



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

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Part 272**

**RIN 0584-AE51**

**Supplemental Nutrition Assistance Program: Civil Rights Update to the Federal-State Agreement**

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

**ACTION:** Proposed rule.

**SUMMARY:** The proposed action would update civil rights assurance language contained in Supplemental Nutrition Assistance Program (SNAP) regulations on the Federal-State Agreement (FSA). The rule does not contain any new requirements and would codify protections already required by Federal law and existing policy.

**DATES:** Written comments must be received on or before [insert date 60 days after publication in the Federal Register] to be assured of consideration.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Preferred Method:* Federal eRulemaking Portal: Go to <http://www.regulations.gov>.

Follow the online instructions for submitting comments.

- *Mail:* Send comments to Sasha Gersten-Paal, Branch Chief, Certification Policy Branch, Program Development Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302, 703-305-2507.

All written comments submitted in response to this proposed rule will be included in the record and made available to the public. Please be advised that the substance of comments and the identity of individuals or entities submitting the comments will be subject to public disclosure. FNS will make written comments publicly available online at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Sasha Gersten-Paal, Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302, 703-305-2507.

**SUPPLEMENTARY INFORMATION:**

The Food and Nutrition Act of 2008, as amended (the Act), requires that each State operating SNAP have a State Plan of Operation (State Plan) specifying details as to how the State conducts the program. The State Plan contains forms, plans, agreements and policy descriptions required by Federal regulation and is cleared under OMB No. 0584-0083, Expiration date 4/30/2017. Current SNAP regulations at 7 CFR 272.2(a)(2) include the FSA as one such required component of the State Plan. The FSA is the legal agreement between the Department of Agriculture (Department) and the State agency through which the State elects to operate SNAP and to administer the program in accordance with the Act, SNAP regulations and the State Plan. Although both the Department and the State agency may mutually agree to modify or supplement the

language, the regulations at 7 CFR 272.2(b)(1) contain standard FSA language for State agencies operating SNAP.

As a Federal program, civil rights protections for SNAP applicants and recipients are important and essential. The standard FSA language contained in the regulations at 7 CFR 272.2(b)(1) already requires State agencies administering SNAP to agree to assure compliance with civil rights requirements, including Title VI of the Civil Rights Act of 1964, section 11(c) of the Food Stamp Act of 1977 (now the Food and Nutrition Act of 2008, as amended), and the Department's regulatory nondiscrimination requirements.

Since the publication of the final rule establishing the standard FSA language, additional civil rights legislation has been passed and more uniform administrative procedures have been established to support effective enforcement of the civil rights protections. Further, the U.S. Department of Justice (DOJ) recommended the addition of updated references in the Department's civil rights-related materials. The Department understands that similar language has been incorporated into agreements in other Federal agencies, and has incorporated very similar language in agreements in the Department's Child Nutrition Program and Women, Infants and Children programs. We note, by way of background, that the FSA in SNAP is unique within the Department's programs in that most other comparable agreements are not contained in the Federal regulations but in forms formally approved by the Office of Management and Budget (OMB).

This proposed rule would incorporate references to additional civil rights legislation into the standard FSA language at section 272.2. Those references include Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), Title II and Title III of the Americans with Disabilities Act (ADA), and Executive Order 13166, “Improving Access to Persons with Limited English Proficiency.” This proposed rule would incorporate those provisions into the regulations at 7 CFR 272.2(b)(1). The rule would also require States to comply with Department instructions, policy guidance, and other written directions as well as current regulatory nondiscrimination regulations located at 7 CFR Part 15 et seq. and 7 CFR 272.6 (Nondiscrimination Compliance for participating State agencies). Again, these additions would codify protections already required by Federal law, regulations and existing policy.

FSAs, once signed by a State’s Governor or authorized designee, are valid indefinitely under 7 CFR 272.2(e)(1) until they are terminated. Section 272.2(e)(1) also provides that the FSA must be signed and submitted to FNS within 120 days after the publication of the regulations in final form and shall remain in effect until terminated. Although initially included in the regulations with other regulatory FSA requirements, the same procedure would apply to this update. That is, upon publication of this proposed rule as final, all State agencies administering SNAP would be required to sign a new FSA with the updated language and provide a copy of the same to the Department within 120 days after publication of the regulations in final form. Although State agencies are already required to abide by the new civil rights language as stated above, the Department

believes it is important to incorporate the updated language at section 272.2(b)(1) in the FSA itself.

The rule also proposes additional items be added to the FSA standard language. The other items allow for the Department to track, analyze and enforce the civil rights protections in the FSA. First, this proposed rule would add that the State agency's agreement to follow civil rights requirements in the FSA is made in consideration of and for the purposes of obtaining Federal financial assistance. Second, the rule would incorporate into the FSA the State agency's obligation to compile data, maintain records, and submit records and reports as required to allow for effective enforcement of the civil rights provisions. This would include an assurance to allow Department personnel to review and access records, access facilities and interview personnel to ascertain compliance with nondiscrimination laws. The rule would also codify procedures to support enforcement of the nondiscrimination protections by updating the FSA to include a provision that the Department may seek judicial enforcement for violations of the FSA, and add assurances that the State agency and its successors are bound by the FSA. Again, these provisions would not only be responsive to DOJ's suggestions regarding nondiscrimination compliance language but also mirror language in other USDA programs.

### **Procedural Matters**

#### **Executive Order 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined to be not significant and was not reviewed by the OMB in conformance with Executive Order 12866.

### **Regulatory Impact Analysis**

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

### **Regulatory Flexibility Act**

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

### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202

of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of \$146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at <http://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of \$146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### **Executive Order 12372**

State administrative matching grants for SNAP are listed in the Catalog of Federal Domestic Assistance Programs under 10.561. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29114, June 24, 1983), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. The Department issued guidance in June 2016 to State agencies as part of a larger effort to help States ensure their State Plans are complete and up to date, which in part included direction to State agencies to incorporate updated civil rights provisions as an addendum to existing FSAs.

The Department's Food and Nutrition Service SNAP Regional Offices individually discussed these issues directly with State agencies during policy calls and meetings.

### **Federalism Summary Impact Statement**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121. The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have significant federalism implications. State agencies will be required to update the standard language contained in FSAs once. This agreement will then be binding until otherwise terminated. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

### **Executive Order 12988, Civil Justice Reform**

This proposed 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 that conflict with its provisions or that would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

## **Civil Rights Impact Analysis**

The changes to SNAP regulations in this proposed rule are to incorporate references to additional civil rights legislation into the standard FSA language.

Impact on State agencies: State agencies would be required to submit to the Department an updated FSA within 120 days upon publication of this proposed rule as final. The FSA would include the updated language, signed by a State's Governor or authorized designee. State agencies would also have to agree to certain administrative procedures that ensure effective enforcement of the added protections, such as maintaining data and complying with Federal reviews.

Impact on Households: The updated FSA language would emphasize existing nondiscrimination protections for SNAP households to the effect that no person in the United States shall, on the grounds of sex, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject of discrimination under SNAP.

Training and Outreach: The proposed rule highlights protections that already exist and are required by Federal law, regulations, and existing policy. The Department issued guidance in June 2016 to State agencies as part of a larger effort to help States ensure their State Plans are complete and up to date. It included direction to State agencies to

incorporate the updated civil rights provisions as an addendum to existing FSAs to guarantee they were highlighted immediately.

FNS also maintains a public website that provides basic information on each program, including SNAP. Interested persons, including potential applicants, applicants, and participants can find information about their right to be treated fairly and the protections they are guaranteed. The website also includes information on how to report when an individual feels his or her rights were violated and not treated in accordance with this provision.

Finding and Conclusion: After careful review of the rule's intent and provisions, and the characteristics of SNAP households and individual participants, the Department has determined that this proposed rule will not have a disparate impact on any group or class of persons.

### **Executive Order 13175**

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The Department notes that the regulatory changes proposed in this rule impact program

applicants and participants equally regardless of tribal status or residence. We are unaware of any current Tribal laws that could be in conflict with the final rule.

To share information on the proposed rule with Indian Tribes, FNS discussed the proposed rule at a tribal consultation meeting on August 17, 2016.

### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires OMB to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

The provisions in this proposed rule do not contain new information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1994. The Department anticipates that this rule would have no to minimal time and cost impacts on the Federal government and State agencies. State agencies are already required to follow the requirements contained in the added nondiscrimination references. Any time and cost burden would be related to administrative obligations to sign an updated Federal-State Agreement and ensure appropriate recordkeeping to support enforcement of the nondiscrimination provisions as cleared under OMB Number 0584-0083. FNS provides 50 percent of SNAP's administrative cost reimbursement and so a portion of any minimal administrative costs would be offset by federal funding.

Since State agencies are already required to have these agreements, the impact of this provision is negligible. Other minimal burdens imposed on State agencies by this proposed rule are usual and customary within the course of their normal business activities.

### **E-Government Act Compliance**

The Department is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### **List of Subjects**

#### **7 CFR Part 272**

Alaska, Civil rights, Supplemental Nutrition Assistance Program, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 272 is proposed to be amended as follows:

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

1. The authority citation for Part 272 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

2. Revise §272.2(b)(1) to read as follows:

**§272.2 – Plan of operation.**

\* \* \* \* \*

(b) \* \* \*

(1) The wording of the Federal/State Agreement is as follows:

The State of \_\_\_\_\_ and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations, instructions, policy guidance, and other written directions interpreting Federal law and regulations applicable to this program, and the FNS-approved State Plan of Operation. The State and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

**PROVISIONS**

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.

2. Assurance of Civil Rights Compliance: Comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), section 11(c) of the Food and Nutrition Act of 2008, as amended (7 U.S.C. 2020), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189) as implemented by Department of Justice regulations at 28 CFR Part 35 and 36, Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency” (August 11, 2000), and all requirements imposed by the regulations, instructions, policy guidance, and other written directions issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at 7 CFR Part 15 et seq. and 7 CFR 272.6.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal

personnel; the sale, lease of, or permission to use Federal property or interest in such property; the furnishing of services without consideration, or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient; or any improvements made with Federal financial assistance extended to the State by USDA. This assistance also includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the State agency agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose

signatures appear below are authorized to sign this assurance on behalf of the State agency.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

4. FNS agrees to: 1. Pay administrative costs in accordance with the Food and Nutrition Act of 2008, implementing regulations, and an approved Cost Allocation Plan.

2. Carry out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

Date\_\_\_\_\_

Signature\_\_\_\_\_

(Governor or Authorized Designee)

Date\_\_\_\_\_

Signature\_\_\_\_\_

(Regional Administrator, FNS)

\_\_\_\_\_

November 7, 2016\_\_\_\_\_

Audrey Rowe  
Administrator  
Food and Nutrition Service

\_\_\_\_\_  
Date

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