

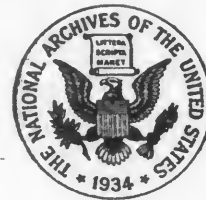
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PART III



DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

■

FOOD STAMPS

Republication of Certain Regulations

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE
FOOD STAMPS

Republication of Certain Regulations

In view of the numerous amendments to the regulations governing the operation of the Food Stamp Program, the Department of Agriculture is issuing an editorial republication of Parts 270-274 of the Food Stamp Program Regulations, 7 CFR Parts 270-274. This republication, which contains no substantive changes, supersedes any previous Food Stamp Program Regulations and amendments issued thereto relevant to these Parts. New Part 275, which is an amendment to the Food Stamp Program Regulations, issued at 39 FR 43691, is not affected by this republication.

SUBCHAPTER C—FOOD STAMP PROGRAM

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PART 270—GENERAL INFORMATION AND DEFINITIONS

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AUTHORITY: 78 Stat. 703, as amended (7 U.S.C. 2011-2026).

§ 270.1 General purpose and scope.

(a) Section 2 of the Food Stamp Act states:

It is hereby declared to be the policy of Congress, in order to promote the general welfare, that the Nation's abundance of food should be utilized cooperatively by the States, the Federal Government, local governmental units, and other agencies to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households. The Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. The Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of our agricultural abundances and will strengthen our agricultural economy, as well as result in more orderly marketing and distribution of food. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to purchase a nutritionally adequate diet through normal channels of trade.

(b) This Part 270 contains general information, definitions, and other material applicable to all parts of this subchapter. Part 271 of this subchapter sets forth policies and procedures governing the manner in which State agencies

desiring to participate in the program will carry out the administrative responsibilities assumed by them under the provisions of the Food Stamp Act, and further prescribes the manner in which eligible households can obtain and use coupons issued to them by such State agencies. Part 272 of this subchapter sets forth additional terms and conditions relating to the participation of retail food stores, wholesale food concerns, meal services, and banks. Part 273 of this subchapter sets forth the procedure for an administrative and judicial review requested by food retailers, food wholesalers, and meal services. Part 274 of this subchapter sets forth the procedure for issuing emergency coupon allotments to households unable to purchase adequate amounts of food due to disaster.

§ 270.2 Definitions.

(a) "Affidavit" means a signed statement, in a form approved by FNS, executed by the head of the household, or his authorized representative, who is making application for participation in the program on behalf of a household in which all members are included in a federally aided public assistance or general assistance grant. The affidavit may be included in the appropriate federally aided public assistance or general assistance application.

(b) "Agency" means that agency of the State government which has the responsibility for the administration of the federally aided public assistance programs within the State and does not include any counterpart local agency administering such programs.

(c) "Application for Participation" means the application to participate in the program, in a form approved by FNS, which is executed by the head of the household, or his authorized representative, on behalf of a household other than one in which all members are included in a federally aided public assistance or general assistance grant.

(d) "Application form" means any one of FNS forms, "Retailer Application for Authorization to Participate in the Food Stamp Program," or "Meal Service Application for Authorization to Participate in the Food Stamp Program for Communal Dining Facilities, Drug Addiction or Alcoholic Treatment and Rehabilitation Programs, and Nonprofit Meal Delivery Services," or "Wholesaler Application for Authorization to Participate in the Food Stamp Program," as required by the context.

(e) "ATP" means an authorization-to-purchase card which is issued by the State agency to an eligible household to show the face value of the coupon allotment the household is entitled to receive on presentation of such document and the amount to be paid by such household for such allotment.

(f) "Authorization" means the approval by FNS of retail food stores, meal services, and wholesale food concerns to participate in the program.

(g) "Authorization card" means the FNS form which evidences approval of a retail food store, a meal service, or a

wholesale food concern to participate in the program.

(h) "Authorized representative" means a person designated by the head of the household to act in his behalf in the purchase and use of coupons, and under certain conditions to act in his behalf in making application for the program. It shall also mean a private nonprofit organization or institution conducting a drug addiction or alcoholic treatment and rehabilitation center which acts on behalf of households defined in paragraph (jj) (3) of this section.

(i) "Bank" means member and non-member banks of the Federal Reserve System.

(j) "Boarder" means an individual to whom a household furnishes meals, or lodging and meals, for compensation at a monthly rate at least equal to the value of the monthly coupon allotment for a one-person household.

(k) "Boarding house" means a place where three or more individuals are furnished meals or lodging and meals for compensation.

(l) "Certification determinations" means action necessary to determine the eligibility of households other than those which consist solely of recipients of federally aided public assistance or general assistance. Such action includes interviews, verification, approval, denial, quality control verification, field investigation, analyses and corrective action necessary to insure the prompt, efficient and correct certification of eligible households.

(m) "Communal dining facility" means senior citizens' centers, apartment buildings occupied primarily by elderly persons, any public or nonprofit private school which prepares meals especially for elderly persons, any public or nonprofit private eating establishment which prepares meals especially for elderly persons during special hours, and any other public or nonprofit private establishment approved by FNS which prepares and serves meals and meets the requirements of § 272.1 of this subchapter. It shall also mean a private establishment which is under contract with an appropriate State or local agency to offer, at concessional prices, meals prepared especially for elderly persons during regular or special hours and which meets the requirements of § 272.1 of this subchapter.

(n) "Coupon" means any coupon, stamp, or type of certificate issued pursuant to the provisions of this subchapter for the purchase of eligible food.

(o) "Coupon allotment" means the total value of coupons a household is authorized to receive during each month or other time period.

(p) "Department" means the U.S. Department of Agriculture.

(q) "Drug addiction or alcoholic treatment and rehabilitation program" means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private nonprofit organization or institution which is certified by the State agency or agencies designated by the Governor as responsible for the administration of the State's pro-

grams for alcoholics and drug addicts pursuant to Public Law 91-616, "Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act of 1970" and Public Law 92-255, "Drug Abuse Office and Treatment Act of 1972" as providing treatment that can lead to the rehabilitation of drug addicts or alcoholics.

(r) "Elderly person" means a person 60 years of age or older who:

(1) Is not a resident of a boarding house or an institution;

(2) Is living alone or only with spouse, whether or not he has cooking facilities in his home;

(3) If he has no cooking facilities, is eligible for and elects to use coupons issued to him to purchase meals prepared for and delivered to him by a nonprofit meal delivery service authorized by FNS to accept food coupons or elects to use coupons to purchase meals prepared especially for the elderly at communal dining facilities authorized by FNS for such purpose.

(s) "Eligible food" means any food or food product for human consumption except alcoholic beverages and tobacco and also includes seeds and plants for use in gardens to produce food for the personal consumption of the eligible household. It shall also mean meals prepared and delivered by an authorized nonprofit meal delivery service or served by a communal dining facility for the elderly to elderly persons and their spouses and to households eligible under § 271.3(a) (2) or (a) (3) of this subchapter; and meals prepared and served by an authorized drug addiction and alcoholic treatment and rehabilitation program to households eligible under § 271.3(a) (4).

(t) "Eligible household" means a household which lives in a project area and meets the standards of eligibility set forth in this subchapter.

(u) "Federal fiscal year" means a period of 12 calendar months beginning with July 1 of any calendar year and ending with June 30 of the following calendar year.

(v) "Federally aided public assistance" means any of the following programs authorized by the Social Security Act of 1935, as amended: Old-Age Assistance, Aid to Families with Dependent Children, Aid to the Blind, and Aid to the Permanently and Totally Disabled.

(w) "Federal reserve banks" means the 12 Federal Reserve Banks and their 24 branches.

(x) "Firm" means, as the context may require, a retail food store or a wholesale food concern or meal service.

(y) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

(z) "Food assistance" means either the Food Stamp Program or the Food Distribution Program, administered by the Department.

(aa) "Food retailer" means any individual, partnership, corporation, or other legal entity owning or operating a retail food store.

(bb) "Food Stamp Act" means the Food Stamp Act of 1964, as amended, 7 U.S.C. 2011-2025.

(cc) "Food wholesaler" means any individual, partnership, corporation, or other legal entity owning or operating a wholesale food concern.

(dd) "Free coupons" means the portion of the coupon allotment that is in excess of the amount paid by an eligible household for its coupon allotment, or the total coupon allotment when the household is eligible for a coupon allotment with no purchase requirement.

(ee) "General assistance" means the State or local public assistance programs, determined by FNS to apply a criteria of need the same as, or similar to, those applied under any of the federally aided public assistance programs.

(ff) "General assistance agency" means any agency of the State using State or local funds to provide assistance to persons not receiving federally aided public assistance.

(gg) "Head of the household" means the member of the household in whose name application is made for participation in the program.

(hh) "Hearing authority" means a hearing official who renders final administrative decisions in hearings under § 271.1(o) of this subchapter.

(ii) "Hearing official" means a person or persons designated by the Agency or the State agency to act on its behalf in conducting hearings under § 271.1(o). Such persons shall not have been involved in the action in question. Medically qualified persons who make medical determinations or provide testimony on medical issues in hearing proceedings and the person who prepares the official hearing record may also be considered hearing officials.

(jj) "Household" means a group of persons, excluding roomers, boarders and live-in-attendants necessary for medical, housekeeping or child care reasons, who are not residents of an institution or boarding house, and who are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common: *Provided*, That residents of federally subsidized housing for the elderly, built under either Section 202 of the Housing Act of 1959 or Section 236 of the National Housing Act, or any narcotics addict or alcoholic meeting the criteria in paragraph (jj) (3) of this section, shall not be considered residents of an institution or boarding house. It shall also mean (1) a single individual living alone who purchases and prepares food for home consumption, (2) an elderly person as defined in this section and his spouse, or (3) a narcotics addict or alcoholic who resides at a facility or treatment center under the supervision of a private nonprofit organization or institution for the purpose of regular participation in a drug or alcoholic treatment and rehabilitation program: *Provided*, That such person must have access to individual or shared cooking facilities or the program in which he is participating has been authorized by FNS to accept food coupons.

(kk) "Hunting and fishing equipment" means equipment for the purpose of pro-

curing food for the eligible household, including nets, fish lines, fish hooks, fishing rods, dip nets, harpoons, hunting knives, gasoline for outboard motors and snowmobiles, tents, foul weather winter clothing and other equipment necessary for subsistence hunting and fishing in areas of Alaska as specified in § 271.3(a) (5); it does not include firearms, ammunition and other explosives.

(ll) "Meal service" means an organization which prepares and serves meals and meets the requirements of § 272.1 of this subchapter, including nonprofit meal delivery services, communal dining facilities for elderly persons and drug addiction and alcoholic treatment and rehabilitation programs.

(mm) "Nonprofit meal delivery service" means a political subdivision or a private nonprofit organization which prepares and delivers meals and meets the requirements of § 272.1 of this subchapter.

(nn) "Outreach" means any communicative effort performed cooperatively or singularly by Federal, State, or local agencies and organizations, or by individuals, to inform low-income households of the availability and benefits of the program and to encourage the participation of eligible households.

(oo) "Program" means the Food Stamp Program conducted under the Food Stamp Act and the provisions of this subchapter.

(pp) "Project area" means the political subdivision within a State which has been approved for participation in the program by the Department.

(qq) "Purchase requirement" means the amount to be paid by an eligible household for its coupon allotment.

(rr) "Redemption certificate" means either of FNS forms, "Retail Merchants Food Stamp Program Redemption Certificate," or "Wholesalers Food Stamp Program Redemption Certificate," as required by the context.

(ss) "Retail food store" means an establishment, including a recognized department thereof, or a house-to-house trade route which sells eligible food to households for home consumption.

(tt) "Roomer" means an individual to whom a household furnishes lodging for compensation.

(uu) "State" means any one of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

(vv) "State agency" means the agency of the State government, including the local offices thereof, which has the responsibility for the administration of the federally aided public assistance programs within the State and, in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which administer such assistance programs for the State agency.

(ww) "State issuing agency" means another agency of the State government or contractual agent of the State agency to which the State agency delegates its administrative responsibilities in connection with the issuance of coupons.

(xx) "Student" means an individual who is attending at least half-time, as defined by the institution, a preschool, kindergarten, grade school, high school, vocational school, technical school, training program, college or university.

(yy) "Training allowance" means payments made on behalf of or received by a household member from the Work Incentive Program, Manpower Development Programs or similar State or local government-sponsored vocational rehabilitation programs.

(zz) "Wholesale food concern" means an establishment which sells eligible food to retail food stores or meal services for resale to households.

§ 270.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the program. When authority is delegated to FNS in the regulations in this subchapter, such authority may be exercised by the Administrator or by such other official of FNS he may designate.

(b) The State agency shall, except as provided in this subchapter, be responsible for the administration of the program within the State, including, but not limited to, the certification of applicant households; the acceptance, storage, and protection of coupons after their delivery to receiving points within the State; outreach to potentially eligible households; and the issuance of coupons to eligible households and the control and accountability therefor: *Provided*, That the State agency may, subject to State law, and under agreement or contract, delegate its administrative responsibility in connection with the issuance of coupons to a State issuing agency. If such administrative responsibility is delegated as permitted by this section the State issuing agency shall administer the applicable provisions of this subchapter under the direction of the State agency. However, the State agency shall be responsible to the Department for carrying out the delegated responsibilities and for paying any claims arising out of any failure of the State issuing agency to carry out such delegated responsibilities.

(c) Except as provided in Part 274 of this subchapter, only employees of the State agency meeting the requirements of § 271.1(g) of this subchapter may perform the interviews required in § 271.4 (a) (2) (ii) of this subchapter of applicants for food stamp eligibility. Volunteers and other non-State agency employees may not be used to interview or certify food stamp applicants for eligibility for program benefits, although such persons may be used in related activities such as outreach, or assisting applicants in completing the application and securing the needed verification. Individuals and organizations, or the facilities thereof, who are parties to a strike or lockout may not be used in the certification process except as a source of verification for information supplied by the applicant. Only authorized employees of the State agency or a State issuing agency shall be permitted access to food

coupons, ATP cards or other issuance documents.

§ 270.4 Coupons as obligations of the United States, crimes and offenses.

(a) Coupons are an obligation of the United States within the meaning of 18 U.S.C. 8. The provisions of title 18 of the United States Code, "Crimes and Criminal Procedure," relative to counterfeiting and alteration of obligations of the United States and the uttering, dealing in, etc., of counterfeit obligations of the United States are applicable to coupons.

(b) Any unauthorized issuance, use, transfer, acquisition, alteration, possession, or presentation of coupons or ATP cards may subject any individual, partnership, corporation, or other legal entity involved to prosecution under sections 14 (b) and (c) of the Food Stamp Act. These sections of the Food Stamp Act read as follows:

(b) Whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization to purchase cards in any manner not authorized by this Act, or the regulations issued pursuant to this Act shall, if such coupons or authorization to purchase cards are of the value of \$100 or more, be guilty of a felony and shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned for not more than five years, or both, or if such coupons or authorization to purchase cards are of a value of less than \$100, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned for not more than one year, or both.

(c) Whoever presents, or causes to be presented, coupons for payment or redemption of the value of \$100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Act or the regulations issued pursuant to this Act shall be guilty of a felony and shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned for not more than five years, or both, or, if such coupons are of a value of less than \$100, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned for not more than one year, or both.

(c) All individuals, partnerships, corporations, or other legal entities including State agencies and their delegates (referred to in this paragraph as "persons") having custody, care and control of coupons and ATP cards shall at all times, in receiving, storing, transmitting, or otherwise handling coupons and ATP cards, take all precautions necessary to avoid acceptance, transfer, negotiation, or use of spurious, altered, or counterfeit coupons and ATP cards and to avoid any unauthorized transfer, negotiation, or use of coupons and ATP cards. Such persons shall also safeguard coupons and ATP cards from theft, embezzlement, loss, damage, or destruction.

(d) Any false statement knowingly made by any person in any application or certification required by this subchapter, by the Plan of Operation of any State agency, or by the instructions of FNS, any willful failure by any person to report changes in income and household circumstances which affect participation as required by § 271.3(a) (1) (iii) of this subchapter, or any fraudulent issuance, acquisition, transfer, use, or alteration

by any person of Form FNS-286, Certification of Household Transfer, may subject such person to criminal prosecution under any applicable provision of Federal law or to civil liability under the provisions of 31 U.S.C. 231 or either, or both, as well as to any legal sanctions as may be maintained under State law.

§ 270.5 Miscellaneous provisions.

(a) FNS shall have the power to determine the amount of and to settle and adjust any claim or claims arising under the provisions of the Food Stamp Act or this subchapter, and to compromise or deny all or part of any such claim or claims.

(b) Persons or agencies desiring information concerning the program should write to the appropriate FNS Regional Office as follows:

(1) For project areas in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands and West Virginia: Northeast Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 729 Alexander Road, Princeton, New Jersey 08540.

(2) For project areas in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 1100 Spring Street, N.W., Room 200, Atlanta, Georgia 30309.

(3) For project areas in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio and Wisconsin: Midwest Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 536 South Clark Street, Chicago, Illinois 60605.

(4) For project areas in Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming: West-Central Regional Office U.S. Department of Agriculture, Food and Nutrition Service, 1100 Commerce Street, Suite 5-D-22, Dallas, Texas 75202.

(5) For project areas in Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon and Washington: Western Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 550 Kearny Street, Room 400, San Francisco, California 94108.

(c) *Saving clause.* The Department reserves the right at any time to withdraw, modify or amend this subchapter.

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Sec.	
271.1	General terms and conditions for State agencies.
271.2	Payments for certain costs of the State agency.
271.3	Household eligibility.
271.4	Certification of households.
271.5	Basis for issuing coupons to eligible households.
271.6	Methods of distributing, issuing, and accounting for coupons and receipts.
271.7	Financial liabilities of the State agency.

271.8 Plans of operation.

271.9 Use or redemption of coupons by eligible households.

AUTHORITY: 78 Stat. 703, as amended (7 U.S.C. 2011-2026).

§ 271.1 General terms and conditions for State agencies.

(a) *Federally donated foods.* In areas where the program is in operation, there shall be no distribution of federally donated foods to households, except that such distribution may be made:

(1) During temporary emergency when FNS determines that commercial channels of food distribution have been disrupted;

(2) For such period of time as FNS determines, not to exceed three months, upon request of a State agency and submission of facts by such State agency showing that the continued distribution of such donated foods is necessary in order to effect an orderly transition in an area in which the distribution of federally donated foods to households is being replaced by the program; or

(3) For such period of time as FNS determines, not to exceed 12 months, upon request of a State agency and submission of facts by such State agency showing that the continued distribution of such donated foods is necessary in order to effect an orderly transition on an Indian Reservation on which the distribution of federally donated foods to households is being replaced by the program under the following conditions:

(i) No such period may extend beyond June 30, 1977,

(ii) If a State agency has received approval of continued distribution of donated foods on a reservation under paragraph (a) (2) of this section prior to the submission of a request for an extended period of transition under this subsection, the total length of time during which the distribution of donated foods may be continued while such distribution is being replaced by the Food Stamp Program may not exceed 12 months;

(iii) The State agency will establish controls which will prevent any household from participating in the Food Stamp Program and also simultaneously receiving household distribution of federally donated foods and,

(iv) The State agency will establish controls which will prevent any household which has been certified for and has begun participation in the Food Stamp Program from resuming receipt of household distribution of federally donated foods.

(4) On request of the State agency, under the following conditions:

(i) Factual information showing the need for concurrent operation of both programs in the same area is submitted by the State agency to the Secretary of Agriculture together with proposed amendments to the State agency's plan of operation which shall set forth, among other things, that:

(a) No funds received from this Department will be used in carrying out the administrative responsibilities of the

State agency in the handling and issuing of federally donated foods;

(b) The household eligibility requirements and certification procedures prescribed in this subchapter will be applied by the State agency in determining the eligibility of all applicant households whether for the Food Stamp Program or for federally donated foods;

(c) The State agency will establish controls which will prevent any household from participating in the program and also simultaneously receiving household distribution of federally donated foods; and

(ii) The Secretary determines that conditions in the area are such that the concurrent operation of both programs is needed in order to effectively provide food assistance to low-income households in the area, and that the proposals of the State agency for local administration will meet the need and otherwise satisfy the requirements of paragraph (a) (3) of this section. Such determination will be based upon all relevant information available, including that provided by the State agency as well as information obtained by the Department from other sources.

The State agency will be informed in writing of the Secretary's decision and the reasons therefor.

(b) *Free coupons as income or resources.* Free coupons provided to any eligible household shall not be considered to be income or resources for any purpose under the Social Security Act of 1935, as amended, or under any other Federal or State laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

(c) *Prohibition of aid reduction.* States or political subdivisions shall not decrease welfare grants or other similar aid extended to any person or persons as a consequence of such person's or persons' participation in the program.

(d) *Nondiscrimination.* In the certification of applicant households for the program and in the issuance of coupons to eligible households, there shall be no discrimination against any household by reason of race, religious creed, national origin, or political beliefs.

(e) *Residency and citizenship.* No durational residency requirement shall be imposed as a condition of eligibility by any State or project area. However, each State agency shall prohibit participation in the program by any person who is not either (1) a citizen or (2) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of Section 203(a) (7) or Section 212(d) (5) of the Immigration and Nationality Act).

(f) *Disclosure.* Each State agency shall restrict the use or disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or this subchapter.

(g) *Personnel standards.* Each State agency shall undertake the certification of applicant households in accordance with the personnel standards used by it in the certification of applicants for benefits under its federally aided public assistance programs.

(h) *Administrative financing.* Except as provided in § 271.2, each State agency shall finance or cause to be financed, from funds available to the State or political subdivisions thereof, the costs of carrying out the administrative responsibilities assigned to it under the provisions of this subchapter, including providing adequate staff and facilities to process applicant households within 30 days of receipt of an affidavit or an Application for Participation.

(i) *Plan of Operation requirement.*

(1) Each State agency shall submit for approval of FNS a Plan of Operation, prepared in accordance with the provisions of § 271.8. Such plan shall cover a Federal fiscal year and may be extended for succeeding Federal fiscal years at the option of FNS unless sooner terminated or suspended as provided in paragraph (s) of this section. Each State agency shall, prior to January 1, 1974, submit for approval of FNS a plan specifying the manner in which it intends to conduct the Food Stamp Program in every political subdivision in the State, unless such State agency can demonstrate that for any political subdivision it is impossible or impracticable to extend the program to such subdivision. FNS shall make a determination of approval or disapproval of such plan in sufficient time to permit institution of such plan by no later than June 30, 1974.

(2) Notwithstanding any other provision of this paragraph (i), Indian reservations on which Food Stamp Program operations were instituted on or after August 21, 1973 (referred to in this subparagraph as "eligible reservations") may elect to request reinstatement of the Food Distribution Program on such reservations. The Department will approve such request: *Provided*, That the Food Distribution Program is carried out pursuant to the regulations of this Department governing that program, Part 250 of this chapter. Each eligible reservation which elects reinstatement of the Food Distribution Program shall, through the appropriate State agency, inform the Department of its election. Eligible reservations which, pursuant to this subparagraph, elect reinstatement of the Food Distribution Program shall, by no later than June 30, 1977, complete conversion back to the Food Stamp Program. Any Indian reservation which, with the approval of the Department, participates in the Food Distribution Program may, after reasonable notice to the applicable State agency and this Department, discontinue participation in that program and begin participation in the Food Stamp Program.

(j) *Administration of certification and issuance.* Each State agency shall administer the program in accordance with the provisions of this subchapter, all FNS Instructions issued pursuant thereto, and its Plan of Operation.

(k) *Outreach.* Each State agency shall take effective action pursuant to an approved outreach plan, using State agency personnel and the services provided by federally funded and other agencies and organizations to inform low-income households, with due regard to ethnic groups, of the availability and benefits of the program and encourage the participation of eligible households.

(l) *Records and reports.* Each State agency shall keep such records and submit such reports and other information as may from time to time be required by FNS.

(m) *Retention of records.* (1) Each State agency shall provide that all program records be retained in an orderly fashion for audit review purposes for a period of three years from the month of origin of each such record. Information from executed ATPs may be retained in any one of the following three methods:

(i) The ATPs may be retained in serial or case number order by transaction month for a period of three years following the month of origin.

(ii) The ATPs may be destroyed after a period of one year provided the reconciliation required by § 271.6(f) has been completed, and provided a listing containing the case name, number, and address; ATP serial number; purchase requirement paid and total value of coupons issued by ATP transaction month is available for review and audit by USDA for three years following the month of origin of the ATPs so listed.

(iii) The ATPs may be destroyed after having been microfilmed front and back in ATP or case number order by transaction month provided the reconciliation required by § 271.6(f) has been completed and provided the microfilm is available for review and audit by USDA for a period of three years following the month of origin.

(2) Where ADP systems are used to prepare and reconcile ATPs, all pertinent records related to the preparation and reconciliation of ATPs shall be retained and made available for review and audit by USDA for a period of three years from the month of origin of such records. No ATPs or other program records shall be destroyed when the State agency has been instructed in writing by FNS or the Department to retain the documents.

(n) *Notice of adverse action.* (1) Prior to any action to reduce or terminate a household's program benefits within the certification period, the State agency shall, except as otherwise provided in paragraph (n) (2) of this section, provide such household 10 days' advance notice before such action is taken. The notice shall explain the reasons for the proposed action, the household's right to request a hearing and the circumstances under which participation is continued if a hearing is requested.

(2) Individual notices of adverse action are not required when:

(i) Mass changes in benefits are required for certain classes of recipients because of changes required by Federal or State law or Federal Regulation affecting the basis of issuance tables, income standards, or other eligibility criteria.

Such changes include, but are not limited to, changes in maximum income limitations and basis of issuance tables prescribed in the general notice published in the FEDERAL REGISTER pursuant to § 271.5, and changes in social security payments or public assistance grants;

(ii) The State agency receives a written statement from the head of the household or his authorized representative that food stamp assistance is no longer desired or that supplies information that requires reduction or termination of benefits and the recipient acknowledges in writing that he knows the required action will be taken;

(iii) The State agency receives notification of the death of the head of a single person household;

(iv) The State agency receives notification that the household has moved from the project area; or

(v) The action is taken as a result of the normal expiration of the certification period as provided in § 271.4(a) (3).

(3) When the advance notice requirement is not required under the conditions specified in paragraph (n) (2) (i) of this section, the State agency shall publicize the possibility of a change in benefits through the various news media or through a general notice mailed out with ATP cards and with notices placed in food stamp and welfare offices.

(4) (i) If a household requests a hearing during the advance notice period, its participation in the program shall be continued on the basis authorized immediately prior to the notice of adverse action. If a hearing request is not made within the advance notice period, benefits will be reduced or terminated as proposed, except that, if the household establishes that its failure to make such request within such period is for good cause, the State agency may provide for reinstatement of benefits on the prior basis. When benefits are reduced or terminated without advance notice as provided in paragraph (n) (2) (i) of this section, participation on the prior basis shall be reinstated if the issue being appealed is that food stamp eligibility or benefits were improperly computed.

(ii) Once continued or reinstated, benefits shall not be reduced or terminated prior to a hearing decision unless:

(a) A determination is made at the hearing that the sole issue is one of Federal law, Regulation or policy and not a matter of fact or judgment relating to an individual case; or

(b) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of adverse action.

(iii) The State agency shall promptly inform the claimant in writing if benefits are reduced or terminated pending the hearing decision.

(o) *Fair hearing.* Each Agency shall provide any household aggrieved by any action of the State agency or State issuing agency in its administration of the program which affects the participation of the household in the program with a fair hearing before the Agency or with

an evidentiary hearing at the local level with a right to appeal to an Agency hearing. When the Agency adopts a system of evidentiary hearings with an appeal to an Agency hearing, it may, in some project areas, permit local evidentiary hearings, and in others, provide for a single hearing before the Agency. Prompt, definitive and final administrative action must be taken by the State agency within 60 days of any request for a hearing.

(1) Each household shall be informed in writing (and, if practical, orally) at the time of application of its right to a hearing, the method by which a hearing may be requested and that its case may be presented by a household member or an authorized representative, such as legal counsel, a relative, friend or other spokesman. Hearing procedures shall be published by the Agency and made available to any interested party.

(2) A household must be provided a reasonable period of time in which to request a hearing. This request may be made by any clear expression (oral or written) by the household (or person acting for it, such as a legal representative, relative or friend) to the effect that an opportunity to present the case to a higher authority is desired. The freedom to make such a request must not be limited or interfered with in any way. State agency emphasis must be on helping the client submit and process the request, and prepare the case, if needed. Information and referral services shall be provided to help claimants make use of any legal services available in the community that can provide legal representation at the hearing. Upon request, the State agency shall make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing.

(3) The State agency shall not deny or dismiss a request for a hearing unless:

(i) The request has been withdrawn in writing; or

(ii) The request is abandoned, that is, the claimant or his authorized representative fails, without good cause, to appear at the scheduled hearing.

(4) Continuation of benefits pending a hearing decision is treated in paragraph (n) (4) of this section.

(5) The time, date, and place of the hearing shall be convenient to the household and adequate advance written notice thereof shall be provided. The hearing shall be conducted by a hearing official or officials as defined in § 270.2(ii) of this subchapter. When the hearing involves medical issues, a medical assessment other than that of the person(s) involved in making the original decision will be obtained from a source mutually satisfactory to the claimant and the State agency and made a part of the record if the hearing official(s) consider(s) it necessary. The household or its representative must be given adequate opportunity to:

(i) Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing;

(ii) Present the case itself or have it presented by a legal counsel or other person;

(iii) Bring witnesses;

(iv) Advance arguments without undue interference;

(v) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and

(vi) Submit evidence to establish all pertinent facts and circumstances in the case.

(6) State agencies may respond to a series of individual requests for hearings by conducting a single group hearing. State agencies may consolidate only cases in which the sole issue is one of Federal law, Regulation or policy. In all group hearings the policies governing hearings must be followed. Each individual claimant shall be permitted to present his own case or be represented by his authorized representative.

(7) The hearing authority shall render a final administrative decision in the name of the Agency on all issues that have been the subject of the hearing. Such decision shall be binding on the State agency. Decisions of the hearing authority shall not run counter to Federal law, Regulations or policy and shall be based exclusively on evidence and other material introduced at the hearing. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the recommendations of the hearing official(s) shall constitute the exclusive record for decision by the hearing authority. This record shall be available to the claimant at a place accessible to him or his representative at any reasonable time.

(8) A decision by the hearing authority rendered in the name of the Agency shall:

(i) In the event of an evidentiary hearing, consist of a memorandum decision summarizing the facts and identifying the regulations supporting the decision;

(ii) In the event of an Agency hearing, specify the reasons for the decision and identify the supporting evidence and regulations.

(9) The claimant shall be notified of the decision in writing and the appeal rights available to him. (i) After an adverse Agency hearing decision, the claimant shall be notified of his right to pursue judicial review of his claim.

(ii) After an adverse evidentiary hearing decision, the claimant shall be advised of his right to appeal to a hearing before the Agency and of his right to request a de novo hearing. Unless a de novo hearing is specifically requested by the appellant, the Agency hearing may consist of a review of the evidentiary hearing record by an Agency hearing official to determine if the decision of the hearing authority was supported by substantial evidence in the record. The claimant must appeal the decision of the evidentiary hearing within 15 days of

the mailing date of the hearing decision notice. The State agency must take prompt, definitive and final administrative action within 60 days of such request. Benefits shall not be continued after an adverse decision to the claimant at an evidentiary hearing.

(10) All State agency hearing decisions shall be accessible to the public, subject to the disclosure safeguards provided for in paragraph (f) of this section.

(11) The State agency is responsible for assuring that all hearing decisions are promptly implemented. When the hearing authority rules that a household has been improperly denied program benefits or has been overcharged for its coupon allotment, credit for such lost benefits or refund of the overcharge shall be promptly provided if appropriate.

(p) *Refunds to households.* A household shall be entitled to a cash refund for any amount that it has been overcharged for its coupon allotment as a result of an error by the State agency in the administration of the food stamp program: *Provided*, That, if the household owes a balance on a claim under paragraph (d) of this section, the State agency shall offset the amount due under this paragraph against such balance. The State agency shall make such refunds from funds collected in payment of the purchase requirement or from its own funds or those of the project area, or, if no such funds are available for this purpose, the State agency shall request FNS to make such refunds directly to the households. If State agency or project area funds are used to make refunds, FNS will credit or reimburse the State agency or project area therefor.

(q) *Public information.* (1) Regulations, Plans of Operation and Federal procedures which affect the public shall be maintained in the State and local offices of the State agency as well as in the Food Stamp Division and FNS Regional Offices for examination by members of the public on regular workdays during regular office hours.

(2) Copies of Regulations, Plans of Operation, and Federal procedures may be obtained from FNS in accordance with regulations of FNS governing the availability of information to the public, Part 295 of this chapter.

(r) *Implementation.* Each State agency shall (1) Put into effect for all households the coupon allotments, purchase requirements and household income eligibility standards contained in revised FSP notices which are issued pursuant to a part of this subchapter on the effective date prescribed in each such notice.

(2) With respect to any amendment to this subchapter (other than provided in the paragraph (r) (1) of this section) which relates directly to the certification of households by the State agency, put such amendment into effect for all households newly applying or being certified subsequent to their first application not later than 60 days after the effective date of such amendment, and for all other households not later than 120 days after such date, unless otherwise provided in such amendment.

(3) With respect to any other amendment to this subchapter, implementation shall be effected as prescribed in each such amendment.

(4) Except for paragraph (r) (1) of this section, the time limitations may be extended by FNS upon written request and justification by a State agency.

(s) *State agency failure to comply.* If FNS determines that, in the administration of the program, a State agency has failed to comply substantially with the provisions of this subchapter, with instructions issued pursuant to this subchapter, or with the State Plan of Operation, FNS shall inform such State agency of such failure and shall allow the State agency a reasonable period of time, as determined by FNS, for the correction of such failure. If, prior to the expiration of such period, corrective action has not been taken, FNS shall direct that there be no further issuance of coupons in the project areas where such failure has occurred until corrective action has been taken.

§ 271.2 Payment for certain State agency administrative costs.

(a) FNS is authorized to pay to each State agency an amount equal to 50 percentum of administrative costs incurred pursuant to § 270.3(b) of this subchapter on or after October 1, 1974.

(b) In any case, where an administrative cost of a State agency is paid with funds which have been contributed by another Federal agency or by an agency from other federally furnished funds, FNS will pay up to 50 percentum of the administrative cost, but in no case will the total of the FNS payment and the other federally contributed or furnished funds total more than 100 percent. Unless authorized by Federal legislation, outlays charged to other Federal grants or to Federal contracts may not be considered as State agency costs.

(c) Submission of claims for payments of such costs shall be in accordance with Part 275 of this subchapter.

§ 271.3 Household eligibility.

(a) *Household.* (1) Eligibility for and participation in the program shall be on a household basis.

(i) Eligibility shall be denied or terminated if the applicant household refuses to cooperate in providing information necessary for making a determination of eligibility or ineligibility. Applicants must assure that all statements made on the application are correct and complete.

(ii) If a participating food stamp household refuses to cooperate in providing the information necessary to complete a quality control review, the household may be subject to denial of further and/or future food stamp benefits. However, after such action and subsequent termination or denial, a household may reapply and be certified for participation in the Food Stamp Program: *Provided*, That the household cooperates fully and completely in supplying to the certifying officer full verification of all information prior to such certification.

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(iii) Households shall report or cause to be reported to the State agency any of the following changes which occur during the certification period within 10 days of the date when such changes become known to the household: (a) changes in gross monthly income in excess of \$25; (b) changes in total monthly deductible expenses in excess of \$25; and (c) changes in any other household circumstances which are required to be reported by the application form. The State agency shall take necessary action on all changes within 10 days from the date they are reported (1) to insure the issuance of a notice of adverse action, where appropriate, and that these changes will be reflected in the first issuance period after the expiration of the advance notice period; or, (2) for all other changes affecting the household's eligibility or basis of issuance, to insure the change is reflected by no later than the first issuance period after the 10th day from the date the change was reported.

(2) Eligible household members 60 years of age or older who are housebound, feeble, physically handicapped or otherwise disabled to the extent that they are unable to adequately prepare all their meals, an elderly person as defined in § 270.2(r) of this subchapter, who is housebound, feeble, physically handicapped or otherwise disabled to the extent that he cannot adequately prepare all of his meals and the spouse of such an elderly person may use all or any part of the coupons issued to them to purchase meals prepared for and delivered to them by a nonprofit meal delivery service authorized by FNS.

(3) Eligible household members 60 years of age or older, or elderly persons as defined in § 270.2(r) of this subchapter and the spouse of such an elderly person may use all or any part of the coupons issued to them to purchase meals prepared especially for them at communal dining facilities authorized by FNS for such purpose.

(4) Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment and rehabilitation program on a nonresident basis may use all or any part of the coupons issued to them to purchase food prepared for or served to them during the course of such program by a private nonprofit organization or institution authorized by FNS. Narcotics addicts or alcoholics who regularly participate in a drug or alcoholic treatment program on a resident basis shall be certified for program participation through the use of an authorized representative which shall be the private nonprofit organization or institution that is administering such treatment and rehabilitation program. Such organization or institution shall apply on behalf of such addict or alcoholic and receive and spend the coupon allotment for meals prepared by or served to such addict or alcoholic. Such organization or institution shall notify the State agency as provided in paragraph (a) (1) (iii) of this section of changes in income and

household circumstances and when such addict or alcoholic leaves the treatment and rehabilitation center. Such organization or institution shall be responsible for any misrepresentation or fraud committed in the certification of center residents and shall assume total liability for food coupons held on behalf of resident recipients.

(5) Eligible households in Alaska residing in areas determined by FNS as areas where access to retail food stores is difficult and who rely substantially on hunting and fishing for subsistence may use all or any part of the coupons issued to them to purchase hunting and fishing equipment, excluding firearms, ammunition and other explosives.

(b) *Income and resource eligibility standards of public assistance and general assistance households.* Households in which all members are included in a federally aided public assistance or general assistance grant shall, if otherwise eligible under this subchapter, be determined to be eligible to participate in the program while receiving such grants without regard to the income and resources of the household members.

(c) *Income and resource eligibility standards of other households.* Each State agency shall apply the uniform national income and resource standards of eligibility established by the Secretary to determine the eligibility of all other applicant households, including those in which some members are recipients of federally aided public assistance or general assistance.

(1) *Definition of income.* (i) Monthly income means all income which is received or anticipated to be received during the month. To compute maximum monthly income for purposes of determining eligibility, income shall mean any of the following but is not limited to:

(a) All compensation for services performed as an employee;

(b) Net income from self-employment, which shall be the total gross income from such enterprise (including the total gain received from the sale of any capital goods or equipment related to such enterprise), less the cost of producing that income. The following shall not be considered as the cost of producing income:

(1) Payments on the principal of the purchase cost of income-producing real estate. Any payments of principal, interest, and taxes on the home shall be subject to paragraph (c) (1) (iii) (h) of this section;

(2) Payments on the principal of the purchase cost of capital assets, equipment, machinery, and other goods;

(3) Depreciation; and

(4) A net loss sustained in any previous period;

(c) The total amount of a roomer's payment to the household;

(d) The total payment received from each boarder less a deduction for each boarder of the value of the monthly coupon allotment for a one-person household;

(e) Payments received as an annuity; pension; retirement or disability benefit; veterans', workmen's or unemployment

compensation; and old-age, survivors, or strike benefit;

(f) Payments received from federally aided public assistance programs, general assistance programs, or other assistance programs based on need;

(g) Payments received from Government-sponsored programs such as Agricultural Stabilization and Conservation Service programs, the Work Incentive Program, or Manpower Training Program;

(h) Payments, except those for medical costs, made on behalf of the household by a person other than a member of the household;

(i) Cash gifts or awards (except as provided in paragraph (c) (1) (ii) (e) of this section) for support, maintenance, or the expenses of education.

(j) Scholarships, educational grants (including loans on which repayment is deferred until completion of the recipient's education), fellowships, and veteran's educational benefits;

(k) Support and alimony payments;

(l) Rents, dividends, interest, royalties, and all other payments from any source whatever which may be construed to be a gain or benefit; and

(m) The actual value of housing received from an employer by members of a household as income in kind, in lieu of or supplemental to household income, not to exceed \$25 per month. No value is to be assigned to housing received as payment in kind which has been condemned or declared substandard under Federal, State, or local housing codes.

(ii) The following shall not be considered income to the household (this list is inclusive and no other exclusions from income shall be allowed):

(a) Income received as compensation for services performed as an employee or income from self-employment by a child residing with the household who is a student and who has not attained his eighteenth birthday;

(b) Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(c) Any gain or benefit which is not in money (except as provided in paragraph (c) (1) (i) (m) of this section);

(d) That income of a household in a quarter which is received too infrequently or irregularly to be reasonably anticipated: *Provided*, That such infrequent or irregular income of all household members does not exceed \$30 in the quarter;

(e) Monies received from insurance settlements, sale of property (except for property related to self-employment provided for in subdivision (c) (1) (i) (b) of this section), cash prizes, awards, and gifts, inheritances, retroactive lump-sum Social Security or Railroad Retirement pension payments, income tax refunds and similar nonrecurring lump-sum payments;

(f) All loans, except loans on which repayment is deferred until completion of the recipient's education;

(g) Income received by volunteers for services performed in the National Older Americans Volunteer Program as

stipulated in the 1973 amendments to the Older Americans Act of 1965, Public Law 93-29 (87 Stat. 30); and

(h) Payments received under the WIC (Women, Infants and Children) Program.

(iii) Deductions for the following household expenses shall be made (this list is inclusive and no other deductions from income shall be allowed):

(a) Ten per centum of income from compensation for services performed as an employee or training allowance not to exceed \$30 per household per month. This deduction shall be made before the following deductions.

(b) Mandatory deductions from earned income which are not elective at the option of the employee such as local, State, and Federal income taxes, Social Security taxes under FICA, and union dues;

(c) Payments for medical expenses, exclusive of special diets, when the costs exceed \$10 per month per household;

(d) The payments necessary for the care of a child or other persons when necessary for a household member to accept or continue employment, or training or education which is preparatory for employment;

(e) Unusual expenses incurred due to an individual household's disaster or casualty losses which could not be reasonably anticipated by the household;

(f) Tuition and mandatory fees assessed by educational institutions (no deductions shall be made for any other education expenses such as, but not limited to, the expense of books, school supplies, meals at school, and transportation);

(g) Court-ordered support and alimony payments; and

(h) Shelter costs in excess of 30 per centum of the household's income after the above deductions. The State agency may develop, subject to FNS approval, standard utility allowances for use in calculating shelter costs: *Provided*, That the State agency must use actual utility costs if the household so requests and can verify such costs; and *Provided further*, That the State agrees to make annual reviews and adjust the standard, as necessary, to reflect deviations revealed by quality control, State agency surveys of utility company rates, or any other methods developed by the State and approved by FNS.

(2) *Handling of income.* (i) To determine the eligibility and basis of issuance of households, income and deductions may be averaged over the appropriate certification period.

(ii) To determine the basis of issuance for households whose primary source of income is from self-employment (including self-employed farmers), or regular farm employment with the same employer, income may be averaged evenly or prorated unevenly over the certification period not to exceed one year.

(iii) To determine the eligibility and basis of issuance for households with income from scholarships, educational grants, fellowships, and veterans' educational benefits, the income shall be aver-

aged over the period which it was intended to cover.

(iv) To determine the eligibility of households with members who receive compensation on other than an hourly or piecework basis under a contract which is renewable on a yearly or longer basis (such as, but not limited to, school employees), such members shall be deemed to be receiving compensation continuously for an entire year even though predetermined nonwork (vacation) periods are involved or actual compensation payments are scheduled for payment during work periods only. For such persons, compensation received under such contracts shall be averaged over a 12-month period. This provision shall not apply in situations where the other party to the contract cannot or will not make payments specified in the contract, or where the flow of earnings specified in the contract is otherwise interrupted.

(3) *Income standards.* Uniform national income standards of eligibility for participation of nonassistance households in the program shall be the higher of: (i) The income poverty guidelines issued by the Secretary of Agriculture based on the statistics on poverty levels reported by the Census Bureau's Current Population Reports; or (ii) the level at which the total coupon allotment equals 30 percent of income. These income standards for each nonassistance household size will be prescribed in General Notices published in the FEDERAL REGISTER.

(4) *Resource definition and standards*—(i) *Maximum allowable resources.* The maximum allowable resources—including both liquid and nonliquid assets—of all members of the household shall not exceed \$1,500 for the household, except that, for households of two or more persons with a member or members age 60 or over, such resources shall not exceed \$3,000.

(ii) *Included in resources.* In determining the resources of a household, the following shall be included and identified in sufficient detail to permit verification:

(a) Liquid resources which are readily negotiable, such as cash on hand, in a checking or savings account in a bank or other savings institution, U.S. savings bonds, stocks or bonds; and

(b) Nonliquid resources, such as buildings, land, or other real or personal property not excluded under paragraph (c) (4) (iii) (a) or (b) of this section.

(iii) *Exclusions from resources.* In determining the resources of a household, the following shall be excluded. This list is inclusive and no other exclusions from resources shall be allowed:

(a) The home and lot normal to the community, one licensed vehicle, household goods, cash value of life insurance policies and pension funds, and personal effects.

(b) Income-producing property which is producing income consistent with its fair market value, or other property such as another vehicle needed for purposes of employment, the tools of a tradesman or the machinery of a farmer, deemed es-

sential to the employment of a household member;

(c) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs;

(d) Resources whose cash value is not accessible to the household, such as, but not limited to, irrevocable trust funds and property in probate;

(e) Payments under Title II of the Uniform Relocation Assistance and Real Properties Acquisition Act of 1970; and

(f) Payments under the WIC (Women, Infants, and Children) Program.

(iv) *Value of resources.* The value of resources shall be determined at fair market value, less encumbrances.

(d) *Work registration requirement.* At the time of application and at least once every six months thereafter, each able-bodied person between the ages of 18 and 65, who is a member of a household, including a person who is not working because of a strike or lockout at his place of employment (except mothers or other members of the household who have responsibility for the care of dependant children under 18 years of age or of incapacitated adults; students enrolled at least half-time in any school or training program recognized by any Federal, State, or local governmental agency; or persons working at least 30 hours per week), shall register for employment by executing the registration form which shall be provided by the State agency, and which the State agency shall forward to the State or Federal employment office having jurisdiction over the area where the registrant resides: *Provided*, That any narcotics addict or alcoholic who regularly participates as a resident or nonresident in a drug or alcoholic treatment and rehabilitation program shall not be considered "able-bodied" for the purpose of this section. For the purposes of paragraph (d) (3) (iv) and (5) of this section, the term "strike" shall not include a strike which has pursuant to a court decision currently in force been determined to be unlawful.

(1) Such member who is required to register shall also:

(i) Report for an interview to the State or Federal employment office where he is registered upon reasonable request;

(ii) Respond to a request from the State or Federal employment office requiring supplemental information regarding employment status or availability for work;

(iii) Report to an employer to whom he has been referred by such office;

(iv) Accept a bona fide offer of suitable employment to which he is referred by such office; and

(v) Continue suitable employment to which he was referred by such office. Such household member shall continue such suitable employment until the employment is no longer considered suitable, or until the household member becomes exempt from the work requirement, as provided in this paragraph, or he is terminated from employment due to circumstances beyond his control.

(2) If the State agency determines that a household member has refused without good cause to comply with the requirements of this paragraph, the household of which he is a member shall be ineligible to participate in the program. Such ineligibility shall continue:

(i) For 1 year from the date of his refusal without good cause to comply with such requirements; or

(ii) Until such household member complies as follows, whichever is earlier:

(a) Refusal to register—registration by the household member.

(b) Refusal to report for an interview to the State or Federal employment office where he is registered—reporting for the required interview.

(c) Refusal to respond to a request from the State or Federal employment office requiring supplemental information regarding employment status or availability for work—response to the employment office correspondence.

(d) Refusal to report to an employer to whom he has been referred by such office—reporting to such employer or another employer to whom he is referred.

(e) Refusal to accept a bona fide offer of suitable employment to which he was referred by such office—acceptance of such employment or of other employment of at least 30 hours per week.

(f) Refusal to continue suitable employment to which he has been referred by such office—returning to such employment or acceptance of other employment of at least 30 hours per week.

(iii) In determining whether good cause existed for failure to comply, the State agency shall consider all facts and circumstances, including information submitted by the State or Federal employment office, the employer, and the registrant or recipient himself.

(3) No employment shall be considered suitable for the purpose of this paragraph if:

(i) The wages offered are less than the highest of:

(a) The applicable Federal minimum wage;

(b) The applicable State minimum wage;

(c) The applicable wage established by valid regulation of the Federal Government authorized by existing law to establish such regulations; or

(d) \$1.30 per hour;

(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 (d) (3) (i) of this section;

(iii) The registrant, as a condition of employment, is required to join, resign from, or refrain from joining any legitimate labor organization; or

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

(4) Any employment offered a particular registrant shall be considered suitable unless he can demonstrate that:

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

(ii) He is physically or mentally unfit to perform the employment, as estab-

lished by documentary medical evidence or reliable information from other sources;

(iii) For a period of 30 days after registration only, the employment offered is not in his major field of experience;

(iv) The distance of the employment from his residence is unreasonable. Determinations in this connection shall be based upon estimates of the time required for going to and from work by means of transportation that is available or expected to be used, and whether or not it would be reasonable for the registrant to expend the time and cost involved for the expected remuneration from the work. In no event shall commuting time per day represent more than 25 percent of the registrant's total work time.

(5) No household shall be denied participation in the program solely on the grounds that a member of the household is not working because of a strike or a lockout at his place of employment.

(6) Registration for participation in the Work Incentive Program (WIN) by members of a household who are required to register for work as stipulated above shall be regarded by FNS as having fulfilled the requirements of this section.

(7) The provisions of this paragraph shall not relieve a household of its responsibility to report acceptance of any employment or receipt of income from employment obtained through any source by any member of the household.

(8) State agencies shall report monthly the number of households and persons whose benefits were reduced or terminated because they accepted employment, and the number who were terminated because of refusal to accept suitable employment.

§ 271.4 Certification of households.

(a) *Household certification*—(1) *Certification of public assistance and general assistance households.* The State agency shall provide for the certification of households in which all members are included in a federally aided public assistance or general assistance grant, solely on the basis of information contained in an affidavit and the assistance case file.

(2) *Certification of other households.* The State agency shall provide for the certification of other households by:

(i) Completion of the Application for Participation;

(ii) An interview at initial certification and any subsequent certification with the applicant or his authorized representative in a personal contact in the office, in a home visit, or by a telephone call (the interview requirement will be continued until quality control demonstrates to FNS the effectiveness of the forms and certification system); and

(iii) Verification of income upon initial certification and, if the amount of household income has changed substantially or if the source of the income has changed, upon any subsequent certification. Verification is required for

other factors of eligibility only to the extent that the information furnished by the applicant is unclear, incomplete, or inconsistent or otherwise raises doubt concerning any factor affecting eligibility or the basis of coupon issuance. In any case where a household indicates that it has income so low that there is a likelihood that a change must occur in order for the household to continue to subsist as an economic unit, verification of factors necessary to substantiate the facts of eligibility is required unless expenditures and income are so stable as to indicate that the household could maintain this level of existence for an extended period of time. At least one collateral contact is mandatory in cases of this type. Certification may be made for 30 days without verification of eligibility factors with respect only to households which report an income so low that they have no purchase requirement and which appear, on the basis of other information furnished, to be eligible for participation. With respect only to households which report receipt of social security benefits, each State agency, at its option, may obtain verification of reported social security benefits through the use of the automated data processing system jointly administered by the Social Security Administration and the Social and Rehabilitation Service, U.S. Department of Health, Education, and Welfare. State agencies electing to use this option shall use the amount of social security benefits reported by such households for certification purposes pending receipt by the local certifying agency of the automated data processing system verification, provided all other household income is verified in accordance with this section.

(3) *Application processing.* The State agency shall provide for the processing of each affidavit or Application for Participation and notify the applicant household of the action taken within reasonable State-established time standards, which shall not exceed 30 days after receipt of such documents. Any subsequent certification, or notification to recipient households of any intention to deny further participation in the program at the end of the certification period, must be completed prior to the expiration of such period.

(4) *Certification periods.* The State agency shall establish limited periods of eligibility as indicated below. At the expiration of each such period entitlement to food stamp benefits shall be established only upon a subsequent certification based upon a newly completed application, an interview, and such verification as required in paragraph (a) (2) (iii), of this section.

(i) Certification periods shall conform as much as possible to calendar months.

(ii) Households in which all members are included in a federally aided public assistance or general assistance grant shall be assigned certification periods which coincide with the period of the assistance grant.

(iii) Other households shall be assigned certification periods based on predictability of income and stability of household circumstances. Households shall be certified for 3 months except as follows:

(a) Households may be certified for less than 3 months when there is a possibility of frequent changes in income and household status, for example, day laborers and migrant workers during the work season.

(b) Households may be certified for up to 6 months if there is little likelihood of changes in income and household status.

(c) Households consisting of unemployed persons with very stable income may be certified for up to 12 months, provided other household circumstances are expected to remain stable, for example, social security recipients, and persons who receive pensions or disability payments.

(d) Households whose primary source of income is from self-employment (including self-employed farmers) or regular farm employment with the same employer may be certified for up to 12 months, provided income can be readily predicted and household circumstances are not likely to change. This determination is made in light of the ability of the worker who is regularly employed by the same employer (as opposed to the worker who has a number of employers during a period of time) to control the amount of money available to the household jointly with the employer through prior arrangement, sometimes known as "furnish."

(5) *Quality control.* The State agency shall provide for a quality control system (a method of continuing review on a sampling basis) to validate the accuracy of determinations of program eligibility and determine the extent to which households are paying the proper purchase requirements and receiving the coupon allotments to which they are entitled. The State agency's system of quality control shall be implemented through:

(i) Application of the sampling methods prescribed by FNS;

(ii) Use of FNS-prescribed schedules and instructions, or schedules which provide for identical information;

(iii) Field investigations, including personal interviews with all households which fall within the sample of participating households and, as necessary, with households that have been denied participation or whose eligibility has been terminated;

(iv) Immediate action to reduce errors where tolerance limits established by FNS are exceeded, and followup corrective action to remove causes of errors;

(v) Use of qualified staff under appropriate direction; and

(vi) Reporting to FNS as prescribed.

(6) *Certification continuation.* (i) The State agency shall provide for continuing the certification of any household for 60 days after the date the household moves from one project area to another: *Provided*, That (a) the household membership does not change; (b) the house-

hold continues to meet the definition of a household as provided in § 270.2(jj) of this subchapter; and (c) the household was not certified under disaster eligibility standards as provided in Part 274 of this subchapter.

(ii) The project area from which the household is moving shall prepare the documents necessary to transfer certification. If the household has received its full coupon allotment for the month in which the move takes place, the project area shall authorize the full coupon allotment for the two months subsequent to the move. If the household has received only a portion of its full coupon allotment, as evidenced by surrender of any unused issuance authorization documents, the project area shall authorize a coupon allotment for the balance of the allotment due the household in addition to the full coupon allotment for the two subsequent months.

(iii) The project area to which the household moves shall accept the transfer document and promptly issue coupons based on the information provided thereon. The household may request certification at any time during the 60-day period. Upon expiration of the 60-day period, the household shall be certified in accordance with the usual procedures prescribed in this part.

(iv) The State agency shall provide for the secure storage of Form FNS-286, Certification of Household Transfer, and shall maintain controls to prevent or detect unauthorized issuance, acquisition, acceptance, use, transfer, or alteration of this form. State agencies shall report the number of Forms FNS-286 issued and redeemed as prescribed by FNS.

(7) *Identification card.* The State agency shall provide for issuance of an identification card to each household certified as eligible to participate in the program. Identification cards indicating special eligibility shall be issued to the following groups:

(i) Households and elderly persons and their spouses eligible for and desiring to use coupons to purchase meals from a nonprofit meal delivery service; and

(ii) Households residing in remote sections of Alaska that have been determined by FNS as areas in which food coupons may be used to purchase hunting and fishing equipment (except firearms, ammunition, and other explosives).

(8) *State agency instructions.* The State agency shall issue written program instructions to personnel responsible for the certification of applicant households. No State agency instruction or interpretation of FNS Instructions shall be issued to local agencies without prior approval by FNS, unless FNS fails to respond to a request for approval within 30 days after the acknowledgment of its receipt by FNS.

§ 271.5 Basis for issuing coupons to eligible households.

The monthly coupon allotments and purchase requirements for eligible households are prescribed in a General Notice published in the FEDERAL REGISTER.

§ 271.6 Methods of distributing, issuing, and accounting for coupons and receipts.

(a) FNS will distribute coupons, printed in such denominations as it may determine necessary, directly to the receiving points designated by the State agency in the Plan of Operation. While in the course of shipment to receiving points coupons shall be considered to be at the risk of the Department.

(b) The State agency shall arrange for the prompt verification of and receipting for the contents of each coupon shipment.

(c) The State agency shall arrange for:

(1) The adequate safekeeping of its supplies of coupons;

(2) The maintenance of a reasonable working inventory of coupons;

(3) The ordering of coupons; and

(4) The maintenance of proper inventory and accounting controls for such coupons.

(d) The State agency or the State issuing agency shall arrange for the issuance of coupons to eligible households and for the collection of sums required from eligible households for the purchase requirement. The coupon allotment to be issued to any household shall be in the amount determined in accordance with § 271.5.

(1) The State agency may issue coupons through the facilities of the U.S. mail. Unless FNS notifies the State agency to the contrary, FNS will accept the risk of loss of nondelivery of coupons to eligible households after deposit of such coupons in the mail, if the State agency issues such coupons through the mail in accordance with instructions provided by FNS.

(2) The State agency shall permit as soon as possible but no later than July 1, 1975, any household participating in the program, if it so elects, to have the cost of its full monthly coupon allotment deducted from any grant or payment such household may be entitled to receive under Title IV of the Social Security Act, and have its full monthly coupon allotment distributed to it.

(3) The State agency shall within the limits of the frequency of issuance available to the household under paragraph (c) (4) of this section, permit any eligible household, except those participating under paragraph (c) (2) of this section, to elect at the time of issuance to receive a coupon allotment having a face value of all, three-quarters, one-half, or one-quarter of the monthly coupon allotment authorized in accordance with § 271.5, and to have such household pay an amount that shall be in the same ratio to the total purchase requirement as the coupon allotment chosen is to the total monthly coupon allotment.

(4) The State agency shall insure that eligible households are offered the frequency of coupon issuance that is best geared to the frequency of their receipt of income: *Provided*, That at a minimum, all project areas shall make provision for a monthly and semimonthly

schedule of issuance: and *Provided further*, That the State agency shall insure that each eligible household is offered the option at the time of certification of choosing to receive coupons on a semimonthly basis.

(5) The State agency shall upon its determination that any certified household has failed to participate for three consecutive months, stop issuing ATP cards to such household until notified by such certified household of its intention to resume participation in the program.

(e) The State agency may authorize, under written agreement with public or private agencies, the acceptance of vouchers or warrants issued by such agencies in payment for coupon allotments issued to eligible households. Such vouchers or warrants shall be converted into cash as soon as practicable thereafter as determined by FNS.

(f) The State agency shall arrange for the reconciliation of coupon inventories, coupon issuances, sums collected from eligible households, vouchers, warrants accepted from public or private agencies, and other receipts. All such receipts shall be safeguarded at all times and promptly deposited. In any issuance system utilizing ATP cards, coupon issuances shall further be reconciled to the master file of certified eligible households.

(g) The State agency shall issue written program instructions to personnel responsible for the issuance of coupons. No State agency instruction or interpretation of FNS instructions shall be issued to local agencies without prior approval by FNS, unless FNS fails to respond to a request for approval within 30 days after the acknowledgment of its receipt by FNS.

(h) Every official or employee, except officials and employees of the U.S. Postal Service, who is responsible for receiving and issuing coupons or accepting cash or other receipts from eligible households shall be covered by an appropriate form of surety bond in favor of the State agency or the State issuing agency. The amount of such surety bonding shall be adequate to protect the financial interests of the State agency in case of loss.

§ 271.7 Financial liabilities of the State agency.

(a) If FNS determines that there has been gross negligence or fraud on the part of the State agency in the initial certification of households, any subsequent certification of households, or the issuance of coupons, the State shall, on demand by FNS, pay to FNS a sum equal to the amount of any free coupons issued as a result of such negligence or fraud. Gross negligence shall include those State agency actions in connection with certification and coupon issuance which are in substantial noncompliance with the provisions of this subchapter and which result in a loss of Federal funds. It shall also include those State agency actions with respect to certification and coupon issuance which would not be considered grossly negligent in them-

selves, but which, after previous admonition by FNS and the lapse of a reasonable period of time to take corrective measures, continue to result in substantial losses of Federal funds.

(b) If FNS determines that there has been a loss of coupons distributed to the State agency, or of the sums required to be collected by it in payment of the purchase requirement, including the cash equivalent of any vouchers or warrants accepted by it in accordance with § 271.6(c), including, but not limited to, coupons or funds lost as a result of thefts, embezzlements or unexplained causes, the State agency shall, on demand by FNS, pay to FNS the face amount of any such coupons, and the amount of such cash or cash equivalent. Coupons which are lost will be presumed to have been redeemed in the customary channels of redemption: *Provided*, That the State agency will be relieved of liability for such coupons which it establishes to the satisfaction of FNS were recovered or destroyed prior to presentation for redemption.

(c) The State agency shall be liable to FNS for any overissuance of coupons or undercollections of cash as a result of mathematical or changemaking errors by personnel of any issuing office. The State agency shall also be liable to FNS for the bonus value of all coupons purchased through the use of documents which are stolen or embezzled from or lost by the State agency.

(d) Upon a determination of the State agency that a participating household has fraudulently obtained coupons, the State agency, on behalf of FNS, shall make demand upon such household for repayment of the value of the free coupons issued to such household as a result of such fraud. Such actions shall be documented in the files of the State agency, and any funds collected as a result of such actions shall be remitted to FNS by the State agency. Demand and payment of any such amounts shall not relieve or discharge such household of any liability, either civil or criminal, for such additional amounts as may be due under any other applicable provisions of law. If the State agency finds that any eligible household has failed substantially to comply with the provisions of this part, the Plan of Operation, or any procedures or instructions issued by FNS or the State agency resulting in the fraudulent acquisition of coupons, such household may be disqualified from further participation in the program by the State agency for such period of time as the State agency shall determine.

(e) If excess free coupons are issued because of a certification error by the State agency or a misunderstanding of program provisions by a participating household, the State agency shall take appropriate corrective action to prevent any further issuance of excess free coupons to such household and, on behalf of FNS, make demand upon such household for repayment of the value of the free coupons issued to the household as a result of such certification error or misunderstanding of program provisions.

The State agency may decline collection action to recover the value of the excess free coupons from the recipient household in any case in which such value is less than \$400 under the following conditions:

(1) The issuance of excess free coupons did not involve gross negligence or fraud covered by paragraphs (a) and (d) of this section; and

(2) The State agency determines that either:

(i) It cannot collect or enforce collection of any significant sum from the household,

(ii) The cost of collection action likely will exceed the amount recoverable thereby, or

(iii) Evidence necessary to prove the claim cannot be produced.

In any case described in this paragraph in which the value of excess coupons issued is \$400 or more, the State agency may decline collection action under the conditions specified herein only with the concurrence of FNS. In any such case, the State agency shall submit a statement of the facts and its proposed determination to FNS for review and concurrence.

§ 271.8 Plans of operation.

(a) The State agency shall prepare and submit a Plan of Operation to FNS for its approval.

(b) No coupons shall be issued prior to the date on which the Plan of Operation is approved by FNS.

(c) Such Plan of Operation shall contain:

(1) An agreement that the State agency will administer the program in conformance with the provisions of this subchapter and all FNS Instructions issued pursuant thereto;

(2) A provision that the State agency will submit for FNS approval any other internal policies, procedures, methods, forms or records that it will use in carrying out the administrative responsibilities assigned to it under the provisions of this subchapter and all FNS Instructions;

(3) Assurances of compliance in accordance with the Departmental Regulations on Nondiscrimination (Part 15 of this title);

(4) A State plan to undertake effective outreach action;

(5) A method for computing and claiming reimbursable program costs;

(6) A quality control plan which shall include:

(i) A brief description of the State's sampling plan, including the system of selecting the sample;

(ii) The State's plan for use of staff; and

(iii) The plan for analysis of and action on findings.

(7) The name of the State issuing agency, if any;

(8) Such other information as may be required by FNS; and

(9) Any other provisions for approval by FNS.

(d) No amendment to the Plan of Operation of any State agency or any

revision to the instructions issued by the State agency or by FNS shall be made without prior approval of FNS.

(e) FNS may require amendment of any State agency's Plan of Operation or written instructions as a condition of continuing approval.

§ 271.9 Use or redemption of coupons by eligible households.

(a) The head of the eligible household or his authorized representative shall sign each book of coupons provided to the head of the household or his authorized representative. The coupons may be used only by the head of the household or other persons selected by him to purchase eligible food for the household, except that eligible households residing in certain designated areas of the State of Alaska may purchase with their food coupons hunting and fishing equipment. Coupons may not be used to pay for deposits on bottles or other returnable food containers. Uncanceled and unendorsed coupons of 50-cent denomination returned as change by authorized retail food stores or meal services may be presented as payment for eligible food purchased in or delivered by an authorized retail food store or prepared and served by a meal service. All other coupons which have been detached from the coupon book prior to the time of purchase or delivery of eligible food may be presented as payment for eligible food purchased in or delivered by an authorized retail food store or meal service, only if the coupons are accompanied by the coupon books which bear the same serial numbers as the detached coupons. It is the right of the head of the household or his authorized representative to detach the coupons from the book.

(b) Upon request, the head of the eligible household or his selected representative shall present the identification card of the head of the household to the retail food store or meal service when exchanging food coupons for eligible food.

(c) Coupons shall not be used to pay for any eligible food purchased prior to the time at which the coupons are presented to authorized retail food stores or meal services.

(d) When change in an amount of less than 50 cents is required in a coupon transaction, it is the right of the head of the household or his authorized representative to exercise the option to receive credit for an equivalent value (not to exceed 49 cents) of eligible food, to trade out in eligible food the difference between the cost of the purchase and the next higher 50-cent increment, or to pay in cash the difference between the cost of the purchase and the next lower 50-cent increment.

(e) If after investigation the State agency finds that any eligible household intentionally has failed substantially to comply with the provisions of this part, the Plan of Operation, or any procedures or instructions issued by the State agency

or FNS relating to the use of coupons issued to the household, such household shall be disqualified from further participation by the State agency for such period of time as the State agency shall determine.

(f) In the event of voluntary termination of participation in the program by a household or death of the head of the household, properly issued coupons may be returned to the State agency, or to FNS for a refund on the same ratio of cash to coupons as was applied by the State agency in the issuance of the coupons to the household. A request for a refund shall be submitted to the State agency. The request for such a refund shall be made in accordance with the following requirements:

- (1) It shall be in ink or typed.
- (2) It shall contain the applicant's address.
- (3) It shall be dated and signed.
- (4) The unused coupons shall be attached.
- (5) There shall be attached any additional documents or statements required by paragraph (g) of this section to show the claimant's right to a refund.

(g) Refunds under paragraph (f) of this section may be requested and paid in the following order of precedence and in accordance with the following conditions:

- (1) To the household member who applied for participation in the program, or his or her spouse;
- (2) When the head of the eligible household is incompetent, to a guardian, close relative, or other individual or organization which has assumed partial or complete financial responsibility for his care and custody, provided a statement is furnished describing the relationship between the claimant and the incompetent and the claimant certifies that the appointment of a legal representative is not contemplated and that the refund will be used for the benefit of the incompetent;
- (3) When the head of the eligible household is deceased, the administrator, executor, or other legally authorized representative of the estate, when supported by a copy of the court order or other document legally establishing his authority to act;
- (4) In the absence of such administrator, executor, or other legally authorized representative, to the sole heir or any one of a number of heirs to the estate of the deceased, provided in the latter case he affirms that the refund will be applied toward the payment of outstanding obligations of the deceased or shared with other heirs in accordance with the laws of the State in which the deceased resided;
- (5) In any event, to a general assistance agency to which the previously issued coupons were returned and for which such agency directly paid the purchase requirement.

(h) State agencies may make direct refund to claimants other than State or local general assistance agencies from food stamp collections or from State or

project area funds. Credit or reimbursement will be made directly to the State or project area by FNS.

(i) Refunds to State or local general assistance agencies will be made by FNS. State agencies unable to use the direct payment methods outlined in paragraph (h) of this section may also forward claims to FNS for payment. The claimant's request for a refund, a statement explaining the basis of the household's participation, the unused coupons, and any additional documents required by paragraph (g) of this section shall be forwarded to FNS by the State agency.

(j) Eligible households participating under the provision of § 271.6(d)(2) may return properly issued coupons to the State agency for a refund on the same ratio of cash to coupons as was applied by the State agency in the issuance of the coupons to the household. Such refunds shall be made from food stamp collections or from State or project area funds. Credit or reimbursement will be made directly to the State or project area by FNS.

(k) None of the provisions outlined above will preclude an eligible claimant from waiving a claim for the unused coupons returned.

§ 271.10 Eligibility and certification of supplemental security income recipients.

(a) Notwithstanding any other provisions of this subchapter, recipients of supplemental security income (SSI) payments shall be treated according to the provisions of this section for purposes of determining eligibility for and certification in the program. The provisions of this section will expire June 30, 1975.

(b) *Definitions.* For the purposes of this section the following definitions shall apply:

(1) "Supplemental security income (SSI)" means supplemental security income payments made under Title XVI of the Social Security Act, State supplemental payments made under section 1616 of that Act or payments made under Section 212(a) of Public Law 93-66.

(2) "Supplemental security income (SSI) recipient" means an individual or an individual and his eligible spouse who receives supplemental security income.

(3) "Essential person" means an individual who is considered an essential person under the terms of Public Law 93-66.

(c) *Food stamp eligibility of SSI recipients—(1) Ineligible SSI recipients.*

(i) No SSI recipient shall be considered a household member or an elderly person for food stamp program purposes if he resides in the States of California, Massachusetts, Nevada (only applies to aged and blind), New York and Wisconsin. The Secretary of Health, Education, and Welfare has determined, pursuant to the provisions of Public Law 93-233, that such States provide State supplementary payments which have been specifically increased to include the value of bonus food coupons. The letter

constituting this determination is published herewith.¹

(ii) SSI recipients in such States shall be terminated from participation in the program immediately, inasmuch as the statutory provisions requiring this result became effective January 1, 1974.

(iii) In such States the income and resources of an SSI recipient who resides with eligible household members or elderly persons shall not be considered available to the household members or elderly persons (except as provided in paragraph (c)(3)(ii) of this section), nor shall his presence be considered in determining the household coupon allotment and purchase requirement. In such instances any payment for deductible expense made on behalf of the household by the ineligible SSI recipient shall not be counted as income to the household nor shall the household be allowed a deduction for such expense. If deductible household expenses are shared among household members and an ineligible SSI recipient, the household shall be granted a deduction based on that proportion of the expense which is actually borne by the household.

(2) *Eligible SSI recipients.* (i) In States other than those specified in paragraph (c)(1)(i) of this section, SSI recipients shall be considered household members or elderly persons. If otherwise eligible under this subchapter, households consisting solely of SSI recipients or of an SSI recipient and an essential person shall be eligible to participate in the program without regard to the income and resources of the household. The State agency shall provide for the certification of such households according to the terms of § 271.4(a)(2).

(ii) In States where SSI recipients are considered household members or elderly persons, (a) households which consist exclusively of SSI recipients (or an SSI recipient and an essential person) and individuals who are recipients of fed-

erally aided public assistance or general assistance shall be classified as public assistance households and (b) households which consist of SSI recipients and individuals who are not exclusively recipients of federally aided public assistance or general assistance shall be classified as nonpublic assistance households and shall be subject to the regular program income and resource standards of eligibility.

(3) *Essential persons.* (i) If otherwise eligible under this subchapter, an essential person shall be considered a household member or an elderly person for purposes of participation in the program.

(ii) The amount of the SSI payment made on behalf of such essential person shall be counted as income available to the household.

PART 272—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS, MEAL SERVICES, AND BANKS

Sec.	
272.1	Approval of retail food stores, wholesale food concerns, and meal services.
272.2	Participation of retail food stores and meal services.
272.3	Participation of wholesale food concerns.
272.4	Procedure for redeeming coupons.
272.5	Participation of banks.
272.6	Disqualification of retail food stores, wholesale food concerns, and meal services.
272.7	Determination and disposition of claims—retail food stores, wholesale food concerns, and meal services.
272.8	Administrative review—retail food stores, wholesale food concerns, and meal services.

AUTHORITY: The provisions of this Part 272 issued under 78 Stat. 703, as amended, 7 U.S.C. 2011-2026.

§ 272.1 Approval of retail food stores, wholesale food concerns, and meal services.

(a) Firms desiring to participate in the program shall file an application with FNS, in such form as FNS may prescribe.

(b) An applicant shall provide sufficient data on the nature and scope of the firm's business for FNS to determine whether such applicant's participation will effectuate the purposes of the program. In making such determination FNS shall consider:

(1) The nature and the extent of the food business conducted by the applicant;

(2) The volume of food stamp business which may be reasonably expected to be done by the applicant;

(3) The business integrity and reputation of the applicant; and

(4) Such other factors as FNS considers pertinent to the application under consideration.

(c) A nonprofit meal delivery service or communal dining facility desiring to prepare and serve meals to households eligible under § 271.3(a)(2) and (a)(3) of this subchapter, in addition to meeting the requirements of paragraphs (a) and (b) of this section, must establish that:

(1) It is not receiving federally donated foods from the Department for use in the preparation of meals to be exchanged for food coupons, unless it is funded under the provisions of Title VII of the Older Americans Act of 1965; and

(2) It is recognized as a tax-exempt organization by the Internal Revenue Service; or

(3) It is a private establishment with which a State or local agency has contracted for meals prepared especially for elderly persons and sold at concessional prices during regular or special hours; *Provided*, That approval to participate shall be automatically withdrawn at the time of expiration or cancellation of the contract with the State or local agency.

(d) Drug addiction or alcoholic treatment and rehabilitation programs desiring to prepare and serve meals to households eligible under § 271.3(a)(4) of this subchapter must, in addition to meeting requirements of paragraphs (a), (b), (c)(1) and (2) of this section, be certified by the State agency or agencies designated by the Governor as responsible for the State's programs for alcoholics and drug addicts pursuant to Public Law 91-616, "Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970" and Public Law 92-255, "Drug Abuse Office and Treatment Act of 1972", as providing treatment that can lead to the rehabilitation of drug addicts or alcoholics; *Provided*, That approval to participate shall be automatically withdrawn at any time that a program loses its certification from the State agency or agencies.

(e) Upon approval, FNS shall issue a nontransferable authorization card to the firm. Such authorization card shall be retained by the firm until superseded, surrendered, or revoked as provided in this part.

(f) FNS shall deny the application of any firm if it determines that such firm's participation will not effectuate the purposes of the program. FNS will not consider the participation of a retail food store as effectuating the purposes of the program unless its food sales include staple foods for home preparation which are most needed in the diets of eligible households. If FNS determines that a firm does not qualify for participation in the program, a notice to that effect shall be issued to the firm. Such notice shall be delivered by certified mail or personal service. If such firm is aggrieved by such action, it may seek administrative review of such action as provided in § 272.8.

(g) FNS may from time to time, but not more frequently than once each Federal fiscal year, require all authorized firms within a project area to submit new applications if such firms wish to continue to participate in the program; *Provided*, That any individual firm may be required to submit a new application at any time FNS receives new or additional information with respect to such firm, relating to any of the criteria set forth in paragraphs (b) and (c) of this section. FNS shall review the new application and within 30 days of receipt, make a determination as to whether the

¹ Dear Mr. Secretary: As indicated in my letter of January 25, 1974, I determined on January 16, that the States of California, Hawaii, Massachusetts, Nevada, New York, and Wisconsin were providing supplementary payments which meet the criteria set forth in sections 8(b) and 8(c) of Public Law 93-233. (The State of Nevada provides such payments to aged and blind recipients only.) The State of Hawaii was the only such State which elected not to retain the bonus value of food stamps in its adjusted payment level. As of this writing, each of the other five States continues to meet the criteria and has retained the option of including the bonus value of food stamps in the adjusted payment level.

Therefore, it is my understanding that, in accordance with Public Law 93-335 for fiscal year 1975, as for January through June 1974, recipients of State supplementary payments residing in California, Massachusetts, Nevada, New York, and Wisconsin will not be eligible to participate in certain food assistance programs of the Department of Agriculture.

NOTE: The recordkeeping and/or reporting requirements herein specified have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

firm's continued participation serves to effectuate the purposes of the program. Applications received under this paragraph shall be considered by FNS under the same criteria and subject to the same rights of administrative review as provided in this section for initial applications.

(h) The filing of any application containing false information may result in the denial or withdrawal of approval to participate in the program and may subject the firm and persons responsible to civil or criminal action under applicable provisions of the law. FNS may also deny or withdraw approval to participate where information regarding the firm's business integrity and reputation becomes available which, in the opinion of FNS, indicates the firm is not willing or does not have the ability to abide by the provisions of this part. Any such withdrawal or denial of authorization to participate in the program shall be subject to administrative review under the provisions of § 272.8. The contents of applications or other information furnished by firms under the provisions of this section shall not be used or disclosed to anyone except for purposes directly connected with the administration and enforcement of the provisions of the Food Stamp Act and the provisions of this subchapter.

§ 272.2 Participation of retail food stores, and meal services.

(a) Authorized retail food stores shall post in the store the "Official Food List" issued by FNS or a notice of similar import.

(b) Coupons shall be accepted by an authorized retail food store or meal service only in exchange for eligible food as defined in § 270.2(s) of this subchapter, except that authorized food stores in Alaska may accept food coupons for hunting and fishing equipment from eligible households participating in accordance with § 271.3(a)(5) of this subchapter. An authorized food retailer or meal service shall not accept coupons in payment for deposit on bottles or other returnable food containers.

(c) Coupons shall be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store: *Provided*, That nothing in this part shall be construed as authorizing FNS to specify the prices at which food may be sold by retail food stores or meal services.

(d) No retail food store or meal service authorized to receive coupons shall accept coupons marked "paid," "cancelled," or "specimen," coupons marked with the name or authorization number of any other firm, coupons bearing the name of any bank, or coupons of other than 50-cent denomination which have been detached from the coupon books prior to the time of purchase or delivery of eligible food unless the detached coupons are accompanied by the coupon books which bear the same serial numbers that appear on the detached coupons. It is the right of the head of

the household or his selected representative to detach the coupons from the book.

(e) Change in cash shall not be given for coupons. An authorized food retailer or meal service must use for the purpose of making change in an amount of 50 cents or more, those uncanceled and unmarked coupons having a denomination of 50 cents which were previously accepted in exchange for eligible foods. If change in an amount of less than 50 cents is required, the eligible household shall have the option of receiving credit from the authorized firm for future delivery of an equivalent value of eligible foods, or of trading out in eligible food the difference between the cost of the purchase and the next higher 50-cent increment, or of paying in cash the difference between the cost of the purchase and the next lower 50-cent increment. Credit in excess of 49 cents shall not be returned in coupon transactions. Tokens or credit slips used for change in coupon transactions shall conform with the following:

(1) Tokens shall not resemble U.S. coins in any way.

(2) Tokens shall be dissimilar in size and material to lawful coins.

(3) Credit slips or tokens shall bear language similar to the following: "Redeemable only in eligible food and only at (insert the name of the issuing store or chain) store(s)."

(4) Credit slips or tokens shall not bear the seal of the Department.

(5) Credit slips shall be clearly and easily distinguishable from the official food coupons.

(6) Credit slips or tokens shall not in any way indicate that they are obligations of the United States or the Department.

(7) Credit slips or tokens issued by one authorized firm shall not be accepted by another authorized firm unless the two firms are under single ownership, or are members of a food marketing cooperative and hold themselves out to be members of the same cooperative by use of the same name, trademarks, house brands, etc.

(f) An authorized food retailer or meal service shall not retain custody of any unexpended coupons of eligible households, or use or adopt any trick, scheme, or device to prevent an eligible household from using unexpended coupons in making purchases from other authorized firms.

(g) Coupons shall not be accepted by an authorized retail food store or meal service in payment for any eligible foods sold or delivered by such firm prior to the time at which the coupons are tendered in payment for eligible foods.

(h) Authorized retail food stores and meal services which receive coupons in accordance with the provisions of this part, shall be entitled to receive payment for the face value of such coupons upon presentation through the banking system or through authorized wholesale food concerns.

(i) Coupons shall not knowingly be accepted from persons who have no right to possession of such coupons for use as prescribed in this part. If a food retailer

the household or his selected representative or meal service has any cause to believe that a person presenting coupons has no right to possession thereof, such food retailer or meal service should request such person to show the identification card of the head of the household to establish the right of such person to possession of coupons.

(j) A nonprofit meal delivery service shall request the recipient of a delivered meal to show the marked identification card establishing the recipient's right to use coupons for such a service the first time that such recipient offers coupons in payment for such a service, or states his intention of doing so, and shall request such marked identification card at any time such nonprofit meal delivery service has cause to question the continued eligibility of such recipient to use coupons for delivered meals.

(k) Authorized Alaskan retailers shall request food coupon customers wanting to purchase hunting and fishing equipment with food coupons to show their identification cards in order to determine that they live in an area designated by FNS as one in which persons are dependent upon hunting and fishing for subsistence.

§ 272.3 Participation of wholesale food concerns.

(a) An authorized wholesale food concern may accept endorsed coupons for redemption only from authorized retail food stores and meal services, and only when coupons are presented with the authorized retail food store's or meal service's properly executed, signed redemption certificate, and when such coupons have not been marked "paid," "cancelled," or "specimen."

(b) An authorized wholesale food concern which has received coupons in accordance with the provisions of this part shall be entitled to receive payment through the banking system for the face value of such coupons, upon presentation of the coupons together with:

(1) The authorized retail food store's or meal service's properly executed, signed redemption certificate for such coupons; and

(2) The authorized wholesale food concern's properly executed, signed redemption certificate.

§ 272.4 Procedure for redeeming coupons.

(a) Coupons accepted by a retail food store, meal service, or a wholesale food concern prior to the receipt by such firm of an authorization card from FNS shall not be presented for redemption unless such redemption has been approved by the FNS Officer-in-Charge under § 272.7 (b). Burned or mutilated coupons shall not be presented for redemption under this section, but shall be presented to the FNS Officer-in-Charge under § 272.7(c).

(b) Each authorized retail food store, meal service, or authorized wholesale food concern shall stamp or otherwise indicate its authorization number or the name of such firm on each coupon prior to the time such coupons are presented for redemption under the procedure provided in this part.

(c) Authorized firms will be provided by FNS with redemption certificates which shall be used in presenting coupons to commercial banks for credit or for cash. Authorized retail food stores and meal services shall also use such certificates in presenting coupons to authorized wholesale food concerns for redemption.

§ 272.5 Participation of banks.

(a) Banks may accept coupons for redemption from authorized retail food stores, authorized meal services, and authorized wholesale food concerns in accordance with the provisions of this part and the instructions of the Federal Reserve Banks. Coupons submitted to banks for credit or for cash must be properly endorsed in accordance with § 272.4 and shall be accompanied by a properly executed redemption certificate. No bank shall knowingly accept coupons used by ineligible persons or transmitted for collection by unauthorized firms or any other unauthorized persons, partnerships, corporations, or other legal entities. Banks may require persons presenting coupons for redemption to show their authorization card. The redemption certificates shall be held by the receiving bank until final credit has been given by the Federal Reserve Bank after which the wholesale food concerns' redemption certificates shall be forwarded to the FNS Field Office and the retail food stores' and meal services' redemption certificates to:

Food Stamp Control Unit
ASCS Commodity Office
U.S. Department of Agriculture
3930 West 65th Street
Minneapolis, MN 55435

Coupons accepted for deposit or for payment in cash must be cancelled by or for the first bank receiving the coupons by indelibly marking "paid" or "cancelled" together with the name of the bank, or its routing symbol transit number, on the coupons by means of an appropriate stamp. A portion of a coupon consisting of less than three-fifths of a whole coupon shall not be accepted for redemption by banks. Banks which are members of the Federal Reserve System, nonmember clearing banks, and nonmember banks which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member bank on the books of the Federal Reserve Bank may forward cancelled coupons directly to the Federal Reserve Bank for payment in accordance with applicable regulations or instructions of the Federal Reserve Banks. Other banks may forward cancelled coupons through ordinary collection channels.

(b) Federal Reserve Banks, acting as fiscal agents of the United States, are authorized to receive cancelled coupons for collection as cash items from armed forces installations, member banks of the Federal Reserve System, nonmember clearing banks, and nonmember banks which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member bank on the books of the Federal Reserve Bank, and

to charge such items to the general account of the Treasurer of the United States.

(c) (1) FNS shall be liable for losses of shipments of canceled coupons while in transit to Federal Reserve or correspondent banks: *Provided, That:*

(i) Coupons shall not be deemed to be in transit while in the custody and care of either the transmitting bank, or of the Federal Reserve, or of the correspondent bank, or of their employees.

(ii) The bank is unable to recover the loss from the carrier: *and Provided further, That,* in the event of a partial loss, there is evidence of the package having been tampered with or damaged in transit. The Federal Reserve and correspondent bank shall record the condition of packages which on receipt appear to have been tampered with or damaged in transit.

(iii) A statement is obtained from the Federal Reserve or correspondent bank that the shipment or part of the shipment was not received. In the event of a partial loss, this statement shall specify the condition of the package upon receipt and state whether it appeared to have been tampered with or damaged in transit.

(2) The commercial bank shall give a prompt written report of loss, destruction, or damage to the Post Office, or other carrier.

(3) Commercial banks shall submit the following documents to FNS in support of any claim for payment for coupons lost in transit:

(i) A copy of the notification of loss to the Post Office or other carrier;

(ii) A statement of facts concerning the loss and the bank's procedures for making the shipment. This statement shall specify that either all or part of the loss cannot be recovered from the carrier. If a partial recovery has been or will be made, the amount shall be stated;

(iii) A statement from the Federal Reserve or correspondent bank that the shipment or part of the shipment was not received. In the event of a partial loss, this statement shall specify that the loss may have resulted from the package being tampered with or damaged in transit;

(iv) All the Redemption Certificates received from the firms which relate to the shipment; and

(v) A copy of the cash letter which transmitted the shipment.

(d) Notwithstanding any provision of this subchapter to the contrary, coupons may be issued to, purchased by, or presented for redemption by persons authorized by FNS to use such coupons in examining and inspecting program operations and compliance with program regulations, and for other purposes determined by FNS to be required for proper administration of the program. Such coupons which have been so issued and used, as well as any coupons which have been issued under paragraph (f) of this section, or which FNS believes may have been issued, transferred, negotiated, used, or received in violation of any provisions of this subchapter or of any

applicable statute, shall at the request of any person acting on behalf of FNS and on issuance of a receipt therefor by such persons, be released and turned over to FNS by the bank receiving such coupons, or by any other person to whom such request is addressed, together with the certificate(s) of redemption accompanying such coupons, if any. Any such coupons so requested shall not thereafter be eligible for redemption through Federal Reserve Banks or other collection channels: *Provided, That* FNS may redeem such coupons from any such bank or person by payment of the face amount thereof upon determination by FNS that such direct redemption of coupons is warranted under all of the circumstances of the examination or inspection in which such coupons were used. Coupons received by FNS under this paragraph shall be held by FNS for such disposition as may be determined by FNS on completion of the examination or inspection in which such coupons were used. In the event such coupons have not been redeemed by FNS as provided in this paragraph, claims or demands relative thereto may be mailed to the local FNS Field Office for the project area involved.

(e) Under the authority contained in paragraph (d) of this section, FNS will sell coupons at face value to any authorized retail food store which wishes to use coupons to conduct internal checks of its employees' handling of coupon transactions: *Provided, That* such retail food store submits a written request to FNS which shall include a certification that the store recognizes that its use of coupons will in no way affect FNS action to enforce program regulations and that the requested coupons will be used only for internal checks of the store's employees and only to uncover sales of items other than eligible foods, as defined in § 270.2(s). The request shall further include the name of the city or county in which the stores to be checked through the use of the requested coupons are located and the name and address of any outside agency with which the retail food store has or will have a contract to conduct checks of the store's employees using coupons. The request shall be directed to the Food Stamp Division, FNS, U.S. Department of Agriculture, Washington, D.C. 20250, and shall be accompanied by a check or money order made payable to the Food and Nutrition Service to cover the face value cost of the coupons requested. Coupons purchased by retail food stores for use in internal checks may be subsequently redeemed for full value in accordance with § 272.4, and in redeeming such coupons, retail food stores are authorized to make the certification required for redemption.

(f) Upon the written request of Federal, State, or local governmental agencies which have authority to investigate, and are investigating, suspected violations of Federal or State statutes relating to the enforcement of the Food Stamp Act or the regulations issued thereunder, the State agency may allow households which it believes are or may

be ineligible for the program to continue program participation and to receive and use ATP cards and food coupons. The State agency may allow such households to continue participation in the program until the earlier of (1) expiration of the period of 90 days after such request is received or of such longer period as FNS, upon request of the State agency, may for good cause approve in a particular case, or (2) receipt of notification from the investigative agency that such participation may be terminated or that the investigation has been completed. Notwithstanding any other provisions of this subchapter, the State agency shall not be liable to FNS for the bonus value of any coupons issued to households which the State agency allows to continue participation in the program in conformity with the provisions of this paragraph.

§ 272.6 Disqualification of retail food stores, meal services, and wholesale food concerns.

(a) Any authorized retail food store, authorized meal service, or authorized wholesale food concern may be disqualified from further participation in the program by FNS for a reasonable period of time, not to exceed three years, as FNS may determine, if such firm fails to comply with the Food Stamp Act or the provisions of this part; except that, if the disqualification is based on failure of such firm to pay a monetary claim determined by FNS pursuant to § 272.7, such disqualification may be continued until such claim is paid. Any firm which has been so disqualified and which desires to be reinstated upon the end of the period of disqualification or at any time thereafter shall file a new application so that FNS may determine whether reinstatement is appropriate under the provisions of this part. Such an application may be filed starting ten days before the end of the period of disqualification.

(b) Any firm considered for disqualification under paragraph (a) of this section shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of non-compliance before a final determination is made by FNS as to the administrative action to be taken. Prior to such determination, the firm shall be sent a letter of charges by the appropriate Regional Office, FNS. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification. Such letter shall inform the firm that it may respond either orally or in writing to the charges contained therein within ten days of the mailing date thereof, which response shall set forth a statement of evidence, information, or explanation pertaining to the specified violations or acts. Such response, if any, shall be made to the Officer-In-Charge, FNS Field Office, who has responsibility for the project area in which the firm is located.

(c) The letter of charges, the response, and such other information as may be available to FNS shall be reviewed and considered by the Chief, Retailer-Wholesaler Branch, Food Stamp Division, who shall then issue his determination.

(d) The determination of the Chief, Retailer-Wholesaler Branch, Food Stamp Division, shall be final and not subject to further administrative or judicial review unless a written request for review is filed within ten days in accordance with § 272.8.

(e) The mailing by certified mail or delivery by personal service of any notice required of FNS by this part will constitute notice to the addressee of its contents.

§ 272.7 Determination and disposition of claims—retail food stores, meal services, and wholesale food concerns.

(a) If FNS determines that a retail food store, meal service, or wholesale food concern accepted coupons in violation of the provisions of the Food Stamp Act or the provisions of this part, FNS may deny the claim for redemption of such coupons. In the event such coupons have been redeemed, FNS may determine a monetary claim against such firm with respect to the coupons involved in such violations and may collect such claim by setoff against the amounts due the firm upon redemption of other coupons. The firm shall promptly pay such claim if FNS does not collect it by setoff. Failure of a firm to pay a claim will be cause for disqualifying the firm or denying an application for reauthorization submitted by the firm if previously disqualified.

(b) The FNS Officer-In-Charge may approve the redemption under §272.4 of coupons accepted by firms prior to the receipt of an authorization card from FNS if the following conditions exist:

(1) The coupons were received in accordance with the provisions of this part governing acceptance of coupons except the provisions requiring that the firm be authorized before acceptance;

(2) The coupons were accepted by the firm in good faith, and without any intent to circumvent the provisions of this part; and

(3) The firm applies for and receives authorization to participate in the program. Firms seeking approval to redeem such coupons shall present a written application for approval to the local FNS Field Office. This application shall be accompanied by a full written statement signed by the firm of the circumstances surrounding the acceptance of the coupons. The statement shall also include a certification that the coupons were accepted in good faith, and without any intent to circumvent the requirements of this part.

(c) FNS may redeem burned or mutilated coupons only to the extent that the Bureau of Engraving and Printing of the United States Treasury Department can determine the value of the coupons. The firm presenting burned or mutilated coupons for redemption shall submit the coupons to the local FNS Field Office with a properly filled-out redemption certificate. In the section of the redemption certificate for entering the amount of coupons to be redeemed, an estimate

of the value of the burned or mutilated coupons submitted for redemption shall be entered if the exact value of the coupons is unknown. The phrase "Finance and Program Accounting Division, FNS, USDA," should be entered in the section of the redemption certificate for entering the name and address of the bank or wholesaler.

(d) If a claim under the provisions of this section is denied in whole or in part, notification of such action shall be sent to the firm by certified mail or personal service. If the firm is aggrieved by such action, it may seek administrative review as provided in § 272.8.

§ 272.8 Administrative review—retail food stores, wholesale food concerns, and meal services.

(a) A food retailer, food wholesaler, or meal service aggrieved by administrative action under the provisions of §§ 272.1, 272.6 and § 272.7 may within 10 days of the date of delivery to the firm of notice of such administrative action, file a written request for review of such administrative action with the Food Stamp Review Officer. On receipt of such request for review, the questioned administrative action shall be stayed pending disposition of such request for review by the Food Stamp Review Officer.

(b) The request for review shall be filed with the Food Stamp Review Officer, U.S. Department of Agriculture, Washington, D.C. 20250.

(c) The procedure for food stamp reviews is published in Part 273 of this subchapter, and is available upon request from the Food Stamp Review Officer.

NOTE: The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

PART 273—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS, FOOD WHOLESALERS AND MEAL SERVICES

Subpart A—Administrative Review—General

- Sec. 273.1 Scope and purpose.
 - 273.2 Food Stamp Review Officer.
 - 273.3 Authority and jurisdiction.
 - 273.4 Rules of Procedure.
- Subpart B—Rules of Procedure**
- 273.5 Manner of filing requests for review.
 - 273.6 Content of requests for review.
 - 273.7 Action upon receipt of a request for review.
 - 273.8 Determination of the Food Stamp Review Officer.
 - 273.9 Legal advice and extensions of time.

Subpart C—Judicial Review

- 273.10 Judicial review.

AUTHORITY: 78 Stat. 703, as amended (7 U.S.C. 2011-2026).

Subpart A—Administrative Review—General

§ 273.1 Scope and purpose.

This Subpart A sets forth the procedure for the designation of Food Stamp Review Officers and the authority and jurisdiction of such officers. Subpart B of

this part sets forth the rules of procedure to be followed in the filing and disposition of the requests for review for which provision is made in § 272.8 of this subchapter. Subpart C of this part relates to the provisions governing the rights of food retailers, food wholesalers, and meal services to judicial review of the final determinations of the Food Stamp Review Officer.

§ 273.2 Food Stamp Review Officer.

(a) The Administrator, FNS, shall designate one or more persons to act as Food Stamp Review Officers.

(b) Such officers shall serve for such periods as the Administrator, FNS, shall determine. Changes in designations and additional designations, may be made from time to time at the discretion of the Administrator, FNS. When more than one Food Stamp Review Officer has been designated, requests for review will be assigned for handling to individual Food Stamp Review Officers by a person designated by the Administrator, FNS. The names of the Food Stamp Review Officers shall be on file in the Office of the Administrator, FNS.

§ 273.3 Authority and jurisdiction.

(a) A Food Stamp Review Officer shall act for the Department on requests for review filed by firms aggrieved by any of the following actions:

(1) Denial of an application to participate in the program under § 272.1 of this subchapter; or

(2) Disqualification from participation in the program under § 272.6 of this subchapter; or

(3) Denial of all or any part of any claim under § 272.7 of this subchapter.

(b) The determination of the Food Stamp Review Officer on such a review shall be the final administrative determination of the Department, subject, however, to judicial review as provided in section 13 of the Food Stamp Act and Subpart C of this part.

§ 273.4 Rules of procedure

Rules of procedure for the orderly filing and disposition of requests for review of firms submitted in accordance with § 273.5 are issued in Subpart B of this part. The Administrator, FNS, may subsequently issue amendments to such rules of procedure as he deems appropriate.

Subpart B—Rules of Procedure

§ 273.5 Manner of filing requests for review.

(a) Requests for review submitted by firms shall be mailed to or filed with "Food Stamp Review Officer, FNS, U.S. Department of Agriculture, Washington, D.C. 20250."

(b) Such requests shall be in writing and shall state the name and business address of the firm involved, and the name, address and position with the firm of the person who signed the request. The request shall be signed by the owner of the firm, an officer or partner of the firm, or by counsel, and need not be under oath.

(c) Such a request shall be filed with the Food Stamp Review Officer within ten calendar days of the date of delivery of the notice of the action for which review is requested. For the purpose of determining whether such a request was timely filed, the filing date shall be deemed to be the postmark date of the request, or equivalent if the written request is filed by a means other than mail.

§ 273.6 Content of requests for review.

(a) Requests for review shall clearly identify the administrative action from which the review is requested. Such identification shall include the date of the letter or other written communication notifying the firm of the administrative action, the name and title of the person who signed such letter or other communication, and whether the action under appeal concerns a denial of an application for participation, a disqualification from further participation, or a denial of all or any part of a claim.

(b) Such requests shall include information in support of the request showing the grounds on which the review is being sought from the administrative action, or it shall state that such information will be filed in writing at a later date. In such event, the Food Stamp Review Officer shall notify the firm of the date by which such information must be filed. The firm requesting review may ask for an opportunity to appear before the Food Stamp Review Officer in person; *Provided*, That any information so submitted in person shall, if directed by the Food Stamp Review Officer, be reduced to writing by the firm and subsequently filed with the Food Stamp Review Officer within such period as he shall specify.

§ 273.7 Action upon receipt of a request for review.

(a) Upon receipt of a request for review of a disqualification action, the Food Stamp Review Officer shall notify the Chief of the Retailer-Wholesaler Branch, Food Stamp Division, FNS, in writing, of the action under review and shall direct that the administrative action shall be held in abeyance until the Review Officer has made his determination. Upon receipt of a request for review of a denial of application to participate in the program; or of a denial of a claim, the Food Stamp Review Officer shall notify the Chief of the Retailer-Wholesaler Branch, Food Stamp Division, FNS, in writing, of the action under review and shall direct that the firm shall not be approved for participation or paid any part of the disputed claim until the Review Officer has made his determination. In any case, notice to the Chief, Retailer-Wholesaler Branch shall be accompanied by a copy of the request filed by the firm.

(b) If the request filed by the firm includes a request for an opportunity to file written information in support of its position at a later date, the Food Stamp Review Officer shall promptly notify the firm of the date by which such information shall be filed. If the firm

fails to file any information in support of its position by the designated date, the information submitted with the original request shall be deemed to be the only information submitted by the firm. In such event, if no information in support of the firm's position was submitted with the original request, the action of the appropriate FNS Regional Office, or of the Chief, Retailer-Wholesaler Branch, Food Stamp Division, FNS, whichever is applicable shall be final.

(c) If the firm filing the request for review asked for an opportunity to appear before the Food Stamp Review Officer in person, such Officer shall promptly notify the firm of the date, time and place set for such appearance. If such firm fails to appear before the Food Stamp Review Officer as specified, any written information timely submitted in accordance with this section shall be deemed to be the only information submitted by such firm.

(d) The Food Stamp Review Officer shall require the Chief, Retailer-Wholesaler Branch, Food Stamp Division, FNS to promptly submit, in writing, all information which was the basis for the administrative action for which the review has been requested.

§ 273.8 Determination of the Food Stamp Review Officer.

(a) The Food Stamp Review Officer shall make a determination based upon:

(1) The information submitted by the Chief, Retailer-Wholesaler Branch, Food Stamp Division, FNS;

(2) Information submitted by the firm in support of its position; and

(3) Such additional information, in writing, as may be obtained by such Officer from any other person having relevant information.

(b) In the case of a request for review of a denial of an application to participate in the program, the determination of the Food Stamp Review Officer shall sustain the action under review or shall direct that the firm be approved for participation.

(c) In the case of a request for review of action disqualifying a firm from participation in the program, the determination of the Food Stamp Review Officer shall sustain the action under review or specify a shorter period of disqualification, direct that an official warning letter be issued to the firm in lieu of any period of disqualification, or direct that no administrative action be taken in the case.

(d) In the case of a request for review of a denial of all or part of a claim of a firm, the determination of the Food Stamp Review Officer shall sustain the action under review or shall specify the amount of the claim to be paid by FNS.

(e) The Food Stamp Review Officer shall notify the firm of his determination by certified mail. Such notification shall be sent to the representative of the firm who filed the request for review.

(f) The Food Stamp Review Officer shall send a copy of his notification to the firm to the Chief, Retailer-Wholesaler Branch, Food Stamp Division, FNS,

who shall undertake such action as may be necessary to comply with the determination of such Officer.

(g) The determination of the Food Stamp Review Officer shall take effect 15 days after the date of delivery of such determination to the firm.

§ 273.9 Legal advice and extensions of time.

(a) If any request for review involves any doubtful questions of law, the Food Stamp Review Officer shall obtain the advice of the Office of the General Counsel, U.S. Department of Agriculture.

(b) Upon timely written request to the Food Stamp Review Officer by the firm requesting the review, the Food Stamp Review Officer may grant extensions of time, if, in his discretion, additional time is required for the firm to fully present information in support of its position: *Provided*, That no extensions shall be made in the time allowed for the filing of a request for review.

Subpart C—Judicial Review

§ 273.10 Judicial review.

(a) A firm aggrieved by the determination of the Food Stamp Review Officer, may obtain judicial review of such determinations, by filing a complaint against the United States in the U.S. District Court for the district in which he resides or is engaged in business, or in any court of record of the State having competent jurisdiction. Such complaint must be filed within 30 days after the date of delivery or service upon him of the notice of determination of the Food Stamp Review Officer in accordance with § 273.8(e), otherwise such determination shall be final.

(b) Service of the summons and complaint in any such action shall be made in accordance with the Rules of Civil Procedure for the U.S. District Courts. The copy of the summons and complaint required by such Rules to be served on the officer or agency whose order is being attacked shall be sent by registered or certified mail to the person in charge of the applicable Regional Office of FNS listed in § 270.5 of this subchapter.

(c) The suit in the U.S. District Court or in the State court, as the case may be, shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action in issue. If the court determines that such administrative action is invalid, it shall enter such judgment or order as it determines is in accordance with the law and the evidence.

(d) During the pendency of such judicial review, or any appeal therefrom, the administrative action under review shall remain in full force and effect, unless the firm makes application to the court upon not less than ten days' notice and, after hearing thereon and a showing of irreparable injury, the court temporarily stays the administrative action under review pending disposition of the de novo trial or an appeal therefrom.

NOTE: The reporting and/or recordkeeping requirements contained herein have been ap-

proved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

PART 274—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS

Subpart A—Major Disasters Declared by the President

- Sec. 274.1 General purpose and scope.
- 274.2 Administration.
- 274.3 Definitions.
- 274.4 Determination of the need for emergency food assistance.
- 274.5 Certification of households and issuance of coupons.
- 274.6 Duration of emergency food issuance.
- 274.7 Reporting.

Subpart B—Other Disasters Declared by FNS

- Sec. 274.8 General purpose and scope.
- 274.9 Administration.
- 274.10 Definitions.
- 274.11 Determination of the need for temporary emergency food stamp assistance.
- 274.12 Certification of households and issuance of coupons.
- 274.13 Duration of temporary emergency food stamp assistance.
- 274.14 Reporting.

Subpart A—Major Disasters Declared by the President

AUTHORITY: The provisions of this Subpart A issued under the Disaster Relief Act of 1974 (Public Law 93-288, 88 Stat. 143).

§ 274.1 General purpose and scope.

Section 409 of the Disaster Relief Act of 1974 authorizes the President to distribute through the Secretary of Agriculture emergency food coupon allotments to low-income households who are unable to purchase adequate amounts of nutritious food as a result of a major disaster. This Subpart A implements section 409 of the Disaster Relief Act of 1974 in project areas where the program is in operation. In areas where the program is not in operation, emergency food assistance need in a major disaster will be met as provided in regulations governing the distribution of federally donated foods.

§ 274.2 Administration.

(a) By Executive Order, the authority provided the President under section 409 of the Disaster Relief Act of 1974 has been delegated to the Secretary of Agriculture.

(b) Within the Department, such authority is delegated to FNS, which shall act in behalf of the Department in the administration of section 409 of the Disaster Relief Act of 1974.

(c) Except as provided in this subpart, the regulations and procedures governing the administration of the program shall remain effective through the period during which emergency food assistance is being made available.

§ 274.3 Definitions.

For the purpose of this subpart the term:

(a) "Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami,

earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion or other catastrophe which is determined to be a "major disaster" by the President pursuant to the Disaster Relief Act of 1974.

(b) "Emergency food coupon allotment" means up to one-month's allotment of food coupons based upon the household size at no cost to the household.

§ 274.4 Determination of the need for emergency food assistance.

The distribution by the State agency of emergency food coupon allotments is authorized to households residing in a food stamp project area in an area determined to have been adversely affected by a major disaster; only upon a determination by FNS that such households, because of reduction in or inaccessibility of income or resources resulting from such major disaster, are in need of food assistance which cannot be met by the existing program in such project areas. Further, the area authorized by FNS for emergency food coupon issuance may or may not have boundaries congruent with that area designated as a major disaster by the President.

§ 274.5 Certification of households and issuance of coupons.

(a) The eligibility of each applicant household for an emergency food coupon allotment shall be determined by the State agency or any designated disaster relief agency. Any such disaster relief agency must be designated by the State agency with the approval of FNS, or by FNS. An applicant household shall be determined eligible for an emergency food coupon allotment if such household establishes to the satisfaction of the State agency, or designated disaster relief agency, that it is in need of food assistance because of reduction in or inaccessibility of income or resources resulting from a major disaster, without regard to the eligibility standards for households under Part 271 of this subchapter.

(b) The issuance of emergency food coupon allotments shall be by the normal procedures in effect in a project area: *Provided*, That if such issuance is not practical because of the effects of the major disaster, the State agency, with FNS approval, may make temporary arrangements during the emergency period to facilitate issuance to eligible households. Such temporary arrangements shall in no way affect the accountability and the liability of the State agency for coupons and cash as provided for in §§ 271.6 and 271.7 of this subchapter.

§ 274.6 Duration of emergency food assistance.

(a) Emergency food assistance shall be available for such period of time as FNS may prescribe, but not in excess of 30 days: *Provided*, That the emergency period may be extended by FNS on the basis of a redetermination that continuing emergency food assistance is necessary because of the continuing effects of the major disaster.

(b) Following the termination of the emergency period, the eligibility of households shall be determined through normal certification procedures including appropriate consideration of continuing hardship factors resulting from the major disaster.

§ 274.7 Reporting.

The State agency shall keep such records and submit such reports and other information concerning this subpart as may from time to time be required by FNS.

NOTE.—The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Subpart B—Other Disasters Declared by FNS

AUTHORITY: Public Law 88-525, 78 Stat. 703, as amended, 7 U.S.C. 2011-2026.

§ 274.8 General purpose and scope.

The Food Stamp Act provides that the Secretary may establish temporary emergency standards of eligibility for the duration of the emergency without regard to income and other financial resources, for households that are victims of a mechanical disaster which disrupts the distribution of coupons, and for households that are victims of a disaster which disrupted commercial channels of food distribution when he determines that such households are in need of temporary food assistance, and that such commercial channels have again become available to meet the temporary food needs of such households. This subpart implements these temporary emergency provisions of the Food Stamp Act in project areas where the program is in operation. In areas where the program is not in operation, emergency food assistance need in a disaster will be met as provided in regulations governing the distribution of federally donated foods.

§ 274.9 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the provisions of this subpart.

(b) Except as provided in this subpart, the regulations and procedures governing the administration of the program shall remain effective through the period during which emergency food assistance is being made available.

§ 274.10 Definitions.

For the purpose of this subpart, the term:

(a) "Mechanical Disaster" means the cessation for not less than 15 consecutive calendar days of the operation of all equipment available to the State agency for the production of ATP cards, by rea-

son of causes beyond the control of the State agency: *Provided*, That such causes shall not include strikes, lockouts, or work stoppages, or any failure on the part of assigned personnel to operate said equipment.

(b) "Disrupts the distribution of coupons" means that by reason of a mechanical disaster the State agency is unable to produce ATP cards or equivalent authorization-to-purchase documents necessary for the normal issuance of coupons to households.

(c) "Temporary emergency" means an emergency caused by a mechanical disaster or any other disaster, resulting from either natural or human causes, other than a major disaster declared by the President under the Disaster Relief Act of 1974, which is determined by FNS to have disrupted the distribution of coupons or to have disrupted commercial channels of food distribution.

(d) "Temporary standards of eligibility" means standards of eligibility for victims of a disaster for temporary food assistance as provided in this subpart.

(e) "Victims of a disaster" means households which as a result of a temporary emergency are in need of temporary food assistance due to a reduction in or inaccessibility of income or resources, or due to the disruption of the distribution of coupons by reason of a mechanical disaster: *Provided*, That in the case of a mechanical disaster the term includes only households already certified as eligible to participate in the program as of the month in which such disaster occurred.

(f) "Commercial channels of food distribution" means firms as defined in this subchapter.

§ 274.11 Determination of the need for temporary emergency food stamp assistance.

FNS shall determine the need for temporary food assistance for households which are victims of mechanical and other disasters, including the fact of the existence of a temporary emergency, the disruption of the distribution of coupons, and the disruption of commercial channels of food distribution, and of the fact that commercial channels of food distribution have again become available to meet the temporary food needs of such households.

§ 274.12 Certification of households and issuance of coupons.

(a) The eligibility of each applicant for temporary emergency food stamp assistance under this subpart shall be determined by the State agency under the temporary standards of eligibility. An applicant household shall be determined eligible for temporary emergency par-

ticipation if such household establishes to the satisfaction of the State agency that it is in need of food assistance because of a temporary reduction of or inaccessibility of income or resources or because of the disruption of coupon distribution without regard to eligibility standards for households under Part 271 of this subchapter, resulting from a temporary emergency, as determined by FNS, and after a determination by FNS that commercial channels of food distribution are available to meet the temporary food needs of such households.

(b) Issuance of emergency food assistance in the form of food coupons shall be in an amount deemed by the State agency to be sufficient to meet the temporary food needs of the applicant household, but in no case shall such a coupon allotment issued in any one month exceed one-month's issuance for the size of the household determined under the basis of issuance for households under Part 271 of this subchapter. Such issuance shall be at no cost to the household.

§ 274.13 Duration of temporary emergency food stamp assistance.

(a) Temporary emergency food stamp assistance shall be available in a food stamp project area for such period of time as FNS may prescribe, but not in excess of 30 days: *Provided*, That the emergency period may be extended by FNS on the basis of a redetermination that continuing temporary emergency food stamp assistance is necessary because of the continuing effects of the temporary emergency.

(b) Following the termination of the emergency period, the eligibility of households which were certified under emergency standards shall be determined through normal certification procedures under Part 271 of this subchapter.

§ 274.14 Reporting.

The State agency shall keep such records and submit such reports and other information concerning this subpart as may from time to time be required by FNS.

NOTE: The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

(Catalog of Federal Domestic Assistance Programs No. 10.551, National Archives Reference Services)

Effective date. This revision shall become effective January 9, 1975.

Dated: January 3, 1975.

RICHARD L. FELTNER,
Assistant Secretary.

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