

issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

#### Public Law 104-4

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Background

In this rule, the U.S. Department of Agriculture (Department), FNS finalizes revisions to the Food Stamp Program (FSP) regulations to require interoperability of all State EBT Systems and portability of all electronically-issued benefits. This requirement is in accordance with the Electronic Benefit Transfer Interoperability and Portability Act of 2000, Pub. L. 106-171, (hereinafter "Pub. L. 106-171") which amended Section 7(k) of the Food Stamp Act of 1977, 7 U.S.C. 2016(k), to mandate nationwide interoperability of FSP EBT systems and portability of electronically issued benefits and directs the Secretary to establish standards to accomplish this. In accordance with the regulations promulgated by the Secretary, the Department will pay one hundred percent of the costs incurred by a State agency for switching and settling transactions, up to an annual limit of \$500,000 nationwide. Pub. L. 106-171 required the Department to promulgate regulations to require interoperability and establish a uniform national standard of interoperability for Food Stamp EBT systems within 210 days of its enactment. In order to meet this requirement, interim regulations were

published in the **Federal Register** on August 15, 2000 at 65 FR 49719. This final action takes the comments received in response to the interim rulemaking into account. Readers are referred to the interim regulation for a more complete understanding of this final action.

Readers should note that another EBT rule was published in the **Federal Register** at around the same time that the interim interoperability rule was published. That rule, *EBT Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996* (65 FR 59105, October 4, 2000), redesignated several paragraphs in the EBT regulations. Therefore, readers should refer to the *Code of Federal Regulations* (CFR) for the most accurate regulatory citations of provisions implemented by the interim rule. Furthermore, this rule reinstates a paragraph from the August 15, 2000 interim Interoperability rule that was inadvertently deleted by the October 4, 2000 EBT Provisions of the PRWORA rule regarding the interoperability funding provisions.

Comments on the interim rule were solicited through November 13, 2000. Eight comment letters were received in response to the interim rule. Comments were received from 5 State agencies, one retailer association, one EBT processor, and one public interest group. This final rule makes one revision to the interim regulations, taking into consideration all comments received.

In general, the commenters supported EBT system interoperability and food stamp benefit portability. Various provisions of the interim rule mandated interoperability of FSP EBT systems and the portability of FSP benefits by requiring: The use of the EBT standard message format; the establishment of the necessary telecommunication links; the use of an Issuer Identification Number on the State's EBT card; and the use of the Retailer EBT Data Exchange (REDE) system. The rule also provides for 100 percent enhanced Federal funding for the cost of switching and settling interstate EBT food stamp transactions, up to an annual nationwide limit of \$500,000. The specific provisions are discussed below.

#### Interoperability Mandate

The interim rule mandated that each State agency implement the functionality for nationwide interoperability of their EBT systems and portability of electronically-issued food stamp benefits by October 1, 2002. The interim rule provided for exemptions from the deadline for State agencies with signed contracts before

October 16, 2000 until they re-negotiate or reprocure their EBT contracts. The rule also exempted Smart Card systems from the mandate until the Department determines that a practicable technological method is available for interoperability with on-line systems. We received no comments opposing the mandate. Three commenters expressed support for the interoperability and portability of FSP benefits because it ensures that food stamp recipients will be able to use their food stamp benefits at authorized retail stores across the country in the same way they were able to use paper food coupons.

#### System Standards for Interoperability

The interim rule established uniform national standards of interoperability and portability based on the standards used by a majority of State agencies. Although the Departmental standards are based on the Quest Operating Rules (hereinafter "Quest"), which have already been adopted by a majority of State agencies, the Department did not adopt Quest in its entirety. Instead the Department chose to require only those components that are essential to interoperability. One commenter supported this decision because it allows the Quest standards to be modified to reflect the emerging industry practices without the burden of obtaining a change in federal regulation. However, two other commenters opposed it, believing that all State agencies should follow the Quest rules to ensure standardization and, therefore, nationwide interoperability.

The Department is aware of no other technical standards, other than those established in the rule, that are fundamental to the achievement of nationwide interoperability. Furthermore, the Quest rules contain requirements that are not essential to interoperability but that would require procedural and card modifications at an expense to the State agencies that have chosen not to adopt the Quest rules. If the Department were to require all State agencies to adopt the Quest rules in their entirety, this would impose added burdens, costs, and rigidity without strong justification. Accordingly, this rule maintains the interoperability standards established in the interim rule and does not specifically require State agencies to adopt Quest.

#### ISO 8583 Message Format

The interim final rule required State agencies to use the International Organization for Standards (ISO) 8583 message format, modified for EBT, in order to facilitate interstate transactions. One commenter opposed language