

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-435 effective Oct. 1, 1985, with respect to claims under section 2025(c) of this title for quality control review periods after such date, and provisions of this section that relate to claims against State agencies and that were in effect for any quality control review period or periods through fiscal year 1985 to remain in effect for claims arising with respect to such periods, see section 701(b)(5)(B), (D)(i) of Pub. L. 100-435, set out as a note under section 2012 of this title.

## EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-253 effective Sept. 8, 1982, see section 193(a) of Pub. L. 97-253, set out as a note under section 2012 of this title.

## EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective on earlier of Sept. 8, 1982, or date such amendment became effective pursuant to section 117 of Pub. L. 97-35, set out as a note under section 2012 of this title, see section 192(a) of Pub. L. 97-253, set out as a note under section 2012 of this title.

Amendment by Pub. L. 97-35 effective and implemented upon such dates as Secretary of Agriculture may prescribe, taking into account need for orderly implementation, see section 117 of Pub. L. 97-35, set out as a note under section 2012 of this title.

## EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-113, title XIII, §1301, Sept. 29, 1977, 91 Stat. 958, provided that the amendment made by section 1301 is effective Oct. 1, 1977.

### § 2023. Administrative and judicial review; restoration of rights

(a)(1) Whenever an application of a retail food store or wholesale food concern to participate in the supplemental nutrition assistance program is denied pursuant to section 2018 of this title, or a retail food store or wholesale food concern is disqualified or subjected to a civil money penalty under the provisions of section 2021 of this title, or a retail food store or wholesale food concern forfeits a bond under section 2021(d) of this title, or all or part of any claim of a retail food store or wholesale food concern is denied under the provisions of section 2022 of this title, or a claim against a State agency is stated pursuant to the provisions of section 2022 of this title, notice of such administrative action shall be issued to the retail food store, wholesale food concern, or State agency involved.

(2) DELIVERY OF NOTICES.—A notice under paragraph (1) shall be delivered by any form of delivery that the Secretary determines will provide evidence of the delivery.

(3) If such store, concern, or State agency is aggrieved by such action, it may, in accordance with regulations promulgated under this chapter, within ten days of the date of delivery of such notice, file a written request for an opportunity to submit information in support of its position to such person or persons as the regulations may designate.

(4) If such a request is not made or if such store, concern, or State agency fails to submit information in support of its position after filing a request, the administrative determination shall be final.

(5) If such request is made by such store, concern, or State agency, such information as may be submitted by the store, concern, or State

agency, as well as such other information as may be available, shall be reviewed by the person or persons designated by the Secretary, who shall, subject to the right of judicial review hereinafter provided, make a determination which shall be final and which shall take effect thirty days after the date of the delivery or service of such final notice of determination.

(6) Determinations regarding claims made pursuant to section 2025(c) of this title (including determinations as to whether there is good cause for not imposing all or a portion of the penalty) shall be made on the record after opportunity for an agency hearing in accordance with section<sup>1</sup> 556 and 557 of title 5 in which one or more administrative law judges appointed pursuant to section 3105 of such title shall preside over the taking of evidence.

(7) Such judges shall have authority to issue and enforce subpoenas in the manner prescribed in sections<sup>2</sup> 499m(c) and (d) of this title and to appoint expert witnesses under the provisions of Rule 706 of the Federal Rules of Evidence.

(8) The Secretary may not limit the authority of such judges presiding over determinations regarding claims made pursuant to section 2025(c) of this title.

(9) The Secretary shall provide a summary procedure for determinations regarding claims made pursuant to section 2025(c) of this title in amounts less than \$50,000.

(10) Such summary procedure need not include an oral hearing.

(11) On a petition by the State agency or sua sponte, the Secretary may permit the full administrative review procedure to be used in lieu of such summary review procedure for a claim of less than \$50,000.

(12) Subject to the right of judicial review hereinafter provided, a determination made by an administrative law judge regarding a claim made pursuant to section 2025(c) of this title shall be final and shall take effect thirty days after the date of the delivery or service of final notice of such determination.

(13) If the store, concern, or State agency feels aggrieved by such final determination, it may obtain judicial review thereof by filing a complaint against the United States in the United States court for the district in which it resides or is engaged in business, or, in the case of a retail food store or wholesale food concern, in any court of record of the State having competent jurisdiction, within thirty days after the date of delivery or service of the final notice of determination upon it, requesting the court to set aside such determination.

(14) The copy of the summons and complaint required to be delivered to the official or agency whose order is being attacked shall be sent to the Secretary or such person or persons as the Secretary may designate to receive service of process.

(15) The suit in the United States district court or State court shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action in issue, except that judicial review of deter-

<sup>1</sup> So in original. Probably should be "sections".

<sup>2</sup> So in original. Probably should be "section".

minations regarding claims made pursuant to section 2025(c) of this title shall be a review on the administrative record.

(16) If the court determines that such administrative action is invalid, it shall enter such judgment or order as it determines is in accordance with the law and the evidence.

(17) During the pendency of such judicial review, or any appeal therefrom, the administrative action under review shall be and remain in full force and effect, unless on application to the court on not less than ten days' notice, and after hearing thereon and a consideration by the court of the applicant's likelihood of prevailing on the merits and of irreparable injury, the court temporarily stays such administrative action pending disposition of such trial or appeal.

(18) **SUSPENSION OF STORES PENDING REVIEW.**—Notwithstanding any other provision of this subsection, any permanent disqualification of a retail food store or wholesale food concern under paragraph (3) or (4) of section 2021(b) of this title shall be effective from the date of receipt of the notice of disqualification. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period.

(b) In any judicial action arising under this chapter, any allotments found to have been wrongfully withheld shall be restored only for periods of not more than one year prior to the date of the commencement of such action, or in the case of an action seeking review of a final State agency determination, not more than one year prior to the date of the filing of a request with the State for the restoration of such allotments or, in either case, not more than one year prior to the date the State agency is notified or otherwise discovers the possible loss to a household.

(Pub. L. 88-525, §14, Aug. 31, 1964, 78 Stat. 708; Pub. L. 91-671, §7, Jan. 11, 1971, 84 Stat. 2052; Pub. L. 92-603, title IV, §411(f), Oct. 30, 1972, 86 Stat. 1492; Pub. L. 95-113, title XIII, §1301, Sept. 29, 1977, 91 Stat. 974; Pub. L. 97-98, title XIII, §1320(b), Dec. 22, 1981, 95 Stat. 1286; Pub. L. 97-253, title I, §176(b), Sept. 8, 1982, 96 Stat. 781; Pub. L. 99-198, title XV, §1536, Dec. 23, 1985, 99 Stat. 1585; Pub. L. 100-435, title VI, §603, Sept. 19, 1988, 102 Stat. 1674; Pub. L. 103-66, title XIII, §13951(b), Aug. 10, 1993, 107 Stat. 678; Pub. L. 104-193, title VIII, §845, Aug. 22, 1996, 110 Stat. 2333; Pub. L. 107-171, title IV, §4117(a), May 13, 2002, 116 Stat. 316; Pub. L. 110-234, title IV, §§4001(b), 4002(a)(7), May 22, 2008, 122 Stat. 1092, 1094; Pub. L. 110-246, §4(a), title IV, §§4001(b), 4002(a)(7), June 18, 2008, 122 Stat. 1664, 1853, 1855.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (a)(7), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-246, §4001(b), substituted “supplemental nutrition assistance program” for “food stamp program”.

Subsec. (b). Pub. L. 110-246, §4002(a)(7), substituted “any allotments” for “any food stamp allotments”.

2002—Subsec. (a)(2). Pub. L. 107-171 added heading and text of par. (2) and struck out former par. (2) which read as follows: “Such notice shall be delivered by certified mail or personal service.”

1996—Subsec. (a). Pub. L. 104-193 designated first through seventeenth sentences as pars. (1) to (17), respectively, and added par. (18).

1993—Subsec. (a). Pub. L. 103-66 inserted “(including determinations as to whether there is good cause for not imposing all or a portion of the penalty)” after “Determinations regarding claims made pursuant to section 2025(c) of this title” in sixth sentence and struck out at end “Notwithstanding the administrative or judicial review procedures set forth in this subsection, determinations by the Secretary concerning whether a State agency had good cause for its failure to meet error rate tolerance levels established under section 2025(c) of this title are final.”

1988—Subsec. (a). Pub. L. 100-435 inserted provisions relating to judicial review and determinations regarding excessive payment error rate claims pursuant to section 2025(c) of this title.

1985—Subsec. (a). Pub. L. 99-198 substituted “on application” for “an application” and “consideration by the court of the applicant's likelihood of prevailing on the merits and of irreparable injury” for “showing of irreparable injury”.

1982—Subsec. (a). Pub. L. 97-253 substituted “section 2021 of this title, or a retail food store or wholesale food concern forfeits a bond under section 2021(d) of this title,” for “section 2021 of this title.”

1981—Pub. L. 97-98 designated existing provision as subsec. (a) and added subsec. (b).

1977—Pub. L. 95-113 substituted revised provisions for administrative and judicial review for provisions relating to violations and enforcement which are now covered by section 2024 of this title.

1972—Subsec. (e). Pub. L. 92-603 struck out subsec. (e) which provided that no person be charged with violation of this chapter or any other law on the basis of statements or information contained in affidavits filed under section 2019(c) of this title, except for fraud.

1971—Subsec. (a). Pub. L. 91-671, §7(a), provided for purchase of coupons.

Subsec. (b). Pub. L. 91-671, §7(a), included alteration as an offense and made authorization to purchase cards the subject matter of the enumerated offenses.

Subsec. (e). Pub. L. 91-671, §7(b), added subsec. (e).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

Amendment by sections 4001(b) and 4002(a)(7) of Pub. L. 110-246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-171, title IV, §4117(b), May 13, 2002, 116 Stat. 316, provided that: “The amendment made by this section [amending this section] takes effect on the date of enactment of this Act [May 13, 2002].”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Oct. 1, 1991, see section 13971(b)(1)(A) of Pub. L. 103-66, set out as a note under section 2025 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-435 effective Oct. 1, 1985, with respect to claims under section 2025(c) of this title

for quality control review periods after such date, except as otherwise provided, see section 701(b)(5)(C), (D) of Pub. L. 100-435, set out as a note under section 2012 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-253 effective Sept. 8, 1982, see section 193(a) of Pub. L. 97-253, set out as a note under section 2012 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-98 effective on earlier of Sept. 8, 1982, or date such amendment became effective pursuant to section 1338 of Pub. L. 97-98, set out as a note under section 2012 of this title, see section 192(b) of Pub. L. 97-253, set out as a note under section 2012 of this title.

Amendment by Pub. L. 97-98 effective upon such date as Secretary of Agriculture may prescribe, taking into account need for orderly implementation, see section 1338 of Pub. L. 97-98, set out as a note under section 2012 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-113, title XIII, §1301, Sept. 29, 1977, 91 Stat. 958, provided that the amendment made by section 1301 is effective Oct. 1, 1977.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-603 effective Jan. 1, 1973, see section 411(h) of Pub. L. 92-603, set out as a note under section 2012 of this title.

**§ 2024. Violations and enforcement**

**(a) In general**

Notwithstanding any other provision of this chapter, the Secretary may provide for the issuance or presentment for redemption of benefits to such person or persons, and at such times and in such manner, as the Secretary deems necessary or appropriate to protect the interests of the United States or to ensure enforcement of the provisions of this chapter or the regulations issued pursuant to this chapter.

**(b) Unauthorized use, transfer, acquisition, alteration, or possession of benefits**

(1) Subject to the provisions of paragraph (2) of this subsection, whoever knowingly uses, transfers, acquires, alters, or possesses benefits in any manner contrary to this chapter or the regulations issued pursuant to this chapter shall, if such benefits are of a value of \$5,000 or more, be guilty of a felony and shall be fined not more than \$250,000 or imprisoned for not more than twenty years, or both, and shall, if such benefits are of a value of \$100 or more, but less than \$5,000, or if the item used, transferred, acquired, altered, or possessed is a benefit that has a value of \$100 or more, but less than \$5,000, be guilty of a felony and shall, upon the first conviction thereof, be fined not more than \$10,000 or imprisoned for not more than five years, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not less than six months nor more than five years and may also be fined not more than \$10,000 or, if such benefits are of a value of less than \$100, or if the item used, transferred, acquired, altered, or processed<sup>1</sup> is a benefit that has a value of less than \$100, shall be guilty of a mis-

demeanor, and, upon the first conviction thereof, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than \$1,000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the supplemental nutrition assistance program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 2015(b)(1) of this title.

(2) In the case of any individual convicted of an offense under paragraph (1) of this subsection, the court may permit such individual to perform work approved by the court for the purpose of providing restitution for losses incurred by the United States and the State agency as a result of the offense for which such individual was convicted. If the court permits such individual to perform such work and such individual agrees thereto, the court shall withhold the imposition of the sentence on the condition that such individual perform the assigned work. Upon the successful completion of the assigned work the court may suspend such sentence.

**(c) Presentation for payment or redemption of benefits that have been illegally received, transferred, or used**

Whoever presents, or causes to be presented, benefits for payment or redemption of the value of \$100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this chapter or the regulations issued pursuant to this chapter, shall be guilty of a felony and, upon the first conviction thereof, shall be fined not more than \$20,000 or imprisoned for not more than five years, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not less than one year nor more than five years and may also be fined not more than \$20,000, or, if such benefits are of a value of less than \$100, shall be guilty of a misdemeanor and, upon the first conviction thereof, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than \$1,000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the supplemental nutrition assistance program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 2015(b)(1) of this title.

**(d) Benefits as obligations of the United States**

Benefits issued pursuant to this chapter shall be deemed to be obligations of the United States within the meaning of section 8 of title 18.

**(e) Forfeiture of property involved in illegal benefit transactions**

The Secretary may subject to forfeiture and denial of property rights any nonfood items, moneys, negotiable instruments, securities, or

<sup>1</sup> So in original. Probably should be "possessed".