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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

[FNS-2007-0042]

RIN 0584-AD12

Food Distribution Program on Indian Reservations: Resource Limits and Exclusions, and Extended Certification Periods

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service (FNS) is amending the regulations for the Food Distribution Program on Indian Reservations (FDPIR). The changes will improve program service, ensure consistency between FDPIR and the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program), and respond to concerns expressed by the National Association of Food Distribution Programs on Indian Reservations (NAFDPIR) that the current FDPIR resource limits are insufficient for the target populations and serve as a barrier to participation. The rule will increase the maximum level of allowable resources to the same level permitted under SNAP (including the establishment of a resource limit of \$3,000 for FDPIR households with a disabled member in accordance with Section 4107 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171), and annual adjustments for inflation in accordance with Section 4104 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246), allow a resource exclusion for the first \$1,500 of the equity value of one pre-paid funeral arrangement per household member, and allow households in which all members are elderly and/or

disabled to be certified for up to 24 months.

DATES: *Effective Date:* This rule is effective March 1, 2010.

FOR FURTHER INFORMATION CONTACT: Laura Castro, Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, 3101 Park Center Drive, Room 506, Alexandria, Virginia 22302, or by telephone (703) 305-2662.

SUPPLEMENTARY INFORMATION:

- I. Procedural Matters
- II. Background and Discussion of the Final Rule

I. Procedural Matters

A. Executive Order 12866

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

B. Regulatory Impact Analysis

1. Need for Action

This action is needed to ensure that regulations pertaining to certification period assignments for elderly and/or disabled households and resource standards are consistent between FDPIR and SNAP and to reflect provisions contained in the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171), which established a resource limit of \$3,000 for SNAP households with a disabled member, and in Section 4104 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246), which established an annual inflation adjustment to the SNAP resource limits starting in fiscal year (FY) 2009.

2. Benefits

This rule amends FDPIR regulations by aligning several provisions with their counterparts in the SNAP. These regulatory changes are designed to help ensure that FDPIR benefits are provided to low-income households living on or near Indian reservations that are in need of nutrition assistance. Because FDPIR regulations regarding resource limits and exclusions are altered by this rule, participation could potentially increase, thus expanding access to those eligible for the program and increasing nutritional benefits to the targeted population.

FNS has projected the impact of each change on FDPIR participation. However, we are unable to determine

the total number of individuals that might be added as a result of this rule. An individual might benefit from more than one provision and the effect of the overlap could not be determined.

3. Cost

This action is not expected to significantly increase costs of State and local agencies, or their commercial contractors, in using donated foods. The combined impact of the changes in this rulemaking is projected to increase program costs by \$68,000 in FY 2010 and \$852,000 over a five-year period (FY 2010-2014). These increased costs are attributable to potential increases in participation.

C. 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 action will not have a significant impact on a substantial number of small entities. While program participants and Indian Tribal Organizations (ITOs) and State agencies that administer the FDPIR and the Food Distribution Program for Indian Households in Oklahoma (FDPIHO) will be affected by this rulemaking, the economic effect will not be significant.

D. Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory

provisions of Title II of the UMRA) that impose on State, local or Tribal governments or the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 12372

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.567. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice published at 48 FR 29114, June 24, 1983, the donation of foods in such programs is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

F. Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

1. Prior Consultation With Tribal/State Officials

The programs affected by the regulatory provisions in this rule are all Tribal or State-administered, federally funded programs. FNS' national headquarters and regional offices have formal and informal discussions with State officials on an ongoing basis regarding program issues relating to the distribution of donated foods. FNS meets annually with NAFDPIR, a national group of State agencies, to discuss issues relating to food distribution.

2. Nature of Concerns and the Need To Issue This Rule

This rule will provide consistency between FDPIR and SNAP in regard to certification period assignments for elderly and/or disabled households and resource standards. The rule was prompted, in part, by a resolution passed by NAFDPIR in FY 2000. NAFDPIR expressed concern that the current FDPIR resource limit was insufficient for the target population and served as a barrier to participation. The rule was also prompted, in part, by a provision contained in the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171), enacted on May 13, 2002. Section 4107 of Public Law

107-171 established a SNAP resource limit of \$3,000 for households with a disabled member. Also, Section 4104 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246), enacted on May 22, 2008, established an annual inflation factor adjustment to the SNAP resource limits. That provision was effective October 1, 2008. The other regulatory provisions finalized in this rule are also consistent with SNAP provisions.

3. Extent to Which the Department Meets Those Concerns

The Department has considered the impact of the final rule on State agencies. The Department does not expect the provisions of this rule to conflict with any State or local law, regulations or policies. The overall effect of this rule is to ensure that low-income households living on or near Indian reservations receive nutrition assistance. This rule will ensure consistency between FDPIR and SNAP in regard to certification period assignments for elderly and/or disabled households and resource standards.

G. Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Although the provisions of this rule are not expected to conflict with any State or local law, regulations, or policies, the rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted.

H. Civil Rights Impact Analysis

The Office of Civil Rights (OCR) has reviewed this rule in accordance with Departmental Regulation 4300-4, "Civil Rights Impact Analysis", to identify and address any major civil rights impact the rule might have on protected classes. Due to the unavailability of data, OCR cannot assess disproportionate impact on women, minorities, and persons with disabilities. OCR believes the intent of this rule is not to limit or reduce the ability of participants to receive the benefits of donated foods in the FDPIR, nor is its intent to reduce or eliminate equal access to participation in FDPIR.

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Proposed information collection burden related to the provisions in this final rule and burden changes related to the implementation of a new Web-Based Supply Chain Management System (WBSCM) are currently at OMB for review under OMB No. 0584-0293, expiration date November 30, 2009. These information collection requirements will not become effective until approved by OMB. Once they have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

This rule will not change the current recordkeeping burden for ITOs and State agencies under OMB No. 0584-0293, but it will impact the reporting burden due to an expected change in number of households participating in FDPIR as a result of this rule. Households complete an application process to participate in the program and are recertified at intervals determined by the State agency or ITO. The current estimated annual reporting burden for the certification or recertification of households to participate in FDPIR is 2,329.05. The provisions of this rule are expected to increase that burden to approximately 2,379.66, which is an increase of 50.61 burden hours.

The approved and proposed information collection estimates for OMB No. 0584-0293 are as follows:

Current estimated total annual responses: 1,160,746.

Proposed estimated total annual responses: 1,655,720.

Difference due to program changes, as reflected in this final rule: 99.

Difference due to WBSCM implementation: 494,875.

Current estimated annual recordkeeping and reporting burden: 1,073,701.

Proposed estimated annual recordkeeping and reporting burden: 1,079,172.

Difference due to program changes, as reflected in this final rule: 51.

Difference due to WBSCM implementation: 5,420.

J. E-Government Act Compliance

The Department is committed to complying with the E-Government Act

to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

II. Background and Discussion of the Final Rule

On July 3, 2008, FNS published a proposed rule in the **Federal Register** (73 FR 38155) to amend the regulations for FDPIR at 7 CFR part 253. The proposed changes would improve program service by: (1) Bringing the maximum level of allowable resources in line with SNAP, including the establishment of a resource limit of \$3,000 for households with a disabled member and a provision for an annual inflation adjustment to the resource limits starting in FY 2009; (2) allowing a resource exclusion for the first \$1,500 of the equity value of one pre-paid funeral arrangement per household member; and (3) allowing households in which all members are elderly and/or disabled to be certified for up to 24 months. It was intended that these proposed changes would also impact the operation of FDPIHO under which the eligibility and certification provisions of 7 CFR part 253 are adopted by reference at 7 CFR 254.5(a).

Comments were solicited through September 2, 2008 on the provisions of the proposed rulemaking. FNS received three comments from the public on the proposed regulatory changes. These comments are discussed below and are available for review at <http://www.regulation.gov>. Enter "FNS-2007-0042" in the box under "Search Documents" and click on "Go" to view the comments received.

In the following discussion and regulatory text, the term "State agency," as defined at 7 CFR 253.2, is used to include ITOs authorized to operate FDPIR and FDPIHO in accordance with 7 CFR parts 253 and 254. The term "FDPIR" is used in this final rule to refer collectively to FDPIR and FDPIHO.

A. Bring the Maximum Level of Allowable Resources in Line With SNAP

The July 3, 2008 rule proposed an amendment to regulations at 7 CFR 253.6(d)(1) to bring the maximum level of allowable resources in FDPIR in line with those established for SNAP under Section 5(g) of the Food and Nutrition Act of 2008 (formerly the Food Stamp Act of 1977) (7 U.S.C. 2014(g)). This would mean: (1) A resource limit of \$3,000 for households with at least one elderly or disabled member; (2) a resource limit of \$2,000 for households without any elderly or disabled

members; and (3) annual inflationary adjustments to the above resource limits starting in FY 2009. The annual resource limit adjustment is based on increases to the Bureau of Labor Standards Consumer Price Index for All Urban Consumers for the 12-month period ending the preceding June 30, rounded down to the nearest \$250 increment. Each adjustment is based on the unrounded amount for the prior 12-month period.

The rule also proposed two conforming amendments to FDPIR regulations. The first change would add definitions for "elderly" and "disabled" at 7 CFR 253.2. These definitions conform to the definitions used under SNAP. The second amendment would revise 7 CFR 253.7(c)(1) to state that households must report within 10 calendar days when their countable resources exceed the applicable maximum allowable limit.

One commenter expressed support for the proposed changes, especially the annual inflationary adjustment to the resource limits.

Another commenter opposed the proposed changes to the resource standards. The commenter stated that program standards should be set according to local economic conditions rather than being based on state or national data. As discussed in the preamble to the July 3, 2008 proposed rule, the proposed changes are intended to bring FDPIR resource standards in line with the resource limits prescribed by Congress for SNAP. FDPIR was established by Congress in 1977 as an alternative to SNAP for low income households living on or near Indian reservations that did not have easy access to SNAP offices and authorized grocery stores. Consequently, FDPIR has similar eligibility criteria to SNAP, although certain administrative requirements have been simplified and streamlined under FDPIR.

Based on the above discussion of the comments received, the proposed changes to bring the maximum level of allowable resources in FDPIR in line with those established for SNAP are retained in this final rule.

B. Resource Exclusion for the First \$1,500 of the Equity Value of One Pre-Paid Funeral Agreement per Household Member

The July 3, 2008 rule proposed an amendment to the regulations at 7 CFR 253.6(d)(2)(i) to ensure that pre-paid funeral agreements with equity value are treated the same under FDPIR as under SNAP. As proposed, the first \$1,500 of equity value of one pre-paid funeral agreement per household

member would not be counted as a household resource under FDPIR. A pre-paid funeral agreement is a pre-need agreement or contract, with a bona fide funeral home, cemeterian, burial planner, etc., for funeral and/or burial services.

In many instances pre-paid funeral agreements are already excluded as a resource under current FDPIR policy, or have no equity value and would not be counted as a resource. For example, funeral expenses are often covered under life insurance policies and current FDPIR policy allows a resource exclusion for the cash value of life insurance policies. Also, an irrevocable pre-paid funeral contract that has no cash surrender value would not be counted as a resource under FDPIR.

Certain pre-paid funeral agreements, however, have equity value. This means that they have a specific value that can be legally converted to cash by the household member and used for normal living expenses. Under current FDPIR policy, the full equity value of a pre-paid funeral agreement would be counted as a resource to the household. Therefore the intent of the proposed change was to provide a resource exclusion, as is provided under SNAP, for those pre-paid funeral agreements that have equity value, but are not currently excluded as a resource under FDPIR. FNS proposed a regulatory change that would ensure that those pre-paid funeral agreements would be treated the same under FDPIR as under SNAP.

One commenter stated that their Tribal members, by and large, do not purchase pre-paid funeral agreements, and that many Tribes provide funeral assistance to their membership. FNS recognizes the valuable service that Tribes provide in assisting members with their funeral expenses. However, for those individuals that have had to use their own resources to secure their funeral arrangements in advance, FNS believes that the SNAP provision is a reasonable approach for providing an exclusion for pre-paid funeral agreements that have equity value.

Another commenter stated that not all eligible FDPIR participants have resources earmarked for funeral expenses, but that funds set aside for funeral expenses should be verified. This comment may be in reference to households that have funds for funeral expenses comingled with other household savings. Under current FDPIR policy and this final rule, funds, including those held for funeral expenses, held in a checking or savings account that are accessible to a household for normal living expenses

are considered a resource to the household. As discussed in the preamble to the July 3, 2008 proposed rule, there is no verifiable way to distinguish the funds held for funeral expenses from a household's general savings when the funds are comingled.

One of the commenters suggested that we define "equity value" in the regulations and provide an example to clarify the proposed provision. We have added the definition of "equity value" and an example to 7 CFR 253.6(d)(2)(i).

Based on the above discussion of the comments received, the proposed changes to allow a resource exclusion for the first \$1,500 of the equity value of one pre-paid funeral agreement per household member are retained in this final rule with the addition of the definition of "equity value" and an example to 7 CFR 253.6(d)(2)(i), as discussed above.

C. Extend Certification Periods Up to 24 Months for Households in Which All Members Are Elderly or Disabled

The July 3, 2008 rule proposed the amendment of regulations at 7 CFR 253.7(b)(2) to allow households in which all members are elderly and/or disabled to be certified for up to 24 months. Under current FDPIR policy, no household can be certified for more than 12 months. This change is intended to benefit elderly and/or disabled households that have stable incomes and household circumstances.

One commenter stated that this change "would help Tribal members very little" and would exclude individuals and families who have the right by Treaty to receive rations until they "are able to support themselves." The commenter stated that "(i)f the harsher Food Stamp regulations are applied to FDPIR programs, even fewer Tribal members will be eligible for participation." The intent of the SNAP provision is to remove potential barriers to participation by allowing elderly and/or disabled households to continue to participate beyond the current 12-month limitation without a recertification interview. Eliminating the need for a recertification interview after the first 12 months of certification would make it easier for low-income elderly and/or disabled households to stay enrolled in FDPIR.

Two commenters addressed the reporting requirements for households. One commenter stated that the proposed change would "help FDPIR reduce the cost of certification but each participant must self report if their eligibility or economic circumstances change." Another commenter remarked that households must be informed that they

are still subject to the requirement to report changes in household circumstances. The proposed change would not modify the requirement at 7 CFR 253.7(c) for households to report changes in household composition and/or income that occur during their certification period. Each State agency is required to develop procedures for when and how changes in circumstances are reported by households. Although the proposed change would require the State agency to contact the household at the end of the first 12 months so that the State agency can determine if there are any changes in circumstances at that time, this action by the State agency would not relieve the household of its responsibility to report changes in income or household composition in accordance with 7 CFR 253.7(c).

D. Other Comments

One commenter stated that FNS failed to consult with Indian Tribal governments prior to the publication of the proposed rulemaking and has failed to comply with Executive Order 13175 on government-to-government relationships with Indian Tribes. FNS' actions in relation to this rule are in compliance with Departmental Regulation Number 1340-006 and Executive Order 13175 in regard to consultation and coordination with Indian Tribal governments. FNS published a proposed rulemaking in the **Federal Register** on July 3, 2008 with a 60-day comment period. In addition, on July 3, 2008 FNS specifically advised the ITOs and State agencies that administer FDPIR of the publication of the proposed rule and the 60-day comment period. The proposed rule was posted for public viewing on the FDPIR Web site at <http://www.fns.usda.gov/fdd/programs/fdpi>. Prior to the publication of the proposed rulemaking, the provisions of the proposed rule were discussed with tribal and State representatives of the ITOs and State agencies that administer FDPIR at NAFDPIR conferences in 2001, 2003, 2004, and 2008. Also, as discussed in the preamble to the proposed rulemaking, the provision for a resource exclusion for the first \$1,500 of the equity value of one pre-paid funeral agreement per household member was proposed in response to a resolution passed by NAFDPIR at its annual conference in 2000. The proposal for a regulatory change was discussed in a January 3, 2001 letter from the FNS Food Distribution Division Director to the President of NAFDPIR.

The same commenter stated that the proposed rulemaking violated Treaty

Rights by requiring FDPIR to operate like SNAP. The commenter also stated its view that the "new USDA approach in treating FDPIR like the Food Stamp Program" was a means taken by FNS to evade its trust responsibility. FNS' approach to align SNAP and FDPIR policies is not new. This has been FNS' approach since the establishment of FDPIR in 1977. This approach is based on Congressional intent that FDPIR serve as an alternative to SNAP for low-income households that reside on or near Indian reservations. The preamble to the December 8, 1978 proposed rulemaking (43 FR 57798) provides the rationale for FNS' approach to align the policies of the two programs and a detailed history of FNS' consultation efforts with tribal governments and other stakeholders in the development of those policies.

The same commenter stated that "there should be full funding for each eligible program participant so that the food distributed fully meets the needs of those participants." The purchase and distribution of USDA foods under FDPIR is authorized by section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b)) and section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note). FNS administers FDPIR in accordance with these legislative mandates. Section 4(a) of the Agriculture and Consumer Protection Act of 1973 directs the Secretary "to improve the variety and quantity of commodities supplied to Indians in order to provide them an opportunity to obtain a more nutritious diet." The joint conference committee report that accompanied the amending legislation in 1977 noted that the conferees did not intend that "the commodity package will necessarily in and of itself constitute a 'nutritionally adequate diet'" (H. Conf. Rpt. 95-599, p. 205 (September 12, 1977)). As such, the preamble to the December 8, 1978 proposed rulemaking states that it is the intent of the Department to offer a food package that "represents an acceptable alternative to Food Stamp Program benefits" (43 FR 57798). Moreover, Congress funds FDPIR through annual appropriations and FNS uses all available funding to support the Program. FNS does not have authority to exceed the appropriated funding levels for the purposes suggested by the commenter.

Based on the above discussion of the comments received, the proposed changes for extended certification periods for elderly and/or disabled households are retained in this final rule.

List of Subjects in 7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

■ Accordingly, 7 CFR part 253 is amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

■ 1. The authority citation for 7 CFR part 253 is revised to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2036).

■ 2. In § 253.2:

■ a. Remove paragraph designations (a) through (j) and list the definitions in alphabetical order.

■ b. Add new definitions entitled “Disabled member” and “Elderly member” in alphabetical order to read as follows:

§ 253.2 Definitions.

* * * * *

Disabled member means a member of a household who:

(1) Receives supplemental security income benefits under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;

(2) Receives federally- or State-administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;

(3) Receives federally- or State-administered supplemental benefits under section 212(a) of Public Law 93–66;

(4) Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act;

(5) Is a veteran with a service-connected or non-service-connected disability rated by the Veteran’s Administration (VA) as total or paid as total by the VA under title 38 of the United States Code;

(6) Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under title 38 of the United States Code;

(7) Is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving

child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States Code;

(8) Is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under title 38 of the United States Code and has a disability considered permanent under section 221(i) of the Social Security Act. “Entitled” as used in this definition refers to those veterans’ surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them;

(9) Receives an annuity payment under: Section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act; or

(10) Is a recipient of interim assistance benefits pending the receipt of Supplemental Security Income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based State general assistance benefits provided that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the State agency, which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).

Elderly member means a member of a household who is sixty years of age or older.

* * * * *

■ 3. In § 253.6:

■ a. Amend paragraph (d)(1) by revising the second sentence; and

■ b. Revise paragraph (d)(2)(i).

The revisions and addition read as follows:

§ 253.6 Eligibility of households.

* * * * *

(d) * * *

(1) * * * The household’s maximum allowable resources shall not exceed the limits established for the Supplemental Nutrition Assistance Program.

(2) * * *

(i) The cash value of life insurance policies; pension funds, including funds in pension plans with interest penalties

for early withdrawals, such as a Keogh plan or an Individual Retirement Account, as long as the funds remain in the pension plans; and the first \$1,500 of the equity value of one bona fide pre-paid funeral agreement per household member. The equity value of a pre-paid funeral agreement is the value that can be legally converted to cash by the household member. For example, an individual has a \$1,200 pre-paid funeral agreement with a funeral home. The conditions of the agreement allow the household to cancel the agreement and receive a refund of the \$1,200 minus a service fee of \$50. The equity value of the pre-paid funeral agreement is \$1,150.

* * * * *

■ 4. In § 253.7:

■ a. Amend paragraph (b)(2)(iii) by removing the last sentence;

■ b. Add new paragraph (b)(2)(iv); and

■ c. Amend paragraph (c)(1) by revising the third sentence;

The revision and addition read as follows:

§ 253.7 Certification of households.

* * * * *

(b) * * *

(2) * * *

(iv) In no event may a certification period exceed 12 months, except that households in which all adult members are elderly and/or disabled may be certified for up to 24 months.

Households assigned certification periods that are longer than 12 months must be contacted by the State agency at least once every 12 months to determine if the household wishes to continue to participate in the program and whether there are any changes in household circumstances that would warrant a redetermination of eligibility or a change in benefit level. The State agency may use any method it chooses for this contact, including a face-to-face interview, telephone call or a home visit. Contact with the household’s authorized representative would not satisfy this requirement; the State agency must contact a household member. The case file must document the contact with the household and include the date of contact, method of contact, name of person contacted, whether the household wishes to continue to participate, and whether changes in household circumstances would warrant a redetermination of eligibility or a change in benefit level.

* * * * *

(c) * * *

(1) * * * Households must also report within 10 calendar days when countable resources, which are

identified in § 253.6(d)(2), exceed the maximum allowable limits as described at § 253.6(d)(1). * * *

* * * * *

Dated: January 12, 2010.

Kevin W. Concannon,
Under Secretary, Food, Nutrition, and
Consumer Services.

[FR Doc. 2010-1708 Filed 1-27-10; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Nos. EE-RM/TP-99-450 and EE-RM/TP-05-500]

RIN 1904-AA96 and 1904-AB53

Energy Conservation Program: Certification, Compliance, and Enforcement Requirements for Certain Consumer Products and Commercial and Industrial Equipment; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; technical correction.

SUMMARY: This document contains a technical correction to the final rule regarding the certification, compliance and enforcement regulations that was published on January 5, 2010. In that final rule, the U.S. Department of Energy (DOE) adopted regulations to implement reporting requirements for energy conservation standards and energy use, and to address other matters, including compliance certification, prohibited actions, and enforcement procedures for specific consumer products and commercial and industrial equipment. Due to drafting errors, language added to the rule in one amendment was deleted from the rule by another amendment, and certain erroneous internal cross references were made. This correction addresses these errors.

DATES: This technical correction is effective February 4, 2010.

FOR FURTHER INFORMATION CONTACT: Michael McCabe, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9155. E-mail:

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SUPPLEMENTARY INFORMATION:

I. Background

On January 5, 2010, the U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) published a final rule titled "Certification, Compliance, and Enforcement Requirements for Certain Consumer Products and Commercial and Industrial Equipment." 75 FR 652. Since the publication of that rule, it has come to DOE's attention that due to a technical oversight, a certain part of the final regulations was inadvertently deleted from the final rule. DOE did not intend to remove this language from its regulations and through this correction document DOE reinserts this inadvertently deleted language. Additionally, certain sections of the regulatory text have an internal referencing error.

II. Need for Correction

As published, the final regulation erroneously removed two provisions that DOE had intended to reserve (10 CFR 431.171) and to amend (10 CFR 431.172). This document intends to reestablish these provisions. In FR Doc. E9-30886, appearing in the notice beginning on page 652 in the **Federal Register** of Tuesday, January 5, 2010, the following corrections are made:

Subpart J—[Corrected]

1. On page 667, in the second column, correct the table of contents for subpart J to part 431 to read as follows:

Subpart J—Provisions for Commercial Heating, Ventilating, Air-Conditioning and Water Heating Products

Sec.

431.171 Purpose and scope. [Reserved]

431.172 Definitions.

431.173 Requirements applicable to all manufacturers.

431.174 Additional requirements applicable to Voluntary Independent Certification Program participants.

431.175 Additional requirements applicable to non-Voluntary Independent Certification Program participants.

431.176 Voluntary Independent Certification Programs.

2. On page 667, in the second column, directly below the heading of subpart J, add and reserve § 431.171, and add § 431.172, to read as follows:

§ 431.171 Purpose and scope. [Reserved]

§ 431.172 Definitions.

The following definitions apply for purposes of subparts D through G, J through K and subpart T of this part.

Other terms in these subparts shall be defined elsewhere in the Part and, if not defined in this part, shall have the meaning set forth in section 340 of the Act.

Alternate efficiency determination method or AEDM means a method of calculating the efficiency of a commercial HVAC and WH product, in terms of the descriptor used in or under section 342(a) of the Act to state the energy conservation standard for that product.

Basic model means, with respect to a commercial HVAC & WH product, all units of such product, manufactured by one manufacturer, which have the same primary energy source and which do not have any differing electrical, physical, or functional characteristics that affect energy consumption.

Commercial HVAC & WH product means any small or large commercial package air-conditioning and heating equipment, packaged terminal air conditioner, packaged terminal heat pump, commercial packaged boiler, hot water supply boiler, commercial warm air furnace, instantaneous water heater, storage water heater, or unfired hot water storage tank.

Flue loss means the sum of the sensible heat and latent heat above room temperature of the flue gases leaving the appliance.

Industrial equipment means an article of equipment, regardless of whether it is in fact distributed in commerce for industrial or commercial use, of a type which:

(1) In operation consumes, or is designed to consume energy;

(2) To any significant extent, is distributed in commerce for industrial or commercial use; and

(3) Is not a "covered product" as defined in Section 321(2) of EPCA, 42 U.S.C. 6291(2), other than a component of a covered product with respect to which there is in effect a determination under Section 341(c) of EPCA, 42 U.S.C. 6312(c).

Private labeler means, with respect to a commercial HVAC & WH product, an owner of a brand or trademark on the label of a product which bears a private label. A commercial HVAC & WH product bears a private label if:

(1) Such product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of such product;

(2) The person with whose brand or trademark such product (or container) is labeled has authorized or caused such product to be so labeled; and

(3) The brand or trademark of a manufacturer of such product does not appear on such label.