

Rules and Regulations

Federal Register

Vol. 60, No. 183

Thursday, September 21, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 271, 272, and 273

[Amendment No. 370]

Food Stamp Program: Student Eligibility

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: On November 1, 1993, the Department published a proposed rule regarding the eligibility of students for the Food Stamp Program and the treatment of educational and training assistance for food stamp purposes. Public comments were solicited and considered. This rule finalizes the student eligibility provisions with the changes specified herein and makes a technical change to the resource section. The provisions regarding the handling of educational and training assistance will be finalized in a separate rule.

DATES: Sections 273.5 (b)(1), (b)(4), and (b)(9) are effective February 1, 1992. The introductory paragraph of § 273.5(b)(6) is effective February 1, 1992. The introductory paragraph of § 273.5(b)(10) is effective February 1, 1992. Sections 273.5(b)(11)(ii), (b)(11)(iii), and (b)(11)(iv) are effective February 1, 1992.

Sections 273.5 (b)(6)(i) and (b)(6)(ii) and sections 273.5 (b)(10)(i) and (b)(10)(ii) and the remaining provisions of this regulation are effective November 1, 1995 and must be implemented no later than February 1, 1996.

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

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

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

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). The Administrator of the Food and Consumer Service has certified that this action does not have a significant economic impact on a substantial number of small entities. State welfare agencies are affected to the extent that they must implement the provisions described in this action. Households are affected to the extent that some currently ineligible students will become eligible for program benefits.

Executive Order 12778

This proposed rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This is not intended to have retroactive effective dates unless so specified in the **DATES** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—state administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to nonquality control (QC)

liabilities) or part 284 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Paperwork Reduction Act

Pursuant to 7 CFR 273.2(f), State welfare agencies must verify certain information which affects household eligibility and benefits. Applicant households are required to provide the necessary information to the State agency. The reporting and recordkeeping burden associated with the application, certification, and continued eligibility of food stamp applicants has been approved by the Office of Management and Budget under OMB No. 0584-0064. OMB approval includes the burden associated with verification of information provided on the food stamp application. OMB approval of the verification requirements in § 273.2(f)(xi) of this rule is not necessary because the statements do not add new or additional verification responsibilities on State agencies, but simply relocate existing verification requirements from § 273.5(a).

Background

On November 1, 1993, the Department proposed procedures to implement amendments to the Food Stamp Act of 1977, as amended (7 U.S.C. 2011 *et seq.*), as set forth in sections 1715 and 1727 of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101-624, enacted November 28, 1990, and section 903 of Title IX of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 102-237, enacted December 13, 1991. section 1715 of Public Law 101-624, as amended by Section 903 of Public Law 102-237, established procedures for determining an income exclusion for certain educational and training assistance received by eligible students. Section 1727 of Public Law 101-624 amended the Food Stamp Act to grant eligibility for participation in the Food Stamp Program ("Program") to certain students currently considered ineligible to participate.

Procedures were also proposed for implementing amendments to the Higher Education Act of 1965 as set forth in sections 471 and 1345 of the Higher Education Amendments of 1992,

Public Law 102-325, enacted July 23, 1992. Those sections prohibit certain Federal educational assistance from being considered as income and resources for food stamp purposes.

Lastly, procedures were proposed for implementing a provision of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, Pub. L. 101-392, enacted September 25, 1990, which prohibits counting certain educational assistance received by students from a program funded by the Perkins Act as income or resources when determining the eligibility and benefits of households containing students.

The Department accepted comments on this rulemaking through January 2, 1994. Comments were received from eight State agencies, one public interest group, and one advocate.

The proposed rule contained provisions on both student eligibility and the treatment of educational and training assistance. This rule finalizes only the provisions concerning student eligibility. The comments pertaining to the student eligibility provisions are discussed below. The provisions regarding the treatment of educational and training assistance contain issues which are, as yet, unresolved, and the Department has decided to finalize those provisions in a separate rulemaking so as not to further delay publication of the student eligibility provisions.

A full explanation of the rule was contained in the preamble of the proposed rule published November 1, 1993 ("November 1 rule") (58 FR 58463). The reader should refer to the preamble of that rule for a full understanding of the provisions of this final rule.

In the proposed rule under Supplementary Information, Executive Order 12778, the Department stated that prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. One commenter said that administrative procedures do not have to be exhausted before judicial challenge and that the Department should correct this misstatement and avoid making such statements in future rulemakings. While we believe that it would have been fully within the Secretary's discretionary authority, as granted in section 4(c) of the Food Stamp Act (7 U.S.C. 2013(c)), to establish an exhaustion requirement, this matter has now been specifically addressed by statute. Section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture

Reorganization Act of 1994, Public Law 103-354, requires persons to exhaust all administrative appeal procedures established by the Secretary or required by law before the person may bring an action in a court of competent jurisdiction against the Secretary, the Department or an agency, office, officer, or employee of the Department.

Institution of Higher Education— § 271.2 and § 273.5(a)

An institution of higher education is currently defined in 7 CFR 271.2 of the regulations as any institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities and vocational or technical schools at the post-high school level. The November 1 rule did not propose to change this definition.

One commenter requested that the regulations be changed to specify that community colleges that do not routinely require high school diplomas are not institutions of higher education.

The Department has become aware that some colleges no longer require a high school diploma due to declining enrollment. It is the Department's intent that persons enrolled in a regular curriculum at a college be considered enrolled in an institution of higher education even if a diploma is no longer required. The Department has also become aware that some colleges that normally require a high school diploma or equivalency certificate may not require them for special programs such as courses for English as a second language or for courses which are not part of the regular curriculum. The Department does not intend that such persons be considered enrolled in an institution of higher education.

Therefore, the Department has decided to revise the language so that a student will be considered enrolled in an institution of higher education if the person is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. A college includes a junior, community, two-year, or four-year college or a university. A person who is attending a business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certification for enrollment in the curriculum would also be considered enrolled in an institution of higher education.

The Department is also taking this opportunity to move the provision regarding enrollment in an institution of higher education from the definition section to the student eligibility section

to facilitate a better understanding of the student provisions. Accordingly, the Department has removed the definition of an institution of higher education from 7 CFR 271.2 and has added a new sentence to 7 CFR 273.5(a).

Student Eligibility—§ 273.5

Age Limit

Current regulations provide that students age 60 or over do not have to meet one of the student eligibility criteria to qualify for the program. In accordance with section 1727 of the Food, Agriculture, Conservation, and Trade Act of 1990, the proposed rule lowered the age exemption from 60 to 50. Two commenters supported this change. Because this is a nondiscretionary change, it is being adopted as proposed at 7 CFR 273.5(a).

The Department is taking this opportunity to move the student exemptions contained in 7 CFR 273.5(a) to 7 CFR 273.5(b) to consolidate them at one place.

On-the-Job Training

The Department proposed to incorporate current policy that a person is exempt from the student ineligibility provisions during the period of time the person is being trained by an employer under an on-the-job training program. However, during the period of time that the person is only attending classes, he or she would be considered a student subject to the provisions of 7 CFR 273.5.

One commenter supported the provision. Another commenter suggested that student status should coincide with the period of time educational income is prorated. A third commenter said all participants in on-the-job training should be exempt if their employer requires class attendance; alternatively they should be exempt if they are enrolled in non-degree programs or for periods too short, e.g., one semester or quarter, to obtain a degree.

There is no basis in the Food Stamp Act for extending the exemption to other participants in on-the-job training programs. Therefore, the Department is adopting the proposal without change at 7 CFR 273.5(a). A student would have to meet one of the other student exemptions to qualify when enrolled and only attending classes in an institution of higher education at least half time.

Work Study

The proposed regulations expanded the list of eligible students to include students participating in a State (as well as a Federal) work study program during the regular school year.

One commenter suggested that any needs-based subsidized employment program that a State supports be defined as a work study program.

Section 6(e) of the Food Stamp Act, as amended, specifically provides that the program must be a work study program. Since many employment programs do not have a study component, the Department is not adopting this suggestion. The Department is adopting the proposal without change at 7 CFR 273.5(b)(1)(ii).

The Department further proposed that a student who was approved for work study at the time of application for food stamps, and anticipated starting a job within two months after the date of application for food stamps, would qualify for this exemption until the student stopped working. However, if a student stopped working because work study funding had run out, the student would continue to qualify for this exemption for no more than two months. The Department specifically asked for comments on whether or not the two-month grace periods would result in making affluent students eligible.

Three of the commenters indicated that affluent students would not become eligible. One commenter thought that the student should actually be participating in work study to be eligible. Another commenter supported the provision but suggested that students remain on the program when work study runs out for two months or until the end of the school term, whichever is later. Five commenters were opposed to the two-month provisions—four of them thought the procedures would be too administratively complex and error prone. (The following are some examples of administrative problems foreseen by commenters. The first two-month period would be tied to the date of application whereas eligibility for the food stamp program is determined for full months. A person could quit work study and reapply for food stamps during the two-month period. "No more than two additional months" could have been interpreted as giving the State agency an option. It may be difficult to anticipate when a student will actually begin work. Numerous contacts with the institutions could be required to keep track of when a student qualifies for the food stamp exemption.) Another commenter suggested that student eligibility status based on work study should continue through the term over which the work study is prorated. The only exception should be for students who refuse to participate in a work study assignment. Two commenters

advised that most work study is approved for a given term or semester and the proposed procedure is unfair to students who receive the same amount of work study but whose work assignments can be completed in a shorter period of time.

After carefully reviewing the comments, the Department has decided to make some changes to the provisions as proposed. The Department has decided to provide an exemption for the school term if a student has been approved for work study during the school term and anticipates actually working during that time. The student must be approved for work study at the time she or he applies for food stamps. The student exemption will begin with the month in which the school term begins or the month work study is approved, whichever is later. Once begun, the exemption will continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment. The Department believes that this will simplify the procedure and be in compliance with the Act which requires participation in work study during the regular school year. The Department has incorporated this change in the final regulations at 7 CFR 273.5(b)(1)(ii).

One commenter suggested that anyone accepted for work study by a school should be considered participating in a work study program. The Department has not adopted this suggestion because students may be determined eligible for work study based on need but frequently funding or work is not available.

One commenter suggested that the regulations mandate use of the verified amount of work study approved by the school. While this would simplify administration of the provision, the Department has not adopted this suggestion because the actual anticipated amount may be less than the approved amount.

One commenter asked if a claim would be required if a student intended to begin work within two months but does not actually work. Another commenter suggested that recoupment be pursued if a student refuses to participate in a work study assignment.

Under the Department's revised procedure, the two-month time frame is not an issue, but a student could anticipate work study during the school term and it may not materialize. If the work study is questionable, the school could be contacted to determine if funding and a job will be available. A claim would not be required unless a determination is made that the student

deliberately gave wrong or misleading information.

One commenter asked if student eligibility based on work study would be retained through scheduled breaks and vacations. In accordance with the Department's changes to the final regulation, the student work study exemption will not continue between terms when there are breaks of a full month or longer for which work study has not been approved. The exemption only applies to months in which the student is approved for work study.

Assigned Students

The proposed regulation expanded the list of eligible students to include students who are assigned to, or placed in, an institution of higher education through, or in compliance with, an employment and training (E&T) program operated by a State or local government which contains components which are at least equivalent to the acceptable components of the food stamp E&T program.

One commenter supported this provision. A second commenter opposed requiring standards comparable to food stamp E&T components; stated that the Department does not have the authority to and should not regulate the content of E&T programs; persons attending community colleges should be considered participating in a State or local government's E&T program, and E&T programs should not serve exclusively food stamp recipients.

Section 6(e)(3)(D) of the Food Stamp Act, as amended by section 1727 of the Food, Agriculture, Conservation, and Trade Act of 1990, clearly provides the Department with the authority for determining which State and local E&T programs are appropriate. All persons attending community colleges cannot be considered participating in a state or local government's E&T program because attendance at a community college does not necessarily indicate participation in an employment program. The Department agrees that E&T programs need not serve food stamp recipients exclusively in order to qualify, but they must be for low-income households. Consequently, the Department is revising the final regulations at 7 CFR 273.5(b)(11)(iv) to this effect.

A third commenter on this provision suggested that the Department clarify that an appropriate program does not have to have all the components, or any combination of components, required in the food stamp E&T program and that State agencies should make the general equivalency determinations but that

students should be permitted to provide evidence of the appropriateness of a program.

The Department agrees that the E&T program should have to meet only one of the acceptable food stamp E&T components. Since the guidelines for the food stamp E&T components are specified in the regulations, the Department also agrees that State agencies may make the equivalency determinations. The Department has changed the final regulations at 7 CFR 273.5(b)(11)(iv) accordingly. The Department does not believe that it would be administratively feasible to require eligibility workers to make a determination on the appropriateness of a program based on information submitted by an individual student.

One commenter thought that self-placements in connection with any of the E&T programs listed should exempt the student. The Department agrees that placements that are initiated by a person while the person is enrolled in an approved E&T program should be considered to be in compliance with the requirements of that program provided that the E&T program the person is enrolled in has a component for enrollment in an institution of higher education and that program accepts the placement. Other self-placements would not qualify. The Department has changed the final regulations at 7 CFR 273.5(b)(11) accordingly.

One commenter thought that participants who voluntarily participate in one of the listed E&T programs should be entitled to an exemption. Section 6(e)(3) of the Food Stamp Act does not limit the exclusion to persons who are required to participate in an approved E&T program. Therefore, the Department agrees that all persons, regardless of whether they are volunteers, who are placed in an institution of higher education by or in accordance with the requirements of an approved program, qualify for the student exemption. The Department has made this change in the final regulations at 7 CFR 273.5(b)(11).

Job Opportunities and Basic Skills (JOBS) Program

The proposed regulations expanded the list of eligible students to include students participating in the work incentive program under part A of title IV of the Social Security Act or its successor program (currently the JOBS program). One commenter supported this change. Since this is a nondiscretionary provision that is required by the Food Stamp Act, as amended, the Department is adopting

the proposed language without change at 7 CFR 273.5(b)(1)(vii).

Single Parents

The proposed regulations provided that a single parent enrolled full time in an institution of higher education who is responsible for the care of a child under age 12 is exempt from the student provisions. This provision would apply where only one natural, adoptive, or stepparent, regardless of marital status, is in the same food stamp household as the child. For example, if one natural parent and a stepparent are living with the child, neither the natural parent nor the stepparent could qualify for the student exemption. If no natural, adoptive, or stepparent is in the same food stamp household as the child, another full-time student in the same food stamp household as the child could qualify for eligible student status if he or she has parental control over the child and is not living with his or her spouse.

One commenter requested that the definition used for the Aid to Families with Dependent Children (AFDC) program be used instead. The commenter stated that the definition is a parent who is singly responsible for a child because of the death, absence, or incapacity of the child's other parent.

AFDC does not have a definition of a single parent. It appears that the commenter is referring to the AFDC definition of deprivation. For AFDC purposes, one category of needy children is those deprived of parental support or of care by reason of the death, continued absence from the home, or physical or mental incapacity of the parent, or unemployment of a principal earner. There is no basis in the Food Stamp Act for limiting the exclusion to cases of deprivation. Therefore, the Department is not adopting this recommendation.

The Department would, however, like to clarify that "regardless of marital status" means that the parent could be single (meaning never married), a widow or widower, separated, divorced, or married and living in a separate household from the other parent. For example, if the natural parents are still legally married but only one parent is living with the child, that parent would be considered a single parent for purposes of this provision.

Resource Exclusions—§ 273.8(e)(11)

In the proposed regulations under the list of resources required to be excluded by other Federal laws, the Department listed payments received under the Job Training Partnership Act (Pub. L. 97-300). It has come to the Department's

attention that Public Law 97-300 only requires that the payments be excluded from income for food stamp purposes. Educational assistance is excluded from resources for the period of time for which it is provided. Allowing an indefinite resource exclusion would create an unnecessary administrative burden to keep track of the payments in subsequent months. For these reasons, the Department is not adopting the proposed change.

Technical Changes

The Department is taking this opportunity to make the following two technical changes.

Verification—§ 273.2(f)

In order to consolidate the verification requirements, the Department is moving the verification requirement for a determination that a person is unfit from the student eligibility section at 7 CFR 273.5(a) to the verification section at 7 CFR 273.2(f)(1).

Resource Exclusions—§ 273.8(e)(11)(vi)

The Job Training Partnership Act of 1982 replaced the Comprehensive Employment and Training Act (CETA) (Pub. L. 97-300, section 183). Because CETA payments have not been made for over ten years, the Department is deleting the reference to CETA payments in the resource section at 7 CFR 273.8(e)(11)(vi).

Implementation—§ 272.1(g)

As stated in the preamble to the proposed regulations, State welfare agencies were instructed through agency directive to implement on February 1, 1992, the provisions of section 1727 of the Food, Agriculture, Conservation, and Trade Act of 1990, which extended eligibility to students attending institutions of higher education on at least a half-time basis if the student is between 50 and 60 years of age; a student with responsibility for a child between the ages of 5 and 12 if adequate child care is not available to enable the individual to attend class and work a minimum of 20 hours per week or participate in a work study program during the regular school year; a student participating in a State financed work study program during the regular school year; enrolled as a result of participation in the Job Opportunities and Basic Skills (JOBS) program; assigned to an institution of higher education by the food stamp employment and training program, a program under section 236 of the Trade Act of 1974, or certain State or local employment and training programs; or a full-time student who is a single parent responsible for the care

of a child under 12. The corresponding provisions in this regulation are effective on that date.

The remaining provisions are effective November 1, 1995 and must be implemented no later than February 1, 1996.

The provisions of the final rule must be implemented no later than the dates specified for all affected households that newly apply for Food Stamp Program benefits on or after the implementation dates. If for any reason a State agency fails to implement, restored benefits must be provided, as appropriate, back to the effective date of the provision, or the date of application, whichever is later.

The current caseload must be converted to the requirements of the final regulations at a household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency is required to provide restored benefits back to the effective date of the provision or the date of application, whichever is later.

The preamble to the proposed rule provided that any variance resulting from implementation of the provisions of the subsequent final rule would be excluded from error analysis for 90 days from the specified implementation dates of such final rule.

One commenter pointed out that the grace period should be 120 days. Section 13951 of the Mickey Leland Childhood Hunger Relief Act, enacted August 10, 1993, excludes from the payment error rate any errors resulting in the application of new procedures for 120 days from the required implementation dates. Accordingly, the Department has provided for a 120-day grace period at 7 CFR 272.1(g).

List of Subjects

7 CFR Part 271

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

7 CFR Part 272

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

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

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

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

Authority: 7 U.S.C. 2011-2032

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

2. In § 271.2, the definition of an "Institution of higher education" is removed.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (g)(144) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * * (144) *Amendment No. (370).* The provisions of Amendment No. (370) are effective and must be implemented as follows:

(i) Sections 273.5(b)(1), (b)(4), and (b)(9) are effective February 1, 1992. The introductory paragraph of 273.5(b)(6) is effective February 1, 1992. The introductory paragraph of 273.5(b)(10) is effective February 1, 1992. Sections 273.5(b)(11)(ii), (b)(11)(iii), and (b)(11)(iv) are effective February 1, 1992.

(ii) Sections 273.5(b)(6)(i) and (b)(6)(ii) and sections 273.5(b)(10)(i) and (b)(10)(ii) and the remaining provisions of this regulation are effective November 1, 1995 and shall be implemented no later than February 1, 1996.

(iii) The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency shall provide restored benefits back to the effective date.

(iv) Any variance resulting from implementation of a provision in this rule shall be excluded from error analysis for 120 days from the required implementation date of that provision.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.2, a new paragraph (f)(1)(xii) is added to read as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(xii) *Students.* If a person claims to be physically or mentally unfit for purposes of the student exemption contained in § 273.5(b)(2) and the unfitness is not evident to the State agency, verification may be required. Appropriate verification may consist of

receipt of temporary or permanent disability benefits issued by governmental or private sources, or of a statement from a physician or licensed or certified psychologist.

* * * * *

5. In § 273.5:

a. paragraph (a) is revised;
b. paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (c) and (d); and

c. the heading of paragraph (b) and paragraph (b)(1) are redesignated as paragraph (b) and revised. The revisions read as follows:

§ 273.5 Students.

(a) *Applicability.* An individual who is enrolled at least half-time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless the individual qualifies for one of the exemptions contained in paragraph (b) of this section. An individual is considered to be enrolled in an institution of higher education if the individual is enrolled in a business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum or if the individual is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

(b) *Student Exemptions.* To be eligible for the program, a student as defined in paragraph (a) of the section must meet at least one of the following criteria.

- (1) Be age 17 or younger or age 50 or older;
- (2) Be physically or mentally unfit;
- (3) Be receiving Aid to Families with Dependent Children under Title IV of the Social Security Act;
- (4) Be enrolled as a result of participation in the Job Opportunities and Basic Skills program under Title IV of the Social Security Act or its successor program;

(5) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;

(6) Be participating in a State or federally financed work study program during the regular school year.

(i) To qualify under this provision, the student must be approved for work study at the time of application for food stamps, the work study must be approved for the school term, and the student must anticipate actually working during that time. The exemption shall begin with the month

in which the school term begins or the month work study is approved, whichever is later. Once begun, the exemption shall continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.

(ii) The exemption shall not continue between terms when there is a break of a full month or longer unless the student is participating in work study during the break.

(7) Be participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer;

(8) Be responsible for the care of a dependent household member under the age of 6;

(9) Be responsible for the care of a dependent household member who has reached the age of 6 but is under age 12 when the State agency has determined that adequate child care is not available to enable the student to attend class and comply with the work requirements of paragraph (b)(5) or (b)(6) of this section;

(10) Be a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12.

(i) This provision applies in those situations where only one natural, adoptive or stepparent (regardless of marital status) is in the same food stamp household as the child.

(ii) If no natural, adoptive or stepparent is in the same food stamp household as the child, another full-time student in the same food stamp household as the child may qualify for eligible student status under this provision if he or she has parental control over the child and is not living with his or her spouse.

(11) Be assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the programs identified in paragraphs (b)(11)(i) through (b)(11)(iv) of this section. Self-initiated placements during the period of time the person is enrolled in one of these employment and training programs shall be considered to be in compliance with the requirements of the employment and training program in which the person is enrolled provided that the program has a component for enrollment in an institution of higher education and that program accepts the placement. Persons who voluntarily participate in one of these employment and training programs and are placed in an institution of higher education through or in compliance with the requirements

of the program shall also qualify for the exemption. The programs are:

(i) a program under the Job Training Partnership Act of 1974 (29 U.S.C. 1501, et seq.);

(ii) an employment and training program under § 273.7;

(iii) a program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296); or

(iv) an employment and training program for low-income households that is operated by a State or local government where one or more of the components of such program is at least equivalent to an acceptable food stamp employment and training program component as specified in § 273.7(f)(1). Using the criteria in § 273.7(f)(1), State agencies shall make the determinations as to whether or not the programs qualify.

§ 273.8 [Amended]

6. In § 273.8, paragraph (e)(11)(vi) is removed, and paragraphs (e)(11)(vii) through (e)(11)(xi) are redesignated as paragraphs (e)(11)(vi) through (e)(11)(x).

Dated: September 15, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95-23404 Filed 9-21-95; 8:45 am]

BILLING CODE 3410-30-P

Rural Utilities Service

7 CFR Part 1717

Investments, Loans, and Guarantees by Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby revises its policies and requirements governing restrictions on investments, loans and guarantees made by electric borrowers. This rule is intended to clarify RUS's policies and requirements, reduce uncertainty by borrowers, and improve compliance.

EFFECTIVE DATE: This rule is effective October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Alex M. Cockey, Jr., Deputy Assistant Administrator—Electric, U.S.

Department of Agriculture, Rural Utilities Service, room 4037-S, Ag Box 1560, 14th Street & Independence Avenue, SW., Washington, DC 20250-1500. Telephone: 202-720-9547.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management

and Budget (OMB). The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

Information Collection and Recordkeeping Requirements

The existing recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), under control number 0572-0032.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 10102, NEOB, Washington, DC 20503. Attention: Desk Officer for USDA.

Background

On December 22, 1987, section 312 was added to the Rural Electrification Act of 1936. This section allows electric borrowers to invest their own funds or make loans or guarantees, not in excess