

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 272 and 274

[Amendment No. 394]

RIN 0584-AC37

#### Food Stamp Program, Regulatory Review: Standards for Approval and Operation of Food Stamp Electronic Benefit Transfer (EBT) Systems

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

**ACTION:** Final rule and interim rule.

**SUMMARY:** This action provides interim and final rulemaking for a proposed rule. It revises Food Stamp Program rules affecting the standards for approval and operation of Food Stamp Electronic Benefit Transfer systems. The changes will increase State agency flexibility in administering the Program and maximize the advantages afforded by the technology. The revisions will also streamline Program administration and improve customer service. Based on the comments received, a significant change to the store-and-forward provision of the proposed rule has been incorporated. The Department has decided to publish this provision only, as an interim rule, so that retailers may immediately be allowed to recoup partial payment for store-and-forward transactions denied solely for insufficient funds, and at the same time, it can solicit comments on the impact of the change. All comments received will be analyzed, and any appropriate changes to the store-and-forward provision of the rule will be incorporated into the subsequent publication of a store-and-forward final rule. The Department is publishing all of the remaining provisions from the proposed rule as a final rule.

**DATES:** *Effective Date:* The interim and final provisions of this rule are effective May 11, 2005. State agencies may implement the provisions anytime after May 11, 2005 but no later than October 11, 2005.

*Comment Date:* Comments on the interim provisions of this rule at 7 CFR 274.12(n) must be received by June 10, 2005 to be assured of consideration.

**ADDRESSES:** The Food and Nutrition Service invites interested persons to submit comments on the interim rule at 7 CFR 274.12(n). Comments may be sent to Mandy Briggs, Chief, EBT Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 403, Alexandria, VA 22302; FAX number (703) 305-1863; E-mail: [BRDHQ-WEB@fns.usda.gov](mailto:BRDHQ-WEB@fns.usda.gov). Comments may also be sent through the Federal eRulemaking Portal by going to <http://www.regulations.gov>. Follow the online instructions for submitting comments. All submitted comments should refer to the title of this proposal.

*Read Comments:* 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, Room 403, Alexandria, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this rulemaking should be addressed to Ms. Briggs at the above address or by telephone at (703) 305-2523.

#### SUPPLEMENTARY INFORMATION:

##### Interim Rule

Because there may be new information available relevant to the Store and Forward provision at 7 CFR 274.12(n) of this rule since the last comment period, the Department is soliciting further public comment, on this provision only, for 60 days. The Store and Forward provision is discussed under the heading, Back-up System, in the preamble. Effective dates of the provision are discussed in the subsequent paragraph under Implementation. All comments received will be analyzed, and any appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

#### Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. This rule, however, is not economically significant, since it is not expected to have an economic impact on the economy of \$100 million or more in any one year.

#### 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.

#### Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments and consult with them as they develop and carry out those policy actions. The Food and Nutrition Service (FNS) has considered the impact of this rule, which changes numerous requirements for approval and operations of Electronic Benefit Transfer (EBT) systems to deliver food stamp benefits. All of the provisions in this rule are discretionary. FNS is not aware of any case where any of these provisions would in fact preempt State law. Prior to drafting this final and the proposed rule, we received input from State agencies at various times. Several of the provisions are in direct response to State agency concerns and some, in fact, codify policies already implemented by State agencies operating EBT systems. Since the Food Stamp Program (FSP) is a State administered, federally funded program, our national headquarters staff and regional offices have informal and formal discussions with State and local officials on an ongoing basis regarding EBT implementation issues. This arrangement allows State agencies to provide feedback that forms the basis for many discretionary decisions in this and other FSP rules. In addition, we sent representatives to regional, national, and professional conferences to discuss our issues and receive feedback on EBT implementation.

### 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). Eric M. Bost, the Under Secretary for Food, Nutrition, and Consumer Services has certified that this final 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

In accordance with the Paperwork Reduction Act of 1995, the reporting and recordkeeping requirements contained in this final rule were submitted and approved by OMB under OMB No. 0584–0083. FNS published a proposed rule in which comments were solicited from the public for 60 days on the proposed decrease in burden hours. No comments were received. This final rule includes revisions of collection of information pertaining to Advanced Planning Documents (APD) required of State agencies requesting funding for an EBT system for food stamps.

Under section 7(i) of the Food Stamp Act of 1977 (FSA) (7 U.S.C. 2016(i)), as amended, the Secretary is authorized to permit State agencies to implement Electronic Benefit Transfer (EBT) systems. The Secretary is authorized to establish standards for the required testing prior to implementation of any EBT system and may require analysis of the implementation results in a limited pilot project area before expansion of the system. Any State requesting funding for an EBT system must submit a written plan of action called an APD to FNS.

In the final rule, we are revising FSP rules affecting the standards for approval and operation of Food Stamp EBT systems. Several of the provisions will reduce the amount of information required for a State agency to submit as part of the standard APD. We are making these revisions in response to the evolution of EBT over time, which has rendered some of the information we are currently collecting unnecessary.

With provisions in this regulation, we are eliminating or reducing the reporting requirements as described below.

- State agencies will no longer need to provide FNS with the written planning and implementation APD approvals from other participating Federal agencies, or indicate that approval is being sought simultaneously from other participating Federal agencies.

- State agencies will be required to submit a substantially abbreviated planning APD compared to what is currently required. The document will include a brief letter of intent, a budget, a cost allocation plan and a schedule of activities and deliverables.

- State agencies will no longer need to submit an acceptance test report unless FNS is not present at the testing or if serious problems are found during the test.

- State agencies will no longer have to submit quarterly pilot project reports, but rather, report problems or issues to FNS when they occur or are identified.

- State agencies will not be required to submit a pilot cost analysis.

- The State agency will not need to submit an APD update requesting FNS approval to expand EBT operations beyond the pilot area unless there are substantive changes to the implementation plan. State agencies may expand EBT simultaneously with pilot operations, unless significant problems arise.

The burden estimates, as currently approved by OMB under OMB No. 0584–0083, are revised as follows below. Appropriate forms will be submitted to OMB.

*Estimates of Burden:* We estimate the provisions of this rule, as listed above, will reduce the amount of time each State agency spends on an APD for EBT by 10 hours, for an overall decrease in burden hours of 100 hours annually, bringing the total time down to 35 hours per respondent.

*Respondents:* State agencies.

*Estimated Number of Respondents:* 10 State agencies per year.

*Estimated Number of Responses per Respondent:* One.

*Estimated Annual Number of Responses:* 10.

*Estimated Total Annual Burden on Respondents:* 350 hours.

### Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. This rule accomplishes the intent of the GPEA by facilitating Electronic Benefit Transfer (EBT) system implementation for the Food Stamp Program (FSP), and thereby eliminating the need to print, distribute and handle paper food stamp coupons in operation of the FSP.

### 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 “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 FSP, the State administrative procedures for Program benefit recipients are issued pursuant to 7 U.S.C. 2020(e)(10) of the FSA and regulations at 7 CFR 273.15; for State agencies, the administrative procedures are issued pursuant to 7 U.S.C. 2023 of the FSA 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); for Program retailers and wholesalers, the administrative procedures are 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, 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, this rule is not economically significant, nor subject to the requirements of sections 202 and 205 of the UMRA.

### Background

A proposed rule was published in the **Federal Register** on July 12, 2001 at 66 FR 36495 to implement provisions to revise food stamp regulations affecting the standards for approval and

operation of Food Stamp EBT Systems. Comments on the proposed rule were solicited through September 10, 2001. This final action takes the comments received into account. Readers are referred to the proposed regulation for more complete understanding of this final action. The revisions will streamline administration of the program, offer greater flexibility to State agencies in enacting policy, and improve customer service. Other provisions have been clarified in order to facilitate EBT implementation by State agencies.

Seventeen comment letters were received in response to the proposed rule. Individual comments were received from 8 State agencies. Of the remaining letters, 3 were from retailers or retailer associations, 2 were from EBT processors, 2 were from EBT industry trade groups, and 2 were from consumer advocacy groups. In addition, the Department solicited supplementary comments specifically on the Store and Forward provision of this rule. The two sessions held for this purpose were the National Automated Clearinghouse Association (NACHA) meeting in Coral Gables, Florida in April 2004 and the Electronic Funds Transfer Association meeting in Chicago, Illinois in May 2004. Input was received from State agencies, retailers/retailer associations, EBT processors and Third Party Processors at these sessions.

In general, the commenters supported the Department's efforts to revise the EBT rules and welcomed the attempts to reduce burdens, increase State flexibility, streamline and reduce the need for some waivers. The specific provisions are discussed below.

### System Approvals

Regulations at 7 CFR 274.12(b)(1) require that State agencies submit APD for approval of EBT systems. We are clarifying in this final rule our expectation that State agencies continue to follow the APD process when procuring subsequent EBT systems after the initial system contract comes to an end. Although one commenter expressed concern that this was not necessary, we believe that the APD process ensures that State agencies have appropriately planned and budgeted for a new system contract. We are also eliminating the requirement that State agencies provide written approval to FNS of the Planning and Implementation APDs from other participating Federal agencies or indicate that approval is being sought simultaneously from participating Federal agencies.

The Department is revising 7 CFR 274.12(c)(1) to reduce the amount of State EBT planning documentation that must be submitted for EBT systems approval. There is no longer a need for FNS to receive the current level of detail on planning activities to provide sufficient agency oversight. We have modified the regulations to make Planning Advanced Planning Documents (PAPD) less burdensome and less prescriptive in terms of the information required, by eliminating the specifications for pilot project site and expanded site descriptions and description of major contacts; and indicating that only minimal information be contained in the PAPD, including a brief letter of intent, planning budget, cost allocation plan, and schedule of activities and deliverables.

We received one comment that opposed not requiring evidence in the PAPD of State agency contact with organizations. USDA continues to encourage open discussions between State agencies and all EBT stakeholders when EBT is coming up for the first time or coming up for re-bid procurement. However, at this stage of EBT implementation nationwide, we do not see the necessity to document these contacts for our purposes.

### System Testing

To further decrease the burden on State agencies to document all aspects of the EBT planning process, we revised the regulations so that functional demonstration test plans and reports are no longer required. Although we no longer require the test documentation, it is in the State agencies' best interest to require that their vendors perform a functional demonstration test. This is especially important if the State Agency is new to EBT or if the functions of the system are new for that vendor. Without such a test, avoidable functional problems could arise later in the acceptance test and result in the project's delay.

In general, the regulations require that extensive acceptance testing be successfully completed prior to system operation. Since experience has shown that EBT systems are often modified over the life of a State agency's contract with a particular vendor, it may be necessary to repeat any or all of these tests if significant changes are made to the system after the system is operational. Therefore, the Department is clarifying this provision by indicating that FNS reserves the right to require re-testing, if warranted.

The Department is also revising the provision that requires the State agency

to provide an acceptance test report. Under most circumstances, FNS will no longer require this report. However, a report will be necessary if FNS is not present at the acceptance testing or serious problems are uncovered during the test.

Regarding testing, we received one comment encouraging us to further streamline the system testing process. The commenter expressed concern that it was too costly to continue testing systems that have already been accepted by FNS. We will continue to appraise our testing needs, but at this time our experience is that problems continue to be revealed during acceptance testing. This indicates a need to continue the practice, regardless of whether the EBT contractor has already been through the acceptance test process with another State.

### Pilot Operation and Reporting

The Department is revising the regulations at 7 CFR 274.12(c)(4) by replacing the specifics on pilot reporting with less rigid requirements. This will provide State agencies the latitude to discern which details are relevant for their particular pilot. Reporting will not be required on a quarterly basis; rather, it will occur as issues or problems arise. Furthermore, we have deleted the requirements for State agencies to provide an EBT pilot project cost analysis because of the cumbersome nature of the data collection process and the limited value that the information provides to FNS.

One commenter expressed concern about doing away with pilot reporting, while another felt that we should do away with all pilot definition requirements unless they are describing a new system. We want to clarify that in most cases, pilots will only occur with a new system. Now that most States have statewide EBT systems, these provisions regarding pilots will affect few State agencies. However, in some cases, State agencies may want to convert a new system in a pilot area only, because the system is introducing new features that were not tested in the previous implementation. For these reasons, some pilot reporting requirements remain in the regulations for instances where they are warranted, but they are substantially reduced.

We are also revising regulations at 7 CFR 274.12(d) to relax the requirement for a minimum full three months of pilot project operation prior to obtaining approval for expansion. This will decrease unnecessary delays in project expansion and reduce additional costs that may ensue while State agencies wait for completion of pilot analyses

and FNS approval. We received one comment that opposed authorization for State agencies to begin statewide rollout before the end of the pilot period. The commenter was concerned that by expediting the process, it will be difficult to discover and prevent certain problems before rollout, especially in the re-bid environment where we are seeing new contracting relationships, *e.g.* multi-vendor contracts.

While we appreciate this concern, FNS has for some time now, allowed State agencies to expand beyond the pilot area prior to the end of the three-month period without significant consequences. As long as the State agency has defined a pilot area with FNS, which can be a base for any analysis and reporting that may be necessary during the first three months, they will not need to delay system expansion. In all cases, FNS reserves the right to halt rollout activities if problems arise during pilot or project expansion.

#### **Retailer Management**

We are extending the time required for State agencies to ensure that retailer equipment is replaced or repaired from 24 hours to within 48 hours. We received two comments stating that extending the timeframe for retailer equipment replacement or repair to 48 hours will promote efficient administration of the program. One commenter felt that 48 hours may still not be long enough in certain areas and recommended we offer options of either extending to 72 hours, giving States the latitude to price contract options with various replacement timeframes, or eliminating next-day requirements for retailers with more than one terminal. Conversely, one commenter expressed concern that extending the timeframe would have an adverse impact on retailers.

With regard to the concern expressed about the impact on retailers, experience supports the fact that in many cases 24 hours is not enough time for contractors to fix or replace problem terminals. Alternatively, allowing for longer than 48 hours would likely create a hardship for many retailers. Therefore, the final regulations at 7 CFR 274.12(f)(4)(v) allow for up to 48 hours to fix or replace store terminals in order to best meet the needs of all parties.

We are revising the regulations at 7 CFR 274.12(f)(4)(vi) to require that State agencies continue to ensure that training is offered to all retailers, but allow retailers to opt out of the training if they desire. For tracking purposes, State agencies shall direct retailers to confirm in writing that they are waiving their

training option. We received two comments that having retailers opt out of training in writing is unnecessary and that it makes more sense to require retailers to put it in writing if they do want training. Another comment was that USDA should update the retailer application and training process to include an EBT training option. Also, they felt it would be important to clarify what action could be taken against retailers that do not respond to requests to put in writing the option not to receive training. One commenter wrote in that allowing retailers to opt out of training in writing is a good idea.

FNS does incorporate general information about EBT into the training associated with the food stamp authorization process. However, the State agency and its contractor are best suited to provide retailer training since it will vary somewhat from State to State. Due to the current processing environment, many retailers today will not see a need to be trained in using point of sale (POS) equipment and will wish to decline training. However, it is important that retailers continue to receive the benefit of training when needed to be sure that they can properly serve food stamp households. Asking the retailers to decline training in writing will help insure that those retailers that want and need the training are getting it without making assumptions as to why they did not respond in writing.

Regulations require FNS compliance investigators be provided access to State EBT systems in order to conduct investigations of program abuse and alleged violations. We are revising the provision to specify the need for on-line access and to extend the access to other FNS staff involved in compliance activity, including FNS regional and field offices, as well as staff from the Department's Office of Inspector General. Also, the rule makes clear the requirement that FNS compliance investigators and investigators from the Department's Office of Inspector General must be given EBT cards with benefits that can be used for food stamp investigations.

In response to several comments, we are correcting language that was published in the proposed rule, which required the deployment of administrative terminals to FNS and other federal agencies with investigative responsibilities. Investigative agencies have been able to use existing terminals as long as they have the necessary software and telecommunications to ensure access to the system. State agencies must ensure that the investigative offices have these items in

place in order to have access to the system. Also, in response to comments, we are clarifying that this will be read-only access to the States' systems. Two comments expressed the view that FNS should cover the cost for this access. FNS will continue to share in these costs on a 50-50-match basis in accordance with 7 CFR 277.18.

#### **Transaction Receipts**

We are revising regulations at 7 CFR 274.12(g)(3) with an additional requirement that a truncated primary account number (PAN) or a coded transaction number be included on the receipt. This policy has been adopted in every operational project to date, and we want to be sure it remains this way. Truncation of the PAN is a well recognized security feature, and we did not receive any comments to this provision.

#### **Benefit Issuance and Replacement**

The Department is revising regulations at 7 CFR 274.12(g)(5)(i) to allow for Personal Identification Number (PIN) assignment in accordance with commercial industry standards, as long as clients have the ability to later select their PIN if they choose and are informed of the selection option. We only received one comment on this provision, which opposed authorization to use PIN pre-assignment even with the option to change the PIN later.

FNS shared the concern that some households may have difficulty remembering PINs that are assigned. The Department commissioned a study through the Economic Research Service to examine the effects of various EBT customer service waivers, including PIN assignment. The study, *Effects of EBT Customer Service Waivers on Food Stamp Recipients*, by Abt Associates, was released in April 2002. Results indicate that clients are most likely to forget an assigned PIN shortly after a state converts to EBT or after new food stamp recipients receive their EBT card. However, these effects diminish dramatically after a recipient uses an assigned PIN repeatedly or has the PIN changed. The requirement to provide all clients the option to change an assigned PIN protects the clients. In many States this can be done very conveniently over the phone.

We are revising regulations at 7 CFR 274.12(g)(5)(ii) to allow a State agency to replace lost or stolen EBT cards within up to five calendar days if the State agency is using centralized issuance. At the same time, we are clarifying that the intent of "card replacement" requirements is to ensure that clients are given access to their

benefits within the specified time frame. This means that regardless of what timeframe the State agency has indicated for card replacement (e.g., 2 days, 5 days) the client must have an active card and PIN in hand and benefits available on the card within the time frame specified by the State agency.

We received several comments to this provision. Three commenters felt we should expand the ability to replace cards within 5 days to State agencies that do some local office card mail-out or rural areas where 2-day replacements are difficult. Two commenters expressed that contractors have no control over the mail system, and therefore, they cannot guarantee that benefits will be in the clients' hands within the allotted timeframe. Another comment was that we should make it 5 business days, not calendar days since some commercial delivery services are cutting back or eliminating Saturday deliveries. Finally, one comment opposed extension to 5 calendar days for receipt of replacement cards from a centralized location.

We appreciate that these concerns exist, however, we are not willing to go any further to allow for more time or fewer restrictions. We want to ensure that households can receive their replacement cards as expeditiously as possible without creating a logistic hardship on the State agencies that need the extra time. Many State agencies have waivers to operate this way currently and we have not seen that it creates an undue burden on the households.

#### Household Training

Provisions at 7 CFR 274.12(g)(10) are revised by removing the requirement for a "hands-on" approach to household training. This provides State agencies the flexibility to determine the best training approach for their client population in their particular environment. However, hands-on training must be available as a back-up for those clients who request it, for special needs populations such as the elderly, or for those individuals identified as having problems with the EBT system.

We received three comments on this provision. One was in complete agreement with the regulation change. Another commented that the requirement to provide hands-on training when necessary is not stipulated in the proposed regulation language. The final comment opposes elimination of the requirement for hands-on training.

FNS is very sensitive to the concern that by not providing hands-on training,

new clients may not get the most thorough exposure to EBT. The Department commissioned a study through the Economic Research Service to examine the effects of various EBT customer service waivers, including training. The results, which were released in April 2002, indicate that eliminating the requirement for hands-on training reduces the amount of time and possibly out-of-pocket costs most recipients spend on EBT training. Also, we have added regulatory language requiring hands-on training for vulnerable client populations and in those cases where the clients request it. This will protect those clients that need hands-on training without burdening those that are comfortable learning through some other approach such as mail training, videos, or training kiosks.

#### Retailer Participation

**FNS Authorization:** We have deleted from the regulations at 7 CFR 274.12(h)(1)(ii), language that inappropriately placed procedural directions for FNS field offices regarding authorizations of Food Stamp retailers. This does not change current FNS policy. No comments were received on this proposal.

**Fees:** Section 7(g)(2) of the FSA (7 U.S.C. 2016(g)(2)) and regulations at 7 CFR 274.12(h)(2) state that authorized retailers shall not be required to pay costs essential to EBT system operations that are utilized solely for the Food Stamp Program. The Department wishes to reiterate that retailers cannot be required to pay for costs related to EBT for Food Stamps, which includes any fees for food stamp transactions on government-provided terminals. Retailers may, however, make the business decision to pay commercial third party processors a fee to process food stamp transactions along with credit and debit transactions processed for the store. These fees would not be reimbursable by the State agency unless mandated by State law.

We have revised regulations at 7 CFR 274.12(h)(2) to allow State agencies to charge retailers reasonable fees to cover the costs resulting from result from abuses, breach of contract or negligence on the part of the retailer.

**POS Deployment:** Regulations at 7 CFR 274.12(h)(4)(ii)(D) are revised to clarify that State agencies may place additional POS terminals in stores above the minimum number of terminals required at no cost to retailers. One comment disagreed with this approach, stating that it may drive up costs. Another comment was that any POS deployment above the formula in the regulation is at a cost to the retailers.

This revision to the regulation does not change current policy. If State agencies are in a position to offer extra terminals to retailers at no cost, that is acceptable, but it is at their discretion.

#### Minimum Card Requirements

In the proposed regulation we proposed removing the requirement at 7 CFR 274.12(i)(6)(i)(B) that FNS' statement of nondiscrimination be printed on the card or card jacket since the State agencies are already expected to provide this nondiscrimination statement to system users on application forms, handbooks, manuals and other distributed materials. The Agency has reconsidered this proposal due to concerns about our responsibility to protect food stamp households against discrimination. We have decided that some form of the nondiscrimination statement must appear on the card or card sleeve, as it does on food stamp coupon books.

Therefore, we are revising the final regulation to require an abbreviated version of the nondiscrimination statement, which is much shorter than the full version printed on other materials. Also, the abbreviated version does not include an address so it should not confuse households about who to contact for general problems with EBT accounts or transactions. The abbreviated non-discrimination statement reads, "The USDA is an equal opportunity provider and employer." This statement must be printed on the EBT card or card sleeve. Consequently, household training requirements will not change with regard to the non-discrimination statement so language at 7 CFR 274.12(g)(10) is not revised as proposed.

#### Concentrator Bank Responsibilities

We have revised regulations at 7 CFR 274.12(j)(1)(iii) to describe the current reimbursement procedures for crediting retailers through the Automated Standard Application for Payment (ASAP) system developed for the U.S. Treasury Department by the Federal Reserve Bank of Richmond. State agencies will need to accommodate the communication linkages and data flow requirements as prescribed by FNS.

In conjunction with the ASAP system, FNS has entered into a partnership with the Federal Reserve Bank of Richmond to develop the Account Management Agent (AMA) system. The AMA system supports the Department's efforts to improve accountability, oversight and management of State EBT systems. State agencies must provide data to the AMA system in the format established by

FNS. This requirement is specified in section 274.12(k)(2)(iii).

### Management and Reporting

We have replaced requirements for EBT exception reports with the Anti-fraud Locator for EBT Redemption Transaction (ALERT) system in 7 CFR 274.12(k)(2)(ii). The ALERT system is used to collect and examine EBT transaction data for the purpose of detecting and investigating retailer fraud and abuse. The standardized format for the ALERT system was developed in consultation with EBT processors and is in use today for all EBT projects. This provision brings our regulations up to date by codifying the required use of the ALERT system. In response to a comment on this provision, we want to clarify that these rules do not change the current ALERT system specifications.

### Federal Financial Participation

We have removed language regarding enhanced funding for development of EBT systems that are fully integrated components of the State's complete automated data processing (ADP) system, because such funding has not been available since the April 1, 1994 enactment of Public Law 103-66 amending the FSA.

### Back-Up System

In the proposed rule we presented an electronic store-and-forward transaction option to State agencies as an alternative to manual transactions. The rule proposed that State agencies could permit retailers with commercial EBT equipment to use store-and-forward transactions at the retailer's option when the EBT system is inaccessible and the retailer is willing to assume liability for the transaction. It was proposed that retailers would have 24 hours from the time the transaction occurred to forward it to the host. If the system were inoperable for more than a 24-hour period, the retailer would have 24 hours from the point when the system resumes operation to forward the transaction.

The proposed rule further stated that in an instance where the store-and-forward transaction is denied due to insufficient benefits, the retailer could resubmit the transaction for the balance in the account. The outstanding balance of the resubmitted transaction could not be re-presented in future months. FNS had previously approved two operational EBT States to incorporate this model into their systems.

This was the most commented-on provision in the proposed rule. Because the comments received raised significant concerns about security, data

validity, and fraud, the Department solicited additional input from the EBT stakeholder community on this provision. In response to some of these comments, we have changed the proposed rule significantly. Therefore, the Department is issuing this provision as an interim rule, and is soliciting additional comments.

Nine commenters supported store-and-forward transactions in general. Three of these commenters expressed strong support for allowing retailers an opportunity to resubmit the transaction for the balance in the account in the case of insufficient benefits.

Three comments did not support the requirement that retailers must submit their transactions within 24 hours of the purchase or of restored EBT services, indicating that this was too short a timeframe. The 24-hour period in the proposed rule refers to the time limit for original submission of the store-and-forward transaction. The Department clearly expects that resubmission would be almost immediate and would be an automated function built into the retailer's system. Most retailers will want to submit store-and-forward transactions as soon as they possibly can access the EBT system to minimize the risk of insufficient funds in the account. One retailer that is operating a store and forward pilot and was present at the NACHA session confirmed that this automated functionality is built into his system. However, since there may be some systems designed to forward transactions in a batch process mode, the Department is allowing a 24-hour submission period to accommodate this system design. To reduce confusion, the Department has revised the description of the 24-hour period to have a single starting point, that is, when the system again becomes available.

Three additional comments expressed the concern that setting up a 24-hour limited period for submission of transactions provided a potential for fraud because processors do not have the ability to monitor the timing of the transactions, leaving the monitoring up to the retailers. During the NACHA and EFTA sessions, EBT processors clarified their concern to be that the 24-hour period is not auditable in the EBT system since the system does not have information on the availability of the retailer system. The Department did not intend to imply that EBT processors must track this time limit or take any unusual action if the transaction date is older than 24 hours. Timely submission will be the retailer's responsibility. However, if a delay of greater than 24 hours on the part of the retailer or its third party processor results in a client

inquiry or complaint that a transaction was processed more than 24 hours after system functionality returned and a future month's benefits were deducted, the client is entitled to an adjustment at the retailer's liability.

Four comments argued that the rule should allow access to the household's subsequent month's benefits to cover a circumstance where there are insufficient benefits available in the current period. Under current rules, there are already manual transaction procedures in place for retailers to obtain approval for Food Stamp transactions when EBT systems are unavailable, procedures that remove any risk for the retailer. Since these manual transaction procedures take longer than an electronic transaction, some retailers prefer to operate in store and forward mode, thus assuming liability for these transactions. These new store-and-forward provisions provide retailers relief from a significant portion of the risk involved with store-and-forward transactions, and relief from more time-consuming procedures associated with manual transactions. At the same time, the provisions allow for better customer service to Food Stamp recipients. The 24-hour timeframe is in place to protect recipients from problems associated with untimely submissions while providing retailers with a reasonable period within which to submit stored transactions. Because the use of credit is prohibited under the Food Stamp Act, the Department is upholding the 24-hour timeframe requirement between renewed EBT system access and submission of the store-and-forward transactions. Should the 24-hour window cross into the beginning of a new benefit issuance period, retailers may nevertheless draw against all available benefits in the account. If it is determined through repeated client complaints or agency oversight that retailers are abusing this process, the retailer may be required to discontinue use of store-and-forward functionality.

Two other commenters were concerned that the rule as written raised issues of data integrity, audit trails and security and could have unintended impacts on other policies, e.g., adjustments and claims. Store-and-forward transactions are subject to the same level of data and security standards, edit checks, and PIN encryption requirements as any other EBT transaction. Therefore, the Department does not agree that these transactions pose an added data or security risk. In fact, several commenters at the NACHA and EFTA sessions stated that the store-and-forward function was a secure

transaction and a significant improvement to manual voucher procedures, which can be misused by retailers and are less secure transactions. Store-and-forward transactions would be subject to the same adjustment and claim procedures as any other EBT transactions; however, there could be a need for additional training to recipients because the date of the store-and-forward transaction would not necessarily coincide with their shopping date.

Since publication of the proposed rule, there has been much discussion within the EBT community about store-and-forward transactions. Most of the debate and resulting concern surround the concept of changing the purchase amount when resubmitting a transaction for payment after it has been denied for insufficient benefits. In this two-step model, if the retailer receives a denial message [which includes the remaining balance in the account] for a store-and-forward transaction, the retailer sends a second message to the processor requesting the remaining balance. These transactions are not specifically identified to EBT system processors. Commenters believed that this could open the door for additional data manipulation, resulting in increased error and potential fraud. At the NACHA and EFTA sessions, several commenters provided positive comments on this model based on operational experience. There have been no documented complaints from recipients in the New Jersey, New York and Pennsylvania pilots, while at the same time there has proven to be a significant benefit to retailers and their customers. There was also a great deal of support for this method due to the ease of implementation. However, the Department recognizes that from an oversight perspective, it is preferable to have an audit trail, which identifies store-and-forward transactions in order to monitor fraudulent activity through the Agency's retailer oversight system. Currently, in the store-and-forward pilots, these transactions are not specifically identified as "store-and-forward," so EBT processors and the Department [through the agency's ALERT system] have no way of knowing that these transactions are taking place. This raises significant concerns for the Department.

A second alternative solution involving a single transaction has now emerged. In this alternative approach, if there were no remaining benefits at all when the stored transaction is submitted, the transaction would be denied. However, if there were benefits, but not enough to cover the full

purchase amount, the system would return a partial approval, immediately crediting the retailer for the balance remaining in the account and debiting the client balance to zero. The retailer would retain liability for the difference, and would not be allowed to resubmit any denied or partially approved store-and-forward transaction. Partial approvals would only be granted for store-and-forward transactions, identified as such within the body of the transaction message. By using the single-transaction approach, there is no need to track the timing of the second submission or its relationship to the initial transaction, which were concerns raised in comments to the proposed rule. It also eliminates any need for the retailer to alter transaction data and minimizes fraud concerns.

The Department has considered the benefits and disadvantages related to both alternatives. The two-step method described in the proposed rule has been tested, found to be viable, and worked well in the demonstration environment. At the same time, the Department finds the concerns raised by commenters to be valid. The one-step method discussed above is a cleaner solution and supported by industry transaction message standards; however, no retailer or EBT processor has yet attempted this process. Nevertheless, the Department is confident that the one-step method is achievable, and in fact preferable, given the inadequacies of the two-step method cited above.

Consequently, under the interim regulations, State agencies, at their option, may allow retailers to implement the one-step store-and-forward methodology herein described. The retailer that has been operating a two-step store-and-forward pilot as a demonstration waiver may continue to do so for up to three years from this rule's effective date in order to facilitate the transition from a two-step to one-step process.

Three commenters relayed concerns that implementing store-and-forward as proposed would require processors to change their systems, consequently increasing cost. Further information on the costs associated with Store and Forward was obtained at the NACHA and EFTA sessions. Although stakeholders did not provide specific cost information, several participants at these sessions indicated that there are no costs to EBT processors or the government in the two step process; any system changes in this model are born by the retailers. However, in the one-step process, EBT system changes would be necessary to accommodate this option as well as one-time costs

associated with testing the interface between the EBT system and the retailer or the retailer's third party processor. The Department expects that the total cost to implement the one-step process would be between 3–8 million dollars, and that the majority of the cost burden (between 2–7 million dollars) falls on retailers making changes to their store systems. Since these costs would be spread out over thousands of retailers, there would not be a significant burden on any one party. The remaining one million dollars in costs would be shared equally by State agencies and the Federal government through the 50/50 reimbursement procedure. Cost estimates for the implementation of the one-step are based on 150 development and testing hours for States and processors, plus 10 additional hours for each third party processor that must be certified to a State EBT system. Estimates also assume that once a processor develops this core functionality for one State, it can be implemented in another State with a minimal number of development and implementation hours. It is the Department's assessment that the benefits to system integrity over the long run outweigh the costs involved in implementing this system option.

While developing the interim language, the Department concluded that store-and-forward requirements should stand on their own, and not be addressed as a subpart of representation. Therefore, the proposed changes to 7 CFR 274.12(m) have been removed from the interim rule, and paragraph (m) will continue to deal solely with manual voucher procedures. Instead, 7 CFR 274.12 (n) has been redesignated as 7 CFR 274.12(o) and a new paragraph (n) addresses store-and-forward.

#### *Implementation*

The interim and final provisions of this rule are effective May 11, 2005. State agencies may implement the required provisions anytime after May 11, 2005, but no later than October 11, 2005. The Department will review and approve a State Agency's implementation plan for Store and Forward, which preferably will include a phase-in schedule or shake-down period prior to statewide rollout. Based on review and analysis of comments received, as well as experience gained through implementing the one-step method, FNS plans to publish a store-and-forward final rule.

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, for the reasons set forth in the preamble, 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)(168), previously reserved, is added to read as follows:

§ 272.1 General terms and conditions.

\* \* \* \* \*

(g) \* \* \*

(168) Amendment No. 394. The interim and final provisions of Amendment No. 394 are effective May 11, 2005. State agencies may implement the provisions anytime after May 11, 2005 but no later than October 11, 2005.

PART 274—ISSUANCE AND USE OF COUPONS

3. In § 274.12:

a. The first sentence in paragraph (b)(1) is amended by adding the words “for development and implementation of initial and subsequent EBT systems.” at the end.

b. Paragraph (b)(4) is amended by removing the first sentence;

c. Paragraphs (c)(1) and (c)(2)(i) are revised;

d. Paragraph (c)(2)(ii) is removed, and paragraphs (c)(2)(iii) through (c)(2)(vii) are redesignated as paragraphs (c)(2)(ii) through (c)(2)(vi), respectively;

e. Newly redesignated paragraph (c)(2)(ii)(B) is amended by removing the semicolon at the end of the second sentence and adding a period in its place and by adding a sentence to the end of the paragraph;

f. The first sentence of newly redesignated paragraph (c)(2)(iii) following the paragraph heading is revised;

g. Paragraph (c)(4) is revised and paragraph (c)(5) is removed;

h. Paragraph (d) is revised;

i. Paragraph (f)(4)(v) is amended by removing the words “24 hours” and adding in their place the words “48 hours”;

j. Paragraphs (f)(4)(vi) and (f)(4)(vii) are revised;

k. A new paragraph (f)(4)(viii) is added;

l. The first sentence in paragraph (g)(3)(iii) is revised;

m. Paragraphs (g)(5)(i) and (g)(5)(ii) are revised;

n. The first sentence in paragraph (g)(6)(ii) is amended by removing the word “pilot” and adding in its place the word “project”;

o. Paragraph (g)(10)(ii) is revised;

p. The last two sentences of paragraph (h)(1)(ii) are removed;

q. Paragraph (h)(2) is revised, and paragraph (h)(4)(ii)(D) is amended by adding a sentence to the end of the paragraph;

r. The second sentence of paragraph (i)(5)(i) is amended by removing the word “publish” and adding in its place the words “make available to third party processors”;

s. Paragraph (i)(6)(i)(B) is revised;

t. Paragraphs (j)(1)(iii) and (k)(2)(ii) are revised, and paragraph (k)(2)(iii) is added;

u. Paragraph (l)(2) is removed, and paragraphs (l)(3) through (l)(6) are redesignated as paragraphs (l)(2) through (l)(5), respectively; and

v. Paragraph (n) is redesignated as paragraph (o) and new paragraph (n) is added.

The revisions and additions read as follows:

§ 274.12 Electronic Benefits Transfer issuance system approval standards.

\* \* \* \* \*

(c) \* \* \* (1) EBT planning APD. The State agency shall comply with the two-stage approval process for APDs in submitting an EBT system proposal to FNS for approval. The Planning APD shall contain the requirements specified under § 277.18(d)(1) of this chapter, including a brief letter of intent, planning budget, cost allocation plan, and schedule of activities and deliverables.

(2) \* \* \*

(i) Functional demonstration. A functional demonstration of the functional requirements prescribed in paragraph (f) of this section in combination with the system components described by the approved System Design is recommended in order to identify and resolve any problems prior to acceptance testing. The Department reserves the right to participate in the Functional Demonstration if one is conducted.

(ii) \* \* \*

(B) \* \* \* FNS may require that any or all of these tests be repeated in instances where significant modifications are made to the system after these tests are initially completed or if problems that surfaced during initial testing warrant a retest;

\* \* \* \* \*

(iii) \* \* \* The State agency shall provide a separate report after the completion of the acceptance test only in instances where FNS is not present at the testing or when serious problems are uncovered during the testing that remain unresolved by the end of the test session. \* \* \*

\* \* \* \* \*

(4) Pilot project reporting. The State agency is required to report to FNS all issues that arise during the pilot period. Reports to FNS shall be provided as problems occur. In instances where the State agency must investigate the issue, FNS must receive the information no later than one month after completion of pilot operations.

(d) Expansion requirements. The pilot and expansion schedule must be delineated in the State agency’s approved implementation plan. As part of the plan, the State agency must indicate a suitable pilot area to serve as the basis of the three-month analysis and reporting; however, expansion can occur simultaneously with pilot operation. Submission of an Advanced Planning Document Update to request FNS approval to implement and operate the EBT system in areas beyond the pilot area is only required in instances where there are substantial changes to the implementation plan. However, if significant problems arise during the pilot period or expansion, the Department can require that roll-out be suspended until such problems are resolved.

\* \* \* \* \*

(f) \* \* \*

(4) \* \* \*

(vi) Ensure that retail store employees are trained in system operation prior to implementation. Retailer training shall be offered by the State agency and include the provision of appropriate written and program specific materials. Retailers have the option to waive instruction by the State agency if they desire. State agencies shall direct retailers to confirm in writing that they are waiving their option to training;

(vii) Provide on-line read-only access to State EBT systems for compliance investigations. The State agency is required to provide software and telecommunications capability as necessary to FNS Compliance Branch



Area offices, Regional offices and Field offices so that FNS compliance investigators, other appropriate FNS personnel and investigators from the Department's Office of Inspector General have access to the system in order to conduct investigations of program abuse and alleged violations;

(viii) Ensure that FNS compliance investigators and investigators from the Department's Office of Inspector General have access to EBT cards and accounts that are updated as necessary to conduct food stamp investigations.

(g) \* \* \*

(3) \* \* \*

(iii) Identify the food stamp household member's account number (the PAN) using a truncated number or a coded transaction number. \* \* \*

\* \* \* \* \*

(5) \* \* \*

(i) The State agency shall permit food stamp households to select their Personal Identification Number (PIN). PIN assignment procedures shall be permitted in accordance with industry standards as long as PIN selection is available to clients if they so desire and clients are informed of this option.

(ii) In general, the State agency shall replace EBT cards within two business days following notice by the household to the State agency that the card has been lost or stolen. In cases where the State agency is using centralized card issuance, replacement can be extended to take place within up to five calendar days. In all instances, the State agency must ensure that clients have in hand an active card and PIN with benefits available on the card, within the time frame the State agency has identified for card replacement.

\* \* \* \* \*

(10) \* \* \*

(ii) Hands-on experience in the use of the EBT equipment must be available for households that request it or demonstrate a need for that kind of training;

\* \* \* \* \*

(h) \* \* \*

(2) Authorized retailers shall not be required to pay costs essential to and directly attributable to EBT system operations as long as the equipment or services are provided by the State agency or its contractor and are utilized solely for the Food Stamp Program. In addition, if Food Stamp Program equipment is deployed under contract to the State agency, the State agency may, with USDA approval, share appropriate costs with retailers if the equipment is also utilized for commercial purposes. The State agency may choose to charge retailers

reasonable fees in the following circumstances:

(i) Cost for the replacement of lost, stolen or damaged equipment;

(ii) The cost of materials and supplies for POS terminals not provided by the State agency;

(iii) Telecommunication costs for all non-EBT use by retailers when lines are provided by the State agency. In addition, State agencies may remove phone lines from retailers in instances where there is significant misuse of the lines.

\* \* \* \* \*

(4) \* \* \*

(ii) \* \* \*

(D) \* \* \* State agencies may provide retailers with additional terminals above the minimum number required by this paragraph at customer service booths or other locations if appropriate.

\* \* \* \* \*

(i) \* \* \*

(6) \* \* \*

(i) \* \* \*

(B) The abbreviated statement of nondiscrimination, which reads as follows: "The USDA is an equal opportunity provider and employer." In lieu of printing the required information on the EBT card, the State agency shall provide each household a card jacket or sleeve containing the nondiscrimination statement.

\* \* \* \* \*

(j) \* \* \*

(1) \* \* \*

(iii) Initiating and accepting reimbursement from the appropriate U.S. Treasury account through the Automated Standard Application for Payment (ASAP) system or other payment process approved by FNS. At the option of FNS, the State agency may designate another entity as the initiator of reimbursement for food stamp redemptions provided the entity is acceptable to FNS and U.S. Treasury.

\* \* \* \* \*

(k) \* \* \*

(2) \* \* \*

(ii) Retailer transaction data submitted to FNS on a monthly basis. This data must be submitted in the specified format in accordance with the required schedule.

(iii) Data detailing by specified category the amount of food stamp benefits issued or returned through the EBT system. Data shall be provided in a format and mechanism specified by FNS to the FNS Account Management Agent as the benefits become available to recipients. This data will be used to increase or decrease the food stamp EBT benefit funding authorization for the State's ASAP account.

\* \* \* \* \*

(n) *Store-and-Forward*. As an alternative to manual transactions:

(1) State agencies may opt to allow retailers, at the retailer's own choice and liability, to perform store-and-forward transactions when the EBT system cannot be accessed for any reason. The retailer would be able to forward the transaction to the host one time within 24 hours of when the system again becomes available. Should the 24-hour window cross into the beginning of a new benefit issuance period, retailers may draw against all available benefits in the account.

(2) State agencies may also opt, in instances where there are insufficient funds to authorize an otherwise approvable store-and-forward transaction, to allow the retailer to collect the balance remaining in the client's account, in accordance with the requirements detailed in this section. In States that elect not to give retailers this option, all store-and-forward transactions with insufficient funds will be denied in full.

(i) State Agencies may elect to allow store and forward to provide remaining balances to retailers as follows:

(A) The EBT processor may provide partial approval of the store-and-forward transaction, crediting the retailer with the balance remaining in the account through a one-step process;

(B) The transaction should be in accordance with the standard message format requirements for store and forward; and

(C) Re-presentation, as described in paragraph (m) of this section, to obtain the uncollected balance from current or future months' benefits shall not be allowed for store-and-forward transactions.

\* \* \* \* \*

Dated: February 5, 2005.

**Eric M. Bost,**

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

[FR Doc. 05-7252 Filed 4-8-05; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM266; Special Conditions No. 25-255A-SC]

#### Special Conditions: Airbus Model A320 Airplanes; Child Restraint System

AGENCY: Federal Aviation Administration (FAA), DOT.