

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 274, 276, 278, 279, and 280

RIN 0584-AD28

#### Food Stamp Program, Reauthorization: Electronic Benefit Transfer (EBT) and Retail Food Stores Provisions of the Food Stamp Reauthorization Act of 2002

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

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to revise Food Stamp Program regulations pertaining to the standards for approval of Electronic Benefits Transfer (EBT) systems, the participation of retail food stores and wholesale food concerns, and the State agency liabilities and federal sanctions.

These proposed changes to the Food Stamp Program's regulations are put forth to implement sections 4108, 4110, 4113 and 4117 of the Food Stamp Reauthorization Act of 2002.

These changes will allow the U.S. Department of Agriculture (Department) to use delivery methods other than certified mail when notifying retailers or State agencies of adverse action; permit the Department to approve alternate methods of issuing food stamp benefits during disasters; eliminate the requirement that Federal costs for EBT systems cannot exceed the costs of the paper systems they replace; and allow group homes and institutions to redeem EBT benefits directly through banks rather than going through authorized wholesalers or other retailers.

**DATES:** The Department must receive comments on or before July 7, 2003 to assure consideration.

**ADDRESSES:** Submit comments to Lizbeth Silberman, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia,

22302. You may also datafax comments to Ms. Silberman's attention at (703) 305-1863, or e-mail them to her at [lizabeth.silberman@fns.usda.gov](mailto:lizabeth.silberman@fns.usda.gov). The Department will open all written comments 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 403.

**FOR FURTHER INFORMATION CONTACT:** Address any questions regarding this rulemaking to Ms. Silberman at the above address or by telephone at (703) 305-2517.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

##### Executive Order 12372

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

##### Executive Order 13132, Federalism

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. The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive order, a federalism summary impact statement is not required.

##### Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the

Regulatory Flexibility Act (5 U.S.C. 601-612). Roberto Salazar, Administrator, Food and Nutrition Service, has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Departmental Field Offices, retailers participating or applying to participate in the Food Stamp Program, State agencies that distribute food stamp benefits and group living homes are the entities affected by this change.

##### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), this proposed rule contains information collections that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting for public comment the changes in the information collection burden that would result from adoption of the proposals in the rule.

Comments on this proposed rule must be received by July 7, 2003.

Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Lauren Wittenberg, Desk Officer for FNS, Washington, DC, 20503. Please also send a copy of your comments to Lizbeth Silberman, 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 Ms. Silberman 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 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.

*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, (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 the design, development and operation of an EBT system must submit a written plan of action called an Advance Planning Document (APD) to the Food and Nutrition Service (FNS) for approval.

In this proposed rulemaking, we are revising Food Stamp Program rules affecting the standards for approval and operation of Food Stamp EBT systems. One 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 section 4110 of the 2002 Farm Bill, which eliminates the cost neutrality requirements.

With provisions in this regulation, we are proposing to eliminate or reduce the reporting requirements as follows: State agencies will no longer be required to complete a cost neutrality assessment of EBT system design, development and operation costs in comparison to the paper system that has been replaced. This assessment was subject to FNS approval as part of the State's APD.

As currently approved by OMB, the estimated time to gather information and complete an EBT APD is 35 hours per respondent. The record-keeping burden includes maintaining a copy of the system design specifications, the APD submission, approvals and APD updates. A total of 49 States have operational EBT systems, and we expect 53 State agencies will be operational 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 350 hours.

*Estimates of Burden:* We estimate the provisions of this proposed rule will reduce the amount of time each State agency spends on an APD for EBT by 5 hours, for an overall decrease in burden hours of 50 annually, bringing the total

time down to 30 hours per respondent or 300 hours per year overall.

*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:* 300 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 except as specified in the **DATES** section of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

#### **Public Law 104–4**

Unfunded Mandate Reform Act of 1995 (UMRA) Title II of UMRA 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) for State, local, and 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.

#### **Background**

In this rule, the Department proposes the following: to revise food stamp regulations affecting the delivery of adverse action notices to retailers and State agencies; to allow alternative issuance systems in disasters; to

eliminate the requirement for cost neutrality for EBT systems; and, to permit redemption of EBT benefits through group living facilities.

#### **Mailing to Retailers and State Agencies**

The Department proposes a revision to regulations at 7 CFR 276.7(b), 278.1(k), 278.1(l)(2), 278.6(o), 278.7(b)(2), 278.7(f), 279.8(e), and, 279.10(b) to eliminate the requirement that the Department send notices of adverse actions to retailers and State agencies using certified mail. Effective May 13, 2002, section 4117 of the Food Stamp Reauthorization Act of 2002 (FSRA) amended section (14)(a)(2) of the Food Stamp Act of 1977 (Food Stamp Act) (7 U.S.C. 2023 (a)(2)) to authorize the delivery of such notices in any form the Secretary determines will provide evidence of the delivery.

Whenever the Department denies a retailer authorization to participate in the Food Stamp Program or prepares to withdraw or disqualify an authorized food stamp retailer for violating program regulations or asserts a claim against the State agency, the FNS sends notice of this adverse action directly to the retailer or State agency. Prior to the enactment of the FSRA, section 14(a)(2) of the Food Stamp Act of 1977 stated, “such notice must be delivered by certified mail or personal service”. Given the various methods of delivery that have become available since the inception of the Food Stamp Program, the Department wants to expand its methods of delivery to include other mailing services, including but not limited to Federal Express, UPS, Emery, and similar services. Thus, to reflect the amendments made by the recently enacted FSRA we propose to amend the program regulations to allow use of delivery methods other than certified mail when mailing determination letters to retailers, or notices to retail food stores, wholesale food concerns and claim notices to State agencies, as long as the method provides evidence of delivery. Although the statutory amendment was directed specifically at notices of adverse action to retail food stores and wholesale food concerns, the Department believes that similar notification would be appropriate for other types of official notices provided under current regulations. Thus, we are proposing to amend regulations at: 7 CFR 276.6(b) regarding claims forfeiture of bonds, 278.7(f) regarding denial of claims brought by authorized firms against FNS; 279.8(e) regarding determinations of review officers; and 279.10(b) regarding the service of a summons and complaint.

### *Alternative Issuance Systems In Disasters*

This section proposes a revision to food stamp regulations at 7 CFR 280.1 for emergency food assistance for victims of disasters. By terms of section 4108 of the FSRA, which amended section (5)(h)(3)(B) of the Food Stamp (7 U.S.C. 2014(h)(3)(B)), the Department received authority to approve alternate methods for issuing food stamp benefits during disasters when reliance on EBT systems is impracticable. This proposal would amend the regulation to reflect this new authority.

Consistent with the intent of the statutory amendment, as expressed in legislative history, the Department would only approve alternate issuance, such as cash, as a last resort, depending on the specific circumstances of the disaster. In disaster situations, the Department will consult with State agencies to determine available means of benefit delivery. (H.R. Conf. Rep. No. 107-424, 107th Cong. 2nd Sess. P. 264 (2002).) EBT is always the preferred method of food stamp benefit delivery. It provides assistance that is earmarked for its intended purpose and is much more difficult to divert. Furthermore, State agencies typically have disaster plans in place under their EBT systems with contingencies for events of this nature. Therefore, it is unlikely a State would ever need to resort to any alternate form of issuance. However, in some extreme circumstances, when EBT is impracticable and the system cannot be restored in a timely fashion, an appropriate alternative delivery method, such as cash, may be permitted. The use of coupons is no longer practicable except in those few States that still issue some or all benefits in the form of coupons. Because EBT systems will be fully implemented by the end of 2004, the cost of printing coupons and maintaining a redemption system for disaster use only would be prohibitive.

### *Cost Neutrality For EBT Systems*

This section proposes to eliminate the requirement at 7 CFR 274.12(e) that Federal costs of EBT systems not exceed the costs of the paper systems they replace, in accordance with section 4110 of the FSRA, which eliminated the statutory requirement that the Secretary include a cost neutrality standard as a condition of approval of State EBT systems.

The elimination of the cost neutrality requirement does not remove the requirement for State agencies to submit Implementation Advanced Planning Documents (IAPDs) to the Department for approval prior to implementing, or

make upgrades or changes to their EBT systems as determined necessary for approval.

### *Redemption of Benefits Through Group Living Arrangements*

This section proposes to revise food stamp regulations regarding participation of group living facilities. By terms of section 4113 of the FSRA, “a center, organization, institution, shelter, group living arrangement and establishment” that are among those defined as retail food stores under section 3(k)(2) of the Food Stamp Act (7 U.S.C. 2012(k)(2)), “may now be authorized to redeem benefits directly through financial institutions in areas where EBT has been implemented.”

The four types of entities affected by this change are drug addict and alcoholic treatment and rehabilitation programs; group living arrangements; shelters for battered women and children; and public or private nonprofit homeless meal providers. Prior to FSRA, such facilities could only redeem benefits through authorized wholesalers and other retailers under section 10 of the Food Stamp Act (7 U.S.C. 2019). Under the coupon system, this was not an unduly cumbersome requirement.

The implementation of EBT changed the dynamic for redeeming food stamp benefits, making it more difficult for group homes to redeem residents’ food stamp benefits. The logistics were impractical for many group homes and recipients. This prompted the Department to approve demonstration projects, specifically permitting group homes to deposit benefits directly into their bank accounts by providing point-of-sale (POS) devices or to process manual vouchers. Facilities then deposit food stamp benefits into their financial institution accounts without involving wholesale food concerns in the process. These demonstration projects mirror the regulatory changes in this proposed rule.

In these situations, the facility functions like most authorized retailers, conducting EBT transactions with its residents, deducting benefits from their cards and depositing them into the facility’s account. The facility can then purchase eligible foods at any authorized retailer with funds drawn directly from its own account. This makes it easier for those recipients residing in the authorized facilities to use their benefits in an EBT environment. Therefore, the Department is proposing that group home facilities be equipped with POS devices in a manner that meets the requirements established for retailers. These facilities

would redeem benefits using the POS device, and then purchase eligible food items.

Equipping of these facilities would be in accordance with the EBT regulations at 7 CFR 274.12. State agencies approved to operate a demonstration project for this function may continue operations without further action and are no longer bound by the survey requirements of a demonstration project.

### *Implementation*

The Department is proposing that the provisions of this rulemaking be effective no later than 30 days after publication of the final rule.

### **List of Subjects**

#### *7 CFR Part 274*

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

#### *7 CFR Part 276*

Administrative practice and procedure, Food stamps, Fraud, State agency liabilities and federal sanctions.

#### *7 CFR Part 278*

Food stamps, Grant programs—social programs, Penalties.

#### *7 CFR Part 279*

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

#### *7 CFR Part 280*

Disaster assistance, Food stamps, Grant programs—social programs.

Accordingly, 7 CFR parts 274, 276, 278, 279, and 280 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 274, 276, 278, 279, and 280 continue to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

### **PART 274—ISSUANCE AND USE OF COUPONS**

1. In § 274.10, paragraphs (f)(1), (f)(2) and (f)(3) are revised to read as follows:

#### **§ 274.10 Use of identification cards and redemption of coupons by eligible households.**

\* \* \* \* \*

(f) \* \* \*

(1) Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment rehabilitation program may use food stamp benefits to purchase food prepared for them during the course of such program by a private

nonprofit organization or institution or publicly operated community mental health center which is authorized by FNS to redeem benefits in accordance with § 278.1 and § 278.2(g) of this chapter.

(2) Eligible residents of a group living arrangement may use food stamp benefits issued to them to purchase meals prepared especially for them at a group living arrangement which is authorized by FNS to redeem benefits in accordance with § 278.1 and § 278.2(g) of this chapter.

(3) Residents of shelters for battered women and children as defined in § 278.1(g) of this chapter may use their food stamp benefits to purchase meals prepared especially for them at a shelter which is authorized by FNS to redeem benefits in accordance with § 278.1 and § 278.2(g) of this chapter.

\* \* \* \* \*

#### § 274.12 [Amended]

2. In § 274.12:

a. Paragraph (e) is removed, and paragraphs (f) through (n) are redesignated as paragraphs (e) through (m), respectively;

b. Newly redesignated paragraph (k)(5) is removed.

#### PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

1. In § 276.7, paragraph (b) is revised to read as follows:

#### § 276.7 Administrative review process.

(b) *Notice of claim.* When asserting a claim against a State agency, FNS shall provide the notice to the State agency using any delivery method as long as the method provides evidence of the delivery.

\* \* \* \* \*

#### PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

1. In § 278.1:

a. The first sentence in paragraph (e) is amended by removing the words “wishing to redeem through wholesalers food stamps received from or on behalf of their participants”;

b. The first sentence in paragraph (f) is amended by removing the words “coupons directly through wholesalers” and adding in their place the word “benefits”;

c. The first sentence in paragraph (g) is amended by removing the words “coupons directly through wholesalers” and adding in their place the word “benefits”;

d. The second sentence in paragraph (k)(7) is revised as set forth below;

e. The first sentence in paragraph (l)(2) is amended by removing the words “certified mail or personal service” and adding in their place the words “using any delivery method as long as the method provides evidence of delivery.”

#### § 278.1 Approval of retail food stores and wholesale food concerns.

\* \* \* \* \*

(k) \* \* \*

(7) \* \* \* The FNS officer in charge shall issue a notice to the firm (using any delivery method that provides evidence of delivery) to inform the firm of any authorization denial and advise the firm that it may request review of that determination.

\* \* \* \* \*

2. In § 278.2, the text of paragraph (g) is redesignated as paragraph (g)(1), and a new paragraph (g)(2) is added to read as follows:

#### § 278.2 Participation of retail food stores.

\* \* \* \* \*

(g) \* \* \*

(2) Notwithstanding paragraph (g)(1) of this section, authorized drug addict and alcoholic treatment and rehabilitation programs, group living arrangements, shelters for battered women and children, and public or private nonprofit homeless meal providers for homeless food stamp households shall redeem EBT benefits directly through an insured financial institution in areas where an Electronic Benefit Transfer (EBT) system has been implemented.

\* \* \* \* \*

#### § 278.6 [Amended]

3. In § 278.6, the first sentence in paragraph (o) is amended by removing the words “certified mail or personal service” and adding in their place the words “any method that provides evidence of delivery”.

#### § 278.7 [Amended]

4. In § 278.7:

a. The first sentence in paragraph (b)(2) is amended by removing the words “certified mail-return receipt requested” and adding in their place the words “using any delivery method as long as the method provides evidence of delivery”;

b. The first sentence in paragraph (f) is amended by removing the words “certified mail or personal service” and adding in their place the words “using any delivery method as long as the method provides evidence of delivery”.

#### PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALE

#### § 279.8 [Amended]

1. In § 279.8, the first sentence in paragraph (e) is amended by removing the words “certified mail” and adding in their place the words “using any delivery method as long as the method provides evidence of delivery”.

#### § 279.10 [Amended]

2. In § 279.10, the last sentence in paragraph (b) is amended by removing the words “registered or certified mail” and adding in their place the words “using any delivery method as long as the method provides evidence of delivery”.

#### PART 280—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS

1. § 280.1 is amended by adding a sentence to the end of the section to read as follows:

#### § 280.1 Interim disaster procedures.

\* \* \* The Secretary may also approve alternate methods for issuing food stamp benefits during a disaster when reliance on Electronic Benefits Transfer (EBT) systems is impracticable.

Dated: April 30, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03-11135 Filed 5-5-03; 8:45 am]

BILLING CODE 3410-30-P

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Food and Drug Administration

#### 21 CFR Part 101

[Docket Nos. 91N-384H and 96P-0500]

RIN 0910-AC49

#### Food Labeling; Nutrient Content Claims, Definition of Sodium Levels for the Term “Healthy”; Extension of Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending to July 5, 2003, the comment period for a proposed rule published in the **Federal Register** of February 20, 2003. The proposed rule would amend the regulation for sodium levels for foods that use the nutrient content claim