

exclusions to cover the expenses shall be allowed when the educational income is received. When the amounts used for allowable expense are more than amounts earmarked by the institution, school, program or other grantor, an exclusion shall be allowed for amounts used over the earmarked amounts. Exclusions based on use shall be subtracted from unearned educational income to the extent possible. If the unearned educational income is not enough to cover the expense, the remainder of the allowable expense shall be excluded from earned educational income.

(iv) An individual's total educational income exclusions granted under the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section cannot exceed that individual's total educational income which was subject to the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section.

(4) \* \* \* Educational loans on which repayment is deferred shall be excluded pursuant to the provisions of § 273.9(c)(3)(i). A loan on which repayment must begin within 60 days after receipt of the loan shall not be considered a deferred repayment loan.

(5) \* \* \*

(ii) \* \* \*

(B) No portion of any educational assistance that is provided for normal living expenses (room and board) shall be considered a reimbursement excludable under this provision.

\* \* \* \* \*

5. In § 273.10, paragraph (c)(3)(iii) is revised and a new sentence is added to the beginning of paragraph (d)(1)(i). The addition and revision read as follows:

**§ 273.10 Determining household eligibility and benefit levels.**

\* \* \* \* \*

(c) *Determining income.* \* \* \*

(3) *Income averaging.* \* \* \*

(iii) Earned and unearned educational income, after allowable exclusions, shall be averaged over the period which it is intended to cover. Income shall be counted either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.

(d) *Determining deductions.* \* \* \*

(1) *Disallowed expenses.*

(i) Any expense, in whole or part, covered by educational income which has been excluded pursuant to the provisions of § 273.9(c)(3) shall not be deductible. \* \* \*

\* \* \* \* \*

6. In § 273.21, the first sentence in paragraph (f)(2)(iii) is revised to read as follows:

**§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).**

\* \* \* \* \*

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

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

(iii) Earned and unearned educational income shall be prorated over the period it is intended to cover in accordance with § 273.10(c)(3)(iii), and it shall be budgeted either prospectively or retrospectively. \* \* \*

\* \* \* \* \*

Dated: September 26, 1996.

Ellen Haas,

*Under Secretary for Food, Nutrition, and Consumer Services.*

[FR Doc. 96-26070 Filed 10-16-96; 8:45 am]

BILLING CODE 3410-30-U

**7 CFR Parts 272 and 273**

[Amendment No. 365]

RIN 0584-AB98

**Food Stamp Program: Monthly Reporting on Reservations Provision of the Food Stamp Program Improvements Act of 1994**

**AGENCY:** Food and Consumer Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rulemaking amends Food Stamp Program regulations to establish procedures for implementing the restrictions concerning use of monthly reporting for households residing on reservations contained in the Food Stamp Program Improvements Act of 1994. It finalizes provisions of a proposed rule published in the Federal Register on June 6, 1995.

**DATES:** This rule is effective December 16, 1996 and must be implemented no later than the first day of the first month after February 18, 1997.

**FOR FURTHER INFORMATION CONTACT:** Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305-2520, or over the internet at [margaret\\_batko@FCS.USDA.GOV](mailto:margaret_batko@FCS.USDA.GOV).

**SUPPLEMENTARY INFORMATION**

Executive Order 12866

This final rule has been determined to be not significant for purposes of

Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

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 rulemaking and related Notice(s) to 7 CFR 3105, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Regulatory Flexibility Act**

This final rulemaking has also been reviewed with respect to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Consumer Service (FCS), has certified that this rulemaking would not have a significant economic impact on substantial number of small entities. The primary impact of the procedures in this rulemaking would be on FCS Regional Offices, State governments, and individuals who might apply for benefits in State agencies that use monthly reporting procedures. To the extent that county or other local governments assist in the administration of the Food Stamp Program, they would also be affected.

Executive Order 12778

This final rulemaking 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** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the 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)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to nonquality control (QC) liabilities) or Part 283 (for rules related to QC

liabilities); (3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

#### Paperwork Reduction Act

Information collection burdens in 7 CFR 273.21 governing reporting and recordkeeping requirements for monthly reporting and retrospective budgeting were approved by the Office of Management and Budget (OMB) under OMB No. 0584-0064. The provisions contained in this final rule change the content of certain notices to households, but would not impose any additional or reduce any current reporting and recordkeeping burden requirements. Since this final rule is placing into effect through formal rulemaking an information collection burden already approved, this rule has no effect on the existing burden estimates. FCS will publish a notice in the Federal Register explaining in detail why the information collection burden approved under OMB No. 0584-0064 is not affected and providing a 60-day period for public comment on the existing burden estimates. As required by the Paperwork Reduction Act of 1995, FCS will submit an Information Collection Request to OMB for extension of OMB No. 0584-0064 addressing any comments received.

#### Background

Section 1723 of the Mickey Leland Memorial Domestic Hunger Relief Act (Title XVII of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101-624, 104 Stat. 3359, November 28, 1990) amended Section 6(c)(1)(A)(i) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2015(c)(1)(A)(i), to exempt households residing on reservations from monthly reporting and retrospective budgeting (MRRB) effective February 1, 1992. The Department announced the regulatory adoption of the requirements of Section 1723 in a final rule amending 7 CFR 273.21(b)(4) published on December 4, 1991, 56 FR 63605, and scheduled to take effect on February 1, 1992.

Since that time, several other pieces of legislation have been enacted, each delaying the effective date of Section 1723. Implementation was initially postponed by Section 908 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102-237, 105 Stat. 1818, December 13, 1991) until April 1, 1993, and then by Pub. L. 103-11 (107 Stat. 41, April 1, 1993) until February 1, 1994. In response, in a November 1, 1993, rulemaking, the Department proposed at 58 FR 58459 a new implementation date of February 1,

1994. Following publication of that proposed rule, Section 1 of Pub. L. 103-205 (107 Stat. 2418) was enacted on December 17, 1993, again postponing implementation of the prohibition concerning MRRB on reservations until March 15, 1994. State agencies were notified of this delay through an implementing memorandum dated January 6, 1994.

On March 25, 1994, the Food Stamp Program Improvements Act of 1994 (Pub. L. 103-225 (108 Stat. 106)) was enacted. Section 101(a) of that law modified the provision prohibiting monthly reporting for households residing on reservations that had been added to section 6(c)(1)(A) of the Act (7 U.S.C. 2015(c)(1)) by Section 1723 of the Leland Act. Section 6(c)(1)(C)(iii) now prohibits State agencies which were not requiring households residing on reservations to submit monthly reports on March 25, 1994, from establishing monthly reporting requirements for these households. These households may be retrospectively budgeted. State agencies that were using monthly reporting on March 25, 1994, for households residing on reservations may continue to do so if certain enumerated conditions are met. On August 29, 1994, in the Miscellaneous Provisions of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 and the Earned Income Tax Credit Amendment final rule (59 FR 44303), the Department addressed the prohibition against establishing new monthly reporting requirements for households residing on reservations if no monthly reporting system was in place on March 25, 1994.

On June 6, 1995 at 60 FR 29767, the Department proposed regulations that would address the provisions in Section 101(a) of Pub. L. 103-225 dealing with the one-month grace period afforded reservation households for submitting required reports, 7 U.S.C. 2015(c)(1)(C) (i) and (ii). This proposal was to establish the following requirements for a State agency if it requires monthly reporting for households residing on reservations:

- (1) Reinstate benefits without requiring a new application for any household that submits a report not later than one month after the end of the issuance month; and
- (2) do not delay, reduce, suspend, or terminate the allotment of a household that submits a report not later than one month after the end of the month in which the report is due; and
- (3) establish two-year certification periods for households on reservations required to submit monthly reports,

unless the State agency is granted a waiver for shorter certification periods.

The Department provided the public 60 days to comment on the regulatory proposals. For additional information on the provisions of this rule, the reader should refer to the preamble of the proposed rule, 60 FR 29767-70. The Department received two comments on the proposed rule, both from State agencies. Both commenters opposed the rule as proposed; one of the commenters offered alternative procedures. These comments are discussed below.

#### Definition of Residing on a Reservation

Section 3(j) of the Act (7 U.S.C. 2012(j)) defines a reservation as "the geographically defined area or areas over which a tribal organization (as that term is defined in subsection (3)(p)) exercises governmental jurisdiction." Section 3(p) (7 U.S.C. 2012(p)) of the Act defines a tribal organization as "the recognized governing body of an Indian tribe (including the tribally recognized intertribal organization of such tribes), \* \* \*, as well as any Indian tribe, band, or community holding a treaty with a State government." Section 101(a) of Pub. L. 103-225 did not modify the Act's definition of a reservation or tribal organization. The Department proposed in § 273.21(t)(1) to adopt these definitions for the purpose of determining whether a household is residing on a reservation. One commenter opposed these definitions because the boundaries of the reservations in his State did not correspond to geographic and ZIP code systems used by the State agency in its certification process. That commenter wanted to allow applicants and recipients to indicate to State agencies whether they resided on reservations and also wanted State agencies to not be responsible for inaccurate recipient indications of residency. The Department has no discretion in the definition of a reservation, since the term is described in the Act. Therefore, the Department is adopting § 273.21(t)(1) as proposed.

The regulation does not establish any proscriptive requirements on a State agency for determining residency on a reservation. Therefore, a State agency is free to establish its own method for establishing residency. However, existing quality control procedures would be used to determine whether a variance existed in a household's actual as opposed to claimed residency. The definition of a reservation used in the quality control procedure would be the definition in the regulations at 7 CFR 271.2.

### Certification Periods

In light of the amendments to Section 6(c)(1) of the Act made by Section 101(a) of Pub. L. 103–225, the Act now requires that State agencies establish two year certification periods for households residing on reservations that are required to submit monthly reports (7 U.S.C. 2015(c)(1)(C)(iv)). Section 6(c)(1)(C)(iv) allows FCS to permit a State agency to establish certification periods for households residing on reservations shorter than two years if the State agency can show good cause for a shorter certification period. The Department proposed in § 273.21(t)(2) that State agencies certify households residing on reservations subject to monthly reporting for two years; in § 273.21(t)(2)(i), that a State agency may request a waiver from FCS to allow it to establish shorter certification periods for those households; and in § 273.21(t)(2)(ii), that a State agency may, for administrative ease, opt to continue the two-year certification period for any household that moves off a reservation. The Department did not receive any comments on these provisions. Accordingly, the Department is adopting § 273.21(t)(2) as proposed.

### Missing and Incomplete Monthly Reports

Section 101(a) of Pub. L. 103–225 (7 U.S.C. 2015(c)(1)(C)(ii)) prohibits a State agency from delaying, reducing, suspending, or terminating the benefits of a household residing on a reservation that submits a report not later than one month after the end of the month in which the report is due. Normally, if a complete monthly report is not received within the time frames specified in 7 CFR 273.21, a State agency would terminate the household. Under Section 101(a) of Pub. L. 103–225, a State agency must now issue benefits to a household residing on a reservation on its normal issuance date even if the household has failed to submit a monthly report. In order to implement this provision, the Department proposed in § 273.21(t)(3)(i) to require a State agency to provide a household residing on a reservation which does not submit its monthly report by the issuance date with the same benefit amount that the household received the previous month. This issuance must be provided to the household on the household's normal issuance date. If the household's report is received prior to the issuance date, but too late to be processed without delaying the household's issuance, the Department proposed that the

household be issued its benefits on the normal issuance date.

In § 273.21(t)(3)(ii), the Department proposed to require a State agency to provide benefits to a household residing on a reservation on the normal issuance date if the household submitted an incomplete monthly report that could not be completed by the normal issuance date. The State agency would be required to attempt to have the household complete the report prior to the normal issuance date, in accordance with the procedures in 7 CFR 273.21(j).

The Department proposed in § 273.21(t)(3)(iii) that if a household failed to submit a monthly report or submitted an incomplete monthly report that was never fully completed and then failed to submit the next consecutive monthly report or submitted an incomplete report for the next consecutive monthly report that was not subsequently completed by the issuance date, the household's participation would be terminated in accordance with the provisions in 7 CFR 273.21(m). Also in § 273.21(t)(3)(iii), the Department proposed that the household would not be terminated if it failed to ever submit or complete the first missing monthly report so long as it submitted the next report by the end of the month in which it was due.

The Department received one comment on the proposed provisions in § 273.21(t)(3). That commenter opposed the proposal as complicated, cumbersome, and costly. Further, the commenter believed that the proposal was contrary to the Department's efforts to improve program integrity and promote personal responsibility. The State agency commenting had already implemented the provision. In its implementation it was requiring the household to submit *the missing report* prior to any subsequent issuance after the initial grace month issuance. If the missing report was not submitted by the end of the issuance (or grace) month, the household would be terminated. The household would not be reinstated unless it submitted the missing report by the end of month following the issuance month.

In light of this comment, the Department has decided to revise the proposed procedures significantly. These revisions are consistent with the Department's goals to increase administrative flexibility for State agencies. Therefore, the Department is replacing the proposed § 273.21(t)(3) with the following language which essentially tracks the language of Section 6(c)(1)(C)(ii) of the Act: "The State agency shall not delay, reduce, or suspend the allotment of a household

that fails to submit a report by the issuance date." Each State agency will be responsible for deciding what report must be submitted—either the missing report [as the commenter suggested] or the next month's report [as was proposed]. The State agency shall make that decision based on what it believes is most appropriate for recipients and most administratively feasible for that State. Additionally, each State agency may unilaterally decide whether to consider a report received too late to act on or an incomplete report as "submitted" for purposes of this provision.

### Benefit Determination

The Department proposed in § 273.21(t)(4) that, in appropriate instances, a State agency repeat the previous month's benefit amount if a report is not received by the issuance date of the next month's allotment. In addition, the Department proposed in § 273.21(t)(4) that a State agency issue the household's benefits based on the previously submitted report without regard to any changes in the household's circumstances that were not completely reported on or verified. Finally, the Department proposed in § 273.21(t)(4) that a State agency adjust the amount of the benefits issued if there was any information on the incomplete report that can be used as submitted. The Department received one comment addressing the requirement in § 273.21(t)(4) to issue the previous month's benefit amount if a report is not received by the issuance date. That commenter opposed the proposal because it provided unequal treatment to households required to monthly report based on whether they lived on or off a reservation. The Department has no discretion in this requirement. Section 101(a)(2) of Pub. L. 103–225 (7 U.S.C. 2015(c)(1)(C)(ii)) requires that the State agency not delay, reduce, suspend, or terminate the allotment of a household that submits a report not later than one month after the end of the month in which the report is due; i.e., the State agency must issue benefits on the issuance date although a monthly report has not been received.

As discussed above in the section of the preamble concerning missing and incomplete reports, a commenter opposed the requirements in § 273.21(t)(3) to issue benefits when a report was incomplete. That commenter also opposed the requirement in proposed § 273.21(t)(4) that State agencies act on information that would otherwise be considered incomplete. The Department has decided not to adopt § 273.21(t)(4) as proposed. The

revisions in § 273.21(t)(3), as adopted herein, specify that benefits not be delayed, reduced, suspended, or terminated. Thus, each State agency is required by that provision to issue benefits on the household's normal issuance date if it fails to submit a monthly report. Each State agency may decide whether to adjust benefits for completed information on an otherwise incomplete report. Final § 273.21(t)(3) will consist of proposed (t)(3) and (t)(4), with the modifications discussed herein.

#### Reinstatement

Section 101(a) of Pub. L. 103-225 (7 U.S.C. 2015(c)(1)(C)(i)) provides that, if a household is terminated for failing to submit or to complete a monthly report, the household shall be reinstated without being required to submit a new application if a monthly report is received no later than the last day of the month following the issuance month. The Department proposed at § 273.21(t)(5) to require that a State agency reinstate a household terminated in accordance with § 273.21(t)(3)(iii) without the household being required to submit a new application if a complete monthly report was received no later than the last day of the month following the month the household was terminated. One comment was received, opposing the provision as proposed. The Department has modified the proposed rule in light of the comment discussed above. The final rule on this is being renumbered § 273.21(t)(4) as opposed to (t)(5) to reflect the decision not to adopt as final proposed § 273.21(t)(4) discussed above. The phrase "or to complete" is being removed from the proposal in this final rule. Removing this phrase reflects the options regarding reports available to the State agency as discussed above.

#### Notices

In § 273.21(t)(6)(i), the Department proposed that all notices regarding changes in a household's benefits meet the definition of adequate notice as defined in 7 CFR 271.2. The Department also proposed in § 273.21(t)(6)(ii) that State agencies provide notice to households about missing or incomplete reports requesting that the household take the action necessary to submit the missing report or to complete an incomplete report. In order to ensure that a household receives adequate notice of any State agency action affecting the household's benefits, the Department proposed in § 273.21(t)(5)(iii) that simultaneously with the issuance of benefits the State agency notify a household if its report

has not been received or if it is incomplete. The household should also be informed that the benefits being provided are based on the previously submitted report and that the amount of the allotment does not reflect any changes in the household's circumstances from the previous issuance. Further, this notice would advise the household that, if the next monthly report was not filed timely and completely, the household would be terminated. The proposed notice requirement conformed notice requirements for these special circumstances with current notice requirements for monthly reporting. Finally, in order to ensure that the household would be aware of the termination and its right to reinstatement, the Department proposed in § 273.21(t)(6)(iv) that, if the household is terminated in the consequent month, the State agency would send the notice so the household receives it no later than the date benefits would have been received. This notice would be required to advise the household of its right to reinstatement if a complete monthly report was submitted by the end of the month following termination. This proposed notice requirement was consistent with current notice requirements for monthly reporting.

The Department did not receive any comments on the notice requirements. However, to be consistent with the modifications made above, the Department is modifying the requirements in the final rule to eliminate references to an incomplete report. The Department is adopting the provision as proposed except for this modification.

#### Supplements and Claims

The Department proposed in § 273.21(t)(7) that, if the household submitted or completed a monthly report after the issuance date but in the issuance month, the State agency would provide the household with a supplement, if warranted. Also, if the household submitted or completed a monthly report or the State agency became aware of a change that would have decreased benefits in some other manner at any time after the issuance date, the Department proposed that the State agency file a claim for any benefits overissued. The Department did not propose that households which submit reports after the issuance month receive restored benefits.

The Department received one comment on proposed § 273.21(t)(7). The commenter did not oppose the claims provision. The commenter

opposed the proposal to provide a supplement when the monthly report is received during the issuance month. The commenter believes that 7 CFR 273.12(c)(1)(i) conflicts with the proposed requirement to provide a supplement, and the commenter preferred the option in 7 CFR 273.12(c)(1)(i) to provide increases in the following month, where warranted. That commenter also opposed providing supplements to these households as undermining the reporting requirements and diminishing household responsibility for reporting.

The Department disagrees with the commenter. Section 273.12(c)(1)(i) is not applicable in this situation. The proposed provision is a special provision that takes precedence over 7 CFR 273.12(c)(1)(i). The provision for providing supplements as well as for establishing claims provides for equitable and consistent treatment of late reported information. The Department recognizes that Section 101(a) of Pub. L. 103-225 was intended to provide special treatment to the households residing on reservations. For that reason, the Department is adopting the regulation as proposed. State agencies must provide supplemental benefits if a missing report is submitted during the issuance month. The commenter was concerned about which report would require a supplement to be issued—the missing report for the month for which benefits were issued or the subsequent month's report that would be due in the issuance month. The proposal has been revised to clarify that it only applies to the missing report and not the subsequent report for the following month.

#### Quality Control Procedures

The legislative history provides that "a State [agency] will not be adversely affected in regard to its quality control efforts related to those households whose monthly reports are not submitted until a month after the report is due." *Congressional Record*, S2905, March 11, 1994. To implement this language, the Department proposed that those certification errors attributable to missing or incomplete monthly reports covered Section 101(a) of Pub. L. 103-225 shall be excluded from the error determination process. One commenter requested clarification of how quality control would handle two situations: (a) the household deliberately withholds a monthly report because they know the information would make them ineligible; and (b) the month prior to the incomplete or missing monthly report is a month in which the household either receives too many or too few food

stamps. The following quality control procedures apply to cases subject to the provisions of this rulemaking and with a review date that falls within the grace period: certification errors that occur during the grace period would be excluded; certification errors occurring prior to the grace period would be reviewed in accordance with existing procedures in the FCS Handbook 310.

#### Implementation

The Food Stamp Program Improvements Act of 1994 was effective upon enactment, March 25, 1994. On March 31, 1994, the Department issued a memorandum notifying State agencies of the legislation and the March 25, 1994, effective date. State agencies were directed to implement the requirements immediately. Recognizing that the statutory amendments regarding the monthly reporting on reservations have already been implemented through the above described memorandum and in order to provide for the orderly implementation of the specific provisions of this proposed rule, the Department proposed that this rule be effective in any given State upon implementation by the State agency but in no event later than the first day of the first month 60 days after publication of the final rule. The Department did not receive any comments on the implementation schedule as proposed. Accordingly, this action amends 7 CFR 272.1(g) to add a new paragraph to address implementation requirements for this final action.

Quality control variances resulting from implementation of the remaining provisions of this final rule will be excluded for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(12), as modified by 7 U.S.C. 2025(c)(3)(A).

#### 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 procedures, Aliens, Claims, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

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

1. The authority citations of Parts 272 and 273 continue to read as follows:

Authority: 7 U.S.C. 2011-2032.

### PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(150) is added to read as follows:

#### § 272.1 General terms and conditions.

\* \* \* \* \*

(g) *Implementation.* \* \* \* (150) *Amendment No. 365.* This provision is effective December 16, 1996 and must be implemented no later than March 1, 1997. 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.

### PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2a. In § 273.21, a new paragraph (t) is added to read as follows:

#### § 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

\* \* \* \* \*

(t) *Monthly reporting requirements for households residing on reservations.* The following procedures shall be used for households which reside on reservations and are required to submit monthly reports:

(1) *Definition of a reservation.* For purposes of this section, the term "reservation" shall mean the geographically defined area or areas over which a tribal organization exercises governmental jurisdiction. The term "tribal organization" shall mean the recognized governing body of an Indian tribe (including the tribally recognized intertribal organization of such tribes), as well as any Indian tribe, band, or community holding a treaty with a State government.

(2) *Certification periods.* Any household residing on a reservation that is required to submit a monthly report shall be certified for two (2) years.

(i) A State agency may request a waiver from FCS to allow it to establish certification periods of less than two (2) years if it is able to justify the need for the shorter periods. Any request for a waiver shall include input from the affected Indian tribal organization(s) and quality control error rate information for the affected households.

(ii) The State agency may opt to continue the two-year certification period for any household that moves off the reservation. If the State agency adopts this option and the household is still living off the reservation at the time it is subject to required recertification, the household shall be subject to the certification period requirements in

§ 273.10(f)(4). If the State agency does not adopt this option, any household that moves off the reservation shall have its certification period shortened. A household continuing to be subject to monthly reporting shall not have its certification period shortened to less than six months. A household becoming subject to change reporting shall not have its certification period end any earlier than the month following the month in which the State agency determines that the certification period shall be shortened.

(3) *Benefit determination for missing reports.* The State agency shall not delay, reduce, or suspend the allotment of a household that fails to submit a report by the issuance date.

(4) *Reinstatement.* If a household is terminated for failing to submit a monthly report, the household shall be reinstated without being required to submit a new application if a monthly report is submitted no later than the last day of the month following the month the household was terminated.

(5) *Notices.* (i) All notices regarding changes in a household's benefits shall meet the definition of adequate notice as defined in § 271.2 of this chapter.

(ii) If a household fails to file a monthly report by the specified filing date, the State agency shall notify the household within five days of the filing date:

- (A) That the monthly report is either overdue or incomplete;
- (B) What the household must do to complete the form;
- (C) If any verification is missing;
- (D) That the Social Security number of a new member must be reported, if the household has reported a new member but not the new member's Social Security number;
- (E) What the extended filing date is;
- (F) That the State agency will assist the household in completing the report; and

(G) That the household's benefits will be issued based on the previous month's submitted report without regard to any changes in the household's circumstances if the missing report is not submitted.

(iii) Simultaneously with the issuance, the State agency shall notify a household, if its report has not been received, that the benefits being provided are based on the previous month's submitted report and that this benefit does not reflect any changes in the household's circumstances. This notice shall also advise the household that, if a complete report is not filed timely, the household will be terminated.

(iv) If the household is terminated, the State agency shall send the notice so the household receives it no later than the date benefits would have been received. This notice shall advise the household of its right to reinstatement if a complete monthly report is submitted by the end of the month following termination.

(6) *Supplements and claims.* If the household submits the missing monthly report after the issuance date but in the issuance month, the State agency shall provide the household with a supplement, if warranted. If the household submits the missing monthly report after the issuance date or the State agency becomes aware of a change that would have decreased benefits in some other manner, the State agency shall file a claim for any benefits overissued.

Dated: July 15, 1996.

Ellen Haas,

*Under Secretary for Food, Nutrition, and Consumer Services.*

[FR Doc. 96-26071 Filed 10-16-96; 8:45 am]

BILLING CODE 3410-30-U

## 7 CFR Parts 272, 273, 278, and 279

[Amendment No. 364]

RIN 0584-AB60

### Food Stamp Program: Simplification of Program Rules

**AGENCY:** Food and Consumer Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes provisions of a proposed rulemaking published on January 11, 1995. It amends Food Stamp Program rules relating to residency, social security numbers, combined allotments, excluded resources, contract income, self-employment expenses, certification periods, the notice of adverse action, recertification, and suspension. The amendments simplify regulatory requirements and increase State agency flexibility. The rule also makes several technical amendments to Food Stamp Program rules.

**DATES:** This final rule is effective November 18, 1996 and must be implemented no later than May 1, 1997, except the provisions of 7 CFR 273.14(b)(2), which have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1995. The provisions of this section will become effective upon approval. FCS will publish a notice in the Federal Register announcing the effective date and implementation date.

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

#### SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget 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, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this proposed rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

#### Paperwork Reduction Act

This final rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The reporting and recordkeeping burden associated with the application, certification, and continued eligibility of food stamp applicants is approved under OMB No. 0584-0064. The burden for applications, including applications for recertification, is estimated to average .2290 hours per response.

To determine the continued eligibility of food stamp recipients, State welfare agencies must recertify eligible households whose certification periods have expired, and households are required to submit a recertification form. Section 273.14(b)(2) of this rule authorizes State agencies to use a modified form of the application used for initial application.

The amendments to 7 CFR 273.14(b)(2) made by this rule do not impose any new collection requirements. The methodology used to

determine the current burden estimates for all applications assumes that some households will be recertified more often than other households. The methodology also assumes that every applicant will complete every line item on the application form; therefore, the burden is overestimated for some households and underestimated for others. Based on this methodology, we believe the current burden estimate sufficiently reflects the potential reduced burden resulting from use of a modified recertification form.

*Comments.* Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250. Comments and recommendations on the proposed information collection must be received by December 16, 1996.

#### 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.

#### Public Participation

This rule contains technical amendments at 7 CFR 272.1(g)(74), 273.2(f)(1), 273.4(a)(2), 273.4(a)(9), 273.4(a)(11), 273.20, 278.1(h), and 279.3 which were not part of the proposed rule published January 11, 1995 and are unrelated to the provisions of the proposed rule. These amendments are being published without an opportunity