

Accordingly, with this final rule, the wording of the proposed rule, with the exception noted above, is adopted.

Changes to Current Regulations

On February 15, 1989, at 54 FR 6990, the Department issued a final rule constituting the first comprehensive review and modification of food stamp issuance regulations since their adoption pursuant to the Food Stamp Act of 1977 (Pub. L. 95-113).

This final rule makes changes to three of those provisions, in an effort to clarify interpretive problems brought to the Department's attention over the past three years. These changes were proposed on May 20, 1991, at 56 FR 23028-29.

4. In the May 20, 1991, proposed rule the Department suggested changes to make clear that staggering may be used in any issuance system and that the 40-day limit on intervals between issuances applies to all issuance systems. Current rules at § 274.2(c)(1) refer to a 40-day limit between "mail issuances" because, in the past, State agencies staggered only mail issuance. The word "mail" is being removed to make it clear that the 40-day limit applies to all staggered issuance situations, and to remove any implication that staggering is relevant only to mail issuance.

Whenever staggered issuance is utilized, the State agency must ensure that the interval between any two issuances after the first full month of participation is not longer than 40 days as required by Section 7(h) of the Act, 7 U.S.C. 2016(h)(2). This applies to instances in which a State agency changes its issuance system, is starting to stagger within any issuance system, decides to no longer stagger within a system, or is fluctuating the issuance schedule by a day or two within a current staggered system. The only exception to the 40-day limit occurs for some households which apply after the 15th of the month and receive their first and second month's benefit as a combined allotment. Since they may receive their benefits for the first and second months of participation in the first month, more than 40 days may elapse before they are put on a regular issuance schedule, beginning with benefits issued for the third month.

Three commenters addressed this proposal. One stated that households which are required to submit monthly reports may have to wait as long as 50 days between issuances. Such an interval would only be permissible in situations in which the State agency is required to wait for the household to meet its monthly reporting requirement. The 40-day rule pertains to on-going

households which have complied with all reporting requirements and expect their benefits at about the same time every month.

Another commenter was concerned that the Department is reading something into the law which established the 40-day requirement that Congress did not intend, and that more than 40 days should be allowed under normal fluctuations within an established staggered issuance system. The Department disagrees; intervals beyond 40 days between normal issuances do not meet the requirement of the law and its legislative history. The 40-day requirement is an extension of the requirement at 7 CFR 274.2(c), which states that issuance schedules shall be established so that households receive benefits on or about the same time each month. The amendment gives State agencies room to adjust issuance schedules when issuance systems are being changed, rather than holding the State agency to the requirement that households receive benefits on or about the same day each month. The Department considers the amendment less restrictive, not more so.

The provision in this rule has been reworded to state more clearly the situations to which it applies. This also addresses a third commenter who said the 40-day rule is simply burdensome.

With this final rule, the Department adopts as final 7 CFR 274.2(c)(1) as proposed to indicate that the requirements of staggered issuance are applicable to all issuance systems.

5. The regulations at 7 CFR 274.3(e) currently provide for validity periods for issuances made in authorization document, direct access, and direct delivery issuance systems. A validity period is the time-frame during which a household may obtain benefits by transacting an authorization document or receiving benefits at an issuance point. The validity period begins the day a household is issued an authorization document or is authorized to obtain its issuance at an issuance point. The validity period for issuances ends on the last day of the month in which authorization to receive benefits is made, with two exceptions. First, for normal issuances made on or after the 20th day of the month, the State agency must extend the validity or availability period at least 20 days into the following month and may extend the validity or availability period until the end of the following month; second, for combined issuances for households applying after the 15th of the month, the validity period must continue until the end of the month following application since benefits for which the household

is eligible are intended for use during both months. States have pointed out that Program administration would be simplified if normal issuances made after the 15th of the month could have the same validity period as the validity period for combined issuance made in the month of application. The proposed rule addressed that concern by changing the issuance date that initiates an extension for validity periods for normal issuances from "on or after the 20th" to "after the 15th" of the month.

Three commenters addressed this provision. One simply stated the amount of time (3 months) that would be required to make the necessary computer changes, but made no statement for or against the provision. Another commenter questioned whether the new trigger date would allow State agencies to retain the option to extend the validity period for normal issuances for 20 days or until the end of the following issuance month. The answer to this question is that, as stated in the proposed rule, State agencies will retain the option. The third commenter suggested that the provision of having the validity dates coincide be optional because of the time and expense required in modifying the State agency's on-line issuance computer. Because this provision was adopted in response to State agency requests as a means of easing the Program's administrative burden, the Department is making this date change an option for State agencies. The Department would also like to clarify that when a combined allotment is issued with the use of two documents in authorization document systems during the month of application, the validity period for both documents must continue until the end of the second month, as that is the period of intended use for the combined benefits.

With this final rule, the Department adopts as final 7 CFR 274.3(e) as previously proposed by making the proposed modification of the validity period for normal issuances a State agency option.

6. In 7 CFR 274.11(a) a change was proposed by the Department to clarify which issuance documents, including signature cards used by direct-delivery agents, are required to be retained for three years in order to provide an audit trail for accountability. The current regulation at 7 CFR 274.11(a)(1) lists specific forms required to be retained. However, as established issuance systems have changed and newer ones have been implemented, the list has not been revised. The Department proposed to replace the listing of specific forms with a general retention requirement covering all issuance system documents