

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 272 and 273

[Amendment No. 376]

RIN: 0584-AB57

#### Food Stamp Program: Anticipating Income and Reporting Changes

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

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes provisions of a proposed rulemaking published December 17, 1996. It revises the current requirement that households report a change of more than \$25 in monthly gross income by increasing the reporting threshold for unearned income to \$50 and by allowing State agencies two options for reporting requirements for changes in the amount of earned income. The rule also provides State agencies with the option of establishing a quarterly reporting system for all nonexempt households. The rule also includes a technical amendment addressing procedures for the handling of certain recurring income in a retrospective budgeting system.

**DATES:** *Effective date:* This rule is effective May 29, 2003.

*Implementation date:* This rule must be implemented no later than November 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Patrick Waldron, Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, (703) 305-2516. The e-mail address is [Patrick.Waldron@FNS.USDA.gov](mailto:Patrick.Waldron@FNS.USDA.gov).

**SUPPLEMENTARY INFORMATION:**

### I. Procedural Matters

#### *Executive Order 12866*

This 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), 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). The Under Secretary for Food, Nutrition, and Consumer Services has certified that this final 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 Food Stamp Program (FSP).

#### *Paperwork Reduction Act*

The information collection requirements associated with this rulemaking have been reviewed by the Office of Management and Budget (OMB) and approved under OMB No. 0584-0064. We did not publish a separate notice requesting comments on the proposed information collection associated with this rule. We did, however, solicit comments concerning the information collection in the proposed rule, which was published on December 17, 1996 at 61 FR 66233. We specifically requested comments on: (a) Whether the proposed collection of information was necessary; (b) the accuracy of the agency's burden estimate; (c) ways to enhance quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on potential respondents. We received no comments specifically concerning the proposed information collection.

Although this rule eliminates or reduces the need to report certain changes in household circumstances,

households will still be required to report other changes. Therefore, we believe that households will still be required to submit an average of one change report form per year. At the time we issued the proposed rule we estimated that approximately 9,342,000 households are subject to change reporting. Based on an estimated average of .167 hours per report and one report per year, we estimated that the report form results in a total burden of 1,507,691 hours per year.

#### *Executive Order 13132*

#### *Federalism Summary Impact Statement*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. We note that all references to State agencies when used in the context of Federalism also refer to local welfare agencies in States in which the FSP is administered by local governments. In developing this rule the Food and Nutrition Service (FNS) has considered the impact on State agencies. This rule increases State agency flexibility by increasing the number of options that State agencies will have regarding procedures for the reporting of information by Food Stamp Program recipients. To a large extent this rule codifies procedures that are currently being utilized by State agencies through waivers, and imposes no new requirements on State agencies.

#### *Prior Consultation With State and Local Officials*

Before drafting this rule, we received input from State 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. These discussions involve implementation and policy issues. This arrangement allows State agencies to provide feedback that forms the basis for many discretionary decisions in this and other FSP rules. In addition, FNS officials attend regional, national, and professional conferences to discuss issues and receive feedback from State officials at all levels. Lastly, the comments on the proposed rule from State officials were carefully considered in drafting this final rule.

### *Nature and Concerns and the Need To Issue this Rule*

State agencies have generally wanted greater flexibility in the establishment of criteria for the reporting of changes in circumstances by participating households. FNS has responded to these concerns through the granting of waivers of current regulatory criteria with respect to household reporting. State agencies have indicated that they would prefer to have greater discretion without the need to go through the time-consuming and cumbersome waiver process. They believe that such discretion would enhance their ability to more efficiently administer the FSP.

### *Extent to Which FNS Meets Those Concerns*

FNS has considered the impact on State and local agencies. In response to State agency concerns we are amending 7 CFR 273.12 to provide State agencies with greater discretion regarding requirements for the reporting of changes in household circumstances. The rule also reduces the burden on households and State agencies by eliminating the need to report relatively small changes in income.

This rule is intended to have a preemptive effect on any State law that conflicts with its provisions or that would otherwise impede its full implementation. FNS is not aware of any case where the provisions of the rule would preempt State law. To the extent the rule includes discretionary changes, the Department has established compliance time frames which give due consideration to State agency processes for notification of customers and stakeholders and for the implementation of the new procedures in local offices.

### *Executive Order 12988*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect 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 needed to respond to requests from State Food Stamp Program agencies for revision of the

requirements for reporting changes in the amount of income received, to clarify procedures for averaging income, and to assist recipients in meeting their responsibility to comply with FSP requirements.

#### *Benefits*

State agencies will benefit from this rule because households will better understand which changes in income they are required to report, and the number of reports requiring State agency action will be reduced. Recipients who work will benefit because they will have to report only significant changes in their income rather than changes that are minor and temporary.

#### *Costs*

The revisions in requirements for reporting changes in income and acting on reported changes are estimated to cost \$58 million over the 2003 to 2007 period.

## **II. Background**

On December 17, 1996, we published a rule at 61 FR 66233 in which we proposed to revise FSP regulations at 7 CFR 273.10 and 7 CFR 273.12 governing the income changes food stamp households are required to report during the certification period and the treatment of this income in determining benefits. Comments were solicited on the provisions of the proposed rule through February 18, 1997, and a total of 29 comments were received. This final rule addresses the commenters' concerns. Readers are referred to the proposed rule for a more complete description of the basis for the rule. Following is a discussion of the provisions of the proposed rule, the comments received, and changes made in the final rule.

### *1. Income Averaging—7 CFR 273.10(c)(3)(i)*

The proposed rule retained current 7 CFR 273.10(c)(3)(i) which provides that households (except destitute migrant and seasonal farm worker households) may elect to have their income averaged and that the State agency shall use the household's anticipation of monthly income fluctuations over the certification period. We proposed to provide in addition that an average must be recalculated at recertification and in response to changes in income in accordance with 7 CFR 273.12(c).

We solicited comments on whether to continue to allow households the option of determining whether their income is averaged or whether to allow State agencies to make the determination.

Seven commenters objected to the proposed continuation of the current provision allowing households to determine whether or not their income should be averaged. The commenters indicated that averaging should be at the option of the State agency, rather than the household. According to these commenters, use of an averaged income amount is administratively easier and an average more accurately reflects income received over the certification period. They believe income averaging is beneficial for households because it reduces the household's need to report changes, simplifies instructions to households concerning reporting responsibilities, and provides households a consistent level of benefits from month to month. One State agency recommended that to minimize administrative costs and to offer States more flexibility, FNS should allow States the option to average monthly income, except for destitute households or unless averaging would result in denial of an otherwise eligible case.

The income of food stamp households frequently fluctuates from month to month, making it difficult for change reporting households to correctly report changes and for the State agency to provide accurate benefits based on the income received in a particular month. Averaging is an effective alternative to monthly reporting and retrospective budgeting, which is more costly for the State agency and burdensome for the household. State agencies have requested the flexibility to determine when averaging is appropriate so that the household's income can be budgeted consistently for food stamps and other assistance programs. Basing allotments on an average also assists households in budgeting for their needs by providing the same level of benefits over several months. Therefore, as revised by this rule, 7 CFR 273.10(c)(3)(i) provides that the State agency may develop methods to be applied Statewide for averaging the income of categories of households. If income has been averaged, we believe State agencies should inform the household of the amount used to calculate the allotment, as many State agencies already do. Therefore, paragraph (c)(3)(i) also contains a provision to that effect.

Another commenter suggested that the rule should prohibit income averaging for migrant and seasonal farm worker households if the income is earned by contract from one employer in less than a 12-month period. We are not adopting this suggestion because, as pointed out by the commenter, 7 CFR 273.10(c)(3)(ii) already prohibits treating the income of migrant or seasonal farm

workers as contract income. This type of income is required to be annualized or prorated over the period it is intended to cover. We also feel that this suggestion is beyond the scope of this rulemaking and that an additional reference to the prohibition against income averaging for such households is unnecessary.

Another commenter asked that the final rule clarify that use of the income conversion factors in 7 CFR 273.10(c)(2) is not a form of income averaging. In the preamble to the proposed rule (61 FR at 66237), we discussed the difference between conversion and averaging but did not propose any change to 7 CFR 273.10(c)(2). However, we agree that some clarification in the regulations would be helpful. Therefore, we are adding a sentence to 7 CFR 273.10(c)(3) to specify that converting income to a monthly amount, as provided in paragraph (c)(2), does not constitute averaging for the purposes of paragraph (c)(3).

## 2. Reporting Requirement for Unearned Income—7 CFR 273.12(a)(1)(i)(A)

We wish to preface our discussion regarding the reporting requirements contained in this final rule by noting that on November 21, 2000, we published a final rule at 65 FR 70134, which included, among several other provisions, an amendment to 7 CFR 273.10(f) giving the State agencies more discretion with respect to the assignment of certification periods. This rule amended 7 CFR 273.12(a)(1) by adding a new paragraph (vii) that provided State agencies with the option of limiting reporting for households with earned income that are assigned certification period of at least six months to only changes in their gross monthly income that result in household gross income greater than 130 percent of the Federal poverty guideline. In States electing this option, households with earned income that are assigned certification periods greater than six months are required to submit reports of their households circumstances every six months. Section 4109 of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) expanded this option, limited to earned income households through regulation, to all households not statutorily exempt from periodic reporting. Although twenty States have currently adopted this option in some form and several other may do so in the future, to maximize State agency flexibility we have elected, subject to the modifications discussed below, to provide State agencies with most of the

options contained in the 1996 proposed rule.

We did not propose any change in the requirement that households report a change of more than \$25 in unearned income and we solicited comments on ways State agencies could use information from computer matches to update unearned income amounts rather than relying on household reports. As proposed, the regulation would have continued to require that households report changes of more than \$25 in unearned income. Change in earned income would be handled in accordance with one of the options specified by the State agency. Seven commenters recommended that the reporting threshold for earned and unearned income should be the same. Three commenters indicated that the unearned income threshold should be increased to \$50.

Although it would be administratively simpler and less confusing if the reporting threshold for earned and unearned income were the same, raising the threshold for unearned income to the same level as the earned income threshold could result in a greater increase in Program costs than only raising the threshold for earned income. According to the Fiscal Year (FY) 2000 "Characteristics of Food Stamp Households," 78.7 percent of food stamp households receive some unearned income, compared to the 27.2 percent of households that receive earned income. We believe some increase in the unearned income reporting threshold is justified, however, because of inflation since the \$25 figure was established in regulations in 1974. Therefore, we are adopting the \$50 threshold suggested by commenters. Changes in households' public assistance and jointly processed general assistance grants are still excluded from unearned income reporting since the State agency has prior knowledge of all changes in these grants.

Although we did not propose any changes in current procedures we solicited comments regarding the use of computer matching as an alternative to the reporting of changes in certain types of unearned income such as supplemental security income (SSI), Old Age, Survivors, and Disability Insurance (OASDI), and unemployment compensation. Five State agencies commented that information from computer matching with other agencies would not be received in time to make changes within the 10-day periods generally required by current regulations at 7 CFR 273.12(c). One State agency is pursuing the possibility

of developing an interface with the Social Security Administration (SSA) that will provide on-line access to benefit information. That would enable the State to identify and act on changes in benefits provided under Titles II and XVI of the Social Security Act within the current time frames. Other State agencies pointed out that information is received overnight from SSA only if requested; new information is not provided automatically. Also, households are required to report prospective changes in income; however, the data match may not show a discrepancy until the month in which the change actually occurred. At the time that the proposed rule was published the use of data obtained through matches would generally not have been feasible since changes based on matched data could not be made as quickly as changes reported by the household.

One State agency commented that households should not be required to report changes in unearned income if the State has an FNS-approved computer matching process that reports these changes at least monthly. Another State agency supported the ability of States to automatically use information received from sources such as SSA, but commented that States should not have to act on information more frequently than monthly. The State agency believes the payment information should be received once a month whether workers must take an action or the actions are automated. The State agency believes use of computer match information is difficult in a prospective budgeting system.

We are retaining the requirement that households are responsible for reporting changes in unearned income. Since the proposed rule was published, a number of States now have online access to data from the SSA. Although we are not eliminating the requirement that households report changes in SSI and OASDI, we will consider waiver requests to eliminate the requirement that households report of changes in those forms of income if the State agency making the request has online access to data from SSA and can implement changes within the timeframes specified under 7 CFR 273.12(c). We also wish to note that as the result of the November 21, 2000, final rule and the recently enacted legislation limiting reporting only to changes that result in household gross income in excess of 130 percent of the poverty level, a significant number of households are no longer subject to change reporting.

As revised in response to comments, 7 CFR 273.12(a)(1)(i)(A) provides that change reporting households are required to report a change greater than \$50 in the amount of unearned income, except changes in public assistance (PA) or jointly processed general assistance (GA). Changes in households' public assistance and jointly processed general assistance grants are still excluded from unearned income reporting since the State agency has prior knowledge of all changes in these grants.

### 3. Reporting Requirement for Changes in Earned Income—7 CFR 273.12(a)(1)(i)(C)

The proposed rule offered State agencies three reporting options for earned income. Under these options, a household with earned income would be required to report one of the following, as determined by the State agency:

- A change in wage rate and a change in part-time or full-time status, provided the household is certified for no more than 3 months;
- A change in wage rate and a change of more than 5 hours a week in the number of hours worked that is expected to continue for more than a month; or
- A change in the amount earned of more than \$80 a month.

State agencies commenting on the proposed rule were generally in favor of the increased flexibility offered by the options. There was, however, some concern expressed that different reporting requirements for earned and unearned income may result in confusion.

We believe that the revised requirements will reduce the number of small (\$25) or temporary changes households have to report, minimizing any possible burden of the different reporting requirements. Also, very few households would be affected because, according to data derived from the FY 2000 "Characteristics of Food Stamp Households," less than 20 percent of households had both earned and unearned income.

One State agency expressed concern that the proposed changes might give change reporting States an advantage over monthly reporting States and suggested that certification errors should not be cited in monthly reporting States for amounts not required to be reported in States without monthly reporting. State agencies have the flexibility under 7 CFR 273.21 to determine what information should be reported on the monthly report form, to limit monthly reporting to certain categories of households, and to

discontinue requiring monthly reports. We believe it is to the advantage of all State agencies to increase the number of available reporting options.

A commenter feared that recipients that move to a different State would be confused if the State had different reporting requirements. It is true that increasing State agency flexibility decreases the consistency offered by national Program requirements. However, reporting requirements have varied from State to State since monthly reporting was made optional in 1988. Administrative waivers and welfare reform demonstration projects have also resulted in a variety of reporting requirements. We expect that State agencies will explain reporting procedures to all households so that the requirements will be understood.

The same commenter believes households will report more changes than necessary and there will be no reduction in the work of the food stamp office. State agencies that have a waiver similar to the first earned income reporting option indicate that the revised reporting requirement reduces the number of changes that are reported and require action by the caseworker. We believe this rule contains reporting requirements that are easier for households to understand and apply.

The commenter also pointed out that current rules at 7 CFR 273.10(f)(4)(ii) require one or two-month certification periods if income cannot be reasonably predicted. Although State agencies always have the option of certifying households with extremely unstable circumstances (such as some homeless households or migrants) for one or two months, we believe it would be an unnecessary burden on both State agencies and households to certify all households with fluctuating earned income for such a short period. We also wish to note that the previously referenced November 21, 2000 rule included an amendment to 7 CFR 273.10(f) giving the State agencies more discretion with respect to the assignment of certification periods. One of the changes in that rule was the elimination of mandatory one and two month certification periods.

One commenter noted that the proposed rule is not clear as to whether the same reporting system has to be used in all parts of the State or if different options can be used in different locations. The commenter supported an option for States to use different methods in different parts of the State. Since some State agencies delegate a significant amount of autonomy to political subdivisions (counties and/or cities) with respect to

the operation of their food stamp programs, and since conditions may vary significantly within a State, in the interest of maximizing State flexibility we are adopting the option suggested by the commenter.

The same commenter indicated that the proposed rule does not allow State agencies to update information at random times outside of the change reporting time frames. For example, according to the commenter, a household cannot be required to return a mailer updating case information during a certification period. The mailer can be sent, but if it is not returned, the case cannot be closed. To find out why the household did not return the report, the State agency is required to call the household in for a formal recertification. The commenter believes the regulations should allow States to do regular reviews of case circumstances without requiring excessive formal administrative procedures. The same commenter also suggested shortening the certification period if the household fails to return the form. We feel that the issue of shortening certification periods in response to a household's failure to return a form requesting information on changes is not within the scope of this rule and, therefore, we are not addressing it here.

#### a. Status Reporting—7 CFR 273.12(a)(1)(i)(C)(1)

In addition to current change reporting procedures and the six-month reporting option contained in the November 21, 2000 final rule, this rule provides State agencies with three reporting options with respect to earned income. Under the first reporting option, households that are required to report only a change in source, wage-rate, and part-time or full-time employment status (status reporting households) would be assigned certification periods of no more than 3 months. Twenty-one commenters (all State or local agencies) opposed limiting this option to households certified for 3 months; one commenter supported the proposal. Four commenters suggested a 6-month limit and one suggested 4-month certification periods.

We proposed that status reporting households be certified for no more than 3 months to limit any potential cost to the FSP of removing the \$25 reporting requirement. Under the status reporting proposal, some households certified on the basis of a small number of hours of part-time work could be required to work progressively more hours from week-to-week and experience a substantial increase in income without having to report the change. Without a

certification period limit, this change could exist for several months before it came to the attention of the State agency at recertification.

One State agency commented that households with a reliable wage history merit a certification period up to 12 months. Households with new employment or a less stable work history would be assigned a shorter certification period. This would allow the agency to tailor a certification period to the household's circumstances rather than arbitrarily assigning a certification period based on the type of income the household receives.

The State agency was also concerned about the administrative impact of the requirement for a 3-month certification period and indicated that households certified for longer than 2 months would receive a notice of expiration in the calendar month before the month their certification ends. Generally, the recertification interview is also conducted at the end of the month before the month the certification ends. In that State, a household certified for 3 months could have a recertification appointment in the same month it receives the approval notice, which would be administratively burdensome and confusing. The State agency also believes that certifying households with earned income for no more than 3 months could create a barrier to participation. While the State agency can offer flexible appointment times to accommodate work hours, other arrangements such as transportation or child care availability may pose a challenge for these households. They may be unable to cope with the requirement to appear for an interview.

Another commenter indicated that the State would assign 3-month certification periods to households with able-bodied adults without dependents to ensure they do not exceed the limit of 3 months of participation in 36 months. Adding another population to the 3-month certifications would unnecessarily burden clients and local offices with added paperwork and office visits and have an adverse impact on Program integrity and client services. This commenter believes that shorter certification periods do not guarantee that clients will report changes correctly.

Other commenters opposed the 3-month certification period limit because it would hamper efforts to make reporting and certification requirements consistent across assistance programs, it is not necessary for households with stable earned income, and it is not consistent with Program simplification and the changing role of the caseworker,

which requires frequent contact with clients during the certification period. Several commenters indicated that State agencies with waivers that allow status reporting without a limited certification period have not reported problems with the waivers and that State agencies should be allowed to use their discretion in setting certification period length.

As pointed out by several commenters, the requirement to be recertified every 3 months could place a substantial burden on low-income working households, as well as on State agencies. We considered offering the status reporting option for only those households with fluctuating income because it was unnecessary to certify households with stable earned income every 3 months. However, although the term "fluctuating income" is often used and understood, it is difficult to define for purposes of regulation. Consequently, to avoid complicating the status reporting option, we proposed to apply it to all earned income.

We have considered all of the commenters' objections to the 3-month certification period limit and agree that certifying earned income households no more than 3 months can create problems for both State agencies and households. We understand the need for State agencies to have uniform requirements across programs and to simplify procedures as much as possible. Nevertheless, we cannot support assigning 12-month certification periods for earned income households who are required to report changes in their work status rather than changes in the amount of their income. As provided in the option for semi-annual reporting set forth in the November 21, 2000, final rule and as evidenced in the recent amendments to the Food Stamp Act (section 4109 of the Farm Security and Rural Investment Act of 2002), the Department believes that State agencies should have some contact with households with earnings at 6-month intervals. The contact may be a recertification or a periodic report.

Therefore, paragraph 273.12(a)(1)(i)(C)(1) of this final rule, provides that households subject to status reporting shall be certified for no more than 6 months. This gives State agencies flexibility to set certification periods appropriate for the stability of the household's circumstances while maintaining program integrity and limiting costs. The Department is also amending the implementation provision of the proposed rule to give States until January 1, 2004 to implement the 6-month certification limit for households subject to status reporting.

One commenter assumed incorrectly that under the proposal, households certified for more than 3 months would be subject to the \$25 reporting requirement. The intent of the proposed revision was to eliminate the \$25 reporting requirement for earned income. If a State agency selects the status reporting option only, all households with earned income will be subject to it regardless of the length of the certification period actually assigned. Quality control will consider the certification period assigned to status reporting households and review cases certified for more than 12 months under the procedures for households with expired certification periods.

The proposed rule did not specifically allow State agencies to select more than one of the earned income reporting options. After the rule was published, several State agencies requested and were granted waivers to use a combination of reporting requirements. For example, State agencies have obtained waivers to use status reporting for households with fluctuating income that are certified for up to 3 months and the \$80 option for households certified for more than 3 months, such as households with stable income or self-employment income that has not been annualized. We believe it is appropriate to tailor reporting requirements to households with different types of earned income. Consequently, in 7 CFR 273.12 of this final rule, paragraph (a)(1)(i)(C) specifies that State agencies may use one or more of the options for categories of households with different types of earned income. However, only one option would apply to an individual household.

In response to 7 CFR 273.12 of the proposed rule, several commenters indicated that the word "and" in paragraph (a)(1)(i)(C)(1) should be "or" so that the option would read: "A change in wage rate of earned income or a change in part-time or full-time employment status." The word "and" was used in the proposed rule to indicate that both of these changes are components of this option. A State agency cannot choose to implement one component or the other. We intended that a household would be required to report if a member had either a change in wage rate or a change in part-time or full-time employment, not that both events had to occur to trigger a report. To clarify our intent, we are changing "and" to "or" in the final rule. We are also adding the words "or salary" after wage rate because not all recipients are paid by the hour. To reduce the burden on both State agencies and affected households, in the final rule we are

qualifying the reporting requirement regarding changes in employment to specify that a household is required to report a change in employment only if that change is accompanied by a change in the household's income.

In response to the above comments, we are revising the first earned income reporting option at 7 CFR 273.12(a)(1)(i)(C)(1) to read as follows: "a change in the wage rate or salary or a change in full-time or part-time employment status (as determined by the employer or as defined in the State's PA program),".

Seven State agencies commented on the requirement in 7 CFR 273.12(a)(2) that changes be reported within 10 days of the date the change becomes known to the household. These State agencies recommended that the date a change becomes known to the household should be the date of receipt of the first payment. In response to those comments and as result of our experience with waivers, we are amending 7 CFR 273.12(a)(2) to allow State agencies to use a range to define the date that the change must be reported. Under the amendment, the State could define the date that the change must be reported as early as the date that the change becomes known to the household or as late as the date that the household receives its first payment as a result of the change. To maximize State agency flexibility, in addition to income from new employment, the amendment to 7 CFR 273.12(a)(2) would also allow State agencies to use the same criteria for the reporting of other changes of income, such as changes in the amount of income (both earned and unearned) or a change resulting from a new source of unearned income. We are also amending 7 CFR 273.12(a)(2) to clarify that households subject to the semi-annual reporting requirement at 7 CFR 273.12(a)(1)(vii) must report changes no later than 10 days from the end of the calendar month in which the change occurred, provided that the household has a minimum of 10 days within which to report the change. To reflect the elimination of the requirement that FNS approve State agency forms provided under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, we are making a technical correction to the second sentence of 7 CFR 273.12(a)(2) by removing the words, "FNS-approved" prior to the reference to joint reporting forms.

b. Changes in Wage Rate and/or Hours Worked—7 CFR 273.12(a)(1)(i)(C)(2)

The second proposed earned income reporting option would allow State

agencies to require households to report a change in wage rate and a change in hours worked of more than 5 hours a week that is expected to continue for more than a month. We received 11 comments on this option. Five commenters supported the proposal, and six found it confusing or suggested modifications. Currently, only three State agencies are utilizing the 5-hour reporting option (through approved waivers). Of the three States, one State limits 5-hour reporting to households in which earned income is received in the form of hourly wages while another State appears likely to replace the 5-hour reporting requirement with the 6-month reporting option. Because of the very small number of States utilizing this option and the possible confusion resulting from the difficulty of determining whether a change in the hours worked will continue for more than one month we decided not to include this option in the final rule.

As indicated above, the primary concern among the commenters was that households might not know how long a change would last, especially if the work environment involves work hours that fluctuate from month to month. Therefore, it might not be reasonable to expect a household to know for how long a change in hours is expected to continue and the proposed requirement would be error-prone. One of these commenters suggested the option would be more effective and less error-prone if it simply required a household to report a change of more than 5 hours per week without having to decide how long this change might last. While this alternative would be less confusing we elected not to adopt it since it could result in the reporting of temporary changes in earned income.

Another commenter asked whether "a month" would be a calendar month or 30 days and if quality control would cite an error if the client did not report an increase in hours on the expectation that the increase would not continue, but in fact the individual is required to continue working more hours. This commenter thought that clients would become confused about the 5 hours, what a month means, and whether the change is anticipated to be longer than a month. Another commenter asked if the 5-hour threshold should be applied each week or averaged over the month. In view of the potential for confusion on the part of clients and the difficulty of determining whether a change is expected to continue we decided not to provide the 5-hour earned income reporting option in the final rule, although we will continue to consider waivers regarding this option.

c. \$100 Earned Income Reporting Threshold—7 CFR 273.12(a)(1)(i)(C)(3)

The third proposed earned income reporting option would allow State agencies to require households to report a change in the amount of earned income of more than \$80. Commenters were evenly divided on this option with six supporting it and six opposing it. Three commenters suggested that the amount should be increased to \$100, and one thought \$80 was too high. We have considered these comments and examined possible alternatives. We believe the earned income reporting requirement should be realistic in terms of current wages and a reasonable expectation of future increases. \$100 per month is slightly less than 5 hours of additional work per week at the current minimum wage rate of \$5.15 an hour. Therefore, we are increasing the \$80 threshold to \$100.

Three State agencies suggested that the phrase "and is expected to continue for more than one month" should be added. We are not accepting the commenters' suggestion. We believe that any change of more than \$100 a month should be reported. The eligibility worker can then determine whether the change is expected to continue, in accordance with the addition to 7 CFR 273.12(c) as discussed below, and document the case file accordingly.

Several commenters indicated that raising the \$25 threshold to \$80 does not address the problems with the requirement for fluctuating income and that it will still be too difficult for a household to know when a change occurs. It is true that many problems associated with having a dollar threshold will remain, even if the threshold is raised considerably. One problem with a fixed dollar threshold is that when income is averaged or converted, households may not know the base figure from which to measure a change. Therefore, we are revising the proposed option to provide at 7 CFR 273.12(a)(1)(i)(C)(2) that the base amount is the amount used by the eligibility worker the last time the allotment was calculated. Since changes in earned income of less than \$100 would not be implemented until the household's next recertification, we are including in 7 CFR 273.12(a)(1)(i)(C)(2) a provision that households subject to this reporting option be assigned certification periods of no more than six months. Consistent with the reasons noted previously for the status reporting option, the final rule establishes a 6-month limit on the length of certification periods provided under this option. Consistent with the status

reporting option, the Department is also amending the implementation provision of the proposed rule to give States until January 1, 2004 to implement the 6-month certification limit for households subject to the \$100 earned income reporting option.

Another commenter indicated that the fifth check received in a five-payday month should not be counted for purposes of determining when a change should be reported. We believe the periodic problem of extra paychecks is addressed in the revised version of the option. Whether actual weekly or biweekly income is used, converted, and/or averaged, the amount last used to calculate the allotment is the figure from which a change should be measured. We believe it is the State agency's responsibility to inform households of this amount and are including this provision in 7 CFR 273.10(c)(3)(i).

We are aware that we did not propose any changes to the provisions of current 7 CFR 273.2(f)(8)(i) and (f)(8)(ii) regarding changes required to be verified at recertification and when reported during the certification period. These provisions prohibit the State agency from requiring verification of changes in income or certain expenses that have not changed by more than \$25. To reflect the new minimum reporting requirement for unearned income, we are amending 7 CFR 273.2(f)(8)(i) and (f)(8)(ii) to require verification of changes in income only if the amount of the change is greater than \$50 per month.

#### 4. Quarterly Reporting—7 CFR 273.12(a)(4) and 7 CFR 273.12(b)(2)

Two States expressed disappointment that the rule did not include an option for quarterly reporting. During the period from 1993 through 1995, we granted a limited number of waivers allowing State agencies to operate quarterly reporting systems for a part of their caseloads. As the result of the favorable reaction to the original quarterly reporting waivers, we have expanded the quarterly reporting option through waivers, and are now granting waivers allowing State agencies to utilize quarterly reporting for all households not statutorily exempt from periodic reporting (specifically migrant or seasonal farmworker households or households consisting entirely of homeless persons).

Based on the comments and the positive response from State agencies that are currently operating under quarterly reporting waivers, we have elected to provide a comprehensive quarterly reporting option for all households, except for those statutorily

exempt from periodic reporting. The option is described in a new paragraph 7 CFR 273.12 (a)(4). Current paragraphs (a)(4) and (5) will be redesignated as paragraphs (5) and (6), respectively. We note that we have elected to continue to describe the current option for the quarterly reporting of the child support obligation separately in redesignated paragraph (a)(5). We have done so based in the belief that State agencies may elect to utilize the quarterly reporting option for the child support obligation while continuing to require change reporting of the other factors of eligibility.

The following conditions apply to quarterly reporting systems. First, a State agency may not include migrant or seasonal farmworker households or households in which all members are homeless individuals in its quarterly reporting system. These categories of households are exempt from any type of periodic reporting under Section 6(c)(1)(A) of the Food Stamp Act of 1977 (7 U.S.C. 2015(c)(1)(A)), including quarterly reporting. This final rule also specifies that households subject to the reporting requirements of 7 CFR 273.12(a)(1)(vii) may not be included in a quarterly reporting system since semi-annual reporting under 7 CFR 273.12(a)(1)(vii) and quarterly reporting are intended to be mutually exclusive options. The State agency would have the option of including all households, subject to the above exceptions, in its quarterly reporting system or may limit the system to certain categories of households. We anticipate that a number of State agencies may elect to exclude households with annualized self-employment income since that type of income would normally not change on a monthly or quarterly basis. The State agency must notify affected households of the quarterly reporting requirement, including the consequences that would result from the failure to file the report in a timely manner. Other conditions include the requirement that the State agency provide the household with a reminder notice if the household does not file the report by the due date, or files an incomplete report, and the requirement that the State agency send the household an adequate notice (which may be combined with the reminder notice) notifying the household that its benefits will be reduced or terminated if it fails to submit a complete report. This final rule also provides that the household not be terminated solely for failure to provide information regarding deductible expenses. The rule specifies that in cases in which a household fails

to provide sufficient information regarding a deductible expense or fails to provide the necessary verification of the expense, the household's eligibility and benefits would be determined without consideration of the deduction. This rule also specifies that the changes reported outside of the quarterly report are subject to the requirements of 7 CFR 273.12(c) and that the quarterly report form shall be the sole reporting requirement for any information which must be included in the form. This rule also provides that changes in the number of hours worked by individuals subject to the work requirement of 7 CFR 273.24 must be reported whenever their work hours fall below 20 hours per week, averaged monthly, pursuant to 7 CFR 273.12(a)(1)(viii), regardless of whether the State agency elects to include the household in a quarterly reporting system. We are also revising 7 CFR 273.12(b)(2) to reflect that the quarterly report form applies to quarterly reporting in general rather than the quarterly reporting of the child support obligation.

#### 5. State Agency Action on Changes—7 CFR 273.12(c)

We proposed to amend 7 CFR 273.12(c) to provide that if a household reports a change in income, the State agency shall act on the change if the new circumstance is expected to continue for at least one month beyond the month in which the change is reported. We received two comments in support of this proposal. Therefore, we are adopting the addition to the regulations as proposed.

#### 6. Technical Amendment to 7 CFR 273.21(f)(2)(v)

On October 17, 1996, the Department published a final rule at 61 FR 54303 entitled "Food Stamp Program: Simplification of Program Rules." The rule amended 7 CFR 273.10(c)(2)(iii) to require that income received on a recurring monthly or semimonthly basis be counted for the month which it is intended to cover rather than the month in which it is received. The amendment specified that the amount of monthly income attributed to the household should not be varied merely because of changes in mailing cycles or pay dates, or because weekends or holidays cause additional payments to be received in a month. It was our intent that this principle apply to both prospectively and retrospectively budgeted households. Because 7 CFR 273.10(c) applies primarily to prospectively budgeted households, and 7 CFR 273.21(f)(2)(v) in its current form addresses only monthly income rather

than both monthly and semimonthly income, we are amending 7 CFR 273.21(f)(2)(v) to enhance consistency and to ensure that recurring income received on a monthly or semimonthly basis by households subject to retrospective budgeting will be counted only for the month which it is intended to cover.

### III. Implementation

The proposed rule provided that State agencies would be required to implement the rule no later than the first day of the month 180 days after publication of the final rule. No comments were received regarding the implementation date. This rule provides in 7 CFR 272.1(g) that the rule is effective May 29, 2003 and must be implemented no later than November 1, 2003. The provisions must be implemented for all households that newly apply for FSP benefits on or after either the required implementation date or the date the State agency implements the provision prior to the required implementation date. The current change reporting caseload shall be converted to these provisions no later than the required implementation date in accordance with procedures established by the State agency. However, for households subject to status reporting or \$100 earned income reporting, the State agency has until January 1, 2004 to convert households to 6-month certification periods. Monthly reporting households shall be changed to the new procedures at 7 CFR 273.21(f)(2)(v) in accordance with 7 CFR 273.21(r). For quality control purposes, any variances resulting from the implementation of this rule shall be excluded from error analysis for 120 days from the required implementation date in accordance with 7 CFR 275.12(d)(2)(vii).

Since the publication of the proposed regulations, we have granted a number of waivers of the requirements for change reporting households to allow State agencies to utilize the reporting options available in the proposed regulations. Nearly half of all State agencies currently have approved waivers to implement one or more of these options. All existing waivers of 7 CFR 273.12(a)(1)(i), including those that allow quarterly reporting, will be obsolete when the State agency implements the final rule or on the required implementation date, whichever is sooner. Since the requirement that households report changes in gross monthly income of more than \$25 will be superseded by the reporting options contained in this rule, State agencies which are still requiring

households to report changes of more than \$25 in gross monthly income will be required to adopt one of the reporting options upon implementation of this rule.

### List of Subjects

#### 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.

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

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

**Authority:** 7 U.S.C. 2011–2036.

### PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ 2. In §272.1, a new paragraph (g)(167) is added to read as follows:

#### § 272.1 General terms and conditions.

\* \* \* \* \*

(g) \* \* \*

(167) *Amendment No. 376.* The provisions of Amendment No. 376 are effective May 29, 2003 and must be implemented no later than November 1, 2003. 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. The current change reporting caseload shall be converted to these provisions no later than the required implementation date in accordance with procedures established by the State agency. However, for households subject to the reporting requirements at § 273.12(a)(1)(i)(C)(1) or (2) of this chapter, the State agency has until January 1, 2004 to convert households to 6 month certification periods. Monthly reporting households shall be converted in accordance with § 273.21(r) of this chapter. For quality control purposes, any variances resulting from the implementation of this rule shall be excluded from error analysis for 120 days from the required implementation date, in accordance with § 275.12(d)(2)(vii) of this chapter.

### PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

#### § 273.2 [Amended]

- 3. In §273.2: a. The first sentence of paragraph (f)(8)(i)(A) is amended by removing the words “or actual utility expenses”.
- b. The second sentence of paragraph (f)(8)(i)(A) is amended by adding a comma and the words “actual utility expenses” after the phrase, “Previously unreported medical expenses”.
- c. The first and third sentences of paragraph (f)(8)(i)(A) and the first sentence of paragraph (f)(8)(ii) are amended by removing the figure “\$25” and adding in its place the figure “\$50”.
- 4. In § 273.10, paragraph (c)(3)(i) is revised to read as follows:

#### § 273.10 Determining household eligibility and benefit levels.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) Income may be averaged in accordance with methods established by the State agency to be applied Statewide for categories of households. When averaging income, the State agency shall use the household’s anticipation of monthly income fluctuations over the certification period. An average must be recalculated at recertification and in response to changes in income, in accordance with § 273.12(c), and the State agency shall inform the household of the amount of income used to calculate the allotment. Conversion of income received weekly or biweekly in accordance with paragraph (c)(2) of this section does not constitute averaging.

\* \* \* \* \*

- 5. In § 273.12:
  - a. The section heading, the introductory text of paragraph (a)(1) and paragraph (a)(1)(i) are revised.
  - b. Paragraph (a)(2) is revised.
  - c. Paragraphs (a)(4) and (a)(5) are redesignated as paragraphs (a)(5) and (a)(6) respectively, and a new paragraph (a)(4) is added.
  - d. Paragraph (b)(2) is revised.
  - e. The introductory text of paragraph (c) is amended by adding two sentences after the first sentence.

The revisions and additions read as follows:

#### § 273.12 Requirements for change reporting households.

(a) *Household responsibility to report.*  
 (1) Monthly reporting households are required to report as provided in § 273.21. Quarterly reporting households are subject to the procedures as provided in paragraph (a)(4) of this section. Certified change



reporting households are required to report the following changes in circumstances:

(i) (A) A change of more than \$50 in the amount of unearned income, except changes relating to public assistance (PA) or general assistance (GA) in project areas in which GA and food stamp cases are jointly processed. The State agency is responsible for identifying changes during the certification period in the amount of PA, or GA in jointly processed cases. If GA and food stamp cases are not jointly processed, the household is responsible for reporting changes in GA of more than \$50.

(B) A change in the source of income, including starting or stopping a job or changing jobs, if the change in employment is accompanied by a change in income.

(C) One of the following, as determined by the State agency (different options may be used for different categories of households as long as no household is required to report under more than one option; the State may also utilize different options in different project areas within the State):

(1) A change in the wage rate or salary or a change in full-time or part-time employment status (as determined by the employer or as defined in the State's PA program), provided that the household is certified for no more than 6 months; or

(2) A change in the amount earned of more than \$100 a month from the amount last used to calculate the household's allotment, provided that the household is certified for no more than 6 months.

\* \* \* \* \*

(2) Certified households must report changes within 10 days of the date the change becomes known to the household. For reportable changes of income, the State agency may require that change to be reported as early as within 10 days of the date that the household becomes aware of the change or as late as within 10 days of the date that the household receives the first payment attributable to the change. For example, in the case of new employment, the State may require the household to report the change within 10 days of the date that the household becomes aware of the new employment, within 10 days of the date the employment begins or within 10 days of the date that the household receives its first paycheck. For households subject to semi-annual reporting, the household must report changes no later than 10 days from the end of the calendar month

in which the change occurred, provided that the household has at least 10 days within which to report the change.

Optional procedures for reporting changes are contained in paragraph (f) of this section for households in States with forms for jointly reporting food stamp and public assistance changes and food stamp and general assistance changes.

\* \* \* \* \*

(4) The State agency may establish a system of quarterly reporting in lieu of the change reporting requirements specified under paragraph (a)(1) of this section. The following requirements are applicable to quarterly reporting systems:

(i) *Included households.* The State agency may include all households within a quarterly reporting system, except migrant or seasonal farmworker households, households that have no earned income and in which all adult members are elderly or disabled, households in which all members are homeless individuals, or households subject to the reporting requirement under paragraph (a)(1)(vii) of this section. The State agency may also limit quarterly reporting to specific categories of households.

(ii) *Notification of the quarterly reporting requirement.* The State agency must notify households of the quarterly reporting requirement, including the consequences of failure to file a report, at initial certification and recertification.

(iii) *Failure to file a complete form by the specified filing date.* If a household fails to file a complete report by the specified filing date, the State agency will send a notice to the household advising it of the missing or incomplete report no later than 10 days from the date the report should have been submitted. If the household does not respond to the notice, the household's participation shall be terminated. The State agency may combine the notice of a missing or incomplete report with the adequate notice of termination described in paragraph (a)(4)(v) of this section.

(iv) *Content of the quarterly report form.*

The State agency may include all of the items subject to reporting under paragraph (a)(1) of this section in the quarterly report, except changes reportable under paragraphs (a)(1)(vii) or (a)(1)(viii) of this section, or may limit the report to specific items while requiring that households report other items through the use of the change report form.

(v) *Reduction or termination of benefits.* If the household files a

complete report resulting in reduction or termination of benefits, the State agency shall send an adequate notice, as defined in § 271.2 of this chapter. The notice must be issued so that it will be received by the household no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, the State agency will not terminate the household, but will instead determine the household's benefits without regard to the deduction.

(vi) *Changes reported outside of the quarterly report.* The State agency must act on any changes reported outside of the quarterly report in accordance with paragraph (c) of this section.

(vii) *Sole reporting requirement.* The quarterly report form shall be the sole reporting requirement for any information that is required to be reported on the form, except that able-bodied adults subject to the time limit of § 273.24 shall report whenever their work hours fall below 20 hours per week, averaged monthly.

\* \* \* \* \*

(b) \* \* \*

(2) The quarterly report form, including the form for the quarterly reporting of the child support obligation, must be written in clear, simple language, and must meet the bilingual requirements described in § 272.4(b) of this chapter. In addition, the form must specify the date by which the agency must receive the form and the consequences of submitting a late or incomplete form. The form (or an attachment) must specify the verification the household must submit with the form, inform the household where to call for help in completing the form, and include a statement to be signed by a member of the household indicating his or her understanding that the information provided may result in reduction or termination of benefits. The form should also include a brief description of the Food Stamp Program fraud penalties.

\* \* \* \* \*

(c) \* \* \* If a household reports a change in income, and the new circumstance is expected to continue for at least one month beyond the month in which the change is reported, the State agency shall act on the change in accordance with paragraphs (c)(1) and (c)(2) of this section. The time frames in paragraphs (c)(1) and (c)(2) of this section apply to these actions. \* \* \*

\* \* \* \* \*

6. In § 273.21, paragraph (f)(2)(v) is revised to read as follows:

**§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(v) The State agency shall budget income received on a recurring monthly or semimonthly basis for the month that it is intended to cover. The State agency shall not vary the budgeting of such income merely because it is received during another month as the result of changes in mailing cycles or pay dates, or because weekends or holidays result in an additional or missed payment.

\* \* \* \* \*

Dated: April 18, 2003.

**Eric M. Bost,**

*Under Secretary for Food, Nutrition, and Consumer Services.*

[FR Doc. 03-10443 Filed 4-28-03; 8:45 am]

BILLING CODE 3410-30-P0000

**DEPARTMENT OF AGRICULTURE**

**Food Safety and Inspection Service**

**9 CFR Parts 319 and 381**

[Docket No. 01-032DF]

RIN 0583-AC96

**Approving Ingredients Used in the Production of Meat and Poultry Products: Use of Any Safe and Suitable Binder or Antimicrobial Agent in Meat and Poultry Products With Standards of Identity or Composition**

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending its regulations to permit the use of any safe and suitable binder or antimicrobial agent in the production of meat and poultry products that are subject to a standard of identity or composition that provides for the use of such ingredients. The use of these ingredients must be consistent with any limitations or conditions of use prescribed in applicable FSIS or Food and Drug Administration (FDA) regulations. This direct final rule will provide establishments with greater flexibility in formulating meat and poultry products.

**DATES:** This rule will be effective June 30, 2003 unless FSIS receives written adverse comments that are within the scope of this rulemaking or written notice of the intent to submit adverse comments that are within the scope of this rulemaking on or before May 29, 2003.

If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit adverse comments or notice of intent to submit adverse comments within the scope of this rulemaking to: FSIS Docket Clerk, Docket No. 01-032DF, Room 102, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250-3700. Any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday. Copies of this direct final rule are available on the Internet at <http://www.fsis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Room 602, 1400 Independence Avenue, SW., Room 602 Cotton Annex, Washington, DC 20250-3700, 202-205-0279.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 23, 1999, FSIS published in the **Federal Register**, a final rule entitled, "Food Ingredients and Sources of Radiation Listed or Approved for Use in the Production of Meat and Poultry Products." The final rule provided a comprehensive background regarding the status of food ingredients and sources of radiation currently listed in Titles 9 and 21 of the CFR, and explained the process by which FDA and FSIS would be working together regarding future requests for approvals of ingredients to be used in meat and poultry products, which are under USDA jurisdiction.

After publishing that rule, the two agencies entered into a memorandum of understanding (MOU) that outlines the responsibilities of each Agency during the joint review of new ingredients or new uses of previously approved ingredients. Under the Federal Food, Drug and Cosmetic Act (FFDCA), FDA has the responsibility for determining the safety of ingredients. FSIS has authority under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) to determine whether new ingredients, or new uses of previously approved ingredients, are suitable for their intended use in meat and poultry products. The final rule and MOU are available on the internet at: <http://www.fsis.usda.gov/oppde/larc>.

As used in this rule, the term "safe and suitable" has the same meaning as in FDA regulations (21 CFR 130.3(d)) and as is applied in the MOU between the two Agencies. A safe and suitable ingredient is one that: (1) Performs an

appropriate technical function in the food in which it is used; (2) is used at the lowest level necessary to achieve its intended purpose in that food; and (3) is currently approved or listed in FDA regulations as a food additive (21 CFR parts 172-180); GRAS substance (21 CFR parts 182 and 184); Prior-Sanctioned Food Ingredient (21 CFR part 181); Color Additive (21 CFR part 70); or is a self-determined GRAS ingredient for which FDA has provided FSIS with a written no objection opinion regarding the safety of the use of the substance in meat and poultry products and for which FSIS has determined the use to be suitable (per an acceptability determination described in the MOU).

Under current regulations, a person wishing to use an FDA-approved ingredient that FSIS has determined to be suitable for use in meat and poultry products, such as an antimicrobial agent or binder, in a product for which there exists a regulatory standard that does not provide for the use of the ingredient, must petition FSIS to amend the standard. Evaluation of the petition for the proposed ingredient use and the rulemaking to amend the standard may take two years or more.

FSIS receives approximately 2 to 3 petitions annually for uses of newly approved or new uses of approved antimicrobials or binders. A recent example of this was the 1999 petition to allow the use of transglutaminase enzyme and pork collagen for use in limited amounts as binders in certain standardized meat and poultry products, which led to an October 31, 2001, final rule (66 FR 54912). Without amending specific product standards of identity, the use of the approved ingredient is limited to non-standardized products only.

**The Final Rule**

FSIS is amending the general requirements of the regulations governing standards of identity and composition for meat and poultry products (9 CFR 319.1 and 381.155). A standard of identity prescribes the manner of preparation and the ingredients of a product that is to be called by a certain name. A standard of composition prescribes the quantity of ingredients, such as the minimum meat or poultry content, of a product. Numerous specific standards of identity and composition for meat and poultry products are set out in the regulations (9 CFR 319, subparts A-U and 381, subpart P). FSIS is adding to the general requirements a provision that will permit the use of any binder or antimicrobial agent if FDA and FSIS