

Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) full consideration has been given to the potential economic impact upon small business. Most of the firms which would be affected by the rule are small businesses. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having gross annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this proposed rule would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Director, Tobacco Division, AMS, USDA, Room 502, Annex Building, P.O. Box 96456, Washington, DC 20090-6456, not later than June 12, 1995.

#### List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

Accordingly, the Department is proposing to amend the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29 as follows:

#### PART 29—TOBACCO INSPECTION

1. The authority citation for Part 29, subpart B continues to read as follows:

**Authority:** 7 U.S.C. 511m and 511r.

##### § 29.123 [Amended]

2. In § 29.123, paragraph (a) is amended by removing the words "S.0070 per pound" and adding in its place "S.0083 per pound".

Dated: May 5, 1995.

**Lon Hatamiya,**

*Administrator.*

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#### Food and Consumer Services

##### 7 CFR Part 278

RIN 0584-AC00

#### Food Stamp Program: Revisions in Use and Disclosure Rules Involving the Sharing of Information Provided by Retail and Wholesale Food Concerns With Other Federal and State Agencies

**AGENCY:** Food and Consumer Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rulemaking proposes to implement certain provisions in two different laws which expand the authority of the United States Department of Agriculture's Food and Consumer Service (FCS) to share information provided by applicants and firms participating as authorized retail food stores or wholesale food concerns in the Food Stamp Program (FSP) with other government agencies. The Food Stamp Act of 1977, as amended, was amended by section 203 of the Food Stamp Program Improvements Act of 1994, and the Social Security Act and the Internal Revenue Code were amended by section 316 of the Social Security Independence and Program Improvements Act of 1994. This proposed rule also includes one technical change to correct an error in regulatory reference that does not change the substance of the affected provision.

The proposed rule would implement the authority for FCS to share such information, excluding employer identification numbers (EINs) and Social Security numbers (SSNs), with Federal and State law enforcement and investigative agencies for purposes of administering and enforcing the Food Stamp Act of 1977, as amended, or any other Federal or State law and regulations issued under this Act or any other Federal or State law. It also would

provide new criteria to govern the sharing of such information and criminal penalties for unauthorized use. Finally, this rule would implement the Secretary of Agriculture's new authority to share EIN and SSN information of applicants and firms participating in the FSP with other Federal agencies.

**DATES:** Comments on the provisions of this rule must be received no later than June 12, 1995, to be assured of consideration.

**ADDRESSES:** Comments should be addressed to Suzanne Fecteau, Food and Consumer Service, Chief, Coupon and Retailer Branch, 3101 Park Center Drive, Alexandria Virginia 22302-1594. All written comments will be open to 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 at the above address or by telephone at (703) 305-2418.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be not significant for purposes of 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 to 7 CFR part 3015 subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of the Executive Order 12372 which requires inter-governmental consultation with State and local officials.

##### Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). William E. Ludwig, the Administrator of the Food and Consumer Service, has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. This action may have a significant effect on a limited number of small entities found to be in violation of State or Federal laws.

**Paperwork Reduction Act**

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

**Executive Order 12778**

This rule has been reviewed under Executive Order 12778, 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 intended to have retroactive effect. 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 Part 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.

**Background**

This rule would expand the use and disclosure of information provided by applicants and firms participating as authorized retail food stores or wholesale food concerns in the FSP. The provisions of this rule will be effective retroactively to August 15, 1994, when Pub. L. 103-296 was enacted, and will be implemented 30 days after the final rulemaking is published.

Current regulations restrict FCS' ability to share information provided by retailers and wholesalers participating in the Food Stamp Program. EINs and SSNs may only be shared with Federal employees whose duties or responsibilities require access to those numbers for the administration and enforcement of the Food Stamp Act of 1977, as amended. The use of EINs and SSNs is only allowed for the maintenance of a list of specific individuals and firms that have been sanctioned or convicted of Food Stamp Program violations under sections 12 (Civil Money Penalties and Disqualification) and 15 (Violations and

Enforcement) of the Food Stamp Act. Other information provided by retailers (e.g. application information, sales and redemption data) can be shared with other Federal or State agencies only for the purposes of administration or enforcement of the Food Stamp Program, the Special Supplemental Food Program for Women, Infants and Children (WIC), and for audits by the General Accounting Office.

*Use and Disclosure of Information Provided by Retail Food Stores and Wholesale Food Concerns*

Section 9(c) of the Food Stamp Act of 1977, as amended (the Act) (7 U.S.C. 2018(c)) governs the authorization of retailers and wholesalers to participate in the Food Stamp Program, based on information those retailers and wholesalers provide FCS. Section 203 of the Food Stamp Program Improvements Act of 1994, Pub. L. 103-225 (108 Stat. 106) amends section 9(c) of the Act, to expand the use and disclosure of information provided by applicant and participating retail and wholesale food concerns, such as food stamp redemption data, as well as information about ownership (excluding EINs and SSNs) and sales data included on the initial application, in addition to information required to be submitted for purposes of determining whether a firm continues to qualify. As authorized by the amendment to section 9(c), this rule would allow disclosure of this information to other Federal and State law enforcement and investigative agencies for the purposes of administering and enforcing the Food Stamp Act, as well as the enforcement of any other Federal or State laws and the regulations issued under this Act and such laws.

This rule proposes other safeguards in addition to new penalties for unauthorized use and disclosure of information. It would limit the use and disclosure of this information to the purpose of effectively administering and enforcing the Food Stamp Act or for investigating violations of other State or Federal laws, or enforcement of such laws and regulations. Federal and State agencies authorized to have access to this information would be required to submit a request in writing. The request must set forth specifically which law is being enforced and must also demonstrate how the requested information is relevant to the enforcement of that law. The Department will base its determination whether or not to disclose the requested information upon such a showing by the requesting agency. The Department expects such information to be

requested most frequently by taxation authorities such as the Internal Revenue Service and State income and sales tax agencies. The information may also be useful to law enforcement and investigative agencies which seek to verify the income and sources of income of a retailer.

In addition to responding to specific requests from other Federal and State agencies, FCS would periodically initiate cross matches of retailer data against other agencies' files. The purpose of these matches is to allow the verification of information reported by applicants and participating firms, and to assist in the administration and enforcement of the Food Stamp Act and other Federal and State laws.

The Food Stamp Improvements Act of 1994 also amends section 9(c) of the Food Stamp Act to provide criminal penalties for the misuse of any information obtained from retail food stores and wholesale food concerns. This would apply to any person who publishes, divulges, discloses, or makes this information known in any manner or to any extent not authorized by Federal law or regulations. A penalty which includes a fine of not more than \$1,000, or imprisonment of not more than one year, or both, is established by law and is reflected in this proposed rulemaking.

*Cross-Matching of Social Security Account Number Information and Employer Identification Number Information Maintained by the Department of Agriculture*

Section 1735 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. No. 101-624, 104 Stat. 3359) amended section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) and added section 6109(f) to the Internal Revenue Code of 1986 (26 U.S.C. 6109(f)) to permit the Secretary of Agriculture to collect the Social Security numbers of individual retailers who apply for FSP authorization and those of the officers of corporate applicants, as well as employer identification numbers assigned by the Internal Revenue Service. Section 316 of the Social Security Independence and Program Improvements Act of 1994 (Pub. L. No. 103-296, 108 Stat. 1464) expands FCS' authority to share the EINs and SSNs of food stamp retailers and wholesalers with other agencies or instrumentalities of the United States for verification purposes to more effectively administer and enforce the Food Stamp Program, as well as other Federal laws.

This rulemaking proposes to permit the Department to share the list of names and identifying numbers of food concerns with other Federal agency personnel who otherwise have access to EINs and SSNs, for the purpose of effectively administering and enforcing the Food Stamp Act or for investigating violations of other Federal laws, or enforcement of such laws. The use of such lists would be limited to cross-matching employer identification number information and Social Security account number information maintained by the Department of Agriculture for the purpose of verifying information provided by applicants and firms participating in the Food Stamp Program.

Under the amendments, the Department must restrict access to officers and employees of the United States government whose duties or responsibilities require access to EINs and SSNs. To obtain such information, a Federal agency must already have access to EINs and SSNs, and must submit a written request that demonstrates the need for such information. The applicable law shall be clearly identified as the relevant basis for a request to assist FCS in determining whether retailer data can be released to the requesting agency. The Department anticipates such information to be requested most frequently by the Internal Revenue Service. The information may also be useful to other Federal agencies which seek to verify the income and sources of income for a given retailer, in conjunction with an EIN or SSN.

In addition to responding to specific requests from other Federal agencies under this proposed rule, FCS would periodically initiate cross matches of retailer data against other Federal agencies' files. The purpose of these matches is to allow the verification of information reported by applicant and participating firms, and to assist in the administration and enforcement of other Federal laws.

The provisions of this rule do not extend to private actions against the authorized entities, either contemplated or ongoing, as private litigants are not law enforcement agencies.

#### *Technical Correction*

This rule proposes to implement a technical change to correct a regulatory reference error in § 278.1 (q)(iv), whereby a paragraph dealing with privacy that should have been referenced as "278.1 (q)" was mistakenly referenced as "278.1 (s)". This correction does not change the intent of this provision.

Finally, it is anticipated that changes to Department of Treasury references used in this proposed rule will be made in the final rule to reflect changes made by the Department of Treasury in a proposed rule dealing with information sharing that was printed in the **Federal Register** on May 10, 1995.

#### **List of Subjects**

##### **7 CFR Part 278**

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

Accordingly, 7 CFR part 278 is proposed to be amended as follows:

1. The authority citation for 7 CFR part 278 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2032.

#### **PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNs AND INSURED FINANCIAL INSTITUTIONS**

2. In § 278.1:

a. The introductory text of paragraph (q) is revised;

b. Paragraphs (q)(1) and (q)(2) are redesignated as paragraphs (q)(2) and (q)(3), respectively, and a new paragraph (q)(1) is added;

c. Newly redesignated paragraphs (q)(2)(i), (q)(2)(ii), (q)(3)(i), and (q)(3)(ii) are revised;

d. Newly redesignated paragraph (q)(2)(iii) is amended by adding after the word "Department" in the first sentence the words "or any agency or instrumentality of the United States" and by removing the designation "(c)(2)" following the references to "§ 301.6109–2" and "(26 CFR § 301.6109–2)";

e. Newly redesignated paragraph (q)(2)(iv) is amended by adding after the word "Department" the words "or maintained by any agency or instrumentality of the United States", by removing the references to "§ 278.1(s)(1)(ii)" and "§ 278.1

(q)(1)(iv)" and adding in their place references to "paragraph (q)(2)(ii) of this section" and "paragraph (q)(2)(iv) of this section", and by removing the designation "(d)" following the references to "§ 301.6109–2" and "(26 CFR 301.6109)";

f. Newly redesignated paragraph (q)(2)(v) is amended by removing the designation "(e)" after the references to "§ 301.6109–2" and "(26 CFR 301.6109–2)";

g. Newly redesignated paragraph (q)(3)(iv) is amended by removing the reference "§ 278.1(q)(2)(iv)" and adding

in its place the reference "paragraph (q)(3)(iv) of this section"; and

h. A new paragraph (q)(4) is added. The revisions and additions read as follows:

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

\* \* \* \* \*

(q) *Safeguarding privacy.* With the exception of EINs and SSNs, the use and disclosure of the contents of an initial application or other information required to be submitted to determine whether an applicant continues to qualify, including ownership information and sales and redemption data provided by retail food stores and wholesale concerns by Federal and State law enforcement and investigative agencies, is limited to the purposes 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 information may also be disclosed to and used by State agencies that administer the Special Supplemental Food Program for Women, Infants and Children (WIC). Such purposes shall not exclude 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. Additional safeguards with respect to employee identification numbers (EINs) are contained in paragraph (q)(2) of this section. Additional safeguards with respect to Social Security numbers (SSNs) are contained in paragraph (q)(3) of this section.

(1) *Criteria for requesting information.* Except for EINs and SSNs, information provided by firms participating in the Food Stamp Program may be requested by Federal or State law enforcement or investigative agencies for purposes of administering or enforcing specified Federal or State laws, or regulations issued under those laws. 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. The request must be submitted in writing 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.

FCS may require additional information, if needed to clarify a request. Requests under this paragraph are limited to authorized entities authorized on and after August 15, 1994. However, unauthorized firms redeeming food stamps in violation of the Food Stamp Act, as amended, on and after August 15, 1994 shall be subject to provisions of this Section.

**(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 9 and 12 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2018, 2021). The Department may share EINs 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 such other agency or instrumentality. Any such information shared pursuant to this paragraph may be used by 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 investigation of violations of other Federal laws or enforcement of such laws. See Treas. Reg. § 301.6109–2 (26 CFR 301.6109–2).

(ii) The only persons permitted access to EINs 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 EINs for the administration or enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigation of violations of other Federal laws or enforcement of such laws. See Treas. Reg. § 301.6109–2 (26 CFR 301.6109–2).

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**(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 for use in determining those applicants who previously have been sanctioned or convicted under section 12 and 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 9 and 12 of the Food Stamp Act of 1977 (7 U.S.C. 2018, 2021). The Department 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 such other agency or instrumentality. Any such information shared pursuant to this paragraph may be used for the purpose of effective administration and enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigation of violations of other Federal laws or enforcement of 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 investigations of violations of other Federal laws or enforcement of such laws.

\* \* \* \* \*

(4) *FCS initiated matches.* Under the restrictions noted in paragraph (q) of this section, FCS will periodically initiate cross matches of retailer data against 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.

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**William E. Ludwig,**

*Administrator, Food and Consumer Service.*

[FR Doc. 95–11785 Filed 5–11–95; 8:45 am]

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**Agricultural Marketing Service**

**7 CFR Part 1099**

[Docket No. AO–183–A47; DA–92–11]

**Milk in the Paducah, Kentucky, Marketing Area; Referendum Order; Determination of Representative Period and Designation of Referendum Agent**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Referendum order.

**SUMMARY:** This document orders that a referendum be conducted to determine whether producers favor issuance of the order regulating the handling of milk in the Paducah, Kentucky, marketing area, as proposed to be amended in the final decisions issued by the Acting Assistant Secretary on December 2, 1994 (59 FR 64524) regarding the Class II price and on January 27, 1995 (60 FR 7290)

regarding the Minnesota-Wisconsin (M–W) price.

**DATES:** The referendum is to be completed on or before May 30, 1995.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Branch Chief, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968 South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding:

Notice of Hearing (M–W price): Issued May 12, 1992; published May 15, 1992 (57 FR 20790).

Notice of Hearing (Class II price): Issued December 14, 1993; published December 21, 1993 (58 FR 67380).

Recommended Decision (M–W price): Issued August 3, 1994; published August 8, 1994 (59 FR 40418).

Recommended Decision (Class II price): Issued August 22, 1994; published August 26, 1994 (59 FR 44074).

Final Decision (Class II price): Issued December 2, 1994; published December 14, 1994 (59 FR 64524).

Final Rule (Class II price): Issued January 27, 1995; published February 2, 1995 (60 FR 6606).

Final Decision (M–W price): Issued January 27, 1995; published February 7, 1995 (60 FR 7290).

Proposed Termination of Order: Issued March 3, 1995; published March 9, 1995 (60 FR 12907).

Extension of Time for Filing Comments on Proposed Termination of Order: Issued March 27, 1995; published March 31, 1995 (60 FR 16589).

Final Rule (M–W price): Issued April 6, 1995; published April 14, 1995 (60 FR 18952).

On January 27, 1995, the Acting Assistant Secretary, Marketing and Regulatory Programs, issued a final decision on proposed amendments to all Federal milk orders, including the Paducah, Kentucky, order. When that decision concerning replacement of the Minnesota-Wisconsin price series was issued, a referendum was not conducted for the Paducah, Kentucky, order because a proposed termination of the order had been published (60 FR 12907) as a result of the order failing to be approved by producers in the referendum conducted on the Class II price amendments. A sufficient number of comments were received opposing the termination of the Paducah, Kentucky, order to indicate that another referendum should be conducted concerning approval of the Class II price amendments. Thus, this referendum is being conducted to determine if