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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 through 285

[Amdt. No. 373]

RIN 0584-AB38

Food Stamp Program: 1995 Quality Control Technical Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On September 10, 1996, the Department of Agriculture published proposed technical changes to the Food Stamp Program's quality control system which were intended to reduce the workload on State agencies and improve the efficiency of the quality control system. This final rule addresses significant comments received in response to the regulatory changes proposed in the proposed rule and finalizes regulatory changes to the Food Stamp Program's quality control system in the following areas: negative case reviews, State agency minimum sample sizes for active and negative case reviews, state sampling procedures, Federal subsample size formulas, error dollar tolerance level, home visits, case completion standards, and miscellaneous technical corrections.

DATES: *Effective Dates:* 7 CFR 275.23(e)(6)(iii) is effective on July 16, 1999. All remaining provisions are effective on October 1, 1999.

Implementation Dates: 7 CFR 275.23(e)(6)(iii) is to be implemented on July 16, 1999. The following provisions are to be implemented on October 1, 2000, with the start of the Fiscal Year 2001 quality control review period: 7 CFR 271.2; 7 CFR 275.3(c)(3)(ii); 7 CFR 275.10(a); 7 CFR 275.11(c)(1); 275.11(e)(2); 7 CFR 275.11(f)(2); 7 CFR 275.13(a); 275.13(b); 275.13(c)(1);

275.13(c)(2); 7 CFR 275.13(f) and 275.23(c)(4). All remaining provisions are to be implemented October 1, 1999, with the start of the Fiscal Year 2000 quality control review period.

FOR FURTHER INFORMATION CONTACT: Retha Oliver, Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 904, Alexandria, Virginia 22302, (703) 305-2474.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. It has been determined that the following cost-benefits would result from adoption of the provisions of this rule:

1. State agency sample size. The provision reducing the minimum sample size for active and negative case reviews will benefit those State agencies opting to use the "smaller range" in their sample plans when their minimum active or negative case sample sizes are currently above the new minimum sample sizes. In Fiscal Year (FY) 1992, before the waiver to reduce current minimum sample sizes was available, State agencies reviewed nearly 52,000 active and over 30,000 negative cases. Assuming a 15 percentage reduction in cases, under this change to the regulatory provision, State agencies will be required to review nearly 8,000 fewer active cases and about 4,500 fewer negative cases. Estimating that each active case review costs \$180 and each negative case review costs \$40, combined potential savings for State agencies and Food and Nutrition Service (FNS) is an estimated \$1.6 million. Savings for State agencies are estimated at \$800,000.

2. Home visits. It is estimated that minimal savings in quality control (QC) expenditures will result from this provision, as it is expected that State agencies will channel the resources into other aspects of quality control operations.

3. Error dollar tolerance level. The provision to modify the error dollar tolerance level from \$5.00 to \$25.00 will benefit those State agencies which qualify for enhanced funding. Based on FY 1997 data, it is estimated that State agencies could qualify for an additional

\$7.5 million in enhanced funding with this modification.

The Department has examined the impact on potential State agency liability calculations from the effect of changing the error dollar tolerance level. Data from FY 1997 has been analyzed to determine how the \$25 tolerance could effect liability amounts. The data shows that in 1997 the estimated liability would increase by \$3.9 million if there are no other changes made to the QC system.

It is not anticipated that any other provisions of this rule will have any significant impact on the costs or benefits to either the State agencies or FNS.

Executive Order 12372

The Food Stamp Program (FSP) is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section 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 FSP the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant 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-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

This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. Sec. 601 through 612). Samuel Chambers, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect State and local agencies that administer the FSP.

Paperwork Reduction Act

This rule contains information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995. In the proposed rule (61 FR 47680), FNS solicited comment from the general public and other public agencies on a related information collection, form FNS 380, the QC Review Worksheet (OMB Number 0584-0074). The proposed rule did not change the reporting and recordkeeping burden for 0584-0074. However, OMB's approval for the burden, contained in 0584-0074, was scheduled to expire. The comment period for 0584-0074 closed November 12, 1996. No comments were received. OMB approved the burden of 558,019 hours through November 30, 1999.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, the more cost-effective or the least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. This rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Civil Rights Impact Analysis

In accordance with USDA Regulation 4300-4, "Civil Rights Impact Analysis", Samuel Chambers, Administrator of the Food and Nutrition Service, has determined that this rule does not in any way limit or deny participation in benefits, conferences, or training opportunities or employment benefits on the basis of an individual or group's race, color, national origin, sex, religion, age, disability, or political beliefs. This rule makes discretionary technical changes to the Food Stamp Program (FSP) quality control process. FSP applicants and participants are selected randomly for a QC review.

Background

On September 10, 1996, the Department of Agriculture's (the "Department") Food and Nutrition Service (FNS) proposed regulations (61 FR 47680) to amend the food stamp QC system in order to reduce the workload on State agencies and enhance the efficiency of the system. A full explanation of the rationale and purpose of these regulatory changes was provided in the preamble of the proposed rulemaking. The Department received comment letters from twenty-one organizations. The preamble of this final rule addresses significant issues raised by those comments. It is recommended that the reader reference the proposed rulemaking, as well as this final rulemaking for a more complete understanding of the regulatory changes that the Department is implementing.

Negative Case Reviews

The proposed rule clarified issues surrounding the review of negative cases and expanded the universe of cases to be reviewed. These clarifications were the culmination of FNS' examination of the QC review process for negative cases, which included, in part the results of research undertaken by Abt Associates on behalf of FNS to develop and pilot test alternative approaches to measuring the extent of nonpayments to eligible households. The proposed clarifications also took into consideration recommendations made by the General Accounting Office on the accuracy of State reported error rates.

Sixteen organizations commented on the proposed regulatory changes to clarify issues surrounding the review of negative cases and the expansion of the universe of cases to be reviewed.

1. Federal Monitoring of State Agency Error Rates for Negative Case Reviews

The Department clarifies in this final rule the requirements and procedures

for Federal monitoring of the negative case reviews conducted by State agencies. Regulations at 7 CFR 275.3(c) are revised to clarify that FNS has the authority to review negative cases as determined appropriate. Section 275.3(c) also is modified to indicate that negative cases would require validation when the State agency's payment error rate appears to entitle the State agency to enhanced funding and when the negative error rate is less than two percentage points above the national weighted mean negative case error rate for the prior period.

The Department received twelve comments on these clarifications. Three comments supported the proposed clarifications. Four were neutral or commented that the clarifications would have no impact on their States. Five comments opposed the clarifications. Of the opposition comments, one objected to any increase in Federal review beyond the current minimum level. Another was concerned about an anticipated increase in workload for QC staff. A third comment questioned the greater scrutiny that negative cases receive for States potentially eligible for enhanced funding. Two comments opposed the revisions on the basis that Federal validation of negative cases should be required for all States to ensure the accuracy of the negative error rate.

In response to these concerns, it should be noted that the proposed changes do not increase Federal authority for review activities beyond what can be or has been done under current practice or is permitted under current statutory and regulatory authority. State and Federal agencies have always had the option to expand their reviews beyond the guidelines in the regulations to the extent necessary to assure the validity of error rates. Given that these revisions do not extend authority for Federal reviews, FNS does not anticipate a significant increase in Federal review activity as a result of this clarification. Any increase in Federal review activity should have a minimal impact on a State agency's QC staff since Federal reviewers conduct this activity.

Validation of the negative error rate for States potentially eligible for enhanced funding is not only justified but has the potential to benefit State agencies. State agencies achieving a certain level of accuracy in their negative cases could be entitled to receive additional funds.

The Department determined that Federal validation of negative cases for all States, as recommended in two comments, is not necessary at this time.

However, if such validations are determined to be prudent in the future, FNS has the authority to conduct them.

The changes to this section will be adopted as proposed, effective October 1, 1999, for the FY 2000 QC review period.

2. Inclusion of Suspended Cases in the Negative Sample Universe

The Department proposed to include suspended cases in the negative case universe and sample frame. There were twelve comments on this proposal. Four favored the change, four were neutral (although three of the four raised concerns about having adequate lead time for implementation should the proposal be adopted), and four opposed the proposal. Comments that objected to the inclusion of suspended cases said reviewing these cases is not cost effective, implementing this change would be difficult or time consuming (generally because of computer changes), or including suspended cases in the negative universe could increase the negative error rate.

The Department must ensure that all households served by the FSP are handled in accordance with federal law and regulations. The Department has determined that an examination of suspended cases through the QC review process is an efficient way to determine whether these cases are dealt with properly. Inclusion of suspended cases in the negative universe would not increase subsample sizes, and therefore would not adversely impact on the workload of QC reviewers. There is no data to indicate whether suspended cases are more or less error prone than other classes of cases in the negative case universe. Since the number of suspended cases is thought to be relatively small, these cases should have only a negligible impact on the negative error rate. Thus, the Department has concluded that the review of suspended cases as a negative case will not significantly impact the negative error rate.

In the matter of implementing this change, there is a general Federal effort to avoid computer changes, other than Y2K improvements, until March 2000. Since adding suspended cases to the negative frame requires a computer change, suspended cases will not be included in the negative frame until October 1, 2000, for the first full QC review period after March 2000. No State agency can include suspensions in the negative frame until that date. The delay in implementing this change should address State concerns about having enough notice to make the necessary computer changes.

This final rule includes suspended cases in the negative sample effective for the FY 2001 review period, which begins October 1, 2000.

3. Use of the Action Date To Determine the Month in Which Negative Cases are Included in the Sample Universe; and Clarification of the Meaning of "Break in Participation" for Suspended and Terminated Cases

The Department proposed to allow State agencies to sample by the action date rather than the effective date to make sampling easier. In addition, the Department proposed to revise the regulations to include denied, suspended, and terminated cases in the negative case universe in the month in which the action to deny, suspend, or terminate food stamp benefits was taken. The Department also clarifies that an action to terminate or suspend a household has actually resulted in a suspension or termination if the household experiences a break in participation in the program as a result of deliberate State agency action. The intent of these changes is to allow State agencies to construct consistent and reliable sampling plans for negative actions, and to ensure that negative actions which have the result of denying benefits to clients are subject to review. These cases are subject to review even if the actions are subsequently reversed, unless their reversal comes under specified conditions (e.g. the State reverses itself without a new application by the client) and within specified time frames (e.g. before the effective date of the termination or suspension action).

There were eight comments on these modifications. None were opposed to the change or clarification. Two comments recommended that the options discussed in the preamble to the proposed rule be included in the regulatory language. The Department agrees that the regulatory language should be revised to include the guidance discussed in the preamble. Therefore, the Department revised the definitions of "negative case" and "review date" at § 271.2, added language at § 275.11(e)(2)(i) and (ii) concerning negative cases in the sample frame, and added clarifying language in the general section at § 275.13(a).

In this final rule the Department is also further clarifying the definition of "review date" at § 271.2. The first sentence in this definition will read as follows: "*Review date* for quality control active cases means a day within the sample month, either the first day of the calendar or fiscal month or the day a certification action was taken to authorize the allotment, whichever is

later." The clarification is in bold print. The meaning of the term "review date" is not affected by this clarification.

As mentioned under (2) above, there is a general Federal effort to avoid computer changes other than Y2K improvements until March 2000. The revisions discussed in the paragraphs above include references to suspended cases. Since suspended cases cannot be added to the negative sample frame until October 1, 2000, for the Fiscal Year 2001 quality control review period, these changes will be implemented October 1, 2000.

4. FNS Will Not Establish a Dollar Loss Rate for Negative Cases

One aspect of negative case reviews that was of interest to Congress was the establishment of a dollar loss rate. For reasons specified in the preamble to the proposed rule, the Department decided not to pursue this option. All four comments on this decision supported not establishing a dollar loss rate for negative cases.

State Agency Minimum Sample Sizes for Active and Negative Case Reviews

FNS has previously granted waivers of the regulations on the minimum sample sizes for active case reviews to improve the efficiency of the QC system without impairing the reliability of QC information. The Department proposed: (1) To include the terms of these waivers in the FSP regulations; (2) to offer State agencies a choice of ranges to use in determining minimum sample sizes for negative case reviews that is similar to the choice of ranges for determining minimum sample sizes for active case reviews; and (3) to reduce the size of the "smaller range" for minimum sample sizes for active case reviews.

The proposed range for the minimum sample size for active cases is 300 to 1020 reviews, a 15 percent reduction from the top of the current range. To use the minimum sample size, a State agency would be required to include in its sampling plan the statement from current § 275.11(a)(2)(iv) that it "will not use the size of the sample chosen as a basis for challenging the resulting error rate." The purpose of the statement, as described in the February 17, 1984, preamble to the rule that established the requirement for the statement, was to serve as "a means of assuring that State agencies consider what degree of reliability they need." (49 FR 6295). There are no other conditions on a State agency's use of the revised smaller range. State agencies may elect to review more cases than the minimum sample defined in

regulations. State agencies may also continue to use the current smaller range of 300 to 1200 reviews per year.

FNS also proposed the creation of a "smaller range" for the minimum sample size for negative case reviews. The "smaller range", representing a 15 percent reduction from the highest end of current requirements, would be 150 to 680 reviews per year.

The current required range of 150 to 800 reviews per year would be retained as the larger range for minimum sample sizes for negative case reviews. If a State agency chose to use the "smaller range" to calculate its minimum sample size for negative case reviews, it would also be required to include in its sampling plan the statement that it "will not use the size of the sample chosen as a basis for challenging the resulting error rates." If a State agency did not include that statement, it would be required to calculate its minimum sample size for negative case reviews according to the larger range. As with active cases, there would be no other conditions on a State agency's use of the revised smaller range. Also, as with active cases the ranges define minimum sample sizes, State agencies may select more.

The Department received ten comments on the proposed changes to State sampling requirements. All ten supported the changes. One comment, while favoring the changes, stipulated that the statement that the State agency would not use the size of the sample chosen as the basis for challenging the resulting error rates should apply only to challenges directly attributable to the reduced sample size and not other statistical issues. The Department did not intend that this statement preclude States from making other statistical challenges to the error rate, only those that can be attributed to use of the smaller sample size.

In addition to the above, one comment identified an incorrect reference to active cases in proposed regulatory language at § 275.11(b)(2)(i). The Department corrected this error in the final rule.

The proposed revisions to State sample sizes are adopted in the final rule, to be implemented October 1, 1999, for the FY 2000 QC review period.

Federal Sample Sizes

The Department proposed to change the headings to the tables which set out the formulas for calculation of the Federal subsample size. These tables appear at § 275.3(c)(1)(i) and § 275.3(c)(3)(i) in current regulations; they appear in paragraphs 275.3(c)(1)(i)(A) and (B) and 275.3(c)(3)(i) in the proposed rule. The

phrase "Federal subsample target" would appear, rather than the current phrase "Federal annual sample size." This change would not permit FNS to select a smaller subsample for any reason other than a State agency's failure to complete the minimum number of reviews in its required sample size. There were no significant comments on this change. It is adopted in the final rule, effective October 1, 1999, the start of the FY 2000 review period.

State Sampling Procedures

The Department proposed four sets of technical clarifications to the sampling regulations so that the regulations will match the way State agencies design and implement their sampling plans.

1. Selection of One-twelfth of the Sample Each Month

The Department determined that provisions requiring that sampling procedures conform to the standard principles of probability sampling and that state samples produce estimates with an acceptable, mandated level of reliability are sufficient to ensure that deviations, minor or otherwise, from equal monthly sample sizes will not jeopardize the validity nor the precision of those error rate estimates. Therefore, in § 275.11, the Department proposed to delete paragraph (a)(2)(iii) and renumber paragraph (a)(2)(iv) as (a)(2)(iii). The Department also proposed technical corrections to regulatory references appearing in § 275.11(b)(1)(ii) and (b)(1)(iii). There were no significant comments on these proposed changes so they are adopted as proposed in the final rule, effective for the FY 2000 QC review period, which begins October 1, 1999.

2. Sampling Plans Must Conform to Accepted Statistical Theory

The Department proposed to amend the regulations at § 275.11(a)(3) to require that all sample designs conform to commonly acceptable statistical theory and application. There were no significant comments on these proposed changes so they are adopted as proposed in the final rule, effective for the FY 2000 QC review period, which begins October 1, 1999.

3. Basis for Final Sample Size

Current regulations at § 275.11(b)(3) provide that FNS will not penalize a State agency if its caseload increases by less than 20 percent from the estimated caseload number that the State agency used to determine the size of its sample. The Department proposed to clarify that this estimated caseload number was the

one *initially* used to determine the sample size. Sample sizes will be found to be adequate if at least the minimum required sample size for the estimated caseload is chosen, and the actual caseload is no larger than 120% of the estimated caseload. There were no significant comments on this proposed change so it is adopted as proposed in the final rule, effective for the FY 2000 QC review period, which begins October 1, 1999.

4. Number of Households Subject to Review Is the Basis for the Sample Size

The Department proposed to clarify the wording in the headings in the tables in proposed § 275.3(c)(1)(i)(A) and (B), and in current § 275.3(c)(3)(i), § 275.11 (b)(1)(ii) and (iii), and proposed § 275.11(b)(2)(i) and (ii). There were no significant comments on these proposed changes so the changes are adopted as proposed in the final rule, effective for the FY 2000 QC review period, which begins October 1, 1999.

Federal Subsample Size Formulas

Because the Department proposed a change in the State sampling size, use of the current formulas for calculating subsample sizes would result in a decrease in the size of the minimum Federal subsample for a State agency that chooses the proposed "smaller ranges." However, the Department does not intend to reduce the Federal subsample. Without a regulatory change, the formula for determining FNS' minimum subsample sizes would not accurately indicate the number of reviews that FNS would actually select for the subsample.

The Department proposed revised formulas for the minimum active and negative Federal subsamples. These proposed formulas, when applied to the new proposed "smaller ranges" for State samples, would yield the current ranges for the Federal subsample. Federal reviewers could still select and review more cases than the minimum subsample.

The Department received four comments on this provision. Two favored the change, one was neutral and one opposed the change. The opposition was based on a concern about FNS having the authority to review more cases than the minimum subsample. However, the authority to review active or negative cases to the extent necessary is an existing authority and was not introduced or increased by the proposed modifications to regulatory language in this rule.

The proposed changes to the formulas are adopted in the final rule, to be

implemented October 1, 1999, effective for the FY 2000 QC review period.

Error Dollar Tolerance Level

The Department proposed to raise the tolerance for excluding small dollar errors at § 275.12(f)(2) from \$5.00 to \$10.00 to address State agency concerns about inflation and the increases in the Thrifty Food Plan. Only those overissuances to eligible households or underissuances to eligible households which exceeded the \$10.00 tolerance figure would be reported and coded in the completion of QC reviews.

Eighteen organizations commented on this proposed regulatory change. All eighteen comments supported an increase in the tolerance level. Four comments recommended that the tolerance level be increased further, two recommended a \$25 tolerance, one recommended a \$20 tolerance and another recommended a higher tolerance without specifying a figure. State reasons given for a higher tolerance included a need to account for inflation more fully and that the focus of administration should be on larger error amounts.

Since the Department's original proposal of a \$10 tolerance, circumstances have changed. The strength of the economy, the success of welfare reform in moving families from welfare to work and restrictions on eligibility for many legal immigrants and unemployed childless adults have led to a decrease in Food Stamp Program participation. For many people, Food Stamps can make the difference between living in poverty and moving beyond it. It is imperative to the success of welfare reform, and more fundamentally the nutritional well-being of eligible persons, that the Program serves eligible low-income families, particularly the working poor. However, since the income and deductions for working poor families tend to be volatile, these households are more error prone and their participation could increase error rates of States trying hardest to serve them. The Department believes that increasing the tolerance to \$25 will support State efforts to serve eligible needy families by reducing State concerns about increased error rates attributable to the participation of working poor families. In view of State comments and the above, the QC tolerance will be increased to \$25.

In the final rule, a \$25 tolerance will be implemented by all State agencies on October 1, 1999, effective for the FY 2000 QC review period.

Home Visit Requirement

The Department proposed to amend the regulatory requirement for the face-to-face interview to take place at the client's home in most instances. The proposed revision would simply require a face-to-face interview. There were 19 comments on this proposal.

The Department considers face-to-face interviews an essential component to ensure the accuracy of certification decisions. There was no change or intent to change the requirement that a face-to-face interview be conducted, only a revision of the location of the face-to-face interview. However, the Department received nine comments that proposed alternatives to the face-to-face interview. Suggested alternatives included phone interviews, questionnaires or elimination of face-to-face interviews for some categories of cases. None of these alternatives are considered acceptable.

Seventeen of the nineteen comments on the proposed change favored the flexibility to conduct interviews at a location other than the client's home. Two opposed the change. Opposition was based on concerns about the impact of this change on the accuracy of error rates. In view of better monitoring of household circumstances through data bases, the Department no longer considers an interview at the client's home a necessity in all cases to ensure the accuracy of the review. However, interviews with clients at their homes is still the preferred practice and the Department encourages State reviewers to continue to interview clients at their homes when practical. One comment stated that using authorized representatives as information sources for households, as allowed by this provision, is not always a good practice since they often just transact authorization to participate cards or coupons for households. FNS expects that these individuals would be used as a primary source of information on households only if they can demonstrate sufficient knowledge about the household's situation in order to answer questions on the household's behalf. Indiscriminate use of these individuals as information sources would not be an acceptable practice.

The changes to regulations are adopted in the final rule as proposed and are to be implemented effective October 1, 1999, effective for the FY 2000 QC review period.

Conducting QC Reviews Against Federal Regulations

The Department solicited comments from all interested parties on the

appropriateness and potential consequences of a variance exclusion for erroneous payments which result from the State agency having followed State agency policies or directives under certain conditions. There were 17 comments on this proposal. Fifteen favored the change, one was noncommittal and one opposed it. Despite their general support of this proposal, five of the 15 comments favoring the proposal raised concerns. Three questioned how this provision would be implemented. Three other comments raised issues concerning what should be excluded from error, whether all State agencies would be alerted to identified differences in other State agencies, or whether other current practices would be maintained. Another comment objected to the proposal, indicating that a variance exclusion was appropriate when something new is being implemented but not when errors are made after the implementation period. In light of the issues raised, FNS has decided not to pursue this proposal.

QC Review Case Completion Standard

The Department proposed to amend the current requirement that a State agency complete 100 percent of its minimum required sample size. The new standard for State agency completion will be 98 percent of its minimum required sample size. In the event that a State agency fails to complete 98 percent of its minimum required sample size, error rates would be adjusted using the current regulatory formula which is based on a 100 percent completion requirement.

All 15 comments the Department received on this change supported a reduction of the completion rate standard. Five recommended that the standard be lowered to 95 percent. One recommended that the standard be based on the annual national average instead of a flat percentage.

FNS has modified QC review procedures over the years so that cases can be completed if sufficient effort is put into conducting the review. A 98 percent completion rate, permitting a two percent flexibility, is a reasonable reduction from the current 100 percent standard. In order to preserve the integrity of the system, the highest accuracy of error rates must be maintained. The Department does not support a further reduction in the completion standard as proposed by these comments.

The 98 percent completion standard will be adopted in the final rule effective October 1, 1999 for the start of the FY 2000 QC review period.

Changing Federal Case Findings and Disposition

The Department proposed to codify into regulations the policies and practices which dictate when and under what circumstances FNS will change the Federal findings or disposition for a specific case. Ten organizations commented on this proposal.

There were three comments on the issue of whether FNS should codify the circumstances under which Federal findings or case dispositions would be changed. One comment supported codification, another supported codification but did not agree with some of the proposed practices. Another comment objected to the codification of this information in regulations on the basis that more restrictive limitations will be applied in those instances in which circumstances do not easily fall into one of the five categories in the proposed regulation. The Department agrees that codification probably would make it more difficult for FNS to change Federal findings or dispositions for cases when their circumstances do not fit in the five categories defined in regulations. Therefore, the Department has decided against codifying in regulations the circumstances in which Federal decisions or case dispositions will be changed.

The comments received on the five proposed policies and practices for changing Federal findings or disposition of cases are discussed below.

1. Informal Resolution

FNS proposed to change the Federal finding or disposition if, as a result of the informal resolution process, both the State agency and FNS agreed on a new finding or disposition. The Department received seven comments on the informal resolution process. There were no comments that objected to this practice. Two offered general support of the process while five relayed concerns about a reduction of time frames for informal resolution as a result of the Mickey Leland Childhood Hunger Relief Act of 1993, ("Leland Act"), Chapter 3, Title XIII of the Omnibus Reconciliation Act of 1993, Public Law 103-66.

Due to changes mandated by the Leland Act, FNS shortened the period of time State agencies have to request arbitration from 28 days to 20 days in the rule entitled FSP: QC Provisions of the Leland Act ("Leland Rule") (62 FR 29652) published June 2, 1997.

It should be noted that the Department is required to implement changes that enable it to meet requirements set by law, such as the deadlines set by the Leland Act.

Shortening timeframes for informal resolution was necessary to ensure that the timeframes in the Leland Act could be met. The preamble to the Leland Rule discusses these timeframes in more detail. Please refer to that publication for further discussion.

2. Ruling by an Arbitrator

FNS proposed to change the Federal finding or disposition whenever an arbitrator's decision requires that a change be made.

There was one comment on this provision. This comment was concerned that the arbitrator is an employee of FNS and made two proposals to address the concern. According to this comment, arbitrator decisions should be reviewed by the Secretary on request of the State agency and the arbitrator should be independent of FNS. Arbitration is the final decision of the process. As such, once the arbitrator has made a decision, that decision is final, with two exceptions. The first would be to implement a change in law or regulations. The other would be if FNS learned that it had not properly implemented the decision of the arbitrator. FNS has explored the option of having an arbitrator independent of the agency. However, given the importance of these decisions and the tight time periods for making decisions, the arbitrator needs to be familiar with statutory requirements, Departmental decisions and policies. After making inquiries with other organizations/offices about taking over this function, FNS concluded that outsourcing was not plausible, primarily due to the lack of technical expertise and anticipated delays in decision-making.

The Final Leland Rule changed the arbitration process from a two-tiered system to a one-tiered system. This change was driven primarily by reductions in timeframes for completing cases as required by the Leland Act.

3. Implementation of a Regulation, Law, or Waiver

FNS proposed to change Federal findings or dispositions to implement a change in regulations, an amendment to the Food Stamp Act, or retroactive provisions to a waiver.

Two comments questioned the intent of implementing a regulation or amendment through changing case findings or dispositions. FNS anticipates that this action will rarely be necessary. To date this circumstance has happened only once, when Congress mandated that a change be implemented retroactively. This action did not negatively impact State agencies. FNS

must implement changes required by Law.

4. Correct any Application of Incorrect Written Policy

The Department would change Federal findings or disposition of a case whenever it became aware that an error was the result of correct State application of an incorrect written policy provided by a Departmental employee authorized to issue FSP policy. It is likely that the State agency and FNS will not become aware of the problem until well after the State agency's deadline for requesting arbitration. Therefore, in order to ensure that the State agency is not harmed by any potential incorrect policy, the Department proposed that the variance exclusion at § 275.12(d)(2)(viii) may be made in the Federal findings at any time that such a problem is discovered.

There was one comment on the discussion of this provision in the preamble to the proposed rule. While the comment did not object to the variance exclusion, it did object to FNS not allowing new factual information to be considered in the final disposition of the case. The comment characterized FNS' reasons for taking this position as administrative and stated that those concerns should not outweigh the system's primary mission of establishing an accurate error rate.

The Department is opposed to making changes based on new "factual" information for three reasons. First, State agencies are responsible for obtaining all necessary information at the time the State QC reviewer conducts the review.

Second, if the household's circumstances were not reasonably certain at the time of the State agency's review, the case should have been disposed of as "not completed." It does not seem likely that reasonably verified information would be contradicted at a later time.

Third, the Department recognizes the need for final closure in the resolution process. Section 13951 of the Leland Act specifies that "no later than 180 days after the end of the fiscal year, the case review and arbitration of State-Federal difference cases shall be completed." The Department believes that without providing some limit on the resolution process this mandated deadline can not be achieved. For example, if FNS permitted new "factual" information to be presented after the case was under review for arbitration, FNS would be obligated to investigate and confirm or repudiate the new "facts" even if these facts were questionable and unlikely to have a

bearing on the outcome of the case. This would delay resolution of the case and ultimately the determination of the national average error rate. The Department maintains that resolution of the "facts" of a case in question should be accomplished prior to its submission as a completed case.

5. Conflict in a Federal Finding/Disposition

If, for any reason, the Federal findings or disposition in the Food Stamp Quality Control System (FSQCS) conflicted with the finding letter transmitted to the State agency, FNS would ensure the FSQCS was correct. If the FSQCS coding was incorrect, it would be corrected. If the finding letter was incorrect, it would be corrected. Either way, FNS would transmit a new finding letter to the State agency explaining what had occurred. There were no comments on this provision.

If, in any of the five circumstances specified above, FNS were to make changes to the finding and disposition of a case, these changes would be made as proposed regardless of the effect on the amount of error in the case. A State agency would be notified of the change and entitled to arbitration of the new Federal finding or disposition, with one exception. If FNS changed the Federal findings or disposition to comply with the decision of the arbitrator, the State agency would have no further right to arbitration. This is because the arbitrator's decisions are final, with two exceptions. The first would be to implement a change in law or regulations. The other would be if FNS learned that it had not properly implemented the decision of the arbitrator.

As discussed above, the Department has decided against codifying in regulations the policies and practices which dictate when and under what circumstances FNS will change Federal findings or the disposition of a specific case. Therefore, the policies and practices discussed above are not detailed in the final rule.

Miscellaneous Technical Corrections

The Department received no significant comments regarding the proposal to effect technical corrections to various paragraphs appearing in Part 275 of the regulations. These modifications are retained in this final rule. The Department has adopted all of the proposed technical changes in this final rule. The modifications will become effective and are to be implemented October 1, 1999, effective for the FY 2000 QC review period which begins with the October 1999 sample

month. Since publication of the proposed rule, the Department published a final rule on June 2, 1997, the previously referenced Leland Rule, which modified regulatory language at § 275.23(e)(9).

In the final rule the Department is making a technical revision to regulations at § 275.23(e)(6)(iii) to restore language that provides State agencies protection against double billings for the same dollar losses under both the QC liability system and the negligence provisions at § 276.3. This language was inadvertently deleted from this provision by the final rule entitled "Food Stamp Program: Hunger Prevention Act of 1988 and Mickey Leland Childhood Hunger Relief Act; Rules of Practice; Administrative Law Judges," published July 6, 1994. This change will be effective upon publication of the final rule.

Implementation

The provision at § 275.23(e)(6)(iii) is effective and to be implemented on July 16, 1999. The following provisions are effective on October 1, 1999 and are to be implemented on October 1, 2000, with the start of the Fiscal Year 2001 quality control review period: § 271.2; § 275.3(c)(3)(ii); § 275.10(a); § 275.11(c)(1); § 275.11(e)(2); § 275.11(f)(2); § 275.13(a); § 275.13(b); § 275.13(c)(1); § 275.13(c)(2); § 275.13(f)(2) and § 275.23(c)(4). The remaining provisions of this rule are effective and are to be implemented October 1, 1999, with the start of the Fiscal Year 2000 quality control review period, which begins with the October 1999 sample month.

List of Subjects

7 CFR Part 271

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

7 CFR Part 272

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

7 CFR Part 275

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

For the reasons set out in the preamble, Parts 271 through 285 of Chapter II of Title 7 Code of Federal Regulations are amended as follows:

1. The authority citation for Parts 271 through 285 is revised to read as follows:

Authority: 7 U.S.C. 2011-2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, the definitions of "Error", "Negative case", "Negative case error rate", "Quality control review", and "Review date" are revised to read as follows:

§ 271.2 Definitions.

* * * * *

Error for active cases results when a determination is made by a quality control reviewer that a household which received food stamp benefits during the sample month is ineligible or received an incorrect allotment. Thus, errors in active cases involve dollar loss to either the participant or the government. For negative cases, an "error" means that the reviewer determines that the decision to deny, suspend, or terminate a household was incorrect.

* * * * *

Negative case means a household whose application for food stamp benefits was denied or whose food stamp benefits were suspended or terminated by an action in the sample month or by an action effective for the sample month.

Negative case error rate means an estimate of the proportion of denied, suspended, or terminated cases where the household was incorrectly denied, suspended, or terminated. This estimate will be expressed as a percentage of completed negative quality control reviews excluding all results from cases processed by SSA personnel or participating in a demonstration project identified by FNS as having certification rules that are significantly different from standard requirements.

* * * * *

Quality control review means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct.

* * * * *

Review date for quality control active cases means a day within the sample month, either the first day of the calendar or fiscal month or the day a certification action was taken to authorize the allotment, whichever is later. The "review date" for negative cases, depending on the characteristics of individual State systems, could be the date on which the eligibility worker makes the decision to suspend, deny, or terminate the case, the date on which the decision is entered into the computer system, the date of the notice

to the client or the date the negative action becomes effective. For no case is the "review date" the day the quality control review is conducted.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (g)(155) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation. * * *

(155) *Amendment No. 373.* The provision at § 275.23(e)(5)(iii) is effective and is to be implemented on July 16, 1999. The following provisions are effective on October 1, 1999 and are to be implemented on October 1, 2000, with the start of the Fiscal Year 2001 quality control review period: § 271.2; § 275.3(c)(3)(ii); § 275.10(a); § 275.11(c)(1); § 275.11(e)(2); § 275.11(f)(2); § 275.13(a); § 275.13(b); § 275.13(c)(1); § 275.13(c)(2); § 275.13(f)(2) and § 275.23(c)(4). The remaining provisions of this rule are effective and are to be implemented October 1, 1999, with the start of the Fiscal Year 2000 quality control review

period, which begins with the October 1999 sample month.

PART 275—PERFORMANCE REPORTING SYSTEM

4. In § 275.3:

a. the introductory text of paragraph (c) is amended by revising the third sentence and adding a new sentence between the third and fourth sentences;

b. paragraph (c)(1)(i) introductory text is revised, and the table following the introductory text is removed;

c. paragraphs (c)(1)(i)(A), (c)(1)(i)(B), and (c)(1)(i)(C) are redesignated as paragraphs (c)(1)(i)(C), (c)(1)(i)(D), and (c)(1)(i)(E), respectively, and new paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) are added;

d. newly redesignated paragraph (c)(1)(i)(C) introductory text is amended by removing the words "n is the" and adding in their place the words "n' is the";

e. paragraph (c)(3)(i) introductory text, and the table following the introductory text, are revised;

f. paragraph (c)(3)(i)(A) introductory text is amended by removing the words "n is the" and adding in their place the words "n' is the";

g. paragraph (c)(3)(ii) is amended by adding the word ", suspend," between the words "deny" and "or".

The revisions and additions read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State Agency error rates.* * * * FNS must validate the State agency's negative case error rate, as described in § 275.23(d), when the State agency's payment error rate for an annual review period appears to entitle it to an increased share of Federal administrative funding for that period as outlined in § 277.4(b)(2) of this chapter, and its reported negative case error rate for that period is less than two percentage points above the national weighted mean negative case error rate for the prior fiscal year. However, this requirement will not preclude the Federal review of any negative case for other reasons as determined appropriate by FNS. * * *

(1) *Payment error rate.* * * *

(i) FNS will select a subsample of a State agency's completed active cases, as follows:

(A) For State agencies that determine their active sample sizes in accordance with § 275.11(b)(1)(ii), the Federal review sample for completed active cases is determined as follows:

Average monthly reviewable caseload (N)	Federal subsample target (n')
31,489 and over	n'=400
10,001 to 31,488	n'=.011634 N+33.66
10,000 and under	n'=150

(B) For State agencies that determine their active sample sizes in accordance with § 275.11(b)(1)(iii), the Federal review sample for completed active cases is determined as follows:

Average monthly reviewable caseload (N)	Federal subsample target (n')
60,000 and over	n'=400
10,001 to 59,999	n'=.005 N+100
10,000 and under	n'=150

* * * * *

(3) Negative case error rate. * * *

(i) FNS will select a subsample of a State agency's completed negative cases, as follows:

Average monthly reviewable negative caseload (N)	Federal subsample target (n')
5,000 and over	n'=160
501 to 4,999	n'=.0188 N+65.7
Under 500	n'=75

* * * * *

[§ 275.10 Amended]

5. In § 275.10(a):

a. the second sentence is amended by adding the word ", suspended," between the words "denied" and "or";

b. the fifth sentence is amended by adding the word ", suspend," between the words "deny" and "or".

6. In § 275.11:

a. paragraph (a)(2)(iii) is removed, paragraph (a)(2)(iv) is redesignated as paragraph (a)(2)(iii) and a new paragraph (a)(2)(iv) is added;

b. paragraph (a)(3) is revised;

c. paragraph (b)(1)(ii) is amended by removing the reference to "(a)(2)(viii)" and adding in its place the reference to "(a)(2)(iii)" and by revising the table;

d. paragraph (b)(1)(iii) is amended by removing the reference to "(a)(2)(viii)", and adding in its place the reference to "(a)(2)(iii)", and by revising the table;

e. paragraph (b)(1)(iv) is amended by removing the word "anticipated" in the third sentence;

f. paragraph (b)(2) is revised;

g. paragraph (b)(3) is revised;

h. the last sentence in paragraph (c)(1) is amended by adding the word "suspension," between the words "denial" and "or";

i. paragraph (e)(2) is revised;

j. the introductory text of paragraph (f)(2) is revised;

k. paragraph (f)(2)(iv) is revised and paragraphs (f)(2)(v) through (f)(2)(ix) are added.

The additions and revisions read as follows:

§ 275.11 Sampling.

(a) *Sampling plan.* * * *

(2) *Criteria.* * * *

(iv) If the State agency has chosen a negative sample size as specified in paragraph (b)(2)(ii) of this section, include a statement that, whether or not the sample size is increased to reflect an increase in negative actions as discussed in paragraph (b)(3) of this section, the State agency will not use the size of the sample chosen as a basis for challenging the resulting error rates.

(3) *Design.* FNS generally recommends a systematic sample design for both active and negative samples because of its relative ease to administer, its validity, and because it yields a sample proportional to variations in the caseload over the course of the annual review period. (To

obtain a systematic sample, a State agency would select every kth case after a random start between 1 and k. The value of k is dependent upon the estimated size of the universe and the sample size.) A State agency may, however, develop an alternative sampling design better suited for its particular situation. Whatever the design, it must conform to commonly acceptable statistical theory and application (see paragraph (b)(4) of this section).

- * * * * *
- (b) *Sample size.* * * *
- (1) *Active cases.* * * *
- (ii) * * *

Average monthly reviewable caseload (N)	Minimum annual sample size (n)
60,000 and over	n=2400
10,000 to 59,999	n=300+[0.042(N - 10,000)]
Under 10,000	n=300

(iii) * * *

Average monthly reviewable caseload (N)	Minimum annual sample size (n)
60,000 and over	n=1020
12,942 to 59,999	n=300+[0.0153(N - 12,941)]
Under 12,942	n=300

* * * * *

(2) *Negative cases.*

(i) Unless a State agency chooses to select and review a number of negative cases determined by the formulas

provided in paragraph (b)(2)(ii) of this section and has included in its sampling plan the reliability certification required by paragraph (a)(2)(iv) of this section,

the minimum number of negative cases to be selected and reviewed by a State agency during each annual review period shall be determined as follows:

Average monthly reviewable negative caseload (N)	Minimum annual sample size (n)
5,000 and over	n=800
500 to 4,999	n=150+[0.144(N - 500)]
Under 500	n=150

(ii) A State agency which includes in its sampling plan the statement required by paragraph (a)(2)(iv) of this section

may determine the minimum number of negative cases to be selected and

reviewed during each annual review period as follows:

Average monthly reviewable negative caseload (N)	Minimum annual sample size (n)
5,000 and over	n=680
684 to 4,999	n=150+[0.1224(N - 683)]
Under 684	n=150

(iii) In the formulas in this paragraph (b)(2), n is the required negative sample size. This is the minimum number of negative cases subject to review which must be selected each review period.

which are part of the negative universe defined in paragraph (e)(2) of this section) during the annual review period.

need for adjustments to the sample size. FNS shall not penalize a State agency that does not adjust its sample size if the actual caseload during a review period is less than 20 percent larger than the estimated caseload initially used to determine sample size. If the actual caseload is more than 20 percent larger than the estimated caseload, the larger

(iv) In the formulas in this paragraph (b)(2), N is the average monthly number of negative cases which are subject to quality control review (i.e., households

(3) *Unanticipated changes.* Since the average monthly caseloads (both active and negative) must be estimated at the beginning of each annual review period, unanticipated changes can result in the

sample size appropriate for the actual caseload will be used in computing the sample completion rate.

* * * * *
(e) *Sample frame.* * * *

(2) *Negative cases.* The frame for negative cases shall list:

(i) All households whose applications for food stamp benefits were denied by an action in the sample month or effective for the sample month except those excluded from the universe in paragraph (f)(2) of this section. If a household is subject to more than one denial action in a single sample month, each action shall be listed separately in the sample frame; and

(ii) All households whose food stamp benefits were suspended or terminated by an action in the sample month or effective for the sample month except those excluded from the universe in paragraph (f)(2) of this section.

* * * * *
(f) *Sample universe.* * * *

(2) *Negative cases.* The universe for negative cases shall include all households whose applications for food stamps were denied or whose food stamp benefits were suspended or terminated by an action in the sample month or effective for the sample month except for the following:

* * * * *
(iv) A household which is under active investigation for Intentional Program Violation;

(v) A household which was denied, but subsequently certified within the normal 30 day processing standard, using the same application form;

(vi) A household which was suspended or terminated but the suspension or termination did not result in a break in participation that is the result of deliberate State agency action. There would be no break in participation if the household is authorized to receive its full allotment in the month for which the suspension or termination was effective other than continuation of benefits pending a fair hearing. Pro rated benefits are not considered to be a full allotment;

(vii) A household which has been sent a notice of pending status but which was not actually denied participation;

(viii) A household which was terminated for failure to file a complete monthly report by the extended filing date, but reinstated when it subsequently filed the complete report before the end of the issuance month;

(ix) Other households excluded from the negative case universe during the review process as identified in § 275.13(e).

* * * * *

7. In § 275.12:

a. paragraph (c)(1) introductory text is revised;

b. the first sentence of paragraph (f)(2) is amended by removing the reference to "\$5.00" and adding in its place a reference to "\$25.00";

c. paragraph (g)(2) introductory text is revised.

The revisions and additions read as follows:

§ 275.12 Review of active cases.

* * * * *

(c) *Field investigation.* * * *

(1) *Personal interviews.* Personal interviews shall be conducted in a manner that respects the rights, privacy, and dignity of the participants. Prior to conducting the personal interview, the reviewer shall notify the household that it has been selected, as part of an ongoing review process, for review by quality control, and that a personal face-to-face interview will be conducted in the future. The method of notifying the household and the specificity of the notification shall be determined by the State agency, in accordance with applicable State and Federal laws. The personal interview may take place at the participant's home, at an appropriate State agency certification office, or at a mutually agreed upon alternative location. The State agency shall determine the best location for the interview to take place, but would be subject to the same provisions as those regarding certification interviews at § 273.2(e)(2) of this chapter. Those regulations provide that an office interview must be waived under certain hardship conditions. Under such hardship conditions the quality control reviewer shall either conduct the personal interview with the participant's authorized representative, if one has been appointed by the household, or with the participant in the participant's home. Except in Alaska, when an exception to the field investigation is made in accordance with this section, the interview with the participant may not be conducted by phone. During the personal interview with the participant, the reviewer shall:

* * * * *

(g) *Disposition of case reviews.* * * *

(2) *Cases not subject to review.* Active cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated in the review process. In addition to cases listed in § 275.11(f)(1), these shall include:

* * * * *

8. In § 275.13:

a. paragraph (a) is revised;

b. the first sentence of paragraph (b) is revised;

c. the third sentence of paragraph (b) is amended to add the word ", suspension," between the words "denial" and "or";

d. the first sentence of paragraph (c)(1) is amended by adding the word ", suspended," between the words "denied" and "or";

e. the second sentence of paragraph (c)(1) is amended by adding the word ", suspend," between the words "deny" and "or";

f. the first sentence of paragraph (c)(2) is amended by adding the word ", suspended," between the words "denied" and "or";

g. paragraph (e)(1) is amended by adding a heading to the paragraph;

h. paragraph (e)(2) is revised;

i. the first sentence of paragraph (f) is amended by adding the words "suspended or" between the words "been" and "terminated".

The addition and revisions read as follows:

§ 275.13 Review of negative cases.

(a) *General.* A sample of households whose applications for food stamp benefits were denied or whose food stamp benefits were suspended or terminated by an action in the sample month or effective for the sample month shall be selected for quality control review. These negative cases shall be reviewed to determine whether the State agency's decision to deny, suspend, or terminate the household, as of the review date, was correct. Depending on the characteristics of individual State systems, the review date for negative cases could be the date of the agency's decision to deny, suspend, or terminate program benefits, the date on which the decision is entered into the computer system, the date of the notice to the client, or the date the negative action becomes effective. However, State agencies must consistently apply the same definition for review date to all sample cases of the same classification. The review of negative cases shall include a household case record review; an error analysis; and the reporting of review findings, including procedural problems with the action regardless of the validity of the decision to deny, suspend or terminate.

(b) *Household case record review.* The reviewer shall examine the household case record and verify through documentation in it whether the reason given for the denial, suspension, or termination is correct or whether the denial, suspension, or termination is

correct for any other reason documented in the casefile. * * *

* * * * *

(e) *Disposition of case review.* * * *

(1) *Cases reported as not complete.*
* * *

(2) *Cases not subject to review.*

Negative cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated in the review process. In addition to cases listed in § 275.11(f)(2), these shall include:

(i) A household which was dropped as a result of a correction for oversampling;

(ii) A household which was listed incorrectly in the negative frame.

* * * * *

9. In § 275.23:

a. paragraph (c)(4) is amended by adding the word “, suspension,” between the words “denial” and “or”;

b. paragraph (e)(6)(i) is amended by removing everything but the first sentence;

c. paragraph (e)(6)(iii) is revised.

d. the introductory text of paragraph (e)(8)(iii) is amended by removing the word “all” and adding in its place the words “98 percent”.

e. paragraph (e)(9) is revised.

The revisions read as follows:

§ 275.23 Determination of State agency program performance.

* * * * *

(e) *State agencies' liabilities for payment error rates.* * * *

(6) * * *

(iii) Whenever a State is assessed for an excessive payment error rate, the State shall have the right to request an appeal in accordance with procedures set forth in part 283 of this chapter. While FNS may determine a State to be liable for dollar loss under the provisions of this section and the negligence provisions of § 276.3 of this chapter for the same period of time, FNS shall not bill a State for the same dollar loss under both provisions. If FNS finds a State liable for dollar loss under both the QC liability system and the negligence provisions, FNS shall adjust the billings to ensure that two claims are not made against the State for the same dollar loss.

* * * * *

(9) *FNS Timeframes.* FNS shall determine and announce the national average payment error rate for the fiscal year within 30 days following the completion of the case review process and all arbitrations of State agency-Federal difference cases for that fiscal year, and at the same time FNS shall notify all State agencies of their

individual payment error rates and payment error rate liabilities, if any. The case review process and the arbitration of all difference cases shall be completed not later than 180 days after the end of the fiscal year. FNS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the reporting period in which the claim arose unless an administrative appeal relating to the claim is pending. Such appeals include requests for good cause waivers and administrative and judicial appeals pursuant to Section 14 of the Food Stamp Act. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c) of this chapter, FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Federal Claims Collection Act, depending upon the amount of the State's liability. FNS is not bound by the timeframes referenced in this subparagraph in cases where a State fails to submit QC data expeditiously to FNS and FNS determines that, as a result, it is unable to calculate a State's payment error rate and payment error rate liability within the prescribed timeframe.

* * * * *

Dated: July 12, 1999.

Shirley R. Watkins,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 99-18164 Filed 7-15-99; 8:45 am]

BILLING CODE 3410-30-U

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

RIN 0560-AF38

Implementation of Preferred Lender Program and Streamlining of Guaranteed Farm Loan Programs Loan Regulations; Correction

AGENCIES: Rural Housing Service, Rural Business—Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Correction to final regulations.

SUMMARY: This document corrects the amendatory language contained in the final rule published February 12, 1999, (64 FR 7358) establishing the regulations that govern the Farm Service Agency (FSA) guaranteed farm loan program. These corrections are necessary to change some erroneous references, clarify some provisions, and correct sections that conflict with statute or other program requirements. The effect will be to ensure the original intent of each provision is stated and implemented correctly. This correction will apply retroactively to those loans approved since the effective date of the final rule.

DATES: Effective on July 16, 1999.

FOR FURTHER INFORMATION CONTACT: Phillip Elder (202) 690-4012; Electronic mail: phillip_elder@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The final rule being corrected by this publication was promulgated under 7 CFR part 762 to replace the regulations under 7 CFR part 1980, subparts A and B, as they pertain to the guaranteed farm loan programs of FSA, to update and streamline program requirements, and to implement a preferred lender program.

Need for Correction

As published, the final rule (64 FR 7358-7403) contains several technical errors which may prove misleading and cause unintentional results if not clarified.

Discussion of Changes

The corrections being made are described as follows:

(1) Section 762.122(a)(1) states, “The total outstanding combined Direct and Guaranteed FO and OL principal balance cannot exceed \$700,000 and,”. This conflicts with the combined direct and guaranteed loan maximum of \$900,000 provided by paragraph (a)(4) of § 762.122. Paragraph (a)(1) should read, “The total outstanding combined guaranteed FO and OL principal balance cannot exceed \$700,000 and,”. This change is consistent with the intended policy for loan limits as discussed in the preamble of the final rule. Paragraph (a)(4) also needs to be amended to refer to “principal balance” rather than “balance” for consistency and clarity.

(2) Section 762.122(c)(1) states, “No guaranteed OL shall be made to any loan applicant after the 15th year that a loan applicant, or any individual signing the promissory note, first received direct or guaranteed OL.” Since the 15 year limit is based on the