

# Presidential Documents

Title 3—

Proclamation 6732 of October 5, 1994

The President

General Pulaski Memorial Day, 1994

By the President of the United States of America

## A Proclamation

October 11 marks the anniversary of the death of a true hero of humanity. General Casimir Pulaski fought for the cause of freedom on two continents, determined to realize the ideal of self-determination for every individual. Each year, Americans pause to honor this man, whose life and death represent a commitment to democracy that holds an invaluable lesson for all of us.

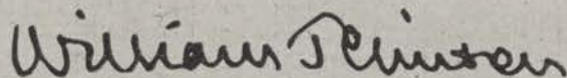
The proud history of Poland contains chapter upon chapter reflecting the virtues of courage, honor, and sacrifice. Pulaski, a loyal son of Poland, wrote a glorious page in that lengthy book. His life is a testament to humanity's inextinguishable desire for liberty and to our willingness to sacrifice all to defend, or to recapture, that sacred blessing. His death reminds us that the cost of liberty is often high. Pulaski well understood that price and was willing to pay it if only for the chance of extending to all people the noble mandates of democracy and human dignity.

As a freedom fighter in Poland, Pulaski's dedication to the pursuit of liberty led him to defend the rights of the embattled American colonists in our Nation's War of Independence. Combining his military expertise, his undying thirst for justice, and his indomitable courage, Pulaski served with extraordinary valor in the cavalry of the Continental Army. And 215 years ago, during the siege of Savannah, General Pulaski gave his life so that our country might prevail in its quest for nationhood.

Thanks to the selflessness and strength of men and women who, like General Pulaski, refused to let seemingly hopeless odds deter them in their struggle for freedom, we celebrate the possibilities for peace in a hopeful new era of social change. The ideals for which Pulaski fought and died are sweeping the globe. Poland itself is free, at peace, and increasingly prosperous. Thanks in no small measure to the efforts of General Pulaski's modern-day compatriots, Europe is united in liberty, and the light of democracy shines brightly around the world.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Tuesday, October 11, 1994, as General Pulaski Memorial Day, and I encourage the people of the United States to commemorate this occasion with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.







# Rules and Regulations

Federal Register

Vol. 59, No. 195

Tuesday, October 11, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 890

RIN 3206-AG03

### Federal Employees Health Benefits Program: Debarment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations to incorporate into regulations the statutory requirement that carriers in the Federal Employees Health Benefits (FEHB) Program may not deny claims for services or supplies due to the debarment of the providers who supplied them if the claimants could not have known that the provider was debarred. The purpose of these regulations is to comply with the provision of law that requires OPM to prescribe regulations on this issue.

**EFFECTIVE DATE:** November 10, 1994.

**FOR FURTHER INFORMATION CONTACT:** Margaret Sears (202) 606-0191.

**SUPPLEMENTARY INFORMATION:** On May 10, 1994, OPM published interim regulations in the *Federal Register* (59 FR 24030) clarifying that carriers cannot deny claims based on debarment if there was no reasonable way the claimant could have known that the provider was debarred. When an individual who has not previously been notified of a provider's debarment submits a claim for services or supplies furnished by a debarred provider, the carrier must (1) honor the claim under the terms of its contract with OPM, and (2) inform the individual about the debarment of the provider and the minimum period of time remaining under the terms of the debarment.

In practical terms, this generally means that the first claim(s) an enrollee

submits for services or supplies received after a provider has been debarred, but before the enrollee has been informed of the debarment, is (are) paid to the same extent it (they) would have been paid had the provider not been debarred. The carrier must, at the same time, inform the enrollee concerning the debarment. The carrier will deny any subsequent claims for service or supplies furnished during the period the provider is debarred.

OPM received no comments on the interim regulations.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees and annuitants.

### E.O. 12866, Regulatory Review

This rule has been reviewed by OMB in accordance with E.O. 12866.

### List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

James B. King,  
Director.

Accordingly, under authority of 5 U.S.C. 8913, OPM is adopting its interim regulations under 5 CFR part 890 as published on May 10, 1994 (59 FR 24030) as final rules without change.

[FR Doc. 94-24953 Filed 10-7-94; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 271

### Food Stamp Program: Forfeiture and Denial of Property Rights

AGENCIES: Office of Inspector General and Food and Nutrition Service, Department of Agriculture.

ACTION: Final rule.

**SUMMARY:** This rule implements section 15(g) of the Food Stamp Act of 1977, as amended by Section 124 of the Food

Stamp Act Amendments of 1980, Pub. L. 96-249, which authorizes the Secretary of Agriculture to subject to forfeiture and denial of property rights any nonfood items, moneys, negotiable instruments, securities, or other things of value that are furnished or intended to be furnished by any person in exchange for food coupons; authorization cards, or other program benefit instruments or access devices in any manner not authorized by the Food Stamp Act or regulations issued pursuant to the Food Stamp Act, 7 U.S.C. 2024(g). The rule establishes procedures to be followed by the Inspector General and other Federal law enforcement officials who conduct investigations of alleged violations of the Food Stamp Act and who may, during the course of those investigations, acquire property subject to forfeiture and denial of property rights.

**EFFECTIVE DATE:** November 10, 1994.

**FOR FURTHER INFORMATION CONTACT:** Brian L. Haaser, Director, Program Investigations Division, Office of Inspector General, United States Department of Agriculture, 14th Street and Independence Avenue SW, Washington, DC 20250-2318. Phone: (202) 720-6701.

### SUPPLEMENTARY INFORMATION:

#### Classification

#### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

#### Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance 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 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).



**Regulatory Flexibility Act**

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. No. 96-354, 94 Stat. 1164, September 19, 1980). Charles R. Gillum, Acting Inspector General, USDA, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

**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 provisions of this rule or the application of this rule, all applicable administrative procedures must be exhausted. The administrative review requirements relating to forfeiture of property pursuant to the Food Stamp Act of 1977, as amended, are set out in this rule.

**Background**

This rule recognizes that the Office of Inspector General (OIG), USDA, conducts the majority of criminal investigations that result in Federal criminal prosecution under the Food Stamp Act; that such investigations involve the acquisition of valuable property by investigators in exchange for food coupons, authorization cards, or other program benefit instruments or access devices; and that Congress granted to USDA the power to subject such property to forfeiture. It should be noted that the Act defines "coupon" to include any " \* \* \* type of certificate issued pursuant to the provisions of this Act" (7 U.S.C. 2012(d)). Thus, this rulemaking subjects to forfeiture property offered in exchange for any program benefit instrument or access device.

In addition to OIG, other Federal law enforcement agencies, including the United States Secret Service and the United States Postal Inspection Service, also conduct criminal investigations involving the acquisition of property in exchange for food coupons, authorization cards, or other program benefit instruments or access devices. Finally, in some instances food coupons and other benefit instruments are provided to other Federal law enforcement agencies for use in

investigations involving program related activities under memoranda of understanding with OIG. This rule applies as well to seizures related to the Act which are made by those agencies. However, this rule specifically provides that the forfeiture provisions shall not apply to those items exchanged during the course of internal investigations by retail firms, investigations conducted by State and local law enforcement agencies, or FNS Compliance Branch investigations.

For a more detailed explanation of the provisions of this rule, the reader should refer to the preamble of the proposed rule cited below.

The proposed rule was published in the *Federal Register* on December 6, 1993, 58 FR 64172, with a 60 day comment period ending February 4, 1994. We received only one letter with comments. The commenter suggested that the rule should clarify that property not acquired by investigation is not subject to the rule, that the property belongs to USDA and disposal must be approved by USDA, and that any moneys obtained from sale of property or by forfeiture belongs to USDA and shall be deposited with USDA.

We did not make any changes as a result of the comments because we believe the rule already adequately addresses the commenter's concerns. The provisions of 7 CFR 271.5(e)(1)(ii) of the rule state that the forfeiture and denial of property rights provisions shall apply to property exchanged or offered in exchange during investigations by the Inspector General, USDA, and by other authorized Federal law enforcement agencies. We believe this is clear enough without adding that it does not cover other property. Section 271.5(e)(2) clearly states that the property is deemed forfeited to USDA, and § 271.5(e)(2)(v) provides custodians guidance on property disposal and refers to the applicable regulations which would be those of USDA and/or GSA. Finally, while any moneys exchanged or collected are deemed forfeited to USDA just like other property, section 7 CFR 271.5(e)(2)(vi) provides that such moneys shall be deposited into the general fund of the United States Treasury. The moneys are deposited to the general fund because OIG does not have the legal authority needed to deposit them with USDA.

**List of Subjects in 7 CFR Part 271**

Administrative practice and procedure, Claims, Food stamps, Penalties.

Accordingly, 7 CFR part 271 is amended as follows:

**PART 271—GENERAL INFORMATION AND DEFINITIONS**

1. The authority citation for part 271 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. Section 271.5 is amended by adding a new paragraph (e), as follows:

**§ 271.5 Coupons as obligations of the United States, crimes and offenses, forfeiture and denial of property rights.**

(e) Forfeiture and denial of property rights.

(1) General.

(i) Any nonfood items, moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for food coupons, authorization cards, or other program benefit instruments or access devices in any manner not authorized by the Food Stamp Act or regulations issued pursuant to the Act, shall be subject to forfeiture and denial of property rights. Such property is deemed forfeited to the United States Department of Agriculture (USDA) at the time it is either exchanged or offered in exchange.

(ii) These forfeiture and denial of property rights provisions shall apply to property exchanged or offered in exchange during investigations conducted by the Inspector General, USDA, and by other authorized Federal law enforcement agencies.

(iii) These forfeiture and denial of property rights provisions shall not apply to property exchanged or intended to be exchanged during the course of internal investigations by retail firms, during investigations conducted solely by State and local law enforcement agencies and without the participation of an authorized Federal law enforcement agency, or during compliance investigations conducted by the Food and Nutrition Service.

(2) Custodians and their responsibilities.

(i) The Inspector General, USDA, the Inspector General's designee, and other authorized Federal law enforcement officials shall be custodians of property acquired during investigations.

(ii) Upon receiving property subject to forfeiture the custodian shall:

(A) Place the property in an appropriate location for storage and safekeeping, or

(B) Request that the General Services Administration (GSA) take possession of the property and remove it to an appropriate location for storage and safekeeping.

(iii) The custodian shall store property received at a location in the



judicial district where the property was acquired unless good cause exists to store the property elsewhere.

(iv) Custodians shall not dispose of property prior to the fulfillment of the notice requirements set out in paragraph 3, or prior to the conclusion of any related administrative, civil, or criminal proceeding, without reasonable cause. Reasonable cause to dispense with notice requirements might exist, for example, where explosive materials are being stored which may present a danger to persons or property.

(v) Custodians may dispose of any property in accordance with applicable statutes or regulations relative to disposition. The custodian may:

(A) Retain the property for official use;

(B) Donate the property to Federal, State, or local government facilities such as hospitals or to any nonprofit charitable organizations recognized as such under section 501(c)(3) of the Internal Revenue Code; or

(C) Request that GSA take custody of the property and remove it for disposition or sale.

(vi) Proceeds from the sale of forfeited property and any moneys forfeited shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, transportation costs, and any recording fees. Moneys remaining after payment of such expenses shall be deposited into the general fund of the United States Treasury.

(3) Notice requirements.

(i) The custodian shall make reasonable efforts to notify the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture except for the good cause exception if the owner cannot be notified.

(ii) The notice shall:

(A) Include a brief description of the property;

(B) Inform the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture of the opportunity to request an administrative review of the forfeiture;

(C) Inform the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture of the requirements for requesting administrative review of the forfeiture; and

(D) State the title and address of the official to whom a request for administrative review of the forfeiture may be addressed.

(iii) Except as provided in paragraphs

(e)(3) (iv) and (v) of this section, notice

shall be given within 45 days from the date the United States convicts, acquits, or declines to act against the person who exchanged the property.

(iv) Notice may be delayed if it is determined that such action is likely to endanger the safety of a law enforcement official or compromise another ongoing criminal investigation conducted by OIG, the United States Secret Service, the United States Postal Inspection Service, or other authorized Federal law enforcement agency.

(v) Notice need not be given to the general public.

(4) Administrative review.

(i) The actual or apparent owner(s) of or person(s) with possessory interests in the property shall have 30 days from the date of the delivery of the notice of forfeiture to make a request for an administrative review of the forfeiture.

(ii) The request shall be made in writing to the Assistant Inspector General for Investigations, Office of Inspector General, USDA, or to his/her designee, hereinafter referred to as the reviewing official.

(iii) A request for an administrative review of the forfeiture of property shall include the following:

(A) A complete description of the property, including serial numbers, if any;

(B) Proof of the person's property interest in the property; and,

(C) The reason(s) the property should not be forfeited.

(iv) The requestor may, at the time of his/her written request for administrative review, also request an oral hearing of the reasons the property should not be forfeited.

(v) The burden of proof will rest upon the requestor, who shall be required to demonstrate, by a preponderance of the evidence, that the property should not be forfeited.

(vi) Should the administrative determination be in their favor, the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture may request that forfeited items be returned or that compensation be made if the custodian has already disposed of the property.

(vii) The reviewing official shall not remit or mitigate a forfeiture unless the requestor:

(A) Establishes a valid, good faith property interest in the property as owner or otherwise; and

(B) Establishes that the requestor at no time had any knowledge or reason to believe that the property was being or would be used in violation of the law; and

(C) Establishes that the requestor at no time had any knowledge or reason to

believe that the owner had any record or reputation for violating laws of the United States or of any State for related crimes.

(viii) The reviewing official may postpone any decision until the conclusion of any related administrative, civil, or criminal proceeding.

(ix) The decision of the reviewing official as to the disposition of the property shall be the final agency determination for purposes of judicial review.

Done at Washington, D.C. this 28th day of September 1994.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 94-25008 Filed 10-7-94; 8:45 am]

BILLING CODE 3410-23-M

## Agricultural Stabilization and Conservation Service

7 CFR Parts 735, 736, 737, 738, 739, 740, 741, and 742

RIN 0560-AD13

### U.S. Warehouse Act Fees

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

**SUMMARY:** This final rule revises the regulations under the United States Warehouse Act (USWA) to increase the fees charged to grain, tobacco, wool, dry bean, nut, syrup, cotton and cottonseed warehousemen for licensing and inspection services. In addition, a schedule of fees has been added to impose annual fees on cotton warehousemen. Future fee changes will be announced by a notice in the *Federal Register* prior to July 1, to be effective October 1 of each year, when such changes have been determined to be necessary.

**EFFECTIVE DATE:** October 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Director, Licensing Authority Division, United States Department of Agriculture (USDA), Agricultural Stabilization and Conservation Service (ASCS), PO Box 2415, Washington, DC 20013-2415, telephone 202-720-2121, FAX 202-690-0014.

### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866

This rule has been determined to be significant and was reviewed by Office of Management and Budget (OMB) under Executive Order 12866.