

Commodity	Parts per million
* * *	*
Cucumber	0.02
* * *	*
Fruit, stone, group 12, except plum	1.0
* * *	*
Peppermint, oil	20
Peppermint, tops	10
* * *	*
Plum	0.15
Plum, prune, dried	0.30
* * *	*
Spearmint, oil	20
Spearmint, tops	10
* * *	*
Tomato	0.20
* * *	*

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 286

RIN 0970-AC40

Temporary Assistance for Needy Families (TANF) Carry-Over Funds

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

ACTION: Interim final rule.

SUMMARY: This rule implements the statutory change to section 404(e) of the Social Security Act (42 U.S.C. 604(e)) as enacted by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5). This change allows States, Tribes and Territories to use Temporary Assistance for Needy Families (TANF) program funds carried over from a prior year for any allowable TANF benefit, service or activity. Previously these funds could be used only to provide assistance. This interim final rule applies to States, local governments, and Tribes that administer the TANF program.

DATES: *Effective Date:* May 27, 2009.

Comment Date: Comments are due on or before July 27, 2009.

ADDRESSES: You may mail or hand-deliver comments regarding this interim rule to the Administration for Children and Families, Office of Family Assistance, 370 L'Enfant Promenade, SW., 5th floor, Washington, DC 20447. You also may transmit comments electronically via the Internet at:

<http://www.regulations.gov>. You may download an electronic version of this rule at: <http://www.regulations.gov>.

All comments received, including any personal information provided, will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m., at 901 D St., SW., 5th Floor, Washington DC.

FOR FURTHER INFORMATION CONTACT:

Robert Shelbourne, Director, Division of State TANF Policy and Acting Director, Division of Tribal TANF Management, Office of Family Assistance, ACF, at (202) 401-5150.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 417 of 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 have interpreted this provision to allow us to regulate where Congress has charged HHS with enforcing certain TANF provisions by assessing penalties. Because the improper use of Federal TANF carry-over funds can result in a financial penalty pursuant to 42 U.S.C. 609(a)(1), we have the authority to regulate in this instance.

Justification for Interim Final Rule

The Administrative Procedures Act requirements under 5 U.S.C. 553 for notice of proposed rulemaking do not apply to rules when the agency finds good cause that notice is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)). We find proposed rulemaking unnecessary because the policy was effective upon enactment and this regulatory action merely updates program regulations to reflect current law and avoid any unnecessary confusion on the part of States and Tribes. The change made to the TANF program by the Recovery Act on the use of carry-over funds was intended to provide increased flexibility immediately to States and Tribes to support work and families especially during this difficult economic period. If this regulation were delayed, States and Tribes might be hesitant to take advantage of the flexibility afforded by the statutory change because of the conflict with the regulation, and any confusion resulting from that conflict.

For the same reason given above, we also find good cause for waiving the Administrative Procedures Act requirement under 5 U.S.C. 553(d) which provides that a rule generally may not become effective less than 30 days after it is published in the **Federal**

Register. Since the statute was effective upon enactment and because this regulation merely updates the regulations to reflect the current law, this rule is effective upon publication.

II. American Recovery and Reinvestment Act of 2009

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), which included a provision to lift the restriction on unspent Federal TANF funds reserved or "carried over" into a succeeding fiscal year. Prior to Public Law 111-5, carry-over funds could only be used to provide assistance (*i.e.*, ongoing basic needs payments, and supportive services such as transportation and child care to families who are not employed). Section 2103 of Division B of Public Law 111-5 amends section 404(e) of the Social Security Act (Act) by allowing States, District of Columbia, the Territories and Tribes to use the carry-over funds for any allowable TANF benefit, service, or activity (such as job skills training or re-training activities, employment counseling services, parental counseling services, teen pregnancy prevention activities, services for victims of domestic violence, after-school programs)—and not just assistance.

Thus, the policy reflected in this interim final rule is effective immediately and applies to all Federal TANF funds carried over into fiscal year 2009 as well as to all future Federal TANF funds carried over into a subsequent year.

Herein after and as defined in section 419(5) of the Social Security Act, we will use "States" to mean the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa. (However, American Samoa has chosen not to participate in the TANF program.)

III. Regulatory Provisions

As discussed below, section 2103 of Public Law 111-5 requires a change in the Tribal TANF regulation at 45 CFR 286.60. The TANF regulations at 45 CFR Part 263, applicable to States and Territories, require no change.

Part 286—Tribal TANF Provisions

Section 286.60: Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?

Under prior law, section 404(e) of the Act, entitled "Authority to Reserve Certain Amounts for Assistance," allowed States and Indian Tribes

operating approved Tribal TANF programs (Tribes) to reserve Federal TANF funds that they receive “for any fiscal year for the purpose of providing, without fiscal year limitation, assistance under the State or tribal program funded under this part” (Title IV, Part A of the Act). Based on the reading of this section, we concluded that States and Tribes could only use reserve or “carry-over” funds to provide TANF assistance, defined in 45 CFR 260.31 for States and in 45 CFR 286.10 for Tribes, and to pay for the administrative expenses associated with providing the assistance. The statutory wording also precluded States from transferring “carry-over” funds to either the Social Services Block Grant Program (SSBG) under title XX of the Act or the Child Care and Development Block Grant Program (also known as the Child Care Discretionary Fund within the Child Care and Development Fund (CCDF)). (The transfer provision in section 404(d) of the Act does not apply to Tribes.)

Section 2103 of Division B of Public Law 111–5 (American Recovery and Reinvestment Act of 2009) amended section 404(e) of the Social Security Act. The amendment allows States and Tribes to use unspent Federal TANF funds carried over from prior fiscal years “to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part.” Thus, States and Tribes are no longer restricted to using carry-over TANF funds to provide benefits that specifically meet the definition of *assistance*. States and Tribes may expend carry-over funds for any allowable TANF benefit, service, or activity. Because the amended section 404(e) continues to specify that carry-over funds may only be used “under this part”—*i.e.*, in the TANF program, States may not transfer any carry-over funds to either CCDF or the SSBG program. States may only transfer current year Federal TANF funds (up to the statutory limit) to these programs.

Accordingly, we have amended § 286.60 because the limitation on the use of carry-over funds explicitly appears in this section. We have deleted paragraph (b) which previously read, “A Tribe may expend funds beyond the fiscal year in which awarded only on benefits that meet the definition of assistance at § 286.10 or on the administrative costs directly associated with providing that assistance.” This sentence is no longer accurate because the law removes the restriction. We have revised the remaining language to provide that a Tribe may reserve amounts awarded to it, without fiscal

year limitation, to provide assistance, benefits, and services in accordance with the requirements under § 286.35 or § 286.40, if applicable.

No change in the regulations related to the State TANF program is necessary, as those regulations speak more broadly to improper uses of TANF funds. Specifically, § 263.11(b) currently states that “We will consider use of funds in violation of * * * sections 404 and 408 and other provisions of the Act * * * to be misuse of funds.” This statement is not impacted by the change to section 404(e) of the Act.

IV. Paperwork Reduction Act

There are no information collection activities imposed by this regulation, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) regarding reporting and recordkeeping, do not apply.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in this Act to include small businesses as defined by the Small Business Administration, non-profit organizations that are not dominant in their markets, and small governmental jurisdictions. This rule will affect primarily the 50 States, the District of Columbia, certain Territories, and Indian Tribes operating approved Tribal TANF programs. Therefore, we certify that this rule will not have a significant impact on small entities.

VI. Regulatory Impact Analysis

Executive Order 12866 requires the review of regulations to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this interim final rule is consistent with these priorities and principles. This regulation implements a statutory change in the use of Federal TANF block grant funds carried over from a prior fiscal year included in the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). Further, we certify that this change is not an “economically significant regulatory action” under Section 3(f)(1) of Executive Order 12866. It will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition,

jobs, the environment, public health or safety, or State, local, or tribal governments or communities. TANF block grant awards remain the same; this change in statute simply allows carry-over funds under the TANF program to be used for broader purposes.

The Department, however, has determined that this rule is significant for the purposes of review under Section 3(f)(4) of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB).

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 \$133 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 \$133 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 negatively 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.

The Department has determined that this regulation does not negatively affect family well being. The purpose of the TANF program is to strengthen the economic and social stability of families. This rule lifts the restriction on the use of Federal TANF carry-over funds so that States and Tribes may provide the services that families need to attain and maintain self-sufficiency.

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. Consistent with this

Executive Order, we specifically solicited comments from State and local government officials on this interim final rule. We will seriously consider these comments in developing the final rule.

List of Subjects in 45 CFR Part 286

Carry over, Reserve, Prior fiscal years, Federal TANF funds.

(Catalog of Federal Domestic Assistance Program Number 93.558, Temporary Assistance for Needy Families Program)

Dated: March 30, 2009.

Curtis L. Coy,

Acting Assistant Secretary for Children and Families.

Approved: April 28, 2009.

Charles E. Johnson,

Acting Secretary, Department of Health and Human Services.

■ For the reasons stated in the preamble, we are amending 45 CFR chapter II by amending part 286 as set forth below:

PART 286—TRIBAL TANF PROVISIONS

■ 1. The authority citation for part 286 is revised to read as follows:

Authority: 42 U.S.C. 601, 604, and 612; Public Law 111–5.

■ 2. Revise § 286.60 to read as follows:

§ 286.60 Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?

No. A Tribe may reserve amounts awarded to it, without fiscal year limitation, to provide assistance, benefits, and services in accordance with the requirements under § 286.35 or § 286.40, if applicable.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket Nos. 07–294, 06–121, 02–277, 04–228; MM Docket Nos. 01–235, 01–317, 00–244; FCC 09–33]

Promoting Diversification of Ownership in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Report and Order* adopts changes to the reporting requirements on FCC Form 323, “Ownership Report for Commercial Broadcast Stations” to

improve Form 323 data collection in order to obtain an accurate, reliable, and comprehensive assessment of minority and female broadcast ownership in the United States. The FCC also is broadening Form 323 reporting requirements to require low power television station licensees, including Class A stations, to file biennially.

DATES: The amendments to §§ 73.3615, 73.6026, and 74.797 contain information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Mania Baghdadi, (202) 418–2330, Amy Brett (202) 418–2703.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Report and Order* (R&O) adopted April 8, 2009, and released May 5, 2009. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs>). The complete text may be purchased from the Commission’s copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Summary of the Report and Order

1. In the (R&O) (1) the FCC enlarges the class of licensees required to file ownership reports biennially to include LPTV stations, including Class A stations, as well as commercial broadcast stations licensed to sole proprietors and partnerships composed of natural persons; (2) for purposes of defining the class of interests that are reportable, the FCC will not apply two attribution exemptions—the single majority shareholder exemption and the exemption for interests held in eligible entities that would be attributable but for the higher Equity/Debt Plus (“EDP”) thresholds adopted in the *Diversity Order*; (3) the FCC set a uniform biennial filing date in place of the filing date tied to stations’ renewal anniversaries; and (4) the FCC set an initial filing date of no later than November 1, 2009. To effectuate these changes, as discussed more fully below, the FCC delegates authority to staff to (1) revise the FCC Form 323 according to the parameters adopted in the (R&O); (2) revise the electronic interface so that the ownership data is incorporated into the database, is searchable, and can be aggregated and cross-referenced; (3) build additional checks into Form 323 to perform verification and review

functions and to preclude the filing of incomplete or inaccurate data; and (4) conduct audits on a random basis to ensure accuracy of Form 323 Reports.

2. Currently, full power broadcast stations are required to periodically file Form 323 Ownership Reports to identify their organizational and ownership structures. Form 323 also requires stations to provide information on owners’ race, ethnicity, and gender. Currently, full power commercial broadcast licensees are required to file Form 323: (1) When filing the station’s license renewal application; (2) following the consummation of an assignment or transfer of control of the station license; (3) within 30 days after the grant of a construction permit for a new commercial radio or television station; and (4) at two-year intervals on the anniversary date of the station’s renewal application filing date. The biennial reporting requirement does not apply, however, where the licensee is a sole proprietor or a partnership that is composed entirely of natural persons. In lieu of filing a new report, a licensee with a current and unamended report may certify that it has reviewed its current report and that it is accurate. The Commission does not require LPTV stations, including Class A stations, to file Form 323. If a full power commercial licensee or permittee is directly or indirectly controlled by another entity or if another entity holds an attributable interest in such licensee or permittee, a separate Form 323 is required to be submitted for such entity. To determine which interests are reportable on Form 323, the Commission uses its broadcast attribution rules, including the multiplier, which applies when an interest in a licensee is held indirectly by any party through one or more intervening entities in a vertical ownership chain. Form 323 defines the term “respondent” as either the licensee or permittee or an entity controlling or holding an attributable interest in the licensee or permittee. Each respondent, other than a natural person, is required to list its officers, directors, stockholders, and other entities with attributable interests, its non-insulated partners, and/or its members.

3. In 1998, the Commission began collecting data on minority and female broadcast ownership to fulfill the Commission’s statutory mandate under Section 257 of 1996 Telecom Act of 1996 and Section 309(j) of the Communications Act of 1934 to promote opportunities for small businesses and businesses owned by women and minorities in the broadcasting industry. The Commission revised Form 323 to