Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending part 211 of title 5, Code of Federal Regulations, as follows:

PART 211—VETERAN PREFERENCE

■ 1. The authority for part 211 continues to read as follows:

Authority: 5 U.S.C. 1302.

■ 2. In § 211.102, revise paragraphs (a), (b), and (g) to read as follows:

§ 211.102 Definitions.

* * * * *

(a) *Veteran* means a person who has been discharged or released from active duty in the armed forces under honorable conditions performed—

(1) In a war; or,

(2) In a campaign or expedition for which a campaign badge has been authorized; or

(3) During the period beginning April 28, 1952, and ending July 1, 1955; or

(4) For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning February 1, 1955, and ending October 14, 1976; or

(5) During the period beginning August 2, 1990, and ending January 2, 1992; or

(6) For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom.

(b) *Disabled Veteran* means a person who has been discharged or released from active duty in the armed forces under honorable conditions performed at any time and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a statute administered by the Department of Veterans Affairs or a military department.

* * * * *

(g) *Discharged or released from active duty* means with either an honorable or general discharge from active duty in the armed forces. The Department of Defense is responsible for administering and defining military discharges.

[FR Doc. E6–8962 Filed 6–8–06; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

RIN 0584–AD32

Food Stamp Program: Employment and Training Program Provisions of the Farm Security and Rural Investment Act of 2002

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes the proposed provisions of a rule published on March 19, 2004 to amend Food Stamp Program regulations to codify Food Stamp Employment and Training (E&T) Program provisions of section 4121 of the Farm Security and Rural Investment Act of 2002 (the Farm Bill). This final rule establishes a reasonable formula for allocating the 100 percent Federal grant authorized under the Farm Bill to carry out the E&T Program each fiscal year. This final rule also codifies the Farm Bill provision that makes available up to $20 million a year in additional unmatched Federal E&T funds for State agencies that commit to offer an education/training or workfare opportunity to every applicant and recipient who is an able-bodied adult without dependents (ABAWD), limited to 3 months of food stamp eligibility in a 36-month period, who would otherwise be terminated. This final rule eliminates the current Federal cost-sharing cap of $25 per month on the amount State agencies may reimburse E&T participants for work expenses other than dependent care. This final rule codifies Farm Bill provisions that expand State flexibility in E&T Program spending by repealing the requirements that State agencies earmark 80 percent of their annual 100 percent Federal E&T grants to serve ABAWDs; they meet or exceed their fiscal year 1996 State administrative spending levels to access funds made available by the Balanced Budget Act of 1997; and the Secretary be given the authority to establish maximum reimbursement costs of E&T Program components. Lastly, this final rule rescinds the balance of unobligated funds carried over from fiscal year 2001.

DATES: This final rule is effective August 8, 2006.

FOR FURTHER INFORMATION CONTACT: Micheal Atwell, Senior Program Analyst, Program Design Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, 3101 Park Center Drive, Room 810, Alexandria, Virginia, 703–305–2449, or via the Internet at *micheal.atwell@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule was determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Executive Order 12372

The Food Stamp Program (FSP) is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3105, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph of this final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that OMB approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The information collections in this rule were previously approved under OMB control number 0584–0339. The rules in 7 CFR 273.7(d)(1)(i)(D) provide that, if a State Agency will not obligate or expend all of the funds allocated to it for a fiscal year (FY), the Food and Nutrition Service (FNS) will distribute the unobligated, unexpended funds during the current or subsequent FY on a first come-first served basis. State Agencies may request more funds, as needed. Typically, FNS receives nine such requests per year. The burden associated with OMB control number 0584–0339 has been revised by adding 9 hours to it to account for the time it takes State Agencies to prepare the

requests. The additional 9 hours were approved by OMB on August 22, 2005.

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). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not regulate the activities of small businesses or other small entities; instead it regulates the administration of the FSP, which is administered only by State or county social service agencies.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 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 UMRA, the Department 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 UMRA generally requires the Department 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 UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus this rule is not subject to the requirements of section 202 and 205 of UMRA.

Executive Order 13132

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have ''federalism implications,'' agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Prior to drafting the rule, we received input from State and local agencies at various times. Since the FSP is a State administered, federally funded program, our regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program implementation and policy issues. This arrangement allows State and local agencies to provide feedback that forms the basis for many discretionary decisions in this and other FSP rules. In addition, we presented our ideas and received feedback on program policy at various State, regional, national, and professional conferences. Lastly, the comments from State and local officials on the proposed Farm Bill rule were carefully considered in drafting this final rule.

Nature of Concerns and the Need To Issue This Rule

State agencies generally want greater flexibility in their implementation of FSP work requirements and in the operation of the E&T Program. State agencies have indicated that providing them this flexibility would greatly enhance their ability to more efficiently administer the FSP. They also want current rules streamlined to allow them to conform to the rules of other means tested Federal programs.

Extent to Which FNS Meets Those Concerns

FNS has considered the impact on State and local agencies. This rule deals with changes required by law, which were effective on May 13, 2002. The overall effect is to lessen the administrative burden by providing increased State agency flexibility in E&T Program spending.

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public with the option of submitting information or transacting business electronically to the maximum extent possible. State agencies have the option of submitting the Food Stamp Employment and Training Activity Report (FNS–583) (OMB 0584–0339 electronically via the Food Program Reporting System. Also, State agencies may submit their applications for additional Federal operating funds via e-mail.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individual participants, FNS has determined that there is no way to mitigate its impact on the protected classes. Other than how to allocate E&T funds among State agencies, FNS had no discretion in implementing any of these changes, which were effective upon enactment of the Farm Bill on May 13, 2002. All data available to FNS indicate that protected individuals have the same opportunity to participate in the FSP as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. (FSP nondiscrimination policy can be found at 7 CFR 272.6(a)). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Regulatory Impact Analysis

Need for Action

This action is needed to implement the provisions of section 4121 of the Farm Bill, which sets forth funding directives for the E&T program. Because the rules resulting from section 4121 will have generally applicability, they are best accomplished through regulatory action. The provisions of this regulation establish a reasonable formula for allocating the 100 percent Federal grant authorized under the Farm Bill to carry out the E&T Program each fiscal year; make available up to $20 million a year in additional unmatched Federal E&T funds for State agencies that commit to offer an education/training or workfare opportunity to every ABAWD applicant and recipient who would otherwise be terminated after 3 months of food stamp eligibility in a 36-month period (3-month time limit); eliminate the current Federal cost-sharing cap of $25 per month on the amount State agencies may reimburse E&T participants for work expenses other than dependent care; repeal the requirement that State agencies earmark 80 percent of their annual 100 percent Federal E&T grants to serve ABAWDs; and repeal the requirement that State agencies meet or exceed their FY 1996 State administrative spending levels to access

funds made available by the Balanced Budget Act of 1997.

Benefits

State agencies will benefit from the provisions of this rule because they streamline the annual E&T Program grant allocation process, expand State agency flexibility in serving at-risk ABAWDs and other work registrants, and eliminate unnecessary and complex rules on how State agencies can spend E&T Program funds.

Costs and Participation Impacts

The regulatory impact analysis associated with this rule reports that the E&T provisions of the Farm Bill are expected to reduce Federal outlays by $36 million in FY 2005 and by $188 million in the 5 years FY 2005 through FY 2009 (see Table 1). In accordance with OMB circular A–4, FNS has used a pre-statutory baseline (FY2002) for this analysis. Because these provisions have already taken effect, it was possible to compare this pre-legislative baseline to current expectations for spending on E&T using the President's FY 2006 budget baseline, the most recent data available at the time of analysis. These assumptions have also been incorporated in the President's FY 2007 budget. The annual cost of the provisions was measured as the difference between the two cost streams. The standard E&T outlay factor of 84 percent was applied to the difference in expected obligations to estimate the expected impact on E&T outlays. This methodology assumes that differences between the pre-legislative baselines and post-reform projections are entirely due to the impact of provisions in this rule-making. To the extent that other outside factors have influenced E&T provision and spending, the impacts of this provision could be over-or understated.

TABLE 1.—COST IMPACT OF E&T PROVISIONS OF THE FARM BILL OF 2002 (FEDERAL OUTLAYS)

[In millions of dollars]

	2005	2006	2007	2008	2009	5-year
100% E&T Grants	−36	−35	−36	−39	−42	−188
50% E&T Grants	18	19	20	21	21	99
Participant Reimbursements	6	6	6	6	7	31
Participant Benefit Impact	−24	−27	−27	−26	−26	−130
Total Impact	−36	−37	−37	−38	−40	−188

The items identified in Table 1 are described in more detail below:

* *100% E&T Grants.* The cost to the government of the provisions on 100 percent Federal E&T grants was estimated based on expected 100 percent E&T obligations prior to the legislation ($130 million in FY 2002), indexed by economic projections from the Office of Management and Budget.

* *50% E&T Grants.* The cost to the Government of the provisions on 50 percent Federal E&T grants was based on expected 50 percent E&T obligations prior to the legislation ($107 million in FY 2002), indexed by economic projections from the Office of Management and Budget.

* Participant Reimbursements. The cost to the Government of the provisions on E&T participant reimbursements was based on expected obligations prior to the legislation ($31 million in FY 2002), indexed by economic projections from the Office of Management and Budget.

Participant Benefit Impact. With new flexibility and decreased Federal E&T funding, some States likely reduced the level of E&T services they provide to ABAWDs, thereby making them ineligible for food stamps. Based on data from the FNS–583 FNS estimated that 14,000 persons were made ineligible by these provisions in FY 2005. These impacts are already incorporated in the President's FY 2007 budget baseline. State agencies have already implemented any applicable changes and no further impact is expected following publication of this final rule. The savings in food stamp benefits was calculated based on the estimated number of ABAWDs made ineligible times the average monthly benefit per ABAWD, times 12 months. These savings were rounded to the nearest million dollars. (For example, in FY 2005, 14,000 persons were made ineligible, times an average food stamp benefit of $141, times 12 months to yield a savings of $24 million.) The standard food stamp benefit outlay factor of 0.99 was used to estimate the impact on benefit outlays.

While this regulatory impact analysis details the expected impacts on Food Stamp Program costs and the number of participants likely to be affected by the food stamp employment and training provisions of the Farm Security and Rural Investment Act of 2002, it does not provide an estimate of the overall societal costs of the provisions, nor does it include a monetized estimate of the benefits they bring to society. We anticipate that the provisions improve program operations by giving flexibility to States to provide employment and training services that better meet the needs of their food stamp populations. However, to the extent that some food stamp recipients are made ineligible, the provisions have made it more difficult for them to obtain a healthful diet.

Background

On March 19, 2004, FNS published a rule at 69 FR 12981 in which we proposed to revise food stamp regulations at 7 CFR 273.7 regarding funding for the E&T Program. Comments on this proposed revision were solicited through May 18, 2004. A total of 24 comments were received. This final rule addresses the commenters' concerns. Readers are referred to the proposed rule for a more complete description of the basis for the rule. Following is a discussion of the provisions of the proposed rule, the comments received, and changes made in the final rule.

Funding for Food Stamp Employment and Training Programs

Allocation of E&T Grants

FNS proposed to allocate one-half of the annual 100 percent Federal grant based on our estimate of the numbers of ''at-risk'' ABAWDs in each State (those who do not reside in an area subject to a waiver of the time limit or who are not included in each State agency's 15 percent ABAWD exemption allowance) calculated using ABAWD data collected by Mathematica Policy Research, Incorporated (MPR) for its September 2001 report, ''Imposing a Time Limit on Food Stamp Receipt: Implementation of the Provisions and Effects on Food Stamp Program Participation.'' Based on the MPR study data, FNS established percentages for the numbers of waived and/or exempted ABAWDs in each State

and applied those percentages to Quality Control (QC) survey data to estimate each State agency's at-risk ABAWD population. FNS believed this to be the most accurate and reliable data available. FNS proposed to allocate the balance of the annual 100 percent E&T grant based on the number of work registrants reported by each State agency on the FNS–583, E&T Program Activity Report from the most recent complete FY.

FNS received 22 comments regarding our proposed allocation methodology. Twenty commenters objected to our reliance on at-risk ABAWDs. They were concerned that this reliance would discourage States from using the two measures available to protect the eligibility of ABAWDs who are unable to obtain employment. The first measure is to request that FNS waive the time limit for a group of ABAWDs in a State if we determine that the area in which the individuals reside has an unemployment rate of over 10 percent or does not have a sufficient number of jobs to provide employment for the individuals. The second measure is the State option to exempt up to 15 percent of its ABAWD population that does not reside in waived areas each FY. The commenters point out that, by utilizing these measures, States will receive smaller E&T grants than if they had not used them. Several commenters pointed out that more than a few States have statewide waivers of the time limit due to high unemployment or a lack of jobs and these States will lose half of their potential annual E&T grants as a result. Several State agencies pointed out that the formula ignores the fact that waived and exempted ABAWDs are work registrants subject to E&T participation and, although they currently provide E&T services to exempt ABAWDs and to ABAWDs in waived areas, they will have to curtail or terminate these services because of reduced grants.

Two commenters argued that FNS has flexibility under the law to adopt a formula that better serves the ABAWD population. They believe that the concept of ''at-risk ABAWDs'' should be significantly revised or dropped and that FNS should adopt a more practical approach to the requirement that it take into account the numbers of individuals not exempt from the work requirement under section 6(o) of the Food Stamp Act. They believe that FNS should consider other factors and apply necessarily inexact measures of those numbers.

Eight commenters recommended that the ABAWD allocation be based on the total number of ABAWDs, not just at-risk ones. Three recommended that the entire grant be based on total ABAWDs. Several recommended that FNS use the most recent QC household characteristics data (OMB 0584–0299) that reflects each State's share of the nation's food stamp recipients who are age 18 through 49, not disabled, and who do not live with children.

One State agency recommended using a funding ratio of 10 to 20 percent based on at-risk ABAWDs, 80 to 90 percent on work registrants.

One State agency recommended using a multi-part formula that averages the number of ABAWDs determined from the QC sample and the number of ABAWDs participating in components that meet the ABAWD work requirement as reported on the FNS–583, E&T Program Activity Report. It also urged that State agencies be informed of the numbers to be used and given the opportunity to challenge them if they disagree.

One State agency recommended that all 100 percent Federal E&T funds be allocated based on a point system that favors at-risk ABAWDs. It proposes assigning a value of 1.0 to all mandatory work registrants, excluding ABAWDs, and assigning a value of 1.3 to all ABAWDs.

One State agency recommended using an allocation formula based one-half on the number of E&T work registrants and one-half on the number of ABAWD E&T participants.

FNS agrees with those commenters concerned that adhering to the proposed 50/50 split of the 100 percent Federal grant places too much emphasis on ABAWDs. The E&T program has two constituencies—ABAWDs subject to the time limit who need services that qualify them to remain eligible for benefits until they are able to find employment; and all other work registrants who also need services to improve their ability to become self-sufficient. Under the proposed split, a State's ABAWD population would determine half its grant amount; and, since all ABAWDs are work registrants, they would be counted again in determining the other half. For the FY 2005 $90 million grant allocation, FNS allocated $80 million based on work registrants and $10 million on at-risk ABAWDs. In addition, to lessen the negative impact on those State agencies with a large waived and exempted ABAWD population, FNS limited the cut in grant funding to no more than 20 percent of the FY 2004 grant allocations. Our experience with the FY 2005 E&T grant allocation convinced us that the appropriate share to be allocated based on numbers of ABAWDs is 10 percent of the grant, with 90 percent allocated based on the overall universe of work registrants. We have incorporated this ratio into the final rule.

FNS also agrees with the commenters who urged us to take a different approach to how we accomplish the annual allocation. FNS carefully considered each comment and weighed the suggested funding strategies against the statutory requirement that we take into account at-risk ABAWDs. FNS examined several alternatives for using data to capture the most reliable estimate of the numbers of ABAWDs in each State. The use of at-risk ABAWD estimates for each State was, of course, most desirable. However, after careful review FNS determined that these numbers were difficult to obtain and unreliable, due both to technical considerations and to continual shifts in the numbers of waived and exempted ABAWDs in most States. To ensure a reasonably accurate count of at-risk ABAWDs, State agencies would most likely have to create new computer programming and reporting requirements for at-risk ABAWDs. FNS does not believe that such an additional State agency reporting burden is desirable or necessary. For the FY 2006 $90 million grant allocation, FNS used food stamp QC data for the most recently available completed FY (FY 2004) which reflected total ABAWD numbers instead of at-risk ABAWD estimates. The data, which is state-compiled and federally reviewed, provide a breakdown of each State's population of adults age 18 through 49, who are not disabled, and who do not live with children. These data mirror ABAWD characteristics, are readily and widely available, are consistent with commenters' requests, and, when compared to the less current percentages established by the September 2001 MPR study, provide a more reliable estimate of the numbers of all ABAWDs in each State. Our experience indicates that using total ABAWD numbers is the most efficient, equitable way to allocate the ABAWD portion of the annual E&T grant, with currently available data-while still adhering to the statutory requirement to take into account at-risk ABAWDs. This approach has the advantage over our earlier proposal in that it does not reduce funding for States that rely on waivers and exemptions, thus does not serve as a disincentive to use those tools.

While some commenters questioned the validity of work registrant data from the FNS–583, E&T Program Activity Report, FNS remains convinced that it provides the most reliable work registration information available. State

agencies have been collecting and reporting work registrant data on the FNS–583 for many years and they are proficient in accurately counting their work registrants. Prior to 1996, the annual E&T grants were allocated based primarily on FNS–583 work registrant data. In addition, the universal use of computers and the development of sophisticated software to track program participation and compliance with eligibility requirements make the accurate calculation of the number of work registrants a relatively simple procedure. Finally, FNS has been working closely with states over the last few years to correct instances of misreporting E&T data.

Thus, in response to comments and based on our experience, FNS is amending the final rule at 7 CFR 273.7(d)(1)(i)(B) to establish that 10 percent of the annual 100 percent Federal E&T grant will be allocated among the 53 State agencies based on food stamp QC data for the most recently available completed FY that reflects each State's share of the nation's food stamp recipients who are age 18 through 49, not disabled, and who do not live with children, as a percentage of such individuals nationwide.

The remaining 90 percent will be allocated based on the numbers of work registrants in each State as a percentage of work registrants nationwide. FNS will use work registrant data reported by each State agency on the FNS–583, Employment and Training Program Activity Report, from the most recent Federal FY.

Additional Funding for States That Serve ABAWDs

The proposed rule contained the provision of an additional $20 million in 100 percent Federal E&T funds each FY to be allocated among eligible State agencies to serve all ABAWDs subject to the time limit. To be eligible for a share of the additional $20 million, the Department proposed that a State agency must make and comply with a commitment, or pledge, to offer a qualifying education/training activity or workfare position to each ABAWD applicant or recipient who is ''at risk,'' *i.e.*, one who is in the last month of the 3-month time limit; does not live in an area covered by a waiver of the time limit; and is not part of a State agency's 15 percent ABAWD exemption allowance. FNS proposed to allocate among them the $20 million based on the 2001 MPR study's estimate of the numbers of ABAWDs in each participating pledge State who do not reside in an area subject to a waiver granted in accordance with 7 CFR 273.24(f) or who are not included in each State agency's 15 percent ABAWD exemption allowance under 7 CFR 273.24(g), as a percentage of such ABAWDs in all the participating pledge States. Eligible State agencies must use their shares of the $20 million allocation to defray costs incurred in serving at-risk ABAWDs.

Three commenters objected to our methodology. Two recommended that the allocation formula include all ABAWDs. One recommended that the money be allocated based on actual services provided and not just on the population eligible for service.

For the reasons cited in the above discussion concerning the regular Federal E&T allocation, the Department agrees that the allocation formula should include all ABAWDs. While making it clear that the first priority of a participating State agency is to guarantee that all its at-risk ABAWDs are provided the opportunity to remain eligible while they acquire the skills and experience necessary to obtain employment, the Department, in the proposed rule, provided the option of allowing the State agency to use a portion of its additional funding to provide E&T services to ABAWDs who are not at risk. However, if a State agency uses waivers and/or its exemption allowance to protect all of its ABAWDs from the time limit, it is not eligible to share in the $20 million. Therefore, the formula included in this final rule bases the allocation of a participating pledge state's share of the $20 million on the total number of ABAWDs in the State as a percentage of ABAWDs in all participating States. For the reasons discussed in the previous section, the number of ABAWDs will be derived from QC data and not from the MPR study. One commenter urged that FNS revise this final regulation to properly reflect what it is that a State must pledge to do in order to be eligible for its share of the $20 million ABAWD allocation. The cost of serving at-risk ABAWDs is not an acceptable reason to fail to live up to the pledge. In other words, a slot must be available and the ABAWD must be served even if the State exhausts all of its 100 percent E&T funds and must use 50 percent State matching funds to serve all at-risk ABAWDs. This commenter believes that the language of the proposed regulation implied that to meet the pledge States have to pledge only to use their share of the $20 million to serve these individuals.

The Department agrees. FNS has added language to the final rule to clarify that a participating pledge State must serve all its at-risk ABAWDs, and it must be prepared to use its own money to fulfill its commitment.

Allocation of Carryover Funding

The Department, in the proposed rule, provided for the first come-first served reallocation of unspent 100 percent Federal E&T grant funds carried over into the subsequent FY. FNS would notify all State Agencies of the availability of the funds each year.

One commenter pointed out that State Agencies that may benefit from an allocation of carryover funds to augment their annual grants will not be aware of the availability of such funds until after critical program adjustments must be made.

FNS agrees that State Agencies may find it difficult to rely on carryover funding because they are notified of its availability well into the annual budget and spending cycle. However, FNS does not know how much carryover funding remains until completion of the close-out of financial accounts for the preceding year, which is not normally accomplished until the second quarter of the current year. Thus, FNS is unable to allocate available carryover funding until that time.

FNS urges interested State Agencies to submit their requests for carryover funding, with accompanying justification, as early as possible in the FY. FNS will act upon the requests as quickly as possible.

Participant Reimbursements

The Farm Bill eliminated the $25 per month per participant limitation on Federal cost sharing for reimbursement for the costs of transportation and other actual costs other than dependent care.

One commenter believes that the language of the proposed rule related to the E&T State plan suggests that there is only one reimbursement rate for participant expenses other than dependent care. States may desire to have different reimbursement policies for households that experience different types of expenses, or they may want to establish different levels of reimbursement for different areas of the State where, for example, costs of transportation are higher. The commenter recommends that FNS revise the language to allow for more than one reimbursement rate for transportation and other expenses.

The Department agrees that the language of the E&T State plan provision relating to participant reimbursements should be revised to allow for varying rates of reimbursements. This final rule will include language in 7 CFR 273.7(c)(6)(xv) to clarify that, if the State

agency proposes to provide different reimbursement amounts to account for varying levels of expenses, for instance, for greater or lesser costs for transportation in different areas of the State, it must include them here.

One commenter encourages FNS to consider allowing E&T reimbursement for participants for up to 30 days following placement into unsubsidized employment. Mandatory participants may not receive their first paycheck for up to four weeks. This causes hardships for E&T participants who need to get back and forth to work until they receive a paycheck. Also, the participant may have a need for employment-related items such as clothing, work boots, bonding, tools, etc. once a job is accepted.

FNS believes that expanding the range of possible covered costs eligible for a Federal match for reimbursement is desirable because doing so supports the goal of the E&T Program to help food stamp applicants and recipients obtain employment and achieve self-sufficiency. In our discussion of expanded reimbursements in the proposed rule we stated that expenses such as license and bonding fees required for employment, for which the E&T participant is liable, could also be considered for reimbursement by State agencies. However, after reviewing comments on the proposed rule and reconsidering the scope of the E&T Program, FNS wants to take this opportunity to amend that statement. While we understand wanting to support employed persons, the use of Federal funds to provide services associated with starting and keeping a job is beyond the scope of the E&T Program and must be disallowed.

Congress established the E&T Program to assist members of households participating in the FSP in gaining skills, training, work, or experience that will increase their ability to obtain regular employment. It defined an E&T program as one that contains one or more components providing job search; job search training; workfare; actual work experience or training, or both; educational programs or activities; self-employment activities; and, as approved by the Secretary, other employment, education and training programs, projects, and experiments. Lastly, Congress required that Federal funds provided to a State agency may be used only for operating an E&T program as defined. It required that States may be reimbursed 50 percent of their costs incurred in connection with transportation costs and other expenses reasonably necessary and directly related to participation in an E&T program as defined.

Based on this language in the Food Stamp Act and on the legislative history of the E&T Program, Congress clearly intended to limit the scope of the Program to preparing for and obtaining employment. Post-employment services were never part of the Program's mandate.

One reason for this limitation is the relatively small Federal grant authorized by Congress to fund the Program. With limited resources, along with the requirement to provide qualifying education and training opportunities that allow ABAWDs to remain eligible beyond the 3-month time limit, the Program must focus on relatively inexpensive components designed to provide basic services.

Further, although some States may desire more flexibility to align their E&T policies on participant reimbursements with those for Temporary Assistance for Needy Families (TANF) work supportive services, the significant differences that exist between the E&T and TANF work programs preclude FNS from allowing States to cover the entire array of expenditures considered suitable under TANF guidelines. These differences involve the nature of the authorizing legislation and funding mechanisms (block grant with time-limits versus Federal entitlement with limited education and training funds), the range of purposes served, the degree to which exemptions are available, and the sizes of the populations receiving benefits.

Since the E&T Program is defined by its components and all the components are designed to enable participants to obtain jobs, reimbursing the costs of goods and services associated with employment retention are beyond the scope of what can be allowed. Thus, FNS must limit participation reimbursements to those costs involved in successful component participation and disallow costs associated with starting and keeping a job once one has been offered.

Keep in mind, however, that employed individuals may participate in regular, approved E&T program components and receive participant reimbursements to cover their expenses. For example, an individual works less than 30 hours a week, or earns less than the Federal minimum wage equivalent of 30 hours. The individual—who is otherwise eligible for food stamps and is subject to all program work requirements, including E&T—is assigned to and participates in a General Equivalency Diploma (GED) preparation component. The State agency is authorized to claim reimbursement for any administrative costs associated with the individual's participation, as well as half of the costs of participant expenses, such as transportation, course materials, etc.

Reduction in Work Effort

In the proposed rule FNS clarified its policy concerning reduction in work effort. We proposed to amend the regulations to state that an individual exempt from FSP work requirements because he or she is working a minimum of 30 hours a week who reduces his or her work hours to less than 30, but who continues to earn more in weekly wages than the Federal minimum wage multiplied by 30 hours, remains exempt from FSP work requirements and is not subject to disqualification.

One commenter supports the clarification of the minimum wage equivalency as it applies to the reduction in work effort. The commenter does, however, recommend that the final rule clarify when States should and should not apply the minimum wage equivalency analysis. The commenter points out that the work hours of low-skill workers typically fluctuate considerably from month to month. Many small reductions in work hours occur either involuntarily or for good cause. The commenter believes that FNS can reduce administrative burdens on State agencies and households alike by specifying in the final rule that reductions of 5 hours or less do not trigger a sanction.

The Department agrees that such situations sometimes occur, resulting in a work week less than 30 hours or weekly earnings less than the minimum wage equivalency. State agencies must take such situations into account when determining whether a disqualification for reduction in work effort should apply. However, FNS disagrees that provision for a 5-hour leeway is appropriate. By initiating such a policy, FNS would, in effect, alter the federally mandated 30-hour minimum.

The Department has, in this final rule, included a reminder to State agencies that minor variations in the number of hours worked or in the weekly minimum wage equivalent wages are inevitable and must be taken into consideration when assessing a recipient's compliance with Program work rules.

State E&T Plans

FNS is taking this opportunity to make a technical correction to the language at 7 CFR 273.7(c)(7), which requires that State agencies submit their

State E&T Plans biennially. FNS is revising this to annual submissions. While the basics of E&T plans, such as components offered and program reporting and coordination methodologies, may remain constant, the requirement for annual participation, budget, and funding estimates, along with a discussion of program changes, and other pertinent information demands a yearly submission, which State agencies do. This correction acknowledges that requirement. Although we did not address this issue in the preamble to the proposed rule, FNS did inadvertently include the revised regulatory language. FNS did not receive any comments concerning the change.

List of Subjects

7 CFR Part 272

Administrative practice and procedures, Food stamps, Grant programs-social programs.

7 CFR Part 273

Administrative practice and procedures, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping.

■ Accordingly, 7 CFR parts 272 and 273 are amended as follows:

■ 1. The authority citation for parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ 2. In § 272.1, add paragraph (g)(172) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(172) Amendment No. 400. The provisions of Amendment No. 400, regarding the Employment and Training Program Provisions of the Farm Security and Rural Investment Act of 2002 are effective August 8, 2006.

§ 272.2 [Amended]

■ 3. In § 272.2, paragraph (e)(9) is amended by removing the reference to ''§ 273.7(c)(7)'' and adding in its place a reference to ''§ 273.7(c)(8)''.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 4. In § 273.7:

■ a. paragraph (c)(6)(ii) is amended by removing the period at the end of sentence three and adding in its place a semi-colon, and by removing the last sentence

■ b. paragraph (c)(6)(vii) is revised;

■ c. new paragraphs (c)(6)(xv) and (c)(6)(xvi) are added;

■ d. paragraphs (c)(7), (c)(8), (c)(9), (c)(10), (c)(11), (c)(12), (c)(13), and (c)(14) are redesignated as paragraphs (c)(8), (c)(9), (c)(10), (c)(11), (c)(12), (c)(13), (c)(14), and (c)(15), respectively, and new paragraph (c)(7) is added;

■ e. newly redesignated paragraph (c)(8) is amended by removing the word ''biennially'' in the first sentence and adding in its place the word ''annually'';

■ f. newly redesignated paragraphs (c)(9), (c)(10), and (c)(11) are revised;

■ g. paragraph (d)(1)(i) is revised;

■ h. paragraph (d)(1)(ii) is amended by removing paragraphs (d)(1)(ii)(A), (d)(1)(ii)(B), (d)(1)(ii)(C), and (d)(1)(ii)(D), and redesignating paragraphs (d)(1)(ii)(E), (d)(1)(ii)(F), (d)(1)(ii)(G), and (d)(1)(ii)(H) as paragraphs (d)(1)(ii)(A), (d)(1)(ii)(B), (d)(1)(ii)(C), and (d)(1)(ii)(D), respectively;

■ i. paragraphs (d)(1)(iii) and (d)(1)(iv) are removed;

■ j. paragraphs (d)(3), (d)(4), (d)(5), and (d)(6) are redesignated as (d)(4), (d)(5), (d)(6), and (d)(7), respectively, and new paragraph (d)(3) is added;

■ k. newly redesignated paragraph (d)(4) introductory text is amended by adding a new second sentence after the first sentence of the introductory text, removing the references ''paragraphs (d)(3)(i) and (d)(3)(ii)'' in sentences four and seven and adding in their place the references ''paragraphs (d)(4)(i) and (d)(4)(ii)'', and by removing the references ''paragraphs (d)(3)(i) and (d)(3)(ii)'' in sentence eight and adding in its place the reference ''paragraph (d)(4)(i)'';

■ l. newly redesignated paragraph (d)(4)(i) is amended by removing the last sentence;

■ m. newly redesignated paragraph (d)(4)(ii) is amended by removing the last sentence;

■ n. newly redesignated paragraph (d)(4)(v) is amended by removing the reference ''paragraphs (d)(3)(i) and (d)(3)(ii)'' in the second sentence and adding in its place the reference ''paragraphs (d)(4)(i) and (d)(4)(ii)'', and removing the reference ''paragraph (d)(3)(i)'' in the last sentence and adding in its place the ''paragraph (d)(4)(i)'';

■ o. paragraph (f)(7)(ii) is amended by removing the reference ''paragraphs (b)(1)(iii) and (b)(1)(v)'' in the second sentence and adding in its place the reference ''paragraphs (b)(1)(iii) or (b)(1)(v)'';

■ p. paragraph (f)(7)(iv) is amended by removing words ''exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(v)'' in the first sentence and adding in their place the words ''exemption in paragraph (b)(1)(iii)'';

■ q. paragraph (j)(3)(iii) is amended by removing the last sentence and adding two new sentences in its place.

The revisions and additions read as follows:

§ 273.7 Work provisions.

* * * * *

(c) * * *

(6) * * *

(vii) The method the State agency uses to count all work registrants as of the first day of the new fiscal year;

* * * * *

(xv) The combined (Federal/State) State agency reimbursement rate for transportation costs and other expenses reasonably necessary and directly related to participation incurred by E&T participants. If the State agency proposes to provide different reimbursement amounts to account for varying levels of expenses, for instance for greater or lesser costs of transportation in different areas of the State, it must include them here.

(xvi) Information about expenses the State agency proposes to reimburse. FNS must be afforded the opportunity to review and comment on the proposed reimbursements before they are implemented.

(7) A State agency interested in receiving additional funding for serving able-bodied adults without dependents (ABAWDs) subject to the 3-month time limit, in accordance with paragraph (d)(3) of this section, must include in its annual E&T plan:

(i) Its pledge to offer a qualifying activity to all at-risk ABAWD applicants and recipients;

(ii) Estimated costs of fulfilling its pledge;

(iii) A description of management controls in place to meet pledge requirements;

(iv) A discussion of its capacity and ability to serve at-risk ABAWDs;

(v) Information about the size and special needs of its ABAWD population; and

(vi) Information about the education, training, and workfare components it will offer to meet the ABAWD work requirement.

* * * * *

(9) The State agency will submit an E&T Program Activity Report to FNS no later than 45 days after the end of each Federal fiscal quarter. The report will contain monthly figures for:

(i) Participants newly work registered;

(ii) Number of ABAWD applicants and recipients participating in qualifying components;

(iii) Number of all other applicants and recipients (including ABAWDs involved in non-qualifying activities) participating in components; and

(iv) ABAWDs subject to the 3-month time limit imposed in accordance with § 273.24(b) who are exempt under the State agency's 15 percent exemption allowance under § 273.24(g).

(10) The State agency will submit annually, on its first quarterly report, the number of work registrants in the State on October 1 of the new fiscal year.

(11) The State agency will submit annually, on its final quarterly report:

(i) A list of E&T components it offered during the fiscal year and the number of ABAWDs and non-ABAWDs who participated in each; and

(ii) The number of ABAWDs and non-ABAWDs who participated in the E&T Program during the fiscal year. Each individual must be counted only once.

* * * * *

(d) * * *

(1) * * *

(i) Allocation of grants. Each State agency will receive a 100 percent Federal grant each fiscal year to operate an E&T program in accordance with paragraph (e) of this section. The grant requires no State matching.

(A) In determining each State agency's 100 percent Federal E&T grant, FNS will apply the percentage determined in accordance with paragraph (d)(1)(i)(B) of this section to the total amount of 100 percent Federal funds authorized under section 16(h)(1)(A) of the Act for each fiscal year.

(B) FNS will allocate the funding available each fiscal year for E&T grants using a formula designed to ensure that each State agency receives its appropriate share.

(*1*) Ninety percent of the annual 100 percent Federal E&T grant will be allocated based on the number of work registrants in each State as a percentage of work registrants nationwide. FNS will use work registrant data reported by each State agency on the FNS–583, Employment and Training Program Activity Report, from the most recent Federal fiscal year.

(*2*) Ten percent of the annual 100 percent Federal E&T grant will be allocated based on the number of ABAWDs in each State, as determined by food stamp QC data for the most recently available completed fiscal year, which provide a breakdown of each State's population of adults age 18 through 49 who are not disabled and who do not live with children.

(C) No State agency will receive less than $50,000 in Federal E&T funds. To ensure this, FNS will, if necessary, reduce the grant of each State agency allocated more than $50,000. In order to guarantee an equitable reduction, FNS will calculate grants as follows. First, disregarding those State agencies scheduled to receive less than $50,000, FNS will calculate each remaining State agency's percentage share of the fiscal year's E&T grant. Next, FNS will multiply the grant—less $50,000 for every State agency under the minimum—by each remaining State agency's same percentage share to arrive at the revised amount. The difference between the original and the revised amounts will represent each State agency's contribution. FNS will distribute the funds from the reduction to State agencies initially allocated less than $50,000.

(D) If a State agency will not obligate or expend all of the funds allocated to it for a fiscal year under paragraph (d)(1)(i)(B) of this section, FNS will reallocate the unobligated, unexpended funds to other State agencies during the fiscal year or the subsequent fiscal year on a first come-first served basis. Each year FNS will notify all State agencies of the availability of carryover funding. Interested State agencies must submit their requests for carryover funding to FNS. If the requests are determined reasonable and necessary, FNS will allocate carryover funding to meet some or all of the State agencies' requests, as it considers appropriate and equitable. The factors that FNS will consider when reviewing a State agency's request will include the size of the request relative to the level of the State agency's E&T spending in prior years, the specificity of the State agency's plan for spending carryover funds, and the quality of program and scope of impact for the State's E&T program and proposed use of carryover funds.

* * * * *

(3) *Additional allocations.* In addition to the E&T program grants discussed in paragraph (d)(1) of this section, FNS will allocate $20 million in Federal funds each fiscal year to State agencies that ensure availability of education, training, or workfare opportunities that permit ABAWDs to remain eligible beyond the 3-month time limit.

(i) To be eligible, a State agency must make and comply with a commitment, or ''pledge,'' to use these additional funds to defray the cost of offering a position in an education, training, or workfare component that fulfills the ABAWD work requirement, as defined in § 273.24(a), to each applicant and recipient who is:

(A) In the last month of the 3-month time limit described in § 273.24(b);

(B) Not eligible for an exception to the 3-month time limit under § 273.24(c);

(C) Not a resident of an area of the State granted a waiver of the 3-month time limit under § 273.24(f); and

(D) Not included in each State agency's 15 percent ABAWD exemption allotment under § 273.24(g).

(ii) While a participating pledge State may use a portion of the additional funding to provide E&T services to ABAWDs who do not meet the criteria discussed in paragraph (d)(3)(i) of this section, it must guarantee that the ABAWDs who do meet the criteria are provided the opportunity to remain eligible.

(iii) State agencies will have one opportunity each fiscal year to take the pledge described in paragraph (d)(3)(i) of this section. An interested State agency, in its E&T Plan for the upcoming fiscal year, must include the following:

(A) A request to be considered as a pledge State, along with its commitment to comply with the requirements of paragraph (d)(3)(i) of this section;

(B) The estimated costs of complying with its pledge;

(C) A description of management controls it has established to meet the requirements of the pledge;

(D) A discussion of its capacity and ability to serve vulnerable ABAWDs;

(E) Information about the size and special needs of the State's ABAWD population; and

(F) Information about the education, training, and workfare components that it will offer to allow ABAWDs to remain eligible.

(iv) If the information provided in accordance with paragraph (d)(3)(iii) of this section clearly indicates that the State agency will be unable to fulfill its commitment, FNS may require the State agency to address its deficiencies before it is allowed to participate as a pledge State.

(v) If the State agency does not address its deficiencies by the beginning of the new fiscal year on October 1, it will not be allowed to participate as a pledge State.

(vi) No pledges will be accepted after the beginning of the fiscal year.

(vii)(A) Once FNS determines how many State agencies will participate as pledge States in the upcoming fiscal year, it will, as early in the fiscal year as possible, allocate among them the $20 million based on the number of ABAWDs in each participating State, as a percentage of ABAWDs in all the participating States. FNS will determine the number of ABAWDs in each

participating State using food stamp QC data for the most recently available completed fiscal year, which provide a breakdown of each State's population of adults age 18 through 49 who are not disabled and who do not live with children.

(B) Each participating State agency's share of the $20 million will be disbursed in accordance with paragraph (d)(6) of this section.

(C) Each participating State agency must meet the fiscal recordkeeping and reporting requirements of paragraph (d)(7) of this section.

(viii) If a participating State agency notifies FNS that it will not obligate or expend its entire share of the additional funding allocated to it for a fiscal year, FNS will reallocate the unobligated, unexpended funds to other participating State agencies during the fiscal year, as it considers appropriate and equitable, on a first come-first served basis. FNS will notify other pledge States of the availability of additional funding. To qualify, a pledge State must have already obligated its entire annual 100 percent Federal E&T grant, excluding an amount that is proportionate to the number of months remaining in the fiscal year, and it must guarantee in writing that it intends to obligate its entire grant by the end of the fiscal year. A State's annual 100 percent Federal E&T grant is its share of the regular 100 percent Federal E&T allocation plus its share of the additional $20 million (if applicable). Interested pledge States must submit their requests for additional funding to FNS. FNS will review the requests and, if they are determined reasonable and necessary, will reallocate some or all of the unobligated, unspent ABAWD funds.

(ix) Unlike the funds allocated in accordance with paragraph (d)(1) of this section, the additional pledge funding will not remain available until obligated or expended. Unobligated funds from this grant must be returned to the U.S. Treasury at the end of each fiscal year.

(x) The cost of serving at-risk ABAWDs is not an acceptable reason to fail to live up to the pledge. A slot must be made available and the ABAWD must be served even if the State agency exhausts all of its 100 percent Federal E&T funds and must use State funds to guarantee an opportunity for all at-risk ABAWDs to remain eligible beyond the 3-month time limit. State funds expended in accordance with the approved State E&T Plan are eligible for 50 percent Federal match. If a participating State agency fails, without good cause, to meet its commitment, it may be disqualified from participating in the subsequent fiscal year or years.

(4) * * * The Federal government will fund 50 percent of State agency payments for allowable expenses, except that Federal matching for dependent care expenses is limited to the maximum amount specified in paragraph (d)(4)(i) of this section. * * *

* * * * *

(j) * * *

(3) * * *

(iii) * * * If the individual reduces his or her work hours to less than 30 a week, but continues to earn weekly wages that exceed the Federal minimum wage multiplied by 30 hours, the individual remains exempt from Program work requirements, in accordance with paragraph (b)(1)(vii) of this section, and the reduction in work effort provision does not apply. Minor variations in the number of hours worked or in the weekly minimum wage equivalent wages are inevitable and must be taken into consideration when assessing a recipient's compliance with Program work rules.

* * * * *

§ 273.24 [Amended]

■ 5. In § 273.24, paragraph (a)(4)(i) is amended by removing the reference ''§ 273.22'' and adding in its place the reference ''§ 273.7(m)''.

Dated: June 1, 2006.

Kate Coler,

Deputy Under Secretary, Food, Nutrition and Consumer Services.

FR Doc. E6–9001 Filed 6–8–06; 8:45 am]

BILLING CODE 3410–30–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–53937; File No. S7–10–06]

RIN 3235–AJ56

Amendments to Plan of Organization and Operation Effective During Emergency Conditions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is adopting amendments to certain of its rules that operate in the event of emergency conditions to revise the provisions on delivering submittals, the line of succession to the Chairman in the event of the Chairman's incapacity or unavailability, and make conforming changes. These changes are intended to update these provisions.

DATES: *Effective Date:* June 9, 2006.

FOR FURTHER INFORMATION CONTACT: Stephen M. Jung, Assistant General Counsel for Legislation and Financial Services, Office of the General Counsel, at (202) 551–5162.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart G of Part 200 of Title 17 of the Code of Federal Regulations ''describes the plan of organization and operation which will be observed by the Securities and Exchange Commission in discharging its duties and responsibilities in the event of [specified emergency conditions].'' [1] It includes provisions for designating the location of the offices of the Commission; delivering requests, filings, reports, or other submittals to the Commission; and designating the successor to the Chairman and the division and office heads in the event of their incapacity or unavailability during emergency conditions.

II. Summary of Amendments

The amendments provide guidance on certain terms used in subpart G; revise the provisions on delivering requests, filings, reports, or other submittals during emergency conditions; revise the line of succession to the Chairman in the event of the Chairman's incapacity or unavailability during emergency conditions; and make conforming changes.

A. Guidance on General Terms

The amendments provide guidance on the terms ''unavailable or incapacitated'' and ''emergency conditions,'' as used in subpart G.

1. *Unavailable or Incapacitated.* The amendments clarify that a person shall be considered unavailable or incapacitated in any situation and from any cause that prevents the person from assuming or performing on a timely basis his or her authorized duties, roles, or responsibilities of office, whether from a primary or alternate facility, or any other location. This language is intended to be a general statement of the concepts of unavailability and incapacity rather than an exhaustive definition of the terms. The statement is a flexible one that is intended to cover unforeseen, and perhaps novel, circumstances.

2. *Emergency Conditions.* The amendments also provide that emergency conditions shall be deemed to commence upon the occurrence, or the imminent threat of the occurrence, of a natural or man-made disturbance

[1] 17 CFR 200.200.