

**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****7 CFR Parts 272, 274, 276, 278, 279, and 280**

[Amendment No. 397]

RIN 0584-AD28

**Food Stamp Program, Reauthorization: Electronic Benefit Transfer (EBT) and Retail Food Stores Provisions of the Food Stamp Reauthorization Act of 2002****AGENCY:** Food and Nutrition Service, USDA.**ACTION:** Final rule.

**SUMMARY:** This action provides final rulemaking for a proposed rule published May 6, 2003. It revises Food Stamp Program regulations pertaining to the standards for approval of Electronic Benefits Transfer (EBT) systems, the participation of retail food stores and wholesale food concerns, and the State agency liabilities and Federal sanctions. These changes to the Food Stamp Program's regulations are put forth to implement sections 4108, 4110, 4113 and 4117 of the Food Stamp Reauthorization Act of 2002. These changes will allow the U.S. Department of Agriculture (Department) to use delivery methods other than certified mail when notifying retailers or State agencies of adverse action; permit the Department to approve alternate methods of issuing food stamp benefits during disasters; eliminate the requirement that Federal costs for EBT systems cannot exceed the costs of the paper systems they replace; and allow group homes and institutions to redeem EBT benefits directly through banks rather than going through authorized wholesalers or other retailers.

**DATES:** This rule is effective January 4, 2006.**FOR FURTHER INFORMATION CONTACT:** Mandy Briggs, Chief, EBT Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, or telephone (703) 305-2523.**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 part 3015, subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

**Executive Order 13132, Federalism**

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. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive order, a federalism summary impact statement is not required.

**Regulatory Flexibility Act**

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Eric Bost, 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. Departmental Field Offices, retailers participating or applying to participate in the Food Stamp Program, State agencies that distribute food stamp benefits and group living homes are the entities affected by this change. However, the number of those affected is not large enough to be considered significant.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a valid OMB control number. Information collections in this final rule have been previously approved by OMB under OMB number 0584-0083 (Operating Guidelines, Forms and Waivers).

The Food and Nutrition Service (FNS) published a proposed rule on May 6, 2003, which solicited comments on the proposed revisions to reduce the

number of burden hours. No comments on the proposed burden were received; however, comments related to proposed changes to the regulations were received and are addressed in the Background section of this rule.

**Government Paperwork Elimination Act**

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

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless specified in the **DATES** section 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.

**Public Law 104-4**

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 to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or

more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

### Regulatory Impact Analysis

#### 1. Need for Action

This action is needed to formalize implementation of provisions of the Food Stamp Reauthorization Act of 2002 related to EBT and retailer operations. These changes will allow the Department to: (1) Use delivery methods other than certified mail when notifying retailers or State agencies of adverse action; (2) approve alternate methods of issuing food stamp benefits during disasters; (3) eliminate the requirement that Federal costs for EBT systems cannot exceed the costs of the paper systems they replace; and (4) permit group homes and institutions to redeem EBT benefits directly through banks rather than being restricted to authorized wholesalers or other retailers.

#### 2. Benefits

Federal and State agencies will benefit from the provisions of this rule because they will streamline the administrative procedures that are already in place and codify current practice.

#### 3. Costs

There will be minimal costs associated with outfitting group homes with point of sale (POS) devices. In Fiscal Year (FY) 2003, only 1,544 group homes existed in the United States, and the monthly average leasing cost of \$26 would be equally shared between the Department and the State agencies if all group homes requested POS devices. Since many States have already been operating group homes in this way through demonstration waivers, most of these homes already have POS devices, minimizing the impact of any new costs. We estimate that eliminating the cost neutrality requirement on EBT systems cost less than \$1 million per year during the first five years of enactment (FY 2002–FY 2006). There are no costs from the other two sections of the final rule.

### Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, “Civil Rights Impact Analysis,” to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule’s intent and provisions, and the characteristics of food stamp households and individual participants, FNS has determined that there is no

way to soften their effect on any of the protected classes. FNS has no discretion in implementing many of these changes. The changes that are required to be implemented by law have been implemented. All data available to FNS indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. (See 7 CFR 272.6.) Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

### Background

A proposed rule was published in the **Federal Register** on May 6, 2003 at 68 FR 23927 to revise Food Stamp Program regulations pertaining to the standards for approval of Electronic Benefits Transfer (EBT) systems, the participation of retail food stores and wholesale food concerns, and the State agency liabilities and Federal sanctions. Comments on the proposed rule were solicited through July 7, 2003. This final action takes the comments received into account.

In this rule, the Department amends Food Stamp Program regulations to expand the delivery of adverse action notices to retailers and State agencies, allow alternative issuance systems in disasters, eliminate the requirement for cost neutrality for EBT systems, and permit redemption of EBT benefits through group living facilities.

Thirteen comment letters were received in response to the proposed rule. Individual comments were received from four State agencies and nine public interest groups. In general, the commenters supported the proposed rule’s changes. Readers are referred to the proposed regulation for a more complete understanding of this final action.

The only changes between the proposed and final rules are due to two oversights in the proposed rule. First, we are not finalizing the proposed portion of 7 CFR 274.12 that specifically provides that the cost of administering statewide benefit issuance after implementation of the EBT system should be funded at the regular Federal financial participation rate, up to the level of the current coupon issuance costs. This proposed portion of the sentence contains outdated information

since coupon issuance is no longer a reality in the EBT system. Second, 7 CFR 278.2(g)(2) incorrectly proposed as mandatory the requirement that authorized drug addict and alcoholic treatment and rehabilitation programs, group living arrangements, shelters for battered women and children, and public or private nonprofit homeless meal providers for homeless food stamp households redeem EBT benefits directly through an insured financial institution, although the requirement was correctly proposed as optional in the preamble. Therefore, we are now clarifying in this final rule that the requirement contained in 7 CFR 278.2(g)(2) of this final rule contains the word “may” instead of the word “shall” to indicate that this requirement is optional and not mandatory per interpretation of the Food Stamp Reauthorization Act of 2002 (FSRA).

### Mailing to Retailers and State Agencies

The Department revises regulations at 7 CFR 276.7(b), 278.1(k)(7), 278.1(l)(2), 278.6(o), 278.7(b)(2), 278.7(f), and 279.7(b) to eliminate the requirement that the Department send notices of adverse actions to retailers and State agencies using certified mail. Effective May 13, 2002, section 4117 of the FSRA amended section 14(a)(2) of the Food Stamp Act of 1977 (Food Stamp Act) (7 U.S.C. 2023(a)(2)) to authorize the delivery of such notices in any form the Secretary determines will provide evidence of the delivery.

The Department received two comments on this provision. One commenter supported the revision, but felt that the State should be notified in advance of notices to retailers. FNS believes that this is not necessary since we have a direct relationship with retailers as part of retailer oversight responsibilities for the Food Stamp Program. Currently, any State interested in retailer notification consults with the FNS Regional Office. Some States do receive copies of letters to the retailer based on what is negotiated at the regional level. Therefore, no additional requirements are necessary at this time and the provision is finalized as proposed.

### Alternative Issuance Systems in Disasters

This final rule revises Food Stamp Program regulations at 7 CFR 280.1 for emergency food assistance for victims of disasters. By terms of section 4108 of the FSRA, which amended section 5(h)(3)(B) of the Food Stamp Act (7 U.S.C. 2014(h)(3)(B)), the Department received authority to approve alternate methods for issuing food stamp benefits

during disasters when reliance on EBT systems is impracticable. This final rule amends the regulation to reflect this new authority.

Four comments were received on this issue. Two commenters fully supported this revision. Another commenter felt that the regulation should acknowledge that States should re-examine existing disaster plans in light of the new provision enabling a "cash-out" option in the event of catastrophic disaster. Congress, however, was clear in its intent that cash-out would not be implemented unless specific disaster circumstances made EBT unworkable. Consistent with the intent of the statutory amendment, as expressed by the Conference Committee, H.R. Conf. Rep. No. 107-424, at 264 (2002), the Department would only approve alternate issuance, such as cash, as a last resort, depending on the specific circumstances of the disaster.

Another commenter stated that cash is not always a viable alternate method of issuance, but suggested we extend the benefit and card issuance time frame to 10 days, from the current guideline of 3 days. The Department does not agree that this would be sensible in a disaster situation when there is an urgent need to assist people who are victims of a disaster and to get benefits to them as quickly as possible. Additionally, since each disaster situation is unique, we would only approve the specifics of a disaster plan on a case-by-case basis.

#### *Cost Neutrality for EBT Systems*

This provision eliminates the requirement at 7 CFR 274.12(e) that Federal costs of EBT systems not exceed the costs of the paper systems they replace as a condition of approval of State EBT systems, in accordance with section 4110 of the FSRA.

The elimination of the cost neutrality requirement does not remove the requirement for State agencies to submit Implementation Advanced Planning Documents (IAPDs) to the Department for approval prior to conversion to a new system or to making upgrades or changes to their existing EBT systems. We received one comment fully supporting this revision and none opposing it.

#### *Redemption of Benefits Through Group Living Facilities*

This final rule revises food stamp regulations regarding participation of group living facilities. By terms of section 4113 of the FSRA, a center, organization, institution, shelter, group living arrangement and establishment that are among those defined as retail food stores under section 3(k)(2) of the

Food Stamp Act (7 U.S.C. 2012(k)(2)), may now be authorized to redeem benefits directly through financial institutions in areas where EBT has been implemented. The four types of entities affected by this change are drug addict and alcoholic treatment and rehabilitation programs; group living arrangements; shelters for battered women and children; and public or private nonprofit homeless meal providers. These group home facilities represent 1.64 percent of all firms in the program, while 98.4 percent are classified as traditional grocery stores.

In these situations, the facility functions like most authorized retailers, conducting EBT transactions with its residents, deducting benefits from their cards and depositing them into the facility's account. The facility can then purchase eligible foods at any authorized retailer or wholesaler with funds drawn directly from its own account. This makes it easier for those recipients residing in the authorized facilities to use their benefits in an EBT environment. Therefore, the Department is providing that group home facilities may be equipped with POS devices in a manner that meets the requirements established for retailers. These facilities would redeem benefits using the POS device, and then purchase eligible food items.

The Department did not receive any comments on the variety of ways that group homes operate. However, we are providing clarification that not all group homes must have the same EBT procedures in place. Some States have group homes that are not using POS devices, but instead assign an authorized representative from each group home to shop with one EBT card for everyone at authorized wholesalers. In this rule, the Department does not intend to preclude any States from redeeming EBT benefits in group homes that operate in a different manner.

The Department received 13 comments on the group home provision which is limited to the statutory provision allowing the facilities to deposit directly into financial institutions which allow them to use a POS device. One commenter fully supported this revision. Eleven commenters provided a variety of similar feedback on the operations or management process for these facilities, some of which were outside the narrow scope of this final rule. All comments are encompassed in the paragraphs that follow. We believe that current rules in CFR 273.11 provide adequate safeguards and address the most important of the commenters' concerns about fraud. Additionally, as fraud risks vary for

each type of group home facility, they still remain much lower than when coupons were issued since EBT transactions can be tracked and monitored more easily than the old paper system.

Specifically, several commenters thought the rule should be limited to residential facilities, which is not allowable under the statute. The law specifies the four types of facilities that may be authorized to redeem benefits. The only entity that is not residential is the homeless meal providers; moreover, FNS feels it is good policy to provide services to homeless meal providers that cover a transient population.

Several commenters also thought the rule should be limited to group homes that actually provide meals for stays exceeding a month. Another comment relates to charging for actual meals served or only accessing a portion of the benefits for each meal served (no greater than 1/90th of the thrifty food plan). Both types of comments shared the same concern that the centers would take all of the recipient benefits on the first day they became available and put them in the centers' own account, leaving nothing for the household when it leaves the center. The comment to charge on a per meal basis or only a portion of the meal benefits represents a significant operational change that does not seem practical for these small facilities. In addition to the administrative burden placed on States and centers to charge on a per meal basis, it would be extremely difficult to track that the meals account for the correct portion of the benefits available.

Current rules at 7 CFR 273.11(e)(5) address State agency and center actions when the household leaves prior to the 16th of the month. Specifically, the rules prohibit drug and alcohol treatment centers and group living arrangements from obtaining more than half of the household's allotment prior to the 16th of the month when benefits are issued through an EBT system. These rules also require centers to return to households that leave before the 16th of the month one-half of their benefits. It specifically also states that after the household leaves the center, the center can no longer act as the household's authorized representative for certification purposes or for obtaining or using benefits. The center must also provide the departing households with their EBT cards at any time during the month.

Other commenters wanted to limit the use of POS devices to certain staff, require facilities to maintain records of meals charged to clients, and not allow

staff to collect personal identification numbers or cards.

As for limiting the use of POS devices to certain staff, this restriction would be extremely difficult to monitor or enforce. Additionally, FNS does not monitor who specifically uses POS devices in other firms (grocery stores) that participate in the program. Some commenters expressed concern about possible fraudulent abuse by employees of these centers; however, the regulations at 7 CFR 273.11 already contain significant protections against such abuse. Under current rules, centers are responsible for any over-payment or misuse, regardless of who does it. Additionally, the rules require centers to provide State agencies with monthly or semi-monthly lists of participating residents. In addition, States must conduct periodic random on-site visits to the center to assure the accuracy of records. The rules also describe how States must establish a claim for over-issuance of benefits and outline the steps that they would take prior to FNS disqualification of an authorized center.

Commenters also wanted centers to maintain records establishing that food purchases attributable to recipients at least equal the value of the benefits taken from those recipients. This suggestion has merit now that group homes can place benefits into their checking accounts. There would be some additional recording keeping requirements imposed on the facilities. 7 CFR 273.11 requires States to do random checks on the facilities anyway, and looking at the amount of food expenditures versus the benefits redeemed would not be unduly burdensome. This issue will be addressed in a future rulemaking and will be taken under consideration.

On the comment to not allow centers to collect PIN numbers or cards, it is important to emphasize that group homes operate in a variety of ways and this rule does not preclude centers from operating in different ways. Specifically, some centers act as the authorized representative for clients and must have access to PIN numbers and cards in order to redeem the food stamp benefits.

One commenter wanted facilities to be exempt from the minimum Food Stamp redemption activity per month to obtain State-provided POS terminals. It is important to emphasize that States already have this option. Current rules require that all authorized retailers be provided with POS devices regardless of its size. In some cases, at the State's request, they are issued retailer participation waivers so that POS deployment is not required for retailers

with redemption levels less than \$100 per month.

Another commenter said that monthly EBT statements should be provided to all recipients detailing the transactions. The Department does not agree that this is necessary. Current rules in 7 CFR 274.12 already require that clients be provided printed receipts at the time of transaction and be able to check their balance anytime without making a purchase or standing in a checkout line. Current rules also require State agencies to ensure that the EBT system is capable of providing a transaction history for a period of up to two calendar months to households upon request.

The same commenter provided comments on battered women and children's rights that included making benefits available to all battered women and not just women who leave an abusive household and reside in official shelters. The same commenter said FNS should implement procedures similar to the Family Violence Option of the Temporary Assistance for Needy Families (TANF) program and to waive regulations that make escaping from domestic violence more difficult, places individuals at risk of further violence, or penalizes individuals because of violence. The comments on battered women and children's rights are outside the scope of this rule.

The issue of extending the re-issuance provision to women who fled to the residences of friends or relatives was addressed in the comments of the final rule, Food Stamp Program: Certifying Residents of Shelters for Battered Women and Children, published at 46 FR 60160 on December 8, 1981. The re-issuance provision is detailed in 7 CFR 273.11(g)(3). Normally State data systems will prevent issuance of benefits to individuals who are already participating in another household. However, in the case of a mother and children who leave the household which contains the abuser, and apply as shelter residents, the State agency must override the normal system edit to allow the mother and children to be certified. The household with the abuser will potentially receive excess benefits until the benefit amount is reduced through the adverse action process.

The December 8, 1981 rule established the exception to the residents of institution ban for residents of shelters for battered women and children. At the time, the Department took the position that Congress intended the special provisions relative to shelters for battered women and children to apply only to residents of such shelters. We believe the suggestion would place a burden on State agencies

to investigate or verify that domestic violence was an issue in the move, and not simply a move motivated by other reasons.

Equipping of these facilities would be in accordance with the EBT regulations at 7 CFR 274.12. State agencies approved to operate a demonstration project for this function may continue operations without further action and are no longer bound by the survey requirements of a demonstration project. This rulemaking does not affect current State operations.

#### *Implementation*

The provisions of this rule are effective January 4, 2006.

#### **List of Subjects**

##### *7 CFR Part 272*

Alaska, Civil Rights, Food Stamps, Grant Program—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.

##### *7 CFR Part 276*

Administrative practice and procedure, Food stamps, Fraud, State agency liabilities and federal sanctions.

##### *7 CFR Part 278*

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, General line—wholesalers, Groceries, Groceries—retail, Penalties.

##### *7 CFR Part 279*

Administrative practice and procedure, Food stamps, General line—wholesalers, Groceries, Groceries—retail.

##### *7 CFR Part 280*

Disaster assistance, Food stamps, Grant programs—social programs.

■ Accordingly, 7 CFR parts 272, 274, 276, 278, 279, and 280 are amended as follows:

■ 1. The authority citation for 7 CFR parts 272, 274, 276, 278, 279, and 280 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)(171) is added to read as follows:

**§ 272.1 General terms and conditions.**

\* \* \* \* \*  
 (g) *Implementation.* \* \* \*

(171) *Amendment No. 397.* The provisions of Amendment No. 397 are effective January 4, 2006. State agencies may implement the provisions anytime after the rule is published but no later than June 5, 2006.

**PART 274—ISSUANCE AND USE OF COUPONS**

■ 3. In § 274.10, paragraphs (f)(1), (f)(2) and (f)(3) are revised to read as follows:

**§ 274.10 Use of identification cards and redemption of coupons by eligible households.**

\* \* \* \* \*  
 (f) \* \* \*

(1) Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment rehabilitation program may use food stamp benefits to purchase food prepared for them during the course of such program by a private nonprofit organization or institution or publicly operated community mental health center which is authorized by FNS to redeem benefits in accordance with § 278.1 and § 278.2(g) of this chapter.

(2) Eligible residents of a group living arrangement may use food stamp benefits issued to them to purchase meals prepared especially for them at a group living arrangement which is authorized by FNS to redeem benefits in accordance with § 278.1 and § 278.2(g) of this chapter.

(3) Residents of shelters for battered women and children as defined in § 278.1(g) of this chapter may use their food stamp benefits to purchase meals prepared especially for them at a shelter which is authorized by FNS to redeem benefits in accordance with § 278.1 and § 278.2(g) of this chapter.

\* \* \* \* \*

**§ 274.12 [Amended]**

■ 4. In § 274.12:

■ a. Paragraph (e) is removed, and paragraphs (f) through (o) are redesignated as paragraphs (e) through (n), respectively;

■ b. Newly redesignated paragraph (k) (1) is amended by removing the words “up to the level of the current coupon issuance costs, as prescribed in paragraph (c)(3) of this section”.

■ c. Newly redesignated paragraph (k)(4) is removed and newly redesignated paragraph (k)(5) is further redesignated as paragraph(k)(4).

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

■ 5. In § 276.7, paragraph (b) is revised to read as follows:

**§ 276.7 Administrative review process.**

\* \* \* \* \*

(b) *Notice of claim.* When asserting a claim against a State agency, FNS shall provide the notice to the State agency using any delivery method as long as the method provides evidence of the delivery.

\* \* \* \* \*

**PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS**

■ 6. In § 278.1:

■ a. The first sentence in paragraph (e) is amended by removing the words “through wholesalers food stamps received from or on behalf of their participants”; and adding in their place the word “benefits”;

■ b. The first sentence in paragraph (f) is amended by removing the words “coupons directly through wholesalers” and adding in their place the word “benefits”;

■ c. The first sentence in paragraph (g) is amended by removing the words “coupons directly through wholesalers” and adding in their place the word “benefits”;

■ d. The second sentence in paragraph (k)(7) is revised; and

■ e. The first sentence in paragraph (l)(2) is amended by removing the words “certified mail or personal service” and adding in their place the words “using any delivery method as long as the method provides evidence of delivery”.

The revision reads as follows:

**§ 278.1 Approval of retail food stores and wholesale food concerns.**

\* \* \* \* \*

(k) \* \* \*

(7) \* \* \* The FNS officer in charge shall issue a notice to the firm (using any delivery method that provides evidence of delivery) to inform the firm of any authorization denial and advise the firm that it may request review of that determination.

\* \* \* \* \*

■ 7. In § 278.2, the text of paragraph (g) is redesignated as paragraph (g)(1), and a new paragraph (g)(2) is added to read as follows:

**§ 278.2 Participation of retail food stores.**

\* \* \* \* \*

(g) \* \* \*

(2) Notwithstanding paragraph (g)(1) of this section, authorized drug addict and alcoholic treatment and rehabilitation programs, group living arrangements, shelters for battered women and children, and public or private nonprofit homeless meal providers for homeless food stamp households may be authorized to redeem EBT benefits directly through an insured financial institution in areas where an Electronic Benefit Transfer (EBT) system has been implemented.

\* \* \* \* \*

**§ 278.6 [Amended]**

■ 8. In § 278.6, the first sentence in paragraph (o) is amended by removing the words “certified mail or personal service” and adding in their place the words “any method that provides evidence of delivery”.

**§ 278.7 [Amended]**

■ 9. In § 278.7:

■ a. The first sentence in paragraph (b)(2) is amended by removing the words “certified mail-return receipt requested” and adding in their place the words “using any delivery method as long as the method provides evidence of delivery”;

■ b. The first sentence in paragraph (f) is amended by removing the words “certified mail or personal service” and adding in their place the words “using any delivery method as long as the method provides evidence of delivery”.

**PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS**

**§ 279.7 [Amended]**

■ 10. In § 279.7, the last sentence in paragraph (b) is amended by removing the words “registered or certified mail” and adding in their place the words “using any delivery method as long as the method provides evidence of delivery”.

**PART 280—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS**

■ 11. § 280.1 is amended by adding a sentence to the end of the section to read as follows:

**§ 280.1 Interim disaster procedures.**

\* \* \* \* \* The Secretary may also approve alternate methods for issuing food stamp benefits during a disaster when reliance on Electronic Benefits Transfer (EBT) systems is impracticable.

Dated: November 23, 2005.

**Eric M. Bost,**

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

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BILLING CODE 3410-30-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket No. FV05-985-2 IFR A]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2005-2006 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule amends a prior interim final rule that increased the quantity of Class 1 (Scotch) and Class 3 (Native) spearmint oil that handlers may purchase from, or handle for, producers during the 2005-2006 marketing year. The prior interim final rule increased the Scotch spearmint oil salable quantity from 677,409 pounds to 1,062,898 pounds, and the allotment percentage from 35 percent to 55 percent. In addition, the prior interim final rule increased the Native spearmint oil salable quantity from 867,958 pounds to 1,019,600 pounds, and the allotment percentage from 40 percent to 47 percent. This action does not affect the Scotch spearmint oil salable quantity and allotment percentage; however, it increases the Native spearmint oil salable quantity by an additional 151,855 pounds from 1,019,600 pounds to 1,171,455 pounds, and the allotment percentage by an additional 7 percent from 47 percent to 54 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

**DATES:** Effective June 1, 2005, through May 31, 2006; comments received by February 3, 2006 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments

concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under

section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The initial salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2005-2006 marketing year were recommended by the Committee at its October 6, 2004, meeting. The Committee recommended salable quantities of 677,409 pounds and 867,958 pounds, and allotment percentages of 35 percent and 40 percent, respectively, for Scotch and Native spearmint oil. A proposed rule was published in the **Federal Register** on January 12, 2005 (70 FR 2027). Comments on the proposed rule were solicited from interested persons until February 11, 2005. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2005-2006 marketing year was published in the **Federal Register** on March 24, 2005 (70 FR 14969).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee has made recommendations to increase the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle for, producers during the 2005-2006 marketing year, which ends on May 31, 2006. An interim final rule was published in the **Federal Register** on September 23, 2005 (70 FR 55713), which increased the 2005-2006 marketing year salable quantities and allotment percentages for Scotch and Native spearmint oil to 1,062,898 pounds and 55 percent, and 1,019,600 pounds and 47 percent, respectively. Comments on the interim final rule are being solicited from interested persons through November 22, 2005.

This rule amends the interim final rule that was published in the **Federal Register** on September 23, 2005, and is based on a unanimous Committee recommendation made at a meeting on October 5, 2005, to increase the Native spearmint oil salable quantity by an