

Proposed Rules

Federal Register

Vol. 65, No. 10

Friday, January 14, 2000

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 Part 253

RIN: 0584-AC81

Food Distribution Program on Indian Reservations: Income Deductions and Miscellaneous Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This proposed rule would amend regulations for the Food Distribution Program on Indian Reservations. The changes would improve program service by allowing households two income deductions when proper verification is provided. The first income deduction would be given to households that pay legally required child support for a nonhousehold member. This change conforms to an income deduction allowed under the Food Stamp Program. The second income deduction would be provided to households that pay the premium for their Medicare Part B medical insurance. This deduction was prompted by a resolution passed by the National Association of Food Distribution Programs on Indian Reservations. This rule would also make technical amendments, such as changing outdated terminology, and revising or removing provisions that are obsolete or have changed.

DATES: Send your comments to reach us on or before March 14, 2000. Comments received after the above date will not be considered in making our decision on the proposed rule.

ADDRESSES: You can mail or hand-deliver comments to Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 510, 3101 Park Center Drive, Alexandria, Virginia 22302-1594.

FOR FURTHER INFORMATION CONTACT:

Lillie F. Ragan at the above address or telephone (703) 305-2662.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Procedural Matters
- III. Background and Discussion of the Proposed Rule

I. Public Comment Procedures

Your written comments on this proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. Comments received after the close of the comment period (see **DATES**) will not be considered or included in the Administrative Record for the final rule.

The comments, including names, street addressees, and other contact information of respondents, will be available for public review at the Food and Nutrition Service, 4501 Ford Avenue, Room 612, Alexandria, Virginia, during regular business hours (8:30 a.m. to 5 p.m.), Mondays through Fridays, except Federal holidays.

II. Procedural Matters

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. President Clinton's Presidential memorandum of June 1, 1998, requires us to write new regulations in plain language. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) make it more or less clear?

(4) Would the rule be easier to understand if it was divided into more (but shorter) sections?

(5) Is the description of the rule in the preamble section entitled "Background and Discussion of the Proposed Rule" helpful in understanding the rule? How

could this description be more helpful in making the rule easier to understand?

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.570, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V, and final rule-related notices published at 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

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). The Administrator of the Food and Nutrition Service has

certified that this action will not have a significant impact on a substantial number of small entities. While program participants and Indian Tribal Organizations and State agencies that administer the Food Distribution Program on Indian Reservations (FDPIR) will be affected by this rulemaking, the economic effect will not be significant.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the applications of its provisions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), this proposed rule will contain information collections that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting for public comment the changes in the information collection burden that would result from adoption of the proposals in the rule.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To be assured of consideration, comments must be postmarked on or before March 14, 2000. Please send

comments to Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 510, 3101 Park Center Drive, Alexandria, Virginia 22302-1594, and to Lori Schack, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. All comments will be summarized and included in the request for OMB approval of the proposed changes in the information collection burden. All comments will become a matter of public record. For further information, or for copies of the information collections discussed below, please contact Ms. Ragan at the above address or telephone (703) 305-2662.

Title: Food Distribution Forms (This information collection burden consolidates the reporting and recordkeeping requirements for 7 CFR parts 240, 247, 250, 251, 252, 253 and 254.)

OMB Number: 0584-0293.

Expiration Date: 1/31/2001.

Type of Request: Revision of a currently approved collection.

Abstract: The reporting requirement currently approved for 7 CFR 253.7, which addresses the certification of households to participate, would be modified by this proposed rule. The rule would allow income deductions for legally required child support payments for a nonhousehold member and Medicare Part B premium payments, and would require verification of these household expenses. The current reporting burden estimates associated with the certification of households to participate in FDPIR (7 CFR 253.7) must be modified to include the proposed verification requirements. We estimate that the verification requirements of this rule will increase the reporting burden by approximately 2 minutes for those application/recertification actions affected by this rule. When averaged with application/recertification actions not affected by this rule, the manhours per response is increased by .01 hours.

The proposed income deductions and the reporting burden associated with the proposed verification requirements are not expected to affect a large percentage of FDPIR households. In regard to the

income deduction for legally obligated child support payments, we expect that only 1 percent of the participant population will receive this deduction. This projection is based on the March 28, 1998, *Characteristics of Food Stamp Households, Fiscal Year 1996*, which reports that approximately 1 percent of food stamp households receive a child support deduction. We applied this percentage in determining the number of FDPIR participants that would be affected by this proposed rule, and we increased the reporting burden estimate for that group accordingly. Our estimate also reflects applicant households that would become eligible as a result of the proposed child support income deduction.

In regard to the income deduction for Medicare Part B premium payments, we note that approximately 29 percent of FDPIR participating households receive Social Security payments (*Evaluation of the Food Distribution Program on Indian Reservations, Volume 1: Final Report*, (June 15, 1990)). We assume that all of these households have the Medicare Part B premium automatically withheld from their monthly Social Security payments. Our proposed estimate for the reporting burden associated with this income deduction reflects an increase for this subgroup—FDPIR participants that receive Social Security payments. Our estimate also reflects applicant households that would become income eligible as a result of the proposed income deduction for Medicare Part B premium payments.

Respondents: State, Local, or Tribal Government; Individuals or households; business or other for-profit; Not-for-profit institutions; Federal Government.

Estimated Number of Respondents: Total package—368,523 (Current); total package—368,590 (Proposed).

Estimated Number of Responses per Respondent: Total package—918,526 (Current); total package—918,593 (Proposed).

Estimate of Burden: Total package—1,154,502 (Current); total package—1,154,581 (Proposed).

The present and proposed estimates of the reporting burden for information collections affected by this rule are detailed below:

	Responses per respondents	Manhours per response	Total manhours
253.7 Certification of Households to Participate:			
Present	4500	0.5	2250
Proposed ...	4567	0.51	2329

II. Background and Discussion of the Proposed Rule

The Food and Nutrition Service (FNS) is proposing to amend the regulations for the Food Distribution Program on Indian Reservations (FDPIR) at 7 CFR part 253. The changes would improve program service by allowing households two income deductions when proper verification is provided. The first income deduction would be given to households that pay legally required child support for a nonhousehold member. The second income deduction would be provided to households that pay the premium for their Medicare Part B medical insurance. This rule would also make technical amendments, such as changing outdated terminology, and revising or removing provisions that are obsolete or have changed. These amendments are discussed in more detail below.

In the following discussion and regulatory text, we use the term "State agency," as defined at 7 CFR 253.2, to include Indian Tribal Organizations (ITOs) authorized to operate FDPIR.

1. Income Deduction for Child Support Payments

This proposed rule would amend 7 CFR 253.6(f) to allow an income deduction for legally required child support payments made by a household member to or for a nonhousehold member. This includes payments made to a third party on behalf of the nonhousehold member (vendor payments) and amounts paid toward overdue child support (arrearages). Alimony payments are not considered child support payments. This provision is intended to encourage non-custodial parents to fully comply with their child support obligations. At the same time, the deduction would result in a more accurate reflection of the paying household's reduced ability to buy food. The Food Stamp Program already treats child support payments this way.

2. Income Deduction for Medicare Part B Premium

FNS is also proposing to amend the regulations at 7 CFR 253.6(f) to allow an income deduction to cover the full amount of the Medicare Part B (Medical Insurance) premium. In most cases, the amount of the premium is withheld automatically from the Social Security, Railroad Retirement, or Civil Service Retirement payments. In some cases, Medicare beneficiaries are billed quarterly for this premium. (In 1999, the monthly premium for Part B is \$45.50).

This income deduction would not be allowed in those cases where a State has

opted to pay the Medicare premium on behalf of its low-income residents. In addition, household members who are not Medicare beneficiaries because they receive their health care through the Indian Health Service would not be allowed this income deduction.

This income deduction was developed in consultation with the National Association of Food Distribution Programs on Indian Reservations (NAFDPIR). NAFDPIR requested implementation of this income deduction on May 4, 1998, in one of several resolutions passed at its 1998 annual meeting in San Diego, California. The deduction in this rule addresses a clear and present need identified by NAFDPIR. It would positively impact an extremely needy segment of the participant population: low-income elderly and disabled Native Americans subsisting on fixed incomes and often living in isolated areas without access to supplemental sources of nutrition such as the Emergency Food Assistance Program, the Child and Adult Care Food Program, and the Commodity Supplemental Food Program. Appropriate nutrition supplementation and nutrition education through FDPIR may help them to live independently and reduce the possibility that they will need costly institutional care. This income deduction is similar, but not identical, to the deduction allowed under the Food Stamp Program for medical expenses.

3. Mandatory Verification

FNS is also proposing to amend the regulations at 7 CFR 253.7(a)(6)(i) to require the verification of the two income deductions that would be implemented by this rule:

a. Legal obligation and actual child support payments—The State agency must obtain verification of the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. Documentation that verifies the household's legal obligation to pay child support, such as a court order, cannot be used to verify the household's actual monthly child support payments.

b. Medicare Part B Premium—The State agency must obtain verification of the household's payment of the Medicare Part B Premium. Documentation of this expense could include a copy of the Social Security benefit statement for the current calendar year (SSA-4926-SM), which identifies the amount of the Medicare Part B Premium deducted from the monthly Social Security benefit, or a

paid receipt for Medicare Part B Premium payments paid directly to Medicare by the household.

4. Miscellaneous Technical Changes

Nomenclature Corrections—

§ 253.3(d); § 253.5(a)(2)(vii); § 253.6(e)(2)(i)(C); § 253.6(e)(2)(ii)(A); § 253.6(e)(2)(iii)(B).

Legislative changes in recent years have resulted in revisions to program titles referenced in 7 CFR part 253. Other FNS program initiatives have prompted changes in terms commonly used among FNS programs. This rule would amend the FDPIR regulations to replace the title "Aid to Families with Dependent Children Program" with the title "Temporary Assistance for Needy Families Program," and replace the acronym "AFDC" with the acronym "TANF" wherever the outdated terms appear. Similarly, 7 CFR part 253 would be amended to replace the title "Comprehensive Employment and Training Act" with the title "Job Training Partnership Act," and to replace the acronym "CETA" with the acronym "JTPA" wherever the outdated terms appear. In addition, § 253.3(d) would be amended to replace the phrase "the four food groups" with the phrase "USDA Food Guide Pyramid."

References to Obsolete Food Stamp Program Provisions—§ 253.6(e)(1)(ii); § 253.5(f)(2) 7 CFR part 253 references Food Stamp Program provisions that have changed or become obsolete. This rule would correct these references. First, § 253.6(e)(1)(ii) would be amended to reflect an earlier change under the Food Stamp Program to adjust the income eligibility standards once a year on October 1, rather than twice a year on January 1 and July 1. The change to an annual adjustment under the Food Stamp Program was effective on July 1, 1988 (see interim rule and correction published on September 29, 1987 [52 FR 36390]). We have been making annual adjustments to the FDPIR income eligibility standards since that time, but the regulations at § 253.6(e)(1)(ii) had not been corrected.

In addition, § 253.5(f)(2) references an obsolete Food Stamp Program requirement that State agencies allow public attendance at formal certification training sessions. This rule would delete § 253.5(f)(2), accordingly.

Obsolete Sources of Income and Resources—§ 253.6(d)(2)(iv); § 253.6(e)(3)(x) § 253.6(d)(2)(iv) and § 253.6(e)(3)(x) list sources of income that are excluded under Federal statute from consideration as income or resources, respectively. We are aware that two of these types of payments have been discontinued and wish to take this

opportunity to delete them from the FDPIR regulations. First, the resource and income exclusion provisions at § 253.6(d)(2)(iv)(F) and § 253.6(e)(3)(x)(G) would be deleted. These paragraphs refer to payments provided under the Comprehensive Employment and Training Act (CETA). Also, § 253.6(e)(3)(x)(F), which references payments by the Community Services Administration for the Crisis Intervention Program, would be deleted.

List of Subjects in 7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 253 is proposed to be amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

1. The authority citation for 7 CFR part 253 is revised to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2032).

2. In § 253.3, revise the third sentence of paragraph (d) to read as follows:

§ 253.3 Availability of commodities.

* * * * *

(d) * * * The food package offered to each household by the State agency shall contain a variety of foods from each of the food groups in the Food Distribution Program on Indian Reservations Monthly Distribution Guide Rates by Household Size—Vegetables, Fruit, Bread-Cereal-Rice-Pasta, Meat-Poultry-Fish-Dry Beans-Eggs-Nuts, Milk-Yogurt-Cheese, and Fats-Oils-Sweets. * * *

§§ 253.5 and 253.6 [Amended]

3. In § 253.5(a)(2)(vii) and § 253.6(e)(2)(iii)(B), remove the acronym “AFDC” and add in its place the acronym “TANF”.

§ 253.5 [Amended]

4. In § 253.5, remove paragraph (f)(2), and redesignate paragraph (f)(3) as paragraph (f)(2).

5. In § 253.6:

a. Remove paragraph (d)(2)(iv)(F);
b. Amend paragraph (e)(1)(ii) by removing the words “January 1 and July 1” and adding, in their place, the words “October 1”;

c. Amend paragraph (e)(2)(i)(C) by removing the words “Comprehensive Employment and Training Act” and adding, in their place, the words “Job Training Partnership Act”;

d. Amend paragraph (e)(2)(ii)(A) by removing the words “Aid to Families with Dependent Children (AFDC)” and adding, in their place, the words “Temporary Assistance for Needy Families (TANF)”;

e. Remove paragraphs (e)(3)(x)(F) and (e)(3)(x)(G); and

f. Add new paragraphs (f)(3) and (f)(4) to read as follows:

§ 253.6 Eligibility of households.

* * * * *

(f) * * *

(3) Households will receive a deduction for legally required child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The State agency must allow a deduction for amounts paid towards overdue child support (arrearages). Alimony payments made to or for a nonhousehold member cannot be included in the child support deduction.

(4) Households will receive a deduction for the full amount of the Medicare Part B medical insurance premium that is withheld from the Federal retirement or disability payment of a household member or is paid by a household member directly to Medicare. This income deduction is not allowed in situations where the premium is paid by the State on behalf of the Medicare beneficiary or where household members are not Medicare beneficiaries because they receive their health care through the Indian Health Service.

6. In § 253.7, revise paragraph (a)(6)(i) to read as follows:

§ 253.7 Certification of households.

(a) * * *

(6) * * *

(i) *Mandatory verification.*—(A) *Gross non-exempt income.* The State agency must obtain verification of each household’s gross non-exempt income prior to certification. Households certified under the expedited service processing standards at paragraph (a)(9) of this section are not subject to this requirement. Income does not need to be verified to the exact dollar amount unless the household’s eligibility would be affected, since Food Distribution Program benefits are not reduced as income rises. If the eligibility worker is unable to verify the household’s income, the worker must determine an amount to be used for certification purposes based on the best available information. Reasons for inability to verify income include failure of the person or organization providing the

income to cooperate with the household and the State agency, or lack of other sources of verification.

(B) *Legal obligation and actual child support payments.* The State agency must obtain verification of the household’s legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. Documentation that verifies the household’s legal obligation to pay child support, such as a court order, cannot be used to verify the household’s actual monthly child support payments.

(C) *Medicare Part B medical insurance premium.* The State agency must obtain verification of the household’s payment of the Medicare Part B medical insurance premium. Documentation of this expense could include:

(1) A copy of the Social Security benefit statement for the current calendar year (SSA–4926–SM), which identifies the amount of the Medicare Part B premium deducted from the monthly Social Security benefit; or

(2) A receipt for Medicare Part B premium payments paid directly to Medicare by the household.

* * * * *

Dated: January 6, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–936 Filed 1–13–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF ENERGY

10 CFR Parts 960 and 963

[Docket No. RW–RM–99–963]

RIN 1901–AA72

Office of Civilian Radioactive Waste Management; General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories; Yucca Mountain Site Suitability Guidelines

AGENCY: Office of Civilian Radioactive Waste Management (OCRWM). U.S. Department of Energy (DOE).

ACTION: Proposed Rule; Announcement of Extension of Public Comment Period and Rescheduling of Public Hearings.

SUMMARY: On November 30, 1999, the U.S. Department of Energy (DOE) published a Supplemental Notice of Proposed Rulemaking to amend the general guidelines for evaluating the suitability of Yucca Mountain, Nevada as a site for development of a nuclear waste repository (64 FR 67054). That notice established a 75-day public comment period ending February 14,