

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814

(916) 323-5206



February 28, 1983

ALL-COUNTY LETTER NO. 83-15

TO:

SUBJECT: Optional Food Stamp Workfare Program

REFERENCE:

On October 8, 1982, the U. S. Department of Agriculture published final regulations implementing the optional Food Stamp (FS) Workfare Program. We are issuing this All-County Letter to ensure that counties are aware of this program and to explain how the related administrative costs are to be requested for Fiscal Year (FY) 1983/84.

The final federal regulations permit political subdivisions to implement FS Workfare programs encompassing the following elements:

1. All food stamp recipients who are required to register for work are subject to FS Workfare requirements. In addition, recipients who are exempt from registration requirements because they have a child between six and twelve years of age, those exempt because they are applicants for or recipients of Unemployment Insurance Benefits (UIB), and WIN registrants who are actually participating in WIN less than 20 hours per week are required to participate.
2. The required hours of FS Workfare participation are to be limited to the household's food stamp allotment divided by the State minimum wage up to a maximum of 30 hours per week.
3. FS Workfare sites are to be limited to public agencies and private nonprofit agencies.
4. If the FS Workfare mandatory participant fails, without good cause, to participate, the entire household would become ineligible to receive food stamps for a two-month period, subject to a "cure" provision.
5. FS Workfare assignments may not result in displacement of budgeted staff or filling of a vacant position at the worksite, unless it can be demonstrated that such vacancy is the result of insufficient funds to sustain former staffing levels.

The above are only some of the key elements of FS Workfare. For further information, we have attached the federal regulations which pertain to the program. The Department is developing State policy for those areas in which State agencies are provided flexibility under the federal regulations. These policies will be transmitted to the counties as soon as possible. In the meantime, counties that are interested in this program should use the information that is currently available for planning purposes. We do not anticipate that the forthcoming State policies will require any major adjustments in the FS Workfare proposals that are developed.

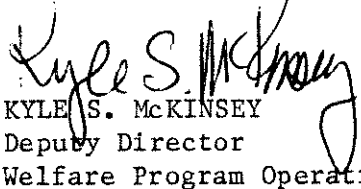
The final federal regulations provide 50 percent federal reimbursement for the administrative costs incurred in operating FS Workfare programs. In order for the Department to request funds for the State portion of the nonfederal share of FS Workfare programs, it is imperative for counties planning to implement this program in FY 1983/84 to provide funding information to this Department. The FY 1983/84 Cost Control Impact Questionnaire is the vehicle to use to provide this information.

County requests should include the number of staff and their first-line supervisors projected to time study to FS Workfare and the increased support costs attributable to Workfare. All time spent by eligibility staff and their first-line supervisors involved in the determination of eligibility and continuing certification of FS benefits will continue to be charged to the appropriate eligibility function and will be subject to normal eligibility allocations. However, time spent by time-studied staff for activities outlined in a workfare plan which are unique to the project and are not an integral component of the initial and/or continuing food stamp eligibility process should be charged to FS Workfare. FS Workfare information should be reported on the Cost Control Questionnaire as follows:

Questionnaire Section VI - Other Considerations, page 31. Identify the number of staff and their first-line supervisors anticipated to time study to FS Workfare in FY 1983/84. Identify whether the salary level of the proposed Workfare staff is equivalent to Social Services or Eligibility Workers. The salary level of Group I casework staff is the primary factor in determining whether the caseworker should time study to the Social Services or Eligibility and Nonservice function. Thoroughly justify projected staffing levels and methodology used to compute the number of staff. Itemize by support category (i.e., clerical, administrative, etc.) projected operating costs for the Workfare program. Include anticipated Group III, Direct Costs, attributable to FS Workfare. Identify the specific time period the above projections cover (i.e., six months, nine months, etc.). Also, should you determine additional eligibility staff is necessary for the initial and/or continuing eligibility process, separately identify the number of workers and/or supervisors. The above projections should not be included in any other sections of the Questionnaire. Explain and justify in detail FY 1983/84 projected needs.

If State funds are appropriated in FY 1983/84 for FS Workfare, participating counties will receive a separate Workfare allocation and transferability between Workfare and other programs will not be allowed.

If you have any questions on the program aspects of FS Workfare, please contact Steve Munro of the Employment Programs Bureau at (916) 323-5206. Questions regarding the completion of the Cost Control Questionnaire should be directed to the County Administrative Expense Control Bureau, at (916) 322-5802.

A handwritten signature in black ink, appearing to read "Kyle S. McKinsey". The signature is written in a cursive style with a large, looping initial "K".

KYLE S. MCKINSEY
Deputy Director
Welfare Program Operations

cc: CWDA

Attachment

Friday
October 8, 1982

Food and Nutrition Service

Part V

**Department of
Agriculture**

Food and Nutrition Service

Optional Workfare Program; Final Rule

DEPARTMENT OF AGRICULTURE**Food and Nutrition Service****7 CFR Parts 272 and 273**

[Amdt. No. 217]

Optional Workfare Program**AGENCY:** Food and Nutrition Service, USDA.**ACTION:** Final rule.

SUMMARY: The Food Stamp and Commodity Distribution Amendments of 1981 (Pub. L. 97-98), enacted on December 22, 1981, provide the option for any political subdivision, in any State, to establish a workfare program as a component of the Food Stamp Program. The objective of this final rule is to permit those State agencies or political subdivisions choosing to establish a workfare program to do so for eligible food stamp recipients. Workfare-eligible recipients would be assigned to public service work in return for the household's food stamp allotment. The work would be valued at a rate equivalent to the greater of the Federal or State minimum wage. The Food Stamp Act Amendments of 1982 (Pub. L. 97-253), enacted on September 8, 1982, made certain changes in the law. Those changes which did not leave any discretion to the Department have been incorporated into this rule.

EFFECTIVE DATE: This rule is effective on November 8, 1982.

FOR FURTHER INFORMATION CONTACT:

Questions regarding this proposed rulemaking should be directed to Thomas O'Connor, Supervisor, Policy and Regulations Section, Programs Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302 or by telephone at (703) 756-3429.

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this final rule have been approved by the Office of Management and Budget (OMB). (OMB approval No. 0584-0285).

Classification

Executive Order. This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been classified "not major". The rule will not have an annual effect on the economy of \$100 million or more, nor will it likely result in a major increase in costs or prices for

consumers, individual industries, Federal, State or local government agencies or geographic regions. Because this rule will not affect the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act. This final rule has also been reviewed with regard to the requirements of Pub. L. 96-354. Samuel J. Cornelius, Administrator of the Food and Nutrition Service has certified that the rule will not have a significant economic impact on a substantial number of small entities. The rule will implement those provisions of Section 1333 of Pub. L. 97-98, the Food Stamp and Commodity Distribution Amendments of 1981, which require the establishment of an optional workfare program. State and local welfare agencies will be affected to the extent that they are involved in administering the workfare program. Political subdivisions will also be affected if they choose to administer a workfare program. Those most affected will be individuals participating in the Food Stamp Program who live in an area operating a workfare program and meet the eligibility requirements for participating in such a program.

Introduction

On June 8, 1982, the Department issued proposed regulations (47 FR 24968) to implement Section 1333 of the Food Stamp and Commodity Distribution Amendments of 1981 (Pub. L. 97-98) which provided for the establishment of workfare programs at the option of political subdivisions. The Department received a total of 94 comment letters from State welfare agencies, State employment services, local agencies, FNS Regional Offices, another Federal agency, public interest groups, and individuals. This preamble discusses changes made in the final rule which result from comments received. We have also clarified several points where commenters expressed confusion. Most comments which request changes contrary to the legislation are not discussed in the preamble. The rationale contained in the June 8 proposed rule should be regarded as the basis for the final rule, where the rule is unchanged.

We would also like to point out that the workfare concept has also been adopted into law for the Aid to Families with Dependent Children Program (AFDC) (Pub. L. 97-35). The Department of Health and Human Services issued

final regulations for the Community Work Experience Program (CWEP) on February 5, 1982 (45 CFR Part 238). This program is optional for State agencies and permits the establishment of a workfare requirement for eligible AFDC recipients.

Voluntary Workfare

The Department received a number of comments noting that another available option, per legislative history (S. Rep. No. 97-290, 97th Cong., 1st Sess., p. 228 (1981)), was the establishment of a workfare program where participation is voluntary for the recipients. The Department recognizes that this may have been intended by Congress as an option to be offered to State agencies and political subdivisions, and has revised the rule accordingly. However, the Department is concerned about the cost effectiveness of such programs. The Department will not approve plans which do not show that the benefits of establishing the workfare program, in terms of hours worked by participants and reduced food stamp allotments due to successful job attainment, are expected to exceed the costs of establishing such a program. In addition, if the Department finds that an approved voluntary program is too costly for the number of participants it is serving, the Department reserves the right to withdraw approval.

An additional option which several commenters thought was available, per the statutory language, was that participants had a choice between workfare and job search in all workfare programs. The Department does not agree that this was intended by the statute. It is provided in the legislative history that, "to the extent that workfare and job search requirements conflict, job search activities should take precedence" (H.R. Rep. No. 97-106, 97th Cong., 1st Sess., p. 168 (1981)). This infers that both obligations may exist concurrently. In addition, the weekly limit on workfare hours is intended to assure that time remain for job search activities.

Program Administration

Seventeen commenters thought that political subdivisions should be further defined to facilitate program administration and prevent areas like water districts and school districts from submitting plans. Fourteen of these commenters thought it should be limited to areas administering the Food Stamp Program. Many of these fourteen cited the House Committee Report (H.R. Report No. 97-106, page 57) to support their position. The Department has

chosen not to amend the rule to limit eligible political subdivisions. The Department thinks Congress was clear, by not limiting the definition of political subdivision in the statute, conference report (S. Report No. 97-290, pages 226-228), or any other portion of the House Committee Report, that any political subdivision should be permitted to submit a plan. Limiting eligibility to those political subdivisions which administer the Food Stamp Program would preclude any county or city in a State which administers the Food Stamp Program from implementing workfare. For example, if a State agency administers the Food Stamp Program and a city chooses to implement workfare, the city would not be able to do so. The Department does not believe this was Congress' intention.

The proposed rule stated that State agencies would act as authorized agents for FNS by being responsible for ensuring compliance with workfare programs with the workfare regulations and for disbursing funds to workfare programs. Thirteen commenters, three of which were State agencies, thought FNS should be responsible for the monitoring of workfare programs since no mention of State agency involvement was provided in the statute. One State agency commented in favor of our proposal. In light of these comments, the Department has reexamined this issue and made the following change. State agencies will now have the option of assuming the responsibility of monitoring and ensuring compliance of workfare programs. However, there will not be an option regarding the disbursing of Federal funds. Federal funding will continue to go through the State agency Letter of Credit, as provided in the proposed rule, and disbursed to workfare programs by the State agency.

Three other State agencies commented that FNS should fund any activities undertaken by State agencies in the role of authorized agents at 100 percent instead of the regular 50 percent rate. Since the Department is leaving this role as an option, the Federal participation will remain at 50 percent.

State Agency Policy Decisions

Upon review of comments, the Department has decided that certain policy decisions, not specified by the statute or legislative history, should be left to the State agencies. This is consistent with this Administration's policy of enhancing State flexibility. These decisions are in the areas of reimbursable expenses to participants, good cause, and application of sanctions to households which split into two or

more households. The State agency may, by not taking any action, use the policy established in this rule for those three areas. On the other hand, the State agency may submit for approval to FNS its policy in any or all of these areas. These policies will be approved according to their compliance with the workfare statute and legislative history. Consequently, transportation, which is reimbursable according to the statute, shall be integrated into the State policy on reimbursable expenses. Likewise, the cost of meals away from home is not reimbursable, as provided in the conference report (Senate Report No. 97-290, page 228). Upon obtaining approval of a policy by FNS, all workfare programs within that State shall operate according to that policy. Until that approval is obtained, the Federal policy provided in this rule shall apply. The rule has been amended accordingly.

Participant Reimbursement

Several respondents commented that the cost of child care should be included as a reimbursable cost to the participant if it is necessary to meet the workfare obligation and two other commenters requested clarification on the treatment of child care. This cost was intended to be reimbursable by the proposed rule as a cost "reasonably necessary and directly related to participation in the program."

This has been clarified in the final rule through specific identification of child care as a reimbursable cost. It should be noted, however, that child care which has been reimbursed cannot be used to determine the amount of the child care deduction in determining household benefits. This has also been added to the rule.

A number of commenters discussed the \$25 limit on reimbursements per participant per month. Most of these thought this amount was not sufficient to cover expenses. Two commenters thought the amount would lead to prohibitive expenses for local agencies. The \$25 is, however, a statutory requirement and has not been revised. Four other respondents commented that this limit is only on the amount that FNS would share; there is no limit on how much may be reimbursed to the participant. This is a correct interpretation which was intended by the Department and has been clarified in the rule. Reimbursing costs which exceed \$25 per participant per month is a local option and a local expense.

One respondent, citing the House Committee Report (H.R. Rep. No. 97-106, p. 167), commented that it was Congress' intention that participants be

reimbursed for all actual costs of transportation plus up to \$25 per participant per month for other work-related expenses. However, the statutory language and the more recent Conference Report (S. Rep. No. 97-290, p. 228) indicate that all work-related reimbursements, including transportation, be considered in the \$25 per participant per month limit. In addition, this statutory provision was designed after the identical CWEP regulatory provision which includes transportation in the \$25 limit. Consequently, the Department has not amended this provision.

Sanctions

Many comments were received on the sanctions policy. Some respondents requested statutory changes which cannot be made here. Several requested clarification on how sanctions would be imposed in specific situations. As a result of these requests, a few additions have been made to the rule. The first clarification addresses when the sanction for noncomplying households begins. For those households still participating in the program, the disqualification shall begin the first possible month that the sanction can be placed. For those households no longer participating in the program, the disqualification shall begin whenever the household returns to the program. Consequently, if a household leaves the food stamp program before the sanction can be levied, the sanction will pend until the household returns to the program. Once the sanction begins, however, it runs through to its conclusion regardless of the household's status.

The regulations have also been amended to clarify that a two month sanction is levied for each month that a household is certified for food stamps while not complying with workfare requirements. In other words, if a household did not comply for two consecutive months without having good cause (which may occur due to the timing of obligations), then the household would be sanctioned for four consecutive months (two months of noncompliance times two month sanctions). The State agency will inform the household of the penalty for failure to comply at the time the household is informed of the nature of the workfare program.

The third clarification made is in the situation where a household to be sanctioned splits into two or more households. The workfare sanction is to be applied to all household members. Even though a household splits, each

individual member will still be subject to disqualification. Consequently, if one household member leaves the household and the program, the remaining household members would be ineligible to receive benefits for the sanction period. In cases where only part of the original household is still participating in the program, the disqualification period will begin for all of the members once the sanction can be levied against any one. Upon completion of the sanction period, all of the original household members would again be eligible to receive benefits. If a departing household member has joined another food stamp household, that member would be ineligible to participate for the sanction period. When determining eligibility and allotment, the individual will not be included in the household's size. However, all of that member's income and resources would be included in determining the new household's benefits. Applying the sanctions in this manner ensures that the whole household, as it existed during the time of noncompliance, is penalized, just as it would have been if the household did not separate. To permit the remaining household members to avoid the penalty, by only applying it to the noncomplying member, would encourage household breakup. The Department believes this was not Congress' intent and should be avoided.

Unemployment Insurance Recipients

Seven commenters indicated that Unemployment Insurance (UI) recipients should be exempt from workfare since they are required in most States to be available for work 40 hours a week. The commenters suggested that by being involved in workfare, the UI recipients risk losing their UI benefits. This provision is a statutory provision and as such cannot be changed. It is clear, however, that workfare assignments are secondary to finding regular employment. If a workfare participant is notified of a job interview to attend in order to comply with UI requirements, that interview would take precedence over the workfare assignment. The Department has clarified this in the final rule. One commenter noted that the intent of the legislation is that UI applicants as well as UI recipients be subject to workfare. The Department agrees and the rule has been changed accordingly.

Prime Designee

Five respondents requested that the prime designee concept from the Food Stamp Workfare Demonstration Projects be incorporated into the rule. The prime

designee is the one individual in a household who is workfare eligible and designated by the household as being responsible for the workfare obligation. If a household has more than one household member eligible for workfare, only the one designated by the household would be referred to the operating agency as being available to work. If that "prime designee" fails to comply with the workfare obligation, it would be the household's responsibility to have one of the other workfare eligible household members report to the operating agency for assignment. Otherwise, the household will be sanctioned.

The Department has not added the prime designee concept to the rule. The Department cannot restrict all those State agencies and political subdivisions wishing to operate a workfare program by requiring the establishment of such a system. However, there is nothing in this rule that precludes an operating agency from establishing a prime designee system for their program.

Good Cause

A number of additions to good cause reasons were requested by commenters. One was that reference to "adequate" child care be made, in the already existing provision that lack of child care for any children in a household between the ages of six and twelve is good cause for noncompliance by the parent or caretaker. Commenters noted that adequate child care is used in the CWEP regulations in reference to children between the ages of three and six. The Department agrees that this should be a concern and has adopted the CWEP provision by changing the rule accordingly. Commenters also requested that where work expenses exceed the amount reimbursed by the operating agency, good cause exists for noncompliance. Since the Department agrees that it was the intention of the legislation that participants not be required to spend their scarce resources to participate in workfare, this provision has been added to the rule. This is also consistent with the CWEP regulations which do not permit AFDC recipients to be required to participate in CWEP without being reimbursed for work expenses. Ten commenters requested that inappropriate work assignments be considered good cause for noncompliance. The Department has not added this to the rule because the decision of what is appropriate work for those able to work is a decision that should be left with the operating agency. Paragraph (f)(2)(iii) already considers specific work assignments unsuitable for participants that demonstrate that they

are physically or mentally unfit to perform that work.

Regular Worker Protections

Fourteen commenters expressed concern that paragraph (f)(2)(viii) did not provide sufficient protection against the displacement of regular workers. The complaint was that a public agency could easily prove that insufficient funds were available to sustain staff levels and thus continue to use workfare participants although regular workers would have been accommodated were workfare participants not available. The commenters requested deletion of the phrase which permits the use of workfare participants to fill vacancies when proof of insufficient funds can be provided. The Department has chosen not to remove the phrase because there may indeed be instances where use of workfare participants to fill certain vacancies would be valid due to funding limitations precluding the filling of those positions. However, since displacement of regular workers is a statutory prohibition, this will be monitored closely.

Grievance Procedure

Twelve respondents commented that grievance procedures should be established and maintained for workfare participants in addition to the already existing fair hearing process. While such a system is already established in the State agency for various recipient complaints and the Department is sure that most operating agencies would have chosen to establish such a system, the Department has incorporated a provision in this rule allowing the establishment of a grievance procedure by the operating agency. The Department believes that such a procedure will help avoid an increase in the fair hearing burden. It will permit workfare participants to raise to the operating agency complaints regarding their working conditions or perceived noncompliance by job sites with the workfare regulations, and permit the operating agency to resolve those complaints without having to rely on the fair hearing process. However, this grievance procedure does not replace the fair hearing process nor does a workfare participant need to go through the grievance procedure before requesting a fair hearing.

Benefits and Working Conditions

Three respondents commented on the equal benefits and working conditions provisions which state that workfare participants should receive equal benefits and working conditions as

those provided to similarly employed individuals. Generally, the commenters thought the provisions would be a deterrent to job site participation due to the expenses and administrative difficulty of meeting them. These are statutory provisions and, consequently, have not been changed. However, the Department did not intend, nor does it think it was the statute's intention that workfare recipients be provided health benefits through the job site's health plan or paid vacations like those received by the paid employees. Workfare participants are not employees in the technical sense. The work performed is done as a condition of eligibility to receive the benefits their household has been certified to receive. The provisions of this rule are intended to ensure that the benefits and working conditions related to the actual work performed, not the employment by a particular agency, and provided to similarly employed individuals doing similar work, are provided to workfare participants. This includes benefits such as worker's compensation and working conditions such as coffee breaks, lunch periods, and personal safety equipment. The determination of what constitutes similarly employed individuals is left to the operating agency.

Job Search Period

The proposed rule stated that a job search period of up to 30 days following household certification may be established prior to assigning a recipient to a workfare job. One commenter questioned whether or not the 30-day job search period would be applicable after a household disqualification. The Department has chosen to let this decision remain a local option.

Status of Participant While Awaiting Fair Hearing

The proposed rule stated that a household would, if otherwise determined eligible, continue to have a workfare obligation while awaiting the outcome of a fair hearing. One commenter noted that this meant a household claiming an exemption through the fair hearing process would still be required to participate in workfare and face a sanction if it did not comply during those months between the fair hearing request and the fair hearing decision. This is correct. The participant may choose to continue to not comply while awaiting the fair hearing. In such a case, the household would continue to receive benefits. However, if the fair hearing results in an adverse finding, the household will be sanctioned for each month that it was

certified for food stamps while failing to comply with workfare requirements.

Notice to Operating Agency

One commenter thought the notice from the State agency to the operating agency should include the hours of obligation and an indication of any part-time employment the potential participant may have. Upon review, the Department did amend the requirements of the notice, though not exactly as the commenter requested. The notice requirements have now been changed to require an indication of any part-time work which will assure that the State agency and operating agency do not receive different reports on the household's work situation. However, only if the State agency is calculating the hours of obligation should the hours be included on the notice. If the operating agency is computing the hours, as permitted in paragraph (d)(2), the monthly allotment will be included.

Reporting Requirements

The proposed rule stated that the State agency would submit quarterly reports to FNS, within 45 days of the end of each quarter, which provide certain workfare statistics for that quarter. One State agency and one local agency commented that the 45-day reporting deadline would be impossible to meet. The local agency suggested a 60-day deadline. Since more comments were not received on this issue, the Department did not change this deadline. However, it will review requests for specific waivers submitted by the State agencies. In such a request, the State agency would need to demonstrate why an extension is necessary.

Client Confidentiality

One commenter noted that regulations restricting disclosure or use of information obtained from food stamp households were missing. The rule has been amended to reference § 272.1(c) which provides for restrictions on disclosure or use of this information.

Round Down Obligation

One respondent commented that there should be a provision to round down hours of obligation if a fraction of an hour is left when making the calculation. The Department has chosen to leave this decision as a local option and has amended the rule to indicate this. Fractions of hours may be rounded down or households may be required to work those fractions. However, in no instance may the number be rounded up since a household may not be required to work more than those hours

determined by dividing the household's allotment by the minimum wage.

Federal Liability

The proposed rule stated that the Federal government is not the employer of workfare participants and, consequently, does not assume any liability for injury or death of a workfare participant while on the job. Upon review, the Department recognized that Federal agencies may be job site sponsors and has amended the rule to acknowledge this possibility. However, all Federal agencies would need to check with their own statutory limitations on use of volunteers prior to providing work for workfare participants.

Persons Subject To Workfare

In the proposed rule, the Department identified persons subject to workfare by referencing the work registration regulations to identify those subject to work registration and then identifying those additional groups also eligible for workfare. In so doing, the Department failed to include as eligible those parents or other household members responsible for the care of a dependent child between six and twelve. Regulations establishing this group as being subject to the work registration requirement have not yet been issued. Consequently, the Department has amended this rule to conform with the statute by establishing this group as being eligible for workfare.

Changes Resulting From Recent Legislation

Changes in the workfare legislation have been made as a result of provisions in the Food Stamp Act Amendments of 1982. The Department has determined that three of those provisions leave no discretion for the Department and, consequently, can be included in this final rule.

Hours of Workfare. The maximum number of workfare hours to be required of any participant per week has been raised to 30. The maximum number of hours which may be required including any other hours worked remains at 30 per week.

Similar Workfare Programs. A provision which permits the operation of joint workfare/CWEP programs, as well as combining workfare with other workfare-type programs when the Department approves, was included in the legislation. This provision was previously part of the legislative history and the proposed regulations were designed accordingly. Changes have

been made in this final rule to clarify this provision.

WIN Participants. The operating agency will now have the option of exempting or not exempting recipients who are " * * * subject to and currently actively and satisfactorily participating" more than 20 hours per week in WIN. If an operating agency chooses not to exempt a WIN participant, the hours of WIN participation will be counted towards the 30 hour per week limit. Recipients who are exempt from workfare as a result of being students enrolled at least half time in training programs other than WIN are not included in this option and may not be subject to workfare.

The Department, upon review of this provision has amended its interpretation indicated in the proposed rule. The Department provided in the proposed rule that CWEP participants be included with WIN participants as being exempt from workfare when participating more than 20 hours per week. However, the recent legislation has made it clear, by referring specifically to WIN participants, that Congress did not intend that CWEP participation be included in the 20 hour limit. Consequently, the rule has been amended so that involvement in CWEP for more than 20 hours is not grounds for an exemption. However, the 30-hour per week limit on hours of work per week will still be applicable to joint CWEP and workfare participation.

Conforming Amendments

According to these regulations, if an individual fails to comply with the workfare requirements, without good cause, the State agency must disqualify the entire household. The Department is making conforming amendments, in four different areas, to implement this policy.

The first conforming amendment, at 7 CFR 273.1(b)(6), includes these household members in the definition of "disqualified individuals". The second conforming amendment, a 7 CFR 273.8(j) requires the State agency to count the disqualified individual's resources when determining the household's eligibility. The third conforming amendment, at 7 CFR 273.9(b)(3), requires the State agency to count the disqualified individual's entire income in determining the household's eligibility and calculating its allotment. The fourth conforming amendment, at 7 CFR 273.11c, restates the procedures for handling resources and income which are required by 7 CFR 273.22(f)(6)(iii).

Implementation

This rule is effective November 8, 1982. Workfare programs may be

implemented after this date provided FNS has approved the workfare plan. Workfare plans may be submitted for approval prior to this date.

List of Subjects

7 CFR Part 272

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

7 CFR Part 273

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

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

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. A new paragraph (42) is added to § 272.1(g) as follows:

§ 272.1 General terms and conditions.

(g) Implementation. * * *

(42) *Amendment 217.* The regulations concerning the optional workfare program contained in Amendment 217 shall be in effect November 8, 1982. Workfare programs may be implemented after this date provided FNS has approved the workfare plan.

2. In § 272.2, a new sentence is added to the end of paragraph (a)(2) to read as follows:

§ 272.2 Plan of operation.

(a) General Purpose and Content.

(2) *Content.* * * * The Workfare Plan is also considered part of the State Plan of Operation, but is submitted separately as prescribed under § 273.22.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.1, paragraph (b)(6) is revised to read as follows:

§ 273.1 Household concept.

(b) Nonhousehold members. * * *

(6) *Disqualified individuals.* Individuals disqualified for fraud, as set forth in § 273.16, for failure to provide an SSN, as set forth in § 273.6, or for failure to comply with workfare requirements, as set forth in § 273.22.

4. In § 273.8, paragraph (j) is revised to read as follows:

§ 273.8 Resource eligibility standards.

(j) *Resources of nonhousehold members.* The resources of nonhousehold members, defined in § 273.1(b), shall not be counted as available to the household unless the member is:

(1) Disqualified from the program for fraud, in accordance with § 273.16;

(2) Disqualified from the program for failing to comply with the requirement to provide an SSN in accordance with § 273.6;

(3) Disqualified from the program for failing to comply with workfare requirements in accordance with § 273.22; or

(4) An ineligible alien in accordance with § 273.4 who would be considered a household member if not for his or her ineligible alien status.

5. In § 273.9, a new sentence is added to paragraph (b)(3) to read as follows:

§ 273.9 Income and deductions.

(b) Definition of income. * * *

(3) * * * The earned or unearned income of an individual disqualified from the household for failing to comply with workfare requirements, in accordance with § 273.22, shall continue to be attributed in their entirety to the remaining household members.

6. In § 273.11, paragraph (c) is revised to read as follows:

§ 273.11 Action on households with special circumstances.

(c) Treatment of income and resources of disqualified members.

Individual household members may be disqualified for failing to comply with workfare requirements, for fraud, for refusal to obtain or to provide an SSN, or for being an ineligible alien. During the period of time that such household members are ineligible, the eligibility and benefit level of any remaining household members shall be determined in accordance with the procedures outlined in this section.

(1) *Disqualification for failing to comply with workfare requirements.* The eligibility and benefit level of a household which contains an individual who is disqualified for this reason shall be determined as follows:

(i) *Income, resources, and deductible expenses.* The income and resources of the disqualified member shall continue to count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, and excess shelter deductions shall continue

to apply to the remaining household members.

(ii) *Eligibility and benefit level.* The disqualified member shall not be included when determining the household's size for the purposes of assigning a benefit level to the household or of comparing the household's monthly income with the income eligibility standards. The State agency shall ensure that no household's coupon allotment is increased as a result of the disqualification of one or more household members.

(2) *Disqualification for other causes.* The eligibility and benefit level of any remaining household members of a household containing individuals disqualified for fraud, for refusal to obtain or to provide an SSN, or for being an ineligible alien shall be determined as follows:

(i) *Resource.* The resources of such disqualified members shall continue to count in their entirety to the remaining household members.

(ii) *Income.* A pro rata share of the income of such disqualified members shall be counted as income to the remaining members. This pro rata share is calculated by first subtracting the allowable exclusions from the disqualified member's income and dividing the income evenly among the household members, including the disqualified members. All but the disqualified members' share is counted as a deductible shelter expense for the remaining household members.

(iii) *Deductible expenses.* The 18 percent earned income deduction shall apply to the prorated income earned by such disqualified members which is attributed to their households. That portion of the households' allowable shelter and dependent care expenses which are either paid by or billed to the disqualified members shall be divided evenly among the households' members, including the disqualified members. All but the disqualified members' share is counted as a deductible shelter expense for the remaining household members.

(iv) *Eligibility and benefit level.* Such disqualified members shall not be included when determining their households' sizes for purposes of assigning a benefit level to the households or for purposes of comparing the households' monthly incomes with the income eligibility standards.

(3) *Reduction or termination of benefits within the certification period.* Whenever an individual is disqualified within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining household members based, as

much as possible, on information in the case file.

(i) *Fraud disqualification.* If a household's benefits are reduced or terminated within the certification period because one of its members had been disqualified for fraud, the State agency shall notify the remaining members of their eligibility and benefit level at the same time the disqualified member is notified of his or her disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits.

(ii) *Disqualification for other causes.* If a household's benefits are reduced or terminated within the certification period because one or more of its members failed to comply with workfare's requirements, refused to obtain or provide an SSN, or is an ineligible alien, the State agency shall issue a notice of adverse action in accordance with § 273.13(a)(2) which informs the household of the disqualification, the reason for the disqualification, the eligibility and benefit level of the remaining members, and the actions the household must take to end the disqualification.

7. A new § 273.22 is added to read as follows:

§ 273.22 Optional workfare program.

(a) *General.* This section contains rules which are to be followed in operating a Food Stamp Workfare Program. Under this program, nonexempt food stamp recipients may be required to perform work in a public service capacity as a condition of eligibility to receive the coupon allotment to which their household is normally entitled. The primary goal of workfare is to improve employability and enable individuals to move into regular employment.

(b) *Program Administration.* (1) Any State food stamp agency or other political subdivision in any State choosing to establish and operate a workfare program must submit for FNS approval a workfare plan in accordance with the requirements of this section. For the purpose of this section, a political subdivision is any local government, including, but not limited to, any county, city, town or parish. A State agency may implement a workfare program statewide or in only some areas of the State. The areas of operation must be identified in the State workfare plan.

(2) Political subdivisions are encouraged, but not required, to submit their plans to FNS through their respective State agencies. At a minimum, however, plans shall be

submitted to the State agencies concurrent with their submission to FNS. Workfare plans and subsequent amendments shall not be implemented prior to their approval by FNS.

(3) When a State agency chooses to sponsor a workfare program by submitting a plan to FNS, it shall append the approved plan to its State Plan of Operations. When a political subdivision chooses to sponsor a workfare program by submitting a plan to FNS, the State agency shall be responsible as a facilitator in the administration of the program by disbursing Federal funding and meeting the requirements identified in paragraph (d) of this section. Upon notification that FNS has approved a workfare plan submitted by a political subdivision in its State, the State agency shall incorporate that political subdivision's workfare plan into its own State Plan of Operations.

(4) The operating agency is that administrative organization which has been identified in the workfare plan as being responsible for establishing job sites, assigning eligible recipients to the job sites, and meeting the requirements of this section. The operating agency may be any public or private, nonprofit organization. The State agency or political subdivision which submitted the workfare plan shall be responsible for monitoring the operating agency's compliance with the requirements of this section or of the workfare plan. The Secretary may suspend or terminate some or all workfare program funding, or withdraw approval of the workfare program from the State agency or political subdivision which submitted the workfare plan upon finding that that State agency or political subdivision, or their respective operating agencies have failed to comply with the requirements of this section or of the workfare plan.

(5) State agencies or other political subdivisions shall describe in detail in the plan how the political subdivision, working with the State agency and any other cooperating agencies that may be involved in the program, shall fulfill the provisions of this section. The plan shall include workload projections, staffing plans, interagency communication plans, and specific operational agreements developed by the agencies involved. The plan shall be a one-time submittal, with amendments submitted as needed to cover any changes in the workfare program as they occur.

(6) State agencies or political subdivisions submitting a workfare plan shall submit with the plan an operating budget covering the period from the initiation of the workfare program's

implementation schedule to the close of the Federal fiscal year. In addition, an estimate of the cost for one full year of operations shall be submitted together with the workfare plan. For subsequent fiscal years, the workfare program budget shall be included in the State agency's budget.

(7) If workfare plans are submitted by more than one political subdivision, each representing the same population (such as a city within a county), the Department shall determine which political subdivision will have its plan approved. Under no circumstances shall a food stamp recipient be subject to more than one food stamp workfare program. If a political subdivision chooses to operate a workfare program and represents a population which is already, at least in part, subject to a food stamp workfare program administered by another political subdivision, it must establish in its workfare plan how food stamp recipients will not be subject to more than one food stamp workfare program.

(c) *Operating Agency Responsibilities.* (1) The operating agency, as designated by the State agency or other political subdivision which submits a plan, shall be responsible for establishing and monitoring job sites, interviewing and assessing eligible recipients, assigning eligible recipients to appropriate job sites, monitoring participant compliance, making initial determinations of good cause for household noncompliance, and otherwise meeting the requirements of this section.

(2) *Establishment of Job Sites.* Workfare job slots may only be located in public or private, nonprofit agencies. Contractual agreements must be established between the operating agency and organizations providing jobs which include but are not limited to designation of the slots available and designation of responsibility for provision of benefits, if any are required, to the workfare participant.

(3) *Notifying State Agency of Noncompliance.* The operating agency shall notify the State agency of noncompliance by a household with a workfare obligation when it has determined that the household did not have good cause for the non-compliance. This notification shall occur within five days of such determination so that the State agency may make a final determination as provided in paragraph (d)(4) of this section.

(4) *Notifications.* Notices shall be established to be used as follows:

(i) For the State agency to notify the operating agency of workfare-eligible households. Included in this notice shall

be the case name, case number, names of workfare-eligible household members, address of the household, certification period, and indication of any part-time work. If the State agency is calculating the hours of obligation, this shall also be included in this notice. If the operating agency is computing the hours to be worked, the monthly allotment shall be included.

(ii) For operating agencies to notify the workfare participant of where and when the participant is to report, to whom the participant is to report, a brief description of duties for the particular placement, and the number of hours to be worked.

(iii) For operating agencies to notify the State agency of failure by a household to meet its workfare obligation.

(5) *Recordkeeping Requirements.*

(i) Files must be maintained which record activity by workfare participants. At a minimum, these records must contain job sites and hours assigned, hours completed, and communications with the State agency and job sites.

(ii) Program records shall be maintained in an orderly fashion, for audit and review purposes, for a period of 3 years from the month of origin of each record. Fiscal records and accountable documents shall be retained for 3 years from the date of fiscal or administrative closure of the workfare program. Fiscal closure, as used in this paragraph, means that workfare program obligations for or against the Federal government have been liquidated. Administrative closure, as used in this paragraph, means that the operating agency or Federal government has determined and documented that no further action to liquidate the workfare program obligation is appropriate. Fiscal records and accountable records shall be kept in a manner which will permit verification of direct monthly reimbursements to recipients, in accordance with paragraph (f)(4) of this section.

(6) *Reporting Requirements.* The operating agency shall be responsible for providing information needed by the State agency to fulfill the reporting requirements stated in paragraph (d)(6) of this section.

(7) *Disclosure.* The provision of § 272.1(c) restricting the use and disclosure of information obtained from food stamp households shall be applicable to the administration of the workfare program.

(8) *Grievance Procedures.* The operating agency may establish a system for handling complaints filed by workfare participants regarding their working conditions, perceived

noncompliance by job sites with the provisions of this section, or any other area related to their workfare participation. This procedure need not handle complaints that can be pursued through a fair hearing nor may choosing not to use this procedure preclude a participant from requesting a fair hearing. If established, a description of this system shall be included in the workfare plan. Complaints which have not been resolved through this system and those against the operating agency shall be forwarded to the State agency and handled by the State agency according to the provisions of § 271.6. Workfare participants shall be informed of the grievance procedure.

(d) *State Agency Responsibilities.* (1) If a political subdivision chooses to operate a workfare program, the State agency shall cooperate with the political subdivision in developing a plan. This includes providing caseload and cost estimates, as well as being available for consultation on the design of the administrative structure and interagency communications for the program. The State agency may decide what its workfare policy shall be in three areas. They are the definition of reimbursable expenses, the definition of good cause, and the sanctioning of members of divided households (paragraphs (f)(4), (f)(5), and (f)(6)(ii) of this section, respectively). The State agency may either accept the policies contained in these paragraphs or determine its own policies, subject to the requirements of section 20 of the Food Stamp Act of 1977, as amended, and the approval of FNS. Until the Food and Nutrition Service approves any alternate policies of the State agency, the provisions of paragraphs (f)(4), (f)(5), and (f)(6)(ii) of this section shall apply.

(2) The State agency shall determine at certification or recertification which household members are eligible for the workfare program and inform the household representative of the nature of the program and of the penalties for noncompliance. If the State agency is not the operating agency, each member of a household who is subject to workfare under paragraph (e)(1) of this section shall be referred to the organization which is the operating agency. The information identified in paragraph (c)(4)(f) of this section shall be forwarded to the operating agency within 5 days after the date of household certification. Computation of hours to be worked may be delegated to the operating agency.

(3) The State agency shall inform the household and the operating agency of the effect of any changes in a

household's circumstances on the household's workfare obligation. This includes changes in benefit levels or workfare eligibility.

(4) Upon notification by the operating agency that a participant has failed to comply with the workfare requirement without good cause, the State agency shall make a final determination as to whether or not such failure occurred and whether there was good cause for any such failure. If the State agency determines that the participant did not have good cause for noncompliance, a sanction shall be processed as provided in paragraph (f)(8) of this section. The State agency shall immediately inform the operating agency of the months during which the sanction shall apply.

(5) Recordkeeping Requirements. The State agency shall maintain in each household's casefile all workfare-related forms used by the State agency in meeting the requirements of this section.

(6) Reporting Requirements. The State agency shall submit quarterly reports to FNS within 45 days of the end of each quarter identifying for that quarter for that State:

(i) The number of households referred to the operating agency as containing workfare-eligible recipients. A household shall be counted as referred each time it is referred to the operating agency.

(ii) The number of households assigned to jobs each month by the operating agency.

(iii) The number of individuals assigned to jobs each month by the operating agency.

(iv) The total number of hours worked by participants.

(v) The number of households against which sanctions were applied. A household being sanctioned over two quarters should only be reported as sanctioned for the earlier quarter.

(7) State Agency Monitoring. The State agency may, at its option, assume responsibility for monitoring all workfare programs in its State to assure that there is compliance with this section and with the plan submitted and approved by FNS. Should the State agency assume this responsibility, it would act as agent for FNS which is ultimately responsible for ensuring such compliance. Should the State agency determine that noncompliance exists, it may withhold funding until compliance is achieved or FNS directs otherwise. FNS shall be notified prior to the withholding of funds of the circumstances leading to that action. At a minimum, the State agency shall perform onsite reviews of each workfare program once within six months of the program's implementation and then in

accordance with the Management Evaluation review schedule for that program area.

(e) *Household Responsibilities.* (1) Persons Subject to Workfare. Household members subject to the work registration requirements as provided in § 273.7(a) shall also be subject to the workfare requirements. In addition:

(i) Those recipients subject to and currently involved less than 20 hours a week in the work incentive program (WIN) under Title IV of the Social Security Act shall be subject to workfare. Those recipients involved more than 20 hours a week may be subject to workfare at the option of the political subdivision;

(ii) Those recipients exempt from work registration requirements due to the application for or receipt of unemployment compensation shall be subject to workfare requirements; and

(iii) Those recipients exempt from work registration requirements due to being a parent or other household member responsible for the care of a dependent child between the ages of six and twelve shall be subject to workfare requirements. If the child has its sixth birthday within a certification period, the individual responsible for the care of the child shall be subject to the workfare requirement as part of the next scheduled recertification process, unless the individual qualifies for another exemption.

(2) *Household Obligation.* The maximum total number of hours of work required of a household each month shall be determined by dividing the household's coupon allotment by the Federal or State minimum wage, whichever is higher. Fractions of hours of obligation may be rounded down. The household's hours of obligation for any given month may not be carried over into another month except when the household wishes to end a disqualification due to noncompliance with workfare in accordance with paragraph (f)(8) of this section.

(f) *Other Program Requirements.* (1) *Priority Placements.* The State agency or political subdivision submitting the plan shall indicate in the plan how it will determine priority for placement at job sites when the number of eligible participants is greater than the number of available positions at job sites.

(2) *Conditions of Employment.* (i) Recipients may be required to work up to, but not to exceed, 30 hours per week. In addition, the total number of hours worked by a recipient under workfare together with any other hours worked in any other compensated capacity, including hours of participation in a WIN training program, by such recipient

on a regular or predictable part-time basis, shall not exceed thirty hours a week. With the recipient's consent, the hours to be worked may be scheduled in such a manner that more than thirty hours are worked in one week, as long as the total for that month does not exceed the weekly average of thirty hours a week.

(ii) No participant shall be required to work more than eight hours on any given day, except that with the recipient's consent, more than eight hours may be scheduled.

(iii) No participant shall be required to accept an offer of workfare employment if such employment fails to meet the criteria established in § 273.7(i)(1) (iii) and (iv); and § 273.7(i)(2) (i), (ii), (iv), and (v).

(iv) If the workfare participant is unable to report for job scheduling, to appear for scheduled workfare employment, or to complete the entire workfare obligation due to compliance with Unemployment Insurance requirements, the additional work requirements established in § 273.7(e)(1), (2), (3), or (4), or the job search requirements established in § 273.7(f), such inability shall not be considered a refusal to accept workfare employment. If the workfare participant informs the operating agency of the time conflict, the operating agency shall, if possible, reschedule the missed activity. If such rescheduling cannot be completed before the end of the month, this shall not be cause for disqualification.

(v) The operating agency shall assure that all persons employed in workfare jobs receive job-related benefits at the same levels and to the same extent as similar non-workfare employees. These shall be benefits related to the actual work being performed, such as workers' compensation, and not to the employment by a particular agency, such as health benefits. Of those benefits required to be offered, any elective benefit which requires a cash contribution by the participant shall be optional at the discretion of the participant.

(vi) All persons employed in workfare jobs shall be assured by the operating agency of working conditions provided other employees similarly employed.

(vii) The provisions of section 2(a)(3) of the Service Contract Act of 1965 (Pub. L. 89-286), relating to health and safety conditions, shall apply to the workfare program.

(viii) Operating agencies shall not provide work to a workfare participant which has the effect of replacing or preventing the employment of an individual not participating in the

workfare program. Vacancies, due to hiring freezes, terminations, or lay-offs, shall not be filled by a workfare participant unless it can be demonstrated that such vacancies are a result of insufficient funds to sustain former staff levels.

(ix) The workfare jobs shall in no way infringe upon the promotional opportunities which would otherwise be available to regular employees.

(x) Workfare jobs shall not be related in any way to political or partisan activities.

(xi) Workfare assignments should, to the greatest extent possible, take into consideration previous training, experience, and skills of a participant.

(xii) The cost of workers' compensation or comparable protection provided to workfare participants by the State agency, political subdivision, or operating agency is a matchable cost under paragraph (g) of this section. Whether or not this coverage is provided, in no case is the Federal government the employer in these workfare programs (unless a Federal agency is the job site), and therefore, USDA does not assume liability for any injury to or death of a workfare participant while on the job.

(xiii) The nondiscrimination requirement provided in § 272.7(a) shall apply to all agencies involved in the workfare program.

(3) Job Search Period. The operating agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment during which the potential participant is expected to look for a job. This period may only be established at household certification, not at recertification. The potential participant would not be subject to any job search requirements beyond those required under § 273.7 during this time.

(4) Participant Reimbursement. Participants shall be reimbursed by the operating agency for transportation and other costs that are reasonably necessary and directly related to participation in the program. These other costs may include the cost of child care, or the cost of personal safety items or equipment required for performance of work if these items are also purchased by regular employees. These other costs shall not include the cost of meals away from home. No participant cost which has been reimbursed under a workfare program operated under Title IV of the Social Security Act or any other workfare program shall be reimbursed under the food stamp workfare program. Only reimbursement of participant costs which are up to but not in excess of \$25 per month for any

participant will be subject to Federal cost sharing as provided in paragraph (g)(1) of this section. Child care costs which are reimbursed may not be claimed as expenses and used in calculating the child care deduction for determining household benefits. Pursuant to paragraph (d)(1) of this section, a State agency may decide what its reimbursement policy shall be.

(5) Good Cause. For the purpose of this section, unless a State agency has determined its good cause policy pursuant to paragraph (d)(1) of this section, good cause shall include:

(i) Circumstances beyond a household member's control, such as, but not limited to: illness; the illness or incapacitation of another household member requiring the presence of the workfare participant; a household emergency; or the lack of transportation when transportation is not provided by the operating agency;

(ii) Necessity for a parent or other responsible household member to care for a child between the age of six and 12 because adequate child care is not otherwise available;

(iii) Becoming exempt from the workfare eligibility requirements under the terms established in paragraph (e)(1) of this section.

(iv) Household moving out of the area of the workfare project.

(v) Instances where cost of transportation and other costs have exceeded \$25 per month and are not being reimbursed by the operating agency.

(6) Failure to Comply. (i) Where a workfare participant has been determined by the State agency to have failed or refused without good cause to comply with the requirements of this section, the entire household shall be ineligible to participate. Such ineligibility shall continue until either the household meets the provisions of paragraph (f)(8) of this section or for 2 consecutive months, whichever occurs earlier. Within 10 days after receiving notification of the household's failure to comply with the requirements of this section, the State agency shall, if it determines that there is not good cause for the noncompliance, provide the household with a notice of adverse action, as specified in § 273.13. Such notification shall contain the proposed period of disqualification and shall specify the terms and conditions on which disqualification can be ended. Information shall also be included with the notification on the procedures and requirements contained in paragraph (f)(8) of this section. The disqualification period shall begin with the first month following the expiration of the adverse

notice period, or following a fair hearing decision if a fair hearing is requested, in which the household would normally have received benefits. A household member shall not be required to perform work at a job site when the household is no longer receiving benefits unless the household has chosen to meet the conditions for ending disqualification specified in paragraph (f)(8) of this section. Until the disqualification is actually invoked, the household, if otherwise eligible, will continue to have a workfare obligation.

(ii) Should a household have two or more consecutive months of noncompliance while being certified for food stamps, the total corresponding months of sanction shall be a cumulative total; that is, two months of noncompliance shall entail a four-month sanction. Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow all the members of the household at the time of the noncompliance. None of those household members shall be eligible to participate in the food stamp program for the length of the sanction beginning at the point when the sanction can be placed against any one of them.

(iii) If a sanctioned household member joins another food stamp household, that household's eligibility and benefit level shall be determined as follows:

(A) Income, resources, and deductible expenses. The income and resources of the household member(s) disqualified for noncompliance with workfare shall count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, and excess shelter deductions shall apply to the remaining household members.

(B) Eligibility and benefit level. An individual disqualified for noncompliance with workfare shall not be included when determining the household's size for the purpose of assigning a benefit level to the household or of comparing the household's monthly income with income eligibility standards. The State agency shall ensure that no household's coupon allotment is increased as a result of the disqualification of one or more household member for workfare noncompliance.

(7) Fair Hearings. Each household has a right to a fair hearing to appeal a denial or termination of benefits due to a State agency determination of failure to comply with the requirements of this section. The fair hearing requirements provided in § 273.15 shall apply. If a fair hearing is scheduled, the operating agency shall be available to participate

in the hearing. The State agency shall provide the operating agency sufficient advance notice to permit the attendance of an operating agency representative.

(8) **Ending Disqualification.** Following the end of the 2-month disqualification period for noncompliance with the workfare provisions of this section, a household may resume participation in the program if it applies again and is determined eligible. Eligibility may be re-established during a disqualification period and the household shall (if it makes application and is determined otherwise eligible) be permitted to resume participation if the member who failed to comply or any other workfare-eligible member of the household satisfies all outstanding workfare obligations. A workfare position shall be made available for a household which wishes to end disqualification in this manner.

(g) **Federal Financial Participation.** (1) Fifty percent of all administrative costs incurred by State agencies or political subdivisions in operating a workfare program shall be funded by the Federal government. Such costs include those related to recipient participation in workfare, up to \$25 per month for any participant, as indicated in paragraph (f)(4) of this section. Such costs shall not include the costs of equipment, capital expenditures, tools or materials used in connection with the work performed by workfare participants, the costs of supervising workfare participants, the costs of reimbursing participants for meals away from home, or reimbursed expenses in excess of \$25 per month for any participant.

(2) **Funding Mechanism.** The State agencies shall have responsibility for disbursing Federal funds used for the workfare program through the State agencies' Letters of Credit. The State agency shall also assure that records are being maintained which support the financial claims being made to FNS.

This will be for all programs, regardless of who submits the plan. Mechanisms for funding local political subdivisions which have submitted plans must be established by the State agencies.

(3) **Fiscal Recordkeeping and Reporting Requirements.** Workfare-related costs shall be identified by the State agency on the Financial Status Report (Form SF-269) as a separate column. All financial records, supporting documents, statistical records, negotiated contracts, and all other records pertinent to workfare program funds shall be maintained in accordance with § 277.12.

(h) **Coordination With Other Workfare-type Programs.** State agencies and political subdivisions may operate workfare programs as provided in this section jointly with a workfare program operated under Title IV of the Social Security Act to the extent that provisions and protections of the statute are maintained or with other workfare programs operated by the subdivision to the extent that the provisions and protections of this section are maintained. Statutory provisions include, but are not limited to, eligible recipients as provided in paragraph (e)(1) of this section, maximum hours of work per week as provided in paragraph (f)(2)(i) of this section and the penalty for noncompliance as provided in paragraph (f)(6)(i) of this section. When a household receives benefits from more than one program with a workfare requirement and the household is determined to have a food stamp workfare obligation, the food stamp obligation may be combined with the obligation from the other program. However, this may be done only to the extent that eligible food stamp workfare participants are not required to work more than 30 hours a week in accordance with paragraph (f)(2)(i) of this section. Any intent to coordinate programs should be described in the

plan. Waivers of provisions in this section, for the purpose of operating workfare jointly with local general assistance workfare-type programs may be requested and provided in accordance with § 272.3(c). Statutory provisions, shall not be waived.

(i) **Voluntary Workfare Program.** State agencies and political subdivisions may operate workfare programs whereby participation by food stamp recipients is voluntary. In such a program, the penalty for failure to comply as provided in paragraph (f)(6) of this section shall not apply for noncompliance. The amount of hours to be worked will be negotiated between the household and the operating agency, though not to exceed the limits provided under paragraph (f)(2) of this section. In addition, all protections provided under paragraph (f)(2) of this section shall continue to apply. Those State agencies and political subdivisions choosing to operate such a program shall indicate in their workfare plan how their staffing will adapt to anticipated and unanticipated levels of participation. The Department will not approve plans which do not show that the benefits of the workfare program, in terms of hours worked by participants and reduced food stamp allotments due to successful job attainment, are expected to exceed the costs of such a program. In addition, if the Department finds that an approved voluntary program does not meet this criteria, the Department reserves the right to withdraw approval.

(91 Stat. 958 (7 U.S.C. 2011-2029), and Sec. 1, Pub. L. 97-98; 95 Stat. 1282 (7 U.S.C. 2012))
(Catalog of Federal Domestic Assistance Program No. 10.551, Food Stamps)

Dated: October 6, 1982.

John W. Bode,

Deputy Assistant Secretary.

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