

that would build on current programs to develop a comprehensive, national food safety education and training campaign directed at people who work in restaurants and other food service facilities, people who work in retail stores, and at consumers. This campaign would include lesson plans and materials for classroom training that could be used in public school curricula as well as in food service settings.

### Household Consumers

A primary tool for reducing the risk of foodborne disease among consumers is education. To ensure that consumers are fully and adequately informed of the significant risks associated with SE in eggs and how to best avoid these risks, FDA shortly will be proposing certain labeling requirements for eggs. The agencies also plan to intensify their consumer education efforts in the coming months and to institute permanent food safety education programs that will help consumers protect themselves from all food safety hazards.

Thus, by this notice, FDA and FSIS are requesting comments and information on a variety of issues concerning ways to reduce the risk to the public health from SE in shell eggs. These issues need to be addressed comprehensively by the agencies. FSIS and FDA welcome discussion and comments on the issues in this notice and other issues related to the subject. The agencies are particularly interested in comments about alternatives that would minimize the impact on small entities.

Done in Washington, DC, on May 11, 1998.

**Thomas J. Billy,**

*Administrator, FSIS.*

**William B. Schultz,**

*Deputy Commissioner for Policy, FDA.*

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 273 and 274

RIN 0584-AC61

### Food Stamp Program: Electronic Benefits Transfer Benefit Adjustments

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

**ACTION:** Proposed Rule.

**SUMMARY:** This rule proposes to revise Food Stamp Program regulations pertaining to State agencies' ability to make adjustments to a recipient account in an Electronic Benefits Transfer (EBT) system, in order to correct a system error or an out-of-balance condition. EBT stakeholders have proposed the changes so that States and their processors can correct errors when they are identified, rather than 10 days after the advance notice has been sent to the household. The changes would enable State agencies to correct errors in a more timely manner, and bring EBT closer in line with current commercial Electronic Funds Transfer (EFT) practices. This rule also proposes to revise the formula

for recovering funds under the representation rule.

**DATES:** Comments must be received on or before July 20, 1998, to be assured of consideration.

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

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

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This proposed rule has been determined to be non-significant for purposes of Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget.

**Public Law 104-4**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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 Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Food and Nutrition Service 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 UMRA) for State, local and tribal governments or the private sector of \$100 million or more in any one year. Thus this rule is

not subject to the requirements of sections 202 and 205 of the UMRA.

**Executive Order 12372**

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

**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). Shirley Watkins, the Under Secretary for Food, Nutrition and Consumer Service, has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

**Paperwork Reduction Act**

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

**Executive Order 12778**

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 for rules related to non-quality control (QC) liabilities or Part 283 for rules related to QC liabilities; (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

**Background**

*Adjustments*

The Food and Nutrition Service (FNS) has been contacted by a number of State agencies and other interested stakeholders regarding its policy on making adjustments to EBT-issued benefits when a system error has resulted in an out-of-balance condition. During normal EBT processing for an authorized transaction, settlement is completed when the transaction acquirer has been properly credited for an amount equal to the amount debited from the household's benefit allotment. System malfunctions, however, can cause an interruption to this process. For purposes of this proposed regulation, an out-of-balance settlement condition exists when system errors or other technical malfunctions cause an interruption to the end-to-end settlement process from acquirer back to issuer, resulting in a settlement condition that does not reflect the authorized transaction. In the commercial EFT environment, such conditions are routinely corrected via a manual adjustment to the customer's account without notification to the account holder. In this proposed rule, an adjustment is defined as a debit or credit transaction initiated to correct a system error or to correct an out-of-balance condition identified in the settlement process. Current food stamp regulations, however, do not allow such adjustments without prior notification to the food stamp household.

Regulations found at 7 CFR 274.12(f)(4) require that State agencies establish a date when the household's benefits become available to them each month. By regulation, State agencies are not allowed to make adjustments to the food stamp allotment after the availability date. This is in keeping with the coupon system which has no mechanism to retrieve benefits after they have been issued to the household. However, FNS recognizes that EBT provides additional tools that were not available in the coupon system. Corrections to technical errors can be made quickly and accurately, where previously, in the paper system, they could not be made. Commercial operating rules for EFT systems and the QUEST EBT operating rules have provisions which require adjustments for system errors. (The QUEST operating rules set forth EBT requirements for those state agencies that choose to issue benefits under the QUEST service mark.) This proposed rule would allow adjustments, after the availability date, to correct a system error.

Proposing this change leads to the need to propose a second change. Section 11(e)(10) of the Food Stamp Act of 1977, as amended, gives households the right to a fair hearing over any action that affects their participation in the program. This section stipulates that to exercise this right households must request a fair hearing in a timely manner following receipt of an individual notice of the agency's action. Further, households have the right to delay the State agency's action and receive benefits at the previous level, pending a decision by the hearing official. Regulations implementing these provisions of the Act and signifying when a notice of action is necessary are found in § 273.15.

With some exceptions, which are specified in the regulation, households must be given an advance notice of 10 days before reduction in benefits can be put in place. The excepted situations in the regulation allow for concurrent benefit adjustment and notice—referred to as adequate notice. That is, State agencies are allowed to notify households at the same time as an action is taken.

The nature of EBT settlement adjustments makes timeliness critical. A 10-day advanced notice, as required by current regulation, could have a negative impact on the State agency's ability to correct the out-of-balance condition. For example, to provide notice 10 days prior to the adjustment action could risk benefits no longer being available since, unlike certification actions, the household has immediate access to the benefits in question. For this reason, in § 273.13(a)(3)(vii), we propose that State agencies be allowed to send an adequate notice when the action is taken. This would allow the error condition to be corrected expeditiously, while preserving the household's right to adequate notice and a fair hearing.

In order to ensure that the rights of the household are protected, this rule proposes to only allow adjustments under the following conditions:

(1) Adjustments would not be allowed against future month benefits, i.e., against those benefits that were not in the account at the time of the original transaction.

(2) In those cases in which a household no longer has benefits available from the issuance month, this rule proposes that the funds may be recovered using the re-presentation procedures set forth in 7 CFR 274.12(l). If, however, there are sufficient benefits remaining to cover only part of the adjustment, the adjustment may be made using the remaining balance, with

the difference being subject to the re-presentation procedures.

(3) If the household is no longer receiving benefits, the State agency is under no further obligation to recover the funds.

(4) The household shall be given adequate notice at the time of the adjustment in accordance with procedures set forth in 7 CFR 273.13(a)(3). An adequate notice includes an explanation of the action being taken, the reason for the action, the household's right to a fair hearing, and the household's right to continued benefits.

(5) If the household chooses to have a fair hearing and elects to have benefits continued pending the fair hearing decision, the State agency would be required to re-credit the adjusted amount until the dispute is adjudicated. If the hearing finds in favor of the State agency, the State agency would re-process the adjustment (debit) for the full amount credited at the time of the fair hearing request. If there are no benefits remaining in the household's account at the time the State agency action is upheld, the State agency shall make the adjustment from the next month's benefit. If the household is no longer receiving benefits when the fair hearing decision is rendered, the State agency would be under no further obligation to recover the funds. An adjustment would not be made if the affected retailer is no longer on the EBT system.

(6) Adjustments would only be allowed when auditable documentation is available to substantiate the out-of-balance condition.

Finally, it has come to the Department's attention that EBT regulations do not provide time frames by which system errors must be resolved. The Department, therefore, proposes that all system errors be corrected within 5 business days. After 5 business days, any recovery of funds from a recipient's account must be handled through the re-presentation process. The Department believes that unless the adjustment is made within a reasonable time, recipients will be unable to understand the connection between the original transaction and the adjustment action. The 5-day time frame also ensures that households negatively impacted by a system error will not have to wait unreasonably long periods of time for resolution.

#### *Re-presentations*

Current regulations give State agencies the option to implement a re-presentation system to recoup certain losses in instances specified in 7 CFR

274.12(l). Regulations at 7 CFR 274.12(l)(1)(iii) stipulate that the rate of re-presentation be \$50 for the first month and \$10 or 10 percent—whichever is greater—in subsequent months, until the re-presentation is completely repaid. These amounts were originally selected so that the electronic system would be consistent with the claims process in place in the coupon system. Some State agencies have argued that the variation in the rate of re-presentation for the first month and subsequent months makes it particularly difficult to implement an automated re-presentation system. Currently, only one State agency has implemented re-presentation because of the burden of programming a system which would meet these requirements. Therefore, the Department proposes that the required rate differentiation between the first month and subsequent months be eliminated; the State agency would have the option to debit the benefit allotment of a household following the insufficient funds transaction in an amount equal to at least \$10, but no higher than 10 percent of the allotment. This deduction would be repeated on a monthly basis until the re-presentation is completely repaid. State agencies may choose to recover funds at an amount less than 10% of the allotment, but shall apply the lesser repayment amount to all households.

#### **Implementation**

The Department is proposing that the provisions of this rulemaking be implemented 30 days after publication of the final rule. The Department also proposes to allow variances resulting from implementation of the provisions of the final rule to be excluded from error analysis for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii).

#### **List of Subjects**

##### *7 CFR Part 273*

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

##### *7 CFR Part 274*

Administrative procedures and practices, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 7 CFR parts 273 and 274 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 273 and 274 continues to read as follows:

Authority: 7 U.S.C. 2011-2032.

**PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

2. In § 273.13, a new paragraph (a)(3)(vii) is added to read as follows:

**§ 273.13 Notice of adverse action.**

(a) \* \* \*

(3) \* \* \*

(vii) An EBT system-error has occurred during the redemption process, resulting in an out-of-balance settlement condition. The State agency shall adjust the benefit in accordance with § 274.12 of this chapter.

\* \* \* \* \*

3. In § 273.15, the fourth sentence of paragraph (k)(1) is revised and three new sentences are added after the fourth sentence to read as follows:

**§ 273.15 Fair hearings.**

\* \* \* \* \*

(k) *Continuation of benefits.*

(1) \* \* \* If the State agency action is upheld by the hearing decision, a claim against the household shall be established for all overissuances except in the case of an EBT adjustment, in which case another adjustment (debit) shall be made immediately to the household's account for the total amount erroneously credited when the fair hearing was requested. If there are no benefits remaining in the household's account at the time the State agency action is upheld, the State agency shall make the adjustment from the next month's benefits. If the household is no longer receiving benefits at the time of the fair hearing decision, the State agency is under no further obligation to recover the debt. An adjustment shall not be done if the affected retailer is no longer on the EBT system. \* \* \*

\* \* \* \* \*

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

4. In § 274.12:

a. Paragraph (f)(4) is revised;

b. Paragraph (f)(7)(iii) is amended by removing the second sentence;

c. Paragraph (l) introductory text is redesignated as the first sentence of paragraph (l)(1) introductory text;

d. Paragraph (l)(1) introductory text is amended by redesignating the last sentence as the introductory text of paragraph (l);

e. Paragraph (l)(1)(iii) is revised;

f. Paragraphs (l)(2), (l)(3), (l)(4), and (l)(5) are redesignated as (l)(3), (l)(4), (l)(5), and (l)(6); and

g. A new paragraph (l)(2) is added. The revisions and additions read as follows:

**§ 274.12 Electronic Benefit Transfer system issuance approval standards.**

\* \* \* \* \*

(f) *Household participation* \* \* \*

(4) *Issuance of benefits.* State agencies shall establish an availability date for household access to their benefits and inform households of this date.

(i) The State agency may make adjustments to benefits posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted.

(ii) A State may make adjustments to an account after the availability date only to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error.

(A) Adjustments shall be made no later than 5 business days after the out-of-balance condition occurred.

(B) Adjustments shall not be made against a future month's benefit. If there are sufficient benefits remaining to cover only part of the adjustment, the adjustment may be made with the remaining balance.

(C) The household must be given, at a minimum, adequate notice in accordance with § 273.13 of this chapter.

(D) Should the household dispute the adjustment, the benefits must be re-credited to the household's account pending resolution.

(E) Should a State agency wish to process an adjustment against future month benefits, such an action shall be in accordance with re-presentation procedures found in paragraph (l) of this section.

(iii) The appropriate management controls and procedures for accessing benefit accounts after the posting shall be instituted to ensure that no unauthorized adjustments are made in accordance with paragraph (f)(7)(iii) of this section.

\* \* \* \* \*

(l) *Re-presentation* \* \* \*

(1) \* \* \*

(iii) The State agency may debit the benefit allotment of a household following the insufficient funds transaction in any amount which equals at least \$10 or up to 10% of the transaction. This amount will be deducted monthly until the total owed is paid. State agencies may opt to re-

present at a level that is less than the 10% maximum, however, this lesser amount must be applied to all households.

(2) When a system-error has resulted in an out-of-balance condition at settlement, and the State agency is unable to recover an erroneous credit as an adjustment, a re-presentation may be made as follows:

(i) the state agency shall debit the benefit allotment of a household monthly in an amount equal to at least \$10 or up to 10% of the allotment until the re-presentation is completely paid.

(ii) notice shall be provided prior to the month re-presentation occurs and shall state the amount of the reduction in the benefit allotment.

\* \* \* \* \*

Dated: May 12, 1998.

**George A. Braley,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 98-13227 Filed 5-18-98; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 98-CE-05-AD]

RIN 2120-AA64

**Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASW-19 Sailplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASW-19 sailplanes. The proposed action would require inspecting the tow release cable guide fittings for the correct mounting, and, if the fittings are mounted in the front of the bulkhead, moving the fitting to the rear of the bulkhead. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent premature release of the tow cable during take-off, which could result in loss of the sailplane.

**DATES:** Comments must be received on or before June 26, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation