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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 274

[Amendment No. 390]

RIN 0584–AC44

Food Stamp Program, Regulatory Review: Electronic Benefit Transfer (EBT) Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action provides final rulemaking for a proposed rule published May 27, 1999. It revises Food Stamp Program regulations pertaining to implementation of Electronic Benefit Transfer (EBT) systems in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) signed by the President August 22, 1996. This rule implements the EBT provisions found in Section 825 of PRWORA which are meant to encourage implementation of EBT systems to replace food stamp coupons.

DATES: This rule is effective November 3, 2000. State agencies may implement the provisions anytime after the effective date. However, EBT systems must be in place no later than October 1, 2002, unless the State is granted a waiver by the Secretary of Agriculture.

FOR FURTHER INFORMATION CONTACT: Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, room 718, 3101 Park Center Drive, Alexandria, Virginia, 22302, or telephone (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 13132, Federalism

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 requires mandatory implementation of Electronic Benefit Transfer (EBT) systems to deliver food stamp benefits in accordance with non-discretionary requirements set forth in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). In addition, FNS added the two discretionary cost neutrality provisions directly in response to State concerns. FNS is not aware of any case where any of these provisions would in fact preempt State law and no comments were made to that effect. Prior to drafting this final rule, we received input from State agencies at various times. 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 feed back that form 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 timeframes, cost-neutrality issues and other more general EBT concerns. Lastly, the comments on the proposed rule from State officials were carefully considered in the drafting of this final rule.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition and Consumer Services, has certified that this 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 Food Stamp Program.

Paperwork Reduction Act

This rule does not contain additional reporting or recordkeeping requirements other than those that have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and assigned OMB control numbers 0584–0083 and 0505–0008.

Executive Order 12988

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program (FSP), the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(11) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out 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); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (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. Thus this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Proposed rules were published in the **Federal Register** on May 27, 1999 at 64 FR 28763 to implement the provisions of section 825 of the PRWORA (Pub. L. 104–193) which amended Section 7 of the Food Stamp Act of 1977, as amended (7 U.S.C. 2016) (the FSA). Comments on the proposed rule were solicited through July 26, 1999. This final action takes the comments received into account. Readers are referred to the proposed regulation for a more complete understanding of this final action.

Eighteen comment letters were received in response to the proposed rule. Individual comments were received from 8 State agencies. Of the remaining letters, 2 were from retailer associations, 2 were from banking associations, 2 were from Public Interest Groups, 1 was from an EBT processor, 1 was from an EBT industry trade group, 1 was from a planning company, and 1 was from an alliance of States, networks, contractors, financial institutions and retailers.

In general, the commenters supported EBT and the Department's efforts to encourage implementation. Various provisions of this rule: mandate EBT systems for food stamps; allow for implementation of off-line EBT systems; relax cost-neutrality requirements; allow collection of EBT replacement card fees from client household benefit accounts; and identify operational limitations for including client photographs on EBT cards. The specific provisions are discussed below.

Mandate EBT

The proposed rule would mandate that each State agency fully implement EBT statewide for issuance of food stamp benefits no later than October 1, 2002, unless the Secretary provided a waiver because a State agency faced unusual barriers to implementing an EBT system. Each State agency was encouraged to implement an EBT system as soon as practicable. Although a majority of the commenters supported the EBT mandate in general, several had serious concerns with this requirement.

Three comments reflected a concern that the lack of competition in the current EBT environment will impede full implementation efforts. Three commenters expressed concern that the Department's interpretation of the legislation was too stringent in requiring that State agencies be fully implemented statewide by October 1, 2002. They felt that if a State agency is actively moving toward statewide implementation by the deadline, the regulatory requirement should be satisfied. One commenter suggested allowing an extra six months for full implementation, while another suggested short-term waivers to ensure that systems will be ready for reliable operation within a few months after the October 1, 2002 date. One commenter felt that there should be a prohibition on implementations and system changes between October 1999 and the first quarter of 2000 because of Y2K considerations.

The Department was impressed by the show of concern from State agencies and other interested parties about the requirement for full implementation by October 1, 2002. However, Congress was clear in its intent that State agencies must implement EBT for food stamps statewide by the deadline of October 1, 2002, unless they receive a waiver granted by the Secretary because of unusual barriers to full implementation.

Three commenters felt that the rule should specify what will qualify as ''unusual barriers'' to implementation, and thus warrant a waiver. Without knowing what, if any, obstacles State agencies might face, the Department is not able to specify what kinds of problems would justify a waiver from the Secretary. The Department will need to evaluate any waiver requests submitted on an individual basis. However, the Department does not foresee any obstacles that cannot be overcome in order to meet the requirements that State agencies implement EBT systems statewide by October 1, 2002.

The preamble of the proposed rule also stated that any State agency not granted a waiver and not having fully implemented EBT statewide by October 1, 2002, will be out of compliance with these rules and may be subject to disallowance of administrative funds pursuant to the provisions of 7 CFR 276.4. Two commenters requested clarification with respect to penalties that would result if States had not implemented EBT by the deadline. We believe that the regulations, as cited above, provide the State agencies sufficient detail on the disallowance of administrative funds to impart the importance of complying with this requirement.

Off-Line Technology

The proposed regulation would implement the statutory amendment which removed the prohibition against State agencies implementing off-line EBT systems. A majority of the comments on this provision support the change to allow off-line systems because it provides State agencies greater flexibility to determine the kind of system suitable for their own needs. However, one commenter recommended that off-line technologies be implemented transitionally to protect existing investments by States and retailers in on-line systems. Another felt that, while off-line systems can make the integration of cash and non-cash benefits more efficient and convenient for recipients, costs must come down before the technology can be widely implemented. Another raised the concern that retailers should not have to bear the cost of the new technology. By allowing off-line system implementation, the Department is offering State agencies more flexibility but is not endorsing off-line technology over magnetic stripe on-line technology. We recognize that the cost implications for State agencies and for retailers will largely drive the degree to which this technology is adopted over time.

The proposed rule also defines an off-line EBT system as a benefit delivery system in which a benefit allotment can be stored on a card and used to purchase authorized items at a point-of-sale terminal without real-time authorization from a central processor. One commenter suggested modifying the definition of off-line systems to ''* * * a benefit delivery system in which a benefit allotment can be stored on a card or in a card access device.

* * *'' We are incorporating the language of the suggested definition into the regulation to convey that in some cases with an off-line system, benefits must be downloaded onto a card at the point-of-sale terminal or some other card access device.

Another commenter wanted us to specify that off-line systems not be permitted to retain information on recipients, including food choices, for privacy reasons. Off-line systems are held to the same privacy requirements as on-line systems as found in current Food Stamp regulations at 7 CFR 274.12(e)(1)(ix), (redesignated by this publication as 7 CFR 274.12(f)(1)(ix)). This provision states that State agencies shall ensure the privacy of household data and provide benefit and data security. Retailers, for instance, are not permitted to store any information on EBT cards or accounts, on-line or off-line. Because of the existing protections, we have not made any further changes to the rule with regard to this issue.

The rule did not propose standards specific to off-line systems but did solicit comments from the public to provide input into our decision regarding what standards we should propose in the future. One commenter disagreed with this approach and suggested that national uniform standards must be developed before off-line systems can be implemented. The Department has already tested off-line technology for EBT and sees no reason not to allow State agencies to move in this direction if they choose. However, we understand the limitations of not having standards in place and will continue to work with the State agencies and other interested parties to keep apprised of advances being made toward standards in the off-line industry as it evolves.

Cost Neutrality

This rule implements two discretionary changes (offers option of a national issuance cost cap and allows for prospective certification of EBT systems), and one non-discretionary change (removes requirement that EBT systems be cost neutral in any one year) to the EBT cost neutrality requirements of 7 CFR 274.12(c). Most of the comments that we received on the proposed rule were in response to the cost neutrality section. In general, the comments reflect that cost neutrality continues to be a source of concern and frustration for State agencies and other stakeholders, even as we strive to make the requirements less burdensome.

Three of the commenters acknowledged general support of these provisions because they offer State agencies more flexibility to determine and track cost neutrality; however, a majority of the commenters expressed the belief that the Department needs to go further to reduce the impact of cost neutrality requirements. Four commenters recommend exempting certain EBT activities and associated costs from the cost neutrality determination, such as farmers' market participation in the FSP. Similarly, two commenters complained that the cost cap does not take into consideration certain State costs which are not related to coupon issuance but are required for EBT or by FSP regulations, *e.g.,* an annual Statement of Auditing Standards (SAS) 70 audit of EBT systems. Three commenters said that FNS should take into consideration the increased costs to operate EBT and the States' limited financial resources. Four commenters mentioned that the lack of EBT competition has meant higher costs; therefore, further relaxation of cost neutrality requirements are needed. One commenter suggests that State agencies with smaller caseloads need flexibility in choosing a contractor, because it is harder for them to be cost neutral.

The Department has similar concerns about the costs related to EBT and how they impact on a State's cost neutrality. For instance, the Department has decided to exempt all SAS 70 audit costs from State agencies' cost neutrality determinations, and we will continue to examine activities and costs with an eye to whether they should be part of EBT cost neutrality consideration. However, we believe that, by implementing the changes in this rule, a majority of the concerns about the implications of Federal cost neutrality can be overcome.

Two comments specifically welcomed the non-discretionary change to remove the annual cost neutrality assessment of EBT compared to paper systems. However, one comment letter reflected some misunderstanding by questioning whether there is any change to the time periods for calculating cost neutrality under an EBT contract since there are so few billable case months in the first year or so of a first generation EBT system. With the legislative removal of the annual cost neutrality requirement, State agencies will now assess the cost neutrality of the entire contract period, not year to year. This provision should greatly reduce the likelihood that State agencies are held responsible for costs exceeding the cost cap, because they are able to spread them out over the full contract period.

The national cap is a case-month issuance amount calculated by FNS to be $2.42 for fiscal year 2000. The amount is based on nationwide State and Federal coupon issuance costs as validated by FNS. State agencies may opt for this method for determining the cost neutrality of their EBT systems rather than derive their own coupon issuance cost cap. One commenter generally supported the provision. Another commenter suggested that the national cap be lowered or eliminated if it becomes apparent that EBT contractors are tying project bids to the cap rather than competing aggressively. This also included the suggestion of not publishing the national cap for this reason. The Department does not foresee this being a problem because each State agency has its own cost constraints to doing EBT that may in fact be lower than the national cost cap. Contractors will have to be sensitive to how much the individual States can spend on an EBT system when submitting bid proposals, regardless of the national cost cap.

Only one commenter reacted specifically to the proposal on prospective certification. The commenter suggested that FNS deny prospective certification to State agencies with contracts containing troublesome provisions such as a contractor's ability to increase unit costs if caseloads fall below expectations but not reducing those unit costs in the event a recession or other event causes caseloads to rise. The Department agrees that these contract provisions can sometimes be questionable; however, the State agency would have to take such contractual impacts into account when submitting the prospective analysis for FNS approval.

Three comments requested clarification on how the proposed cost neutrality changes will impact on a re-bid contract. The Department does not foresee making any distinction between first time contracts and re-bid contracts when doing cost neutrality assessments. In both cases, the State agency will choose to either: (1) calculate their own State cost cap which is based on individual States' statewide coupon issuance costs, multiplied by the percentage of Federal financial participation, plus Federal only coupon issuance costs, and then validated by FNS; or (2) use the national cap which is calculated by FNS. The State agency then projects the costs of the EBT system for the life of the system; i.e., the contract period. If the State agency can demonstrate up front that the system will be cost neutral, no further cost assessment of the project during the contract period is necessary, unless the State agency makes significant changes to the system which increase contract or

other costs enough to warrant a reassessment.

Clarification was requested by several other commenters. One commenter wanted to know if validated cost caps would have to be recalculated. If the State agency already has a validated cost cap, it may use that cap or switch to the national cap, whichever it wants to use. Another commenter wanted to be able to exclude residual coupon costs from assessment when the State agency is operating statewide. In fact, this is already permitted. State agencies may request that residual coupon costs be taken into consideration as they are rolling out an EBT system, but there are no residual coupon costs once the EBT system is implemented statewide.

Another commenter wanted a more equitable method of determining the cost of off-line systems since off-line systems suffer under current requirements. The Department does not intend to change cost neutrality requirements to fit off-line systems. We recognize that those systems still tend to cost more than on-line systems, but this will likely change if off-line technology advances in the market place.

Two commenters specifically requested clarification of the distinction between direct and indirect costs. After review of the comments, we have determined that the level of detail on direct and indirect costs in the proposed rule, as well as much of the detail on process and procedures related to calculating cost neutrality, is more appropriately handled through guidance to the State agencies. FNS is currently developing the cost neutrality guidance for distribution to the State agencies shortly after publication of this rule. We have revised the cost neutrality section of the final regulation extensively to reflect this.

Differentiate Food Stamp Eligible Items

As discussed in the preamble of the proposed rule, PRWORA requires, to the extent practicable, the establishment of system approval standards for measures that permit a system to differentiate items of food that may be bought using food stamps from items that may not be bought using food stamps. This resulted in a report to Congress in August of 1998 explaining that we would have to require scanners at all authorized food stamp retailers to accomplish this and, while it is technically feasible, it is cost prohibitive to do so at this time. No regulatory change was proposed. We received seven comments supporting this position.

Replacement Card Fee

The proposed rule would provide State agencies with the option to collect a charge for replacement of an EBT card by reducing the monthly allotment of the household. We received five comments generally supporting this provision. Two commenters suggested that we allow collection of future months' benefits for replacement cards. The Department does not see why it should be necessary for a State agency to collect a replacement card fee from a household's future months' benefits. There is currently no prohibition against waiting until funds are available in the benefit account before collecting the fee for replacing the card.

One commenter felt that, since replacing cards is an administrative function, this should not be considered program income. All administrative functions are shared costs and, therefore, if the State agency is being reimbursed for a cost that the Department has already shared in through payment to the EBT contractor, the fee collected must be treated as program income and shared with the Department. Another commenter suggested that State agencies should offer one free replacement per year similar to the credit card industry. State agencies have the flexibility to implement a provision with this kind of leniency if they wish, but the Department will not mandate it.

One commenter had several suggestions to restrict the provision in ways to further protect food stamp households. One point was that, in order to be in compliance with the Americans with Disabilities Act of 1990, as amended (ADA), State agencies should not charge fees to clients with disabilities who frequently request replacement cards, because this is an indication that the client needs better training or help obtaining an authorized representative. It was further recommended that State agencies be required to waive the replacement fee if a client shows good cause.

The Department shares the commenter's concerns for recipients that experience difficulties keeping up with their EBT cards because of disabilities or those that can otherwise show good cause reasons for requesting a replacement card. Therefore, we strongly urge State agencies to consider the circumstances surrounding the recipients' need for a replacement card. Furthermore, we recommend that each State agency develop their own good cause policy for card replacement fees. Such policies would allow free replacement cards in instances of fires or other household emergencies, robbery or other crimes, and for recipients with disabilities that significantly impair their ability to secure the card. We have added regulatory language to emphasize these concerns.

It should be noted, however, that EBT card replacement is significantly different from replacement of coupons lost as a result of household emergencies or mail theft. When coupons are replaced, the actual benefits which were lost are replaced. When a household reports an EBT card lost or stolen, a hold is placed on the benefits remaining on that card, thereby protecting the household from unauthorized access to those benefits. When the card is replaced, the household will have access to the benefits that were on the card at the time it was reported lost or stolen.

Another suggestion was to establish a cap on the fee amount which would be announced annually and for FNS to refuse to grant training waivers (*i.e.,* allow States to mail EBT training to food stamp households rather than conduct hands-on sessions) to State agencies that charge a fee. The Department does not believe that these recommendations are necessary or required under the law. Therefore, we are not changing the regulatory language further in response to this comment. However, FNS will continue to review State agencies' plans for replacement card fee collection to ensure that households are not being charged exorbitant fees and are not being treated unfairly.

Photograph on EBT Card

The proposed regulation specifies that State agencies may require that EBT cards contain a photograph of one or more members of a household but that the State agency must establish procedures to ensure that any other appropriate member of the household or any authorized representative of the household may utilize the EBT card if a photo is used. Four commenters generally supported the provision to use a photo on the card at State agency option. One comment specifically supported the Department's concern that all eligible household members must still be able to use the card. One commenter remarked that putting a photo on the card may reduce card replacements and selling of cards to non-beneficiaries and that any State doing so would need to have uniform procedures in place as part of their EBT program.

One commenter suggested that State agencies be required to place photos on the EBT card similar to how photos

appear on credit cards so as not to make it obvious that a client is using a food stamp card. The Department does not intend to dictate how the photo should be placed on the EBT card.

Another commenter suggested that placing a photo on the card will create confusion for retailers and shift burden of policing the program to the stores. The Department has no intention of shifting the burden of monitoring the compliance of food stamp program recipients to the retail community. That is why the regulation is explicit in requiring State agencies to have a plan in place to ensure that all appropriate household members or authorized representatives can access benefits from the account as necessary. This plan might include retailer training to ensure that they understand someone other than the client pictured on the card may be entitled to use the card.

Anti-tying Restrictions

In the preamble of the proposed rule we discussed the anti-tying provision in PRWORA and the Department's response to it. To summarize, after consulting with the Federal Reserve System Board of Governors, the Department learned that anti-tying prevents the conditioning of any service on the purchase of another service or product. Since EBT is non-conditioned and, therefore, must be offered to retailers at no cost, the Federal Reserve agrees that the existing anti-tying laws are not relevant in the EBT environment. A majority of the commenters to this section agreed with the Department's position.

Two commenters did not agree and felt that USDA needs to do more to find a means to implement the intent of section 825 pertaining to anti-tying for the sake of promoting competition for Point of Sale (POS) services. They suggest that the Department use its expertise to ensure maximum competition and that perhaps prohibiting EBT contractors from offering commercial equipment in the States where they hold contracts is a cost effective and a pro-competitive approach. The Department has no evidence that this is a problem in the current EBT environment, a position which is supported by the Federal Reserve Board of Governors, as well as a majority of the commenters. However, we will continue to look at this issue to determine if further action may be necessary in the future.

System Compatibility

The preamble language in the proposed rule spoke to the sense of Congress that State agencies should operate their EBT systems in a manner that makes them compatible with one another. It further went on to say that, since current rules already require system compatibility, no regulatory change was necessary. Several commenters wanted us to interpret the term ''system compatibility'' to be synonymous with system interoperability and took this opportunity to express their support of system interoperability; *i.e.,* the ability for food stamp households in one State to use their EBT benefits in another State.

Three comments say we must achieve or require interoperability. Two other commenters want the Department to require interoperability and to specify who pays for it. One commenter supports interoperability and believes the Department should pay for it. Another three commenters merely state their support of interoperability while one other noted that without interoperability, cash-out should be allowed when recipients move from State to State. Interoperability legislation has now been passed by Congress and the Department published an interim rule on interoperability in the **Federal Register** August 15, 2000 at 65 FR 49719, entitled Food Stamp Program: EBT Systems Interoperability and Portability.

Three commenters expressed concern about transaction processing standards being inconsistent with commercial standards. The Department continues to work with State agencies, EBT processors, and other interested parties through forums like the EBT Industry Council, a subgroup of the Electronic Funds Transfer Association (EFTA), and the National Automated Clearing House Association (NACHA) to see if better standards for transaction processing can be developed. Under current regulations at 7 CFR 273.12(h), State agencies do have the option to request prior written approval from FNS to use the prevailing regional industry standards rather than the standards specified in this section. One commenter expressed concern that customer service and help line performance standards are also inconsistent with commercial standards. FNS does not prescribe standards in these areas, giving State agencies the flexibility to set their own requirements in individual contracts for EBT services.

One commenter requested FNS consider reviewing the pay-phone access issue and adjustments with an eye toward system compatibility. Another comment said that we need to ensure that other programs like the State food stamp programs can be added to existing systems in a cost effective manner. A final comment suggested that nationwide system compatibility at all levels would greatly enhance EBT systems. We appreciate these broader comments but felt they did not fit within the scope of this rule. The Department will, however, continue to look at how system compatibility can be enhanced with the ongoing evolution of EBT.

Regulation E

As stated in the preamble of the proposed regulation, Section 907 of the PRWORA amends Section 904 of the Electronic Funds Transfer Act, commonly known as Regulation E, to exempt from coverage government EBT accounts held for recipients of State-administered needs-tested assistance programs, including the FSP. Because this provision does not amend the FSA, we did not propose changes to our current regulations. We received only two comments on this issue. One commenter supported FNS's position; the other believed we must reserve further action on this issue until the effects of abrogating Reg E are clear.

Implementation

This rule is effective November 3, 2000. State agencies may implement the provisions anytime after the effective date. However, EBT systems must be in place statewide no later than October 1, 2002, unless the State is granted a waiver by the Secretary of Agriculture.

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)(164) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(164) *Amendment No. 390.* The provisions of Amendment No. 390 are effective November 3, 2000. State agencies may implement the provisions anytime after the effective date. However, Electronic Benefit Transfer (EBT) systems must be in place statewide no later than October 1, 2002, as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

PART 274—ISSUANCE AND USE OF COUPONS

3. In § 274.3, a new paragraph (a)(5) is added to read as follows:

§ 274.3 Issuance systems.

(a) * * *

(5) An off-line Electronic Benefit Transfer system in which benefit allotments can be stored on a card or in a card access device and used to purchase authorized items at a point-of-sale terminal without real-time authorization from a central processor.

* * * * *

4. In § 274.12:

a. Paragraph (a) is revised.

b. Paragraph (b)(1) is amended by removing the second sentence and by removing the words ''However the'' and adding ''The'' in its place in the third sentence.

c. Paragraphs (c)(3)(i) through (c)(3)(vi) are removed.

d. Paragraphs (e), (f), (g), (h), (i), (j), (k), (l), and (m) are redesignated as paragraphs (f), (g), (h), (i), (j), (k), (l), (m), and (n), respectively, and a new paragraph (e) is added.

e. Newly redesignated paragraph (g)(5)(v) is revised.

f. In newly redesignated paragraph (i), a new paragraph (i)(6)(iv) is added.

g. Newly redesignated paragraph (l)(6) is removed.

The revisions and additions read as follows:

§ 274.12 Electronic Benefit Transfer issuance system approval standards.

(a) *General.* This section establishes rules for the approval, implementation and operation of Electronic Benefit Transfer (EBT) systems for the Food Stamp Program as an alternative to issuing food stamp coupons. By October 1, 2002, State agencies must have EBT systems implemented statewide, unless the Secretary provides a waiver for a State agency that faces unusual barriers to implementing an EBT system. In general, these rules apply to both on-line and off-line EBT systems, unless stated otherwise herein, or unless FNS determines otherwise for off-line systems during the system planning and development process.

* * * * *

(e) *Cost neutrality.* To receive full Federal reimbursement for food stamp administrative costs, the State agency must operate its EBT system in a cost-neutral manner, whereby the Federal cost of issuing benefits in the State after implementation of the EBT system does not exceed the Federal cost of delivering coupon benefits under the previous coupon issuance system. The issuance cost cap is expressed in terms of a cost per case month derived by dividing the annual total cost of issuance by the total number of households issued food stamp benefits during the year the costs were incurred. In determining its coupon issuance cap, the State agency shall use either: the National Coupon Issuance Cap, as determined by FNS, or calculate a State Coupon Issuance Cap based on the State agency's statewide issuance costs under the coupon issuance system. FNS will not reimburse the State agency for any costs incurred above the approved coupon issuance cap.

(1) The National Coupon Issuance Cap is a case-month issuance amount, as calculated by FNS.

(2) A State Coupon Issuance Cap is a case-month issuance amount, as calculated by the State agency based on guidance provided by FNS. The State agency must provide narrative explanations and satisfactory supporting documentation to clarify each cost item, its relationship to the coupon issuance function, and how it was calculated. All issuance costs included in the State coupon issuance cap must have been charged to the Federal government and are subject to validation by FNS.

(3) The State agency shall submit its State coupon issuance cap or indicate it has opted to use the National Coupon Issuance Cap as part of the Implementation APD process. The State coupon issuance cap must be approved by FNS prior to implementation of the pilot, and shall be effective from the first date benefits are issued to households through the EBT system during the pilot project.

(4) Each State agency's approved State issuance coupon cap and the National Coupon Issuance Cap will be adjusted each Federal fiscal year based on the percentage change in the most recently published Gross Domestic Product Implicit Price Deflator Index (GDP Price Deflator) calculated from the percentage change in the index between the first quarter of the current calendar year and the first quarter of the previous year, as published each June by the Bureau of Economic Analysis.

(5) The determination of cost neutrality will be assessed on a prospective basis; that is, FNS will make a determination whether the EBT system will be cost neutral based on a comparison of the coupon issuance costs to the projected costs of the EBT system. The State agency may choose how they determine coupon issuance costs either according to paragraph (e)(1) or paragraph (e)(2) of this section. After approval of its coupon cost cap, the State agency shall submit to FNS an analysis, completed according to FNS guidance, comparing the coupon issuance costs to the projected EBT costs over the contract period for system operation which defines the life of the system. If the State agency uses the National Coupon Issuance Cap, Statewide cost projections for issuance costs after EBT implementation must include all contract costs and all other direct EBT issuance costs. If the State agency develops their own State issuance cost cap, Statewide cost projections for issuance costs after EBT implementation must include all of the direct EBT costs, and projections for all categories of allocated costs which were included in the coupon cost cap calculation using the same allocation methodology as in the cost cap calculation.

(i) EBT planning costs are to be excluded from the cost neutrality assessment and shall include costs attributed to the preparation of the Planning APD, all activities leading to the development of the EBT implementation plan, and the completion of the documentation contained in the FNS approved Implementation APD.

(ii) The cost neutrality assessment must include pre-issuance costs, which can include system design, development and start-up costs, and operations costs. The operations phase is defined as beginning with the first EBT issuance in the pilot area.

(iii) If the comparison demonstrates the proposed system will cost less than the coupon issuance system, no further measurement will be required for the life of the system unless there is a substantial increase in EBT costs requiring prior approval as described in § 277.18 (c)(2)(ii)(C) of this chapter and the submittal of an Implementation APD Update as outlined in the FNS Handbook 901 (APD Handbook).

(iv) Any State agency that cannot demonstrate cost neutrality prospectively will be required to track EBT costs throughout the life of the system according to FNS guidance, and reimburse FNS for any excess at the end of the defined system life.

(6) The State agency is required to provide an updated cost neutrality assessment for all subsequent EBT systems developed or implemented, incorporating the revised costs of the new system.

* * * * *

(g) * * *

(5) * * *

(v) The State agency may impose a replacement fee by reducing the monthly allotment of the household receiving the replacement card; however, the fee may not exceed the cost to replace the card. If the State agency intends to collect the fee by reducing the monthly allotment, it must follow FNS reporting procedures for collecting program income. State agencies currently operating EBT systems must inform FNS of their proposed collection operations. State agencies in the process of developing an EBT system must include the procedure for collection of the fee in their system design document. All plans must specify how the State agency intends to account for card replacement fees and include identification of the replacement threshold, frequency, and circumstances in which the fee shall be applicable. State agencies may establish good cause policies that provide exception rules for cases where replacement card fees will not be collected.

* * * * *

(i) * * *

(6) * * *

(iv) State agencies may require the use of a photograph of one or more household members on the card. If the State agency does require the EBT cards to contain a photo, it must establish procedures to ensure that all appropriate household members or authorized representatives are able to access benefits from the account as necessary.

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Dated: September 21, 2000.

Shirley R. Watkins,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 00–25364 Filed 10–3–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–016]

Standards For Business Practices Of Interstate Natural Gas Pipelines

Issued September 28, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order Granting Clarification.

SUMMARY: The Federal Energy Regulatory Commission is granting clarification of Order No. 587–L (65 FR 41873), which established November 1, 2000, as the date by which pipelines are required to comply with the regulation requiring them to permit shippers to offset imbalances on different contracts held by the shipper and to trade imbalances. (18 CFR 284.12(c)(2)(ii)). The order clarifies that pipelines on which shippers do not incur imbalances and are not subject to imbalance penalties need not implement imbalance trading on their systems.

DATES: Pipelines seeking an exemption from the imbalance trading requirement must file within 15 days of the order to show why they should not be required to implement imbalance trading.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283.

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0507.

SUPPLEMENTARY INFORMATION:

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

Order Granting Clarification

Issued September 28, 2000.

Iroquois Gas Transmission System, L.P. (Iroquois) and Michigan Gas Storage Company (Michigan) filed requests for clarification or rehearing of Order No. 587–L.[1] Order No. 587–L established November 1, 2000 as the date by which pipelines are required to implement section 284.12(c)(2)(ii) of the Commission's regulations requiring pipelines to implement imbalance netting and trading on their systems.[2] Pipelines are required to file tariff sheets to implement imbalance trading in sufficient time for the tariff changes to become effective November 1, 2000.

Iroquois and Michigan request clarification that pipelines on which shippers do not incur imbalances and are not subject to imbalance penalties are not required to implement imbalance trading on their systems. Iroquois and Michigan state that, in Order No. 637–A,[3] the Commission determined that pipelines without imbalance penalties would not be required to offer imbalance management services, and contend that the same rationale should apply to imbalance trading.

The Commission agrees that pipelines on which shippers do not incur imbalances and are not subject to imbalance penalties need not implement imbalance trading on their systems. The purpose of requiring imbalance trading was to establish a mechanism by which shippers can avoid imbalance charges. If shippers cannot incur imbalances, then shippers do not need to trade imbalances.

However, the Commission cannot make a determination in a generic rulemaking proceeding as to whether the circumstances on an individual pipeline permit an exemption from the requirement to provide imbalance trading. Shippers on the individual systems should be given the opportunity to respond to any request for such an exemption. Accordingly, pipelines that seek an exemption from the imbalance trading requirement must file within 15 days of this order showing why they should not be required to implement imbalance trading on their systems.

The Commission Orders

(A) The requests for clarification are granted, in part, as discussed in the body of the order.

(B) Pipelines seeking an exemption from the imbalance trading requirement are required to file within 15 days of the

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–L, 65 FR 41873 (July 7, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,100 (June 30, 2000).

[2] 18 CFR 284.12(c)(2)(ii).

[3] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637–A, 65 FR 35706, 35736 (Jun. 5, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,600–601 (May 19, 2000).