



Billing Code: 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

RIN 0584-AE01

Clarification of Eligibility of Fleeing Felons

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

ACTION: Final rule.

SUMMARY: This rule implements Section 4112 of the Food, Conservation, and Energy Act of 2008. Section 4112 amended Section 6(k) of the Food and Nutrition Act of 2008 to require the Secretary of Agriculture to define the terms “fleeing” and “actively seeking” to ensure that State agencies use consistent procedures regarding the disqualification of a fleeing felon from eligibility for SNAP benefits when the individual is fleeing to avoid prosecution, custody or confinement after conviction for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing (or a high misdemeanor in New Jersey) or is violating a condition of probation or parole under Federal or State law.

DATES: This rule is effective [insert 60 days from date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Sasha Gersten-Paal, Certification

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SUPPLEMENTARY INFORMATION:

Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104 -193 (PRWORA) amended Section 6 of the Food Stamp Act of 1977 (now entitled The Food and Nutrition Act of 2008) (the Act) to disqualify fleeing felons from the Supplemental Nutrition Assistance Program (SNAP). To be disqualified under the fleeing felon provisions of PRWORA, an individual must be either: fleeing to avoid prosecution, custody or confinement after conviction for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing (or a high misdemeanor in New Jersey); or violating a condition of probation or parole imposed under Federal or State law. The intent of the law was to prohibit individuals who were intentionally fleeing to avoid prosecution or imprisonment from receiving SNAP benefits and to aid law enforcement officials actively seeking to apprehend those fleeing to avoid prosecution or custody by providing them with needed information as allowable under the Act. The disqualification provisions were codified in the SNAP regulations on January 17, 2001, at 66 FR 4438. For simplicity, throughout the balance of this preamble we will use the term felony to encompass felonies, and, in the State of New Jersey, felonies and high misdemeanors.

Section 4112 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110 – 246) amended Section 6(k) of the Act to require the Secretary of Agriculture to define the terms “fleeing” and “actively seeking” to ensure State agencies use consistent procedures

to disqualify individuals fleeing to avoid prosecution, custody or confinement after conviction for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing or is violating a condition of probation or parole under Federal or State law. On August 19, 2011, the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) published a proposed rule at 76 FR 51907, providing proposed definitions for "fleeing" and "actively seeking", and procedures for disqualifying individuals determined to be fleeing or violating a condition of probation or parole. Readers are directed to the proposed rule for a more thorough description of the policies in effect prior to the publication of the proposed rule and for the reasons the Department was directed to define these terms. The Department received thirty-seven comments on the proposed rule. Comments were received from State agencies, legal service organizations, advocacy groups, state investigative agencies, and private citizens.

The regulations governing the fleeing felon and parole and probation violators are found at 7 CFR 272.1(c)(1)(vii) Disclosure, 7 CFR 273.1(b)(7)(ix) Special household requirements, 7 CFR 273.2(b)(4)(ii) Privacy Act Statement, and 7 CFR 273.11(n) Fleeing Felons and probation or parole violators. The Department proposed revising § 273.11(n) in its entirety. The Department also proposed a conforming amendment for 7 CFR 272.1(c)(1)(vii) Disclosure.

Section 202 of PRWORA established similar provisions for Supplemental Security Income (SSI). The Social Security Administration (SSA) developed more rigorous standards than FNS in implementing the legislative provision. SSA's Social Security Program Operations Manual System (POMS) provided that an individual is ineligible to

receive SSI benefits beginning any month in which a warrant, court order or decision, or an order of decision by an appropriate agency is issued which finds that individual is wanted in connection with a crime that is a felony. SSA was sued in multiple courts on its policy. On September 24, 2009, the United States District Court for the Northern District of California approved a settlement agreement in the case of Martinez v. Astrue, Civ. No. 08-cv-04735 cw. Under that settlement, SSA will suspend or deny benefits to an individual only if a law enforcement officer presents an outstanding felony arrest warrant for any of three categories of National Crime Information Center (NCIC) Uniform Offense Classification Codes: Escape (4901), Flight to Avoid (prosecution, confinement, etc.) (4902), and Flight-Escape (4999). This method of identifying fleeing felon status is referred to throughout the rest of the preamble as Martinez for ease of reference.

In developing the proposed rule, the Department did not adopt the Martinez settlement for SNAP. As explained more thoroughly in the preamble to the proposed rule, after FNS' implementation of PRWORA requirements, the FCEA contained specific direction for additional amendments to SNAP requirements surrounding the disqualification of felons. At the same time, FNS believed that SSA's implementation of its PRWORA requirements were overly rigorous. Because the direction to FNS in the FCEA preceded the settlement agreement in Martinez, FNS did not believe it was appropriate to follow the Martinez settlement. However, the Department did express interest in hearing from commenters whether they believed that SNAP should follow the Martinez settlement in defining a fleeing felon. Twenty-two of the thirty-seven commenters recommended that the Department adopt the Martinez settlement. The

Department has taken those comments into consideration in developing this final rule and is incorporating Martinez as an alternative test for establishing whether an individual is a fleeing felon and whether a law enforcement agency is actively seeking the individual.

Fleeing Felons

In § 273.11(n), the Department proposed that, before a State agency determines an individual to be a “fleeing” felon, the following four criteria must be met: (1) there has to be a felony warrant for an individual; (2) the individual has to be aware of, or should reasonably have been able to expect that, a warrant has or would have been issued; (3) the individual has to have taken some action to avoid being arrested or jailed; and (4) a law enforcement agency must be actively seeking the individual. The Department proposed that all four items have to be present and verified by the State agency to determine that an individual is a fleeing felon (i.e., there is an outstanding felony warrant, the State agency has documented evidence that the individual knew about the warrant or could reasonably have anticipated a warrant was going to be issued, the State agency has documentation that the individual took an action to avoid arrest or jail for the felony, and a law enforcement agency is actively seeking the individual).

The proposed rule allowed one exception to the four-part test. This exception provided that FNS would consider an individual to be a fleeing felon if a law enforcement officer presents an outstanding felony arrest warrant for any of three categories of NCIC Uniform Offense Classification Codes: Escape (4901), Flight to Avoid (prosecution, confinement, etc.) (4902), and Flight-Escape (4999) to a State agency to obtain information on the location of and other information about the

individual named in the warrant, in accordance with the provisions of Section 11(e)(8)(E) of the Act. Although the Department indicated in the proposed rule the intention not to adopt Martinez, the proposed exception essentially was Martinez, and an alternative to the four-part test. For this and other reasons discussed subsequently, in this final rule a State agency may adopt either the four-part test or, as an alternative, the Martinez test for purposes of determining whether an individual is a fleeing felon.

Thirteen commenters supported the four-part test, although, as noted above, most of those supporting it would prefer the Department adopt the Martinez test. One commenter recommended that we allow each State agency the option to adopt either the four-part test or the Martinez test.

Ten commenters opposed the four-part test, although the reasons for opposition were not consistent. Two commenters opposed the requirement that State agencies have the responsibility to verify fleeing felon status instead of the household. Eight commenters supported the proposed requirement. The Department is adopting the requirement that the State agency has responsibility for obtaining verification of fleeing felon status. Since publication of the proposed rule, we have determined that the requirement that the State agency, not the household, has responsibility for verification of fleeing felon and probation or parole violation status should also be addressed in 7 CFR 273.2(f) (Verification). Consequently, the Department has added a provision to 7 CFR 273.2(f)(5)(i) that places responsibility for verification of fleeing felon on the State agency.

One commenter pointed out that the regulations needed to clarify that the underlying cause for the warrant was for a felony offense. The Department agrees and has revised §

273.11(n) to clarify that the underlying crime for which the warrant was issued was for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing.

Five commenters were concerned about the requirement that the State agency verify that the individual was aware or should have been aware of a warrant and/or that the individual had taken some action to avoid being arrested or jailed (parts 2 and 3 of the 4-part test of fleeing felon). The Department is aware that these are difficult determinations. However, it is impossible for the Department to supply an exhaustive list of actions that would constitute knowledge in either circumstance. Evidence provided by a law enforcement officer that the individual left the jurisdiction following a court appearance would be indicative of the individual taking action to avoid being arrested or jailed, for instance, but moving from one home to another would not be evidence of either part of the test. The State agency will have to evaluate each case separately, using a reasonable standard established by the State to ensure consistency for all cases, and document the case file accordingly.

Five commenters opposed the four-part test because they believed that the current tests are sufficient or that the proposal was too complex, and that a warrant in and of itself should be sufficient to identify a person as a fleeing felon. Two of these five commenters were investigative agencies and one was an organization representing investigative agencies. One commenter was a State agency who reported that its fraud investigators felt the Department had no authority to dictate a time frame for a law enforcement agency to act on a warrant. The fifth was a private citizen. The investigative agencies, in particular, wanted the policies to remain the same. While we

understand the concerns expressed by the investigative agencies, the Department cannot leave the regulations as currently written. The Department is required by law to define the terms “fleeing felon” and “actively seeking.” Congress, in enacting section 4112 and the legislative history supporting it, as documented in the proposed rule, made it clear that the current policies were not sufficient. The Department is not dictating the time frame for a law enforcement officer to act on a warrant. The Department is simply defining “actively seeking” for SNAP purposes, establishing when an individual must be disqualified under the fleeing felon provisions of the Act. That definition does not require a law enforcement agency to act within those time frames.

To more closely mirror the language in the Act, and to improve consistency of terms, the Department is revising certain terms referred to in the regulatory text of the final rule. In particular, the Department specifies that warrants are felony warrants that law enforcement agencies must be Federal, State or local law enforcement agencies, and that law enforcement officials must be acting in their official capacity, in the text of the final regulations. For consistency, the Department also adds to the text of the final regulation that not only if a law enforcement agency does not indicate that it intends to enforce a felony warrant, but also if a law enforcement agency does not intend to arrest an individual for probation or parole violations, within 30 days, the State agency shall not determine the person is a fleeing felon or probation or parole violator. In addition, the Department makes other minor changes in the final rule text to improve readability and legal clarity.

One commenter raised concerns about the difficulty of serving warrants on Indian reservations. While the Department recognizes that an Indian reservation may not

cooperate with a local law enforcement agency concerning enforcement of a warrant, the Department does not believe that it is appropriate to disqualify an individual indefinitely from food assistance because of jurisdictional issues that cannot be resolved. It should be noted, however, that as long as the law enforcement agency continues to attempt to enforce the warrant, the law enforcement agency would be considered to be actively seeking the individual. The State agency would need verification from the law enforcement agency that it is continuing its attempts to enforce the warrant and would need to document the case file accordingly.

The Department finds the commenters' arguments supporting the use of the Martinez test persuasive. As discussed in the proposed rule and above, the Department believed the initial factors subject to the suit in Martinez to be too stringent and inappropriate for purposes of SNAP and that the legislative intent of the FCEA (post Martinez decision) required distinct, uniform, and clear standards. However, in light of the comments to the proposed rule, the Department is persuaded that the Martinez approach can still support the uniformity and clarity required by the FCEA. As demonstrated by the public's response to the Department's requests for specific feedback on this matter, allowing the Martinez test as an alternative to the Department's four-part test has garnered significant support as a usable and administratively feasible way to also implement the FCEA's requirements of uniformity and clarity. For example, one commenter, an association representing State agencies, commented that the proposed rule definition would require a complex and time-consuming series of steps that must be taken for disqualification of each individual, and includes criteria that cannot be known with objective certainty. The Martinez test, in contrast, provides simplicity and certainty due

to its objective enforceability – the presentation of a felony arrest warrant by a law enforcement officer. This commenter also explained that although some States had implemented approaches similar to the four-part test in the Department’s proposed rule, a number of States had already implemented the Martinez test or were planning to do so. This established, real world use and commenter response demonstrates the value and reliability of the Martinez test.

The objective standard used by Martinez - the presentation of a felony arrest warrant based on one of the three NCIC categories by a law enforcement officer - effectively establishes uniform definitions of “fleeing” and “actively seeking,” as required by the FCEA. The definition of “fleeing” is uniformly established by requiring that the individual’s actions must fit within one of the three NCIC Uniform Offense Classification Codes, Escape (4901), Flight to Avoid (prosecution, confinement, etc.) (4902), and Flight-Escape (4999). The presentation of a felony arrest warrant to a State agency by a law enforcement officer establishes that the law enforcement agency is “actively seeking” the individual.

On further review, based on the comments received, the Department has decided to require State agencies to adopt the definitions of fleeing felon and actively seeking as proposed by using either the four-part test or the Martinez test. This allows State agencies the flexibility to determine which test best suits their needs and administrative structures, while still requiring uniform definitions, standards and procedures.

Each State agency will have to submit an amendment to its State Plan identifying the option it selects. We have added a requirement to 7 CFR 272.2(d)(1) to mandate that each State agency identify the option chosen in its State plan and have modified

§ 273.11(n) to reflect the two alternative tests to establish whether a person is a fleeing felon.

Three commenters raised concerns about inconsistency with SSA and State Combined Application Projects (CAP). The Department does not believe that inconsistency between the two agencies will present a problem. An individual disqualified by SSA as a fleeing felon would not be eligible for the State's CAP. If the question of whether an individual may be a fleeing felon arises in the SNAP office, it will be the State agency's responsibility to determine if the individual meets its definition of fleeing felon status. Each State agency using the four-part test would also remain responsible for determining "actively seeking" in the event that an individual is identified as a fleeing felon or probation or parole violator, regardless of whether the individual is participating through a CAP. Also, if a law enforcement officer approaches the State agency with a felony warrant, the State agency would still have to make a determination of fleeing felon status for a CAP SNAP participant. So, the State agency would not be relying on the SSA determination of fleeing felon status.

Probation and Parole Violators

Section 6(k) of the Act prohibits any individual from participating in SNAP during any period in which the individual is violating a condition of probation or parole imposed under a Federal or State law. Neither the term "fleeing" nor "felony" is referenced in the prohibition from participating based on probation or parole violation. Additionally, the Act and the legislative history of the Act provide no guidance about what constitutes a probation or parole violation. Likewise, the Act does not limit such violations to felony charges only. Therefore, the Department proposed that the

disqualification apply to all identified probation or parole violations. The Department received no comments addressing this aspect of the proposal and is adopting the provision that an individual determined to have violated any probation or parole imposed under Federal or State law will be disqualified from SNAP eligibility.

In the proposed rule, we proposed that in order for an individual to be a probation or parole violator, 1) the individual must have violated a condition of his or her probation or parole, and 2) law enforcement must be actively seeking the individual to enforce the conditions of the probation or parole.

The Department received eighteen comments on the proposed standards and procedures for determining whether an individual should be considered a probation or parole violator. Fourteen of those commenters requested that the regulation specify that an impartial party must make a determination that there has been a probation or parole violation. The Department agrees with these commenters that only an impartial party should determine whether an individual violated probation or parole imposed under Federal or State law. The State agency has the discretion to determine what constitutes an impartial party. The provision at § 273.11(n)(2) has been modified accordingly. Two commenters wanted the Department to make no changes to the current standards and procedures. One was an investigative agency, the other a private citizen. Congress directed the Department to address the lack of clarity in the current procedures; therefore, the Department cannot accommodate these two commenters.

As discussed in the preamble to the proposed rule, Section 6(k)(2) of the Act requires the Department to ensure that “actively seeking” is defined, and that consistent procedures are established that disqualify individuals whom law enforcement authorities

are actively seeking for the purpose of holding criminal proceedings against the individual. In the proposed rule, we interpreted Section 6(k)(2) to also require the application of the term “actively seeking” to probation and parole violators. We proposed in § 273.11(n) that State agencies follow the same procedures for verifying through law enforcement whether an applicant or participant is a probation or parole violator as those used to determine if an individual is a fleeing felon. This would ensure that there are consistent procedures in place for establishing if a law enforcement office is actively seeking an individual, whether that individual is a fleeing felon or a probation or parole violator. One commenter, an investigator, wanted the current procedure that does not define actively seeking to remain in place. Because we are required by law to define “actively seeking,” we have adopted the definition of “actively seeking” for probation and parole violators as proposed. We have also determined that State agencies have the responsibility of verifying the parole or probation violator status of an individual.

Application Processing

As discussed in the proposed rule, the time necessary for determining fleeing felon or probation or parole violator status may extend beyond the time frames allowed under 7 CFR 273.2(g) and 7 CFR 273.2(i)(3) for State agencies to process applications. Therefore, the Department proposed in § 273.11(n)(5) that if a State agency needs to act on an application without determining fleeing felon or probation or parole violator status in order to comply with the time frames allowed under 7 CFR 273.2(g) and 7 CFR 273.2(i)(3), the State agency shall process the application without consideration of the individual’s fleeing felon or probation or parole violator status.

Three commenters raised concerns about expedited service. As proposed in § 273.11(n)(5), the State agency would be required to meet the time frames for providing expedited service in 7 CFR 273.2(i)(3) if fleeing felon or probation or parole violator status could not be resolved within the expedited service time frames. The Department is adopting § 273.11(n)(5) as proposed.

One commenter raised a concern about determining when a person ceases to be a fleeing felon or a probation or parole violator (e.g., when the warrant expires, when the individual is arrested, at the next reporting period, or at recertification). That commenter recommended that an individual be disqualified until the individual is arrested. The Act does not define a specific period for which an individual is denied or terminated for being a fleeing felon or a probation or parole violator. It simply provides that the individual is disqualified if the individual is a fleeing felon or a probation or parole violator. It is the Department's view that an individual is only a fleeing felon or a parole or probation violator for SNAP purposes if that individual meets the definition in § 273.11(n). Therefore, assuming the law enforcement agency has not arrested the individual who is therefore ineligible because he or she is a resident of an institution, the individual would be free to apply for SNAP at any time. A new determination of fleeing felon or probation or parole violator would need to be made each time the individual applies. The Department recognizes that this could result in churning (that is, when a SNAP case exits the program and then reenters within four months or less); however, there is no provision in the Act that would establish a time period for disqualification or preclude the individual from reapplying.

Privacy Act, Simplified Reporting, and Transitional Benefits

It should be noted that the Privacy Act provisions and confidentiality provisions found at Section 11(e)(8) of the Act remain intact for individuals subject to the fleeing felon and parole or probation violator provisions of the Act. Therefore, the Department is reminding the reviewers of this rule that the provisions regarding the process of providing information to law enforcement officials only applies to legitimate law enforcement officers. Information about potential fleeing felons or parole or probation violators must not be released to individuals reporting possible violations by recipients or applicants, such as bounty hunters.

Under 7 CFR 273.12(a)(5), State agencies are permitted to place households under a simplified reporting system. Under such a system, the State agency may choose to act on all changes in household circumstances (7 CFR 273.12(a)(5)(vi)(A)), or to act on any change if it would increase the household's benefits and not act on any change that would decrease the household's benefits, unless the household has voluntarily requested that its case be closed, the State agency has information about the household's circumstances considered verified upon receipt, or there has been a change in the household's public assistance grant (7 CFR 273.12(a)(5)(vi)(B)). If an individual has been determined to be a fleeing felon or a probation or parole violator in accordance with 7 CFR 273.11(n), the Act prohibits this individual from participating in SNAP. In order to ensure that the individual is removed from the program in accordance with the requirements of the Act, the Department proposed to add a requirement to 7 CFR 273.12(a)(5)(vi)(B) that the State agency act to remove the individual even though it might result in a decrease in benefits. Two comments were received on this proposal.

One commenter supported removing the individual; the other commenter opposed removing the individual as it complicates simplified reporting and requires additional computer programming. No commenter raised a legal point that would allow an individual to continue to participate due to the restrictions of simplified reporting, and because an individual determined to be a fleeing felon or a probation or parole violator is prohibited by the Act from participating in the program, the individual cannot be allowed to participate regardless of the household's reporting system. Therefore, the Department has adopted the provision as proposed.

Subpart H of Part 273, beginning at § 273.26, which was promulgated in accordance with Section 4115 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Pub. L. 107 – 17, permits households leaving the Temporary Assistance for Needy Families (TANF) program to receive transitional benefits for households. Section 4115 refers to ineligible households rather than ineligible household members. The regulations at 7 CFR 273.26 provide that State agencies may choose to limit transitional benefits to households in which all members had been receiving TANF, or may provide benefits to any household in which at least one member had been receiving TANF. Households in which all members are disqualified for being fleeing felons or probation or parole violators are clearly excluded from receiving transitional benefits. Once approved for transitional benefits, the benefit amount cannot be changed unless the State agency has opted to adjust the benefit in accordance with 7 CFR 273.27. Consequently, the Department proposed that, in order to conform to the intent of section 4115 of the FSRIA concerning ineligible households rather than ineligible household members, the State agency shall not take action to adjust a household's transitional benefit amount

because an individual in that household has been determined to be a fleeing felon or a probation or parole violator, unless the provisions of 7 CFR 273.27 are applicable. The Department did, however, express interest in seeking comments about this decision to continue transitional benefits for the entire household when an individual household member has been determined to be a fleeing felon or probation or parole violator.

The Department received five comments about transitional benefits. Three commenters supported continuing transitional benefits for the entire household when a household member has been determined to be a fleeing felon or probation or parole violator. One commenter misunderstood and thought the Department was proposing to remove the individual, not keep the benefits unchanged. One commenter opposed the preamble explanation, and recommended that the fleeing felon be removed from the household and the benefits reduced. The Department is finalizing the prohibition that a State shall not adjust a household's transitional benefit amount because an individual in that household has been determined to be a fleeing felon or a probation or parole violator, unless the provisions of 7 CFR 273.27 are applicable. The Department continues to believe this decision conforms to the intent of section 4115 of the Farm Security and Rural Investment Act concerning ineligible households rather than ineligible household members.

Miscellaneous

Since publication of the proposed rule, two issues related to the provision disqualifying fleeing felons from participation, but not addressed in the proposed rule, have come to the Department's attention. When the final rule, Personal Responsibility Provisions of the Personal Responsibility Act of 1996 (66 FR 4438), January 17, 2001, was published,

the preamble explained that the proposed paragraph 7 CFR 272.1(c)(1)(vii) essentially tracked the statutory language, including the requirement for the name of the household member being sought to be provided when requesting disclosure of household information. However, the actual language of paragraph 7 CFR 272.1(c)(1)(vii), in both the proposed rule and the final rule, omitted the requirement that the law enforcement officer provide the name of the individual being sought. Section 11(e)(8)(E) of the Act requires that the law enforcement officer furnish the State agency with the name of the household member being sought. This was a technical oversight that needs to be corrected. Therefore, the Department is adding this requirement at 7 CFR 272.1(c)(1)(vii) through this final rulemaking.

Following publication of the proposed rule, State agencies requested policy clarifications from FNS regional offices about how to determine the time period for establishing claims for individuals identified as fleeing felons or as probation or parole violators. Although we did not receive any formal comments about this issue, the Department would like to clarify that, for purposes of SNAP, an individual is not considered a fleeing felon or a probation or parole violator until a determination has been made in accordance with 7 CFR 273.11(n). Therefore, the date of the determination of fleeing felon or probation or parole violator status would be the date from which any claims calculation would be made.

Procedural Matters

Executive Orders 13563 and 12866

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 final rule has been designated 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

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. Individuals identified as fleeing felons or probation or parole violators will be affected by having their participation in the program terminated. The requirement to terminate such individuals' participation already exists. This rule only clarifies what participants will be determined to be fleeing felons or probation or parole violators. It is anticipated that potentially fewer participants will be terminated than under the previous

requirements. 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 final rule does not contain any 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 Programs under 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 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. 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.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with this rule's 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

FNS has reviewed this final rule in accordance with the Department Regulation 4300-4, “Civil Rights Impact Analysis,” to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities.

Section 821 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104 - 193 (PRWORA) amended Section 6 of the Act to prohibit fleeing felons and parole violators from participating in the program. This prohibition was codified in SNAP regulations by the final rule “Food Stamp Program; Personal Responsibility Provisions of the Personal Responsibility and Work opportunity Reconciliation Act of 1996” (66 FR 4438). SNAP regulations at 7 CFR 273.11(n) addresses the prohibition for participation by an individual identified as a fleeing felon or a probation or parole violator. The existing regulations do not define “fleeing” and do not provide procedures for the State agency to use in disqualifying an individual identified as a fleeing felon or a probation or parole violator. Section 6(k) of the Act requires the Secretary of Agriculture to define the terms “fleeing” and “actively seeking” to ensure SNAP State agencies use consistent procedures to disqualify individuals. After a careful review of the rule's intent and provisions, FNS has determined that there is no way to determine whether the rule would have any impact on minorities, women, and persons with disabilities. FNS does not collect information on persons disqualified under the fleeing felon and parole violation provisions. Such a new collection would be difficult information to capture and cause an unnecessary burden on State agencies. Therefore, we are unable to determine whether a disproportionate number of minorities, women, and persons with disabilities are disqualified. This rule provides greater

direction on what constitutes a fleeing felon or parole violator, what constitutes actively seeking, and more uniform procedures among the States. The impact of the rule may be to lower the number of individuals disqualified, but without information on the number currently being disqualified or information on the number of warrants that will be applicable under the procedures, there is no way to determine if there actually will be a reduction. Nor, without such data being available is there a way to determine if the new provisions affect minorities, women, and persons with disabilities more than the general SNAP caseload.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires the Office of Management and Budget (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. Under this final rule State agencies will have to submit an amendment to its State Plan identifying which definition of “fleeing felon” it selects. Reporting burden for annual State Plan of Operations Updates, such as the requirement at 272.2(d)(1) to indicate the definition of fleeing felon, is included in a currently approved information collection (OMB Control Number 0584-0083, expiration date 4/30/2017). The impact of this rule on the existing burden is negligible and therefore no modification to the current requirements is necessary.

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.

Executive Order 13175

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

We are unaware of any current Tribal laws that could be in conflict with the final rule. We did not receive any comments from Tribal organizations. One commenter raised concerns about the difficulties local law enforcement officers may have trying to enforce a warrant on tribal land. That is not a SNAP concern; it is a law enforcement concern. This regulation does not require any change in operations for the Tribal organizations.

List of Subjects

7 CFR Part 272

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

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Supplemental Nutrition Assistance Program, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

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

1. The authority citation for Parts 272 and 273 continue to read as follows:

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

PART 272 – REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. Revise § 272.1(c)(1)(vii) to read as follows:

§272.1 General terms and conditions.

* * * * *

(c) * * *

(1) * * *

(vii) Local, State, or Federal law enforcement officers acting in their official capacity, upon written request by such law enforcement officers that includes the name of the household member being sought, for the purpose of obtaining the address, social security number, and, if available, photograph of the household member, if the member is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or a high misdemeanor in New Jersey), or is violating a condition of probation or parole imposed under a Federal or State law. The State agency shall provide information regarding a household member, upon written request of a law enforcement officer acting in his or her official capacity that includes the name of the

person being sought, if the other household member has information necessary for the apprehension or investigation of the other household member who is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole imposed under Federal or State law. The State agency must accept any document that reasonably establishes the identity of the household member being sought by law enforcement authorities. If a law enforcement officer provides documentation indicating that a household member is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole, the State agency shall follow the procedures in §273.11(n) to determine whether the member's eligibility in SNAP should be terminated. A determination and request for information that does not comply with the terms and procedures in §273.11(n) would not be sufficient to terminate the member's participation. The State agency shall disclose only such information as is necessary to comply with a specific written request of a law enforcement agency authorized by this paragraph.

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3. Amend § 272.2 by adding new paragraph (d)(1)(xvii) to read as follows:

§272.2 Plan of operation.

* * * * *

(d) * * *

(1) * * *

(xvii) A plan indicating the definition of fleeing felon the State agency has adopted, as provided for in § 273.11(n).

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PART 273 – CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. Amend § 273.2 by adding a new sentence at the end of paragraph (f)(5)(i) to read as follows:

§273.2 Office operations and application processing.

* * * * *

(f) * * *

(5) * * *

(i) * * * However, the State agency has primary responsibility for verifying fleeing felon and parole or probation violator status in accordance with § 273.11(n).

* * * * *

5. Amend § 273.11 by adding paragraphs (n)(1) through (5) to read as follows:

§273.11 Action on households with special circumstances.

* * * * *

(n) * * *

(1) Fleeing felon. An individual determined to be a fleeing felon shall be an ineligible household member. To establish an individual as a fleeing felon, a State agency must verify that an individual is a fleeing felon as provided in paragraph (n)(1)(i) of this section, or a law enforcement official acting in his or her official capacity must have provided the State agency with a felony warrant as provided in paragraph (n)(1)(ii) of this section. The State shall specify in its State plan of operation which fleeing felon test it has adopted as required at §272.2(d)(1)(xvii) of this chapter.

(i) Four-part test to establish fleeing felon status. To establish that an individual is a fleeing felon, the State agency must verify that:

(A) There is an outstanding felony warrant for the individual by a Federal, State, or local law enforcement agency, and the underlying cause for the warrant is for committing or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing or a high misdemeanor under the law of New Jersey;

(B) The individual is aware of, or should reasonably have been able to expect that, the felony warrant has already or would have been issued;

(C) The individual has taken some action to avoid being arrested or jailed; and

(D) The Federal, State, or local law enforcement agency is actively seeking the individual as provided in paragraph (n)(3) of this section.

(ii) Alternative test to establish fleeing felon status. Alternatively, a State agency may establish that an individual is a fleeing felon when a Federal, State, or local law enforcement officer acting in his or her official capacity presents an outstanding felony arrest warrant that conforms to one of the following National Crime Information Center Uniform Offense Classification Codes, to the State agency to obtain information on the location of and other information about the individual named in the warrant:

(A) Escape (4901);

(B) Flight to Avoid (prosecution, confinement, etc.) (4902); or

(C) Flight-Escape (4999).

(2) Probation and parole violator. An individual determined a parole or probation violator shall not be considered to be an eligible household member. To be considered a probation or parole violator, an impartial party, as designated by the State agency, must

determine that the individual violated a condition of his or her probation or parole imposed under Federal or State law and that Federal, State, or local law enforcement authorities are actively seeking the individual to enforce the conditions of the probation or parole, as provided in paragraph (n)(3) of this section.

(3) Actively seeking. For the purposes of this paragraph (n), actively seeking is defined as follows:

(i) A Federal, State, or local law enforcement agency informs a State agency that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within 20 days of submitting a request for information about the individual to the State agency;

(ii) A Federal, State, or local law enforcement agency presents a felony arrest warrant as provided in paragraph (n)(1)(ii) of this section; or

(iii) A Federal, State, or local law enforcement agency states that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within 30 days of the date of a request from a State agency about a specific outstanding felony warrant or probation or parole violation.

(4) Response time. The State agency shall give the law enforcement agency 20 days to respond to a request for information about the conditions of a felony warrant or a probation or parole violation, and whether the law enforcement agency intends to actively pursue the individual. If the law enforcement agency does not indicate that it intends to enforce the felony warrant or arrest the individual for the probation or parole violation within 30 days of the date of the State agency's request for information about the warrant, the State agency shall determine that the individual is not a fleeing felon or

a probation or parole violator and document the household's case file accordingly. If the law enforcement agency indicates that it does intend to enforce the felony warrant or arrest the individual for the probation or parole violation within 30 days of the date of the State agency's request for information, the State agency will postpone taking any action on the case until the 30-day period has expired. Once the 30-day period has expired, the State agency shall verify with the law enforcement agency whether it has attempted to execute the felony warrant or arrest the probation or parole violator. If it has, the State agency shall take appropriate action to deny an applicant or terminate a participant who has been determined to be a fleeing felon or a probation or parole violator. If the law enforcement agency has not taken any action within 30 days, the State agency shall not consider the individual a fleeing felon or probation or parole violator, shall document the case file accordingly, and take no further action.

(5) Application processing. The State agency shall continue to process the application while awaiting verification of fleeing felon or probation or parole violator status. If the State agency is required to act on the case without being able to determine fleeing felon or probation or parole violator status 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 fleeing felon or probation or parole violator status.

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6. Amend § 273.12 by redesignating paragraph (a)(5)(vi)(B)(3) as paragraph (a)(5)(vi)(B)(4) and adding a new paragraph (a)(5)(vi)(B)(3) to read as follows:

273.12 Requirements for change reporting households.

(a) * * *

(5) * * *

(vi) * * *

(B) * * *

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

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Dated: September 1, 2015.

Audrey Rowe
Administrator
Food and Nutrition Service

[FR Doc. 2015-22763 Filed: 9/9/2015 08:45 am; Publication Date: 9/10/2015]