

PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 501]

Food Stamp Discretionary Provisions

Statutory Authority

The Department of Public Welfare (Department) under the authority of sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)) and the Federal Food Stamp regulation in 7 CFR 273.16(h)(1)(ii)(C) (relating to disqualification for intentional program violation) intends to amend the regulation set forth in Annex A.

Purpose of Regulation

The purpose of this proposed rulemaking is to amend § 501.13(b)(2)(i)(C) (relating to intentional program violation disqualification) to conform to Federal requirements in 7 CFR 273.16(h)(1)(ii)(C). The Department also proposes to amend § 501.13(a)(1) by deleting the term "Office" and inserting "Bureau" when referencing the bureau that handles administrative disqualification hearings.

This proposed rulemaking is needed to codify Federal requirements to provide written notification to food stamp households of the consequences of consenting to disqualification as part of a deferred adjudication process. Proposed rulemaking is needed to ensure that these requirements are codified as a State regulation completely and accurately.

Requirements

§ 501.13(b)(2)(i)(C) (relating to intentional program violation disqualification).

The Department proposes to amend this clause to delete references to specific disqualification penalty periods that are no longer correct and to codify notice requirements as provided under Federal regulation. The Department proposes to amend this clause to specify that a written notice to food stamp households in which a member accused of committing an intentional program violation consents to disqualification must include a reference to 7 CFR 273.16(b). Written notice must also include a statement of which penalty is being imposed as a result of the consent agreement.

Affected Individuals and Organizations

This proposed rulemaking affects food stamp households in which a household member is accused of committing an intentional program violation and consents to disqualification under a deferred adjudication process. The individual who is subject to disqualification must receive appropriate advance written notice of the consequences of consenting to disqualification. Approximately 925 individuals were disqualified from participation in the Food Stamp Program for Fiscal Year (FY) 2004-2005 because they or the head of household signed a disqualification consent agreement; 671 for FY 2005-2006 and 645 for FY 2006-2007.

Accomplishments and Benefits

This proposed rulemaking codifies notice requirements that comply with the Federal regulation. Individuals who

are not accurately or completely informed of the consequences of consenting to disqualification could challenge the disqualification on the grounds that the written notice was defective.

Fiscal Impact

No cost to the Commonwealth, local government, service providers or food stamp households is anticipated as a result of this proposed rulemaking.

Paperwork Requirements

This proposed rulemaking does not increase or add to paperwork requirements.

Effective Date

This proposed rulemaking is effective upon final publication in the *Pennsylvania Bulletin*.

Public Comment Period

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department at the following address: Edward J. Zogby, Director, Bureau of Policy, Room 431, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-4081 within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-515 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments by using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 12, 2009, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare (Committees). In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has any comments, recommendations or objections to any portion of the proposed amendment, it may notify the Department and the Committees within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor, of any comments, recommendations or objections raised, prior to final publication of the regulation.

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-PRO-515. No fiscal impact; (8) recommendations adoption.

Annex A
TITLE 55. PUBLIC WELFARE
PART II. PUBLIC ASSISTANCE MANUAL
Subpart L. FOOD STAMP PROGRAM
CHAPTER 501. FOOD STAMP DISCRETIONARY PROVISIONS

§ 501.13. Intentional program violation disqualification.

(a) *Determination of an intentional program violation.*

(1) *Disqualification hearings—7 CFR 273.16(a) and (e).* The [Office] Bureau of Hearings and Appeals is responsible for conducting administrative disqualification hearings for individuals alleged to have committed an intentional program violation as set forth in § 275.11(a) (related to general policy.)

* * * * *

(b) *Disqualification without a hearing or prosecution by a court.*

* * * * *

(2) *Deferred adjudication—7 CFR 273.16(h).* The Department will establish procedures to allow accused individuals to sign disqualification consent agreements for cases of deferred adjudication. The Office of Inspector General may use this method for cases in which a determination of guilt is not obtained from a court [due to] because the accused individual [having] met the terms of a court order or for cases which are not

prosecuted [due to] because the accused individual [having] met the terms of an agreement with the prosecutor. Disqualification consent agreements in cases referred for prosecution will conform with the following requirements:

(i) *Notification.* Advance written notification will be provided to the household member stating the consequences of consenting to disqualification as part of the deferred adjudication. The advance notification will include, at a minimum:

* * * * *

(C) [Disqualification] A statement that the disqualification penalties for intentional program [violation] violations under the Food Stamp Program [which could be imposed are 6-month disqualification for the first violation, 12-month disqualification for the second violation and permanent disqualification for the third violation] are specified in 7 CFR 273.16(b) (relating to disqualification for intentional program violation).

(D) A statement of the penalty that will be imposed as a result of consenting to disqualification.

(E) A statement that the remaining household member, if any, will be held responsible for repayment of the resulting claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

* * * * *

[Pa.B. Doc. No. 09-357. Filed for public inspection February 27, 2009, 9:00 a.m.]