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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 272

[FNS-2009-0024]

RIN 0584-AD91

Supplemental Nutrition Assistance Program: Privacy Protections of Information From Applicant Households

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: The Food and Nutrition Service (FNS) is revising Supplemental Nutrition Assistance Program regulations that cover the privacy protections for Supplemental Nutrition Assistance Program (SNAP) households and applicants. The change is to comply with a new provision of the Food and Nutrition Act of 2008.

DATES: *Effective Date:* This rule will become effective May 16, 2011.

Comment Date: To be considered, comments on this interim rule must be postmarked on or before July 15, 2011 to be assured of consideration.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Send comments to Jane Duffield, Chief, State Administration Branch, Supplemental Nutrition Assistance Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 818, Alexandria, VA 22302.
- *E-Mail:* Send comments to [PADMAILBOX@fns.usda.gov](mailto:PADMALBOX@fns.usda.gov). Include

Docket Number [insert number], Supplemental Nutrition Assistance Program: Privacy Protections of Information from Applicant Households in the subject line of the message.

All comments submitted in response to this interim rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via <http://www.regulations.gov>. **FOR FURTHER INFORMATION CONTACT:** Jane Duffield, 703-605-4385, at the above address.

SUPPLEMENTARY INFORMATION:

Background

FNS is revising Supplemental Nutrition Assistance Program (SNAP) regulations to clarify the legal basis and requirements for privacy protection provisions of section 4120 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), Public Law 110-246. This interim rule implements the requirement that SNAP State agencies provide sufficient information to local educational agencies (LEAs) in order for LEAs to directly certify children receiving SNAP benefits as eligible for free school lunches under the Richard B. Russell National School Lunch Act and for free school breakfasts under the Child Nutrition Act of 1966 without further application.

Currently, 7 CFR 272.1(c) clarifies privacy protections afforded to Supplemental Nutrition Assistance Program (SNAP) applicants. The Food and Nutrition Act of 2008 (the Act) continues to permit the disclosure of information from applicants or recipients to persons directly connected with the administration or enforcement of the SNAP, other Federal assistance programs, or Federally-assisted State programs. However, as a result of the 2008 Farm Bill, the Act now directs that the persons to whom State agencies release the information must assure that the information is used only for administration or enforcement of those programs. Accordingly, FNS is adding a clarifying provision to existing regulations at 7 CFR part 272.1(c)(1).

FNS has never interpreted the use and disclosure provision in the Act or the regulations to permit disclosure of

information from applicant households to Program personnel for use outside the administration and enforcement of the program. Section 272.1(c) currently provides that recipients of information on SNAP applicant or recipient households must protect the information against unauthorized disclosure to persons or for purposes not specified in the regulations. Historically, our reviews and discussions with State agencies over information safeguards have found that State agencies have long understood that they must not allow the information to be used outside of the SNAP for purposes not permitted by the regulations, and State agencies have strived to protect the data from unauthorized disclosure or use. Based on that history, we do not anticipate that this rulemaking will require any change on the part of State agencies in how they protect information provided by SNAP applicants. Confidential information will continue to be unavailable to the general public and others not having a legitimate reason relating to program administration and enforcement.

The Act also provides that the safeguards on disclosure shall not prevent the sharing of information to ensure that any child receiving SNAP benefits be certified as eligible for free lunches under the provisions of the Richard B. Russell National School Lunch Act and free breakfasts under the Child Nutrition Act of 1966, at schools without further application. The purpose of this provision is to make clear that applicants' information may be used to comply with requirements for certifying schoolchildren as eligible for free school meals based on their eligibility for SNAP benefits, and to ensure that existing requirements for safeguarding the released information and using it only for the purpose of certifying children for free school breakfast and lunches are observed. State agencies in the largest school districts have been operating under these rules since at least July 1, 2005, and in all school districts since July 2008. Therefore we are adding a clarifying provision to the regulations and do not anticipate that any new State action will be required.

Procedural Matters

Issuance of an Interim Rule and Date of Effectiveness

USDA, under the provisions of the Administrative Procedure Act at 5 U.S.C. 553(b)(B), finds for good cause that use of prior notice and comment procedures for issuing this interim rule is unnecessary. This interim rule implements section 4120 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246 by codifying at 7 CFR Part 272.1(c)(1) the requirement that SNAP State agencies must assure that the disclosure and subsequent use of information of applicants and recipients of benefits be only for program administration and enforcement. USDA concludes that as implementation of section 4120 is nondiscretionary and specific, and as this rulemaking will not require any changes on the part of State agencies in how they protect information provided by SNAP applicants, it is unnecessary to issue this rule as a proposed rule. For the same reason, the interim rule is effective upon publication.

Although we do not anticipate this rule will be controversial, privacy issues are sensitive ones for some members of the public, and the opportunity to comment will be of value to a significant number of people, therefore, USDA invites public comment on this interim rule for a 60-day period. The agency will address comments, and affirm or amend the interim rule in a final rule.

Executive Order 12866 and Executive Order 13563

Executive Orders 13563 and 12866 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 rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Regulatory Impact Analysis

As required for all rules that have been designated as significant by the OMB, a Regulatory Impact Analysis

(RIA) was developed for this interim rule. It follows this rule as an Appendix. The following summarizes the conclusions of the regulatory impact analysis:

Need for Action: Implement Section 4120 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

Benefits: Codifies the release of information necessary to directly certify Supplemental Nutrition Assistance Program household members for free school breakfasts and lunches without further application.

Costs: Costs to SNAP State agencies for negotiating agreements and operating annual direct certification systems with State education agencies has been captured in the regulatory impact analysis for the Child Nutrition Division’s rule titled, “Direct Certification and Certification of Homeless, Migrant and Runaway Children for Free School Meals.” Based on these cost estimates, the cost to SNAP State agencies for implementing these requirements is \$0.20 million between fiscal years 2004 and 2011.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601–612). Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

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 interim 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

The Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from 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. FNS has considered this rule’s impact on State and local agencies and has determined that it does not have federalism implications under Executive Order 13132. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section (6)(b) of the Executive Order, a federalism summary impact statement is not required.

Civil Rights Impact Analysis

FNS has reviewed this interim rule in accordance with the Department Regulation 4300–4, “Civil Rights Impact Analysis,” to identify and address any major civil rights impact the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule’s intent and provisions, FNS has determined that this rule has no impact on any of the protected classes. These changes affect the privacy of information collected from Supplemental Nutrition Assistance Program applicants and households and not an individual applicant’s or recipient’s eligibility or participation in the Supplemental Nutrition Assistance Program. FNS has no discretion in implementing these changes. The changes are required to be implemented by law. All data available to FNS indicate that protected individuals have the same opportunity to participate in the Supplemental Nutrition Assistance Program as non-protected individuals.

FNS specifically prohibits the State and local government agencies that administer the Program from engaging

in actions that discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of benefits, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. SNAP

nondiscrimination policy can be found at 7 CFR 272.6. Discrimination in any aspect of program administration is prohibited by these regulations, the Food and Nutrition Act of 2008, the Age Discrimination Act of 1975 (Pub. L. 93-112, section 504), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accordance with 7 CFR part 15.

Executive Order 12988

This interim 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 implementation. This rule is not intended to have retroactive effect unless so specified in the Dates paragraph of the rule. Prior to any judicial challenge to the provisions of this interim rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Executive Order 13175

USDA will undertake, within 6 months after this rule becomes effective, a series of Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities, and individuals. These sessions will establish a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

The policies contained in this rule would not have Tribal implications that preempt Tribal law.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; see 5 CFR part 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. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

The Food and Nutrition Service 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.

Privacy Protections

Section 4120 of Public Law 110-246, of the Food, Conservation, and Energy Act (FCEA) of 2008 amends Section 11(e)(8) of the Food and Nutrition Act of 2008 (the Act), 7 U.S.C. 2020(e)(8), to codify existing regulatory provisions. Currently, 7 CFR 272.1(c) clarifies privacy protections afforded to Supplemental Nutrition Assistance Program (SNAP) applicants. The Act continues to permit the disclosure of information from applicants or recipients to persons directly connected with the administration or enforcement of the SNAP, other Federal assistance programs, or Federally-assisted State programs. However, the Act, as amended, now directs that the persons to whom State agencies release the information must assure that the information is used only for administration or enforcement of those programs.

List of Subjects in 7 CFR Part 272

Alaska, Civil rights, Claims, SNAP, Grant programs—social programs, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

For the reasons set forth in the preamble, 7 CFR part 272 is 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. Section 272.1 is amended by adding a new paragraph (c)(1)(viii) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(c) * * *
(1) * * *

(viii) Local educational agencies administering the National School Lunch Program established under the Richard B. Russell National School Lunch Act or the School Breakfast Program established under the Child Nutrition Act of 1966, for the purpose of directly certifying the eligibility of school-aged children for receipt of free meals under the School Lunch and School Breakfast programs based on their receipt of Supplemental Nutrition Assistance Program benefits.

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Dated: May 4, 2011.

Kevin W. Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

Appendix

Note: This appendix will not be published in the Code of Federal Regulations.

Regulatory Impact Analysis Summary

7 CFR Part 272: Supplemental Nutrition Assistance Program Provisions of Title IV of Public Law 110-246

Interim Rule

Need for Action: This action is needed to implement Section 4120 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), Public Law 110-246, which amended Section 11 of the Food and Nutrition Act 2008 (7 U.S.C. 2020).

Discussion: FNS is revising Supplemental Nutrition Assistance Program (SNAP) regulations to clarify the legal basis and requirements for privacy protection provisions of the 2008 Farm Bill. This interim rule would implement the requirement that SNAP State agencies provide sufficient information to local educational agencies (LEA) in order for LEAs to directly certify children receiving SNAP benefits as eligible for free school lunches under the Richard B. Russell National School Lunch Act and for free school breakfasts under the Child Nutrition Act of 1966 without further application. This interim rule will not have an implementation impact on SNAP State agencies as they have been providing this information to LEAs for very large school districts since 2006 and for all school districts since 2008.

Effect on Low-Income Families: This interim rule will not have any impact on low-income families.

Cost Impact: Since the interim rule is codifying processes already in place, there is no cost to the Government in FY 2011 or over the 5 years FY 2011 through FY 2015.

Participation Impacts: This interim rule will not have any impact on SNAP participation.

Uncertainty: There is no uncertainty associated with this cost estimate.

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