DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 271, 272 and 273

[Amendment No. 375]

RIN 0584–AB76

Food Stamp Program: Certification Provisions of the Mickey Leland Childhood Hunger Relief Act

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends Food Stamp Program regulations to implement nine provisions of the Mickey Leland Childhood Hunger Relief Act, finalizing a proposed rule published in the Federal Register on August 30, 1994. This rule will: (1) simplify the household definition; (2) establish eligibility for children who live with their food stamp eligible parents in a drug or alcohol rehabilitation center; (3) exclude from resources the value of vehicles used to transport fuel or water; (4) increase the fair market value exclusion of vehicles for determining a household's resource limit; (5) exclude certain General Assistance (GA) vendor payments; (6) exclude the earnings of elementary and secondary students under age 22 who live with their parents; (7) increase the maximum amount of the dependent care deduction; (8) eliminate the current federally-imposed limit and (9) require State agencies to establish a Statewide limit on the dependent care reimbursement paid to participants in the Food Stamp Employment and Training Program (E&T); and require proration of food stamp benefits only after a break of more than one month in certification.

DATES: This rule is effective December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Chief, Certification Policy Branch, Program Development Division, Food and Consumer Service, 3101 Park Center Drive, Alexandria, VA 22302 or by telephone at (703) 305–2520.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.551. For the reasons set forth in the final rule and related notices of 7 CFR Part 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.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATES** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program, the administrative procedures are as follows: (1) for Program benefit recipients—State administrative procedures issued to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 283 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

The Department has also reviewed this final rule in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Ellen Haas, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The rule will affect food stamp applicants and recipients and the State and local agencies that administer the Program. Eligibility criteria will be simplified and some currently participating households will realize an increase in Program benefits.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The information collection requirements associated with application, certification and ongoing eligiblity of food stamp households is approved under OMB No. 0584–0064. This rule affects the determination of eligibility and benefit levels only; it does not affect the current information collection requirements for making such determination.

Regulatory Impact Analysis

Need for Action

This action is required as a result of Title XIII, Chapter 3, Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, the Mickey Leland Childhood Hunger Relief Act (Leland Act), amendments to the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2032. The Leland Act amendments: (1) simplify the household definition; (2) establish eligibility for children who live with their food stamp eligible parents in a drug or alcohol rehabilitation center; (3) exclude from resources the value of vehicles used to transport fuel or water; (4) increase the fair market value exclusion of vehicles for determining a household's resource limit; (5) exclude certain General Assistance vendor payments; (6) exclude the earnings of elementary and secondary school students under age 22 who live with their parents; (7) increase the maximum amount of the dependent care deduction; (8) eliminate the current federally-imposed limit and require State agencies to establish a Statewide limit on the dependent care reimbursement paid to participants in the Food Stamp Employment and Training Program; and (9) require proration of benefits only in the initial month of certification.

Benefits

This action will increase the number of potentially eligible food stamp recipients and will increase the benefit level of certain households that are affected by these provisions.

Costs

It is estimated that this action will increase the cost of the Food Stamp Program by approximately $7 million in Fiscal Year 1994; $107 million in Fiscal Year 1995; $132 million in Fiscal Year 1996; $187 million in Fiscal Year 1997; and $207 million in Fiscal Year 1998.

Background

On August 30, 1994, the Department published a proposed rule at 59 FR 44866 to implement amendments to the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2032, (Food Stamp Act) made by the Mickey Leland Childhood Hunger Relief Act. Title XIII, Chapter 3,

Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, (Leland Act).

Comments were solicited on the provisions of the proposed rulemaking through October 31, 1994. The Department received 26 comment letters from State and local welfare agencies and public interest groups. All comments received were reviewed and considered, and those which raised relevant issues or questions are addressed below by subject. Comments which were unclear or not pertinent to this rulemaking are not addressed in this preamble. For a full understanding of the provisions of this final rule, the reader should refer to the preamble of the proposed rule.

By the time this rule is published, subsequent legislation will have modified some of its provisions. The Department will be amending these regulations to reflect those legislative changes.

Simplifying the Household Definition for Households With Children and Others

Section 13931 of the Leland Act amended section 3(i) of the Food Stamp Act to simplify the household definition provisions and to support families that live together to share housing expenses but maintain individual households. With certain enumerated exceptions, the simplified household definition allows persons who live together and purchase food and prepare meals separately to participate in the Program as separate food stamp households. Those presumed to be groups of individuals who customarily purchase and prepare meals together even if they do not do so are: (1) spouses who live together; (2) parents and their children 21 years of age or younger (who are not themselves parents living with their children or married and living with their spouses); and (3) children (excluding foster children) under 18 years of age who live with and are under the parental control of a person other than their parent together with the person exercising parental control. The Leland Act left intact the separate household status of individuals (and their spouses) who live with others, are 60 years of age or older, and are unable to purchase food and prepare meals due to a disability or disabling infirmity, as long as the other household members' income (excluding that of the spouse) does not exceed 165% of the poverty line.

The Department proposed to amend 7 CFR 273.1(a) to mirror section 13931 of the Leland Act with one addition. The Leland provision did not address whether a child under 18 who is living with a non-parent adult can be a separate household from that adult when the child is married and living with his or her spouse or living with his or her own child. To provide the same treatment for a child living with a non-parent adult that is provided for a child living with a natural, adoptive, or stepparent, the Department proposed changing the definition of parental control to specify that children who live with their own children or who are married and live with their spouses are not considered to be under parental control for purposes of the section. Several commenters, including State welfare agencies and public interest groups, strongly supported the proposal because it simplifies the household determination by making the purchase and preparation of food the basis for membership in a household with only a few simple exceptions.

The Department also proposed two conforming amendments to implement section 13931 of the Leland Act. As described in greater detail above, the Leland Act preserved the separate household status permitted for elderly individuals who are so disabled that they cannot purchase and prepare food for themselves. The Department proposed amending the provision that implements this exception, 7 CFR 273.1(a)(2)(ii), to update its references to the new portions of 7 CFR 273.1(a)(2)(i) regarding spouses and children. The Department proposed a second conforming amendment to remove the requirement of 7 CFR 273.10(f)(2) that mandates certification periods of up to six months for households meeting the parent/child or sibling provisions of 7 CFR 273.1(a)(2)(i) (C) and (D) because the Leland Act amended the parent/child provisions and removed the sibling provisions.

No adverse comments were received on the amendment removing the six-month certification requirement for households consisting of an individual and his/her minor children living with the individual's parent or sibling, and so it will not be changed in this final rulemaking. The other proposed conforming amendment is discussed below.

Two State welfare agencies requested clarification on how section 13931 of the Leland Act and the Department's proposed rule changed 7 CFR 273.1(a)(2)(ii), which allows individuals who are elderly and so disabled that they cannot purchase and prepare food for themselves to be separate households (in certain circumstances) from the others with whom they live. In the proposed rule, the Department updated the references in the elderly and disabled provision to correspond to the proposed rule's household definition. Under that proposal, an elderly and disabled person would be combined into one household with his or her spouse, his or her natural, adopted or stepchildren under age 22, and those children under 18 over whom the elderly and disabled individual exercised parental control. This makes the provision needlessly complex. This special rule for elderly and disabled people was created to discourage these individuals from being institutionalized, and to encourage people to take care of them by allowing them to be separate food stamp households. To continue to subject this exception to the other household provisions regarding children is also a departure from the legislation, which only requires that the elderly and disabled individual be included in the same food stamp household as his or her spouse. For these reasons, the Department is amending 7 CFR 273.1(a)(2)(ii) to follow the statutory language more directly.

One commenter asked whether there was a minimum age for children who can, by default, have their own household under this elderly and disabled exception. Section 5(i) of the Food Stamp Act, as amended by the Leland Act, provides that ''[n]otwithstanding the preceding sentences, [the household definition provision] an individual who lives with others, who is sixty years of age or older, and who is unable to purchase food and prepare meals because such individual suffers * * * from a disability * * * shall be considered, together with any of the others who is the spouse of such individual, an individual household, without regard to the purchase of food and preparation of meals if the income * * * of the others, excluding the spouse, does not exceed the poverty line * * * by more than 65 per centum.'' This statutory language requires that the elderly and disabled individual be combined with his or her spouse, but does not address children that may also be in the household. It would be rare for an elderly person who is so disabled that he or she cannot purchase and prepare food to be living alone in a household with a minor child. Because this circumstance is not very likely to occur and the Food Stamp Act does not address children, the Department has decided not to set an arbitrary minimum age, and instead will follow the language of the Food Stamp Act.

With respect to the proposal as a whole, one commenter thought it was confusing that the household definition establishes different ages (18 and 21) depending on the child's relationship

with the people with whom the child lives. Because these ages were statutorily mandated, the Department does not have the authority to change them. Several commenters requested that the Department continue to grant separate household status to minor children who live with an elderly or disabled parent or sibling. However, section 13931 of the Leland Act amended the household definition, eliminating the sibling provision in favor of a more simplified definition. The Department cannot override the Leland Act by restoring this provision. One commenter asked whether an individual can have a separate food stamp household the month he or she turns 22 (or 18 if the individual lives under the parental control of a non-parent), or the month after. The household composition analysis is not analogous to other age-driven provisions because it is also based on whether the individual purchases and prepares food separately from the others in the household. Separate household status is not granted automatically; an individual must meet the requirements that apply to all applicants, including the requirement to purchase and prepare food separately.

Two commenters asked whether the provisions of 7 CFR 273.1(c)(1) regarding boarders should be changed in light of the Leland Act changes and the legislative intent behind those changes. Current regulations at 7 CFR 273.1(c)(1) preclude children, even adult children, from being granted boarder status in their parents' home. According to 7 CFR 273.1(c)(5), a boarder's income and resources are excluded from the income and resources of the household providing boarder services. Allowing adult children to be boarders in their parents' homes might encourage parents to allow children to remain at home until they are self-sufficient. The commenters thought a rule change would be necessary to remove the prohibition against children being boarders in their parents' homes. However, the current boarder provision, 7 CFR 273.1(c)(1), incorporates the new household definition by reference and denies boarder status only to those ''* * * individuals or groups of individuals described in paragraph (a)(2) [of 7 CFR 273.1] * * *.'' Paragraph 273.1(a)(2) is being amended by this rule to describe children under age 22 living with their natural, adoptive, or stepparents, and children under 18 living under the parental control of a non-parent adult. Therefore, children age 22 and over are no longer prohibited by 7 CFR 273.1(c)(1) from being considered boarders in their parents' homes, and children 18 and over living with non-parent adults are not prohibited from being considered boarders in the adult's home.

The Department received many comments on its proposal to amend the definition of parental control. The current definition is contained in Food Stamp Program Policy Memo 3–93–6, dated March 26, 1993, which states that children under parental control for food stamp eligibility purposes are ''minors who are dependents—financial or otherwise—of the household as opposed to independent units.'' The proposed rule retained the ''dependents or otherwise'' clause of the old definition, and added that ''[c]hildren who are living with their children or who are married and living with their spouse are considered to be independent units and not under parental control.'' The Department proposed to change the definition so that children living with non-parent adults would be treated the same as children living with their natural, adoptive, or stepparents.

Four State welfare agencies objected to the proposal that children with children of their own should be separate households from the parents or adults with whom they live only if the children purchase and prepare food separately. One commenter also objected to this granting of separate status to children who are married and living with their spouse when they purchase and prepare food separately from the adults with whom they live. This treatment is statutorily mandated with respect to children under age 22 who live with their natural, adoptive, or stepparents. The Department's only discretion in implementing this particular provision was to extend this treatment to those children under 18 who are living with non-parent adults. Several public interest groups commended the Department's decision to extend the parent/child and spousal exceptions mandated for natural, adopted, or stepchildren under age 22 who live with their parents to children under 18 who live with non-parent adults. No comments were received that objected to treating these two groups of children (those who live with their natural, adoptive, or stepparents and those under 18 who live with a non-parent adult) the same. Therefore, the Department's proposal to amend 7 CFR 273.1(a) to define as independent those children who are either married and living with their spouses, or living with their own children, is retained in this final rulemaking.

One State welfare agency requested more time to implement the extension of the parent/child and spousal exceptions to children under 18 living with non-parent adults because it was not statutorily mandated, and so not included in the implementing instructions provided by the Department. The Department recognizes that implementing new provisions places an administrative burden on State welfare agencies, especially those with separate rulemaking procedures. Therefore, the Department is making one exception to the September 1, 1994, implementation date for the provisions of this rule. State agencies must implement the provision allowing separate household status to children under 18 who are living with their spouse or children in the home of a non-parent adult no later than 90 days after publication of this rule.

Several commenters requested guidance on what constitutes parental control with respect to a minor who is ''financially or otherwise'' dependent on other household members. Some commenters argued that the definition is vague and can result in inconsistent treatment. Although the Department recognizes that this definition may be subject to interpretation, the Department drafted this definition (in Food Stamp Program Policy Memo 3–93–6) to provide a consistent measure that would be broad enough to be compatible with State laws, which vary widely on issues of parental control. The Department is also reluctant to provide finite lists of dependencies which would be indicative of parental control. The Department feels that this determination should be left to the eligibility worker, who is in the best position to evaluate a particular child's relationship with the adults in his or her household. The Department believes that a more specific definition of parental control would limit the eligibility worker's flexibility to make these determinations. For these reasons, the Department has decided to adopt the proposed revision to 7 CFR 273.1(a)(2)(i)(B) (designated 273.1(a)(2)(i)(C) in this rule) with one minor language clarification suggested by a commenter that makes the provision easier to understand.

One commenter was concerned that the Department's definition of parental control can hurt children who leave their parents' homes because of abuse or neglect and who move in with neighbors, relatives, or parents of schoolmates. The commenter noted that defining parental control to include financial dependence often prevents these children from having their own food stamp households, and therefore makes it more difficult for families to afford to take in these children. The

commenter requested that a household's affidavit stating that a child is not under parental control be accepted to conclusively establish that child's independence. If in fact a child is under parental control according to Program rules, those facts are not changed merely because the household provides a statement otherwise. The facts of a given situation, as determined by the eligibility worker, would govern the certification of a child or children as a separate household.

The commenter's other suggestion was to expand the definition of foster children to include children who live with others outside of the formal foster care system. However, even if these children were included as foster children, they would not be entitled to separate household status because foster children are considered boarders under 7 CFR 273.1(c)(6). As boarders, these children could not have their own household, but could be included in the food stamp household of the household providing boarder services at its request. This option results in an outcome identical to the situation first presented by the commenter, in which the child cannot have his or her own household, but can be included in the household of others. Although the Department understands the difficulties these children and the families that take them in face, the Department has elected not to change the definition of parental control for the reasons discussed above.

In summary, the Department is adopting the changes to 7 CFR 273.1(a)(2)(i) as proposed, with a minor change in language. The proposed change to 7 CFR 273.1(a)(2)(ii) was revised to clarify that only the spouse of an elderly and disabled household member must be included in the household of the elderly and disabled person. The proposed change to 7 CFR 273.10(f) is adopted without change.

Eligibility of Children of Parents Participating in Drug or Alcohol Treatment Programs

Section 13932 of the Leland Act amended the Food Stamp Act to authorize Program eligibility for children living with their otherwise eligible parent(s) in a drug or alcohol treatment center. Under this provision, the children would be included in the parent's household. To implement this provision, the Department proposed to amend 7 CFR 273.1(e)(1)(ii) to extend food stamp eligibility to children of narcotic addicts or alcoholics who are residents of drug or alcohol treatment centers. Conforming language was also proposed to 7 CFR 273.1(f)(2), and to the definition of ''eligible foods'' in 7 CFR 271.2.

Two public interest groups commented on this provision, and both raised the same issue. Although the commenters generally supported the provision, both requested that State welfare agencies be given the option to allow narcotic addict or alcoholic parents and their children who live with them in the treatment center to be separate households. This issue was addressed in the preamble to the proposed rule. The Department has considered this issue again, but continues to believe that the household definition in the Food Stamp Act, as amended by the Leland Act, prohibits allowing separate household status to children under 22 living with their parents in a treatment center. Therefore, the Department is adopting with minor technical change the amendments to 7 CFR 273.1(e)(1)(ii) and 7 CFR 273.1(f)(2) contained in the proposed rule.

Vehicles Necessary To Carry Fuel or Water

Section 13924 of the Leland Act amended section 5(g)(2) of the Food Stamp Act to exclude from household resources the value of a vehicle that a household depends upon to carry fuel for heating or water for home use when such transported fuel or water is the household's primary source for fuel or water. The Department proposed to amend 7 CFR 273.8(h)(1) to add the new vehicle exclusion as paragraph (vi). The language of the Department's proposed rule mirrors the statutory language, and the Department is adopting as final the language of the provision in the proposed rulemaking. However, in response to several issues raised by commenters, the Department would like to clarify its rationale for adopting this provision.

One commenter objected to adding another vehicle exclusion to an already complicated provision, but because this provision is statutorily mandated, the Department does not have the discretion to omit this exclusion.

In this final rulemaking, the Department is continuing its commitment to providing State agencies with enough flexibility so that they can implement this rule to address their specific situations. For example, the Alaska State agency has the flexibility to determine whether a boat or other vehicle would meet the requirements of this provision because the Department has not defined the term ''vehicle.'' Several commenters commended the Department for this position, and it has not been changed in this rulemaking.

The Department wishes to clarify its position on one policy expressed in the preamble to the proposed rule in light of comments received. The Department indicated in the preamble to the proposed rule at 59 FR 44869, that access to public utilities would not preclude a household from using this exclusion as long as the household actually used the vehicle as provided in section 13924 of the Leland Act. This statement was based on the Department's view that a household may not be able to afford the fuel that is piped into the home, or may choose not to use the fuel for other reasons. The Department believed that these households should be entitled to the exclusion.

Although the Department stated in the preamble to the proposed rule that the provision could apply where the household was unable to use its utilities ''for whatever reason, such as non-payment of utility bill[s],'' the Department did not intend to indicate that this resource exclusion could be extended to cover temporary conditions. This policy was intended to address those situations in which a household was using its vehicle to transport fuel or water for sustained periods of time. This interpretation is supported by both the legislative history and the language of the statute. The Conference Report indicates that Congress intended this exclusion to apply only when households did not have fuel or water ''piped into their homes.'' (House Conference Report No. 213, 103rd Cong., 1st Session 927 (1993)). Further, the language of the statute allows a resource exclusion for ''a vehicle that a household depends on * * * when such transported fuel or water is the primary source * * * for the household * * *'' (emphasis added). This language implies something more permanent than a temporary condition like a utility being off because of non-payment of the bill. The two State welfare agencies that commented on this aspect of the vehicle exclusion did not support the provision. One agency wondered how its eligibility workers could know how long to apply the exclusion if a household told the worker it was using the vehicle because the electricity had been turned off for non- payment. Such cases would be labor intensive for the caseworker in order to ensure that the exclusion ended when utilities were restored. Both State agency commenters suggested that allowing it to apply in this situation would be error-prone and administratively difficult to implement.

This vehicle exclusion extends eligibility to households that would not otherwise be eligible because of the

excluded vehicle. Allowing the exclusion when a household has temporarily had its utilities turned off for non-payment of its utility bills also presents the incongruous situation of addressing a household's inability to pay a utility bill with temporary eligibility for food stamps.

The Department recognizes that there may be times when a household's utilities will be off for an extended period of time, or that there may be rural areas or other areas with sporadic or unreliable access to water or fuel. There may also be occasions where a household's access to drinking water is interrupted for an extended period of time such that the exclusion would be appropriate. To balance the need for administrative ease in determining entitlement to the exclusion with an appropriate response to a household's circumstances, the Department is modifying the language of the final rule to allow the vehicle exclusion if it is anticipated that the transported fuel or water will be the household's primary source of fuel or water during the certification period. This gives eligibility workers the flexibility to evaluate each situation and apply the provision with common sense and good judgment.

The legislative history of the provision indicates that Congress intended to apply the exclusion without requiring the household to meet any ''additional tests concerning the nature, capabilities, or other uses of the vehicle.'' (House Conference Report No. 213, 103rd Cong., 1st Session 927 (1993); House Report No. 111, 103rd Cong., 1st Session 33 (1993)). The Department drafted its proposed rule to reflect this statutory intent, and no adverse comments were received on this provision. However, some commenters mistakenly thought this was a verification provision. This language is intended merely to prevent a household that meets the fuel/water vehicle exclusion from having to further justify excluding the vehicle. It is very possible that a vehicle excluded under this provision would have value far in excess of the fair market value vehicle exclusion (discussed below), and this language would preclude the household from having to meet the fuel/water vehicle exclusion test first, and then having to meet a fair market value test.

In the preamble to the proposed rule, the Department requested comments on how this exclusion could be verified. By asking for these comments, the Department did not mean to indicate that it was departing in any way from its normal verification requirements and procedures. Several public interest groups urged that an applicant household's assertion that it depends on a vehicle to transport its fuel or water should conclusively establish its entitlement to the exclusion. The Department sees no reason to exempt this vehicle exclusion from the normal verification requirements by allowing self-declaration. Several commenters supported including a question in the food stamp application, or checking with someone outside the household who is familiar with the household's circumstances. With the exception of the documentation requirement contained in the proposed rule, the Department is not adopting any specific verification requirements for this exclusion. No adverse comments were received regarding the Department's requirement that no documentation be required unless the exclusion was questionable, so it is adopted as final.

No comments were received on the proposed technical amendment to the summary of the vehicle provisions at 7 CFR 273.8(h)(6). Therefore, the proposed revisions to 7 CFR 273.8(h)(1) and 7 CFR 273.8(h)(6) are adopted as final.

Vehicles Needed To Seek and Continue Employment and for Household Transportation

Current regulations at 7 CFR 273.8(h)(3), in accordance with section 5(g) of the Food Stamp Act, require that all licensed vehicles be evaluated to determine their fair market value for purposes of determining a household's resource eligibility for the Program. Section 13923 of the Leland Act amended section 5(g)(2) of the Food Stamp Act to increase the fair market value resource exclusion of vehicles by $50 on September 1, 1994, and by an additional $50 on October 1, 1995. Beginning on October 1, 1996, the fair market value resource exclusion will be adjusted annually, using a base of $5,000, to reflect changes in the Consumer Price Index (CPI).

In order to implement section 13923 of the Leland Act, the Department proposed to amend 7 CFR 273.8(h)(3) to conform to the timetable and values mandated by section 13923. The Department received three comments on this provision, each one requesting a departure from the values or timetable provided by the Leland Act. Two of the commenters suggested that the participant's equity value should be evaluated, which would provide a more realistic measure of the vehicle's value to the household. One commenter suggested increasing the exclusion directly to $4,600 without the intermediate steps. The Department has no discretion in this area. Section 13923 of the Leland Act is itself a compromise position. As indicated in the House Conference Report, the exclusion was originally going to be raised to $5,500 in 1994, and adjusted annually to the CPI thereafter. (House Conference Report No. 213, 103rd Cong., 1st Session, 927 (1993)). Given this clear legislative mandate, the Department cannot unilaterally raise the fair market value exclusion or change the Leland Act's timetable. The Department is therefore adopting the provision as proposed.

After the proposed rule was published, the Department realized that a conforming amendment was needed at 7 CFR 273.8(i)(4), involving the transfer of resources. That provision contains an example which includes the old dollar figure of $4,500 for the vehicle exclusion. Because the exclusion has changed and will become variable starting in 1996, the example in 7 CFR 273.8(i)(4) has been deleted.

General Assistance (GA) Vendor Payments

Section 13915 of the Leland Act amended section 5(k)(1)(B) of the Food Stamp Act to change the treatment of third-party payments made to recipients from GA programs. To implement this provision, the Department proposed to amend and reorganize 7 CFR 273.9(c)(1). Three commenters supported the proposed language as a significant improvement over the previous, more complex provision. One commenter supported the provision, but requested that GA vendor payments for utilities assistance also be excluded from income under the provision. Under the proposed language, 7 CFR 273.9(c)(1)(ii)(A) does exclude ''assistance provided for utility costs'' from income. Because no adverse comments were received, the Department is adopting the complete revision of 7 CFR 273.9(c)(1) contained in the proposed rulemaking.

Student Earned Income Exclusion

Section 13911 of the Leland Act amended section 5(d)(7) of the Food Stamp Act to exclude ''income earned by a child who is a member of the household, who is an elementary or secondary school student, and who is 21 years of age or younger * * *.'' Current regulations at 7 CFR 273.9(c)(7) exclude the earned income of children who are under age 18, members of the household, under the parental control of another household member, and students at least half-time. Under the current regulations, the exclusion does not apply if the student has formed a separate household. The legislative

history of section 13911 indicates that the provision was intended to assist students that are still in high school and living with their parents beyond age 18, but not to change the law regarding students who live away from home and have separate food stamp households (House Report No. 111, 103rd Cong., 1st Session 28 (1993)).

To implement this provision and address issues that had arisen under the current student earned income exclusion, the Department proposed to amend 7 CFR 273.9(c)(7) to exclude the earned income of ''a student under age 22 who attends elementary or secondary school or classes to obtain a General Equivalency Diploma at least half-time and lives with a natural, adoptive or stepparent, is under the control of a household member other than a parent, or is certified in a separate food stamp household but lives with a natural, adoptive or stepparent.'' The proposed rule included some provisions not directly mandated by the statutory language, but that were either carried over from the current provision or included in the proposed rule to implement the legislative intent of the provision. Issues raised in the comments to the proposed rulemaking are addressed below.

Living Arrangement

Thirteen commenters strongly opposed limiting the student earnings exclusion to students living with their parents or under the parental control of another household member. There were no comments that supported the limitation. Commenters argued that a student's living arrangements should have no bearing on the student's entitlement to the exclusion. Several commenters argued that the First Circuit's decision in *Dion* v. *Commissioner, Maine Department of Human Services,* 933 F.2d 13 (1st Cir. 1991), discussed in the preamble to the proposed rule would specifically prohibit this limitation. Several commenters argued that even if the legislative history supported the limitation, statutory construction rules would prohibit looking to it because of the clear language of the statute. Several commenters thought the limitation was inconsistent with the Department's and Congress' intent to encourage students to stay in school. Some State welfare agencies also commented that the requirement would be burdensome and error-prone.

The Department maintains its position that the language of the statute and its legislative history support limiting the exclusion to students living with their parents. It is appropriate and necessary for the Department to look to the legislative history of this provision in order to develop implementing regulations. This exclusion was passed after the First Circuit's decision in *Dion* and so the Department considered the provision's legislative history to determine whether, and to what extent, Congress intended the provision to address issues raised in that litigation. The Department disagrees with one commenter's assertion that the Supreme Court's decision in *Chevron USA* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984), would preclude looking to the legislative history to interpret this provision. Even the *Dion* court looked to the legislative history to interpret the statutory language of the pre-Leland provision. That court concluded, based on the language of the statute and its legislative history, that Congress had not intended to limit the exclusion to students living with their parents. *Dion,* 933 F.2d at 19. It is also the Department's position that its proposal does not violate the holding in *Dion.* The decision in that case was based in part on the lack of ''evidence that Congress considered the policy implications of either extending the exclusion to all student-earners or limiting it to those within their parents' household.'' (emphasis added) *Dion,* 933 F.2d at 17. Now Congress has clearly indicated its intent to limit this exclusion only to students living with their parents. (House Report No. 111, 103rd Cong., 1st Session 28 (1993)).

Contrary to some commenters' assertions, the Department believes the limitation best addresses Congressional intent. The House Report states that the provision was intended ''to encourage those students who are living with their parents to pursue their education * * *.'' (emphasis added) (House Report No. 111, 103rd Cong., 1st Session 28 (1993)). Congress clearly did not intend the exclusion to apply to all students, but created the exclusion to address situations where students' earnings could have a negative impact on the students' families. There is also no reason that this limitation will be administratively burdensome or error-prone because the information will already have been collected and analyzed for the household determination.

In order to reflect the realities of today's diverse household situations and be consistent with the amended household definition provisions of 7 CFR 273.1(a)(2)(i)(B), the Department will include students who are living under the parental control of an adult household member other than a parent. The Department continues to believe that this is a reasonable interpretation of the statutory language and intent that otherwise eligible students living with parents (or with others acting in that role) should have their earned income excluded.

The Department has therefore decided to retain the requirement in the proposed rule that students must live with a natural, adoptive, or stepparent, or be living under the parental control of a household member other than a parent, to be eligible for this exclusion.

One commenter requested more time to implement the student income exclusion because of the limitations regarding a student's living arrangements. The Department may not extend the implementation beyond the statutorily mandated date of September 1, 1994.

Status as Head of Household

The Department also received several comments arguing that the exclusion should apply regardless of the student's status as head of household. In its proposal, the Department extended the exclusion to students who are certified in separate food stamp households, but who live with their parents. Under the proposal, any (otherwise eligible) student who lives with his or her natural, adoptive or stepparent is entitled to the exclusion, regardless of that student's status in the food stamp household.

The plaintiff in *Dion,* a 17 year-old girl who was the head of her own food stamp household and who also lived with her parents, would be eligible for the exclusion under the proposal. A student who lives with someone other than his or her natural, adoptive, or stepparents, and who forms a separate food stamp household would not be eligible for the exclusion. The Department does not agree with the commenter who argued that whether a student like Ms. Dion is living with her parents or living on her own would not be relevant in this inquiry. Congress specifically stated that the new student provision was not intended to change ''current law regarding those students who live away from home and have formed a separate household.'' (emphasis added) (House Report No. 111, 103rd Cong., 1st Session 28 (1993)). Such students are currently ineligible for the income exclusion, and so Congress specifically intended for those students to remain ineligible for the exclusion.

The Department is therefore retaining the proposal's extension of the exclusion to students who have been certified in a separate food stamp household, as long as that student is

living with a natural, adoptive or step-parent.

Half-Time Attendance

Another issue raised by several commenters was whether the Department could require that students attend school at least half-time to be eligible for the exclusion. The legislative history of section 13911 of the Leland Act did not address this issue. Because of concerns that the increased scope of the exclusion (increasing the eligible age from 18 to 21) would dramatically increase its cost, the Department believed that the exclusion should be limited to students seriously pursuing a high school diploma or General Equivalency Diploma (GED).

Seven commenters strongly objected to the proposal's half-time requirement. One commenter, although recognizing the Department's desire to limit costs with a fair and simple rule, agreed with other commenters that the half-time requirement was arbitrary. Another commenter suggested that students with learning disabilities, health problems, difficult family situations, or other circumstances might not be able to attend classes half-time. Commenters also argued that restricting the exclusion to students who attended school for a specified period of time each day was contrary to Congressional intent to help students who need more time to finish school. (House Report No. 111, 103rd Cong., 1st Session 28 (1993)). Several State agencies remarked that verification would be difficult and the requirement would be error-prone.

The Department understands the concerns regarding the half-time requirement. However, the Department is reluctant to exclude the income of every student. To illustrate, although the Department is extending the exclusion to GED students, we do not believe that this exclusion should apply to a person working full-time and studying for the GED for a few hours a week on his or her own.

One commenter made a suggestion that provides some limit, but is not arbitrary. The commenter suggested that as long as a person attends school for enough time for that person's state or local school district to consider the person a ''student,'' then the exclusion should apply, regardless of the time the person spends in class. The Department has chosen to adopt this practical and reasonable approach to the problem of school attendance. This approach also resolves a separate issue raised by two commenters, who requested that home-schooled students also be eligible for the exclusion. The Department has amended 7 CFR 273.9(c)(7) to provide that as long as the otherwise eligible person is either (1) attending elementary or secondary school, or (2) attending GED or home-school classes recognized, operated, or supervised by the student's state or local school district, then the student's earned income will be excluded. The Department also believes that this approach will be less administratively burdensome and error-prone.

GED Classes

One commenter objected to the Department's decision to include students attending classes to obtain a GED among those students who are eligible for this exclusion. The commenter believed that adding GED students would make the exclusion too difficult to implement because of the half-time attendance requirement. Two commenters supported the inclusion of GED students. The Department has eliminated the half-time requirement, and believes that the new provision will not be difficult to apply to GED students. Although the Leland Act did not directly address GED students, the legislative history reflects support for those who are working to obtain a high school diploma, (House Report No. 111, 103rd Session 28 (1993)), and the Department sees no reason not to include those pursuing a diploma in a GED program recognized, supervised, or operated by the student's state or local school district. The Department believes that earning a high school diploma is a significant step towards self-sufficiency, and that extending this exclusion to include students pursuing a GED in a reputable program will encourage them to continue. Therefore, the proposed provision to allow the earned income exclusion for students attending GED classes is retained in this final rule.

Case Adjustment When Student Becomes 22

Another issue addressed in the proposal is the point at which a student's earnings must be counted when the student turns 22 during the certification period. To make the requirements for applicant and ongoing households and prospective and retrospective budgeting procedures the same, the Department proposed to add a new paragraph (E) to 7 CFR 273.10(e)(2)(i) to provide that for prospective eligibility and benefit determination, the earned income of a high school or elementary school student shall be counted beginning with the month following the month in which the student turns 22. To address retrospectively budgeted households, the Department proposed to amend 7 CFR 273.21(j)(1)(vii) to specify that the income of an elementary or secondary student shall be counted beginning with the budget month after the month in which the student turns 22. The Department's proposal did not change the current regulations regarding the continuation of the exclusion during temporary interruptions in school attendance and the proration of income when the child's share cannot be differentiated. Two commenters commended the Department's proposal as a simple and fair handling of the issue.

One commenter suggested that the income be included beginning with the certification period after the student turns 22 or graduates. Similarly, one commenter suggested that certification periods be set to correspond with these events. Although the Department encourages State agencies to set certification dates as suggested by the commenter to ease the administrative burden of making the adjustment, the Department will not complicate the provision by requiring that certification periods be so set. In addition, because the effects of the income exclusion are so sweeping, the Department believes it would be too costly to extend a student's earned income exclusion until the next recertification. The Department is therefore adopting the language of these proposals with one clarification in the context of retrospective budgeting.

The Department is clarifying 7 CFR 273.21(j)(1)(vii), which addresses retrospective eligibility and budgeting, because of a comment we received which demonstrated that our proposal was not clear. The new language specifies that the income of an elementary or secondary student shall be counted beginning with the budget month after the budget month in which the student turns 22. To illustrate: a student in a retrospective budgeting jurisdiction (which budgets from the 15th of the month to the 14th of the next month) turns 22 on September 14. Under the provision, the student's income would be included the budget month after the budget month in which the student turned 22. The student turned 22 in the budget month of August 15–September 14, so the student's income would be included beginning the budget month of September 15–October 14.

With this change in wording for retrospectively budgeted cases, the revisions to 7 CFR 273.10(e)(2)(i) and 7 CFR 273.21(j)(1)(vii) are adopted as proposed.

JTPA Earnings

One commenter asked for clarification on whether earnings received pursuant to the Job Training and Partnership Act (JTPA) could be excluded from income under this provision. Under the language in this final rulemaking, JTPA earnings can be excluded under the student income exclusion. Current regulations at 7 CFR 273.9(b)(1)(v) provide that JTPA earnings are earned income to the recipient. The student income exclusion of 7 CFR 273.9(c)(7) excludes earned income of students who meet its requirements. The two provisions do not conflict; one defines JTPA earnings as ''earned income,'' and the other excludes all ''earned income'' of those individuals who meet its requirements.

Summary

In summary, the Department is amending 7 CFR 273.9(c)(7) to exclude the earned income of any household member who is an elementary or secondary school student 21 years of age or younger who lives with his or her natural, adoptive, or stepparents or who is living under the parental control of a household member other than a parent. An elementary or secondary school student is someone who attends elementary or secondary school, or who attends GED or home-school classes recognized, operated, or supervised by the student's state or local school district.

Improving Access to Employment and Training Activities

Dependent Care Deduction

Section 13922 of the Leland Act amended section 5(e) of the Food Stamp Act by increasing the maximum dependent care deduction to $200 for each dependent child under the age of two, and to $175 for all other dependents. In its discussion on implementing the two-tiered deduction, Congress urged that implementation be conducted in ways that would minimize administrative burdens on State agencies. (House Conference Report No. 213, 103rd Congress, 1st Session 926 (1993)).

The Department proposed to amend 7 CFR 273.9(d)(4) and 7 CFR 273.10(e) to replace the fixed maximum deduction with the Leland Act's two-tiered approach. To address Congressional intent, the Department proposed to require State welfare agencies to adjust the deduction from $200 to $175 no later than the next regular recertification after a dependent child's second birthday.

Several commenters supported the two-tiered approach as both realistic and reasonable. Two commenters also supported the Department's proposal to allow State welfare agencies flexibility regarding when to adjust the amount of the deduction after a dependent child's second birthday. One State welfare agency thought that allowing the higher deduction amount to continue until the next recertification after the child's second birthday was confusing, and suggested that the Department require that the adjustment be made the month following the child's second birthday. Under the language in the proposed rulemaking, the State agency can adjust the deduction the month following the child's second birthday if that timeframe is easier or less confusing for the agency to implement. No other commenters objected to the Department's decision to allow a later adjustment, and so the Department is adopting the provision in the proposed rule requiring the adjustment no later than the next recertification after the child's second birthday.

The Department also proposed a conforming change to 7 CFR 273.10(d)(1)(i) to replace the term ''child care expense'' with the term ''dependent care expense.'' No adverse comments were received on this conforming change, and so the Department is adopting this amendment as provided in the proposed rulemaking.

Dependent Care Reimbursement for the Food Stamp Employment and Training Program

Section 13922 of the Leland Act amended section 6(d) of the Food Stamp Act to replace the $160 cap on dependent care reimbursements to participants in the Employment and Training Program with a requirement that State agencies reimburse the actual costs of dependent care expenses up to a limit set by the State agency. Section 13922(b) of the Leland Act establishes a methodology for determining the relevant limits, including a local market rate for dependent care.

One State welfare agency objected to the provision, stating that there is no established local market rate for dependent care for individuals over the age of 18. The Department does not see this as a significant problem. The proposed rule would require the State agency to establish a State limit for dependent care over the age of 18. The State limit cannot be more than the local market rate. The lack of a local market rate does not preclude the State welfare agency from establishing a State limit, it simply places a cap on the State limit. Without a local market rate, the State agency can establish a State limit by using a reasonable estimation of the cost of service in the area, and the amount of dependent care reimbursement payable to households would be the established State limit or the actual cost of dependent care, whichever is lower. Where there is a local market rate, State welfare agencies cannot establish State limits which exceed that rate, and the amount of the dependent care reimbursement is the lower of the local market rate, the State limit, or actual costs. Because the Department does not see this as a significant problem with the provision, the Department is adopting the provision as proposed.

Proration of Benefits

Section 13916 of the Leland Act amended section 8(c)(2)(B) of the Food Stamp Act to eliminate proration of first month's benefits if a household is recertified for food stamps after a break in certification of less than one month. Current regulations at 7 CFR 273.10(a)(1)(ii) require that a household's benefit level for the initial month of certification be based on the day of the month it applies for benefits and that the household receive benefits from the date of application to the end of the month.

The Department proposed to revise 7 CFR 273.10(a) (1)(ii) and (2)(i) to prohibit the proration of first month's benefits for all households that apply for benefits after a break in certification of less than one month.

The Department's proposal raised several issues. Several public interest groups commented that the final rule should make clear that benefits should not be prorated even if a client's previous participation was in another county. Under the language of the Leland Act, the reason for the break in certification is not relevant when applying the provision. The Department does not believe the provision requires clarification on that point. Furthermore, the administrative problems that State welfare agencies face when transferring a household's case from one jurisdiction to another are not really impacted by this provision. Applying this provision just means that if the client's break in certification is one month or less, the client's benefits are calculated from the beginning of the month, not the day the client reapplied in the new jurisdiction.

A State welfare agency requested clarification as to the provision's impact on the Department's reinstatement policy. This provision does not directly affect this policy. Under that policy, a State agency may reinstate a household without requiring a new application if the household has had a break in

certification of less than one month because of a late monthly report. The Leland provision was not meant to eliminate policies helpful to households, but only to ensure that those households that reapply after a short break in certification do not receive reduced benefits.

Another State welfare agency raised the issue of the interaction of the Leland Act proration provision and the Department's combined allotment policy contained in 7 CFR 274.2(b) (2), (3), and (4). Under that policy, a household that is eligible for expedited service and applies after the 15th of the month is entitled to a combined allotment representing the prorated portion of the first month's benefit, plus the next month's benefit. To accommodate the administrative realities of expedited service cases, the provision, like other provisions regarding verification for expedited service cases, allows for delayed verification. The commenter was concerned that dishonest applicants could continue to reapply for expedited service benefits after the 15th of a month, and under the combined provisions of the combined allotment rule and the new proration provision, continue to get six weeks' worth of benefits with little verification. Section 13916 of the Leland Act defines ''initial month'' to mean one that follows a period of more than one month in which the household was not certified to participate. A household that reapplies within one month of a break that is entitled to have its benefits not prorated under this section, is not, by definition, in its ''initial month,'' and so is not entitled to a combined allotment because a combined allotment is only available for ''initial'' allotments.

Although this question raises a serious issue, the Department does not believe that further analysis on this point is fruitful in the context of this rulemaking. The commenter's question is not really addressed to the proration or the combined allotment policies. The question really addresses the delayed verification requirements necessitated in expedited service cases. If the Department addresses the expedited service regulations in the future, we will reexamine this issue in that context.

One State welfare agency requested that States that issue benefits prospectively on a rolling fiscal month be exempted from this provision. The language of the Leland Act does not allow exceptions to the proration provision; therefore, the Department has no authority to exempt such States.

The most significant issue to arise under this provision is whether the proration of benefits provision applies only when an identical household reapplies after a break in certification of less than one month. Two State welfare agencies raised this issue in their comments.

One commenter suggested that as long as at least one household member was certified in the previous month, the household should get the benefit of the provision and its benefits should not be prorated. This approach effectively extends the provision, which was intended to benefit households, to individuals. The Department does not believe this extension would be consistent with either the statutory language or intent of section 13916 of the Leland Act. The Department does recognize the need, however, to address changing household membership in the context of this provision.

To address this issue, the Department has revised 7 CFR 273.10(a)(1)(ii) to specify that a household that reapplies after a break in certification is not considered to be the ''same'' household if the membership of the original household has changed to the extent that the certification worker must establish a new case for a portion of the original household. Under this approach, when a household's membership changes so that a new case is created, the new case's benefits are prorated, but the original case's benefits are not prorated.

The Department believes that this approach is consistent with the statutory language and intent, which was to eliminate the proration requirement for households which reapply after a break in certification of less than one month. (House Report No. 111, 103d Cong., 1st Session 30 (1993).) It also provides a reasonable limit on the provision, protecting the interests of the original household over the interests of members that leave to form new households. Because State agencies will be able to apply this provision in conjunction with established policy for creating new cases when household membership changes, this approach would not be unduly burdensome. The Department believes that it is most appropriate to have this case-related decision made by the eligibility worker, who will be most familiar with the situation.

The Department also proposed to delete 7 CFR 273.10(a)(2) (ii) and (iii). Both provisions, which prohibit proration in the first month of a household's new certification period, were made moot by section 13916 of the 1993 Leland Act. No adverse comments were received on this proposal, and so those paragraphs are deleted in this final rulemaking.

With the modification addressing the problem of changing household composition, the proposed amendments to 7 CFR 273.10(a) are adopted as final.

Implementation

Pursuant to section 13971 of the Leland Act, the Leland Act was effective, and States were required to implement it, September 1, 1994. Pursuant to Public Law 104–121, the Contract with America Advancement Act of 1996, this final rule is effective December 16, 1996; State agencies must implement it no later than June 30, 1997. State agencies will be required to adjust the cases of ongoing households at the next recertification, at household request, or when the case is next reviewed, whichever comes first. If implementation of the Leland Act or this rule is delayed, benefits shall be restored, as appropriate, in accordance with the Food Stamp Act. Three State welfare agencies did not agree that restored benefits were mandated by the Leland Act. One of those agencies suggested that Congress' decision to apply new provisions no later than the next recertification indicated that the Leland Act was not intended to be retroactive. As explained below, the Department has determined that section 13951 of the Leland Act requires that clients receive the benefits of its provisions as of September 1, 1994, and so benefits shall be restored, to the extent appropriate, in accordance with the Food Stamp Act.

Legislative history indicates that the Leland Act provisions were to be implemented in the Department's ''normal manner.'' (House Conference Report No. 213, 103rd Congress, 1st Session 926 (1993)). The Department's ''normal'' procedure is to set an implementation date after which households are entitled to the benefits of the new provision. If there is a statutorily mandated implementation date, the implementation date would correspond to that date. If the State agency cannot adjust the ongoing cases by this date, then benefits are restored, within the restrictions provided by the Food Stamp Act, back to the required implementation date when the case is adjusted. To help ease the administrative burden of implementing statutory changes, the Department does not require immediate adjustment or require State agencies to conduct case reviews to determine which households would benefit from legislative changes. Several public interest groups requested that the Department require State welfare agencies to notify ongoing

households of the Leland Act provisions because it would help households realize the benefits of the legislation more quickly. Although the Department in general encourages giving notice to households, the Department has decided not to require that notice be given to households because of the administrative burden and costs to State agencies.

If for any reason a State agency fails to implement on the required dates, restored benefits shall be provided, if appropriate under the provisions of the Food Stamp Act, back to the relevant implementation date or the date of application, whichever is later. In accordance with section 13951 of the Leland Act, variances resulting from implementation of the provisions of the final rule are excluded from error analysis for 120 days from June 30, 1997.

List of Subjects

7 CFR 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Report and recordkeeping requirements.

7 CFR 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

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

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

Authority: 7 U.S.C. 2011–2032.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

2. In § 271.2, in the definition of ''Eligible foods'', paragraph (4) is amended by removing the words ''eligible households'' and adding in their place the words ''narcotic addicts or alcoholics and their children who live with them''.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (g)(151) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(151) *Amendment No. 375.* Public Law 103–66, the Mickey Leland Childhood Hunger Relief Act, was effective and required to be implemented on September 1, 1994. The provisions of Amendment No. 375 are effective December 16, 1996, and must be implemented by June 30, 1997. The State agency shall implement the provisions of this amendment no later than the appropriate required implementation date for all households newly applying for Program benefits on or after such implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits, as may be appropriate under the Food Stamp Act, back to the appropriate required implementation date. If for any reason a State agency fails to implement on the appropriate implementation date, restored benefits shall be provided, if appropriate, back to the appropriate required implementation date or the date of application, whichever is later. Any variances resulting from implementation of this amendment shall be excluded from quality control error analysis for 120 days from June 30, 1997.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.1:

a. Paragraphs (a)(2)(i)(B) and (a)(2)(i)(C) are revised.

b. Paragraph (a)(2)(i)(D) is removed.

c. Paragraph (a)(2)(ii) is amended by removing the words ''may be a separate household from the others based on the provisions of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section'' and adding in their place the words ''may be considered, together with any of the others who is the spouse of the elderly and disabled individual, an individual household''.

d. Paragraph (e)(1)(ii) is amended by adding the words '', and their children who live with them'' after the words ''facility or treatment center''.

e. Paragraph (f)(2) introductory text is amended by adding the words ''and their children who live with them'' after the words ''on a resident basis''.

The revisions read as follows:

§ 273.1 Household concept.

(a) *Household definition.* * * *

(2) *Special definition:*

(i) * * *

(B) A child under 22 years of age who is living with his or her natural, adoptive, or stepparents, unless the child is also living with his or her own child(ren) or spouse.

(C) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child is considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, except that a child who is living with his or her own child(ren) or spouse is not considered to be under parental control.

* * * * *

5. In § 273.7:

a. A new paragraph (c)(4)(xiv) is added.

b. A new paragraph (c)(4)(xv) is added.

c. Paragraph (d)(1)(ii)(A) is amended by revising the first, seventh, and last sentences.

The additions and revisions read as follows:

§ 273.7 Work requirements.

* * * * *

(c) *State agency responsibilities.*

* * *

(4) * * *

(xiv) The Statewide limit(s) for dependent care reimbursements as established by the State agency. The limit(s) shall not be less than the dependent care deduction amounts specified under § 273.9(d)(4).

(xv) The local market rates of dependent care providers in the State. State agencies shall adopt the local market rates already established by programs under section 402(g) of the Social Security Act. State agencies shall establish separate local market rates for categories of care relevant to food stamp E&T which are not addressed under section 402(g) of the Social Security Act and include such rates in the E&T State Plan.

* * * * *

(d) *Federal financial participation.*

(1) *Employment and training grants.*

* * *

(ii) *Participant reimbursements.*

* * *

(A) The costs of such dependent care expenses that are determined by the State agency to be necessary for the participation of a household member in the E&T program up to the actual cost of dependent care, the local market rate, or the Statewide limit, whichever is lowest. * * * If more than one household member is required to participate in the E&T program, the

State agency shall provide reimbursement for the actual cost of dependent care, the local market rate, or the Statewide limit, whichever is lowest, for each dependent in the household, regardless of the number of household members participating in the E&T program. * * * A State agency may claim 50 percent of costs for dependent care services provided or arranged by the State agency up to the actual cost of dependent care, the local market rate, or the Statewide limit, whichever is lowest.

* * * * *

6. In § 273.8:

a. Paragraph (h)(1) is amended by removing the period at the end of paragraph (h)(1)(v) and adding in its place the word ''; or'' and adding a new paragraph (h)(1)(vi).

b. Paragraph (h)(3) is revised.

c. Paragraph (h)(6) is amended by revising the first sentence of the paragraph.

d. Paragraph (i)(4) is amended by removing the second sentence.

The additions and revisions read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(h) *Handling of licensed vehicles.*

* * *

(1) * * *

(vi) Necessary to carry fuel for heating or water for home use when such transported fuel or water is anticipated to be the primary source of fuel or water for the household during the certification period. Households shall receive this resource exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle. Households shall not be required to furnish documentation, as mandated by § 273.2(f)(4), unless the exclusion of the vehicle is questionable. If the basis for exclusion of the vehicle is questionable, the State agency may require documentation from the household, in accordance with § 273.2(f)(4).

* * * * *

(3) Each licensed vehicle not excluded under paragraph (h)(1) of this section shall be evaluated individually to determine its fair market value resource exclusion limit, and that portion of the resource exclusion limit which exceeds $4,500 for FY 1993, shall be attributed in full toward the household's resource level regardless of any encumbrances. The $4,500 fair market value resource exclusion limit for licensed vehicles shall remain in effect through August 31, 1994. On September 1, 1994 through September 30, 1995, the fair market value resource exclusion limit shall be increased to $4,550. On October 1, 1995 through September 30, 1996, the fair market value resource exclusion limit shall be increased to $4,600. On October 1, 1996 and each October 1 thereafter, using a base of $5,000, the fair market value resource exclusion limit for licensed vehicles shall be adjusted to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics for the 12-month period ending on June 30 preceding the date of such adjustment and rounded to the nearest $50. Any value in excess of the appropriate fair market value resource exclusion limit shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicle. For example, in November 1994 a household owning an automobile with a fair market value of $5,550 shall have $1,000 applied toward its resource exclusion level. Any value in excess of $4,550 (the fair market value resource exclusion limit for that time period) shall be attributed to the household's resource level, regardless of the amount of the household's investment in the vehicle, and regardless of whether or not the vehicle is used to transport household members to and from employment. Each vehicle shall be appraised individually. The fair market value resource exclusion limit of two or more vehicles shall not be added together to reach a total fair market value resource exclusion in excess of the fair market value resource exclusion for the appropriate time period.

* * * * *

(6) In summary, each licensed vehicle shall be handled as follows: First, the vehicle shall be evaluated to determine if it is an income producer, a home, necessary to transport a disabled household member, or necessary to carry fuel for heating or water for home use. * * *

* * * * *

7. In § 273.9:

a. Paragraph (c)(1) is revised.

b. The first sentence of paragraph (c)(7) is revised, a sentence is added after the first sentence, and the last sentence is removed.

c. Paragraph (d)(4) is amended by removing the words ''$160 per month, per dependent'' in the last sentence and adding in their place the words ''$200 a month for each dependent child under two (2) years of age and $175 a month for each other dependent''.

The revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) *Income exclusions.* * * *

(1) Any gain or benefit which is not in the form of money payable directly to the household, including in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and include meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household. Payments made to a third party on behalf of the household are included or excluded as income as follows:

(i) *Public assistance (PA) vendor payments.* PA vendor payments are counted as income unless they are made for:

(A) Medical assistance;

(B) Child care assistance;

(C) Energy assistance as defined in paragraph (c)(11) of this section;

(D) Emergency assistance (including, but not limited to housing and transportation payments) for migrant or seasonal farmworker households while they are in the job stream;

(E) Housing assistance payments for households living in transitional housing for the homeless;

(F) Emergency and special assistance. PA provided to a third party on behalf of a household which is not specifically excluded from consideration as income under the provisions of paragraphs (c)(1)(i)(A) through (c)(1)(i)(E) of this section shall be considered for exclusion under this provision. To be considered emergency or special assistance and excluded under this provision, the assistance must be provided over and above the normal PA grant or payment, or cannot normally be provided as part of such grant or payment. If the PA program is composed of various standards or components, the assistance would be considered over and above the normal grant or not part of the grant if the assistance is not included as a regular component of the PA grant or benefit or the amount of assistance exceeds the maximum rate of payment for the relevant component. If the PA program is not composed of various standards or components but is designed to provide a basic monthly grant or payment for all eligible households and provides a larger basic grant amount for all households in a particular category, e.g., all households with infants, the larger amount is still part of the normal grant or benefit for such households and not an ''extra'' payment excluded under this

provision. On the other hand, if a fire destroyed a household item and a PA program provides an emergency amount paid directly to a store to purchase a replacement, such a payment is excluded under this provision. If the PA program is not composed of various standards, allowances, or components but is simply designed to provide assistance on an as-needed basis rather than to provide routine, regular monthly benefits to a client, no exclusion would be granted under this provision because the assistance is not provided over and above the normal grant, it is the normal grant. If it is not clear whether a certain type of PA vendor payment is covered under this provision, the State agency shall apply to the appropriate FCS Regional Office for a determination of whether the PA vendor payments should be excluded. The application for this exclusion determination must explain the emergency or special nature of the vendor payment, the exact type of assistance it is intended to provide, who is eligible for the assistance, how the assistance is paid, and how the vendor payment fits into the overall PA benefit standard. A copy of the rules, ordinances, or statutes which create and authorize the program shall accompany the application request.

(ii) *General assistance (GA) vendor payments.* Vendor payments made under a State or local GA program or a comparable basic assistance program are excluded from income except for some vendor payments for housing. A housing vendor payment is counted as income unless the payment is for:

(A) Assistance provided for utility costs;

(B) Energy assistance (as defined in paragraph (c)(11) of this section);

(C) Housing assistance from a State or local housing authority;

(D) Emergency assistance for migrant or seasonal farmworker households while they are in the job stream;

(E) Housing assistance for households living in transitional housing for the homeless;

(F) Emergency or special payments (as defined in paragraph (c)(1)(i)(F) of this section; or

(G) Assistance provided under a program in a State in which no GA payments may be made directly to the household in the form of cash.

(iii) *Department of Housing and Urban Development (HUD) vendor payments.* Rent or mortgage payments made to landlords or mortgagees by HUD are excluded.

(iv) *Educational assistance vendor payments.* Educational assistance provided to a third party on behalf of the household for living expenses shall be treated the same as educational assistance payable directly to the household.

(v) *Vendor payments that are reimbursements.* Reimbursements made in the form of vendor payments are excluded on the same basis as reimbursements paid directly to the household in accordance with paragraph (c)(5) of this section.

(vi) *Demonstration project vendor payments.* In-kind or vendor payments which would normally be excluded as income but are converted in whole or in part to a direct cash payment under a federally authorized demonstration project or waiver of provisions of Federal law shall be excluded from income.

(vii) *Other third-party payments.* Other third-party payments shall be handled as follows: moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. This distinction is illustrated by the following examples:

(A) A friend or relative uses his or her own money to pay the household's rent directly to the landlord. This vendor payment shall be excluded.

(B) A household member earns wages. However, the wages are garnished or diverted by the employer and paid to a third party for a household expense, such as rent. This vendor payment is counted as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, the rent payment shall be excluded from income. Similarly, if the employer provides housing to an employee in addition to wages, the value of the housing shall not be counted as income.

(C) A household receives court-ordered monthly support payments in the amount of $400. Later, $200 is diverted by the provider and paid directly to a creditor for a household expense. The payment is counted as income. Money deducted or diverted from a court-ordered support or alimony payment (or other binding written support or alimony agreement) to a third party for a household's expense shall be included as income because the payment is taken from money that is owed to the household. However, payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household. For example, a court awards support payments in the amount of $400 a month and in addition orders $200 to be paid directly to a bank for repayment of a loan. The $400 payment is counted as income and the $200 payment is excluded from income. Support payments not required by a court order or other legally binding agreement (including payments in excess of the amount specified in a court order or written agreement) which are paid to a third party on the household's behalf shall be excluded from income.

* * * * *

(7) The earned income (as defined in paragraph (b)(1) of this section) of any household member who is under age 22, who is an elementary or secondary school student, and who lives with a natural, adoptive, or stepparent or under the parental control of a household member other than a parent. For purposes of this provision, an elementary or secondary school student is someone who attends elementary or secondary school, or who attends classes to obtain a General Equivalency Diploma that are recognized, operated, or supervised by the student's state or local school district, or who attends elementary or secondary classes through a home-school program recognized or supervised by the student's state or local school district. * * *

* * * * *

8. In § 273.10:

a. The third sentence of paragraph (a)(1)(ii) is amended by adding the words ''of more than one month, fiscal or calendar depending on the State's issuance cycle,'' after the words ''following any period'', replacing the comma after the words ''not certified for participation'' with a period, and removing the remainder of the sentence.

b. The fourth sentence of paragraph (a)(1)(ii) is removed and a new sentence is added in its place.

c. Paragraphs (a)(2)(ii) and (a)(2)(iii) are removed, and the designation for paragraph (a)(2)(i) is removed.

d. Newly redesignated paragraph (a)(2) is further amended by adding the words ''more than one month'' after the words ''If an application for recertification is submitted'' in the third sentence.

e. The sixth sentence of paragraph (d)(1)(i) is amended by removing the word ''child'' the first time it appears and adding ''dependent'' in its place.

f. A sentence is added to the end of paragraph (d)(4).

g. Paragraph (e)(1)(i)(E) is amended by removing the words ''maximum amount

of $160 per dependent'' and adding in their place the words ''maximum amount as specified under § 273.9(d)(4) for each dependent''.

h. A new paragraph (e)(2)(i)(E) is added.

i. Paragraph (f)(2) is removed and reserved.

The additions read as follows:

§ 273.10 Determining household eligibility and benefit levels.

(a) *Month of application.*

(1) *Determination of eligibility and benefit levels.* * * *

(ii) * * * For purposes of this provision, a household is not considered to be the same household as the previously participating household if the certification worker has established a new food stamp case for the household because of a significant change in the membership of the previously participating household.

* * *

* * * * *

(d) *Determining deductions.* * * *

(4) *Anticipating expenses.* * * * If a child in the household reaches his or her second birthday during the certification period, the $200 maximum dependent care deduction defined in § 273.9(d)(4) shall be adjusted in accordance with this section not later than the household's next regularly scheduled recertification.

* * * * *

(e) *Calculating net income and benefit levels.* * * *

(2) *Eligibility and benefits.*

(i) * * *

(E) If a household contains a student whose income is excluded in accordance with § 273.9(c)(7) and the student becomes 22 during the month of application, the State agency shall exclude the student's earnings in the month of application and count the student's earnings in the following month. If the student becomes 22 during the certification period, the student's income shall be excluded until the month following the month in which the student turns 22.

* * * * *

9. In § 273.21, the first sentence of paragraph (j)(1)(vii)(A) is revised and a new sentence is added after the first sentence to read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB)

* * * * *

(j) *State agency action on reports.*

(1) *Processing.* * * *

(vii) * * *

(A) Earned and unearned income received in the corresponding budget month, including income that has been averaged in accordance with paragraph (f) of this section. The earned income of an elementary or secondary school student excluded in accordance with § 273.9(c)(7) shall be excluded until the budget month following the budget month in which the student turns 22.

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Dated: September 27, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 96–26072 Filed 10–16–96; 8:45 am]

BILLING CODE 3410–30–U

7 CFR Parts 271, 272, 273, and 275

[Amendment No. 362]

RIN 0584–AB58

Food Stamp Program; Child Support Deduction

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a provision of the 1993 Mickey Leland Childhood Hunger Relief Act establishing a deduction for households that make legally obligated child support payments to or for a nonhousehold member. The provision results in increased benefits for households that pay child support, thereby enabling more parents to meet their legal obligation. A proposed rule was published December 8, 1994.

DATES: The provisions of this rule are effective December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, or (703) 305–2516.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

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

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Ellen Haas, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This final rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The reporting and recordkeeping burden associated with the application, certification, and continued eligibility of food stamp applicants is approved under OMB No. 0584–0064.

To receive the child support deduction authorized by 7 CFR 273.9(d) of this rule, households must report the child support obligation and amounts paid on the application form and provide verification. The methodology used to determine the current burden estimates for all applications assumes that every applicant will complete every line item on the application form. The model food stamp application and the model application worksheet were revised in 1995 to include a line for the child support deduction and the associated burden is included in the current burden estimate of .2290 hours per response. Therefore, the amendment to 7 CFR 273.9(d) made by this rule to add a child support deduction does not alter the current burden estimate.

Section 273.12(a) of this rule requires that households report changes in the legal obligation to pay child support during the certification period; changes in the amount of child support paid must be reported when the household applies for recertification. The rule allows State agencies to require households to report child support information monthly or quarterly. Section 273.10(f) provides that households that are not required to report the amount of child support paid during the certification period on a monthly or quarterly report shall be certified for no more than 6 months. State agencies that currently require