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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272 and 273

[FNS 2015-0038]

RIN 0584-AE41

Supplemental Nutrition Assistance Program: Student Eligibility, Convicted Felons, Lottery and Gambling, and State Verification Provisions of the Agricultural Act of 2014

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

ACTION: Final rule.

SUMMARY: This final rule implements four sections of the Agricultural Act of 2014 (2014 Farm Bill), affecting eligibility, benefits, and program administration requirements for the Supplemental Nutrition Assistance Program (SNAP). Section 4007 clarifies that participants in a SNAP Employment & Training (E&T) program are eligible for benefits if they enroll or participate in specific programs that will assist SNAP recipients in obtaining the skills needed for the current job market. Section 4008 prohibits anyone convicted of Federal aggravated sexual abuse, murder, sexual exploitation and abuse of children, sexual assault, or similar State laws, and who are also not in compliance with the terms of their sentence or parole, or are a fleeing felon, from receiving SNAP benefits. Section 4009 prohibits individuals with substantial lottery and gambling winnings from receiving SNAP benefits. Section 4015 requires all State agencies to have a system in place to verify income, eligibility, and immigration status.

DATES: Effective dates: This final rule is effective [insert date 60 days after date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

Background

Section 4007: Student Eligibility Disqualifications

Background

Section 6(e) of the Food and Nutrition Act of 2008 (the Act) (7 U.S.C. 2015(e)) generally prohibits students enrolled at least half-time in an institute of higher education from receiving SNAP. There are several exceptions to the general prohibition, and section 4007 of the 2014 Farm Bill amended the exception at section 6(e)(3)(B) of the Act (7 U.S.C. 2015(e)(3)(B)) for students who are enrolled at least half-time at an institution of higher education through a SNAP Employment and Training (E&T) program. Under the new requirements, these students can be eligible to participate in SNAP only if the E&T program is part of a program of career and technical education (as defined by the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act)) that may not be completed in more than 4 years at an institute of higher

education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)); or is limited to courses for remedial education, basic adult education, literacy, or English as a second language. This amendment does not affect the other exceptions in section 6(e) of the Act. The U.S. Department of Agriculture (the Department) proposed modifications in 7 CFR 273.5(b)(11)(ii) to incorporate these changes in section 4007.

The proposed rule also revised the description of acceptable E&T education components at 7 CFR 273.7(e)(1)(vi) to include courses or programs of study that are part of a program of career and technical education as defined in section 3 of the Perkins Act. The substance of the other criteria at section 273.7(e)(1)(vi) remain unchanged, with the exception of a technical correction. The proposed rule inadvertently removed language clarifying that educational components must directly enhance the employability of the participants and a direct link between education and job-readiness must be established for a component to be approved. The final rule restores this language. Individuals participating in remedial courses, basic adult education, or English as a second language continue to qualify for the student exemption. These courses may be offered concurrently or contextually with courses or programs of study that are part of a program of career and technical education.

Defining Career and Technical Education Programs

Section 3 of the Perkins Act (20 U.S.C. 2302) offers a general definition of the term “career and technical education” and the proposed rule noted that the Department believes State agencies are in the best position to determine what courses or programs of study meet the definition. A program does not have to be receiving Perkins funding for a State agency to consider it eligible;

it would just need to meet the general definition, as determined by the State agency.

Commenters were generally supportive of granting States this discretion in identifying which programs meet the general definition.

Some commenters asked that the final rule be clear that all State agencies must at least adopt the basic definition of career and technical education, and then have State-specific criteria. The Department believes the proposed language at section 273.5(b)(11)(ii) is sufficient to ensure that States use Perkins Act criteria to identify which programs meet the general definition and is adopting the provisions as proposed.

Four-Year Programs

Section 4007 provides that eligible courses or programs of study may be completed in not more than four years. The proposed rule explained that students participating in qualifying courses or programs of study that are designed to be completed in up to four years, but may actually take longer than four years to complete, satisfy this requirement. Commenters were unanimously supportive of this explanation and the Department is adopting the provision as proposed.

Section 4008: Eligibility Disqualifications for Certain Convicted Felons

Background

Section 4008 of the 2014 Farm Bill added a new section 6(r) to the Act (7 U.S.C. 2015(r)) prohibiting any individual from receiving SNAP benefits if the individual is convicted of certain crimes and not in compliance with the terms of the sentence, is a fleeing felon, or is a parole or probation violator (as described in section 6(k) of the Act) from receiving SNAP benefits. The

certain crimes in section 4008 are: (i) aggravated sexual abuse under section 2241 of title 18, United States Code; (ii) murder under section 1111 of title 18, United States Code; (iii) sexual exploitation and other abuse of children under chapter 110 of title 18, United States Code; (iv) a Federal or State offense involving sexual assault, as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); and (v) an offense under State law determined by the Attorney General to be substantially similar to an offense in (i) through (iii) above. The Department proposed to codify this change in a new section at 7 CFR 273.11(s).

Section 4008 requires an individual applying for SNAP benefits to attest to whether the applicant or any other member of the household was convicted of any of the enumerated offenses. In addition, although those disqualified from receiving SNAP benefits under this provision are not eligible members of a SNAP household, the statute requires that their income and resources be included in the eligibility determinations for the other eligible household members.

As provided for in section 4008(c), the amendments do not apply to convictions for conduct occurring on or before February 7, 2014, the date of enactment of the 2014 Farm Bill.

Disqualification

The proposed rule added a new section at 7 CFR 273.11(s) to include the section 4008 provisions. Before passage of the 2014 Farm Bill, section 6(k) of the Act and section 273.11(n) already prohibited certain fleeing felons and probation and parole violators from receiving SNAP benefits. Standards for determining whether someone is a fleeing felon or probation or parole

violation are addressed in section 273.11(n), finalized in the “Clarification of Eligibility of Fleeing Felons Final Rule,” published on September 10, 2015 (80 FR 54410). Standards for fleeing felons under section 273.11(n) should apply to the new eligibility disqualifications for certain convicted felons.

Commenters were supportive of the Department’s interpretation of section 4008 in section 273.11(s). Some commenters, including State agencies, requested that the Department provide additional information – through either regulations or guidance – on what crimes under State law may be determined by the Attorney General to be substantially similar offenses. The Department agrees that additional guidance from the Department of Justice will be needed for State agencies to successfully implement section 273.11(s)(1)(v) of the final rule and has requested assistance on this matter from the Department of Justice. Information from the Department of Justice is still forthcoming; therefore, the Department is adopting this provision as proposed and will provide further guidance when available.

This final rule also makes a conforming change to include individuals convicted of certain felonies not compliant with the terms of their sentence as ineligible household members listed at 7 CFR 273.1. A reference to the newly recreated 7 CFR 273.11(s) has been added to 273.1(b)(7).

Attestation

The proposed rule added section 273.2(o), which would require every individual applying for SNAP benefits to attest to whether the individual, or any member of the individual’s household,

has been convicted of a crime covered by this section and whether the household member is in compliance with the terms of their sentence. Section 4008 requires an attestation as to whether an individual has been convicted of one of the enumerated offenses. The Department has made the decision to also require an attestation as to whether the individual is in compliance with the sentence. This section provided basic standards to meet the attestation requirement to help ensure consistency across State agencies, while allowing some State discretion.

Proposed language at section 273.2(o) directed State agencies to update their application processes to include the attestation requirement. It allowed for this to be done in writing, verbally, or both, provided that the attestation is legally binding in the law of the State, and the method chosen is reasonable and consistently applied. The proposed rule also required State agencies to verify the felon status when an applicant affirmatively attested that the applicant or a member of the household had been convicted of a felony identified in section 4008 and was not in compliance with the sentence, or when attestations were questionable. In conducting verifications, the rule proposed that State agencies were also responsible for establishing reasonable, consistent standards, evaluating each case separately, and documenting the case file accordingly.

The Department received nine comments on the proposed implementation of section 4008. Though commenters were largely supportive or silent on how the disqualifications under this section were to be codified under 7 CFR 273.11(s), they shared some concerns for how the proposed language at section 273.2(o) addressed the application process and verifying attestations.

In updating the application process, commenters urged the Department to prohibit States from requiring individuals and/or household members to come into the office solely to complete an attestation. Commenters also recommended that State agencies be required to explain the attestation to clients to ensure the disqualification is understood prior to attestation – particularly that this disqualification only applies to those who are out of compliance with the terms of their sentence. The Department agrees that clear communication with households is vital to the application process. Similarly, completing the attestation requirement alone should not create a need for a household to visit their local office as this is not a prudent use of administrative resources. Therefore, the final rule is adopting additional language at section 273.2(o)(1) to ensure State agencies explain the attestation requirement to applicant households during the application process and to prevent State agencies from compelling applicants to come to the office solely to complete or discuss an attestation. As with all other program materials, this explanation must meet bilingual requirements at 272.4(b).

Comments received from State agencies as well as advocacy groups raised concerns with how to verify attestations. State agencies shared that verifying this new component of the application process may be challenging as there is no national database available that would allow States to conduct the verification. They also cited the associated staff resources needed to complete this requirement as evidence that meeting the requirement as proposed would be burdensome and overly difficult. Advocates agreed with the Department that the State agency, not the individual, is best suited to verify a household member attestation that there is a convicted felon in the household who is complying with the terms of their sentence. They also agreed that verifying this information should not delay application processing beyond the required processing

timeframes. The Department maintains this is a responsibility of the State agency but recognizes the concerns that the proposed requirements for verifying attestations would be onerous.

Therefore, in response to these comments, the Department is revising the proposed language at section 273.2(o)(3) and adding new paragraph 273.2(o)(4). Under the revised section 273.2(o)(3), State agency verification of attestations shall be limited to attestations that are considered questionable. The State agency shall follow the standards established under section 273.2(f)(2) to determine whether an attestation is questionable. This language is also incorporated into section 273.2(b)(5)(i). The revised section 273.2(o)(3) also explains that, when verifying an attestation, the State agency must verify both that the individual has been convicted of one of these crimes and that the individual is out of compliance with the terms of the sentence. Section 273.2(o)(4) maintains that application processing shall not be delayed beyond required processing timeframes solely because the State agency has not obtained verification of an attestation. The State agency shall continue to process the application while awaiting verification. If the State agency is required to act on the case without being able to verify an attestation in order to meet the time standards in sections 273.2(g) or 273.2(i)(3), the State agency shall process the application without consideration of the individual's felony and compliance status.

Section 4009: Lottery and Gambling Winners

Background

Section 4009 of the 2014 Farm Bill provides that any household that receives substantial lottery or gambling winnings, as determined by the Secretary, must lose eligibility for benefits

immediately upon receipt of winnings. It also requires that those households remain ineligible until they meet the allowable financial resources and income eligibility requirements of the Act. Section 4009 also requires the Secretary to set standards for each State agency to establish agreements, to the maximum extent practicable, with entities responsible for the regulation or sponsorship of gaming in the State (gaming entities) to identify SNAP individuals with substantial winnings. The proposed rule added provisions regarding the disqualification based on receipt of substantial winnings in section 273.11(r), agreements between State agencies and gaming entities in section 272.17, and requirements for households to report substantial winnings in section 273.12. The final rule adopts the proposed provisions with changes discussed below.

Disqualification for Substantial Lottery or Gambling Winnings

Section 4009 gives the Secretary authority to define what amount constitutes substantial lottery and gambling winnings, that when received by a household, results in an immediate disqualification for SNAP benefits. The proposed rule defined substantial winnings as \$25,000 or more, before taxes or other amounts are withheld, won in a single game.

Of the 19 comments received regarding the lottery provision, only 10 commenters discussed the \$25,000 proposed threshold, the definition of substantial based on gross versus net winnings, and the disqualification to the entire household. Three of the 10 commenters agreed with the definition of substantial winnings as defined in the proposed rule. Five commenters expressed concern about the definition of substantial winnings being based on gross, not net, winnings. These five commenters noted that if substantial taxes are withheld or intercepted for debt collection, this would result in the household receiving less than \$25,000. One of the five comments addressing net winnings suggested that the Department change the threshold to

\$50,000 after taxes and other amounts withheld and requested that the Department distinguish between the definitions of lottery and gambling winnings. While the Department appreciates the comments on considering net versus gross winnings, it is impractical for a State agency to collect information on net winnings and would result in undue State burden. In addition, if an individual's net winnings cause the household to fall below the allowable SNAP income and resource requirements, the household may reapply for SNAP benefits.

One commenter questioned why the entire household must be disqualified for substantial winnings. The Department does not have discretion to limit the disqualification for substantial lottery and gambling winnings to only the individual that receives the winnings, and not the entire household. Section 4009 specifically imposes ineligibility for the household in which a member receives substantial lottery or gambling winnings, not just the individual.

As to the comment suggesting that disqualification be based on either lottery or gambling winnings, but not both, the statute also bases the disqualification on "lottery or gambling winnings." Therefore, either substantial lottery or gambling winnings result in disqualification. The Department does not see a rationale for differentiating between lottery and gambling winnings.

Three comments suggested that the \$25,000 threshold for substantial winnings in the proposed rule was too high. One of these comments suggested that the Department change the threshold to \$2,250 because it aligns with the non-elderly/disabled resource limit in section 5(g) of the Act, and is already programmed in State eligibility systems, thereby easing State administrative

application of this provision. Another commenter suggested lowering the threshold to \$5,000. The last of the three comments requested that the threshold be optional to account for States with lower, more restrictive resource limits. Taking into consideration the varied comments, the Department has decided to align the definition of substantial lottery and gambling winnings with the statutory resource limit for elderly or disabled households in the final rule. The Department believes this change will simplify administration of the provision and enhance program integrity. Aligning the threshold with the non-elderly/disabled resource limit would restrict eligibility for elderly or disabled households whose winnings exceed the lower resource limit but may not meet or exceed the higher, elderly or disabled resource limit. Imposing a limit for all households linked to the resource limit for elderly or disabled households balances the intent to enhance program integrity with ensuring that households with small winnings can continue to participate in the program up to the statutory resource limit.

Consequently, the Department is modifying the final rule regulatory text regarding the threshold for substantial winnings. In the final rule, substantial lottery or gambling winnings are defined as a cash prize won in a single game, before taxes or other amounts are withheld, which is equal to or greater than the resource limit for elderly or disabled households as defined in 7 CFR 273.8(b). For administrative simplicity, all households certified to receive SNAP benefits will be subject to this definition of substantial winnings, regardless of whether they contain an elderly or disabled member. This rule creates a new section 273.11(r) to codify the disqualification and definition.

Adjustment for Inflation

In the proposed rule, the Department intended to adjust the \$25,000 lottery and gambling threshold for inflation by recalculating the threshold each fiscal year and rounding the amount to the nearest \$5,000. The Department received four comments regarding annually adjusting the lottery and gambling threshold for inflation. One commenter supported adjusting the threshold for inflation, while three commenters disagreed with adjusting for inflation annually. These three commenters noted that adjusting the threshold annually would increase State administrative burden.

Since the lottery and gambling threshold for this provision now aligns with the resource limit for elderly or disabled households, the threshold shall be adjusted for inflation in accordance with 7 CFR 273.8(b)(1) and (2). The threshold shall be rounded down to the nearest \$250 increment to reflect the changes for the 12-month period ending the preceding June in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. State agencies will continue to receive an updated resource limit annually in the Cost of Living Adjustment Memorandum, which will indicate the lottery and gambling substantial winnings threshold amount. In Fiscal Year 2019, the Federal resource limit for elderly or disabled households is \$3,500. The Department believes that aligning the threshold with the statutory resource limit and the current procedure for adjustment for inflation, will minimize State administrative burden. This change is codified in the final rule regulatory text at 273.11(r)(2)(ii).

Cooperative Agreements

The Department proposed to add new section 272.17 to codify the section 4009 requirement that State agencies, to the maximum extent practicable, establish agreements with gaming entities in order to identify individuals within the state with substantial winnings who are members of a SNAP household. The Department received five comments addressing this requirement. One comment noted that the match is critical, effective, and reduces burden on SNAP households. Four comments expressed concern regarding State agencies establishing cooperative agreements with gambling and lottery entities, noting that establishing the agreements will be problematic, burdensome, and increase costs to the State. Of these four comments, one comment asked for clarity on what would be considered a good faith effort and a practical number of gaming entities with which to establish agreements.

The Department appreciates the concerns expressed about establishing agreements with gaming entities; however, section 4009 requires the establishment of these agreements to the maximum extent practicable. In implementing this requirement, the Department understands that the types of lottery and gambling activities allowed within a State, and the administration and oversight of these games, vary from State to State. For example, some States may have a large number of small entities that pay out only minimal winnings, and it may not be feasible to enter into agreements with all of these entities. State agencies are expected to make a good faith effort to include as many gaming entities in their implementation of this rule as practicable. While households must always report substantial lottery or gambling winnings as proposed in section 273.12(a)(5)(iii)(G) (discussed below), if a State agency and gaming entity cannot come to an agreement after the State agency made a good faith effort, then the State agency would not need

to continue to pursue an agreement with that gaming entity at that time. If there are no gaming entities in the State, the State agency is not expected to establish cooperative agreements.

One commenter requested clarity on how States should detect out-of-State winners. Section 4009 does not differentiate the disqualification for receipt of substantial lottery and gambling winnings based on in-State or out-of-State winnings. States are not required to enter into cooperative agreements with out-of-State gaming entities. However, households are required to report substantial winnings, regardless if they are won in-State or out-of-State. If a State agency becomes aware of a household member winning substantial winnings from a gaming entity outside of the State, then the State would follow procedures under 273.12(c)(3) for unclear information if that information is not verified and clear. The Department believes the proposed rule was sufficiently clear on the requirement for State agencies to establish cooperative agreements with gaming entities, and is not making changes in the final rule, but will clarify as needed with additional guidance as States implement the provision.

One commenter questioned whether gaming entities would be compensated for costs associated with establishing cooperative agreements and suggested that the costs included in the proposed information collection appeared to be minimal. The Department is not authorized to reimburse gaming entities for their business costs, but the associated allowable State agency costs of cooperative agreements would be reimbursed at 50 percent in accordance with 277.4(b). The Department will clarify as needed with additional guidance as States implement the provision.

In the final rule, the Department is revising the requirements for the State Plan of Operation in 272.2(d)(1) to include information about cooperative agreements into which the State has entered with gaming entities.

Privacy Concerns

The Department proposed that a cooperative agreement established between the State agency and a gaming entity would specify that the gaming entity would share information about individuals with substantial winnings with the State agency as frequently as is feasible to identify SNAP recipients with substantial winnings. The Department received four comments that expressed concern about safeguarding confidential information of SNAP applicants and recipients. As noted in the proposed rule, cooperative agreements are to solely allow for the gaming entities to transmit information to State agencies; State agencies are prohibited from sharing any information about SNAP households with gaming entities. Cooperative agreements shall specify the type of information shared by the gaming entity and include safeguards limiting the release and disclosure of personally identifiable information to parties outside of those included in the agreement. The Department has incorporated a reference to 272.1(c), which protects privacy concerns, at 272.17(b) in the final rule and believes this adequately addresses the concerns.

Self-Reporting

The Department proposed to add paragraph 273.12(a)(1)(viii) and revise paragraphs 273.12(a)(5)(iii)(E) and 273.12(a)(5)(vi)(B) to require households to self-report substantial winnings to the State agency administering the household's SNAP benefits, in accordance with the reporting timeframes outlined in section 273.12(a)(2). The Department received five

comments about SNAP recipients self-reporting substantial winnings to State agencies. Of the five comments, one comment suggested that State agencies should rely on self-reporting, the media, and Internal Revenue Service (IRS) yearly tax reports to identify SNAP recipients who win a substantial amount of lottery and gambling winnings. Another of the five comments noted that gambling winnings are already tracked by the IRS and easy to find. One commenter disagreed with adding the reporting requirement, while another comment encouraged the Department to ensure that reporting requirements do not unduly burden SNAP households. The last of the five comments supported the self-reporting requirement and suggested that the disqualification for not reporting substantial lottery and gambling winnings should not extend to the entire household, but only to the individual who did not report.

The Department appreciates the comments received concerning the burden to SNAP households that must self-report substantial winnings. However, households certified to receive SNAP must report substantial winnings so that the State agency may immediately act on household changes, as required by section 4009.

The Department is adopting the regulatory text from the proposed rule as final, and is making two clarifications due to the previous publication of the “Supplemental Nutrition Assistance Program (SNAP): Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008” final rule on January 6, 2017 (82 FR 2010) (FCEA final rule), which made changes to section 273.12(a)(2). The Department is clarifying that, in accordance with section 273.12(a)(2), certified SNAP households must report substantial lottery and gambling winnings, as defined by this final rule, within 10 days of the date the household

receives the substantial winnings or, at the State agency's option, within 10 days of the end of the month in which the household received the winnings. Additionally, 273.12(a)(5)(iii)(E) was re-designated as 273.12(a)(5)(iii)(G) in the FCEA final rule, and, therefore, the Department is codifying the requirement for households to self-report substantial winnings at section 273.12(a)(5)(iii)(G) in the final rule.

Informing SNAP Households of the Disqualification for Substantial Lottery and Gambling Winnings

The Department received four comments addressing the proposed requirement in section 272.17(c)(4) for State agencies to provide households with a notice of adverse action as described in section 273.13 before terminating benefits based on receipt of substantial lottery and gambling winnings. One of the four comments requested clarity on how States may inform SNAP households of the new lottery and gambling disqualification, and the rules for re-establishing eligibility for SNAP. Two of the four comments agreed with the Department's position that it is not necessary to include a question on the initial SNAP application asking applicants if anyone in the household has ever received substantial lottery or gambling winnings as section 4009 is aimed at households already participating in SNAP. The last of the four comments requested clarity on notices informing households of its ineligibility for SNAP.

As noted in the preamble to the proposed rule, this disqualification applies to participating SNAP households. Current regulations at 7 CFR 273.2(e)(1) require the State agency to inform households during the interview of their rights and responsibilities, including the households' responsibility to report changes. Therefore, at the time a household is certified to receive SNAP,

the State agency is required to inform the household that it may lose eligibility for SNAP if a household member receives substantial lottery and gambling winnings.

States have flexibility in determining how to best inform households that have been disqualified due to receipt of substantial lottery or gambling winnings of the requirements for re-establishing eligibility. Such information may be provided in various ways, including at the time of case closure and/or the notice of adverse action. Including information in the notice of adverse action about how households may regain eligibility is a best practice for informing households that have been disqualified due to significant lottery or gambling winnings. The Department is making no changes in the final rule because it believes that the rule as proposed sufficiently addressed the above issues.

Verification of Data Matches

In new section 272.17(c), the Department proposed to give State agencies discretion to determine whether information about a SNAP household member's receipt of substantial lottery or gambling winnings received through data matches with gaming entities is verified upon receipt. The Department received three comments addressing verification of data matches. One commenter supported this discretion; two commenters recommended requiring States to send a notice to households to verify lottery or gambling winnings information received from data matches with gaming entities before disqualifying households. As noted in the proposed rule, data received through cooperative agreements with gaming entities may come from a wide variety of gaming entities (e.g. public or private entities; local, statewide or national entities) with varying degrees of reliability.

Based upon the comments and further review, the Department has determined that information from data matches regarding lottery or gambling winnings does not fall within the definition in 273.2(f)(9)(iii) of information that is “verified upon receipt.” However, State agencies have existing discretion in 273.2(f)(2) and (3) to determine what information is questionable and requires verification, so long as the criteria used is consistent. In this final rule, the Department is clarifying that the standards regarding verification in 273.2(f)(2) and (3) apply to information from data matches regarding lottery and gambling winnings.

In section 272.17(c)(4), the Department proposed requiring State agencies to send households a notice of adverse action, in accordance with section 273.13 and prior to termination, when the household receives substantial winnings during their certification period. For households found to have received substantial winnings at the time of their case’s recertification, the proposed rule stated that the State agency would provide these households with a notice of denial, per section 273.10(g)(2).

Additionally, since the publication of the proposed rule, the FCEA final rule was published on January 6, 2017. The FCEA final rule updated procedures at section 273.12(c)(3) on how to treat unclear information, including when the State must send households a Request for Contact (RFC) to resolve unclear information. When information about a household’s receipt of substantial winnings during the certification period is unclear, the State would follow the procedures outlined at section 273.12(c)(3).

One of these commenters also suggested that State agencies request information on deductions withheld from the household's winnings when contacting a household after the State has learned that the household has received substantial winnings. As previously discussed, basing the disqualification on net, instead of gross, winnings would be overly burdensome. Therefore, the Department will not require States agencies to request information about deductions from winnings.

The Department believes that the procedures established in the proposed rule and those updated in the FCEA final rule give households sufficient notice when action is taken on their case due to receipt of substantial winnings and, therefore, is adopting the provisions as proposed.

Eligibility for Previously Disqualified SNAP Households

Section 4009 requires that households disqualified for substantial winnings remain ineligible until they again meet the allowable financial resources and income eligibility requirements of the Act. The Department received one comment that suggested adding a timeframe for when an applicant may re-apply for SNAP benefits under program income and resource requirements and to include an appeals process when a household is disqualified under this rule. Since section 4009 provides that a household remain ineligible "until the household meets the allowable financial resources and income eligibility requirements," specifying a timeframe is not appropriate since any set timeframe may not reflect the circumstances under which a disqualified household does become eligible again. This final rule adopts the proposed rule's language that previously disqualified households remain ineligible until they meet the income and eligibility requirements outlined in sections 273.8 and 273.9. In addition, the right to request a fair hearing

under section 273.15 for an action that affects a household's participation in the program applies to households disqualified under this rule for substantial lottery and gambling winnings without need for an explicit statement.

The Department received three comments requesting guidance on how the new lottery and gambling disqualification in this rule applies to households certified for SNAP under categorical eligibility requirements defined at 7 CFR 273.2(j). Under this rule, households certified to receive SNAP benefits under section 273.2(j) that lose eligibility because an individual member received substantial lottery or gambling winnings, as defined by this rule, will remain ineligible until they meet the income and eligibility requirements in the Act detailed in sections 273.8 and 273.9, as required by section 4009. The Department will make no changes to the final rule.

Section 4015: Mandating Certain Verification Systems

Section 4015 of the 2014 Farm Bill amended section 11(p) of the Act (7 U.S.C. 2020(p)) to require State agencies to use an immigration status verification system established under section 1137 of the Social Security Act (SSA) (42 U.S.C. 1320b-7) and an income and eligibility verification system, in accordance with standards set by the Secretary. Before the 2014 Farm Bill, State agencies were not required to use either of these verification systems.

Immigration Status and Verification Systems

Background

Current regulations at 7 CFR 273.2(f)(1)(ii) require that State agencies verify the eligible immigration status of all non-citizens applying for SNAP benefits but do not specify the system

that State agencies must use. The amendments made by the 2014 Farm Bill mandate that State agencies use an immigration status verification system established under section 1137 of the SSA. Section 1137(d)(3) of the SSA (42 U.S.C. 1320b-7(d)(3)) requires verification of immigration status “through an automated or other system” designated by the Immigration and Naturalization Service (INS) for use by the States. The only immigration status verification system currently designated under section 1137 of the SSA is the Systematic Alien Verification for Entitlements (SAVE) Program.

SAVE is an inter-governmental service accessible by Federal, State, and local benefit-granting agencies and licensing bureaus that are authorized by law to verify immigration status. State agencies use the SAVE system to verify the immigration status of SNAP applicants, ensuring benefits are only provided to individuals whose citizenship or immigration status allows them to receive SNAP. As discussed in the preamble to the proposed rule, under the Homeland Security Act of 2002 (P.L. 107-296), INS functions transferred from the Department of Justice to the newly created Department of Homeland Security (DHS). Within DHS, the U.S. Citizenship and Immigration Services (USCIS) administers the SAVE program.

USCIS has confirmed that the only two ways a SNAP State agency can currently verify immigration status with USCIS are both through the SAVE system. Under electronic verification, a State agency submits a request electronically and the SAVE system either confirms the applicant’s status or requests submission of additional information. Under paper-based verification, a State agency mails a completed Form G-845, Verification Request, with a copy of the applicant’s documentation, to a USCIS State Verification Office. A State agency

may also attach a Form G-845 Supplement, Document Verification Request Supplement, to request more detailed information on an applicant's immigration status, citizenship, and sponsorship. To conduct either electronic or paper-based verification through the SAVE system, the State agency must first sign a memorandum of agreement with USCIS.

Mandatory Use of SAVE

The Department proposed to amend regulations at 7 CFR 272.11(a) and 273.2(f)(1)(ii)(A) to require States to use an immigration status verification system established under section 1137 of the SSA (42 U.S.C. 1320b-7) when verifying immigration status of SNAP applicants. The Department also proposed to clarify in section 273.2(f)(1)(ii) and (f)(10) that, even though households are still required to submit documentation to verify the immigration status of household members who are non-citizens, State agencies must also verify the validity of that status with USCIS.

As discussed in the preamble to the proposed rule, all 53 State agencies (including the District of Columbia, Guam, and the Virgin Islands) have indicated to FNS that they already use the SAVE system to verify immigration status. Commenters were, therefore, generally supportive of the proposed changes, with one noting that SAVE is a system that States are already using and requiring its use ensures compliance with statutory and regulatory requirements without imposing new burdens or costs on States. Three commenters made requests for clarification.

One commenter asked the Department to clarify that the use of SAVE is limited to verifying the status of any non-citizen household member applying for SNAP, but not for any non-applicant

household members, including individuals applying on behalf of a household. As per current regulations, the status of non-applicant household members does not need to be verified. The Department believes the proposed language at section 273.2(f)(10) requiring documentation and verification “for each alien applying for SNAP benefits” is sufficiently clear and is therefore not adopting additional clarifications for non-applicant households in the final rule.

Another commenter asked the Department to follow a State agency’s policy and clarify that a delay in receipt of data from the SAVE system is not a basis for a delay in application processing timelines. Under the State policy, if all other factors of eligibility have been established and the non-citizen applicant is otherwise eligible, benefits must be granted while awaiting a SAVE response. This policy is consistent with existing regulations at section 273.2(f)(1)(ii)(B) and no change in the final rule is necessary.

A third commenter noted the SAVE system can only verify that the information provided by an applicant is accurate at one point in time; if immigration status has recently changed, SAVE may not always be updated to reflect the current status. The commenter requested the Department clarify that, if an applicant provides paper documentation indicating a new status, State agencies should be allowed to use prudent judgment to determine the status of the applicant. As the Department believes the regulatory requirements around immigration status verification are already consistent with other verification practices for questionable information, no additional clarifying language has been added to the final rule. The Department believes current verification procedures for questionable information are sufficient for these rare occurrences.

The Department also proposed in section 273.2(f)(10)(vi) to allow, but not require, State agencies to use SAVE to confirm whether an affidavit of support has been executed for a sponsored non-citizen. No comments were submitted on this issue, and the Department adopts the provision with technical edits to ensure consistent terminology.

Technical Corrections

When INS ceased to exist on March 1, 2003, its functions transferred from the Department of Justice to the DHS. Within DHS, USCIS administers the SAVE program, as well as overseeing lawful immigration to the United States and naturalization of new American citizens. The proposed rule updated references from INS to USCIS throughout parts 271, 272, and 273 accordingly. Commenters were either supportive of or silent on these changes, and the final rule adopts the changes as proposed.

Income and Eligibility Verification System (IEVS)

Section 4015 of the 2014 Farm Bill requires State agencies to use an income and eligibility verification system (IEVS), in accordance with standards set by the Secretary. As discussed in the preamble to the proposed rule, standards for the optional use of IEVS already exist at sections 272.8(a)(1), 273.2(b)(2), and 273.2(f)(9). In accordance with the statutory changes, the Department proposed amending these regulations to change the use of IEVS from an option to a requirement. State agencies must follow standard verification procedures for IEVS matches. As there were no substantive comments on these proposed changes, the final rule adopts the changes as proposed.

III. 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 final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (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.

While there may be some burden/impact on State agencies and small entities involved in the

gaming industries, the impact is not significant as the burden would be on State agencies to enter into appropriate cooperative agreements.

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

This final 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 \$100 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

SNAP is listed in the Catalog of Federal Domestic Assistance Programs under 10.551. For the reasons set forth in the Federal Register notice published June 24, 1983 (48 FR 29115), this

program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

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 13132. The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This final 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 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 Department has reviewed this final rule in accordance with USDA Regulation 4300-4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule’s intent and provisions, the Department has determined that the changes to SNAP regulations in this proposed rule are driven by legislation and therefore required. The Department specifically prohibits the State and local government agencies that administer the program from engaging in discriminatory actions. Discrimination in any aspect of program administration is prohibited by SNAP regulations, the Food and Nutrition Act of 2008, the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and Title VI of the Civil Rights Act of 1964. State agencies that participate in SNAP must take reasonable steps to ensure that persons with Limited English Proficiency (LEP) have meaningful access to programs, services, and benefits. This includes the requirement to provide bilingual program information and certification materials and interpretation services to single-language minorities in certain project areas. SNAP State agencies that do not provide meaningful access for LEP individuals risk violating prohibitions against discrimination based on National Origin in the Food and Nutrition Act of 2008, as amended, Title VI of the Civil Rights Act of 1964 (Title VI), and SNAP program regulations. SNAP State agencies must also ensure equal opportunity access for persons with disabilities. This includes ensuring that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with people without disabilities. State Agencies that do not provide persons with disabilities equal opportunity access to programs may risk violating prohibitions against disability discrimination in the Rehabilitation Act of 1978, the American with Disabilities Act (ADA), and SNAP program regulations. Where

State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with non-discrimination requirements and the regulations at 7 CFR 272.6.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Indian 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. On August 15, 2018, the Department participated in a Tribal Consultation on the Lottery provisions of this rule. There were no significant comments. Tribal organizations with gaming facilities may be approached by the State(s) in which they are located to enter into cooperative agreements to identify individuals with significant lottery or gambling winnings. The Department also briefed Indian Tribes on the provisions of this rule at a listening session on February 14, 2019. Indian Tribes were subsequently provided the opportunity to consultation on this rule but the Department received no feedback. If an Indian Tribe requests future consultation, the Department will work to ensure meaningful consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) 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.

In accordance with the Paperwork Reduction Act of 1995, this final rule will contain information collections that are subject to review and approval by the OMB; therefore, the Department submitted the proposed rule for public comment regarding changes in the information collection burden resulting from the provisions in this final rule.

In accordance with the Paperwork Reduction Act of 1995, the notice included in the proposed rule invited the general public and other public agencies to comment on the proposed information collection. This is a new collection for final rule, Supplemental Nutrition Assistance Program: Student Eligibility, Convicted Felons, Lottery and Gambling, and State Verification Provisions of the Agricultural Act of 2014 (RIN 0584-AE41). Section 4009 of the Agricultural Act of 2014 (the Act) makes SNAP participants with substantial lottery and gambling winnings ineligible for SNAP benefits. Section 4009 of the Act also provides that State SNAP agencies are required to the maximum extent practicable to establish cooperative agreements with gaming entities within the State to identify SNAP recipients with substantial winnings. USDA is implementing section 4009 through final rulemaking.

State SNAP agencies are required, to the maximum extent practicable, to establish cooperative agreements with gaming entities within the State to identify SNAP recipients with substantial winnings. Gaming entities (both State public agency and private business gaming entities) that enter into the cooperative agreements will share information with the State SNAP agency on

individuals within their gaming establishment who win amounts equal to or greater than the maximum allowable resource limit for elderly or disabled SNAP households, as defined in 7 CFR 273.8(b).

The provisions regarding students, felon disqualification and State eligibility verification systems in this final rule do not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995. State agencies will be required to make minimal, one-time changes to their application process in order to comply with the provisions of the felon disqualification attestation requirement. Since State agencies are already required to verify the immigration status of non-citizens applying for the program, the impact of this provision is negligible. Other minimal burdens imposed on State agencies by this final rule are usual and customary within the course of their normal business activities.

These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, the Department will publish a separate action in the Federal Register announcing OMB approval.

Requests for additional information or copies of this information collection should be directed to Mary Rose Conroy at 703-305-2803

Title: Supplemental Nutrition Assistance Program: Student Eligibility, Convicted Felons, Lottery and Gambling, and State Verification Provisions of the Agricultural Act of 2014

Form Number: [N/A]

OMB Number: [0584-NEW]

Expiration Date: [Not Yet Determined.]

Type of Request: New collection

Abstract: This final rule will implement section 4009 of the Agricultural Act of 2014 (Ending Supplemental Nutrition Assistance Program Benefits for Lottery or Gambling Winners), which provides that a household in which a member receives substantial lottery or gambling winnings shall lose eligibility for SNAP until the household meets normal income and resource standards. This rule defines lottery or gambling winnings equal to or greater than the resource limit for elderly or disabled households as defined in 7 CFR 273.8(b) as substantial. The provision also requires States to establish cooperative agreements, to the maximum extent practicable, with entities responsible for regulating or sponsoring gaming activities (gaming entities) in their State in order to identify individuals with substantial winnings.

This rule does not carry any recordkeeping burden. Reporting burden details are provided below.

Affected public: State agencies, State gambling entities, gaming entities

Regulation Section: 7 CFR 272.17

Respondent Type: State agency and gaming entities

Estimated number of respondents: 250

Total annual responses: First year 1,561,350; Ongoing 1,560,800

Estimated annual burden hours: First year 561,920 hrs; Ongoing 193,920 hrs

Estimated cost to respondents: First year \$23,317,573; Ongoing \$3,874,373

Description of Costs and Assumptions:

In the proposed rule's information collection burden, the Department assumed that all 53 State agencies would establish cooperative agreements despite large variation in gaming activities among States. The final rule's information collection estimates are based on 50 of the 53 State agencies implementing this provision to establish cooperative agreements. The Department assumes that at least three of the 53 State agencies do not have gambling or lottery in the State. These three State agencies would not be subject to this information collection because the rule does not require States to establish agreements with gaming entities outside of the State.

These three State agencies are required to act when a household self-reports substantial lottery or gambling winnings, or the State learns of a household's winnings. Nevertheless, the Department does not anticipate that these States will experience an increased burden for action on this information, as it is estimated that States without gaming entities will have significantly fewer households that receive substantial winnings. Therefore, the estimates in this final information collection are based on 50 State agencies establishing cooperative agreements as required by section 4009.

First Year (One-time occurring costs)

It is estimated that establishing the cooperative agreements between the State Agency and the gaming entities will take approximately 320 hours per response (80,000 hours total). This includes time for the State agency to reach out to gaming entities in the State, negotiate terms for sharing identifying information of winners, establish secure connections for sharing information, and complete all necessary reviews of agreements by legal counsel and State leadership. Our estimate assumes that 50 of the 53 State Agencies receiving SNAP funding will implement this rule despite large variations in gaming activities among States.

It is estimated that creating a computerized system to match information on winners from gaming entities with State SNAP participation lists will take approximately 4,160 hours per response (208,000 hours total). All States currently make use of other computerized data matching systems (e.g., SAVE for immigration verification), so costs assume States will re-program existing systems.

Ongoing Yearly Costs

Once the computerized matching system is in place, the matches between the winner list and SNAP participation list should occur automatically and with negligible cost. There is no national database of how many people win large amounts of money in State lotteries or through other gaming activities. For this estimate, it is assumed that approximately 36,000 SNAP participants (average 720 per State Agency) nationally will be identified every year through the above matches, but, of these, approximately 23,000 (average 460 per State agency) will be found to have actual substantial lottery or gambling winnings (the others may be simply misidentified because of a similar name, inaccurate reporting, etc.). For each match, an eligibility worker will:

- Generate a notice to an identified match requesting more information (10 minutes).
- Review the returned information from the participant and engage in any additional verification (20 minutes).
- If the matched participant is not a winner –Update the case file (10 minutes).

- If the matched participant is a winner – Un-enroll the household and send notice of adverse action (30 minutes).

Lottery or gambling winners who lose eligibility for SNAP will need to be re-evaluated according to normal program rules if they again decide to apply for SNAP benefits. This process will vary by State depending on the categorical eligibility policy options in place. Eligibility workers will need to identify if a current SNAP applicant previously lost eligibility due to substantial winnings.

Due to the change in the final rule, lowering the threshold for substantial lottery and gambling winnings to the \$3,500 resource limit for elderly or disabled households under 7 CFR 273.8(b), the Department anticipates that State agencies will need to reevaluate significantly more households than estimated in the proposed information collection. This will increase the estimated cost and burden for States.

| Reg. Section | Respondent Type | Description of Activity | Estimated Number of Respondents | Annual Report or Record Filed | Total Annual Responses | Number of Burden Hours Per Response | Estimated Total Burden Hours | Hourly Wage Rate* | Estimate Cost to Respondents |
|---------------------|----------------------------|---|--|--------------------------------------|-------------------------------|--|-------------------------------------|--------------------------|-------------------------------------|
| 7 CFR 272.17 | State SNAP Agency Managers | **Establish cooperative agreements with State public agency | 50 | 5 | 250 | 320 | 80,000 | 59.35 | \$4,748,000 |

| | | | | | | | | | |
|----------------------------------|--|--|----|-----|--------|-------|---------|---------|--------------|
| | | and gaming entities | | | | | | | |
| 7 CFR 272.17 | State Public Agency Gaming Entity Managers | **Establish cooperative agreements with State SNAP agency | 50 | 1 | 50 | 320 | 16,000 | \$59.35 | \$949,600 |
| 7 CFR 272.17 | State SNAP IT Staff | **Create a data matching system with State public agency and gaming entities | 50 | 1 | 50 | 4,160 | 208,000 | \$53.74 | \$11,177,920 |
| 272.17 and 273.11(r) | State SNAP Agency Eligibility Worker | Eligibility worker follow-up - misidentified winners | 50 | 260 | 13,000 | 0.667 | 8,671 | \$21.45 | \$185,993 |
| 7 CFR 272.17 and 7 CFR 273.11(r) | State SNAP Agency Eligibility Worker | Eligibility worker follow-up - true winners | 50 | 460 | 23,000 | 1 | 23,000 | \$21.45 | \$493,350 |
| 7 CFR 272.17 and 7 CFR 273.11(r) | State SNAP Agency Eligibility Worker | Eligibility worker work new applications (churn) | 50 | 411 | 20,550 | 1 | 20,550 | \$21.45 | \$440,798 |

| | | | | | | | | | |
|--|--|--|------------|------------|---------------|----------|---------------|----------|--------------------|
| 7 CFR 272.17 | State Public Agency Gaming Entity Staff Member | Input data into data matchin g system for use by State SNAP agency | 50 | 6,000 | 300,000 | 0.08 | 24,000 | \$19.56 | \$469,440 |
| 7 CFR 272.17 | State SNAP IT Staff | Maintai n a data matchin g system with State public agency and gaming entities | 50 | 1 | 50 | 320 | 16,000 | \$53.74 | \$859,840 |
| State Agency Subtotal Reporting | | | 50 | | | - | | - | \$19,324,940 |
| 7 CFR 272.17 | Gaming Entity Managers | **Establ ish cooperat ive agreeme nts with State SNAP agency | 200 | 1 | 200 | 320 | 64,000 | \$40.12 | \$2,567,680 |
| 7 CFR 272.17 | Gaming Entity Staff Member | Input data into data matchin g system for use by State SNAP agency | 200 | 6000 | 1,200,00 0 | 0.08 | 96,000 | \$13.57 | \$1,302,720 |
| Business Subtotal Reporting | | | 200 | 101 | 16,059 | - | 52,152 | - | \$3,870,400 |

| | | | | | | | |
|---|------------|--|--|--|--|---|--------------|
| States and Business Reporting Grand Total Burden Estimates | 250 | | | | | - | \$23,195,340 |
|---|------------|--|--|--|--|---|--------------|

| Summary Of Burden | Est. No. of Respondents | No. of Responses per Respondent | Total Annual Responses | Est. total Hours per Response | Est. total Burden | Cost to Respondents |
|-------------------|-------------------------|---------------------------------|------------------------|-------------------------------|-------------------|---------------------|
| Reporting | 250 | 13,224 | 1,557,150 | | 561,920 | \$23,195,340 |
| Recordkeeping | - | - | - | - | - | - |
| TOTAL | 250 | | 1,557,150 | | 561,920 | \$23,195,340 |

*Based on the Bureau of Labor Statistics May 2017 Occupational and Wage Statistics. The salaries of State SNAP agency managers and public gaming entity managers are considered to be “General and Operations Managers (11-1021).” The salaries of gaming entity managers are considered to be “Gaming Managers (11-9071).” The salaries of State SNAP IT Staff are considered to be “Software Developers, Systems Software (15-1133).” The salaries of the eligibility workers are considered to be “Eligibility Interviewers, Government Programs (43-4061).” The salaries of public gaming entity staff member are considered to be “Information and Record Clerks, All Other (43-4199).” The salaries of gaming entity staff member are considered to be “Gaming Cage Workers (43-3041).” (<http://www.bls.gov/oes/home.htm>).

** These are only first year costs and are next expected to re-occur annually.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, 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 271

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

7 CFR Part 272

Alaska, Civil rights, Claims, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Employment, Food stamps, Fraud, Government employees, Grant programs-social programs, Income taxes, Reporting and recordkeeping requirements, Students, Supplemental Security Income, Wages.

For the reasons set forth in the preamble, 7 CFR parts 271, 272 and 273 are amended as follows:

1. The authority citation for Parts 271, 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2036.

PART 271 – GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2:

a. In the definition of “*Alien Status Verification Index (ASVI)*”, remove the words “Immigration and Naturalization Service” and add, in their place, the words “United States Citizenship and Immigration Services (USCIS)”.

b. Remove the definition of “*Immigration and Naturalization Service (INS)*.”

c. Add a definition of “*United States Citizenship and Immigration Services (USCIS)*” in alphabetical order.

The addition to read as follows:

§ 271.2 Definitions

* * * * *

United States Citizenship and Immigration Services (USCIS) means the U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security.

* * * * *

PART 272 – REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. Add § 272.2(d)(1)(xviii) to read as follows:

§272.2 Plan of operation.

* * * * *

(d) * * *

(1) * * *

(xviii) A list indicating the names of gaming entities with which the State agency has entered into cooperative agreements and the frequency of data matches with such entities.

* * * * *

4. In § 272.8(a)(1), revise the first sentence to read as follows:

§ 272.8 State Income and Eligibility Verification System.

(a) * * *

(1) State agencies shall maintain and use an income and eligibility verification system (IEVS), as specified in this section. * * *

* * * * *

5. Amend § 272.11 by revising paragraph (a) and in paragraphs (b) and (d), remove the word “INS” and add in its place the word “USCIS”.

§ 272.11 Systematic Alien Verification for Entitlements (SAVE) Program.

(a) *General.* A State agency shall use an immigration status verification system established under section 1137 of the Social Security Act (42 U.S.C. 1320b-7) to verify the eligible status of all aliens applying for SNAP benefits. USCIS maintains the Systematic Alien Verification for Entitlements (SAVE) Program to conduct such verification.

* * * * *

6. Add § 272.17, to read as follows:

§272.17 Substantial Lottery or Gambling Winnings.

(a) *General.* Each State agency, to the maximum extent practicable, shall establish cooperative agreements with gaming entities within their State to identify members of certified households who have won substantial lottery or gambling winnings as defined in §273.11(r).

(b) *Cooperative Agreements.* State agencies, to the maximum extent practicable, shall enter into cooperative agreements with the gaming entities responsible for the regulation or sponsorship of gaming in the State. Cooperative agreements should specify the type of information to be shared by the gaming entity, the procedures used to share information, the frequency of sharing information, and the job titles of individuals who will have access to the data. Cooperative agreements shall also include safeguards to prevent release or disclosure of personally identifiable information of SNAP recipients who are the subject of data matches in accordance with 272.1(c).

(c) *Use of information on winnings.* States shall provide a system for:

- (1) Comparing information obtained from gaming entities about individuals with substantial winnings with databases of currently certified households within the State;
- (2) The reporting of instances where there is a match;
- (3) The verification of matches to determine their accuracy in accordance with § 273.2(f);
- (4) If during a household's certification period, as defined in § 273.11(r), prior to any action to terminate the household's benefits, the State agency shall provide the household notice in accordance with the provisions on notices of adverse action appearing in § 273.13. If the information received is unclear, the State agency shall follow procedures at § 273.12(c)(3). For households that are found to have received substantial winnings at the time of the household's recertification, the State agency shall notify such households, in accordance with the provisions on notices of denial appearing in § 273.10(g)(2); and
- (5) The establishment and collection of claims as appropriate.

(d) *Frequency of data matches.* The State agency shall perform data matches as frequently as is feasibly possible to identify SNAP recipients with substantial winnings, as defined in § 273.11(r); however, at a minimum the State agency shall conduct data matches when a household files a periodic report and at the time of the household's recertification.

(e) *State Plan of Operation.* The State agency shall include as an attachment to the annual State Plan of Operation, as required in accordance with § 272.2, the names of gaming entities with which the State agency has entered into cooperative agreements, the frequency of data matches with such entities.

PART 273 – CERTIFICATION OF ELIGIBLE HOUSEHOLDS

7. In Part 273 remove the word “INS” each place it appears and add, in its place, “USCIS”.

8. Add § 273.1(b)(7)(xii) to read as follows:

§ 273.1 Household concept.

* * * * *

(b) * * *

(7) * * *

(xii) Individuals convicted of certain crimes and who are out of compliance with the terms of their sentence and ineligible under § 273.11(s).

* * * * *

9. In § 273.2:

a. Amend paragraph (b)(2) by revising the first sentence;

b. Amend paragraph (f)(1)(ii)(A) by revising the first sentence and adding a new second sentence;

c. Amend paragraph (f)(5)(i) by adding four sentences at the end of the paragraph;

d. Amend paragraph (f)(9) by revising the paragraph heading and paragraphs (f)(9)(i) and (ii);

e. Amend paragraph (f)(10), by revising the introductory text and adding paragraph (f)(10)(vi);

f. Revise (j)(2)(vii)(D);

g. Add new paragraph (o).

The revisions and additions to read as follows:

§ 273.2 Office operations and application processing.

* * * * *

(b) * * *

(2) * * * In using IEVS in accordance with paragraph (f)(9) of this section, a State agency must notify all applicants for SNAP benefits at the time of application and at each recertification through a written statement on, or provided with, the application form that information available through IEVS will be requested, used, and may be verified through collateral contact when discrepancies are found by the State agency, and that such information may affect the household's eligibility and level of benefits. * * *

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) The State agency shall verify the eligible status of all aliens applying for SNAP benefits by using an immigration status verification system established under section 1137 of the Social Security Act (42 U.S.C. 1320b-7). FNS may require State agencies to provide written confirmation from USCIS that the system used by the State is an immigration status verification system established under section 1137 of the Social Security Act. * * *

* * * * *

(5) * * *

(i) * * * If a SNAP applicant's attestation regarding disqualified felon status described in § 273.2(o) is questionable, the State agency shall verify the attestation. Each element of a questionable attestation — that the individual has been convicted of a crime listed at § 273.11(s), and that the individual is not in compliance with the terms of their sentence — shall be verified by the State agency. The State agency shall determine whether an attestation is questionable

based on the standards established under § 273.2(f)(2)(i). In conducting verifications of questionable attestations under this paragraph, the State agency shall establish reasonable, consistent standards, evaluate each case separately, and document the case file accordingly.

* * * * *

(9) *Mandatory use of IEVS.* (i) The State agency must obtain information through IEVS in accordance with procedures specified in § 272.8 of this chapter and use it to verify the eligibility and benefit levels of applicants and participating households.

(ii) The State agency must access data through the IEVS in accordance with the disclosure safeguards and data exchange agreements required by part 272.

* * * * *

(10) *Mandatory use of SAVE.* Households are required to submit documentation for each alien applying for SNAP benefits in order for the State agency to verify their immigration statuses. State agencies shall verify the validity of such documents through an immigration status verification system established under section 1137 of the Social Security Act (42 U.S.C. 1320b-7) in accordance with § 272.11 of this chapter. USCIS maintains the SAVE system to conduct this verification. When using SAVE to verify immigration status, State agencies shall use the following procedures: * * *

* * * * *

(vi) State agencies may use information contained in SAVE search results to confirm whether an alien has a sponsor who has signed a legally binding affidavit of support when evaluating the alien's application for SNAP benefits in accordance with the deeming requirements described in § 273.4(c)(2).

* * * * *

(j) * * *

(2) * * *

(vii) * * *

(D) Any member of that household is ineligible under § 273.11(m) by virtue of a conviction for a drug-related felony, under § 273.11(n) for being a fleeing felon or a probation or parole violator, or under § 273.11(s) for having a conviction of certain crimes and not being in compliance with the sentence.

* * * * *

(o) Each State agency shall require the individual applying for SNAP benefits to attest to whether the individual or any other member of the household has been convicted of a crime as an adult as described in § 273.11(s) and whether the convicted member is complying with the terms of the sentence.

(1) The State agency shall update its application process, including certification and recertification procedures, to include the attestation requirement. Attestations may be done in writing, verbally, or both, provided that the attestation requirement shall be explained to the applicant household during the interview and the attestation is legally binding in the law of the State. Whatever procedure a State chooses to implement must be reasonable and consistent for all households applying for SNAP benefits. However, no individual shall be required to come to the SNAP office solely for an attestation.

(2) The State agency shall document this attestation in the case file.

(3) The State agency shall establish standards for verification of only those attestations that are questionable, as described in § 273.2(f)(2). When verifying an attestation, the State agency must

verify any conviction for a crime described in § 273.11(s) and that the individual is not in compliance with the terms of the sentence.

(4) Application processing shall not be delayed beyond required processing timeframes solely because the State agency has not obtained verification of an attestation. The State agency shall continue to process the application while awaiting verification. If the State agency is required to act on the case without being able to verify an attestation in order to meet the time standards in § 273.2(g) or § 273.2(i)(3), the State agency shall process the application without consideration of the individual's felony and compliance status.

10. Revise § 273.5(b)(11)(ii), to read as follows:

§ 273.5 Students.

* * * * *

(b) * * *

(11) * * *

(ii) An employment and training program under § 273.7, subject to the condition that the course or program of study, as determined by the State agency:

(A) is part of a program of career and technical education as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302) designed to be completed in not more than 4 years at an institution of higher education as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 2296); or

(B) is limited to remedial courses, basic adult education, literacy, or English as a second language.

* * * * *

11. Revise § 273.7(e)(1)(vi), to read as follows:

§ 273.7 Work provisions.

* * * * *

(e) * * *

(1) * * *

(vi) Educational programs or activities to improve basic skills or otherwise improve employability including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program.

(A) Allowable educational programs or activities may include, but are not limited to, courses or programs of study that are part of a program of career and technical education (as defined in section 3 of the Carl D. Perkins Act of 2006), high school or equivalent educational programs, remedial education programs to achieve a basic literacy level, and instructional programs in English as a second language.

(B) Only educational components that directly enhance the employability of the participants are allowable. A direct link between the education and job-readiness must be established for a component to be approved.

12. In § 273.11:

a. Amend paragraph (c)(1) introductory text by revising the sentence after the paragraph heading; and

b. Add paragraphs (r) and (s).

The revisions and additions to read as follows:

§273.11 Action on households with special circumstances.

* * * * *

(c) * * *

(1) * * * The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of a disqualification for an intentional Program violation, a felony drug conviction, their fleeing felon status, noncompliance with a work requirement of § 273.7, imposition of a sanction while they were participating in a household disqualified because of failure to comply with workfare requirements, or certain convicted felons as provided at § 273.11(s) shall be determined as follows: * * *

* * * * *

(r) *Disqualification for Substantial Lottery or Gambling Winnings.* Any household certified to receive benefits shall lose eligibility for benefits immediately upon receipt by any individual in the household of substantial lottery or gambling winnings, as defined in paragraph (r)(2) of this section. The household shall report the receipt of substantial winnings to the State agency in accordance with the reporting requirements contained in § 273.12(a)(5)(iii)(G)(3) and within the time-frames described in § 273.12(a)(2). The State agency shall also take action to disqualify any household identified as including a member with substantial winnings in accordance with §272.17.

(1) *Regaining Eligibility.* Such households shall remain ineligible until they meet the allowable resources and income eligibility requirements described in §§ 273.8 and 273.9, respectively.

(2) *Substantial Winnings--(i) In General.* Substantial lottery or gambling winnings are defined as a cash prize equal to or greater than the maximum allowable financial resource limit for elderly or disabled households as defined in § 273.8(b) won in a single game before taxes or

other withholdings. For the purposes of this provision, the resource limit defined in § 273.8(b) applies to all households, including non-elderly/disabled households, with substantial lottery and gambling winnings. If multiple individuals shared in the purchase of a ticket, hand, or similar bet, then only the portion of the winnings allocated to the member of the SNAP household would be counted in the eligibility determination.

(ii) Adjustment. The value of substantial winnings shall be adjusted annually in accordance with § 273.8(b)(1) and (2).

(s) *Disqualification for certain convicted felons.* An individual shall not be eligible for SNAP benefits if:

(1) The individual is convicted as an adult of:

(i) Aggravated sexual abuse under section 2241 of title 18, United States Code;

(ii) Murder under section 1111 of title 18, United States Code;

(iii) An offense under chapter 110 of title 18, United States Code;

(iv) A Federal or State offense involving sexual assault, as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or

(v) An offense under State law determined by the Attorney General to be substantially similar to an offense described in clause (i), (ii), or (iii); and

(2) The individual is not in compliance with the terms of the sentence of the individual or the restrictions under § 273.11(n).

(3) The disqualification contained in this paragraph (s) shall not apply to a conviction if the conviction is for conduct occurring on or before February 7, 2014.

13. In §273.12, add paragraph (a)(1)(viii) and revise paragraphs (a)(4)(iv), (a)(5)(iii)(G) and (a)(5)(vi)(B).

The addition and revisions read as follows:

§273.12 Reporting requirements.

(a) * * *

(1) * * *

(viii) Whenever a member of the household wins substantial lottery or gambling winnings in accordance with § 273.11(r).

(4) * * *

(iv) *Content of the quarterly report form.* The State agency may include all of the items subject to reporting under paragraph (a)(1) of this section in the quarterly report, except changes reportable under paragraphs (a)(1)(vii) and (a)(1)(viii) of this section, or may limit the report to specific items while requiring that households report other items through the use of the change report form.

(5) * * *

(iii) * * *

(G) The periodic report form shall be the sole reporting requirement for any information that is required to be reported on the form, except that a household required to report less frequently than quarterly shall report:

(1) When the household monthly gross income exceeds the monthly gross income limit for its household size in accordance with paragraph (a)(5)(v) of this section;

(2) Whenever able-bodied adults subject to the time limit of § 273.24 have their work hours fall below 20 hours per week, averaged monthly; and

(3) Whenever a member of the household wins substantial lottery or gambling winnings in accordance with § 273.11(r).

* * * * *

(vi) * * *

(B) The State agency must not act on changes that would result in a decrease in the household's benefits unless one of the following occurs:

(1) The household has voluntarily requested that its case be closed in accordance with § 273.13(b)(12).

(2) The State agency has information about the household's circumstances considered verified upon receipt.

(3) A household member has been identified as a fleeing felon or probation or parole violator in accordance with § 273.11(n).

(4) There has been a change in the household's PA grant, or GA grant in project areas where GA and food stamp cases are jointly processed in accordance with § 273.2(j)(2).

(5) The State agency has verified information that a member of a SNAP household has won substantial lottery or gambling winnings in accordance with § 273.11(r).

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Dated: April 8, 2019.

Brandon Lipps
Administrator
Food and Nutrition Service

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