of $160 per dependent'' and adding in their place the words ''maximum amount as specified under § 273.9(d)(4) for each dependent''.

h. A new paragraph (e)(2)(i)(E) is added.

i. Paragraph (f)(2) is removed and reserved.

The additions read as follows:

§ 273.10 Determining household eligibility and benefit levels.

(a) *Month of application.*

(1) *Determination of eligibility and benefit levels.* * * *

(ii) * * * For purposes of this provision, a household is not considered to be the same household as the previously participating household if the certification worker has established a new food stamp case for the household because of a significant change in the membership of the previously participating household.

* * *

* * * * *

(d) *Determining deductions.* * * *

(4) *Anticipating expenses.* * * * If a child in the household reaches his or her second birthday during the certification period, the $200 maximum dependent care deduction defined in § 273.9(d)(4) shall be adjusted in accordance with this section not later than the household's next regularly scheduled recertification.

* * * * *

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

(2) *Eligibility and benefits.*

(i) * * *

(E) If a household contains a student whose income is excluded in accordance with § 273.9(c)(7) and the student becomes 22 during the month of application, the State agency shall exclude the student's earnings in the month of application and count the student's earnings in the following month. If the student becomes 22 during the certification period, the student's income shall be excluded until the month following the month in which the student turns 22.

* * * * *

9. In § 273.21, the first sentence of paragraph (j)(1)(vii)(A) is revised and a new sentence is added after the first sentence to read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB)

* * * * *

(j) *State agency action on reports.*

(1) *Processing.* * * *

(vii) * * *

(A) Earned and unearned income received in the corresponding budget month, including income that has been averaged in accordance with paragraph (f) of this section. The earned income of an elementary or secondary school student excluded in accordance with § 273.9(c)(7) shall be excluded until the budget month following the budget month in which the student turns 22.

* * *

* * * * *

Dated: September 27, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 96–26072 Filed 10–16–96; 8:45 am]

BILLING CODE 3410–30–U

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7 CFR Parts 271, 272, 273, and 275

[Amendment No. 362]

RIN 0584–AB58

Food Stamp Program; Child Support Deduction

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a provision of the 1993 Mickey Leland Childhood Hunger Relief Act establishing a deduction for households that make legally obligated child support payments to or for a nonhousehold member. The provision results in increased benefits for households that pay child support, thereby enabling more parents to meet their legal obligation. A proposed rule was published December 8, 1994.

DATES: The provisions of this rule are effective December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, or (703) 305–2516.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Ellen Haas, 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. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This final rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The reporting and recordkeeping burden associated with the application, certification, and continued eligibility of food stamp applicants is approved under OMB No. 0584–0064.

To receive the child support deduction authorized by 7 CFR 273.9(d) of this rule, households must report the child support obligation and amounts paid on the application form and provide verification. The methodology used to determine the current burden estimates for all applications assumes that every applicant will complete every line item on the application form. The model food stamp application and the model application worksheet were revised in 1995 to include a line for the child support deduction and the associated burden is included in the current burden estimate of .2290 hours per response. Therefore, the amendment to 7 CFR 273.9(d) made by this rule to add a child support deduction does not alter the current burden estimate.

Section 273.12(a) of this rule requires that households report changes in the legal obligation to pay child support during the certification period; changes in the amount of child support paid must be reported when the household applies for recertification. The rule allows State agencies to require households to report child support information monthly or quarterly. Section 273.10(f) provides that households that are not required to report the amount of child support paid during the certification period on a monthly or quarterly report shall be certified for no more than 6 months. State agencies that currently require

monthly reporting by some categories of households may require monthly reporting households entitled to the child support deduction to report changes in child support on that report. This option does not alter the current burden estimate for the monthly report form of .1617 hours per response because these households are already included in the number of households used to determine household burden associated with the monthly report form.

State agencies that do not use monthly reporting to obtain information about child support payments may require households to report child support information quarterly. State agencies may use the change report form currently used for reporting other changes or may develop a separate report form. The change report form will also be used for households that do not report monthly or quarterly to report changes in the child support obligation. The current estimate of burden hours assumes that every household will submit at least one change report form during its certification period. Therefore, the estimated number of reports received is related to the length of a household's certification period. Under this rule, some households would be recertified or submit a quarterly report in lieu of a change report. The current burden estimate for the change report form already takes into account the variations in the length of certification periods. Therefore, the requirement to report certain changes in child support is not expected to alter the current burden estimate of .1617 hours per response for the change report form.

Comments. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Wendy Taylor, OIRM, Room 404–W, Office of Management and Budget, Paperwork Reduction Project (OMB No. 0584–0064), Washington, D.C. 20503 and Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, D.C. 20250. Comments and recommendations on the proposed information collection must be received by December 16, 1996.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This 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 unless so specified in the **DATES** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Impact Analysis

Need for Action

This action is required as a result of the Mickey Leland Childhood Hunger Relief Act which amends the Food Stamp Act of 1977, as amended, to establish a child support deduction for households that pay legally obligated child support to a nonhousehold member.

Benefits

The child support deduction will increase the number of potentially eligible food stamp recipients and will increase the benefit level of households eligible for the deduction.

Costs

It is estimated that this action will increase the cost of the Food Stamp Program by $125 million in Fiscal Year 1996; $130 million in Fiscal Year 1997; and $145 million in Fiscal Year 1998.

Background

On December 8, 1994, we published a proposed rule at 59 FR 63265 to implement section 13921 of the Mickey Leland Childhood Hunger Relief Act, Chapter 3, Title XIII, Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, enacted August 10, 1993, (Leland Act), which amends section 5(e) of the Food Stamp Act to add a deduction for legally obligated child support payments made by a household member to or for a nonhousehold member.

We accepted comments through February 6, 1995, and received letters from 27 commenters, including State and local welfare agencies, State child support enforcement (CSE) agencies, and State employees. We are not addressing comments that are technical or beyond the scope of this rulemaking or comments on the requirement to establish a deduction. The requirement to establish a deduction is mandated by statute and is not subject to comment. All other comments are addressed below.

1. Allowable Deductions

A. Legal obligation. We proposed to add a new paragraph to 7 CFR 273.9(d) to provide that households would be eligible for a deduction for child support paid by a household member to or for a nonhousehold member, provided the household member was legally obligated to pay child support. Section 273.2(f)(10)(xii) of the proposed rule provided that a legal obligation entitling a payor to the deduction could be established by a court or administrative order or a legally enforceable separation agreement. Alimony payments would not be deductible.

Comments

Three of the seven comments on this provision supported the proposal. Two commenters suggested that payments be allowed even if they are not legally obligated and another indicated that a deduction should be allowed for the full amount paid even if the payment exceeds the amount the household member is legally obligated to pay. Commenters also requested clarification of the terms ''legally enforceable separation agreement'' and ''administrative process'' as an alternative to a court order.

Response

The Leland Act allows a deduction only for ''legally obligated'' child support; therefore, we are unable to allow a deduction for amounts the household member is not legally obligated to pay. State agencies may determine what constitutes a legal obligation to pay child support under State law. As used in the proposed rule, a ''legally enforceable separation agreement'' is a contract between the parties that would be enforceable through court action. State agencies may apply State law to determine what is an enforceable contract. The term ''administrative process'' refers to the process authorized by State law for establishing an obligation to pay child support and determining the amount of child support. We believe the term ''legally obligated child support payments'' is consistent with the legislation and sufficiently broad to allow application of State law and procedures. As indicated below in the discussion of verification requirements, we are not including in this final rule

the proposed examples of a legal obligation.

The proposed rule would have provided in § 273.9(d)(7) that a deduction be allowed for child support payments paid by a household member ''to or for a nonhousehold member. * * *'' Subsequent to publication of the proposed rule, it came to our attention that an obligation to pay child support may continue even if the child or the child and other parent are in the same household as the individual paying the child support. This may occur, for example, if the child moves back and forth between parents or if the payor has a continuing obligation to make arrearage payments to the State Child Support Enforcement (CSE) agency after the family is reunited.

The regulation as proposed would not have prohibited allowing the deduction when a legally obligated child support payment was made to an individual or agency outside the household even if the child for whom the support was paid was a household member. Therefore, we believe there is no need to revise the proposed language. No deduction would be allowed, of course, if a child support payment is made to a household member.

B. Vendor payments. The proposed rule provided in new § 273.9(d)(7) that payments a noncustodial parent makes to a third party (such as a landlord or utility company) on behalf of the nonhousehold member (vendor payments) would be included in the deduction. Also, the rule proposed that legally obligated vendor payments made by the noncustodial parent to obtain health insurance for the child would be deductible.

Comments

Eight commenters addressed vendor payments and several had questions regarding how the allowable portion of the noncustodial parent's health insurance premium would be determined. One commenter recommended that a deduction be allowed for any vendor payment made by a noncustodial parent on behalf of a nonhousehold member. A State agency asked whether a deduction is allowed when the noncustodial parent pays a landlord but the method of payment (whether the payment is to be made directly to or for the nonhousehold member or indirectly as a vendor payment) is not specified in the court order or separation agreement. Other commenters recommended that vendor payments for clothes or groceries not be deductible. Some commenters recommended that vendor payments paid in lieu of alimony or spousal support be allowed as a deduction, while other commenters believed these payments should not be deductible. Other commenters were concerned that the types of payments considered to be child support would be different for food stamp and CSE purposes.

Response

We are not providing detailed requirements for determining the amount of the allowable health insurance premium because this may vary with the type of coverage and the nature of the obligation. We believe State agencies are in a better position to work out a method that is reasonable and not overly burdensome. Employers or insurers could be contacted for information regarding the best proration method.

The household member may make vendor payments for various expenses of the nonhousehold member, but unless the household member is legally obligated to pay the expense, the payments are not deductible. A legally obligated payment is deductible whether it is made as a vendor payment or as a direct payment to or for the nonhousehold member. Absence of designation of a method of payment (directly to the household or indirectly to a provider) in the court order or separation agreement does not prevent the payment from being deductible as long as it can be verified. We are unable to allow vendor payments obligated under an alimony or spousal support order because the Leland Act limits the deduction to child support payments.

Child support is generally paid through a court or State child support enforcement agency or directly to the household containing the child. We consulted with the Office of Child Support Enforcement of the U.S. Department of Health and Human Services in developing both the proposed rule and this final rule. Unlike the Food Stamp Program, CSE does not earmark payments made toward various aspects of a child support obligation, but instead reflects the total child support paid. A household member may be required to pay rent or medical expenses on behalf of a nonhousehold member, for example, but the amount would be included in the total amount the household member is ordered to pay instead of being itemized in the CSE record. Therefore, the payments shown in the CSE record may not match those reported and verified by the household.

Despite potential inconsistencies between CSE records and food stamp records of child support payments, we believe households should be allowed a deduction for child support paid by vendor payments. We believe the intent of Congress is to allow vendor payments if the household member has a legal obligation to pay them. As reported in the preamble to the proposed rule at 59 FR 63266, the legislative history of the Leland Act states: ''Since the purpose of this amendment is to encourage absent parents to live up to the full extent of their child support obligations, the value of legally binding child support that is provided in-kind, such as payments of rent directly to the landlord, would also be eligible for this deduction.'' See 114 *Congressional Record* S10726, August 6, 1993.

To satisfy the requirement that the deduction be allowed only for legally obligated child support and the desire of Congress to include vendor payments as allowable deductions, we are clarifying in this rule that any legally obligated payments made, whether directly to or for the nonhousehold member or indirectly as a vendor payment, are deductible. We are not adopting the examples of vendor payments included in the proposed rule (health insurance payments and payments to utility providers or landlords) because they are discussed in the preamble and are not needed in the final rule.

The proposed rule included references to verification and reporting requirements in new § 273.9(d)(7). Since these requirements are contained in other sections of current regulations, we are removing any reference to verification and reporting requirements from § 273.9(d)(7) in the final rule.

The proposed requirement to allow a deduction for legally obligated child support payments made to third parties is adopted as final at § 273.9(d)(7), with clarifications and removal of unnecessary language.

C. Arrearages. The proposed rule provided in new § 273.9(d)(7) that households with at least a 3-month record of child support payments would be eligible for a deduction for amounts paid toward child support arrearages in addition to the current month's obligation. Households with less than a 3-month record would not be allowed a deduction for arrearages, or back payments.

Comments

Seven State agencies commented on this provision. Three supported the proposal to allow a deduction for back payments and felt that a deduction should be allowed even if the household had no payment record. Three State agencies were concerned that allowing a deduction for arrearages would result in a double deduction. They indicated that allowing a deduction for arrearages

could skew an average and would make estimating future arrearage payments difficult. One State agency asked if arrearages could be averaged into the prospective obligation even when the court order did not address the arrearage. Another State agency felt that the total amount of the monthly deduction should be no more than the amount of the current obligation on a monthly basis.

One commenter suggested that if wages are being garnished for child support, the full amount should be allowed even if it includes arrearages and the household does not have a payment history yet because garnishment assures that it will be paid. Three commenters asked how one-time collections of past-due child support, such as tax refund intercepts, would be handled in estimating the deduction.

Response

The Leland Act and its legislative history require that arrearage payments be allowed in calculating a household's child support deduction. The Leland Act specifies that a deduction is to be allowed for payments ''made.'' The legislative history at 114 *Congressional Record* S10725 indicates that the intent of the provision is to encourage the payment of child support: ''Now these payments are counted as income to the family that pays them and to the family that receives them. This is not only unfair, it is a disincentive for absent fathers to pay child support. We must remove current disincentives for absent parents to take responsibility for their children.* * *'' The Conference Report (House Report No. 213, 103d Congress, 1st Session, 1993, p. 925) states: ''The managers do not intend for this procedure [averaging and retrospective budgeting] to deny a household a deduction for any child support actually paid.* * *'' Income used to pay child support for a child in another household depletes available income for support of the payor's household. The child support order or separation agreement need not require payment of arrearages since the initial obligation to pay already exists in the order or agreement; nor is a payment schedule necessary for the deduction to be allowed. The food stamp State agency may, however, work with the CSE agency and the household to establish such a schedule as the basis for anticipating the amount of deduction.

We recognize that anticipating the amount of future arrearage payments will be difficult. That is why the proposed rule did not allow a deduction for arrearages to households without a payment history. However, we realize that this makes administration of the provision more complex. The intent of Congress was to minimize burdens on State agencies and households. Therefore, we have decided to allow a deduction for arrearages even for households without a payment history. State agencies will be able to anticipate the likelihood of future payments based on the household's available income. State agencies also have the option of budgeting the child support deduction retrospectively while budgeting other circumstances prospectively. Verification of payments received could be obtained, if necessary, from the payee. In addition, child support arrearages are collected through garnishment of wages or unemployment benefits in some cases, and verification of the garnishment will be readily available. As stated above, the deduction is intended for payments ''made.'' In the case of arrearages where no payment history has been established, the State agency should exercise additional caution when budgeting for the deduction. If the eligibility worker has no basis for expecting future payments toward arrearages, or no basis for expecting payments to equal those estimated by the applicant, no arrearage amount should be included in an average used to project the deduction for the certification period. Provisions for reducing the likelihood that households will receive an inappropriate deduction are described with the budgeting and reporting requirements below.

No amount would be budgeted based on amounts collected through tax intercept. Unlike child support paid through garnishments from current income, child support collected through tax intercept is taken from a lump sum payment. The intent of the child support deduction is to make it possible for households to pay child support out of available income. We believe it would be inconsistent with this intent to allow a deduction for amounts collected through tax intercept.

The proposed provision in new § 273.9(d)(7) to allow a deduction for arrearage payments is adopted with a change to remove the requirement that households must have a payment history to receive the deduction.

2. Verification

A. Household verification. The proposed rule would have added a new mandatory verification requirement to the regulations at 7 CFR 273.2(f)(1). The proposed rule provided that the State agency would verify the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support paid. The household would be responsible for providing verification of the legal obligation, the obligated amount, and the amount paid. According to the proposed rule, the State agency would be required to accept documentation verifying a household's actual payment, such as canceled checks, wage withholding statements, verification of withholding from unemployment compensation, and statements from the custodial parent regarding direct payments or vendor payments the household member pays or expects to pay. The proposed rule provided that documents establishing an obligation to pay would not be accepted as verification of the household's actual monthly child support payments. The proposed rule would also have amended 7 CFR 273.2(f)(8) to require verification at recertification of the amount of legally obligated child support a household member pays to a nonhousehold member.

Comments

We received comments from five commenters relating to various aspects of the household verification requirements and three comments concerning possible disputes between payees and payors. One State agency agreed with the proposal to require that both the legal obligation and actual amount paid be verified. Another State agency thought there was an inconsistency between the provision in proposed § 273.9(d)(7) that no deduction be allowed if the household fails or refuses to obtain necessary verification and the proposed requirement in new § 273.2(f)(1)(xii) establishing the State agency's responsibility for verifying entitlement to the deduction and the amount. A State agency indicated that the responsibility for verification rests with the payor, with appropriate help from the worker. Another commenter asked what kind of verification should be accepted in new cases. One commenter indicated that the rule provided a clear definition of acceptable verification for a legal obligation to pay child support but not for a legally enforceable separation agreement. Another indicated that any amount collected by CSE establishes that it was legally obligated.

One of the commenters indicated that many noncustodial parents do not keep good records and rely on the CSE agency to provide a record of child support payments. Another suggested that food stamp applicants without CSE cases who want the deduction should be required to open a CSE case. Making

payments through CSE would facilitate verification.

Several commenters raised the issue of possible disputes between the custodial and noncustodial parents regarding the amount of child support received and paid if both parents are members of food stamp households. One State agency wanted to know if the State agency is obligated to compare the amount reported as child support income by the payee household with the amount claimed as a deduction by the payor household and to adjust the figures if the amounts differ. Commenters were concerned about how disputes would be resolved, and one suggested that no deduction be allowed if the amount of child support paid is disputed.

Response

We are modifying the proposed requirement to verify child support information to remove unnecessary language concerning the household's responsibility to provide verification and the types of acceptable documentation. Verification requirements, including the State agency's obligation to assist the household, the sources of verification and responsibility for providing verification are already included in the regulations at 7 CFR 273.2(f) (4) and (5). If no verification is available because a household member has recently become responsible for paying child support, the State agency shall anticipate the amount to be budgeted initially based on verification of the amount of the obligation and the amount the household member expects to pay monthly. (Requirements for budgeting and reporting changes are discussed later in this preamble.)

We agree with the commenter that the existence of a CSE case makes it easier to verify that child support is or is not being paid, and we would support State agency measures to encourage households to use CSE child support services. However, we have no authority to require that they do so. Services are available to any individual who is not otherwise eligible as a recipient of Aid to Families with Dependent Children (AFDC) and/or Medicaid. We believe the resolution of differences regarding claims of child support paid or received is best left to State agencies to address. If State agencies encourage payor households to use canceled checks, money order receipts, or receipts signed by the custodial parent as verification of payment, there should be few occasions when the verification is questionable. Also, although the household is the primary source for verification, the State agency may also obtain verification from CSE records, courts, or other sources.

State agencies may, but are not required to compare the payee and payor records when both are food stamp households. We are not imposing a requirement on State agencies to compare payor and payee files each month because the payment and income amounts reflected legitimately may not match. This could occur, for example, if the cases are on different reporting and budgeting systems, vendor payments are involved, or averaging is used.

The proposal to add a mandatory verification requirement for the child support deduction to 7 CFR 273.2(f)(1)(xii) is adopted as final with clarification and removal of unnecessary language. Because of changes in the final rule regarding the reporting requirements for child support, we are revising the requirement at 7 CFR 273.2(f)(8)(i)(A) for verifying the amount of legally obligated child support at recertification to require verification of changes in the legal obligation, including the amount of the obligation, and the amount of child support the household pays. We are also adding a sentence to provide that reportedly unchanged information shall be verified only if the information is incomplete, inaccurate, inconsistent or outdated.

B. Matching requirements. Also included in § 273.2(f)(1)(xii) of the proposed rule was a requirement that the State agency enter into agreements with CSE agencies to obtain data regarding the child support obligation and the household's payment record from CSE automated data files before recertification or, for households certified for 3 months or fewer, prior to alternate recertifications. The match with the records of food stamp recipients receiving a child support deduction was intended to provide a record of child support paid or to identify cases in which no payments were recorded. The State agency would then have this information available for use at recertification. The proposed rule at 7 CFR 273.2(b)(2) also would have required State agencies to notify households on the application that child support information may be verified with CSE agencies or courts.

Comments

The proposed matching requirement generated more comments than any other, and only two commenters found the proposal reasonable. Fourteen commenters expressed concern about this requirement. State and county welfare offices and CSE agencies objected to the requirement on the grounds that (1) a match, particularly an interstate match, would not be cost-effective, (2) CSE systems do not contain all the required information on all cases, (3) resolving discrepancies between information provided by the household and that obtained from CSE records would be burdensome, (4) the match is unnecessary because adequate verification is available from households and other sources, and (5) CSE automated data systems are being implemented now and modifications cannot be made at this time. Commenters suggested that on-line access to CSE records for advance verification would be preferable to a post-certification match. They requested that the match requirement be eliminated, be made optional, or be delayed until implementation of CSE automated data systems is completed.

In addition to concerns expressed about the matching requirement, some State agencies had specific questions about its application. Two commenters questioned the necessity of notification to applicants that child support information would be checked through computer matching with CSE. One commenter asked what action the State agency would be required to take if a CSE match showed a change greater than $50 in child support paid. Another asked what action the State agency should take if the household verified a payment but CSE had no record.

Response

The purpose in requiring State agencies to enter into an agreement with CSE to match State agency records with CSE records was to ensure that households would not continue to be given a deduction when they were not actually making monthly payments. Under the proposed rule, there was no requirement for reporting changes in child support paid during the certification period unless the State agency required the household to report quarterly or monthly. We believed matching would enable the State agency to verify the degree to which the household had met its obligation and determine whether it should continue to receive a deduction.

We continue to believe that matching the household's food stamp record of child support payments with CSE records is beneficial. However, we have considered all comments and have decided not to mandate a match. Where reasonable, State agencies should verify child support information by all means available. Many States may not yet be equipped to match child support information via automated CSE agency records. However, the goal is to ensure that States take every opportunity to

verify data provided by a recipient regarding another State or Federally administered program. Verification could take place by match, by checking available data on an on-line system or by other means. Our expectation is that State agencies will seek every opportunity to institute an appropriate verification system between programs.

We are leaving it up to State agencies to determine the extent to which automated data systems can be used at this time. Some State agencies already have the capability of conducting on-line matches with CSE records and routinely consult these records before authorizing a deduction. We strongly encourage all State agencies to develop and use this capability as soon as possible. In the meantime, we believe the reporting and certification period requirements described below will provide protection against abuse of the deduction.

We also agree with the commenters that the proposed amendment to 7 CFR 273.2(b)(2) requiring State agencies to notify applicants on the application form that information provided may be checked with CSE records is unnecessary. Regulations at 7 CFR 273.2(b)(3) require all State agencies to use an application form designed by FCS unless a deviation is approved. The Food Stamp Program model application form (FCS–385) already contains language notifying households that information provided by the applicant will be compared with other Federal, State and local records using computer matching systems. Therefore, it is unnecessary to amend 7 CFR 273.2(b)(2) to include the proposed specific notice requirement, and we are not adopting the proposed amendment.

3. Budgeting and Reporting Requirements

The proposed rule provided State agencies three options for handling budgeting and reporting requirements for child support. Under Option 1, change reporting, the anticipated child support payment would be budgeted either prospectively or retrospectively. For change reporting households with a record of 3 or more months of paid child support, the State agency would average at least 3 months of legally obligated child support and use the average as the household's child support deduction for the certification period, taking into account any anticipated changes in the legal obligation or other changes that would affect the payment. Households with an established payment history of 3 or more months would have to report only changes in the legal obligation that occurred during the certification period.

For change reporting households without a record of at least 3 months of paid, legally obligated child support, the State agency would base the child support deduction on anticipated payments, exclusive of payments toward arrearages. These households would have to report changes of more than $50 from the amount used in the most recent certification action, excluding payments toward arrearages, until a payment history was established. They would also have to report changes in the legal obligation.

Under Option 2, quarterly reporting, State agencies could require households claiming the child support deduction to report their actual payments quarterly. These households would have the payments budgeted either prospectively or retrospectively. They would be required to report actual amounts paid and changes in the legal obligation.

Under Option 3, monthly reporting, a State agency could require households claiming the child support deduction to report monthly. After the beginning month or months, the household would have to be budgeted retrospectively and would report changes in the amount paid and the legal obligation.

The proposed rule also provided that for retrospectively budgeted households in the beginning month or months of certification, the State agency would either average past payments if the household had a payment history or use an estimate of child support the household expected to pay, excluding arrearages, if the household had no payment history.

Comments

Three of the eight commenters on budgeting and reporting agreed with the proposal. We received no specific comments on the proposal to allow quarterly reporting of child support payments.

Several State agencies opposed the reporting provisions as unnecessarily limiting and burdensome and indicated that child support should be treated the same as any other type of income deduction. Others objected to the proposed requirement that change reporting households without a payment history report a change of more than $50 in child support paid and suggested alternative reporting requirements. Several commenters objected to the averaging requirements for prospective and retrospectively budgeted households in proposed § 273.10(d)(8). We are not describing these comments individually because, as indicated below, we are not adopting the proposed $50 reporting requirement and the averaging requirements. One commenter opposed the requirement to report changes in the legal obligation between recertifications on the grounds that these changes rarely happen. Another State agency indicated that the child support order will include the age at which the legal obligation stops. The State agency can track that date and remove the deduction when the child reaches that age.

Response

We are retaining the three reporting and budgeting options contained in the proposed rule: change reporting with prospective or retrospective budgeting, quarterly reporting with prospective or retrospective budgeting, and monthly reporting with retrospective budgeting. However, in response to comments, we are simplifying the requirements and providing increased State agency flexibility.

As indicated by the legislative history, Congress intended that regulations implementing the child support deduction minimize burdens on State agencies and households. The Conference Report (House Conference Report No. 213, 103rd Congress, 1st Session, 1993, pages 925–26) states: ''For example, States could be permitted to base a household's deduction for a certification period on the average amount it paid in the prior certification period (with appropriate adjustments for any changes in the order) rather than having to keep track throughout a certification period of how much the absent parent actually pays each month. The managers do not intend for this procedure to deny a household a deduction for any child support actually paid, but rather the intention is to give States the option to use consistent budgeting procedures that would minimize the number of changes they would be required to make. State agencies correctly following such procedures would not be charged with quality control errors if the amount of child support that a household paid increased or decreased as long as the State agency adjusted the household's allotment prospectively at its next recertification.''

To more fully meet the intent of Congress and address the concerns of commenters, we are modifying the reporting and budgeting requirements of the three options. This final rule allows State agencies the option of certifying households receiving a child support deduction more frequently or requiring periodic reporting of child support information. We believe this coincides with procedures State agencies currently use for identifying changes in

the circumstances of households with earnings.

As proposed, a new § 273.12(a)(1)(vi) adds the requirement that households report changes in the legal obligation to pay child support. In accordance with 7 CFR 273.12(a)(2), the household would be required to report these changes within 10 days. Although changes in the legal obligation may be infrequent, the requirement to report such a change may prevent overissuance of benefits to households no longer obligated to pay child support.

Some State agencies may track the age of the child for whom the support is provided and the date when the obligation stops; others may rely on households to report the change. Therefore, we are retaining the requirement.

Under the change reporting option as modified by this rule, households with less than a 3-month record of child support payments are not required to report a change of more than $50 in child support payments, as was proposed. Under this final rule, a limit on certification period length for these households would replace the reporting requirement. The final rule provides at § 273.10(f)(9) that State agencies are required to certify change reporting households without a record of regular child support payments for no more than 3 months, as described under ''Certification Periods'' below. State agencies are required to certify change reporting households with a payment history for no more than 6 months.

Therefore, we are adopting as final the addition of paragraph (vi) to 7 CFR 273.12(a) to provide that change reporting households are required to report changes in the legal obligation to pay child support.

We are also modifying the requirements for option 2, quarterly reporting, to increase State agency flexibility. We are not adopting the provision of proposed § 273.12(a)(1)(vi) that would have required quarterly reporting households to report actual monthly amounts paid in addition to changes in the legal obligation or the provision in proposed § 273.12(a)(4)(i) that the State agency would have to provide the household with the quarterly report no later than the end of the second month in the quarter.

We are also not adopting the provisions of proposed § 273.12(a)(4)(ii) and § 273.12(b)(2) (i) through (x) regarding the content of the quarterly report form. State agencies may determine and specify on the quarterly report the child support information the household is required to report and the date by which it must be reported. State agencies may, but are not required to remind the household about other changes that have to be reported. They may also advise the household that the State agency will act on changes in child support the household reports before submitting the quarterly report.

The requirements in proposed paragraphs 273.12(b)(2) (iii), (iv), (v), (vi), and (x) for the quarterly report form are already provided in 7 CFR 273.21(h)(2) (iii), (iv), (v), (vi) and (vii) for the monthly reporting form. Therefore, we are adding a reference in § 273.12(b)(2) to 7 CFR 273.21(h)(2) (iii) through (vii). With these changes, the proposed requirements for child support quarterly reporting are adopted as final.

Under Option 3, the State agency may require categories of households to report child support information on a monthly report. The proposed rule would have amended 7 CFR 273.21(h)(2) to add a paragraph specifying that if a State agency elects to require reporting of child support payments on the monthly report form, the State agency shall require the household to report changes in the actual monthly amount of child support paid and any changes in the legal obligation to pay child support. We are not adopting this proposed amendment. State agencies may determine what information households are required to report on the monthly report.

We are adopting with modification the proposed amendment to add new paragraph (E) to 7 CFR 273.21(j)(3)(iii). We received no comments on this provision that the State agency shall not allow a child support deduction if the household does not report or verify child support information the State agency requires to be reported or verified.

As provided in the proposed rule and required by section 6(c)(1)(A) of the Act, households excluded from monthly reporting and retrospective budgeting in accordance with 7 CFR 273.21(b) cannot be required to report periodically, and the State agency cannot use retrospective budgeting for the excluded households. Under all options, State agencies are required to act on any changes in child support payments reported by the household that affect benefits or eligibility.

The proposed sections 273.10(d)(8)(i), (ii), (iii), and (iv) prescribing requirements for averaging and budgeting the child support deduction are not being adopted because they are unnecessary in light of the changes made in this rule. Under this final rule, § 273.10(d)(8) provides that State agencies may budget child support payments prospectively, in accordance with 7 CFR 273.10(d) (2) through (5), or retrospectively, in accordance with 7 CFR 273.21(b) and (f)(2). The payments may be budgeted prospectively or retrospectively regardless of the budgeting system used for the household's other circumstances. Section 273.21(f)(2)(iv) currently provides that the State agency shall budget deductible expenses prorated over two or more months (except medical expenses) either prospectively or retrospectively. We are adding a conforming amendment to 7 CFR 273.21(f)(2)(iv) to provide that the child support expense may be averaged and budgeted prospectively or retrospectively.

We received no comments on the proposed amendment to 7 CFR 271.2 allowing use of an adequate notice in connection with quarterly reporting, and the amendment is adopted as proposed.

With these changes, the final rule provides that State agencies shall either require households receiving a child support deduction to report a change in the legal obligation to pay child support within 10 days of the date the household becomes aware of a change or provide specified information periodically (monthly or quarterly). The proposed provision at § 273.12(a)(4)(ii) which prohibits State agencies from requiring households that report child support information periodically to report the same changes within 10 days is adopted as final. An option to use frequent recertifications in place of reporting requirements is discussed below.

We received one comment supporting the proposal regarding treatment of the deduction in households with a member who is ineligible because of alien status or failure to provide a social security number. We proposed to handle the child support deduction the same way as the shelter and dependent care expenses of these households under 7 CFR 273.11(c)(2)(iii). That is, that portion of the household's allowable child support expense which is paid by the ineligible member is divided among the household members, including the ineligible member. All but the ineligible member's share is counted as a deductible child support expense for the remaining members. Therefore, the proposed amendment to 7 CFR 273.11 is adopted as final without change.

4. Certification Periods

The proposed rule contained no requirements regarding certification periods for households eligible for the child support deduction. However, in the preamble at 59 FR 63270 we

indicated that we were not proposing certification period requirements because current rules at 7 CFR 273.10(f)(4) already address the certification period length for households that experience frequent and significant changes and those that have more predictable circumstances. The preamble reflects the expectation that households with a regular payment record and households that report their child support payments quarterly or monthly would be certified for longer periods (6 to 12 months) while households with no payment record or which have extreme monthly variations in payments would be certified for a shorter period of time.

Comments

We received three comments on certification periods. One State agency indicated that the problem of fluctuations in child support payments could be addressed by using limited certification periods for households receiving the deduction. Another State agency agreed with the statement in the preamble of the proposed rule that establishing special certification period requirements was not necessary. Another commenter asked that ''short period'' as used in the preamble be defined and asked whether a minimum certification period would be required.

Response

As indicated above in the discussion about reporting and budgeting requirements, we have reconsidered our position on the need for certification period limits in connection with the child support deduction. We agree with the commenter that assigning limited certification periods to households claiming the deduction is one way to control for fluctuations in payments. Requiring households to report changes periodically is another way.

Under this rule State agencies can choose to use frequent recertifications instead of reporting requirements to obtain information about changes in child support payments. To protect Program integrity, we believe it is necessary to set a limit on the number of months a household may participate without some examination of the amount of child support actually being paid. Therefore, this rule provides that if the State agency does not require households to report changes in child support payments periodically during the certification period, the State agency shall assign certification periods that correspond to the extent to which the household has made regular payments. Households with no history of regular child support payments who are not required to report periodically shall be assigned a certification period of no more than 3 months. Households with an established record of regular payments that are expected to continue payments of the same amount and frequency shall be certified for no more than 6 months if they are not required to report periodically. State agencies may establish their own procedures for determining what constitutes a ''record of regular child support payments.''

Households required to report periodically shall be assigned certification periods of not less than 6 months and not more than 12 months, unless a waiver has been approved.

Current regulations at 7 CFR 273.10(f)(3), (6), and (7) governing certification periods for jointly processed PA or GA cases and elderly or self-employed households are based on requirements of section 3(c) of the Food Stamp Act and shall continue to apply. We realize that under current regulations, frequent recertifications can be a burden for both households and State agencies. However, a proposed rule titled ''Simplification of Program Rules'' published January 11, 1995, would, when final, simplify the recertification process to greatly reduce the burden on households and State agencies. Households that establish a regular child support payment history will benefit by having less frequent recertifications.

Therefore, this rule amends 7 CFR 273.10(f) to add a new paragraph (9). It requires State agencies to certify households eligible for a child support deduction for no more than 3 months if they have no record of regular child support payments and are not required to submit periodic reports. Households with a record of regular payments shall be certified for no more than 6 months unless they are required to submit periodic reports.

5. Claims and Disqualification

Comments

One commenter asked whether a household would be charged with an intentional Program violation (IPV) if it claimed a deduction and then failed to report that the household member did not make the payment. The commenter also asked whether a claim against the household would be established when a deduction is granted but the household does not make the anticipated payment, and what action would be taken if it was discovered that the household had provided false verification.

Response

Current regulations at 7 CFR 273.18 provide requirements for establishing inadvertent household error or IPV claims. If a household is required to report a change in child support and does not report the change, a claim will be established in accordance with 7 CFR 273.18(c) (1) or (2). If the household is not required to report a change during the certification period, a claim is not established because of failure to report a change during that period. If the household provided false information or verification, the household could be charged with an IPV, in accordance with 7 CFR 273.16, or the State agency could pursue court action against the household member. If the individual is found to have intentionally violated Program rules, an IPV claim would be established in accordance with 7 CFR 273.18(c)(2).

6. Quality Control

In accordance with the legislative history of the child support deduction provision (House Conference Report No. 213, 103rd Congress, lst Session (1993) p. 925), the proposed rule would have added a new paragraph (ix) to 7 CFR 275.12(d)(2) to provide that any variance in a child support deduction which was the result of an unreported change subsequent to the most recent certification action shall be excluded from the error determination. As indicated in the preamble to the proposed rule at 59 FR 63270, the QC system would review the accuracy of the deduction at the most recent certification action prior to the sample month. Any unreported change in actual child support payments or obligation subsequent to the certification action would not be the basis for citing a household reporting error or a State agency error. A variance would exist if the QC reviewer determined that the State agency did not apply the proper deduction at the most recent certification action or that the household reported a change after the most recent certification action and the State agency failed to act or acted improperly on the reported change.

Comments

The five State agencies that commented on quality control supported the proposed provision.

Response

The proposed addition of paragraph (ix) to 7 CFR 275.12(d)(2) regarding QC variances in child support cases is adopted as final without change.

7. Implementation

The preamble to the proposed rule at 59 FR 63270 indicated that the child support provision of the Leland Act was effective September 1, 1994 and was required to be implemented by October 1, 1995.

Comments

Two State agencies commented on the proposed implementation requirements. One indicated that the State agency would have a problem getting changes in place by October 1995, that there was no extra money for programming, and an additional 6 months would be needed. The other State agency indicated that for States which implemented before the required date, there should be a paragraph explaining that only the overall policy intent, not the procedural steps such as CSE matching and reporting, had to be implemented at that time.

Response

In accordance with section 13971 of the Leland Act, this final rule provides that State agencies were authorized to implement the child support deduction effective September 1, 1994, but were not required to implement the provision until October 1, 1995.

In accordance with Pub. L. 104–221, the Contract with America Advancement Act of 1996, this final rule is effective December 16, 1996 and must be implemented no later than May 1, 1997. The provisions must be implemented for all households that newly apply for Program benefits on or after either the required implementation date or the date the State agency implements the provision prior to the required implementation date. State agencies are required to adjust the cases of participating households at the next recertification, at household request, or when the case is next reviewed, whichever comes first. State agencies which fail to implement by the required implementation date or adjust benefits as required shall provide restored benefits as appropriate.

Variances resulting from implementation of the provisions of the final rule are excluded from error analysis for 120 days from the required implementation date, in accordance with section 13951(c)(2) of the Leland Act. State agencies which implement prior to the required implementation date must notify the appropriate regional office prior to implementation that they wish the variance exclusion period to begin with actual implementation, as provided in 7 CFR 275.12(d)(2)(vii)(A). In the absence of such notification, the exclusionary period will begin with the required implementation date.

List of Subjects

7 CFR Part 271

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

7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

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

7 CFR Part 275

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

Accordingly, 7 CFR parts 271, 272, 273, and 275 are amended as follows:

1. The authority citation of parts 271, 272, 273, and 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

2. In § 271.2, the definition of ''Adequate notice'' is amended by removing the words ''in a Monthly Reporting and Retrospective Budgeting system'' and adding in their place the words ''in a periodic reporting system such as monthly reporting or quarterly reporting.''

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (g)(148) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(148) *Amendment No. 362.* The provision of Section 13921 of Public Law 103–66 establishing a child support deduction was effective September 1, 1994, and was required to be implemented no later than October 1, 1995. The provisions of Amendment No. 362 are effective December 16, 1996 and must be implemented no later than May 1, 1997. State agencies shall implement the provisions no later than the required implementation date. The provisions must be implemented for all households that newly apply for Program benefits on or after either the required implementation date or the date the State agency implemented the provision prior to the required implementation date, whichever is earlier. State agencies are required to adjust the cases of participating households at the next recertification, at household request, or when the case is next reviewed, whichever comes first. State agencies which fail to implement or adjust cases by the required implementation date shall provide restored benefits as appropriate. For quality control purposes, any variances resulting from implementation of the provisions are excluded from error analysis for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii) and 7 U.S.C. 2025(c)(3)(A). State agencies which implement prior to the required implementation date must notify the appropriate regional office prior to implementation that they wish the variance exclusion period to begin with actual implementation, as provided in 7 CFR 275.12(d)(2)(vii)(A). Absent such notification, the exclusionary period will begin with the required implementation date.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.2:

a. a new paragraph (f)(1)(xiii) is added and

b. two new sentences are added at the end of paragraph (f)(8)(i)(A).

The additions read as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(xiii) *Legal obligation and actual child support payments.* The State agency shall obtain verification of the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. Documents that are accepted as verification of the household's legal obligation to pay child support shall not be accepted as verification of the household's actual monthly child support payments. State agencies may and are strongly encouraged to obtain information regarding a household member's child support obligation and payments from Child Support Enforcement (CSE) automated data files. The State agency shall give the household an opportunity to resolve any discrepancy between household

verification and CSE records in accordance with paragraph (f)(9) of this section.

* * * * *

(8) *Verification subsequent to initial certification.* (i) *Recertification.* (A) * * * The State agency shall require a household eligible for the child support deduction to verify any changes in the legal obligation to pay child support, the obligated amount, and the amount of legally obligated child support a household member pays to a nonhousehold member. The State agency shall verify reportedly unchanged child support information only if the information is incomplete, inaccurate, inconsistent or outdated.

* * * * *

4(a). In § 273.9, paragraphs (d)(7) and (d)(8) are redesignated as paragraphs (d)(8) through (d)(9) respectively and a new paragraph (d)(7) is added to read as follows:

§ 273.9 Income and deductions.

* * * * *

(d) *Income deductions.* * * *

(7) *Child support deduction.* Legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The State agency shall allow a deduction for amounts paid toward arrearages. Alimony payments made to or for a nonhousehold member shall not be included in the child support deduction.

* * * * *

5. In § 273.10:

a. The introductory text of paragraph (d) is amended by adding the words ''child support'' between the words ''shelter,'' and ''and medical''.

b. A new paragraph (d)(8) is added.

c. Paragraph (e)(1)(i)(E) is amended by removing the reference ''(e)(1)(i)(F)'' and adding in its place a reference to ''(e)(1)(i)(G)''.

d. Paragraphs (e)(1)(i)(F) and (e)(1)(i)(G) are redesignated as paragraphs (e)(1)(i)(G) and (e)(1)(i)(H) respectively and a new paragraph (e)(1)(i)(F) is added.

e. Newly redesignated paragraph (e)(1)(i)(G) is amended by removing the reference to ''(e)(1)(i)(G)'' and adding in its place a reference to ''(e)(1)(i)(H)''.

f. A new paragraph (f)(9) is added.

The additions and revisions read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* * * *

(8) *Child support deduction.* State agencies may budget child support payments prospectively, in accordance with paragraphs (d)(2) through (d)(5) of this section, or retrospectively, in accordance with § 273.21(b) and § 273.21(f)(2), regardless of the budgeting system used for the household's other circumstances.

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

(1) *Net monthly income.*

(i) * * *

(F) Subtract allowable monthly child support payments in accordance with § 273.9(d)(7).

* * * * *

(f) *Certification periods.* * * *

(9) Households eligible for a child support deduction that have no record of regular child support payments or of child support arrearages and are not required to report child support payment information required by the State agency periodically (monthly or quarterly) during the certification period shall be certified for no more than 3 months. Households with a record of regular child support and arrearage payments that are not required to report payment information periodically during the certification period shall be certified for no more than 6 months. These requirements do not apply to households whose certification periods are established in accordance with paragraphs (f)(3), (f)(6), or (f)(7) of this section. Households required to report monthly or quarterly shall be assigned certification periods in accordance with paragraph (f)(8) of this section.

* * * * *

§ 273.11 [Amended]

6. In § 273.11,

a. Paragraph (c)(1)(i) is amended by adding the words ''child support,'' after the words ''dependent care,''.

b. Paragraph (c)(2)(iii) is amended by adding the words ''child support payment,'' after the word ''allowable'' in the second sentence and after the word ''deductible'' in the third sentence.

7. In § 273.12:

a. A new paragraph (a)(1)(vi) is added.

b. Paragraph (a)(4) is redesignated as paragraph (a)(5) and a new paragraph (a)(4) is added.

c. The heading of paragraph (b), the introductory text of paragraph (b)(1), and paragraph (b)(2) are revised.

The revisions and additions read as follows:

§ 273.12 Reporting changes.

(a) *Household responsibility to report.*

(1) * * *

(vi) Changes in the legal obligation to pay child support.

* * * * *

(4) The State agency may require a household that is eligible to receive a child support deduction in accordance with § 273.9(d)(7) to report information required by the State agency regarding child support on a change report, a monthly report, or quarterly report. The State agency shall process the reports in accordance with procedures for the systems used in budgeting the household's income and deductions. The following requirements apply to quarterly reports:

(i) The State agency shall provide the household a reasonable period after the end of the last month covered by the report in which to return the report. If the household does not file the report by the due date or files an incomplete report, the State agency shall provide the household with a reminder notice advising the household that it has 10 days from the date the State agency mails the notice to file a complete report. If the household does not file a complete report by the extended filing date as specified in the reminder notice, the State agency shall determine the household's eligibility and benefits without consideration of the child support deduction. The State agency shall not terminate the benefits of a household for failure to submit a quarterly report unless the household is otherwise ineligible. The State agency shall send the household an adequate notice as defined in § 271.2 of this chapter if the household fails to submit a complete report or if the information contained on a complete report results in a reduction or termination of benefits. The quarterly report shall meet the requirements specified in paragraph (b) of this section. The State agency may combine the content of the reminder notice and the adequate notice as long as the notice meets the requirements of the individual notices.

(ii) The quarterly report form, if required, shall be the sole reporting requirement for reporting child support payments during the certification period. Households excluded from monthly reporting as specified in § 273.21(b) and households required to submit monthly reports shall not be required to submit quarterly reports.

* * * * *

(b) *Report forms.* (1) The State agency shall provide the household with a form for reporting the changes required in paragraph (a)(1) of this section to be reported within 10 days and shall pay the postage for return of the form. The

change report form shall, at a minimum, include the following:

* * * * *

(2) A quarterly report form for reporting changes in the child support obligation and payments shall be written in clear, simple language and meet the bilingual requirements described in § 272.4(b) of this chapter. The report shall meet the requirements of § 273.21(h)(2)(iii) through (h)(2)(vii).

* * * * *

8. In § 273.21:

a. Paragraph (f)(2)(iv) is amended by adding a sentence at the end.

b. Paragraph (j)(3)(iii) is amended by removing the semicolon at the end of paragraphs (j)(3)(iii)(A) and (j)(3)(iii)(B) and adding a period in its place and by adding a new paragraph (j)(3)(iii)(E).

The additions read as follows:

§ 273.21 Monthly reporting and retrospective budgeting (MRRB).

* * * * *

(f) *Calculating allotments for households following the beginning months.* * * *

(2) *Income and deductions.* * * *

(iv) * * * The State agency may average the child support expense and budget it prospectively or retrospectively.

* * * * *

(j) *State agency action on reports.* * * *

(3) *Incomplete filing.* * * *

(iii) * * *

(E) If the household does not report or verify changes in child support, the State agency shall not allow a child support deduction.

* * * * *

Part 275—PERFORMANCE REPORTING SYSTEM

9. In § 275.12, a new paragraph (d)(2)(ix) is added to read as follows:

§ 275.12 Review of active cases.

* * * * *

(d) *Variance identification.* * * *

(2) *Variances excluded from error analysis.* * * *

(ix) Any variance in a child support deduction which was the result of an unreported change subsequent to the most recent certification action shall be excluded from the error determination.

* * * * *

Dated: September 27, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 96–26068 Filed 10–16–96; 8:45 am]

BILLING CODE 3410–30–U

7 CFR Parts 272 and 273

[Amendment No. 374]

RIN 0584–AB93

Food Stamp Program: Treatment of Educational and Training Assistance

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: On November 1, 1993, the Department published a proposed rule regarding the eligibility of students for the Food Stamp Program and the treatment of educational and training assistance for food stamp purposes. Public comments were solicited and considered. This rule finalizes the provisions regarding educational and training assistance. The provisions regarding student eligibility were published final in a separate rule.

EFFECTIVE DATE: This rule is effective December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; telephone: (703) 305–2520.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Under Secretary for Food, Nutrition, and Consumer Services has certified that this action does not have a significant economic impact on a substantial number of small entities. State welfare agencies are affected to the extent that they must implement the provisions described in this action. Potentially eligible and currently participating households are affected to the extent that they contain members who are eligible students and who receive assistance excluded from income and resources under this action. Some currently participating student households could realize an increase in benefits as a result of this action.

Executive Order 12778

This proposed rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. This 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 effective dates unless so specified in the ''Dates'' section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) for program benefit recipients—state administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1)) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

The Department received one comment concerning Executive Order 12778. One commenter said that administrative procedures do not have to be exhausted before judicial challenge and that the Department should correct this misstatement and avoid making such statements in future rulemakings. While we believe that it would have been fully within the Secretary's discretionary authority, as granted in section 4(c) of the Food Stamp Act (7 U.S.C. § 2013(c)), to establish an exhaustion requirement, this matter has now been specifically addressed by statute. Section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, P. L. 103–354, requires persons to exhaust all administrative appeal procedures established by the Secretary or required by law before the person may bring an action in a court of competent jurisdiction against the Secretary, the Department or an agency, office, officer, or employee of the Department.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject