on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 9, 2008.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.516 is amended by revising the table in paragraph (b) to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Starfruit	10	12/31/10

* * * * *

[FR Doc. E8–16876 Filed 7–22–08; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 263

RIN 0970–AC15

Cost Allocation Methodology Applicable to the Temporary Assistance for Needy Families Program

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule applies to the Temporary Assistance for Needy Families (TANF) program and requires States, the District of Columbia and the Territories (hereinafter referred to as the ''States'') to use the ''benefiting program'' cost allocation methodology in U.S. Office of Management and Budget (OMB) Circular A–87 (2 CFR part 225). It is the judgment and determination of HHS/ACF that the ''benefiting program'' cost allocation methodology is the appropriate methodology for the proper use of Federal TANF funds. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 gave federally-recognized Tribes the opportunity to operate their own Tribal TANF programs. Federally-recognized Indian tribes operating approved Tribal TANF programs have always followed the ''benefiting program'' cost allocation methodology in accordance with OMB Circular A–87 (2 CFR part 225) and the applicable regulatory provisions at 45 CFR 286.45(c) and (d). This final rule contains no substantive changes to the proposed rule published on September 27, 2006.

EFFECTIVE DATE: This rule is effective July 23, 2008.

FOR FURTHER INFORMATION CONTACT: Robert Shelbourne, Director, State TANF Policy Division at (202) 401–5150, *rshelbourne@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION: On September 27, 2006, ACF published a Notice of Proposed Rulemaking (NPRM) to add section 263.14 to 45 CFR part 263, requiring a State or Territory to use a benefiting program cost allocation methodology consistent with the general requirements of OMB Circular A–87 to allocate TANF costs. We provided a 60-day comment period that ended on November 27, 2006. We offered the public the opportunity to submit comments by surface mail, e-mail, or electronically via our Web site.

Comment Overview

After accounting for duplication, we received one comment on the NPRM. We have summarized the public comment and our response to it in Section II of the preamble to this final rule.

Table of Contents

I. Statutory Authority

We are issuing this regulation under the authority granted to the Secretary of Health and Human Services (HHS) by 42 U.S.C. 1302(a). Section 1302(a) authorizes the Secretary to make and publish such rules as may be necessary for the efficient administration of functions with which he is charged under the Social Security Act.

42 U.S.C. 617 limits the authority of the Federal government to regulate State conduct or enforce the TANF provisions of the Social Security Act, except as expressly provided. We interpret this

provision to allow us to regulate the use of a permissible cost allocation methodology because States and the Territories need to know what they may and may not do to avoid potential misuse of funds penalties under 42 U.S.C. 609(a)(1).

Pursuant to 42 U.S.C. 609(a)(1), we may impose a financial penalty whenever a State misuses Federal TANF funds. The TANF regulations at 45 CFR 263.11 address the proper and improper uses of Federal TANF funds. Section 263.11(b) sets forth the circumstances that constitute misuse of Federal funds. Use of Federal TANF funds in violation of any of the provisions in OMB Circular A–87 (2 CFR part 225) is one such circumstance. Accordingly, we are specifying that the ''benefiting program'' cost allocation methodology is the appropriate methodology for the proper use of Federal TANF funds.

II. Background

The Office of Management and Budget (OMB) has issued government-wide standards for allocating the costs of government programs. Specifically, OMB Circular A–87 (2 CFR part 225), ''Cost Principles for State, Local and Indian Tribal Governments,'' provides that ''A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.'' Thus, costs that benefit multiple programs may not be allocated to a single program. An illustrative way to determine whether multiple programs benefit from a cost objective is to ask, for example: In the absence of the TANF program, would another program still have to undertake the function? If the answer is yes, there is a benefit to each program and the costs should be allocated using the ''benefiting programs'' cost allocation method.

The ''benefiting program'' cost allocation method applies to all Federal programs, unless there is a statutory or OMB-approved exception. Prior to enactment of the TANF program, HHS allowed States, the District of Columbia, and the Territories to charge the common administrative costs of determining eligibility and case maintenance activities for the Food Stamp and Medicaid programs to the AFDC program—a so-called ''primary program'' allocation method. This exception to the ''benefiting program'' cost allocation requirement of OMB Circular A–87 (2 CFR part 225) was consistent with Conference Committee language indicating AFDC might pay for these common costs because families who were eligible for AFDC (the primary program) were also automatically eligible for Medicaid and met the categorical, but not necessarily the income, requirements of Food Stamps.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193) was enacted on August 22, 1996. Title I of PRWORA repealed the AFDC program and replaced it with the TANF program. Unlike AFDC, TANF eligibility no longer automatically makes a family eligible for Medicaid, and eligibility for certain TANF services and benefits do not lead to categorical eligibility for Food Stamps.

As a result, HHS issued guidance prohibiting States from continuing to use the ''primary program'' allocation methodology. On September 30, 1998, the Office of Grants and Acquisition Management (OGAM) in HHS issued OGAM Action Transmittal (AT) 98–2 which required States to allocate costs to each ''benefiting program'' in accordance with the provisions in OMB Circular A–87 (2 CFR part 225). According to the instructions and rationale in OGAM AT 98–2, ''Cost shifting (to a primary program) is not permitted by most program statutes, except where there is a specific legislative provision allowing such cost shifting. While the former AFDC program allowed such an exception, the TANF legislation that replaced AFDC does not permit it being designated as the sole benefiting or primary program.'' All States submitted revised cost allocation plans to comply with this policy and since then have continued to allocate Medicaid, Food Stamp and TANF costs in accordance with a ''benefiting'' methodology.

Six States filed suit in District Court to prevent HHS from enforcing OGAM AT 98–2 (*Arizona* v. *Thompson, 281 F.3d 248* (*DC Cir. 2002*). The States alleged that they incur common administrative costs that benefit the TANF, Medicaid, and Food Stamp programs and contended that the ''grandfather provision'' under 42 U.S.C. 604(a)(2) permits them to use TANF grants as they did under the AFDC program. Section 604(a)(2) allows States to use Federal TANF funds in any manner that the State was authorized to use Federal funds received under the State's former AFDC program, the Job Opportunities and Basic Skills Training (JOBS) program or the Emergency Assistance program in effect as of either September 30, 1995 or August 21, 1996, whichever date the State has elected.

The United States District Court for the District of Columbia upheld the Department's position. However, the States appealed to the United States Court of Appeals for the District of Columbia Circuit (Court of Appeals). The Court of Appeals decided, on March 5, 2002, that the TANF legislation does not require HHS to conclude that States are prohibited from using the ''primary program'' cost allocation methodology (281 F.3d at 256). The Appeals Court noted that: ''The background against which Congress enacted the Welfare Reform Act included both Circular A–87's general principle of benefiting program allocation and its well-recognized exception for the AFDC program.'' Id. However, the Court left open the possibility that HHS could, in the exercise of its rulemaking discretion, prospectively prescribe that States use the ''benefiting program'' method to allocate common costs among programs. Id. The case was ultimately remanded to HHS for further consideration. After considerable deliberation, we have determined that the benefiting program cost allocation methodology is the appropriate cost allocation rule to apply to the TANF program.

Comment: A national association requested that we reconsider our proposal, because it restricts State flexibility and State options. It maintains that the ties between the TANF program and the Food Stamp program are strong and numerous in most States. It points to the 2002 Farm Bill as an example of legislation which enables States to align the definition of income and/or resources under the Food Stamp program to that used in the TANF or Medicaid program. As another example, it points to the close connection between the Food Stamp program and the TANF program set forth in the interim final TANF rule published in the **Federal Register** on June 29, 2006. A provision in the rule urges States to implement a Simplified Food Stamp Program, for purposes of considering the required hours of work participation in a work experience or community service program. It argues that the widespread adoption of such conformity options has led States to combine staff, automated systems, and other administrative functions when operating these programs.

Response: The 2002 Farm Bill provisions and the Simplified Food Stamp Program give States the option to align certain Food Stamp and TANF program eligibility rules. But, this flexibility did not alter or affect in any way the required cost principles applicable to both programs. The Food Stamp program, administered by the U.S. Department of Agriculture's Food and Nutrition Service, is subject to the

same Common Rule cost principles as the TANF program. In using Federal Food Stamp program funds or Federal TANF program funds, States have been and continue to be required to follow the uniform cost principles for determining allowable costs in OMB Circular A–87 (2 CFR part 255).

OMB Circular A–87 (2 CFR part 225) states that program costs must be necessary, reasonable, and allocable. A cost must also be allowable under OMB Circular A–87 cost principles and the program's laws, terms and conditions of the Federal award, or governing regulations. An allowable cost is allocable to a particular program in accordance with the relative benefits received by that program. Thus, allowable shared costs must be allocated in accordance with the ''benefiting program'' cost allocation methodology and no changes have been made in this final rule.

III. Discussion of Regulatory Provisions

We have added the following new section to part 263, subpart B of the TANF regulations.

Section 263.14 What methodology shall States use to allocate Federal TANF costs?

This section provides that States shall use only the ''benefiting program'' cost allocation methodology. Requiring a ''benefiting program'' cost allocation methodology is consistent with the TANF final rules which make the TANF program subject to 45 CFR part 92 and includes the cost principles of OMB Circular A–87 (2 CFR part 225).

One of the fundamental Federal appropriation principles at 31 U.S.C. 1301(a) states that appropriations can only be used for the purposes for which they were appropriated, unless otherwise provided by law. OMB Circular A–87 (2 CFR part 225) reflects this principle by requiring ''benefiting program'' cost allocation. The overall purpose of OMB Circular A–87 (2 CFR part 225) is to achieve more efficient and uniform administration of Federal awards and to provide the foundation for greater uniformity in the costing procedures of non-Federal governments. Without an explicit legislative provision permitting ''primary program'' cost allocation, we believe it would be inconsistent with and contrary to these appropriation principles to allow TANF funds to be used to pay for costs allocable to other programs.

Since the decision of the Appeals Court, no State has submitted a revised ''primary program'' cost allocation plan for allocating the common costs of determining eligibility or case maintenance for TANF, Food Stamps and Medicaid to HHS for approval. These were the primary common costs previously claimed and allowed under a ''primary program'' cost allocation methodology under the former AFDC program.

Under the President's Management Agenda of improved accountability, each program needs to know its full costs using consistent and comparable data to assess program trends and measure performance. Appropriate program and funding decisions, both now and in the future, must be based on the knowledge and accounting of total program costs, including those costs incurred under a consistent benefiting program methodology. Under this rule, we will not permit an exception to the benefiting program cost allocation methodology generally required under OMB Circular A–87 (as permitted for the AFDC program prior to the enactment of the TANF program). Thus, HHS will disapprove any TANF cost allocation amendments proposing a ''primary program'' cost allocation methodology.

Therefore, the Secretary is exercising his discretion to require a ''benefiting program'' cost allocation methodology under TANF in accordance with OMB Circular A–87 (2 CFR part 225). This final rule requires States to make no changes to their TANF cost allocation plans, but instead will affirm and lock in place, current cost allocation practice.

Readers should note that we revised the title of this section to be more concise. ''States'' has already been defined in 45 CFR 260.30 to mean the 50 States, the District of Columbia, and the Territories.

This final rule does not affect federally-recognized Indian tribes operating approved Tribal TANF programs. Prior to enactment of PRWORA of 1996, needy families in a federally-recognized Indian tribe received assistance under the State's former Aid to Families with Dependent Children (AFDC) program. PRWORA gave federally-recognized Tribes the opportunity to operate their own Tribal TANF programs. These Tribes have always followed the ''benefiting program'' cost allocation methodology in accordance with OMB Circular A–87 and the applicable Tribal TANF regulatory provisions at 45 CFR 286.45(c) and (d).

IV. Paperwork Reduction Act of 1995

This rule contains no new information collection activities that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, codified at 44 U.S.C. 3507.

V. Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Regulatory Flexibility Act.

VI. Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule is considered a ''significant regulatory action'' under the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

Since all States should be using a ''benefiting program'' cost allocation methodology under TANF, we believe the impact of this final rule is minimal. We do not believe this rule will have a significant negative impact or reduce potential Federal reimbursement, as States receive a fixed Federal block grant amount.

VII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

VIII. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

IX. Assessment of Federal Regulation and Policies on Families

Section 654 of The Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment

addressing seven criteria specified in the law. These regulations will not have an impact on family well-being as defined in the legislation.

X. Executive Order 13132

Executive Order 13132 ''Federalism'' requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. In the NPRM, we did solicit comments from State and local government officials, consistent with this Executive Order. We did not receive any comments from State and local government officials.

List of Subjects in 45 CFR part 263

Grant programs—Federal aid programs, Penalties, Public assistance programs—Welfare programs.

Approved: May 16, 2008.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

Michael O. Leavitt,

Secretary of Health and Human Services.

■ For the reasons set forth in the preamble, the Administration for Children and Families amends 45 CFR chapter II to read as follows:

PART 263—EXPENDITURES OF STATE AND FEDERAL TANF FUNDS

■ 1. The authority citation for 45 CFR part 263 continues to read as follows:

Authority: 42 U.S.C. 604, 607, 609, and 862a.

■ 2. Add § 263.14 to subpart B to read as follows:

§ 263.14 What methodology shall States use to allocate TANF costs?

States shall use a benefiting program cost allocation methodology consistent with the general requirements of OMB Circular A–87 (2 CFR part 225) to allocate TANF costs.

[FR Doc. E8–16854 Filed 7–22–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XJ16

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish by catcher processors participating in the limited access or opt-out fisheries that are subject to sideboard limits established under the Central GOA Rockfish Program in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 sideboard limits of pelagic shelf rockfish established for catcher processors participating in the limited access or opt-out fisheries in the West Yakutat District of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 17, 2008, through 1200 hrs, A.l.t., July 31, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 pelagic shelf rockfish sideboard limit established for catcher processors participating in the limited access or opt-out fisheries that are subject to sideboard limits under the Central GOA Rockfish Program in the West Yakutat District of the GOA is 180 mt. The sideboard limit is established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008) and as posted as the 2008 Rockfish Program Catcher Processor Sideboards at *http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm.*

In accordance with § 679.82(d)(7)(i)(A), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 pelagic shelf rockfish sideboard limit established for catcher processors participating in the limited access or opt-out fisheries in the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 180 mt, and is setting aside the remaining 0 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.82(d)(7)(ii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the pelagic shelf rockfish sideboard limit established for catcher processors participating in the limited access or opt-out fisheries in the West Yakutat District of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pelagic shelf rockfish sideboard limit for catcher processors participating in the limited access or opt-out fisheries in the West Yakutat District of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 16, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.82 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*