

# 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, 272, 273 and 276

[FNS-2008-0034]

RIN 0584-AD25

#### Supplemental Nutrition Assistance Program (SNAP): Clarifications and Corrections to Recipient Claim Establishment and Collection Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** Supplemental Nutrition Assistance Program (SNAP) recipient claims are established and collected against households that receive more benefits than they are entitled to receive. This rulemaking corrects and clarifies provisions of the final rule on recipient claims published at 65 FR 41752, July 6, 2000. The purposes of this proposed rulemaking are to remove a definition and several provisions that were made obsolete by the final rule; correct the typographical errors; correct the omission of the requirement that a copy of the claims management plan be submitted to the FNS Regional Office for informational purposes; reinforce current practices and requirements in the areas of fair hearings, fees, due dates, delinquent claims, retention, claim referrals, negligence and fraud; make conforming changes needed as a result of a subsequent rulemaking pertaining to a sponsor's responsibility for overissuances of an alien household; and to remove an overpayment exception that is no longer applicable to the program.

**DATES:** Comments on this proposed rulemaking must be received by July 1, 2009, to be assured of consideration.

**ADDRESSES:** The Food and Nutrition Service, Department of Agriculture invites interested persons to submit comments on this proposed rule.

Comments may be submitted by any of the following methods:

- *E-mail:* Send comments to [PADmailbox@fns.usda.gov](mailto:PADmailbox@fns.usda.gov).
- *Fax:* Submit comments by facsimile transmission to (703) 305-0928.
- *Mail:* Send comments to Jane Duffield, State Administration Branch, Program Accountability and Administration Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 818, Alexandria, Virginia 22302.

• *Hand Delivery or Courier:* You may also hand-deliver comments to us on the 8th floor at the above address.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

#### FOR FURTHER INFORMATION CONTACT:

Questions regarding this rulemaking should be addressed to Jane Duffield at the above address, by telephone at (703) 605-4385, or via the Internet at [jane.duffield@fns.usda.gov](mailto:jane.duffield@fns.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Additional Information on Comment Filing/Electronic Access

###### Electronic Access and Filing Address

You may view and download an electronic version of this proposed rule at <http://www.fns.usda.gov/snap/>. You may also comment via the Internet at the same address. Please include "Attention: RIN 0584-AD25" and your name and return address in your Internet message. If you do not receive confirmation from the system that we have received your message, contact us directly at (703) 605-4385.

###### Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposed rule you are addressing. To be assured of consideration, comments must be received on or before the close of the comment period, see **DATES**. We may not consider for the final rule comments that we receive after the close of the comment period or comments delivered to an address other than those listed above. We will make all comments, including names, street

addresses, and other contact information of respondents, available for public inspection on the 8th floor, 3101 Park Center Drive, Alexandria, Virginia 22302 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

## II. Procedural Matters

### Executive Order 12866

This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

### 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). Enrique Gomez, Acting Administrator, Food and Nutrition Service (FNS), has certified that this rule will not have a significant 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.

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, (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 UMRA, FNS 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 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. 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 in 7 CFR part 3015, Subpart V and related Notice (48 FR 29,115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

*Executive Order 13132*

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 Executive Order 13132. FNS has considered this rule's impact on State and local agencies and has determined that it does not have federalism implications under Executive Order 13132.

*Executive Order 12988*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not 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. As addressed in the Dates paragraph, with the exception of providing an informational copy of the claims management plan, the provisions are already in force. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

*Civil Rights Impact Analysis*

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of SNAP households and individual participants, FNS has determined that there are no civil rights impacts in this proposed rule. All data available to FNS indicate that protected individuals have the same opportunity to participate in SNAP as non-protected individuals.

FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate against any

application or participant in any aspect of Program administration, including, but not limited to, the certification of households, the issuance of benefits, 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. SNAP nondiscrimination policy can be found at 7 CFR 272.6(a)). Discrimination in any aspect of Program administration is prohibited by these regulations, the Food and Nutrition Act of 2008, the Age Discrimination Act of 1975 (Pub. L. 94-135), the Rehabilitation Act of 1973 (Pub. L. 93-112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)). 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. Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.

*Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public 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. Information collections in this proposed rule have been previously approved under OMB Nos. 0584-0069, 0584-0446, and 0584-0492.

FNS-209 Report (OMB No. 0584-0069)

Claims activity is reported by State agencies on the Status of Claims Against Households (FNS-209) report. The OMB approved the information collection requirements for completing and submitting the FNS-209 report under OMB Control Number 0584-0069. This rule does not change this burden.

Federal Collection Methods for Supplemental Nutrition Assistance Program Recipient Claims (0584-0446)

The information collection burden for Federal collections of recipient claims is covered under OMB Control Number 0584-0446. This rule makes some changes to those requirements. This rule does not change this burden.

Repayment Demand and Program Disqualification (0584-0492)

The burden associated with providing notice and demand for payment to households has been approved under

OMB Control Number 0584-0492. This rule does not change this burden.

*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.

**III. Background**

Prior to the July 6, 2000, final rule, the last major revision to the SNAP recipient claim regulations was in 1983. The July 6, 2000, final rule accomplished several specific objectives while updating the SNAP recipient claims regulations. First, it incorporated changes mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193. Second, it streamlined the presentations of our policies, and in some cases, the policies themselves. Third, it incorporated Federal debt management regulations and statutory revisions into recipient claim management. Finally, that rule provided State agencies with additional tools to facilitate the establishment, collections and disposition of recipient claims.

*Purpose of this Rule*

This rulemaking is to correct and clarify provisions of the July 6, 2000, final rule on recipient claims published at 65 FR 41,752, July 6, 2000. This rule does not create new standards for establishing and collecting SNAP recipient claims. Rather, this rulemaking clarifies areas of the final rule, as published, to reflect longstanding policy. Additionally, this rule makes minor technical changes and corrects typographical errors. With this proposed rule we continue to improve claims management in the SNAP while affirming our longstanding position that State agencies have a great amount of flexibility in their efforts to increase claim collection.

*Areas of Policy Clarification*

The following policy areas are being clarified in this rulemaking: Fair hearings, fees, due dates, delinquency date, retention of collections, and claim referral timeframes. All of these policy areas fall within 7 CFR 273.18.

*Claims and Fair Hearings*

Section 11(e)(10) of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. 2020) specifically provides for a fair hearing when a claim for an overissuance is established against a household. We are concerned that the

omission of the word “fair” in paragraphs 7 CFR 273.18(e)(3)(iii) and (iv)(I) could inadvertently deprive a household of its due process rights. Therefore, we are adding the word “fair” into the regulatory text. By adding this text, we are affirming the household’s right to a fair hearing.

#### *Due Dates*

In accordance with 7 CFR 273.18(e)(3)(iv), when a claim is established, the State issues an initial notification letter or demand letter to the household. Among other things, current rules require that the initial notification letter include a due date or time frame to either repay or make arrangements to repay the claim unless the State agency is going to impose allotment reduction. However, we recognize that households that may initially repay their claims through allotment reduction may at some point cease to receive benefits. In order to ensure that all households are treated fairly, we expect that these households will be notified of a due date or time frame to either repay or make arrangements to repay the claim should they cease to receive benefits while they have an outstanding claim. Therefore, we are adding new language at 7 CFR 273.18(e)(3)(iv)(O) that reinforces this expectation that all households be notified of a due date in the initial notification letter.

#### *Delinquency Date*

FNS is required by the Debt Collection Improvement Act of 1996, Public Law 104–134, to submit eligible SNAP recipient debts to the Treasury Offset Program (TOP) for collection. One of the requirements is that a SNAP recipient debt must be at least 180 days delinquent in order to be submitted to TOP. We consider the starting point for counting the 180 days to be the delinquency date. We intend that the delinquency date, once established, remain the same throughout the existence of the claim. The change in regulatory text contained in this rulemaking at 7 CFR 273.18(e)(5)(iii) emphasizes that post-delinquency repayment agreements do not alter the delinquency date.

#### *Retention of Claims*

Section 16(a) of the Food and Nutrition Act of 2008 permits States to retain 35 percent collected for Intentional Program Violation (IPV) claims and 20 percent for Inadvertent Household Error (IHE) claims. We are adding provisions at 7 CFR 273.18(k)(2) to clarify that there is no retention by the State in situations where payments

are not returned to the State because the household is ordered by a court to perform community service in lieu of a claim or in situations where payments made to a court are not forwarded to the State. This was inadvertently not addressed in the July 6, 2000, rulemaking.

#### *Claim Referral and Establishment*

Under the Claim Referral Management section at 7 CFR 273.18(d), State agencies have a standard timeframe for establishing claims. These timeframes are intended to be used primarily as a management tool by States to prevent the backlog of claims and to reinforce our expectation that States run an efficient and effective claims management system. States have always had the option to develop and follow their own claims referral management plan. We do not consider recipient claims that have been established outside of these timeframes invalid claims. However, claims that are established timely have a better chance of being collected. Therefore, we are adding a paragraph at 7 CFR 273.18(d)(3) that clarifies FNS’s position that States must establish SNAP recipient claims even if they cannot be established within the referral management timeframes outlined in 7 CFR 273.18(d).

#### *Additional Actions of this Regulation*

Other proposed actions included in this rule are corrections as a result of typographical errors and changes that were neglected at the time of the July 6, 2000, rulemaking; removal of the definition for “Claims Collection Point” from 7 CFR 271.2 because the term is no longer used; addition of the requirement at 7 CFR 272.2(d)(1)(x) for State agencies to submit an informational copy of the claims management plan to the FNS regional office; changes to conform 7 CFR 273.18(a)(4) to subsequent changes made by the November 21, 2000, (65 FR 70,134) final regulation on sponsored aliens, which eliminated the sponsor’s liability for overpayments of the alien household’s benefits; and removal of the exception to overpayments caused by households transacting Authorization to Participate (ATP) cards, as they are no longer used in the Program.

#### **List of Subjects**

##### *7 CFR Part 271*

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

##### *7 CFR Part 272*

Alaska, Civil rights, SNAP, Grant programs—social programs, Reporting and recordkeeping requirements.

##### *7 CFR Part 273*

Administrative practice and procedure, Aliens, Claims, SNAP, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

##### *7 CFR Part 276*

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs.

Accordingly, 7 CFR Parts 271, 272, 273, and 276 are amended as follows:

1. The authority citation for parts 271, 272, 273 and 276 continues to read:

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

#### **PART 271—GENERAL INFORMATION AND DEFINITIONS**

##### **§ 271.2 [Amended]**

2. In § 271.2, remove the definition for “Claims Collection Point”.

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

3. In § 272.2 revise paragraph (d)(1)(x) to read as follows.

##### **§ 272.2 Plan of operation.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(x) Claims Management Plan as required by 273.18(a)(3) to be submitted for informational purposes only; not subject to approval as part of the plan submission procedures under paragraph (e) of this section.

\* \* \* \* \*

#### **PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

4. In § 273.18:

a. Remove paragraph (a)(4)(ii) and redesignate (a)(4)(iii) as (a)(4)(ii);

b. Amend paragraph (b)(3) by removing the last sentence;

c. Amend paragraph (c)(1)(ii)(D) by removing “(e)(1)(ii)(C)” and adding in its place “(c)(1)(ii)(C)”;

d. Add paragraph (d)(3);

e. Amend paragraph (e)(1) by removing “(g)(2)” and adding in its place “(e)(2)”;

f. Remove “a hearing” and add in its place “a fair hearing” in paragraphs (e)(3)(iii) and (e)(3)(iv)(I);

g. Redesignate paragraph (e)(3)(iv)(O) as (e)(3)(iv)(P) and add a new paragraph (e)(3)(iv)(O);

h. Revise the first sentence of paragraph (e)(5)(iii);

i. Revise paragraph (k)(2).

The additions and revisions read as follows:

**§ 273.18 Claims against households.**

\* \* \* \* \*

(d) \* \* \*

(3) States must establish claims even if they cannot be established within the timeframes outlined under paragraph (d) of this section.

(e) \* \* \*

(3) \* \* \*

(iv) \* \* \*

(O) If allotment reduction is to be imposed, a due date or time frame to either repay or make arrangements to repay the claim in the event that the household stops receiving benefits.

\* \* \* \* \*

(5) \* \* \*

(iii) The date of delinquency for a claim covered under paragraph (e)(5)(i)(B) of this section is the due date of the missed installment payment unless the claim was delinquent prior to entering into a repayment agreement, in which case the due date will be the due date on the initial notification/demand letter. \* \* \*

\* \* \* \* \*

(k) \* \* \*

(2) These rates do not apply to:

(i) Any reduction in benefits when you disqualify someone for an IPV;

(ii) The value of court-ordered public service performed in lieu of the payment of a claim; or,

(iii) Payments made to a court that are not subsequently forwarded as payment of an established claim.

\* \* \* \* \*

**PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS**

**§ 276.2 [Amended]**

5. In § 276.2, amend paragraph (c) by removing “273.18(h)” and adding in its place “273.18(l)”.

\* \* \* \* \*

Dated: March 22, 2009.

**E. Enrique Gomez,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. E9-7151 Filed 4-1-09; 8:45 am]

**BILLING CODE 3410-30-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 110**

**[Docket No. USCG-2008-0047]**

**RIN 1625-AA01**

**Anchorage Regulations; Port of New York and Vicinity**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** This document supplements the Coast Guard's May 2008 proposal to amend the existing special anchorage area at Perth Amboy, New Jersey, at the junction of the Raritan River and Arthur Kill. The proposed amendment is necessary to facilitate safe navigation and provide for a safe and secure anchorage for vessels of not more than 65 feet in length. This supplemental notice of proposed rulemaking provides updated coordinates for the proposed amendment and revises the proposed use limitations.

**DATES:** Comments and related material must be received by the Coast Guard on or before May 4, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG-2008-0047 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Mr. Jeff Yunker, Waterways Management Coordinator, Coast Guard, telephone 718-354-4195, e-mail [Jeff.M.Yunker@uscg.mil](mailto:Jeff.M.Yunker@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

**Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0047), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert “USCG-2008-0047” in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

**Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2008-0047 in the Docket ID box, press