

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 272, 273 and 274

[Amdt. No. 378]

RIN 0584-AC61

#### Food Stamp Program; Electronic Benefit Transfer Benefit Adjustments

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

**ACTION:** Final rule.

**SUMMARY:** This action provides final rulemaking for an interim rule published on September 9, 1999. The final rule revises Food Stamp Program regulations pertaining to a State agency's ability to make an adjustment to a household's account in an Electronic Benefit Transfer system. It enables State agencies to make adjustments to correct system errors without sending households *advance* notice of the action but does require that households be notified of any such actions. The rule also defines the timeframes and other requirements for the adjustments. The final rule incorporates several changes in response to a number of comments the Department received on the interim rule.

As a separate action, this regulation also adopts as final the requirements for re-presentation in the interim rule. State agencies may use re-presentation to recover funds when the host computer is inaccessible and there are insufficient funds to cover a manual transaction.

**DATES:** This final rule is effective August 4, 2000. State agencies may begin implementing the rule August 4, 2000 but no later than January 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and

Nutrition Service, USDA, room 718, 3101 Park Center Drive, Alexandria, Virginia 22302, or telephone (703) 305-2517.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This final rule has been determined to be non-significant for purposes of Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget.

##### Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service 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 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 Food and Nutrition Service 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 final rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local and tribal governments or the private sector of \$100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

##### 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.

##### Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5

U.S.C. 601-612). Samuel Chambers, Jr., Administrator, Food and Nutrition Service, has certified that this final rule will not have a significant economic impact on a substantial number of small entities. Food stamp authorized retailers will be affected minimally. State and local welfare agencies will be the most affected to the extent that they administer the Program.

##### Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

##### 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 so specified in the "Dates" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program, the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 for rules related to non-quality control (QC) liabilities or 7 CFR Part 283 for rules related to QC liabilities; and (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

##### Background

In a State where food stamp benefits are issued using an Electronic Benefit Transfer System (EBT), Food Stamp Program (FSP) participants purchase food by swiping their EBT card through a point-of-sale (POS) machine at an authorized retailer. In the transaction, benefits move from the participants' accounts to the retailers' bank accounts. During normal EBT transaction processing, settlement of the transaction

is completed when the transaction acquirer, typically a retail food store, has been properly credited for an amount equal to the amount debited from the household's benefit allotment. System malfunctions can cause an interruption to this process, resulting in a settlement condition that does not reflect the original transaction. Proposed regulations were published in the **Federal Register** on May 19, 1998 at 63 FR 27511 to change the way in which certain EBT error conditions are handled. Because of the complex nature of this issue and the substantive comments received to the proposed rule, the Department published an interim rule rather than a final rule in order to obtain further comments. The interim rule, published in the **Federal Register** September 9, 1999 at 64 FR 48933, implemented the proposed rule with some substantive changes as a result of comments received on the proposed rule.

The interim rule requires State agencies to make adjustments to correct out-of-balance settlement conditions that do not reflect original EBT transactions as a result of system malfunctions. In cases where a store is not credited for the full transaction amount, the interim rule requires State agencies to make an adjustment by debiting the client household's account, provided a concurrent notice is sent to the household. The interim rule also requires State agencies to debit a household's future month's benefits to complete an adjustment.

Apart and separate from system error adjustments, changes were also implemented for handling re-presentations when the system host computer cannot be accessed and there are insufficient funds in the household's account to cover a manual transaction. Readers should refer to the proposed and interim regulations for a more complete understanding of this final action.

This final rule reflects further revisions to the regulations, taking into consideration all comments received on the interim rule. Comments on the interim rule were solicited through November 8, 1999. Seventeen comment letters were received in response. Individual comments were received from twelve State agencies. Of the remaining letters, 2 were from EBT processors, 1 was from a retailer association, 1 was from an alliance of States, networks, financial institutions and retailers, and 1 was from a credit card company.

In general, the commenters supported the Department's efforts to streamline the adjustment process for certain types

of system errors. However, the commenters still believe that the Department did not go far enough in doing so and that the EBT adjustment policy should be further simplified to more closely mirror procedures used to correct system errors in the commercial environment. The major comments are discussed below.

#### *General*

There is a significant difference between adjustments in an EBT environment and adjustments in a commercial environment. Processors treat commercial adjustments as routine corrections which do not require special notification to customers. However, commercial debit card customers do have protections found in Regulation E at 12 CFR part 205 (hereinafter "Reg. E"), that food stamp clients do not have. One important protection is the requirement that commercial debit card users receive monthly statements summarizing their account activities. The monthly statement provides the account holder notification after the fact that an adjustment was processed to the account. However, food stamp EBT users were explicitly exempted from Reg. E with the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193 (PRWORA).

Requirements set forth in the Food Stamp Act of 1977, as amended, 7 U.S.C. 2019(e)(10), (FSA), and in the FSP regulations, require client notifications and rights to appeal when negative actions are taken. Because debit adjustments against a food stamp client's EBT account can be viewed as a type of adverse action, the same notice and appeal rights must be applied in these circumstances. The State agencies and other stakeholders continue to raise this as a primary concern due to the potential costs associated with notification and the fair hearing process. However, because of the statutory and regulatory provisions set up to protect food stamp households in situations of adverse action, and the gap left without the customer protections from Reg. E, these requirements remain unchanged in the final regulation.

Several commenters expressed concern that there needs to be sufficient training for retailers and third party processors on how the adjustment rule will be implemented, especially those aspects of the rule dealing with liabilities and timeframes. Although not addressed in the regulation, the Department will work with State agencies to ensure that the appropriate level of information is made available to retailers and third party processors. We

will also work with State agencies to determine how best to disseminate that information.

#### *Definitions*

The interim rule defined business days as Automated Clearing House (ACH) days. Two commenters requested that instead of ACH days, we define business days as calendar days other than Saturdays, Sundays or Federal holidays. We have made this change at 7 CFR 274.12 (f)(4)(ii)(A) to make the rule language more universal. Another commenter requested that we clarify all references to "days" as either "calendar" or "business" days. Where appropriate, we have done so throughout the final rule.

#### *Future Month's Benefits*

The interim rule requires a debit adjustment from a recipient's account to be made from a future month's benefit, *i.e.*, benefits that are not in the account at the time the initial adjustment is attempted, but are issued in subsequent months. This would apply in situations where either: (1) No benefits are available in the client account when the adjustment is attempted, or (2) only a portion of the benefits required for the full adjustment is available at the time the adjustment is attempted.

Two commenters provided general support of collection against future month's benefits. One commenter, however, asked for clarification on what was meant in the interim rule by requiring State agencies to collect from future months in which there has been a break in benefits. In the interim rule, State agencies are required to complete an outstanding adjustment that exists for a household that comes back on to the FSP after being off the Program for a period of time. This would require debiting the household's account in a month other than when the error occurred, *i.e.*, use their future month's benefits.

Two commenters suggested limiting the number of months processors must attempt adjustments against a client's account, *e.g.*, 1 future month, before the adjustment debt is canceled. Limiting the number of months an adjustment must be carried over until it is satisfied reduces the length of time State agencies and processors must track and account for an adjustment. Consequently, State agencies will also be relieved of tracking adjustments that cannot be collected from a household that leaves the FSP, regardless of whether that household returns to the FSP at a future date.

The Department is convinced that limiting the length of time the State agency may attempt an adjustment to

one future month greatly reduces costs and makes this operation much more manageable. The Department is further convinced that this change will not significantly impact the number of adjustments that can be completed for the full amount. This is consistent with data that shows the average EBT transaction amount is \$20, and therefore, most adjustments will be fully satisfied after going against no more than one future month's issuance. The final rule reflects this change.

At 7 CFR 274.12(f)(4)(ii), the interim rule states that, by definition, the amount of an adjustment cannot differ from the value of the original transaction. In response to three commenters, we are removing this language from the rule because it does not account for the possibility of partial adjustments in the current month, and again in future months. This language becomes more problematic now that we are limiting the State agencies' access to one future month's benefits to make an adjustment. In some cases, it is possible that the State agency will not be able to collect anything from a household, or only a portion of a total adjustment because the household has left the FSP, or they have a minimal benefit issuance that will not cover the full adjustment in the next month.

However, the Department is clarifying that we are not requiring State agencies to settle partial adjustments to retailer accounts. We have been informed that many acquirers' systems cannot accept partial adjustment amounts that do not match the original error transaction and prefer receiving no credit rather than a partial credit. In cases where the State agency chooses not to settle a partial adjustment to the acquirer, the adjustment amount must be returned to the household account.

Another commenter raised the concern that making a partial adjustment in the current month, then another partial adjustment in the next month is problematic. This is another example where tracking and settling the adjustment becomes complicated by the likelihood of multiple transactions to complete a full adjustment. The suggested solution from the commenter was to place a hold on a partial adjustment available in the current month, then move the funds at one time, as a single adjustment, after the next month's benefits are issued. This reduces the number of transactions required to make an adjustment when going against a future month's benefits. We can see the merit in this approach and will allow State agencies to handle the process in this way, so long as the notification to households: (1) Is sent at

the time the initial hold is placed on the current month's remaining available funds, if any; (2) clearly states the full adjustment amount; and (3) advises the household that any amount still owing is subject to collection from the household's next future month's benefits. To reduce the possibility of creating a hardship on the household, the processor must place a hold on whatever portion of the adjustment is available in the current month rather than wait to debit the entire adjustment amount from the household's next month's issuance.

Two commenters suggested dropping the language at 7 CFR 274.12(f)(4)(ii), which provides that "[a] State agency shall make adjustments to an account after the availability date \* \* \*," because it implies that adjustments can never be made before the availability date. We have re-worded this paragraph to clarify that State agencies must make adjustments to correct system errors and that those adjustments may be made after the availability date. This distinguishes system error adjustments from other types of adjustments to client EBT accounts which may not be made after the benefit availability date.

The Department will require State agencies to amend training materials to disclose information to households about adjustments, including the possibility that an adjustment can be made against a future month's benefit. Training materials must also inform households of their right to a fair hearing if they do not feel that the adjustment is warranted and their right to receive a credit for the adjustment amount pending a fair hearing decision. Although one commenter questioned the sense of allowing State agencies a grace period to make changes to training materials, we have not changed the rule. State agencies may grandfather disclosure information on adjustments into their training materials if they have EBT systems that have been operational for one year from the date of this publication. However, as we discuss below, whenever a household's account is debited to make an adjustment, the State agency must provide the household concurrent notification of their rights to appeal and to provisional credits, including the possibility of adjustment from the next month's benefits.

#### *Notice and Fair Hearing Requirement*

When an adjustment will adversely affect the household, the interim rule requires State agencies to send a concurrent notice at the time the action is taken rather than an advance notice which must be sent 10 days before an

action is taken. The concurrent notice gives households the right to a fair hearing and the right to be credited for the adjustment amount pending the outcome of the fair hearing. The majority of comments received on this subject continue to disagree with the notice requirement. However, as mentioned above, such notification is mandated by the FSA. Thus, the final rule remains unchanged in requiring concurrent notice to households. These notices must contain the level of detail described in current regulations at 7 CFR 273.13, *i.e.*, State agencies are required to include information about the circumstances which resulted in the adverse action. State agencies are encouraged to include as much detail about the transaction—date, time and location—as possible, since such information could reduce calls to the help desk as well as requests for fair hearings and provisional credits.

Several commenters relayed concern that only one notice be required, even when partial adjustments are necessary from future months to recoup the full adjustment amount. It is the intent of this rule that only one notice be sent to a household informing it of the error and disclosing the full adjustment amount. The State agency must send the notice concurrent to taking initial action on the adjustment. Subsequent transactions to move the funds or otherwise complete the adjustment do not require additional household notification. It should be noted that all actions taken to reduce the household's allotment are subject to notice, including the correction of an erroneous adjustment that first went in the household's favor. No notice is necessary if an adjustment is a credit to the household account.

The household has 90 days from the date of the notice to request a fair hearing. However, if the request is received within 10 days from the date of the notice, the household must be granted a provisional credit pending the fair hearing decision. Three commenters believe that merchants and/or processors need to have input into the fair hearing process. There is no prohibition against parties other than the State agency and the FSP households having input into the fair hearing process. We encourage State agencies to ensure that all parties involved in resolving an error have access to the fair hearing process.

#### *Provisional Credits*

Several comments were received relating to provisional credits pending fair hearing determination. There continues to be considerable confusion

about how to handle provisional credits, specifically how to handle claims of system errors and how provisional credits should be funded. Commenters also continue to have questions regarding liabilities for provisional credits in various circumstances.

First, the Department is clarifying that provisional credits are not required for denied system error claims initiated by client households. For example, a household claims that they are missing benefits from the EBT account as a result of a retailer's system problem, but the alleged system error cannot be substantiated with settlement data. In this case, the State agency may deny the adjustment. However, in so doing, they must also inform the household of their right to a fair hearing. In such a case, if the household does request a fair hearing, the State agency is not required to make a provisional credit to the household pending the fair hearing decision.

Several commenters were also concerned with the complexity of the provisional credit process when a retailer requests an adjustment. The interim rule states that, when a client responds to a retailer-initiated adjustment by requesting a fair hearing and provisional credit, the State agency must notify the processor to initiate another adjustment to credit the recipient's account—presumably coming out of the retailer's account. This scenario becomes even further complicated in cases where the client's fair hearing is not upheld. At such time, the amount of the provisional credit must be debited from the client account and credited back to the retailer.

Many commenters expressed concerns about the problems associated with State agencies and their processors having to track adjustments back and forth between the retailer and household accounts pending a fair hearing decision. There was also concern expressed about the likelihood that a household may spend the provisional credit and leave the FSP before it could be determined that the adjustment was in error. To simplify the process and reduce the risk involved in instances of retailer-initiated adjustments, the Department will require State agencies to have their processors place a hold on the adjustment amount in the client account pending a timely request for a provisional credit.

If the household does not request a provisional credit within the 10-day timeframe allotted for doing so, the hold on the funds in the client account is released and the adjustment is made into the retailer's account. As discussed

above, if there are insufficient funds to cover the full adjustment amount, the State agency may choose to maintain the hold until the next month's benefits are issued and settle the full adjustment amount. If the household does request the provisional credit, the hold is released and the funds remain in the client's account. Should the fair hearing decision go against the client, the adjustment amount will then be credited to the retailer's account.

Four commenters felt that it was unfair to make retailers liable for provisional credits. Three commenters asked that we specify where provisional credits are to come from. Three other commenters suggested that government sources rather than private sources fund provisional credits. We are not changing the source of provisional credits in the final rule. However, we believe that, by not requiring provisional credits in instances of denied client-initiated adjustments, and by requiring State agencies to put a hold on an adjustment until after the time when a household can request a provisional credit, we have simplified the adjustment process and reduced the retailers' liability for unwarranted provisional credits.

Four commenters supported the Department taking on the liability of funding credit adjustments to clients when the responsible retailers have left the FSP or otherwise refuse to fund a legitimate adjustment. The Department has determined that because these adjustments result from the State agency's system errors, the State is ultimately responsible for making the client whole in these instances. The number of these situations that are likely to occur are quite small given that adjustments occur infrequently and the majority of food stamp transactions take place in stores with historically low turnover in the FSP. Moreover, adjustment amounts as reported by retailers and processors are small. If a client household leaves the FSP before a credit adjustment has been completed for a retailer, the adjustment is discontinued. As was stated in the interim rule, collections made from clients that are not credited to retailers because they have left the FSP must be returned to the Department.

#### *Timeframes*

The interim rule distinguishes between adjustments generated by retailers and recipients. It allows the State agency 10 days from the date of the error transaction to complete an adjustment requested by a retailer and 5 days from the date a client household notifies the State agency or help desk to complete a client-initiated adjustment.

Three commenters felt the timeframes to complete adjustments were too short; three others specified that the 5-day timeframe to complete a client-initiated adjustment was too short, given the actions that must take place and the number of participants inherent in the adjustment process. The processes described by the commenters include compilation of documentation, research, exchange of information, and making the adjustment. The suggestion was to extend the timeframe for client initiated adjustments from 5 days to 10 or 15 days.

We believe that most client-initiated adjustments will result in funds owed to the household. In these scenarios, recipients have suffered a loss through no fault of their own, ostensibly through a verifiable system error. However, we have been convinced that 5 days is not enough time to complete an investigation of a client-initiated adjustment request. Therefore, the Department is extending the timeframe for client-initiated adjustments from 5 days to 10 days, in order to provide sufficient time for the State agencies and the processors to complete error verification research and handle the adjustment properly. This timeframe also applies to circumstances where the State agency or other entity besides the household discovers an error which must be corrected by crediting the household's account. Such a correction must occur within 10 days from the time the error is discovered.

The Department does not believe that a case has been made to justify allowing additional time after the 10-day deadline to complete retailer-initiated adjustments. In response to three comments, we are clarifying the use of the word "completed" in the context of retailer-initiated adjustments to mean that the initial adjustment transaction, which will be a hold placed on the funds available in the client account, must be attempted as soon as possible within 10 days of the error transaction, and a concurrent notification must be sent to the household. The funds will not move until after the time has passed for a household to request a provisional credit. We understand that, in some cases, all or some portion of the full adjustment will have to be made from the next month's allotment. However, the household must be notified concurrent with the initial adjustment action. The State agency may not take action on any adjustment to debit a household's account if more than 10 days have passed since the error transaction occurred, except in cases when the action is initiated within the 10-day timeframe but the funds are not

available in the current month and must be taken from the next month's benefit issuance.

Another comment was raised regarding the 180 days a client household has to notify the State agency of a system error and request an adjustment. Indications are that client households do not request adjustments this far from the date an alleged error occurred, primarily because EBT households do not receive account statements, and therefore, keep track of their account balances with their POS receipts. As such, it is more likely that they will discover the error soon after the transaction takes place.

Furthermore, many State agencies only keep transaction data on-line at the host computer for 90 days. To research an alleged error once the data has been moved off-line greatly increases the potential cost and administrative burden of the adjustment process. The Department is convinced that the 180-day timeframe is longer than necessary for households to request an adjustment and has reduced the timeframe to 90 days.

One commenter requested that the Department put specific deadlines on each participant in the adjustment, e.g., the retailer has a certain number of days to request the adjustment, then the processors have another specified timeframe to complete the process, and so on. The Department believes that such an approach would be difficult to track and administratively burdensome. We realize, however, that each of these participants has a responsibility to the others to handle their portion expeditiously if timeframes are to be met. We would recommend and expect that this level of detail be addressed in retailer and third party agreements.

One commenter wanted clarification on the ramifications of not meeting timeframes or otherwise complying with this rule. This rule will not impose specific penalties for non-compliance. As with other regulatory requirements, however, State agencies are required to ensure the processor's compliance and failure to do so may result in administrative sanctions by the Department against the State agency.

#### *Re-presentations*

The Department received three comments relaying confusion about how re-presentation fits into the adjustment process. In fact, re-presentation regulations are separate and apart from adjustment rules, because State agencies now have access to a household's future month's benefit issuance to make an adjustment. The only time a State agency would need to consider re-

presentation is in the event of insufficient funds to cover a manual transaction when the system host computer is down. Any references to re-presentation are used in the context of 7 CFR 274.12(e). There are no changes regarding re-presentations in the final rule from what was published in the interim rule.

#### **Implementation**

This final rule is effective August 4, 2000. State agencies may begin implementing the rule August 4, 2000 but no later than January 2, 2001. State agencies that have already implemented EBT shall have one year in which to grandfather adjustment disclosure into their training materials according to 7 CFR 274.12(f)(10)(viii).

#### **List of Subjects**

##### *7 CFR Part 272*

Alaska, Civil Rights, Food Stamps, Grant Programs—social programs, Reporting and recordkeeping requirements.

##### *7 CFR Part 273*

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

##### *7 CFR Part 274*

Administrative procedures and practices, Food Stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 7 CFR Parts 272, 273 and 274, which was published at 64 FR 48933 on September 9, 1999, is adopted as a final rule with the following changes:

1. The authority citation for 7 CFR Parts 272, 273 and 274 continues to read as follows:

**Authority:** 7 U.S.C. 2011–3036.

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

2. In § 272.1, paragraph (g)(154) is revised to read as follows:

##### **§ 272.1 General terms and conditions.**

(g) *Implementation.* \* \* \* (154) *Amendment No. 386.* The provisions of Amendment No.386 are effective August 4, 2000. State agencies may begin implementing the rule August 4, 2000 but not later than January 2, 2001. State agencies that have already implemented EBT shall have one year in which to grandfather adjustment disclosure into their training

materials according to 7 CFR 274.12(f)(10)(viii).

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

3. In § 273.13, paragraph (a)(3)(vii) is redesignated as (a)(4) and is revised to read as follows:

##### **§ 273.13 Notice of adverse action.**

(a) \* \* \* (4) The State agency shall notify a household that its benefits will be reduced if an EBT system-error has occurred during the redemption process resulting in an out-of-balance settlement condition. This notification shall be made no later than the date the action is initiated against the household account. The State agency shall adjust the benefit in accordance with § 274.12 of this chapter.

\* \* \* \* \*

4. In § 273.15, the fifth and sixth sentences of paragraph (k)(1) are revised to read as follows:

##### **§ 273.15 Fair hearings.**

\* \* \* \* \*

##### (k) *Continuation of benefits.*

(1) \* \* \* In the case of an EBT adjustment, as defined in § 274.12(f)(4)(ii) of this chapter, once an adverse action is upheld, the State agency shall immediately debit the household's account for the total amount stated in its original notice. If there are no benefits or insufficient benefits remaining in the household's account at the time the State agency action is upheld, the State agency may only make the adjustment from the next month's benefits, regardless of whether this satisfies the full adjustment amount. \* \* \*

\* \* \* \* \*

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

5. In § 274.12, paragraphs (f)(4) and (f)(10)(viii) are revised to read as follows:

##### **§ 274.12 Electronic Benefit Transfer issuance system approval standards.**

\* \* \* \* \*

##### (f) *Household Participation* \* \* \*

(4) *Issuance of Benefits.* State agencies shall establish an availability date for household access to their benefits and inform households of this date.

(i) The State agency may make adjustments to benefits posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted.

(ii) A State agency shall make adjustments to an account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error. A system error is defined as an error resulting from a malfunction at any point in the redemption process: from the system host computer, to the switch, to the third party processors, to a store's host computer or point of sale (POS) device. These adjustments may occur after the availability date and may result in either a debit or credit to the household.

(A) *Client-initiated adjustments.* The State agency must act on all requests for adjustments made by client households within 90 calendar days of the error transaction. The State agency has 10 business days from the date the household notifies it of the error to investigate and reach a decision on an adjustment and move funds into the client account. This timeframe also applies if the State agency or entity other than the household discovers a system error that requires a credit adjustment to the household. Business days are defined as calendar days other than Saturdays, Sundays, and Federal holidays.

(B) *Retailer-initiated adjustments.* The State agency must act upon all adjustments to debit a household's account no later than 10 business days from the date the error occurred, by placing a hold on the adjustment balance in the household's account. If there are insufficient benefits to cover the entire adjustment, a hold shall be placed on any remaining balance that exists, with the difference being subject to availability only in the next future month. The household shall be given, at a minimum, adequate notice in accordance with § 273.13 of this chapter. The notice must be sent at the time the initial hold is attempted on the household's current month's remaining balance, clearly state the full adjustment amount, and advise the household that any amount still owing is subject to collection from the household's next future month's benefits.

(1) The household shall have 90 days from the date of the notice to request a fair hearing.

(2) Should the household dispute the adjustment and request a hearing within 10 days of the notice, a provisional credit must be made to the household's account by releasing the hold on the adjustment balance within 48 hours of the request by the household, pending resolution of the fair hearing. If no request for a hearing is made within 10 days of the notice, the hold is released on the adjustment balance, and this

amount is credited to the retailer's account. If there are insufficient funds available in the current month to cover the full adjustment amount, the hold may be maintained and settled at one time after the next month's benefits become available.

(iii) The appropriate management controls and procedures for accessing benefit accounts after the posting shall be instituted to ensure that no unauthorized adjustments are made in accordance with paragraph (f)(7)(iii) of this section.

\* \* \* \* \*

(10) \* \* \*

(viii) Disclosure information regarding adjustments and a household's rights to notice, fair hearings, and provisional credits. The disclosure must also state where to call to dispute an adjustment and request a fair hearing. State agencies that have already implemented EBT shall have one year in which to grandfather adjustment disclosure into their training materials.

\* \* \* \* \*

Dated: June 28, 2000.

**Samuel Chambers, Jr.,**  
*Administrator, Food and Nutrition Service.*  
[FR Doc. 00-16944 Filed 7-3-00; 8:45 am]

**BILLING CODE 3410-30-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 98-SW-74-AD; Amendment 39-11807; AD 2000-13-08]**

**RIN 2120-AA64**

**Airworthiness Directives; Eurocopter Deutschland GmbH Model EC 135 Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD) that applies to Eurocopter Deutschland GmbH (ECD) Model EC 135 helicopters. That AD requires conducting a tail rotor drive shaft vibration survey (survey), installing a Fenestron Shaft Retrofit Kit, inspecting each tail rotor drive shaft bearing (bearing) attaching lock plate for bent-open tabs and broken or missing slippage marks, and visually inspecting each bearing support for cracks. This AD requires conducting the survey and installing the Fenestron Shaft Retrofit Kit. This AD also requires installing double bearing supports and struts,

revising the required compliance time for the repetitive inspections of the bearing attach hardware and supports, and removing the requirement to contact the FAA if a lock plate tab is bent open or if slippage marks are broken or missing. This amendment is prompted by continued reports of misaligned or cracked bearing supports and loose bearing attachment bolts. The actions specified by this AD are intended to prevent loss of drive to the tail rotor and subsequent loss of control of the helicopter.

**DATES:** Effective August 9, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 9, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110, telephone (817) 222-5123, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98-15-25, Amendment 39-10866 (63 FR 59206, November 3, 1998), that applies to ECD Model EC 135 helicopters, was published in the **Federal Register** on April 6, 2000 (65 FR 18010). That action proposed to require the following:

- Conducting a vibration survey and installing the Fenestron Shaft Retrofit Kit L535M3002 882;
- Installing double bearing supports and struts;
- Inspecting and, if necessary, replacing bearing attach hardware; and
- Increasing the repetitive inspection interval for the bearing supports and attach hardware to 50 hours time-in-service (TIS).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the