Rescission Proposal No. R92-33

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation BUREAU: Federal Railroad Administration Appropriation title and symbol: Local rail freight assistance 69X0714	New budget authority....... $ 11,500,000 (P.L. 102-140) Other budgetary resources.. $ 1,641,000 Total budgetary resources... $ 13,141,000 Amount proposed for rescission..........................$ 9,880,000
OMB identification code: 69-0714-0-1-401 Grant program: [X] Yes [ ] No	Legal authority (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other ________
Type of account or fund: [ ] Annual [ ] Multi-year: ________ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ________

JUSTIFICATION: This appropriation funds the Local Rail Freight Assistance program, which was initiated in 1973 to provide financial service to light density lines. Partial deregulation achieved by the Staggers Rail Act of 1980 has stimulated the industry, and the abandonment of light density rail lines that was prevalent during the industry's financial crisis of the 1970's is no longer a problem. Therefore, there is no need for Federal assistance in preserving light density lines. The rescission proposal is being requested because the program has fulfilled the purpose for which it was created.

ESTIMATED EFFECTS: Only States that have already received letters of commitment would receive grants in FY 1992.

OUTLAY EFFECT: (in thousands of dollars):

1992 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997
10,346	6,394	-3,952	-3,952	-1,976	---	---	---

[FR Doc. 92-7431 Filed 3-31-92; 8:45 am]

BILLING CODE 3110-01-C

federal register

Wednesday
April 1, 1992

Part III

Department of the Interior

Call for Information and Nominations and Notice of Intent to Prepare an Environmental Impact Statement; Notice

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Alaska OCS Region

St. George Basin
Lease Sale 153
Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS
(Responses Due in 45 Days)

On December 17, 1991, the Minerals Management Service (MMS) published a Federal Register Notice requesting comments on new alternatives to the Proposed Comprehensive Outer Continental Shelf (OCS) Natural Gas and Oil Resource Management Program for 1992-1997. One of those new alternatives was to narrow the five lower potential Alaska planning areas (Norton Basin, Navarin Basin, St. Matthew-Hall, Hope Basin, and St. George) being considered in the proposed 5-Year Comprehensive Program (1992-1997) to two planning areas, the St. George Basin and the Hope Basin, for leasing consideration. Sales in these two areas, under this alternative, would be proposed for 1994 and 1997, respectively. The closing date for comments on that Federal Register Notice was January 31, 1992. The comments are being evaluated and the decision on the alternatives will be announced with the Department of the Interior's Proposed Final Comprehensive Program in the Spring of 1992. In the interim, however, in order to plan for a 1994 sale, the pre-sale steps are being initiated at this time for the St. George Planning Area.

To keep all program options open and have enough time to carry out the necessary steps to make it possible to plan for a sale in the St. George Basin in 1994, it was decided to combine the Request for Interest and Comments (RFIC) step and the Call for Information and Nominations (Call) step. An earlier step involving public input, the Information Base Review (IBR) step was completed in February 1992 and, on the basis of that information, the determination was made that there was sufficient information to proceed with the Call for Nominations and Comments for St. George Basin Sale 153. If a different option presented in the 5-year program is selected by the Secretary, then the prelease process for the proposed sale will be adjusted to fit that selected option.

Purpose of Request for Interest and Call for Information and Nomir‑tions

The 's an important part of our planning and consultation proce. .d provides industry and other interested parties an opport. .ity to voice their interest and comments on the proposed lease sale. The oil and gas industry is asked to assist in this process by providing up-to-date information on its interest in leasing and exploring within the St. George Basin Planning Area. Other interested and potentially affected parties are also asked to provide comments about particular geologic, environmental, biological, archaeological, or socioeconomic conditions, potential conflicts, and other information that might bear upon potential leasing and development in the St. George Basin Planning Area.

Information and nominations on oil and gas leasing, exploration, and development and production within the St. George Basin Planning Area are sought from all interested parties. This initial planning and consultation step is part of the Area Evaluation and Decision Process and is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (OCSLAA) (43 U.S.C. 1331 - 1356) (1988)), and regulations at 30 CFR Part 256. This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date in compliance with applicable laws including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) as amended, the OCSLAA, and with established departmental procedures.

Description of Area

The area of this RFIC and Call is located offshore the State of Alaska north of the Aleutian Island chain in the Bering Sea (See page-sized map at the end of this Notice). The RFIC and Call area extends offshore from around 15 miles to approximately 130 miles, in water depths from around 75 meters to 2,000 meters. The area available for nominations and comments consists of approximately 2,149 blocks (about 12 million acres). Respondents may nominate and are asked to comment on any acreage within the entire RFIC and Call area. A large scale map of the St. George Basin Planning Area (hereinafter referred to as the Call map) showing boundaries of the area on a block-by-block basis and a complete list of Official Protraction Diagrams (OPD's) are available from the Records Manager, Alaska OCS Region, Minerals Management Service, 949 E. 36th Avenue, Room 502, Anchorage, Alaska 99508-4302, telephone (907) 271-6621. The OPD's may be purchased from the Records Manager for $2.00 each.

Respondents should note that the State of Alaska has requested a 30-mile buffer in the area around the Pribilof Islands. If the alternative is selected in the next 5-Year Program, those blocks would be deferred to a future 5-Year Program.

Current editions of the listed OPD's are based on the North American Datum of 1927. Prior to the issuance of any Proposed Notice of Sale, new editions of all the listed OPD's would be prepared based on the North American Datum of 1983.

Instructions on RFIC and Call

Respondents are requested to nominate blocks within the Call area that they would like considered for inclusion in proposed OCS Lease Sale 153. Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Respondents are asked to submit a list of whole and partial blocks nominated (by OPD designations) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are deemed to be proprietary information.

Respondents are also requested to rank areas nominated according to priority of interest (e.g., priority 1 (high), 2 (medium), or 3 (low). Areas nominated that do not indicate priorities will be considered priority 3. Respondents are encouraged to be specific in indicating areas or blocks by priority. Blanket priorities on large areas are not useful in the analysis of industry interest. The telephone number and name of a person to contact in the respondent's organization for additional information should be included in the response.

Comments are sought from all interested parties about particular geologic, environmental, biological, archaeological, or social and economic conditions, conflicts, or other information that might bear upon potential leasing and development in the Call area. Comments are also sought on potential conflicts with approved local coastal management plans (CMP's) that may result from the proposed sale and future OCS oil and gas activities. If possible, these comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the large-scale Call map.

Nominations and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled **"Nominations for Proposed St. George Basin Lease Sale 153," or "Comments on the Request for Information and Comments and Call for Information and Nominations for Proposed St. George Basin Lease Sale 153,"** as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service, 949 E. 36th Avenue, Room 110, Anchorage, Alaska 99508-4302.

Use of Information from RFIC and Call

Information submitted in response to this RFIC and Call will be used for several purposes. First, responses will be used to help identify the areas for potential oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. A third purpose for this Call is to assist in the scoping of the Environmental Impact Statement (EIS) and the development of alternatives to the proposed action for analysis. The Notice of Intent to Prepare an EIS is included later in this document. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore oil and gas activities. Fifth, comments may be used to point out potential conflicts between offshore oil and gas activities and the State's CMP.

Existing Information

An extensive environmental, social and economic studies program has been under way in this area since 1975. The emphasis, including continuing studies, has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies may be obtained from the Records Manager, Alaska OCS Region, at the address stated under Description of Area. The reports may also be ordered directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephone at (703) 487-4650.

In addition, a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, at the address stated under Instructions on Call or by telephone at (907) 271-6620.

Summary Reports and Indices and technical and geologic reports are available for review at the MMS Alaska OCS Region (see address under Description of Area). Copies of the Alaska OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070.

Tentative Schedule

Approximate dates for actions and decision and consultation points in the planning process are:

Milestones	Dates
Comments Due on the RFIC/Call	May 1992
Scoping Comments Due	June 1992
Area Identification	August 1992
Draft EIS/Proposed Notice of Sale Published	October 1993
Hearings on Draft EIS Held	November 1993
Governor's Comments Due on Proposed Notice of Sale	January 1994
FEIS Filed with EPA	July 1994
Consistency Determination Signed	July 1994
Final Notice of Sale Published	November 1994
Sale	December 1994

NOTICE OF INTENT TO PREPARE ENVIRONMENTAL IMPACT STATEMENT
(Comments Due in 45 Days)

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended, MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as Sale 153 in the St. George Basin off Alaska in the Bering Sea. Throughout the scoping process, Federal, State, and local governments and other interested parties have the opportunity to aid MMS in determining the significant issues and alternatives to be analyzed in the EIS and the possible need for additional information.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal that may be considered are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Instructions on Call above. Comments should be enclosed in an envelope labeled **"Comments on the Notice of Intent to Prepare an EIS on the proposed St. George Basin Lease Sale 153."** Comments are due no later than 45 days from publication of this Notice.

Scott Sewell

Director, Minerals Management Service

Scott Sewell

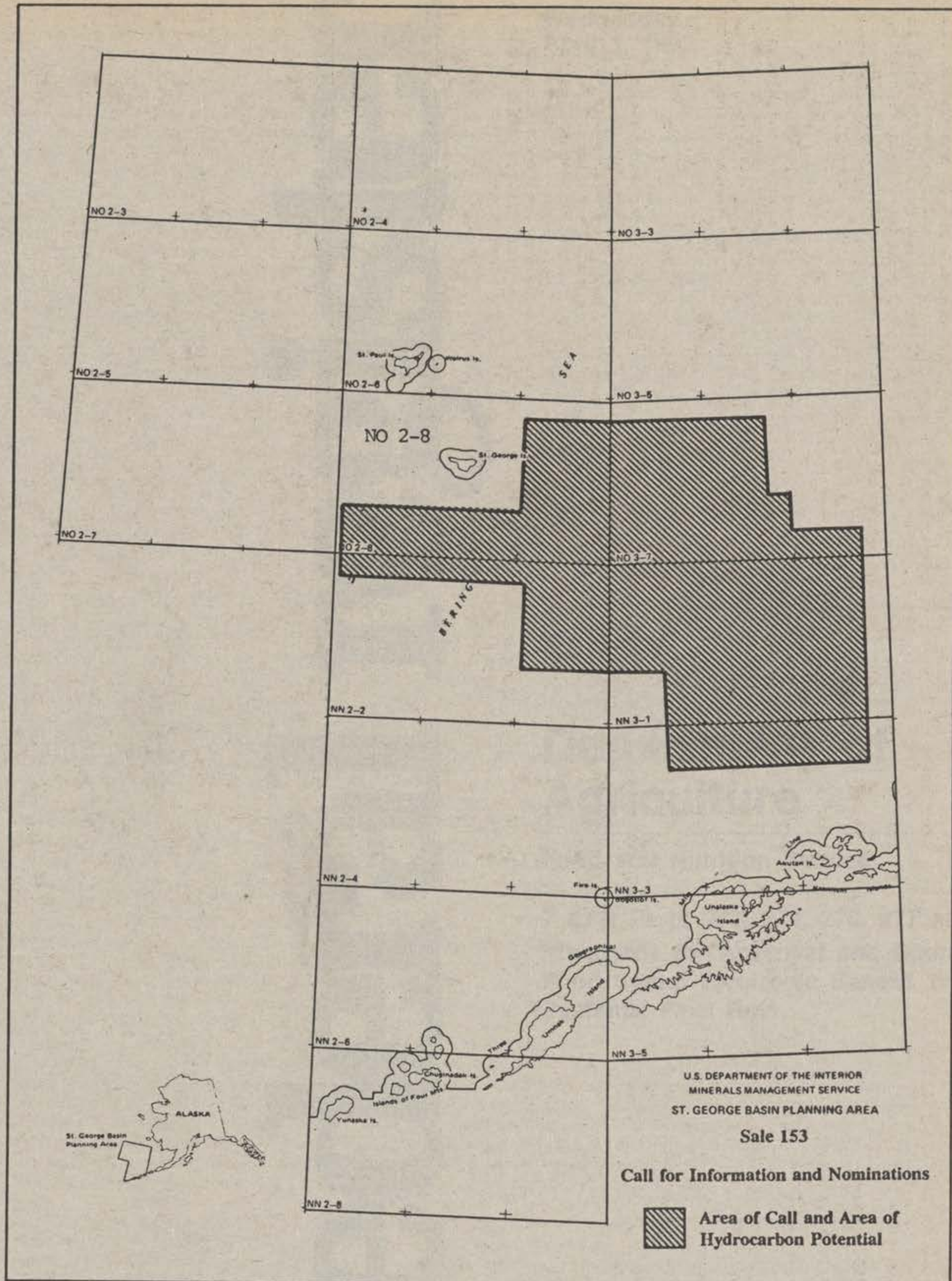
Approved: Richard Roldan

Deputy Assistant Secretary, Land and Minerals Management

Richard Roldan

MAR 1992

Date



[FR Doc. 92-7385 Filed 3-31-92; 8:45 am]

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federal register

Wednesday
April 1, 1992

Part IV

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 272, 274, 276, 277 and 278

Standards for Approval and Operation of Food Stamp Electronic Benefit Transfer Systems; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 274, 276, 277 and 278

[Amendment No. 345]

Food Stamp Program: Standards for Approval and Operation of Food Stamp Electronic Benefit Transfer Systems

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: Section 1729 of the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 amended section 7 of the Food Stamp Act of 1977, as amended, to require the Department to issue regulations establishing Electronic Benefit Transfer (EBT) systems as operational issuance systems to provide food stamp benefits to eligible households. This action implements standards that EBT systems must meet in order to be approved for operation.

DATES: This rule is effective April 1, 1992. This immediate effective date is necessary to meet the statutory requirement that these rules be in effect by April 1, 1992.

The provisions of this rule apply to all on-line Electronic Benefit Transfer systems for the Food Stamp Program, including the currently operating demonstration projects and proposed systems currently under review by the Department. Currently operating demonstration projects will be given a period of time to satisfy the requirements of this regulation, to be negotiated with the Food and Nutrition Service (FNS) and not to exceed two years from the effective date.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey N. Cohen, Supervisor, Demonstration Projects Section, Program Development Division, FNS, USDA, room 718, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum 1512–1

The Department has reviewed this action under Executive Order 12291 and the Secretary of Agriculture's Memorandum No. 1512–1. The Department has classified this final rule as nonmajor. The rule does not meet any of the three criteria identified under the Executive Order. The rule's effect on the economy will be less than $100 million annually and it will have no effect on costs or prices. Competition, employment, investment, productivity, innovation will remain unaffected. There will be no effect on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3015, subpart V (48 FR 29, 115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, 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 implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provision of this rule or the application of its provisions also applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows:

(1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15;

(2) For State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 2676.7 (for rules related to non-quality control (QC) liabilities) or Part 284 (for rules related to QC liabilities);

(3) For program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this final rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies, recipient households, and food retailers will be affected because they participate in the Food Stamp Program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements contained in this regulation will be submitted for approval to the Office of Management and Budget (OMB). Such provisions shall not be effective until OMB approval has been obtained. Other organizations and individuals desiring to submit comments on the information collection requirements should address them to Mr. Cohen at the above address, and to the Office of Information and Regulatory Affairs, OBM, New Executive Office Building (room 3028), Washington, DC 20503, ATTN: Desk Officer for FNS–USDA.

This rulemaking changes information and collection requirements in three areas. First, in order to obtain approval for Federal financial participation, State agencies must seek approval for EBT systems through the Advanced Planning Document (APD) process prescribed under paragraphs 274.12 (c) and (d). Second, information collections associated with the redemption of food coupons by authorized retailers and wholesalers, prescribed under 7 CFR 278.2(g) and 7 CFR 278.3(c), would be reduced as coupon issuance systems are replaced by EBT systems. Finally, ongoing information collections are utilized to report a wide range of program data and include information from EBT systems. The three areas are described in more detail below.

In gathering information for its federal budget request, the Department estimated that a total of 26 out of 53 State agencies would request approval for EBT systems during the next three years. This included the nine State agencies that have already submitted documentation to obtain approval to develop EBT demonstration projects. Consequently, the Department estimates that 17 State agencies will submit new APDs for EBT systems. This will affect an existing reporting burden under OMB Control No. 584–0083. The Department will be submitting a revised reporting burden package for OMB approval to reflect this new reporting burden.

The 53 State agencies are required annually to provide budget estimates for each quarter for the Federal fiscal year on Form FNS–366A for major program cost areas. In addition, Form SF–269 is completed by each State agency in order to obtain reimbursement for allowable program administrative costs each quarter. FNS has revised these forms to accommodate reporting needs for alternative issuance systems. The revisions to FNS-366A and SF-269 have been approved under OMB Control Nos. 584-0083 and 0505-0008.

As projects are implemented the annual reporting burden for authorized retailers to complete Redemption Certificates (OMB Control No. 0584-0085) will be reduced. Because the burden is minimal on a national basis at this time and the Department will be updating the previously approved information collection burden prior to its expiration date in August 1992, the estimated reduction in burden collection pertaining to EBT systems will be included with the Department's forthcoming revision.

The reporting requirements of pilot operations (§ 274.12(c)) and provisions requiring information to be provided to FNS Compliance Offices quarterly (§ 274.12) are expected to be minimal. Other information collections are either accommodated through existing report forms or are not applicable to EBT system (i.e., FNS-250, Food Coupon Inventory Report). Consequently, no burden revisions will be necessary.

Public Participation and Effective Date

The Department is publishing this action effective on the publication date in the **Federal Register** without permitting 30 days to pass prior to the effective date. This immediate effective date is necessary to meet the statutory requirements of the Leland Act (title XVII, Pub. L. 101-624, enacted November 28, 1990) that these rules be effective April 1, 1992. Thus, good cause exists for publication less than 30 days prior to the effective date of this rule pursuant to 5 U.S.C. 553(d).

Background

Proposed regulations were published in the **Federal Register** of December 13, 1991 at 56 FR 65114, Part II. Comments on the proposal were solicited through February 11, 1992. This final action takes the comments received into account. Readers are referred to the proposed regulation for a more complete understanding of this final action.

The Department's fiscal year 1992 legislative proposals for the Food Stamp Program included allowing on-line EBT as an operational alternative as part of a package of items aimed at improving the integrity and operational efficiency of the Program. On November 28, 1990, Congress re-authorized the Food Stamp Program by passing the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 (Leland Act) (title XVII, Pub. L. 101-624). The Leland Act amended section 7 of the Food Stamp Act of 1977, as amended (7 U.S.C. 2016(i)) (the Act), to require USDA to establish standards for the approval of State agency on-line EBT systems for issuing Food Stamp Program benefits. The standards are required in the following areas:

—The cost effectiveness of the EBT system relative to the operational cost of issuance systems utilized prior to the implementation of the EBT system;
—The required level of household protection regarding privacy, ease of use, and access to and service in retail food stores;
—The terms and conditions of participation by retail food stores, financial institutions, and other appropriate parties;
—System security;
—System transaction interchange, reliability, and processing speeds;
—Financial accountability;
—The required testing of system operations prior to implementation; and
—The analysis of the results of system implementation in a limited project area prior to expansion.

While the Leland Act did not authorize the utilization of an off-line EBT system, i.e., a system which utilizes a self-contained benefit access device such as a microprocessor card, it neither prohibited off-line EBT systems nor precluded the use of components with off-line characteristics such as intelligent POS devices. Off-line EBT systems may be approved as part of demonstration projects conducted under the waiver authority of section 17 of the Act (7 U.S.C. 2026). The Department is currently testing an off-line EBT system in a demonstration project in Dayton, Ohio for the Food Stamp Program. The demonstration project began operations in March 1992 and will run for nine months. Results from the demonstration project should be available within six months after the operational phase is completed. There is also an off-line project currently operating in Casper, Wyoming for the Special Supplemental Food Program for Women, Infants and Children (WIC) program.

Congress expressed specific concern with the impact of EBT systems on retailers and food stamp program households as well as the importance of using existing commerical electronic funds tranfer (EFT) systems (piggy-backing) to lower State costs (H.R. Rep. No. 916, 101st. Cong., 2d Sess. 1093-94(1990)). In addressing retailer participation, the legislation requires that all authorized food retailers be afforded the opportunity to participate in any EBT system for the Food Stamp Program. Regarding household participation, the EBT system must preserve existing services in such a way that households are not negatively affected by the system. The Department would emphasize that any EBT system must include stores serving minority language populations. Also, a sufficient number of stores must be equipped with Point-of-Sale (POS) terminals such that eligible households do not suffer a significant reduction in their choice of retail food stores nor incur a significant increase in the costs for food or transportation to participating food retail stores.

Since 1984, USDA has explored EBT systems through several demonstration projects. In the initial Reading, Pennsylvania demonstration project, the Department evaluated the EBT system compared to the coupon-based issuance and redemption system. The evaluation measured the differences between the two systems in terms of administrative cost, vulnerability to benefit loss and abuse, and impact on participating food retailers, households, and financial institutions. The demonstration showed that EBT had a positive impact on each of the measured areas except cost. While the EPT costs in the demonstration were high, the evaluation indicated that there was a great deal of potential for lowering them. Subsequent demonstration projects have aimed to determined whether EBT systems could be implemented and operated at the same cost as paper coupon-based issuance systems. In doing so, USDA has sought to conduct demonstration projects that enable the examination of issues such as the level of terminal deployment necessary and the integration of EBT systems with other public assistance programs as well as commerical POS systems. In developing this rule, the Department has drawn on its experience with the demonstration projects in Reading, Pennsylvania, Albuquerque, New Mexico, Baltimore, Maryland and Ramsey County, Minnesota. A general notice describing the procedures followed by these projects was published on May 28, 1991, in the **Federal Register** (56 FR 24,048).

Ninety-seven comment letters were received in response to the proposed rule. Comments were received from 29 State agencies representing 23 States, 8 from County or local agencies, 1 from another Federal Government agency, 14 from Public Interest Groups, 16 from Food retailers and/or their associations, 2 from members of the general public, 8 from financial institutions, 5 from intermediate networks or switches, and 14 from other companies in the electronics funds transfer industry. Ten of the 97 comment letters were received late (i.e., received after the February 11, 1992 closing date for comments). Each of these 10 letters were read by the Department; however, none of them raised comments resulting in changes to the final regulations that were not already raised by other commenters.

In general, the commenters were supportive of the action being taken by the Department to move forward with EBT, though there were many specific concerns expressed regarding the Department's approach. The major comment themes and concerns deemed by the Department to be significant are discussed below. Comments which have been judged to be not significant, not relevant to the final rulemaking, or not related to the rulemaking process are not addressed.

As discussed in the proposed rule, it is the Department's intention that ultimately EBT will be a comprehensive nationwide system with similar benefit portability to that which exists now with the coupon system. The current food stamp coupon system is a national system under which households may utilize their benefits in any State in the country. There is one redemption process which is followed by all retailers and financial institutions in the country. However, in the short term, the Department recognizes that government EBT and its commercial counterpart, direct debit at the point-of-sale, are still young industries with much development yet to take place. Consequently, this final rulemaking is viewed by the Department as the first Food Stamp EBT rule with revisions likely being needed as the program evolves over the coming years. This final rule is designed to give State agencies the opportunity to start the EBT process. However, as addressed in the proposed rule, State agencies must be aware that they may need to adapt their EBT systems to the still evolving environment in the coming years.

In the proposed rule, the Department expressed uncertainty as to whether any one organizational EBT model will be or can be the basis for a national EBT system of the future. That remains the case and, consequently, the Department has tried to keep this final rulemaking sufficiently flexible to accommodate different approaches.

In this rule, the Department has established technical and performance standards, some of which are specific to operations of Food Stamp EBT systems. However, as stated in the proposed rule, the Department continues to expect industry, not the Federal government, to be the driving force in formalizing technological standards. Several commenters agreed with this position though some offered modifications, some of which are addressed in this preamble. Consequently, as with the proposed rule, the Department is continuing to allow State agencies to utilize, with FNS approval, those standards prevalent for the POS industry in their region. In approving requests for exceptions to the regulated standards, State agencies will be required to justify the need to adopt standards that may lessen household and/or retailer accessibility and service and document the existence of regional standards that are suggested as alternatives.

To reiterate the caution to State agencies and their agents presented in the preamble to the proposed rule, the Department will be following the development of industry standards closely and may choose in the future to promulgate some of those technological standards as requirements for Food Stamp EBT systems. Consequently, the Department expects the State agencies to pay close attention to efforts by the banking industry, the regional networks and food retailers to control their communications through a series of formalized standards, and have their EBT systems designed to meet currently prevailing standards such as the standards established through the American National Standards Institute (ANSI) or the International Organization for Standardization (ISO) at the outset.

As noted in the proposed rule, the Department also expects the Federal settlement process for EBT systems to evolve over the next few years. The Department of Agriculture and the Treasury Department recognize that the current system needs improvement, from both the financial industry's and Federal government's perspective. Consequently, these Departments are working closely with other Federal agencies to develop a system better able to handle the immediate provision of Federal funds for EBT benefits. So, as indicated in the proposed rule, this final rule sets in place the Letter-of-Credit system currently utilized by the demonstration projects. Future revisions to this system are anticipated and would be promulgated in a future rulemaking. To that end, the Department is reserving 7 CFR 278.10 to accommodate any such future rulemaking. This is addressed further in the preamble below.

Voluntary EBT

The proposed rule was silent on the subject of State agencies implementing voluntary EBT systems, i.e., those systems under which households would have the option of receiving their benefits through the EBT system or continue receiving their benefits via coupons. Eight commenters suggested that the Department authorize only voluntary systems and one commenter asked that the Department expressly permit voluntary systems in the final rules. At least one commenter assumed voluntary systems were permitted. Some commenters cited statements by Senator Leahy (Congressional Record, October 25, 1990, S. 16672) that encouraged the Department and States to develop voluntary EBT systems, noting that households finding EBT difficult would be able to convert back to coupons. Two commenters suggested only mandatory systems be permitted; i.e., those EBT programs in which only EBT is available and all food stamp households participate by necessity. Three commenters asked for the Department to clarify its intent in this area.

The Department's intent with the proposed rules was that these EBT regulations would permit only mandatory EBT programs. The Department only has experience with mandatory systems as all food stamp demonstration projects to date have been mandatory systems. In addition, the Department is concerned that: (1) Dual issuance systems would be more costly in terms of administrative costs; (2) voluntary systems would be of limited value in terms of the effectiveness of EBT in limiting food stamp fraud because persons inclined to misuse benefits would opt for paper coupons; and, (3) voluntary systems do not further the Department's long-term goal of delivering all benefits electronically. Beyond this, the Department's experience is that recipients overwhelmingly preferred EBT to the coupon systems that were replaced and that even those populations that the Department expected might have problems with EBT (e.g., elderly, disabled) reported preference for EBT. Consequently, these final rules establish the option for State agencies to implement mandatory systems only. FNS has approved one State—Iowa—to proceed with a voluntary EBT demonstration project and looks forward to receiving evaluation results from that project. The Department believes this willingness to look at and experiment with voluntary systems is consistent with the Conference Report comments.

Some commenters specifically raised concern regarding the ability of EBT to accommodate recipients with special needs. In terms of recipient protections under EBT, implementation of the requirements of the Americans with Disabilities Act of 1990 is an existing responsibility of all retailers, financial institutions, and other EBT providers. Consequently enhancements for the benefit of disabled recipients will take place outside of activities associated with this rulemaking. In addition, authorized representatives can continue to be utilized in EBT programs.

Utilization of Regional Networks

In the preamble, of the proposed rule, the Department outlined one EBT model of interest which requires use of regional electronic funds transfer networks as an integral part of the EBT system design. The Department requested comments regarding this approach and received many in response. As indicated in the proposed rule preamble, the Department is not yet prepared to regulate such a requirement at this time since the utilization of regional networks for all transactions has not been tested in an EBT demonstration. However, the Department appreciates the comments received on this subject, will be analyzing them closely and using them as a basis for further examination of this possible approach, and plans to address this model again in future regulatory efforts.

Waivers

The decisions reflected in this rulemaking are largely influenced by the Department's experience with EBT demonstration projects, research conducted prior to publication of the proposed rule, and comments received in response to the proposed rule. The Department recognizes that there are alternative approaches to EBT system design and operations that are not permitted by this rulemaking. The Department may be willing to experiment with some of these alternatives by granting State agencies waivers to the provisions of this rule. However, such waivers will only be granted on a need-to-know basis. That is, if the Department believes it already has sufficient information on a particular alternative from other sources or believes it will be getting sufficient information from an already-approved demonstration, such waivers will not be granted. Because such waivers would be granted in order to gain additional information, State agencies should expect that evaluation requirements will accompany any waiver approval.

Scope of Rule

In response to comments on various portions of the proposed rule, the Department is hereby clarifying that these rules apply to only the Food Stamp Program and are not to be interpreted as setting policy for other Federal agencies and/or programs.

How To Get EBT System Approval—Section 274.12 (b), (c), and (d)

The Department proposed to adopt, with some modifications, the two-phase Advanced Planning Document (APD) process currently prescribed by § 277.18 of this chapter for approving EBT systems. Under the proposed rulemaking, a State agency requests Federal financial participation for the EBT planning process by submitting a Planning APD (PAPD). An EBT PAPD must be submitted for all EBT systems, regardless of the estimated cost of these systems, as the proposed rule eliminated all thresholds which establish whether Federal prior approval is required. The dollar thresholds applicable to any EBT Requests for Proposals (RFPs), contracts, and contract amendments that under 7 CFR 277.18(c) required prior approval were eliminated.

One commenter agreed with the proposed provision while two commenters opposed the proposal. The Department is retaining this requirement primarily because of the extensive realignment of existing relationships necessary to implement an EBT system.

Several commenters addressed the proposed elimination of the requirement for an estimate of total project costs. The Department has made use of total project estimates in APDs for automated certification and eligibility systems to enable FNS to manage large budget needs and the internal review process. For EBT systems, the Department believes there is less need for total project estimates at this juncture. First, the cap on costs already controls the total cost of EBT for the Federal government. Second, EBT costs are uncertain before a cost/benefit analysis is conducted by the State agency. The Department expects that the EBT system costs will become more apparent during the planning stages, and will be subject to Department approval when the cost-benefit analysis and Implementation APD budget are submitted. Therefore, the estimate of total automated data processing (ADP) project cost is not included as part of the Planning APD in this rulemaking.

Single Architecture Per State—Section 274.12(b)

Two commenters supported the requirement for a single architecture within any one State. One commenter objected to the requirement as limiting State agencies' options, though asked for clarification on exactly what was being required. With this requirement, the Department wants to ensure that if different processors operate in a State, the exchange of data between them must be uniform. For example, an agreed upon, uniform record format for the exchange of data—e.g., from recipient to retailer, retailer to processor, processor to processor, processor to concentrator bank—must be utilized. The Department believes this will lead to uniform processing and recordkeeping, and exchange of information at minimum costs, with minimum technical demand and with minimum security risk. This single architecture would have the desired effect of ensuring that any EBT card holder in the State be able to use his or her card in any other EBT area within the State. Though this rule does not permit off-line EBT systems as an operational alternative for State agencies, this single message format requirement does not preclude having both technologies operating within one architecture. This one record format will also permit retailers within the State that wish to utilize their own equipment or processor to have only one set of interchange standards with which to interface.

WIC and Other Program Participation—Section 274.12(b)(4)

The proposed rule required that the State WIC agency be consulted during the initial planning stages and as the Food Stamp EBT system is developed. The proposed requirement did not extend to the need to obtain concurrence on each document of the APD process unless a joint WIC and Food Stamp system is being considered. Most commenters were supportive of this requirement with several requesting clarification regarding the timing and any requirements for how this can be accomplished. The Department believes this requirement is appropriate during the Planning APD process to ensure that the State WIC agency has an opportunity to express its interest. Regarding the requirements for a joint project, this rule only establishes the Food Stamp Program requirements. The WIC Program is utilizing existing policy and procedures.

Several other comments recommended the streamlining of approval for EBT systems, with one commenter suggesting approval through a single Federal agency. The Department has for some time actively consulted and coordinated with the Department of Health and Human Services (DHHS) regarding automated data processing system approvals. We will continue to do so for those integrated EBT systems requested by State agencies and as other State and/or Federal programs decide to participate in EBT systems. Therefore, no single review agency is established through this rulemaking.

EBT Planning APD—Section 274.12(c)(1)

The Department proposed the addition of two new requirements to those prescribed at 7 CFR 277.18(d). These new requirements, specifically for EBT systems, are that the State agency commit to provide as part of project planning activities the following: (1) A description of the anticipated pilot and expanded project sites; and (2) a description of major contacts initially made to assess support for the project, as well as submission of written commitments from food retailers and financial institutions in the pilot area, and evidence of contacts with recipient organizations and others in the pilot project area.

Several commenters requested clarification on whether the Department expects written commitments from retailers at the time a State agency submits the PAPD. The Department is only requiring a brief summary of contacts already made with food retailers or their associations and other organizations. But, the written retailer commitments shall be submitted during the planning phase of the pilot project and once the State agency seeks approval to expand the pilot project.

The majority of comments received on this subject supported the requirements as proposed. However, several commenters also indicated support for additional requirements such as requiring State agencies to submit commitments from recipient advocacy groups, financial institutions, regional networks and other potential participants. In a similar approach, some commenters supported a requirement for the State agency to create advisory or planning bodies to work on development of the APD which include the representatives of the client community. While the Department believes that getting public input on EBT plans is necessary and maintains this requirement, we are not specifying a particular method to do so.

The Department strongly encourages State agencies to begin working with retailers, food stamp households or groups representing households and others from the outset of planning. It is imperative that State agencies establish good working relationships with these groups early in the process in order to successfully plan and design the eventual EBT system. Because food retailer commitment to the project is critical and because State agencies do not normally deal with retailers, the proposed rule required that evidence of early contacts with retailer groups in the pilot and fully operational areas be obtained and written commitments submitted once planning has begun.

The Department indicated in the preamble to the proposed rule that planning activities include, where appropriate, the completion of a cost-benefit analysis, a functional requirements document, and general system design, and the preparation of the Implementation APD. Within the functional requirements document, cost-benefit analysis, and general system design, the State agency needs to show how the provisions of this rule are met. The planning phase for the EBT system culminates in the preparation of an RFP and approval to acquire EBT services if the State agency anticipates contracting with commercial firms to operate the system.

Two commenters suggested that the PAPD process include an analysis of POS/ATM network infrastructure, a fees summary and forecast by case-month pilot and Statewide EBT operations. The proposed rule requirements for the site descriptions included minimum descriptions of the pilot and expanded sites, commercial POS deployment and the number of lanes which may need to be equipped. The Department expects that the State would address any potential fee structures that are currently charged in regional networks in the cost-benefit analysis and POS infrastructure descriptions as appropriate if the State agency chose to integrate the Food Stamp EBT system with available network services. The Department is clarifying that full Statewide implementation, while consistent with the goal of a nationwide EBT system for the Food Stamp Program, may not prove to be feasible in every instance and is therefore an option of the State agency. One commenter also encouraged the Department to provide timely retail redemption data to facilitate planning by the State agency. The Department will do so with the provision that a State agency must maintain the confidentiality of the individual retailer information.

Four commenters stated that the Department should establish time frames for responding to the various documents required in the APD process. The commenters suggested that these would be helpful in the planning process. The Department fully intends to respond to State agencies regarding EBT documents requiring Federal approval in a timely and comprehensive manner. However, we do not believe regulatory time frames adequately serve to improve the planning if additional time to review documentation and later make corrections is denied to either Federal or State agencies.

Two commenters raised concerns regarding the proposed rule discussion that indicated the Department did not require a feasibility study and an alternatives analysis for EBT systems. One commenter supported the elimination of a feasibility study and alternatives analysis. The other commenter opposed its elimination requesting clarification on whether the Department expected State agencies to complete a feasibility study without requiring the supporting documentation. Another concern was that the elimination of the feasibility study and alternatives analysis was mentioned in the preamble but not addressed in the proposed rule requirements. For two reasons, the Department does not believe a feasibility study is necessary. First, the Department has already determined that EBT is feasible. Second, the costs are controlled by the issuance cap. However, the Department will be expecting State agencies to show that EBT is viable for their State as they work through the planning process and show that there are solutions to the potential barriers that may exist for EBT (e.g., phone line infrastructure). Regarding the alternatives analysis, the Department believes the statutory requirement that EBT be made an operational alternative for State agencies argues against requiring that State agencies report on alternatives to EBT. However, should State agencies wish to conduct either a feasibility study or an alternatives analysis as part of its planning process, the Department would be willing to provide funding for such efforts. The Department believes the current regulatory requirements at 7 CFR 277.18 provide sufficient flexibility to allow this approach and has, therefore, not made any regulatory changes.

Pilot Project—Section 274.12(c)

Many commenters recognized the need for pilot project operations, both due to the statutory requirement and the practicality of first implementing systems on a small scale. However, eight commenters suggested that the minimum pilot project length be reduced from six months. These commenters generally believed less time was necessary to determine that the pilot was successful, and the more quickly pilot projects could expand, the more quickly State agencies and their vendors could achieve efficiencies resulting from economies of scale.

In response to these comments, the Department is amending the regulations to require a minimum pilot project duration of three months of full caseload implementation for the pilot. The length of the pilot will need to be agreed upon by the State agency and FNS. Some of the factors that will need to be taken into consideration will be the rate of phase-in of the pilot caseload (i.e., shakedown period), the track record, if any, of the system being implemented, and the size of the pilot. EBT pilots are important to the agency for more than just providing a dry run for the computer system and a test of cost neutrality. It is also an opportunity for State agencies to determine that all parties—e.g., recipients, and retailers—are comfortable with the system, that the State agency's approach to training is effective, and that any interfaces with third-party processors are effective. In the food stamp program demonstration projects to date, just implementing the full caseload has ranged from three months to more than a year and a half.

Pilot Project Reporting

The proposed rule identified a series of items to be reported quarterly to FNS during the pilot phase. Six commenters objected to the amount of reporting required of the State. Some of these commenters suggested that the cost of providing such reports be excluded from the cost neutrality equation. In response to these comments, the Department has reviewed the reporting requirements and has concluded that these reports are necessary to monitor pilot project activity in order to assess compliance with these regulations. Beyond this, the Department believes most of these reports are essential for the State agency to successfully administer an EBT system and, therefore, would be developed by the State agency for its own purposes. Therefore, the requirement for these reports stands as proposed. In terms of relief from the cost neutrality standard, the Department views all costs associated with EBT as part of the equation, including the costs associated with tasks which are new to the State agency. When a State agency chooses to pursue EBT, it also chooses to undertake the package of requirements that accompany EBT.

The Department is also making a technical change to the regulation to clarify that the program reporting requirements at § 274.4 must continue to be complied with both during the pilot project and after the EBT system is expanded. As a result, the proposed rule language under pilot reporting has been moved to § 274.12(j) Reconciliation and Management Reporting.

EBT Implementation APD—Section 274.12(c)(2)

In addition to the Implementation APD requirements at 7 CFR 277.18, the Department proposed to require that State agencies commit to submitting for approval additional deliverables such as the system design, Functional Demonstration Plan, Acceptance Test Plan, prototype Food Retailer Agreement, Pilot Project Implementation Plan and an APD Update for expanding the pilot project for FNS review and approval prior to installation and issuance of food stamp benefits through the EBT system. A mix of comments was received addressing the extensive review process that was proposed. One commenter supported the proposed provision stating that the Department plays a vital role in the many aspects of EBT system development. Two commenters offered general recommendations that the approval process be automated or not be cumbersome and time consuming. Four commenters objected to the additional reviews with one specifically citing the costly front-end investment by local or State governments and Federal agencies in such an approval process. Another of the commenters complained that the additional requirements were intrusive and beyond normal Federal approval authority.

The Department recognizes the level of resources that will be required by the approval process. However, because the access of needy people to food will be linked to EBT systems, the Department believes that it is obligated to ensure that all EBT systems are fully reviewed and tested. As noted in the proposed rule, the Department expects that, as EBT systems evolve and the reliability of specific systems is demonstrated, the need to require review of some documentation will decrease. The Department plans to make available model EBT documents to assist State and local agencies which several of the commenters supported as a means of streamlining the approval process while enabling State or local agencies to customize their documentation.

Several commenters addressed the prototype retailer agreement required by the proposed rule. Two commenters requested clarification regarding whether all retailer agreements need to be submitted or if a sample agreement would suffice. The Department intended for a prototype retailer agreement outlining retailer responsibilities and the terms of participation in the Food Stamp EBT system to be submitted for review without requiring each retailer agreement to be submitted.

Commenters also addressed the proposed requirements for acceptance tests. two commenters indicated concern that independent participation by the Department or its representatives in acceptance testing may unnecessarily delay project implementation. They suggested that Department acceptance testing be conducted within reasonable timeframes or that, if delays resulted, the State agency not be held responsible for the cost of any schedule delays. One of these commenters suggested that a sound acceptance test plan should be sufficient for Departmental participation in acceptance testing. The Department is concerned about the satisfactory implementation of the plan. The demonstrations conducted to date have all accommodated Departmental participation within the scheduled dates of the acceptance testing where possible. When delays have resulted, they were due to the need to correct deficiencies that needed to be overcome prior to full acceptance of the EBT system and not due to Departmental participation.

One commenter suggested that acceptance testing be limited to functional testing, error condition handling, security testing and stress and throughput performance testing. The Department is not persuaded by this argument and remains convinced that testing components such as system capacity, recovery procedures, regression testing and administrative reporting are needed to comprehensively assess the system performance, and therefore, retains these as proposed in the final rule.

One commenter also requested clarification regarding the requirement to provide a description of any transition period where the EBT system and a coupon system will operate concurrently. The commenter asked if this requirement addressed instances where a State agency initiates a voluntary system with the intent to move to a mandatory system or to cover a geographical phase-in to Statewide operation. The Department has previously indicated that these rules are applciable to mandatory systems only. A transition period refers to the necessary steps the State agency must take to implement an EBT system and reallocate personnel and other resources to operate the system. Due to the concern raised, the Department has revised the requirements for the pilot and expansion implementation plans.

Cost Effectiveness—Section 274.12(c)(3) and (c)(5) and Section 274.12(k)

In accordance with section 7(i)(2)(A) of the Act (7 U.S.C. 2016(i)(2)(A)), the Department proposed a requirement that EBT systems be cost neutral to the Federal government. Specifically, the Act requires that the operational costs of EBT systems as well as the amortized cost of capital expenditures and other reasonable start-up costs not exceed the costs of the coupon issuance system that has been replaced. As stated in the preamble to the proposed rulemaking, the Department's interpretation of this statutory requirement is that the Federal costs of EBT systems, including the Federal share of capital expenditures and start-up costs, must be equal to or less than the Federal costs of the current coupon issuance systems utilized by a State agency. In the proposed rule, the Department defined the annual post-EBT implementation issuance cap as the current case-month cost of coupon system being replaced multiplied by the number of case-months for the year multiplied again by an inflation factor, as appropriate. This cap, as proposed, was to be applied once an EBT system begins to issue food stamp benefits. Case-month cost is the average administrative costs to issue food stamp program benefits to a case for one month. Once EBT issuances begin in the pilot project, the proposed rule required that the issuance cap cover all issuance costs, both coupon and EBT, within the State. A yearly adjustment was permitted utilizing the change in the Gross National Product (GNP) implicit price deflator to account for the effects of inflation.

The Statewide issuance cap, as proposed, was to be derived from State and Federal coupon issuance costs. State costs were to include direct allowable costs for personnel, fringe benefits, travel, equipment, supplies, contracts, construction and other direct costs associated with coupon issuance. Federal costs were to include coupon printing, shipping, processing, and reconciliation costs with an adjustment for the effects of float on the Federal funding of benefits. In addition, the proposed rule permitted mail issuance losses up to the tolerance limit absorbed by FNS and the fifty percent Federal share of State administrative costs for issuance activities to be included. Because cost neutrality is interpreted to be Federal cost neutrality, a State agency may continue to operate an EBT system that costs more than the issuance cap provided it is willing to absorb those costs above the issuance cap.

Nearly half of the commenters commented on the proposed cost neutrality provisions. The specific components of the issuance cap, to be included or excluded, received attention from many commenters. Many suggested that the issuance cap include or consider the State costs of duplicate issuances, food retailer savings from reductions in coupon handling, financial institution savings, broader consumer food price savings resulting from implementation of EBT and EFT systems, food stamp household savings obtained from EBT system conveniences and gains by the Department and State agencies from greater accountability and monitoring capability and federal cost reductions in coupon printing, shipping, monitoring, and auditing. Other comments supported the inclusion of the potential intangible benefits that may be obtained from EBT such as the more secure access to benefits for households, the removal of coupons as an alternative currency and the reduction in program abuses and losses due to trafficking in coupons and misdirecting benefits.

Many commenters also believed that some costs related to the operation of an EBT system should be excluded from the issuance cap. These suggestions included excluding the costs of maintaining coupon inventories necessary for conversion from the EBT system back to coupon benefits and requirements associated with pilot and exception reporting, retailer management, and training that are not currently required in a coupon issuance system. One commenter supported the proposed rule's exclusion of PAPD costs from the issuance cap. Two commenters raised concern with the requirement for an EBT expert to assess EBT losses as part of the cost analysis suggesting that the Department should provide any experts with knowledge of POS systems and possible losses.

While many different elements could be included or excluded from the issuance cap and the computation of cost neutrality, the Department feels that the proposed issuance cap comprises the complete direct administrative costs of the coupon issuance system that would be replaced by an EBT system and is in keeping with Congress' intent on the cost neutrality provision. Federal functions for printing, storing, shipping, and redemption of coupons are factored into the proposed issuance cap. This is done because they are legitimate, accountable costs to the Federal government that are attributable to the coupon system. As for the inclusion of intangible benefits, many of the suggested items escape meaningful measurement or involve a significant degree of estimation and, furthermore, cannot be associated with any actual cost to the Federal government. Current costs to State agencies to replace mail losses are permitted up to the regulatory tolerances prescribed at 7 CFR 276.2(b)(4). The Department is not persuaded that issuance replacement costs should be shifted to the issuance cap when they are not reimbursed currently. However, a cost avoidance in States where issuance replacements consistently exceed the tolerances will be realized.

In reviewing the cost analysis requirements, the Department believes that the need to obtain an expert to estimate EBT system benefit losses is not necessary. Consequently, the requirement has been dropped from the final rulemaking. The requirement to submit the cost analysis as part of any request to expand the pilot project has been changed to require the cost analysis after completion of the minimum three month pilot project period of operation with the full caseload. In clarifying this, the Department believes that the cost analysis will serve the informational needs of other State agencies and the Department even if the State agency determines that expansion is not warranted.

The Department disagrees with the suggestion that costs associated with EBT functions that are not required under the coupon issuance system be excluded from the cost neutrality equation. Functions in the EBT system do not necessarily correspond to each of the functions now required of a coupon issuance system and many of the coupon system functions no longer need to take place. The pilot reporting requirements are necessary for the State agency to adequately manage the EBT system on a daily basis and may be even more important once the system expands. It is the Department's view that these reports should be automated during system design and development as much as possible, which should result in minimum time and expense compiling the information from multiple sources once the system is underway. Reporting system activities during the pilot project will enable the Department to quickly assess the system peformance and may facilitate deliberations by the Department when a request to expand the pilot project is considered. Although some of these functions are not performed by the State agency at this time, the Department believes they are crucial to moving forward with EBT and an integral part of the cost of EBT.

The Department agrees with one commenter that guidelines on computing the issuance cap will enable a consistent determination of cost neutrality. We do not believe that identical criteria for each State agency, as one commenter suggested, are possible due to the wide range of State administrative structures. The proposed rule permitted State agencies to include direct allowable costs for personnel, fringe benefits, travel, equipment, supplies, contracts, construction and other direct costs associated with coupon issuance. It should be clarified that in the process of establishing the issuance cap, it will be necessary for FNS to engage in discussions with State agencies regarding the various cost components in the paper coupon system that may or may not affect cost neutrality in an EBT system.

The Department had proposed that the indirect costs of the food coupon and EBT systems not be included in the assessment of cost neutrality. Several comments requested clarification of the types of indirect costs excluded and the treatment of indirect costs for cost neutrality and cost analyses purposes. The Department continues to believe that indirect costs should not be included for purposes of cost neutrality assessment. The Department is clarifying in the regulation that indirect costs are excluded from both the costs included in the coupon issuance cap and the operational costs of the EBT and food coupon issuance systems. The Department has clarified that for purposes of cost neutrality, indirect costs are those State-level and State agency costs which are included in the State agency's indirect cost proposal and approved for cost charging through indirect cost rates. Costs which are common to more than one program but are charged as direct costs through a public assistance cost allocation plan, rather than through an indirect cost rate, should be included for purposes of EBT cost neutrality to the extent that such costs can be identified as EBT or food coupon issuance costs. The exclusion of such indirect costs from both the food issuance cap and the EBT system operational costs will result in equitable treatment to States and the Federal Government for cost neutrality purposes and should eliminate potential administrative and record-keeping burdens.

The Department had proposed that the State agency perform cost analyses of the pilot project to compare actual EBT pilot project costs to the coupon issuance cap and the projected EBT system operational costs. The proposed rule indicated that indirect costs should be included in such cost analyses. Several commenters indicated that there would be inconsistent treatment of indirect costs for the purposes of cost neutrality assessment and the cost analyses. The Department agrees that there should be consistent treatment for indirect costs and is clarifying that indirect costs should not be included in the cost analyses.

Twelve commenters indicated that the cost neutrality provisions are inequitable to those State or local agencies that currently operate reasonably low cost issuance systems. Six of these twelve commenters were concerned that, as proposed, operating within the cost neutrality provisions could result in price gouging in the higher cost States and provides little incentive to the lower cost States to convert to an EBT system. Four commenters further urged the Department to consider possible incentives for the lower cost State agencies such as enhanced funding for design and devlopment or more willingness by the Department to absorb the risks and costs of changing to an EBT system. One commenter suggested that EBT start-up costs not be included for low-cost State agencies. One commenter also requested that the Department consider the design and development costs as well as the amortized capital expenditures incurred in the implementation of an on-line coupon issuance system by State or local agencies that are currently operating low cost on-line issuance systems in the paper coupon issuance cap. Equipment costs that are amortized as operating expenses of a current coupon system are permissible within the coupon issuance cap required by this regulation. However, design and development costs are not acceptable as they are not part of the operational costs of the issuance system. The cost neutrality equation tests the cost effectiveness of moving from an existing system to an EBT system and is not a comparison of the costs associated with bringing up a coupon system and bringing up an EBT system.

While the Department recognizes that State agencies with low cost coupon issuance systems may find it more difficult to change to an EBT system, the statutory requirement for cost neutrality requires that EBT systems not cost more than current issuance systems. Given the absence of information on national issuance costs and the known variation in costs of different State systems at this time, the Department believes that the best implementation of the statute is to base the issuance cap on the cost of each State agency's coupon issuance cost level and the related Federal coupon issuance costs. Secondly, the soundest available information on the cost of EBT systems at this time remains the Reading, Pennsylvania EBT data which showed that EBT costs were approximately three times coupon issuance costs. Consequently, although EBT systems present some obvious improvements in the level of service and accountability for food stamp benefits, Congress has not authorized spending more Federal funds on EBT systems than is presently spent on the coupon system.

Regarding potential incentives for low cost State agencies, the Department has no authority to selectively provide enhanced funding solely for EBT systems. Regarding exceptions from the inclusion of start-up costs for low cost State agencies this too is precluded by the statute which requires the inclusion of start-up costs in the cost neutrality equation. One commenter illustrates the scope of potential exceptions by suggesting that the Department consider factors such as large geographical distances, extensive rural populations and/or urban concentrations of low income populations as special circumstances that should be considered in establishing an issuance cap. While these factors may influence costs, the Department does not believe that the statute affords the latitude to change actual cost levels in setting an issuance cap.

In the proposed rule, the Department included provisions for adjusting the Federal coupon issuance costs, as necessary, for the effects EBT has on float associated with the Federal funding of food stamp benefits. As indicated in the preamble of the proposed rule, float associated with food stamp benefit redemption may change due to the adoption of an EBT system. Two commenters disagreed with any adjustment for float due to the adoption of an EBT system. The two commenters opposing this proposed requirement disagreed because the cost of Federal float is not included in the current paper coupon issuance costs. By including the cost of float, the Federal Government is requiring State agencies to bear a cost under EBT that they do not incur under paper coupon issuance systems. Finally, one commenter pointed out that float between Federal and State government is addressed under the Cash Management Improvement Act (CMIA). The Department's understanding is that float in the Food Stamp Program does not fall under the CMIA since food stamp float is associated with how quickly benefits are drawn between the time of issuance to a recipient to the time the Federal Reserve System draws funds from the U.S. Treasury. The CMIA addresses float that results from the funds flow between State and Federal agencies. The Department is currently examining the potential effect on float costs to the Federal Government which may result from changing from the paper coupon to the EBT benefit issuance system. At this time, there is insufficient information from the demonstration projects to determine a potential gain or loss in float costs to the Federal Government. Consequently, including the cost of float associated with Federal benefit redemption in an EBT system is being deferred to a future rulemaking.

Statewide Coupon Issuance Cap

As indicated above, the Department proposed to determine the issuance cap on the basis of the statewide cost of the current coupon issuance system divided by the number of food stamp case-months during the fiscal year. This cap was then applied against the statewide cost of issuing benefits whether benefits were issued statewide solely through EBT or through both EBT and coupon systems. The EBT issuance cap takes effect at the time benefits are first issued during the pilot project. A number of commenters felt that establishing a Statewide issuance cap was inappropriate, specifically in States where the Food Stamp Program is administered on the county level. One reason cited was that some States did not currently control costs at the county level. Another commenter stated that this was unfair to those State agencies that implement EBT systems in a portion of the State when State agencies that continued issuing coupons were not capped. Several suggested alternatives were supported such as applying the issuance cap to the EBT areas only, applying the issuance cap only when full implementation of EBT is begun and/or using the average cost of issuance by region or nationally as the issuance cap.

Although there are a number of alternatives, most of the alternatives present other inequities for State agencies or local agencies and create difficulties in assessing and managing cost neutrality. For example, within a State, the cost of issuance varies between county administered programs. This could prove to be a disadvantage to lower cost county administered programs within the State as well as a very difficult prospect for measuring individual county cost neutrality. Since FNS' relationship is with State agencies, it is at this level the Department believes the cost neutrality equation should be applied. However, to try and ease the burden of getting EBT pilots started in all States, the Department is amending the statewide issuance cap provisions to permit State agencies to treat pilot project issuance costs that exceed the issuance cap as start-up costs and assign them retroactively upon reaching the seven year asignment period. These pilot issuance costs are restricted to a period of one year from the date EBT benefits are first issued in the pilot. The Department believes that this permits additional latitude for a State agency in the event the caseload is relatively small during a pilot project in comparison to the needed equipment deployment. As a result, the language at § 274.12(c)(3)(iv)(A) is revised to permit pilot operational costs that exceed the cap to be counted toward the assignable start-up costs for a period not to exceed one year of pilot operations from the time benefits are first issued to households in the pilot area.

Some commenters also supported the elimination of the issuance cap after a fixed number of years of operating an EBT system. However, the statute does not provide the Department the authority to eliminate the issuance cap even if the operating EBT systems are incurring costs that are meeting or below the issuance cap. Consequently, such a change has not been made.

Start-up Costs and Retroactive Assignment

The Department proposed to retroactively assign all start-up costs that are incurred from the date of approval of the Implementation APD to the first issuance of benefits through the EBT system. Several of the comments reflected some misunderstanding over whether or not the Department participated in start-up costs until after the seven year assignment period. With the retroactive assignment proposal, the Department would approve a State agency claim for reimbursement for design and development costs as the costs are incurred just as with any other incurred costs. The Department is not requiring State agencies to bear this cost alone for the full seven years nor is the Department refusing to share in these costs. Rather, after an agreed time period of up to seven years, EBT start-up costs are assigned to the total operational issuance costs for that period. If the assignment of EBT start-up costs to operational issuance costs results in costs which exceed the cap for the period, such costs in excess of the cap would be subject to disallowance. The specific period of assignment up to seven years will be agreed upon during the APD approval process.

Regarding fixed capital and equipment costs, some confusion was also apparent from the comments received. The Department intended to require State agencies to adhere to current practices for amortizing capital expenditures and did not revise existing regulations as a result. Typically State agencies amortize equipment costs over a five year period or the life of the equipment and may continue to do so for EBT capital expenditures. Currently, the amortized capital expenditures are claimed as a portion of the ongoing administrative operations of a State agency. However, some comments presumed that the seven year assignment included a change to the existing requirements for amortization of equipment expenditures. This is not the case; however, changes are made to the regulation to clarify that the charging of capital expenditures shall be in accordance with paragraph 277.18(i) and appendix A of § 277.18 of this chapter.

Other commenters questioned how a State agency could anticipate the number of households that would participate over a seven year period. The Department acknowledges that any estimates will be very tenuous, particularly in the later years, but believes that a tenuous estimate is better than no estimate for budgeting purposes. It is this uncertainty over caseloads that led the Department to propose the retroactive allocation of start-up costs. In addition, it may be to the State agency's advantage to be able to allocate more of these costs across the later years when the State agency's case-month costs may be lower due to economies of scale realized from expanded EBT coverage.

Annual GNP Deflator Adjustments

The Department proposed that, for each fiscal year's projected issuance cap, the issuance cap would be adjusted by the percentage change in the Gross National Product Implicit Price Deflator (GNP price deflator). The Department also proposed that the issuance cap be revised to reflect actual inflation prior to adjusting for inflation and establishing the next year's cap. The concerns expressed in the comments generally viewed the GNP deflator as a poor reflection of the increases in costs that may occur at a site or that it does not account for factors such as increases in postal rates. One commenter suggested that State agencies have the option of choosing the higher of actual inflation for their State or the GNP deflator. However, the Department believes conducting actual assessments of inflation for each State would be an administratively complex exercise. Further, the Department believes that, in the long run, the GNP deflator, together with the adjustments proposed by the Department, will prove to be an accurate measure of the changes in costs. Consequently, this provision has not been changed in the final rule.

A number of other comments related to cost neutrality were made. Two commenters requested clarification about Federal reimbursement of issuance and other administrative costs for services provided on Indian Reservations. Currently, the Department provides State agencies 75 percent federal funding for activities on Indian Reservations. Due to this type of variance from the regular 50–50 match funding provisions, the final rule is revised to accommodate this within the issuance cap. Another commenter, in opposing the use of the previous four Federal fiscal quarters as the base period for the issuance cap, recommended that States be permitted to develop cost plans that anticipate issuance costs based on relevant factors such as postage increases, contracts and other factors. The proposed rule did include an option for State agencies to use another base period if the State agency can demonstrate that the alternative would be more accurate. This option, however, is not applicable to factors that broaden the scope of the issuance cap beyond the base period used to calculate current coupon issuance costs which was suggested by one commenter. This provision remains as proposed.

Cost Neutrality Government-Wide

Seven comments were received that generally supported cost neutrality government-wide although several commenters requested additional clarification from the Department. A number of comments addressing cost effectiveness also implied support for cost neutrality of the entire EBT system rather than on a program by program basis. As stated in the proposed rule, though the Department endorses the government-wide cost neutrality agreement adopted by the federal Interagency EBT Steering Committee, the Department needs to work within existing regulations. These regulations hold that reimbursements to State agencies that administer the Food Stamp Program are limited to activities directly associated with the Food Stamp Program. To implement cost-neutrality government-wide requires information that is not currently available and additional authorization by statute to reimburse costs differently.

As a result, the Department wishes to clarify how the issuance cap is to be administered in an integrated EBT system for both food stamps and Aid for Dependent Children (AFDC). One commenter interpreted the cost neutrality provision government-wide to mean that a State agency may claim reimbursement up to a combined EBT cap for both AFDC and Food Stamps. An example is a combined cap of $6.00 when the basis of the total cap is determined from food stamp coupon costs equal to $4.00 and AFDC check issuance costs equal to $2.00. If the total EBT system costs amount to $5.50 per case-month, the commenter's interpretation of cost neutrality government-wide suggests that the State should be able to claim the full $5.50 regardless of whether the cost to the Food Stamp Program was above the food stamp coupon issuance costs. The Department wishes to clarify that the State may claim food stamp EBT costs up to the coupon issuance cap plus any inflation factor added once the base cap is established. Consequently, if the State agency incurred $4.25 in food stamp EBT costs per case-month, the State is permitted to claim $4.00 only under existing authority even if the total cost was only $5.50 and below the combined issuance cap for both programs.

Expansion Approval Requirements—Section 274.12(d)

Three commenters suggested that the regulations fail to provide for sufficient evaluation of the pilot projects prior to expansion. In the same vein, two other commenters suggested the need for criteria to determine if there was a successful pilot, if roll-out may occur, and what the timeframes for roll-out may be. One commenter agreed with the expansion approval requirements as proposed and one commenter expressed concern regarding the impact delays in approving expansion beyond the pilot would have on State agency contracts. Two commenters were opposed to the requirement that a State agency provide an assessment of the effects EBT may have had upon household participation in the Food Stamp Program.

The Department believes the proposed requirements for expansion approval are sufficient. State agencies will be reporting activity to FNS for the duration of the pilot which will be providing FNS with an opportunity to monitor pilot activities. Since the purpose of the pilot is to provide the State agency with a smaller scale shake-down test prior to expansion and not for the purpose of conducting a more extensive evaluation, the Department has chosen not to require an extensive evaluation. The Department already knows from its experience with Demonstration Projects that EBT is technically feasible and well liked by all participants. The Department does want more information on the potential effects EBT may have on participation and, therefore, is maintaining the proposed requirement. Therefore, all expansion requirements are being kept as proposed except for clarifications in the requirements of the Expansion Implementation Plan to conform with the Pilot Project Implementation Plan.

Functional and Food Stamp Program Requirements—Section 274.12(e)

As prescribed in the proposed rulemaking, the Department has established five minimal functional requirements that an EBT system would have to be able to perform specifically for the Food Stamp Program: (1) Authorizing household benefits; (2) providing food benefits to households; (3) crediting food retailers and financial institutions for food stamp purchases or refunds; (4) managing retailer participation; and (5) settlement and reconciliation. Settlement and reconciliation functions are prescribed under paragraph (j) of the proposed rulemaking. Related to some of these functional areas are Food Stamp Program requirements that would need to be supported by an EBT system.

The first area, authorizing household benefits, includes basic functions that must be conducted in order to enable households to participate. Under the proposed rulemaking, the State agency was required to permit households to carry-over benefits from month to month. One commenter opposed this requirement stating that a monthly window of availability is adequate and facilitates reconciliation. The Department has maintained this requirement because carry-over of benefits permits food stamp households the same flexibility they have with food coupons. Further, carry-over of benefits is consistent with commerical debit card systems which access accounts that carry balances from one month to another.

In the proposed rule, issuance in the on-line EBT systems was defined as the point in time when benefits are posted electronically to the household account database. One commenter pointed out that this definition of issuance did not appear to agree with language for adjusting benefit errors discovered after posting the benefit issuance file to the system database but prior to the issuance date. Consequently, the Department is clarifying the definition of issuance to be the point in time at which a household can use its benefits after the benefits have been posted to the account. This time must be regularly scheduled pursuant to 7 CFR 274.2(c). Prior to reaching the issuance date, posting errors may still be adjusted by the State agency without providing the household advance notice. After this point, overissuances would continue to be handled according to current food stamp regulations for establishing and collecting claims.

The proposed rule stated that the State agency would provide training to households prior to implementation of the EBT system and as needed during system operation. The Department received a variety of comments generally supporting the emphasis on household training, but indicating a need for additional clarification or guidance in specific areas. Of the thirty different comments received, seven commenters stated that training should provide for hands-on use of the POS equipment. Eight commenters stated that written information should be provided to recipients at the time of training, with two of those commenters noting the need to include client rights in the printed material and two of those commenters stating that materials should be written at appropriate grade level and language. Five other commenters felt that there should be a requirement for special training needs of recipients who have limited English-speaking abilities, or are physically or mentally handicapped. One commenter felt that guidance is needed on the type of instruction, level of training and comparative evaluation of methods and techniques. In response to these comments and in recognition of the importance for EBT systems, the Department is expanding the proposed training requirements to include hands-on training on the use of POS equipment; consideration of special needs of recipients with limited English-speaking abilities, physical or mental handicaps; and, the use and provision of written materials, including client rights, at appropriate grade level and language for all recipients per 7 CFR 272.4(b).

The preamble to the proposed rulemaking stated that the State agency has the option to utilize either Personal Identification Number (PIN) selection (whereby the household selects the PIN) or PIN assignment (whereby the household is assigned a PIN). Twenty-two commenters, some in very strong terms, suggested that the Department limit this option to PIN selection only. They argued that the risks were too great with PIN assignment as the PINs would be difficult to remember and, therefore, written down and kept with the card. This would pose a security risk for safeguarding the benefits. One commenter opposed PIN selection as they felt that PIN assignment was more secure in preventing the use of a common number source such as a birth date, phone number or Social Security number. The Department has not yet had the opportunity to test PIN assignment in a Food Stamp Program EBT project nor has any mandatory EBT system utilized PIN assignment to date. Given the strong support for PIN selection and the fact that the Department does not have sufficient information to support PIN assignment, the Department is amending the proposed rule to require the use of a PIN selection (§ 274.12(e)(1)(ii)). Procedures related to PIN assignment, such as separate mailing of each, are deleted from the final rule. The Department recognizes that PIN assignment promises some cost savings and would consider permitting a State agency to test this feature.

The second functional area, providing food benefits to households, included specific tasks that would permit the households to obtain food at the point-of-sale (POS). Included in these specific tasks were back-up purchase procedures to assure households access to their benefits when the EBT system is down. The comments received on this proposed provision are discussed later on.

The third functional area, crediting retailers and financial institutions, required the EBT system to perform activities related to food stamp transactions at the POS terminal through the full crediting of retailer bank accounts via the automated clearinghouse (ACH) network or other means approved by the Secretary. Comments received by the Department are discussed further on in the preamble under the heading, "Crediting Retailers."

The fourth functional area was managing retailer participation. In this area, three commenters addressed the proposed provision regarding retailer training. One commenter supported the provision for training the stores' trainers and further stated that all trainees should be provided with written reference materials and program specific information. Two commenters stated that retailer training should be provided on a continuing basis, one of which felt that training should be at government expense. To better clarify the retailer training policy, the Department is amending the rule to include a provision of that appropriate materials need to be provided to retailers as part of training activities. It is the Department's intent that training be provided to all newly authorized retailers as needed, once conversion has been completed, but that ongoing training is the responsibility of the retailer. Regarding the government absorbing the cost of retailer employee time spent in training, as stated in the preamble to the proposed rule, because retailers currently do not receive reimbursement for training their employees in the current food stamp procedures and requirements, the Department is not requiring that the State agency reimburse retailers for employee training costs.

Household Participation—Section 274.13(f)

The proposed rule prohibited account restrictions such as setting a minimum dollar amount per transaction or maximum limit on the number of transactions. None commenters supported the prohibition on transaction limits. Eight commenters felt that "reasonable" transaction limits should be allowed, however, some of these comments related to transaction limits at an ATM and, thus, do not apply to Food Stamp EBT. Given the general support received for prohibition of the number of transaction limits and that the current coupon system has no such limitations on use of benefits by households, the Department is retaining this provision as written.

In addition to the comments received on transaction limits, the Department received a number of comments on transaction fees. Eight commenters, predominantly public interest groups, requested clarification that transaction fees to food stamp recipients should be explicitly prohibited. Five commenters, mostley State agencies, felt that transaction fees to food stamp househoulds should be allowed after a certain number of transactions had been completed. The Department, in proposing a prohibition on the number of transactions or on setting a minimum dollar amount per transaction, intended to transaction fees would also be prohibited as the application of such fees would, in effect, limit transactions. Under the coupon system, recipients are not charged for transactions. The Department is concerned that any transaction fees could alter recipient food shopping patterns and negatively affect the household's ability to meet their food needs. Consequently, the

Department is amending § 274.12(f)(1) to specifically prohibit the imposition of transaction fees to food stamp households.

Balance Information—Section 274.12(f)(2) and (3)

The proposed rule required printed receipts at the time of purchase showing the amount of the purchase and the balance remaining in a household's food stamp EBT account. The Department has long held that providing a balance on the POS receipt best allows households to track their remaining benefits in a manner comparable to the food coupon system. The balance on the POS receipt provides each household a running record and minimizes the need for the household to take separate actions to determine the remaining balance in the account. Twelve commenters supported the need for printing the balance on the receipt. Due to privacy concerns, three commenters felt that households should have the option as to whether the remaining balance is printed on the receipt. Four commenters opposed the printing of the remaining balance on the receipt, two of whom felt it was a security risk as most register receipts have two parts.

Prior to the Reading, Pennsylvania EBT demonstration, the Department determined that there was not a privacy issue associated with printing of the remaining balance on the receipt. The household's name is not included on the receipt, only the card account number. The Department's experience is that recipients have found this information helpful. The Department does not believe it is necessary, nor would it be cost-effective, to require that recipients be given the option for having the receipt contain the remaining balance. Consequently, the final rule requires, as proposed, that printed receipts provide the amount of the purchase and the balance remaining in the household's food stamp benefit account.

Two commenters noted that the cost to upgrade POS equipment to print remaining balance on receipt should be paid for by the government or the retailer should be reimbursed. The Department expects that such details will be resolved by the State agencies and the retailers, and, therefore, has not regulated any such provision herein.

The proposed rule also required that balances be made available without the need to purchase food or wait in a checkout line. Five commenters supported this provision. Three commenters, all retailers, felt that balance inquiry should not be permitted in the check-out lanes as it would cause unnecessary delays at the cash register. Four commenters encouraged seperate or remote balance inquiry terminals, including use of customer service counters. Seven commenters supported the provision of balance information by phone, either a 24-hour, seven day per week hotline (five commenters) or an audio response unit (two commenters). Provisions for balance inquiry do not need to include the use of closed check-out lanes; this is just one of the many options utilized in the demonstration projects. The Department is maintaining this provision as proposed and leaving it to the State agencies to determine how they will satisfy the requirement.

The Department further proposed that State agencies be capable of providing a transaction history of up to two months to households that request it in order to facilitate problem identification and resolution. Six commenters supported this provision as written. One commenter opposed the provision, stating that it was inconsistent with the current food stamp system and, further, that State agencies should be able to charge a fee for this service. Four commenters, all State agencies, felt that transaction histories should not be done "routinely," but rather to resolve a dispute or concern with printed balance information. Further, these commenters noted that clarification was needed regarding frequency limits and what is meant by "up to two months."

It is the Department's intent that the provision of a transaction history to a household will be done more as an exception rather than a rule, to assist in dispute resolution or clarify a household's question or concern. The provision for providing a transaction history for a period of "up to two months" means that the EBT system must be capable of providing transaction histories for two calendar months of activity. That is, if a recipient requests a history of one month, the State agency may limited the history report to the one calendar month requested. One commenter noted that recipients should be able to self-initiate transaction histories at the POS terminals. There is nothing to preclude a State agency from considering this type of feature, but it is not an option the Department chooses to regulate. The provision stands as proposed other than adding a clarification to ensure information is available for up to two calendar months.

POS Receipt Information—Section 274.12(f)(3)

As proposed, this final rule does not permit the names of household members to be printed on receipts or displayed at the terminal except when a signature is necessary to complete a manual transaction when the system is down. The Department did not receive any comments in opposition to this provision. Two commenters supported this provision.

The POS receipt is required to contain, at a minimum, information such as the transaction type, purchase amount, remaining balance, date of transaction, terminal location, and account code or recipient code. The State agency may wish to include other informational items on the POS receipt. For example, two commenters stated that a cashier/clerk identification number should also be included on the POS receipt to help track any fraudulent transactions. This has been done in some of the EBT demonstration projects and provides a service to both the retailers as well as to the State agency. The Department strongly encourages the State agency to consider inclusion of a clerk/cashier ID on the POS receipt. However, this has not been made a requirement in this rule.

Card and PIN Replacement—Section 274.12(f)(5)

The Department proposed that the State agency be permitted to impose a replacement fee on EBT cards above a State agency determined threshold, not to exceed the actual cost to replace the card. Six commenters supported this provision, though one commenter argued that if the replacement fee is too low, it may not serve as a deterrent. Another commenter, a State agency, noted that they would waive replacement fees for hardship cases and one commenter suggested that there be at least one free replacement and a $2.00 cap on replacement fees. Two commenters opposed this provision, with one commenter recommending that fees not be imposed unless the card was lost more than three times (time period not specified by commenter). Three commenters asked for clarification as to whether payment of fees could be made through a deduction of the household's benefit account, with one commenter asking for clarification on who would receive the benefit of fees collected.

Given the supportive responses and the demonstration project experience of sometimes numerous card replacements that showed that the carelessness of a few recipients can be very costly, the Department has adopted this provision as proposed by giving the State agency the option of imposing a fee for cards replaced above a State agency determined threshold upon receipt of approval from FNS. To clarify, payment of fees cannot be made through a deduction to the food stamp household's benefit account. Further, the State agency would need to ensure that the fees are applied to the EBT cost center and reported as program income.

The Department also proposed that the State agency be required to replace lost or stolen EBT cards, or PINs when a household has forgotten it, within two business days after the household has reported the loss to the State agency. Four commenters supported this provision as written. Three commenters stated that immediate replacement of cards/PINs should be required. One commenter felt that recipients should be allowed to complete a manual transaction while awaiting card/PIN replacement. Nine commenters opposed the two business day replacement as unrealistically short and suggested alternative timeframes. Three commenters recommended three business days for replacement; two commenters suggested five business days for replacement; and one commenter, a financial institution, recommended a 10 to 15 day standard. The suggested alternative timeframes reflected, in some cases, the time that would be necessary when the cards and PIN are mailed from a central location.

Since the Department is requiring PIN selection, it is expected that centralized mailing of cards and PINs will be the exception. We do not believe that immediate replacement is a viable or practical alternative. On the other hand, we feel that two business days for replacement is not an unreasonable goal as food stamp households can access their benefits only with use of the EBT card and such access is very important for households. Further this quick replacement has not been a problem for the demonstration projects. Consequently, the Department is adopting the proposed provision as final. Should a State agency propose a system utilizing centralized mailing of cards, a waiver may be requested to allow a longer replacement time. However, the Department will not approve time periods exceeding five days. The use of manual back-up procedures without presenting the EBT card represents a significant security risk and, therefore, would not be allowed.

The Department proposed that if a household loses its EBT card and the benefits are spent, no replacement of benefits would be made. The proposed rule also required that an immediate hold be placed on accounts at the time notification is received from the household regarding the need for a new card or PIN. It was the Department's intent that liability for lost benefits shift from the recipient to the State agency at the time the household reports the card as lost or stolen to the appropriate entity.

One commenter opposed the prohibition on replacement of benefits. Seven commenters stated that benefits lost after the household reports the loss should be replaced, that is, the liability should shift from the recipient to the State agency. Three of these commenters also stated that food stamp households should be entitled to the same protection under regulation E as other consumers, including limitations on liability for lost benefits and, further, that stronger protection and less liability is warranted for recipients. Regulation E is the Federal Reserve regulation which implements the Electronic Funds Transfer Act and which applies to electronic transfers that debit or credit a consumer asset account—i.e., debit card transactions.

The proposed rule on liability for lost benefits was based on the belief that each household needs to be responsible for ensuring that their card and PIN are secure. Recipient training emphasizes the importance of keeping the PIN in a separate location from the card to safeguard benefits if the card is lost. While the Department understands the concerns raised by commenters, this rule retains the proposed provision and holds a household liable for any benefits drawn from their accounts prior to their reporting their cards lost or stolen. However, once the household reports the card lost or stolen to the appropriate entity, the State agency is required to place an immediate hold on the benefits and at that point assumes liability for lost benefits. If benefits are drawn from an account after the time the card has been reported lost or stolen, the State or its agent must replace the lost or stolen benefits. The rule has been clarified accordingly.

Two commenters recommended that the State agency be required to maintain a record showing the date and time the household reports the lost/stolen card. The Department agrees that this documentation is necessary to establish liability and the rule has been revised to require such recordkeeping.

One commenter stated that households should be notified of their right to card/PIN replacement. As indicated in the recipient training section, the Department expanded the training requirements to include provision of client rights to all EBT households. The right to card/PIN replacement as well as assumption of liability for a lost card would be included in this training.

One commenter asked for clarification regarding duplicate accounts not being established which would permit households to access more than one account in the system. The suggestion was that there might be accounts other than food stamp accounts to which the household has access. To clarify, the Department is amending the proposed language to indicate that not more than one food stamp account can be accessed.

Benefit Conversion 274.12(f)(6)

The proposed rule required the State agency to convert food coupons into electronic benefits for households which enter an EBT area. Conversely, households leaving an EBT area would have to be able to have their remaining balances converted into food coupons. Two State agencies opposed converting coupons issued by another State agency to EBT as it would create administrative difficulties including, perhaps, design modifications to the eligibility system. The Department agrees. Since EBT is not widespread, and coupon use will continue for some time, the Department is amending the proposed rule to allow the State agency the option to permit the household that enters an EBT area to continue to use the coupons on hand prior to conversion to EBT. This requirement may change, however, once EBT has become more widespread.

The rule also proposed that conversions from EBT to coupons occur within one business day. Nine commenters supported the one business day conversion with two of these commenters stating that one day is feasible if the client appears in person. However, one day may not be sufficient if conversion is handled by phone or mail. Ten commenters opposed the one business day conversion limit with two State agencies noting that coupon inventories are not maintained at all offices and, therefore, it would not be possible to convert recipients back to coupons in one business day. Four of the commenters opposing the one day conversion noted that one day conversion may not be possible due to system requirements and the need to process applications. Two State agencies felt there should be an allowance for the mailing of benefits and that one day conversion was not reasonable. Two commenters noted that coupon conversion is a service to the client already issued benefits and the associated rules should not be confused with those of initial issuance. The Department agrees that one day for conversion to coupons may not be sufficient for those State agencies that maintain a centralized depository of coupons. Consequently, the Department has amended the final rule to permit the State agency to convert EBT benefits to coupons within three business days when centralized coupon inventories are used. One business day will remain the requirement for State agencies with local inventories.

The proposed rule also permitted the State agency the option of limiting the number of conversions per household that may occur during a one year period of time. Three commenters supported a limit to the number of conversions. Another commenter stated that if conversions are limited, then at least one conversion per year should be allowed. Nine commenters opposed any limitation on the number of conversions since it restricts the recipient's ability to shop in bordering non-EBT areas and to travel. One commenter felt there was no need to convert benefits as it adds unnecessary costs and complexity. Three commenters stated that the limitation should be lifted to accommodate mobile populations such as migrant workers. As stated in the proposed rule, the Department believes that unlimited conversions reduce the potential of the EBT system to minimize trafficking. It is not the Department's intent to alter the shopping patterns of food stamp households and the Department does not believe the limitation on the number of conversions will have this impact. The State agency is required to address household access to retail stores, including the equipping of bordering non-EBT retail stores (refer to section on "Border Stores"). Further, it was not the Department's intent to limit mobile populations such as migrant workers. Certainly, households moving out of the area are entitled to conversions and should be provided conversions in all cases. It is also the Department's intent that conversions be made available for situtations such as leaving the area temporarily for family emergencies. However, the Department maintains that State agencies are in the best position to determine whether any limits on conversion are warranted and how such limits are best applied. The Department is clarifying this requirement to permit State agencies to establish a limitation on the number of conversions that will be approved by FNS during the APD process; however, any limitation shall not be applicable to households that move from the EBT area.

Under the proposed rule, the State agency would be required to round the benefits down to the nearest dollar amount suitable for coupon issuance. For the remaining benefits in an EBT account, the Department proposed that the household spend any remaining benefits in order to eliminate the small remaining balance. One commenter opposed the rounding down and one commenter supported it. Opposition to the rounding down was stated to be that the recipient would "lose" benefits. The Department would like to clarify that benefits that cannot be converted are not lost. The benefits remain on the EBT card and the recipient is instructed to spend these benefits down.

Several State agencies commented on the spending down procedures with one of the State agencies stating that they oppose the notification to the household to spend down; they felt this notice could be provided during the initial training. However, in order to minimize the prospect of a household not using its benefits, the Department believes that the notification is warranted. Another State agency commented that they should be permitted to certify the remaining amount over to the receiving State agency and zero out the account with household approval. One State agency commented that State agencies should be permitted to require recipients to spend down amounts less than $20.00 at conversion. The Department believes, however, that recipients have a sufficiently strong interest in retaining this level of benefits to justify our retention of the requirement for conversion as proposed. The Department, based on the comments received, is not sufficiently compelled to change the provision for rounding down and spending down.

One commenter asked for clarification regarding the situation when a household fails to initiate a conversion before leaving the EBT area and whether the State agency is permitted to deny a request that the unspent benefits be transferred. To clarify, the State agency cannot deny a request for the transfer of benefits that have been issued but have not been spent.

The Department also proposed that if the household fails to spend the remaining balance within one week after conversion, the State agency would expunge the amount and notify the Department of the amount of benefits expunged. One commenter opposed the expunging of benefits stating that recipients should not be required to "use it or lose it." The Department believes that, when households have given notice that they are leaving the area and have converted their EBT benefits to coupons, it is reasonable to allow the State agency to limit the cost of account maintenance by expunging the remaining amount. In these cases, the households have chosen not to access their remaining benefits, an amount which would not exceed $1.99, and would not be accessing these benefits since they have left the area. Therefore, the final rule is adopted as proposed.

Stale or Dormant Accounts—Section 274.12(f)(7)

The Department proposed that when accounts are inactive for a three month period that the State agency be permitted to store the remaining benefits amounts off-line. Two commenters supported off-line storage of inactive accounts with one of commenters stating that off-line storage of inactive accounts should not be mandated and the other commenter stating that the State agency should be given the option as to when to load inactive files off-line. One commenter supported the proposed provision of moving accounts that are inactive for three months to an off-line file. Five commenters opposed off-line storage after three months, with two commenters citing that it was not worth the effort, that it would be easier to maintain the accounts on-line until time to purge. One commenter, a financial institution, stated that the standard banking practice was six months for inactive accounts and twelve months for stale dating. A State agency recommended that two consecutive months of inactivity be used. One commenter recommended conforming with AFDC accounts where a warrant is canceled after 180 days if it is not cashed. Given the lack of consensus on the time period for moving accounts off-line, the Department has maintained this provision as proposed. State agencies may determine when inactive accounts are moved off-line any time after a minimum period of three months.

Two commenters asked that "inactive accounts" be more precisely defined. The Department defines inactive accounts as those accounts that have had no activity initiated by the household, regardless of whether benefits have been issued. One commenter asked if off-line accounts carry an interest liability under the Cash Management Improvement Act. To clarify, food stamp benefit accounts are an authorization account, not a consumer account whereby funds in the consumer account earn interest. Therefore, there would be no interest liability with the off-line food stamp accounts. A State agency asked if they could delegate off-line accounts to a contractor. The State agency may contract out the maintenance of off-line accounts but they would need to ensure that they could access the off-line account as necessary.

The proposed rule required the State agency to attempt to notify the household prior to storing the benefits off-line and inactivating the benefit card account. Three commenters supported this provision as written; two commenters opposed. In keeping with current food stamp program requirements, the Department feels that it is incumbent upon the State agency to attempt to notify the household prior to storing the benefits off-line and inactivating the benefit card account. This provision is adopted in the final rule as proposed.

The proposed rule would permit the State agency to expunge dormant account benefits after one year of inactivity. Two commenters supported the provision as written. One commenter opposed this provision. Three commenters stated that one year was too long and suggested other timeframes. Two commenters recommended 90 days before expunging dormant accounts and one commenter recommended a period six to nine months. One commenter noted that timeframes for unclaimed accounts vary according to State statute. One commenter asked whether the term "expunged" means that the household is no longer entitled to the benefits. Three commenters stated that the language in this provision seems to contradict the provision for expunging the remaining conversion benefit balance after a one week period. To clarify these last two issues, the Department defines the term "expunged" to mean that authorization for household use of remaining benefits is withdrawn and the benefits are, therefore, no longer available to the household. Further, the Department believes that a different standard is warranted for expunging stale accounts than for expunging unconverted EBT food stamp benefits that have not been spent down after a household is notified to do so when conversion takes place. Unlike households that have not accessed their benefits for a year and have not contacted the State agency, households requesting conversion to coupons have contacted the State agency and have essentially given permission to the State agency to close their case. Moreover, in a conversion situation, the maximum expunged amount would be $1.99. Therefore, the timeframe for expunging benefits remains at one year. However the Department recognizes that this is a provision that pertains to the availability of benefits, there needs to be consistency across State agencies. Therefore, the rule has been modified to require State agencies to expunge stale accounts (i.e., those unaccessed for one year) on a monthly basis and report the change in the benefit issuance obligation along with other issuance obligation information reported to FNS each month.

Photo Identification Cards

The proposed rule stated that the requirements for providing identification cards do not apply in EBT systems because EBT systems can adequately safeguard against fraudulent and/or duplicate issuances by use of the PIN. However, State agencies that wish to continue the issuance of identification cards in addition to EBT cards may do so. Six commenters, three of which were retailers, supported the provision as written. Two commenters felt that both a PIN and photo should be allowed, with one commenter, a retailer, stating that photo identification should be permitted when the system is down. Since the proposed rule permits the State agency to issue identification cards in addition to the EBT cards, if they choose to do so, we have adopted the proposed provision as final.

Timely Issuance—Section 274.12(f)(8)

The proposed rule required State agencies that issue benefits through EBT to meet the processing standards for issuance of normal applications and expedited service applications. Four comments were received in support of this provision as written. One commenter stated that "timely" access needs to be specifically defined. We believe that "timely" is adequately addressed in 7 CFR 273.2 regarding application processing and expedited service timeframes. Consequently, this provision has been adopted in the final rule as proposed.

Access to Retail Stores

The proposed rule required that the EBT system provide for minimal disruption of access to and service in retail stores and not result in either a significant reduction in choices of authorized retailers for households or a significant increase in the cost of food or transportation to participating households. Eleven commenters stated that "minimal disruption" in terms of a "significant reduction of choices" and/or a "significant number of participating retailers" should be defined in more quantifiable terms, with two of the commenters also adding the need for quantifying minority store participation. Three of the eleven commenters provided suggested participation rates from at least 75 percent of all authorized retailers, to 90 percent of participating supermarkets and 75 percent of participating small retailers, to 90 percent of all authorized stores unless no area using EBT is more than five miles from a participating store. One commenter suggested that loss of any of the largest six to eight supermarket chains should be considered a significant reduction in choice. One commenter noted that significant reduction in choices of authorized food retailers for households could be interpreted in a very restrictive manner if only a few stores, for example, do 80 percent or more of food stamp volume in an area. Three commenters recommended that surveys or a monitoring effort be required to assess whether EBT results in significant reduction in choices, with one of the commenters stating that FNS should fund such an effort. One commenter noted that State agencies should be required to examine complaints of inadequacy. One commenter stated that the statute does not address that EBT shall not result in a significant increase in the cost of food or transportation to participating retailers.

The Department carefully considered the many comments received regarding this provision. We do not feel that quantifying a "significant reduction in choices" or a "significant number of participating retailers" is a viable alternative. No federal rule stating acceptable percentages could adequately anticipate the myriad of possible retailer environments that exist in the country. For example, one area may exist where there are just a few stores that do almost all of the food stamp business. In this area, the State agency might be faced with a "significant reduction in choices" if one or more of these stores did not participate in the EBT system. In another area, where food stamp business is spread over many stores, non-participation by particular retailers could probably be handled more readily. The State agency must determine whether shopping patterns for households residing in the project area would be disrupted and "significant reduction in choices" or a "significant number of participating retailers" would need to be determined on a case-by-case basis. However, the Department fully intends to use its approval authority in examining the sufficiency of the State agency deployment plan to ensure that the needs of households are met without a significant increase in the cost of food or cost of transportation for households.

The Department has amended the language at paragraph 274.12(g)(4)(ii)(C) to require the State agency to examine household shopping patterns in the EBT issuance area in order to establish the needs for POS terminal deployment. The Department has also amended paragraph 274.12(f)(8) to require that the EBT system not result in a significant increase in the cost of food or the cost of transportation to participating retailers incurred by food stamp households.

Retailer Participation—Section 274.12(g)

The Department received numerous comments regarding the provisions prescribed in the proposed rulemaking for retailer participation. The six areas proposed for retailer participation include:

(1) Providing retailer an opportunity to participate;

(2) Retailer cost to participate;

(3) Sufficient numbers of retailers participating;

(4) Terminal deployment requirements;

(5) Crediting of retailers; and

(6) Retailer agreements.

The statute requires State agencies to afford all authorized food retailers an opportunity to participate in the EBT system. Four comments were received which requested clarification on the participation of drug treatment centers and homeless meal providers. As explained in the proposed rule, an authorized food retailer includes each of the retailer types authorized to participate as prescribed under 7 CFR 278.1. The Department wishes to clarify that this requirement includes any authorized food retailer including senior citizens' centers or Meals-on-Wheels providers, treatment programs such as drug addiction and alcohol rehabilitation programs, group living arrangements, shelters for battered women and children, homeless meal providers, house-to-house trade routes, farmers markets, and other firms that sell eligible food products. All of these food retailers as well as supermarkets, grocery stores, convenience stores and corner markets must apply to FNS in order to be authorized to participate and be authorized by FNS prior to accepting food coupons, or EBT access cards, in exchange for eligible food items. State agencies do not have authority to select which retailers can or cannot participate in an EBT system.

One comment questioned whether all retailers are required to participate in the EBT system with a second comment suggesting that once an EBT system is in operation, continued participation as an authorized retailer should be contingent on participation in the EBT system. Similarly, another comment suggested that State agencies should have the option to permit retailers to participate without the installation of a POS terminal. Regarding this latter concern, the Department wishes to clarify that retailers may not choose to remain on a paper voucher system in lieu of the EBT system as long as a POS terminal can be utilized at the store location. However, if they do not desire POS terminals, they are not required to accept them. Furthermore, authorized retailers must continue to accept food coupons even though an EBT system operates at a particular store location. The Department is amending the proposed rule at paragraph 274.12(g)(1) to add a sentence which reads "an authorized food retail store shall not be required to participate in an EBT system." In addition, the Department is revising the last sentence at pargaraph 274.12(g)(1)(i) by adding "via a POS terminal" after "on-line transactions" in order to clarify that the Department views the primary EBT system as consisting of POS terminals and that alternative systems could be utilized only if a retailer cannot accommodate such terminals.

Two comments also questioned the flexibility of the proposed provisions regarding an alternative system for those food retailers that would not have POS terminals or be able to telephone at the time of sale to obtain authorization from the central computer database. One commenter noted that a manual voucher system as back-up or an alternative for food retailers unable to accommodate a POS terminal would be costly for State agencies. One commenter supported the proposed alternative for those food retailers that had no telephone access. As discussed in the preamble to the proposed rule, utilization of manual vouchers or other back-up systems is to be limited to retailers which, due to the nature of their business, could not accommodate electronic access to the EBT system. The Department does not intend to disallow manual voucher systems or other alternatives to a POS terminal as one comment stated. Rather, the Department has urged demonstration projects to develop methods that permit all types of authorized retailers to access the EBT system, utilizing an electronic access to the extent possible. This is appropriate as a step which will permit EBT systems on a nationwide basis. However, if a State agency devises a method to accommodate retailers such as route vendors without utilizing a manual voucher procedure, the Department would be willing to entertain that possibility.

As a result, retailers would not be permitted to refuse POS terminals in exchange for a manual voucher system solely because of a preference for a paper redemption system.

However, State agencies may choose to utilize manual vouchers during an interim period when a retail store is awaiting installation of POS equipment. This policy is consistent with one comment received urging that EBT be implemented in a manner which is equitable for all food retailers. Several other comments also indicated that there is a need to avoid disruption of the competitive market among food retailers which such an interim measure alleviates.

One comment recommended that food retailers be required to have a bank account. The Department currently does not require authorized food retailers to have bank accounts in order to redeem food coupons. However, the vast majority of financial institutions have operating policies which would preclude redemption of food coupons for a retailer that did not have an ongoing relationship with a given bank. Therefore, the Department sees no need to require retailers to have bank accounts as it is a routine part of business practices and a retailer would have to have a relationship with a financial institution capable of electronic settlement.

Retailer Access to System—Section 274.12(g)(1)(ii)

The Department proposed that the State agency permit access by the retailer to the EBT central computer within two weeks of receipt of the FNS authorization notice and provide access to the system within 30 days or a mutually agreed time period if the retailer chooses a third party processor or chooses to drive its own terminals. To facilitate the third party interface and certification process, the Department proposed that State agencies be required to publicize their third party interface requirements in advance of system implementation. Seven of the nine comments received were opposed to the time limits as proposed. These commenters indicated that installation time for telephone lines, POS terminal installation, terminal set-up and the need to successfully complete State certification in instances of third party processors in many instances requires more than the proposed two weeks for retailers and 30 days for third party processors. For example, one comment indicated that dedicated telephone installation by the telephone company can take up to 45 days alone. State agencies shall continue to be required to permit access to the EBT system within two weeks for food retailers and 30 days for third party processors or retailers driving their own terminals. The time periods begin after FNS authorization is received by the retailer. The Department is revising the proposed rulemaking to require FNS field offices that are responsible for authorizing food retailers to inform each retailer at the time of application that an EBT system operates in their location and to provide timely notice to the State agency of all newly authorized retailers. Provided the retailer can reasonably expect authorization to participate, the food retailer and State agency or its contractor can take preliminary steps which ensure timely access to the EBT system once the retailer receives formal authorization from FNS.

However, if circumstances beyond the control of the State agency or its contractor will prevent access within the prescribed time periods, the State agency shall inform the retailer and/or third party processor. Such circumstances may include, but are not limited to, the installation of telephone lines, establishment of the pre-notification required to validate ACH crediting to a retailer's bank account and successful completion of State agency certification standards for functional and acceptance testing. Consequently, the language at paragraph 274.12(g)(1)(ii) is changed to include provisions for circumstances outside the control of State agencies or their contractors.

Two comments indicated that all food retailers should be permitted access to the EBT system at the same time. The Department agrees that implementation of the EBT system should be conducted in a manner that does not disrupt existing markets to the extent possible. It is not possible, however, for newly authorized retailers once the EBT system has been implemented to be equipped at the same time as all other retailers. The Department shall review implementation plans prepared by State agencies to ensure that retailers are not put unnecessarily at a competitive disadvantage during implementation of the EBT system. The Department believes that implementation needs may differ considerably from site to site which necessitates flexibility for State agencies in their planning. As a result, no changes are made to the proposed rule with respect to this issue.

Retailer Costs—Section 274.12(g)(2)

In the proposed rule, the Department prohibited a State agency from requiring retailers to bear costs essential to and directly attributable to an EBT system utilized solely for the Food Stamp Program. The Department also proposed that the State agency may, with FNS approval, share appropriate costs with retailers if the equipment is utilized for commercial purposes in addition to food stamp EBT transactions. The Department received 33 comments regarding this provision or issues pertaining to costs to retailers. Comments generally focused on three areas:

(1) General perspectives on prohibiting retailer cost;

(2) Cost sharing between government and retailer; and

(3) Costs to upgrade or retrofit retailer equipment.

Two comments supported and six commenters opposed, in general, the provision prohibiting a State agency from requiring retailers to pay the costs of an EBT system. One comment disagreed with the Department's interpretation of section 7(g) (7 U.S.C. 2016(g)), of the Act believing that section 7(g) is applicable only to instances where an EBT system is mandated by the Department or the Office of the Inspector General. One comment observed that the provision prohibiting retailer costs shifted costs from retailers to State and Federal governments. Two comments indicated that retailers gained economically from reductions in coupon handling costs. One comment suggested that food retailers should be able to absorb the cost of EBT equipment. In general, those that disagreed with this provision did so believing that food retailers stand to gain from an EBT system because they will be relieved of the costs they are currently incurring under the coupon system; therefore, it would be equitable for retailers to contribute to the cost of EBT. While the Department does not dispute this position, it believes Congress' intent was that this provision be applied broadly. However, the Department wishes to clarify that this regulatory provision permits food retailers that choose to invest in their own equipment to pay for that equipment. State agencies, however, cannot require food retailers to purchase equipment or incur other costs as a condition of participation in the EBT system.

On the second issue, cost sharing provisions, twenty comment letters were received on a variety of topics. Five commenters, mostly retailers, suggested that retailers providing equipment be reimbursed through transaction fees. Three other retailers commented that they did not expect to be reimbursed for EBT transactions conducted on their terminals. One comment requested clarification on whether transaction fees were a negotiable item. Another comment asked whether the State agency should expect retailers to share costs. A number of other comments also raised concerns on how cost sharing may be accomplished and requested more pricing definitions in the final regulations. The Department has chosen to leave it to each State agency to negotiate the best arrangements to meet its own goals of implementing EBT systems and achieving cost neutrality. The Department is giving State agencies discretion in determining whether their EBT system design will involve the payment of transaction fees and does not believe that it is appropriate to impose a fee structure or define acceptable cost sharing methods. Two commenters supported transaction fees paid by the State agency, if necessary and provided the fees were not leveraged higher and higher, because, they noted, there is an administrative burden associated with tracking a "fair cost" by specific uses of equipment.

Several comments supported the Department's discussion in the preamble to the proposed rule that if a retailer, for business reasons, decided to purchase and deploy terminals or obtain EFT services through a third party processor the retailer is making a business decision not to use the EBT system equipment. These commenters recommended that the State agencies should place terminals procured with government funds for food stamp only transactions or other government applications but not permit those terminals to be utilized for commercial purposes and get involved with collecting fees for commercial activities. These commenters also thought it inappropriate to permit shared ownership arrangements between government agencies and food retailers. The Department agrees with these commenters that collecting fees is inadvisable for State agencies. However, the Department is not changing the proposed rule requiring compensation for government terminals in order to maintain maximum flexibility for the State agencies by allowing such fee arrangements.

The third issue raised by four comment letters is the issue of costs related to upgrading equipment already deployed commercially in food retail stores and retrofitting costs to adhere to the requirements of this regulation. One commenter asked who would pay these costs and pointed out that use of standard interfaces would lessen such costs. As stated previously, such costs would need to be negotiated when a State agency implemented an EBT system. Similarly, maintenance costs, raised by one comment, would be incorporated into new or existing contractual terms as each system is implemented. Two comments stated that the costs for modifications to existing commercial POS terminals for EBT should not be borne by the retailer. Again, the Department views this as an issue which must be negotiated as the State agency develops plans, estimates costs and prepares for system implementation.

Border Stores—Section 274.12(g) (3) and (4)(ii)(C)

Under the proposed rule, the Department required that the State agency and border stores negotiate a mutually agreed level of POS terminal deployment up to the number of lanes per store. The Department suggested in the preamble to the proposed rule that the State agency conduct a survey of food stamp households to help in determining whether shopping patterns for households residing within the project area would be disrupted. The proposed rule did not distinguish between stores bordering the intra-State EBT project area and those stores residing outside the State boundaries. However, in the preamble to the proposed rule, the Department acknowledged that equipage of border stores across State boundaries may present some unique difficulties and specifically requested comments on this issue.

Several commenters questioned the implicit requirement that State agencies deploy equipment across State boundaries. These commenters pointed out that there are no established procedures for negotiating reimbursement for equipment when a second State implements and EBT system nor are there procedures for the coordination between State agencies whose clients frequent the same food retail stores. One comment suggested that some form of reimbursement be instituted to a State required to deploy terminals in another State. Two commenters viewed deployment in border stores as an issue that argues for a regional network or national EBT system solution. The Department agrees that this is an area for which procedures are not yet well defined. In fact, it is an area that has yet to be examined in EBT systems and, consequently, is one of the areas that the Department will be watching closely as EBT systems expand. The Department anticipates that interstate equipage and transaction interchange will be subject of future rulemaking. In the meantime, the proposed rules have not been expanded to address this issue, but the Department expects that State agencies will be able to negotiate equitable solutions.

Twelve comments were received expressing a range of concerns with the proposed border store deployment provision. Two comments agreed with the Department's suggestion that State agencies survey food stamp households to determine shopping patterns and the need to equip stores bordering the project area or conduct a study to establish household shopping patterns. One of these commenters further recommended that the study of border stores be mandated and that the findings be reassessed in any periodic evaluations of the EBT system. The Department also received several comments regarding the criteria, if any, that should be utilized by the State agency in determining the need to equip border stores, in particular stores located across State boundaries. Several comments specifically recommended not requiring deployment across State boundaries provided the State agency can demonstrate that an adequate number of retailers exists within State boundaries and are equally accessible to food stamp households. Another commenter echoed those comments by suggesting that deployment across State boundaries be based on need and not on client shopping habits or convenience. Some commenters suggested that, in a situation where the border store wished to be equipped without clear evidence of need, a border retailer should be expected to purchase its equipment or, at a minimum, contribute to the equipage of its store. Failing this, these commenters argued, the equipment should be purchased by the Department rather than the State agency.

Other commenters, favoring the required State deployment across State boundaries, suggested that failure to equip border stores violates the statute in that it severely limits shopping choices. Another comment suggested that the criteria be that all stores within reasonable distances from borders, i.e., 15 miles from project area, must be equipped and that no disruption of shopping patterns or food retailers losing potential market revenue should take place. A number of comments supported establishment of the criterion to avoid potential loss of market share by food retailers.

The Department agrees that some assessment of household shopping patterns is necessary to ensure that household access is not significantly disrupted in accordance with paragraph (f)(9) and paragraph (g)(3) of this final regulation. Therefore, the Department has amended the language at paragraph 274.12(g)(4)(ii)(C) to require the State agency to examine household shopping patterns in the EBT issuance area in order to establish the needs for POS terminal deployment.

The Department also agrees that food retailers bordering the EBT operating area and which are necessary for recipient food access must be equipped regardless of State boundaries. State agencies should achieve a level of deployment sufficient to ensure that the needs of eligible households can be met without increasing their food or transportation costs. The focus of the decision to equip border retailers is on meeting household needs, not necessarily increasing household convenience. The Department wishes to emphasize, however, that it is inadequate to establish a criterion which confines deployment to retail stores located within the State boundaries solely because the number of stores within the State's boundaries appears to be adequate. A determination of accessibility for all portions of the caseload must also be made. The Department believes the language of the proposed rule is sufficient to enforce adequate equipage in border areas, given the variety of situations that exist. The Department fully intends to use its approval authority in examining the sufficiency of State agency deployment plans.

POS Terminal Deployment—Section 274.12(g)(4)(ii)

In accordance with section 7(i)(3)(B) of the Act (7 U.S.C. 2016(i)(3)(B)), the Department proposed that all lanes shall be equipped for those retailers for whom food stamp redemptions comprise more than 15 percent of their total food sales. For those stores having food stamp sales below 15 percent of total food sales, the Department proposed to require that the State agency equip supermarkets with one terminal for every $11,000 of monthly food stamp redemption activity up to the number of lanes per store. Supermarkets are those food retailers which identify themselves as such when applying to the Department to participate in the Food Stamp Program. All other food retailers were proposed to receive one terminal for every $8,000 of monthly food stamp redemption activity up to the number of lanes per store.

Under the proposal, the State agency also was required to review terminal deployment once each year. State agencies may also submit an alternative deployment formula for FNS approval as long as the alternative does not provide fewer terminals than the FNS formula. Finally, the Department proposed that newly authorized food retailers and the State agency could negotiate terminal deployment up to the number of lanes in each store based on known shopping patterns in the store's location.

FNS field offices are permitted under the proposed rulemaking to provide retailer redemption activity reports at the request of the State agency, provided that specific retailer information remains confidential in accordance with section 9(c) of the Act (7 U.S.C. 2018(c)). Additionally, the proposed rule permitted the State agency to make adjustments to the number of terminals when a food retailer provides sufficient evidence documenting the need for additional terminals or where redemption patterns indicate a need for fewer terminals.

The Department received 33 comment letters regarding the various provisions proposed for terminal deployment. Comments fell into the broad categories pertaining to the need for and method of determining deployment in all lanes to meet the statutory minimum requirement, the formula for equipping stores having less than 15 percent of food sales in food stamps, and requirements for signs to prevent alleged discrimination in stores with less than all lanes equipped.

Despite the statutory requirement that all lanes need to be equipped when food stamp business exceeds 15 percent of total food sales, the Department received nine comments disagreeing with this requirement as it was proposed. Several comments insisted that all lanes require POS equipment to ensure that "welfare only" lanes are not designated and to comply with program requirements that retailers provide equal treatment to food stamp households. One commenter suggested that indemnifying food retailers that do not get every lane equipped would not be an issue if all lanes are equipped. Some commenters opposed the requirement due to the impact on store productivity as well as the potential cost implications to a State agency. The Department fully intends to comply with the statutory requirement and notes that the proposed rulemaking permitted State agencies to request approval for an alternative formula for deployment above the minimum levels prescribed herein. In fact, the Department is amending the proposed rules to allow State agencies to deploy terminals above the minimum levels prescribed herein without having to obtain prior approval from FNS. In addition, food retailers are permitted to submit additional documentation to substantiate the need for more terminals than initially determined necessary. However, the Department continues to believe that, in an effort to keep EBT systems cost neutral, it is difficult to support the notion that all stores, regardless of food stamp activity level, should have all lanes equipped by the government.

Several commenters asked for clarification on the basis for the formula and why it distinguishes between supermarkets and other food retailers. As indicated in the preamble of the proposed rulemaking, this is a minimum deployment formula designed to accommodate the anticipated number of transactions and volume of food purchases by type of retailer. The Reading, Pennsylvania experience showed that supermarkets typically did larger food stamp dollar volumes per transaction which is a similar pattern nationally. Upon application to the Department for authorization, prospective food retailers indicate which type of retailer they are, using categories which are generally derived from recognized industry standards. The formula also stems from redemption information showing that peak transaction periods occur on or shortly after the benefit issuance dates. One other comment questioned how the 15 percent threshold was derived. The Department wishes to clarify that this threshold is specified by statute and represents Congressional intent to establish a level of food stamp business significant enough to warrant deployment of POS terminals in every lane.

Several comments received were directed at the formula proposed for equipping less than all lanes. Two commenters asked for clarification about whether a retailer doing less than $8,000 in food stamp business is excluded from the EBT system or entitled to a terminal. Retailers must be afforded access to the EBT system regardless of the level of their food stamp business. Retailers doing less than $8,000 in food stamp business are entitled to at least one POS terminal. Several comments supported the possibility of utilizing manual voucher procedures in lieu of deploying terminals at low volume food retailers. As discussed earlier, the Department does not find this argument persuasive because we want to minimize the volume of paper vouchers in the interest of system security. Consequently, the Department believes that, if a retailer can accommodate a POS terminal, the State agency must provide the terminal for the retailer to access the system.

A similar comment asked the Department to clarify whether State agency authority to reduce the number of POS terminals at paragraph 274.12(g)(4)(ii)(C) is applicable for retailers other than newly authorized retailers. The Department's intent was that this provision apply to all retailers and, consequently, has moved this sentence to paragraph 274.12(g)(4)(ii)(B) to clarify that it is applicable to all food retailers, not only newly authorized food retailers. Regarding a related issue, two comments recommended adding a requirement that food stamp households be able to submit evidence that additional POS devices are needed. The Department agrees with this and has amended the proposed rule to add such a provision.

Four comments were received that raised concerns regarding the deployment formula and its application to inquiry terminals. One comment questioned whether an inquiry terminal was to be included in the maximum number of terminals required under the formula. One comment asked for clarification on who should pay for inquiry-only terminals.

Two comments indicated that the maximum of one terminal per lane would preclude the option of putting a balance only terminal at the courtesy counter. One of these comments also requested a better definition of lane, as compared to the courtesy counters and other departments in a supermarket.

The Department does not require a balance inquiry terminal in every food retail store but inquiry terminals may be deployed at the option of the State agency or by a food retailer. Balance inquiry terminals are to be a means of enabling food stamp households to readily obtain their account balance. Our experience has been that balance inquiry terminals are not necessary in smaller food retail stores since the POS terminal is readily available in most instances. The POS deployment formula refers to POS terminals at check-out lanes only. It does not involve balance-only terminals. The question of who should pay for balance inquiry terminals remains a matter to be negotiated between the State agency and food retailers provided it is consistent with agreements for POS terminal deployment in checkout lanes. The standards for POS terminal deployment are designed as minimum standards to enable food stamp households to access the EBT system for their benefits without requiring extended waiting in checkout lines or being singled out as welfare recipients. Inquiry terminals do not have an appreciable effect on the POS terminal deployment requirements.

Two comments supported an alternative formula to the formula proposed. They did so because in many instances food retailers are protective of total food sales information which is required to determine the 15 percent threshold for full lane equipage. The comments recommended basing deployment solely on food stamp volume and number of checkout lanes, e.g., one terminal per every $15,000 in food stamp sales per month, one terminal for every two lanes for stores with food stamp sales between $5,000 and $14,999 and so forth. Another comment indicated that for a combined food stamp and WIC program (or other programs) the terminal deployment formula should equal food stamp plus WIC benefit redemption levels, divided either by $11,000 or $8,000 as appropriate. While the Department recognizes the concerns expressed about total food sales information, the statute stipulates the 15 percent threshold as it applies to food stamp sales as a portion of total dollar amount of food sold by the store. In applying for authorization, food retailers are required to submit information regarding total food sales. In the information on file with FNS is insufficient or not current, food retailers may provide updated sales data to substantiate eligibility to receive additional equipment. Consequently, the Department is not changing the proposed formula.

One other comment requested clarification on Departmental policy regarding deployment of POS terminals in express or cash-only lanes. The Department believes this is a retailer decision on whether it is necessary to equip cash-only lanes if all lanes in the store are not being equipped. Also, one comment requested clarification on whether third party processors must adhere to the deployment requirements. The Department makes no distinction in applying requirements for terminal deployment between third party processors employed by a food retailer to place and drive POS terminals and the EBT processor that contracts with a States agency. However, our experience to date indicates that most retailers that select a third party equip every lane.

A number of commenters raised issues related to the nature of signs or other lane designations which indicate that a checkout lane is equipped for EBT activities. Five comments were received that agreed with the requirement with one comment further indicating a need to address signage during recipient training. One comment indicated that signage should conform with other payment cards as far as signage and lane designation. Three comments were concerned about the lane designation when EBT was the only electronic medium available and compliance with the requirement for "no food stamp only" lanes. Similarly, one comment suggested that signage would be no protection during heavy business days. The Department urges that signage be in a generic form that conforms with existing practices within the food retail stores for other payment methods. Other payment forms with the appropriate lane designations, such as express lanes that accept cash only or accept cash or checks, are routinely and successfully utilized in the retail environment now. Most of the EBT demonstration projects conducted to date have adopted a generic plastic card design with a corresponding name such as "Independence Card" or simply "EBT accepted here" differentiating the card from other debit or credit card designs. Signage has been developed that enables food stamp households to select the appropriate EBT lanes and, although the lanes are designated for EBT purchases, they continue to be available to all store customers. It is critical that the EBT lanes remain available for use by all customers and not be solely confined to food stamp customers or specifically designated for food stamp or welfare customers only. Consequently, the Department has amended the proposed rule to clarify that signs may be utilized to designate the EBT lanes provided other customers can use the same lane(s). However, the Department is not requiring that specific language be contained on signs, as one comment recommended, nor is there a requirement that specific lanes such as express or cash only lanes be equipped. The Department is also amending the rules regarding recipient training to expressly require that lane equipage and signage be covered as a training topic.

In a related issue, three comments were concerned that less than full lane coverage would increase potential discrimination charges against food retail stores. A similar comment is reflected by the suggestion that signage would not protect a retail store during peak business periods. The three comments supported indemnification by the Department against discrimination suits should they arise due to the deployment of fewer POS terminals than in every lane. The Department does not find indemnification to be an acceptable alternative since food retailers remain responsible for the actions of store employees in the equitable treatment of food stamp households. Consequently, no changes have been made in this final rulemaking to the language of the proposed rule.

Eight comments were received regarding the role of State agencies in management and review of POS terminal deployment. The provisions for retailer management contained at paragraph 274.12(e)(4) required that State agencies monitor terminal deployment and be capable of replacing terminals within 24 hours. Several commenters felt that review of deployment once per year was inadequate because retail sales can change quickly and market closures or other circumstances require more frequent monitoring. Other comments asked for clarification on how the monitoring should be conducted, whether through on-site reviews or via reports from the EBT system indicating food stamp sales volumes. One comment supported a requirement that State agencies monitor and report POS deployment, taking into consideration the length of lines and waiting times and the overall volume of food stamp purchases. Another comment recommended that random reviews be required particularly at the beginning of the month. Two commenters believed the minimum requirement should be to permit retailers to request a review when the food retailers believe it is necessary.

Since the proposed rule did not require a specific timeframe or method for monitoring deployment and signage requirements, the Department believes it is inappropriate in this final rulemaking to add such requirements without accepting comments on the specific proposed requirements. However, the Department expects that State agencies will make use of information from food stamp households, food retailers and the EBT system itself in determining the needs to adjust deployment requirements.

Crediting Retailers—Section 274.12(g)(5)

The proposed rule required that the financial institutions holding accounts for food retailers or third party processors be credited within two business days following the daily cut-over of the EBT system operator. Nine of the eleven comments received on this provision support next day crediting for retailer accounts. Many of these comments indicated that next day crediting, which would provide credit for purchase transactions the day following system cut-over, is the industry standard and that EBT systems should not differ from industry practice. One of the remaining comments supported daily crediting at a minimum. The other comment supported the proposed provision. Several commenters requested a description of the current Federal settlement process and clarification regarding what improvements may be made to the current settlement system.

As indicated in the preamble of the proposed rule, the Department proposed to reserve 7 CFR 278.10 to accommodate future rulemaking which may be needed for any changes to the current process for settlement of Federal payments for EBT benefits. In response to several comments, the Department wishes to clarify the current Federal funding process for Food Stamp Program EBT benefits and the need to examine changes to that current process. All Food Stamp Program EBT demonstration projects have utilized a similar system of Federal funding for EBT benefits. All States have employed a concentrator bank to serve as the chief settlement agent for retail store EBT transactions. Each business day the concentrator bank consolidates credits due to retail food stores for all EBT transactions which occurred during that processing day (i.e., from 2 p.m. to 2 p.m. of the next day). After stripping off credits due to direct customers of the bank, the concentrator bank prepares an Automated Clearinghouse (ACH) tape to provide electronic funds transfer through the ACH to settle all remaining credits due to retail food stores. The ACH tape is submitted to the Federal Reserve for processing and credits are settled on the following business day. The concentrator bank provides credits to its own customers in accordance with its own policies and procedures.

The Department maintains a separate letter of credit for each EBT demonstration project. The letters of credit are funded exclusively for Food Stamp Program EBT benefits transactions. Unlike other funds used for program purposes, FNS does not issue grants to States to fund Food Stamp Program EBT benefits. Rather, the Department retains all obligational authority for EBT benefits funds and maintains its own letters of credit for funds availability. FNS has authorized the State agency or its agent for each demonstration project to draw funds from the EBT benefits letter of credit in order to reimburse the value of credits paid by the concentrator bank through the ACH process. Funds are requested by the State agency or its agent via SMARTLINK, the front-end communication linkage to the Payment Management System which is the grant payment system utilized by the Food and Nutrition Service and various other Federal agencies. The U.S. Department of Health and Human Services operates the SMARTLINK and Payment Management Systems. The Payment Management System ordinarily authorizes grant-related payments (i.e., reimbursement for program administrative costs) through the ACH system, which will provide funds the next business day following the day of the funds request. However, in order to provide funding to the concentrator bank for EBT benefits, payment requests are manually processed and forwarded to the Department of the Treasury to authorize a wire transfer through the Federal Reserve. While the Departments have been able to maintain this process for demonstration projects, all three Departments acknowledge the need to make the funding procedures more streamlined and efficient in order to support large-scale operations.

This effort is being pursued under the auspices of the Federal Interagency Steering Committee. The Department has been charged by this committee to develop, together with other Departments' representatives serving on the Treasury Department EBT Financial Standards Subcommittee, develop alternative operational models for an improved financial infrastructure that would support large scale, multiple program EBT systems.

The Steering Committee directed the subcommittee to prepare a report to aid the committee in understanding the range of financial infrastructures. It will work cooperatively with other subcommittees, the Treasury Department and Federal Reserve Board. It will be assisted by a contractor procured by the Food and Nutrition Service.

Further, it is in the best interest of the development of EBT to encourage States now designing systems to do so in a way that allows for possible changes in the financial settlement process. Until a decision can be made for the entire Federal government, Federal and State agencies that are operating or actively pursuing EBT do so with the possibility of future changes based on the development of settlement and reconciliation standards.

The Departments are currently working with EBT system cooperators to examine EBT funding and settlement processes and needs and are planning to report to the Interagency EBT Steering Committee later this fiscal year. The Department will continue to maintain the current funding process to support all EBT projects. At such time, that changes to the Food Stamp program financial processes and infrastructure are recommended, the Department plans to publish proposed changes to the process for public comment at subsection 278.10.

Since the completion of these efforts will take some time, next day settlement cannot yet be made the standard for crediting food retailers. Consequently, the proposed rulemaking requirement for a minimum standard of two days from cut-over remains unchanged in this final rulemaking.

Performance and Technical Standards—Section 274.12(h)

Section 7(i)(2)(E) of the Act (7 U.S.C. 2016(i)(2)(E)) requires the Department to issue performance and technical standards in the following areas: System processing speed, availability and reliability, security, ease-of-use, interchange, and minimum card and POS terminal requirements. As the Department explained in the preamble to the proposed rule, the proposed standards are based on experience with the several demonstration projects currently operating and the Department's assessments of the standards currently employed by commercial EFT networks.

The Department also indicated in the proposed rule that we expect State agencies to design their EBT systems to meet currently prevailing standards such as the standards established through the American National Standards Institute (ANSI) or the International Organization for Standardization (ISO) where appropriate. Several commenters agreed with this position, some even suggesting that the Department require that appropriate ANSI or ISO standards be utilized. The Department has recognized that, in many cases, each one of the ANSI or ISO standards may not be accepted by every regional network or other processors. Therefore, the Department has promulgated this provision as proposed. However, the Department will examine closely any State agency system that significantly departs from recognized industry standards during the APD approval process and expect sufficient justification for any such departure.

System Processing Speeds—Section 274.12(h)(1)

Because system processing speeds have been a hotly debated issue with all of the demonstration projects, the

Department specifically requested comments on this area in the proposed rule. The proposed processing response times required that, for leased line systems, 98 percent of all EBT transactions have a processing response time of 10 seconds or less and all EBT transactions be processed within 15 seconds. Leased line systems are those systems that utilize rented telecommunications carriers to connect from the point-of-sale to the central computer. For dial-up POS systems, 95 percent of all EBT transactions shall occur within 15 seconds and all EBT transactions shall be processed within 20 seconds. Processing response time is to be measured from the time the "enter" or "send" key is pressed until receipt and display of authorization information by the POS terminal (approval or denial).

The Department received 47 comments on several issues related to the proposed system processing speeds. In some cases individual commenters raised more than one issue. The issues included the specific standards for dial-up terminals and leased line terminals, the method of measuring response times, terminal time-out standards utilized within the industry, the applicability of the standards at peak operating times as well as initial start-up of a pilot project, and penalties and/or other remedies that could be taken to ensure compliance with the standards. Penalty provisions are addressed separately herein with overall penalty guidelines for all performance standards established by this regulation.

Comments specific to the dial-up and leased line processing speed standards were split. Nine commenters generally supported the Department's proposed standards. One commenter wanted the standards to be tighter and nine commenters wanted the standards loosened to some degree for either dial-up lines, leased lines, or both. Three commenters suggested we provide greater flexibility for gearing to the different network standards. The Department believes sufficient evidence remains to maintain the processing speeds as proposed and, therefore has not made any changes. However, the Department wishes to reiterate that these standards are *minimum* standards that may be improved upon as technology changes. The Department also recognizes that in some situations, limiting factors such as existing telephone line capabilities, existing network capabilities and other environmental causes, the processing speeds may differ from these standards. Therefore, as proposed at paragraph 274.12(h), a State agency may, with the prior written approval of the Department, utilize the prevailing industry standards that would presumably reflect these local factors, in lieu of the processing speed standards established herein. The Department believes that this provision permits sufficient flexibility with respect to existing practices and other capabilities that may prevent complete adherence to the processing speed standards of this final rule. Although one commenter stated that satellite technology is available, the Department does not have any experience with this technology or microwave technology and therefore will address these possibilities during the APD process, if raised.

The Department proposed to measure processing speeds from the POS terminal at the time the "enter" or "send" key was pressed to the receipt and display of authorization or disapproval information. To clarify this, the measurement would not include the full printing of the receipt as one commenter indicated. One commenter noted that the dial-up time alone can take between 15 to 20 seconds and therefore the measurement should occur when the connection is made with the host computer. The Department believes it is imperative that there be some measure of the total processing time of a transaction, including the time necessary for connection, and has defined this measurement accordingly. The Department also believes system design can go a long way towards preventing delays in connection time by, for example, providing sufficient ports for peak demands for connection. Again, if dial-up time is a problem in some areas, the regional network standards should reflect this. Another commenter stated that the industry practice is to measure response times "end to end limits" without including the POS terminals themselves. Although this may be the practice with some network systems, the Department has drawn from its experiences in the demonstration projects in using this measurement technique for processing speeds without significant difficulties. Moreover, from the vantage point of the retailer and the recipient, response time is experienced at the terminal rather than at the host computer. Thus, the measurement method will remain as proposed.

Two commenters suggested that the Department establish a standard for POS terminals to "time out." Typically, POS terminals are set to discontinue a request for authorization within a predetermined time period. This "time out" is, in part, a security measure designed to prevent unauthorized access to the system. The suggestions to increase the "time-out" period at the initial implementation were made to help ensure that when both check out clerks and clients are less familiar with the EBT system, adequate time would be available to complete transactions. Flexibility at implementation would prevent unnecessary use of off-line and/or manual transactions as well as repeated attempts to get the transaction done within the time limit. The suggestions are worthy of consideration, however, the Department believes that individual situations may differ so that a specific standard for timing out is not necessary. The Department recommends that State agencies recognize the POS terminal timer features in their implementation activities and make any necessary adjustments when required without unduly affecting security.

System Availability for Reliability—Section 274.12(h)(2)

In the proposed rule, the Department required that EBT systems be measured in terms of the availability of the central computer to authorize EBT transactions and the availability of the entire system. The proposed performance standard for central computer availability required the database to be available 99.9 percent of scheduled time, 24 hours per day, 7 days per week. The Department also proposed that the entire system be available for a minimum of 98 percent of scheduled time, 24 hours a day, 7 days per week. The entire system includes the central computer as well as any third party processors and/or network intermediate processing facility connected to the EBT system to transmit food stamp transactions to the central computer database for authorization. The standard for the entire system excludes individual POS terminals, individual card failure and other single component failures. Scheduled downtime for maintenance work is also not counted in calculating the availability of the central computer system. Finally, the Department proposed that downtime for scheduled maintenance not be scheduled during peak transaction periods, especially when the State agency issues benefits on the same day or days each month.

The Department received 47 comments regarding the availability standards. Many of the comments generally supported the standards as established. In fact, several commenters commended the Department for establishing such high standards. At the same time, some of these commenters questioned whether such standards could be consistently attained. In a similar theme, other comments pointed out differences in telephone lines such as fiber optic or copper wire lines that would affect the availability standards somewhat. Other commenters raised concerns over whether these availability standards could be met at merchant POS terminals because of equipment failure and uncontrollable failure of network telephone facilities.

The Department wishes to clarify that the availability standard for the entire EBT system includes the host central computer, third party processors and/or network intermediate processing facilities and does not include the availability of POS terminals, individual card failure or other component failures that occur at merchant POS terminals. POS terminal failures could not be meaningfully measured in total system availability. Furthermore, telephone outages and the capabilities of telephone lines in an area may be beyond the direct control of the EBT contractor. In other cases, however, the EBT contractor may have chosen a particular means of communication of which the contractor should be held responsible for its performance. Consequently, should transmission lines failure prevent adherence to the availability standards, the Department would consider each situation on a case-by-case basis. As a result, the Department is not changing the proposed provision.

One commenter recommended that the availability standard be established on the basis of the transaction authorization availability rather than on the basis of the number of minutes the database is available. At 99.9 percent availability measured in minutes, a host computer would be able to comply with the standard as long as unscheduled downtime did not exceed 43 minutes per month (assuming 200 minutes of scheduled downtime for a 30 day month). In comparison, on the basis of transaction authorization availability, the host could not be available for 60 minutes during a specific month and, if no transactions were attempted during the 60 minute period when the host computer was unavailable, the host computer would have met the availability standard. The Department is not amending the proposed rule at paragraph 274.12(h)(2)(i) to base availability on the transaction authorization availability rather than total minutes available. The Department is concerned that this method has not been utilized in demonstrations and that the actual measurement of failed transactions by type of failure might be difficult. The Department will, however, be willing to entertain waiver requests from State agencies for this approach to measurement. In reviewing such requests, the Department would be looking for assurances that data on all failed transactions would be captured and that such failures could be distinguished and reported by reason for the failure.

Five commenters addressed system, maintenance and/or update activities in the proposed rule. Three of the commenters expressed concern with excluding the scheduled downtime from the calculation of availability when a number of food retail stores are increasingly open 24 hours a day. Another commenter recommended restricting scheduled downtime to a specific time period rather than a more general reference to non-peak usage periods. For example, scheduled downtime for maintenance could be conducted only between 2 and 4 a.m. on a weekly basis. The last commenter, while not specifically addressing scheduled downtime, recommended that Remote Job Entry (RJE) updates of databases be scheduled during timeframes which do not conflict with network settlement processes. This same commenter recommended that stand-in processing be permitted. Stand-in processing is the process whereby another processing entity authorizes transactions in the place of the authorization processor when the authorization database is unable to authorize transactions. It is the Department's understanding that the stand-in processing may occur by utlizing a "negative" file similar to the process used in check authorization. The "negative" file would contain the most recent available balance information for a specific account.

While food retail stores are increasingly open for 24 hours, most if not all computer systems require periodic maintenance. This does not mean that all system maintenance requires scheduled downtime nor that new techniques are not available which permit maintenance while the mainframe remains available for authorizing transactions. However, the Department recognizes that the generally accepted industry practice is to permit scheduled downtime and that scheduled downtime for maintenance occurs during non-peak time periods whenever possible. Therefore, the proposed exclusion of downtime from the calculation of availability remains unchanged.

Similarly, downtime is generally limited to non-peak periods of transaction activity. The Department believes the proposed requirement permits sufficient latitude to processors to address the needs of system maintenance without unduly restricting operational needs. However, State agencies may wish to place more specific limitations on the timing of scheduled maintenance within recognized industry practices. Similarly, the Department strongly urges that system updates take place in a manner that does not interfere with settlement periods in keeping with generally recognized practices within the industry.

In addition to the availability of the system to perform, the Department proposed an accuracy standard which states that no greater than 2 in every 10,000 transactions would result in inaccurate EBT transactions. Several commenters were concerned with the definition of inaccurate transactions and whether the standard applied to food stamp transactions or all transactions. The Department is clarifying that the types of transactions considered include transactions processed through to the host computer although the entire system is considered towards the measurement of this standard. Consequently, this includes errors originating at a POS terminal or other remote component. This standard, as all others, applies only to food stamp transactions.

One commenter requested clarification on two types of inaccurate transactions. In one instance, an issuance file is double posted to the EBT authorization database. In a second case, an incorrect transaction is posted and the ACH credit to a retailer occurs. In both instances, the question is whether these types of errors are single errors or counted as multiple errors. In the first instance, the Department intended that posting to the authorization database be outside the universe of transactions falling within the accuracy measure. Certainly, the Department expects the State agency to negotiate any liability issues with its contractor since the State is held liable for any benefits actually credited to retailers after a double issuance. In addition, the Department expects that steps will be taken to the extent possible to ensure that double posting or similar errors are prevented. Since the performance measures contained in this rule are minimum standards, the State agency may choose to incorporate issuance into the universe of transactions being measured. In the second example, it appears that the system could not recognize the inaccuracy until the ACH credit took place and, thus, would be a single inaccuracy. Finally, two commenters suggested alternative standards more stringent than the proposed 2 in every 10,000 transactions. The Department believes that the standard is adequate. If State agencies choose, they may require more stringent standards. Therefore, no change is made to the proposed accuracy measurement standard other than to clarify that inaccuracy measurements apply to all food stamp transactions that clear through the host computer.

Security—Section 274.12(h)(3)

The Department proposed several EBT security provisions in addition to the security provisions required under 7 CFR § 277.18(p) for State automated data processing security. The proposed rule required the State agency to incorporate the security requirements of this regulation into the existing Security Program, where appropriate, rather than developing a separate EBT Security Program. The areas of additional security measures are: (1) Storage and procedural controls; (2) communications access controls; (3) message validation; (4) administrative and operational procedures; (5) security risk analysis of the EBT system; and (6) an EBT contingency plan. Thirty-six comments from twenty-one commenters were received on each of the six areas except for message validation requirements which are, therefore, adopted unchanged from the proposed rule.

Storage and Procedural Controls—Section 274.12(h)(3)(i)

Under the proposed rule, the State agency is required to adopt storage and procedural controls over blank unissued EBT cards and PINSs, and spare or unused POS equipment. The Department received one comment questioning the need to maintain storage controls over spare or unused POS terminals of the same type utilized for unused cards and PINs. The commenter pointed out that POS terminals are generic until the software is loaded. The Department recognizes that controls over unused or spare equipment may differ from controls over cards and PINs that could be used for unauthorized access to the system for benefits. However, the Department is clarifying that the proposed provision did not detail specific procedures that would be applied equally to cards and PINs as well as POS terminals. Controls on all these items, however, need to be established. No change has been made to the proposed rule in this final rule however.

Communications Access—Section 274.12(h)(3)(ii)

The Department proposed several security requirements for control of telecommunications access in the EBT system. In particular, the Department intentionally proposed standards which require utilization of the Data Encryption Standard (DES) algorithm method of encryption. Twelve commenters raised issues in response to the Department's interest in receiving comments on this provision. Of these comments, three generally agreed with requiring DES encryption, six indicated that only the PIN should be encrypted and three more commenters indicated that PIN encryption should occur at the point of entry. Of these comments, several indicated that not all networks require DES encryption but that the emerging trend is clearly moving toward requiring DES encryption of the PIN from the point of entry. As a result, the Department is revising the proposed language at § 274.12(h)(3)(ii) to clarify that only DES encryption of the PIN from the point of entry will be required rather than encryption of all data.

In a related issue, one commenter addressed the impact of DES encryption on the processing speeds of EBT transactions when information other than the PIN is encrypted. The commenter indicated that the DES encryption algorithm for PINs is widely used within regional networks already under ANSI X9.8, Management and Security. However, use of the ANSI X9.19, Financial Institution Retail Message Authentication standard could hinder processing speeds when used to calculate the message authentication code at a POS terminal. Such codes are unique to each terminal to ensure that each message is emitted from a terminal recognized by the system host. Using a DES method would permit detection of unauthorized changes in messages although it would not disguise the data contained in the message itself. The commenter indicated that while network processors utilize encrypted message authentication codes within POS terminals, these are not widely adopted at this time. It is our belief that advances in POS terminals will make use of DES beyond the PIN more prevalent in the future. The Department believes that in light of these two concerns, it is useful to clarify that adoption of the DES algorithm method may be included, as appropriate, into the operating procedures of an EBT system although the Department will limit the requirement to the PIN only.

Limiting DES to PIN encryption also facilitates the needs of some food retailers that may require internal reconciliation of data from POS transactions with store-wide activity of all types as one commenter indicated. Control over PIN encryption must be managed through a key management procedure recognized by each of the network participants. The Department proposed a POS terminal requirement that prohibits the display of the PIN at the terminal screen which will remain as proposed in this final rulemaking.

As indicated above, three commenters suggested that the PIN must be prevented from unsecured transmission between any point in the system. The proposed language at § 274.12(h)(7)(iii) is revised to state that PIN encryption shall be utilized from the point of entry rather than data encryption in general. The point of entry is from the PIN pad. Depending on the type of terminal, the point of entry may be a PIN pad securely attached to the POS terminal or remote PIN pad protected by a shielded cable so that the PIN is not exposed outside a secure hardware encryption device. The basic principle is that the PIN should never be transmitted "in the clear" outside a secure encryption device or security module. One commenter questioned how long the Department would give a regional network to comply with the DES encryption requirement if it did not already utilize the DES encryption method. As stated with all the performance standards, the Department will consider each case separately as it arises.

Three commenters requested clarification regarding the manual transaction requirements and system security. One commenter asked whether a PIN is required for these transactions and whether the identity code in the proposed rule identifies the retailer, the store clerk or store manager. The Department's experience to date has dealt with manager authorization codes that must be input via a touch tone telephone or verbally provided to the operator at the beginning of the call. The procedures do not permit individual clerks to simply call the hotline since this presents a potential breach of security. No PIN has been required nor should be requested from a household.

Another commenter pointed out that at least one existing network does not have the capability to authorize transactions via a hotline or audio response unit. As a consequence, requiring telephonic authorization solely for the food stamp component would be costly to implement. The commenter recommended the adoption of a paper voucher system already in use as a more preferable alternative. While the Department recognizes that the requirement may become a cost to the State agency, experience shows that telephonic authorization of manual transactions can significantly reduce liabilities arising from unfunded transactions. In the interest of minimizing such liabilities, the Department is retaining a requirement for telephonic authorization.

Responses from two commenters were received, one opposed and another advocating the use of software encryption. One commenter clarified that software encryption routines utilizing the host computer should be prohibited. The second commenter indicated that software encryption was cheaper and speedier. These two comments reflect a current debate over whether hardware or software encryption should be utilized in POS networks. Because older equipment quite often has fewer capabilities, software encryption routines controlled at the host may be difficult to utilize for some retailers or POS networks. However, it is our understanding that hardware encryption is becoming more widespread among networks due to its superior security. Since the Department is limiting the PIN encryption standard to the utilization of DES encryption from the point of entry, we believe this minimum standard will permit State agencies the latitude to adopt a more stringent standard if they wish.

Two commenters suggested that the Department require card capture as part of system security. One commenter opposed this requirement. Since the primary activities of an EBT system for the Food Stamp Program occur at POS terminals which do not have card capture capabilities, this is not an appropriate requirement.

A number of commenters also indicated that the Department should require a limit on the number of PIN attempts to prevent unauthorized access to benefit card accounts when they are lost or stolen. The Department is persuaded by this requirement and has revised the proposed rule by adding the requirement that the State agency shall establish a maximum number of unsuccessful PIN attempts prior to deactivating the card. The Department believes that the specific number can be negotiated within existing industry practices for an allowable number of unsuccessful PIN attempts prior to deactivating an EBT card (i.e., three unsuccessful attempts every 24 hours).

Administrative and Operational Procedures—Section 274.12(h)(3)(iv)

The proposed rule required that administrative and operational procedures be implemented to ensure that any administrative changes that affect a household's benefit allotment or funds transfers within the system are limited to authorized personnel only and a full audit trail of such changes be provided by the system. The functions identified include setting up household accounts, transmittal of funds or authorizations to accounts for households or retailers, adjustments to account records, removal of benefits for off-line storage or if benefits are expunged, and transmittal of ACH credits to the Federal Reserve system or other process approved by FNS. While these functions are identified, this listing is not exhaustive. One commenter was concerned about precluding the adjustment of double debits if they occur. The Department did not intend to prevent such an adjustment by omission. However, as with the other functions, established administrative procedures must be utilized when the household accounts are accessed. Additional privacy concerns with regard to accessing a benefit account without the household's concurrence are discussed in the section on Household Participation of this preamble.

Security Program Risk Analyses—Sections 274.12(h)(3)(v) and 277.18(p)

State agencies are required under 7 CFR 277.18(p) to conduct periodic risk analyses of their automated data processing systems. The Department proposed at § 274.12(h)(3)(v) to add a specific EBT component to existing risk analyses included as part of the State Security Program. However the Department wishes to clarify that the EBT risk analysis is to be added as one component to existing Security Programs. In response to concerns raised by two commenters, the Department is also clarifying that the scope of security audits and identification of the State entity charged with conducting the audit is the purview of each State agency. The Department's requirement at § 277.18(p) specifies only that State and local agencies are responsible for the security of all ADP projects under development, and operational systems involved in the administration of the Food Stamp Program. The basis for security requirements should be recognized industry standards or standards governing security of Federal ADP systems and information processing. At a minimum, the Department believes that it is appropriate to conduct a security risk analysis prior to implementation and within a reasonable time after expansion of the EBT system. Consequently, the items listed under the proposed rule have been unchanged in this final rule.

EBT Contingency Plan—Section 274.12(h)(3)(vi)

The Department proposed to require the State agency to submit a contingency plan prior to implementing the system in order to address conversion back to coupons in the event of an emergency shutdown, an extended period of inaccessibility, or system failure. The plan would be included in a State agency Security Program upon approval by the Department. The proposed contingency plan was to address situations arising during natural disasters and other possible scenarios when households would be prevented from purchasing food through the EBT system. This requirement mirrors the requirements for a contingency plan under § 277.18(p)(2) which meets the needs of the State agency and/or its contractor if a short-term or long-term interruption of processing service occurs.

Six commenters addressed the proposed requirement for an EBT contingency plan. Two commenters noted the need to include recovery procedures and backup plans prior to project activation. Such recovery plans should include update requirements and quick handling. While agreeing with these comments, the Department believes that the proposed rule permits State agencies sufficient latitude to incorporate such procedures and plans in their contractual provisions with EBT vendors. Another commenter questioned the need to maintain coupon inventories for purposes other than for a contingency against a major system interruption. Since the Department has little experience with the current demonstration projects in this area, we believe it is necessary to permit some State initiative and latitude in this area. A contingency plan should permit the timely resumption of benefit issuance . with the least interruption possible of household access to their benefits. Provided coupon issuance can be resumed quickly, it is a viable alternative as a back-up. Therefore, a contract to mail coupons as a contingency may be appropriate although the Department is not specifically requiring any one method or alternative. The Department has also revised the proposed requirements for expansion to include an update of the contingency plan approved prior to pilot implementation in order to address the expanded scope of the EBT system.

Ease-of-Use—Section 274.12(h)(4)

The Department proposed standards for ease-of-use that the State agency must ensure. These include standards applicable to all system users such as food stamp households, State or local agency personnel and food retailers and specific requirements just for food retailers. Seven commenters specifically addressed the requirements prescribed in the proposed rulemaking. Four commenters agreed with the basic requirements as proposed, with one commenter indicating that ease-of-use must take into account the uniqueness of States and their systems and another suggesting that the standard be applied more broadly to the EBT processor and network provider in addition to the card user and merchants. The Department expects that the interface of an EBT system with the State systems would accommodate the uniqueness of each State system. Therefore, no change is made to the proposed rulemaking. While agreeing that ease-of-use should in general apply to other EBT system participants such as the EBT processor and any network providers, the Department believes it is sufficient to limit specific ease-of-use requirements to those end users that must access the system for benefits, information required to conduct their business or administrative needs. Thus, the Department believes no change to the language as proposed is necessary.

Two commenters stressed the need to require the EBT system to adapt equipment for the needs of persons with disabilities. The Department is in agreement with this provision and amends the proposed language to require that the EBT system provide reasonable accommodation for the needs of households with disabilities in keeping with the requirements of the Americans with Disabilities Act of 1990. We believe that specific adaptations to equipment, in accordance with the Americans with Disabilities Act, are necessary to the extent the cost is not excessive to modify the equipment or the immediate environment surrounding the equipment. Further, the Department is amending the proposed language at § 274.12(h)(4)(i)(D) to provide for training that specifically addresses the needs of persons with disabilities.

The final commenter recommended that the Department clearly define relevant standards which measure how "user friendly" the EBT system is. The Department believes that the criteria proposed of minimizing the number of keystrokes required to access the system and providing screen prompts are sufficient to ensure ease-of-use. Approval of system designs for adherence to the functional requirements includes review of terminal and administrative screens and the steps required by households and others accessing the system enabling the Department to monitor system ease-of-use.

Third Party Processors—Section 274.12(h)(5)

A total of eight commenters provided comments on the proposed provisions regarding third party processor participation. Third party processors include data processing firms hired to drive terminals for a retailer and retailers choosing to drive their own terminals. The Department proposed that State agencies be responsible for certification standards and third party interface specifications. Each third party processor was required to meet the certification and system interface requirements in order to access the authorization database. To facilitate this, State agencies must publish the interface specifications prior to implementing the EBT system. The Department also proposed that third party processors and food retailers driving their own terminals shall be liable for transactions until the transaction has been electronically accepted by the State agency's primary contractor or an intermediate processing facility (switch).

Three commenters generally supported the requirement that retailers driving their own terminals and third party processors be able to participate and directly access the EBT authorization database provided they comply with the interface specifications and the performance and technical standards. One commenter indicated that this would foster competition and enable retailers to make greater use of their own terminals. However, two other commenters indicated that retailers may select, for other business reasons or due to the need for a communications switch, a third party processor which could not meet the processing speed requirements of this rule. These commenters recommended that either higher transaction times be permitted or the standard should not be applicable to third party processors. The Department agrees that situations may arise, in particular if telephone line capability significantly impacts the processing response times at the POS terminal, which could warant adoption of the prevailing industry standards of a regional network. However, the Department disagrees that third party processors should be held to a lesser standard than other processors participating in the system and has thus maintained the provision as proposed. System standards are set to safeguard the security of public funds and ensure adequate recipient service. These standards apply to all retail food stores.

Six of the commenters focused on issues connected to certification standards for third party processors. One commenter opposed the requirement that State agencies be responsible for certifying third party processors because it interferes in the retailer's business and increase State administrative expenses. The Department disagrees with this comment because it is a critical function of State agencies to ensure that each component of the EBT system adheres to the performance standards in order to maintain minimum levels of service for food stamp households. Three other commenters raised concerns regarding measures that could be taken for failure to meet the certification standards. One commenter questioned whether it would be appropriate for the State agency to place its own terminals or deny the food retail store acess to the system if the certification standards could not be met. While these are possible alternatives, the Department would expect that State agencies carefully consider the nature of the performance failure and take less drastic measurers to the maximum extent possible since cost implications may arise as well as contractual concerns if a retailer is removed. Two other comments raised a concern that the EBT system may be decertified (presumably by the Department) due to a third party processor's failure to perform when the contractual relationship is between the processor and the retailer. While a retailer directly contracts with a third party processor, the State agency or its contractor is required to enter into an agreement with food retailers which governs the participation of the retailer in the EBT system. The Department believes this agreement may contain remedies to be taken which are less than denial of access to the EBT system. No change to the language of this section as proposed is being made.

Card Requirements—Section 274.12(h)(6)

The proposed rule required State agencies to print a return address where the EBT card can be returned if found or no longer in use, the FNS statement of nondiscrimination on the EBT card or, with prior approval of FNS, the statement printed on a separate sleeve or card jacket. The Department also reserved the right to require a Department logo on the card as a way of identifying program participants. Finally, the names of State and local officials were prohibited on EBT cards, card sleeves or jackets, or other printed materials distributed for use by EBT system participants. A total of 22 commenters provided comments on the various provisions of EBT cards. However, no comments were received on the provision prohibiting the names of State and local officials on EBT cards or materials; therefore, it has not been changed in this final rulemaking.

Two commenters pointed out a discrepancy between the proposed rule language of the preamble and the language required under paragraph 274.12(h)(6)(i) for returning a lost or unused card. The Department is clarifying that the intent was to require a return address only and not include a hot line telephone number as stated in the preamble to the proposed rule. A hot line number for reporting missing cards would be of limited value to a recipient if actually located on the card as another commenter indicated. However, the Department is requiring that a hot line number be provided to households during their training as three commenters recommended. This is essential information for a household to have in order to report a lost or stolen card and permit an immediate hold to be placed on remaining benefits.

Regarding the statement of nondiscrimination, four commenters recommended that the card design minimize any stigma on the clients with an additional eight commenters further opposing the nondiscrimination statement, in part because of concerns about stigma. Others among these commenters pointed out that card space was limited, that the statement would be an obstacle for EBT cards utilized for multiple programs, that the statement would be too costly to print, and that the statement is not required on food coupons presently. Commenters also noted that the statement of nondiscrimination is already provided when applying for food stamp benefits. Two commenters recommended that the Department permit additional flexibility to print the statement without prior approval on a sleeve or jacket.

The Department believes that the statement of nondiscrimination must be provided to recipients in an EBT system and points to the fact that currently all coupon booklets contain this statement of nondiscrimination. We also do not believe it is sufficient that households be informed that they may contact their local social service office to report any possible incidents of discrimination, as one commenter suggested. However, to provide additional flexibility, the Department will permit State agencies to print the statement either on the card itself or with a card sleeve or jacket without the prior approval of the Department. The regulatory language has been amended to reflect this change. The Department also wishes to note that a technical amendment is being made to the nondiscrimination statement by replacing the words "handicap" and "religion" with "disability" and "religious belief" respectively. This language is being revised to be consistent with terminology contained in the Americans with Disabilities Act of 1990.

Two commenters disagreed with requiring a USDA logo. One of these commenters also indicated that the Department should provide guidelines about its design soon if it retains this requirement. While the Department believes it is necessary to leave this provision unchanged, no actions have been taken at this time to examine possible logo designs. In addition, ongoing discussions are currently underway between federal agencies regarding a single card with multiple accounts for both federal and/or State benefit programs. These discussions may have an impact on any USDA logo should one be developed. As a result, no change is made to the proposed language in this final rulemaking.

A number of commenters addressed several technical card considerations that were not included in the proposed regulation. Some commenters suggested utilization of ISO standard plastic cards with respect to card size and shape, use of magnetic stripes with the encoding of track 1 and track 2 but not track 3, embossing of the Primary Account Number (PAN), and signature panel. Another commenter suggested the adoption of a national card numbering system. The ISO 8583 standard for on-line bank card messages was also recommended by one commenter as a card requirement.

The Department recognizes that the ISO standards would be beneficial because the standard card utilization by commercial debit card terminals and card readers would perhaps facilitate "piggybacking" onto commerical debit card systems more easily. However, without the full benefit of public comment on specific card standards and their possible impact on existing systems, the Department believes that it would be premature to promulgate these in this final rulemaking. The Department indicated in the preamble to the proposed rule that we will be following the development of technical standards, primarily driven by the industry, and may choose in the future to promulgate some of those standards. Thus, in addition to staying alert to efforts by the banking industry, food retailers and regional networks to formalize standards, State agencies are encouraged to design their systems to meet prevailing ISO or ANSI standards where appropriate. The demonstration projects currently operating comply with many of the ISO or ANSI card standards in most instances.

One commenter made a strong recommendation to emboss both the card holder's name and the expiration date on the EBT card as is the practice in the commercial debit card industry. Another commenter supported embossing household names on the card to facilitate paper receipts similar to those utilized in credit card authorization with carbon copies. The Department disagrees with these two comments. Food stamp households are often composed of several members which would pose a problem for embossing several names, if needed on an EBT card. Issues of household privacy are also a concern for the Department; therefore, the Department is not requiring the embossing of household names on EBT cards. An expiration date would also be impractical in the Food Stamp Program because benefits do not expire until used by a household or expunged from an inactive account. Because households are certified to participate in the program for variable time periods, it would be difficult for State agencies to predict a viable expiration date to emboss on an EBT card for Food Stamp Program.

Terminal Requirements—Section 274.12(h)(7)

Regarding terminal standards, the Department proposed just three requirements for POS terminals: non-display of balance information, non-display of the PIN and data encryption at the POS terminal. Data encryption has been addressed previously and the language has been amended as discussed in the section on communications message security and encryption. Three comments were received on the non-display of balance information. One commenter questioned whether this meant that paper receipt was the only means available for balance information. As prescribed in the functional requirements section of the regulation, the Department requires the adoption of other methods for obtaining balance information. Examples may include balance inquiry terminals, POS terminals in closed check-out lanes, automated teller machines, audio response units, or a hotline or customer service telephone number. The other two comments were concerned with the cost of deploying balance inquiry terminals with printers if the display of the balance on a terminal screen is prohibited. The Department did not intend to put this limitation on balance-only terminals and has revised the language at paragraph 274.12(h)(7)(i) to clarify that the balance may be displayed at a balance-only inquiry terminal.

Two commenters supported the Department's proposal to prohibit the display of the PIN at POS terminals. No changes in the language have been made with this final rulemaking. One commenter also suggested that the Department require that EBT terminals be capable of multiple program applications. While the Department agrees with this provision, it is our understanding that the majority of terminals available at this time are capable of handling multiple programs. In addition, a State agency would need to select terminals that can accommodate multiple program applications if they anticipate integrating an EBT system for both food stamp and cash benefits. The Department will be looking for this ability during the APD approval process.

Performance Bonds and Penalties—Section 274.12(h)(8)

The Department proposed that a State agency may require a performance bond or utilize other contractual measures to enforce compliance with the performance and technical standards required in this rulemaking. Seven commenters addressed this penalty provision, generally encouraging the Department to establish guidelines and to avoid inordinate penalties from being imposed on system operators by State agencies. Two commenters suggested that the penalties include termination of third party processors for failure to comply or denying continued authorization of a retailer by the Department. The Department believes that penalty provisions should be addressed within recognized industry standards through the contractual process and therefore has not regulated any herein. For example, a State agency may require that prior to interfacing with the authorization database, a third party processor could be required to enter into an agreement which contains penalties for failure to comply with the performance standards of the Food Stamp Program. Similar agreements are entered into in the commercial industry between intermediate processing facilities. One other commenter recommended that State agencies should grant some latitude at initial implementation in complying with the standards. The Department agrees with these comments but believes that the language in the proposed rulemaking affords sufficient contractual latitude for State agencies and does not require a change.

As one commenter indicated, other business concerns may attract a food retailer to a particular third party processor. Therefore, the food retailer, in making a business decision to use a third-party processor should be cognizant of the Food Stamp Program standards when selecting a contractor and any associate penalities for non-performance.

Concentrator Bank Requirements—Section 274.12(i)

The Department proposed minimum functional requirements for concentrator banks or other entities approved by FNS that would be transmitting food stamp credits to retailer bank accounts through the Automated Clearinghouse (ACH) process that currently exists or another process approved by FNS. Concentrator banks are defined as financial institutions or other entities acceptable to the Federal Reserve Board and FNS that take information regarding retailer credits from the EBT system operator and transmit this information into the ACH network or other process approved by FNS. The Department proposed that concentrator banks must be federally insured financial institutions and have an ongoing relationship with the Federal Reserve system and its ACH processing. The State agency, with FNS approval, could delegate a party other than the concentrator bank, to request reimbursement from the Federal Treasury Letter-of-Credit. This permits various configurations to occur that coincide with existing responsibilities in the settlement process within commercial POS networks. The Department also proposed a requirement that State agencies must establish separate or dual controls over the withdrawal of funds from the Letter-of-Credit established with the U.S. Department of Health and Human Services Payment Management System for reimbursing food stamp credits to retailers. Similarly, in the coupon system, coupon issuance responsibilities must either be divided between two persons or subject to the completion of a second review in order to prevent any single individual from having complete control over the authorization of issuances and the issuances themselves.

Eight comments were received on the proposed provisions regarding concentrator banks. Two commenters were concerned with the potentially negative impact on smaller institutions such as credit unions. One comment further suggested that the Department permit up to 12 months lead time for these less sophisticated smaller institutions to obtain any necessary equipment to participate either as a concentrator bank or to accept food stamp credits via the ACH system. In a related issue, one commenter questioned the term "acceptable to the Federal Reserve Board." One commenter indicated concern that this rule did not recognize existing private ACH payment systems other than the ACH operated through the Federal Reserve. Another commenter suggested that existing State, federal and credit card issuance rules could continue to serve without additional security measures imposed on concentrator banks.

The Department is clarifying that our intention is not to restrict the participation of smaller institutions. EBT depends on the capability of financial institutions to electronically transmit and accept food retailer credits. Experience shows that financial institutions of different sizes have this capability, and that EBT does not limit participation to large financial institutions. In some cases financial institutions have accepted credits on behalf of other institutions in playing a role as a consolidator bank with the Federal Reserve ACH system. This type of arrangement is acceptable to the Department for crediting retailers although food retailers must recognize that any delays that may result in getting their credits are due to indirect access to the ACH process and subject to the third party processor's timely pass through of the credits. Regarding the utilization of private ACH systems, the proposed rule language included reference to another "process for crediting retailers approved by FNS;" this was intended to permit private ACH systems or other crediting systems such as network net settlement to operate. The language, "acceptable to the Federal Reserve," merely means the capability of accepting ACH credits or debits through the Federal Reserve ACH system. The demonstration projects operating to date all utilize the Federal Reserve ACH system to credit food retailers.

Two comments were directed at the relationship between a State agency and either the concentrator bank or its EBT processor. One comment indicated that the Department should permit State agencies to negotiate which financial institution will be used as a settlement bank. The Department does not impose any restrictions on which bank a State may negotiate with for settlement other than minimum capabilities to perform the services required. The other commenter believed that it was not practical for the State agency to provide daily food sales activity, i.e., credits to food retailers. The commenter indicated that it was more appropriate to require the contractor to be directed to do so. The Department is holding the State agency responsible for this information although it is appropriate for the State agency to direct the contracted processor or a concentrator bank to provide information on the daily credits to food retailers.

One comment requested clarification on the proposed requirement that State agencies establish separate or dual controls over the withdrawal of funds from the Letter-of-Credit to reimburse credits paid to food retailers. One other commenter requested clarification on the processes whereby a vendor may draw against the Letter-of-Credit, in particular what safeguards exist to ensure the vendor does not create a fictitious account. The possibility that a vendor could abuse authority to draw funds from the Letter-of-Credit prompted the Department to require State agencies to establish either separate or dual controls over this procedure. Similarly, the Department requires State agencies to separate issuance and certification functions or establish dual control within an office for the coupon system to prevent creation of false cases or overissuances by an eligibility worker. Since State agencies are liable for the draws from the Letter-of-Credit, although this task may be delegated to a contractor in an EBT system, it is prudent for State agencies to establish some oversight over this process. No changes to the proposed rule are required and the language requiring State agency controls has been incorporated into this final rulemaking.

Reconciliation and Management Reporting—Section 274.12(j)

The proposed rule required the EBT system to provide management and reconciliation reports to enable the State agency to track information as it occurs in the EBT system. Two commenters, a State agency and a retailer, supported the required reporting. Two additional commenters stated that they supported the need for these reports but they disagreed with providing monthly hard copies due to the cost of printing. Six commenters, mainly State agencies, opposed the reporting requirements stating that the level of detail was unnecessary and went beyond what is currently required. Several State agencies argued that FNS should pay for the costs of these additional reports particularly since some of these reports were viewed as an USDA responsibility rather than a State agency responsibility. One commenter stated that the cost of providing these reports should be excluded from the cost neutrality formula. Two commenters stated that a consistent set of reports, with formats, should be provided. One commenter suggested that there should be reports designed to measure change in participation rates directly attributable to EBT implementation as well as the assessing the characteristics of those entering or leaving the EBT area. One commenter asked whether reconciliation is to the dollar or the penny, citing cost as a factor for reconciling to the dollar. To clarify, reconciliation must be to the penny.

The proposed rule also mandated that the State agency require the EBT system to produce exception reports to facilitate investigations by FNS and State agency personnel into possible fraudulent activities. Four commenters opposed specific regulatory language regarding identification of households that complete transactions for their full benefit allotment amount arguing that not all allotments are large and may, in fact, be a ten dollar minimum payment. One commenter felt that retailers should be provided reports on compliance exceptions to assist in internal investigations. The Department is responsible for conducting compliance investigations and provision of such reports to retailers would be detrimental to the investigatory process.

In response to the many comments received, the Department carefully reviewed the reconciliation and management reporting requirements, as well as the exception report requirements. The Department believes that these reports are necessary for the State agency to successfully manage the system, monitor compliance and to permit the State and Federal agencies to verify system transactions validity and integrity. Therefore, the requirement for these reports remains as proposed. However, the Department agrees that some of the compliance exception parameters may need to be revisited. In particular, the Department agrees that a report on all households exhausting their full benefit allotments with one transaction would be unreasonable.

Further, the Department recognizes that the nature of these reports may change over time and, therefore, the details of which reports will be required of the State agencies, and the specific information to be contained in these reports, will be delineated at the time of system development, along with suggested formats for the reports. In regard to the exclusion of these reports from the cost neutrality standard, the Department views all direct costs associated with EBT as part of the standard, including costs associated with any new tasks for the State agency. The Department would be willing to consider an alternative to hard copies of the reports if a mutually acceptable alternative can be negotiated between the State agency and FNS. The Department believes that reports that measure changes in participation rates as related to EBT go beyond the scope of program operations and, therefore, are not included in the reconciliation and management report requirements.

Federal Financial Participation—Section 274.12(k)

The proposed rule stated that enhanced funding would not be available to State agencies solely for development of an EBT issuance system; however, if a State plans to include EBT issuance as an integrated component of a complete certification and issuance system, it may receive enhanced funding. The Department received a number of comments from State agencies that already have a certified State certification system. One State agency asked if enhanced funding is available for State agencies that are already certified. One State agency asked for clarification as to whether modifications to a certified state system, necessary to support and manage EBT, are eligible for enhanced funding. Three State agencies recommended that enhanced funding be provided to all states in order to support EBT system interface with the certified state ADP system. One commenter asked if FNS intended to preclude the use of third party processors and/or require the state to operate its own system by specifying that, to be eligible for enhanced funding, the EBT system must be fully integrated with the complete state ADP system. The Department would like to clarify that enhanced funding for EBT, including modifications to certified systems, is available only when the State agency has not yet received enhanced funding for a certification system. Enhanced funding for an EBT system which is an integrated component of the State agency's automated system does not preclude the selection of a separate contractor to operate the EBT system.

One commenter asked if there would be retrospective adjustment for the number of cases served during the year. During the federal fiscal year end close-out, the Department will finalize the number of cases served with the State agency. It is anticipated that this adjustment will be minimal as the number of cases served does not vary significantly from month to month.

Manual Transactions/Representation—Section 274.12(1)

Numerous comments were submitted on the subject of manual transactions. Most agreed that there was a need for back-up systems. Some commenters expressed concern that there were insufficient requirements associated with these back-up systems, particularly insufficient protection for recipients. Suggested protection included requiring mechanisms for recipients to clearly and specifically indicate the total amount of transaction in such a manner that subsequent alteration could not take place and requiring the imprinting of the debit card on the manual voucher. Two commenters suggested manual back-up systems were expensive in relation to their value, utilized only for the convenience of retailers, and not necessary. Others complained that back-up systems should not be required because they risked insufficient funds transactions or posed security risks. Some commenters suggested that voice authorization from the computer center was a necessity for a back-up system; others complained that obtaining authorization at the time of a transaction was a burden on retailers and should not be required.

The Department has not amended the requirement for a back-up system—there must be a back-up system available for use whenever any component of the EBT system malfunctions. As proposed, the specifics of the back-up procedures are left to the State agencies, subject to approval by FNS. Since the card or terminal can malfunction, the Department expects that a manual back-up system—i.e., one that relies on paper vouchers—is necessary in at least some situations. It is essential that households have a means to purchase food when any part of the system is unavailable. The back-up systems utilized in the demonstration projects have relied heavily on a paper voucher; however, one project has shown that it is possible for an automated off-line approach to be utilized in some situations.

One commenter suggested that it was not sufficient merely to require that there be a back-up system available, but that the Department should require that retailers utilize the back-up system when it is necessary (i.e., not refuse a transaction because the back-up system must be utilized.) The Department does not believe retailers can be required to accept back-up transactions on occasions when the retailer would be absorbing liability. Therefore, the Department is not requiring that retailers accept manual transactions. However, the Department's experience has been that retailers are generally willing to accept all transactions, whether or not a back-up system is being utilized, and expects this trend to continue. The alternative would be for the purchaser to bring his or her business to another retailer.

The aspect of back-up transactions that posed the greatest concern to commenters is the liability associated with back-up transactions and when re-presentation against a household's future benefits may take place. A wide range of specific comments and/or suggestions were received on these subjects. Six commenters specifically indicated that liability for overdraws should rest with the State agency, with more commenters implying the same. Some of these commenters suggested the States take on liability up to a certain dollar limit, beyond which retailers would be liable. One commenter suggested that liability rest with retailers as in current commercial off-line practice. One commenter suggested that authorization on manual transactions only be obtained by the retailer for transactions above $50.

In terms of re-presentation, one State agency indicated that phone authorization should not be required and States which absorb the liability for manual transaction overdraws should be able to re-present all overdraws. Six commenters suggested the re-presentation procedures were cumbersome and unworkable, some further suggesting that an off-line store and forward approach be utilized instead. Two commenters suggested that resubmission of the entire overdrawn amount be allowed in the following month. One other commenter suggested that re-presentation be an automated function. Two other commenters objected to the requirement that recipients receive notice, in addition to the notice required on the voucher, prior to the actual re-presentation.

Here again, the Department is not substantively amending the proposed rules regarding liability and re-presentation. The Department is continuing to require that liability for overdraws resulting from manual transactions rest with the State agency. The State agency can pass this liability on to other parties through negotiations, as appropriate for its circumstances. The only time that re-presentation can take place against future months benefits is when perfect knowledge as to how many benefits remain in the account at the time of the back-up transaction cannot be obtained. This includes those occasions when the phone lines are down or the host computer is down. However, even when the host computer is down, the retailer must make a call to the computer center to get the latest balance and an authorization for re-presentation to be allowed. This particular requirement will have an impact on the use of automated off-line store and forward approaches. If these approaches do not obtain an authoriztion that sufficient balance was in the account at the time of the last report (the Department expects this information to be produced every 24 hours for a legitimate manual back-up/re-presentation procedure), then re-presentation may not occur. The regulation is being clarified to indicate that, for re-presentation to be permitted, the call must be made and authorization must be recieved by the retailer on occasions when the host computer is down.

In response to those commenters who stated that re-presentation is cumbersome and unworkable, the Department is reiterating that re-presentation is an option for the State agency.

The proposed rule stated that, during the first month of re-presentation, if the monthly allotment is less than $50, the State agency shall select the greater of $10 or 10% of the monthly allotment for re-presentation. One commenter pointed out that for food stamp allotments of less than $50, $10 is always greater than 10 percent. The regulation has been amended to indicate that, in the first month of re-presentation, if the monthly allotment is less than $50, $10 of the allotment shall be deducted.

Regulation E

The proposed rule discussed Regulation E (12 CFR 205.2), the Federal Reserve regulation regarding electronic transfers that debit or credit an account, as it relates to EBT. To date, the Federal Reserve Board has ruled that EBT does not fall under Regulation E by virtue of the fact that EBT accounts are not "consumer asset accounts", but government accounts set up by the government. However, the Federal Reserve is currently in the process of reviewing their treatment of EBT and may decide that EBT should be covered by Regulation E. The Department received a mixture of comments both in support of continuing the exemption of EBT from Regulation E and in support of the application of Regulation E to EBT programs. Nine commenters, predominantly State and local agencies, strongly stated their opposition of the application of Regulation E to EBT programs, with six of these commenters citing the cost of monthly statements and liability as prohibitive. One commenter stated that Regulation E requirements should be utilized for receipt formats for ATMs and POS terminals. Three commenters, public interest groups, recommended that consumer protection set forth in the Electronic Funds Transfer Act and Regulation E be applied to EBT programs. One commenter recommended resolution of Regulation E before finalizing the EBT regulations and another commenter stated that since Regulation E has not yet been promulgated, it should not be included in the EBT regulation. One commenter stated that FNS should establish its own regulations to protect recipients and another commenter asked if the Federal Reserve Board will monitor EBT to ensure compliance with Regulation E. The Department appreciates the many comments received regarding the application of Regulation E to EBT. Discussions with the Federal Reserve Board are on-going, however, it is up to the Federal Reserve to determine if EBT is covered by Regulation E. Until final regulations are published, the Department cannot address specific issues or questions about Regulation E. The Department referenced Regulation E in the proposed rule in order to bring attention to its possible applicability to EBT. The Department strongly urges that comments be provided to the Federal Reserve Board when the proposed regulation is published.

State Liabilities—Sections 274.12(l) and 276.2

The Department received only one comment supporting the provisions that hold the State liable for benefits. Other commenters raised issues regarding liability, however these comments have been addressed elsewhere. Consequently, the provisions of the proposed rule are clarified with respect to State liabilities after the report of lost or stolen benefits.

Ownership Rights and Procurement Requirements—Section 274.12(m)

The Department proposed that the State agency shall comply with the software and automated data processing equipment ownership rights prescribed under 7 CFR 277.18(l) of this chapter. One commenter suggested that this provision did not adequately address trade secrecy and ownership rights. This commenter also indicated that large data processing firms would be reluctant to participate if software details were subject to disclosure. Another commenter observed that it was their view that the government does not secure any rights in proprietary EBT software simply through the purchase of transaction processing services from an outside vendor under existing contract law. They also noted that paying a fee for EBT services was in effect leaving future development of the software entirely to the vendor, not staking a claim to whatever enhancements are made. The Department is clarifying that each potential contract for the acquisition of automated data processing services is reviewed for adherence with Federal procurement requirements. As issues arise with respect to software development and ownership rights, a determination is made in accordance with the applicable regulations on a case by case basis. A similar approach will be applied to EBT systems as well.

Current EBT Demonstration Projects

The Department indicated that we expect the State agencies operating current EBT demonstrations to submit a plan for complying with the standards prescribed by this regulation. The plan shall address the areas in which the State EBT demonstration project does not comply with the provisions of this rule and how the State agency plans to bring its system into compliance. The State agency shall provide a schedule of the actions it expects to take and when they are to be completed within 90 days of the implementation date of these regulations. Any requests for Federal financial participation shall accompany the plan when submitted for FNS approval. Compliance with the requirements of this rule shall be completed within two years of the implementation date of the final regulation. To continue the EBT project as a demonstration project, the State agency shall contact the Department and indicate its wishes to continue under the authority of section 17 of the Act (7 U.S.C. 2026) as a demonstration project and state what research value would be obtained in continuing as a demonstration.

List of Subjects

7 CFR Part 272

Administrative practice and procedure, Aliens, Claims, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Reporting and recordkeeping requirements, State liabilities.

7 CFR Part 276

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

7 CFR Part 277

Food Stamps, government procedure, Grant programs-social programs, Investigations, Records, Reporting and recordkeeping requirements.

7 CFR Part 278

Food Stamps, Government procedure, Grant programs—social programs, Investigations, Records, Reporting and recordkeeping requirements.

Accordingly, 7 CFR chapter II is amended as follows:

1. The authority citation for part 272, 274, 276, 277 and 278 continues to read as follows:

Authority: 7 U.S.C. 2011-2031.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(125) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementaiton * * *

(125) *Amendment No. 345.* The provisions of Amendment No. 345 are effective on April 1, 1992, and shall be implemented as follows:

(i) Currently operating demonstration projects shall submit to FNS for approval a plan no later than June 30, 1992, to satisfy the requirements of this regulation. The plan shall address the areas in which the State EBT demonstration project does not comply with the provisions of this rule and how the State agency plans to bring its system into compliance. The State agency shall submit a schedule of any actions it proposes to take and when they are to be completed. Compliance with the provisions of this final regulation shall occur within two years from the effective date unless approved by FNS to continue operations under the authority of section 17 of the Act (7 U.S.C. 2026) as a demonstration project. In seeking FNS approval to continue under Section 17 authority, the State agency shall state what research value would be obtained in continuing the demonstration.

(ii) For State agencies that have proposals or planning documents currently under review by the Department, the State agencies and the Department shall establish at what point the State agency is in the planning process and how the State agency will fit into the approval process of these rules. All such State agencies will be expected to comply with the standards of these rules.

(iii) A State agency that wishes to obtain approval for an EBT system shall submit a Planning Advanced Planning Document for FNS approval as prescribed herein.

PART 274—ISSUANCE AND USE OF COUPONS

3. In § 274.3:

a. the introductory text of paragraph (a) is amended by removing the word "three".

b. a new paragraph (a)(4) is added.

c. the first sentence in paragraph (b) is amended by removing the word "three".

The addition reads as follows:

§ 274.3 Issuance systems.

(a) *System classification.* * * *

(4) An on-line Electronic Benefit Transfer system in which food stamp benefits are stored in a central computer database and electronically accessed by households at the point-of-sale via reusable plastic cards.

* * * * *

§ 274.10 [Amended]

4. In § 274.10, the first sentence in paragraph (b)(1) is amended by adding the words "or an Electronic Benefit Transfer system" after the words "project areas serviced entirely by mail issuance".

5. A new § 274.12 is added that reads as follows:

§ 274.12 Electronic Benefit Transfer Issuance System approval standards.

(a) *General.* This section establishes rules for the approval, implementation and operation of on-line Electronic Benefit Transfer (EBT) systems for the Food Stamp Program as an alternative to issuing food stamp coupons. An on-line EBT system is a computer-based system in which the benefit authorization is received from a central computer through a point-of-sale (POS) terminal. Eligible households utilize magnetic-stripe plastic cards and have accounts maintained at the central computer in lieu of food stamp coupons to purchase food items at authorized food retailers. Once certified, the household's benefits are electronically loaded into a central computer account for each month during the certification period. Checkout lanes at authorized food retailers are to be equipped with POS terminals. When the transaction occurs, the POS terminals connect on-line to the central computer database; verify the validity of the Personal Identification Number (PIN), card number, and the amount of available benefits in an EBT account; obtain authorization for each purchase and initiate the debiting of the household's account and the crediting of the retailer's account.

(b) *Program Administration.* (1) The State food stamp agency shall submit Planning and Implementation Advanced Planning Documents (APDs) for FNS approval in accordance with the requirements of § 277.18 of this chapter and this section. The State agency may implement an EBT system statewide or in only some areas of the State. However, the State agency shall implement EBT systems in a pilot area prior to expansion Statewide or to other project areas. The areas of pilot operation and full-scale operation shall be identified in the Planning APD when submitted to FNS for approval.

(2) The State agency shall be responsible for the coordination and management of the EBT system. The Secretary may suspend or terminate some or all EBT system funding or withdraw approval of the EBT system from the State agency upon a finding that the State agency or its contracted representative has failed to comply with the requirements of this section and/or § 277.18 of this chapter.

(3) All EBT systems within a State must follow a singular EBT APD and system architecture submitted by the State agency. Multiple EBT designs will be acceptable only if: such designs can be fully justified by the State agency; the system differences are transparent to participating households that move within the State; operating costs are the same or lower; and the ability of the different systems to readily communicate (transaction interchange) with one another.

(4) The State agency must provide written approval of the Planning and Implementation APDs from other participating Federal agencies or indicate that approval is being sought simultaneously from participating Federal agencies. The State agency shall indicate how it plans to incorporate additional programs into the EBT system if it anticipates the addition of other public assistance programs concurrent with or after implementation of the Food Stamp Program EBT system. The State agency shall also consult with the State agency officials responsible for administering the Special Supplemental Food Program for Women, Infants and Children (WIC) prior to submitting the Planning APD for FNS approval.

(c) *Pilot Project Approval Requirements*—(1) *EBT Planning APD.* The State agency shall comply with the two-stage approval process for APDs in submitting an EBT system proposal to FNS for approval. In addition to the requirements for a Planning APD specified under § 277.18(d)(1) of this chapter, the State agency shall commit itself to provide the following as part of the project planning activities to FNS for approval:

(i) Pilot Project Site and Expanded Site Descriptions. At a minimum, the proposed pilot project site and expanded site descriptions shall include the geographical boundaries, average number and characteristics of food stamp program participants and households, the number and type of authorized food retailers and authorized retailers bordering the pilot and expanded areas, the food stamp redemption patterns of food retailers, the status of commercial POS deployment and the estimated number of checkout lanes that will require POS equipment; and

(ii) A Description of Major Contacts. A description of initial contacts the State agency has made in the proposed pilot area among food retailers, financial institutions and households or their representatives that may be affected by implementation of the EBT system. Written commitments from the retail grocer community (including supermarket chains, independent retailers, and convenience stores) and participating financial institutions in the pilot area shall be provided along with other documentation that demonstrates the willingness to support the proposed EBT system within the pilot area and expanded system area. The State agency shall submit evidence of contacts with recipient organizations and others.

(2) *EBT Implementation APD.* The EBT Implementation APD shall include the completed documents required under § 277.18 of this chapter for Implementation APDs, where appropriate. In addition, EBT

Implementation APDs shall include the detailed pilot project site description and expanded site description, as described in this paragraph. Also, the State agency shall commit to completing and submitting the following documents for FNS approval and obtaining such approval prior to issuance of benefits to eligible households in the pilot project area:

(i) A Functional Demonstration Plan. The functional demonstration plan shall include:

(A) The schedule, procedures, and test data for performing the functional requirements prescribed in paragraph (e) of this section in combination with the system components described by the approved System Design;

(B) The procedures for performing the functional demonstration, each participant's responsibility during the demonstration, and procedures for collecting data to evaluate system functionality. The Department reserves the right to participate and conduct independent testing as necessary during the Functional Demonstration.

(ii) A Functional Demonstration Report. Upon the completion of the functional requirements demonstration test, the State agency shall submit a Functional Demonstration report. The report shall summarize the activities, describe major problems encountered and proposed solutions, and provide the timetable for completing any system revisions. Resolution of any problems identified during the functional demonstration shall be completed prior to advancing towards the acceptance test.

(iii) An Acceptance Test Plan. The Acceptance Test Plan for the pilot project shall describe the methodology to be utilized to verify that the EBT system complies with Food Stamp Program requirements and System Design specifications. At a minimum, the Acceptance Test Plan shall address:

(A) The types of testing to be performed;

(B) The organization of the test team and associated responsibilities, test database generation, test case development, test schedule, and the documentation of test results. Acceptance testing shall include functional requirements testing, error condition handling and destructive testing, security testing, recovery testing, controls testing, stress and throughput performance testing, and regression testing;

(C) A "what-if" component shall also be included to permit the opportunity for observers and participants to test possible scenarios in a free-form manner.

(D) The Department reserves the right to participate and conduct independent testing as necessary during the Acceptance testing and appropriate events during system design, development, implementation and operation.

(iv) An Acceptance Test Report. The State agency shall provide a separate report after the completion of the acceptance test. The report shall summarize the activities, describe any discrepancies, describe the proposed solutions to discrepancies, and the timetable for their retesting and completion. In addition, the report shall contain the State agency's recommendations regarding implementation of the EBT system in the pilot site.

(v) A Prototype Food Retailer Agreement. The State agency shall enter an agreement with each food retailer that complies with the requirements of paragraph (g)(6) of this section.

(vi) A Pilot Project Implementation Plan. The pilot project implementation plan shall include the following:

(A) A description of the tools, procedures, detailed schedules, and resources needed to implement the pilot project;

(B) The equipment acquisition and installation requirements, ordering schedules, and system and component testing;

(C) A phase-in strategy which permits a measured and orderly transition to EBT. In describing this strategy, the plan shall address training schedules that avoid disruption of normal shopping patterns and operations of participating households and food retailers. Training of food stamp households, State agency personnel and retailers and/or their trainers shall be coordinated with the installation of equipment in retail stores;

(D) A description of on-going tasks associated with fine-tuning the system and making any corrective actions necessary to meet contractual requirements. The description shall also address those tasks associated with on-going training, document updates, equipment maintenance, on-site support and system adjustments, as needed to meet Food Stamp Program requirements; and,

(E) A plan for orderly phase-out of the pilot project if it is demonstrated during the pilot project operations that the system is not acceptable.

(vii) A Contingency Plan. The State agency shall submit a written contingency plan for FNS approval. The contingency plan shall contain information regarding the back-up issuance system that will be activated in the event of an emergency shut-down which results in short-term or extended system inaccessibility, or total discontinuation of EBT system operations. The contingency plan shall be incorporated into the State system security plan after FNS approval as prescribed at § 277.18(p) of this chapter.

(3) *EBT Implementation APD Budget.* The Implementation APD budget shall be prepared and submitted for FNS approval in accordance with the requirements of paragraph (k) of this section and § 277.18(d)(2) of this chapter.

(i) Coupon Issuance Cap. The State agency shall provide an analysis of current statewide coupon issuance costs as compared to the projected costs of issuing benefits in the State after implementation of the EBT system, both for the EBT system and any remaining coupon issuance areas. The coupon issuance cap shall be determined as follows:

(A) The State agency shall utilize the statewide coupon issuance costs, which include State agency costs in paragraph (c)(3)(ii) of this section and Federal costs in paragraph (c)(3)(iii) of this section, calculated from issuance costs for the four Federal fiscal quarters prior to submitting the EBT Implementation APD. Case-month cost represents the average Federal share of administrative costs to issue program benefits to a case for one month. An alternative base period may be utilized, with approval from FNS, if the State agency can demonstrate that the alternative period would be more accurate or other circumstances prevent use of the previous four Federal fiscal quarters as the baseline.

(B) The annual Federal issuance cap, to be in place from the time benefits are first issued though EBT, shall be calculated by multiplying the case-month cost for the coupon system being replaced by the number of food stamp program case-months statewide for the year and by the appropriate inflation factor. The inflation factor shall be derived in accordance with paragraph (k) of this section. The issuance cap shall be effective from the date benefits are issued to households through EBT system during the pilot project.

(ii) State Coupon Issuance Costs.

(A) Beginning at the point the household is established in the Issuance Authorization File, all direct State administrative costs of the current coupon issuance system shall be identified.

(B) State operating costs of coupon issuance shall include, but shall not be limited to, direct allowable costs for personnel, fringe benefits, travel, equipment, supplies, contracts, construction and other direct costs associated with coupon issuance. Indirect costs shall not be included in the determination of State issuance costs for purposes of calculating the coupon issuance cap. Such indirect costs are defined as costs which are included in the State agency's indirect cost proposal and approved for cost charging through an indirect cost rate. The State agency shall provide narrative explanations to clarify each category and how it was calculated.

(iii) Federal Coupon Issuance Costs. Federal costs associated with the issuance of coupons in a particular State are to be included in the coupon issuance cap. These Federal costs shall include:

(A) Case-month costs for coupon printing, shipping, processing, and reconciliation. The case-month figure associated with these costs will be available from FNS upon request;

(B) Monthly mail issuance losses up to the tolerance limit approved by FNS;

(C) Monthly duplicate issuance losses absorbed by FNS; and

(D) Fifty percent of the allowable State administrative costs pertaining to coupon issuance.

(iv) EBT Equipment and Start-up Costs.

(A) For the purpose of assigning the costs to the post-EBT implementation issuance cap, costs to design and develop the EBT system, incurred from the approval date of the Implementation APD but prior to actual issuance of benefits through the EBT system, shall be assigned over the life of the EBT system for a period not to exceed seven years. The seven year period shall begin when the initial household is issued benefits in the pilot project. Such design and development costs shall be assigned at the end of the period and claims shall be made for any assigned costs that exceed the total cap for the seven years. For a period of one year from the first issuance in the pilot, costs incurred during the pilot project that exceed the issuance cap may be treated in the same manner as these design and development costs and assigned to the cap at the end of the seven year period.

(B) For the purpose of claiming Federal financial participation in capital expenditures, such costs shall be charged from the time operations begin in accordance with 7 CFR 277.18(i)(3) and appendix A of 7 CFR 277.18. Equipment costs shall include the cost of installation and shall be applied to the issuance funding cap as amortized. EBT equipment costs shall be identified in the EBT system budget as a separate component, both for the pilot and the fully operational system.

(v) Costs of EBT Planning APD. The costs for EBT project planning activities shall be excluded from the case-month issuance cap described in paragraph (c)(3) of this section. Planning costs shall include costs attributed to the preparation of the Planning APD and the completion of the documentation contained in the FNS approved Planning APD.

(vi) EBT operational costs. In accordance with appendix A of § 277.18 of this chapter, the State agency shall identify the allowable EBT operational costs for reimbursement. Operations costs shall begin from the date benefits are issued to recipients in the pilot project. The State agency shall provide cost information as follows:

(A) The State agency shall include EBT system operation costs which include, as appropriate, but are not limited to: labor hours and costs by job category and by program for each unit, direct non-labor costs by program for each agency, vendor charges, if any, computer usage (CPU, disk storage, tapes, printing), the equipment amortization/lease and maintenance (including POS hardware and installation costs), telecommunications installations, recurring telecommunications, benefit card stock and equipment, supplies, printing and reproduction, travel, postage, automated clearinghouse charges, wire transfer fees and other such settlement fees, and other direct costs. Indirect costs shall not be included as EBT system operation costs.

(B) The State agency shall be responsible for the post-EBT implementation issuance costs that exceed the coupon issuance cap in any one year. These costs shall include all issuance costs incurred Statewide for food coupon and EBT issuance. The State agency shall document any issuance costs it projects to be above the cap in the budget submitted to FNS for approval.

(4) *Pilot Project Reporting.* (i) A quarterly report containing the following information delineated by month shall be provided to FNS by the end of the month following each Federal fiscal quarter. The quarterly report shall contain, at a minimum:

(A) A summary, by task, of major completed activities and scheduled activities for the upcoming period.

(B) The number of active cases for each month;

(C) The number and dollar amount of food stamp purchases in total and by store ID;

(D) The number and dollar amount of food stamp reversals, in total and by store ID;

(E) The total number and dollar amount of manual sales authorized;

(F) The total number and dollar amount of issuances posted to EBT accounts during the month, delineated by public assistance Food Stamp households and non-public assistance Food Stamp households;

(G) Total number and dollar amount of grocer credits during settlement (by day of month);

(H) Total number of retailers added to or deleted from the system as defined under part 278 of this chapter;

(I) Number and dollar amount of food stamp benefits converted to coupons;

(J) Total number of Food Stamp Program balance inquiries, by type of device such as Automated Teller Machines, POS terminals or Audio Response Units (ARUs) or hotline telephone numbers;

(K) Total number of rejected transactions, grouped by reasons (e.g., invalid PIN, insufficient funds, invalid transaction type for device, etc.);

(L) The number of access cards issued by the type of case (new, recertification, replacement for loss, damage or theft);

(M) Number of client calls and grocer calls to the ARU or hotline number;

(N) The average number of transactions by type;

(O) Average dollar value of purchases per case-month;

(P) Transactions utilized per day as a percentage of transactions through the system each month;

(Q) Problems encountered, their status, actions taken by the State agency and any support needed from FNS to resolve them; and

(R) Anticipated delays, reasons for the delays, and corrective actions planned or taken that require an amendment to the Project Work Plan. The Project Work Plan shall be updated and submitted with each quarterly report.

(ii) The State agency shall submit APD Updates as prescribed in § 277.18 of this chapter and paragraph (d) of this section.

(5) *Cost Analysis.* (i) The State agency shall be responsible for conducting a cost analysis comparing the actual EBT pilot project costs to the costs of the EBT system operations projected in the Implementation APD and the costs of the coupon issuance system being replaced.

(ii) The cost analysis may be conducted by State agency staff or by an independent contractor. The cost analysis shall represent the costs of the pilot as costs per case-month.

(iii) The State agency shall report in the cost analysis all start-up costs that shall be amortized under the issuance cap for the EBT system. At a minimum, the State agency shall identify:

(A) The labor hours and costs by job category for each unit (e.g., the Food Stamp Program Section, the financial assistance section, the EBT project section, etc.) of the State and local agencies and for each vendor;

(B) The direct costs for each agency and vendor. The line items to be included are computer usage (CPU, disk storage, tapes, printing), the equipment amortization/lease and maintenance (excluding POS hardware), telecommunications installations, recurring telecommunications, benefit card stock and equipment, supplies, printing and reproduction, travel, postage, Automated Clearinghouse and wire transfer fees, in addition to other direct costs.

(iv) The State agency shall report the per case-month operating costs of the EBT and the coupon systems. Case-month costs shall be calculated by determining the average monthly issuance cost per system divided by the average monthly food stamp caseload issued benefits for the most recent four fiscal quarters or the most recent fiscal year. These costs shall be reported by function. The functions include: authorizing access to benefits; delivering benefits; crediting retailers; managing retailer participation; and reconciling and monitoring the issuance system. For each function the State agency shall report the information specified in paragraphs (c)(5)(iii) (A) and (B) of this section.

(v) The State agency shall report benefit loss per case month. For coupon losses the State agency shall utilize data from Form FNS-250 Food Coupon Accountability Report, Form FNS-259 Food Stamp Mail Issuance Report, and Form FNS-46 Issuance Reconciliation Report. Data from actual EBT system losses shall be included as a separate line in the cost analysis report.

(vi) EBT operational costs shall be measured after the EBT pilot project system has operated for a minimum of three months with the full caseload in the pilot area. The cost analysis shall be submitted to FNS after completion of the period of pilot operations with the full caseload.

(vii) The State agency shall measure any residual coupon costs resulting from households within the demonstration site that have not been converted to EBT, households from outside of the site that shop at stores within the pilot project area; and households leaving the pilot project area. If the State agency proposes to operate EBT on less than a statewide basis for an indefinite period of time, costs for the combined coupon and EBT systems shall be reported and compared to the coupon system costs.

(d) *Expansion Requirements.* After a minimum of three months of pilot project operation with the full pilot caseload, the State agency may decide to expand the EBT system. If expansion is selected, the State agency shall submit an APD Update to request FNS approval to implement and operate the EBT system in areas beyond the pilot area. The APD Update shall contain the following:

(1) A proposed expansion budget for FNS' review and approval;

(2) An Implementation Plan. At a minimum, the Expansion Implementation Plan shall address:

(i) The requirements of paragraphs (c)(2)(vi) (A) through (D) of this section as applied to the expansion activities; and,

(ii) The names, titles, addresses, and telephone numbers of the persons responsible for coordinating expansion activities;

(3) A description of any necessary system design changes, including software modifications and/or modifications of equipment configurations. The design changes shall be documented within the ADP Update or provided to FNS for approval separately upon completion;

(4) An assessment of the effects the EBT pilot project had, if any, on program participation during the pilot operation; and,

(5) A revised Contingency Plan as required in paragraph (c)(7) of this section to address the expanded scope of the system.

(e) *Functional Requirements.* The State agency shall ensure that the EBT system is capable of performing the following functional requirements prior to implementation:

(1) *Authorizing Household Benefits.* (i) Issuing and replacing EBT cards to eligible households;

(ii) Permitting eligible households to select a personal identification number (PINs) at least four digits in length;

(iii) Establishing benefit cards and accounts with the central computer database;

(iv) Maintaining the master household issuance record file data and current authorization information;

(v) Training households and other users in system usage;

(vi) Authorizing benefit delivery;

(vii) Posting benefits to each household's account for regular and supplemental issuances;

(viii) Providing households with access to information on benefit availability;

(ix) Ensuring the privacy of household data and providing benefit and data security;

(x) Inventorying and securing accountable documents; and

(xi) Zeroing out benefit accounts and other account authorization activity.

(2) *Providing Food Benefits to Households.* (i) Verifying the identity of authorized households or authorized household representatives at issuance terminals or POS;

(ii) Verifying the PIN and/or PIN offset, primary account number (PAN), terminal identification number and retailer identification number;

(iii) Determining the sufficiency of the household's account balance in order to debit or credit household benefit accounts at the point-of-sale;

(iv) Sending messages authorizing or rejecting purchases;

(v) Providing back-up purchase procedures when the system is unavailable;

(vi) Ensuring that benefits are available and carried over from month-to-month.

(vii) Converting EBT benefits to coupons in accordance with paragraph (f)(6) of this section; and

(viii) Responding to issuance problems in a timely manner.

(3) *Crediting Retailers and Financial Institutions for Redeemed Benefits.* (i) Verifying electronic transactions flowing to or from participating retailers' bank accounts;

(ii) Creating and maintaining a file containing the individual records of EBT transactions;

(iii) Totalling all credits accumulated by each retailer;

(iv) Providing balance information to retailers or third party processors from individual POS terminals, as needed;

(v) Providing each retailer information on total deposits in the system on a daily basis;

(vi) Preparing a daily tape in a National Automated Clearinghouse format or other process approved by FNS with information on benefits redeemed for each retailer and in summary;

(vii) Transmitting the automated clearinghouse (ACH) tape to a financial institution for transmission through the ACH or other method approved by FNS;

(viii) Transferring the information on the ACH tape or other process approved by FNS containing daily redemption activity of each retailer to the FNS Minneapolis Computer Support Center at least once weekly. Transmittal may be by tape, disc, remote job entry or other means acceptable to FNS.

(4) *Managing Retailer Participation.* The State agency shall:

(i) Convey retailer authorization information provided by FNS to the system operator and follow up on actions taken regarding any disqualification or withdrawal by an authorized food retailer from the Food Stamp Program within two business days after receipt;

(ii) Add newly authorized food retail stores or third party processors to the EBT system as prescribed under paragraph (g)(1)(ii) of this section.

(iii) Ensure that only currently authorized retailers can access the system;

(iv) Monitor food retailers to ensure that equipment deployment complies with paragraph (g)(4) of this section;

(v) Ensure that equipment and supplies are maintained in working order for retail stores equipped by the State agency or its contractor. Equipment shall be replaced or repaired within 24 hours;

(vi) Ensure that retail store employees are trained in system operation prior to implementation. Such training shall include the provision of appropriate written and progrm specific materials;

(vii) Provide a mechanism for compliance investigations which permits authorized invetigators to have access to the system in order to conduct investigations of program abuse and alleged violations.

(f) *Household Participation*—(1) *Transaction Limits.* No minimum dollar amount per transaction nor maximum limit on the number of transactions shall be established. In addition, no transaction fees shall be imposed on food stamp households utilizing the EBT system to access their benefits.

(2) *Access to Balances.* Households shall be permitted to determine their food stamp account balances without making a purchase or standing in a checkout line. The State agency shall ensure that the EBT system is capable of providing a transaction history for a period of up two calendar months to households upon request.

(3) *Transaction Receipts.* Households shall be provided printed receipts at the time of transaction. At a minimum this information shall:

(i) State the date, merchant's name and location, transaction type, transaction amount and remaining balance for the food stamp account;

(ii) Comply with the requirements of 12 CFR part 205 (Regulation E) in addition to the requirements of this section; and

(iii) Identify the food stamp household member's account number (the PAN) or a coded transaction number. The household's name shall not appear on the receipt except when a signature is required when utilizing a manual transaction voucher.

(4) *Issuance of Benefits.* State agencies shall establish an availability date for household access to their benefits and inform household of this date. The State agency may make adjustments to benefit posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted. The appropriate management controls and procedures for accessing benefit accounts after the posting shall be instituted to ensure that no unauthorized adjustments are made in accordance with paragraph (f)(7)(iii) of this section.

(5) *Issuance and Replacement of Cards or PINs.* (i) The State agency shall permit food stamp households to select their Personal Identification Number (PIN). PIN assignment procedures shall not be permitted.

(ii) The State agency shall replace EBT cards within two business days following notice by the household to the State agency. The State may request a waiver from the Department to allow a longer replacement time.

(iii) The State agency shall ensure that a duplicate account is not established which would permit households to access more than one account in the system.

(iv) An immediate hold shall be placed on accounts at the time notice is received from a household regarding the need for card or PIN replacement. The State agency shall implement a reporting system which is continually operative. Once a household reports that their EBT card has been lost or stolen, the State agency shall assume liability for benefits subsequently drawn from the account and replace any lost or stolen benefits to the household. The State agency or its agent shall maintain a record showing the date and time of all reports by households that their card is lost or stolen.

(v) The State agency may impose a replacement fee with the approval of FNS. The fee shall not exceed the cost to replace the card. Any card replacement fee, the replacement threshold, frequency and circumstances to which the fee shall be applicable shall be identified when submitting the Advance Planning Document for FNS approval.

(6) *Benefit Conversion.* (i) Households leaving an EBT project area must be able to convert their electronic benefits to coupons. At State agency option, a household entering an EBT area may be required to spend any remaining food coupons prior to utilizing the EBT system to access their benefits. Conversion shall occur within one business day following notice to the State agency by the household when inventories of food coupons are stored at local agency locations. Conversion shall occur within three business days if the State maintains coupon inventories in a central location.

(ii) Requests for conversions to food coupons solely for purposes of shopping outside the pilot area shall be prohibited. However, the State agency may allow benefits in an EBT account to be converted to coupons for short-term absences from the EBT system area for family emergencies or similar isolated occurrences.

(iii) Splitting food stamp benefits between food coupons and an electronic benefit access card at the time of issuance shall not be permitted.

(iv) At State agency option, a limit may be imposed on the number of conversions per household that may occur annually for the purposes prescribed under paragraph (f)(6)(ii) of this section. A limit on conversions to food coupons shall not be imposed on households moving from the EBT area.

(v) The State agency shall develop procedures for conversion whenever a household has left a State. These procedures shall not conflict with mailing restrictions regarding Authorization to Participate documents or other authorizing documents.

(vi) The State agency shall round EBT benefits remaining in an account down to the nearest dollar amount suitable for coupon issuance. The State agency shall require the household to spend any remaining balance that cannot be converted to food coupons. If a household fails to spend the remaining benefits within one week after conversion occurs, the State agency shall expunge the benefits from the account and report the adjustment to the Department.

(7) *Stale Account Handling.* Stale benefit accounts are those food stamp benefit accounts which are not accessed for three months or longer.

(i) If EBT accounts are inactive for three months or longer, the State agency may store such benefits off-line.

(A) Benefits stored off-line shall be made available upon reapplication or re-contact by the household;

(B) The State agency shall attempt to notify the household of this action before storage of the benefits off-line and describe the steps necessary to bring the benefits back on-line;

(ii) The State agency shall expunge benefits that have not been accessed by the household after a period of one year. Issuance reports shall reflect the adjustment to the State agency issuance totals to comply with monthly issuance reporting requirements prescribed under § 274.4 of this part.

(iii) Procedures shall be established to permit the appropriate managers to adjust benefits that have already been posted to a benefit account prior to the household accessing the account; or, after an account has become dormant or the household has not used the funds which remain after conversion. These procedures shall be utilized if an account has been erroneously debited or credited. The procedures shall also be applicable to removing stale accounts for off-line storage of benefits or when the benefits are expunged. Whenever benefits are expunged or stored off-line, the State agency shall document the date, amount of the benefits and storage location in the household case file.

(8) *Timely Benefit Availability.* The State agency shall ensure that the EBT system complies with the expedited service benefit delivery standard and the normal application processing standards prescribed by § 273.2 and § 274.2 of this chapter.

(9) *Access to Retail Stores.* The EBT system shall provide for minimal disruption of access to and service in retail stores by eligible households. The EBT system shall not result in a significant increase in the cost of food or cost of transportation to authorized food retail stores for food stamp households. Checkout lanes equipped with POS devices shall be made available to Food Stamp households during all retail store hours of operation.

(10) *Household Training.* The State agency shall provide training to each household prior to implementation and as needed during ongoing operation of the EBT system. Training functions for an EBT system may be incorporated into certification procedures. At a minimum, the household training shall include:

(i) Content which will familiarize each household with the provisions of paragraphs (f)(1) through (f)(9) of this section;

(ii) Hands-on experience for each household in the use of the EBT equipment necessary to access benefits and obtain balance information;

(iii) Notification to the household of the procedures for manual transactions and re-presentation;

(iv) The appropriate utilization and security of the Personal Identification Number;

(v) Each household's responsibilities for reporting loss or damage to the EBT card and who to report them to, both during and outside business hours. Information on a 24 hour hotline telephone number shall be provided to each household during training;

(vi) Written materials and/or other information, including the specific rights to benefits in an EBT system, shall be provided as prescribed under 7 CFR 372.4(b) for bilingual households and for households with disabilities. Written materials shall be prepared at an educational reading level suitable for food stamp households;

(vii) Information on the signs or other appropriate indicators located in checkout lanes that enable the household to identify lanes equipped to accept EBT cards.

(g) *Retailer Participation.* (1) All authorized retailers must be afforded the opportunity to participate in the EBT system. An authorized food retailer shall not be required to participate in an EBT system.

(i) Retailers who do not have immediate access to telephones at the time of purchase shall be accommodated by an alternative system (e.g., manual vouchers with preliminary or delayed telephone verification) for redeeming food sales to eligible food stamp customers. These retailers include stationary food stores which opt to make home deliveries to food stamp households, house-to-house trade routes which operate on standing orders from customers, e.g. milk and bread delivery routes, food buying cooperatives authorized to participate as well as other food retailers authorized under § 278.1 of this chapter. Prior to delivery or upon returning to the store, the retailer shall telephone the EBT central computer or hotline number to log the transaction and obtain an authorization number. If authorization cannot be obtained before or at the time of purchase, the retailer assumes the risk for sufficient benefits being available in the household's account. Any alternate method cannot be burdensome on either the household or the retailer, and it must include acceptable privacy and security features. Such systems shall only be available to retailers that cannot be equipped with a POS terminal at the time of sale.

(ii) Newly authorized retailers shall have access to the EBT system within two weeks after the receipt of the FNS authorization notice. However, whenever a retailer chooses to employ a third party processor to drive its terminals or elects to drive its own terminals, access to the system shall be accomplished within a 30 day period or a mutually agreed upon time to enable the third party interface specifications and any State required functional certification to be performed by the State agency and/or its contractor. The FNS field office shall notify each new retailer at the time of application for authorization that an EBT system is operating in their store location(s). The field office shall also notify the State agency in a timely manner when a retailer is authorized to participate in the Food Stamp Program.

(2) Authorized retailers shall not be required to pay costs essential to and directly attributable to EBT system operations as long as the equipment or services are provided by the State agency or its contractor and are utilized solely for the Food Stamp Program. In addition, if Food Stamp Program equipment is deployed under contract to the State agency, the State agency may, with USDA approval, share appropriate costs with retailers if the equipment is also utilized for commercial purposes.

(3) The State agency shall ensure that a sufficient number of authorized food retailers have agreed to participate throughout the area in which the EBT system will operate to ensure that eligible food stamp households will not suffer a significant reduction in their choice of retail food stores and that a sufficient number of retail food stores serving minority language populations are participating.

(4) The EBT system shall be implemented and operated in a manner that maintains equal treatment for food stamp households in accordance with § 278.2(b) of this chapter. The following requirements for the equal treatment of food stamp households shall directly apply to EBT systems:

(i) Retailers shall not establish special checkout lanes which are only for food stamp households or welfare customers. If special lanes are designated for the purpose of accepting other electronic debit or credit cards and/or other payment methods such as checks, food stamp customers with EBT cards may also be assigned to such lanes as long as other commercial customers are assigned there as well.

(ii) POS terminals shall be deployed as follows in EBT systems requiring food stamp households to participate:

(A) For an authorized food retail store with food stamp benefit redemption amounting to 15 percent or more of total food sales, all checkout lanes shall be equipped;

(B) For an authorized food retail store with Food Stamp benefit redemptions representing less than 15 percent of total food sales, supermarkets shall, at a minimum, receive one terminal for every $11,000 in monthly redemption activity up to the number of lanes per store. All other food retailers shall receive one terminal for every $8,000 in monthly redemption activity up to the number of lanes per store. However, a State agency may utilize an alternative deployment formula that permits equipment deployment at higher levels than required by this paragraph up to the number of lanes in each store. The State agency shall review terminal deployment on a yearly basis and shall be authorized to remove excess terminals if actual redemption activity warrants a reduction.

(C) For newly authorized food retailers and authorized food retailers bordering the EBT system area, the State agency and food retailer shall negotiate a mutually agreed level of terminal deployment up to the number of lanes per store. The State agency may consult with the appropriate FNS field office in order to determine the previous food stamp redemption activity that could be utilized in determining the initial number of terminals to deploy in newly authorized retailers or border stores. The State agency shall examine household shopping patterns in the EBT operating area in order to establish the needs for border store equipment. Redemption information shall remain confidential.

(D) Any food retailer shall be able to submit further evidence that it warrants additional terminals after the initial POS terminals are deployed. Food stamp households may also submit evidence to the State agency that additional POS terminals are needed.

(5) The State agency shall ensure that the EBT system provides credits to the financial institution holding the accounts for retailers or third party processors within two business days of the daily cut-over period for retailer settlement. The cut-over period is the time of day established by the system in which a transaction day is established for settlement and reconciliation.

(6) The State agency shall enter into an agreement with each authorized food retailer. The retailer agreement shall describe the terms and conditions of participation in the Food Stamp EBT system. At a minimum, the agreement shall:

(i) Describe all terms and conditions with respect to equipment ownership, lease arrangements, handling and maintenance for which the State agency and merchant are liable;

(ii) Describe the agreed upon procedures and policies for participation and withdrawal from the EBT system;

(iii) Comply with all Food Stamp Program regulations with respect to retailer participation in the program and treatment of Food Stamp Program households. This shall include specific requirements with respect to the deployment of terminals and the identification of checkout lanes for food stamp customers;

(iv) Delineate the liabilities during system downtime and the associated responsibilities of each party with respect to the use of off-line and/or manually entered data, paper vouchers, and re-presented vouchers.

(h) *Performance and Technical Standards.* The State agency shall ensure that EBT systems comply with Point of Sale (POS) technical standards established by the American National Standards Institute (ANSI) or International Organization for Standardization (ISO) where applicable. In addition, the State agency shall ensure that the EBT system meets performance and technical standards in the areas of system processing speeds, system availability and reliability, system security, system ease-of-use, minimum card and terminal requirements, performance bonding, and a minimum transaction set. With prior written approval from FNS, the State agency may utilize the prevailing industry performance standards in its region in lieu of those identified in this section. The standards shall be included in all requests for proposals and contracts.

(1) *System Processing Speeds.* (i) For leased line systems, 98 percent of EBT transactions shall be processed within 10 seconds or less and all EBT transactions shall be processed within 15 seconds. Leased line systems rent telecommunications carriers specifically to connect to the central authorizing computer. For dial-up systems, 95 percent of the EBT transactions shall be processed within 15 seconds or less and all EBT transactions shall be processed within 20 seconds or less. Dial-up systems utilize existing telecommunications lines to dial up and connect to the central computer at the time of the transaction. Processing response time shall be measured at the POS terminal from the time the 'enter' or 'send' key is pressed to the receipt and display of authorization or disapproval information. Third party processors, as defined in paragraph (h)(5) of this section, shall be required by the State agency to comply with the same processing response times required of the primary processor.

(ii) The EBT system shall provide reports, as determined by the State agency, that document transaction processing response time and the number and type of problematic transactions that could not be processed within the standard response time.

(2) *System Availability and Reliability.* (i) The EBT system central computer shall be available 99.9 percent of scheduled up-time, 24 hours a day, seven days per week. Scheduled up-time shall mean the time the database is available for transactions excluding scheduled downtime for routine maintenance. The total system, including the system's central computer, any network or intermediate processing facilities and cardholder authorization processors, shall be availale 98 percent of scheduled up-time, 24 hours per day, 7 days per week. Scheduled downtime for routine maintenance shall occur during non-peak transaction periods. State certification procedures shall determine whether intermediate processing facilities and cardholder authorization processors are capable of complying with system availability standards prescribed herein prior to permitting the interface with the central computer system.

(ii) The system central computer shall permit no more than 2 inaccurate EBT transactions for every 10,000 EBT transactions processed. The transactions to be included in measuring system accuracy shall include all types of food stamp transactions permitted at POS terminals and processed through the host computer, manual transactions entered into the system, credits to household accounts, and funds transfers to retailer accounts.

(iii) Reconciliation reports and other information regarding problematic transactions shall be made available to the State agency by the system operator, individual retailers, households or financial institutions as appropriate. Reports on problematic transactions, including inaccurate transactions shall be delineated by the source of the problem such as card failure, POS terminal failure, interruption of telecommunications, or other component failure. Errors shall be resolved in a timely manner.

(3) *System Security.* As an addition to or component of the Security Program required of Automated Data Processing systems prescribed under § 277.18(p) of this chapter, the State agency shall ensure that the following EBT security requirements are established:

(i) Storage and control measures to control blank unissued EBT cards and PINs, and unused or spare POS devices;

(ii) Measures to ensure communication access control. Communication controls shall include the transmission of transaction data and issuance information from point-of-sale terminals to work-stations and terminals at the data processing center. The following specific security measures shall be included, as appropriate, in the system design documentation, operating procedures or the State agency Security Program:

(A) Computer hardware controls that ensure acceptance of data from authorized terminals only. These controls shall include the use of mechanisms such as retailer identification codes, terminal identifiers and user identification codes, and/or other mechanisms and procedures recognized by the industry;

(B) Software controls, placed at either the terminal or central computer or both, that establish separate control files containing lists of authorized retailers, terminal identifying codes, and user access and identification codes. EBT system software controls shall include separate checks against the control files in order to validate each transaction prior to authorization and limiting the number of unsuccessful PIN attempts that can be made utilizing standard industry practices before the card is deactivated;

(C) Communications network security that utilizes the Data Encryption Standard algorithm to encrypt the PIN, at a minimum, from the point of entry. Other security may include authentication codes and check-sum digits, in combination with data encoded on the magnetic stripe such as the PIN and/or PIN offset, to ensure data security during electronic transmission. Any of the network security measures may be utilized together or separately and may be applied at the terminal or central computer as indicated in the approved system design to ensure communications control;

(D) Manual procedures that provide for secure access to the system with minimal risk to household or retailer accounts. Manual procedures may include the utilization of manager identification codes in obtaining telephonic authorization from the central computer system; requirements for separate entry with audio response unit verification and authorization number; and/or the utilization of 24 hour hotline telephone numbers to authorize transactions.

(iii) Message validation shall include but shall not be limited to:

(A) Message format checks for completeness of the message, correct order of data, existence of control characters, number and size of data fields and appropriate format standards as specified in the approved system design;

(B) Range checks for acceptable date fields, number and valid account numbers, purchase and refund upper limitations in order to prevent and control damage to the system accounts;

(C) Reversals of messages that are not fully processed and recorded.

(iv) Administrative and operational procedures shall ensure that:

(A) Functions affecting an account balance are separated or dually controlled during processing and when requesting Federal reimbursement through a concentrator bank under the provisions of paragraph (i) of this section. These functions may include but are not limited to the set up of accounts, transmittal of funds to and from accounts, access to files to change account records, and transmittal of retailer deposits to the ACH network or other means approved by FNS for crediting retailer bank accounts;

(B) Passwords, identity codes or other security procedures must be utilized by State agency or local personnel and at data processing centers;

(C) Software programming changes shall be dual controlled to the extent possible;

(D) System operations functions shall be segregated from reconciliation duties;

(v) A separate EBT security component shall be incorporated into the State agency Security Program for Automated Data Processing (ADP) systems where appropriate and as prescribed under § 277.18(p) of this chapter. The periodic risk analyses required by the Security Program shall address the following items specific to an EBT system:

(A) EBT system vulnerability to theft and unauthorized use;

(B) Completeness and timeliness of the reconciliation system;

(C) Vulnerability to tampering with or creating household accounts;

(D) Erroneous posting of issuances to household accounts;

(E) Manipulation of retailers' accounts such as creation of false transactions or intrusion by unauthorized computer users;

(F) Capability to monitor systematic abuses at POS terminals such as debits for a complete allotment, excessive manual issuances, and multiple manual transactions at the same time. Such monitoring may be accomplished through the use of exception reporting;

(G) Tampering with information on the ACH tape or similar information utilized in a crediting method approved by FNS; and,

(H) The availability of a complete audit trail. A complete audit trail shall, at a minimum, be able to provide a complete transaction history of each individual system activity that affects an account balance. The audit trail shall include the tracking of issuances from the Master File and Issuance File, network transactions from point-of-sale terminals to EBT central computer database and system file updates.

(vi) The State agency shall incorporate the contingency plan approved by FNS prior to pilot implementation and subsequently updated as part of the Expansion Implementation Plan into the Security Program.

(4) *System Ease-of-Use.* (i) For all system users, the State agency shall ensure that the system:

(A) Minimizes the number of separate steps required to complete a transaction;

(B) Minimizes the number of codes or commands needed to make use of the system;

(C) Makes available clear and comprehensive account balance information with a minimum number of actions necessary;

(D) Provides training and instructions for all system users especially those persons with disabilities;

(E) Makes available prompts on POS terminals or balance only terminals, where appropriate;

(F) Identifies procedures for problem resolution;

(G) Provides reasonable accommodation for the needs of households with disabilities in keeping with the Americans with Disabilities Act of 1990.

(ii) In addition to the requirements of paragraph (h)(4)(i) of this section, the State agency shall ensure that retailers utilizing the EBT system:

(A) Have available manual backup procedures;

(B) Can obtain timely information on daily credits to their banks;

(C) Have available deposit information in a format readily comparable to information maintained in the store; and

(D) Have available instructions on resolving problems with equipment and retailer accounts.

(5) *Third Party Processors.* Third party processors are financial institutions, cardholder authorization processors other than the party with which the State agency has contracted for EBT services, and food retailers driving their own terminals that are capable of relaying electronic transactions to a central database computer for authorization. The State agency shall afford retailers the opportunity to use third party processors and shall provide interface specifications and certification standards in order for the third party processor to participate in the EBT system.

(i) In order to participate in a Food Stamp Program EBT system, a third party processor must be able to meet all third party interface specifications and certification standards associated with this section. The State agency shall publish the third party interface specifications prior to implementation of the EBT system to enable third party processors to access the database. Third party processors shall undergo functional and acceptance tests as specified by the State agency;

(ii) Third party processors shall be liable for transactions until the transaction has been electronically accepted by the contracted vendor or an intermediate processing facility;

(iii) The State agency shall ensure that third party processors and food retailers driving their own terminals comply with this section and all applicable Food Stamp Program regulations.

(6) *Minimum Card Requirements.* (i) The State agency shall ensure that the following information is printed on the card:

(A) The address of the office where a card can be returned if found or no longer in use;

(B) The statement of nondiscrimination which reads as follows: "This is an equal opportunity program. If you believe that you have been the victim of discrimination in your efforts to receive food stamp benefits because of your race, color, national origin, age, sex, disability, religious belief, or political beliefs, write immediately to the Administrator, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302." In lieu of printing the required information on the EBT card, the State agency shall provide each household a card jacket or sleeve containing the nondiscrimination statement.

(ii) FNS reserves the right to require State agencies to place a Department logo on the EBT card and/or sleeves or jackets.

(iii) EBT cards and/or sleeves or jackets shall not contain the name of any State or local official. EBT informational materials shall not indicate association with any political party or other political affiliation.

(7) *POS Terminals.* POS terminals shall meet the following requirements:

(i) Balance information shall not be displayed on the screen of the POS terminal except for balance-only inquiry terminals;

(ii) PINs shall not be displayed at the terminal; and

(iii) PIN encryption shall occur from the point of entry in a manner which prevents the unsecured transmission between any point in the system.

(8) *Performance Bonding.* The State agency may require a performance bond in accordance with § 277.8 of this chapter or utilize other contractual clauses it deems necessary to enforce the requirements of this section.

(9) *Minimum Transaction Set.* At a minimum, the State agency shall ensure that the EBT system, including third party processors and retailers driving their own terminals, is capable of providing for authorizing or rejecting purchases, refunds or customer credits, voids or cancellations, key entered transactions, balance inquiries and settlement or close-out transactions.

(i) *Concentrator Bank Responsibilities.* The concentrator bank shall be a Federally insured financial institution or other entity acceptable to the Federal Reserve which has the capability to take retailer credits and/or debits, obtained from the EBT system operator, and transmit them to the ACH network operated by the Federal Reserve or through another process for crediting retailers approved by FNS. Transmittal shall be by tape or on-line in a format suitable for the Automated Clearinghouse (ACH) or as approved by FNS.

(1) The minimum functions of the concentrator bank are:

(i) Preparing a daily ACH tape or other crediting process approved by FNS with information on benefits redeemed and creditable to each retailer;

(ii) Transferring the ACH tape or other crediting process approved by FNS to the Federal Reserve or other entity approved by FNS;

(iii) Initiating and accepting reimbursement from the appropriate U.S. Treasury account via the Payment Management System of the U.S. Department of Health and Human Services (HHS) or other payment process approved by FNS. At the option of FNS, the State agency may designate another entity as the initiator of reimbursement for food stamp redemptions provided the entity is acceptable to FNS and HHS;

(iv) Cooperating in the reconciliation of discrepancies and error resolution when necessary.

(2) With the approval of FNS, another procedure, other than the ACH system, may be utilized to credit retailer accounts and/or debit FNS' account, if it meets the needs of FNS and the EBT system.

(3) The State agency shall be liable for any errors in the creation of the ACH tape or its transmission. The State agency may transfer the liability associated with creation of the ACH tape, its transmission or another crediting process approved by FNS as appropriate to the EBT system operator or the concentrator bank. Appropriate system security administrative and operational procedures shall be instituted in accordance with paragraph (h)(3) of this section.

(j) *Reconciliation and Management Reporting.* The EBT system shall provide reports and documentation pertaining to the following:

(1) *Reconciliation.* Reconciliation shall be conducted and records kept as follows:

(i) Reconciliation of benefits posted to household accounts on the central computer against benefits on the Issuance Authorization File;

(ii) Reconciliation of individual household account balances against account activities on a daily basis;

(iii) Reconciliation of each individual retail store's food stamp transactions per POS terminal and in total to deposits on a daily basis;

(iv) Verification of retailer's credits against deposit information entered into the ACH network;

(v) Reconciliation of total funds entered into, exiting from, and remaining in the system each day;

(vi) Maintenance of audit trails that document the full cycle of issuance from benefit allotment posting to the State issuance authorization file through posting to point-of-sale transactions at retailers through settlement of retailer credits.

(2) *Management Reports.* The State agency shall require the EBT system to provide reports that enable the State agency to manage the system. The reports shall be available to the State agency or FNS as requested on a timely basis and consist of:

(i) Information on how the system operates relative to its performance standards, the incidence, type and cause of system problems, and utilization patterns.

(ii) Information regarding transactions and other information specified by FNS during system development which is necessary to conduct compliance investigations. At a minimum exception reports shall be able to isolate transaction data by individual retailers and households. Exception reports shall be provided to the appropriate FNS Compliance Branch Area office on a quarterly basis. The Compliance Officer in Charge (COIC) shall be permitted to require that the reports be made available on either a more or less frequent basis.

(3) *Pilot Project Reports.* The State agency shall provide quarterly reports as described in paragraph (c)(4) of this section during the pilot project.

(4) *Program Reporting.* When benefits are initially issued through an EBT system, the State agency shall report as required by FNS in § 274.4 and in accordance with the FNS instructions specific to EBT issuances.

(k) *Federal Financial Participation.* (1) The cost of administering statewide benefit issuance after implementation of the EBT system shall be funded at the regular Federal financial participation rate up to the level of the current coupon issuance costs, as prescribed in paragraph (c)(3) of this section.

(2) The State agency may request enhanced funding for the development of EBT systems which are components of complete automated data processing systems to be developed in accordance with the provisions of 7 CFR 277.18(g). To be eligible for enhanced funding, the EBT system must be fully integrated with the complete ADP system.

(3) Enhanced funding for coupon issuance activities that a State agency incurs on Indian Reservations and the enhanced funding provided in accordance with this paragraph for development of an EBT system shall be accommodated within the issuance cap.

(4) The State agency shall comply with the provisions set forth under 7 CFR 277.18 and appendix A of 7 CFR 277.18 in determining and claiming allowable costs for the EBT system.

(5) Access to system documentation, including cost records of contractors or subcontractors shall be made available and incorporated into contractual agreements in accordance with § 277.18(k) of this chapter.

(6) The State agency shall adjust the issuance cap, once the cap is approved by FNS, as follows:

(i) The food stamp case load utilized in estimating annual budgetary needs under the cap shall be adjusted quarterly by the number of cases actually issued benefits through the EBT system and the coupon issuance systems operating within the State. Quarterly costs adjusted by the number of food stamp cases actually issued benefits during the quarter shall accumulate by each Federal fiscal quarter until the close of the fiscal period to which it applies;

(ii) The annual issuance cap adjustment shall be based on the percentage change in the Gross National Product Implicit Price Deflator index (GNP price deflator). The index is reported monthly by the U.S. Department of Commerce, Bureau of Economic Analysis. The percentage change shall be calculated from the percentage change in the index between the first quarter of the current calendar year and the first quarter of the previous year. This data will be made available to State agencies by FNS from the June report published by the Bureau of Economic Analysis. The case-month cap for subsequent Federal fiscal years shall be obtained by revising the previous year's cap based on the most recent inflation information for that period. The State agency shall then multiply the revised issuance cap from the prior year by the percentage change in inflation indicated by the most recent GNP price deflator;

(iii) The yearly amortized cost associated with pre-operational costs (i.e., design, development) shall be determined at the end of the assignment period established in accordance with paragraph (c)(3)(iv) of this section and assigned retroactively to the case-month costs of each prior year of operation. If such assignment puts the State agency over the issuance cap of all prior years of operation, claims shall be made as appropriate.

(l) *Re-presentation.* The State agency shall ensure that a manual purchase system is available for use during times when the EBT system is inaccessible.

(1) Under certain circumstances, when a manual transaction occurs due to the inaccessibility of the host computer and the transaction is rejected because insufficient funds are available in a household's account, the State agency may permit the re-presentation of the transaction during subsequent months. At the State agency's option, re-presentation may be permitted within the EBT system as follows:

(i) Re-presentation of manual vouchers when there are insufficient funds in the EBT account to cover the manual transaction may be permitted only under the following circumstances:

(A) The manual transaction occurred because the host computer was down and authorization was obtained by the retailer for the transaction; or

(B) The manual transaction occurred because telephone lines were down.

(ii) Re-presentation of manual vouchers shall not be permitted when the EBT card, magnetic stripe, PIN pad, card reader, or POS terminal fails and telephone lines are operational. Manual transactions shall not be utilized to extend credit to a household via re-presentation when the household's account balance is insufficient to cover the planned purchase.

(iii) The State agency may debit the benefit allotment of a household during the first month following the insufficient funds transaction in the amount of $50. If the monthly allotment is less than $50, the State shall debit the account for $10. For each subsequent month, the deduction from the monthly allotment shall be the greater of $10 and 10 percent until the re-presentation is completely repaid.

(2) The State agency shall establish procedures for determining the validity of each re-presentation and subsequent procedures authorizing a debit from a household's monthly benefit allotment. The State agency may ask households to voluntarily pay the amount of a re-presented transaction or arrange for a faster schedule of payment than identified in paragraph (l)(1)(iii) of this section.

(3) The State agency shall ensure that retailers provide notice to households at the time of the manual transaction that re-presentation may occur if there are insufficient benefits in the account to cover the transaction. The statement shall be printed on the paper voucher or on a separate sheet of paper. The State agency shall also provide notice to the household prior to the month when a benefit allotment is reduced when a re-presentation is necessary. Notice shall be provided to the household for each insufficient transaction that is to be re-presented in a future month. The notice shall be provided prior to the month it occurs and shall state the amount of the reduction in the benefit allotment.

(4) The Department shall not accept liability under any circumstances for the overissuance of benefits due to the utilization of manual vouchers, including those situations when the host computer is inaccessible or telecommunications lines are not functioning. However, the State agency, in consultation with authorized retailers and with the mutual agreement of the State agency's vendor, if any, may accept liability for manual purchases within a specified dollar limit. Costs associated with liabilities accepted by the State agency shall not be reimbursable.

(5) The State agency shall be strictly liable for manual transactions that result in excess deductions from a household's account.

(m) *Ownership Rights and Procurement Requirements.* (1) The State agency shall comply with the software and automated data processing equipment ownership rights prescribed under § 277.13 and § 277.18(1) of this chapter.

(2) The State agency shall comply with the procurement standards prescribed under § 277.18(j) of this chapter. Under service agreements, the procurement of equipment and services which will be utilized in a Food Stamp EBT system shall be conducted in accordance with the provisions set forth under § 277.18(f) of this chapter.

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

6. In § 276.2, a new paragraph (b)(7) is added to read as follows:

§ 276.2 State agency liabilities.

* * * * *

(b) * * *

(7) State agencies shall be held strictly liable for overissuances resulting from Electronic Benefit Transfer system errors and unauthorized account activities. Such overissuances shall include but not be limited to: Overissuances to household accounts that are accessed and used by households, replacement benefits to a household's account due to authorized use of the benefits in a household's account, benefits drawn from an EBT account after the household has reported that the EBT card is lost or stolen to the State or its agent, overdraft situations due to the use of manual back-up procedures approved by the State agency, overcredits to a retailer account and transfer of funds to an illegitimate account.

* * * * *

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

7. In § 277.18:

a. A new sentence is added after the first sentence in paragraph (c)(1) introductory text;

b. A new sentence is added after the last sentence in paragraph (c)(2)(ii)(A);

c. A new sentence is added after the last sentence in paragraph (c)(2)(ii)(B);

d. Two new sentences are added after the last sentence in paragraph (c)(2)(ii)(C);

e. A new sentence is added after the last sentence in paragraph (d)(1)(v).

The additions read as follows:

§ 277.18 Establishment of an Automatic Data Processing (ADP) and Information Retrieval System.

* * * * *

(c) * * *

(1) * * * However, a State agency shall obtain prior written approval from FNS for the acquisition of ADP equipment or services to be utilized in an EBT system regardless of the cost of the acquisition. * * *

* * * * *

(2) * * *

(ii) * * *

(A) * * * The State agency shall obtain prior written approval from FNS for Request for Proposals which are associated with an EBT system regardless of the cost.

(B) * * * The State agency shall obtain prior written approval from FNS for contracts which are associated with an EBT system regardless of the cost.

(C) * * * Amendments to contracts for EBT systems shall be permitted within the approved funding cap. State agencies shall submit copies of any contract amendments or contract extensions to FNS with an accompanying analysis of the impact the changes would have upon the approved issuance cap.

* * * * *

(d) * * *

(1) * * *

(v) * * * An estimate of total project cost for an EBT system shall not be required to be incorporated into the Planning APD budget.

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

7. A new § 278.10 is added to part 278 and reserved for future use.

§ 278.10 [Reserved]

Dated: March 27, 1992.

George A. Braley,

Acting Administrator.

[FR Doc. 92–7510 Filed 3–31–92; 8:45 am]

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