

Proposed Rules

Federal Register

Vol. 64, No. 132

Monday, July 12, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Chapter II, Subchapter C, and Parts 271, 273 and 276

RIN 0584-AC41

Food Stamp Program: Non-Discretionary Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: On August 22, 1996, the President signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This rule proposes to amend the Food Stamp Program Regulations to implement the non-discretionary provisions of this law which affect the Food Stamp Program. These provisions concern changes in the minimum and maximum allotments, the standard and shelter deductions, household composition, the fair market value of vehicles, the definition of homeless, and expedited service. This rule also incorporates, where possible, the principles of the President's Regulatory Reform Initiative and removes overly prescriptive, outdated, and redundant provisions and increases State agency flexibility.

DATES: Comments on this proposed rulemaking must be received on or before September 10, 1999 to be assured of consideration.

ADDRESSES: Comments should be submitted to Margaret Werts Batko, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be faxed to the attention of Ms. Batko at (703) 305-2486 or e-mailed to Margaret_Batko@FCS.USDA.GOV. All written comments will be open for public inspection at the office of the Food and Nutrition Service during

regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be addressed to Ms. Batko at the above address or by telephone at (703) 305-2516.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be Economically Significant under E.O. 12866, and Major under P.L. 104-121, and has therefore 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 rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), 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). Shirley R. Watkins, Under Secretary for Food, Nutrition, and Nutrition Services, has certified that this 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. Participants will be affected to the extent that their benefits will not increase at the rate they would have under the old law.

Paperwork Reduction Act

This proposed 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 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full

implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of the final rule. 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 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 and Part 279.

Regulatory Impact Analysis

Need for Action

This action is needed to implement 8 provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193. This rule proposes to remove the exception in current law that allows persons age 21 and under who are themselves parents or married, and who live with a parent, to participate in the Food Stamp Program as a separate household; change the way the maximum allotments are calculated by using 100% of the Thrifty Food Plan instead of 103%; alter the definition of homeless by setting a time limit (where there was none before) on people whose primary nighttime residence is a temporary accommodation in the home of another; freeze the standard deduction in food stamps for fiscal year 1997 and beyond at \$134; retain a cap on the excess shelter expense deduction; freeze the fair market value of vehicle exemption at \$4,650; freeze the minimum allotment at \$10 a month; increase the number of days in which States have to provide expedited service from 5 to 7 calendar days; eliminate households consisting entirely of homeless people from those categories of households entitled to receive expedited service; and remove the State agency option to exclude from unearned income up to \$50 monthly of title IV-D child support payments.

Effects on Administering Agencies

State food stamp offices are affected to the extent that they must implement the provisions described in this action. However, State agencies are not expected to change their personnel due to these changes, so State agencies are expected to incur minimal costs.

Costs

The changes in the food stamp requirements made by the provisions addressed in this rule would reduce Food Stamp Program costs for FY 1998 by approximately \$1,930 million.

Definitions—7 CFR 271.2

Definition of Homeless: Current regulations at 7 CFR 271.2 define a homeless individual as an individual lacking a fixed or regular nighttime residence or whose primary nighttime residence is a shelter, a residence intended for those to be institutionalized, a temporary accommodation in the residence of another, or a public or private place not designed to be a regular sleeping accommodation for humans. The Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032) (the Act), did not place a time limit on what constitutes a temporary accommodation in the residence of another.

Section 805 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 amends section 3(s)(2)(C) of the Act by setting a time limit for people whose primary nighttime residence is a temporary accommodation in the home of another. These people will only be considered homeless if the temporary accommodation is for not more than 90 days. This rule proposes to amend 7 CFR 271.2 accordingly.

Definition of Minimum Benefit: Prior to the PRWORA, section 8(a) of the Act provided that the minimum benefit for one- and two-person households shall be \$10 per month, and shall be adjusted to the nearest \$5 each October 1 based upon the percentage change in the Thrifty Food Plan for the twelve-month period ending the preceding June.

The current regulations at 7 CFR 271.2 define minimum benefit as the minimum monthly amount of food stamps that one- and two-person households received. Section 271.2 also provides that the amount of the minimum benefit will be reviewed annually and adjusted to the nearest \$5 each October 1 based on the percentage change in the Thrifty Food Plan for the twelve-month period ending the preceding June.

Section 826 of the PRWORA amends section 8(a) of the Act by removing the

annual adjustment provision, thus freezing the minimum benefit at \$10. This rule proposes to amend 7 CFR 271.2 accordingly.

Household Concept—7 CFR 273.1

7 CFR 273.1(a)(2)—Special Definition—Treatment of Children Living at Home: Section 3(i)(2) of the Act provides specific definitions for what constitutes a household when a child is living with his or her parents. The Mickey Leland Childhood Hunger Relief Act, Title XIII, Chapter 3 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 (Leland Act), amended section 3(i) of the Act with the intention of simplifying the household definition provisions and supporting families that live together and share housing expenses but who do not necessarily purchase and prepare meals together. With certain enumerated exceptions, the simplified household definition allowed persons who live together and who purchase food and prepare meals separately to participate in the Program as separate food stamp households. Specifically, it provided that a child under 22 years of age who is living with his or her natural or adoptive parent or stepparent, is presumed to purchase and prepare meals together with the parent even if he does not, unless the child is also living with his or her own child(ren) or spouse. The “Certification Provisions of the Mickey Leland Childhood Hunger Relief Act” rule published October 17, 1996 (61 FR 54279), amended 7 CFR 273.1 accordingly. Currently, 7 CFR 273.1(a)(2)(B) provides that a child under 22 years of age who is living with his or her natural or adoptive parents or stepparents, is considered to be purchasing and preparing meals with his or her parents, *unless* the child is also living with his or her own child(ren) or spouse.

Section 803 of the PRWORA amended section 3(i) of the Act by eliminating this exception to the household definition. This rule proposes to make a corresponding change to the regulations at 7 CFR 273.1 to provide that a child under 22 years of age who is living with his or her natural or adoptive parents or stepparents is considered to be purchasing and preparing meals with his or her parents and, therefore, is part of the parents’ household.

Definition of Parental Control: To provide the same treatment for a child living with a non-parent adult that is provided for a child living with a natural or adoptive parent or stepparent, the Department is proposing to change the definition of parental control. This rule proposes to amend 7 CFR 273.1 by

removing the exception that a child who is living with his or her own child(ren) or spouse is not considered to be under parental control.

Reorganization of 7 CFR 273.1—Household Concept: In the spirit of the President’s Regulatory Reform Initiative, we are proposing to reorganize section 273.1, with the exception of 7 CFR 273.1(d) and (f), which remain unchanged. We are not proposing significant changes to section 273.1 as nearly every provision is set forth in the Act and can be changed only through legislative action. However, we are condensing several sections into a single section; removing unnecessary verbiage and provisions covered elsewhere in the regulations; and providing State agency flexibility where possible. This proposed rule sets out the entire revised text for the convenience of the reader. The specific changes are detailed in the following paragraphs of this section of preamble.

Eligibility for the Food Stamp Program is based on a “household” concept. Current regulations at 7 CFR 273.1(a)(1) define what constitutes a “household” for Food Stamp Program purposes. Generally, a household means an individual living alone or group of individuals living together and purchasing food and preparing meals in common. There are exceptions to this general household concept policy for certain types of living arrangements which are set forth in 7 CFR 273.1(a)(2), (b), (c), and (e).

This rule proposes to combine the current provisions at 7 CFR 273.1(a)(2), (b), (c)(1), (c)(3), and (e) governing the inclusion or exclusion from a household of certain individuals living with others in a single section designated as paragraph (b). These individuals include spouses, children, elderly and disabled persons, roomers, live-in attendants, boarders, residents of institutions, and other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household. There has been confusion in the past as to when such individuals are included or excluded as household members. We believe including the provisions in separate paragraphs under a single regulatory section rather than addressing each inclusion/exclusion provision in a separate regulatory section will help to clarify the household concept.

Furthermore, this rule would remove the definition of “spouse” at 7 CFR 271.2. Most States have laws governing who is considered a spouse. Allowing State agencies to use a State definition of spouse provides flexibility while

ensuring a uniform policy throughout the State.

To ensure uniformity among all States, we are proposing to retain in new paragraph (b)(3) the language currently appearing in 7 CFR 273.1(c)(1) which defines a boarder. Boarders are individuals or groups of individuals residing with others and paying reasonable compensation to the others for meals or meals and lodging. Persons paying less than reasonable compensation for meals are not boarders and, thus, are required to be members of the household providing the services. We are also proposing to retain the language appearing in current rules at 7 CFR 273.1(c)(3)(i) and (ii) that provides that an individual qualifies as a boarder paying reasonable compensation for board when the board payment is for more than two meals a day for which the individual pays an amount equal to or in excess of the maximum food stamp allotment for the appropriate size of the boarder household, or is for less than two meals a day and the individual pays an amount equal to or in excess of two-thirds of the maximum food stamp allotment for the appropriate size of the boarder household.

We contemplated removing these computation provisions from the rules and allowing State agencies the flexibility to establish a means for computing reasonable compensation. This computation method has been in existence since 1982. Upon researching our files, we found no evidence that these provisions have been a problem for the State agencies or clients. This is not an area of the Program where State agencies have specifically asked for flexibility. We believe the provision as written is simple to administer, equitable to clients, and adaptable to each State's automated certification system. However, we specifically solicit comments from interested parties on this matter.

With the proposed combining of 7 CFR 273.1(a)(2), (b), (c)(1), (c)(3), and (e) in new paragraph (b), 7 CFR 273.1(c) of current regulations would be eliminated. We are adding a new paragraph (c). There has been some confusion by State agencies as to when the policy on "purchasing food and preparing meals" overrides policy prohibiting the separation of spouses and children, or prohibiting the participation of boarders. In the new paragraph (c) we would specifically allow State agencies to apply discretion when the rule does not lend itself to a simple and direct answer to certain living situations. We cannot cover all living situations by regulation. We intend that State agencies use prudent

judgment in determining when to allow individuals to be certified as separate households from others with whom they reside and to protect Program integrity by not allowing great numbers of households to fragment into smaller households. The language also clarifies that any State policy adopted under this provision must be applied consistently throughout the State.

This rule proposes to remove the language currently appearing at 7 CFR 273.1(c)(2) and (c)(4). The provision at 7 CFR 273.1(c)(2) reminds the State agency that the household with whom the boarder resides can participate in the Program if otherwise eligible. The provision at 7 CFR 273.1(c)(4) reminds the State agency that an individual furnished both meals and lodging and paying less than reasonable compensation for these services is not a boarder, but is a member of the household providing the services pursuant to 7 CFR 273.1(a). We consider these two provisions to be redundant.

We are not proposing any changes in 7 CFR 273.1(d) Head of Household, and (f) Authorized Representative because we believe the current regulations are appropriate. Requirements in current regulations at 7 CFR 273.1(g) for determining the eligibility and benefits of households containing members on strike are redesignated as paragraph (e), with minor editorial changes for clarity.

Application Processing—7 CFR 273.2

Expedited Service: Current regulations at 7 CFR 273.2(i) provide for expedited service to migrant or seasonal farm workers who are destitute and households with less than \$150 in combined monthly gross income. Both of these types of households must also have liquid resources of \$100 or less to qualify for expedited service. Households in which all members are homeless individuals and eligible households whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage and utilities are also eligible to receive expedited service. Prior to the PRWORA, section 11(e)(9) of the Act required that benefits be provided not later than five calendar days following a household's date of application for all eligible households.

Section 838 of the PRWORA amends section 11(e)(9) of the Act by increasing the amount of days in which States have to provide expedited service from five to seven calendar days, and eliminating households consisting entirely of homeless people from those categories of households entitled to receive expedited service.

Accordingly, this rule proposes to amend 7 CFR 273.2(i)(3)(i) by striking "fifth" calendar day and inserting "seventh". This rule also would amend 7 CFR 273.2(i)(3)(ii) by striking "5 calendar days" and inserting "7 calendar days." In addition, the rule would remove 7 CFR 273.2(i)(1)(iii) which provides that households in which all members are homeless individuals are entitled to expedited service and redesignates 2(i)(1)(iv) as 2(i)(1)(iii). Homeless individuals may continue to qualify for expedited service under the financial criteria.

Resource Eligibility Standards—7 CFR 273.8

Fair Market Value: The Leland Act amended section 5(g) of the Act to provide that on October 1, 1996, and each October 1 thereafter, the fair market value resource exclusion limit for licensed vehicles shall be adjusted, using a base of \$5,000, to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics for the 12-month period ending on June 30 preceding the date of such adjustment and rounded to the nearest \$50. The "Certification Provisions of the Mickey Leland Hunger Relief Act" rule, published October 17, 1996 (61 FR 54279), amended 7 CFR 273.8(h)(3) accordingly.

Section 810 of the PRWORA amended section 5(g) of the Act to provide that any licensed vehicle that is used for household transportation or to obtain or continue employment to the extent that the fair market value of the vehicle exceeds \$4,600 through September 30, 1996, and \$4,650 beginning October 1, 1996 shall be included in financial resources. Section 810 also freezes the fair market value exclusion limit used in determining the countable value of the included vehicle at \$4,650. Accordingly, this rule proposes to amend 7 CFR 273.8 to include the new resource exclusion level which is effective October 1, 1996.

We are proposing to modify the definition in 7 CFR 273.8(c)(i)(C) of a vehicle that can be excluded from a household's assets because it is used for income-producing purposes to include vehicles needed for performing a job, although they may also be used for commuting and for normal household errands. Examples would be a car used for a job as a delivery person, a motor vehicle used by a courier, a car used by a household member to call on customers, even though the vehicle is not used for long-distance travel, or any vehicle used to perform a job that was advertised as requiring a personally-

owned motor vehicle. This will ensure that State agencies will not have to verify the relative amount of mileage traveled for income-producing purposes. Accordingly, this rule proposes to amend 7 CFR 273.8 to remove the requirement that a vehicle used for income-producing purposes be used primarily for those purposes in order to be excluded from a household's assets. FNS is seeking comments on the effect this proposal will have on State agencies and on food stamp applicants and recipients.

Reorganization of 7 CFR 273.8: We are taking this opportunity to propose a reorganization of 7 CFR 273.8 and the removal of redundant or unnecessary verbiage.

Section 5(g)(2) of the Act requires that the Secretary prescribe inclusions and exclusions from financial resources following the regulations in force as of June 1, 1982. The law provided an exception for the provisions governing vehicles and inaccessible resources. All other resource inclusion and exclusion provisions described in the regulations as of June 1, 1982 became law by reference and can only be changed through legislative action. Nonetheless, there are some provisions we are able to change and some areas where we can remove redundant or unnecessary verbiage. Those provisions relate to the fair market value test for vehicles, inaccessible resources, and the transfer of resources. This rule would revise 7 CFR 273.8(e), (g), (h), (i) and remove (j).

Currently, paragraph (e)(3) provides that licensed vehicles shall be excluded from resources pursuant to the current provisions under paragraph (h). A list of vehicles excluded from resources without regard to the fair market value or equity value of the vehicle appears in paragraphs (h)(1) and (h)(2). Paragraphs (h)(3) through (h)(6) state that vehicles not excluded under paragraphs (h)(1) or (h)(2) must be evaluated for their fair market value and/or equity value to determine what portion of the value of the vehicle would be counted as a resource, unless the vehicle is exempt from such tests. Regulations governing the determination of the fair market value of a vehicle are set forth in paragraph (g). We believe that this organization is confusing and difficult to follow.

This rule proposes to remove all the provisions from paragraph (h) and transfers them to either (e) or (g). The list of vehicles excluded from resource consideration currently contained in paragraphs (h)(1)(i)-(v) and (h)(2) are incorporated into 7 CFR 273.8(e)(3). The remaining provisions of paragraph 5(h)(3), (h)(4) and (h)(5) concerning the

treatment of non-excluded vehicles are rewritten and combined with the provisions in paragraph (g) to improve readability. As a result of transferring the text of paragraph (h), that section would no longer exist and paragraph (i) would be re-designated as paragraph (h). A conforming amendment would also be made to paragraphs (e)(16) and (e)(18) to reference the relocation of the vehicle exclusion provisions. Furthermore, the current 7 CFR 273.8(j), which provides that the resources of certain non-household members shall be treated in accordance with 7 CFR 273.11, would be removed. We believe this reference is unnecessary.

In keeping with the principles of the President's Regulatory Reform Initiative of increasing State flexibility, this interim rule removes the prescriptive regulations in paragraph (g) for determining the fair market value of a vehicle and allows State agencies to establish their own methodologies. However, to ensure client protection, we are proposing to retain the prohibition against increasing the basic value of a vehicle because of low mileage, optional equipment, or special apparatus for the handicapped as State variations may affect eligibility and costs.

This proposed rule would also revise paragraph (e)(11) which excludes from countable resources any resource that is specifically excluded by any other Federal statute and lists such excluded resources. This rule proposes to remove the specific list of resources excluded by other Federal laws. We periodically provide State agencies with a list of such excluded resources through agency memoranda because the list changes frequently and quickly becomes outdated. Doing this by regulations results in incomplete regulations, thereby causing confusion. We believe it is sufficient to have the regulation simply provide an exclusion for any resource specifically excluded by another Federal statute and continue to notify State agencies through agency memoranda when such laws are enacted.

Income and Deductions—7 CFR 273.9

Standard Deduction: Current regulations at 7 CFR 273.9(d)(7) provide that effective October 1, 1987, and each October 1 thereafter, the standard deduction shall be adjusted to reflect change in the CPI-U for items other than food for the twelve months ending the preceding June 30. Section 809 of the PRWORA amends section 5(e) of the Act to provide that the Secretary shall allow a standard deduction for each household in the 48 contiguous States and the District of Columbia, Alaska,

Hawaii, Guam, and the Virgin Islands of the United States of \$134, \$229, \$189, \$269, and \$118, respectively. The annual adjustment is eliminated. This rule would amend the regulations at 7 CFR 273.9(d)(7) accordingly.

Excess Shelter Expense Deduction: The current regulations at 7 CFR 273.9(d)(5) provide that households are entitled to a deduction from income for excess shelter expenses that exceed 50 percent of the household's net income remaining after all other deductions. For households with an elderly or disabled member (as defined in 7 CFR 271.2), the amount of the deduction is not limited. For other households, the deduction is limited. This limit, usually referred to as the "shelter cap," has been changed several times due to legislation. The current regulations at 7 CFR 273.9(d)(8) were last updated in 1987 and provide that effective October 1, 1988, and each October 1 thereafter, the maximum limit for the excess shelter expense deduction shall be adjusted to reflect changes in the shelter, fuel, and utilities components of housing costs in the CPI-U for the 12 months ending the preceding June 30.

The Leland Act amended section 5(e) of the Act to gradually increase and then remove the limit on the amount of excess shelter expenses these households could deduct from their income to determine eligibility and benefits. The Leland Act provided that effective October 1, 1995 through December 31, 1996, the excess shelter expense deduction in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, shall not exceed \$247, \$429, \$353, \$300, and \$182, respectively, and that the cap be removed January 1, 1997.

The "Excess Shelter Expense Limit and Standard Utility Allowances" rule, published on November 22, 1994 (59 FR 60098), proposed to make the corresponding change in the regulations at 7 CFR 273.9(d)(8). This rule has been overtaken by more recent statutory changes and will not be published in final form.

Section 809 of the PRWORA once again amended section 5(e) of the Act in regard to the excess shelter limit. Section 809 provides that a household shall be entitled to an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter exceeds an amount equal to 50 percent of monthly household income after all other applicable deductions have been allowed. In the case of a household that does not contain an elderly or disabled individual, in the 48 contiguous States

and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, the excess shelter expense deduction shall not exceed:

(i) for the period beginning on the date of enactment of the law and ending on December 31, 1996, \$247, \$429, \$353, \$300, and \$182 per month, respectively;

(ii) for the period beginning on January 1, 1997, and ending on September 30, 1998, \$250, \$434, \$357, \$304, and \$184 per month, respectively;

(iii) for fiscal years 1999 and 2000, \$275, \$478, \$393, \$334, and \$203 per month, respectively; and

(iv) for fiscal year 2001 and each subsequent fiscal year, \$300, \$521, \$429, \$364, and \$221 per month, respectively.

This proposed rule would make a corresponding change to the regulations at 7 CFR 273.9(d)(8).

Determining Household Eligibility and Benefit Levels—7 CFR 273.10

Maximum Allotments: As required by section 3(o) of the Act prior to the PRWORA, the current regulations at 7 CFR 273.10(e)(4)(ii)(F) provide that effective October 1, 1990 and each October 1 thereafter, maximum food stamp allotments shall be based on 103 percent of the cost of the Thrifty Food Plan (TFP) for the four-person reference family for the preceding June, rounded to the nearest lower dollar increment.

Section 804 of the PRWORA amends section 3(o) of the Act by providing that on October 1, 1996, and each October 1 thereafter, the Department shall adjust the cost of the maximum allotment to reflect the cost of the Thrifty Food Plan in the preceding June, and round the result to the nearest lower dollar increment for each household size, except that on October 1, 1996, the Secretary may not reduce the cost of the maximum allotment in effect on September 30, 1996.

Accordingly, this proposed rule would amend 7 CFR 273.10(e)(4)(ii) to provide that effective October 1, 1996, the maximum food stamp allotments shall be based on 100% of the cost of the TFP, as defined in section 271.2, for the preceding June, rounded to the nearest lower dollar increment, except that on October 1, 1996, the allotments may not fall below those in effect on September 30, 1996.

In addition, the Department is proposing to remove 7 CFR 273.10(e)(4)(ii)(A) through (F) as these paragraphs, which provide for the adjustment of the TFP for the years 1983 through 1995, are outdated.

Conforming Amendments

Aid to Families with Dependent Children: The current food stamp regulations contain the terms, "Aid to Families with Dependent Children," "AFDC," and "Aid to Families with Dependent Children (AFDC)." The PRWORA block granted this program to the States and renamed it the Temporary Assistance for Needy Families (TANF) program. Therefore, these terms are obsolete. Section 109 of the PRWORA made conforming amendments to the Food Stamp Act by replacing those terms with a reference to assistance under a State program funded under part A of title IV of the Social Security Act.

Accordingly, this rule proposes to amend Subchapter C by replacing the words "Aid to Families with Dependent Children" with "Temporary Assistance for Needy Families", by replacing "AFDC" with "TANF", and by replacing "Aid to Families with Dependent Children (AFDC)" with the phrase "Temporary Assistance for Needy Families (TANF)".

Child support payments: As required by section 5 of the Act prior to the PRWORA, the current regulations at 7 CFR 273.9(c)(12) provide that the State agency has the option to exclude from unearned income, up to \$50 monthly of title IV-D child support payments in cases where such payments are received by the households from the title IV-D support agency responsible for collecting such child support payments on behalf of AFDC recipients. The exclusion must be uniformly applied to all affected households. Section 109 of the PRWORA amends section 5 of the Act by removing this exclusion. This rule proposes to remove 7 CFR 273.9(c)(12) and renumber (c)(13) through (c)(17) accordingly.

As required by section 5 of the Act prior to the PRWORA, current regulations at 7 CFR 276.2(e)(1) provide that the State agency shall be liable to FCS for the increased dollar value of coupon allotments resulting from providing households with an income exclusion for child support payments as described in section 273.9(c)(12). Section 109 of the PRWORA amends section 5 of the Act by removing the payoff. Accordingly, this rule would remove 7 CFR 276.2(e) in its entirety.

Implementation

State welfare agencies have been instructed through agency directive to implement the provisions of the PRWORA without waiting for formal regulations. Sections 803 (Treatment of Children Living at Home), 805

(Definition of Homeless), and 838 (Expedited Service) were required to be implemented as of August 22, 1996. Sections 804 (Adjustment of the Thrifty Food Plan) and 810 (Vehicle Allowance) were required to be implemented as of October 1, 1996. Section 809 (Excess Shelter Cap) required no change until January 1, 1997. Sections 809 (Standard Deduction), 826 (Minimum Allotment), and 109 (Conforming Amendments) required no immediate action by the State agencies. The Department is proposing that the changes in this rule be effective and must be implemented the first day of the month 60 days from date of publication of the final rule. State agencies shall implement the provisions no later than the required implementation date. State agencies would be required to adjust the cases of ongoing households at the next recertification, at household request, or when the case is next reviewed, whichever comes first. If implementation of the above Act or this rule is delayed, benefits shall be restored, as appropriate, in accordance with the Food Stamp Act. Any variances resulting from implementation of the provisions of the final rule would be excluded from error analysis for 120 days from the first day of the month 60 days from date of publication of the final rule.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

Accordingly, 7 CFR chapter II, subchapter C, and parts 271, 273, 276 are proposed to be amended as follows:

SUBCHAPTER C—FOOD STAMP AND FOOD DISTRIBUTION PROGRAM—[AMENDED]

1. In Subchapter C:

a. The words "Aid to Families with Dependent Children" are removed wherever they appear and the words "Temporary Assistance for Needy Families" are added in their place.

b. The references to "AFDC" are removed wherever they appear and "TANF" is added in their place.

c. The references to "Aid to Families with Dependent Children (AFDC)" are removed wherever they appear, and the words "Temporary Assistance for Needy Families (TANF)" are added in their place.

2. The authority citation for parts 271, 273, and 276 is revised to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

3. In § 271.2:

a. Paragraph (3) of the definition of "Homeless individual" is amended by adding the words "for not more than 90 days" after the word "accommodation".

b. The definition of "Minimum benefit" is amended by removing all text after the word "benefit" in the second sentence and adding in its place "shall be \$10."

c. The definition of "Spouse" is removed.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.1, paragraphs (a), (b), (c) and (e) are revised to read as follows:

§ 273.1 Household concept.

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

(1) An individual living alone;

(2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or

(3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

(b) *Special household requirements.*

(1) *Required household combinations.* The following individuals who live with others shall be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

(i) Spouses;

(ii) A child under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and

(iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child shall be considered to be

under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household.

(2) *Elderly and disabled persons.* Notwithstanding the provisions of paragraph (a) of this section, an otherwise eligible member of a household who is 60 years of age or older and is unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act or a non disease-related, severe, permanent disability may be considered, together with his or her spouse (if living there), a separate household from the others with whom the individual lives. Separate household status under this provision shall not be granted when the income of the others with whom the elderly disabled individual resides (excluding the income of the elderly and disabled individual and his or her spouse) exceeds 165 percent of the poverty line.

(3) *Boarders.* (i) Residents of a commercial boarding house, regardless of the number of residents, are not eligible to participate in the Program. A commercial boarding house is an establishment licensed as an enterprise that offers meals and lodging for compensation. In project areas without licensing requirements, a commercial boarding house is a commercial establishment which offers meals and lodging for compensation with the intent of making a profit.

(ii) All other individuals or groups of individuals paying a reasonable amount for meals or meals and lodging shall be considered boarders and are not eligible to participate in the Program *independently* of the household providing the board. Such individuals or groups of individuals may participate, along with a spouse or children living with them, as members of the household providing the boarder services, only at the request of the household providing the boarder service. An individual paying less than a reasonable amount for board shall not be considered a boarder but shall be considered, along with a spouse or children living with them, as a member of the household providing the board.

(A) For individuals whose board arrangement is for more than two meals per day, "reasonable compensation" shall be an amount that equals or exceeds the maximum food stamp allotment for the appropriate size of the boarder household.

(B) For individuals whose board arrangement is for two meals or less per day, "reasonable compensation" shall be an amount that equals or exceeds

two-thirds of the maximum food stamp allotment for the appropriate size of the boarder household.

(iii) Boarders shall not be considered to be residents of an institution for the purposes of paragraph (b)(7)(vii) of this section.

(4) *Foster care individuals.*

Individuals placed in the home of relatives or other individuals or families by a Federal, State, or local governmental foster care program shall be considered to be boarders and cannot participate in the Program *independently* of the household providing the foster care services. Such foster care individuals may participate, along with a spouse or children living with them, as members of the household providing the foster care services, only at the request of the household providing the foster care.

(5) *Roomers.* Individuals to whom a household furnishes lodging for compensation, but not meals, may participate as separate households. Persons described in paragraph (b)(1) of this section shall not be considered roomers.

(6) *Live-in attendants.* Live-in attendants may participate as a separate household. Persons described in paragraph (b)(1) of this section shall not be considered live-in attendants.

(7) *Ineligible household members.* The following persons are not eligible to participate as separate households or as a member of any household:

(i) Ineligible aliens and students as specified in § 273.4 and § 273.5, respectively;

(ii) SSI recipients in "cash-out" States as specified in § 273.20;

(iii) Individuals disqualified for noncompliance with the work requirements of § 273.7;

(iv) Individuals against whom a sanction was imposed for failure to comply with a workfare requirement as specified in § 273.22;

(v) Individuals disqualified for failure to provide an SSN as specified in § 273.6;

(vi) Individuals disqualified for an intentional Program violation as specified in § 273.16; and

(vii) Residents of an institution, with some exceptions. Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services. Exceptions to this requirement include only the individuals listed in paragraphs (b)(7) (vii)(A) through (b)(7)(vii)(E) of this section. The individuals listed in paragraphs (b)(7)(vii)(A) through (b)(7)(vii)(E) can

participate in the Program and shall be treated as separate households from the others with whom they reside pursuant to the mandatory household combination requirements of paragraph (b)(1) of this section, unless otherwise stated:

(A) Individuals who are residents of federally subsidized housing for the elderly;

(B) Individuals who are narcotic addicts or alcoholics who reside at a facility or treatment center for the purpose of regular participation in a drug or alcohol treatment and rehabilitation program, and their children but not the spouse of such persons who live with them at the treatment center or facility;

(C) Individuals who are disabled or blind who are residents of group living arrangements;

(D) Individual women or women with their children who are temporarily residing in a shelter for battered women and children; and

(E) Individuals who are residents of public or private nonprofit shelters for homeless persons.

(c) *Unregulated situations.* For situations that are not clearly addressed by the provisions of paragraphs (a) and (b) of this section, the State agency may apply its own policy for determining when an individual is a separate household or a member of another household if the policy is applied consistently throughout the State.

* * * * *

(e) *Strikers.* Households with a striking member are not eligible to participate in the Program, unless the household was eligible for benefits the day prior to the strike and is otherwise eligible at the time of application. A striker shall be anyone involved in a strike or concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Any employee affected by a lockout, however, shall not be deemed to be a striker. Further, an individual who goes on strike who is exempt from work registration, in accordance with § 273.7(b), the day prior to the strike, other than those exempt solely on the grounds that they are employed, shall not be deemed to be a striker.

(1) Pre-strike eligibility shall be determined by considering the day prior to the strike as the day of application and assuming the strike did not occur.

(2) Eligibility at the time of application shall be determined by comparing the striking member's

income before the strike to the striker's current income and adding the higher of the two to the current income of non-striking members during the month of application. If the household is eligible, the higher income figure shall also be used in determining the household's benefits.

* * * * *

§ 273.2 [Amended]

5. In § 273.2:

a. Paragraph (i)(1)(iii) is removed.

b. Paragraph (i)(1) (iv) is redesignated as paragraph (i)(1)(iii).

c. Paragraph (i)(3)(i) is amended by removing the word "fifth" wherever it appears and adding the word "seventh" in its place.

d. Paragraph (i)(3)(ii) is amended by removing the words "5 calendar days" and adding the words "7 calendar days" in its place.

6. In § 273.8:

a. Paragraph (c)(2) is amended by removing the regulatory reference to "paragraph (h)" and adding in its place a regulatory reference to "paragraph (g)".

b. Paragraph (e)(3) is revised.

c. Paragraph (e)(11) is amended by removing the second sentence of the introductory text and by removing paragraphs (e)(11)(i) through (e)(11)(ix).

d. Paragraph (e)(16) is amended by removing the regulatory reference to "paragraphs (h)(1)(i), (h)(1)(ii) or (h)(1)(v)" and adding in its place the regulatory reference to "paragraphs (e)(3)(i)(A), (e)(3)(i)(B) or (e)(3)(i)(E)", respectively.

e. Paragraph (e)(18) is amended by removing the regulatory reference to "paragraph (h)" and adding in its place a regulatory reference to "paragraph (g)".

f. Paragraph (g) is revised.

g. Paragraphs (h) and (j) are removed and paragraph (i) is redesignated as paragraph (h).

The revisions read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(3)(i) Licensed vehicles that meet the following conditions:

(A) Used for income-producing purposes such as, but not limited to, a taxi, truck, or fishing boat, or a vehicle used for deliveries, to call on customers, or required by the terms of employment. Licensed vehicles that have previously been used by a self-employed household member engaged in farming but are no longer used over 50 percent of the time in farming because the household member has terminated his/her self-employment from farming shall

continue to be excluded as a resource for one year from the date the household member terminated his/her self-employment farming;

(B) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(C) Necessary for long-distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household), for example, the vehicle of a traveling sales person or a migrant farm worker following the work stream;

(D) Used as the household's home and, therefore, excluded under paragraph (e)(1) of this section;

(E) Necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle per physically disabled household member). A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the special needs of the disabled person or if the vehicle is a special type of vehicle that makes it possible to transport the disabled person. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member; or

(F) Necessary to carry fuel for heating or water for home use when such transported fuel or water is anticipated to be the primary source of fuel or water for the household during the certification period. Households shall receive this resource exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle. Households shall not be required to furnish documentation, as mandated by § 273.2(f)(4), unless the exclusion of the vehicle is questionable. If the basis for exclusion of the vehicle is questionable, the State agency may require documentation from the household, in accordance with § 273.2(f)(4).

(ii) On those Indian reservations that do not require vehicles driven by tribal members to be licensed, such vehicles shall be treated as licensed vehicles for the purpose of this exclusion.

(iii) The exclusion in paragraphs (e)(3)(i)(A) through (e)(3)(i)(F) of this section will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when

a fishing boat is frozen in and cannot be used.

* * * * *

(g) *Determining the value of non-excluded vehicles.* (1) The State agency shall individually evaluate the fair market value of each licensed vehicle that is not excluded under paragraph (e)(3) of this section. That portion of the fair market value that exceeds \$4,650 beginning October 1, 1996, shall be counted in full toward the household's resource level, regardless of any encumbrances on the vehicle. Such licensed vehicles as well as all unlicensed vehicles shall *also* be evaluated for their equity value (fair market value less encumbrances), unless specifically exempt from the equity value test. If the vehicle has a countable fair market value of more than \$4,650 after October 1, 1996, and also has a countable equity value, only the greater of the two amounts shall be counted as a resource. Only the following vehicles are exempt from the equity value test:

(i) Vehicles excluded under paragraph (e)(3)(i) of this section;

(ii) One licensed vehicle per household; and

(iii) Any other vehicle used to transport household members to and from employment (including times during temporary periods of unemployment), or to and from training or education that is preparatory to employment, or to seek employment in compliance with the employment and training criteria specified in § 273.7.

(2) State agencies shall be responsible for establishing methodologies for determining the fair market value of vehicles. In establishing such methodologies, the State agency shall not increase the basic value of a vehicle by adding the value of low mileage or other factors such as optional equipment or special apparatus for the handicapped. Households which claim that the State agency's determination of the value of its vehicle(s) does not apply shall be given the opportunity to acquire verification of the true value of the vehicle from a reliable source.

* * * * *

7. In § 273.9:

a. Paragraph (c)(12) is removed and paragraphs (c)(13), (c)(14), (c)(15), (c)(16) and (c)(17) are redesignated as paragraphs (c)(12), (c)(13), (c)(14), (c)(15) and (c)(16) respectively.

b. Paragraphs (d)(7) and (d)(8) are revised to read as follows:

§ 273.9 Income and deductions.

* * * * *

(d) * * *

(7) *Adjustment of standard deduction.* Effective October 1, 1996, for each

household in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, the standard deduction shall be \$134, \$229, \$189, \$269, and \$118, respectively.

(8) *Adjustment of shelter deduction.* In the case of a household that does not contain an elderly or disabled individual, in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, the excess shelter expense deduction shall not exceed

(i) For the period beginning August 22, 1996, and ending on December 31, 1996, \$247, \$429, \$353, \$300, and \$182 per month, respectively;

(ii) For the period beginning on January 1, 1997, and ending on September 30, 1998, \$250, \$434, \$357, \$304, and \$184 per month, respectively;

(iii) For the period beginning on October 1, 1998 and ending on September 30, 2000, \$275, \$478, \$393, \$334, and \$203 per month, respectively; and

(iv) For the period beginning on October 1, 2000 and thereafter, \$300, \$521, \$429, \$364, and \$221 per month, respectively.

* * * * *

8. In § 273.10 paragraph (e)(4)(ii) is revised to read as follows.

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) Calculating net income and benefit levels. * * *

(4) Thrifty Food Plan (TFP) and Maximum Food Stamp Allotments.

* * *

(ii) Adjustment. Effective October 1, 1996, the maximum food stamp allotments shall be based on 100% of the cost of the TFP as defined in section 271.2 for the preceding June, rounded to the nearest lower dollar increment, except that on October 1, 1996, the allotments may not fall below those in effect on September 30, 1996.

* * * * *

§ 276.2 [Amended]

9. In § 276.2, paragraph (e) is removed.

Dated: June 29, 1999.

Shirley R. Watkins,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 99-17445 Filed 7-9-99; 8:45 am]

BILLING CODE 3410-30-U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 241

[INS No. 1848-97]

RIN 1115-AE83

Early Release for Removal of Criminal Aliens in State Custody Convicted of Nonviolent Offenses

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (INS) regulations relating to apprehension and removal of aliens under section 241 of the Immigration and Nationality Act (Act). This proposed rule establishes an administrative process whereby criminal aliens in state custody convicted of nonviolent offenses may be removed prior to completion of their sentence of imprisonment. This proposed rule will implement the authority contemplated by Congress to enhance the ability of the United States to remove criminal aliens.

DATES: Written comments must be submitted on or before September 10, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling please reference INS No. 1848-97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Ronald W. Dodson, Senior Special Agent, Office of Investigations, Immigration and Naturalization Service, 425 I Street, NW., Room 1000, Washington, DC 20536, telephone (202) 514-2998. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 1996, President Clinton signed into law the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104-132, 110 Stat. 1214. The AEDPA contained numerous provisions dealing with criminal aliens, designed to "enhance the ability of the United States to deport criminal aliens." See Conference Report on S. 735 (H.R. Rept. No. 104-518, dated April 15,