

2. Section 1650.31 is revised to read as follows:

§ 1650.31 Financial hardship withdrawals.

(a) A participant who has not separated from Government employment and who can demonstrate financial hardship is eligible to withdraw all or a portion of his or her own contributions to the TSP (and their attributable earnings) in a single payment to meet certain specified financial obligations. The amount of a financial hardship withdrawal must be at least \$1,000.

(b) A participant will demonstrate financial hardship if he or she meets one or both of the following tests:

(1) Based on TSP calculations, the participant's monthly cash flow is negative (*i.e.*, net income is less than ordinary monthly household expenses).

(2) The participant has incurred, or will incur within the next six months, extraordinary expenses which the participant has not paid, for which he or she has not been and will not be reimbursed, and which cannot be met by his or her monthly cash flow over a period of six months. Documentation of the expenses must be dated within 45 days of the date of the withdrawal request. Extraordinary expenses are limited to the following four types:

(i) Medical expenses payable by the participant and related to the treatment of the participant, the participant's spouse, or the participant's dependents. Generally, eligible expenses are those that would be eligible for deduction as medical expenses for Federal income tax purposes, but without regard to the Internal Revenue Service's (IRS) income limitations on deductibility. However, the following expenses that are allowed by the IRS are not eligible TSP medical expenses: health insurance premiums and expenses associated with household improvements required as a result of a medical condition, illness, or injury to the participant, the participant's spouse, or the participant's dependents. These items are already taken into account elsewhere in the TSP financial hardship calculations.

(ii) The cost of household improvements required as a result of a medical condition, illness or injury to the participant, the participant's spouse, or the participant's dependents which is eligible for deduction as a medical expense for Federal income tax purposes, but without regard to the IRS income limitations on deductibility or the fair market value of the property. Household improvements are structural improvements to the participant's living quarters or the installation of special equipment that is necessary to

accommodate the circumstances of the incapacitated person.

(iii) The cost of repair or replacement resulting from a personal casualty loss that would be eligible for deduction for Federal income tax purposes, but without regard to the IRS income limitations on deductibility, fair market value of the property, or number of events. Personal casualty loss includes damage, destruction, or loss of property resulting from a sudden, unexpected, or unusual event, such as an earthquake, hurricane, tornado, flood, storm, fire, or theft.

(iv) Legal expenses for attorney fees and court costs associated with separation or divorce. Court-ordered payments to a spouse or former spouse and child support payments are not allowed, nor are costs of obtaining prepaid legal services or other coverage for legal services.

(c) The amount of a participant's financial hardship withdrawal cannot exceed the smallest of the following:

(1) The amount requested;

(2) The amount in the participant's account that is equal to his or her own contributions and attributable earnings; or

(3)(i) The amount which would both:

(A) Make up the participant's negative cash flow, if any, for a period of six months; and

(B) Pay documented extraordinary expenses, if any.

(ii) If the TSP calculates that the participant has a negative cash flow and extraordinary expenses, the amount of the disbursement is equal to six times the amount of the negative monthly cash flow plus the amount of the extraordinary expenses. If the TSP calculates that the participant has a positive cash flow, the amount of the disbursement is equal to the amount of the documented extraordinary expenses minus six times the amount of the positive monthly cash flow.

(d) A participant is not eligible for an in-service hardship withdrawal during the time he or she has pending a petition in bankruptcy under Chapter 13 of the Bankruptcy Code.

3. Section 1650.42 is revised to read as follows:

§ 1650.42 Taxes related to in-service withdrawals.

(a) When an in-service withdrawal is paid directly to a participant from the TSP, the money is taxable income in the year in which the payment is made. However, a participant does not pay taxes on money that the TSP transfers directly to an IRA or other eligible retirement plan until the money is withdrawn from the IRA or plan.

(b) A financial hardship in-service withdrawal from the TSP is not an eligible rollover distribution, and a participant therefore may not request the TSP to transfer a financial hardship in-service withdrawal to an IRA or other eligible retirement plan. A financial hardship in-service withdrawal is subject to 10% withholding. The withholding is not mandatory; the participant may either avoid the withholding or increase the amount of withholding by submitting an IRS Form W-4P, Withholding Certificate for Pension or Annuity Payments, to the TSP record keeper.

(c) An age-based in-service withdrawal from the TSP is an eligible rollover distribution, and a participant may request the TSP to transfer all or a portion of an age-based in-service withdrawal to an IRA or other eligible retirement plan, consistent with paragraph (d) of this section. If the withdrawal is not transferred, it is subject to mandatory 20% withholding. (The participant may increase the amount of withholding by submitting an IRS Form W-4P to the TSP record keeper.)

(d) A transfer or rollover may be requested by filing with the TSP record keeper a TSP Form 75-T. An eligible retirement plan is a plan defined in the Internal Revenue Code, 26 U.S.C. 402(c)(8). There are four types of eligible retirement plans: an individual retirement account (IRA), an individual retirement annuity (other than an endowment contract), a qualified pension, profit-sharing, or stock bonus plan, and an annuity plan described in 26 U.S.C. 403(a). An eligible retirement plan must be maintained in the United States, which means one of the 50 states or the District of Columbia.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 274

[Amendment No. 392]

RIN 0584-AC37

Food Stamp Program, Regulatory Review: Standards for Approval and Operation of Food Stamp Electronic Benefit Transfer (EBT) Systems

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action will revise Food Stamp Program rules affecting the standards for approval and operation of Food Stamp Electronic Benefit Transfer systems. The changes will increase State agency flexibility in administering the program and maximize the advantages afforded by the technology. We are proposing the revisions to streamline program administration and improve customer service.

DATES: Comments must be received on or before September 10, 2001 to be assured of consideration.

ADDRESSES: Comments should be submitted to Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Mr. Cohen at (703) 605-0232, or by e-mail to jeff.cohen@fns.usda.gov. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 718.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Mr. Cohen at the above address or by telephone at (703) 305-2517.

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. This rule, however, is not economically significant, since it is not expected to have an economic impact on the economy of \$100 million or more in any one year.

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.

Executive Order 13132, Federalism

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments and consult with them as they develop and carry out those policy actions. The Food and

Nutrition Service (FNS) has considered the impact of this rule which proposes numerous changes to the requirements for approval and operations of Electronic Benefit Transfer (EBT) systems to deliver food stamp benefits. All of the provisions in this rule are discretionary. FNS is not aware of any case where any of these provisions would in fact preempt State law. Prior to drafting this proposed rule, we received input from State agencies at various times. Several of the provisions are in direct response to State agency concerns and some, in fact, codify policies already implemented by State agencies operating EBT systems. Since the Food Stamp Program (FSP) is a State administered, federally funded program, our national headquarters staff and regional offices have informal and formal discussions with State and local officials on an ongoing basis regarding EBT implementation 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, we sent representatives to regional, national, and professional conferences to discuss our issues and receive feedback on EBT implementation.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Eric M. Bost, the Under Secretary for Food, Nutrition, and Consumer Services has certified that this proposed 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 Program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this proposed rule announces our intent to revise information collection 0584-0083 and reduce the amount of information collected as part of the Advanced Planning Documents (APD) required of State agencies requesting funding for an Electronic Benefit Transfer (EBT) system for food stamps.

Comments on this proposed rule must be received by September 10, 2001.

Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC, 20503. Please also send a copy of your comments to Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101

Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection, please contact Mr. Cohen at the above address.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

For Further Information Contact:

Jeffrey N. Cohen, (703) 305-2522.

Title: Operating Guidelines, Forms and Waivers.

OMB Number: 0584-0083.

Type of Request: Revision of a currently approved collection.

Abstract: Under section 7(i) of the Food Stamp Act of 1977, as amended (FSA), (7 U.S.C. 2016(i)) the Secretary is authorized to permit State agencies to implement Electronic Benefit Transfer (EBT) systems. The Secretary is authorized to establish standards for the required testing prior to implementation of any EBT system and may require analysis of the implementation results in a limited pilot project area before expansion of the system. Any State requesting funding for an EBT system must submit a written plan of action called an Advance Planning Document (APD) to the Food and Nutrition Service (FNS).

In this proposed rulemaking, we are revising Food Stamp Program rules affecting the standards for approval and operation of Food Stamp EBT systems. Several of the provisions will reduce the amount of information required for a State agency to submit as part of the standard APD. We are proposing these revisions in response to the evolution of EBT over time, which has rendered some of the information we are currently collecting unnecessary.

With provisions in this regulation, we are proposing to eliminate or reduce the reporting requirements as described below.

- State agencies will no longer need to provide FNS with the written planning and implementation APD approvals from other participating Federal agencies, or indicate that approval is being sought simultaneously from other participating Federal agencies.

- State agencies will be required to submit a substantially abbreviated planning APD compared to what is currently required. The document will include a brief letter of intent, a budget, a cost allocation plan and a schedule of activities and deliverables.

- State agencies will no longer need to submit an acceptance test report unless FNS is not present at the testing or if serious problems are found during the test.

- State agencies will no longer have to submit quarterly pilot project reports, but rather, report problems or issues to FNS when they occur or are identified.

- State agencies will not be required to submit a pilot cost analysis.

- The State agency will not need to submit an APD update requesting FNS approval to expand EBT operations beyond the pilot area unless there are substantive changes to the implementation plan. State agencies may expand EBT simultaneously with pilot operations, unless significant problems arise.

As currently approved by OMB, the estimated time to gather information and complete an EBT APD is 45 hours per respondent. The recordkeeping burden includes maintaining a copy of the system design specifications, the APD submission, approvals and APD updates. A total of 39 States are operational with EBT systems and we expect 41 States to operate EBT systems within the next year. In addition to the remaining States, some EBT States will be entering new contracts as their current contracts expire. We estimate 10 State agencies will submit an APD each year, for a total of 450 hours.

Estimates of Burden: We estimate the provisions of this proposed rule, as listed above, will reduce the amount of time each State agency spends on an APD for EBT by 10 hours, for an overall decrease in burden hours of 100 hours annually, bringing the total time down to 35 hours per respondent.

Respondents: State agencies.

Estimated number of Respondents: 10 State agencies per year.

Estimated number of Responses per respondent: One.

Estimated annual number of responses: 10.

Estimated Total Annual Burden on Respondents: 350 hours.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" 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. 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) of the FSA and regulations at 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 of the FSA and regulations at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or 7 CFR Part 283 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to Section 14 of the FSA (7 U.S.C. 2023) and 7 CFR 278.8.

Public Law 104-4

Title II of the Unfunded Mandate 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 FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with the "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 FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. Thus, this rule is not economically significant, nor subject to the requirements of sections 202 and 205 of the UMRA.

Background

In this rule, FNS is proposing to revise food stamp regulations affecting the standards for approval and operation of Food Stamp Electronic Benefit Transfer Systems. The revisions will streamline administration of the program, offer greater flexibility to State agencies in enacting policy, and improve customer service. Other provisions have been clarified in order to facilitate implementation by State agencies.

Electronic Benefit Transfer Issuance System Approval Standards—7 CFR 274.12

On April 1, 1992, the Department issued a final rule establishing standards for operation of on-line Electronic Benefit Transfer (EBT) Systems as an alternative to coupons. Those regulations were promulgated in accordance with the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 (Leland Act), Pub. L. 101-624, as part of a package of items aimed at improving the efficiency and effectiveness of program operations.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) signed by the President August 22, 1996, further authorizes use of off-line EBT technology, which uses a self-contained benefit access device, commonly known as a smartcard, to access benefits. The provisions of this rulemaking pertain to both on-line and off-line systems, unless otherwise specified. Currently, no industry standards exist for off-line smartcard systems. We intend to propose standards for off-line EBT systems in the future once those industry standards are developed. However, we have learned a great deal about off-line EBT systems from those currently operating. State agencies interested in implementing off-line systems may submit proposals for approval which will be evaluated on a case by case basis, pending the publication of specific off-line standards.

When the EBT regulations were initially issued, EBT systems were still in their infancy and had only been implemented in a few pilot areas. However, as more and more State agencies went on-line with EBT, other State and federal agencies implementing EBT were able to learn and benefit from those early efforts. As a result, State agencies have been able to roll-out their systems more aggressively and with greater ease by replicating the system designs of operational State agencies, with some State-specific modifications. In order to keep pace with the strides

made in EBT implementation, the Department has reviewed the EBT regulations and is proposing modifications to the rules to reflect a more standardized and streamlined approach to EBT system approvals. Provisions which would improve program administration through greater State agency flexibility, automation and integrity have also been proposed in this rulemaking. Other provisions would be clarified by reorganizing or deleting paragraphs, in order to simplify implementation for State agencies. The major revisions are discussed below.

System Approvals

Current regulations at 7 CFR 274.12(b)(1) require that State agencies submit APDs for approval of EBT systems. We are clarifying in this proposed rule our expectation that State agencies continue to follow the APD process when procuring subsequent EBT systems after the initial system contract comes to an end.

Current regulations at 7 CFR 274.12(b)(4) require that the State agency provide written approval to FNS of the Planning and Implementation Advanced Planning Documents from other participating Federal agencies or indicate that approval is being sought simultaneously from participating Federal agencies. This requirement was intended to keep FNS informed on where other Federal agencies were in the EBT project approval process, including any issues that could potentially effect project approval by other agencies. However, in May 1994, FNS was designated the "lead program agency" for the Federal Government with regard to State EBT systems. In this role, FNS now coordinates document approvals and provides State agencies with a single point of contact in the Federal Government, when necessary. Since State agencies no longer need to coordinate document approvals from relevant Federal agencies, we propose eliminating this requirement.

The Department is also proposing to reduce the amount of State EBT planning documentation to be submitted for EBT systems approval, as required in 7 CFR 274.12(c)(1). The Department is confident that State agencies recognize the importance of careful and thorough project planning for EBT system implementation. There is no longer a need for FNS to receive the current level of detail on planning activities to provide sufficient agency oversight. Therefore, this rule proposes to modify regulations at 7 CFR 274.12(c)(1)(i) and 274.12(c)(1)(ii) to make Planning Advanced Planning Documents (PAPD) less burdensome

and less prescriptive in terms of the information required, by:

- (1) Eliminating the specifications contained in (i) and (ii) for pilot project site and expanded site descriptions and description of major contacts; and
- (2) Indicating that only minimal information be contained in the PAPD, including a brief letter of intent, planning budget, cost allocation plan, and schedule of activities and deliverables.

System Testing

To further decrease the burden on State agencies to document all aspects of the EBT planning process, the proposed regulations at 7 CFR 274.12(c)(2)(i) would no longer require a functional demonstration test plan or report. This was operationalized in our streamlined procedures implemented in 1994. Although we no longer require the documentation, we continue to recommend that State agencies demand a functional demonstration test of their vendors, particularly if functions of the system are new for that vendor. Without such a test for the State agency's benefit, avoidable functional problems could arise later in the acceptance test and result in the project's delay.

In general, extensive acceptance testing must be successfully completed prior to system operation, as stipulated in section 274.12(c)(2)(iii)(B). Since experience has shown that EBT systems are often modified over the life of a State agency's contract with a particular vendor, it may be necessary to repeat any or all of these tests if significant changes are made to the system after the system is operational. Therefore, the Department is clarifying this provision by indicating that FNS reserves the right to require such re-testing, if warranted.

The Department is also proposing to revise the current provisions at 7 CFR 274.12(c)(2)(iv), which require the State agency to provide an acceptance test report. Under most circumstances, FNS will no longer require this report; however, a report will be necessary if FNS is not present at the testing or serious problems are uncovered during the test.

Pilot Operation and Reporting

Current requirements at 7 CFR 274.12(c)(4)(i) stipulate that pilot project reports contain standard information as prescribed in subparagraphs (A) through (R). Now that EBT is no longer in its infancy, this information has proven to be excessive, and is often irrelevant to the task of identifying issues that have surfaced during the pilot shakedown period. The general intent of pilot project reports is to identify any

problems which need to be resolved prior to expansion. The Department is proposing to delete 7 CFR 274.12(c)(4)(i)(A) through (c)(4)(i)(R) and replace them with less rigid requirements and to allow State agencies latitude to discern which details are relevant for their particular pilot. Reporting would no longer be required on a quarterly basis, rather, it would occur as issues or problems arise.

Current regulations at 7 CFR 274.12(c)(5) require the State agency to conduct a cost analysis comparing the actual EBT pilot project costs to the costs of the EBT system operations projected in the Implementation APD and the costs of the coupon issuance system being replaced. This data was collected for information purposes only. However, it is a particularly cumbersome and costly requirement for State agencies and FNS has been waiving the requirement for some time. Therefore, the Department is proposing that this requirement be eliminated.

Current regulations at 7 CFR 274.12(d) require a minimum of three months of full pilot project operation prior to obtaining approval for expansion. State agencies complained that this requirement led to unnecessary delays in project expansion and additional costs while they wait for completion of analyses and FNS approval. FNS recognized that EBT systems have matured to the point where it is unusual to have significant problems. There remains, however, a statutory requirement for a pilot.

Consequently, FNS has been allowing State agencies to expand beyond the pilot area prior to the end of the three month period as long as they provide the required information on the pilot area. In keeping with this policy, we are now proposing that FNS negotiate a suitable pilot area with each State agency to be the basis of the three-month analysis and reporting. State agencies will not need to cease expansion activities as long as this pilot area operates without major difficulties. Expansion may continue as agreed in the implementation plan; however, FNS reserves the right to halt roll-out activities if problems arise during pilot or project expansion.

Retailer Management

Current regulations at 7 CFR 274.12(f)(4)(v) require State agencies to ensure that retailer equipment is replaced or repaired within 24 hours. We have found, however, that under certain circumstances, particularly in rural settings, it may be impossible for State agencies to guarantee this

standard. Therefore, we propose that this timeframe be extended to 48 hours.

Current regulations at 7 CFR 274.12(f)(4)(vi) require State agencies to ensure that retail store employees are trained in system operation prior to implementation. This requirement was originally established to facilitate EBT conversion and to ensure that retailers were provided with the training needed to effectively participate in the program. However, the infrastructure has matured, commercial POS deployment is more prevalent and more stores are using their own systems. Consequently, mandating that all retailers receive specialized training provided by the State agency is no longer necessary. We are, therefore, proposing that State agencies continue to ensure that training is offered to all retailers, but allow retailers to opt out of this instruction if they desire. For tracking purposes, State agencies shall direct retailers to confirm in writing that they are waiving their training option.

Current regulations at 7 CFR 274.12(f)(4)(vii) require that FNS compliance investigators be provided access to State EBT systems in order to conduct investigations of program abuse and alleged violations. We are expanding this requirement for "access" to include other FNS staff involved in compliance activity from FNS regional and field offices and as well as staff from the Department's Office of Inspector General, and specifying that they have on-line access to a State agency's EBT system. This may demand the deployment of administrative terminals to Compliance Branch Area offices, Regional offices and Field offices in order to achieve this requirement. Also, FNS compliance investigators, as well as investigators from the Department's Office of Inspector General, must have access to EBT cards with accounts that are updated as necessary for use in food stamp investigations.

Transaction Receipts

Current regulations at 7 CFR 274.12(g)(3)(ii) require that the information contained on transaction receipts comply with the requirements of 12 CFR part 205 (Regulation E). The provisions of 12 CFR part 205 allow card numbers to be truncated on the printed receipt. However, it does not require truncation. Regulations at 7 CFR 274.12(g)(3)(iii) require that the primary account number or a coded transaction number be included on the receipt. FNS recognized the vulnerability that results from printing the entire card number on a receipt in EBT systems due to the existence of manual and key-entered

transactions and recommended to State agencies that a truncated card number be printed on the receipt. While this policy has been adopted in every operational project to date, we want to be sure it remains this way. Therefore, in the interest of consistently protecting client information, FNS proposes to require truncation of the card number in addition to requirements of 12 CFR part 205.

Benefit Issuance and Replacement

The Department is proposing a revision to the regulations at 7 CFR 274.12(g)(5)(i) which require Personal Identification Number (PIN) selection. The use of PIN assignment is becoming more widespread in the commercial world and is of interest to State agencies because of the potential cost savings it provides. Several States have requested waivers to allow this approach and it has already been implemented in many States. Therefore, we propose that this section be amended to allow PIN assignment in accordance with commercial industry standards, as long as clients have the ability to later select their PIN if they so desire and are informed of this alternative.

Current regulations at 7 CFR 274.12(g)(5)(ii) require a State agency to replace lost or stolen EBT cards within two days. At the same time, the preamble in our April 1, 1992 rule (57 FR 11230) invites the State agency to request a waiver to allow for a replacement time up to five days if the State agency is using centralized issuance. Several State agencies have received such a waiver and have not reported any significant inconvenience to clients.

In order to save costs, many State agencies now issue EBT cards centrally through the mail rather than over-the-counter at the local office. This approach also saves recipients from having to make a separate trip to have their cards issued. However, it is impossible for State agencies to meet a 24-hour time limit for card replacements when issuing cards centrally. Moreover, for security purposes, State agencies are required to send the EBT card and the PIN separately when cards are issued through the mail. Security expectations are generally that there should be at least 3 days between when the card arrives at a home and when the PIN arrives. For these reasons, we propose that this section be amended to permit up to five days for card replacement when a State is using centralized mail issuance.

At the same time, we are clarifying that the intent of "card replacement" requirements is to ensure that clients are

given access to their benefits within the specified time frame. This means that regardless of what time frame the State agency has indicated for card replacement (e.g., 2 days, 5 days) the client must have in hand an active card and PIN, with available benefits on the card, within the time frame specified by the State agency.

Household Training

Current provisions at 7 CFR 274.12(g)(10) call for a "hands-on" approach to household training. This leads to considerable costs for State agencies and is not the only effective means to provide this service to clients. In EBT projects to date, several State agencies have sought waivers in this area to allow for mail training, videos, and kiosk approaches in lieu of a "hands-on" component. Since State agencies are in the best position to decide which approach is most viable for their particular environment and client population, the Department proposes amending this section to continue to require household training without specifying a particular method for the general population. However, hands-on training must be available as a back-up for those clients who request it, for special needs populations such as the elderly, or for those individuals identified as having problems with the EBT system.

Retailer Participation

FNS Authorization: Current regulations at 7 CFR 274.12(h)(1)(ii) include procedural directions for FNS field offices regarding authorizations of Food Stamp retailers. Since these requirements are not directed at State agencies, we are proposing to delete the provisions from this citation. This would not change current policy.

Fees: Current law at section 7(h)(2) of the Food Stamp Act (7 U.S.C. 2016(h)(2)) and regulations at 7 CFR 274.12(h)(2) state that authorized retailers shall not be required to pay costs essential to EBT system operations that are utilized solely for the Food Stamp Program. The Department wishes to reiterate that retailers cannot be required to pay for costs related to EBT for Food Stamps. This includes any fees associated with food stamp transactions. Note that while retailers cannot be charged fees for such transactions on government-provided terminals, they can be charged for commercial/third party processor food stamp transactions. This issue has also surfaced in operating projects with regard to potential bank charges. There have been some instances where banks have attempted to impose a fee on retailers for food

stamp EBT redemption services. This is contrary to regulations.

State agencies have argued and the Department agrees that this prohibition on charging retailers should not be extended to cover the following costs which result from abuses, breach of contract, or negligence on the part of the retailer:

(1) cost for the replacement of lost, stolen or damaged equipment;

(2) materials and supplies for POS terminals not provided by the State agency; and

(3) telecommunication costs for any non-EBT use by retailers when lines are provided by the State agency. This would also allow the State agency to remove phone lines that they have installed and maintained for food stamp transactions in instances where there is significant misuse of the lines.

Several State agencies have sought waivers to allow charges to retailers in these circumstances in the interest of avoiding abuses in these areas. Therefore, we propose to revise this section to allow State agencies to charge retailers reasonable fees only in the circumstances outlined above.

POS Deployment: Current regulations at 7 CFR 274.12(h)(4)(ii) prescribe a formula for minimum POS deployment "up to the number of lanes in each store." The Department believes that this provision has been interpreted by some to be unnecessarily restrictive. State agencies have the flexibility under current regulation to deploy terminals at customer service booths or other locations in the store for balance inquiry or other purposes, as many State agencies have done. However, because this policy has been often misinterpreted to prohibit such deployment, we are proposing to clarify that State agencies may deploy terminals beyond the number of lanes in a store at the State agency's discretion.

Minimum Card Requirements

Current regulations at 7 CFR 274.12(i)(6)(i)(B) require that FNS's statement of non-discrimination be printed on the card or card jacket. Several issues have arisen as a result of this requirement. Since many States are implementing multi-benefit programs on a single card, the inclusion of this statement, which is specific to FNS benefit programs, is no longer practical. In addition, many households are unclear about the circumstances under which they should contact the State, the State's contractor, or FNS about a particular problem. Consequently, the address provided to notify FNS of discrimination incidents has been

misused and has been a source of client confusion and frustration.

Furthermore, since publication of the regulations, a Departmental non-discrimination statement has been issued in Departmental Regulation 4300 (DR 4300) and now replaces the FNS statement. The non-discrimination statement in DR 4300 differs from that in the EBT rules by directing recipients to report instances of discrimination to the USDA Office of Civil Rights rather than to FNS. The statement reads, "In accordance with Federal law and the U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, religion, political beliefs, or disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer."

Since State Agencies are already expected to provide this non-discrimination statement on application forms, handbooks, manuals and other material distributed to the system users, the Department is proposing that this statement be removed from the card or card jacket. Recipients must be notified of their non-discrimination protections as part of household training. FNS regulations at 7 CFR 274.12(g)(10) would be revised to reflect this change.

Concentrator Bank Responsibilities

Current regulations at 7 CFR 274.12(j)(1)(iii) describe the reimbursement procedures for crediting retailers through the Payment Management System. This mechanism has been phased-out and replaced by the Automated Standard Application for Payment (ASAP) system developed for the U.S. Treasury Department by the Federal Reserve Bank of Richmond. Therefore, the Department is proposing revisions to this section which update the new crediting procedures. ASAP improves service to retailers in that it allows for a much later cut-off window than the previous system, and, at the same time, ensures next-day reimbursement even with the later cut-off time. State agencies will need to accommodate the new communication linkages and data flow requirements as prescribed by FNS.

In conjunction with the ASAP system, FNS has entered into a partnership with the Federal Reserve Bank of Richmond to develop the Account Management Agent (AMA) system. The AMA system supports the Department's efforts to

improve accountability, oversight and management of State EBT systems. State agencies will need to provide data in a format established by FNS to the FNS Account Management Agent. This proposed requirement is specified in section 274.12(k)(2)(iii).

Management and Reporting

In order to take advantage of the extensive audit trail available in EBT systems, FNS has designed and implemented the Anti-fraud Locator for EBT Redemption Transaction (ALERT) system to collect and examine EBT transaction data for the purpose of detecting and investigating retailer fraud and abuse. In support of the system, State agencies will need to provide retailer transaction data to FNS on a monthly basis in accordance with the format specified by FNS. The standardized format was developed in consultation with EBT processors. This provision would replace the current requirement specified in 7 CFR 274.12(k)(2)(ii) for EBT exception reports.

Federal Financial Participation

Current regulations at 7 CFR 274.12(l)(2) indicate that State agencies can receive enhanced funding for development of EBT systems that are fully integrated components of the State's complete automated data processing (ADP) system. This enhanced funding has not been available for ADP development since the April 1, 1994 enactment of Public Law 103-66 amending the FSA. Therefore, this provision has been removed.

Back-up System

Current regulations at 7 CFR 274.12(m) require the State agency to ensure that a manual purchase system is available for use during times when the EBT system is inaccessible. Electronic store-and-forward transactions are available to retailers in commercial debit systems and are preferable to manual vouchers for some retailers who do not wish to spend time obtaining telephone authorization for the transaction when the system is down. This type of transaction is stored in the POS device with an encrypted PIN and sent to the host at a later point in time. Several operational EBT States obtained FNS approval to incorporate this into their system. In keeping with this policy, the Department is proposing to allow use of a store-and-forward alternative for those retailers who elect to assume liability for these transactions. In order to protect against applying the transaction to future

months' benefits, the retailer would be able to forward the transaction to the host one time within 24 hours of when the transaction occurred. If the system is inoperable for more than a 24 hour period, the retailer would have 24 hours from the point when the system resumes operation. In an instance where the store and forward transaction is denied due to insufficient funds, the retailer could re-present for the balance in the account. The balance of this transaction could not be re-presented in future months.

Implementation

The Department is proposing that the provisions of this rulemaking be implemented no later than 180 days after publication of the final rule.

List of Subjects in 7 CFR Part 274

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Reporting and recordkeeping requirements, State liabilities.

Accordingly, 7 CFR part 274 is proposed to be amended as follows:

PART 274—ISSUANCE AND USE OF COUPONS

1. The authority citation for 7 CFR part 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

2. In § 274.12,
a. the first sentence in paragraph (b)(1) is amended by adding the words “for development and implementation of initial and subsequent EBT systems” at the end;

b. paragraph (b)(4) is amended by removing the first sentence;

c. paragraphs (c)(1) and (c)(2)(i) are revised;

d. paragraph (c)(2)(ii) is removed, and paragraphs (c)(2)(iii) through (c)(2)(vii) are redesignated as paragraphs (c)(2)(ii) through (c)(2)(vi), respectively;

e. newly redesignated paragraph (c)(2)(ii)(B) is amended by removing the semicolon at the end of the second sentence and adding a period in its place and by adding a sentence to the end of the paragraph;

f. the first sentence of newly redesignated paragraph (c)(2)(iii) following the paragraph heading is revised;

g. paragraph (c)(4)(i) is revised and paragraph (c)(5) is removed;

h. paragraph (d) is revised;

i. paragraph (f)(4)(v) is amended by removing the words “24 hours” and adding in their place the words “48 hours”;

j. paragraphs (f)(4)(vi) and (f)(4)(vii) are revised;

k. a new paragraph (f)(4)(viii) is added;

l. the first sentence in paragraph (g)(3)(iii) is revised;

m. paragraphs (g)(5)(i) and (g)(5)(ii) are revised;

n. the first sentence in paragraph (g)(6)(ii) is amended by removing the word “pilot” and adding in its place the word “project”;

o. paragraph (g)(10)(ii) is removed, and paragraphs (g)(10)(iii) through (g)(10)(viii) are redesignated as paragraphs (g)(10)(ii) through (g)(10)(vii), respectively;

p. newly redesignated paragraph (g)(10)(v) is amended by adding a sentence after the first sentence;

q. the last two sentences of paragraph (h)(1)(ii) are removed;

r. paragraph (h)(2) is revised, and paragraph (h)(4)(ii)(D) is amended by adding a sentence to the end of the paragraph;

s. the second sentence of paragraph (i)(5)(i) is amended by removing the word “publish” and adding in its place the words “make available to third party processors”;

t. paragraphs (i)(6)(i), (j)(1)(iii), and (k)(2)(ii) are revised, and paragraph (k)(2)(iii) is added;

u. paragraph (l)(2) is removed, and paragraphs (l)(3) through (l)(5) are redesignated as paragraphs (l)(2) through (l)(4), respectively;

v. paragraph (m) introductory text is revised.

The revisions and additions read as follows:

§ 274.12 Electronic Benefit Transfer issuance system approval standards.

* * * * *

(c) * * * (1) *EBT planning APD.* The State agency shall comply with the two-stage approval process for APDs in submitting an EBT system proposal to FNS for approval. The Planning APD shall contain the requirements specified under § 277.18(d)(1) of this chapter, including a brief letter of intent, planning budget, cost allocation plan, and schedule of activities and deliverables.

(2) * * *

(i) *Functional demonstration.* A functional demonstration of the functional requirements prescribed in paragraph (f) of this section in combination with the system components described by the approved System Design is recommended in order to identify and resolve any problems prior to acceptance testing. The Department reserves the right to participate in the Functional Demonstration if one is conducted.

(ii) * * *

(B) * * * FNS may require that any or all of these tests be repeated in instances where significant modifications are made to the system after these tests are initially completed or if problems that surfaced during initial testing warrant a retest;

* * * * *

(iii) * * * The State agency shall provide a separate report after the completion of the acceptance test only in instances where FNS is not present at the testing or when serious problems are uncovered during the testing that remain unresolved by the end of the test session. * * *

* * * * *

(4) *Pilot project reporting.* (i) The State agency is required to report to FNS all issues that arise during the pilot or shakedown period. Reports to FNS shall be provided as problems occur. In instances where the State agency must investigate the issue, FNS must receive the information no later than one month after completion of pilot operations.

* * * * *

(d) *Expansion requirements.* The pilot and expansion schedule must be delineated in the State agency's approved implementation plan. As part of the plan, the State agency must indicate a suitable pilot area to serve as the basis of the three-month analysis and reporting, however, expansion can occur simultaneously with pilot operation. Submission of an Advanced Planning Document Update to request FNS approval to implement and operate the EBT system in areas beyond the pilot area is only required in instances where there are substantial changes to the implementation plan. However, if significant problems arise during the pilot period or expansion, the Department can require that roll-out be suspended until such problems are resolved.

* * * * *

(f) * * *

(4) * * *

(vi) Ensure that retail store employees are trained in system operation prior to implementation. Retailer training shall be offered by the State agency and include the provision of appropriate written and program specific materials. Retailers have the option to waive instruction by the State agency if they desire. State agencies shall direct retailers to confirm in writing that they are waiving their option to training;

(vii) Provide on-line access to State EBT systems for compliance investigations. The State agency may be required to deploy administrative terminals to FNS Compliance Branch Area offices, Regional offices and Field

offices so that FNS compliance investigators, other appropriate FNS personnel and investigators from the Department's Office of Inspector General have access to the system in order to conduct investigations of program abuse and alleged violations;

(viii) Ensure that FNS compliance investigators and investigators from the Department's Office of Inspector General have access to EBT cards and accounts that are updated as necessary to conduct food stamp investigations.

(g) * * *

(3) * * *

(iii) Identify the food stamp household member's account number (the PAN) using a truncated number or a coded transaction number. * * *

* * * * *

(5) * * *

(i) The State agency shall permit food stamp households to select their Personal Identification Number (PIN). PIN assignment procedures shall be permitted in accordance with industry standards as long as PIN selection is available to clients if they so desire and clients are informed of this option.

(ii) In general, the State agency shall replace EBT cards within two business days following notice by the household to the State agency that the card has been lost or stolen. In cases where the State agency is using centralized card issuance, replacement can be extended to take place within up to five calendar days. In all instances, the State agency must ensure that clients have in hand an active card and PIN with benefits available on the card, within the time frame the State agency has identified for card replacement.

* * * * *

(10) * * *

(v) * * * This shall include the statement of non-discrimination found in Departmental Regulation 4300-3 (available from USDA, Office of Civil Rights, Room 326-W, Whitten Building, Washington, DC 20250). * * *

* * * * *

(h) * * *

(2) Authorized retailers shall not be required to pay costs essential to and directly attributable to EBT system operations as long as the equipment or services are provided by the State agency or its contractor and are utilized solely for the Food Stamp Program. In addition, if Food Stamp Program equipment is deployed under contract to the State agency, the State agency may, with USDA approval, share appropriate costs with retailers if the equipment is also utilized for commercial purposes. State agency may choose to charge retailers reasonable fees in the following circumstances:

(i) Cost for the replacement of lost, stolen or damaged equipment;

(ii) The cost of materials and supplies for POS terminals not provided by the State agency;

(iii) Telecommunication costs for all non-EBT use by retailers when lines are provided by the State agency. In addition, State agencies may remove phone lines from retailers in instances where there is significant misuse of the lines.

* * * * *

(4) * * *

(ii) * * *

(D) * * * State agencies may provide retailers with additional terminals beyond the number of lanes in a store at customer service booths or other locations if appropriate.

* * * * *

(i) * * *

(6) * * *

(i) The address of the office where a card can be returned if found or no longer in use should be printed on the card.

* * * * *

(j) * * *

(1) * * *

(iii) Initiating and accepting reimbursement from the appropriate U.S. Treasury account through the Automated Standard Application for Payment (ASAP) system or other payment process approved by FNS. At the option of FNS, the State agency may designate another entity as the initiator of reimbursement for food stamp redemptions provided the entity is acceptable to FNS and U.S. Treasury;

* * * * *

(k) * * *

(2) * * *

(ii) State agencies must provide retailer transaction data to FNS on a monthly basis. This data must be submitted in the specified format in accordance with the required schedule.

(iii) Data detailing by specified category the amount of food stamp benefits issued or returned through the EBT system shall be provided in a format and mechanism specified by FNS to the FNS Account Management Agent as the benefits become available to recipients. This data will be used to increase or decrease the food stamp EBT benefit funding authorization for the State's ASAP account.

* * * * *

(m) *Re-representation*. The State agency shall ensure that a manual purchase system is available for use during times when the EBT system is inaccessible. As an alternative to manual transactions, State agencies may allow retailers, at the retailer's option and liability, to perform

store-and-forward transactions when the system is down. The retailer would be able to forward the transaction to the host one time within 24 hours of when the transaction occurred. If the system is inoperable for more than a 24 hour period, the retailer would have 24 hours from when the system resumes operation. In instances where the store-and-forward transaction is denied due to insufficient funds, the retailer could re-present for the balance in the account. This transaction could not be re-presented in future months.

* * * * *

Dated: July 2, 2001.

Eric M. Bost,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 01-17212 Filed 7-11-01; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR PART 20

RIN 3150-AG25

Revision of the Skin Dose Limit

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to delete a reference to averaging over 1 square centimeter from its definition of shallow-dose equivalent (SDE). In addition, the proposed rule would change the method of calculating SDEs by specifying that the assigned SDE must be the dose averaged over the 10 square centimeters of skin receiving the highest exposure. A result of this rulemaking is to make the skin dose limit less restrictive when small areas of skin are irradiated and to address skin and extremity doses from all source geometries under a single limit. This change would permit measuring or calculating SDEs from discrete radioactive particles (DRPs) on or off the skin, from very small areas (< 1.0 square centimeters) of skin contamination, and from any other source of SDE by averaging the measured or calculated dose over the most highly exposed, contiguous 10 square centimeters for comparison to the skin dose limit of 50 rem (0.5 Sv).

DATES: Submit comments by September 25, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to