

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 at 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.

Public Participation

Section 274.2(c) is simply a restatement of existing Food Stamp Program regulations regarding the obligation of State agencies to provide combined or aggregate allotments in certain circumstances and makes no changes in existing policy. Section 274.2(d)(2) is the regulatory adoption of Section 102 of Pub. L. 103-225 regarding the availability of staggered issuance of benefits on Indian reservations. Therefore, the amendments to 7 CFR 274.2(c) and (d)(2) are being issued as final rules without prior notice and public comment. The language of § 274.2(d)(2) is the same as that employed in Pub. L. 103-225. Section 102 of Pub. L. 103-225 is non-discretionary in that it makes an existing policy, staggered issuance, available to Indian reservations for at least 15 days per month at the request of the tribal governing authority. Because of the non-discretionary nature of the amendments to 7 CFR 274.2(c) and (d)(2), the Department has determined, pursuant to 5 U.S.C. 553, that public comment on these provisions prior to implementation is unnecessary as it would serve no practical purpose.

Background

The Mickey Leland Memorial Domestic Hunger Relief Act (Title XVII of Pub. L. 101-624, enacted November 28, 1990) amended three provisions of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2011 *et seq.*) (the Act), relating to the timing and method of benefit delivery (issuance). These amendments related to staggered issuance of benefits on Indian reservations, aggregate (combined) allotments to households applying after the 15th of the month, and mail issuance in rural areas where households experience transportation difficulties in obtaining benefits.

The Department issued a proposed rulemaking and sought comments on these three provisions of Pub. L. 101-624 on May 20, 1991, at 56 FR 23027. In the same publication, the Department also announced its intent to make three

minor technical changes to existing issuance provisions deemed appropriate to improve benefit issuance. Comments were sought on these changes as well. Each of the six regulatory changes proposed on May 20, 1991, will be separately discussed in this rulemaking.

The 1990 Amendments (Pub. L. 101-624): Comments and Analyses

1. Section 1728 of Pub. L. 101-624 amended Section 7(h)(1) of the Act, 7 U.S.C. 2016(h)(1) to mandate the use of staggered issuance throughout the month on Indian reservations. This provision reflected the findings of a GAO audit (Recipient and Expert Views on Food Assistance at Four Indian Reservations, GAO/RCED 90-152, dated June 28, 1990) in which auditors were told by recipients that each month certain retail food stores authorized to accept food stamps on or near reservations were increasing the prices of eligible food during the week containing the one or more issuance days.

Subsequent to the publication of the proposed rule on this issue, Congress enacted Section 908 of Pub. L. 102-237, delaying the implementation of Section 1728 of Pub. L. 101-624 until April 1, 1993. Section 908 of Pub. L. 102-237 directed GAO to report to Congress by June 13, 1992, on the difficulties that residents on Indian reservations experience in obtaining benefits. The study was to examine prices at food stores, determine issuance-period preferences of households, analyze any transportation problems that may exist, and examine monthly reporting requirements.

On November 25, 1992, GAO released Letter Report RCED-93-70R concerning the need for staggered issuance on Indian reservations. This report summarized comments from 13 State agencies and two national Indian organizations, but arrived at no conclusive recommendation.

Due in significant part to the inconclusive nature of the GAO Report, Congress, on April 1, 1993, in Pub. L. 103-11, "Food Stamp Requirements on Indian Reservations: Delay," delayed implementation of the mandatory staggered issuance requirement of Section 1728 of Pub. L. 101-624, until January 24, 1994. Implementation of Section 1728 was further delayed until March 15, 1994, by section 1 of Pub. L. 103-205, "Food Stamp Program on Indian Reservations," on December 17, 1993.

With section 102 of the Food Stamp Improvements Act of 1994, Pub. L. 103-225, enacted on March 25, 1994, Congress amended Section 7(h)(1) of the

Act by deleting the mandatory requirement for staggered issuance on Indian reservations, which had been provided for in Section 1728 of Pub. L. 101-624, and making staggered issuance on Indian reservations discretionary with each tribal organization. Section 7(h)(1) of the Act, 7 U.S.C. 2016(h)(1), now provides that staggered issuance shall be provided to tribal organizations by State agencies over a period of at least 15 days each month if so requested by the organization exercising governmental jurisdiction over the reservation.

In light of the amendment to section 7(h)(1) of the Act by section 102 of Pub. L. 103-225, making staggered issuance an Indian tribal organization option, the Department believes that a lengthy discussion of the public comments on the proposed rule, pertaining to the parts of the statutory provision which were amended, is no longer necessary, since the comments, while appreciated, are no longer relevant. The Department also believes that the implementation of section 102 of Pub. L. 103-225 does not require public comment. Congress has given the Department and State agencies no discretion and no options with regard to the use of staggered issuance on Indian reservations; the sole discretion to be exercised is with Indian tribal organizations. Under the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553, public comment on a regulatory change is not required if that comment would serve no practical purpose. As a reflection of the Department's absence of discretion in this matter, the Department hereby implements as a final rule without prior notice and comment section 102 of Pub. L. 103-225 in regulatory language identical to that employed by Congress in the legislation. This provision will be located at § 274.2(d)(2).

2. In the May 20, 1991, rulemaking published at 56 FR 23027, the Department sought comments on its proposal to implement section 1732 of Pub. L. 101-624. That provision amended section 8(c)(3) of the Act, 7 U.S.C. 2017(c)(3), to change program requirements concerning aggregate benefits (combined benefits for the month of application and the first full month of benefit receipt) for eligible households applying after the 15th of the month. Prior to the amendment, section 8(c)(3) required that an initial allotment reflecting an aggregate of prorated benefits for the application month and benefits for the first full month was required if the application was made after the 15th day of the month. Amended section 8(c)(3) made