

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 271, 272, 273, and 276

[FNS–2008–0034]

RIN 0584–AD25

#### Supplemental Nutrition Assistance Program (SNAP): Clarifications and Corrections to Recipient Claim Establishment and Collection Standards

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

**ACTION:** Final rule.

**SUMMARY:** Supplemental Nutrition Assistance Program (SNAP) recipient claims are established and collected against households that receive more benefits than they are entitled to receive. This rulemaking corrects and clarifies provisions of the final rule on recipient claims published at 65 FR 41752 on July 6, 2000. The purposes of this final rulemaking are to remove a definition and several provisions that were made obsolete by the final rule; correct the typographical errors; correct the omission of the requirement that a copy of the claims management plan be submitted to the FNS Regional Office for informational purposes; reinforce current practices and requirements in the areas of fair hearings, fees, due dates, delinquent claims, retention, claim referrals, negligence and fraud; make conforming changes needed as a result of a subsequent rulemaking pertaining to a sponsor's responsibility for overissuances of an alien household; and to remove an overpayment exception that is no longer applicable to the Program.

**DATES:** This rule is effective January 14, 2011.

**FOR FURTHER INFORMATION CONTACT:** Jane Duffield, State Administration Branch,

Program Accountability and Administration Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 818, Alexandria, Virginia 22302. Telephone: (703) 605–4385. Internet: [jane.duffield@fns.usda.gov](mailto:jane.duffield@fns.usda.gov).

**SUPPLEMENTARY INFORMATION:** On April 2, 2009 (74 FR 14935), the Department published a proposed rule clarifying and correcting provisions of the final rule on recipient claims published at 65 FR 41752, July 6, 2000. One comment was received on the proposed rule. The comment addressed fair hearing and due process rights of recipients who are subject to a claim. Because these issues are not being considered in this rulemaking, we have not addressed the comment in this final rule. Therefore, without exception, the Department is adopting the proposed rule as final.

#### I. Procedural Matters

##### *Executive Order 12866*

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

##### *Regulatory Flexibility Act*

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). It has been certified that this rule will not have a significant impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

##### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (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 UMRA, FNS 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 FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-

effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector of \$100 million or more in any one year. This rule is therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

##### *Executive Order 12372*

SNAP 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 29,115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

##### *Executive Order 13132*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132. 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 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. As addressed in the Dates paragraph, with the exception of providing an informational copy of the claims management plan, the provisions are already in force. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

##### *Civil Rights Impact Analysis*

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, and the characteristics of SNAP households and individual participants, FNS has determined that there are no civil rights impacts in this final rule. All data available to FNS indicate that protected individuals have the same opportunity to participate in SNAP as non-protected individuals.

FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate against any application or participant in any aspect of Program administration, including, but not limited to, the certification of households, the issuance of benefits, the conduct of fair hearings, or the conduct of any other Program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. SNAP nondiscrimination policy can be found at 7 CFR 272.6(a). Discrimination in any aspect of Program administration is prohibited by these regulations, the Food and Nutrition Act of 2008, the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6. Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.

#### *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. The policies contained in this rule would not have Tribal implications that preempt Tribal law.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Information collections in this final rule have been previously approved under OMB Nos. 0584–0069, expiration date 8/2012, 0584–0446, expiration date 2/2013 and 0584–0492, expiration date 7/2011.

#### *FNS–209 Report (OMB No. 0584–0069)*

Claims activity is reported by State agencies on the Status of Claims Against Households (FNS–209) report. The OMB approved the information collection requirements for completing and submitting the FNS–209 report under OMB Control Number 0584–0069. This rule does not change this burden.

#### *Federal Collection Methods for Supplemental Nutrition Assistance Program Recipient Claims (0584–0446)*

The information collection burden for Federal collections of recipient claims is covered under OMB Control Number 0584–0446. This rule makes some changes to those requirements. This rule does not change this burden.

#### *Repayment Demand and Program Disqualification (0584–0492)*

The burden associated with providing notice and demand for payment to households has been approved under OMB Control Number 0584–0492. This rule does not change this burden.

#### *E-Government Act Compliance*

FNS is committed to compliance with the E-Government Act of 2002 (Pub. L. 107–347) (E-Gov), 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 to the extent possible.

## **II. Background**

Prior to the July 6, 2000 final rule, the last major revision to the SNAP recipient claim regulations was in 1983. The July 6, 2000 final rule accomplished several specific objectives while updating the SNAP recipient claims

regulations. First, it incorporated changes mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). Second, it streamlined the presentations of our policies, and in some cases, the policies themselves. Third, it incorporated Federal debt management regulations and statutory revisions into recipient claim management. Finally, that rule provided State agencies with additional tools to facilitate the establishment, collections and disposition of recipient claims.

#### *Purpose of this Rule*

This rulemaking corrects and clarifies provisions of the July 6, 2000 final rule on recipient claims published at 65 FR 41752, July 6, 2000. This rule does not create new standards for establishing and collecting SNAP recipient claims. Rather, consistent with what we indicated in our proposals, this rulemaking clarifies areas of the final rule, as published, to reflect longstanding policy. Additionally, this rule makes minor technical changes and corrects typographical errors. With this final rule we continue to improve claims management in SNAP while affirming our longstanding position that State agencies have a great amount of flexibility in their efforts to increase claim collection.

#### *Areas of Policy Clarification*

The following policy areas are being clarified in this rulemaking: fair hearings, fees, due dates, delinquency date, retention of collections, and claim referral timeframes. All of these policy areas fall within 7 CFR 273.18.

#### *Claims and Fair Hearings*

Section 11(e)(10) of the Food and Nutrition Act of 2008, as amended (7 U.S.C. 2020(e)(10)) specifically provides for a fair hearing when a claim for an over issuance is established against a household. We are concerned that the omission of the word “fair” in paragraphs 273.18(e)(3)(iii) and 273.18(e)(3)(iv)(I) could inadvertently deprive a household of its due process rights. Therefore, we are adding the word “fair” into the regulatory text. By adding this text, we are affirming the household’s right to a fair hearing.

#### *Due Dates*

In accordance with paragraph 273.18(e)(3)(iv), when a claim is established, the State issues an initial notification letter or demand letter to the household. Among other things, current rules require that the initial notification letter include a due date or time frame to either repay or make

arrangements to repay the claim unless the State agency is going to impose allotment reduction. However, we recognize that households that may initially repay their claims through allotment reduction may at some point cease to receive benefits. In order to ensure that all households are treated fairly, we expect that these households will be notified of a due date or time frame to either repay or make arrangements to repay the claim should they cease to receive benefits while they have an outstanding claim. Therefore, we are adding new language at paragraph 273.18(e)(3)(iv)(O) that reinforces this expectation that all households be notified of a due date in the initial notification letter.

#### *Delinquency Date*

FNS is required by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), to submit eligible SNAP recipient debts to the Treasury Offset Program (TOP) for collection. One of the requirements is that a SNAP recipient debt must be at least 180 days delinquent in order to be submitted to TOP. We consider the starting point for counting the 180 days to be the delinquency date. We intend that the delinquency date, once established, remain the same throughout the existence of the claim. The change in regulatory text contained in this rulemaking at paragraph 273.18(e)(5)(iii) emphasizes that post-delinquency repayment agreements do not alter the delinquency date.

#### *Retention of Claims*

Section 16(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2024(a)) permits States to retain 35 percent collected for Intentional Program Violation (IPV) claims and 20 percent for Inadvertent Household Error (IHE) claims. We are adding provisions at paragraph 273.18(k)(2) to clarify that there is no retention by the State in situations where payments are not returned to the State because the household is ordered by a court to perform community service in lieu of a claim or in situations where payments made to a court are not forwarded to the State. This was inadvertently not addressed in the July 6, 2000, rulemaking.

#### *Claim Referral and Establishment*

Under the Claim Referral Management section at paragraph 273.18(d), State agencies have a standard timeframe for establishing claims. These timeframes are intended to be used primarily as a management tool by States to prevent the backlog of claims and to reinforce

our expectation that States run an efficient and effective claims management system. States have always had the option to develop and follow their own claims referral management plan. We do not consider recipient claims that have been established outside of these timeframes invalid claims. However, claims that are established timely have a better chance of being collected. Therefore, we are adding a paragraph at paragraph 273.18(d)(3) that clarifies FNS's position that States must establish SNAP recipient claims even if they cannot be established within the referral management timeframes outlined in paragraph 273.18(d).

#### *Additional Actions of this Regulation*

Other final actions included in this rule are corrections as a result of typographical errors and changes that were neglected at the time of the July 6, 2000 rulemaking; removal of the definition for "Claims Collection Point" from § 271.2 because the term is no longer used; addition of the requirement at paragraph 272.2(d)(1)(x) for State agencies to submit an informational copy of the claims management plan to the FNS regional office; changes to conform paragraph 273.18(a)(4) to subsequent changes made by the November 21, 2000 (65 FR 70134) final regulation on sponsored aliens, which eliminated the sponsor's liability for overpayments of the alien household's benefits; and removal of the exception to overpayments caused by households transacting Authorization to Participate (ATP) cards, as they are no longer used in the Program.

#### **List of Subjects**

##### *7 CFR Part 271*

SNAP, Grant programs—social programs, Reporting and recordkeeping requirements.

##### *7 CFR Part 272*

Alaska, Civil rights, SNAP, Grant programs—social programs, Reporting and recordkeeping requirements.

##### *7 CFR Part 273*

Administrative practice and procedure, Aliens, Claims, SNAP, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

##### *7 CFR Part 276*

Administrative practice and procedure, SNAP, Fraud, Grant programs—social programs.

■ Accordingly, 7 CFR parts 271, 272, 273, and 276 are amended as follows:

■ 1. The authority citation for parts 271, 272, 273 and 276 continues to read as follows:

**Authority:** 7 U.S.C. 2011 through 2036.

#### **PART 271—GENERAL INFORMATION AND DEFINITIONS**

##### **§ 271.2 [Amended]**

■ 2. In § 271.2, remove the definition for "Claims Collection Point".

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

■ 3. In § 272.2 revise paragraph (d)(1)(x) to read as follows.

##### **§ 272.2 Plan of operation.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(x) Claims Management Plan as required by § 273.18(a)(3) to be submitted for informational purposes only; not subject to approval as part of the plan submission procedures under paragraph (e) of this section.

\* \* \* \* \*

#### **PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

■ 4. In § 273.18:

■ a. Remove paragraph (a)(4)(ii) and redesignate (a)(4)(iii) as (a)(4)(ii);

■ b. Amend paragraph (b)(3) by removing the last sentence;

■ c. Amend paragraph (c)(1)(ii)(D) by removing "(e)(1)(ii)(C)" and adding in its place "(c)(1)(ii)(C)";

■ d. Add paragraph (d)(3);

■ e. Amend paragraph (e)(1) by removing "(g)(2)" and adding in its place "(e)(2)";

■ f. Remove "a hearing" and add in its place "a fair hearing" in paragraphs (e)(3)(iii) and (e)(3)(iv)(I);

■ g. Redesignate paragraph (e)(3)(iv)(O) as (e)(3)(iv)(P) and add a new paragraph (e)(3)(iv)(O);

■ h. Revise the first sentence of paragraph (e)(5)(iii);

■ i. Revise paragraph (k)(2).

■ The additions and revisions read as follows:

##### **§ 273.18 Claims against households.**

\* \* \* \* \*

(d) \* \* \*

(3) States must establish claims even if they cannot be established within the timeframes outlined under paragraph (d) of this section.

(e) \* \* \*

(3) \* \* \*

(iv) \* \* \*

(O) If allotment reduction is to be imposed, a due date or time frame to either repay or make arrangements to

repay the claim in the event that the household stops receiving benefits.

\* \* \* \* \*

(5) \* \* \*

(iii) The date of delinquency for a claim covered under paragraph (e)(5)(i)(B) of this section is the due date of the missed installment payment unless the claim was delinquent prior to entering into a repayment agreement, in which case the due date will be the due date on the initial notification/demand letter. \* \* \*

\* \* \* \* \*

(k) \* \* \*

(2) These rates do not apply to:

(i) Any reduction in benefits when you disqualify someone for an IPV;

(ii) The value of court-ordered public service performed in lieu of the payment of a claim; or

(iii) Payments made to a court that are not subsequently forwarded as payment of an established claim.

\* \* \* \* \*

## PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

### § 276.2 [Amended]

■ 5. In § 276.2, amend paragraph (c) by removing “273.18(h)” and adding in its place “273.18(l)”.

Dated: December 2, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010-31459 Filed 12-14-10; 8:45 am]

BILLING CODE 3410-30-P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 730, 734, 736, 742, 744, and 745

[Docket No. 101118556-0556-02]

RIN 0694-AF05

#### Updated Statements of Legal Authority To Reflect Continuation of Emergency Declared in Executive Order 12938

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule updates the Code of Federal Regulations (CFR) legal authority citations for the Export Administration Regulations (EAR) to replace citations to the President's Notice of November 6, 2009, *Continuation of Emergency Regarding Weapons of Mass Destruction*, with citation to the President's Notice of

November 4, 2010 on the same subject. This rule also updates the authority citation for one executive order to reflect the compilation of that executive order into title 3 of the CFR. BIS is making these changes to keep the CFR's legal authority citations for the EAR current.

**DATES:** *Effective Date:* December 15, 2010.

**ADDRESSES:** Comments concerning this rule should be sent to [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov), or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694-AF05 in all comments, and in the subject line of e-mail comments.

#### FOR FURTHER INFORMATION CONTACT:

William Arvin, Regulatory Policy Division, Bureau of Industry and Security, telephone: (202) 482-2440.

#### SUPPLEMENTARY INFORMATION:

##### Background

In Executive Order 12938 of November 14, 1994 (59 FR 59099, 3 CFR, 1994 Comp., p. 950), the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy and economy of the United States posed by the proliferation of nuclear, biological and chemical weapons and the means of delivering such weapons. That emergency has been continued in effect through successive annual presidential notices. The authority for parts 730, 734, 736, 742, 744 and 745 of the EAR (15 CFR parts 730, 734, 736, 742, 744 and 745) rests in part on E.O. 12938, as amended, and on the successive annual notices continuing the emergency. This rule revises the authority citations in those parts of the CFR to cite the notice of November 4, 2010, which is the most recent such annual Presidential notice, and to remove the citation to the notice of November 6, 2009 on the same topic.

The authority for parts 730 and 736 of the EAR also rests in part on Executive Order 13338 of May 11, 2004, *Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria*. This rule adds the title 3 CFR citation for that executive order to parts 730 and 736 to reflect the fact the E.O. 13338 has been codified into title 3 of the CFR.

BIS is making these revisions so that title 15 of the CFR will cite the current authority for the parts mentioned above. This rule is purely procedural, and makes no changes other than to revise CFR authority citations paragraphs. It

does not change the text of any section of the EAR, nor does it alter any right, obligation or prohibition that applies to any person under the EAR.

#### Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not involve any collection of information.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. This rule only updates legal authority citations and is non-discretionary. This rule does not alter any right, obligation or prohibition that applies to any person under the EAR. Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. Because neither the Administrative Procedure Act nor any other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

#### List of Subjects

##### 15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

##### 15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

##### 15 CFR Part 736

Exports.