

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 272

RIN 0584-AC75

#### Food Stamp Program: Civil Rights Data Collection

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Nutrition Service (FNS) is proposing to revise Food Stamp Program (FSP) regulations that cover the collection and reporting of racial/ethnic data by State agencies on persons receiving benefits from the FSP. The proposed changes are to comply with new racial/ethnic data collection standards issued by the Office of Management and Budget (OMB) while also providing regulatory flexibility and reform for this area of the program regulations.

**DATES:** Comments on this proposed rulemaking must be received by January 27, 2003, to be assured of consideration.

**ADDRESSES:** Comments should be submitted to Barbara Hallman, Chief, State Administration Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Only written comments will be accepted. All written comments will be open for public inspection during regular business hours (8:30 am to 5 pm, Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 820.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this proposed rulemaking should be directed to Ms. Hallman at the above address or by telephone at (703) 305-2383.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been

reviewed by the Office of Management and Budget.

##### Executive Order 12372

The FSP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), the FSP 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). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities. This rule may have minimal impact on some small entities.

##### Executive Order 12988

This proposed 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 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 section of the final rule. Prior to any judicial challenge to the provisions of this proposed rule or the application of its provisions, all applicable administrative procedures must be exhausted.

##### Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS 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 proposed rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local and tribal governments or the private sector of \$100 million or more in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

##### Executive Order 13132, Federalism

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 regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

##### (1) Prior Consultation With State Officials

Prior to drafting this proposed rule, we consulted with State and local agencies at various times. Because 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 comments that form the basis for many discretionary decisions in this and other Food Stamp rules. Further, we first requested comments on the proposed data collection for the revised standards in our November 30, 1999 **Federal Register** notice. Since then, State agency comments have helped us make the rule responsive to concerns presented by State agencies.

##### (2) Nature of Concerns and the Need To Issue This Rule

State agencies generally were concerned that the classification by caseworkers of an applicant's multiple race heritage via visual observation of people who chose not to self-identify may not always be accurate. They were also concerned about the cost involved and time that will be allowed for States to make system changes to collect and compile the data, to train workers, and

to convert the current caseload. The standardization of the data collection addresses another major State concern, the need to have the data collected in the same way across other means-tested Federal programs. Specific comments and policy questions submitted by State agencies helped us identify issues that needed to be clarified in the proposed rule. Implementing the revised racial classification standards will allow data standardization across the Federal Government.

### *(3) Extent to Which We Meet Those Concerns*

FNS has considered the impact of the proposed rule on State and local agencies. This rule makes changes that conform to the revised OMB standards for the collection and reporting of racial ethnic data. Although the rule implementing the revised data collection standards will require eligibility workers to collect both race and ethnicity on participating households, the information will standardize racial ethnic data collection by States for the Federal Government and will permit more accurate data collection on individuals who classify themselves as being of more than one race. It will show the increasing diversity of our Nation over time. FNS intends to allow States to obtain one race per person when visual observation is used because the applicant chooses not to self-identify. While State agencies will have to change their application form and information system to collect, compile, and report data, train workers, and convert the caseload, this is a one-time change. The 50 percent Federal reimbursement by FNS helps defray half the State's cost to make the change for the FSP and to collect, compile and report the data. The proposed rule provides States ample time to implement the revised data collection standards and convert the existing caseload to the revised data requirements. In the proposed rule, we have addressed every concern submitted by State agencies regarding this provision. States will have the opportunity to comment on the implementation timeframe in the proposed rule. FNS is not aware of any case where the provisions of the rule would preempt State law.

### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, the proposed information collection requirements contained in this rule are being made available for public comment in a Notice published elsewhere in this issue of the **Federal Register**. Readers who

would like more information on the information collection aspects of the rule, or would like to comment on the revised information collection burden, should refer to that notice for more information.

It is important to note that, as discussed in the following preamble, OMB has received public comment on the revised data collection standards addressed in the Notice published in today's **Federal Register**. Thus, in the Notice, FNS is offering the public to comment only on its proposal for implementing the new OMB standards, not on the standards themselves. The Notice addresses implementation of the revised OMB standards for the FSP, the Commodity Supplemental Food Program (CSFP), and the Food Distribution Program on Indian Reservations (FDPIR). These three programs have historically been approved under the same OMB approval package.

The revised data collection requirements will be submitted to OMB for approval after comments are received during the 60-day comment period. Until the OMB approves FNS' revised data collection requirements, State agencies would continue to use current forms (FNS 101 and FNS 191) approved under OMB Approval No. 0584-0025.

FNS is proposing this regulation separate from the Notice because the regulations governing the FSP contain provisions that must be amended to implement the revised standards, since they specifically identify the old racial/ethnic classifications. The CSFP and FDPIR do not require similar regulatory changes.

### **Background**

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs receiving federal financial assistance. The Department of Justice (DOJ) regulations, at Title 28 of the Code of Federal Regulations (CFR), Section 42.406(a), require all Federal agencies to provide for the collection of racial and ethnic information from applicants for and beneficiaries of Federal assistance sufficient to permit effective enforcement of Title VI. Section 272.6(g) and (h) of the current program rules require States to collect data on households by racial/ethnic data and to report the summary data to FNS.

FNS collects this data in order to comply with the statutory mandates of the Civil Rights Act of 1964, DOJ regulations, and USDA regulations on nondiscrimination. The data are provided to the Department's Office of

Minority Affairs to satisfy the regulatory requirement for annual participation data. The Department includes this data in an annual USDA Equal Opportunity Report. FNS compares the data to Census data and uses the data to identify any minority participation trends or disparities that need follow-up. FNS also reviews the data prior to conducting State or local agency compliance reviews as well as in selecting areas for review.

Section 272.6(g) of the FSP rules specifies the racial/ethnic categories as American Indian or Alaskan Native, Asian or Pacific Islander, black (not of Hispanic origin), Hispanic, and white (not of Hispanic origin). These current racial and ethnic categories, which have been in place for more than 20 years, conformed to classification standards set by OMB in Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting.

On October 30, 1997, OMB issued revised standards for the classification of Federal data on race and ethnicity in a notice in the **Federal Register** (62 FR 58782 *et al.*). They replace and supersede Statistical Policy Directive No. 15. All Federal agencies are required to comply with the revised OMB standards. The OMB standards revise the racial and ethnic categories and require that respondents be offered the option of selecting one or more racial designations. Only the FSP regulations specify the old racial ethnic data classifications that are being replaced. We are now proposing to amend the FSP regulations to comply with OMB policy.

### **Data Collection by State Agencies**

Under the revised standards, there are new categories for race and ethnicity. There are now five categories for race and two categories for ethnicity. The new racial categories are: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or White. Under the revised standards, the former "Asian or Pacific Islander" category has been separated into two categories, "Asian" and "Native Hawaiian or Other Pacific Islander." The revised standards allow individuals to choose more than one race to describe themselves. The revised categories on ethnicity are: "Hispanic or Latino", and "Not Hispanic or Latino." The State agency must include these racial and ethnic categories on the State agency's application or data input screen.

To ensure data quality, the State agency's application or data input screen must use separate questions for

collecting ethnicity and race, with ethnicity requested first. Applicants must be allowed to identify themselves as being of more than one race by choosing multiple racial categories. Instructions on the application should instruct applicants to "Mark one or more \* \* \*" or "Select one or more \* \* \*." The State agency must develop alternative means of collecting racial and ethnic data on households, such as by observation during the interview when the information is not provided voluntarily by the household on the application form.

The changes in the standards deal with the way in which State agencies collect racial/ethnic data and the racial/ethnic classifications. However, we wish to point out that some things have not changed. The current policy that the racial categories are not to be used for determining the eligibility of population groups for participation in the program would continue. The application form would continue to indicate that (1) the racial and ethnic information is voluntary, (2) that it will not affect eligibility or the level of benefits, and (3) that the reason for the information is to assure that program benefits are distributed without regard to race, color, or national origin.

Currently, § 272.6(g) lists the old racial/ethnic categories, specifies the method of data collection, and specifies related requirements for application forms. We do not believe it is appropriate to continue to list in the regulations the specific individual racial and ethnic categories. Instead the proposed regulations specify that State agencies shall collect the data "as specified by FNS". Racial designations and the manner of racial/ethnic data collection are based on Federal policy which is issued by OMB and which all Federal agencies must follow. Since the Federal policy was based on public comment, it would involve a duplication of effort for Federal agencies, in turn, to codify and implement the revised standards by further rulemaking with more public comment on the same issue. The intent is to pass along revisions to the State agencies on a more timely basis. As part of this streamlining, FNS will collect comments in the future through comments to proposed notices on the data collection and reporting. FNS guidance will be issued to provide clarification as necessary appropriate to the program in order to comply with the Federal policy.

By being less detailed in program regulations, we are streamlining the Federal policy process, while maintaining flexibility for any future

changes in the Federal policy and FNS data collection and reporting procedures. Further, since the Paperwork Reduction Act requires the publication of a **Federal Register** notice for comment if a Federal reporting form change is proposed, comments on any future changes in racial designations for data reporting would be obtained and considered in conjunction with any proposed form changes. Accordingly, the Department proposes to revise § 272.6(g) to drop the specific racial category references and to replace that text with a more general requirement in the regulations that will be automatically linked to the Federal policy. However, the gist of the policy has been briefly explained in this preamble. FNS will issue supplementary guidance in the form of an implementing memorandum to State agencies once the final rule is published that will conform to the revised standards. To capture data under the new standards, State information systems will need to be changed.

#### Reporting to FNS

The current regulations at § 272.6(h) specify that the State agency shall report the racial/ethnic data on participating households on forms provided by FNS. The above changes will necessitate a form revision. Although the Department is not specifically describing the form changes in the regulatory text of § 272.6(h), the revision of the FNS reporting form will impact the way State agencies must compile data in order to report it to us. FNS has discussed the changes in a **Federal Register** notice dated November 30, 1999, in October 2000 and 2001 supplementary guidance issued to State agencies, and again in this proposed rule.

To comply with the new standards, State information systems will need to be changed. We are proposing to require State agencies to report the number of household contacts who selected (or were observed to be under) only one racial category, separately for each of the five racial categories, and to provide a count of household contacts who selected more than one race for various multiple-race categories. The State agencies must report the number of household contacts who identified themselves as being Hispanic or Latino by racial category. Confidential or identifying information, such as names of participants, are not being reported to us under this reporting mechanism.

We would continue to use the summary data to evaluate conformance with the Civil Rights Act and to provide the data to other Federal agencies upon request for their missions related to the

Civil Rights Act. The data on the number of household contacts of more than one race will help us track changes in our Nation's diversity over time in the program. The more detailed data on the Hispanic data by race would allow us to monitor changes in racial/ethnic response patterns over time. We are very interested in State agency comment on the proposed data collection and reporting and on the reporting burden estimate per State agency. We are also interested in any cost estimates from State agencies for making the change to their information systems to comply with the new proposed reporting.

We are proposing to revise § 272.6(h) to provide that State agencies must report the racial/ethnic data on forms *or formats* provided by FNS. This change is intended to speed the movement from paper reporting forms to electronic reporting format. It also complies with the intent to move to electronic reporting of this information as soon as our system modifications will allow.

#### Implementation

As explained previously in this preamble, until comment is received on these proposed regulations and approval for the revised forms are approved by OMB, State agencies would continue with the current data collection requirements for the fiscal year 2003 reporting period. FNS anticipates the publication of the final rule early in 2003. In the interim, FNS would accept comments on this rule and on the new reporting requirements through the Notice published elsewhere in this issue of the **Federal Register**. FNS recognizes that State and local agencies will need time to modify their application forms, data input screens, and information systems in order to begin capturing and tabulating data. It is crucial for FNS' information system that all State agencies implement the revised reporting format at the same time.

The Forms FNS 101 and 191 currently in use would remain in effect for the fiscal year 2003 reporting period. State agencies would be required to implement the revised FNS 191 for the report month of April 2004. For the FNS 101, State agencies would be required to implement for the report month of July 2004.

#### List of Subjects in 7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, reporting and recordkeeping requirements.

Accordingly, 7 CFR part 272 is proposed to be amended as follows:

1. The authority citation for part 272 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.6, paragraphs (g) and (h) are revised to read as follows:

### § 272.6 Nondiscrimination compliance.

\* \* \* \* \*

(g) *Data collection.* The State agency must obtain racial and ethnic data on participating households in the manner specified by FNS. The application form must clearly indicate that the information is voluntary, that it will not affect the eligibility or the level of benefits, and that the reason for the information is to assure that program benefits are distributed without regard to race, color, or national origin. The State agency must develop alternative means of collecting the ethnic and racial data on households, such as by observation during the interview, when the information is not provided voluntarily by the household on the application form.

(h) *Reports.* As required by FNS, the State agency must report the racial and ethnic data on participating household contacts on forms or formats provided by FNS.

Dated: November 22, 2002.

**Roberto Salazar,**

*Administrator.*

[FR Doc. 02–30112 Filed 11–26–02; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 71

[Docket No. 99–017–1]

RIN 0579–AB13

### Blood and Tissue Collection at Slaughtering Establishments

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to establish requirements for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farm animals) and poultry at slaughtering establishments when it is necessary for disease surveillance. We also propose that any person who moves or causes the movement of livestock or poultry interstate for slaughter may only move the animals to a slaughtering establishment that has been listed by the

Administrator. The Administrator would list a slaughtering establishment after determining that the establishment provides the type of space and facilities specified by the regulations to safely collect blood and tissue samples for disease testing. The actual testing of samples could occur either at the establishment or at another location, as determined by the Administrator. Alternatively, the Administrator could list a slaughtering establishment that does not supply such space and facilities if the Administrator determines that it is not necessary to conduct testing of animals slaughtered at the establishment because the data collected through such testing would not significantly assist APHIS disease surveillance programs.

This collection of blood and tissue samples would enable us to identify animals at slaughter that are affected by various communicable diseases of concern. This change would affect persons moving livestock or poultry interstate for slaughter, slaughtering plants that receive animals in interstate commerce, and, in cases where test-positive animals are successfully traced back to their herd or flock of origin, the owners of such herds or flocks. The long-term effects of this change would be to improve surveillance programs for animal diseases and to contribute to the eventual control or eradication of such diseases.

**DATES:** We will consider all comments that we receive on or before January 27, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 99–017–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1231. Please state that your comment refers to Docket No. 99–017–1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 99–017–1” on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to

help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Adam Grow, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–4363.

### SUPPLEMENTARY INFORMATION:

#### Background

The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), has many programs to protect the health of livestock and poultry in the United States. These include programs to prevent endemic diseases and pests from spreading within the United States and programs to prevent the introduction of foreign animal diseases, as well as programs to control or eradicate certain animal diseases from the United States.

Regulations governing the interstate movement of animals for the purpose of preventing the dissemination of animal diseases within the United States are contained in 9 CFR, subchapter C—“Interstate Transportation of Animals (Including Poultry) and Animal Products.”

The legal authority for USDA to conduct testing was recently restated in the Animal Health Protection Act of 2002 (Subtitle E of the Farm Security and Rural Investment Act of 2002, Public Law 107–171). Section 10409 states that the Secretary of Agriculture “may carry out operations and measures to detect, control, or eradicate any pest or disease of livestock (including the drawing of blood and diagnostic testing of animals), including animals at a slaughterhouse, stockyard, or other point of concentration.”

#### Proposed Changes to the Regulations

We are proposing to amend the regulations in subchapter C, part 71, “General Provisions,” to provide for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farmed animals) and poultry at slaughter. We propose to require that persons moving livestock and poultry interstate for slaughter may only move the animals to slaughtering establishments that have been listed by the Administrator of APHIS. We do not