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 Part 274

RIN 0584–AC71

Food Stamp Program: Electronic Benefits Transfer Benefit (EBT) Statement on Auditing Standards 70 (SAS 70) Audit Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service (FNS) proposes to revise Food Stamp Program (FSP) regulations about approval of Electronic Benefits Transfer (EBT) systems and how States arrange for those systems to be audited. States with EBT systems delivering FSP benefits would be required to obtain an annual audit of their FSP EBT system. States could direct their EBT system contractor to have audits done, contract separately for the audits, or have competent state personnel conduct them. The audits would be a new requirement recommended by the United States Department of Agriculture (USDA) Office of the Inspector General (OIG). EBT audits must comply with the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70, Reports on the Processing of Transactions by Service Organizations (SAS 70). Audits would also follow EBT review guidelines developed by the USDA OIG to the extent the guidelines refer to FSP benefits.

DATES: Comments must be received on or before May 24, 1999 to be assured of consideration.

ADDRESSES: Submit comments in writing 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 Mr. Cohen at (703) 605–0232 or they may be sent via e-mail to jeff__cohen@fcs.usda.gov. 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, Room 718, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be addressed to Mr. Cohen as above or by telephone at (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been 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 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 R. 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 agencies and their EBT contractors will be the most affected to the extent that they administer the Program.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

This rule does not contain additional reporting or recordkeeping requirements other than those already approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Those reporting and recordkeeping requirements are assigned OMB control number 0584–0083.

Background

Electronic Benefits Transfer (EBT) Systems and Financial Statements

All States must change from paper coupon systems to EBT systems for the issuance of Food Stamp Program (FSP) benefits by October 1, 2002. Currently, thirty-seven States have implemented EBT systems and more than 50 percent of FSP benefits are issued through those systems. State agencies contract individually for EBT systems. Some States work together in groups to solicit and select an EBT contractor; however,

each State signs its own contract with the winning bidder.

For the FSP, EBT systems move money from Federal accounts held in the name of each State to accounts at banks and other financial institutions held by food retailers. Each food retailer must first be authorized by the Food and Nutrition Service (FNS) to accept food stamp benefits. Currently, about $1.3 billion in food stamp benefits are paid to food retailers for recipient purchases each month. Over half of that amount, about $700,000,000, is now being moved by EBT systems each month.

States usually contract for EBT systems that deliver the benefits of several programs, not just food stamp benefits. Data from EBT systems are reported to State and Federal financial systems and used in financial statements of many agencies. State EBT systems report food stamp data to FNS financial systems which in turn provide data used in the annual FNS financial statements. Annual audits of EBT systems would ensure that EBT systems are secure and that data used in financial systems and statements is correct. Annual audits would provide government auditors of state and federal agencies financial statements with an independent assessment of EBT data.

Statement on Auditing Standards 70

The American Institute of Certified Public Accountants (AICPA) produces standards for accounting which are generally accepted by government and business. This rule requires EBT audits to follow the Statement on Auditing Standards No. 70, Reports on the Processing of Transactions by Service Organizations (SAS 70). SAS 70 is available from AICPA located at 1211 Avenue of the Americas, New York, NY, 10036–8775, phone (212) 596–6200 or at 1455 Pennsylvania Avenue, Washington, DC, 20004–1081, phone (202) 737–6600.

EBT Review Guidelines

The United States Department of Agriculture's Office of the Inspector General (USDA's OIG) is the lead agency for EBT issues for the President's Council on Integrity and Efficiency (PCIE). The PCIE was created by Executive Order 12805, May 11, 1992, to identify weaknesses and to promote efficiency in Federal programs. USDA's OIG, with the help of a PCIE work group, drafted guidelines to assist auditors of EBT systems. The guidelines are titled ''Review Guidelines for Service Organizations Providing EBT Services for Government Programs'' (EBT guidelines). The PCIE work group included Federal, State, and public accounting representatives. Comments were obtained from the Office of Management and Budget, the Government Accounting Office, and from the AICPA.

The guidelines are being revised now. They will be available by March 1, 1999. We propose to require States to use the final guidelines in auditing FSP EBT systems to the extent the guidelines refer to FSP. The draft EBT guidelines are available from FNS or USDA's OIG. The final guidelines will be also be available on the FNS website at http://www.usda.gov/fcs/stamps/ebt.htm.

Efficient Audits

EBT companies often have EBT contracts with several states for the delivery of many program benefits. This rule is based on the idea that one annual audit at each company, covering all the States and all programs handled by that company, is most efficient. The review guidelines anticipate that kind of audit. Individual States would meet FNS' requirement for an annual SAS 70 audit if their EBT system contractor has been audited as part of a SAS 70 audit which covered all the States and programs handled by that contractor. FNS encourages States to complete audits this way to save costs.

Costs of EBT Audits

The way the State arranges for the audits is not being addressed in this proposed rule. States may contract directly with auditing companies, they may require their EBT contractor to arrange for audits, competent State staff may conduct the audits, and there may be other possibilities. Therefore, the way the State is billed for costs will vary. Costs could be directly billed by an auditing firm, or contained in a monthly case fee charged by their EBT contractor, or charged separately by their EBT contractor. If a single audit is done for several States and programs as anticipated by the EBT review guidelines, the costs must be appropriately allocated to each State and each program covered by the audit.

FNS will reimburse States for 50 percent of their costs related to the FSP audit work. The only limit on reimbursement from the FSP for EBT costs is the already existing limit of cost neutrality in the food stamp regulations at 7 CFR 274.12(c)(3).

Whose Work Must Be Audited

SAS 70 audits review ''service organizations'' that perform transactions which affect the financial statements of ''user organizations.'' In the FSP EBT environment, EBT contractors are the service organizations and States are the user organizations. States usually have a contract with one company, called the EBT primary contractor. The primary contractor often has many subcontractors to do some of the work for the EBT contract. Some or all of the contractors and subcontractors may be reviewed as part of the audit. This will depend on which contractors or subcontractors perform the functions required to be reviewed by the SAS 70 or the EBT review guidelines.

States sometimes do EBT work themselves instead of hiring a contractor. For example, one State is acting as EBT primary contractor and handling all subcontracts. Another State is producing and distributing EBT cards. Only the work of contractors would be covered by this rule and the SAS 70 audit requirements. State work would be exempt from this proposed SAS 70 audit requirement. State work would, however, be subject to review by FNS or audit by USDA's OIG.

EBT Management Reports Requirements

Regulations at 7 CFR 274.12(j)(2) require States to obtain reports from and about their EBT systems. This rule adds an annual SAS 70 audit report using the EBT review guidelines as a required report in the section. States would be required to provide the EBT SAS 70 audit report to USDA's OIG auditors or to FNS within 30 days of a written request.

Additional Audits or Reviews

USDA's OIG and FNS reserve the right to conduct other audits or reviews of EBT if they find that is needed.

Implementation

The Department is proposing that this rule should be effective during the first Federal Fiscal Year that begins after the date of publication of the final rule.

List of Subjects in 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 part 274 is proposed to be amended as follows:

PART 274—ISSUANCE AND USE OF COUPONS

1. The authority citation for 7 CFR part 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 274.12:

a. Revise the heading of paragraph (j); and

b. Add new paragraph (j)(5).

The revision and addition read as follows:

§ 274.12 Electronic Benefit Transfer Issuance System approval standards.

* * * * *

(j) *Reconciliation, Management Reporting, and Audits.* * * *

(5) *Audits.* (i) The state agency must obtain an annual audit of their EBT system contractors regarding the issuance, redemption, and settlement of Food Stamp Program benefits. The audit must comply with American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70 (SAS 70). The audit must also follow the EBT review guidelines developed by the United States Department of Agriculture (USDA), Office of the Inspector General to the extent the guidelines refer to food stamp benefits. EBT work done by the State does not have to be audited in this manner but may be subject to audits by USDA's Office of the Inspector General or to reviews done by the Food and Nutrition Service.

(ii) The state agency must retain a copy of the SAS 70 report. If the Food and Nutrition Service or the USDA Office of Inspector General asks for the SAS 70 audit report in writing it must be provided within thirty days of the receipt of the written request.

(iii) The Food and Nutrition Service and the USDA Office of Inspector General reserve the right to conduct other reviews or audits of the State's Food Stamp Program EBT system or parts of the EBT system.

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Dated: February 16, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–4410 Filed 2–22–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 93–076–11]

RIN 0579–AA59

Animal Welfare; Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare Act regulations concerning the humane handling, care, treatment, and transportation of marine mammals in captivity. These proposed regulations were developed by the Marine Mammal Negotiated Rulemaking Advisory Committee and appear to be necessary to ensure that the minimum standards for the humane handling, care, treatment, and transportation of marine mammals in captivity are based on current general, industry, and scientific knowledge and experience.

DATES: Consideration will be given only to comments received on or before April 26, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–076–11, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 93–076–11. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1228, (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*, enacted in 1966 and amended in 1970, 1976, 1985, and 1990) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3.

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture established regulations under the Act in 1979 for the humane handling, care, treatment, and transportation of marine mammals used for research or exhibition purposes. These standards, contained in 9 CFR part 3, subpart E, were amended in 1984. During the 14 years since the standards were amended, advances have been made, new information has been developed, and new concepts have been implemented with regard to the handling, care, treatment, and transportation of marine mammals in captivity.

On July 23, 1993, APHIS published in the **Federal Register** (58 FR 39458, Docket No. 93–076–1) an advance notice of proposed rulemaking that solicited comments on appropriate revisions or additions to the standards for the humane handling, care, treatment, and transportation of marine mammals used for research or exhibition (referred to below as the regulations). The comments we received supported our intent to revise the regulations and suggested it would be highly desirable to involve all interested parties in developing appropriate regulations. We determined that consensus among interested parties was attainable, and that we should proceed with negotiated rulemaking.

On May 22, 1995, we published in the **Federal Register** (60 FR 27049–27051, Docket No. 93–076–3) a notice of intent to establish an advisory committee to advise the Department on how to revise the regulations. The notice included a list of groups tentatively identified by the Department as potential participants on the advisory committee. A committee, called the Marine Mammal Negotiated Rulemaking Advisory Committee (the Committee), was subsequently established in accordance with the Federal Advisory Committee Act (5 U.S.C. App. I). It included all of the groups that were identified in the notice as potential participants, with the exception of the Society for Marine Mammology, which was unable to participate.

The following organizations were included on the Committee as voting members:

American Zoo and Aquarium Association
Alliance of Marine Mammal Parks and Aquariums
International Association of Amusement Parks and Attractions
Marine Mammal Coalition
United States Navy
Center for Marine Conservation
Humane Society of the United States
Animal Welfare Institute, representing a broad coalition of animal concern groups
American Association of Zoo Veterinarians
International Association for Aquatic Animal Medicine
International Marine Animal Trainers Association
Animal and Plant Health Inspection Service

The following organizations or individuals were included on the Committee as observers or consultants. These individuals did not vote on the final consensus reached by the Committee:

Marine Mammal Commission
National Marine Fisheries Service
Fish and Wildlife Service
Dr. Joseph Geraci, independent consultant to the Committee