



**Billing Code: 3410-30-P**

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Part 274**

**[FNS-2012-0028]**

**RIN 0584-AE26**

**Supplemental Nutrition Assistance Program: Trafficking Controls and Fraud**

**Investigations**

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Food and Nutrition Service (FNS) is issuing this affirmation of a final rule, without change, of an interim rule that amended Supplemental Nutrition Assistance Program (SNAP) regulations, to require State agencies to monitor electronic benefit transfer (EBT) card replacement requests and send notices to those clients who have requested four cards within a 12-month period. The State agency shall be exempt from sending this notice if it chooses to exercise the card withholding option, in accordance with SNAP regulations, and sends the first warning notice upon the household's fourth card replacement request.

**DATES:** Effective Date: On\_[insert date of publication in the Federal Register], the Department is adopting as a final rule the amendments to 7 CFR 274.6 in the interim rule published at 78 FR 51649, dated August 21, 2013.

**FOR FURTHER INFORMATION CONTACT:** Jane Duffield, Chief, State Administration Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 818, Alexandria, Virginia, 22302. Ms. Duffield may be reached by telephone at 703-605-4385 or via email at [Jane.Duffield@fns.usda.gov](mailto:Jane.Duffield@fns.usda.gov) .

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On August 21, 2013, FNS published an interim rule provision at 7 CFR 274.6(b)(6), that requires State agencies to monitor EBT card replacements and issue excessive replacement card notices to clients who have requested four card replacements in a 12-month period. FNS' decision to issue the interim rule was based on a comment received in response to the proposed rule: *Supplemental Nutrition Assistance Program: Trafficking Controls and Fraud Investigations*, published on May 30, 2012, at 77 FR 31738. The commenter suggested that FNS propose a method for handling multiple card requests that includes monitoring EBT card replacements and sending warning notices to those clients requesting an excessive amount of EBT cards. This process, initiated by North Carolina and implemented by the majority of States, has proven to be efficient and cost effective. FNS agreed with the comment and amended the regulations in the same section, to require that all States implement this method for handling multiple card requests. Since the majority of States currently monitor EBT card replacement requests and subsequently issue warning notices for four or more requests, FNS does not believe this provision will create a substantial burden for States overall.

FNS believes that all State agencies should be monitoring card replacement activity and that the requirement to issue an excessive replacement card notice provides an important tool for State agencies to use in monitoring and preventing trafficking of EBT cards. Based on current data, the number of clients requesting five or more cards has decreased nationally since many States adopted this practice.

FNS provided the opportunity for comment through the interim rule process because the provision was not included in the proposed rule. Comments were solicited for 60 days with an extension, ending November 6, 2013, due to the government shutdown.

FNS received five comments on the interim rule. Two commenters requested clarification on the starting point for the 12-month timeframe for calculating the number of requests for replacement EBT cards and whether clients should receive additional notices for subsequent 12-month periods. The 12-month timeframe refers to any four cards replacements that fall within the past 12-month period. State agencies must monitor card replacement requests, and send warning notices to clients who request four cards within the past twelve months. State agencies should continue to monitor and re-notify clients who request additional EBT cards beyond a 12-month period. If trafficking is suspected, the State agency must refer cases to the State's fraud investigation unit. In all cases, if State agency staff suspects that the client's lack of understanding is the reason for requesting excessive replacement cards, they must educate the client on how to manage the card, rather than refer the case for investigation. FNS believes regulatory language for this provision is sufficiently clear and is not making any modifications.

Two commenters stated that States should be allowed to implement their own systems for monitoring and managing excessive EBT card request and set their own standards for calculating excessive requests for replacement cards.

Motivated by the need to come up with a consistent national policy, FNS used statistical analysis of SNAP EBT transaction records to arrive at the decision to send a warning notice after four EBT card requests within 12 months. EBT card transaction activity indicates that, after the fourth replacement card, a household's shopping behavior is three times more likely to be flagged as potential trafficking by FNS' fraud detection system. States have the flexibility to set their own policies for EBT card requests beyond this threshold. States may also initiate the process sooner than the threshold if a household is suspected of committing fraud.

FNS received one comment indicating that the requirement will create an additional burden for caseworkers who must conduct further investigations without clear guidelines on what constitutes compliance. The commenter further stated that the regulation should specify what constitutes an appropriate client explanation and whether State agencies can determine what constitutes an appropriate explanation. Since 98 percent of SNAP households use three or fewer cards within a year, with most (79 percent) using only one card, FNS does not expect the warning notice requirement contained in this regulation to create a significant burden for State agencies. Additionally, most States already monitor card replacements and provide warning notices for excessive replacement requests. This regulation does not require households to contact the State agency and provide an explanation. FNS explains in the preamble for the final regulation that contains the card withholding option, that FNS is not specifying which household explanations are suspicious and which are satisfactory. FNS believes that State agencies are in the best position to determine which cases should be referred for investigation based on a client's explanation, lack of explanation or suspicious behavior.

FNS adopts the interim rule as a final rule without change because FNS did not receive any comments that indicate a need for change to the interim regulation. A summary of comments for the interim regulation have been provided in this preamble.

**List of Subjects in 7 CFR Part 274**

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

**PART 274-ISSUANCE AND USE OF PROGRAM BENEFITS**

Accordingly, the Department is adopting as a final rule, without change, the interim rule that amended 7 CFR 274.6(b)(6) and was published at 78 FR 51649 on August 21, 2013.

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Yvette S. Jackson  
Acting Administrator  
Food and Nutrition Service

April 18, 2014  
Date

[FR Doc. 2014-09334 Filed 04/23/2014 at 8:45 am; Publication Date: 04/24/2014]