DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, and 273

RIN 0584–AC45

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

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Food and Nutrition Service (FNS) proposes to amend its regulations to implement several work-related provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). This proposed rule makes significant changes to current work rules, including requirements for the Food Stamp Employment and Training Program and the optional workfare program. These changes streamline Food Stamp Program work requirements, simplify the disqualification requirements for failure to comply with work rules, and provide greater flexibility for States to operate their employment and training programs.

DATES: Send your comments to reach us by February 22, 2000.

ADDRESSES: You may mail comments to Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, attention Program Design Branch. You may FAX comments to us at (703) 305–2486, attention Program Design Branch. You may also hand-deliver comments to us on the 7th floor at the above address. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under Electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: John Knaus, Chief, Program Design Branch, Program Development Division, Food Stamp Program, FNS, at (703) 305–2519. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Electronic Access and Filing Address

You may view and download an electronic version of this proposed rule at http://www.fns.usda.gov/fsp/. You may also comment via the Internet at the same address. Please include ''Attention: RIN 0584–AC45'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your message, contact us directly at (703) 305–2519.

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section of paragraph of the proposed rule you are addressing. We may not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period or comments delivered to an address other than those listed above. We will make all comments, including names, street addresses, and other contact information of respondents, available for public inspection on the 7th floor, 3101 Park Center Drive, Alexandria, Virginia 22302 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays. We will also post all comments on the Internet at http://www.usda.gov/fsp at the end of the comment period. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, or other contact information from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

Since 1971, able-bodied food stamp recipients have been required to register for work and accept suitable jobs as a condition for receiving benefits. In 1982 Congress passed legislation creating workfare, a food stamp work-for-benefits program. States and local jurisdictions were afforded the option of requiring most able-bodied recipients to work in public service jobs in exchange for their food stamps. In 1987 States implemented the Food Stamp Employment and Training (E&T) Program, designed to improve food stamp recipients' ability to gain employment, increase earnings, and reduce their dependency on public assistance.

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 Food Stamp Program (FSP) work-related provisions that strengthen work requirements, promote personal responsibility, streamline E&T requirements, and greatly increase State flexibility.

Section 815 of PRWORA revised FSP work requirements by amending section 6(d)(1) of the Food Stamp Act of 1977 (the Act) (7 U.S.C. 2015(d)(1)). It dealt with disqualification for noncompliance with FSP work requirements. It added to the list of ineligible individuals at section 6(d)(1)(A) 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 Act (7 U.S.C. 2029). Section 815 deleted, as an explicit good cause for refusal to accept an offer of employment, the lack of adequate child care for children above age five and under age 12. The provision 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 part A of title IV of the Social Security Act (title IV–A), 42 U.S.C. 601 *et seq.*

Section 817 of PRWORA amended Act language at section 6(d)(4) relating to the E&T Program. It streamlined 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 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.

PRWORA also contained major changes in the requirements for Federal financial participation in the E&T program. Subsequently, the Balanced Budget Act of 1997 (Pub. L. 105–33) further amended those requirements. Federal financial participation is addressed in a separate rulemaking.

Three other PRWORA provisions added new language to the 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 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.

Lastly, as part of the Department's ongoing regulation streamlining and reform initiative, this rule proposes to consolidate the workfare regulations at 7 CFR 273.22 with FSP work requirements contained in 7 CFR 273.7.

III. Discussion of Proposed Rule

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 two-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 Act, this rulemaking proposes the following changes to current regulations.

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.

Section 815 of PRWORA amended section 6(d)(1) of the Act by adding to the list of reasons for disqualification the refusal without good cause by an individual to provide a State agency with sufficient information to determine his or her employment status or job availability. Note, however, that 7 CFR 273.7(e) already contains the requirement that a work registrant respond to a request from the State agency or its designee for supplemental information regarding employment status or availability for work. Therefore, no action is required to amend current regulations in this regard.

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 aligned workfare penalties with other work penalties. It amended section 20 of the 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 Act as a reason for disqualification.

Therefore, this rule proposes 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.

This rule further proposes to incorporate the work registrant requirements listed in 7 CFR 273.7(e) into 7 CFR 273.7(a), which will be redesignated 7 CFR 273.7(a)(1) and renamed *work requirements.*

This rule also proposes 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). They will be redesignated 7 CFR 273.7(a)(4), (a)(5), and (a)(6) respectively.

Lastly, this rule proposes to make the following changes to 7 CFR 273.7: (1) the current provisions at 7 CFR 273.7(f), (g), (h), (i), (m), and (n) will be redesignated 7 CFR 273.7(e), (f), (g), (h), (i), and (j) respectively; (2) the current provisions at 7 CFR 273.7(o) and (p) will be deleted and new provisions, designated 7 CFR 273.7(k) and (l) will be added; (3) the provisions for the optional workfare program at 273.22 will be redesignated 7 CFR 273.7(m); and (4) 7 CFR 273.22 will be removed.

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 Act by adding a new provision, section 6(d)(1)(D), Administration. While assigning to the Secretary responsibility for determining the meanings of good cause, voluntary quit, and reduction of work effort, section 6(d)(1)(D) assigns 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.

This rule proposes 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 (other than good cause, voluntary quitting, and reducing work effort); for establishing the procedures for determining whether an individual is in compliance with FSP work requirements; and for determining whether an individual is in actual compliance with FSP 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. These provisions will be incorporated in a new paragraph, 7 CFR 273.7(a)(2).

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 FSP 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)(B) of the 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 FSP 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.

This rule proposes 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, and by adding a new paragraph (4), *Household Ineligibility.* 7 CFR 273.7(f)(4) will 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.

Disqualification Periods

Current regulations at 7 CFR 273.7(g)(1) establish a two-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 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 he or she complies with the requirement, one month, or, at State agency option, up to three months, whichever is later. For the second violation, until the later of the date the individual complies, two months, or a period—determined by the State agency—not to exceed six months. For the third or subsequent violation, until the later of the date the individual complies with the requirement; six months; a date determined by the State agency; or, at the option of the State agency, permanently.

This rule proposes 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) will provide for minimum mandatory disqualification periods for individuals who fail or refuse without good cause to comply with FSP 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 propose to add a new paragraph (d)(xiii) under 7 CFR 272.2, *Plan of operation.* Paragraph (d)(xiii) will contain the requirement for each State agency's disqualification policies.

Ending Disqualification

Current regulations at 7 CFR 273.7(h) provide that, at the end of the 2-month disqualification period, participation may resume if the disqualified individual or household reapplies for benefits and is determined eligible.

Eligibility may be reestablished by a household during the disqualification period if the head of household becomes exempt from the work registration requirement, is no longer a member of the household, or complies with the appropriate work requirement. A disqualified individual may resume participation during the disqualification period by becoming exempt from work registration or by complying with the appropriate requirement.

As discussed previously, section 815 of PRWORA assigned to State agencies responsibility for establishing the procedures for determining whether an individual is in compliance with work requirements, as well as the actual determination of compliance.

The Department believes that Congress intended for State agencies to have maximum flexibility in implementing and administering their disqualification policies. Thus, when determining whether a disqualified individual or household has complied with the FSP work requirement in question, a State agency may use its established procedures, as long as these procedures are no less restrictive than the State agency's title IV–A process.

Since section 815 of PRWORA called for mandatory disqualification periods (the *later* of the date of compliance or end of disqualification), a disqualified individual will no longer be able to comply with the requirement during the disqualification period and end or ''cure'' the disqualification early.

Congress clearly intended to end this practice of curing of a disqualification. Section 815 amended section 6(d)(1)(B)(ii) of the Act by deleting the following provision: ''Any period of ineligibility for violations under this paragraph shall end when the household member who committed the violation complies with the requirement that has been violated.''

Thus, PRWORA removed a policy that provoked criticism in the past: the possibility of reestablishing eligibility during a disqualification by complying with a work requirement. This ability to cure a disqualification was viewed as providing a ''revolving door'' through which noncompliant participants could continuously reenter the FSP to avoid serious penalty.

In light of this prohibition against curing a disqualification, several State agencies have asked whether PRWORA also changed the previous policy of ending a disqualification when, during the disqualification period, a disqualified individual became exempt from FSP work requirements. This policy is unchanged.

Section 6(d)(2) of the Act provides that a person who must otherwise comply with the FSP work requirements in section 6(d)(1), and who is subject to the penalties for noncompliance, is exempt from those requirements if he or she is: (1) subject to and complying with a title IV–A or Federal–State unemployment compensation work requirement; (2) a parent or other household member caring for a dependent child under age six or an incapacitated person; (3) a student; (4) a regular participant in a drug addiction or alcoholic treatment and rehabilitation program; (5) working 30 hours a week or earning the minimum wage equivalent; or (6) between the age of 16 and 18 and not head of a household, or between 16 and 18 and attending school or training on a half-time basis. Also exempt are those under 16 or 60 and over and those who are physically or mentally unfit.

In the Department's view, the language of section 6(d)(2) must be interpreted to include disqualified individuals who meet one of the exemption criteria. In such cases, that individual is no longer subject to the work requirements or to the attendant penalties for noncompliance. For instance, if a disqualified individual gains responsibility for the care of a dependent child under six during his or her disqualification period, that individual is no longer subject to FSP work requirements. The disqualification must terminate and the individual, if otherwise eligible, must be allowed to resume participation.

Therefore, this rule proposes to amend redesignated 7 CFR 273.7(g) by deleting reference to a 2-month disqualification period and by providing that, at the end of the applicable minimum mandatory disqualification period (except in cases of permanent disqualification), participation may resume if the disqualified individual reapplies for food stamps and is determined by the State agency to be in compliance with work requirements. This rule proposes to further amend redesignated 7 CFR 273.7(g) by removing the provision for curing a disqualification.

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 child care 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 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 child care remains as a good cause reason for noncompliance.

Although current good cause regulations remain basically unchanged, we propose to take this 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 propose 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.

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 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.

We propose 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 believe that 60 days is a reasonable time span to use to gauge intent.

We also propose 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 Program work requirements. The Department welcomes comments on this issue.

Lastly, 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 proposes to make this clear in the rule. We also propose to incorporate good cause for reduction of work effort into the good cause provision at redesignated 7 CFR 273.7(i).

Accordingly, the following amendments to redesignated 7 CFR 273.7(j) are proposed. Any individual who, 60 days or less before applying for food stamps, or at any time after application, without good cause quits a job of 30 hours or more a week or a job that provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 30 hours, or who is employed 30 or more hours per week but without good cause reduces his or her work effort to less than 30 hours, must be disqualified for a period specified by the State agency's minimum mandatory disqualification provisions. The disqualified individual must be considered an ineligible household member. The individual's income and resources must continue to be counted to determine eligibility and level of benefits for the remaining household members. 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 household the State agency may, at its option, disqualify the entire household. Because the ability to cure a disqualification was eliminated, the provision for reestablishing eligibility during a disqualification if the individual secures new, comparable employment is removed.

Failure To Comply With a Title IV–A or Unemployment Compensation Work Requirement

Current regulations at 7 CFR 273.7(g)(2) provide that an individual who is exempt from FSP work requirements because he or she is registered for work under title IV–A or unemployment compensation but fails to comply with a title IV–A or unemployment compensation requirement *comparable* to a food stamp work requirement must be treated as though the individual failed to comply with the corresponding food stamp requirement. Comparability exists if the title IV–A or unemployment compensation requirement places responsibilities on the individual similar to food stamp work requirements.

In the past, this comparability issue created controversy and confusion among State agencies. How can a requirement in one program be ''comparable'' to one in another program with different rules, different caseloads, and different operating procedures? The ''similar responsibilities'' explanation only added to the confusion. If a title IV–A work program contained a training component not available to food stamp work registrants, did this mean that participation in that component placed a greater responsibility on the title IV–A household than on the food stamp household, even if the food stamp household had another component available; one that, while not the same, provided opportunities for training?

A conforming amendment to section 819 of PRWORA deleted the comparability language in section 6(d)(2)(A) of the Act relating to failure to comply with a title IV–A or unemployment compensation work requirement.

With the striking of the comparability requirement, State agencies are now able to impose FSP disqualifications on individuals (and-optionally-households) who fail to comply with title IV–A or unemployment compensation work requirements, without regard to the existence of ''similar responsibilities'' among programs.

The regulation continues to make it clear that the noncomplying individual will not be subject to FSP disqualification if he or she meets one of the other exemption criteria listed at 7 CFR 273.7(b) (excluding participation in title IV–A work activities or receipt of unemployment compensation). For example, an individual responsible for the care of a child under six who is disqualified under a title IV–A program for failure to comply with its work requirements would not be subject to a FSP disqualification because that individual remains exempt under another FSP criteria.

Note: Section 819 of PRWORA, titled ''Comparable Treatment for Disqualification,'' added a new paragraph (i) to section 6 of the Act. Section 6(i) provided that, if a food stamp recipient is disqualified for failure to comply with a requirement of a Federal, State, or local means-tested public assistance program, the State agency may opt to impose the same disqualification on the recipient under the FSP. Thus, in the example above, the State agency could, under the comparable disqualification provision of section 6(i), disqualify the individual who is responsible for the care of a child under six, using title IV–A rules and procedures. It is important to note that the language of section 6(i) specifically limits this option to individuals. Therefore, State agencies may not impose comparable treatment for disqualification on the entire household.

The Department is proposing to amend redesignated 7 CFR 273.7(f)(6) accordingly by deleting the comparability requirement for imposing FSP disqualifications on individuals who are not otherwise exempt FSP work requirements and who fail to comply with the work registration requirements of title IV–A or of the Federal-State unemployment compensation system. The Department further proposes to add the option of allowing State agencies to disqualify individuals who meet other FSP exemption criteria by using the same rules and procedures that apply under title IV–A for failure to comply with a title IV–A work requirement. Such a disqualification must be in accordance with the comparable disqualification provisions at 7 CFR 273.11(l).

Caretaker Exemption

Current regulations at 7 CFR 273.7(b)(iv), pursuant to section 6(d)(2)(B) of the 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 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 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, may lower the age of a qualifying dependent child to between one and six years. This option may be exercised for a period of not more than three years.

This rule proposes 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. These State agencies, upon submission of written notification to the Department, may, for a maximum of three years, lower the age of a dependent child that qualifies a parent or other household member for an exemption to between one and six.

Employment and Training Program

Since April 1987 State agencies have been required to operate a Food Stamp Employment and Training Program. The E&T program seeks to improve food stamp recipients' ability to obtain regular employment, increase earnings, and reduce their dependency on public assistance.

State agencies may choose to operate one or more of a variety of E&T components. The components may vary from State to State, and may include job search, job search training, workfare, work experience, self-employment activities, and vocational and basic education components. Job search has by far been the most prevalent activity, because of its relatively low cost.

The Department funds the E&T Program in three categories. An annual 100% Federal grant is allocated to State agencies to operate their programs. The Department matches allowable operational E&T costs that exceed the 100% Federal grant. USDA also matches 50% of the costs incurred by participants in fulfilling their E&T obligations by contributing half of the costs for dependent care (within certain limits), and half of up to $25 per month for transportation and other costs. All funding passes from USDA directly to State agencies.

Prior to the enactment of PRWORA, the Department allocated an annual 100% Federal grant of $75 million to State agencies. In accordance with section 16(h) of the Act, $60 million was distributed according to each State's proportion of work registrants nationwide, and the remaining $15 million was distributed based on State agency performance in placing people into E&T activities.

The Food Security Act of 1985 (Pub. L. 99–198), which created the E&T Program, mandated that the Department establish performance standards requiring State agencies to place at least 50 percent of their mandatory participants into E&T programs. Mandatory participants are work registrants not exempted from E&T by a State agency. Congress lowered the 50 percent performance requirement to 10 percent, effective FY 1992, to encourage State agencies to begin utilizing more substantive interventions or to target service to certain groups.

Each State agency must have in place conciliation procedures for the resolution of disputes involving the participation of individuals in the E&T Program.

In accordance with section 817 of PRWORA, which contains amendments to section 6(d)(4) of the Act, this rulemaking proposes the following changes to current regulations.

Statewide Workforce Development System

Section 817 of PRWORA amended section 6(d)(4) of the Act to require that each component of a State agency's E&T program be delivered through a statewide workforce development system, unless the component is not available locally through such a system.

A statewide workforce development system is an interconnected strategy for providing comprehensive labor market and occupational information to jobseekers, employers, providers of one-stop delivery of core services, providers of other workforce employment activities, and providers of workforce education activities.

This rule proposes to add, at 7 CFR 273.7(c), a new paragraph (5), which will contain the requirement that each component of a State agency's E&T program be delivered through its statewide workforce development system. If the component is not available locally through such a system, the State agency may use another source.

Acceptable Level of Effort of E&T Components

Current regulations at 7 CFR 273.7(f)(1) require that any E&T component offered by a State agency entail a certain level of effort on the part of participants. The Department established a minimum level of effort that is comparable to spending 12 hours a month for two months (or less in workfare or work experience components) making job contacts. The Department based this level on the pre-E&T food stamp job search requirement that a participant contact 24 employers in an eight-week period in an effort to locate suitable employment. The Department intends to maintain this level as the acceptable level of component effort.

Section 824 of PRWORA established a new work requirement under which nonexempt ABAWDs become ineligible if, during a 36-month period, they receive benefits for three months in which they do not meet specific conditions. One such condition is participation for 20 or more hours a week in a work program, such as E&T—excluding job search or job search training activities. The 20-hour requirement does not apply to workfare or work experience components of E&T programs. Participation in those components is limited to the number of monthly hours equal to the result obtained by dividing a household's food stamp allotment by the higher of the applicable Federal or State minimum wage.

The Department urges State agencies to plan their E&T component participation requirements with the ABAWD provisions in mind. By establishing sufficient levels of effort for their non-work, non-job search/job search training E&T program components, or by judicious scheduling of simultaneous participation in a combination of components to meet the ABAWD provisions, State agencies can contribute significant—and valuable—resources to permit ABAWDs to maintain their food stamp eligibility. State agencies must keep in mind, however, the maximum individual or household participation requirements specified in section 6(d)(4)(F) of the Act. The total monthly work hours in an E&T program required of a household, together with the hours of work in a optional workfare program, may not exceed the number of hours equal to the household's food stamp allotment divided by the higher of the applicable Federal or State minimum wage. The total hours of individual participation in E&T, together with any hours worked for compensation in cash or in kind (including workfare), cannot exceed 120 hours per month.

Applicant Work Requirements

Current regulations at 7 CFR 273.7(f)(1) allow a State agency to require an individual to conduct a job search from the time an application is filed for an initial period of up to eight consecutive weeks. This State agency option was provided to conform FSP policy with title IV–A applicant job search requirements.

Section 817 of PRWORA amended section 6(d)(4) of the Act by expanding this existing State agency option. In addition to job search, a State agency may require non-exempt food stamp applicants to participate in any of its E&T program components as a condition of eligibility.

This rulemaking proposes to amend redesignated 7 CFR 273.7(e)(1) to authorize a State agency to require FSP applicants, at its option, to participate in and comply with any component it offers in its E&T program for an initial period beginning at the time of application. In order to assure the maximum success of applicant participation, the Department further proposes to remove the eight-week time limit for this initial period of applicant participation. Thus, a State agency may require applicant participation for any initial period it determines to be adequate to meet program goals. However it was not the intent of Congress to permit State agencies to delay the determination of an individual's eligibility for benefits or the issuing of benefits to an otherwise eligible household until initial participation is completed. Therefore, the Department proposes to maintain the requirement at redesignated 7 CFR 273.7(e)(1)(i) that, as long as the applicant is complying with the E&T requirement, the State agency not delay the determination of the individual's eligibility for benefits or the issuance of benefits to an otherwise eligible household pending completion of an applicant E&T requirement.

Job Search

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 Act by deleting the title IV–A comparability requirement for job search.

Therefore, we propose 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.

The legislative history of the Act indicates that, while Congress did not place a minimum or maximum limit on job search, it did expect the Department to develop and implement reasonable requirements. The only limitation Congress placed on the Department was that it not initiate a mandatory continual job search. Congress did not intend that work registrants actively engage in a systematic and sustained effort to obtain work every month and provide tangible evidence to the State agency of such effort. It feared that such a system would create administratively complex and cumbersome reporting systems that would flood State agency offices with paperwork, but would not produce jobs. At the time of the publication of the original job search rule in January 1981, the Department chose the eight-week job search period to conform with the requirements of the Aid to Families with Dependent Children (AFDC) Program. Job search under AFDC's Work Incentive Program (WIN) was mandated to be no more than eight weeks a year.

In keeping with the State agency flexibility offered under PRWORA, the Department further proposes to amend redesignated 7 CFR 273.7(e)(1)(i) by removing the annual eight 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 believes that Congress' initial concern about the length of job search still applies. 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 Department welcomes comments on this issue.

Lastly, the Department proposes to amend redesignated 7 CFR 273.7(e)(1)(i) by adding that, in accordance with section 6(o)(1)(A) of the 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 food stamp eligibility for able-bodied adults. This same notice will be added at redesignated 7 CFR 273.7(e)(1)(ii), which describes job search training programs. These additions will 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 propose 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.

Workfare

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

We propose to amend redesignated 7 CFR 273.7(e)(1)(iii) to include a statement that makes clear that the job search period authorized by State agencies for workfare components does meet the work requirement for able-bodied adults.

Work Experience Programs

Current regulations at 7 CFR 273.7(f)(1)(iv) authorize assignment to a work experience component to improve the employability of participants through training and/or actual work experience. In accordance with sections 6(d)(4)(B)(i)(I) and (II) of the Act, assignments are limited to ones that serve a useful public purpose in fields such as health, social service, environmental protection, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care. Additionally, assignments are to use, to the greatest extent possible, a participant's prior training, experience, and skills.

Section 817 of PRWORA amended section 6(d)(4) by deleting the above limitations imposed on work experience assignments. In taking this action, the Department believes that Congress meant to expand State agency flexibility to place individuals not only in public or private non-profit assignments, but also in work experience positions with private sector, for-profit employers. However, the Act and other Federal laws—including the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, *et seq.*)—govern the rights of participants assigned to positions with for-profit employers as well as those in non-profit positions. State agencies must exercise great caution to comply with those laws and to ensure those rights when establishing and operating private sector work experience components.

This flexibility does not extend to workfare assignments, in which participants are required to work off the value of their household's monthly food stamp allotment. Workfare assignments may only be in public or private non-profit agencies.

We propose to amend redesignated 7 CFR 273.7(e)(1)(iv) by deleting the requirements that work experience assignments serve a useful public purpose, and that they use, to the greatest extent possible, a participant's prior training, experience, and skills. Thus, assignments can be made to any available public or private non-profit project, as well as with any private, for-profit employer, regardless of prior training, experience, or skills, as long as such assignments, pursuant to section 6(d)(4)(B)(iv), do not serve to replace a worker not participating in the program; and as long as they provide the same benefits and working conditions to E&T participants as those provided to regular employees performing comparable work for comparable hours.

''Other Programs, Projects, and Experiments''

In accordance with section 16(h)(4) of the Act, the Federal 100 percent E&T grant may only be used by State agencies to operate an E&T program under section 6(d)(4). Section 6(d)(4)(B)(vii) of the Act includes as an allowable component of an E&T program other employment, educational and training programs, projects, and experiments aimed at accomplishing the purpose of the E&T program. Such components must be approved by the Secretary, or by the State under regulations issued by the Secretary. These components include work programs under section 824 of PRWORA that allow ABAWDs to maintain eligibility for food stamps. These work programs are defined as (1) a program under the WIA; (2) a program under section 236 of the Trade Act; and (3) a program of employment and training operated or supervised by a State or political subdivision of a State that meets standards approved by the Governor of the State, including a program under subsection (d)(4), other than a job search program or a job search training program. Therefore, in order to qualify for Federal financial participation, all WIA, Trade Act and State/local employment and training programs must be fully described in the State E&T plan; must guarantee all the rights and meet all the requirements of regular E&T program components; and must be approved by the Secretary.

Exemptions

Current regulations at 7 CFR 273.7(f)(2) permit State agencies, subject to approval by the Department, to exempt from E&T certain individual work registrants or categories of work registrants for which participation is impracticable. Factors listed which may lead to the impracticability of participation in some geographic areas, for some groups of work registrants, include availability of job opportunities and the cost-effectiveness of participation. For individuals, personal circumstance such as lack of job readiness, the remote location of work opportunities, physical condition, and the unavailability of dependent care are listed. Additionally, with approval from the Secretary, persons who have participated in the FSP for 30 days or less may be exempted from participation.

Although State agencies are afforded a certain amount of flexibility in determining who will or will not participate in E&T, they are required to justify proposed exemptions in their E&T State plans. The Department can accept or reject the proposed exemptions, based on the validity of the State agency's claim.

Individual exemptions must be reevaluated at each recertification.

Categorical exemptions should be reviewed no less frequently than annually to determine whether they remain valid.

Current regulations at 7 CFR 273.7(c)(4) detail the State agency's responsibilities for preparing and submitting an E&T plan. Paragraph (c)(4)(iii) requires the State agency to list the categories and types of individuals it seeks to exempt from E&T participation, the basis used to determine these exemptions, including any cost information, and the estimated percentages of work registrants the State plans to exempt.

Section 817 of PRWORA amended section 6(d)(4)(D) of the Act to remove the requirements that: (1) individual and categorical exemptions from E&T be based on impracticability; (2) State agencies require the approval of the Secretary to exempt household members that have participated in the FSP for 30 days or less; and (3) individual exemptions be reevaluated no less often than at each certification or recertification.

Accordingly, the Department proposes to amend redesignated 7 CFR 273.7(e)(2) by removing restrictions on State agency flexibility in determining E&T exemptions. The State agency may, at its discretion, exempt individual work registrants and categories of work registrants. Although the validity of exemptions must be periodically reevaluated, each State agency may establish the frequency of its evaluation.

The Department also proposes to amend 7 CFR 273.7(c)(6)(iii) by removing the requirement that the State agency list the basis, including cost information, it uses to determine its exemptions; and by adding the requirement that it include the frequency with which it plans to reevaluate the validity of its exemptions.

Voluntary Participation

Current regulations at 7 CFR 273.7(f)(4) contain two provisions for volunteers. First, that a State agency ''may operate program components in which individuals elect to participate.'' Second, a State agency ''shall permit, to the extent it deems practicable, persons exempt from the work registration or employment and training requirements,'' as well as those who have complied or are in the process of complying with E&T requirements, to participate in any E&T component it offers.

While the purpose of the two provisions appears to be similar but contradictory—one is an option, the other a mandate—they were based on Congressional intent to provide for two different circumstances.

The term volunteer must first be defined. A volunteer is an individual who is exempt from FSP work requirements or who is a work registrant exempted by the State agency from participation who elects to participate in E&T. A mandatory participant who elects to participate in an E&T component while or after completing a required component is considered a volunteer in the subsequent component.

In the first instance, Congress, recognizing its potential effectiveness, permitted State agencies to allow any individual food stamp recipient who elected to participate to volunteer. For example, persons with a child under 6—and therefore exempt from work registration—who wished to receive training and assistance in finding a full-time job would benefit, and long term Federal costs might be lowered.

In the second instance, Congress required State agencies to allow, to the greatest practicable extent, work registrants exempted from E&T, as well as E&T participants who had complied with or were in the process of complying with program requirements, access to any E&T program component available.

Section 817 of PRWORA amended section 6(d)(4)(G) by removing the requirement that State agencies shall—to the extent deemed practicable—permit both exempt and nonexempt work registrants to participate in any E&T component offered. State agencies retain, however, the option to operate E&T components in which individuals volunteer to participate.

This rule proposes to amend redesignated 7 CFR 273.7(e)(4) by removing the requirement placed on State agencies to permit exempt work registrants and participants to take part in any component offered. While the Department encourages and supports such participation in E&T activities, it believes State agencies should be afforded maximum flexibility in determining who may participate in their programs and to what degree. State agencies continue to have the option to offer E&T components in which volunteers may participate. We do not believe, however, that volunteers should be subjected to the same penalties for noncompliance as mandatory participants. We also do not believe that a distinction should be drawn between volunteer and regular E&T participants concerning maximum hour restrictions on participation. Accordingly, the Department proposes that the current regulatory requirements concerning disqualification and hours of work or participation for volunteers continue to apply.

Conciliation

Current regulations at 7 CFR 273.7(g)(ii) contain requirements for a State agency to establish conciliation procedures to be used when an individual fails to comply with an E&T Program requirement. The purpose of the conciliation effort is to determine the reason(s) the work registrant did not comply with the E&T requirement and provide him or her with an opportunity to comply prior to issuing a notice of adverse action. The conciliation period begins the day after the State agency learns of the noncompliance and continues for at least 30 days. In this time the State agency is expected to contact the noncompliant individual to determine the reason for the noncompliance, establish whether good cause exists, and advise the individual on what actions need to be taken to avoid disqualification. The noncompliant individual must perform a verifiable act of compliance within the 30-day period to avoid receiving a notice of adverse action.

Current regulations at 7 CFR 273.7(g)(iv) and (v) detail the adverse action procedures that a State agency must follow as soon as it learns about an act of noncompliance with a FSP work requirement other than an E&T Program requirement. First, the State agency must establish if good cause for the noncompliance exists. Then, within 10 days of establishing that good cause does not exist, the State agency must issue the noncompliant individual a notice of adverse action.

The notice of adverse action details the particular act of noncompliance committed and the proposed period of disqualification. The notice must also specify that the individual may 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 sanction. The disqualification period begins the first month following the expiration of the 10-day adverse notice period, unless a fair hearing is requested.

Section 817 of PRWORA amended section 6(d)(4)(H) of the Act by deleting the conciliation requirement.

Accordingly, we propose to amend redesignated 7 CFR 273.7(f) by removing the requirements imposed on State agencies to establish and operate a conciliation procedure for the resolution of disputes involving the participation of an individual in E&T. However, a State agency may opt to incorporate an informal conciliation process into its E&T program. In such cases the State

agency must comply with the adverse action procedures at the end of the conciliation period.

Performance Standards and State Compliance With Employment and Training Requirements

Current regulations at 7 CFR 273.7(o) set forth the requirements for State agencies to meet an annual performance standard for the minimum number of participants that a State agency must place in its E&T program. Since FY 1992 the performance standard has been set at 10 percent of a State agency's mandatory E&T participants plus volunteers.

In order to calculate its performance standard at the end of the fiscal year, a State agency is required to collect information on its total work registrants, the number of work registrants it exempts from E&T, and the number of non-exempt work registrants (mandatory participants) and volunteers it places in E&T components during the fiscal year.

The current regulation at 7 CFR 273.7(p)(2) provides that if a State agency fails to meet the required performance standard without good cause, the Department may disallow administrative funding for the State agency's E&T program, as well as withholding the State agency's performance-based allocation. Further, the current regulation at 7 CFR 273.7(p)(1) applies the provisions of § 276.1(a)(4) to State agencies that fail to efficiently and effectively administer their E&T programs. That regulation authorizes FNS to seek injunctive relief and/or suspension or disallowance of the Federal share of a State agency's administrative funds if the State agency fails to efficiently and effectively administer any part of the Food Stamp Program, including E&T.

Section 817 of PRWORA amended section 6(d) of the Act by removing paragraph (K), which directed the Secretary to establish performance standards to measure the extent of State implementation of E&T. Section 817 further amended section 6(d) by removing paragraph (L)(ii), which authorized the Secretary—in cases where a State agency fails, without good cause, to comply with E&T requirements, including failing to meet performance standards—to withhold administrative funding, including the 100 percent Federal E&T grant.

Accordingly, we propose to amend 7 CFR 273.7 by removing paragraph (o), Performance Standards. It is possible that Congress will, in the future, mandate some type of performance measurement system—either process or outcome based—for the E&T Program. In the interim, State agencies are free to use the resources of their E&T programs to serve their at-risk populations in the most effective manner possible.

We also propose to amend 7 CFR 273.7 by deleting paragraph (p), State noncompliance with Employment and Training requirements. The former paragraph (p)(1), which, as explained above, details the consequences of States not complying with E&T requirements, will be redesignated as paragraph (c)(14).

Federal Financial Participation

Current regulations at 7 CFR 273.7(d) require the Department to allocate an annual 100 percent Federal E&T grant to States, based in part on the number of work registrants in each State compared to the number of work registrants nationwide; and in part on each State agency's program performance. Each State agency must receive at least $50,000 in unmatched Federal funds. The State agency is required to use the E&T grant to fund the administrative costs of planning, implementing and operating its E&T program. The Department will pay 50 percent of all other administrative costs above those covered by the 100 percent Federal grant that the State agency incurs in operating its E&T program.

The Department matches half the amount State agencies spend to reimburse E&T participants for the actual costs of transportation and other costs (excluding dependent care) that are determined by the State agency to be necessary and directly related to E&T participation, up to $25 per month. Thus, the Department will pay up to $12.50 a month of each participant's costs. The State agency may supplement this amount, but without Federal matching funds.

State agencies must also provide payments or reimbursements to E&T participants for dependent care expenditures, up to a statewide limit set by the State agency. This statewide limit may not be less than the limit set for the dependent care deduction at 7 CFR 273.9(d)(4), that is, $200 per month for each dependent under age 2 and $175 per month for each other dependent. However, the reimbursement may not exceed the applicable local market rate as determined by procedures consistent with the JOBS Program. Thus, the State agency must reimburse actual costs of dependent care up to either the local market rate or the statewide limit set by the State agency, whichever is lower. The Department matches State agency expenditures for reimbursements at the 50 percent level.

Section 817 of PRWORA amended sections 6(d)(4) and 16(h) of the Act concerning the funding of, and Federal financial participation in, the E&T Program. Subsequently, the Balanced Budget Act of 1997 (Pub. L. 105–33) substantially amended those requirements. Therefore, the majority of amendments dealing with funding are addressed in a separate rule. However, section 817 amended section 6(d)(4) of the Act in two significant areas that will be addressed in this proposed rule.

Section 817 of PRWORA amended section 6(d)(4) of the Act by removing the requirement that reimbursements for dependent care expenses incurred due to participation in E&T must equal at least the amount of the dependent care deduction established for determining household eligibility and benefit amounts. We propose to amend 7 CFR 273.7(c), *State agency responsibilities,* by removing the provision that requires State agencies, in their State plans, to include a statewide limit for dependent care reimbursements established by the State agency that must not be less than the dependent care deduction amounts specified under § 273.9(d)(4).

Section 817 of PRWORA further amended section 6(d) of the Act by adding the 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 fiscal year 1995. This rule proposes, 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 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 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.

Employment Initiatives Program

Section 852 of PRWORA amended section 17 of the Act (7 U.S.C. 2026) to add provisions for an employment initiatives program under which an eligible household in a qualifying State may elect to receive the cash equivalent of its food stamp coupon allotment.

This rule proposes to add, at 7 CFR 273.7, a new paragraph (k), containing the following requirements for the employment initiatives program.

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 benefits from a State program funded under title IV–A. Qualified State agencies are Alaska, California, Connecticut, the District of Columbia, Massachusetts, Michigan, Minnesota, New Jersey, West Virginia, and Wisconsin.

A food stamp household in one of the 10 qualified State agencies may receive cash benefits if it elects to participate and an adult member of the household (1) has worked in regular (i.e., unsubsidized) employment for the last 90 days, earning a minimum of $350 per month; (2) is receiving cash benefits under a State program funded under title IV–A; or (3) was receiving cash benefits from 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.

As required by section 852, A qualifying State agency operating an employment initiatives program must agree to pay for an increase in cash benefits to compensate participating households for any State or local sales taxes on food purchases.

Also as required by section 852, a State agency that operates an employment initiatives program for two years must evaluate the impact of providing cash assistance in lieu of a food stamp coupon allotment to participating households. The State agency must provide the Department with a written report of its evaluation findings. The State agency, with the concurrence of the Department, will determine the content of the evaluation. The Department expects the evaluation to address, at a minimum, questions concerning the effects of providing cash assistance on household food expenditures, food use, and nutrient availability. Additionally, related issues such as households' experiences in running out of food and expenditure shifts from food to other goods and services should be addressed.

Work Supplementation Program

Section 849 of PRWORA amended section 16(b) of the 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.

Prior to the enactment of PRWORA, about a dozen States were approved to operate demonstration projects in local jurisdictions that included a work supplementation component. In July 1997, FNS sent a letter to all States about the work supplementation program including a set of questions and answers. These guidelines were provided to facilitate the implementation of these programs under PRWORA. These guidelines placed no requirements on States beyond those of federal law and other federal regulations governing reporting on and accounting for financial and participation data. Because of the limited experience with the work supplementation programs, the Department does not intend to propose additional requirements or restrictions. The Department hopes that this flexibility encourages more States to develop partnerships with private employers in an environment that supports innovation and experimentation within the limits of the law.

This rule proposes to add, at 7 CFR 273.7, a new paragraph (l), containing the following requirements for the work supplementation or support program.

We further propose to add a new paragraph (d)(1)(xiv) under 7 CFR 272.2, *Plan of operation.* Paragraph (d)(1)(xiv) will contain the requirement for a planning document from each State agency that operates a work supplementation program.

A State agency that proposes to implement a work supplementation program must submit its plan for FNS approval. This plan must address the requirements for a work supplementation or support program listed this proposed rule. Once its plan is approved, FNS will provide the State agency with the cash value of recipients' food stamp benefits to be used as wage subsidies for work supplementation programs and to reimburse the State for related administrative costs.

PRWORA established the following parameters for work supplementation programs:

- The individual must be receiving public assistance, but must not be employed by the employer at the time the individual enters the work supplementation program.
- The wage subsidy received under the work supplementation program must be excluded from household income and resources during the time the individual is participating in work supplementation.
- The household must not receive a separate food stamp allotment while participating in the work supplementation program.
- An individual participating in a work supplementation program must be excused from meeting any other work requirements.
- The work supplementation program must not displace any persons currently employed who are not supplemented or supported.
- 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 effectively decreased due to taxation or any other reason because of its use as a wage subsidy.
- The earned income deduction must not be applied to the subsidized portion of wages earned in a work supplementation program.
- State agencies must specify how public assistance recipients in the proposed work supplementation and support program will, within a specified period of time, be moved from supplemented or supported employment to employment that is not supplemented or supported.

The Department solicits comments in the following areas that are 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 asks 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 is 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.

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 household member is calculated by dividing the household's monthly benefit by the higher of the applicable Federal or State minimum wage. Workfare helps ensure that only those who are willing to work receive benefits; it provides useful public services; and it provides valuable work experience.

Under current rules, household members subject to the work registration requirements of 7 CFR 273.7(a) are also subject to workfare. Additionally, recipients of benefits under title IV–A are 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 are also subject to workfare.

Workfare is a household responsibility. Legislative history (Conference Report No. 97–290 on the Agriculture & 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 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 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 (42 U.S.C. 609); and (3) conform disqualification penalties for failure to comply with workfare requirements with those under section 6(d)(1) of the 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.

This rulemaking proposes 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 propose to move the amended 7 CFR 273.22 to 7 CFR 273.7, *Work provisions,* and to designate it paragraph (m), *Optional workfare program.*

Comparable Workfare

Section 824 of PRWORA established the provision that non-exempt individuals will become ineligible if, in the preceding 36-month period, they receive food stamps for three months during which they do not meet a required work or training obligation. One of the qualifying activities is to ''participate in and comply with the requirements of a [workfare] program under section 20 or a comparable program established by a State or political subdivision of a State * * *''

Several State agencies are operating—or have expressed an interest in operating—programs that, while comparable to workfare in that they require the participant to work for his or her household's food stamp allotment, vary greatly from the requirements of workfare under section 20 of the Act. The purpose of these comparable programs is to assist ABAWDs in fulfilling their work requirement and maintaining eligibility for benefits. Although there are variations, these comparable programs, for the most part, provide that the ABAWDs voluntarily participate and find their own public service placements. They are also responsible for arranging to have their participation reported to their

caseworkers and for verifying their workfare hours. Participation requirements range from three hours a week to 25 hours per month. Additionally, these ''self-inititated'' programs may or may not offer reimbursement for transportation or other costs of participation. The work site is responsible for providing work benefits and/or protections.

The Department initially determined that, since self-initiated programs do not meet the requirements of section 20 of the Act, they are not eligible for Federal financial participation. However, the Balanced Budget Act of 1997 contained a ''use of funds'' requirement for 100 percent Federal E&T grant allocations. State agencies must use at least 80 percent of their E&T grants to serve nonexempt ABAWDs who are placed in and comply with the requirements of an approved work program, a workfare program under section 20 or a comparable workfare program established by a State or political subdivision. Thus comparable self-initiated workfare programs are now eligible for Federal financial participation.

This rule proposes to add a new paragraph (10) to the newly designated paragraph 273.7(m). The new paragraph, (m)(10), will contain the provisions relating to comparable workfare programs.

IV. Procedural Matters

Executive Order 12866

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

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 to (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley Watkins, 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 Food Stamp Program.

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 the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) which 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 the UMRA.

Regulatory Impact Analysis

Need for Action

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 would: (1) establish new disqualification penalties for noncompliance with Food Stamp Program work requirements; (2) permit certain States to lower the age at which a child exempts a parent or caretaker from food stamp work rules; (3) revise and streamline the Food Stamp Employment and Training (E&T) Program; (4) provide States 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 Food Stamp Program 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.

Costs

Changes brought about by this rule will reduce Program costs for the five-year period FY 99 through FY 03 by approximately $101.7 million. The savings are realized from section 815, disqualification. They are the result of new disqualification penalties for noncompliance with Food Stamp Program work requirements. For FY 1999–2003, the estimated yearly dollar savings (in millions) are $30.9, $25.9, $19.5, $13.3, and $12.1 respectively. The costs/savings of the other four provisions cannot be determined because they either do not affect eligibility for food stamps or their effect on eligibility cannot be determined. They will not be discussed in this analysis.

Section 815—Disqualification. This provision deals with disqualification for noncompliance with Food Stamp Program work requirements. It adds to the list of ineligible individuals those who refuse without good cause to provide sufficient information to allow a determination of their employment status or job availability; voluntarily and without good cause quit their job (previously limited to heads of households); voluntarily and without good cause reduce their work effort to less than 30 hours a week; and fail to comply with the workfare rules in section 20 of the Food Stamp Act.

The disqualification provision deletes the lack of adequate child care for children above age five and under age 12 as an explicit good cause for refusal to accept a job offer and removes the requirement that the entire food stamp household be disqualified if the head of

the household is disqualified. Instead, if the head of the household is disqualified, States have the option of disqualifying the entire household for the duration of the head of the household's disqualification, or for 180 days, whichever is less.

The provision establishes new mandatory minimum disqualification periods for individuals who fail to comply with work requirements. The length of the disqualification is based on the frequency of the occurrence. The State agency has the option to choose the length for each occurrence: (1) for the first violation, one to three months; (2) for the second violation, two to six months; and (3) for the third or subsequent violation, six months, a date determined by the State agency, or—at State agency option—permanently. In each instance, the individual must complete the disqualification period before he or she is allowed to comply with the work requirement and establish eligibility.

The disqualification provision requires the Secretary to determine the meaning of: (1) good cause; (2) voluntarily quitting; and (3) reducing work effort; requires States to determine: (1) The meaning of other terms; (2) the procedures for establishing compliance; and (3) whether individuals are complying; and requires that none of such determinations be less restrictive than comparable determinations under title IV–A of the Social Security Act.

This provision affects participants who fail to comply with Program work requirements by requiring minimum disqualification periods, with no provision to ''cure'' or end the disqualification by complying. It affects households whose heads fail to comply, if the State agency opts to disqualify the entire household. It also affects households in which a member is disqualified because the disqualified individual's income is considered available to the household in calculating household benefits.

We estimate FY 99 savings to be $30.9 million and the five-year savings for FY 99 through FY 03 to be $101.7 million. The provisions in this section vary only slightly from the work requirements that PRWORA imposed on ABAWDs (for example, age ranges varied only slightly—from 16–60 as opposed to the 18–50 year old range specified for ABAWDs). We derived our estimates using a percentage of FSP participants (mostly ABAWDs) who may be required to meet PRWORA work requirements but who would turn down qualifying work or training opportunities and be sanctioned. We estimate that 22,000 persons will be sanctioned in FY 99 for refusing a work opportunity of some sort. We multiplied this number by the average monthly food stamp benefit level for this group (estimated to be $118.68 in 1999) times 12.

Paperwork Reduction Act

Sections 272.2 and 273.7 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Food and Nutrition Service is submitting a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Operating Guidelines, Forms, and Waivers.

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 (E&T) 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 Food Stamp Program 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.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention Desk Officer for the Food and Nutrition Service.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and 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.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

List of Subjects

7 CFR Part 271

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

7 CFR Part 272

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

7 CFR Part 273

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

Accordingly, 7 CFR Parts 271, 272, and 273 are proposed to be amended as follows:

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

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2:

a. Remove the definition of ''Base of eligibles''.

b. Amend the definition of ''Exempted'' by removing the reference to ''§ 273.7(f)'' and adding in its place a reference to ''§ 273.7(e)''.

c. Revise the definition of ''Placed in an employment and training (E&T) program'' to read 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.

* * * * *

PART 272–REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.2, new paragraphs (d)(1)(xiii) and (d)(1)(xiv) are added to read as follows:

§ 272.2 Plan of operation.

* * * * *

(d) *Planning documents.* * * *

(1) * * *

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

(xiv) 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

4. Revise § 273.7 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 registration form need not be completed by the member required to register.

(ii) Participate in an 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, to the extent required 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 of 1938 (U.S.C. 206(a)(1)) 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.

(2) The Food and Nutrition Service (FNS) will determine the meaning of ''good cause,'' ''voluntary quit,'' and ''reduction of work effort'' as used in paragraph (a)(1) of this section.

(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 required to comply with, 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(g) 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 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) A parent or other household member responsible for the care of a dependent child under 6 or an incapacitated person. If the child has its 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.

(B) The State agencies of Alabama, Kansas, Maryland, Michigan, North Dakota, Virginia, Wisconsin, and Wyoming may opt to lower the age of

a dependent child that qualifies a parent or other household member for an exemption to between 1 and 6. The age may be lowered for a maximum three-year period. The eligible State agencies must notify FNS, in writing, when they decide to initiate their option. Only the State agencies listed are authorized this option.

(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 be 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 farmworkers 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)(iii) 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 (such as loss of employment that also results in a loss of income of more than $25 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) 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 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 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. A 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 a State agency's E&T program must be delivered through a statewide workforce development system, unless the component is not available locally through such a system.

(6) In accordance with § 272.2(e)(9) of this chapter, each State agency must prepare and submit an Employment and Training Plan to its appropriate FNS Regional Office and to the FNS National 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;

(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 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 an informal 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.

(xiv) The payment rates for child care established in accordance with the Child Care and Development Block Grant provisions of 45 CFR 98.43, which require the State agency to ensure that eligible children receive child care services equal to the services provided to children not funded through Block Grant assistance or through child care assistance under any other Federal, State, or Tribal programs.

(7) State agencies will submit E&T Plans biennially, at least 45 days before the start of the Federal fiscal year. State agencies must submit plan revisions to the appropriate FNS regional office for approval if they plan to alter the nature or location of their 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 the number of:

(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.

(9) State agencies will submit annually, on their first quarterly report, the number of work registered persons in that State in October of the new fiscal year.

(10) State agencies will submit annually, on their final quarterly report, the following information:

(i) The number of work registrants exempted from E&T participation as part of a category of persons during the course of the year separated by the specific reasons for the exemptions.

(ii) The number of mandatory and volunteer participants placed in each E&T component offered by the State agency.

(11) Additional information may be required of individual State agencies on an as needed basis depending on the contents of the State agency's E&T Plan regarding the type of components offered and the characteristics of persons served.

(12) State agencies 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) 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 remain available until expended.

(A) No State agency will receive less than $50,000 in Federal 100 percent funds in a fiscal year.

(B) If a State agency will not expend all of the funds allocated to it for a fiscal year, FNS will reallocate the unexpended funds to other State agencies during the fiscal year or the subsequent fiscal year.

(C) State agencies must use E&T program grants to fund the administrative costs of planning, implementing and operating food stamp E&T programs in accordance with approved State agency E&T plans. E&T grants may 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)(1)(ii) of this section.

(D) A State agency's receipt of the E&T program grant as allocated under paragraph (d)(1)(i)(A) or (d)(1)(i)(B) of this section 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 program grant does not release a State agency from its responsibility under paragraph (c)(4) of this section to operate an E&T program.

(E) Federal funds made available to a State agency to operate a 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.

(F) 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 benefits under a State program funded under part A of title IV 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 benefits under a State program funded under part A of title IV 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 recipients.

(ii) *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)(1)(ii)(A) and (d)(1)(ii)(B) 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)(1)(ii)(A) and (d)(1)(ii)(B) of this section. The State agency may reimburse participants for expenses beyond the amounts specified in paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) 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). Reimbursements will be provided as follows:

(A) The costs of dependent care determined by the State agency 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 rate for child care is determined in accordance with the Child Care and Development Block Grant provisions of 45 CFR 98.43, which require the State agency to ensure that eligible children receive child care services equal to the services provided to children not funded through Block Grant assistance or through child care assistance under any other Federal, State, or Tribal programs. 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 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, the applicable payment rate for child care, or the Statewide limit, 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 benefits 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.

(B) The actual costs of transportation and other costs (excluding dependent care costs) that are determined by the State agency to be necessary and directly related to participation in the E&T program up to $25 per participant per month. 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 that exceed the standard, up to $25 or such other maximum level of reimbursements established by the State agency.

(C) 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.

(D) 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.

(E) 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)(1)(ii)(A) and (d)(1)(ii)(B) 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)(1)(ii)(B) of this section will be considered in determining a dependent care deduction under § 273.9(d)(4).

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

(iv) 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.

(2) *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.

(3) *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 (or less in workfare or work experience components if the household's benefit divided by the minimum wage is less than this amount) making job contacts; however, FNS may approve components which do not meet this guideline which it determines will advance program goals. An initial screening by an eligibility 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 of these regulations, job search and job search training, when offered as components of an E&T program *do not meet* the definition of work program relating to the participation requirements necessary to maintain food stamp eligibility for able-bodied adults. 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 required time spent in the other 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. In accordance with section 6(o)(1)(A) of the Food Stamp Act and § 273.24 of these regulations, a job search program *does not meet* the definition of work program relating to the participation requirements necessary to maintain food stamp eligibility for able-bodied adults. However, such a program, when

operated under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*), or under section 236 of the Trade Act of 1974 (19 U.S.C. 2296) does meet the definition of work program.

(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) and (2) of the Food Stamp Act and § 273.24 of these regulations, a job search program *does not meet* the definition of work program relating to the participation requirements necessary to maintain food stamp eligibility for able-bodied adults. However, such a program, when operated under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*), or under section 236 of the Trade Act of 1974 (19 U.S.C. 2296) does meet the definition of work program.

(iii) A workfare program as described in paragraph (m) of this section. 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 work requirement for able-bodied adults.

(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 State or Federal 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; or who, in accordance with paragraph (j) of this section, voluntarily and without good cause quits a job or reduces work effort and, after the reduction, is working less than 30 hours per week, is ineligible to participate in the Food Stamp Program, and will be considered an ineligible household member, pursuant to § 273.1(b)(2).

(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 sanction. 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.

(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) *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.

(4) *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; or

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

(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.

(5) *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.

(6) *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)(4) 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)(4) 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 individuals 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)(1) 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(l) of these regulations.

(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) In addition to any criteria established by State agencies, employment will be considered unsuitable if:

(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).

(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. For example, a Sabbatarian could refuse to work on the Sabbath.

(i) *Good cause.* (1) The State agency is responsible for determining good cause when a food stamp recipient fails or refuses to comply with FSP 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 household member involved and the employer, 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 does not meet the suitability criteria 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 by not meeting the criteria 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 20 hours a week or in which the weekly earnings are equivalent to the Federal minimum wage multiplied by 20 hours 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 weekly earnings of less than the Federal minimum wage multiplied by 20 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) *Individual ineligibility.* An individual is ineligible to participate in the Food Stamp Program if, in the 60 days 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.

(2) *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 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 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 the last 60 days. 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 voluntarily 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)(3) 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)(2). 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)(3) 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 within 60 days prior to 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 may resume participation at the end of the disqualification period, if applicable. 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)(2). 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. If 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 up to the entire appropriate mandatory disqualification period, beginning the first of the month after the month in which the voluntary quit or reduction in work effort occurred. If there are fewer days than the appropriate mandatory disqualification period from the first of the month after the month in which the voluntary quit or reduction in work effort occurred to the end of the certification period, a claim must be imposed, and the individual must remain ineligible for benefits for a prorated number of days, with the end result that a claim is established or the individual is ineligible for the full mandatory disqualification period. 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)(3) of this section.

(3) *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.

(4) *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 part A of title IV of the Social Security Act.

(3) *Qualified State agencies.* Alaska, California, Connecticut, DC, 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 part A of title IV 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 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.

(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.

(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.

(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)(6)(ii) 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 paragraph (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.

(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.

(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) Participants may be required to work up to, but not to exceed, 30 hours per week. In addition, the total number of hours worked by a workfare participant, together with any other hours worked in any other compensated capacity, including hours of participation in a title IV work program, by that participant on a regular or predictable part-time basis, must not exceed 30 hours a week. 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 (Pub. L. 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 contained in paragraphs (m)(6)(v)(A) and (m)(6)(v)(B) of this section.

(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 that number of hours toward future work obligations.

(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.

(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 part A of title IV 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) *Coordination with other workfare-type programs.* State agencies and political subdivisions may operate workfare programs as provided in this section jointly with a workfare program operated under Title IV of the Social Security Act to the extent that provisions and protections of the statute are maintained or with other workfare programs operated by the subdivision to the extent that the provisions and protections of this paragraph (m) are maintained. Statutory provisions include, but are not limited to, eligible recipients as provided in paragraph (m)(5)(i) of this section, maximum hours of work per week as provided in paragraph (m)(6)(i)(A) of this section and the penalties for noncompliance as provided in paragraph (f) of this section. When a household receives benefits from more than one program with a workfare requirement and the household is determined to have a food stamp workfare obligation, the food stamp obligation may be combined with the obligation from the other program. However, this may be done only to the extent that eligible food stamp workfare participants are not required to work more than 30 hours a week in accordance with paragraph (m)(6)(i)(A) of this section. Any intent to coordinate programs should be described in the plan. Waivers of provisions in this section, for the purpose of operating workfare jointly with local general assistance workfare-type programs, may be requested and provided in accordance with § 272.3(c) of this chapter. Statutory provisions shall not be waived.

(9) *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 criteria, the Department reserves the right to withdraw approval.

(10) *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 able-bodied adults without dependents affected by the participation 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.

(iv) The State agency or political subdivision must provide a description of its program, including a methodology for ensuring compliance with (m)(10)(ii) of this section. The description should be submitted to the appropriate Regional office, with copies forwarded to the Food Stamp Program National office.

§ 273.22 [Removed]

5. Remove § 273.22.

Dated: December 16, 1999.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

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