

RULES and REGULATIONS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 314]

Food Stamp Program; Categorical Eligibility for Certain Public Assistance and Supplemental Security Income (SSI)  
Recipients

Wednesday, June 7, 1989

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking puts in final form Food Stamp Program interim regulations published August 5, 1986 which implemented the categorical eligibility provision contained in section 1507 of the Food Security Act of 1985 (Pub. L. 99-198; December 23, 1985). That provision mandates that households that only contain members who are recipients of public assistance (PA) or supplemental security income (SSI) benefits be categorically eligible for food stamp benefits.

This final action also addresses a provision of the Hunger Prevention Act of 1988 (Pub. L. 100-435, September 19, 1988) which eliminates the September 30, 1989 expiration date for testing categorical eligibility under the Food Security Act of 1985.

DATES: The new provisions contained in this final action at [§ 272.1\(g\)\(108\)](#), [§ 273.2\(j\)\(1\)\(iv\)](#), [§ 273.2\(j\)\(2\)\(iii\)\(B\)](#), [§ 273.17](#) and [§ 273.18](#) are effective July 7, 1989 to be implemented no later than September 1, 1989. All the remaining provisions, which specifically adopt, as final, interim provisions as published at [51 FR 28200-28202](#), August 5, 1986 or modify the interim provisions for clarity only, are effective retroactively to December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Chief, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Certification Policy Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 706, Alexandria, VA. 22302, telephone (703) 756-3496.

SUPPLEMENTARY INFORMATION:

Classification

[Executive Order 12291](#)

This action has been reviewed under [Executive Order 12291](#) and the Secretary of Agriculture's Memorandum No. 1512-1. The Department has classified this action as non-major. The effect of this action on the economy will be less than \$100 million and it will have an insignificant effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition or United States-based enterprises with foreign-based enterprises.

#### [Executive Order 12372](#)

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule and related Notice to 7 CFR 3015, Subpart V ([48 FR 29115](#)), this program is excluded from the scope of [Executive Order 12372](#) which requires intergovernmental consultation with State and local officials.

#### *Regulatory Flexibility Act*

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, Stat. 1164, September 19, 1980). G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Food Stamp Program. Potential and current participants will be affected because of changes to various program policies and procedures.

#### *Paperwork Reduction Act*

The provision at [7 CFR 273.10\(g\)\(1\)\(ii\)](#) requiring the State agency to tell households to inform the State agency of their eligibility for PA or SSI benefits on form FNS-442, Action Taken on Your Food Stamp Case, does not alter or change burden estimates for the FNS-442 as approved under OMB No. 0584-0064. The remaining provisions of this rule do not contain new or additional reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 ([44 U.S.C. 3507](#)).

#### Background

#### *Comments*

On August 5, 1986, the Department issued an interim rule at [51 FR 28196](#) which implemented the Food Security Act of 1985 provision on categorical eligibility for certain PA and SSI households. A total of 15 comment letters were received on the interim rule—the majority from State agencies. All comments received were reviewed but only those issues that either arose repeatedly or those which can be addressed by regulation are discussed in detail. Comments which proposed legislative changes or were unclear or not pertinent are not addressed in this preamble. A full explanation of the rationale of the rule is contained in the preamble of the interim rule. It is suggested that persons also refer to that rule for background information.

#### *Reactivation of Denied Cases—[§ 273.2\(j\)\(1\)\(iv\)](#)*

The interim rule established a procedure which required the State agency to reevaluate any application from a household which applied for both food stamps and Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI) but which was denied food stamps prior to action being taken on the AFDC or SSI appli-

cation. The reevaluation would be done when the household was found to be eligible for or authorized for receipt of AFDC or SSI benefits and thus categorically eligible. The interim rule provided that the State agency shall not reinterview the household but shall use available information to update the application and/or make mail or phone contact with the household or authorized representative to determine any changes in circumstances. Any changes shall be initialed and the updated application resigned and dated by the authorized household member or procedure. In general, commenters preferred an outright denial and reapplication and, at the very least, wanted more flexibility in contacting the household to update information on the original application. One commenter was concerned that State agencies are not required to contact the household and, thus, the household may not be actively involved in the reevaluation process.

Because the Department considers that categorical eligibility begins at the point when the person or assistance unit becomes eligible for receipt of PA or SSI benefits, or becomes authorized for receipt of PA or SSI benefits, this final action retains the provision requiring reactivating a denied food stamp case which is later determined categorically eligible. However, to ensure that the household has an opportunity to participate in the reevaluation process and that the State agency has the latest information, this final action amends [7 CFR 273.2\(j\)\(1\)](#) to require State agencies to first use available information to update the application and then contact the household to explain and confirm changes and determine if any other changes in circumstances have occurred. The final rule still requires **\*24511** that the household initial changes and re-sign and date the application, unless the household does not supply new information or information supplied by the household does not deviate from the available information obtained by the State agency.

The interim rule provided that if AFDC or SSI eligibility is not determined within 30 days after the date the food stamp application is filed and the household is not eligible as a nonpublic assistance (NPA) household, the application shall be denied on the 30th day and reactivated when the AFDC/SSI eligibility determination is made. One commenter suggested that the application be pending on the 30th day in lieu of denial and reactivation. This suggestion is not adopted. The Food Stamp Act requires that a decision on food stamp eligibility be made within 30 days of the date the application is filed and the Department cannot justify keeping a case pending beyond 30 days when the household is ineligible for food stamps.

This same commenter suggested that categorical eligibility be effective on the same date AFDC/SSI is effective. The commenter explained her concern through the use of a case example: An AFDC application was filed October 6, 1986. Because the State agency opted to make AFDC effective the first of the month in which the 30th day after the date of the AFDC application falls, AFDC became effective November 1, 1986. The interim rules provide that any household determined PA eligible which is categorically eligible within the 30-day food stamp processing time shall be provided food stamp benefits back to the date of the food stamp application. The commenter pointed out that the household in the example will be considered categorically eligible effective for a period of time for which the household was not eligible for AFDC.

It is not clear from the commenter's example if the household was determined to actually be ineligible for PA for the period October 6 through October 31 and, thus, not entitled to receive PA benefits for that period or if the household was determined to be eligible for PA but the State agency opted, for various administrative reasons, not to provide PA benefits for October 6 through October 31 but rather to begin delivery of PA benefits on an ongoing basis in November, or opted to provide October benefits along with the subsequent full month's benefits for November. It was never the intent of the Department to extend categorical eligibility for food stamp benefits to a person or assistance unit which is actually determined ineligible for PA for a given month and, thus, not entitled to PA benefits. The Department's concern, with regard to the interim provision at [7 CFR 273.2\(j\)\(1\)\(iv\)](#), was that the effective date of categorical eligibility for a given household not be delayed simply because of when the State agency opts to begin the delivery of PA benefits to an eligible PA applicant. The date used by a State agency as the date on which an eligible PA applicant will actually begin to receive PA benefits can vary.

Using the commenter's example case, if the State agency determined in October that the person or assistance unit is an eligible PA applicant but opted, for some administrative reason, not to begin delivery of any PA benefits until November, it is the Department's intent that the household be considered categorically eligible for food stamps and receive food stamp benefits for October back to the date of the food stamp application (assuming the household applied for food stamps in October). It is the Department's opinion that such household is "authorized" to receive PA in October and should be considered a PA recipient for categorical eligibility purposes. On the other hand, if the State agency determined in October that the person or assistance unit is an ineligible PA applicant for the period October 6 through October 31 but PA-eligible for a period beginning November 1 or a period between November 1 and the end of the 30-day food stamp processing time, it is the Department's intent that the household be considered categorically eligible for food stamps beginning in November and receive food stamp benefits for the entire month of November.

Therefore, this final action retains the statement at [7 CFR 273.2\(j\)\(1\)\(iv\)](#) which provides that any household determined PA eligible which is categorically eligible within the food stamp 30-day processing time shall be provided food stamp benefits back to the date of the food stamp application. However, to ensure uniform treatment and avoid misapplication of the effective date of categorical eligibility, this final action adds a clarifying statement to the provision which provides that in no event shall food stamps be back paid under categorical eligibility for a month in which the household has been determined to be ineligible for receipt of any PA benefits for that month, unless the household is eligible for food stamp benefits as an NPA case.

*Disqualified/Ineligible Person—[§ 273.2\(j\)\(2\)\(ii\)](#)*

The interim rules provided that under no circumstances shall any household be considered categorically eligible if any member of the household is disqualified for an intentional Program violation, failure to comply with monthly reporting requirements, or failure to comply with work requirements (in accordance with [7 CFR 273.7](#)). At the time the interim rules were published, [7 CFR 273.7](#) provided that if any member of a household failed to comply with the work requirements of [7 CFR 273.7](#), the entire household would be disqualified from the Program. The August 5 interim rules governing categorical eligibility were consistent with this policy. However, a subsequent rule published at [51 FR 47378](#), December 31, 1986, amended [7 CFR 273.7](#) to provide that the entire household would be disqualified only if the head of the household failed to comply with the work requirements of [7 CFR 273.7](#). If another member failed to comply, only that member is disqualified. Therefore, as noted by a commenter, the categorical eligibility rules need to be revised to clarify how to handle both types of disqualification situations. Therefore, this final action amends [7 CFR 273.2\(j\)\(2\)](#) to clarify that households disqualified because the "head of the household" failed to comply with the work requirements of [7 CFR 273.7](#) shall not be considered categorically eligible. Households which contain a member, other than the head of the household, who is disqualified because of a failure to comply with the requirements of [7 CFR 273.7](#), could be considered categorically eligible, if the household is otherwise eligible for food stamp benefits. This policy for handling categorical eligibility for households which contain a member, other than the head of the household, who fails to comply with [7 CFR 273.7](#) is consistent with the provision governing categorical eligibility of households which contain other types of ineligible members; i.e. an ineligible alien, an ineligible student, an SSI recipient in a cash-out State, or persons institutionalized in a nonexempt facility.

A question was asked on how to handle households disqualified for failure to comply with workfare. In accordance with rules published December 31, 1986, workfare can be a component of a State agency's Employment and Training (E&T) program. A State agency's E&T program is established in accordance with [7 CFR 273.7](#). Thus, failure to comply with \*24512 workfare as an E&T component is subject to the disqualification provisions of [7 CFR 273.7](#). Handling categorical eligibility for households or individuals disqualified under [7 CFR 273.7](#) is explained in more detail in the previous paragraph.

Where workfare is not a component of a State agency's E&T program, disqualification for failure to comply is subject to the disqualification provisions of [7 CFR 273.22](#). In accordance with [7 CFR 273.22](#), the entire household is disqualified if any member fails to comply with workfare. It is Congress' intent that households disqualified due to a violation of food stamp rules not be reinstated due to categorical eligibility. (H.R. Rpt. No. 99-447, 99th Cong., 1st Sess., Dec. 17, 1985, p. 521.) Thus, households disqualified in accordance with [7 CFR 273.22](#) cannot be considered categorically eligible. Accordingly, this final action amends [7 CFR 273.2\(j\)\(2\)](#) to specifically prohibit households in accordance with [7 CFR 273.22](#) from being considered categorically eligible.

Another commenter asked that the statement contained in the preamble of the August 5 interim rule which clarifies Congressional intent that a household disqualified for Program violations cannot be reinstated to the Food Stamp Program because of categorical eligibility be included in the regulatory language. The Department adopted this suggestion and this final action amends [7 CFR 273.2\(j\)\(2\)](#) accordingly.

Current rules at [7 CFR 273.11\(c\)\(3\)](#) provide that whenever an individual is determined ineligible within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining members based, as much as possible, on information in the case file. One commenter suggested that a reference to this policy be included in the rules to clarify that the provision applies for households that must be reevaluated because one of its members was disqualified for an intentional Program violation. The interim rules provide that households not entitled to categorical eligibility because of the Program's disqualification provisions are subject to all food stamp eligibility and benefit provisions and this would include all the provisions of [7 CFR 273.11\(c\)](#). However, the Department agrees that a reference to the provisions of [7 CFR 273.11\(c\)](#) would clarify this policy. Therefore, this final action amends [7 CFR 273.2\(j\)\(2\)](#) to require, by regulatory reference, that State agencies apply all the provisions of [7 CFR 273.11\(c\)](#) when determining the eligibility or ineligibility of remaining household members when a member of the household is disqualified or otherwise considered ineligible to participate in the Program.

*Suspension for Cases Entitled to Zero Benefits—[§ 273.2\(j\)\(2\)\(v\)\(F\)](#)*

Several comments were received on the interim rule's procedures to suspend a case which is categorically eligible but the household's income is such that it is not entitled to food stamp benefits ("zero benefit" cases). The interim rule required that the case not be denied but that it be held in suspension in accordance with [7 CFR 273.10\(e\)\(2\)\(iii\)\(A\)](#) to monitor if the household becomes entitled to benefits at any time during the certification period. Commenters preferred to give State agencies an option to deny rather than suspend such cases in accordance with [7 CFR 273.10\(e\)\(2\)\(iii\)\(A\)](#). In the latter case, the household would reapply if its circumstances change so that it becomes entitled to benefits. State agencies have indicated that suspension of these cases is an administrative burden requiring extensive system changes, especially for computerized systems. The State agencies project that only a minimal number of households would be entitled to "zero benefits" and that the majority of those households would not become entitled to benefits within the certification period. Also, State agencies believe that the large majority of these households would always be ineligible for "zero" benefits. Further, these households could reapply at any time their circumstances change to become eligible.

This final action retains the interim provision. The Department cannot adopt this suggestion because categorical eligibility is determined based on a household's status as a PA/SSI recipient. The provision at [7 CFR 273.10\(e\)\(2\)\(iii\)\(A\)](#) applies to households determined eligible based on the Program's gross and/or net income tests and whose net income exceeds the level at which benefits are issued. Categorically eligible households, by statute, cannot be subject to an income test for food stamp eligibility. To deny such households based on the fact that their net income exceeds the level at which benefits are applied would indirectly result in denial of eligibility based on a type of income test.

*Restored Benefits—§ 273.2(j)(1)(iv)*

The interim rule provided that denied households which later become categorically eligible are entitled to restored benefits from the beginning of the period for which PA or SSI benefits are paid, the original food stamp application date, or December 23, 1985, whichever is later. The interim rule also provided that benefits be restored in accordance with [7 CFR 273.17](#).

Two commenters asked that the rule clarify whether or not the 12-month limit for restoring benefits under [7 CFR 273.17](#) applies to denied households which later become categorically eligible. Because the statute mandated that the categorical eligibility provision of the law was effective on December 23, 1985, restored benefits would be required to be paid back to that date for some households and the period of restoration could be longer than 12 months. Thus, the 12-month limit under the provisions of [7 CFR 273.17](#) cannot be applied and this final action amends [7 CFR 273.17](#) to clarify this matter for categorical eligibility purposes and other such legislative action which results in a restoration period of more than 12 months.

*Income Deduction—§ 273.10(d)(7)*

The interim rule provided that individuals entitled to the excess medical deduction at [7 CFR 273.9\(d\)\(3\)](#) and the uncapped excess shelter expenses deduction at [7 CFR 273.9\(d\)\(5\)](#), shall receive these two income deductions, if they incur such expenses, for the period for which SSI benefits are authorized to be paid, or from the date of the food stamp application, whichever is later as discussed in [§ 273.2\(j\)](#) of the interim rule. The interim rule also provided that individuals entitled to restored benefits, in accordance with [§ 273.2\(j\)\(1\)\(iv\)](#) of the interim rule, shall receive restored benefits using the medical and shelter expense deductions, if they incur such expenses. One commenter questioned whether households containing newly entitled SSI recipients but which do not meet the categorical eligibility criteria would be entitled to the medical and excess shelter expense deductions for the period for which the SSI recipient is authorized to receive SSI benefits.

All of the provisions of the interim rule are intended to change normal procedures for determining food stamp eligibility and benefit levels for categorically eligible households. Households which are not considered categorically eligible are subject to the normal food stamp eligibility and benefit level determination procedures, including the procedures for handling the medical and excess shelter expense deductions under [7 CFR 273.9\(d\)\(3\)](#) and [\(d\)\(5\)](#). The Department believes that the commenter was misled and confused because the regulatory language of [§ 273.10\(d\)\(7\)](#) of the interim rule used the \*24513 term “individuals” instead of “households” and the rule addressed the relationship of the provisions for categorically eligible households through regulatory reference to [§ 273.2\(j\)](#) of the interim rule.

The preamble of the interim rule discussed the Department's intent that the procedures for handling the medical and excess shelter expense deductions for households denied as NPA households which later become categorically eligible, be consistent with the timeframes and procedures for paying benefits to households determined categorically eligible within the 30-day food stamp processing standard. The preamble also noted that the Department needed to address how to handle the medical and shelter expense deductions for households determined eligible as NPA households which later become categorically eligible.

In light of the commenter's confusion and possible misapplication of the provision, this final action amends [7 CFR 273.10\(d\)\(7\)](#) to be more specific and clarify Departmental intent. This final action provides that a household which contains an SSI recipient that is determined, within the 30-day processing standard, to be categorically eligible, or eligible as an NPA household and later becomes categorically eligible, shall receive the medical and shelter deduc-

tions as discussed in [7 CFR 273.9 \(d\)\(3\)](#) and [\(d\)\(5\)](#), if it incurs such expenses, for the period for which SSI benefits are authorized to be received, or from the date of the food stamp application, whichever is later. A household, containing an SSI recipient, which is determined ineligible as an NPA household and later becomes categorically eligible, shall receive the medical and excess shelter expense deductions, if they incur such expenses, for the period for which restored benefits are to be paid in accordance with [7 CFR 273.2\(j\)\(1\)\(iv\)](#); i.e., from the beginning of the period for which SSI benefits are paid, the original food stamp application date, or December 23, 1985, whichever is later.

#### *Claims—§ 273.18*

Some commenters wanted the Department to clarify how claims would be handled in the event a categorically eligible household was subsequently found to be ineligible for PA or SSI at the time they had received it. The preamble to the interim rule had stated that the food stamp claims recovery rules applied to categorically eligible households. However, it was not clear in the interim rule how claims would be treated for categorically eligible households. For example, a household receiving PA might be subsequently determined ineligible for PA. The questions are whether a food stamp claim should be filed against such a household for the time when it was improperly receiving PA and if so, how would the amount of the claim be determined. The interim rule did not offer guidance, although it stated that there would not be a quality control variance if all members of the household actually received PA or SSI.

The Department carefully considered the issue of how claims should be treated in cases of categorical eligibility and is offering the following clarification. For claims purposes, categorical eligibility cannot be rescinded retroactively. As long as everyone in the household received PA or SSI during a given time, it would be considered to have been properly eligible for food stamps for claims purposes even if its PA or SSI eligibility was subsequently determined improper. This is consistent with the statute where the intent is that certain households would be determined eligible for food stamps not on the basis of factors such as income and assets but on the basis of receipt of PA or SSI. The Act does not specify that this eligibility would be considered provisional until such time as the PA or SSI eligibility was thoroughly validated. Therefore, the determination that the household was eligible for food stamps would be considered “accurate” so long as each member of the household had received PA or SSI. (Of course, once the State agency is aware that the household should not be receiving food stamps because it is no longer receiving PA or SSI, the State agency must take action to ensure that the household does not continue to receive food stamps.)

Although categorical eligibility cannot be rescinded retroactively, a claim to correct an improper benefit level can be established against a categorically eligible household whose PA or SSI eligibility is subsequently determined improper if the reason for the subsequent PA or SSI ineligibility was additional household income or changes in household size and/or deductions which directly affect the calculation of the food stamp benefit amount. A claim could not be established if the reason the household was subsequently declared ineligible for PA or SSI related to excess household resources.

Food stamp benefits are based on the difference between the maximum allotment for the household's size and 30 percent of the household's net income. This is true for categorically eligible households and for noncategorically eligible households alike. Thus, claims could be collected from a categorically eligible household if the household's net income had changed. For example, if a four-person household was originally recorded as having \$1,100 earnings, they might be entitled to \$250 PA. Thus, their gross income was \$1,350, which was above the gross income limits, and they would not have received food stamps if it were not for categorical eligibility. After adding together their earned and PA income and after taking into account their deductions, the household would have had \$696 net income and would have been entitled to an allotment of \$91. If it was determined that the household had \$200 earnings that had been previously overlooked, the \$200 would be added to all of their other income, and their gross income would be \$1,550 for food stamp purposes. Based upon the income and deductions actually available to the household, the household should have received an allotment of \$43. Subtracting this amount from the actual issu-

ance of \$91 the household would owe a claim of \$48. Thus, a claim could be calculated for a categorically eligible household if the reason for a household's subsequent ineligibility for PA or SSI related to the discovery of additional income. A claim could not be calculated (and therefore established) if the reason the household was subsequently declared ineligible for PA related to excess household resources.

In some cases, the additional gross income would result in a net income amount so high that the household would be entitled to a zero allotment. Thus, the amount of the claim would be equal to the entire amount issued to the household. The household still would have been categorically eligible for food stamps but it would have been entitled to zero benefits. It should be noted that in the case of a household of one or two persons, the minimum benefit rules would apply when calculating the allotment the household was actually entitled to receive.

A claim could also be established if the reason for a household's subsequent PA or SSI ineligibility related to the discovery of an unreported household member that did not receive PA or SSI. Although the household still would have been considered categorically eligible for food stamps based on the fact that the reported members did receive PA or SSI, a claim can be established for the difference between the allotment the household received and the allotment the household should have received as an NPA household had the additional \*24514 member been properly reported and included in the calculation of a benefit amount based on household size and net income.

The Department is not restructuring its claims regulations or revising the FNS-209 in order to make a new category for households whose food stamp categorical eligibility was based on PA or SSI eligibility that was subsequently determined improper. Although no existing claims category precisely fits this circumstance, the Department has decided that the existing categories can be used. Once the State agency has determined that the household should not have received PA or SSI, it must determine the cause. This is important particularly to determine whether or not a claim can be calculated and whether the State agency is entitled to retain any portion of the value of the claim and how much. The three categories for claims are inadvertent household error, administrative error, and intentional Program violation. In accordance with [7 CFR 273.18\(h\)](#), State agencies are entitled to retain 25 percent of the value of inadvertent household error claims they collect. They are entitled to retain 50 percent of intentional Program violation claims. They are not entitled to retain any portion of administrative error claims because they should not benefit from their own errors.

This final action amends [7 CFR 273.18](#) to provide that the category for inadvertent household errors will be used when the overissuance was caused by a misunderstanding or unintended error on the part of the household, as provided in [7 CFR 273.18\(a\)\(1\)](#). In addition, since the SSI agency is not an agency of State government, instances of SSI agency error will also be considered inadvertent household errors, unless fraud has been determined. Thus, the State agencies would retain a portion of claims collected when the SSI agency would retain a portion of claims collected when the SSI agency has been in error. The category for administrative errors will be used if the overissuance was caused by State agency action or failure to take action. In some cases, the food stamp State agency may not be at fault, but another agency of State government may be. In those cases, in order to prevent the State from benefiting from their own errors, the State agency will be assessed as the responsible agency so long as the State or local welfare agency made the decision. In cases of recipient fraud, the category for intentional Program violation can be used. However, it is important to note that this claims category can only be used where the food stamp State agency has pursued the case in accordance with [7 CFR 273.16](#). In other words, a fraudulent act to obtain PA or SSI benefits cannot automatically be considered a fraudulent act to obtain food stamp benefits. A separate and distinct food stamp action must be pursued by the State agency, in accordance with [7 CFR 273.16](#), before the State agency can use the claims category of intentional Program violation described in [7 CFR 273.18](#). Until such food stamp action is taken, the category for inadvertent household errors shall be used on the FNS-209.

#### *Quality Control*

Waiver of liability. The interim rule contained a special quality control (QC) provision about the implementation of the interim rule. According to that provision ([§ 272.1\(g\)\(78\)\(ii\)](#)), QC would not find a case in error solely because of the way a State agency implemented, or did not implement, the interim rule. This special procedure was to be in effect between August 5, 1986 and October 1, 1986. Some commenters asked that the special provision go beyond October 1. One commenter suggested 90 days, one six months. While the Department does not agree that a six-month period is necessary, or even desirable, it is appropriate to allow at least a 60-day period from the first day of the first full month after the August 5 publication date of the interim rule. Another commenter asked how QC should handle variances in cases with review dates before August 5, 1986. These cases are a problem because the interim rule was effective retroactively to December 23, 1985. QC would have found some active (or participating) households ineligible and some negative actions (denials and terminations) valid. Retroactively, the ineligible households became eligible while the valid negative actions became invalid. Accordingly, this final action amends [7 CFR 272.1\(g\)\(78\)\(ii\)](#) to provide that QC reviewers shall not identify variances resulting solely from implementation or nonimplementation of the interim rule in cases with review dates between December 23, 1985 and October 31, 1986. For reviews already completed by State agency QC, the Federal QC system will review and change Federal subsample findings if State agency QC identifies the cases. The State agency QC findings will not be changed. The Department would like to emphasize that this provision applies only to the coding of variances for QC purposes. This provision does not relieve Federal and State QC of their responsibilities to report information about households to the appropriate authorities. State agencies shall handle all resulting claims and restorations as provided elsewhere in this final action.

Erroneous Information. One commenter suggested that a QC variance should not be charged when the Food Stamp Program receives erroneous information from the State agency's AFDC Program. The commenter pointed out that there is a QC procedure for when a Federal agency provides erroneous information to the Food Stamp Program that a variance will not be charged. (See FNS Handbook 310, section 181.2).

The Department does not agree that QC should treat the provision of erroneous information by a State and Federal agency in the same manner. By law, the Department must not penalize a State agency through QC if the Federal government provided wrong information through automation. The State agency acted as it should have in relying upon the federally provided information. When AFDC payment information was incorrect the State agency itself erred. The State agency did not properly coordinate its AFDC and food stamp components in the transfer of information. Therefore, when the State agency overissues or underissues coupons, QC should charge the State agency with a variance.

Verification. One commenter recommended that QC should not verify income that the AFDC Program had already verified. Another commenter stated that QC should not review benefit levels (presumably AFDC and SSI benefits) because the verification of these levels is superseded by categorical eligibility.

The Department does not agree with these comments for two reasons. First, as explained earlier in this preamble, the amount of the AFDC benefit, SSI benefit, or other verified income is not necessarily deemed for food stamps. Rather, the Food Stamp Program deems (or considers) that the household has met the income eligibility limits. Since the Program still needs the exact income amounts to calculate an allotment, QC must still review those amounts.

Second, QC is usually reviewing a sample month which is not the month of the food stamp application. Between application and the sample month a household's AFDC grant, SSI benefit, or other income may change. The household must report changes in SSI and other non-AFDC income. The State agency must process changes in all three income sources. Therefore, QC must review the income amounts to ensure **\*24515** that the sample month's allotment reflected all the changes that should have been processed.

Handling changes. One commenter asked how QC would review changes in a household's circumstances. For example, if a household became ineligible for SSI but failed to report the change, would there be an error for food stamps? For eligibility, no. QC does not review the five special factors for eligibility, because eligibility is assumed under the law. If the household members were all authorized (by SSA) to receive SSI, QC accepts that. QC does not verify whether the household members were eligible for SSI. In reviewing benefits, however, the answer may be different. If a household's SSI income changed, QC would review that change. A finding of error may result. As another example of a change, SSA may close a household member's SSI case. If the household did not report this change, would its categorical eligibility be affected? Yes. All households must report all changes in sources of income, like getting new sources and losing old ones. Loss of SSI is a change that must be reported. QC would charge the State agency with a variance if the household was ineligible under normal Program rules.

Review timeframes. In the preamble to the interim rule, the Department described the procedures for reviewing a household's categorical eligibility. As a first step, QC would verify the household's correct composition "as of the review date." The correct procedure is to verify the household's correct composition according to the eligibility system used—prospective or retrospective. Under prospective eligibility, QC verifies composition on the review date. Under retrospective eligibility, QC verifies composition on the last day of the budget month.

#### *Other concerns*

Several commenters raised concerns about requiring verification of income not verified by AFDC and whether individual income sources are assumed or just the gross and net tests. Households are only considered to have met the resource test and the gross and net income tests by virtue of FSP eligibility based on their status as PA/SSI recipients. Because the food stamp criteria are used in the benefit calculation, any income, deduction or factor not verified by AFDC or SSI must be verified if required under [7 CFR 273.2\(f\)](#) for the purpose of a food stamp benefit calculation.

In preparing this action, it came to the Department's attention that the provision of the interim rule of August 5 which amended [7 CFR 273.2\(k\)](#) could be misleading. Specifically the phrase "authorized to receive PA or SSI benefits as defined in [§ 273.2\(j\)](#)" should read "authorized to receive PA or SSI benefits as discussed in [§ 273.2\(j\)](#)". The intent of the reference is to alert users to the fact that categorical eligibility is extended to persons "authorized" to receive AFDC/SSI benefits as well as those in actual receipt of such benefits. As currently written, the regulatory reference appears to direct users to a definition of PA or SSI benefits. To ensure proper use of the provision, this final action amends the regulatory reference phrase in 7 CFR 273.2(k) to clarify Departmental intent.

#### *Implementation*

A number of commenters expressed concern with the immediate implementation date and the retroactive effective date of the August 5 interim rule. While the Department understands these concerns, it had no discretion in this area. The Department had to make the provisions effective retroactively to December 23, 1985 because the statute specifically provided that the categorical eligibility provisions of the legislation were effective on that date.

This final action provides that the provisions of this action which adopt, as final without change, a provision of the interim rule or modify a provision of the interim rule for clarity only are retroactively effective to December 23, 1985. The clarifications do not represent any change in intended policy and, thus, do not require any special implementation efforts by State agencies. The QC provision in [§ 272.1\(g\)\(78\)\(ii\)](#) is also effective retroactively to December 23, 1985 as it is directly related to implementation of the interim rule and has no impact on the implementation of this final rule.

This action further provides that the provisions of this final action which, as the result of changes resulting from the Department's response to comments on the interim rule, require the alteration of State procedures, are to be effective September 1, 1989. State agencies are afforded 60 days in which to complete implementation efforts of the new provisions. QC errors resulting from application of any new provision of this final action shall be handled in accordance with the interim rules published November 2, 1988 ([53 FR 44171](#)).

#### *Recision of Expiration Date*

In accordance with section 1507 of the Food Security Act of 1985 (Pub. L. 99-198, December 23, 1985) and the preamble of the August 5, 1986 interim regulations, categorical eligibility was to be tested only through September 30, 1989. Thus, the provisions of the interim regulation and subsequent final action on those provisions contained in this action would have ceased to be effective on that date. Subsequent legislative action has changed this stipulation. In accordance with section 201 of the Hunger Prevention Act of 1988 (Pub. L. 100-435, September 19, 1988), the Department hereby announces that the provisions of the August 5, 1986 interim regulations which are adopted as final or modified by the provisions contained in this final action, are no longer subject to an expiration date and shall be retained as permanent regulatory policy.

#### *List of Subjects*

##### *7 CFR Part 272*

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

##### *7 CFR Part 273*

Administrative practice and procedure, Aliens, Claims Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Part 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: [7 U.S.C. 2011-2029](#).

#### PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES [7 CFR § 272.1](#)

2. The amendment to add a new paragraph (g)(78) to [7 CFR 272.1](#), as published at [51 FR 28200](#), August 5, 1986, is adopted as final. However, paragraph (g)(78)(ii) is revised for clarity.

##### [7 CFR § 272.1](#)

3. In [§ 272.1](#), a new paragraph (g)(108) is added in numerical order, the revision and addition read as follows:

##### [7 CFR § 272.1](#)

[§ 272.1](#) General terms and conditions.

\* \* \* \* \*

(g) Implementation. \* \* \*

(78) \* \* \*

(ii) For quality control (QC) purposes only, QC reviewers shall not identify variances resulting solely from either implementation or nonimplementation of this rule in cases with review dates between December 23, 1985 and October 31, 1986, inclusive.

\* \* \* \* \*

(108) Amendment No. 314. (i) The provision of Amendment No. 314 which adds five sentences to [§ 273.2\(j\)\(1\)\(iv\)](#) and the provisions which add a new paragraph [§ 273.2\(j\)\(2\)\(iii\)\(B\)](#) and amend [§§ 273.17](#) and [273.18](#) are effective July 7, \*24516 1989 and shall be implemented no later than September 1, 1989.

(ii) All remaining provisions of Amendment No. 314, which adopt the interim provisions of August 5, 1986 as final without change or modify the interim provisions for clarity only, are effective retroactively to December 23, 1985 (the effective date of the interim rulemaking). These provision do not reflect a change in intended policy and, therefore, do not require special implementation efforts by State agencies.

PART 273—CERTIFICATION OF PARTICIPATING HOUSEHOLDS [7 CFR § 273.2](#)

4. The amendment to [§ 273.2](#), as published at [51 FR 28200](#), August 5, 1986, to revise introductory paragraph (j) is adopted final without change.

[7 CFR § 273.2](#)

5. The amendment to [§ 273.2](#), as published at [51 FR 28200](#), August 5, 1986, to revise the title of paragraph (j)(l), is adopted final without change.

[7 CFR § 273.2](#)

6. The amendment to [§ 273.2](#), as published at [51 FR 28201](#), August 5, 1986, to revise the first two sentences of paragraph (j)(1)(iv) and add a new sentence after the second sentence is adopted final without change.

[7 CFR § 273.2](#)

7. The amendment to [§ 273.2](#), as published at [51 FR 28201](#), August 5, 1986 to revise the seventh sentence of paragraph (j)(1)(iv) and add twelve new sentences after the seventh sentence, is adopted final with the following changes: The sentence which begins with the words “The State agency shall not reinterview the household” and the sentence which begins with the words “Any changes shall be initialed” are removed and three new sentences are added in their place; the sentence which begins with the words “Any household determined PA eligible” is removed and a new sentence is added in its place; and the sentence which begins with the words “Benefits shall be paid from” was revised by a subsequent regulation published on January 30, 1989 at [54 FR 4249](#).

7 CFR § 273.2

8. The amendments to § 273.2, as published at 51 FR 28201, August 5, 1986, to redesignate paragraphs (j)(2) and (j)(3) as paragraphs (j)(3) and (j)(4), respectively, and to add a new paragraph (j)(2) are adopted final with the following changes:

7 CFR § 273.2§ 273.2 [Amended]

a. New paragraph (j)(2) is amended for clarity as follows:

1. Replacing the parenthetical phrase appearing in the first sentence of paragraph (j)(2)(i) with the phrase “(except those listed in paragraph (j)(2)(iii) of this section)”;
2. Changing the reference to “paragraph (ii) of this subsection” appearing in paragraph (j)(2)(i)(D) to read “paragraph (j)(2)(iii) of this section”;
3. Redesignating existing paragraphs (j)(2)(iii), (j)(2)(iv) and (j)(2)(v) as new paragraphs (j)(2)(v), (j)(2)(vi) and (j)(2)(vii), respectively;
4. Redesignating paragraphs (j)(2)(ii) introductory text, (j)(2)(ii)(A), (j)(2)(ii)(B), (j)(2)(ii)(C), and new paragraphs (j)(2)(iii) introductory text, (j)(2)(iii)(A), (j)(2)(iii)(B), (j)(2)(iii)(C), respectively;
5. designating the last three sentences appearing at the end of paragraph (j)(2)(i)(D) as paragraph (j)(2)(ii);
6. Designating the last sentence appearing at the end of newly designated paragraph (j)(2)(iii)(C) as paragraph (j)(2)(iv);
7. Removing the words “any member of that household is disqualified for” from the introductory text of newly designated paragraph (j)(2)(iii);

7 CFR § 273.16

8. Adding to newly designated paragraph (j)(2)(iii)(A) the words “any member of that household is disqualified for” immediately after the designation “(A)” and removing the semicolon after the reference to § 273.16 and replacing it with the words “or for”;
9. Removing from newly designated paragraph (j)(2)(iii)(B) the regulatory designation “(B)” and replacing the word “Failure” with the word “failure”;
10. Removing the word “Failure” in newly designated paragraph (j)(2)(iii)(C) and adding in its place the words “the head of the household is disqualified for failure”; and
11. Adding before the period at the end of newly designated paragraph (j)(2)(iv) the words “(including the provi-

sions of [§ 273.11\(c\)](#)) and cannot be reinstated in the Program on the basis of categorical eligibility provisions”.

b. New paragraph (j)(2)(iii)(B) is added.

[7 CFR § 273.2](#)

Pursuant to amendment numbers 7 and 8a through 8b stated above, [§ 273.2 \(j\)\(1\)\(iv\)](#) and [\(j\)\(2\)](#) are revised to read as follows:

[7 CFR § 273.2](#)

[§ 273.2](#) Application processing.

\* \* \* \* \*

(j) PA, GA, and categorically eligible households. \* \* \*

(1) \* \* \*

(iv) In order to determine if a household will be eligible due to its status as a recipient PA/SSI household, the State agency may temporarily postpone, within the 30-day processing standard, the food stamp eligibility determination if the household is not entitled to expedited service and appears to be categorically eligible. However, the State agency shall postpone denying a potentially categorically eligible household until the 30th day in case the household is determined eligible to receive PA benefits. Once the PA application is approved, the household is to be considered categorically eligible if it meets all the criteria concerning categorical eligibility in [§ 273.2\(j\)\(2\)](#). If the State agency can anticipate the amount and the date of receipt of the initial PA payment, but the payment will not be received until a subsequent month, the State agency shall vary the household's food stamp benefit level according to the anticipated receipt of the payment and notify the household. Portions of initial PA payments intended to retroactively cover a previous month shall be disregarded as lump sum payments under [§ 273.9\(c\)\(8\)](#). If the amount or date of receipt of the initial PA payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, the PA payments shall be handled as a change in circumstances. However, the State agency is not required to send a notice of adverse action if the receipt of the PA grant reduces, suspends or terminates the household's food stamp benefits, provided the household is notified in advance that its benefits may be reduced, suspended, or terminated when the grant is received. The case may be terminated if the household is not categorically eligible. The State agency shall ensure that the denied application of a potentially categorically eligible household is easily retrievable. For a household filing a joint application for food stamps and PA benefits or a household that has a PA application pending and is denied food stamps but is later determined eligible to receive PA benefits and is otherwise categorically eligible, the State agency shall provide benefits using the original application and any other pertinent information occurring subsequent to that application. Except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from a public institution in accordance with [§ 273.1\(e\)\(2\)](#), benefits shall be paid from the beginning of the period for which PA or SSI benefits are paid, the original food stamp application date, or December 23, 1985 whichever is later. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution shall be paid benefits from the date of their release from the institution. In situations where the State agency must update and reevaluate the original application of a \*24517 denied case, the State agency shall not reinterview the household, but shall use any available information to update the application. The State agency shall then contact the household by phone or mail to explain and confirm changes made by the State agency and to determine if other changes in household circumstances have occurred. If any information obtained from the household differs from that which the State agency obtained from available in-

formation or the household provided additional changes in information, the State agency shall arrange for the household or its authorized representative to initial all changes, re-sign and date the updated application and provide necessary verification. In no event can benefits be provided prior to the date of the original food stamp application filed on or after December 23, 1985. Any household that is determined to be eligible to receive PA benefits for a period of time within the 30-day food stamp processing time, shall be provided food stamp benefits back to the date of the food stamp application. However, in no event shall food stamp benefits be paid for a month for which such household is ineligible for receipt of any PA benefits for the month, unless the household is eligible for food stamp benefits and an NPA case. Benefits shall be prorated in accordance with [§ 273.10\(a\)\(1\)\(ii\)](#) and [\(e\)\(2\)\(ii\)\(B\)](#). Households that file joint applications that are found categorically eligible after being denied NPA food stamps shall have their benefits for the initial month prorated from the date from which the PA benefits are payable, or the date of the original food stamp application, whichever is later. The State agency shall act on reevaluating the original application either at the household's request or when it becomes otherwise aware of the household's PA and/or SSI eligibility. The household shall be informed on the notice of denial required by [§ 273.10\(g\)\(1\)\(ii\)](#) to notify the State agency if its PA or SSI benefits are approved. Households who file joint applications for food stamps and PA and whose PA application is subsequently denied may be required to file new food stamp applications or may have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for PA and food stamp purposes and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits. State agencies shall notify households of the need for a new application. If a required new application is filed within 30 days of the original application, the filing date of the new application shall be the original filing date of the joint application.

(2) Categorically Eligible Households. (i) Any household (except those listed in paragraph (j)(2)(iii) of this section) in which all members receive or are authorized to receive PA and/or SSI benefits shall be considered eligible for food stamps because of their status as PA and/or SSI recipients unless the entire household is institutionalized as defined in [§ 273.1\(e\)](#) or disqualified for any reason from receiving food stamps. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution in accordance with [§ 273.1\(e\)\(2\)](#), shall not be categorically eligible upon a finding by SSA of potential SSI eligibility prior to such release. The individuals shall be considered categorically eligible at such time as a final SSI eligibility determination has been made and the individual has been released from the institution. The eligibility factors which are deemed for food stamp eligibility without the verification required in [§ 273.2\(f\)](#) because of PA/SSI status are the resource, gross and net income limits; social security number information; sponsored alien information; and residency. If any of the following factors are questionable, the State agency shall verify, in accordance with [§ 273.2\(f\)](#), that the household which is considered categorically eligible:

- (A) Contains only members that are PA or SSI recipients as defined in the introductory paragraph [§ 273.2\(j\)](#);
  - (B) Meets the household definition in [§ 273.1\(a\)](#);
  - (C) Includes all persons who purchase and prepare food together in one food stamp household regardless of whether or not they are separate units for PA or SSI purposes; and
  - (D) Includes no persons who have been disqualified as provided for in paragraph (j)(2)(iii) of this section.
- (ii) Households subject to retrospective budgeting that have been suspended for PA purposes as provided for in Aid to Families with Dependent Children (AFDC) regulations, or that receive zero benefits shall continue to be considered as authorized to receive benefits from the appropriate agency. Categorical eligibility shall be assumed at recertification in the absence of a timely PA redetermination. If a recertified household is subsequently terminated from PA benefits, the procedures in [§ 273.12\(f\)\(3\)](#), [\(4\)](#), and [\(5\)](#) shall be followed, as appropriate.

(iii) Under no circumstances shall any household be considered categorically eligible if:

(A) Any member of that household is disqualified for an intentional Program violation in accordance with [§ 273.16](#) or for failure to comply with monthly reporting requirements in accordance with [§ 273.21](#);

(B) The entire household is disqualified because one or more of its members failed to comply with workfare in accordance with [§ 273.22](#); or

(C) The head of the household is disqualified for failure to comply with the work requirements in accordance with [§ 273.7](#).

(iv) These households are subject to all food stamp eligibility and benefits provisions (including the provisions of [§ 273.11\(c\)](#)) and cannot be reinstated in the Program on the basis of categorical eligibility provisions.

(v) No person shall be included as a member in any household which is otherwise categorically eligible if that person is:

(A) An ineligible alien as defined in § 273.4;

(B) Ineligible under the student provisions in § 273.5;

(C) An SSI recipient in a cash-out State as defined in § 273.20; or

(D) Institutionalized in a nonexempt facility as defined in [§ 273.2](#).

(vi) For the purposes of work registration, the exemptions in [§ 273.7\(b\)](#) shall be applied to individuals in categorically eligible households. Any such individual who is not exempt from work registration is subject to the other work requirements in [§ 273.7](#).

(vii) When determining eligibility for a categorically eligible household all provisions of this subchapter except for those listed below shall apply:

(A) [Section 273.8](#) except for the last sentence of paragraph (a).

(B) [Section 273.9\(a\)](#) except for the fourth sentence in the introductory paragraph.

(C) [Section 273.10\(a\)\(1\)\(i\)](#).

(D) [Section 273.10\(b\)](#).

(E) [Section 273.10\(c\)](#) for the purposes of eligibility.

(F) [Section 273.10\(e\)\(2\)\(iii\)\(A\)](#).

[7 CFR § 273.2](#)

9. The amendments to [§ 273.2](#), as published at [51 FR 28201](#), August 5, 1986, which amended the introductory text of newly designated paragraph (j)(3)(i), amended newly designated paragraph (j)(3)(ii), and amended the first sentence of newly designated paragraph (j)(4) are adopted final without change.

[7 CFR § 273.2](#)

10. The amendment to [§ 273.2](#), as published at [51 FR 28201](#), August 5, 1986, to remove the third sentence of introductory paragraph (k) and add \*24518 three new sentences in its place is adopted final with the following clarity change: The sentence added by this earlier amendment which begins with the words “However, households in which all members are either PA or SSI” is amended by replacing the words “as defined in [§ 273.2\(j\)](#)” with the words “(as discussed in [§ 273.2\(j\)](#))”.

[7 CFR § 273.8](#)

11. The amendment to [§ 273.8](#), as published at [51 FR 28202](#), August 5, 1986, to remove the last sentence in paragraph (a) and add a new sentence in its place is adopted final without change.

[7 CFR § 273.9](#)

12. The amendment to [§ 273.9\(a\)](#), as published at [51 FR 28202](#), August 5, 1986, to add a new sentence after the third sentence in introductory paragraph (a) is adopted final without change.

[7 CFR § 273.10](#)

13. The amendment to [§ 273.10](#), as published at [51 FR 28202](#), August 5, 1986, to add a new paragraph (d)(7) is adopted. However, new paragraph (d)(7) is revised for clarity.

[7 CFR § 273.10](#)

14. The amendment to [§ 273.10](#), as published at [51 FR 28202](#), August 5, 1986, to add a new sentence to the end of paragraph (g)(1)(ii) is adopted final without change.

[7 CFR § 273.10](#)

The revised [§ 273.10\(d\)\(7\)](#) reads as follows:

[7 CFR § 273.10](#)

[§ 273.10](#) Determining household eligibility and benefit levels.

\* \* \* \* \*

(d) Determining deductions \* \* \*

(7) Households which contain a member who is a disabled SSI recipient in accordance with paragraphs (2), (3), (4)

or (5) of the definition of a disabled member in [§ 271.2](#) or households which contain a member who is a recipient of SSI benefits and the household is determined within the 30-day processing standard to be categorically eligible (as discussed in [§ 273.2\(j\)](#)) or determined to be eligible as an NPA household and later becomes a categorically eligible household, shall be entitled to the excess medical deduction of [§ 273.9\(d\)\(3\)](#) and the uncapped excess shelter expense deduction of [§ 273.9\(d\)\(5\)](#) for the period for which the SSI recipient is authorized to receive SSI benefits or the date of the food stamp application, whichever is later, if the household incurs such expenses. Households, which contain an SSI recipient as discussed in this paragraph, which are determined ineligible as an NPA household and later become categorically eligible and entitled to restored benefits in accordance with [§ 273.2\(j\)\(1\)\(iv\)](#), shall receive restored benefits using the medical and excess shelter expense deductions from the beginning of the period for which SSI benefits are paid, the original food stamp application date or December 23, 1985, whichever is later, if the household incurs such expenses.

\* \* \* \* \*

#### [7 CFR § 273.17](#)

15. In [§ 273.17](#), the last sentence of the introductory text of paragraph (a)(1) is amended by replacing the first word of the sentence “Benefits” with the words “Furthermore, unless there is a statement elsewhere in the regulations that a household is entitled to lost benefits for a longer period, benefits”.

#### [7 CFR § 273.18](#)

16. In [§ 273.18](#):

- a. paragraphs (a)(1) and (a)(2) are revised;
- b. new paragraphs (b)(1)(iv), (b)(1)(v) and (b)(2)(vi) are added;
- c. two sentences are added at the end of paragraph (c)(1)(ii).

The additions and revision read as follows:

#### [7 CFR § 273.18](#)

[§ 273.18](#) Claims against households.

(a) \* \* \*

(1) Inadvertent household error claims. A claim shall be handled as an inadvertent household error claim if the over-issuance was caused by:

- (i) A misunderstanding or unintended error on the part of the household;
- (ii) A misunderstanding or unintended error on the part of a categorically eligible household provided a claim can be calculated based on a change in net income and/or household size amount;

(iii) SSA action of failure to take action which resulted in the household's categorical eligibility provided a claim can be calculated based on a change in net income and/or household size.

(2) Administrative error claims. A claim shall be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action or, in the case of categorical eligibility, an action by an agency of the State or local government which resulted in the household's improper eligibility for public assistance provided a claim can be calculated based on a change in net income and/or household size.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) The household was receiving food stamps solely because of categorical eligibility and the household was subsequently determined ineligible for PA and/or SSI at the time they received it.

(v) The SSA took an action or failed to take the appropriate action, which resulted in the household improperly receiving SSI.

(2) \* \* \*

(vi) An agency of the State or local government took an action or failed to take an appropriate action, which resulted in the household improperly receiving PA.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) \* \* \* For categorically eligible households, a claim will only be determined when it can be computed on the basis of changed household net income and/or household size. A claim shall not be established if there was not a change in net income and/or household size.

\* \* \* \* \*

Date: May 30, 1989.

G. Scott Dunn,

Acting Administrator.

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