

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 271 and 274

[FNS–2016–0074]

RIN 0584–AE02

#### Supplemental Nutrition Assistance Program: 2008 Farm Bill Provisions on Clarification of Split Issuance; Accrual of Benefits and Definition Changes

**AGENCY:** Food and Nutrition Service, U.S. Department of Agriculture.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Supplemental Nutrition Assistance Program (SNAP) regulations to implement provisions of the 2008 Farm Bill regarding monthly benefit issuance allotments, storage of benefits off-line, and permanent expungement of unused benefits, as well as related benefit expungement and off-line storage provisions of the 2018 Farm Bill. This final rule also updates SNAP regulations to reflect the program's name change to SNAP and benefit issuance through Electronic Benefit Transfer (EBT) systems.

**DATES:** This final rule is effective September 23, 2020.

**FOR FURTHER INFORMATION CONTACT:** Vicky T. Robinson, Chief, Retailer Management and Issuance Branch, Retailer Policy and Management Division, Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), 1320 Braddock Place, Alexandria, Virginia 22314, (703) 305–2476, [Vicky.Robinson@usda.gov](mailto:Vicky.Robinson@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

##### *Purpose of the Regulatory Action*

This rule finalizes the provisions of a proposed rule published on September 29, 2016 (81 FR 66866). With this final rule, the Department is amending 7 CFR

part 274 to implement the benefit issuance, storage and expungement provisions of the Food, Conservation and Energy Act of 2008, Public Law 110–234 (2008 Farm Bill).

Since publication of the proposed rule, the President signed the Agriculture Improvement Act of 2018 (2018 Farm Bill), which made additional mandatory changes to the provisions governing the storage and expungement of unused benefits. Accordingly, the Department intends to adopt these 2018 Farm Bill provisions as final as well.

Finally, this final rule will update terminology at 7 CFR part 271 to reflect the program's new name and the issuance of benefits through Electronic Benefit Transfer (EBT) systems, as well as add new EBT-related definitions to 7 CFR 271.2.

##### *Summary of Changes From Proposed Rule*

The final rule incorporates the following modifications for clarity:

- The definitions of EBT Card, EBT System, Interoperability and Point-of-Sale Device will no longer refer to point-of-sale and card technology in order to take into account on-line and other emerging technologies.
- Amendatory language is being added to clarify that taking benefits off-line means making a household's entire SNAP EBT account inaccessible to the household, including any new benefits added to the account.
- Amendatory language is being added to clarify that any unexpired benefits taken off-line must be restored upon a household's recertification or reapplication for benefits or a general request for assistance.
- Amendatory language is being added to clarify that benefits must be expunged on a first-in-first-out (FIFO) basis.

The Department is also making the following changes to the proposed provisions:

- The proposed change to the definition of “Drug addiction or alcoholic treatment and rehabilitation program,” is being withdrawn to provide the public another opportunity to comment as part of a future comprehensive rulemaking regarding group living arrangements.
- The proposed corrections to the definitions of “Employment and Training (E&T) component,” and

“Employment and Training (E&T) mandatory participant,” is being withdrawn because they will be included in a separate rulemaking on E&T provisions.

- State agencies will now have the option to maintain the current method of expunging unused benefits only from inactive accounts or to expunge benefits based on the date of issuance, regardless of account activity. The option the State chooses must be applied to all households.

- State agencies must expunge unused benefits after nine months (rather than 12 months) in accordance with one of the expungement processes above.

- States agencies must provide notice to individual households prior to expunging benefits no later than 30 days prior to the date the benefits will be expunged.

- State agencies may choose to take benefits off-line prior to expungement after three months of account inactivity (rather than six months).

- State agencies will not be required to remove off-line benefits from the Account Management Agent (AMA) as proposed. Instead, State agencies will be required to make the entire EBT account inaccessible to the household if they take benefits off-line.

##### II. Background

SNAP regulations at 7 CFR part 274 already required several of the 2008 Farm bill provisions addressed in the proposed rule. These include requirements to issue monthly benefits in one lump sum, expunge unused benefits after the household's account has been inactive for 12 months, and notify households prior to taking benefits off-line. The Department's implementing memo on October 1, 2008, addressed provisions requiring State agencies to wait until a SNAP account remains inactive for six months and to reinstate off-line benefits within 48 hours of a household's request.

The Department published a proposed rule to solicit comments on various implementation details of the above provisions over which the Department has discretion, as well as to update 7 CFR part 271 to reflect “SNAP” as the new name of the program and the mandatory issuance of benefits through Electronic Benefit Transfer (EBT) systems.

With regard to benefit expungement, the proposed rule specifically solicited feedback on whether the expungement timeframe should continue to apply only to inactive EBT accounts as required under current SNAP policy, require State agencies to expunge benefits based on the date of issuance even if the account remains active, or provide States agencies the option to use either method.

On December 20, 2018, the President signed the 2018 Farm Bill, which made additional changes to the provisions governing the storage and expungement of unused benefits. Section 4006 of the 2018 Farm Bill specifies that a State may take benefits off-line after three months (previously six months) and that States must expunge unused benefits after nine months (previously 12 months). States must also notify individual households before expunging their benefits. Because these provisions are mandatory and non-discretionary, the Department is including these provisions in this final rule without comment. State agencies will have 12 months from the effective date of this rule to implement these mandatory 2018 Farm Bill provisions.

The Department solicited comments on the proposed rule for 60 days, ending November 28, 2016. The Department received 24 comments from various entities, including 13 advocate organizations, eight State or local government agencies, two Electronic Funds Transfer (EFT) associations, and one individual not identified with an organization or a State agency.

### III. Summary of Comments and Explanation of Revisions

Overall, commenters supported the proposed rule but wanted exemptions from the expungement and off-line provisions for certain groups, as well as greater protections for clients, especially the elderly and disabled. Commenters also wanted more clarification on the process for taking benefits off-line and restoring them. There was some opposition to the requirement to remove off-line benefits or the benefits of deceased households from the EBT system and the AMA, preferring that State agencies merely deactivate EBT cards. Some commenters also pointed out that some of the definitions related to EBT were too narrow and should be broadened to account for emerging technologies. Below is further discussion of the most substantive comments the Department received.

#### Definitions

The Department proposed adding new definitions under 7 CFR part 271 to

update terminology for the EBT issuance system and ensure consistency with current policy. Commenters wanted the definitions of *EBT card*, *EBT system*, *Interoperability*, and *point-of-sale (POS) terminal* to account for possible technologies that do not require a POS terminal or EBT card, such as online shopping. The Department agrees that the proposed definitions may be too narrow as technology develops. Therefore, this final rule broadens these definitions. One commenter also noted that adding the definition for *Contractor* would be confusing, given such broad and varying use of the term throughout the SNAP program. This final rule will change the term *Contractor* to *EBT contractor* to distinguish it from other types of contractors used in SNAP. These changes are reflected at § 271.2.

#### Split Issuance

Section 4113 of the 2008 Farm Bill required State agencies to issue a household's ongoing monthly benefit allotment in one lump sum. The Department clarified existing regulations in the proposed regulations that affirm this requirement.

Thirteen advocate and two industry organizations expressed strong support for prohibiting State agencies from splitting ongoing monthly allotments. They believe that lump sum monthly allotments provide SNAP households with maximum flexibility for managing how and when to purchase food within the time, transportation and other constraints that low-income shoppers often face. One commenter also commented that splitting monthly SNAP allotments would have a "chilling effect" on seniors receiving SNAP benefits. Others added that it would increase administrative costs at both the state and federal level. No commenters expressed opposition to this provision.

The Department appreciates all comments on this issue, which provide additional support for requiring the issuance of monthly benefit allotments in a single lump sum. Given these comments and the fact that no comments expressed opposition, this provision remains unchanged in the final rule at 7 CFR 274.2(c).

#### Moving Benefits Off-Line

Prior to the 2008 Farm Bill, regulations required three months of account inactivity before the State agency could exercise its discretion to move the inactive account benefits offline. However, the 2008 Farm Bill mandated six months of account inactivity before the State agency could move the inactive account benefits

offline. Accordingly, the Department proposed rules to reflect this new requirement. However, following publication of the proposed rule, Congress passed the 2018 Farm Bill which restored the original requirement of three months of inactivity. Because this statutory provision is mandatory and non-discretionary, the Department will not change the current regulation, which requires three months of inactivity prior to moving benefits offline.

The Department also proposed to notify households in advance within 10 days prior to moving inactive account benefits off-line. In addition, the Department proposed to require that any offline benefits must be restored within 48 hours of the recipient's request. Finally, the Department proposed to remove off-line benefits from the EBT system rather than merely deactivating the account.

No comments opposed the requirement for the notice or the restoration of benefits within 48 hours of a recipient's requests. However, commenters did request exemptions for certain groups, consideration of potential barriers to participation in SNAP before moving inactive account benefits off-line, and clarification regarding removal of off-line benefits from the EBT and AMA systems. The Department summarizes these comments and provides its responses below.

Nine advocate organizations requested that the Department make several household categories exempt from having their benefits taken off-line, such as the elderly, disabled and/or households that receive the minimum benefit allotment. The Department emphasizes that State agencies are not required to take benefits off-line prior to permanent expungement. Moreover, individual State agencies that choose to implement the off-line option have the discretion to exempt certain groups of households from having their inactive accounts stored off-line. Therefore, the Department will not require certain household exemptions in this final rule. Instead, any State agency that chooses to implement the off-line option can exercise its own discretion as to whether to apply such exemptions.

Six advocate organizations wanted the Department to require State agencies to investigate possible barriers facing the household before taking benefits off-line. Commenters suggested that State agencies should consider specific demographics of the SNAP household, whether the SNAP household received their EBT card and PIN, whether the SNAP household is aware of

transportation community services, and whether a lack of information exists regarding the appointment of an authorized representative.

Currently, only six State agencies exercise the off-line option, without any such requirement in place. The Department does not have supporting information from those States to justify requiring States to now take affirmative steps prior to taking action to determine if households are experiencing barriers that prevent them from using their benefits. Furthermore, the action to take benefits off-line is not permanent. Households still have up to six months to have the benefits reinstated from the point that benefits are moved off-line. However, the Department encourages State agencies that opt to take benefits off-line to include, in addition to how to reactivate the account, information in the off-line notice regarding transportation options, authorized representatives, and other assistance available to households.

Eight advocate organizations wanted the Department to codify requirements for a simple and easy-to-use process for requesting restoration of benefits stored off-line, including notices that are easy to understand and an easy way to contact a SNAP worker to request reinstatement. The Department is not swayed by the comments suggesting simple and easy-to-use processes should be codified. However, in response to comments, the Department is requiring that any unexpired benefits taken off-line be restored upon recertification or reapplication for benefits without the household having to make a specific request and that, moreover, a general request for any type of assistance from a household that has had benefits moved off-line be considered a request for reinstatement of those benefits. States may continue to establish their own procedures for restoring benefits outside of the recertification or application process. Title 7 CFR 274.2(h) is amended accordingly.

#### *Removing Off-Line Benefits From the EBT System*

The Department proposed to require that, if a State exercised their option to take inactive account benefits off-line, the amount would also need to be removed from the AMA. The AMA is an accounting system that interfaces with the U.S. Department of Treasury to keep track of benefit authorizations, returned benefits such as expungements, and benefit redemptions. An industry organization opposed this proposed requirement because it would require all such benefits to be tracked by the eligibility system and reissued if

requested by the household. Commenters added that this requirement would complicate AMA reporting because the accounting method would understate the true outstanding SNAP liability of SNAP benefits for States that move benefits off-line prior to expungement. Commenters suggested allowing States to leave the benefits on the EBT system and merely make them inaccessible to the client. Another industry organization disagreed with the need to take benefits off-line at all because of the overall complexity of tracking and reporting the benefits.

The option for State agencies to take benefits off-line after three months of account inactivity is statutory and, therefore, the Department does not have the discretion to eliminate this option. However, we are persuaded by the commenters that the complexities associated with removing the benefits from AMA are unwarranted. Therefore, in this final rule, the Department is removing the proposed provision to require State agencies to remove off-line benefits from AMA. State agencies may continue to move benefits off-line after at least three months of inactivity by making inactive EBT account benefits inaccessible to the household without taking them off the AMA system. The Department will also clarify the meaning of taking benefits off-line to align with this change. Title 7 CFR 274.2(h) is amended accordingly.

#### *Benefit Expungement*

The Department proposed keeping the current expungement process, which is based on account activity, unchanged. The Department also specifically asked commenters to provide feedback on amending the process so that unused benefits are expunged based on the issuance date, regardless of account activity. This alternative process would give households a finite period of time to use their benefits as opposed to allowing benefits to remain in household EBT accounts indefinitely, as long as there is account activity at least once every 12 months. The Department also asked for comments on whether State agencies should have the option to choose either of the two methods for determining when benefits get expunged.

Seventeen commenters in total, including all 13 advocate organizations, three State/local agencies, and one EFT association, preferred maintaining the current process of expunging only from inactive accounts. They cited the technological and financial burden on State agencies to make the necessary system changes as well as the view that

there are practical and economic reasons for households to accumulate benefits which tend to impact the most vulnerable SNAP recipients—the elderly, disabled, and those with transportation, mobility and food access hurdles. Three advocate organizations wanted the Department to require State agencies to expunge benefits on a first-in-first-out (FIFO) basis under the alternative option to expunge benefits based on the issuance date.

Four commenters, including two State agencies, preferred expunging benefits that have not been used by a specific timeframe, regardless of account activity. They believe this approach is more consistent with the purpose of the Program and that excessively high SNAP EBT account balances could indicate a lack of need or fraudulent activity, which undermines the public's perception of the program's integrity. Three other State agencies wanted to have the option to choose either expungement method.

If the Department were to require States to change the current expungement process to require unused benefits be expunged based on the date of issuance, several commenters wanted the Department to exempt restored benefits from the expungement process or allow households a longer period of time to spend those benefits. Also, many of the same commenters who wanted exemptions from taking benefits off-line for certain households wanted similar exemptions to apply to benefit expungement as well.

In the interest of State flexibility, the Department has decided to give State agencies the option to implement either of the two expungement methods described in the proposed rule. State agencies must designate which approach will be used in its State plan and apply the same approach uniformly to all households. The Department would also like to take this opportunity to clarify that State agencies are already required to apply household transactions against SNAP benefits on a FIFO basis and that, under either of the two expungement options, by definition, State agencies will continue to expunge the oldest benefits first.

In accordance with Section 4006 of the 2018 Farm Bill, this final rule amends the expungement timeframe from 12 months to nine months. The Department considers nine months to be equal to 274 days. Therefore, State agencies may opt to either expunge households' individual benefit allotments, or any remaining portion thereof, nine months after the allotment was issued (*i.e.*, made available to the household) or wait until the account has

been inactive for nine months before expunging any benefits at the allotment level. In this final rule, the amended expungement provisions are at 7 CFR 274.2(i) and the proposed paragraph (i) is now paragraph (j).

If expunging benefits based on the issuance date, the Department was interested in feedback with regard to lump sum benefits issued as a result of a fair hearing determination to determine if an exception process was feasible or practical. Since then, the Department has determined that an exception process that allows households additional time beyond nine months to access their benefits would not be consistent with the 2018 Farm Bill requirement and, therefore, is not allowable. However, State agencies that choose the option to expunge benefits based on the issuance date could mitigate the potential problem of lump sum issuances by splitting up the retroactive payments and issuing them in separate months. The 2008 Farm Bill provision specifically makes an exception to the split issuance prohibition in cases where a benefit correction is necessary. No changes have been made in the final rule regarding this issue.

Section 4006 of the 2018 Farm Bill also requires States to provide notice to individual households prior to expunging that household's SNAP benefits, including benefits stored off-line, so that the household has the opportunity to access the benefits and avoid expungement. Currently, State agencies are required to notify individual households prior to taking benefits off-line, but not prior to permanently expunging unused benefits.

Because the 2018 Farm Bill specifically requires the notice to include the date upon which benefits must be expunged, the Department is requiring State agencies to provide individual notification that is closely tied to the expungement date, but not later than 30 days before the first benefits get expunged. General notification of the change in the expungement timeframes should be done at certification/recertification and in training materials, as has been the case before this requirement. This general notification, however, cannot replace the individual notification to households whose benefits are scheduled to be expunged within at least 30 days.

As proposed and as currently required, benefits must be expunged individually at the monthly allotment level; however a notice is only being required prior to expunging the first

allotment. State agencies are not being required to provide monthly expungement notices prior to expunging each benefit allotment. If the expungement process stops for a household for any reason, including when the household accesses their benefits or requests restoration of remaining off-line benefits, the State would need to provide the household with a new expungement notice if the household's benefits become subject to expungement again.

Consistent with other required formal notices to households, the Department is requiring that this notice must be written in easily understandable language and include the date that benefit expungement will begin, the action needed to prevent the expungement, and the household's right to request a fair hearing. This expungement notification provision is being codified at 7 CFR 274.2(i)(2).

#### *Expunging Benefits of Deceased Households*

In general, commenters did not oppose the proposed requirement to expunge benefits when all certified household members are determined to be deceased in accordance with 7 CFR 272.14, regardless of account activity or the benefit issuance date. However, two State/local agencies wanted the Department to allow State agencies to merely make benefits of deceased households inaccessible until they age off, rather than permanently expunging them at the time of the death match, to avoid possible misidentification of deceased individuals. The same two State agencies cited concerns with necessary system programming changes and the need to make benefits quickly available again in instances when the death match is erroneous.

While the Department understands concerns that a household account might erroneously be expunged due to a false death match, several State agencies have already been expunging benefits of deceased one-person households under the Agency's waiver authority. Under 7 CFR 272.14, State agencies are required to independently verify death matches and provide the household notice and the opportunity to respond prior to terminating benefits. To date, the Agency has not had any indication that false death matches have created an issue that would justify allowing benefits to remain in the EBT accounts of deceased single-person households.

Furthermore, State agencies are already required to close single-person household cases when a death match is verified. Therefore, requiring States to

expunge the account of such households does not add any additional risks which do not already exist. Should such an error occur, the State agency could correct the mistake by reissuing the benefits as a new benefit just as when off-line benefits are reinstated if they have been removed from the EBT system or when lump sum benefits are restored as a result of a fair hearing determination.

In contrast, having benefits of a deceased household remain in the account, even if deactivated, would leave such benefits susceptible to fraud, such as being activated by unauthorized individuals. Since there are no longer any certified individuals entitled to the benefits of deceased households, these benefits cannot be reinstated. Leaving these benefits in EBT accounts would also misrepresent the outstanding liability to the Federal government. For all these reasons, the Department is maintaining the provision to permanently expunge benefits upon the verified death match of all certified members of the household at 7 CFR 274.2(i)(4).

#### *Implementation Deadline*

The implementation deadline for all provisions in this rule is 12 months from the rule's effective date. With respect to the expungement provisions, no later than 12 months from the effective date of this rule, State agencies must issue individual notices to households who will have benefits scheduled for expungement within at least 30 days, based on the new nine-month expungement timeframe. Therefore, actual benefit expungement under the new nine-month timeframe must begin no later than 13 months from the effective date of this rule, after providing the minimum 30-day notices to the affected individual households.

#### *Procedural Matters*

Executive Order 12866 and Executive Order 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 final rule has been determined to be not significant and was not reviewed by the

Office of Management and Budget (OMB) in conformance with Executive Order 12866.

#### Regulatory Impact Analysis

This final rule has been designated as not significant by the Office of Management and Budget; therefore, no Regulatory Impact Analysis is required.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, this final rule is certified not to have a significant impact on a substantial number of small entities.

This final rule would not have an impact on small entities because the provisions only impact State agencies responsible for administering the Supplemental Nutrition Assistance Program.

#### Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule as defined by 5 U.S.C. 804(2).

#### Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process.

This rule is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the 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 by State, local or tribal governments, in the aggregate, or 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 most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Executive Order 12372

The Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance under Number 10.551 and is not subject to 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 Executive Order 13132.

The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive order, a federalism summary is not required.

#### Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

#### Civil Rights Impact Analysis

The Department has reviewed this final rule in accordance with USDA Regulation 4300–4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability.

Although the 2018 Farm Bill reduces the amount of time from 12 months to nine months, during which all

households must use or access their benefits before benefits are permanently expunged, mitigation efforts are imbedded in the legislation and this rule by requiring that each individual household be given notice prior to expungement. The notice must be provided at least 30 days in advance, state the date when expungement will begin, and specify the action the household must take to prevent the expungement from occurring. There is no expungement notice requirement under the current requirement to expunge benefits after 12 months of SNAP account inactivity.

Without prior notification, the Department estimates that, on average, approximately 16 percent of SNAP households currently get some amount of benefits expunged from their SNAP accounts. The Department estimates that, on average, one month’s allotment is expunged for each household affected. The Department anticipates that the new notification requirement will reduce the number of expungements despite the reduced timeframe for using benefits.

Currently, only six States are opting to take benefits off-line prior to expungement after six months of account inactivity. The 2018 Farm bill now allows States to take benefits off-line after three months of inactivity. In the States that take benefits off-line, the Department estimates that 14 percent of households have their benefits taken off-line and that six percent of those households have those benefits reinstated prior to expungement. Providing individual household notification prior to taking benefits off-line is required under both the current regulation and the regulation being implemented by this rule.

Because of the new requirement to notify households prior to expungement, the Department estimates that a greater percentage of households that get their benefits taken off-line will get their benefits reinstated than under the new regulation, mitigating the impact of the reduced timeframe for taking benefits off-line due to account inactivity.

The Department is also codifying in this rule that States should automatically restore any off-line benefits upon a household’s recertification or reapplication, and that a general request for assistance should be considered a request for reinstatement of off-line benefits.

While specific demographic data is not readily available, after a careful review of the rule’s intent and provisions and based on the above analysis the Department has determined

that this final rule is not expected to affect the participation of protected individuals in SNAP.

#### 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. We are unaware of any current Tribal laws that could be in conflict with this rule.

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chap. 35; see 5 CFR part 1320) requires 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.

In accordance with the Paperwork Reduction Act of 1995, this final rule contains information collections that are subject to review and approval by the Office of Management and Budget. These existing requirements impact a current collection that has been used without a valid OMB control number or expiration date. The Department plans to bring these burden requirements into compliance, contingent upon OMB approval under the Paperwork Reduction Act of 1995. FNS plans to account for and maintain these burden hours under a new OMB control number assigned by OMB. Because the changes in the information collection burden that will result from adoption of provisions in this final rule were not submitted for public comment in the proposed rule, a separate 60-day notice was published on February 11, 2020, in the **Federal Register** at 85 FR 7716.

All responses received to this published notice will be summarized and included in the information collection request for OMB approval. All comments are also a matter of public record. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection

requirements associated with this rulemaking have been approved, the Department will publish a separate notice in the **Federal Register** announcing OMB's approval.

*Title:* SNAP Benefit Storage and Expungement: Notices and Off-Line Benefit Reinstatement.

*OMB Number:* 0584-NEW.

*Expiration Date:* N/A.

*Type of Request:* New.

*Abstract:* This is a new information collection request. Although the agency has been collecting this information, we were unaware that collecting this information is in violation of the Paperwork Reduction Act. This final rule implements benefit issuance provisions of the Food, Conservation and Energy Act of 2008, Public Law 110-234 (2008 Farm Bill) and the Agricultural Improvement Act of 2018, Public Law 115-334, (2018 Farm Bill). Both Farm Bills amend the Food and Nutrition Act of 2008 (the Act), which includes benefit issuance, storage and expiration requirements for administering the program. State agencies are responsible for issuing benefits to those households entitled to benefits under the Act. This burden request covers activities associated with the required notices sent to individuals/household SNAP participants related to taking benefits off-line prior to permanent expungement after three months of SNAP EBT account inactivity and permanently expunging benefits after nine months of account inactivity. In addition, this burden request covers the activities associated with reinstating the off-line benefits to those SNAP participants upon contact by the household.

*Respondents:* 53 State agencies and 2,961,834 individuals/households SNAP participants. The respondents and activities are broken out below based on activities.

*Respondents:* State/Local/Tribal Government Burden (53).

#### Off-Line Benefit Storage Notice

*Estimated Number of Respondents:* 6.

*Estimated Number of Responses per Respondent:* 90,136.33.

*Estimated Total Annual Responses:* 540,818.00.

*Estimated Average Hours per Response Annually:* 0.05 minutes or 0.0083 hours.

*Estimated Total Annual Burden on Respondents:* 4,515.83.

#### Expungement Notice

*Estimated Number of Respondents:* 53.

*Estimated Number of Responses per Respondent:* 55,883.66.

*Estimated Total Annual Responses:* 2,961,834.00.

*Estimated Average Hours per Response Annually:* 0.05 minutes or 0.0083 hours.

*Estimated Total Annual Burden on Respondents:* 24,731.31.

#### Off-Line Benefit Reinstatement

*Estimated Number of Respondents:* 6.

*Estimated Number of Responses per Respondent:* 5,543.33.

*Estimated Total Annual Responses:* 33,260.00.

*Estimated Average Hours per Response Annually:* 3 minutes or 0.0501 hours.

*Estimated Total Annual Burden on Respondents:* 1,666.33.

*Respondents:* Individual/Household Notice.

#### Off-Line Storage Notice

*Estimated Number of Respondents:* 540,818.00.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Responses:* 540,818.00.

*Estimated Average Hours per Response Annually:* 3.5 minutes or 0.0583 hours.

*Estimated Total Annual Burden on Respondents:* 31,529.69.

#### Expungement Notice

*Estimated Number of Respondents:* 2,961,834.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Responses:* 2,961,834.00.

*Estimated Average Hours per Response Annually:* 2 minutes or 0.0334 hours.

*Estimated Total Annual Burden on Respondents:* 98,925.26.

#### Off-line Benefit Reinstatement

*Estimated Number of Respondents:* 33,260.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Responses:* 33,260.00.

*Estimated Average Hours per Response Annually:* 5 minutes or 0.0835 hours.

*Estimated Total Annual Burden on Respondents:* 2,777.21.

The total burden for this rulemaking is 5,923,668.00 total annual responses and 163,970.49 burden hours.

Respondent	Activity	Estimated annual number respondent	Responses annually per respondent	Total annual responses	Estimated avg. number of hours per response annually	Estimated annual total hours	Hourly wage rate	Total annualized cost of respondent burden
Individuals or Households SNAP Recipients.	Benefit Expungement Notice.	2,961,834.00	1.00	2,961,834.00	0.0334	98,925.26	\$7.25	\$717,208.14
	Off-Line Benefit Storage Notice.	540,818.00	1.00	540,818.00	0.0583	31,529.69	7.25	228,590.25
	Off-Line Benefit Reinstatement.	33,260.00	1.00	33,260.00	0.0835	2,777.21	7.25	20,134.77
Sub-Total of Individual/Households SNAP Recipients.	.....	2,961,834.00	1.00	2,961,834.00	0.1752	133,232.16	7.25	965,933.16
State Agencies .....	Benefit Expungement Notice.	53.00	55,883.66	2,961,834.00	0.0083	24,583.22	23.50	577,705.67
	Off-Line Benefit Storage Notice.	6.00	90,136.33	540,818.00	0.0083	4,488.79	23.50	105,486.57
	Off-Line Benefit Reinstatement.	6.00	5,543.33	33,260.00	0.0501	1,666.33	23.50	39,158.76
Sub-Total of State Agencies.	.....	53.00	55,883.66	2,961,834.00	0.0677	30,738.34	23.50	722,351.00
Grand Total Reporting Burden with both Affect Public.	.....	2,961,887.00	2.0000	5,923,668.00	0.0277	163,970.49	.....	1,688,284.16

**Note:** \* Each State Eligibility worker is counted once as all State Agency employees.

\*\* Based on the Bureau of Labor Statistics May 2020 Occupational and Wage Statistics (<http://www.bls.gov/oes/current/>)—the salaries of the case managers are considered to be “Social Workers—other” (21–1029) functions valued at \$30.12 per staff hour. The salaries of the eligibility workers are considered to be “Eligibility Interviewers, government programs” (43–4061) functions valued at \$22.34. The salaries of Office and Administrative Support Workers, All other (43–9199) is \$18.02 per hour. Assuming an applicant staff person with an average salary of \$23.50 is needed to complete the applications, the total annualized dollars spent on respondent burden with fully loaded wages is \$2,245,417.93. The base cost to respondents is \$1,688,284.16 ( $\times 1.33$  fringe benefit cost) as depicted in the table above.

\*\*\* The \$7.25 used to calculate a cost to SNAP applicants (individuals/households) is the Federal minimum wage.

## E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act, 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.

### List of Subjects in 7 CFR Parts 271 and 274

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

For reason set forth in the preamble, 7 CFR chapter II is amended as follows:

#### SUBCHAPTER C—[AMENDED]

■ 1. Under the authority of 7 U.S.C 2011, in the heading of subchapter C of chapter II, remove the words “Food Stamp” and add in their place the words “Supplemental Nutrition Assistance”.

■ 2. The authority citation for 7 CFR parts 271 and 274 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

## PART 271—GENERAL INFORMATION AND DEFINITIONS

### § 271.1 [Amended]

■ 3. In § 271.1:

■ a. Remove the word “coupons” from the fourth sentence of paragraph (b) and add in its place “SNAP benefits”; and

■ b. Remove the word “coupon” from the tenth sentence of paragraph (b) and add in its place “benefit”.

■ 4. In § 271.2:

■ a. Amend the definition of *Allotment* by removing the word “coupons” and adding in its place the word “benefits”;

■ b. Remove the definition of *Authorization to participate card (ATP)*;

■ c. Add definitions for *Benefit* and *Benefit issuer* in alphabetical order;

■ d. Remove the definitions of *Bulk storage point*, *Coupon issuer*, and *Direct access system*;

■ e. Add definitions for *Electronic Benefit Transfer (EBT) account*, *Electronic Benefit Transfer (EBT) card*, *Electronic Benefit Transfer (EBT) contractor or vendor*, and *Electronic Benefit Transfer (EBT) system* in alphabetical order;

■ f. Amend the definition of *Eligible foods* by removing the word “coupons” where it appears twice in paragraph (3) of the definition and adding in its place the words “SNAP benefits”;

■ g. Amend the definition of *Firm’s practice* by removing the words “food coupons” and adding in their place the words “SNAP benefits”;

■ h. Add definitions for *Interoperability*, *Manual transaction*, and *Manual voucher* in alphabetical order;

■ i. Amend the definition of *Overissuance* by removing the word “coupons” and adding in its place the word “benefits”;

■ j. Add definitions for *Personal identification number (PIN)*, *Point-of-sale (POS) terminal*, and *Primary account number (PAN)* in alphabetical order;

■ k. Remove the definition of *Program*; and

■ l. Add definitions for *Retailer EBT Data Exchange (REDE) system* and *Supplemental Nutrition Assistance Program (SNAP or Program)* in alphabetical order.

The additions read as follows:

### § 271.2 Definitions.

\* \* \* \* \*

*Benefit* means the value of supplemental nutrition assistance provided to a household by means of an EBT system or other means of providing assistance, as determined by the Secretary.

*Benefit issuer* means any office of the State agency or any person, partnership,



corporation, organization, political subdivision or other entity with which a State agency has contracted for, or to which it has delegated functional responsibility, in connection with the issuance of benefits to households.

\* \* \* \* \*

**Electronic Benefit Transfer (EBT) account** means a set of records containing demographic, card, benefit, transaction and balance data for an individual household within the EBT system that is maintained and managed by a State or its contractor as part of the client case record.

**Electronic Benefit Transfer (EBT) card** means a method to access EBT benefits issued to a household member or authorized representative through the EBT system by a benefit issuer. This method may include an on-line magnetic stripe card, an off-line smart card, a chip card, a contactless digital wallet with a stored card, or any other similar benefit access technology approved by FNS.

**Electronic Benefit Transfer (EBT) contractor or vendor** means an entity that is selected to perform EBT-related services for the State agency.

**Electronic Benefit Transfer (EBT) system** means an electronic payments system under which household benefits are issued from and stored in a central databank, maintained and managed by a State or its contractor, and uses electronic funds transfer technology for the delivery and control of food and other public assistance benefits.

\* \* \* \* \*

**Interoperability** means a system that enables program benefits issued to be redeemed outside the State that issued the benefits.

\* \* \* \* \*

**Manual transaction** means an EBT transaction that is processed with the use of a paper manual voucher when there is an EBT system outage.

**Manual voucher** means a paper document signed by the EBT cardholder that allows a retailer to redeem benefits through a manual transaction.

\* \* \* \* \*

**Personal identification number (PIN)** means a numeric code selected by or assigned to a household and used to verify the identity of an EBT cardholder when performing an EBT transaction.

\* \* \* \* \*

**Point-of-Sale (POS) terminal** means a range of devices deployed at authorized retail food stores for redeeming benefits by initiating electronic debits and credits of household EBT accounts and retailer bank accounts.

**Primary account number (PAN)** means a number embossed or printed on

the EBT card and encoded onto the card to identify the State and EBT account holder.

\* \* \* \* \*

**Retailer EBT Data Exchange (REDE) system** means the FNS system that allows the automated exchange of authorized retailer demographic data between FNS and the State and/or EBT contractor for notification of changes in retailer Program participation.

\* \* \* \* \*

**Supplemental Nutrition Assistance Program (SNAP or Program)** means the program operated pursuant to the Food and Nutrition Act of 2008.

\* \* \* \* \*

#### **§ 271.4 [Amended]**

■ 5. In § 271.4(a)(2), remove the word “coupons” and add in its place “SNAP benefits and EBT cards”.

#### **§ 271.5 [Amended]**

■ 6. In § 271.5:

■ a. Remove “Coupons”, “Coupon”, “coupon”, and “coupons” wherever they appear and add in their place “Benefits”, “Benefit”, “benefit”, and “benefits”, respectively;

■ b. Amend paragraph (a) by adding “and EBT cards” at the end of the last sentence;

■ c. Amend the introductory text of paragraph (b) by removing “ATP” and adding in its place “EBT”;

■ d. Remove paragraphs (b)(1) through (3);

■ e. Amend paragraph (c) by removing “ATP’s” wherever it appear and adding in its place “EBT cards”.

### **PART 274—ISSUANCE AND USE OF BENEFITS**

■ 7. In § 274.2:

■ a. Revise paragraph (c);

■ b. Amend paragraph (e)(1) by removing “of paragraphs (e) through (h)” and removing “§ 274.6 and § 274.7” and adding in its place “§§ 274.6 and 274.7”;

■ c. Amend paragraph (g)(3) by removing “paragraph (h)(3)” and adding in its place “paragraph (j)”;

■ d. Revise paragraph (h);

■ e. Add paragraphs (i) and (j).

The revisions and additions read as follows:

#### **§ 274.2 Providing benefits to participants.**

\* \* \* \* \*

(c) **Benefit allotments.** (1) State agencies shall not issue ongoing monthly benefit allotments to a household in more than one issuance during a month except with respect to the issuance of benefits to a resident of a drug and alcohol treatment and

rehabilitation program in accordance with § 273.11(e) of this chapter or when a benefit correction is necessary.

(2) For those households which are to receive a combined allotment, the State agency shall provide the benefits for both months as an aggregate (combined) allotment, or as two separate allotments, made available at the same time in accordance with the timeframes specified in § 273.2 of this chapter.

\* \* \* \* \*

(h) **Off-line storage.** If a household’s EBT account is inactive for three months (91 days) or longer, State agencies may elect to store all benefits in that account off-line.

(1) An EBT account is inactive if the household has not initiated activity that affects the balance of the household’s SNAP EBT account, such as a purchase or return.

(2) Taking benefits off-line means that the household’s SNAP EBT account, including all existing benefits in the account and any new issuances deposited into the account, is no longer accessible to the household unless and until the account and its benefits are reinstated upon contact by the household.

(3) The State agency shall send written notification to the household up to 10 days prior to or concurrent with the action to store benefits off-line. If an inactive account has a zero balance, a notice to the household is not required. At a minimum, the notice shall include information on:

(i) The steps necessary to bring the benefits back on-line; and

(ii) The State agency’s permanent expungement policy.

(4) Benefits stored off-line that have not been expunged in accordance with paragraph (i) of this section shall be reinstated and made available within 48 hours of reapplication or contact by the household. In addition to a specific request for benefit restoration, household contact shall include, but is not limited to:

(i) Recertification or reapplication for benefits; and

(ii) A general request for assistance.

(i) **Expungement.** (1) State agencies shall apply SNAP transactions against a household’s SNAP benefits on a first-in-first-out basis. As a result, the oldest SNAP benefits are used first. On a daily basis, the State agency shall expunge benefits from EBT accounts at the monthly benefit allotment level in accordance with either paragraph (i)(1)(i) or (ii) of this section. State agencies must designate which approach will be used in its State plan and use the same approach for all households within the State.



(i) *Inactive EBT accounts.* Benefits allotments, or portion thereof, shall be expunged from EBT accounts that have been inactive, per paragraph (h)(1) of this section, for a period of nine months (274 days) in accordance with the following:

(A) When the oldest benefit allotment has not been accessed by the household for nine months, the State agency shall expunge benefits from the EBT account or off-line storage at the monthly benefit allotment level as each benefit allotment ages to nine months since the date of issuance or since the last date of account activity, whichever date is later.

(B) The State agency shall not expunge any benefits from active accounts even if there are benefit allotments older than nine months. If at any time after the expungement process begins, the household initiates activity affecting the balance of the account, the State shall stop expunging benefits from the account and start the account aging process over again for the remaining benefits.

(ii) *Unused benefits.* The State agency shall expunge individual benefit allotments, or portion thereof, that remain in a household's EBT account nine months (274 days) after the date the allotment was issued to the household, regardless of any account activity that may have taken place.

(2) Not later than 30 days before benefit expungement is scheduled to begin, State agencies shall provide notice to the household that benefits in their EBT account are approaching expungement due to nonuse/inactivity. At a minimum, the notice shall include:

(i) The date upon which benefits are scheduled to be expunged; and

(ii) The steps necessary to prevent the expungement, including an opportunity to request that any benefits stored off-line be restored to the household in accordance with paragraph (h) of this section;

(3) Expunged benefits shall be removed from the Account Management Agent and shall not be reinstated.

(4) Notwithstanding paragraph (i)(1) of this section, in instances when the State agency verifies a death match for all certified members of the household and closes the SNAP case in accordance with § 272.14 of this chapter, the State agency shall expunge the remaining SNAP balance in the household's EBT account at that time. In accordance with § 273.13(b)(2) of this chapter, expungement notices, per paragraph (i)(2) of this section, are not required for these households.

(j) *Procedures to adjust SNAP accounts.* Procedures shall be established to permit the appropriate

managers to adjust SNAP benefits that have already been posted to an EBT account prior to the household accessing the account, or to remove benefits from inactive accounts for off-line storage or expungement in accordance with paragraphs (h) and (i) of this section.

(1) Whenever benefits are stored off-line or expunged, the State agency shall document the date, amount of the benefits, and storage location in the household case file.

(2) Issuance reports shall reflect the adjustment to the State agency issuance totals to comply with monthly issuance reporting requirements prescribed under § 274.4.

#### § 274.8 [Amended]

■ 8. In § 274.8(f)(8), remove “§ 274.2(h)(2)” and add in its place “§ 274.2(i)”.

**Pamilyn Miller,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2020–16403 Filed 8–21–20; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1400

[Docket ID CCC–2019–0007]

**RIN 0560–AI49**

#### Payment Limitation and Payment Eligibility

**AGENCY:** Commodity Credit Corporation and Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements the mandatory changes required by the Agriculture Improvement Act of 2018 (2018 Farm Bill) and other changes made by the Farm Service Agency (FSA) on behalf of CCC. Specifically, the mandatory changes update program applicability and payment limitations; and specify that the Secretary may approve a waiver of the average adjusted gross income (AGI) limitation for participants of certain conservation contracts administered by FSA and the Natural Resources Conservation Service (NRCS) on environmentally sensitive land. Also, the mandatory changes expand the definition of “family member” to include first cousins, nieces, and nephews. This rule also includes changes that make minor clarifications and updates throughout part 1400.

**DATES:** *Effective:* August 20, 2020.

**FOR FURTHER INFORMATION CONTACT:** Paul Hanson, telephone: (202) 720–4189, email: [paul.hanson@usda.gov](mailto:paul.hanson@usda.gov). Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

#### SUPPLEMENTARY INFORMATION:

##### Background

This rule amends 7 CFR part 1400 to implement changes made by the 2018 Farm Bill; (Pub. L. 115–334) as well as makes certain changes, as explained below. This rule updates the applicable programs and payment limitations in 7 CFR 1400.1 to reflect current policy and changes made by the 2018 Farm Bill. FSA administers the regulations in 7 CFR part 1400 on behalf of CCC.

##### Payment Limitations

The 2018 Farm Bill and this rule create two separate payment limitations for the Noninsured Crop Disaster Assistance Program (NAP). Previously, a person or legal entity was subject to a \$125,000 payment limitation regardless of the level of NAP coverage obtained. For 2019 and subsequent years, the 2018 Farm Bill provides a separate per crop year maximum per person and legal entity limitation of either \$125,000 for payments to those who purchased basic 50/55 NAP coverage or \$300,000 for payments to those who purchased buy-up coverage. The 2018 Farm Bill increased the payment limitation for the Emergency Conservation Program (ECP) to \$500,000 per program per disaster event.

The 2018 Farm Bill officially removed LDPs and MLGs from the combined payment limit. This rule removes the payment limits for Marketing Loan Gains (MLG), Loan Deficiency Payments (LDP), and the Emergency Assistance for Livestock, Honeybees and Farm Raised Fish Program (ELAP) as mandated by the 2018 Farm Bill (section 1703(a)(2) and section 1501(e) respectively).

##### Waiver of AGI Limitation for Environmentally Sensitive Land of Special Significance

The 2018 Farm Bill does not change the AGI limitation of \$900,000 for certain programs; however, it does authorize the Secretary to waive the AGI limitation for participants of certain conservation contracts administered by FSA or NRCS when the Secretary determines that environmentally sensitive land of special significance will be protected because of the waiver. The waiver authority allows FSA and NRCS the discretion, on a case-by-case basis, to provide benefits to producers who may not otherwise meet the AGI