Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 278 and 279

RIN 0584–AC46

Food Stamp Program: Retailer Integrity, Fraud Reduction and Penalties

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed Rule

SUMMARY: The purpose of this proposed rule is to implement the Food Stamp Program retailer provisions included in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, as well as the retailer provision included in the Federal Agriculture Improvement and Reform Act. While a number of amendments to the current regulations are proposed in order to meet the objectives of streamlining the regulations in response to the Departmental review of the regulations, the majority of the proposed changes included in this proposal are derived from the retailer provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Most of the provisions in this proposed rule are nondiscretionary and required by law. The intent of this rule is to strengthen integrity and eliminate fraud in the Food Stamp Program by ensuring that only legitimate stores participate in the program, by improving the Department's ability to monitor authorized firms, and by strengthening penalties against firms that violate program rules.

DATES: Comments must be received by July 6, 1998 to be assured of consideration. Comments on the discretionary provisions identified in this rule are encouraged. Comments will not affect implementation of those provisions identified as nondiscretionary that are mandated by law and over which the Secretary has no discretion.

ADDRESSES: Comments should be addressed to Suzanne Fecteau, Chief, Redemption Management Branch, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302–1594. All written comments will be open for public inspection at the office of the Food and Consumer Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) in Room 706, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Suzanne Fecteau, Chief, Redemption Management Branch, Benefit Redemption Division, Food Stamp Program, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant under 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.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. § 601–612). Yvette S. Jackson, the Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule may have an effect on a limited number of retail food stores and other entities that are shown to be negligent in effectuating the purposes of the FSP by committing violations or fraud in the program. However, we do not believe this will have a significant effect on most small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this notice announces our intent to submit revised application procedures and associated burden estimates to OMB for approval relative to the application(s) completed by retail food stores and meal service providers to request authorization and/or continued authorization to participate in the Food Stamp Program (FSP). We also intend to request OMB approval of the revised estimates for 3 years.

Comments on this notice must be submitted by July 6, 1998.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Laura Oliven, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (a copy may also be sent to Suzanne M. Fecteau, Chief, Redemption Management Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Va. 22302. **FOR FURTHER INFORMATION,** or for copies of the information collection, please contact Ms. Fecteau at the above address.)

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

For Further Information Contact: Suzanne M. Fecteau, (703) 305–2418.

Title: Food Stamp Program Store Applications.

OMB Number: 0584–0008.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture is the Federal agency responsible for the FSP. The Food

Stamp Act of 1977, as amended (the Act) (7 U.S.C. 2011–2036), requires that the Agency determine the eligibility of firms and certain food service organizations to accept and redeem food stamp benefits and to monitor them for compliance and continued eligibility.

Part of FNS' responsibility is to accept applications from retail food establishments and meal service programs that wish to participate in the FSP, review the applications in order to determine whether or not applicants meet eligibility requirements, and make determinations whether to grant or deny authorization to accept and redeem food stamp benefits. FNS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the firms or services continue to meet eligibility requirements.

There are currently 3 application forms approved under OMB No. 0584–0008. Together these forms are used by retailers, wholesalers, meal service providers, certain types of group homes, shelters, and state-contracted restaurants, to apply to FNS for authorization to participate in the FSP. Form FNS–252, Food Stamp Application For Stores, is generally used by stores, excluding facilities which provide meal services such as communal dining, shelters, restaurant and other meal service programs, which are newly applying for authorization; Form FNS–252R, Food Stamp Program Application For Stores-Reauthorization, is used by the majority of currently authorized stores to apply for reauthorization, excluding facilities which provide meal services such as communal dining, shelters, restaurants and other meal service programs; and Form FNS–252–2, Application to Participate in the Food Stamp Program for Communal Dining Facility/Others, generally used by communal dining and restaurant facilities and other food service programs which are newly applying or applying for reauthorization. In a few cases, at the discretion of the FNS field offices, some stores would be required to complete Form FNS–252 to apply for reauthorization. Section 9(c) of the Act provides the necessary authorization(s) to collect the information contained in these forms.

The proposed revisions to the authorization process contained in § 278.1(a) of this proposed rule do not impose new information collection, reporting or recordkeeping requirements. There are 3 application forms used by firm's who wish to participate in the program. These forms and associated burden hours have been approved by OMB under OMB No. 0584–0008 through October 31, 1999. We are proposing to adjust the current burden estimates based on more recent data and a technical correction to capture a change in application requirements for private restaurants that was inadvertently omitted from the hourly burden estimates when last submitted to OMB and an error in estimating the average hourly burden time for Form FNS–252–2. Comments are solicited on the adjusted burden estimates as discussed in the following paragraphs and reflected in the summary chart at the end of this section of the preamble.

We do not collect information on the number of FSP applications received annually. Current burden estimates associated with these 3 application forms are determined from information maintained in STARS (Store Tracking and Redemption System) based on the total number of currently authorized stores or the number of newly authorized stores. The number of expected applications is divided between initial applications from new applicants and applications for reauthorization from currently authorized stores.

Adjustments—Re-estimates Based on More Recent Data and Corrections

For burden estimates associated with new applicants (initial authorizations), we used the number of stores (all types) newly authorized/approved currently estimated at 20,696; (rounded to 20,700) based on FY 1997 year-end data from STARS and inflated this number by 10% (2,070) to capture a total of 22,770 applications expected to be received and processed from stores annually. It is estimated that 98% (22,315) of the 22,770 applications expected to be received would be on Form FNS–252 and 2% (455) would be on Form FNS–252–2. Due to a technical correction discussed later in this section of the preamble, the number of expected applications would be further changed to reflect an expected total of 22,347 applications using Form FNS–252 and 423 applications using Form FNS–252–2.

For burden estimates associated with applications for reauthorization, we used the total number of stores (all types) authorized (184,300) as of December 1997. Generally, authorized stores are subject to reauthorization at least once every 4 years. Thus, it is estimated that 25% (46,000) of all authorized stores would be subject to reauthorization in any given year. Using, the number of authorized stores as of December 1997, it is estimated that 46,000 reauthorization applications would be expected to be received annually. Of the 46,000 reauthorization applications expected, it is estimated that 96% (44,160) will be on Form FNS–252R, 3% (1,380) will be on Form FNS–252–2, and 1% (460) will be on Form FNS–252.

Hourly burden time per response varies by type of application and includes the time to review instructions, search existing data resources, gather and copy the data needed, complete and review the application, and submit the form and documentation to FNS. It should be noted that the number of applicant and authorized stores has been declining over the past few years due to several program changes, such as changes in eligibility requirements, stronger sanctions against violators, and implementation of Electronic Benefit Transfer systems. These declines have resulted in a reduction in the overall number of respondents and ultimately a reduction in the overall proposed burden hours reflected in the following summary chart.

Currently, private restaurants applying for FSP participation in the State-administered special restaurant program use Form FNS–252–2 to apply for participation. This category of applicant represents about 7% of the number of current applicants using Form FNS–252–2. Over time, it has been determined that we need additional information from such private restaurants to ensure that they meet necessary requirements of operation to carry out the intent of the FSP. The additional information needed would be captured by having these respondents, estimated at about 32, complete Form FNS–252 rather than Form FNS–252–2. We estimate that these restaurants will spend an estimated 10 minutes of additional burden time using the longer Form FNS–252, however, this contributes to a negligible amount to the increase in the average hourly burden rate reflected in the summary chart because the number of respondents is so small. This change is a technical correction rather than a re-estimate based on more recent data, and is reflected in the number of initial applications expected to be received as shown in the summary chart.

As currently approved by OMB, the hourly burden rate per response for Form FNS–252 is 20 to 68 minutes, with the average being 27 minutes and 10 to 20 minutes for Form FNS 252–2, with the average being 10 minutes. These hourly burden rates are not affected by the re-estimated number of applications expected to be received or the technical correction. However, previous estimates

to OMB erroneously reflected the average burden time for Form FNS–252–2 as 10 minutes. The average time is 12 minutes and this correction appears in the proposed estimates in the summary chart.

Total number of respondents completing at least one of the 3 applications in question, taking into consideration the adjustments discussed above, would be as follows:

FNS–252:		
New authorizations	22,347	(22,770 × .98 + 32)
Reauthorizations	460	(184,000 × .25 × .01)
	22,807	
FNS–252–2:		
New authorizations	434	(22,770 × .02 − 32)
Reauthorizations	1,380	(184,000 × .25 × .03)
	1,803	
FNS–252R:		
Reauthorizations	44,160	(184,000 × .25 × .01 − 1,380 − 460)
Total Responses	68,770	

The existing estimates, as approved by OMB through May 1999 and shown on the following chart, reflect the total annual number of responses as 80,613 and the annual burden hours as 18,396. The proposed number of responses would be 68,700 with total burden hours of 15,777 hours. The net effect of the proposed burden estimates is an overall decrease in burden hours of 2,619 hours annually.

Affected Public: Food Retail and Wholesale Firms, Meal Service Programs, certain types of Group Homes, Shelters, and State-contracted Restaurants.

Estimated Number of Respondents: 68,770.

Estimated Number of Responses per respondent: 1.

Estimated Time per Response: 0.229416.

Estimated Total Annual Burden: 15,777.

SUMMARY OF PROPOSED BURDEN ESTIMATES FOR FORMS FNS–252, 252–2 AND 252R

Title	Number of respondents	Responses per respondent	Total annual responses	Burden hours per response	Total annual burden hours
Form FNS–252:					
Existing	26,431	1	26,431	.4500	11,894
Proposed	22,807	1	22,807	.4500	10,263
Difference	−3,624	1	−3,624	.....	−1,631
Form FNS–252–2:					
Existing	2,592	1	2,592	.1855	481
Proposed	1,803	1	1,803	.2000	361
Difference	−789	.....	−789	+.0145	−120
Form FNS–252R:					
Existing	51,590	1	51,590	.1167	6,021
Proposed	44,160	1	44,160	.1167	5,153
Difference	−7,430	.....	−7,430	.....	−868
Totals:					
Existing	80,613	.....	80,613	.....	18,396
Proposed	68,770	.....	68,770	.....	15,777
Difference	−11,843	.....	−11,843	.....	−2,619

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, 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 except as specified in the ''Effective Date'' paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all 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 276.7 (for rules related to non-quality control (QC) liabilities) or 7 CFR 283 (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.

Unfunded Mandate Reform Act of 1995

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 proposed rule contains no Federal mandates under the regulatory provision 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, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) was enacted on August 22,1996, and contains a number of provisions directly affecting the participation of retailers, wholesalers and other entities eligible to be authorized to participate in the Food Stamp Program (FSP). All of the provisions of the law addressed in this rulemaking were effective on the date of enactment. Five of the provisions are nondiscretionary and were immediately implemented in the program through an implementing memorandum issued on September 16, 1996. While these five provisions are incorporated into this proposed rule, they are identified as nondiscretionary in this preamble. Such nondiscretionary provisions are statutory requirements that the Secretary has no authority to change; therefore, such provisions or their implementation cannot be modified by public comment. The PRWORA provides discretion in the implementation of the remaining provisions of the law, and these provisions are being proposed for public comment in this proposed rulemaking. The Department encourages all interested parties to comment on the discretionary provisions as set forth in this proposed rule.

The PRWORA and this proposed rulemaking include the following discretionary and nondiscretionary provisions:

- Revision in the definition of ''coupon'' (nondiscretionary);
- Establishment of a minimum six month waiting period before stores that initially fail to meet authorization criteria can reapply to participate in the program (nondiscretionary), and the establishment of longer periods of time, including permanent prohibition from participation, which reflects the severity of the basis for the denial of the firm's application or a firm's reauthorization in the program (discretionary);
- Requirement that USDA, or its designees, conduct preauthorization visits to applicant firms as specified by the Secretary (discretionary);
- Authority for USDA to disqualify firms based on inconsistent redemption data and suspicious account activity as documented through EBT system data (nondiscretionary);
- Authority to suspend the program participation of violating firms subject to a permanent disqualification pending the outcome of administrative or judicial review (nondiscretionary);
- Authority for USDA to establish authorization periods for the participation of retailers in the program (discretionary);
- Authority to disqualify retailers who intentionally submit falsified applications, including permanent disqualification of such retailers (discretionary); and
- Authority to disqualify retailers that have been disqualified by State agencies responsible for the administration of USDA's Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (discretionary), extension of the periods for disqualification of such FSP retailers and elimination of the FSP administrative and judicial review rights of such retailers (nondiscretionary).

This proposed rulemaking also includes a provision of the Federal Agriculture Improvement and Reform Act (FAIR), Pub.L. 104–127, which provides a limitation on the mandatory permanent disqualification actions that may be taken by USDA for retailers found to be trafficking. Conforming and minor editorial revisions in response to the National Performance Review Regulatory Planning and Reform Initiative are also included in this rule.

FAIR Provision—Eligibility for Trafficking Civil Money Penalties

Section 401 of the FAIR limits mandatory permanent disqualifications for food coupon trafficking (with no possibility of avoiding disqualification by paying a trafficking civil money penalty) to instances in which (1) owners are aware of violations or participate in the conduct of such food coupon trafficking violations or (2) it is the second investigation in which a trafficking violation was committed by firm management.

This provision amends the current automatic ineligibility of a firm for a civil money penalty (CMP) in lieu of permanent disqualification if the ownership or management of the firm was aware of, approved, benefited from or was involved in the conduct of the food coupon trafficking violations (§ 278.6(i)). The FAIR amendment expands the number of firms that may be eligible for such a CMP in lieu of permanent disqualification. The law provides that if such a violation represents first-time management food coupon trafficking, the firm may be considered eligible for the imposition of a CMP, if the firm documents that it meets all of the eligibility requirements for the CMP as specified in § 278.6 (i).

This rulemaking proposes that the provision be applicable to firm management in general, regardless of whether or not the same individual manager committed trafficking violations previously. For example, if an individual manager previously was dismissed from the position for committing trafficking violations, but a different manager of the same firm subsequently commits food coupon trafficking violations, the firm would not be eligible for a second CMP in lieu of permanent disqualification. However, the expansion of eligibility for a CMP in lieu of permanent disqualification as stipulated in the FAIR does not apply to firms where it is shown that ownership or management was involved in trafficking in ammunition, firearms, explosives or controlled substances.

This provision was effective on April 4,1996, the date of enactment of the statute. It was implemented upon the date on which Food and Nutrition Service (FNS) offices received the implementing memorandum, and is applicable to all firms issued a final determination letter subsequent to receipt of the implementing memorandum by FNS offices. The implementing memorandum was issued on September 16, 1996. The amendment to § 278.6(i) of this proposed regulation reflects this change. Comments are invited, however, on the proposed restriction which prohibits a CMP in lieu of permanent disqualification the second time management personnel of a firm commit trafficking violations, regardless of whether it was the same person in the management position that committed the previous violation(s).

Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)

The provisions of the PRWORA related to retailer participation in the FSP represent a three-tiered approach to

enhancing retailer compliance and integrity in order to further the purposes of the FSP and to reduce fraud in this critically important domestic food program. The provisions greatly reinforce USDA's efforts to effectively administer the FSP by improving the ability of the Department to screen applicant retailers prior to authorization, to control retailer performance subsequent to FSP authorization and to impose stiffer penalties against those firms found to be violating the public trust by committing FSP violations and defrauding the program.

Pre-Authorization Screening

The participation of retailers in the FSP is a privilege, not a right. The PRWORA and the provisions of this proposed rulemaking will serve to increase the Department's ability to cut off fraud and abuse at the source by allowing more in-depth pre-authorization screening of applicant firms and verification of the qualifications and continued eligibility of currently authorized firms to participate in the FSP.

Condition Precedent for Approval of Retail Food Stores and Wholesale Food Concerns

Section 831 of the PRWORA provides authority for USDA, its designee or State or local government officials designated by the Department, to conduct preauthorization visits to selected firms, and provides discretion to the Secretary to designate such firms on the basis of size, location and types of items sold. Amendments to § 278.1(a) of the regulation reflect the Secretary's authority to conduct such preauthorization visits as contained in the statute. It is anticipated that firm types subject to preauthorization visits will be determined by the FNS on an annual basis, as priorities and resources permit.

Waiting Period for Firms That Fail To Meet Authorization Criteria

Section 834 of the PRWORA amends section 9(d) of the Food Stamp Act to require that a firm that does not qualify for authorization because the firm fails to meet the eligibility criteria for approval be prohibited from submitting a new application to participate in the FSP for a minimum period of 6 months. The statute also allows the Secretary to establish longer time periods, including a permanent prohibition from participation, that is reflective of the severity of the basis for the denial of the application.

Section 278.1(k) of the regulation is proposed to be revised to include the minimum 6-month prohibition from reapplication, which applies to those firms that are shown to not meet Criterion A or Criterion B of the eligibility requirements of the Food Stamp Act, (7 U.S.C. 2012(k)) and, for co-located wholesale/retail firms, the requirements of § 278.1(b)(1)(iv). Criteria A and B were incorporated into the definition of ''retail food store'' in the Food Stamp Act, as amended by the Pub. L. 103–225, the Food Stamp Program Improvements Act of 1994. While this change in the definition was effective immediately upon enactment of the law and has been implemented, a proposed rule incorporating this statutory change specifically in the regulations is currently in Departmental clearance.

Currently, there is no waiting period for stores that wish to reapply to participate in the FSP after their application is denied because the stores fail to meet basic eligibility criteria for authorization. Such stores can adjust the types of staple food items that they offer for sale in order to meet minimal standards and reapply immediately, and then decrease their inventory after obtaining authorization. Such firms tend to be stores that do not effectuate the purpose of the FSP. The implementation of the 6-month waiting period will reduce the number of firms that temporarily stock minimum requirements of food items solely for the purpose of becoming authorized in the program and then engage in food stamp trafficking as their primary business. This provision applies to initial applicants as well as to those firms being reviewed for the purpose of reauthorization, or any other purpose, that are found not to meet program eligibility requirements. At the time of initial application and reauthorization, firms will be provided notice of this provision. This 6-month prohibition is nondiscretionary.

This rulemaking also proposes to implement the Secretary's authority to establish longer periods of time during which a firm would be restricted from reapplying for program authorization. Section 834 of the PRWORA provides that the Secretary may establish such time restrictions, up to a permanent denial, of a firm's ability to reapply for program authorization depending upon the severity of the reason for the denial of such a firm's initial application or subsequent application for authorization or reauthorization. Section 278.1(b)(3) sets out the criteria discussed below that are proposed to be used by FNS to make determinations regarding reapplication restrictions against firms that are denied authorization or reauthorization, or are otherwise withdrawn from the program. Section 278.1(k) details the proposed periods of time for which a firm will be denied authorization in the program in response to the criteria set out in § 278.1(b)(3). It is proposed that these provisions be applicable to denials of initial authorization and reauthorization in the FSP, as well as to the continued authorization of a firm for participation in the program.

Section 9 of the Food Stamp Act, as amended, provides the Secretary with the authority to consider the business integrity and reputation of program applicants when determining the qualifications of such applicants for participation in the program. The business integrity of a firm is critically important to the effective operation of the FSP. Therefore, the criteria in this proposed rulemaking focus on the business integrity and reputation of the ownership, management and other personnel of those firms seeking authorization or reauthorization in the program. Fraudulent activity in the FSP or other government programs, or in business-related activities in general, reflects on the ability of a firm to effectuate the purposes of the FSP and abide by the rules governing the program. Therefore, this rulemaking proposes that a firm be permanently denied the opportunity for reapplication if a firm is denied authorization or reauthorization in the program on the basis of criminal convictions or a finding of civil liability of the ownership or management of an applicant firm for reasons that affect the business integrity of such firms. If personnel of the firm have been criminally convicted or found civilly liable for reasons related to business integrity, the firm will be denied the opportunity for reapplication to the program for as long as that person is employed by the firm. Examples of such business integrity matters include conviction or civil liability for offenses such as insurance fraud, tax fraud, and embezzlement.

In addition, this proposal stipulates that firms that have been removed from other federal, State or local government programs shall be prohibited from applying for the FSP during the period of removal from such programs. Such action in the FSP would be taken, for example, if a firm is removed from the WIC Program, or had their State or local liquor or lottery license suspended.

It is also proposed that firms for which it is found that an attempt has been made to circumvent a period of disqualification, a civil money penalty

or a fine imposed for FSP violations, or firms for which evidence exists of prior violative behavior which is not related to the FSP, shall be denied the opportunity to apply for the program for a period of 3 years. For example, a firm fined for lottery or liquor license infractions, but not removed from the State or local program through suspension, would be restricted from participation in the FSP for 3 years, commencing from the effective date of the FSP denial.

Further, this rulemaking proposes that firms in which violations of the program have been committed but a sanction has not been served, shall be denied the opportunity to apply for the program for a period of time equivalent to the appropriate sanction period that should have been served. This provision would apply, for example, when a firm goes out of business prior to FNS' sanctioning the firm for FSP violations that were uncovered prior to its going out of business. If the same owner seeks authorization for a different store, such a store would not be immediately authorized in the FSP and would be subject to a waiting period equivalent to the period of time that the previously investigated firm under that ownership would have been disqualified. This waiting period would be applicable whether or not the previously investigated firm was authorized in the FSP or was an unauthorized firm found to be violating the FSP.

This provision also applies to persons who are owners or officers of multi-unit firms, as well as management and personnel who are employed by the owner of a multi-unit firm. If an owner or officer of a multi-unit firm personally committed FSP violations at one unit of a multi-unit firm, and a sanction was not served, it is proposed that an applicant firm under that same ownership would be denied authorization for a period of time that should have been served for the previously committed violations. Moreover, as currently provided in the FSP regulations, the authorization of other units of such multi-unit firms may be withdrawn in response to violations of the FSP by ownership.

If management or personnel of such multi-unit firms commit sanctionable violations at more than one location, this would indicate that such actions are reflective of the overall operating practice of the firm, thus indicating a lack of business integrity on the part of ownership. If such violations occur and an appropriate penalty was not served, the applicant firm will be denied or restricted from applying for authorization in the FSP for the period of time that should have been served by the firm for violations committed at these other locations under the same ownership. The period would be equivalent to the longest sanction period that would have been served for the most serious of violations committed by any one of the associated firms.

Finally, it is proposed that firms for which any other evidence exists that negatively impacts on the business integrity or reputation of the firm shall be denied the opportunity to apply for authorization in the FSP for one year from the effective date of the denial. Firms adversely affected by any such actions would be entitled to appeal rights provided by section 14 of the Food Stamp Act.

This proposal also makes an editorial change unrelated to the PRWORA provisions to conform the language of § 278.1(k), *Denying authorization.* and § 278.1(l), *Withdrawing authorization.* An additional editorial change is also being made to § 278.1(m) so as to conform this section with § 278.1(k) and § 278.1(l). These revisions do not result in any substantive change in the program, but simply clarify the intent that the provisions are applicable to both denials and withdrawals in the program. In addition, language is proposed to be added in § 278.1(k) and § 278.1(l) that reflects the current prohibition against participation in the program as specified in the current rule at § 278.6(f)(4), which prohibits authorization for participation of firms that have outstanding transfer of ownership civil money penalties owed to FNS.

Authority To Establish Authorization Periods

Section 832 of the PRWORA provides authority for the Secretary to establish specific periods of time during which a firm may be authorized to accept food stamps. The intent of this provision is to eliminate the current open-ended authorization of firms in the program. Further, it is intended to protect the integrity of the FSP by requiring a firm to re-apply periodically for continued participation and thereby ensuring that only legitimate and eligible firms are authorized to accept FSP benefits.

It is proposed that no firm be assigned an authorization period for participation in the FSP for longer than 5 years. Moreover, the FNS Officer in Charge may assign a lesser period of authorization, depending on the circumstances. Such circumstances may include the fact that a store is a new firm with unknown sales history, an additional outlet of a chain grocery store with an inconsistent FSP compliance record or a firm that only minimally meets the eligibility criteria for participation in the FSP.

The Department believes that the five year maximum authorization period, after which a firm is required to apply to be reauthorized in the program, is reasonable and necessary for the effective administration of the program, and will ensure that the eligibility of all firms are routinely and periodically reviewed.

The specification of an authorization period in no way precludes FNS from periodically requesting information from a firm or concern for purposes of reauthorization in the program or from withdrawing or terminating the authorization of a firm in accordance with program regulations. The Department will develop administrative procedures to ensure that, prior to the time of expiration of a firm's authorization period, the firm will be provided with reauthorization materials and be given the opportunity to submit such materials and information to enable FNS to evaluate the firm's qualifications for continued participation in the FSP. This proposal is included in § 278.1(j) of the regulation.

Post-Authorization Controls and Stiffer Penalties in the Program

Retailers that abuse the privilege of authorization in the FSP will have that privilege revoked. The PRWORA includes a number of significant tools that will enhance the Department's ability to enforce the effectiveness of the FSP and the monitoring of retailers.

Authority to Suspend Stores Violating Program Requirements Pending Administrative and Judicial Review

Section 845 of the PRWORA amends section 14 of the Food Stamp Act to require that a permanent disqualification of a firm from the FSP be effective from the date of the firm's receipt of the notice of disqualification. The PRWORA also provides that if such an administrative action by FNS is reversed through administrative or judicial review, the Secretary is not liable for the value of any revenues lost by the firm during such a disqualification period. This provision is nondiscretionary and was effective upon the date of enactment of the law. This provision pertains to firms that are subject to permanent disqualification for trafficking in the program, as well as to those firms subject to permanent disqualification for having been sanctioned twice before for violations of the program. Changes reflecting this

provision of the law have been made at § 278.6(b). Editorial revisions have also been made to § 278.8(a), § 279.7(a) and § 279.10(d). Since this provision is nondiscretionary, its implementation cannot be affected by public comment. It is important to note that the statute specifically refers only to permanent disqualification actions. Therefore, firms that request and are found to be eligible for a civil money penalty in lieu of permanent disqualification for trafficking are not affected by the immediate suspension requirement of the statute nor would such firms be expected to pay the civil money penalty pending appeal and may continue to participate in the program pending appeal.

Investigations

Section 278.6(a) of the regulation is proposed to be amended in accordance with section 841 of the PRWORA to make an editorial change that stipulates that findings of program violations and the subsequent suspension or disqualification of a firm may be made based on evidence established through on-site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system. This supports current practice in the program and the current authority provided to the Secretary to enforce program compliance. The provision is nondiscretionary.

Disqualification of Retailers Disqualified From the WIC Program

Section 843 of the PRWORA amends section 12 of the Food Stamp Act to require the Secretary to develop standards by which firms disqualified from the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) are to be reciprocally *disqualified* from participation in the FSP. Currently, FSP regulations provide for the withdrawal of such firms from the FSP in response to WIC disqualification action. Such withdrawals must run for a concurrent period of time. This has proven to be problematic in that it is sometimes difficult for the Food Stamp withdrawal action to catch up to the WIC disqualification, particularly if the WIC disqualification is for a 6 month period or less. Under the current regulations, a firm has the right to appeal the Food Stamp action, and often, by the time the firm has appealed the FSP withdrawal, the WIC disqualification period is ending. Thus, the impact of reciprocal withdrawal is not significant. The change in the law provides that the FSP disqualification period (1) shall be for the same period of time as the WIC disqualification period; (2) may run consecutive to the WIC disqualification; and (3) shall not be subject to FSP administrative or judicial review. These provisions of the statute are nondiscretionary.

In addition, the law stipulates that the Secretary establish criteria for such reciprocal disqualification actions. Current regulations set forth the types of WIC violations that will result in withdrawal of a firm from participation in the FSP.

The Department proposes to retain these same criteria, with some editorial changes to ensure that trafficking violations are fully covered in the listed violations. The WIC violations included here, therefore, represent very serious violations of the WIC Program that are comparable to serious violations of the FSP. These violations best represent the potential risk of violations of a similar nature being committed by unscrupulous firms in the FSP, thus necessitating reciprocal FSP action to protect the integrity of the FSP. The Department solicits comments on the reciprocal disqualification standards set out in § 278.6(e)(8).

Conforming changes to restrict those firms subject to reciprocal disqualification from eligibility for FSP administrative and judicial review are made to § 278.6(n), § 278.8(a), § 279.3(a)(2) and § 279.10(a) of this regulation. The changes made to these sections are nondiscretionary and will not be affected by public comment.

Disqualification of Retailers Who Intentionally Submit Falsified Applications

Section 842 of the PRWORA amends section 12(b) of the Food Stamp Act to authorize the Secretary to disqualify, including permanently disqualify, participating retailers who knowingly submit applications that contain false information about substantive issues. This proposed rule proposes to subject a firm to permanent disqualification if it is found that false information directly related to the eligibility of the firm for authorization is knowingly submitted on the application. In addition, this rule proposes that in cases in which any false information is knowingly submitted that would impact on the ability of FNS to monitor and identify potentially violative firms, the firm shall be disqualified for three years.

This proposed rule outlines examples of the type of information that would be considered ''substantive'' for the purpose of determining eligibility, as well as the type of information that is considered to be substantive from a monitoring standpoint. These examples, however, are not inclusive of all of the information that, if fraudulently submitted, may result in disqualification of a firm.

This rule also proposes to deny authorization of any such firm which is found to have knowingly submitted such false information on the application at the time of initial application processing. It is proposed that such firms be denied for the same period of time for which they would be disqualified under § 278.6(e). The Department encourages comments on this discretionary provision.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 278

Administrative practice and procedure, Banks, banking, Claims, Food stamps, Groceries—retail, Groceries, General line—wholesaler, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, Groceries—retail, Groceries, General line—wholesaler.

Accordingly, 7 CFR parts 271, 278 and 279 are proposed to be amended as follows:

1. The authority citation for parts 271, 278 and 279 continues to read as follows:

Authority:
7 U.S.C. 2011–2032.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, the definition of ''coupon'' is revised to read as follows:

§ 271.2 Definitions.

* * * * *

Coupon means any coupon, stamp, type of certificate, authorization card, cash or check issued in lieu of a coupon, or access device, including an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food Stamp Act of 1977, as amended, for the purchase of eligible food.

* * * * *

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

3. In § 278.1:

a. Paragraph (a) is revised;

b. Paragraph (b)(3) is revised;

c. Paragraph (j) is revised;

d. Paragraph (k) is amended by revising the first sentence of paragraph (k)(2) and redesignating the paragraph (k)(2) as paragraph (k)(7), and adding new paragraphs (k)(2), (k)(3), (k)(4), (k)(5) and (k)(6);

e. Paragraph (l) is amended by redesignating paragraphs (l)(1)(iii) through (l)(1)(v) as (l)(1)(v) through (l)(1)(vii), respectively, revising newly redesignated paragraph (l)(1)(vi), and adding new paragraphs (l)(1)(iii) and (l)(1)(iv);

f. The introductory text of paragraph (m) is revised;

g. Paragraph (o) is removed, and paragraphs (p) through (u) are redesignated as paragraphs (o) through (t), respectively; and

h. Newly redesignated paragraph (o) is revised and newly redesignated paragraph (q) is amended by removing references to (r)(2), (r)(3), (r)(1)(ii), (r)(1)(i), (r)(2)(ii), (r)(2)(iv), (r)(3)(iv) and (r), wherever they appear, and adding in their place references to (q)(2), (q)(3), (q)(1)(ii), (q)(1)(i), (q)(2)(ii), (q)(2)(iv), (q)(3)(iv) and (q), respectively.

The revisions and additions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

(a) *Application.* Any firm desiring to participate or continue to be authorized in the program shall file an application as prescribed by FNS. Such an application shall contain information which will permit a determination to be made as to whether such an applicant qualifies, or continues to qualify, for authorization under the provisions of the program. FNS may require that a retail food store or wholesale food concern be visited to confirm eligibility for program participation prior to such store or concern being authorized or reauthorized in the program. FNS shall determine, based on factors that include size, location, and types of items sold, which stores or concerns shall be visited. Required visits shall be conducted by an authorized employee of the Department, a designee of the Secretary, or an official of the State or local government designated by the Secretary. FNS shall deny or approve the application, or request additional information from the applicant firm, within 30 days of receipt of the initial application.

(b) *Determination of authorization.* * * *

(3) *The business integrity and reputation of the applicant.* FNS shall deny the authorization of any firm from participation in the program for a period of time as specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows:

(i) Criminal conviction records reflecting on the business integrity of owners, officers, managers, or other personnel of the applicant firm;

(ii) Judicial determinations in civil litigation adversely reflecting on the business integrity of owners, officers, managers or other personnel of the applicant firm;

(iii) Official records of removal of the applicant firm from other Federal, State or local government programs;

(iv) Evidence of an attempt by the applicant firm to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food Stamp Act and program regulations;

(v) Evidence (other than a record of a civil or criminal conviction) of prior fraudulent behavior of owners, officers, managers, or other personnel of the applicant firm that is not Food Stamp Program related for which a Food Stamp Program sanction had not been previously imposed and satisfied;

(vi) Previous Food Stamp Program violations by owners, officers, managers, or other personnel of the applicant firm for which a sanction had not been previously imposed and satisfied;

(vii) Evidence of prior Food Stamp Program violations personally committed by the owner(s) or the officer(s) of the firm at one or more units of a multi-unit firm, or evidence of prior Food Stamp Program violations committed by management or other personnel at other units of multi-unit firms which would indicate a lack of business integrity on the part of ownership and for which sanctions had not been previously imposed and satisfied; or

(viii) Any other evidence adversely reflecting on the business integrity or reputation of the applicant firm.

* * * * *

(j) *Authorization.* Upon approval, FNS shall issue a nontransferable authorization card to the firm. The authorization card shall be valid only for the time period for which the firm is authorized to accept and redeem coupons under the program. The authorization card shall be retained by the firm until such time as the authorization period has ended, authorization in the program is superseded, or the card is surrendered or revoked as provided in this part. No firm may be assigned an authorization period in the program of longer than 5 years; however, the FNS Officer in Charge may assign a lesser period for authorization of a firm, depending on the circumstances of such firm. The specification of an authorization period in no way precludes FNS from periodically requesting information from a firm or concern for purposes of reauthorization in the program or from withdrawing or terminating the authorization of a firm in accordance with this part.

(k) *Denying authorization.* * * *

(2) The firm has failed to meet the eligibility requirements for authorization under Criterion A or Criterion B, as specified in the Food Stamp Act of 1977, as amended; or, for co-located wholesale/retail firms, the firm fails to meet the requirements of paragraph (b)(1)(iv) of this section. Any firm that has been denied authorization on these bases shall not be eligible to submit a new application for authorization in the program for a minimum period of six months from the effective date of the denial;

(3) The firm has been found to lack the necessary business integrity and reputation to further the purposes of the program. Such firms shall be denied authorization in the program for the following period of time:

(i) Firms for which criminal conviction records reflecting on the business integrity of owners, officers, or managers exist shall be denied authorization permanently; firms for which such records exist with regard to other personnel employed by the firm shall be denied for as long as such person continues to be employed by the firm;

(ii) Firms for which judicial determinations in civil litigation adversely reflecting on the business integrity of owners, officers or managers of the firm have been made shall be denied authorization permanently; firms for which such determinations have been made with regard to other personnel employed by the firm shall be denied authorization for as long as such person continues to be employed by the firm;

(iii) Firms which have been officially removed from other Federal, State or local government programs shall be denied for a period equivalent to the period of removal from any such programs;

(iv) Firms for which evidence exists of an attempt to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food Stamp Act and program regulations shall be denied for a period

of three years from the effective date of denial;

(v) Firms for which evidence exists of prior fraudulent behavior of owners, officers, or managers of the firm which is not Food Stamp Program related and for which a Food Stamp Program sanction had not been previously imposed and satisfied shall be denied for a period of three years from the effective date of denial; firms for which such fraudulent behavior was committed by personnel employed by the firm shall be denied authorization for as long as such person continues to be employed by the firm;

(vi) Firms for which evidence exists of prior Food Stamp Program violations by owners, officers, managers, or other personnel of the firm for which a sanction had not been previously imposed and satisfied shall be denied for a period of time equivalent to the appropriate disqualification period for such previous violations, effective from the date of denial;

(vii) Firms for which evidence exists of prior Food Stamp Program violations at other units of multi-unit firms for which a sanction had not been previously imposed and satisfied shall be denied for a period of time equivalent to the appropriate disqualification period for such previous violations, effective from the date of denial;

(viii) Firms for which any other evidence exists which reflects negatively on the business integrity or reputation of the applicant firm shall be denied for a period of one year from the effective date of denial;

(4) The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3);

(5) The firm's participation in the program will not further the purposes of the program;

(6) The firm has been found to be circumventing a period of disqualification or a civil money penalty through a purported transfer of ownership;

(7) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7, any fines assessed under § 278.6(l) or § 278.6(m), or a transfer of ownership civil money penalty assessed under § 278.6(f). * * *

(l) *Withdrawing authorization.* (1) * * *

(iii) The firm fails to meet the requirements for eligibility under Criterion A or Criterion B, as specified in the Food Stamp Act of 1977, as amended, or, for co-located wholesale/retail firms, the firm fails to meet the requirements of paragraph (b)(1)(iv) of this section, for the time period specified in paragraph (k)(2) of this section;

(iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section. Such firms shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings;

* * * * *

(vi) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7 or any fines assessed under § 278.6(l) or § 278.6(m) or a transfer of ownership civil money penalty assessed under § 278.6(f) or

* * * * *

(m) *Refusal to accept correspondence or to respond to inquiries.* FNS may withdraw or deny the authorization of any firm which:

* * * * *

(o) *Applications containing false information.* The filing of any application containing false or misleading information may result in the denial of approval for participation in the program, as specified in paragraph (k) of this section, or disqualification of a firm from participation in the program, as specified in § 278.6, and may subject the firm and persons responsible to civil or criminal action.

* * * * *

4. In Section 278.6:

a. Paragraph (a) is revised;

b. Paragraph (b)(1) is amended by adding one new sentence to the end of the paragraph;

c. Paragraph (b)(2)(i) is amended by adding two new sentences to the end of the paragraph;

d. Paragraph (c) is amended by adding three new sentences to the end of the paragraph;

e. Paragraph (e) is amended by adding new paragraphs (e)(1)(iii), (e)(3)(vi) and (e)(8);

f. Paragraph (i) is amended by removing the first sentence of Criterion 4 and adding three new sentences in its place, and by removing the words ''or management'' in paragraph (i)(1)(v); and

g. Paragraph (n) is revised.

The revisions and additions read as follows:

§ 278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.

(a) *Authority to disqualify or subject to a civil money penalty.* FNS may disqualify any authorized retail food store or authorized wholesale food concern from further participation in the program if the firm fails to comply with the Food Stamp Act or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system, or the disqualification of a firm from the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), as specified in paragraph (e)(8) of this section. Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section. Any firm which has been disqualified and which wishes to be reinstated at the end of the period of disqualification or at any later time shall file a new application under § 278.1 so that FNS may determine whether reauthorization is appropriate. The application may be filed no earlier than 10 days before the end of the period of disqualification. FNS may, in lieu of a disqualification, subject a firm to a civil money penalty of up to $10,000 for each violation if FNS determines that a disqualification would cause hardship to participating households. FNS may impose a civil money penalty of up to $20,000 for each violation in lieu of a permanent disqualification for trafficking, as defined in § 271.2 of this chapter, in accordance with the provisions of paragraphs (i) and (j) of this section.

(b) *Charge letter.* (1) * * * In the case of a firm for which action is taken in accordance with paragraph (e)(8) of this section, the charge letter shall inform such firm that the disqualification action is not subject to administrative or judicial review, as specified in paragraph (e)(8) of this section.

(2) *Charge letter for trafficking.* (i) * * * The charge letter shall also advise the firm that the permanent disqualification shall be effective immediately upon the date of receipt of the notice of determination, regardless of whether a request for review is filed in accordance with § 279.5 of this chapter. 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.

* * * * *

(c) * * * In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with § 279.5 of this chapter. 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. In the case of a firm for which action is taken in accordance with paragraph (e)(8) of this section, the determination notice shall inform such firm that the disqualification action is not subject to administrative or judicial review, as specified in paragraph (e)(8) of this section.

* * * * *

(e) *Penalties.* * * *

(1) * * *

(iii) It is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to:

(A) Eligibility requirements under § 278.1(b),(c),(d),(e),(f),(g) and (h);

(B) Staple food stock;

(C) Annual gross sales for firms seeking to qualify for authorization under Criterion B as specified in the Food Stamp Act, as amended;

(D) Annual staple food sales;

(E) Total annual gross retail food sales for firms seeking authorization as co-located wholesale/retail firms;

(F) Ownership of the firm;

(G) Employer Identification Numbers and Social Security Numbers;

(H) Food Stamp Program history, business practices, business ethics, WIC disqualification or authorization status, when the store did (or will) open for business under the current ownership, business, health or other licenses, and whether or not the firm is a retail and wholesale firm operating at the same location; or

(I) Any other information of a substantive nature that could affect the eligibility of a firm.

* * * * *

(3) * * *

(vi) Personnel of the firm knowingly submitted information on the application that contained false information of a substantive nature related to the ability of FNS to monitor compliance of the firm with FSP requirements, such as, but not limited to, information related to:

(A) Annual eligible retail food sales;

(B) Store location and store address and mailing address;

(C) Financial institution information; or

(D) Store name, type of ownership, number of cash registers, and non-food inventory and services.

* * * * *

(8) FNS shall disqualify from the Food Stamp Program any firm which is disqualified from the WIC Program:

(i) Based in whole or in part on any act which constitutes a violation of that program's regulation and which is shown to constitute a misdemeanor or felony violation of law, or for any of the following specific program violations:

(A) Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specified period of time;

(B) Exchanging WIC food instruments for cash, credit or consideration other than eligible food; or the exchange of firearms, ammunition, explosives or controlled substances, as defined in section 802 of title 21 of the United States Code, for food instruments;

(C) Receiving, transacting and/or redeeming WIC food instruments outside of authorized channels;

(D) Accepting WIC food instruments from unauthorized persons;

(E) Exchanging non-food items for a WIC food instrument;

(F) Charging WIC customers more for food than non-WIC customers or charging WIC customers more than the current shelf price; or

(G) Charging for food items not received by the WIC customer or for foods provided in excess of those listed on the food instrument.

(ii) FNS shall not disqualify a firm from the Food Stamp Program on the basis of a WIC disqualification unless:

(A) Prior to the time prescribed for securing administrative review of the WIC disqualification action, the firm was provided individual and specific notice that it could be disqualified from the Food Stamp Program based on the WIC violations committed by the firm;

(B) A signed and dated copy of such notice is provided to FNS by the WIC administering agency; and

(C) A determination is made in accordance with § 278.6(a) that such action will not cause a hardship for participating Food Stamp households.

(iii) Such a Food Stamp disqualification:

(A) Shall be for the same length of time as the WIC disqualification;

(B) May begin at a later date than the WIC disqualification; and

(C) Shall not be subject to administrative or judicial review under the Food Stamp Program.

* * * * *

(i) *Criteria for eligibility for a civil money penalty in lieu of permanent disqualification for trafficking.* * * *

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm. Upon the second occasion of trafficking involvement by any member of firm management uncovered during a subsequent investigation, a firm shall not be eligible for a civil money penalty in lieu of permanent disqualification. Notwithstanding the above provision, if trafficking violations consisted of the sale of firearms, ammunition, explosives or controlled substances, as defined in 21 U.S.C. 802, and such trafficking was conducted by the ownership or management of the firm, the firm shall not be eligible for a civil money penalty in lieu of permanent disqualification.

* * * * *

(n) *Review of determination.* The determination of FNS shall be final and not subject to further administrative or judicial review unless a written request for review is filed within the period stated in § 279.5. Notwithstanding the aforementioned, any FNS determination made on the basis of paragraph (e)(8) of this section shall not be subject to further administrative or judicial review.

* * * * *

5. In § 278.8, paragraph (a) is revised to read as follows:

§ 278.8 Administrative review—retail food stores and wholesale food concerns.

(a) *Requesting review.* A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 may, within the period stated in § 279.5 of this chapter, file a written request for review of the administrative action with the review officer, except that disqualification actions taken against firms in accordance with § 278.6(e)(8) shall not be subject to administrative or judicial review. On receipt of the request for review, the questioned administrative action shall be stayed pending disposition of the request for review by the review officer, except in the case of a permanent disqualification as

specified in § 278.6(e)(1). A disqualification for failure to pay a civil money penalty shall not be subject to administrative review.

* * * * *

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

6. In § 279.3, paragraph (a)(2) is revised to read as follows:

§ 279.3 Authority and jurisdiction.

(a) *Jurisdiction.* * * *

(2) Imposition of a fine under § 278.6(l) of this chapter or § 278.6 (m) of this chapter or disqualification from participation in the program or imposition of a civil money penalty under § 278.6 of this chapter, except for disqualification actions imposed under § 278.6(e)(8) of this chapter;

* * * * *

7. In § 279.7, paragraph (a) is amended to add two new sentences after the first sentence to read as follows:

§ 279.7 Action upon receipt of a request for review.

(a) *Holding action.* * * * However, in cases of permanent disqualification under § 278.6(e)(1) of this chapter, such administrative action shall not be held in abeyance pending such a review determination. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be held liable for the value of any sales lost during the disqualification period. * * *

* * * * *

8. In § 279.10, the first sentence of paragraph (a) and paragraph (d) are revised to read as follows:

§ 279.10 Judicial review.

(a) *Filing for judicial review.* Except for firms disqualified from the program in accordance with § 278.6(e)(8) of this chapter, a firm aggrieved by the determination of the food stamp review officer may obtain judicial review of the determination by filing a complaint against the United States in the U.S. district court for the district in which the owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. * * *

* * * * *

(d) *Stay of action.* During the pendency of any judicial review, or any appeal therefrom, the administrative action under review shall remain in force unless the firm makes a timely application to the court and after hearing thereon, the court stays the administrative action after a showing that irreparable injury will occur absent a stay and that the firm is likely to prevail on the merits of the case. However, permanent disqualification actions taken in accordance with § 278.6(e)(1) of this chapter shall not be subject to such a stay of administrative action. If the disqualification action is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period.

Dated: April 24, 1990.

Yvette S. Jackson,

Administrator, Food and Nutrition Service.

[FR Doc. 98–12038 Filed 5–5–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710 and 1714

Prioritizing the Queue for Hardship Rate and Municipal Rate Loans to Electric Borrowers

AGENCY: Rural Utilities Service, Agriculture.

ACTION: Extension of public comment period.

SUMMARY: On April 8, 1998, the Rural Utilities Service (RUS) published in the **Federal Register** an Advanced Notice of Proposed Rulemaking for Prioritizing the Queue for Hardship Rate and Municipal Rate Loans to Electric Borrowers. RUS wishes to extend the comment period for this proposed rule.

The RUS makes hardship rate and municipal rate loans to electric borrowers who meet certain statutory requirements. All applicants from borrowers for these loans are usually considered for approval on a first-come first-served basis. RUS now has a significant shortfall between the total dollar amount of qualified applicants and loan authority for both hardship rate and municipal rate loans. This shortfall has resulted in long waits in the queues for loan approval. RUS is considering making changes to its administrative procedures to prioritize the applications for hardship rate and municipal rate loans, separately, in order to offer these loans to borrowers in greater need of assistance before offering them to other borrowers in the loan queues.

DATES: The date by which written comments must arrive at the address given below is extended from May 8, 1998, to June 8, 1998.

ADDRESSES: Submit written comments to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, Stop 1522, 1400 Independence Avenue, SW, Washington, D.C. 20250–1522. RUS requires, in hard copy, a signed original and 3 copies of all comments (7 CFR 1700.4(e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Deputy Assistant Administrator-Electric Program, U.S. Department of Agriculture, Rural Utilities Service, Stop 1560, 1400 Independence Avenue, SW., Washington, D.C. 20250–1560. Telephone: 202–720–9545. FAX: 202–690–0717.

Blaine C. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 98–11995 Filed 5–5–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–02]

Proposed Amendment to Class E Airspace; Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Philadelphia, PA. The amendment of a Standard Instrument Approach Procedure (SIAP) based on an Instrument Landing System (ILS) at Philadephia International Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before June 5, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–02, F.A.A. Eastern Region, Federal Building #111, John. F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.