

Rules and Regulations

Federal Register

Vol. 76, No. 92

Thursday, May 12, 2011

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

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 272

RIN 0584-AD89

Supplemental Nutrition Assistance Program: Civil Rights Protections for SNAP Households

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service (FNS) is amending Supplemental Nutrition Assistance Program (SNAP) regulations that secure civil rights protections for SNAP households and applicants. The nondiscretionary change complies with an amendment made to the Food, Conservation, and Energy Act of 2008 which specifically enumerates four statutory protections that must be complied with by State agencies in administering SNAP. This nondiscretionary change to the regulations is not expected to have an implementation impact on SNAP State agencies, as they have been subject to such statutes for several years.

DATES: *Effective Date:* This is effective June 13, 2011.

Implementation Date: State agencies must implement the provisions of this rule no later than June 13, 2011.

FOR FURTHER INFORMATION CONTACT: Jane Duffield, Chief, State Administration Branch, Supplemental Nutrition Assistance Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 818, Alexandria, VA 22302, 703-605-4385, and Jane.Duffield@fns.usda.gov.

SUPPLEMENTARY INFORMATION:

Procedural Matters

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been designated non-significant under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601-612). Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

This final rule does not impose any additional or unnecessary and disproportionately burdensome demands upon small governmental jurisdictions with limited resources.

Unfunded Mandates Reform Act

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 by State, local or tribal governments, in the aggregate, or 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 most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final 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, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Supplemental Nutrition Assistance Program (SNAP) is listed in the Catalog of Federal Domestic Assistance under 10.551. For the reasons set forth in the final rule at 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), SNAP is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

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 13121.

This rulemaking is not expected to have an impact on State agencies. State agencies have had to comply with the Americans with Disabilities Act (ADA) (42 U.S.C. 12101) provisions ever since enactment in 1990, over 20 years ago. Current provisions in 7 CFR 272.6 prohibiting discrimination on the basis of handicap has been in effect for over 10 years. Further, State agencies have long had to comply with SNAP regulations that prohibit discrimination on the basis of disability. Accordingly, we anticipate that this rulemaking will not require new State agency implementation action. Therefore, there are no additional requirements on State and local agencies requiring prior consultation with State officials. State agencies will need to continue to consider any accessibility issues that may arise regarding disabled participants or applicants before making changes to SNAP administration or launching any new initiative. State agencies should continue to self-evaluate their administration of SNAP to ensure service to all eligible people with disabilities.

Executive Order 12988

This final 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 and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

This rule will not in any way limit or reduce the ability of protected classes of individuals. Executive Order 12250 delegates the approval of rules based on the Civil Rights Act to the Attorney General. This rule has been reviewed by the Department of Justice (DOJ). There is no pertinent information as to the result of the DOJ review.

Section 4117 of the Food, Conservation, and Energy Act of 2008 (FCEA) amended Section 11(c) of the Food and Nutrition Act of 2008, 7 U.S.C. 202(c), to provide that the administration of SNAP by a State agency shall be consistent with the rights of households under the Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, and title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* As amended, Section 11(c) of the Food and Nutrition Act provides statutory clarification that civil rights protections provided in the specified statutes apply to persons with disabilities who seek to participate in SNAP.

The SNAP administration by State agencies is already subject to all four of these civil rights laws. SNAP regulations at 7 CFR 272.6(a) specify three of the four civil rights laws. However, 7 CFR 272.6(a) does not currently include the Americans with Disabilities Act of 1990. Current rules at 7 CFR 272.6(a) do prohibit discrimination in the certification of households, the issuance of benefits, the conduct of fair hearings, or the conduct of any program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. USDA has also promulgated general, department-wide civil rights regulations at 7 CFR 15b, which also

protect the civil rights of persons with disabilities.

The Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101) was signed into law on July 26, 1990. Title II of the ADA prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public by public entities including State and local governments. It applies to all State and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of State and local governments.

The ADA requires a public entity to make reasonable accommodations to allow participants with disabilities to participate in the program. If the public entity can demonstrate that a particular modification would fundamentally alter the nature of its service, program, or activity, it is not required to make that modification. Public entities do not necessarily have to make each of their existing facilities accessible. They may provide program accessibility by a number of methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate accessible sites. An example of reasonable accommodations may include access ramps for people who use wheelchairs to access buildings.

Since the inception of the program, SNAP State agencies have always served the disabled. In FY 2007, SNAP served a monthly average of 2.8 million households containing disabled nonelderly people. Households with disabled nonelderly people represented 24 percent of all SNAP households and received an average monthly SNAP benefit of \$148. About 57 percent of SNAP households with disabled nonelderly people were single-person households.

Households may file SNAP applications by submitting the form to the SNAP office in person, through an authorized representative, by fax or other electronic transmission, by mail, or by completing an on-line electronic application in States where available. As of September 2010, a total of 26 States allow applicants to apply online and additional States are working on systems that will allow applicants to apply by computer.

Communication between the caseworker and the applicant is an important part of the SNAP application process. The State agency shall provide each household at the time of application for certification and recertification with a notice that informs

the household of the verification requirements the household must meet as part of the application process. The notice shall also inform the household of the State agency's responsibility to assist the household in obtaining required verification provided that the household is cooperating with the State agency. As part of the application process, the household completes and signs the application form, the household or its authorized representative is interviewed by the State agency, and certain information on the application must be verified to determine eligibility.

Examples of reasonable accommodation in the application process may include qualified sign language interpreters and written materials for individuals with hearing impairments. Other examples may include qualified readers and Brailled or large print materials for individuals with vision impairments.

SNAP requires an interview for every initial certification and for recertification, at least once every 12 months. The interview would be face-to-face unless FNS waives the requirement to document the hardship to the household, or the State agency determines individually that the face-to-face aspect would be a hardship under 7 CFR 273.2(e)(2). FNS has not established strict guidelines about what this hardship would be, preferring to allow State agencies a degree of flexibility in determining household hardship situations. As provided in the regulations, these situations include, but are not limited to, illness, transportation difficulties, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in the in-office interview. The State agency must document the case file to show when a waiver was granted because of hardship. The State agency may opt to waive the face-to-face interview in favor of a telephone interview to all households which have no earned income and all members of the household are elderly or disabled. Regardless of any approved waivers, the State agency must grant a face-to-face interview to any household that requests one. The State agency has the option of conducting a telephone interview or a home visit that is scheduled in advance with the household if the office interview is waived.

SNAP benefits are issued in the form of electronic benefit transfer (EBT), which is essentially a system that uses a SNAP debit card for use in authorized

retail food stores to purchase eligible food for the household's consumption. Written materials and/or other information, including the specific rights to benefits in an EBT system, must be provided for households with disabilities. State agencies are required to provide training for all EBT users and especially for persons with disabilities. In addition, in accordance with SNAP regulations at 7 CFR 274.8(b)(vi)(4)(G), EBT systems used by State agencies are required to provide reasonable accommodation for the needs of households with disabilities in keeping with the ADA. With the household's permission, an authorized household representative may use the household's EBT card to purchase eligible food for the household.

As the first step, FNS encourages clients with disabilities to share any accessibility concerns on applying for and receiving SNAP benefits they may have with the State agencies. The State agency is in the best position to consider the client's concern and make timely and reasonable accommodations to serve the household. For example while the face-to-face interview may be conducted at the local SNAP office, it may also be conducted at another mutually acceptable location, including a household's residence. If the household's accessibility concerns are not promptly addressed, individuals may file a written complaint with the Secretary or the Administrator, FNS, Washington, DC 20250. FNS is committed to ensuring that all eligible persons can participate in SNAP.

FNS wishes to note that there are differences in the definitions for disability and disabled between the ADA and SNAP regulations and that they are used for different purposes. Under the ADA, a *disability* is defined as a physical or mental impairment that substantially limits one or more of an individual's major life activities, having a record of such impairment, or being regarded as having such an impairment. The ADA disability definition is used to identify qualified individuals with disabilities which would then be followed by any necessary and reasonable modification of physical barriers or processes that may have the unintended impact of inadvertently screening out people with disabilities.

However, under SNAP regulations, *disabled* is defined as a household member who receives disability benefits under the Social Security Act or receives certain other disability payments specified in 7 CFR 271.2. The SNAP *disabled* definition is used in making the SNAP eligibility determination and benefit calculation.

Specifically, the elderly and disabled are potentially eligible for higher benefits in SNAP that are not available to the nonelderly and the non-disabled with the same income and excess medical expenses. SNAP regulations at 7 CFR 273.9(d)(3) provide for the deduction from income of the excess medical deduction which would be that portion of medical expenses exceeding \$35 per month. This deduction is made for the calculation of the household's income on which the SNAP benefit will be based. This deduction provides additional assistance to the elderly or disabled who have higher medical bills and thus would have less household funds available to purchase food and pay for other necessities. The lower income calculation based on the higher deduction for higher medical costs produces higher SNAP benefits for the elderly or disabled.

The eligibility and benefit rules for SNAP also contain other provisions that benefit the disabled but do not apply to other households. These include but are not limited to allowing disabled recipients who receive SSI to be categorically eligible for SNAP, imposing no cap on the shelter deduction for the disabled, and imposing no gross income limit for the disabled. The disabled who cannot prepare their own meals can, under certain circumstances, be a separate household, along with a spouse.

For purposes of making reasonable accommodations to allow participants with disabilities to apply for the program and receive program services, State agencies are to use the ADA *disability* definition. However, the SNAP *disabled* definition in 7 CFR 271.2 will continue to apply to the eligibility and benefit determination for SNAP applicants.

FNS wishes to point out that in directing State agencies to use the ADA disability definition for purposes of making reasonable accommodation, it is not our intent to diminish other State agency procedures and initiatives to serve applicants, including the disabled. For example, the State agency is not limited to the ADA disability definition when considering hardship for waiving the face-to-face interview. A State agency may continue to waive the face-to-face interview for a reason that is not included in the ADA disability definition. Thus, the use of the ADA definition of disability for purposes of making a decision on reasonable accommodation is not intended to reduce in any way the services to disabled or other households that the State agencies now routinely provide under current FNS regulations,

including services in hardship situations determined under 7 CFR 273.2(e)(2).

Outreach and Communication to Minorities, Women, and Persons With Disabilities

State agencies receiving financial assistance under the SNAP program must provide to FNS a written assurance that SNAP will be operated in compliance with USDA and FNS nondiscrimination laws, regulations, instructions, policies, and guidelines. The FNS Regional Offices (RO) obtain written assurance of nondiscrimination compliance from each State agency and ensure that State agencies are obtaining assurance from local agencies or other sub-recipients that receive Federal financial assistance for compliance. Civil rights assurance is governed by SNAP regulations at 7 CFR 272.6(a).

Under FNS Instruction 113-1, Part XI, civil rights training is required so that all involved in all levels of administration of programs that received Federal financial assistance understand civil rights related laws, regulations, procedures and directives. This training is part of the technical assistance to the State agencies, and the FNS ROs are responsible for providing such training. Specific training includes: Collection and use of data; effective public notification systems; complaint procedures; compliance review techniques; resolution of noncompliance; requirements for reasonable accommodation of persons with disabilities; requirements for language assistance; conflict resolution; and customer service.

FNS also requires each RO Office of Civil Rights to conduct on-going civil rights compliance reviews in its respective States. Under 7 CFR part 275, the State agencies are also required to conduct a civil rights review annually for large project areas, every 2 years for medium project areas, and 3 years for small project areas. There are no additional outreach efforts regarding this final rule. Removing the word "handicap" and adding in its place the word "disability" will not have a disadvantageous effect on the protected groups.

Summary and Conclusion

FNS has reviewed this final rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that there is no way to

soften the effect on any of the protected classes regarding those provisions of the rule. Removing the word “handicap” and adding in its place the word “disability” will not affect the protected groups, but is technical in nature. The term “disability” is consistent with the statutory mandate of the ADA.

Executive Order 13175

E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. In late 2010 and early 2011, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the impact of this rule on the tribe or Indian Tribal governments, or whether this rule may preempt Tribal law. Reports from these consultations will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency 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. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act of 2002, 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.

Implementation

In accordance with Section 11(c) of the Food and Nutrition Act of 2008, as amended by Section 4117 of the FCEA, the Department is amending 7 CFR 272.6(a) specifically to provide that State agency administration of the program must be consistent with the Americans with Disabilities Act (42 U.S.C. 12101). The Department is also making a change in terminology to update a section of SNAP regulations. The current provision in 7 CFR 272.6 prohibits discrimination on the basis of “handicap.” The prohibition of discrimination on the basis of handicap originated in the Rehabilitation Act of 1973, which preceded enactment of the ADA. However, the ADA uses the term “disability” and most SNAP regulations use the term “disabled.” Accordingly, FNS is amending 7 CFR 272.6 to replace the term “handicap” as a prohibited basis for discrimination with the term “disability” to conform to the terminology in the ADA. We are making a similar change in terminology in 7 CFR 271.6(a), which provides that civil rights complaints under all the listed bases are to be handled in accordance with 7 CFR 272.6.

Finally, the Department is making one additional change in terminology in this section of the regulations. The current 7 CFR 272.6 refers to the issuance of “coupons” as one program activity. Section 825 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 amended Section 7(i) of what is now the Food and Nutrition Act of 2008, 7 U.S.C. 2016(i), to mandate that all States must convert from paper coupon systems to an EBT system. By fiscal year 2004, all State agencies had converted to EBT. Accordingly, the Department is using this opportunity to amend 7 CFR 272.6(a) where it refers to the issuance of coupons to replace the term “coupons” with the term “benefits.”

This rule is effective June 13, 2011. The ADA requirements were effective by law on January 26, 1992. The current provision in 7 CFR 272.6 prohibiting discrimination on the basis of handicap has been in effect for over 10 years. Accordingly, this rule reflects the statutory provision and the terminology change consistent with the ADA.

List of Subjects

7 CFR Part 271

Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 272

Alaska, Civil rights, Claims, Grant programs—social programs, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

For the reasons set forth in the preamble, 7 CFR parts 271 and 272 are amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

- 1. The authority citation for part 271 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

§ 271.6 [Amended]

- 2. In § 271.6, in paragraph (a)(1), the second sentence is amended by removing the word “handicap” and adding in its place the word “disability”.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

- 3. The authority citation for part 272.1 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

§ 272.6 [Amended]

- 4. In § 272.6, paragraph (a) is amended by removing the word “handicap” in the first sentence and adding in its place the word “disability” and in the second sentence by adding the words “Americans with Disabilities Act of 1990 (42 U.S.C. 12101)” immediately following the words “the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504)”.

Dated: May 3, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–11419 Filed 5–11–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

19 CFR Part 4

[CBP Dec. 11–10]

Technical Corrections To Remove Obsolete References to Non-Automated Carriers From Electronic Cargo Manifest Regulations and to Update Terminology

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations concerning the