

# 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 272 and 273

RIN 0584-AE01

#### Clarification of Eligibility of Fleeing Felons

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Proposed rule.

**SUMMARY:** Section 6(k) of the Food and Nutrition Act of 2008 (“the Act”) provides that certain individuals are not eligible for Supplemental Nutrition Assistance Program (SNAP) benefits. Such individuals include an individual fleeing to avoid prosecution, custody or confinement after conviction for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing (or a high misdemeanor in New Jersey) or is violating a condition of probation or parole under Federal or State law. Section 4112 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, amended Section 6(k) of the Act to require the Secretary of Agriculture to define the terms “fleeing” and “actively seeking” to ensure State agencies use consistent procedures to disqualify individuals. This rule proposes to define the terms “fleeing” and “actively seeking” and to establish procedures State agencies are to use in determining fleeing felon status. This rule also proposes criteria to identify a parole violator, verification procedures to establish an individual’s status, and time frames for disqualifying an individual determined to be a fleeing felon or a parole violator.

**DATES:** Comments must be received on or before October 18, 2011 to be assured of consideration.

**ADDRESSES:** FNS invites interested persons to submit comments on this proposed rule. Comments may be

submitted by one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Send comments to Angela Kline, FNS, Program Development Division, SNAP, FNS, USDA, Room 812, 3101 Park Center Drive, Alexandria, Virginia 22302.

- All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Angela Kline, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2495.

#### Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193 (PRWORA) amended Section 6 of the Food Stamp Act of 1977 (now entitled The Food and Nutrition Act of 2008) (the Act) to disqualify fleeing felons from SNAP. To be disqualified under the fleeing felon provisions of PRWORA, an individual must be either: fleeing to avoid prosecution, custody or confinement after conviction for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing (or a high misdemeanor in New Jersey); or violating a condition of probation or parole imposed under Federal or State law. The intent of the law was to prohibit individuals who were intentionally fleeing to avoid prosecution or imprisonment from receiving SNAP benefits and to aid law enforcement officials actively seeking to apprehend those fleeing to avoid prosecution or custody. The disqualification provisions were codified in the SNAP regulations on January 17, 2001 at 66 FR 4438. For simplicity, throughout the balance of this preamble we will use the term

felony to encompass both felonies and New Jersey’s high misdemeanors.

The current regulations do not define “fleeing felon” or “probation or parole violation” and do not prescribe specific procedures for verifying or the time frames for denying and/or terminating individuals identified as either a fleeing felon or a parole violator. As a result, State agencies have not uniformly administered these provisions. Some State agencies rely solely on computer data matches to determine if an individual is fleeing or violating a condition of probation or parole. Other State agencies work directly with law enforcement officials prior to imposing a fleeing felon disqualification. Still others put the burden of proof of fleeing felon status on the individual in question, which may create a burden to program access for those who have little or no resources to gather the information needed, particularly if the felony record is in another State.

In addition, there is no centralized, nationwide law enforcement database or data match system that States can access to verify whether an individual is a fleeing felon. Although the FBI’s National Crime Information Center (NCIC) is the only Federal database system that compiles Federal, State, and local warrant information, the NCIC may contain only a fraction of local and State warrants issued across the nation. According to the Government Accountability Office’s (GAO) September 2002 report on strengthening the implementation of the fleeing felon provisions, the NCIC data base contained only approximately 30 percent of State and local warrants in August 2000. Affected SNAP recipients and program advocates have expressed concerns that data match systems are unreliable as the information within the systems may not be accurate or current. For example, a data match may show there is an outstanding or active warrant, but may not specify whether the warrant is for a felony or a misdemeanor. In cases where there are similar names, aliases, or stolen identities, the outstanding or active warrant may not belong to the SNAP recipient. Because of the difficulty in establishing whether an individual is actually a fleeing felon, there are anecdotal statements that State agencies have erroneously denied or terminated benefits based solely on outdated,

inaccurate, or incomplete information obtained from a data match system.

Finally, cooperation between State agencies and law enforcement agencies vary widely by jurisdiction and organizational structure. Some law enforcement agencies may allow a State agency to verify an individual's felon status with a simple phone call whereas other law enforcement agencies may require a more formal, written request detailing the specifics needed to determine eligibility for SNAP. If the felony occurred in a State where the recipient no longer resides, it may be even more difficult and time-consuming for a State agency to obtain information needed from law enforcement to determine if the individual is a fleeing felon.

In an effort to enforce the fleeing felon provisions, a law enforcement initiative, Operation Talon, was established by the USDA Office of the Inspector General (OIG) with FNS concurrence on December 18, 1997. Information from law enforcement agencies was matched with SNAP (Food Stamp Program at the time of Operation Talon initiation) caseload data to detect and apprehend individuals who were fleeing felons. FNS issued a memo in April 1998, providing that fleeing felon status was typically determined by the existence of an outstanding warrant for an individual's arrest and the individual is assumed to be fleeing as of the date the warrant is issued. The memo encouraged States and local agencies to work with law enforcement agencies to ascertain how State law defines fleeing felon and parole/probation violators. The memo also clarified that State agencies must resolve questionable information pursuant to 7 CFR 273.2 when computer matches indicated that an individual might be a fleeing felon or parole/probation violator. In conjunction with Operation Talon, FNS issued policy on November 9, 2001 to address what constitutes "fleeing" that stated "Even though a fleeing felon is usually determined by the existence of an outstanding warrant for the individual's arrest and the individual is assumed to be fleeing as of the date the warrant is issued, this may vary from State to State. Therefore, we encourage the State and local SNAP office to work with State and local law enforcement agencies to ascertain how State law defines fleeing felon and parole/probation violators." The memorandum also encouraged State agencies to give the individual an opportunity to submit documentation that the warrant has been Satisfied. Most recently, FNS has notified State agencies that this proposed rulemaking will clarify client

rights and responsibilities and state administrative procedures. In developing proposed definitions for "fleeing" and "actively seeking," we took into consideration the legislative history, from the debate on the Conference report for H.R. 2419, which later became the FCEA. As recorded on page H3815 of the Congressional Record, on May 14, 2008, Representative Baca expressed concern that innocent people have been ensnared in the disqualification provision and denied benefits in an inappropriate way. According to his statement, the provision has disqualified innocent people who had their identities stolen, or who have outstanding warrants for minor infractions that are many years old and where the police have no interest in apprehending and prosecuting the case. According to Senator Harkin's floor statement, 154 Congressional Record S4752 (May 22, 2008), there is no public purpose served by denying food assistance to individuals whose offense were so minor or so long ago that law enforcement has no interest in pursuing them. He further stated that inadequate guidance to the States has resulted in exactly that and that Section 4112 would correct this by making the Department clarify the terms used and make sure that States are not incorrectly disqualifying needy people not being actively pursued by law enforcement authorities.

Section 202 of PRWORA established similar provisions for Supplemental Security Income (SSI). The Social Security Administration (SSA) developed more rigorous standards than FNS in implementing the legislative provision. SSA's Social Security Program Operations Manual (POMS) provided that an individual is ineligible to receive SSI benefits beginning any month in which a warrant, court order or decision, or an order of decision by an appropriate agency is issued which finds that individual is wanted in connection with a crime that is a felony. SSA was sued in multiple courts on its policy. On September 24, 2009, the United States District Court for the Northern District of California approved a settlement agreement in the case of *Martinez v. Astrue*, Civ. No. 08-cv-04735 cw. Under that settlement, SSA will suspend or deny benefits to an individual only if a law enforcement officer presents an outstanding felony arrest warrant for any of three categories of NCIC Uniform Offense Classification Codes: Escape (4901), Flight to Avoid (prosecution, confinement, etc.) (4902), and Flight-Escape (4999).

In developing these proposed procedures, FNS considered the settlement in the *Martinez* case and determined not to follow the provisions of that settlement in formulating either the definitions or the procedures. Although the initial PRWORA provisions are similar, FNS implemented the PRWORA provision in a much less rigorous form and now has additional legislation guiding the disqualification provisions. The FCEA preceded the decision in *Martinez* reached in August 2009, and provided specific direction for the agency to follow to amend its existing procedures. FNS maintains that the intent of the FCEA in requiring the defining of "fleeing" and "actively seeking" was for the agency to adopt more uniform and clear standards while preserving the basic intent of the original legislation—persons who are fleeing and are actively sought by law enforcement for felony charges should not get program benefits. The legislative direction essentially was to provide consistent treatment of fleeing felons, not to limit it to a very small class of felons. Accordingly, we believe that the limitation imposed by SSA on the types of warrants that are subject to the disqualification provisions is not appropriate for SNAP. However, we would be interested in hearing from commenters whether they disagree with our decision and believe that SNAP should follow the *Martinez* settlement in defining a fleeing felon.

The regulations governing the fleeing felon and parole and probation violators are found at 7 CFR 272.1(c)(1)(vii) Disclosure, 7 CFR 273.1(b)(7)(ix) Special household requirements, 7 CFR 273.2(b)(4)(ii) Privacy Act Statement, and 7 CFR 273.11(n) Fleeing Felons and probation or parole violators. In this rulemaking, we are proposing to revise 273.11(n) in its entirety. A conforming amendment is proposed for 272.1(c)(1)(vii) Disclosure. We do not believe the remaining sections require revision.

#### *Fleeing Felons*

In 273.11(n), we are proposing that, before a State agency determines an individual to be a "fleeing" felon, the following four criteria must be met: (1) There has to be a felony warrant for an individual; (2) the individual has to be aware of, or should reasonably have been able to expect that, a warrant has or would have been issued; (3) the individual has to have taken some action to avoid being arrested or jailed; and (4) a law enforcement agency must be actively seeking the individual. The first and fourth criteria are under the control of law enforcement and will be

addressed later in this preamble discussion. The second criterion, having knowledge of a warrant or should have reasonably anticipated a warrant, is primarily under the control of the individual. The third criterion, taking an action to avoid being arrested or jailed, is an action taken by the individual. In this rule, we are proposing that all four items have to be present and verified to determine that an individual is a fleeing felon (*i.e.*, there is an outstanding felony warrant, the State agency has documented evidence that the individual knew about the warrant or could reasonably have anticipated a warrant was going to be issued, the State agency has documentation that the individual took an action to avoid arrest or jail for the felony, and a law enforcement agency is actively seeking the individual). There is only one exception to meeting these four criteria: FNS would consider an individual to be a fleeing felon if a law enforcement officer presents an outstanding felony arrest warrant for any of three categories of NCIC Uniform Offense Classification Codes: Escape (4901), Flight to Avoid (prosecution, confinement, *etc.*) (4902), and Flight-Escape (4999) to a State agency to obtain information on the location of and other information about the individual named in the warrant, in accordance with the provisions of Section 11(e)(8)(E) of the Act.

Surrounding the issues of who is a “fleeing felon,” what is “actively seeking,” and who is a parole violator (for purposes of this disqualification provision) are questions about how the State agency discovers an individual’s “fleeing” felon or probation or parole violation status, how this information is to be verified, and the time frames for acting on a denial or termination.

There are three basic ways a State agency may become aware of a household’s potential “fleeing” felon or probation or parole status:

- Through a statement by the household, such as checking off a block on an application or report form that a household member is a fleeing felon or violating parole;
- Through a data match with the FBI’s data base NCIC or another data base of outstanding warrants; or
- Through a law enforcement officer who comes to a State agency specifically seeking information on a particular individual for whom he or she has a warrant, in accordance with the provisions of Section 11(e)(8)(E) of the Act.

Each of these ways of learning about a potential fleeing felon raise issues about what constitutes “fleeing” and

“actively seeking” and how they should be verified. We are proposing that primary responsibility for verifying fleeing felon status rests with the State agency, not the household. Although generally verification is the responsibility of the household, there are multiple sensitivities surrounding the disqualification of fleeing felons and probation and parole violators. This prohibition exists for two distinct goals, one, to keep fleeing felons off the program and two, to assist law enforcement officials in capturing individuals who are being actively sought and are participating or attempting to participate in SNAP. When the State agency is approached by a law enforcement agency seeking information about a specific individual, it would be counterproductive to ask a household to verify information that could result in a household member’s capture. Further, a State agency may be more likely than a household to obtain information from a law enforcement officer about the status of an existing warrant. Also, data matches frequently reveal warrants that are old and/or from distant jurisdictions. Results from data match activities have shown that households often find it difficult or impossible to resolve these warrants. Some State agencies have denied or terminated individuals in these situations when there is no reasonable way for the individual to resolve the warrant and the law enforcement agency has not taken any action to execute the warrant.

If a household reports that a member of the household is a “fleeing” felon or probation or parole violator, FNS does not believe the State agency should make a determination that the person is indeed a fleeing felon or probation or parole violator and act to deny or terminate the individual based solely on the household’s statement. Individuals may not understand the legal distinctions in this area or be certain about whether law enforcement is pursuing an action. Prior to determining that an individual is a fleeing felon, the State agency needs to obtain as much information as possible from the household about the household’s knowledge of any outstanding warrant, the applicable time frames, the appropriate jurisdiction or law enforcement agency responsible for the warrant, the address of the potential fleeing felon at the time the warrant was issued, and any other information the household can provide about the warrant and the individual’s actions. The State agency may obtain this information during the interview, or if

an interview is not conducted, as part of its request for verification of other items included in the household’s application. The State agency needs to verify with the appropriate law enforcement agency that there is an outstanding warrant, that the warrant is for a felony, and that the law enforcement agency is actively seeking the individual. If the household reported that the individual has tried to avoid the warrant, such a statement would be considered documentation that the individual took an action to avoid being arrested or jailed. Such a statement has to be more than a check-off box on application or report form, however, so that it is clear that the recipient understands to what they are attesting. It needs to be an affirmative statement by the household that the individual in question did indeed attempt to avoid being arrested or jailed and what the individual did to attempt to evade arrest or being jailed. Absent such a statement, the State agency will need to evaluate the specific circumstances of each case to determine if there is documented evidence that the individual in question took action to avoid being arrested or jailed.

It is important to note that the section 6(k) of the Act being addressed in this rulemaking does not prohibit participants who have committed a felony; it addresses individuals who are fleeing related to committing or possibly having committed a felony. It is important, therefore, that the State agency document one or more actions that indicate the individual was aware of the warrant and acted to avoid arrest. Knowledge of awareness of an existing warrant could include being interviewed by law enforcement officers about the felony in question or a statement from another household member, relative, or collateral contact, such as a landlord, that the individual was aware an officer had attempted to serve a warrant. Actions indicating avoidance of arrest could include moving to a new residence after the warrant has been issued, particularly a residence for which the individual is not the owner or holder of the lease, or using a different name, particularly not a normal name change such as a marriage or divorce. Such actions are not independent grounds for considering an individual as fleeing, however, these actions, when considered in conjunction with other factors, may indicate fleeing felon status. The household would retain its right to a fair hearing in the event the individual is denied or terminated based on a determination of fleeing felon status.

Section 273.2(f)(5) provides that primary responsibility for verification rests with the household. It also provides that the State agency must assist the household in obtaining verification provided the household is cooperating. Given the difficulty individuals may have obtaining the necessary documentation from law enforcement agencies and the need to provide law enforcement with time to apply a warrant where appropriate, we have determined that the State agency shall bear primary responsibility for verifying and documenting fleeing felon status. State agencies engaging in data matching with outstanding warrant lists are already doing this, without the clear definitions of “fleeing” and “actively seeking.” For households that report a fleeing felon as a household member on an application, the provisions for verification proposed in this rule are consistent with the requirement that the State agency verify and document all aspects of a household’s eligibility and/or benefit level that are questionable.

We are proposing to define “actively seeking” as:

- A law enforcement agency stating that it intends to enforce an outstanding warrant within 20 days of submitting a request to a State agency for information about a specific individual, in accordance with the provisions of Section 11(e)(8)(E) of the Act; or
- A law enforcement agency stating that it intends to enforce an outstanding warrant within 30 days of the date of a request from a State agency about a specific warrant.

Absent a statement from the law enforcement agency that it will attempt to enforce the warrant within the time frame, we propose that the State agency determine that the law enforcement agency is not actively seeking the individual if no response from the law enforcement agency is received within the 20 day time frame provided in the notice from the State agency. A State agency usually has 30 days to act on a new application that is not subject to expedited service provisions. For new applicants, this should give State agencies sufficient time to request, receive a response, and act on the information provided by the law enforcement agency. We believe that 20 days is a sufficient amount of time for a law enforcement agency to make a determination whether to act on the warrant using the information available from the State agency and to respond to the State agency’s request for information. We are interested in hearing from law enforcement agencies about whether they believe that this amount of time is sufficient for them to

evaluate and act on information provided by a State agency.

Some State agencies have conducted data matches with various law enforcement databases to ascertain if an individual participating in the program is a potential fleeing felon. As we described earlier in this preamble, data matches do not always indicate whether a warrant is for a misdemeanor or felony offense, the warrant may be old, and the applicable law enforcement agency may not be interested in pursuing the warrant, or the warrant may actually misidentify the SNAP recipient as the person being sought. Thus, the mere existence of a warrant naming an individual who is a SNAP recipient or applicant does not provide sufficient information to determine that the individual is actually a fleeing felon who is being actively sought by a law enforcement agency. Rather, it is a possible source for information about an individual who could, through additional verification, be determined to be a fleeing felon. In this rule we are proposing that such data matches are not considered verification that an individual is a fleeing felon or a probation or parole violator. We are proposing that a positive hit in such a data match be verified by the State agency in the same way that it verifies a household reporting that a member may be a fleeing felon. That means that the State agency must verify with the appropriate law enforcement agency that the warrant is for a felony and that the law enforcement office is actively seeking the individual. This is consistent with how other matches are treated in SNAP where the information cannot be considered verified upon receipt. The State agency must request sufficient information from the law enforcement agency to verify that the individual being sought by the warrant is actually the individual SNAP participant. Such information may include, but is not limited to, social security number, birthday date, race and/or nationality, and place of birth.

We propose that the State agency give the law enforcement agency 20 days to respond to a request for information about the conditions of the warrant and whether the law enforcement agency intends to actively pursue the individual. If the warrant is not for a felony or if the law enforcement agency does not indicate that it intends to enforce the warrant within 30 days of the date of the State’s request for information about the warrant, we are proposing that the State agency determine that the individual is not a fleeing felon and document the household’s case file accordingly. We

are proposing that if the law enforcement agency indicates that it does intend to enforce the warrant within 30 days of the date of the request for information on the warrant, the State agency will postpone taking any action on the case until the 30-day period has expired. Once the 30-day period has expired, we are proposing that the State agency verify with the law enforcement agency whether it has attempted to execute the warrant. If it has, the State agency would take appropriate action to deny an applicant or terminate a participant who has been determined to be a fleeing felon (that is, a case in which the law enforcement agency attempted to enforce the warrant but was unable to do so and intends to pursue enforcement) or who has been apprehended. The individual retains the right to request a fair hearing. If the law enforcement agency has not taken any action, we are proposing that the State agency not consider the individual a potential fleeing felon and take no further action in the matter.

Finally, information about fleeing felon status could come to the attention of a State agency if a law enforcement agency comes to the State agency seeking information about an applicant for whom it holds an outstanding warrant. Section 11(e)(8)(E) of the Act requires that the State agency provide the information being requested by the law enforcement agency. The State agency may provide the address, social security number and photo of the participant or applicant, if it has one. In this rule, we are proposing that the State agency must:

- Provide the law enforcement agency with the information it requests;
- Request that the law enforcement agency notify the State agency if and when it attempts to enforce the warrant; and
- Take no action to contact or disqualify the individual for 20 days.

At the end of the 20 days, we are proposing that the State agency verify with the law enforcement agency whether it has attempted to execute the warrant. If it has, we are proposing that the State agency take appropriate action to deny an applicant or terminate a participant who has been determined to be a fleeing felon or who has been apprehended. If the law enforcement agency has not taken any action, we are proposing that the State agency not consider the individual a potential fleeing felon and take no further action in the matter.

We recognize that the time frames for determining fleeing felon status may extend beyond the time frames allowed under 7 CFR 273.2(g) and 7 CFR

273.2(i)(3) for State agencies to process applications. Therefore, we are proposing in 273.11(n) that if a State agency needs to act on an application without determining fleeing felon status in order to comply with these time frames, the State agency shall process the application without consideration of the individual's fleeing felon status.

#### *Probation and Parole Violators*

Section 6(k) of the Act prohibits any individual from participating in SNAP during any period during which the individual is violating a condition of probation or parole imposed under a Federal or State law. Neither the term "fleeing" nor "felony" are referenced in the prohibition from participating based on probation or parole violation. Additionally, the Act and the legislative history of the Act provide no guidance about what constitutes a probation or parole violation. The Act does not limit such violations to felony charges only. Therefore, we are proposing that the disqualification apply to all identified probation or parole violations. However, Section 6(k)(2) of the Act requires the Department to ensure that "actively seeking" is defined and that consistent procedures are established that disqualify individuals whom law enforcement authorities are actively seeking for the purpose of holding criminal proceedings against the individual. We are interpreting Section 6(k)(2) to require the application of the term "actively seeking" to probation and parole violators. We are proposing in 7 CFR 273.11(n) that State agencies shall follow the same procedures for verifying through law enforcement whether an applicant or participant is a probation or parole violator as those used to determine if an individual is a fleeing felon. This would ensure that there are consistent procedures in place for establishing if a law enforcement office is actively seeking an individual, whether that individual is a fleeing felon or a probation or parole violator. It would make following the procedures easier for State agencies as there would be only one procedure to follow for each of these types of individuals disqualified under section 6(k) of the Act.

#### *Privacy Act, Simplified Reporting, and Transitional Benefits*

It should be noted that the Privacy Act provisions and confidentiality provisions found at Section 11(e)(8) of the Act remain intact for individuals subject to the fleeing felon and parole or probation violator provisions of the Act. Therefore, we want to remind the reviewers of this rule that the provisions

regarding the process of providing information to law enforcement officials only applies to legitimate law enforcement officers. Information about potential fleeing felons or parole or probation violators must not be released to bounty hunters or other individuals reporting possible violations by recipients or applicants.

Under 7 CFR 273.12(a)(5) State agencies are permitted to place households under a simplified reporting system. Under such a system, the State agency may choose to act on all changes in household circumstances (7 CFR 273.12(a)(5)(vi)(A)) or to act on any change if it would increase the household's benefits and only act on any change that would decrease the household's benefits if the household has voluntarily requested that its case be closed, the State agency has information about the household's circumstances considered verified upon receipt, or there has been a change in the household's public assistance grant (7 CFR 273.12(a)(5)(vi)(B)). If an individual has been determined to be a fleeing felon or a probation or parole violator in accordance with 7 CFR 273.11(n), the Act prohibits this individual from participating in SNAP. In order to ensure that the individual is removed from the program in accordance with the requirements of the Act, we are proposing to add a requirement to 7 CFR 273.12(a)(5)(vi)(B) that the State agency act to remove the individual even though it might result in a decrease in benefits.

Subpart H of Part 273, which was promulgated in accordance with Section 4115 of the Farm Security and Rural Investment Act of 2002, Public Law 107-17, ("FSRIA"), permits households leaving the Temporary Assistance for Needy Families (TANF) program to receive transitional benefits for households. Section 4115 refers to ineligible households rather than ineligible household members. State agencies have the option to provide transitional benefits to a household that contains members who are not in the TANF unit as well as a household that contains ineligible members or members who are under TANF sanction. Households in which all members are disqualified for being fleeing felons, or probation or parole violators are excluded from receiving transitional benefits. Once approved for transitional benefits, the benefit amount cannot be changed unless the State agency has opted to adjust the benefit in accordance with 7 CFR 273.27. We believe that, in order to conform to the intent of section 4115 of the Farm Security and Rural Investment Act concerning ineligible

households rather than ineligible household members, the State agency shall not take action to adjust a household's transitional benefit amount because an individual in that household has been determined to be a fleeing felon or a probation or parole violator unless the provisions of 7 CFR 273.27 are applicable.

However, because section 6(k) of the Act prohibits an individual who is a fleeing felon or a probation or parole violator from receiving SNAP benefits, we are interested in hearing whether commenters believe that it is necessary, in order to conform with section 6(k) of the Act, that SNAP benefits are not provided to an individual found to be a fleeing felon or a probation or parole violator, in accordance with the provisions being proposed in this rulemaking, during the transitional benefit period.

#### **SUPPLEMENTARY INFORMATION:**

##### **Procedural Matters**

##### *Executive Orders 13563 and 12866*

Executive Orders 13563 and 12866 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 proposed rule has been designated a "significant regulatory action" although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

##### **Regulatory Impact Analysis**

##### *Need for Action*

This action is required to implement Section 6(k) of the Food and Nutrition Act of 2008. Section 6(k) provides that certain individuals are not eligible for Supplemental Nutrition Assistance Program benefits. Such individuals include an individual fleeing to avoid prosecution, custody or confinement after conviction for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing (or a high misdemeanor in New Jersey) or is violating a condition of probation or parole under Federal or State law. Section 4112 of the FCEA, amended Section 6(k) of the Act to require the

Food and Nutrition Service to define the terms “fleeing” and “actively seeking” to ensure State agencies use consistent procedures to disqualify individuals. This action is not expected to have an effect on Federal Program costs.

In developing the proposed procedures we considered the concerns expressed by representatives of Congress about individuals being disqualified based on mistaken identities or for older minor infractions that law enforcement no longer has an interest in pursuing. Further, based on experience with the implementation of the provision, we have determined that the responsibility for verification should rest with the State agency, not the recipient. The State agency is more likely to obtain cooperation from law enforcement in ascertaining if the law enforcement agency intends to enforce a warrant against a specific individual. Also, if law enforcement comes to the State agency, the State agency may delay taking action to give law enforcement time to act. Finally, recipients are frequently unable to resolve warrants from jurisdictions outside of the immediate area because of lack of funds to travel. State agencies can better ascertain if a distant law enforcement agency is interested in pursuing an identified individual. State agencies will be affected by this rule making to the extent they identify individuals who may be fleeing felons or probation or parole violators.

#### **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. Individuals identified as fleeing felons or parole violators will be affected by having their participation in the program terminated. The requirement to terminate such individuals’ participation already exists. This rule only clarifies what participants will be determined to be fleeing. It is anticipated that potentially fewer participants will be terminated than under the previous requirements. State and local welfare agencies will be the most affected to the extent that they administer the program.

#### **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 proposed rule does not contain any 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 is listed in the Catalog of Federal Domestic Assistance Programs under 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is excluded in 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 13122. FNS has considered this rule’s impact on State and local agencies and has determined that it does not have Federalism implications under Executive Order 13132.

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with this rule’s 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**

FNS has reviewed this proposed 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.

Section 821 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193 (PRWORA) amended Section 6 of the Act to prohibit fleeing felons and parole violators from participating in the program. This prohibition was codified in SNAP regulations by the final rule “Food Stamp Program; Personal Responsibility Provisions of the Personal Responsibility and Work opportunity Reconciliation Act of 1996” (66 FR 4438). SNAP regulations at 7 CFR 273.11(n) addresses the prohibition for participation by an individual identified as a fleeing felon or a probation or parole violator. The existing regulations do not define “fleeing” and do not provide procedures for the State agency to use in disqualifying an individual identified as a fleeing felon or a probation or parole violator. Section 6(k) of the Act requires the Secretary of Agriculture to define the terms “fleeing” and “actively seeking” to ensure SNAP State agencies use consistent procedures to disqualify individuals. After a careful review of the rule’s intent and provisions, FNS has determined that there is no way to determine whether the rule would have any impact on minorities, women, and person with disabilities. FNS does not collect information on persons disqualified under the fleeing felon and parole violation provisions. Such a new collection would be difficult information to capture and cause an unnecessary burden on State agencies. Therefore, we are unable to determine whether a disproportionate number of minorities, women, and persons with disabilities are disqualified. This rule proposes to provide greater direction on what constitutes a fleeing felon or parole violator, what constitutes actively seeking, and more uniform procedures among the States. The impact of the rule may be to lower the number of individuals disqualified, but without information on the number currently being disqualified or information on the number of warrants that will be applicable under the proposed procedures, there is no way to

determine if there actually will be a reduction. Nor, without such data being available is there a way to determine if the new provisions affect minorities, women, and persons with disabilities more than the general SNAP caseload.

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 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, 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.

#### Executive Order 13175

USDA will undertake, within 6 months after this rule becomes effective, a series of Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities and individuals. These sessions will establish a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation 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 leaders and their representatives concerning ways to improve this rule in Indian country.

We are unaware of any current Tribal laws that could be in conflict with the proposed rule. We request that commenters address any concerns in this regard in their responses.

#### List of Subjects

##### 7 CFR Part 272

Alaska, Civil rights, Supplemental Nutrition Assistance Program, Grant programs—social programs, Penalties,

Reporting and recordkeeping requirements.

##### 7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Supplemental Nutrition Assistance Program, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 272 and 273 are proposed to be amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

#### PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. Paragraph 272.1(c)(1)(vii) is amended by revising the fourth and fifth sentences.

The revision reads as follows:

##### § 272.1 General terms and conditions.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(vii) \* \* \* If a law enforcement

officer provides documentation indicating that a household member is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole, the State agency shall follow the procedures in § 273.11(n) to terminate the member's participation. A request for information that does not comply with the requirements in § 273.11(n) would not be sufficient to terminate the member's participation. \* \* \*

\* \* \* \* \*

#### PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. Paragraph 273.11(n) is revised to read as follows:

##### § 273.11 Action on households with special circumstances

\* \* \* \* \*

(n) \* \* \*

(1) *Fleeing felon.* To designate an individual as a fleeing felon, the State agency must verify that an individual is a fleeing felon or a law enforcement official must have provided the State agency with an appropriate warrant.

(i) The State agency must verify that:

(A) There is an outstanding felony warrant (or high misdemeanor warrant in New Jersey) for the individual;

(B) The individual is aware of, or should reasonably have been able to expect that, a warrant has or would have been issued;

(C) The individual has taken some action to avoid being arrested or jailed; and

(D) A law enforcement agency is actively seeking the individual; or

(ii) A law enforcement officer presents an outstanding felony arrest warrant, identified by one of the following National Crime Information Center Uniform Offense Classification Codes, to a State agency to obtain information on the location of and other information about the individual named in the warrant:

(A) Escape (4901);

(B) Flight to Avoid (prosecution, confinement, etc.) (4902); or

(C) Flight-Escape (4999).

(2) *Probation and parole violators.*

Any individual discovered to be a parole or probation violator shall not be considered to be an eligible household member. To be considered a probation or parole violator, the individual must have violated a condition of his or her probation or parole and law enforcement must be actively seeking the individual to enforce the conditions of the probation or parole.

(3) “Actively seeking” is defined for paragraphs (n)(1) and (n)(2) of this section as:

(i) A law enforcement agency stating that it intends to enforce an outstanding warrant or arrest an individual for a probation or parole violation within 20 days of submitting a request to a State agency for information about a specific individual;

(ii) A law enforcement agency presents a felony arrest warrant listed in paragraph (n)(1)(ii) of this section; or

(iii) A law enforcement agency stating that it intends to enforce an outstanding warrant or arrest an individual for a probation or parole violation within 30 days of the date of a request from a State agency about a specific warrant or violation.

(4) The State agency shall give the law enforcement agency 20 days to respond to a request for information about the conditions of the warrant or a probation or parole violation and whether the law enforcement agency intends to actively pursue the individual. If the law enforcement agency does not indicate that it intends to enforce the warrant within 30 days of the date of the State's request for information about the warrant, the State agency shall determine that the individual is not a fleeing felon or a probation or parole violator and document the household's case file accordingly. If the law enforcement agency indicates that it does intend to enforce the warrant within 30 days of the date of the request for information on the warrant, the State agency will postpone taking any action on the case until the 30-day period has expired. Once the 30-day period has



expired, the State agency shall verify with the law enforcement agency whether it has attempted to execute the warrant. If it has, the State agency shall take appropriate action to deny an applicant or terminate a participant who has been determined to be a fleeing felon or a probation or parole violator or who has been apprehended. If the law enforcement agency has not taken any action within 30 days, the State agency shall not consider the individual a potential fleeing felon or probation or parole violator, shall document the case file accordingly, and take no further action.

(5) *Application processing.* The State agency shall continue to process the application while awaiting verification of fleeing felon or probation or parole violator status. If the State agency is required to act on the case without being able to determine fleeing felon or probation or parole violator status in order to meet the time standards in § 273.2(g) or § 273.2(i)(3), the State agency shall process the application without consideration of the individual's fleeing felon or probation or parole violator status.

\* \* \* \* \*

4. Paragraph 273.12(a)(5)(vi)(B) is amended by redesignating paragraph (a)(5)(vi)(B)(3) as paragraph (a)(5)(vi)(B)(4) and adding a new paragraph (a)(5)(vi)(3) to read as follows:

#### § 273.12 Reporting requirements.

- (a) \* \* \*
- (5) \* \* \*
- (vi) \* \* \*
- (B) \* \* \*

(3) A household member has been identified as a fleeing felon or probation or parole violator in accord with § 273.11(n);

Dated: August 11, 2011.

**Kevin Concannon,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 2011-21194 Filed 8-18-11; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

## DEPARTMENT OF THE TREASURY

### 19 CFR Parts 10 and 163

[USCBP-2011-0030]

RIN 1515-AD75

### Duty-Free Treatment of Certain Visual and Auditory Materials

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations pertaining to the filing of documentation related to free entry of certain merchandise under Chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS). The proposed amendment would permit an applicant to file the documentation required for duty-free treatment of certain visual and auditory materials of an educational, scientific, or cultural character under subheading 9817.00.40, HTSUS, at any time prior to the liquidation of the entry. The regulation currently requires the filing of this documentation within 90 days of the date of entry. The proposed change would provide more time for the importer to provide the necessary certification documentation to CBP and would serve to align the filing of required certification documentation with a change in CBP policy that extended the liquidation cycle for entries in the ordinary course of business from 90 days to 314 days after the date of entry. The change is consistent with other regulations that govern the duty-free treatment of merchandise under Chapter 98, HTSUS.

**DATES:** Written comments must be received on or before October 18, 2011.

**ADDRESSES:** You may submit comments, identified by *docket number*, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via Docket No. USCBP 2011-0030.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, NW., (Mint Annex), Washington, DC 20229-1179.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted

without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Robert Dinerstein, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade, (202) 325-0132.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change. See **ADDRESSES** above for information on how to submit comments.

#### Background

The United States signed the "Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character" made at Beirut, Lebanon (also referred to as the "Beirut Agreement") in 1948. By Public Law 89-634, 80 Stat. 879, 19 U.S.C. 2501 (October 8, 1966), which amended the Tariff Schedules of the United States, and Executive Order 11311, 31 FR 13413 (Oct. 18, 1966), the United States implemented its obligations under the Agreement to