

(3) *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

(4) *Contributions and donations.* Unallowable.

(5) *Entertainment.* Costs whose purpose is for amusement, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities are unallowable.

(6) *Fines and penalties.* Costs resulting from violations of or failure to comply with Federal, State and local laws and regulations are unallowable.

(7) *Governor's expenses.* The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable. However, for a federally-recognized Indian tribal government, only that portion of the salaries and expenses of the office of the chief executive that is a cost of general government is unallowable. The portion of salaries and expenses directly attributable to managing and operating programs is allowable.

(8) *Indemnification.* The cost of indemnifying the State against liabilities to third parties and other losses not compensated by insurance is unallowable.

(9) *Interest and other financial costs.* Interest on borrowings, bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable.

(10) *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies are unallowable.

(11) *Losses.* Losses which could have been covered by permissible insurance are unallowable.

(12) *Underrecovery of cost under agreements.* Any excess of cost over Federal contribution under one agreement is unallowable under another agreement.

(13) The acquisition of land or buildings is an unallowable cost.

[Amdt. 188, 45 FR 85702, Dec. 30, 1980, as amended by Amdt. 207, 47 FR 52338, Nov. 19, 1982; Amdt. 298, 52 FR 36400, Sept. 29, 1987; Amdt. 316, 54 FR 24531, June 7, 1989; Amdt. 319, 55 FR 4361, Feb. 7, 1990; Amdt. 342, 59 FR 2733, Jan. 19, 1994]

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

Sec.

278.1 Approval of retail food stores and wholesale food concerns.

278.2 Participation of retail food stores.

278.3 Participation of wholesale food concerns.

278.4 Procedure for redeeming coupons.

278.5 Participation of insured financial institutions.

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

278.7 Determination and disposition of claims—retail food stores and wholesale food concerns.

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

278.9 Implementation of amendments relating to the participation of retail food stores, wholesale food concerns and insured financial institutions.

278.10 [Reserved]

AUTHORITY: 7 U.S.C. 2011-2032.

EDITORIAL NOTE: OMB control numbers relating to this part 278 are contained in §271.8.

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

(a) *Application.* Any firm desiring to participate in the program shall file an application as prescribed by FCS. The FCS officer in charge shall deny or approve authorization, or request more information, within 30 days of receipt of the application.

(b) *Determination of authorization.* An applicant shall provide sufficient data on the nature and scope of the firm's business for the FCS officer in charge to determine whether the applicant's participation will further the purposes of the program. In making this determination the FCS officer in charge shall consider all of the following:

(1) *The nature and extent of the food business conducted by the applicant.* (i) Retail food stores which sell primarily food for home preparation and consumption and in which one or more staple food items, as defined in §271.2, make up more than 50 percent of eligible food sales shall normally be considered to have food business of a nature and extent which will further the purposes of the program. These stores shall include: Full-line grocery stores; convenience stores; stores which sell meat, poultry, or, fish; stands which sell agricultural commodities; farmers markets; milk routes; bread routes; day-old bread stores; bakeries which sell bread; and nonprofit cooperative food-purchasing ventures which are properly licensed to sell food in the

state and locality in which they are operating.

(ii) Firms whose primary business is not the sale of food for home preparation and consumption, but who have recognized grocery departments in which staple foods make up more than 50 percent of eligible food sales, shall normally be considered to have food business of a nature and extent which will qualify the store for participation in the program. In determining whether a store's staple food business is sufficient for the store to qualify for participation in the program, the FCS officer in charge shall also consider:

(A) The volume of staple food business the store does;

(B) The amount of sales of staple foods compared to other business conducted by the firm; and

(C) The availability of other authorized food stores in the area.

(iii) Wholesale food concerns whose primary business is the sale of eligible food at wholesale, and in which one or more staple food items, as defined in § 271.2, make up more than 50 percent of eligible food sales, shall normally be considered to have adequate food business for the purposes of the program.

(iv) No co-located wholesale/retail food concern with 50 percent or less of its total sales in retail food sales may be authorized to redeem food stamps unless it meets the criteria applicable to all retail firms and:

(A) It is a legitimate retail food outlet. Indicators which may establish to FCS that a firm is a legitimate retail food outlet include, but are not limited to, the following:

(1) The firm's marketing structure; as may be determined by factors such as, but not limited to:

(i) A retail business license;

(ii) The existence of sales tax records documenting retail food sales; and/or separate bookkeeping records; and

(2) The way the firm holds itself out to the public as evidenced by factors such as, but not limited to:

(i) The layout of the retail sales space;

(ii) The use of retail advertisements;

(iii) The posting of retail prices;

(iv) Offering specials to attract retail customers;

(v) Hours of operation for retail business;

(vi) Parking area for retail customers; and

(B) It has total annual retail food sales of at least \$250,000; or

(C) It is a legitimate retail outlet but fails to meet the requirements in paragraph (b)(1)(iv)(B) of this section, and not authorizing such a firm would cause hardship to food stamp households. Hardship would occur in any one of the following circumstances:

(1) Program recipients would have difficulty in finding authorized firms to accept their coupons for eligible food;

(2) Special ethnic foods would not otherwise be available to recipients; or

(3) Recipients would be deprived of an opportunity to take advantage of unusually low prices offered by the firm if no other authorized firm in the area offers the same types of food items at comparable prices.

(2) *The volume of coupon business which FCS may reasonably expect the firm to do.* The FCS officer in charge may consider such factors as the location of a store and previous food sales volumes in evaluating the ability of an applicant firm to attract food stamp business.

(3) *The business integrity and reputation of the applicant.* The FCS officer in charge may consider:

(i) Criminal conviction records reflecting on the honesty or integrity of officers or managers of the applicant firm;

(ii) Official records of removal from other Federal, State, or local programs;

(iii) Judicial determinations in civil litigation adversely reflecting on the integrity of officers or managers of the applicant firm;

(iv) Evidence of an attempt to circumvent a period of disqualification from the food stamp program or a civil money penalty imposed for violations of the Food Stamp Act and this part;

(v) Evidence of prior fraudulent behavior of officers, managers or employees of the applicant firm; and

(vi) Any other evidence reflecting on the business integrity and reputation of the applicant.

(4) *Bonding for firms with previous sanctions.* (i) If the applicant firm has been sanctioned for violations of this part, by withdrawal or disqualification from program participation, or by a civil money penalty, the FCS officer-in-charge shall, as a condition of future authorization, require the applicant to present a collateral bond which:

(A) Is issued by a bonding agent recognized under the law of the State in which the applicant is conducting business, and which is represented by a negotiable certificate only.

(B) Is payable to the Food and Consumer Service, U.S. Department of Agriculture;

(C) Cannot be canceled by the bonding agent for non-payment of the premium by the applicant;

(D) Has a face value of \$1,000 or an amount equal to ten percent of the average monthly coupon redemption volume of the applicant for the immediate twelve months prior to the effective date of the most recent sanction which necessitated the bond, whichever amount is greater;

(E) Is valid at all times during which the firm is authorized to participate in the program; and

(F) Remains in the custody of the officer-in-charge unless released to the applicant as a result of the withdrawal of the applicant's authorization, without a fiscal claim established against the applicant by FCS.

(ii) Furnishing a collateral bond shall not eliminate or reduce a firm's obligation to pay in full any civil money penalty or previously determined fiscal claim which may have been assessed against the firm by FCS prior to the time the bond was required by FCS, and furnished by the firm. A firm which has been assessed a civil money penalty shall pay FCS as required, any subsequent fiscal claim asserted by FCS. In such cases a collateral bond shall be furnished to FCS with the payment, or a schedule of intended payments, of the civil money penalty. A buyer or transferee shall not, as a result of the transfer or purchase of a disqualified firm, be required to furnish a bond prior to authorization.

(5) *Taxpayer identification numbers.* At the time of an initial request for authorization as well as reauthorization,

an applicant firm must provide its employer identification number and social security numbers as described below:

(i) *Employer Identification Number.* The firm must provide its employer identification number (EIN) if one has been assigned to the firm by the Internal Revenue Service. The authority to request EINs and the guidelines for requesting EINs are set forth in section 6109(f) of the Internal Revenue Code of 1986 and Treas. Reg. § 301.6109-2 (26 CFR 301.6109-2).

(ii) *Social Security Number.* In addition to the EIN, the firm must provide the social security numbers (SSNs) of the following individuals:

(A) The SSN of an owner of a sole proprietorship.

(B) The SSNs of general partners of firms which are partnerships.

(C) The SSNs of up to five of the largest shareholders (owners) of privately owned corporations. (For purposes of this section, a privately owned corporation is one which has shares or stock that are not traded on a stock exchange or available for purchase by the general public.)

(6) *Other factors.* Any other factors which the FCS officer in charge considers pertinent to the application under consideration.

(c) *Wholesalers.* A wholesale food concern may be authorized to accept coupons only from a specified customer or customers if it meets the requirements of paragraphs (a) and (b) of this section, and FCS determines it is required as a redemption outlet:

(1) For one or more specified authorized drug addict or alcoholic treatment programs,

(2) For one or more specified authorized group living arrangements,

(3) For one or more specified authorized shelters for battered women and children,

(4) For one or more specified authorized nonprofit cooperative food-purchasing ventures,

(5) For one or more specified authorized public or private nonprofit homeless meal providers, or

(6) For one or more specified authorized retail food stores which are without access to an insured financial institution which will redeem their coupons.

No firm may be authorized to accept and redeem coupons concurrently as both a retail food store and a wholesale food concern. Authorizations of wholesale food concerns granted prior to January 28, 1982 shall expire on May 31, 1982. Wholesale food concerns desiring to participate in the program after that date must reapply for authorization in accordance with the provisions of this paragraph.

(d) *Meal services.* A meal delivery service or communal dining facility desiring to prepare and serve meals to households eligible to use coupons for those meals in addition to meeting the requirements of paragraphs (a) and (b) of this section, must establish that:

(1) It is recognized as a tax exempt organization by the Internal Revenue Service; or

(2) It is a senior citizens' center or apartment building occupied primarily by elderly persons and SSI recipients, and their spouses; or

(3) It is a restaurant operating under a contract with a State or local agency to prepare and serve (or deliver) low-cost meals to homeless persons, elderly persons and SSI recipients (and in the case of meal delivery services, to elderly persons or handicapped persons) and their spouses. Such a facility must have more than 50 percent of its total sales in food. The contracts of restaurants must specify the approximate prices which will be charged.

(e) *Treatment programs.* Drug addict or alcoholic treatment and rehabilitation programs wishing to redeem through wholesalers food stamps received from or on behalf of their participants shall in addition to meeting the requirements of paragraphs (a), (b) and (d)(1) of this section, be under Part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). Approval to participate is automatically withdrawn once the treatment and rehabilitation program no longer meets the criteria which would make it eligible for funding under part B of Title XIX (in accordance with the definition in *Drug addiction or alcoholic treatment and rehabilitation program* in § 271.2).

(f) *Group living arrangements.* FCS shall authorize as retail food stores those group living arrangements wishing to redeem coupons directly through

wholesalers. The group living arrangement must, in addition to meeting requirements of paragraphs (a), (b), and (d)(1) of this section, be certified by the appropriate agency or agencies of the State under regulations issued under section 1616(e) of the Social Security Act or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act. Approval to participate is automatically cancelled at any time that a program loses its certification from the State agency or agencies.

(g) *Shelters for battered women and children.* FCS shall authorize as retail food stores those shelters for battered women and children wishing to redeem coupons directly through wholesalers. The shelter must be public or private nonprofit, as defined in paragraph (d)(1) of this section, and meet the requirements of paragraphs (a) and (b) of this section. Shelters which also serve other groups of individuals must have a portion of the facility set aside on a long-term basis to shelter battered women and children. Also required is that the shelter be a residence which serves meals or provides food to its residents.

(h) *House-to-house trade routes.* FCS shall, in consultation with the Department's Office of Inspector General, determine those locations where the operation of trade routes damages the program's integrity. FCS may limit the authorization of house-to-house trade routes to those trade routes whose services are required by participating households in such areas in order to obtain food. The FCS Officer in Charge, in deciding whether households in such areas require a trade route's services, shall consider the volume of food business the trade route does and the availability of alternate sources of comparable food. An FCS official shall inspect any applicant trade route's vehicle to ensure that the trade route is a retail food store before authorizing it to accept coupons. An FCS official may require, as a condition of continuing authorization, that the trade route vehicle be reinspected semiannually to ensure that it continues to be a retail food store.

(i) *Private homeless meal providers.* FCS may authorize as retail food stores those restaurants which contract with the appropriate State agency to serve meals to homeless persons at "concessional" (low or reduced) prices. Restaurants shall be responsible for obtaining contracts with the appropriate State agency as defined in §272.9 and for providing a copy of the contract to FCS at the time it applies for authorization to accept food stamp benefits. Contracts must specify the approximate prices which will be charged. Examples of reduced prices include, but are not limited to, a percentage reduction, a set dollar amount reduction, a daily special meal, or an offer of a free food item or beverage (excluding alcoholic beverages).

(j) *Authorization card.* Upon approval, FCS shall issue a nontransferable authorization card to the firm. The authorization card shall be retained by the firm until superseded, surrendered, or revoked as provided in this part.

(k) *Denying authorization.* FCS shall deny the application of any firm if it determines that:

(1) The firm does not qualify for participation in the program as specified in paragraph (b), (c), (d), (e), (f), (g) or (h) of this section; or

(2) 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). The FCS officer in charge shall issue a notice to the firm by certified mail or personal service of any authorization denial and shall advise the firm that it may request review of that determination.

(l) *Withdrawing authorization.* (1) FCS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons.

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

(ii) The firm fails to meet the specifications of paragraph (b), (c), (d), (e), (f), (g), or (h) of this section;

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

(iv) The firm has failed to pay fines assessed under §278.6(l) or §278.6(m); or

(v) The firm is required under State and/or local law to charge tax on eligible food purchased with coupons or to sequence or allocate purchases of eligible foods made with coupons and cash in a manner inconsistent with 272.1 of these regulations.

(2) The FCS officer in charge shall issue a notice to the firm by certified mail or personal service to inform the firm of the determination and of the review procedure. FCS shall remove the firm from the program if the firm does not request review within the period specified in §279.5.

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

(1) Refuses to accept correspondence from FCS;

(2) Fails to respond to inquiries from FCS within a reasonable time; or

(3) Cannot be located by FCS with reasonable effort.

(n) *Periodic reauthorization.* At the request of FCS a retail food store or wholesale food concern will be required to undergo a periodic reauthorization determination by updating any or all of the information on the firm's application form. Failure to cooperate in the reauthorization process will result in withdrawal of the firm's approval to participate in the program.

(o) *Removal from the Special Supplemental Nutrition Program, for Women, Infants, and Children (WIC).* (1) FCS shall withdraw the Food Stamp Program authorization of any firm which is disqualified from the WIC Program 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:

(i) 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.

(ii) Exchanging cash or credit for WIC food instruments;

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

(iv) Accepting WIC food instruments from unauthorized persons;

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

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

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

(2) FCS shall not withdraw the Food Stamp Program authorization of a firm which is disqualified from the WIC Program unless prior to the time prescribed for securing review of WIC disqualification action, the firm was provided notice that it could be withdrawn from the Food Stamp Program based on the WIC violation. Once a firm has served the period of removal from WIC specified by the State agency, the firm may reapply for Food Stamp Program authorization and be approved if otherwise eligible.

(p) *Applications containing false information.* The filing of any application containing false or misleading information may result in the denial or withdrawal of approval to participate in the program and may subject the firm and persons responsible to civil or criminal action.

(q) *Administrative review.* Any withdrawal or denial of authorization to participate in the program shall be subject to administrative review under § 278.8.

(r) *Use and disclosure of information provided by firms.* With the exception of EINs and SSNs, the contents of an initial application, or other information required to be submitted by retail food stores and wholesale food concerns to determine continued eligibility, such as ownership information and sales and redemption data, may be disclosed to and used by Federal and State law enforcement and investigative agencies for the purpose of administering or enforcing the Food Stamp Act or any other Federal or State law, and the regulations issued under the Food Stamp Act or such other law. Such disclosure and use shall also include companies or individuals under contract for the operation by, or on behalf of FCS to accomplish an FCS function. Such purposes include the audit and examination of such information by

the Comptroller General of the United States authorized by any other provision of law. Any person who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by Federal law or regulations any information obtained under this paragraph shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both. Safeguards with respect to employee identification numbers (EINs) are contained in paragraph (r)(2) of this section. Safeguards with respect to Social Security numbers (SSNs) are contained in paragraph (r)(3) of this section.

(1) *Criteria for requesting information.* FCS shall determine what information can be disclosed and which government agencies have access to that information based on the following criteria:

(i) Federal and State law enforcement or investigative agencies or instrumentalities administering or enforcing specified Federal and State laws, or regulations issued under those laws, have access to certain information maintained by FCS. Such agencies or instrumentalities must have among their responsibilities the enforcement of law or the investigation of suspected violations of law. However, only certain Federal entities have access to information involving SSNs and EINs in accordance with paragraph (r)(1)(ii) of this section;

(ii) Except for SSNs and EINs, information provided to FCS by applicants and authorized firms participating in the FSP may be disclosed and used by qualifying Federal and State entities in accordance with paragraph (r)(1)(i) of this section. The disclosure of SSNs and EINs is limited only to qualifying Federal agencies or instrumentalities which otherwise have access to SSNs and EINs based on law and routine use. Release of information under this paragraph shall be limited to information relevant to the administration or enforcement of the specified laws and regulations, as determined by FCS;

(iii) Requests for information must be submitted in writing, including electronic communication, and must clearly indicate the specific provision of law or regulations which would be administered or enforced by access to requested information, and the relevance

of the information to those purposes. If a formal agreement exists between FCS and another agency or instrumentality, individual written requests may be unnecessary. FCS may request additional information if needed to clarify a request;

(iv) Disclosure by FCS is limited to: Information about applicant stores and concerns with applications on file; information about authorized stores participating in the FSP; and information about unauthorized entities or individuals illegally accepting or redeeming food stamps;

(v) Requests for information disclosure by FCS may involve a specific store or concern, or some or all stores and concerns covered by paragraph (r)(1)(iv) of this section. In addition, FCS may sign agreements allowing certain government entities direct access to appropriate FCS data, with access to EINs and SSNs limited only to other Federal agencies and instrumentalities that otherwise have access to such numbers.

(2) *Employer identification numbers.* (i) The Department may have access to the EINs obtained pursuant to paragraph (b)(5) of this section for the purpose of establishing and maintaining a list of the names and EINs of the stores and concerns for use in determining those applicants who previously have been sanctioned or convicted under sections 12 and 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2021 or 2024). The Department also may share EINs with other Federal agencies and instrumentalities that otherwise have access to EINs if the Department determines that such sharing would assist in verifying and matching such information against information maintained by such other agency or instrumentality. Any such information shared pursuant to this paragraph may be used by the Department or such other agency or instrumentality for the purpose of effective administration and enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. See Treas. Reg. § 301.6109-2 (b) and (c) (26 CFR 301.6109-2 (b) and (c)).

(ii) The only persons permitted access to EINs obtained pursuant to para-

graph (b) of this section are officers and employees of the United States, who otherwise have access and whose duties or responsibilities require access to the EINs for the administration or enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. See Treas. Reg. § 301.6109-2(d)(1) (26 CFR 301.6109-2(d)(1)).

(iii) The Department or any agency or instrumentality of the United States shall provide for any additional safeguards that the Secretary of the Treasury determines to be necessary or appropriate to protect the confidentiality of the EINs. The Department may also provide for any additional safeguards to protect the confidentiality of EINs so long as these safeguards are consistent with any safeguards determined by the Secretary of the Treasury to be necessary or appropriate. See Treas. Reg. § 301.6109-2(d)(2) (26 CFR 301.6109-2(d)(2)).

(iv) EINs maintained by the Department or maintained by any agency or instrumentality of the United States pursuant to § 278.1(b)(5) are confidential. Except as provided in paragraph (r)(2)(ii) of this section above, no officer or employee of the United States who has or had access to any such EIN may disclose that number in any manner. For purposes of paragraph (r)(2)(iv) of this section the term *officer or employee* includes a former officer or employee. See Treas. Reg. § 301.6109-2(e) (26 CFR 301.6109(e)).

(v) Sections 7213(a) (1), (2) and (3) of the Internal Revenue Code of 1986 apply with respect to the unauthorized, willful disclosure to any person of EINs obtained by the Department pursuant to § 278.1(b)(5) in the same manner and to the same extent as sections 7213(a) (1), (2) and (3) apply with respect to unauthorized disclosure of returns and return information described in those sections. Section 7213(a)(4) of the Internal Revenue Code of 1986 applies with respect to the willful offer of any item of material value in exchange for any EIN obtained by the Department pursuant to § 278.1(b)(5) in the same manner and to the same extent as section 7213(a)(4) applies with respect to offers (in exchange for any return or return

information) described in that section. See Treas. Reg. §301.6109–2(f) (26 CFR 301.6109–2(f)).

(3) *Social Security numbers.* (i) The Department may have access to SSNs obtained pursuant to paragraph (b)(5) of this section for the purpose of establishing and maintaining a list of names and SSNs of stores and concerns for use in determining those applicants who previously have been sanctioned or convicted under section 12 or 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2021 or 2024). The Department may use this determination of sanctions and convictions in administering sections 12 and 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2018, 2021). The Department also may share SSNs with other Federal agencies and instrumentalities if the Department determines that such sharing would assist in verifying and matching such information against information maintained by the Department or such other agency or instrumentality. Any such information shared pursuant to this paragraph shall be used for the purpose of effective administration and enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws.

(ii) The only persons permitted access to SSNs obtained pursuant to paragraph (b) of this section are officers and employees of the United States, who otherwise have access, and whose duties or responsibilities require access to the SSNs for the administration or enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. Such access shall also include companies or individuals under contract for the operation by, or on behalf of FCS to accomplish an FCS function.

(iii) The Department shall provide for all additional safeguards that the Secretary of Health and Human Services determines to be necessary or appropriate to protect the confidentiality of the SSNs. The Department may also provide for any additional safeguards to protect the confidentiality of SSNs so long as these safeguards are consistent with any safeguards determined by the Secretary of Health and Human

Services to be necessary or appropriate.

(iv) The SSNs and related records that are obtained or maintained by authorized persons are confidential, and no officer or employee shall disclose any such SSN or related record except as authorized. The term “related record” means any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom a request for a SSN is maintained. For purposes of paragraph (r)(3)(iv) of this section the term “officer or employee” includes a former officer or employee.

(v) The sanctions under sections 7213(a) (1), (2) and (3) of the Internal Revenue Code of 1986 will apply with respect to the unauthorized, willful disclosure to any person of SSNs and related records obtained or maintained in the same manner and to the same extent as sections 7213(a) (1), (2) and (3) apply with respect to unauthorized disclosures of returns and return information described in those sections. The sanction under section 7213(a)(4) of the Internal Revenue Code of 1986 will apply with respect to the willful offer of any item of material value in exchange for any SSN or related record in the same manner and to the same extent as section 7213(a)(4) applies with respect to offers (in exchange for any return or return information) described in that section.

(4) *FCS initiated matches.* Under the restrictions noted in paragraph (r) of this section, FCS will periodically initiate cross matches of retailer data with other Federal and State agencies’ files for the purpose of verifying information provided by applicant and participating firms, and for the purposes of administering and enforcing other Federal or State laws. Such matches could involve all firms participating after implementation for the purpose of verifying information such as, but not limited to, SSNs and retail sales data.

(s) *Public and Private Nonprofit Homeless Meal Providers.* FCS shall authorize as retail food stores, those public and private nonprofit homeless meal providers which apply and qualify for authorization to accept food stamps from homeless food stamp recipients. Such

meal providers must be public or private nonprofit organizations as defined by the Internal Revenue Service (I.R.C. 501(c)(3)), must serve meals that include food purchased by the provider, must meet the requirements of paragraphs (a) and (b) of this section, and must be approved by an appropriate State or local agency, pursuant to §272.9. Public and private nonprofit homeless meal providers shall be responsible for obtaining approval from an appropriate State or local agency and shall provide written documentation of such approval to FCS prior to approval of the meal provider's application for authorization. (If such approval is subsequently withdrawn, FCS authorization shall be withdrawn). Public and private nonprofit homeless meal providers serving meals which consist wholly of donated foods shall not be eligible for authorization. In an area in which FCS, in consultation with the Department's Office of Inspector General, finds evidence that the authorization of a public and private nonprofit homeless meal provider would damage the Food Stamp Program's integrity, FCS shall limit the participation of that public and private nonprofit homeless meal provider, unless FCS determines that the establishment or shelter is the only one of its kind serving the area.

(t) Each authorized retail food store shall post in a suitable and conspicuous location in the store a sign designed and provided by FCS which provides information on how persons may report abuses they have observed in the operation of the program. Refusal or repeated failure to display such a sign by an authorized retail food store may result in the withdrawal of the firm's approval to participate in the program.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §278.1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTES: 1. At 61 FR 53600, Oct. 15, 1996, in §278.1, paragraph (i) was redesignated as paragraph (j) and a new paragraph (i) was added. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget. The Food and Con-

sumer Service will publish a document in the FEDERAL REGISTER announcing the effective date.

§278.2 Participation of retail food stores.

(a) *Use of coupons.* Coupons may be accepted by an authorized retail food store only from eligible households or the households' authorized representative, and only in exchange for eligible food. Coupons may not be accepted in exchange for cash, except when cash is returned as change in a transaction in which coupons were accepted in payment for eligible food under paragraph (d) of this section. Coupons may not be accepted in payment of interest on loans or for any other nonfood use. An authorized retail food store may not accept coupons from another retail food store, except that public or private nonprofit homeless meal providers may redeem coupons for eligible food through authorized retail food stores.

(b) *Equal treatment for coupon customers.* Coupons shall be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store except that tax shall not be charged on eligible foods purchased with coupons. However, nothing in this part may be construed as authorizing FCS to specify the prices at which retail food stores may sell food. However, public or private nonprofit homeless meal providers may only request *voluntary* use of food stamps from homeless food stamp recipients and may not request such household using food stamps to pay more than the average cost of the food *purchased* by the public or private nonprofit homeless meal provider contained in a meal served to the patrons of the meal service. For purposes of this section, "average cost" is determined by averaging food costs over a period of up to one calendar month. Voluntary payments by food stamp recipients in excess of such costs may be accepted by the meal providers. The value of donated foods from any source shall not be considered in determining the amount to be requested from food stamp recipients. All indirect costs, such as those incurred in the acquisition, storage, or preparation of the foods used in meals shall also be excluded. In addition, if