PART 400—EMPLOYEE FINANCIAL DISCLOSURE AND ETHICAL CONDUCT STANDARDS REGULATIONS

§ 400.101 Cross-reference to employee financial disclosure and ethical conduct standards regulations.

Employees of the Export-Import Bank of the United States (Bank) should refer to:

(a) The executive branch-wide financial disclosure regulations at 5 CFR part 2634;

(b) The executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635; and

(c) The Bank regulations at 5 CFR part 6201 which supplement the executive branch-wide standards.

Authority: 5 U.S.C. 7301.

[FR Doc. 95–8593 Filed 4–6–95; 8:45 am]

BILLING CODE 6690–01–P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 272 and 273

[Amendment No. 359]

RIN 0584–AB78

Food Stamp Program: Medical Expense Deduction

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes an interim rulemaking published on October 3, 1994. The interim rulemaking amended food stamp regulations to simplify the means by which households with elderly and disabled members claim deductions from income for verified, prospective, non-reimbursed medical expenses.

DATES: The amendments to § 272.1(g)(138), § 273.10(d)(4), and § 273.21(f)(2)(iv), § 273.21(i) and § 273.21(j)(3)(ii)(C) are effective May 8, 1995 and must be implemented no later than September 5, 1995. The remaining provisions of the interim rule which are being adopted as final without change, were effective October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Eligibility and Certification Rulemaking Section, Certification Policy Branch, Program Development Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

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

Regulatory Flexibility Act

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

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 284 (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.

Background

On October 3, 1994, the Department published an interim rule at 59 FR 50153 (interim regulation) amending the food stamp regulations to simplify the means by which households with elderly and disabled members claim deductions from income for verified, prospective, non-reimbursed medical expenses. Comments were solicited on the provisions of the interim rule through December 2, 1994. This final action addresses the commenters' concerns. Readers are referred to the interim rule for a more complete understanding of this final action.

The Department received 5 comments on the interim rule. Two of the commenters supported the interim rule, believing that it benefitted households and State agencies alike by eliminating unnecessary reporting requirements. Four of the five commenters raised issues which are addressed below.

Budgeting of Medical Expenses

A commenter noted that, although the interim regulations require State agencies to allow households to estimate, prospectively, recurring medical expenses, they do not explicitly prohibit retrospective budgeting of those expenses. Such retrospective budgeting is prohibited by section 5(e) of the Food Stamp Act of 1977, as amended, 7 USC 2014(e) (Act). Since only households in which all members are elderly or disabled with no earned income are amongst those groups of households exempt from retrospective budgeting, the interim rule's failure to explicitly prohibit the retrospective budgeting of medical expenses leaves open the possibility that some households' medical expenses would be budgeted in that manner.

The Department agrees with the commenter that the interim regulations failed to explicitly prohibit the retrospective budgeting of medical expenses. Therefore, the Department is amending current regulations at 7 CFR 273.21(f)(2)(iv) to require that State agencies prospectively budget recurring medical expenses.

Verification of Medical Expenses

The same commenter requested clarification of the procedures for State agency action on a household's voluntary report of a change in medical expenses. Although reporting of changes in medical expenses during the

certification period was not required by the interim rule, the household was given the option of voluntarily reporting any changes in medical expenses it incurred between certifications. If the household voluntarily reported a change in its medical expenses, the interim rule required the State agency to act on the change in accordance with current regulations at 7 CFR 273.12(c).

The commenter felt that the reference was unclear and that further clarification was necessary. The commenter was particularly concerned about instances in which a household voluntarily reports a change in medical expenses that would cause a decrease in the household's allotment. Under current regulations at 7 CFR 273.12(c), the State agency may act on a reported change that would decrease the household's allotment or make the household ineligible without verification, though verification which is required by 7 CFR 273.2(f) has to be obtained prior to the household's recertification. The commenter felt that it should be clear in the regulatory language at 7 CFR 273.2, that if the household voluntarily reports a change in its recurring medical expenses that would decrease its allotment, the State agency should act on the change without requiring the household to verify it.

The Department agrees with the commenter that, with respect to State agency action on a household's voluntary report of changes in medical expenses, additional clarification of the requirements is desirable. Therefore, the Department is amending 7 CFR 273.10(d)(4) and 7 CFR 273.21(i) and (j)(iii)(C) to describe the procedures for acting on a household's voluntary report of changes in its medical expenses. The State agency is required to verify reported changes that would increase a household's allotment. The State agency has the option of either requiring verification prior to acting on the changes, or requiring the verification prior to the second normal monthly allotment after the change is reported. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without verification, though verification which is required by 7 CFR 273.2(f) has to be obtained prior to the household's recertification.

Restored Benefits

A commenter stated that the interim rule should have provided for restoration of benefits back to October 1, 1991; the effective date of section 1717 of the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 (1990 Leland Act), Title XVII, Public Law 101–624. The commenter argued that, because the Department failed to issue regulations in connection with section 1717 of the 1990 Leland Act, elderly and disabled households were wrongfully denied allotments based on recurring medical expenses during the period beginning October 1, 1991 (the effective date of section 1717 of the 1990 Leland Act) to October 1, 1994 (the effective date of the October 3, 1994 interim rule). The commenter believed that the interim regulations should permit these households to receive restored benefits back to October 1, 1991.

Another commenter, however, questioned the need for the restoration of benefits under the interim rule. The commenter noted that under previous regulations, eligible households were receiving allowable medical expense deductions and that the interim rule merely simplified the process through which households can claim that deduction. Since eligible households were already receiving a deduction, the commenter asked in what case would a household be entitled to restored benefits.

The Department agrees with the second commenter that restored benefits are not necessary in connection with the interim rule. The provisions of the interim rule did not change eligibility requirements for the medical deduction, but only simplified reporting procedures for claiming the deduction. Households that claimed the deduction under the previous rules should have received a benefit similar to that received under current rules.

It could be argued that some eligible households may have refrained from claiming the medical deduction under the old rules because they felt that the former reporting requirements were too exacting, and that if the simplification provisions of the October 3, 1994 interim regulation had been published by the effective date of the 1990 Leland Act, those households would have claimed the medical deduction. However, restored benefits would not be appropriate for such households since the Department's former reporting requirements were consistent with the statute and within the Department's discretion. Therefore, such households could not argue they were wrongfully denied benefits.

At the time the 1990 Leland Act was enacted, the Department believed that its then existing regulations adequately addressed the intent of section 1717. This claim was made in a proposed rule (Miscellaneous Provisions of the Mickey Leland Memorial Domestic Hunger Relief Act, June 28, 1991, 56 FR 29594), and no comment was received to the contrary. After learning that some States may have been confused and were misapplying the reporting requirements, the Department first issued regional memoranda and then exercised its discretion to revise and simplify its rules in a way designed to ease the reporting burden on both households and State agencies.

The Department maintains that its old rules satisfied the requirements of section 1717 of the 1991 Leland Act. Under the rules that existed at that time, a household's medical expense deduction for the certification period was still based on the household's prospectively estimated recurring medical expenses and there was no change in the procedures that occur at the time of certification or recertification. Households were, however, required to report unanticipated changes of $25 or more which occurred during the certification period.

The major simplification provision of the interim rule was the elimination of the household's requirement to report unanticipated changes of $25 or more in its medical expenses that it experienced during the certification period. The Department believes that this simplification was not required by section 1717 of the 1990 Leland Act but was within the discretion of the Department to further simplify medical deduction reporting procedures for households and beleaguered State agencies alike.

The Department disagrees with the commenter that households eligible for the medical deduction should be issued restored benefits. First, the provisions of the interim rule merely simplified discretionary reporting requirements and did not alter eligibility requirements. Households eligible for the medical deduction would have received essentially the same benefit under the old rules as they did under the interim regulations. Second, though some households may have refrained from claiming the medical expense deduction because of the reporting requirements connected with the deduction, the Department contends that since the regulations in effect prior to the interim rule were reasonably within the Department's discretion when implementing the medical expense provisions of the 1990 Leland Act, no household was wrongly denied benefits.

Consistent with the above, the Department is not amending the interim regulations to provide for the restoration

of benefits back to October 1, 1991 for households eligible for the medical expense deduction. The Department, however, is amending the interim regulations at 7 CFR 272.1(g)(138) to eliminate the requirement that restored benefits be issued back to October 1, 1994, the effective date of the interim rule, for households converted to the interim rule's procedures after the effective date. As noted by the second commenter, households eligible for the medical expense deduction were receiving correct deductions under prior regulations, and thus restored benefits are not necessary. If the household properly reported and verified its allowable medical expenses, it should have received the correct amount of benefits.

On a related issue, a commenter wrote that State agencies should be required to notify eligible households immediately of the provisions of the interim rule. The interim rule required State agencies to implement the changes in medical deduction policy on October 1, 1994, and all households that newly apply for Program benefits on or after October 1, 1994 would be subject to the interim rule procedures. For households participating prior to October 1, 1994, the interim rule required that they be subject to the new provisions at their request, at the time of recertification, or when their case is next reviewed, whichever occurs first. The State agency is required to provide restored benefits to such households back to the required implementation date or the date of application, whichever is later.

The commenter felt that since households are unlikely to know about the changes in medical deduction policy required by the October 3, 1994 interim rule and, therefore, are unlikely to request benefit conversion to the new policy, State agencies should be required to notify households of the provisions of the interim rule immediately and not wait until the household's next recertification or case review. The commenter noted that households with elderly or disabled persons are likely to have longer certification periods, perhaps up to 24 months. Therefore, waiting until a household's next recertification could delay implementation of the interim rule's provisions for several years. The commenter also contended that restored benefits are insufficient because they force vulnerable, hungry households to go without benefits during the certification period when they most need the assistance.

The provisions of the interim rule simplify the means by which households with elderly and disabled members can claim the medical deduction. Those provisions benefit both eligible households and State agencies by reducing the reporting burden associated with the deduction. The Department agrees with the commenter, therefore, that it is in the best interest of both households and State agencies for eligible households to be made aware of the interim rule's procedures as soon as possible. Therefore, the Department is revising the implementation regulations of the interim rule at 7 CFR 272.1(g)(138) to require that State agencies notify all households eligible for the medical expense deduction of the change in medical deduction reporting procedures and of their right to be converted to those new procedures immediately. The method of notification is being left up to the State agencies.

Another commenter requested clarification of a State agency's obligation to establish claims or provide supplemental benefits to households as a result of the changes in medical deduction policy. As noted above, a household's medical deduction is based on expenses reported at certification and changes in those expenses that can be reasonably anticipated. The household does not have to report any changes in its medical expenses during the certification period. The State agency would learn of any difference between the deduction and actual costs at the household's next recertification, when the household would be required to report and verify all of its current medical expenses. However, the State agency would not be allowed to apply this information to the previous (i.e., ending) certification period.

Because of the change in policy regarding the reporting of medical expenses during the certification period, the State agency shall not issue supplements to or establish claims against households that choose not to report and/or verify changes in medical expenses when they occur during the certification period. The Department is amending the interim regulations at 7 CFR 273.10(d)(4) to clarify this requirement.

Implementation

Under the interim rule, the provisions addressed in this final rule were effective October 1, 1994. The Department received one comment criticizing the short implementation time of the interim rule. The commenter wrote that State agencies are put in an awkward position whenever regulatory changes are made effective prior to the date of release of a regulation. This anomaly, the commenter noted, usually results because of the statutory implementation date of a provision. The provisions of the October 3, 1994 interim rule, however, were discretionary, and the commenter felt that the Department could have afforded State agencies a reasonable period of time for implementation.

The Department understands the difficulties State agencies encounter when the effective date of a rule precedes its publication date. However, the Department felt that, due to apparent misapplication of the reporting requirements by some State agencies, the provisions of the interim rule were important enough to warrant a retroactive implementation date. In addition, in the Spring of 1994, the Department informed State agencies through its regional offices of the likelihood of a change in regulations regarding the medical expense deduction, thus giving State agencies the opportunity to do advanced planning in regard to implementing the rule. No change in the interim rule's effective date is being made in this final rule.

The provisions of this final action which adopt as final without change provisions of the interim rule were effective as of October 1, 1994. The provisions of this final action which require alteration of State procedures are to be effective May 8, 1995 and must be implemented no later than September 5, 1995.

Any variance resulting from the implementation of the provisions of this final rule shall be excluded from quality control error analysis for 120 days from the required implementation date in accordance with 7 CFR 275.12(d)(2)(vii).

List of Subjects

7 CFR Part 272

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

7 CFR Part 273

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

Accordingly, the interim rule amending 7 CFR 272 and 273 which was published at 59 FR 50153 on October 3, 1994, is adopted as a final rule with the following changes:

1. The authority citation for 7 CFR parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (g)(138) is revised to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation * * *

(138) *Amendment No. 359* The provision of *Amendment No. 359* regarding the medical expense deduction is effective and must be implemented no later than October 1, 1994. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 275.12(d)(2)(vii) of this chapter. The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. State agencies must notify households eligible for the deduction of the change in medical deduction reporting requirements and the right of the household to be converted to those new procedures immediately. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.10, the eighth sentence of paragraph (d)(4) is removed, and three new sentences are added to the end of paragraph to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* * * *

(4) *Anticipating expenses.* * * * If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8)(ii) if the change would increase the household's allotment. The State agency has the option of either requiring verification prior to acting on the change, or requiring the verification prior to the second normal monthly allotment after the change is reported. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without requiring verification, though verification which is required by § 273.2(f)(8) shall be obtained prior to the household's recertification.

* * * * *

4. In § 273.21:

a. Paragraph (f)(2)(iv) is amended by adding the words '', except medical expenses,'' after the words ''prorated over two or more months'' in the first sentence, and by adding a new sentence after the first sentence.

b. The third sentence of paragraph (i) is revised and a fourth sentence is added.

c. Paragraph (j)(3)(iii)(C) is revised.

The revisions and addition read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

* * * * *

(f) *Calculating allotments for households following the beginning months.* * * *

(2) *Income and deductions.* * * *

(iv) * * * Medical expenses shall be budgeted prospectively. * * *

* * * * *

(i) *Verification.* * * * If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8)(ii) before acting on it if the change would increase the household's allotment. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without requiring verification, though verification which is required by § 273.2(f)(8)(i) shall be obtained prior to the household's recertification.

(j) *State agency action on reports.* * * *

(3) *Incomplete filing.* * * *

(iii) * * *

(C) If a household fails to verify a change in reported medical expenses in accordance with § 273.2(f)(8), and that change would increase the household's allotment, the State agency shall not make the change. The State agency shall act on reported changes without requiring verification if the changes would decrease the household's allotment, or make the household ineligible.

* * * * *

Dated: March 30, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95–8492 Filed 4–6–95; 8:45 am]

BILLING CODE 3410–30–U

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 95–003–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine by removing and adding commuted traveltime allowances for travel between various locations in Oregon, Washington, and Wyoming. Commuted traveltime allowances are the periods of time required for Plant Protection and Quarantine employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Plant Protection and Quarantine employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime between these locations.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Eggert, Assistant to the Deputy Administrator, Resource Management Staff, PPQ, APHIS, Suite 4C03, 4700 River Road Unit 130, Riverdale, MD 20737–1228; (301) 734–7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of Plant Protection and Quarantine (PPQ) on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as