

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 272 and 274

[Amendment No. 384]

RIN: 0584-AC91

#### Food Stamp Program: Electronic Benefit Transfer (EBT) Systems Interoperability and Portability

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

**ACTION:** Interim rule.

**SUMMARY:** The purpose of this interim rule is to implement legislation requiring interoperability of Food Stamp Program Electronic Benefit Transfer (EBT) Systems and portability of electronically-used benefits nationwide. The rule revises Food Stamp Program regulations to ensure that recipients can use their electronic food stamp benefits across state borders by requiring interoperable state electronic issuance systems. The regulations establish uniform national standards to achieve this requirement. One hundred percent Federal funding is available to pay for the operational cost of this functionality, up to a national annual limit of \$500,000. Costs beyond this level will be covered at the standard fifty percent program reimbursement rate for State administrative costs.

**DATES:** This interim rule is effective September 19, 2000. Comments must be received on or before November 13, 2000, 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 data-faxed to the attention of Mr. Cohen at (703) 605-0232, or by e-mail to

jeff.cohen@fns.usda.gov. All 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 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.

##### 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). Samuel Chambers, Jr., Administrator for the Food, Nutrition, and Consumer Service, has certified that this interim final rule will not have a significant economic impact on a substantial number of small entities. State agencies and their EBT service providers will be the most affected to the extent that they administer or operate EBT services for Food Stamp Program benefit delivery.

##### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, the Food and Nutrition Service (FNS) is publishing for public comment a summary of new information collection being required by interim regulations. The collection has been submitted to the Office of Management and Budget (OMB) for emergency approval by September 18, 2000.

Comments on this document must be received by September 14, 2000. The 60-

day period normally allowed for comment on a proposed collection of information has been shortened to the minimum 30 days under the emergency approval process because a longer period would likely prevent the U.S. Department of Agriculture (Department) from meeting the statutory deadline enacted under Section 7(k)(4) of the Food Stamp Act of 1977 (FSA), as amended by the Electronic Benefit Transfer Interoperability and Portability Act of 2000, Public Law 106-171 (hereinafter "Public Law 106-171").

Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection, please contact Mr. Cohen at the above address.

Comments are invited on: (a) Whether the collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of FNS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology.

All responses to this document will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

For Further Information Contact: Jeffrey N. Cohen, (703) 305-2522.

*Title:* Interoperability Funding Agreement.

*OMB Number:* 0584-XXXX.

*Type of Request:* New collection.

*Abstract:* Under Public Law 106-171, the Secretary is required to ensure that electronic benefit transfer (EBT) systems

used for the issuance and redemption of Food Stamp Program (FSP) benefits are interoperable and that food stamp benefits are portable among all States by October 1, 2002, except where exemptions apply or a temporary waiver is granted. In addition, in accordance with the regulations promulgated by the Secretary, the Department is authorized to pay one hundred percent of the costs incurred by a State agency for switching and settling interstate food stamp transactions, up to an annual limit of \$500,000 nationwide.

In this rule, the FSP regulations are being revised to require that State agencies requesting one hundred percent funding for interoperability costs sign an Interoperability Funding Agreement to comply with the administrative procedures established by the Department. The administrative procedures will be issued to State agencies under separate guidance and do not impose additional information collection burdens other than those announced in this notice or which are part of a collection currently approved for the Department by OMB. The signed agreement will serve as the obligating document, which will enable the Department to put aside funds for the fiscal year to pay for interoperability costs incurred by State agencies. The agreement must be signed annually because appropriations laws stipulate that funding for interoperability costs must be obligated to State agencies in the same fiscal year as such costs are incurred. This requirement will add a new information collection burden for State agencies with EBT systems that request enhanced funding for interoperability costs. The recordkeeping burden includes maintaining interoperability cost information and other documentation used to support requests for payment, including contractor bills and interoperability transaction records.

The estimated time to read, sign, and submit the Interoperability Funding Agreement is 0.5 hours per respondent. The estimated time to maintain interoperability cost information is .25 hours per respondent. Under Section 7(i) of the FSA (7 U.S.C. 2016(i)), a total of 53 State agencies are required to have statewide EBT systems by October 1, 2002. Two State agencies, Ohio and Wyoming, currently have Smart Card (off-line) food stamp EBT systems, which are currently exempt from the interoperability requirements of Public Law 106–171. Therefore, we estimate that, under nationwide EBT implementation, 51 State agencies will submit the agreement once a year to request enhanced funding for

interoperability costs, for a total of 38.25 hours.

*Estimates of Burden:* We estimate the provisions of this interim final rule, as listed above, will take each State agency 0.75 hours on gathering, reporting, and maintaining information, for an overall burden of 38.25 hours annually.

*Respondents:* State agencies with EBT systems delivering Food Stamp Program benefits.

*Estimated number of Respondents:* 51 State agencies per year under nationwide EBT implementation.

*Estimated number of Responses per respondent:* One.

*Estimated annual number of responses:* 51.

*Estimated Total Annual Burden on Respondents:* 38.25 hours.

#### **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 unless so specified in the “Dates” 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 FSP, the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to section 11(e)(1) of the FSA (7 U.S.C. 2020(e)(1)) and regulations at 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to Section 14 of the FSA (7 U.S.C. 2023) and regulations at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or 7 CFR Part 283 (for rules related to QC liabilities); and (3) for Program retailers and wholesalers—administrative procedures issued pursuant to Section 14 of the FSA (7 U.S.C. 2023) and 7 CFR 278.8.

#### **Public Law 104–4**

Title II of the Unfunded Mandate 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 Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with the “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. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Public Comment**

Public Law 106–171 authorizes Federal reimbursement, in accordance with regulations promulgated by the Secretary of Agriculture, of the costs incurred by State agencies for switching and settling interstate transactions after the date of enactment (February 11, 2000) and before October 1, 2002, for State agencies which use standards of interoperability and portability adopted by a majority of State agencies and for such costs incurred after September 30, 2002 for State agencies using the standards adopted in this rulemaking. These regulations establish uniform standards to facilitate interoperability and portability already adopted by a majority of State agencies and lay out the funding provisions and administrative procedures for State agencies to receive payment. In order for funding to be made available for this fiscal year, these rules must be made effective as soon as possible. If the Department were to use the standard rulemaking process, issuing a proposed rule to solicit comments prior to making the rule effective, it would be unlikely that a rule would be made effective prior to the end of this fiscal year and funds could not then be obligated for this year. For this reason, it has been determined for good cause, pursuant to 5 U.S.C. 553, that notice and prior public comment on this rule are impracticable and contrary to the public interest. The Department nevertheless is seeking public comment in order to improve the administration of the rule. All comments received will be analyzed, and any appropriate changes to the rule will be incorporated into the subsequent publication of the final rule.

#### **Background**

In this rule, the U.S. Department of Agriculture (Department) Food and Nutrition Service (FNS) is revising Food

Stamp Program (FSP) regulations to require interoperability of all State Food Stamp Electronic Benefit Transfer (EBT) Systems and portability of all electronically-issued benefits. This requirement is in accordance with the Electronic Benefit Transfer Interoperability and Portability Act of 2000, Public Law 106-171, (hereinafter "Public Law 106-171" which mandates nationwide interoperability of FSP EBT systems and portability of electronically-issued benefits and directs the Secretary to establish standards to accomplish this. In accordance with the regulations promulgated by the Secretary, the Department will pay one hundred percent of the costs incurred by a State agency for switching and settling transactions, up to an annual limit of \$500,000 nationwide.

**Electronic Benefit Transfer Issuance System Approval Standards—7 CFR 274.12**

*EBT Interoperability Requirements*

Pursuant to section 7(i) of the FSA, all State agencies must implement EBT systems for the issuance of FSP benefits by October 1, 2002. Currently, the majority of State agencies have implemented EBT systems and most others are in some stage of planning. State agencies contract individually for EBT systems with EBT service providers. These contracts vary in duration. In addition to food stamp benefits, State agencies also contract for EBT systems which deliver benefits for several cash programs, such as Temporary Assistance for Needy Families (TANF) and State cash benefit programs. One State also uses EBT for the delivery of benefits of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Among State-administered benefit programs, only the FSP requires that State agencies change from paper to EBT systems and only the FSP has regulations addressing EBT.

Regulations promulgated April 1, 1992 (57 FR 11218) require food stamp EBT system interoperability between States only to the extent necessary to provide retailer access to recipients along State borders. The Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (PRWORA), Public Law 104-193, encouraged the development of interoperable EBT systems but did not require it. As EBT systems evolved, some State agencies opted to require that their contractors provide interoperability within regional

consortiums, but not necessarily nationwide.

On February 11, 2000, Public Law 106-171 was enacted to require State agencies to provide nationwide interoperable functionality in their EBT systems and portability for electronically-issued food stamp benefits. The purpose of this new requirement, among other things, is to enhance the flow of interstate commerce involving electronic transactions for food stamp benefits under a uniform national standard of interoperability and portability, thus enhancing service to benefit recipients. Section 7(k)(4) of the FSA, as added by Public Law 106-171, stipulates that, effective 30 days after these regulations are promulgated, any State agency entering into a new EBT contract must include provisions to implement interoperability and portability by October 1, 2002. This section further directs the Department to issue regulations which implement these provisions and establish standards to achieve interoperability and portability in order to qualify for one hundred percent federal funding subject to the \$500,000 annual authorization level. Specific federal funding participation requirements are discussed in the "funding" section of this regulation.

The majority of State systems currently in use could be interoperable for both food stamps and cash by making some minor technical changes to their systems. However, most State agencies did not negotiate the cost of nationwide interoperability in their contracts. Therefore, if the law were to require interoperability midway through a contract for all State agencies, State and Federal governments could incur costs to retrofit existing EBT systems for interoperability. In order to avoid this, Public Law 106-171 amended the FSA to add section 7(k)(5), which exempts those State agencies with existing EBT system contracts that do not expire before October 1, 2002. At the same time, the statute does not preclude State agencies from modifying their contracts prior to their expiration dates to include interoperability and receive one hundred percent federal funding as specified in the "funding" section of this regulation. There are additional waiver provisions for State agencies with technical barriers to implementing interoperability by October 1, 2002, including those State agencies that operate Smart Card (off-line) EBT systems. The implementation section of the preamble provides more details on these waiver provisions.

*System Standards for Interoperability*

Public Law 106-171 directs the Secretary to establish a uniform national standard of interoperability and portability that is based on the standards used by a majority of State agencies. The required Departmental standards in this rule are based on the "Quest Operating Rules" (QUEST), which have already been adopted by a majority of State agencies. The QUEST rules set forth requirements to distribute government benefits under the QUEST service mark and form the basis for contractual agreements between the various stakeholders for State agencies that choose to adopt these rules. These rules were developed by the National Automated Clearing House Association (NACHA), a not-for-profit trade association that develops operating rules for various kinds of electronic payments.

In order to develop minimum standards that would be compatible with QUEST rules, the Department reviewed the QUEST rules thoroughly to determine which components of these rules were essential to ensure interoperability and portability of FSP EBT systems, without demanding unnecessary requirements of State agencies that have opted not to adopt the QUEST rules. The Department has determined that the following technical and non-technical standards are necessary to accomplish this goal: (1) Requiring the 8583 message format to standardize the information included in an EBT transaction message so that all EBT POS transaction messages are universally understood; (2) instituting Issuer Identification Number (IIN) requirements for EBT cards to facilitate transaction routing to the appropriate State authorization system, regardless of its point of origin; and (3) establishing minimum transaction sets for interoperable systems to ensure that specific types of transactions can be processed across State borders. In addition, language adapted from the QUEST rules is included in this interim rule to standardize the roles and responsibilities of State agencies or their prime contractors, designated agents, and third parties or terminal operators in the EBT system. There are also programmatic requirements which need to be adapted for interoperable circumstances. The specific standards are discussed below.

*8583 Message Format*

In an effort to facilitate EBT implementation for State agencies and other stakeholders, the Department developed a technical specification for

EBT food stamp transactions from a Point-Of-Sale (POS) terminal in October 1995. The purpose in creating this specification was to provide one standard POS/EBT system interface that retailers could use in multi-state retail operations. The specification was also essential to facilitate interstate transactions. The majority of State agencies operating EBT systems have already adopted this message format. The EBT specification is based on the International Organization for Standardization (ISO) 8583 which incorporates the specific requirements of an EBT system. It also serves to standardize the information that must be contained in the message format, a key piece of information being the FNS retailer authorization number.

For purposes of interoperability, standardization is critical to effectuating communications between a State agency's issuer and retailer/third party messages from sources outside the State EBT system area. If a standard message format is not adopted, a State agency or its designated agent(s) would have to maintain connections with all FNS retailers or their third parties across the country in order to accommodate interstate transactions. In October 1995, these specifications were published in draft form as part of the American National Standards Institute's (ANSI) standards and are available from the American Bankers' Association. The Department is requiring this standard message format for all EBT systems. This interim rule amends current regulations at 7 CFR 274.12(h) which require the State agency to ensure that EBT systems comply with POS technical standards established by the ANSI or the International Organization for Standardization (ISO) where applicable.

#### *Issuer Identification Number (IIN) Requirements*

In order for interoperability to occur, transactions must be routed to the appropriate State system for authorization, regardless of the transaction's point of origin. It is impractical from a system processing and cost perspective to require retailers or their third parties/transaction acquirers to have a direct connection to multiple State EBT systems. A system which prompts multiple connections for retailers and third parties would also be a departure from the commercial infrastructure model, which allows a transaction acquirer, as the entity which owns, operates, or controls the POS terminal(s), to manage their connections to the network based on maximizing efficiencies for their system traffic.

Therefore, the Department is requiring that the Primary Account Number (PAN) on the State-issued EBT card be standardized to include State routing information. Many State agencies have already implemented this in order to allow interoperable transactions within a consortium of State EBT systems. Each State agency must obtain a number assigned by the American Bankers Association that identifies the State for purposes of transaction interchange. This number is commonly referred to as the IIN. The State agency or their prime contractor shall include the IIN as the first six digits of the PAN. The State agency or its prime contractor and other designated agents and terminal operators within the State EBT system must be able to recognize all State IIN numbers so that transactions are routed accordingly.

#### *Interoperable Transaction Set Requirements*

Current regulations at 7 CFR 274.12(h)(9) require that all EBT systems include the following minimum transaction capabilities: authorization or rejection of purchases, refunds or customer credits, voids or cancellations, key entered transactions, balance inquiries and settlement or close-out transactions. The Department is modifying this section to specify that the system must be able to complete these transactions across State borders nationwide in accordance with the standards specified in this interim rule at § 274.12 (h)(10).

The Department considered requiring manual transactions nationwide as well. In order to accomplish this, substantial standards beyond what are currently in the QUEST rules would need to be in place for handling manual vouchers. Even if standards are established for voucher processing, it will be very difficult to administer this across State borders. The critical issue is how retailers will obtain an authorization number for the transaction. There would most likely be an increased burden on training and help desk functions of EBT systems, since retailers would need to interface with virtually all State systems in order to obtain authorization information nationwide. Few, if any, third party processors currently support interoperable manual vouchers. When balancing the small percentage of these types of transactions that would occur against the burden to State agencies and retailers to implement this requirement, the Department has determined that it is neither necessary nor cost effective to require interoperable manual transactions nationwide at this time,

except where necessary for border store access.

In addition to these specific technical standards, there are certain responsibilities delineated in the QUEST rules that are integral to interoperability. These responsibilities have been incorporated into the current regulations at 7 CFR 274.12(h). While the regulations assign these responsibilities to the State agency, State agencies may delegate these responsibilities to their EBT prime contractor, a designated agent of the prime contractor, or third parties/retailers as appropriate.

#### *Other Associated Regulation Changes*

There are also regulation changes needed to adapt FSP specific requirements to an interoperable EBT environment. These changes will ensure the integrity of EBT transactions in authorized FNS retailers for in-state transactions as well as interstate transactions, and update the border store and conversion policies for interoperability. Specific changes are as follows:

*Use of the FNS REDE System:* Current regulations at 7 CFR 274.12(e)(4) require that State agencies maintain a current listing of authorized FNS retailers in their EBT systems so that FSP clients can only redeem benefits at authorized retailers. In order to accomplish this, State agencies or their designated agents must obtain retailer authorization information provided by FNS in a timely fashion and follow up on actions taken regarding any disqualification or withdrawal by an authorized food retailer from the FSP within two business days after receipt. This had previously been a manual process. FNS Field Offices used telefaxing or e-mail to send store data to State agencies or their system operators. These manual procedures were subject to errors and cumbersome to manage. In addition, manual procedures were not conducive to an interoperable environment where multiple vendors must be alerted of retailer participation changes on a daily basis. Therefore, an automated system, referred to as Retailer Electronic Benefit Transfer (EBT) Data Exchange (REDE), was developed to improve the accuracy and efficiency of retailer operations overall. A detailed State-specific file, containing store name, address, firm type, and ownership information is provided by FNS so that the State agency or its EBT system operator can update retailer status information in its system and make the necessary equipment and connectivity arrangements. Additionally, REDE provides a complete national list of FNS

authorized stores to facilitate interstate transactions.

The Department is requiring that State agencies or their designated agent access and use REDE so that the files of FNS retailers are updated on a daily basis. The EBT operator in turn would activate or deactivate retailers' EBT connections in accordance with required timeframes, install or remove Point of Sale (POS) devices as appropriate, and make other necessary information changes to the retailer authorization listing. Use of REDE is required for all State EBT systems, regardless of whether the system is interoperable, in order to maximize the efficiency of retailer data exchange between FNS and the State agency. Most State agencies have already adopted use of the REDE files. In accordance with current regulations at 7 CFR 276.2(b)(7), the State agency is strictly liable for any benefits that are improperly issued as a result of failure to meet the requirements of this provision.

*Border Store Requirements:* In current regulations at 7 CFR 274.12(g)(4)(C), State agencies are required to equip retailers in border States with POS devices if client shopping patterns demonstrate that these stores are necessary for food stamp household access to food stamp retailers. In accordance with these regulations, State agencies review redemption patterns for benefit recipients bordering the EBT system area to determine if any out-of-state retailers are necessary for household access. POS equipment is deployed when necessary. These retailers must also be able to participate in the neighboring State EBT system via a manual voucher process in situations where the system is down or equipment is not deployed to the store due to a waiver.

These border store requirements continue to apply for all State agencies. State agencies are required to examine household shopping patterns in order to determine if there is a need for border store equipment; however, the need for such equipment should be significantly less with interoperability. In order to avoid confusion, the Department is clarifying the current regulations at 7 CFR 274.12(g)(4)(C) to more explicitly identify State agency responsibilities for border stores. In an interoperable EBT environment, where all FNS retailers are equipped with POS devices, the need to deploy equipment outside the State is limited to neighboring states that are not interoperable due to exemptions for technological barriers or temporary waivers. State agencies are required to deploy equipment in these situations if there are border stores necessary for

client access. State agencies will also need to make accommodations for retailers in interoperable border States deemed necessary for client access by ensuring that procedures are in place to process manual vouchers in instances when the system is down or for those retailers that do not have POS equipment.

*Benefit Conversion:* Current regulations at 7 CFR 274.12(f)(6) require State agencies to convert electronic benefits to paper coupons for those households leaving the State. Nationwide interoperability and portability would eliminate the need for this requirement. However, there may be some instances where interoperability is not implemented and benefit conversion will still be necessary to provide clients access to their benefits if they relocate. Therefore, the Department is modifying this requirement so that benefit conversion is only required when a household is relocating to a State that is not interoperable with and where electronic benefits are not portable from the household's current State of residence.

#### *Funding Provisions*

Current regulations at 7 CFR 274.12(k) detail the funding arrangements and limitations of federal financial participation for FSP EBT systems. The Department is amending this section so that State agencies may receive one hundred percent federal funding for the costs incurred by a State agency for switching and settling all food stamp interstate transactions.

The total amount of one hundred percent funding available annually nationwide is limited to \$500,000. Public Law 106-171 established this limit based on a study of interoperability fees conducted by NACHA. Fees were estimated based on knowledge of the pricing structure for various regional network gateway fees. While the statute does not give the Secretary authority to set fees for this service, an assessment of "reasonableness" would be part of the Department's review of a State agency's EBT contract. Such an assessment is in accordance with Departmental regulations at 7 CFR 3015.61(f) which states that "Established procedures shall be used for determining the reasonableness, allowability and allocability of costs in accordance with cost principles. . . ." The Department would expect these costs to be the incremental charges associated with the State agency's system operator for switching and settling transactions between States.

In accordance with Public Law 106-171, the Department will pay 100 percent of the costs incurred by a State agency for switching and settling transactions. In order to qualify for this enhanced funding, the State agency's EBT system must meet certain standards of interoperability and portability. The law makes the following distinction between two sets of standards for the short-term and long-term respectively: (1) State agencies must adhere to the standard of interoperability and portability adopted by a majority of State agencies to receive enhanced funding for the period from February 11, 2000 through September 30, 2002; and (2) State agencies must adhere to the standard of interoperability and portability adopted in this regulation to receive funding for interoperability costs incurred after September 30, 2002. Therefore, those State agencies that have adopted the QUEST operating rules are automatically eligible for the enhanced funding retroactive to enactment of the Pub. L. 106-171 on February 11, 2000. At the same time, several State agencies, while not members of QUEST, have adopted standards which establish identical or equivalent provisions to those established under the QUEST rules for their EBT operations. Therefore, if a State agency has not adopted the QUEST rules but has adopted comparable standards by another name which facilitate interoperability and portability of electronic benefits, FNS will review these standards to determine whether the State agency is eligible for retroactive funding and funding prior to October 1, 2002. Retroactive interoperability costs are eligible for enhanced funding with the caveat that State agencies cannot be reimbursed for such costs with funding obligated in subsequent fiscal years, because appropriations laws stipulate that funding for interoperability costs must be obligated to State agencies in the same fiscal year as such costs are incurred. After September 30, 2002, all State agencies that comply with the standards adopted in this regulation would be eligible for the one hundred percent funding, subject to the nationwide cap of \$500,000 for each fiscal year.

In order to receive enhanced funding, State agencies must sign and submit to the Department an Interoperability Funding Agreement on an annual basis, indicating that the State agency agrees to comply with the administrative procedures established by the Department. The administrative

procedures will be issued by the Department under separate guidance.

The signed agreement will serve as the obligating document, which will enable the Department to set aside the funds needed to pay for 100 percent funding of interoperability costs incurred by State agencies during the fiscal year. The agreement should be submitted to the Department only if the State agency intends to request enhanced funding and must be submitted before or concurrent with the State agency's first request for payment, but no later than the last day of the fiscal year in which the interoperability costs are incurred. For example, for the first fiscal year, FY 2000, any State agency that wishes to request retroactive funding for costs incurred from February 11, 2000 through September 30, 2000 must submit the Funding Agreement before September 30, 2000. However, requests for payment may be submitted after this date, according to the quarterly schedule established by the Department at 7 CFR 274.12(K)(6)(iv) and described in the next paragraph.

State agencies approved to receive the enhanced funding through a contract modification approval must submit payment requests on a quarterly basis. Correspondingly, State agencies will be paid for their interoperability costs on a quarterly basis. Furthermore, because there is limited enhanced funding, it is important that requests for payments be based on actual costs. Requests for payments, therefore, must be submitted after the end of each quarter in which the interoperability costs were incurred. The due dates are February 15 (for the period October through December), May 15 (January through March), August 15 (April through June), and November 15 (July through September). If a request for payment is submitted at any time after the required date for the quarter in which the costs were incurred, the request will still be considered. However, because requests for payments will be processed only once every quarter, late requests will not be considered until all other requests submitted by the next required date are scheduled to be processed. If the \$500,000 limitation is exceeded, federal financial participation would revert to the standard fifty percent program reimbursement rate and procedure. Since these interoperability costs and requests for payments are subject to audit, State agencies should maintain supporting documentation for these costs, including contractor bills and interoperability transaction records, for a minimum of three years in accordance with Departmental regulations at 7 CFR

3015.21 on record retention requirements.

#### Implementation

This rulemaking is effective September 14, 2000. Any new contract executed after October 16, 2000, must have provisions for interoperability and portability which include an implementation date for this functionality no later than October 1, 2002. State agencies entering into contracts before October 16, 2000, are not required to re-negotiate their EBT services contract to include interoperability and portability, even if the contract expires after the October 1, 2002 deadline; such State agencies are exempt from the requirement until they re-negotiate to extend the contract or re-procure a new EBT contract. However, this does not preclude a State agency from modifying their contract to include interoperability and portability prior to the end of their contract. In addition, Smart Card systems are exempt from the requirements of this regulation until such time as the Department determines a practicable technological method is available for interoperability with on-line EBT systems. State agencies with ongoing contracts or that operate Smart Card systems do not need to submit a waiver request to receive the exemption.

At the request of a State agency, the Department may provide one waiver to temporarily exempt the State agency from complying with the requirements of this regulation if the State agency adequately demonstrates that: (1) There are unusual technological barriers to the implementation of interoperability and portability; and (2) it is in the best interest of the food stamp program to grant the waiver. Any approved waivers must specify a date by which the State agency will achieve interoperability.

If the State agency has adopted standards for interoperability and portability adopted by a majority of State agencies prior to the effective date of this rulemaking, enhanced funding for interoperability costs is retroactive to the date of enactment of Public Law 106-171, which was signed into law on February 11, 2000 or the date of implementation of such standards, whichever is later.

#### List of Subjects

##### 7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant Programs-social programs, Reporting and recordkeeping requirements.

##### 7 CFR Part 274

Administrative practice and procedure, Food stamps, Fraud, Grant

programs-social programs, Reporting and recordkeeping requirements, State liabilities.

Accordingly, 7 CFR parts 272 and 274 are amended as follows:

1. The authority citation for 7 CFR parts 272 and 274 continues to read as follows:

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

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

2. In § 272.1, paragraph (g)(162) is added to read as follows:

\* \* \* \* \*

(g) Implementation. \* \* \*

(162) *Amendment No. 384.* The provisions of Amendment No. 384 are effective September 14, 2000, and must be implemented as follows:

(i) Any new contract executed after October 16, 2000, must have provisions for interoperability and portability which include an implementation date for this functionality no later than October 1, 2002, except under the following circumstances:

(A) State agencies with contracts entered into before October 16, 2000, are not required to re-negotiate their EBT services contract to include interoperability and portability, even if the contract expires after the October 1, 2002 deadline; such State agencies are exempt from the interoperability requirement until they re-negotiate or re-procure their EBT contract.

(B) Smart Card systems are not required to be interoperable with other State EBT systems until such time that the Department determines a practicable technological method is available for interoperability with on-line EBT systems.

(ii) Enhanced funding is available for interoperability costs incurred after February 11, 2000, and before October 1, 2002, for State agencies which have implemented standards of interoperability and portability adopted by a majority of State agencies, and for such costs incurred after September 1, 2002, for State agencies that have adopted standards for interoperability and portability in accordance with this regulation at 7 CFR 274.12.

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

3. In § 274.12,

a. Paragraph (e)(4)(i) is revised;

b. Paragraph (f)(6)(i) is amended by removing the first sentence and adding in its place two new sentences;

c. Paragraph (g)(4)(ii)(C) is amended by adding three sentences after the third sentence;

d. Paragraph (h) introductory text is amended by adding a new sentence after the first sentence;

e. Paragraph (h)(9) is amended by adding a new sentence after the last sentence;

f. New paragraphs (h)(10) and (h)(11) are added; and

g. A new paragraph (k)(6) is added. The revisions and additions read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(4) \* \* \*

(i) Convey retailer authorization information provided by FNS to the system operator using the Retailer Electronic Benefit Transfer (EBT) Data Exchange (REDE) system. The State agency must access the REDE files to ensure that the FNS retailer files used to authorize valid EBT Food Stamp transactions are updated on a daily basis. Follow-up on actions taken regarding any disqualification or withdrawal by an authorized food retailer from the Food Stamp Program must occur within two business days after receipt;

\* \* \* \* \*

(f) \* \* \*

(6) \* \* \*

(i) Households leaving an EBT State must be able to use their electronic benefits upon relocation. A State agency must convert these electronic benefits to paper coupons if a household is relocating to a State that is not interoperable and where electronic benefits are not portable from the household's current State of residence.

\* \* \*

\* \* \* \* \*

(g) \* \* \*

(4) \* \* \*

(ii) \* \* \*

(C) \* \* \*

The need to deploy equipment outside the State is limited to neighboring States that are not interoperable due to exemptions for technological barriers or temporary waivers. State agencies will also need to make accommodations for border stores in interoperable States that are deemed necessary for client access. To do so, State agencies must ensure that procedures are in place to process manual vouchers in instances when the system is down or for those retailers that do not have POS equipment. \* \* \*

\* \* \* \* \*

(h) \* \* \* This includes the draft EBT ISO 8583 Processor Interface Technical Specifications contained in the ANSI standards, which delineates a standard

message format for retailers and third parties. \* \* \*

\* \* \* \* \*

(9) \* \* \* The system must be capable of completing this transaction set across State borders nationwide in accordance with standards specified in paragraph (h)(10) of this section.

(10) *Interoperability*. State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term "interoperability" means the EBT system must enable a coupon issued in the form of an EBT card to be redeemed in any State. The term "portability" means the EBT system must enable a coupon issued in the form of an EBT card to be used in any State by a household to purchase food at a retail food store or a wholesale food concern approved under the Food Stamp Act of 1977. The standards must include the following:

(i) *EBT System Connectivity*. State agencies are responsible for establishing telecommunications links, transaction switching facilities and any other arrangements with other State agencies necessary for the routing of interoperable transactions to such other State EBT authorization systems. State agencies are also responsible for facilitating the settlement of such interoperable transactions and the handling of adjustments. These connections need not be direct connections between State authorization systems but may be facilitated through agreements and linkages with other designated agents or third party processors. All State agencies must agree to the timing and disposition of disputes, error resolution, and adjustments in accordance with Department regulations at § 273.13(a), § 273.15(k) and paragraph (f) of this section. State agencies or their designated agents must draw funds from State food stamp accounts for food stamp benefits transacted by that State's food stamp recipients, regardless of where benefits were transacted.

(ii) *Message Format*. Each authorization system must use the International Organization for Standards (ISO) 8583 message format, modified for EBT, in a version mutually agreed to between the authorization agent and the party connected for all transactions. Each authorization system must process each financial transaction as a single message financial transaction, except for pre-authorized transactions and reversals, processed as paired transactions.

(iii) *Card Primary Account Number (PAN) Requirements*. Track 2 on each card shall contain the PAN. Each

Government entity must obtain an Issuer Identification Number (IIN) from the American Banker's Association (ABA). The IIN should be included as the first six digits of the Primary Account Number. The PAN must comply with International Organization for Standards (ISO) 7812, Identification Cards—Numbering System and Registration Procedures for Issuer Identifiers. Each State agency must be responsible for generating, updating, and distributing IIN files of all States to each retailer, processor, or acquirer that is directly connected to the State's authorization system. Each terminal operator that uses a routing table for routing acquired transactions must, within seven calendar days of receiving an IIN routing table update, modify its routing tables to reflect the updated routing information.

(iv) *Third Party Processor Requirements*. Each Third Party Processor or terminal operator must have primary responsibility and liability for operating the telecommunications and processing system (including software and hardware) through which transactions initiated at POS terminals it owns, operates, controls or for which it has signed an agreement to accept EBT transactions, are processed and routed, directly or indirectly, to the appropriate State authorization system. Each terminal operator must maintain the necessary computer hardware and software to interface either directly with a State authorization system or with a third party service provider to obtain access to one or more State authorization systems. Each terminal operator must establish a direct or indirect telecommunications connection for the routing of transactions to the State authorization system or to a processor directly or indirectly connected to the State authorization system.

(v) *REDE File*. The State agency must ensure that their EBT system verifies FNS retailer numbers for all interstate transactions against the National REDE file of all FNS EBT retailers to validate these transactions.

(11) *Waivers*. The State agency may request a waiver from the Department for a temporary exemption from compliance with the requirements for interoperability and portability, as found in this section, if they can adequately demonstrate that: (1) There are unusual technological barriers to the implementation of interoperability; and (2) it is in the best interest of the FSP to grant the waiver. All waivers must specify a date by which the State agency

will achieve interoperability and portability.

\* \* \* \* \*

(k) \* \* \*

(6) State agencies may receive one hundred percent federal funding for the costs they incur for switching and settling all food stamp interstate transactions. For purposes of this section, the term "switching" means the routing of an interstate transaction that consists of transmitting the details of a transaction electronically recorded through the use of an EBT card in one State to the issuer of the card that is in another State; and the term "settling" means movement, and reporting such movement, of funds from an EBT card issuer located in one to a retail food store, or wholesale food concern, that is located in another State, to accomplish an interstate transaction. The total amount of one hundred percent funding available annually is limited to \$500,000 nationwide. Once the \$500,000 limitation is exceeded, federal financial participation reverts to the standard fifty percent program reimbursement rate and procedure. In order to qualify for this funding, the State agency must:

(i) adhere to the standard of interoperability and portability adopted by a majority of State agencies for interoperability costs incurred for the period from February 11, 2000 through September 30, 2002;

(ii) meet standards of interoperability and portability under subsections (e) and (h) for costs incurred after September 30, 2002;

(iii) sign and submit, in each fiscal year for which a State agency requests enhanced funding, an Interoperability Funding Agreement to comply with the administrative procedures established by the Department. The State agency must submit the signed agreement to the Department before the end of the fiscal year in which costs are incurred in order to qualify for payment for that fiscal year; and

(iv) submit requests for payment on a quarterly basis after the end of the quarter in which interoperability costs are incurred, in accordance with the Department's administrative procedures. Requests for payments shall be due February 15 (for the period October through December), May 15 (January through March), August 15 (April through June), and November 15 (July through September). Requests for payment submitted after the required date for a quarter shall not be considered until the following quarter,

when such requests for payments are scheduled to be processed.

\* \* \* \* \*

Dated: August 7, 2000.

**Samuel Chambers, Jr.,**  
*Administrator, Food and Nutrition Service.*  
 [FR Doc. 00-20543 Filed 8-14-00; 8:45 am]  
**BILLING CODE 3410-30-U**

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 121**

**Small Business Size Standards; General Building Contractors, Heavy Construction, Except Building, Dredging and Surface Cleanup Activities, Special Trade Contractors, Garbage and Refuse Collection, Without Disposal, and Refuse Systems; Correction**

**AGENCY:** Small Business Administration.  
**ACTION:** Final rule; correction.

**SUMMARY:** This is a technical correction to the final rule that the Small Business Administration (SBA) published in the **Federal Register** (65 FR 37689) on June 16, 2000. In that rule, the Small Business Administration established higher size standards in annual receipts for all of the construction industries including dredging, and for garbage and refuse collection, and refuse systems. SBA is providing below a replacement table for the one that was contained in that final rule. The table that was published on June 16, 2000 contained omissions that are significant and that SBA believes would be misleading if not corrected.

**DATES:** This rule is effective on July 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Ray, Office of Size Standards, (202) 205-6618.

**SUPPLEMENTARY INFORMATION:** This is a technical correction to the final rule that the Small Business Administration (SBA) published in the **Federal Register** (65 FR 37689) on June 16, 2000. In that rule, the SBA established a size standard of \$27.5 million in average annual receipts for all industries in General Building Contractors, Standard Industrial Classification (SIC) Major Group 15, and for all industries except Dredging and Surface Cleanup Activities in Heavy Construction Other Than Building Construction, SIC Major Group 16; \$17.0 million for Dredging and Surface Cleanup Activities, part of SIC 1629, Heavy Construction, Not Elsewhere Classified (NEC); \$11.5 million for all industries in Special

Trade Contractors, SIC Major Group 17; and \$10.0 million for Garbage and Refuse Collection, Without Disposal, part of SIC 4212, Local Trucking Without Storage, and Refuse Systems, SIC 4953. These size standards were published in the table without dollar signs for five of the receipt-based size standards. The omission of dollar signs for these industries will lead to businesses with receipt-based size standards believing that they have employee-based size standards. As a result, eligible businesses would consider themselves ineligible in many cases for SBA program assistance. This correction publishes a corrected table for the one that was contained in that final rule.

In rule FR Doc. 00-15258 published on June 16, 2000, (65 FR 37689) make the following correction:

**§ 121.201 [Corrected]**

1. On page 37694, in § 121.201, the table "SIZE STANDARDS BY SIC INDUSTRY" is corrected to read as follows:

**§ 121.201 What size standards has SBA identified by Standard Industrial Classification codes?**

\* \* \* \* \*

**SIZE STANDARDS BY SIC INDUSTRY**

SIC code and description	Size standards in number of employees or millions of dollars
* * * * *	* * * * *
Division C—Construction:	
Major Group 15—Building Construction—General Contractors and Operative Builders .....	\$27.5
Major Group 16—Heavy Construction Other Than Building Construction—Contractors	\$27.5
Except:	
1629 (Part) Dredging and Surface Cleanup Activities .....	\$17.01
Major Group 17—Construction—Special Trade Contractors .....	\$11.5
* * * * *	* * * * *
Division E—Transportation, Communications, Electric, Gas, and Sanitary Services:	