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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: Interim rule.

SUMMARY: This action provides interim rulemaking for a proposed rule published on May 19, 1998. It revises Food Stamp Program regulations pertaining to the State agency's ability to make an adjustment to a household's account in an Electronic Benefit Transfer (EBT) system. The changes enable State agencies to make an adjustment to correct system errors without sending an advance notice as currently required. This rule also revises the formula for recovering funds under the re-presentation rule.

The Department received a large number of comments to the proposed rule, many of which suggested substantive changes. At least two significant changes to the proposed rule have been incorporated as a result of the comments received. Therefore, the Department has decided to allow further comment by publishing an interim final rule. All comments received will be analyzed, and any appropriate changes in the rule will be incorporated into the subsequent publication of a final rule.

DATES: This interim rule is effective October 12, 1999. State agencies must implement the rule no later than March 7, 2000. Comments must be received on or before November 8, 1999.

ADDRESSES: Comments should be submitted to Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be faxed to the attention of Mr. Cohen at (703) 605–0232, or by e-mail to jeff.cohen@fns.usda.gov. Written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 718.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Mr. Cohen at the above addresses or by telephone at (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Interim Rule

Because this rule has significant changes from the proposed rule, the Department is soliciting further public comment for 60 days. All comments received will be analyzed, and any appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

Executive Order 12866

This interim 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 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 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 interim 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 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. 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; (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Background

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. The change was proposed following concerns from the EBT community that current regulations do not allow State agencies, or their processors, to make an adjustment to correct certain system errors in a manner consistent with the commercial environment. During normal EBT transaction processing, settlement is completed when the transaction acquirer has been properly credited for an amount equal to the amount debited from the household's benefit allotment. System malfunctions, however, can cause an interruption to this process, resulting in a settlement condition that does not reflect the original transaction. The regulations proposed to allow State agencies to make adjustments for these errors when concurrent notice was sent to the household as opposed to the advance notice required by current regulations. Changes were also proposed for handling re-presentations. Readers are referred to the proposed regulation for a more complete understanding of this final action.

Comments on the proposal were solicited through July 20, 1998. This final action takes those comments received into account. Twenty-eight comment letters were received in response to the proposed rule. Individual comments were received from eighteen State agencies. (An additional 10 State agencies commented as part of joint consortia letters.) Of the remaining letters, 4 were from retailers and/or their associations, 2 from EBT processors, 3 were from Public Interest Groups, and 1 was from an alliance of States, networks, financial institutions and retailers. Although four of the letters were received late, their comments were considered. None of these four, however, raised comments resulting in changes to the proposed rule that were not raised by other commenters.

In general, the commenters supported the Department's efforts to streamline the adjustment process for certain types of system errors. The overwhelming majority of the commenters, however, believed that the Department did not go far enough in doing so and that the EBT adjustment policy should mirror commercial practice. The major comments deemed by the Department to be significant are discussed below.

General

There is a significant difference between how EBT adjustments would be handled under the proposed rules and how they are handled in the commercial environment. While commercial adjustments are handled by processors as routine corrections not requiring special notification to customers, in the Food Stamp Program, when adjustments are a debit against the household's account, they are viewed as a type of adverse action. A majority of commenters believed that the food stamp adjustment policy should strictly follow commercial or Electronic Funds Transfer (EFT) standards, arguing that Congress expressly recognized the importance of conforming EBT programs to commercial standards by directing that ''an electronic benefit transfer system should take into account generally accepted standard operating rules based on commercial electronic technology'' (7 U.S.C. 2016 (i)(1)(D)).

The Department is aware that Congress wanted programs to ''take into account'' commercial practices; however, by not mandating that EBT follow commercial practices, Congress recognized that EBT differs from EFT and, in some circumstances, must adhere to different standards. Certainly, in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, (PRWORA), a precedent for such a divergence was set when EBT was explicitly exempted from Regulation E, a requirement for commercial EFT.

The Department believes that, while the overall procedural framework for handling adjustments in the commercial environment is acceptable, there are certain areas—i.e., notifications and the rights to appeal—that must adhere to the requirements set forth in the Food Stamp Act of 1977, as amended, 7 U.S.C. § 2011–2036, (FSA), and food stamp regulations. This is especially important in light of the fact that the commercial environment is silent in some of these areas, or the commercial standards in place are not appropriate for those who depend upon food stamp benefits for basic subsistence.

Several commenters wanted the rule to clarify that State agencies have final authority and reversal authority on all adjustments. They also wanted the rule to require EBT processors to give State agencies adjustment information upon request. The Department believes that Food Stamp regulations already require processors to provide such information by mandating at 7 CFR § 274.12(j)(1)(vi) that systems maintain an audit trail documenting the full cycle of issuance ''through settlement of retailer credits'' and by requiring at 7 CFR § 274.12(j)(2) that the system provide appropriate management reports. As for final authority over adjustments, the Department believes that EBT regulations, and contracts between State agencies and their processors, give States final authority over all matters pertaining to household accounts.

One commenter believed that the proposed rule implied that all adjustments take place at the State level, when, in fact, they are usually handled by the processors. The proposed rule was not meant to imply that the State agencies handle adjustments. All EBT regulations are addressed to the States, as they have authority over the administration of the Food Stamp Program. As with other operational components of EBT, any of the requirements of this rule can be handled by processors, as agents of the State agencies, if appropriate. State agencies remain ultimately responsible, however, for the actions of their contractors.

One commenter suggested that adjustments should be handled as any other administrative claim. The Department believes that adjustments are different from claims in that the errors do not result in money owed to FNS. All of the processing and reporting of claims are based on a collection against an incorrect benefit issuance being passed back to the government. Collection for adjustments, on the other hand, do not result in savings to the government and, therefore, cannot be handled in the same manner as claims.

One commenter stated that the proposed rule implied that adjustments are allowed, but not required. The intent of the proposed rule was to clarify, through regulations, how EBT system errors would be corrected under EBT. It was, therefore, the Department's intent to require all State agencies to follow these rules. The interim rule includes clarifying language that makes the adjustment rule mandatory.

Definitions

The proposed rule limited the type of adjustments that could be processed without advance notice, to system errors resulting in an out-of-balance settlement condition. Several commenters supported this restriction, echoing the

Department's belief that adjustments resulting from human error should not be included in this rule. Other commenters sought to expand the definition of adjustments to include monthly issuance-posting errors and other State agency, non-settling errors. A number of commenters asked for clarifications regarding the definition of a system error.

The Department agrees that adjustments should be allowed only in those situations in which a transaction was not completed because of a system error. A system error is one which occurs due to malfunction at the EBT host, the third party processor, the retailer host system, the Point-of-Sale (POS), or as a result of telecommunications malfunctions. By definition, the amount of an adjustment cannot differ from the value of the original transaction. (The Department recognizes that the original transaction amount may no longer be available in a recipient's account at the time of the adjustment and will allow an adjustment against remaining benefits, even if it differs from the original transaction amount). This definition is in keeping with commercial operating rules and the QUEST EBT operating rules.

Human errors, such as those that may result in incorrect postings, incorrect entries at the POS by the clerk, operating in training mode, etc., are not covered by this rule. The Department believes the household should have the right to advance notice on these more questionable ''adjustments'' to their allotments. Human errors do not leave the same audit trail that system errors do, i.e., documentation of an out-of-balance condition, such as system logs that are generated from any of the reconciliation points.

Monthly-issuance posting errors are pre-issuance errors and, as such, are not within the rule's definition of an adjustment; however, the Department recognizes the need for State agencies to expeditiously correct these errors. The Department will take this comment under consideration for future proposed rulemaking.

Future Month's Benefits

The proposed rule did not allow a debit adjustment from a recipient's account to be made from a future month's benefit, i.e., benefits that were not in the account at the time of the error. Commenters overwhelmingly disagreed with this restriction, arguing that the restriction in the proposed rule increases the probability that the funds will not be available to do a debit adjustment to the household's account. These commenters also argued that restricting adjustments against a future month also puts an unfair burden on retailers who may suffer a loss of revenue if recipients spend benefits prior to an adjustment being made. Finally, many commenters raised concerns about the administrative burdens inherent in using the re-presentation process when collecting from future month's benefits.

The Department has been persuaded by the commenters that adjusting from future months' benefits prevents retailers from having to bear an unfair financial burden due to system errors. Further, since this rule only applies to situations in which the need for an adjustment can be clearly documented, we are confident that there is a minimal risk that recipients will have their accounts adjusted erroneously. The Department understands that the average debit adjustment to a household is relatively small. This is consistent with overall transaction data that shows the average EBT transaction amount is $20. This would lead us to project that, on average, most transactions requiring adjustments would not be large enough to cause a hardship to a food stamp household, where the average benefit amount is $173. This average transaction amount is also well below the $50 currently allowed in the first month of a re-presentation against the household. The interim final rule is, therefore, changed to allow an adjustment against a future month's benefit. This includes future months in which there has been a break in receipt of benefits.

In implementing this change to the proposed rule, 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 material must also inform the 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. States that have already implemented EBT will have one year from the date of this notice to grandfather disclosure information on adjustments into their training materials.

Notice and Fair Hearing Requirement

The proposed rule required State agencies to send a concurrent notice when an adjustment was done that would adversely affect the household. The notice would give 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 did not agree with the notice and fair hearing requirements for EBT adjustments. Most commented that it was inappropriate to apply these requirements to adjustments because they believe notice requirements in the program rules should be limited to circumstances in which benefits are being reduced to collect a previous overissuance of benefits. There were also a number of concerns about the cost of mailing notices, as well as the coordination required between the State agency and the processor, since the processor usually does not have current household addresses. Several commenters, however, supported the application of the notice and hearing requirements, including one which suggested that the Department prescribe the level of detail that should be in the notice. Three commenters supported the adequate notice as opposed to a 10-day advance notice. Another commenter suggested that a notice not be sent as long as the adjustment was done within 5 days as required by the proposed rule.

The Department is not convinced that adjustments should be exempt from the notice requirement. The Food Stamp Act gives recipients certain rights which cannot be abrogated because of the logistical problems inherent in providing the notice. Nor does the fact that these are transactional errors as opposed to benefit overissuances nullify this right. Section 11(e)(10) of the FSA requires State agencies to provide ''for the granting of a fair hearing and a prompt determination thereafter to any household aggrieved by the action of the State agency under *any* provision of its plan of operation as it affects the participation of such household in the food stamp program or by a claim against the household for an overissuance.'' (emphasis added) Further, in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), the Court ruled that, where ''basic subsistence is at stake,'' due process requires that households receive notice and an opportunity for a fair hearing *prior* to the denial of such government benefits. Absent a guarantee that there is absolutely no chance of erroneous adjustments, the Department concludes that households shall retain their notice and fair hearing rights. The level of detail required in the notice is described in 7 CFR 273.13, i.e., State agencies are required to include information about the circumstances which resulted in the adverse action. States 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.

States have requested clarification on the timeframes for the fair hearing. The interim rule has been clarified to state that the household has 90 days from the date of the notice to request a fair hearing. Further, the household has 10 days from the date of the notice to request a re-credit or provisional credit pending the fair hearing decision. Two commenters suggested that a notice (with attendant fair hearing rights) only be required when there has been an incorrect adjustment. For the reasons cited above, the Department believes that all actions taken to reduce the household's allotment are subject to notice.

Two commenters questioned the cost effectiveness of sending a notice when the adjustment is a credit to the client. The notice and fair hearing requirements found in 7 CFR 273.13 and 273.15 only apply to adverse action; therefore, an adjustment which resulted in a credit to a household would not require a notice.

One commenter suggested that the State be required to send the notice, not the contractor. The Department does not want to prescribe how the notice requirement is handled but, instead, prefers to give each State agency and their processor an opportunity to develop a process that works in their unique environment.

Finally, two commenters objected to the State agencies paying a share of administrative costs associated with mailing out notices, handling appeals, and handling re-credits or provisional credits. The Department has no authority in Federal law to pay more than the federal financial participation for food stamp administrative costs, and therefore, cannot pay the States' share.

Re-Credits (Provisional Credits)

A number of other comments related to re-crediting or provisional credits pending a determination of the fair hearings. Some commenters objected to re-crediting pending a fair hearing, while an equal number of those commenting in this area supported it. A few commenters requested clarification on how to handle re-credits, specifically who is liable when an adjustment is due, how re-credits should be funded, and how they should be reported. Some commenters thought the State agency or the processors should be liable, not the retailers.

The Department is clarifying that provisional credits should be handled as any other adjustment. If a household requests a provisional credit pending a fair hearing, the State agency must notify the processor to initiate another adjustment to credit the recipient's account. If the original adjustment was already completed, and payment made to the party suffering the loss, then that account must be debited in order to give a provisional credit to the household.

Two commenters opposed language that allowed State agencies to discontinue collection activity when households and/or retailers were no longer on the program. The Department believes that by allowing an adjustment against future month's benefits, it is simplifying the management controls necessary to collect from households if they return to the program after a break in assistance. Therefore, language stating that households that have left the program are not subject to further collection activity has been removed. Similarly, the proposed rule did not require processors or others such as third party processors to collect against a household when the retailer is no longer with the Food Stamp Program. The Department is not persuaded to change its position regarding retailers. FNS recognizes that once retailers leave the system they are not easily tracked and wishes to reduce the administrative burden on State agencies by not requiring them to further track retailers. However, collections made from clients that are not credited to retailers must be returned to FNS.

The Department is also clarifying the interim rule by changing the term ''re-credits'' to ''provisional credits'' to keep the language in line with commercial nomenclature.

Timeframes

Most of the commenters believed that the proposed 5-day timeframes to complete an adjustment were 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, notification to other participants and making the adjustment—more business partners in the chain add to the processing time. Some commenters estimated that the process in the commercial environment typically takes from 10–45 days, influenced by uncontrollable factors, such as retailers who don't settle daily. The Department has taken these comments into consideration and has modified the interim rule. The interim rule distinguishes between adjustments generated by retailers and recipients.

We believe that most recipient generated 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. By allowing an adjustment against a future month's benefit, the Department is giving the processor the opportunity to do an adjustment prior to a full investigation, if required, without risk of liability if a household is erroneously credited. The Department wishes to emphasize that the provisions of this interim rule also apply to ''correcting adjustments'', i.e., those adjustments generated to reverse an erroneous credit to a recipient's account. Therefore, for client initiated adjustments, the 5-day timeframe remains as proposed.

Commenters identified several scenarios where either the retailer, the client, or the processor would be unaware of an error until well after it has occurred. After reviewing the comments, the Department determined that the timeframes for client initiated adjustments should be counted from the date the household notifies the State agency of the error. This distinction is critical since EBT recipients do not receive monthly statements and, therefore, may not be aware of an error until the next time they attempt to do a transaction. The problem is exacerbated by the fact that a system error often results in an incorrect receipt. For these reasons, the rule has been changed. Client initiated adjustments shall be made within 5 business days of the date the household notifies the State agency or the Help Desk of the error. The household has 180 days from the date the error occurred to make the notification. This requirement does not absolve the State agency/processor from making the adjustment if the 5-day deadline is missed.

The Department acknowledges that retailer and client initiated adjustments are handled differently. The retailer has access to settlement information from the processor or third party. Several commenters stated that not all retailers, particularly small ones, settle on a daily basis and would not know of an error until after the 5-day timeframe had passed. The Department has been persuaded by these arguments and has modified the rule. Retailer initiated adjustments must be completed within 10 days from the date the error occurred. Retailer initiated adjustments that result in a debit to the household's account are not allowed after 10 days.

One commenter requested that correction of benefits should be done in 24 hours, whenever possible. The Department wishes to emphasize the importance to both State agencies and processors of making adjustments as quickly as possible. However, 24 hours

is not a reasonable expectation given the number of parties that are typically involved in the process.

One commenter thought the Department should put specific deadlines on each business partner in the process, i.e. prescribe timeframes to the third parties, processors, retailers, contractors, etc. for handling their own segment of the process. The Department believes that such an approach would be administratively burdensome. We realize, however, that each of these partners has a responsibility to the others to handle their portion expeditiously if timeframes are to be met. We would recommend that this level of detail be addressed in retailer and third party agreements.

The rule has been re-written to clarify that these provisions apply to both credit and debit adjustments. The rule is also being clarified to state that business days means Automated Clearing House (ACH) days.

One commenter wanted clarification on the ramifications of not meeting timeframes. This rule will not impose penalties for not meeting timeframes. As with other regulatory requirements, States are required to ensure the processor's compliance.

Investigations

One commenter thought the rule should be more prescriptive in the area of dispute resolutions: such as, requiring control numbers on complaints taken at customer service, providing detailed instructions for investigating claims, etc. The commenter went on to suggest that the burden of proof be on the retailer in investigating disputes.

The Department is not convinced that this rule should provide more details in investigating system error adjustment claims. The rule covers a very limited type of error, not unlike those handled routinely in the commercial environment. Since there is nothing unique to a food stamp adjustment that would require the Department to justify deviation from existing practices, the interim final rule will remain silent on details for investigating these types of errors. Processors, third parties, retailers and customer service representatives should follow industry practice in ensuring that investigations are handled correctly in a timely manner.

Re-Presentations

As stated in the preamble to the proposed rule, the Department has heard from States and processors that the current re-presentation regulations present costly programming challenges. In an effort to provide some relief, the proposed rules allowed a second collection option for States: a flat $10 or 10% of the allotment from the first month. This eliminated the need to program up to $50 for the first month and a different retention for the remaining months. Most of the commenters believed that, even with the proposed changes, re-presentation remains an unworkable and inefficient way of handling collections. Some commenters stated that the programming involved would still be expensive, and the monthly accounting would take up too much in resources. FNS believes that the change to allow adjustments to future month's benefits for system errors will obviate the need for re-presentations in most circumstances covered by this rule. However, the need for re-presentations remains for those cases in which there has been system downtime. Therefore, the Department is finalizing the rule to allow the State agency to collect at the current rate of $50 in the first month and 10% thereafter, or to go to the flat monthly rate of $10 or 10%, as proposed.

Several commenters asked for clarification on whether or not re-presentation becomes mandatory under this rule. Another commenter suggested that re-presentation should be mandatory. The Department is clarifying that re-presentation remains voluntary under this rule since most States have not been willing to incur the associated costs.

One commenter requested clarification on who holds the funds during re-presentation and who holds the outstanding account. In a re-presentation scenario, the money is collected by the State agency on behalf of the party to whom the debt is owed. The State agency would pass the payments to the parties owed through the processor.

Finally, one commenter asked for clarification on re-presentation since the term is not used in the same way as the QUEST Operating Rules. The Department recognizes that re-presentation, as used in this rule, is unique to the Food Stamp Program. Any references to re-presentation are used in the context of 7 CFR 274.12(e). Food Stamp Program regulations and QUEST Operating Rules, are mutually exclusive, since all States have not adopted the QUEST rules and the Food Stamp Program regulations take precedence over the QUEST rules.

Implementation

This interim rule is effective October 12, 1999. State agencies must implement the rule no later than March 9, 2000.

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, for the reasons set forth in the preamble, 7 CFR Parts 272, 273 and 274 are amended as follows:

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

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

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

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(154) *Amendment No. 378.* The provisions of Amendment No.378 are effective October 12, 1999. State agencies must implement the rule no later than March 7, 2000. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with § 275.12(d)(2)(vii) of this chapter.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.13, a new paragraph (a)(3)(vii) is added to read as follows:

§ 273.13 Notice of adverse action.

(a) * * *

(3) * * *

(vii) An EBT system-error has occurred during the redemption process, resulting in an out-of-balance settlement condition. The State agency shall adjust the benefit in accordance with § 274.12 of this chapter.

* * * * *

4. In § 273.15, the fourth sentence of paragraph (k)(1) is revised and two new

sentences are added after the fourth sentence to read as follows:

§ 273.15 Fair hearings.

* * * * *

(k) *Continuation of benefits.*

(1) * * * If the State agency action is upheld by the hearing decision, a claim against the household shall be established for all overissuances, with one exception. In the case of an EBT adjustment, the State agency shall debit the household's account immediately for the total amount erroneously credited when the fair hearing was requested. If there are no benefits remaining in the household's account at the time the State agency action is upheld, the State agency shall make the adjustment from the next month's benefits, subject to the limitations of this section and, if necessary, continue each month until the debt is re-paid.

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PART 274—ISSUANCE AND USE OF COUPONS

5. In § 274.12:

a. Paragraph (f)(4) is revised;

b. Paragraph (f)(7)(iii) is amended by removing the second sentence;

c. A new paragraph (f)(10)(viii) is added;

d. Paragraph (l)(1)(iii) is revised;

The revisions and addition 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 after the availability date 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, store host computer or POS device. By definition, an adjustment must be equal to the amount of the original error transaction and may result in either a debit or credit to the household.

(A) Client initiated adjustments shall be made no later than 5 business days from the date the household notifies the State agency of the error. Business days are defined as Automated Clearing House (ACH) days.

(B) The household has 180 days from the date of the error to notify the State agency of the need for an adjustment.

(C) Retailer initiated adjustments shall be made no later than 10 business days from the date the error occurred.

(D) If there are insufficient benefits remaining to cover the entire adjustment, the adjustment shall be made using the remaining balance, with the difference being subject to collection in a future month, subject to the limitations found in § 273.15 of this chapter and in this section.

(E) The household shall be given, at a minimum, adequate notice in accordance with § 273.13 of this chapter.

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

(G) Should the household dispute the adjustment and a request is made within 10 days of the notice, a provisional credit must be made to the household's account pending resolution.

(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 the households rights to notice, fair hearings and provisional credits. The disclosure should 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.

* * * * *

(l) *Re-presentation.* * * *

(1) * * *

(iii) The State agency may debit the benefit allotment of a household following the insufficient funds transaction in either of two ways:

(A) Any amount which equals at least $10 or up to 10% of the transaction. This amount will be deducted monthly until the total balance owed is paid-in-full. State agencies may opt to re-present at a level that is less than the 10% maximum, however, this lesser amount must be applied to all households.

(B) $50 in the first month and the greater of $10 or 10% of the allotment in subsequent months until the total balance owed is paid-in-full. If the monthly allotment is less than $50, the State shall debit the account for $10.

* * * * *

Dated: August 23, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–23410 Filed 9–8–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

Commodity Credit Corporation

7 CFR Part 1446

RIN 0560–AF 81

1998-Crop Peanuts, National Poundage Quota, National Average Price Support Level for Quota and Additional Peanuts, and Minimum Commodity Credit Corporation Export Edible Sales Price for Additional Peanuts

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1998 peanut crop: the national poundage quota for quota peanuts is established at 1,167,000 short tons (st); the national average support level for quota peanuts is $610 per st; the national average support level for additional peanuts is set at $175 per st; and the minimum Commodity Credit Corporation (CCC) export edible sales price for price support loan inventory additional peanuts is $400 per st. The poundage quota is established pursuant to statutory requirements contained in the Agricultural Adjustment Act of 1938, as amended (the 1938 Act). The determination of the national average support levels for quota and additional peanuts was made pursuant to the statutory requirements of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act). The determination and announcement of the minimum export edible sale price for additional peanuts is a discretionary action made to facilitate the negotiation of private contracts for export edible peanuts.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Robison, USDA, Farm Service Agency, STOP 0514, 1400 Independence Avenue, SW,