

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 271, 273, and 281

RIN 0584-AD97

#### Updated Trafficking Definition and Supplemental Nutrition Assistance Program (SNAP)-FDPIR Dual Participation

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Nutrition Service (FNS) is proposing changes to the Supplemental Nutrition Assistance Program (SNAP) regulations pertaining to SNAP client benefit use, participation of retail food stores and wholesale food concerns in SNAP, and SNAP client participation in the Food Distribution Program on Indian Reservations (FDPIR). These changes to SNAP regulations address mandatory provisions of the Food, Conservation, and Energy Act of 2008 (hereinafter referred to as "the 2008 Farm Bill") to allow for the disqualification of a SNAP client who purchases, with SNAP benefits, products that have container deposits for the purpose of subsequently discarding the product and returning the container(s) in exchange for cash refund of deposit(s) and/or resells or exchanges products purchased with SNAP benefits for purposes of obtaining cash or other non-eligible items.

**DATES:** To be assured of consideration, comments on this proposed rule must be received by the Food and Nutrition Service on or before August 19, 2011.

**ADDRESSES:** The Food and Nutrition Service (FNS), USDA, invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

- *Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov>. Preferred method; follow the online instructions

for submitting comments on docket [insert docket number].

- *Mail:* Comments should be addressed to Ronald Ward, Acting Chief, Retailer Management and Issuance Branch, Benefit Redemption Division, Rm. 418, 3101 Park Center Drive, Alexandria, Virginia 22302.

All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via: <http://www.regulations.gov>.

All submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5:30 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Address any questions regarding this rulemaking to Ronald Ward, Acting Chief, Retailer Management and Issuance Branch, Benefit Redemption Division at the Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Mr. Ward can also be reached by telephone at 703-305-2523 or by e-mail at [Ronald.Ward@fns.usda.gov](mailto:Ronald.Ward@fns.usda.gov) during regular business hours (8:30 a.m. to 5:30 p.m.) Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

**Background**

Through existing authority under the Food and Nutrition Act of 2008, FNS is also proposing in this rulemaking to stipulate penalties for certain Program abuses committed by retailers. These abuses include stealing of SNAP benefits, by retailers, without client complicity, and other forms of trafficking through complicit arrangements between the retailer and the SNAP client. Examples of the latter would be the purchase, by retailers, of products originally purchased by clients with SNAP benefits and re-sold to stores in exchange for cash or other non-eligible items; or retailers taking possession of SNAP client cards and PINs, using the SNAP benefits to purchase stock for the store, and subsequently returning the card and PIN to the client with cash or other non-eligible items provided in exchange for having used the SNAP benefit.

FNS will also address the mandatory 2008 Farm Bill provisions requiring reciprocal disqualification in SNAP when an individual is disqualified from FDPIR, and under existing authority, will clarify the prohibition against dual participation in SNAP and FDPIR.

In this rule, FNS is proposing to revise SNAP regulations in accordance with Section 4131 (Eligibility Disqualification) of the 2008 Farm Bill to update the definition of trafficking to include certain Program abuses by clients. FNS is also taking this opportunity to address certain retailer abuses of the Program. These types of abuse are not specifically addressed in the current definition of trafficking.

This rule also addresses Section 4211 (Assessing the Nutritional Value of the Food Distribution Program on Indian Reservations (FDPIR) Food Package) of the 2008 Farm Bill which requires, among other things, reciprocal disqualification in SNAP when an individual is disqualified from FDPIR. Proposed regulatory changes will codify the mandatory statutory requirement to make reciprocal SNAP disqualification mandatory in instances of disqualification from FDPIR.

Dual participation in SNAP and FDPIR is prohibited under existing authority in the Food and Nutrition Act of 2008 and is codified in existing regulations. FNS is proposing only to make a technical correction to existing regulations regarding this mandatory prohibition.

The specific provisions are discussed below.

**Updating the Definition of Trafficking**

FNS has received reports from various stakeholders and the media describing Program abuses by SNAP retailers and recipients. These situations negatively impact Program integrity and divert benefits intended to meet the dietary needs of the nation's neediest citizens. Additionally, stakeholders have expressed frustration in not having options for recourse in specific instances of fraud.

Specifically, stakeholders have witnessed SNAP clients purchasing large quantities of products sold in containers that require deposits. The clients have then taken these products outside of the store location, discarded the contents, and subsequently returned to the store location to claim the container deposit amounts in cash.

Currently, bottle deposits are paid for with SNAP benefits when the item is purchased. Regulations do not require separating the container deposits from the eligible food items, as the container is not optional. While regulations prohibit exchanging cash for SNAP benefits, container deposits are difficult to track back to SNAP purchases. In many instances, containers are returned by persons other than the purchaser and in some instances returns are handled by bottle return machines. None-the-less, clients who intentionally purchased products in containers for purposes of disposing of the products and exchanging the containers for cash are, in effect, trafficking without a complicit retailer.

Furthermore, clients have sold food purchased with SNAP benefits in exchange for cash. This can occur in collusion with the owner (or employee) of a SNAP authorized store who requests that the client purchase specific items at an alternate location for subsequent purchase by the complicit retailer. SNAP clients have also purchased large amounts of products such as soft drinks and then resold them for cash to other individuals once outside of the store.

On the retailer side, SNAP authorized retailers have been found abusing the Program by stealing SNAP benefits from unwitting clients. While Electronic Benefit Transfer (EBT) has largely reduced SNAP fraud, it has introduced a new opportunity for retailers to steal benefits from clients, which did not exist when benefits were issued in the form of paper coupons. In this scenario, retailers and/or store employees steal client card numbers and personal identification numbers (PINs), and subsequently debit benefits from client accounts using manual key entry of the card and PIN number without client knowledge or consent. Retailers may use store cameras, or simply observe and capture EBT client card information, including PINs, in order to undertake these fraudulent transactions later.

Penalties for SNAP clients and/or retailers who abuse the Program through the exchange of benefits, *i.e.* trafficking, are already defined in regulation. The current definition of trafficking in SNAP benefits is as follows: "Trafficking means the buying or selling of coupons, ATP cards or other benefit instruments for cash or consideration other than eligible food; or the exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for coupons."

Because the definition of trafficking does not currently include the scenarios

described above, FNS has had difficulty directly assessing penalties against clients and retailers who engage in these acts. At times, FNS has had to rely on State and Federal law enforcement agencies to pursue criminal charges against the violators.

As a result, FNS is proposing to update the definition of trafficking to incorporate stealing of SNAP benefits, re-selling products purchased with SNAP benefits for the express purpose of obtaining cash or other ineligible items, purchasing products purchased with SNAP benefits for the express purpose of providing cash or other ineligible items to SNAP clients, and discarding products purchased with SNAP benefits for the express purpose of obtaining cash for container deposits. Moreover, the definition is being updated, in general, to include other instances where the client and the retailer collude to exchange SNAP benefits for cash or something other than eligible food.

Appropriate penalties for SNAP clients and/or retailers who are found by a court or administrative agency to have trafficked based on the revised definition are already established in current regulations at 7 CFR 273.16 and 7 CFR parts 278 and 279.

#### **Dual Participation in SNAP/FDPIR Correction**

FDPIR provides commodity foods to low-income households, including the elderly, living on Indian reservations, and Native American families residing in designated areas near reservations and in the State of Oklahoma.

Dual participation in both SNAP and FDPIR was already prohibited by regulation and statute prior to the 2008 Farm Bill. However, a technical correction is necessary in § 281.1(c) to amend an incorrect regulatory reference. This proposed change will not impact current policy.

#### **Comparable Disqualification From SNAP for Clients Disqualified From FDPIR**

Currently only FDPIR has regulations prohibiting individuals disqualified from SNAP for intentional program violations from then participating in FDPIR during the period of disqualification. As a result, individuals who were disqualified from the FDPIR are still able to then apply for SNAP and receive benefits during the FDPIR disqualification period. Section 4211 of the 2008 Farm Bill mandates that reciprocal disqualification apply to both SNAP and FDPIR. Therefore, States can no longer allow an individual who is disqualified from FDPIR to then

participate in SNAP during the disqualification period.

This proposed regulation will require reciprocal action in SNAP in instances of disqualification from FDPIR.

#### **Regulatory Impact Analysis**

##### *Need for Action*

The proposed rule is needed to codify nondiscretionary Supplemental Nutrition Assistance Program (SNAP) benefit issuance provisions of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) and to address retailer Program violations.

##### *Benefits*

This rulemaking will codify provisions in the Food and Nutrition Act of 2008 that improve Program integrity, enhance the Program's ability to serve those who are truly in need, and help to ensure that SNAP benefits are used as intended. While committed to providing vital nutrition assistance to our most vulnerable Americans, protecting taxpayer dollars and ensuring program integrity are equally important. Once final, these regulations will allow the Department to take appropriate action against retailers who are stealing SNAP benefits from clients or colluding with clients to traffic benefits, and will allow State agencies to take appropriate action against violating clients. The regulations will also ensure that clients who commit intentional program violations in FDPIR are not able to participate in SNAP while serving their FDPIR disqualification, and will ensure that no client is able to dually participate in SNAP and FDPIR.

##### *Costs*

This proposed rule will primarily codify mandatory provisions of the statute. FNS anticipates that the rule will have a nominal cost impact on States that pursue clients who are defrauding the Program in the ways described. As FNS has an existing process for managing retailer compliance, the cost of pursuing retailers who violate Program rules in the manner described is also nominal. The problems being addressed in the proposed rule are extremely unusual and FNS has no data on which to base an estimate of their frequency or the amount of benefits that might be involved. The proposed rule also updates the existing definition of trafficking, and as such there are no incremental cost or benefit repercussions.

State SNAP and FDPIR agencies will be required to perform checks for dual participation in their Programs and to

ensure that clients disqualified from either SNAP or FDPIR are not allowed to participate in the alternate Program. Cross-Program checks for duplicate participation in SNAP and FDPIR are already required and checks for ensuring that clients disqualified from SNAP or FDPIR are not participating in the alternate Program should follow a similar process; therefore the checks will not significantly impact administrative costs.

#### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

#### **Regulatory Flexibility Act**

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Departmental Field, Regional, and Area Offices, retailers and other firms participating or applying to participate in the Supplemental Nutrition Assistance Program, State agencies that distribute Supplemental Nutrition Assistance Program benefits and State agencies that administer Food Distribution of Indian Reservations, are the entities affected by this change.

#### **Public Law 104–4**

Unfunded Mandate Reform Act of 1995 (UMRA) Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or Tribal governments in the aggregate, or

to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Executive Order 12372**

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule codified 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. Where such actions have Federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of the Executive Order 13132. FNS has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effects 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 proposed rule is not intended to have retroactive effects unless so specified in the Effective Date paragraph of the final rule. Prior to any judicial challenge to the provisions of this proposed rule or the application of its provisions, all applicable

administrative procedures must be exhausted.

#### **Executive Order 13175**

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. In late 2010 and early 2011, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the impact of this rule on the Tribe or Indian Tribal governments, or whether this rule may preempt Tribal law. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. Each session was fully transcribed and the comments received relative to this proposed regulation follow:

One commenter expressed general concern regarding the disparity in benefit value as a result of the increase in SNAP benefits following the American Recovery and Reinvestment and Act (ARRA); FDPIR benefits were not subject to an ARRA increase.

One commenter noted that County level SNAP office staff should have been in attendance at this consultation; if county level staff is not aware of the prohibition relative to dual participation, then they will not abide by that prohibition. This was reiterated by a second commenter who noted that County level SNAP staff should be in the communication loop and receive training. FNS noted that a process of notifying all stakeholders would occur once this regulation is finalized. A third commenter made a procedural recommendation requiring that SNAP certification staff contact the Indian Tribal Organization (ITO) to ensure that applicant clients are not dually participating in FDPIR.

One commenter expressed support for the reciprocal SNAP disqualification that would be based on an intentional program violation in FDPIR.

One commenter noted that direct access to County level SNAP staff would be beneficial; currently the ITO calls the County level office and is subject to an automated message when checking dual participation.

Several commenters noted that access to an automated system for checking dual participation and reciprocal disqualification is practically necessary to make the process work, and that the current process of checking paper printouts is not practical. FNS noted that some ITO's have successfully executed a Memorandum of Understanding (MOU) with the State SNAP agency or county SNAP offices that allow them view-only access to State certification systems for these kinds of checks. Some participating ITO's noted difficulties in getting such MOU's in place. FNS committed to assist ITO's with this process in Oklahoma, and more broadly, to seek examples of successfully executed MOU's and provide those to appropriate stakeholders.

USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

We are unaware of any current Tribal laws that could be in conflict with the proposed rule. We request that commenters address any concerns in this regard in their responses.

#### Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with Departmental Regulations 4300-4, "Civil Rights Impact Analysis", and 1512-1, "Regulatory Decision Making Requirements." After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of protected classes of individuals to receive SNAP benefits on the basis of their race, color, national origin, sex, age, disability, religion or political belief nor will it have a differential impact on minority owned or operated business establishments, and women owned or operated business establishments that participate in SNAP.

The regulation affects or may potentially affect the retail food stores and wholesale food concerns that participate in (accept or redeem) SNAP. The only retail food stores and wholesale food concerns that will be directly affected, however, are those firms that violate SNAP rules and regulations. FNS does not collect data from retail food stores or wholesale food concerns regarding any of the protected classes under Title VI of the Civil Rights Act of 1964. As long as a retail food

store or wholesale food concern meets the eligibility criteria stipulated in the Food and Nutrition Act of 2008 and SNAP regulations, they can participate in SNAP. Also, FNS specifically prohibits retailers and wholesalers that participate in SNAP to engage in actions that discriminate based on race, color, national origin, sex, age, disability, religion, or political belief. This rule will not change any requirements related to the eligibility or participation of protected classes or individuals, minority-owned or operated business establishments, or women-owned or operated business establishments in SNAP. As a result, this rule will have no differential impact on protected classes of individuals, minority-owned or operated business establishments, or women-owned or operated business establishments.

Further, FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that "State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of the program administration is prohibited by these regulations, according to the Act. \* \* \* Enforcement may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15." Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

This proposed rule will not affect the reporting and recordkeeping burden and

does not contain additional burden requirements subject to OMB approval other than those that have been previously approved in OMB# 0584-0064, expiration date 03/31/2013, by OMB under the Paperwork Reduction Act of 1995.

#### E-Government Act Compliance

FNS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

#### Lists of Subjects

##### 7 CFR Part 271

Food stamps, Grant programs—Social programs, Reporting and recordkeeping requirements.

##### 7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Employment, Food stamps, Fraud, Government employees, Grant programs—Social programs, Income taxes, Reporting and recordkeeping requirements, Students, Supplemental Security Income, (SSI), wages.

##### 7 CFR Part 281

Administrative practice and procedure, Food stamps, Grant programs—Social programs, Indians.

Accordingly, 7 CFR Parts 271, 273 and 281 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 271, 273 and 281 continue to read as follows:

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

#### PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In part 271:
  - a. Remove the words "the Food Stamp Program" or "FSP" wherever they appear and add, in their place, the word "SNAP";
  - b. Remove the words "food stamps" wherever they appear and add, in their place, the words "SNAP benefits";
  - c. Remove the words "food stamp" wherever they appear and add, in their place, the word "SNAP";
3. In § 271.2:
  - a. Remove the words "Food Stamp Act of 1977" and add in their place the words "Food and Nutrition Act of 2008" except in the definition "Food Stamp Act" wherever they appear;
  - b. Remove the words "Food Stamp Act" add in their place, the words "Food and Nutrition Act of 2008"

except in the definition “Food Stamp Act” wherever they appear;

c. The definition of *Trafficking* is revised to read as follows:

**§ 271.2. Definitions.**

\* \* \* \* \*

*Trafficking* means the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; the exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits; the purchase with SNAP benefits of products that have container deposits for purposes of subsequently discarding the product and returning the container(s) in exchange for cash refund deposits; the re-sale of products purchased with SNAP benefits for purposes of obtaining cash or consideration other than eligible food; or the purchase of products originally purchased with SNAP benefits and re-sold in exchange for cash or consideration other than eligible food.

\* \* \* \* \*

**PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

3. In § 273.11:

a. Remove the words “food stamps” wherever they appear and add, in their place, the words “SNAP benefits”;

b. Remove the words “food stamp” wherever they appear and add, in their place, the word “SNAP”;

c. Add two new sentences at the end of paragraph (k) introductory text.

d. Add a new sentence to the end of paragraph (k)(6).

The additions read as follows:

**§ 273.11 Action on households with special circumstances.**

\* \* \* \* \*

(k) \* \* \* In the case of disqualification from the Food Distribution Program on Indian Reservations (FDPIR) for an intentional program violation as described under § 253.8, the State agency shall impose the same disqualification on the member of the household under SNAP. The State agency must, in cooperation with the appropriate FDPIR agency, develop a procedure that ensures that these household members are identified.

\* \* \* \* \*

(6) \* \* \* In instances where the disqualification is a reciprocal action

based on disqualification from the Food Distribution Program on Indian Reservations, the length of disqualification shall mirror the period prescribed by the Food Distribution Program on Indian Reservations.

\* \* \* \* \*

**PART 281—ADMINISTRATION OF THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) ON INDIAN RESERVATIONS**

4. Revise the heading of part 281 to read as set forth above

5. In part 281:

a. Remove the words “the Food Stamp Program” wherever they appear and add, in their place, the word “SNAP”;

b. Remove the words “Food Stamp Act of 1977” wherever they appear and add, in their place, the words “Food and Nutrition Act of 2008”;

c. Remove the words “1977 Food Stamp Act” wherever they appear and add, in their place, the words “Food and Nutrition Act of 2008”;

6. In § 281.1 remove the regulatory reference “§ 283.7(e)” and add, in its place, the regulatory reference “§ 253.7(e)”.

Dated: May 26, 2011.

**Janey Thornton,**

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

[FR Doc. 2011-14982 Filed 6-17-11; 8:45 am]

**BILLING CODE 3410-30-P**

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Part 1236**

**RIN 2590-AA13**

**Prudential Management and Operations Standards**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Section 1108 of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) to require the Federal Housing Finance Agency (FHFA) to establish prudential standards relating to the management and operations of the Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), and Federal Home Loan Banks (Banks) (collectively, regulated entities). FHFA is proposing to implement those HERA amendments by providing for the establishment of the

prudential standards in the form of guidelines, which initially would be set out in an appendix to the rule. The proposal also would include other provisions relating to the possible consequences for a regulated entity that fails to operate in accordance with the prudential standards.

**DATES:** Written comments on the proposed rule must be received on or before August 19, 2011. For additional information, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** You may submit your comments on the proposed rule, identified by regulatory information number “RIN 2590-AA13,” by any of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to [RegComments@FHFA.gov](mailto:RegComments@FHFA.gov). Please include “RIN 2590-AA13” in the subject line of the message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure timely receipt by the agency. Include the following information in the subject line of your submission: Comments/RIN 2590-AA13.

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA13, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel; Attention: Comments/RIN 2590-AA13, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Amy Bogdon, Associate Director, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006, [amy.bogdon@fhfa.gov](mailto:amy.bogdon@fhfa.gov), (202) 408-2546; Carol Connelly, Principal Supervision Specialist, Division of Examination Programs and Support, [carol.connolly@fhfa.gov](mailto:carol.connolly@fhfa.gov), (202) 414-8910; or Neil R. Crowley, Deputy General Counsel, [neil.crowley@fhfa.gov](mailto:neil.crowley@fhfa.gov), (202) 343-1316, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552 (not toll free numbers). The telephone number for the