

Proposed Rules

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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

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB-99-02]

Tobacco Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is withdrawing its proposed rule published in the **Federal Register** on May 12, 1999. The rule proposed to revise the regulations for flue-cured tobacco to: add a special factor to the grademark to identify any lots of baled flue-cured tobacco not opened for inspection; add bale dimensions and spacing requirements for uniform marketing display in auction warehouses; and adjust the poundage tolerance for a warehouse selling baled tobacco in excess of the sales schedule.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Telephone (202) 205-0567.

SUPPLEMENTARY INFORMATION: This notice announces that AMS is withdrawing the proposal to amend regulations under Subpart B, Regulations; Subpart C, Standards, and Subpart G, Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (7 U.S.C. 511 *et seq.*). The proposal was published in the **Federal Register** on May 12, 1999 (64 FR 25462). The proposal would add a special factor "B" to the grademark to identify lots of baled flue-cured tobacco not opened for inspection. Proposed provisions also

would add bale dimensions and spacing requirements for uniform marketing display in auction warehouses and adjust the poundage tolerance for a warehouse selling baled tobacco in excess of the sales schedule.

In response to the request for comments on the proposed rule, seven comments were received. These comments were from a national and state growers association, a leaf tobacco exporters association, a state farm bureau, a flue-cured tobacco cooperative stabilization corporation, a tobacco product manufacturer, and a member of congress. All of the comments opposed the addition of the special factor "B" to the grademark to identify lots of baled flue-cured tobacco not opened for inspection. The commenters' concerns included that special factors have traditionally been used to identify quality rather than packaging, the proposed special factor would add confusion to the marketplace, and that the special factor could be detrimental to sales. With regard to the other proposals concerning bale dimensions and spacing requirements and adjusting the poundage tolerance for a warehouse selling baled tobacco in excess of the sales schedule, one comment noted that farmers who had contacted the commenter were not opposed to those proposed provisions.

After considering the comments, we have concluded that we should not proceed with a proposed rule based on the proposal because the revisions that would be necessary to reconcile the proposed regulations with the views expressed in the comments would be so significant that the final rule would be substantially different from the proposed rule on which the public had the opportunity to comment and which had been endorsed by the Flue-Cured Tobacco Advisory Committee. Therefore, we are withdrawing the May 12, 1999, proposed rule. We will continue the research project for the marketing of flue-cured tobacco in bales for the upcoming season beginning in July and we plan to develop new proposed regulations to address this alternative package method. The concerns and recommendations of all those who commented on the proposed rule that we are withdrawing will be considered during the development of any new proposed regulations. Further, we intend to publish an advance notice

of proposed rulemaking in the **Federal Register** after the close of the next marketing season to solicit additional input from interested persons and to present opportunities for additional public participation in discussions of the scope, rationale, and basis of any new proposed regulation.

Dated: July 15, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99-18666 Filed 7-21-99; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 253 and 254

RIN 0584-AC65

Food Distribution Program on Indian Reservations: Disqualification Penalties for Intentional Program Violations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service is proposing amendments to the Food Distribution Program on Indian Reservations (FDPIR) regulations at 7 CFR Parts 253 and 254 in response to an audit recommendation by the Department of Agriculture's Office of Inspector General (OIG). The proposed changes are intended to improve program integrity and promote consistency with the Food Stamp Program. The rule would define intentional program violations, establish penalties for them, and require Indian Tribal Organizations and State agencies that administer FDPIR to take appropriate action on suspected cases of intentional program violations. It would also address the establishment and collection of claims against households for overissuances under FDPIR, and make technical changes to Part 253 to correct erroneous regulatory references.

DATES: Send your comments to reach us on or before September 20, 1999. 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 Proposed Rule

I. Public Comment Procedures

Your written comments on the 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.

Comments, including names, street addressees, and other contact information of respondents, will be available for public review at the address above 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 proposed regulations easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the proposed regulations clearly stated?
- (2) Do the proposed regulations contain technical language or jargon that interferes with their clarity?
- (3) Does the format of the proposed regulations (grouping and order of sections, use of heading, paragraphing, etc.) aid or reduce their clarity?
- (4) Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- (5) Is the description of the proposed regulation in the preamble section entitled "Background and Discussion of the Proposed Rule" helpful in understanding the proposed regulations? How could this description

be more helpful in making the proposed regulations easier to understand?

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866. Therefore, it 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 generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, or tribal governments, in the aggregate, or by 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, most 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. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12372

The programs addressed in this action are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550 and 10.570, and for the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related Notice (48 FR 29115), are included in 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). 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. Indian Tribal Organizations and State agencies that administer FDIPIR, and program participants will be affected by this

rulemaking, but 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. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

This rule does not contain information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

II. Background and Discussion of the Proposed Rule

The Food and Nutrition Service (FNS) is proposing amendments to the regulations for the Food Distribution Program on Indian Reservations (FDPIR). These changes would define intentional program violations (IPV), establish penalties for them, and require Indian Tribal Organizations (ITOs) and State agencies that administer FDPIR to take appropriate action on suspected cases of IPV. This proposed rule was prompted, in part, by an audit recommendation by the Department of Agriculture's Office of Inspector General (OIG). In its audit of FDPIR, OIG randomly sampled participating households on 30 reservations and found that a number of the sample households had income that exceeded the eligibility guidelines. In many cases, the households failed to report earned income at certification, or changes in income during the certification period. OIG also found that a number of households were participating in FDPIR and the Food Stamp Program (FSP) at the same time, which is prohibited by FDPIR and FSP regulations. OIG's findings and recommendations are found in Audit Report No. 27601-6-KC, which was released on June 18, 1997.

OIG recommended to FNS that it change FDPIR regulations to require ITOs and State agencies to take appropriate action on suspected cases of IPV. OIG further recommended that FNS pattern this requirement on FSP regulations at 7 CFR 273.16.

FNS agrees with OIG's recommendation. The FDPIR operations

manual currently used by ITOs and State agencies, FNS Handbook 501, requires the disqualification of individuals or households for specific violations. Section 5662 of the handbook requires the disqualification of households that have willfully misrepresented their circumstances to obtain more benefits than they were eligible to receive, while Section 5663 requires the disqualification of individuals or households that have been convicted of fraud by a court. However, these disqualification provisions are not found in the FDPIR regulations. Therefore, FNS is proposing changes to the FDPIR regulations that would incorporate these provisions, with some modification to promote conformance with FSP. As proposed, the definition of "intentional program violation" would incorporate the basic concept of "willful misrepresentation of household circumstances" contained in Section 5662. The definition, which is discussed in more detail below, also borrows a FSP provision that would include as an IPV any violation of a Federal statute or regulation relating to the acquisition or use of commodities.

In regard to Section 5663 of the handbook, the proposed rule instructs State agencies to apply the disqualification penalties imposed by a court of appropriate jurisdiction instead of the penalties specified in the proposed rule. This requirement is discussed below in the section of the preamble entitled "Disqualification Penalties." Upon finalization of this rulemaking, FNS Handbook 501 will be revised to be consistent with regulatory provisions.

In addition to defining IPV, the proposed rule would require ITOs/State agencies to take action on suspected cases of IPV, impose standardized disqualification penalties, conduct appeal hearings, and issue claims against households, as appropriate. The specific provisions are discussed in detail below. To make these changes, we are proposing the redesignation of 7 CFR 253.8 and 253.9 as Sections 253.10 and 253.11, respectively, and the addition of two new sections—Section 253.8, Administrative disqualification procedures for intentional program violation, and Section 253.9, Claims against households.

In response to OIG's recommendation, we developed the provisions of this proposed rule to be generally consistent with FSP IPV provisions at 7 CFR 273.16. However, FDPIR and FSP differ significantly in regard to program size, administrative complexity, and both administrative and benefit cost. This rulemaking reflects these differences.

The proposed amendments would create an administrative disqualification system under FDPIR that is less complex and labor-intensive than the system used under FSP. For additional information on FSP provisions, please refer to the preambles of the following rulemakings: proposed rule of June 22, 1982 (47 FR 27038), final rule of February 15, 1983 (48 FR 6836), proposed rule of August 29, 1994 (59 FR 44343), and final rule of August 22, 1995 (60 FR 43513).

In the discussion and regulatory text below, we have used the term "State agency," as defined at 7 CFR 253.2, to include ITOs authorized to administer FDPIR.

1. Treatment of Disqualified Household Members

Current FDPIR regulations at 7 CFR 253.7(e)(3) specify that individuals who are disqualified from participation in FSP for fraud are ineligible to participate in FDPIR until the period of disqualification expires. This section also addresses the treatment of their resources and income and how benefits are determined for the remaining members of their household. To be consistent with FSP regulations, FNS is proposing a revision to Section 253.7(e)(3)(i) to change "fraud" to "IPV."

FNS is also proposing to redesignate Section 253.7(e)(3) as Section 253.7(f) and add a provision specifying that individuals who are determined by the State agency to have committed an IPV under FDPIR are also ineligible to participate in FDPIR until the period of disqualification expires. This section will also incorporate a provision from FNS Handbook 501 that allows ITOs to disqualify households, under certain circumstances, for failure to pay an overissuance claim. Section 5660 of the handbook specifies the circumstances under which a disqualification may be imposed for this reason.

The proposed rule would also redesignate Section 253.7(e)(3)(ii) as Section 253.7(f)(2). This provision, which concerns the treatment of income and resources of the disqualified household member, would also apply to individuals disqualified for an IPV under FDPIR.

2. Definition of Intentional Program Violation

FNS is proposing to establish a definition of "intentional program violation" at newly added Section 253.8(a). This definition is consistent with the definition used under FSP. As proposed, an intentional program violation occurs whenever an individual

intentionally makes a false or misleading statement, or misrepresents, conceals, or withholds facts in order to obtain commodities under FDPIR which the households is not entitled to receive. An intentional program violation is also any act that violates any Federal statute or regulation relating to the acquisition or use of commodities. A program violation is considered "intentional" if the individual committed the act knowingly, willfully, and with deceitful intent.

3. Initiating Administrative Disqualification Procedures

We are proposing at newly added Section 253.8(e)(3) that the State agency must attempt to substantiate all suspected cases of IPV. An IPV is considered to be substantiated when the State agency has clear and convincing evidence that demonstrates that an individual has intentionally committed one or more acts of IPV, as defined above. The State agency would be required to initiate the administrative disqualification procedures (i.e., issue a notice of disqualification) within 10 days of substantiating that an IPV had occurred, even if the individual is not currently participating in, or eligible for, FDPIR (newly added Section 253.8(e)(4)). The disqualification must begin with the next scheduled distribution of commodities that allows an advance notice period of at least 10 days, unless the individual requests a fair hearing (newly added Section 253.8(f)(1)).

The proposed rule, at newly added Section 253.8(e)(6), would also require State agencies to refer substantiated cases of IPV to Federal, State, or local authorities for prosecution under applicable statutes. We recognize that prosecutors may reject certain cases for prosecution, e.g., cases in which the dollar value of the overissuance resulting from the IPV is below a specific amount. Therefore, we propose to allow State agencies to refer only those IPV cases that meet the prosecutors' criteria, when the State agencies have conferred with their legal counsel and prosecutors and determined the criteria for acceptance for possible prosecution.

4. Disqualification Penalties

FNS is proposing the following disqualification penalties at newly added Section 253.8(b):

- 12 months for the first violation;
- 24 months for the second violation; and
- Permanent disqualification for the third violation.

These penalties are consistent with those imposed by Section 6(b) of the Food Stamp Act of 1977, 7 U.S.C. 2015(b), as amended by Section 813 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104-193). In addition, we are proposing the adoption of FSP policy whereby only the individual found to have committed the IPV, and not the entire household, is disqualified (newly added Section 253.8(c)).

In instances where an IPV case is prosecuted and a court of appropriate

jurisdiction imposes a disqualification period, we are proposing that the State agency must apply the court-ordered penalty instead of the proposed penalties above (newly added Section 253.8(h)(5)).

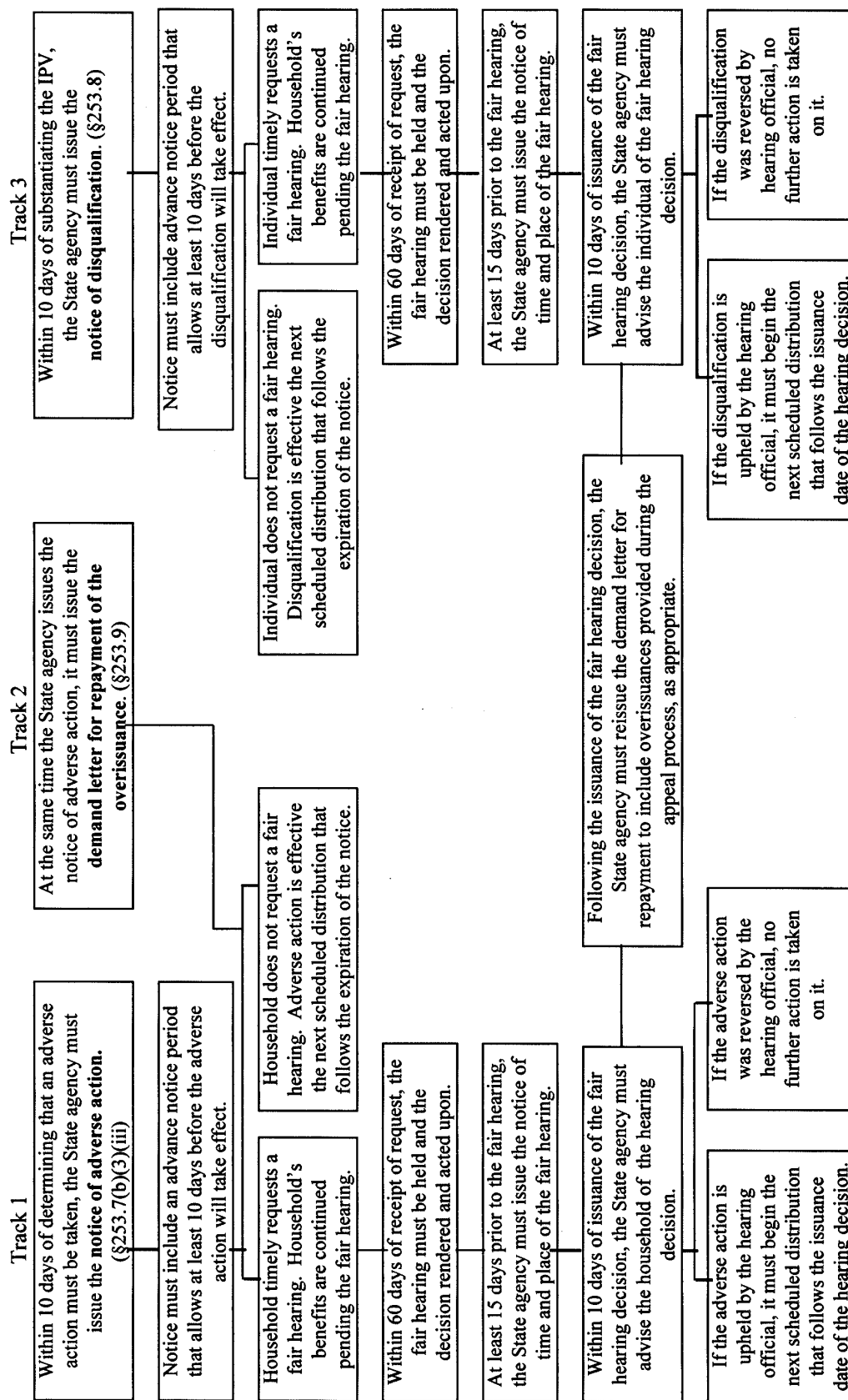
5. Notification Requirements

The State agency must take several actions simultaneously when it discovers that a household willfully misrepresented its circumstances or intentionally failed to report a change, as required by 7 CFR 253.7(c), and, as is often the case, an overissuance

occurred. It must begin the adverse action process to decrease or terminate benefits so that the benefit level accurately reflects the household's current circumstances. It must also issue a demand letter for repayment of the overissuance. Finally, the State agency must initiate the administrative disqualification process. To assist the reader in understanding the required time frames for these actions, we have included the following chart.

BILLING CODE 3410-30-P

Below are the proposed actions and time frames to be taken when the State agency discovers that a household willfully misrepresented its circumstances or intentionally failed to report a change, as required by 7 CFR 253.7(c), and an overissuance occurred. The State agency would simultaneously follow Track 1 to begin the adverse action process; Track 2 to issue a household overissuance claim; and Track 3 to initiate the administrative disqualification process for an intentional program violation (IPV).



Where possible, the State agency may combine the various notices addressed above. These notices often may be addressed to different household members since the notice of disqualification is addressed to an individual, while the notice of adverse action and the demand letter for repayment of the overissuance is addressed to the household. However, in some cases the addressee may be the same. This is the case when the individual to be disqualified is the head of household—the same addressee for the notice of adverse action and the demand letter for the repayment of the overissuance.

FNS is proposing, at newly added Section 253.8(e)(2), that the State agency must inform the household in writing of the disqualification penalties for IPV each time it applies for benefits, including recertifications.

Newly added Section 253.8(e)(4) would also require the State agency to provide a notice of disqualification to an individual determined to have committed an IPV. The State agency must provide this notice within 10 days of substantiating the IPV, as indicated above in Section 3 of this preamble. The requirements for the notice are specified at newly added Section 253.8(f). The notification must be mailed, or otherwise provided to the individual, so as to allow an advance notice period of at least 10 days before the date the disqualification is to take effect. The notice must conform to the requirements at Section 253.7(b)(3)(iii)(C) for notices of adverse action, including a statement advising the individual of his right to appeal the disqualification through a fair hearing and to continue to receive commodities during the appeal process.

The notice of disqualification only addresses the action to disqualify the individual for the substantiated IPV. It is still necessary for the State agency to issue a notice of adverse action, in accordance with Section 253.7(b)(3)(iii), prior to any action to reduce or terminate a household's benefits so that the benefit level accurately reflects the household's current circumstances.

FNS is proposing several changes to the provisions for notices of adverse action at Section 253.7(b)(3)(iii). These changes would conform the adverse action requirements to those proposed for the notice of disqualification. The first change, at Section 253.7(b)(3)(iii)(A), would require that the State agency issue a notice of adverse action within 10 days of determining that the adverse action is warranted. We believe that State agencies should act timely in instances

where it is determined that a household is ineligible or receiving an incorrect level of commodities. The requirement to issue an adverse action notice within 10 days will ensure that adverse action determinations are acted upon in a timely manner. The proposed rule would also require that the adverse action take effect with the next scheduled distribution of commodities that follows the expiration of the advance notice period, unless the household requests a fair hearing. This provision is consistent with the handling of disqualifications and would ensure that adverse actions are implemented in a timely manner.

Section 253.7(b)(3)(iii)(B) addresses the required time frames for the advance notice period for the notice of adverse action. It specifies the requirements for cases that involve joint applications, as well as regular application processing cases. Section 253.7(f) discusses the State agency option to jointly process applications for FDPIR and public assistance or general assistance. The provisions under Section 253.7(b)(3)(iii)(B) for the advance notice period for joint application processing cases would not change. However, we are proposing a revision to the advance notice period for regular application processing cases. Currently, the notice for these cases must include an advance notice period that allows at least 10 and no more than 20 days to elapse before the adverse action takes effect. The proposed rule would require a minimum advance notice period of 10 days, but no maximum time frames would be imposed. An advance notice period of at least 10 days affords the individual sufficient time to respond to the adverse action notice and conforms to the advance notice period time frames used under the Food Stamp Program. Upon the expiration of the 10-day advance notice period, the adverse action will take effect unless an appeal is requested. The proposed rule would also substitute the word "issued" for the word "mailed," since State agencies are not limited to using the mail system for the issuance of notices.

We are also proposing several changes at Section 253.7(b)(3)(iii)(C) relating to the requirements of the notice of adverse action. First, this rule would require that the notices include a statement advising the household that it will be liable for any overissuances received while awaiting a fair hearing, if the hearing official's decision is adverse to the household. We believe households should be aware that, although they have a right to continue to receive benefits pending the fair hearing, they will be held responsible

for repaying those benefits if the fair hearing decision is not in their favor. Another requirement is a statement specifying the expiration date of the advance notice period. This date must allow at least 10 days from the issuance date of the notice of adverse action notice to the date upon which the action becomes effective. Households need to clearly understand the specific date by which they must act in order to appeal an adverse action. We have also revised Section 253.7(b)(3)(iii)(C) to conform to the concepts of plain language by creating a codified list of the notice requirements.

FNS is also proposing that State agencies must provide households with a demand letter for repayment of overissuances, including those that resulted from an IPV. The demand letter must be issued at the same time the notice of adverse action is issued to the household (newly added Section 253.7(b)(3)(iii)(E)). It may be combined with the notice of adverse action.

6. Appeal of the Disqualification

The proposed rule would require, at newly added Section 253.8(g)(1), that an individual subject to a disqualification must be given the opportunity to appeal the disqualification through a fair hearing. The fair hearing provisions at 7 CFR 253.7(g) (to be redesignated as Section 253.7(h)) would be revised to include appeals of disqualifications, but the basic provisions of this section would not change. FNS believes that these fair hearing provisions provide adequate protection to the individual in regard to time frames for action by the State agency, the household's request for a delay of the hearing, requirements for requesting and denying a hearing, requirements for hearing officials, and the household's rights prior to and during the hearing.

To ensure that the individual fully understands the implications of the fair hearing, FNS is proposing that specific information be added to the notification of time and place of the hearing required under 7 CFR 253.7(g)(7) (to be redesignated as Section 253.7(h)(7)). The additional notice requirements, which can be found at newly added Section 253.8(g)(2), are: 1) a warning that if the individual fails to appear at the hearing, the hearing decision will be based solely on the information provided by the State agency; and 2) a statement that the hearing does not prevent the Tribal, State, or Federal Government from prosecuting the individual in a civil or criminal court action, or from collecting any overissuance(s).

FNS is also proposing a change to the provisions at 7 CFR 253.7(g)(11) (to be redesignated as Section 253.7(h)(11)) to improve the notice requirements for fair hearing decisions. First, the rule would establish a time frame for issuing the decision notice. State agencies would be required to inform the individual in writing of the decision within 10 days of the date the fair hearing decision is issued. The rule would also specify the requirements for hearing decision notices that relate to disqualifications. The notice must include the reason for the decision, the date the disqualification will take effect, and the length of the disqualification (i.e., 12 months; 24 months; or permanent). Finally, if the individual is no longer participating, the notice must inform the individual that the period of disqualification will be delayed until the individual reapplies for and is determined eligible for FDPIR benefits.

The State agency would also be required to notify (in writing) the remaining household members if the household was no longer eligible or the household's benefits changed as a result of the disqualification. Procedures for the treatment of income and resources of the disqualified member are discussed at 7 CFR 253.7(e)(3)(ii) (to be redesignated as Section 253.7(f)(2)).

As proposed at newly added Section 253.8(h)(2), the State agency would be required to follow the decision of the fair hearing official. No additional appeal procedure exists within FDPIR if a disqualification is upheld by the fair hearing official. The individual, however, has the right to appeal to a court having appropriate jurisdiction. The court of appropriate jurisdiction could stay the period of disqualification or provide other injunctive remedy.

As discussed earlier, the household is liable for the value of any overissued commodities received while awaiting the outcome of the fair hearing. Therefore, following the issuance of the fair hearing decision, the State agency must revise the demand letter to include the amount of overissued commodities provided to the household during the appeal process, unless the fair hearing decision specifically requires the cancellation of the claim (new paragraph (11)(iv) at redesignated Section 253.7(h)). The State agency must also advise the household that collection action on the claim will continue, in accordance with FNS Handbook 501, unless suspension is warranted.

7. Applying the Disqualification Penalty

FNS is proposing at newly added Section 253.8(h)(1) that, if the

individual does not request a fair hearing, the disqualification period must begin with the next scheduled distribution of commodities which follows the expiration of the advance notice period of the notice of adverse action. If the commodities are normally made available to the household within a specific period of time, e.g., from the first day of the month through the tenth day of the month, the effective date of the disqualification will be the first day of that period. The effective date for the disqualification must be specified in the notice of disqualification (newly added Section 253.8(f)(2)).

In instances where the individual requested a fair hearing and the hearing official upheld the disqualification, newly added Section 253.8(h)(2) of the proposed rule would require that the disqualification period begin the next scheduled distribution which follows the date the hearing decision is issued. If the commodities are normally made available to the household within a specific period of time, e.g., from the first day of the month through the tenth day of the month, the effective date of the disqualification will be the first day of that period.

The individual's current eligibility status for FDPIR is not a factor in imposing the disqualification penalty. The State agency must proceed with imposition of the disqualification penalty even if the individual is not certified to participate in FDPIR at the time the disqualification penalty is to begin. Once a disqualification penalty has begun, it continues without interruption for the duration of the penalty period, i.e., 12 months, 24 months, or permanent (newly added Section 253.8(h)(3)). The disqualification period cannot be interrupted or shortened by a change in the eligibility of the disqualified member's household.

As proposed at newly added Section 253.8(h)(4), the same act of intentional program violation continued over a period of time cannot be separated so that more than one penalty can be imposed. For example, a household intentionally fails to report that a household member left the household, resulting in an overissuance of benefits for 5 months. Although the violation occurred over a period of 5 months, only one penalty will apply to this single act of intentional program violation.

8. Claims Against Households

The regulations at Parts 253 and 254 do not address the establishment of claims against households for overissuances. However, claims

procedures are addressed in FNS Handbook 501 in Chapter V, Certification Procedures, Section 6, State Agency Claims Procedure Against Households. FNS is proposing the addition of new Section 253.9, Claims against households, which would require State agencies to establish and collect claims against households as specified in FNS Handbook 501. FNS Handbook 501 includes the criteria for establishing claims, the method for calculating claims, procedures for collecting claims, and provisions for the disqualification of households for failure to pay a claim.

Newly added Section 253.9 would also stipulate that all adult household members are jointly and separately liable for any overissuance of program benefits to the household, even if they are not currently eligible for, or participating in, FDPIR. Therefore, in the case of an IPV disqualification, the disqualified member's household would remain responsible for repayment of the amount of the overissuance resulting from the IPV.

The proposed rulemaking would also add the definition of "overissuance" to Sections 253.2 and 254.2, respectively. "Overissuance" would mean the dollar value of commodities issued to a household that exceeds the dollar value it was eligible to receive.

9. Technical Changes

FNS is also proposing technical changes to Part 253 to correct erroneous regulatory references. On April 2, 1982, the Department published a final rule (47 FR 14135) that redesignated the contents of Part 283, Subchapter C (Food Stamp Program), in its entirety, as Subchapter B (Food Distribution Program) and renumbered it as Part 253. Some of the regulatory references to Part 283 that were contained in the newly designated Part 253 were never changed. This rulemaking would amend Part 253 to revise these and other incorrect regulatory references wherever they appear.

List of Subjects

7 CFR Part 253

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

7 CFR Part 254

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping

requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 253 and 254 are proposed to be amended as follows:

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

1. The authority citation for Part 253 is revised to read as follows:

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

2. In § 253.2, redesignate paragraphs (f) through (i) as paragraphs (g) through (j), respectively, and add new paragraph (f) as follows:

§ 253.2 Definitions.

* * * * *

(f) *Overissuance* means the dollar value of commodities issued to a household that exceeds the dollar value of commodities it was eligible to receive.

* * * * *

§ 253.5 [Amended]

3. In § 253.5:

a. Amend paragraph (a)(1) by removing the reference “§ 253.9” and adding, in its place, the reference “part 250 of this chapter”;

b. Amend paragraph (a)(2)(vii) by removing the reference “part 283 of this subchapter” and adding, in its place, the words “this part”;

c. Amend paragraph (d)(1) by removing the references “§ 283.7(a)(2) and (b)(3)” and adding, in its place, the references “§ 253.7(a)(2) and (b)(3)”, and by removing the reference “§ 283.7(c)” and adding, in its place, the reference “§ 253.7(c)”;

d. Amend paragraph (k)(1) by removing the reference “§ 283.9(g) of this part” and adding, in its place, the reference “§ 253.11(g)”;

e. Amend paragraph (k)(2) by removing the reference “§ 283.4” and adding, in its place, the reference “§ 253.4”;

f. Amend paragraph (l)(1)(iii) by removing the reference “§ 283.5(k) or § 283.9(g)” and adding, in its place, the reference “paragraph (k) of this section or § 253.11(g)”;

g. Amend paragraph (l)(3)(i) by removing the reference “§ 283.4(d)(2)” and adding, in its place, the reference “paragraph (m) of this section”, and removing the reference “§ 283.5” and adding, in its place, the reference “§ 253.4(e)(2)”.

§ 253.6 [Amended]

4. In § 253.6:

a. Amend paragraph (a)(3) by removing the reference “§ 283.7(a)(10)(i)

and § 283.7(a)(10)(ii)” and adding, in its place, the reference “§ 253.7(a)(10)(i) and § 253.7(a)(10)(ii)”;

b. Amend paragraph (b)(2) by removing the reference “§ 283.6(a)(3)(iv)” and adding, in its place, the reference “paragraph (a)(2)(iv) of this section”;

c. Amend paragraph (c)(1) by removing the reference “§ 283.6(a)(2)(ii)” and adding, in its place, the reference “paragraph (a)(2)(ii) of this section”;

d. Amend paragraph (d)(2)(iii) by removing the reference “§ 283.7(b)(1)(iii)” and adding, in its place, the reference “§ 253.7(b)(1)(iii)”;

e. Amend paragraph (e)(1)(i) by removing the reference “§ 283.6(a)(2)(ii)” and adding, in its place, the reference “paragraph (a)(2)(ii) of this section”, and removing the reference “§ 283.6(c)” and adding, in its place, the reference “paragraph (c) of this section”;

f. Amend paragraph (e)(2)(ii)(F) by removing the reference “§ 283.7” and adding, in its place, the reference “§ 253.7”; and

g. Amend paragraph (e)(3)(ix) by removing the reference “§ 283.7(b)(1)(iii)” and adding, in its place, the reference “§ 253.7(b)(1)(iii)”.

5. In § 253.7:

a. Amend paragraph (a)(2) by removing the reference “§ 283.7(f)” and adding, in its place, the words “paragraph (g) of this section”;

b. Amend paragraph (a)(5) by removing the reference “§ 283.7(a)(7) or § 283.7(a)(9)” and adding, in its place, the reference “paragraphs (a)(7) and (a)(9) of this section”;

c. Add two new sentences to the end of paragraph (b)(3)(iii)(A);

d. Amend the second sentence of paragraph (b)(3)(iii)(B) by removing the words “and no more than 20”, and by removing the word “mailed” and adding, in its place, the word “issued”;

e. Revise paragraph (b)(3)(iii)(C);

f. Add new paragraph (b)(3)(iii)(E);

g. Amend paragraph (c)(1) by removing the reference “§ 283.6(e)(1)” and adding, in its place, the reference “§ 253.6(e)(1)”;

h. Remove paragraph (e)(3);

i. Redesignate paragraphs (f) and (g) as paragraphs (g) and (h), respectively, and add a new paragraph (f);

j. Amend newly redesignated paragraph (g)(1) by removing the reference “§ 283.6(c)(2)” and adding, in its place, the reference “§ 253.6(c)(2)”;

k. Amend newly redesignated paragraph (g)(2) by removing the reference “§ 283.7(a)(7) and § 283.7(a)(9)” and adding, in its place, the reference “paragraphs (a)(7) and (a)(9) of this section”;

l. Revise newly redesignated paragraph (h)(2)(i);

m. Revise newly redesignated paragraph (h)(11)(iii); and

n. Add new paragraph (h)(11)(iv).

The revisions and additions read as follows:

§ 253.7 Certification of households.

* * * * *

(b) *Eligibility determinations.* * * *

(3) *Certification notices.* * * *

(iii) *Notice of adverse action.*

(A) * * * The notice must be issued within 10 days of determining that an adverse action is warranted. The adverse action must take effect with the next scheduled distribution of commodities that follows the expiration of the advance notice period, unless the household requests a fair hearing.

* * * * *

(C) The notice of adverse action must include the following in easily understandable language:

(1) The reason for the adverse action;

(2) The date the adverse action will take effect;

(3) The household's right to request a fair hearing and continue to receive benefits pending the outcome of the fair hearing;

(4) The date by which the household must request the fair hearing;

(5) The liability of the household for any overissuances received while awaiting the outcome of the fair hearing, if the fair hearing official's decision is adverse to the household;

(6) The telephone number and address of someone to contact for additional information; and

(7) The telephone number and address of an individual or organization that provides free legal representation, if available.

* * * * *

(E) If the State agency determines that a household received more USDA commodities than it was entitled to receive, it must establish a claim against the household in accordance with § 253.9. The initial demand letter for repayment must be provided to the household at the same time the notice of adverse action is issued. It may be combined with the notice of adverse action.

* * * * *

(f) *Treatment of disqualified household members.*

(1) The following are not eligible to participate in the Food Distribution Program:

(i) Individuals disqualified from the Food Distribution Program for an intentional program violation under § 253.8. These individuals may

participate, if otherwise eligible, in the Food Distribution Program once the period of disqualification has ended.

(ii) Individuals disqualified from the Food Stamp Program for an intentional program violation under § 273.16 of this chapter. These individuals may participate, if otherwise eligible, in the Food Distribution Program once the period of disqualification under the Food Stamp Program has ended. The State agency must, in cooperation with the appropriate food stamp agency, develop a procedure which ensures that these individuals are identified.

(iii) Households disqualified from the Food Distribution Program for failure to pay an overissuance claim. The circumstances under which a disqualification is allowed for such failure are specified in FNS Handbook 501.

(2) During the time a household member is disqualified, the eligibility and food distribution benefits of any remaining household members will be determined as follows:

(i) *Resources.* The resources of the disqualified member will continue to count in their entirety to the remaining household members.

(ii) *Income.* A pro rata share of the income of the disqualified member will be counted as income to the remaining members. This pro rata share is calculated by dividing the disqualified member's earned (less the 20 percent earned income deduction) and unearned income evenly among all household members, including the disqualified member. All but the disqualified member's share is counted as income to the remaining household members.

(iii) *Eligibility and benefits.* The disqualified member will not be included when determining the household's size for purposes of assigning food distribution benefits to the household or for purposes of comparing the household's net monthly income with the income eligibility standards.

* * * * *

(h) *Fair hearing.* * * *

(2) *Timely action on hearings.*

(i) *Time frames for the State agency.* The State agency must conduct the hearing, arrive at a decision, and notify the household of the decision within 60 days of receipt of a request for a fair hearing. If a fair hearing decision changes a household's eligibility or the amount of commodities to be provided, as determined by household size, the State agency must implement that change so that it is effective for the next scheduled distribution of commodities following the date of the fair hearing

decision. If the commodities are normally made available to the household within a specific period of time, e.g., from the first day of the month through the tenth day of the month, the effective date of the disqualification will be the first day of that period.

* * * * *

(11) *Hearing decisions.* * * *

(iii) Within 10 days of the date the fair hearing decision is issued, the State agency must issue a notice to the household advising it of the decision.

(A) If the decision upheld the adverse action by the State agency, the notice must advise the household of the right to pursue judicial review.

(B) If the decision upheld a disqualification, the notice must also include the reason for the decision, the date the disqualification will take effect, and the duration of the disqualification (i.e., 12 months; 24 months; or permanent). The State agency must also advise any remaining household members, if the household's benefits will change or if the household is no longer eligible as a result of the disqualification.

(iv) The State agency must revise the demand letter for repayment issued previously to the household to include the value of all overissued commodities provided to the household during the appeal process, unless the fair hearing decision specifically requires the cancellation of the claim. The State agency must also advise the household that collection action on the claim will continue, in accordance with FNS Handbook 501, unless suspension is warranted.

* * * * *

§ 253.8 [Redesignated as § 253.10 and Amended]

6. § 253.8 is redesignated as § 253.10 and amended as follows:

a. Amend paragraph (c)(12) by removing the reference “§ 283.7(b)(9)” and adding, in its place, the reference “§ 253.7(a)(9)”;

b. Amend paragraph (e) by removing the words “the State agency's agreement with the Department under § 250.6(b) of part 250 of this chapter and the requirements of § 250.6(l) of this same chapter” and adding, in its place, the reference “§ 250.13 and § 250.15 of this chapter”; and

c. Amend paragraph (f) by removing the reference “§ 250.7 of part 250” and adding, in its place, the reference “§ 250.13(f)”.

7. Add new § 253.8 to read as follows:

§ 253.8 Administrative disqualification procedures for intentional program violation.

(a) *What is an intentional program violation?* An intentional program violation is considered to have occurred when an individual knowingly, willingly, and with deceitful intent:

(1) Makes a false or misleading statement, or misrepresents, conceals, or withholds facts in order to obtain Food Distribution Program benefits which the household is not entitled to receive; or

(2) Commits any act that violates a Federal statute or regulation relating to the acquisition or use of Food Distribution Program commodities.

(b) *What are the disqualification penalties for an intentional program violation?* Individuals determined by the State agency to have committed an intentional program violation will be ineligible to participate in the program:

(1) For a period of 12 months for the first violation;

(2) For a period of 24 months for the second violation; and

(3) Permanently for the third violation.

(c) *Who can be disqualified?* Only the individual determined to have committed the intentional program violation can be disqualified. However, the disqualification of a household member may affect the eligibility of the household as a whole, as addressed under paragraphs (e)(5) and (h) of this section.

(d) *Can the disqualification be appealed?* Individuals determined by the State agency to have committed an intentional program violation may appeal the disqualification, as provided under § 253.7(h)(1).

(e) *What are the State agency's responsibilities?*

(1) Each State agency must implement administrative disqualification procedures for intentional program violations that conform to this section.

(2) The State agency must inform households in writing of the disqualification penalties for intentional program violation each time they apply for benefits, including recertifications.

(3) The State agency must attempt to substantiate all suspected cases of intentional program violation. An intentional program violation is considered to be substantiated when the State agency has clear and convincing evidence that demonstrates that an individual has committed one or more acts of intentional program violation, as defined in paragraph (a) of this section.

(4) Within 10 days of substantiating that an individual has committed an intentional program violation, the State agency must provide the individual

with a notice of disqualification, as described in paragraph (f) of this section. A notice is required even when the individual is currently neither eligible nor participating in the program.

(5) The State agency must advise any remaining household members if the household's benefits will change or if the household will no longer be eligible as a result of the disqualification.

(6) The State agency must provide the individual to be disqualified with an opportunity to appeal the disqualification through a fair hearing, as required by § 253.7(h).

(7) The State agency must refer all substantiated cases of intentional program violations to Federal, State, or local authorities for prosecution under applicable statutes. However, a State agency that has conferred with its legal counsel and prosecutors to determine the criteria for acceptance for possible prosecution is not required to refer cases that do not meet the prosecutors' criteria.

(8) The State agency must establish claims, and pursue collection as appropriate, on all substantiated cases of intentional program violation in accordance with § 253.9.

(f) *What are the requirements for the notice of disqualification?*

(1) Within 10 days of substantiating the intentional program violation, the State agency must mail, or otherwise provide, to the individual a notice of disqualification. The notice must allow an advance notice period of at least 10 days. The disqualification must begin with the next scheduled distribution of commodities that follows the expiration of the advance notice period, unless the individual requests a fair hearing. A notice is required even when the individual is currently neither eligible nor participating in the program.

(2) The notice must conform to the requirements of § 253.7(b)(3)(iii)(C) for notices of adverse action.

(g) *What are the appeal procedures for administrative disqualifications?*

(1) *Appeal rights.* The individual has the right to request a fair hearing to appeal the disqualification in accordance with the procedures at § 253.7(h).

(2) *Notification of hearing.* The State agency must provide the individual with a notification of the time and place of the fair hearing as described in § 253.7(h)(7). The notice must also include:

(i) A warning that if the individual fails to appear at the hearing, the hearing decision will be based solely on the information provided by the State agency; and

(ii) A statement that the hearing does not prevent the Tribal, State, or Federal Government from prosecuting the individual in a civil or criminal court action, or from collecting any overissuance(s).

(h) *What are the procedures for applying disqualification penalties?*

(1) If the individual did not request a fair hearing, the disqualification must begin with the next scheduled distribution of commodities which follows the expiration of the advance notice period of the notice of adverse action. If the commodities are normally made available to the household within a specific period of time (e.g., from the first day of the month through the tenth day of the month), the effective date of the disqualification will be the first day of that period. The State agency must apply the disqualification period (i.e., 12 months, 24 months, or permanent) specified in the notice of disqualification. The State agency must advise any remaining household members if the household's benefits will change or if the household is no longer eligible as a result of the disqualification.

(2) If the individual requested a fair hearing and the disqualification was upheld by the fair hearing official, the disqualification must begin with the next scheduled distribution of commodities which follows the date the hearing decision is issued. If the commodities are normally made available to the household within a specific period of time (e.g., from the first day of the month through the tenth day of the month), the effective date of the disqualification will be the first day of that period. The State agency must apply the disqualification period (i.e., 12 months, 24 months, or permanent) specified in the notice of disqualification. No further administrative appeal procedure exists after an adverse fair hearing decision. The decision by a fair hearing official is binding on the State agency. The household member, however, may seek relief in a court having appropriate jurisdiction. As provided under § 253.7(h)(11)(iii)(B), the State agency must advise any remaining household members, if the household's benefits will change or if the household is no longer eligible as a result of the disqualification.

(3) Once a disqualification has begun, it must continue uninterrupted for the duration of the penalty period (i.e., 12 months; 24 months; or permanent). Changes in the eligibility of the disqualified individual's household will not interrupt or shorten the disqualification period.

(4) The same act of intentional program violation continued over a period of time will not be separated so that more than one penalty can be imposed. For example, a household intentionally fails to report that a household member left the household, resulting in an overissuance of benefits for 5 months. Although the violation occurred over a period of 5 months, only one penalty will apply to this single act of intentional program violation.

(5) If the case was referred for Federal, State, or local prosecution and the court of appropriate jurisdiction imposed a disqualification penalty, the State agency must follow the court order.

§ 253.9 [Redesignated as § 253.11]

8. Redesignate § 253.9 as § 253.11.

9. Add new § 253.9 to read as follows:

§ 253.9 Claims against households.

(a) *What are the procedures for establishing a claim against a household for an overissuance?*

(1) The State agency must establish a claim against any household that has received more Food Distribution Program commodities than it was entitled to receive.

(2) The procedures for establishing and collecting claims against households are specified in FNS Handbook 501, The Food Distribution Program on Indian Reservations.

(b) *Who is responsible for repaying a household overissuance claim?*

(1) All adult household members are jointly and separately liable for the repayment of the value of any overissuance of Food Distribution Program benefits to the household.

(2) Responsibility for repayment continues even in instances where the household becomes ineligible or is not participating in the program.

PART 254—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR INDIAN HOUSEHOLDS IN OKLAHOMA

1. The authority citation for Part 254 continues to read as follows:

Authority: Pub. L. 97-98, sec. 1338; Pub. L. 95-113.

2. In § 254.2, redesignate paragraphs (f) and (g) as paragraphs (g) and (h), respectively, and add new paragraph (f) to read as follows:

§ 254.2 Definitions.

* * * * *

(f) *Overissuance* means the dollar value of commodities issued to a household that exceeds the dollar value of commodities it was eligible to receive.

* * * * *

Dated: June 29, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99-18621 Filed 7-21-99; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560-AF41

Dairy Recourse Loan Program for Commercial Dairy Processors

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: Beginning on January 1, 2000, the Commodity Credit Corporation (CCC) will make recourse loans to commercial processors of dairy products. The regulations currently in effect for this program are being revised and the public is invited to comment on the regulations as revised. The proposed rule includes changes that would make recourse loans available to dairy processors through a central location, as opposed to in-person applications taken at Farm Service Agency (FSA) State or county offices, allow the loan collateral to be based on a rolling, commingled inventory, versus an identity preserved inventory, and miscellaneous other changes which would provide for a more customer-friendly program. These changes are based on suggestions from the dairy processing industry through informal discussions held since the publication of the interim rule on July 18, 1996 at 61 FR 37616.

DATES: Comments on this rule must be received on or before September 7, 1999 to be assured of consideration. Comments regarding the information collection requirements of the Paperwork Reduction Act must be received on or before September 20, 1999 to be assured of consideration.

ADDRESSES: Comments should be sent to Steve P. Gill, Warehouse and Inventory Division, United States Department of Agriculture (USDA), FSA, STOP 0553, 1400 Independence Avenue, SW, Washington, DC 20250-0553 or E-mail: DAIRY@wdc.fsa.usda.gov. Persons with disabilities who require alternative means for communication (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Barry Klein at (202) 720-4647.

SUPPLEMENTARY INFORMATION:

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among various levels of Government.

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed the proposed rule and determined the rule to be significant for the purposes of Executive Order 12866.

Cost-Benefit Assessment

The Commodity Credit Corporation (CCC) of the United States Department of Agriculture (USDA) proposes to revise the regulations governing the dairy recourse loan program (7 CFR 1430). This proposed rule would provide recourse loans to commercial processors of cheddar cheese, butter, and nonfat dry milk. The borrower would be fully liable to repay the amount of the loan, notwithstanding the value of the collateral in the event of default. The loan would mature no later than September 30 of the fiscal year in which the loan is made, but the collateral may be repledged for a new loan that matures before the end of the next fiscal year. The program would be primarily conducted electronically through a central location based on rolling, commingled collateral and be operated using CCC funds, facilities, and authorities.

There are currently about 180 plants in 32 States approved for USDA grading and producing at least one of the products eligible for loans. Consultations with current lenders suggest that the interest rates under the program would be attractive to all but the very best customers that they service. About 170 participants would be expected to participate with an average loan value of \$1.3 million.

The incremental costs have been calculated as initial costs and annual costs. Initial costs are those one-time costs that would occur in the first year only. Annual costs are those costs that occur periodically. The initial incremental cost savings associated with this rulemaking would be \$1.37 million realized by USDA in training and nonrecurring start-up costs. No incremental capital/start-up costs would be incurred by participants. The incremental annual costs to dairy

processors would be \$3,060, because of increased paperwork that would be required to become an Approved Dairy Processor (ADP). However, this would be more than offset by a \$1.17-million incremental annual cost savings because the proposal would allow for the collateralization of commingled inventory. USDA would realize incremental annual cost savings of approximately \$473,000 due primarily to administrative savings of centralized processing.

In summary, under the proposed rule, total initial cost savings in the first year would be \$1.37 million. Total recurring annual cost savings would be \$1.65 million.

The benefits of this proposed rule, in addition to the quantifiable cost savings discussed above, are associated with efficiency and effectiveness. Streamlining the participatory process, would likely increase program participation. That is, loan program participants would benefit from a less burdensome loan application and administration process. In addition, the commingling of inventory would allow processors to only have to show in inventory an amount and type of product equal to that pledged as loan collateral without uniquely having to identify specific product. USDA would benefit by administering the loan in a more efficient and effective manner.

USDA, however, is concerned that this program could have a significant impact on current lenders. More specifically, some banks that lend to dairy processors may be significantly affected. USDA requests documented quantifiable cost data on the extent to which their businesses would be affected.

Copies of the cost benefit assessment may be obtained from Barry Klein, Inventory Management Branch, Warehouse and Inventory Division, FSA, USDA, STOP 0553, 1400 Independence Avenue, SW, Washington DC 20250-0553, telephone (202) 720-2121.

Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.