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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: Final rule.

SUMMARY: The purpose of this final rule is to implement the Food Stamp Program retailer provisions included in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as well as the retailer provision included in the Federal Agriculture Improvement and Reform Act. This rule also contains a number of amendments to the current regulations to streamline the regulations. Most of the provisions in this final 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; improving the Department's ability to monitor authorized firms; and strengthening the penalties against firms which violate program rules.

EFFECTIVE DATES: The amendments in this rule at § 271.2, § 278.6(a), § 278.6(b)(2)(i), § 278.6(c), § 278.8(a), § 279.7(a), and § 279.10(d) were effective August 22, 1996. All other amendments in this rule are effective June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Questions regarding this final rule should be addressed to Thomas O' Connor, Director, Benefit Redemption Division, Food Stamp Program, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866.

Executive Order 12372

The Food Stamp Program (FSP) 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 final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Samuel Chambers, Jr., the Administrator of the Food and Nutrition Service (FNS), 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, the proposed rule included a notice that announced 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 FSP.

There are three application forms used by firms that wish to participate in the program. These are the FNS–252, Food Stamp Application For Stores; the FNS–252R, Food Stamp Program Application for Stores-Reauthorization; and the FNS–252–2, Application to Participate in the Food Stamp Program for Communal Dining Facility/Others. These forms and associated burden hours have been approved by OMB under OMB No. 0584–0008 through October 31, 1999. The revisions to the authorization process contained in § 278.1(a) of this final rule do not impose new information collection, reporting or recordkeeping requirements.

The existing burden estimates, as approved by OMB through October 1999, are shown on the following chart:

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; rounded to .23.

Estimated Total Annual Burden: 15,777.

APPROVED BURDEN 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	22,807	1	22,807	.4500	10,263
FORM FNS–252–2	1,803	1	1,803	.2000	361
FORM FNS–252R	44,160	1	44,160	.1167	5,153
Totals	68,770		68,770	.23	15,777

Executive Order 12988

This final 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 FSP, 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 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.

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 final 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

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, (PRWORA) was enacted on August 22, 1996, and contained a number of provisions directly affecting the participation of retailers, wholesalers and other entities eligible to be authorized to participate in the 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. These five provisions are incorporated into this final rule and 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 may not be modified by public comment. PRWORA provides discretion in the implementation of the remaining provisions of the law, and these provisions were proposed for public comment in the rule published on May 6, 1998. The Department encouraged all interested parties to comment on the discretionary provisions as set forth in the proposed rule. Four substantive comments were received from retail trade/interest groups, WIC State administering agencies and the headquarters of a large retail food chain. In addition, 187 identical letters referring to and expressing agreement with the comment sent by the aforementioned retail food chain headquarters were received.

This final rulemaking includes 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);
- Authority for USDA, or its designees, to 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 final rulemaking also includes a provision of the Federal Agriculture Improvement and Reform Act, Pub. L. 104–127, (FAIR), 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).

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.

The May 6,1998 rule proposed 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.

This provision was effective on April 4,1996, the date of enactment of the statute. It was implemented upon the date on which 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 made to § 278.6(i) of this regulation reflects this change. Comments were 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). No comments were received on this issue; therefore, this provision of the rule is finalized as proposed.

One commentor did, however, indicate that if the owner/operator or firm management was unaware and uninvolved with the trafficking violations, the firm should be eligible for a CMP in lieu of permanent disqualification. Firms are currently provided this opportunity in accordance with the Food Stamp Act of 1977, as amended (FSA), and the criteria outlined in § 278.6(i) of the regulations, and will continue to be provided this opportunity. Therefore, it appears that the commentor misunderstood the amendment made to the current provision. Moreover, the Department wishes to reiterate that the nondiscretionary provision included here expands eligibility of participating firms for a CMP in lieu of permanent disqualification for trafficking in the program.

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

The provisions of 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. All commentors expressed agreement with these premises.

Pre-Authorization Screening

The participation of retailers in the FSP is a privilege, not a right. The PRWORA and the provisions of this final rulemaking will serve to increase the Department's ability to cut off fraud and abuse at the source by allowing more in-depth preauthorization 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. This provision also gives 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.

Two comments were received on this provision. One commentor urged that history and longevity in the FSP should also be considered when making decisions regarding store visits. The Department agrees that other factors, such as those suggested with regard to history and longevity in the program, are appropriate to consider when prioritizing the conduct of store visits. The Department agrees that such factors will be taken into consideration when establishing store visit priorities.

A second commentor took exception with the provision as written in that they felt the regulation should be more prescriptive with regard to store visit criteria. The commentor suggested that the Department annually provide for a notice and comment rulemaking on how it intends to implement its authority to conduct store visits.

The Department has long had the authority to visit authorized and applicant firms in order to assess the eligibility of such firms for authorization in the program. The Department also has the discretion to prioritize the types of firms that will be visited based on its own assessment of Departmental resources, as well as upon review of areas of vulnerability in the operation of the program as defined by management information sources. Therefore, the provisions of this final rule with regard to the store visit provision remain as proposed.

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 was proposed to be revised to include the minimum 6-month prohibition from reapplication, which applies to those firms that are shown not to meet Criterion A or of the eligibility requirements of the FSA, (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 FSA, as amended by the Food Stamp Program Improvements Act of 1994, Pub. L. 103–225. While this change in the definition was effective immediately upon enactment of the law and has been implemented, a final rule incorporating this statutory change specifically in the regulations is currently in Departmental clearance.

As discussed in the preamble to the rule proposed on May 6,1998, prior to the passage of PRWORA, there was no waiting period for stores that wished to reapply to participate in the FSP after their application was denied because the stores failed to meet basic eligibility criteria for authorization. Such stores could adjust the types of staple food

items that they offered 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. As proposed, this final rule 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. The 6-month minimum prohibition is nondiscretionary.

One commentor asserted that such waiting periods should not be applicable to firms seeking reauthorization in the program, indicating that the statute does not extend the authority to apply such periods to such firms. The Department disagrees with the commentor. The waiting periods apply to all firms that apply to participate or apply to continue to participate in the program.

The proposed rule also included provisions 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 PRWORA provides that the Secretary may establish these time periods, including permanent denial of a firm's ability to be authorized in the program, depending upon the severity of the reason for the denial of such a firm's initial or subsequent application for authorization or reauthorization. Section 278.1(b)(3) of this final rule sets out the criteria that are 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. In addition, § 278.1(k) details the 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). These provisions are 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 FSA 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.

Two comments were received on the proposed provision dealing with the business integrity standards. These comments expressed concern that the standards proposed in the May 6, 1998 rule were very broad. In particular, the commentors suggested that applying business integrity standards to non-managerial employees of participating firms was, in essence, ''casting too wide a net'' in terms of corporate responsibility and liability. These commentors further suggested that the FNS proposal assumes that store owners have inexpensive, efficient means of discovering past misconduct of non-managerial employees, which they do not. Commentors indicated that discharging employees or not hiring a prospective employee for a non-company, non-FSP related issue could subject the employer to FNS penalties if the employee is kept on board, but could lead to potential lawsuits or union problems if the employee is discharged. Finally, commentors noted that the proposed business integrity standards were too broad, too vague and offer too much discretion to FNS Officers in Charge to interpret.

In response to these comments, the provisions have been revised in this final rule. First, the standards no longer include references to the business integrity of non-owner or non-managerial personnel. However, the criteria in this final rulemaking still focus on the business integrity and reputation of the ownership and management 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. The Department has refined the business integrity criteria in this final rule and believes that the standards included here are appropriate when assessing the business integrity of a firm.

This rulemaking provides 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. As provided in this final rule, business integrity matters that fall under this category include conviction or civil judgment for offenses such as: embezzlement, theft, forgery, bribery, false statements, receiving stolen property, false claims, or obstruction of justice; commission of fraud in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; and violation of Federal, State and/or local consumer protection laws or other laws relating to alcohol, tobacco, firearms, controlled substances and/or gaming licenses.

This final rule retains the proposed provision that firms removed for administrative reasons from Federal, State or local 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 another federal program, or had their State or local liquor or lottery license suspended.

In response to two comments received, the final rule has been revised to refine the proposal in that firms which have administrative findings brought against them by Federal, State or local officials that do not give rise to removal from such programs, but for which FNS determines a pattern exists evidencing a lack of business integrity, shall be prohibited from applying for the FSP for one year, effective from the date of denial in the program. The proposed rule originally stipulated that such firms would be denied authorization in the FSP for 3 years and included violations committed by personnel of the firm. This final rule applies this provision only if such violations are committed by the owner, officer, or manager of a firm. Moreover, this final rule provides that a ''pattern evidencing a lack of business integrity'' means 3 or more instances of noncompliance with other Federal, State or local program requirements. For example, if a firm was fined for liquor license infractions committed by an owner, officer or manager, and 3 such fines were imposed over a period of time, action to suspend the firm from applying to the FSP would be taken.

The final rule retains the proposed provision that firms that attempt to circumvent a period of disqualification, a civil money penalty, or a fine imposed for FSP violations shall be denied the opportunity to apply for the program for a period of 3 years.

Further, this rulemaking at § 278.1(b)(3)(iv) retains the provision of the proposed rule that firms in which violations of the FSP have been administratively and/or judicially established 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 managers 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, this rule finalizes 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 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, this final rule modifies the proposed rule with regard to other evidence reflecting on business integrity. One commentor believed that the provision as proposed was very broad. Therefore, this final rule refines the provision by stipulating that a one year period of denial in the program would result from the commission of any other offense (other than convictions, judgments, removal or patterns of noncompliance) which: (1) Reflects negatively on the business integrity or business honesty of the owners, officers or managers of a firm; and (2) seriously and directly affects the present responsibility of a person.

The proposal also made an editorial change, unrelated to PRWORA's provisions, to conform the language of § 278.1(k), *Denying authorization* and § 278.1(l), *Withdrawing authorization*. A further editorial change was 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 was added in § 278.1(k) and § 278.1(l) of this rule to reflect 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. This final rule implements these changes as proposed.

Authority To Establish Authorization Periods

Section 832 of PRWORA provides authority for the Secretary to establish specific time periods 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.

It was proposed that no firm be assigned an authorization period for participation in the FSP for longer than five years. Moreover, the proposal provided that the FNS Officer in Charge may assign a lesser period of authorization, depending on the circumstances of the particular firm.

Two comments were received on this proposed provision. One commentor favored the provision, while the second disagreed in general with the proposed five year maximum authorization period, particularly with regard to firms that are longstanding participants in the program. In addition, this commentor voiced concerns with providing general discretion to FNS Officers in Charge to authorize firms for less than the five year period on the basis of undefined circumstances surrounding a firm's participation or approval in the program.

The final rule has been revised to comply with the intent of the statute that authorization periods be specified in the program. The Department agrees with the comment discussed above, and, therefore, this final rule provides that all firms will be authorized for a maximum period of five years. This final rule does not provide FNS Officers in Charge the discretion to authorize firms for lesser periods of time.

The Department believes that the five year authorization period is reasonable and necessary for the effective administration of the program. Moreover, 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 is provided with authorization materials and 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 provision 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 PRWORA amends section 14 of the FSA 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 nondiscretionary provision was effective upon the date of enactment of the law, and affects firms that are subject to permanent disqualification for trafficking in the program, as well as those firms subject to permanent disqualification for having been sanctioned twice before for violations of the program. These changes are found at § 278.6(b) of the final rule. 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 which 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. Further, such firms would not be expected to pay the civil money penalty pending appeal and may continue to participate in the program pending appeal. One commentor agreed with the Department's assertion that immediate disqualification refers only to those firms not eligible for a civil money penalty in lieu of permanent disqualification, but pointed out that the preamble discussion in the proposed rule was not reflected in the regulatory language itself. In response to this comment, the language at §§ 278.6(b)(2)(i) and 278.6(c) has been clarified to account for this.

In addition, the commentor requested clarification as to how the period between receipt of the notice of immediate disqualification and the 10-day period for a firm to submit a request and documentation for a trafficking CMP is handled. The immediate disqualification pending appeal is effective upon the date of receipt of the *determination* letter by the firm. The current regulations at § 278.6(b)(1) provide that, prior to such a determination, the firm receives a letter of charges to which it may respond. It is at that time, subsequent to receipt of the charge letter, that the firm would be indicating whether or not it desires a CMP in lieu of permanent disqualification and would submit documentation in support of such a request. If it is determined that the firm is eligible for a trafficking CMP, the determination letter that follows would acknowledge that the firm has requested and documented its eligibility for a trafficking CMP, and thus could continue to participate in the program pending any appeal of the trafficking finding itself. However, once the determination is made that the firm is not eligible for a CMP in lieu of trafficking, the firm receives a determination letter that indicates the firm has been found to be ineligible for a CMP in lieu of permanent disqualification for trafficking and that the permanent disqualification is effective upon receipt of the determination letter. The firm, while disqualified, is eligible to appeal the determination. However, in those cases, the disqualification action cannot be held pending appeal because the firm has been permanently disqualified.

Investigations

Section 278.6(a) of the regulation was proposed to be amended in accordance with section 841 of PRWORA to make an editorial change stipulating 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 editorial change supports current program practice and USDA authority to enforce program compliance. The provision is nondiscretionary and is finalized in this rule.

Disqualification of Retailers Disqualified From the WIC Program

Section 843 of PRWORA amends section 12 of the FSA 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, the 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 FSP action, and often, by the time the firm has appealed the FSP withdrawal, the WIC disqualification period is ending.

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 and are finalized in this rule.

In addition, the law stipulates that the Secretary establish criteria for such reciprocal disqualification actions. Current regulations at § 278.1(o) set forth the types of WIC violations that will result in withdrawal of a firm from participation in the FSP. The Department proposed to retain these same criteria, now found at § 278.6(e)(8), 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 solicited comments on the reciprocal disqualification standards set out in § 278.6(e)(8). One comment was received on these specific provisions. The commentor indicated concern that some WIC State agencies may be misinterpreting the standards set forth in the regulation, and that without the opportunity to appeal to the FSP to dispute such misinterpretations, the firm's reciprocal disqualification would be erroneous. Section 12(g) of the FSA does not allow a firm to appeal a reciprocal disqualification action taken by FNS. Editorial changes to this final rule have been made to conform to the language of the WIC program final rule, which provides some clarification to WIC State agencies. In addition, the preamble to that rule provides WIC State agencies with further clarification regarding WIC Program sanctions and guidance to assist those State agencies in appropriately classifying WIC Program violations.

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 are not subject to public comment.

Disqualification of Retailers Who Intentionally Submit Falsified Applications

Section 842 of the PRWORA amends section 12(b) of the FSA to authorize the Secretary to disqualify, including permanently disqualify, participating retailers who knowingly submit applications that contain false information about substantive issues. The May 6, 1998 rule proposed to permanently disqualify a firm if it is found that false information directly related to the firm's eligibility for authorization is knowingly submitted on the application. In addition, the rule proposed 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.

The proposed rule outlined 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.

The rule also proposed to deny authorization of any such firm which is found to have knowingly submitted false information on the application at the time of initial application processing. It was proposed that such firms be denied for the same period of time for which they would be disqualified under § 278.6(e). The Department encouraged comments on this discretionary provision; however, no comments were received. Therefore, the revisions as proposed are finalized in § 278.6(e) and § 278.1(k) of this rule.

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 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 (t) are redesignated as paragraphs (o) through (s), 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)(1)(iv), (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)(1)(iv), (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. 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) Conviction of or civil judgment against the owners, officers or managers of the firm for:

(A) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(C) Violation of Federal, State and/or local consumer protection laws or other laws relating to alcohol, tobacco, firearms, controlled substances, and/or gaming licenses;

(ii) Administrative findings by Federal, State or local officials that do not give rise to a conviction or civil judgment but for which a firm is removed from such a program, or the firm is not removed from the program but FNS determines a pattern exists (3 or more instances) evidencing a lack of business integrity on the part of the owners, officers or managers of the firm;

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

(iv) Previous Food Stamp Program violations administratively and/or judicially established as having been committed by owners, officers, or managers of the firm for which a sanction had not been previously imposed and satisfied;

(v) 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 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

(vi) Commission of any other offense indicating a lack of business integrity or business honesty of owners, officers or managers of the firm that seriously and

directly affects the present responsibility of a person.

* * * * *

(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 food stamp benefits. 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. All firms will be authorized in the program for a period of 5 years. The specification of an authorization period in no way precludes FNS from periodically requesting information from a firm 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 records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in § 278.1(b)(3)(i) shall be denied authorization permanently;

(ii) Firms which have been officially removed from other Federal, State or local government programs through administrative action shall be denied for a period equivalent to the period of removal from any such programs; or, if the firm is not removed from the program, but FNS determines a pattern (3 or more instances) exists evidencing a lack of business integrity on the part of the owners, officers or managers of the firm, such firm shall be denied for a one year period effective from the date of denial;

(iii) 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 of 1977, as amended, and program regulations shall be denied for a period of three years from the effective date of denial;

(iv) Firms for which evidence exists of prior Food Stamp Program violations by owners, officers, or managers 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;

(v) Firms for which evidence exists of prior Food Stamp Program violations at other units of multi-unit firms as specified in § 278.1(b)(3)(v) 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;

(vi) Firms for which any other evidence exists which reflects negatively on the business integrity or business honesty of the owners, officers or managers of the firm as specified in § 278.1(b)(3)(vi) 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 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 § 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 three new sentences to the end of the paragraph;

d. Paragraph (c) is amended by adding four 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 of 1977, as amended, 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. Firms that request and are determined eligible for a civil money penalty in lieu of permanent disqualification for trafficking may continue to participate in the program pending review and shall not be required to pay the civil money penalty pending appeal of the trafficking determination action.

* * * * *

(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. Firms that request and are determined eligible to a civil money penalty in lieu of permanent disqualification for trafficking may continue to participate in the program pending review and shall not be required to pay the civil money penalty pending appeal of the trafficking determination action. 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 of 1977, 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) A pattern of 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) A pattern of receiving, transacting and/or redeeming WIC food instruments outside of authorized channels;

(D) A pattern of exchanging non-food items for a WIC food instrument;

(E) A pattern of charging WIC customers more for food than non-WIC customers or charging WIC customers more than the current shelf price; or

(F) A pattern of 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 paragraph (a) of this section 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 of this chapter.

Notwithstanding the above, 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. However, 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) 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, the 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 administrative 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 21, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–10736 Filed 4–29–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS 1979–99]

RIN 1115–AF43

Additional Authorization to Issue Certificates for Foreign Health Care Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The interim rule amends the regulations of the Immigration and Naturalization Service (Service) to grant, on a temporary basis, authorization to the Commission on Graduates of Foreign Nursing Schools (CGFNS) to issue certificates to foreign health care workers in the occupations of occupational therapy and physical therapy. This rule also grants the Foreign Credentialing Commission on Physical Therapy (FCCPT) the authority to issue certificates to foreign-trained physical therapists. The rule is written in response to formal requests by CGFNS and FCCPT to obtain permission to issue certificates to foreign-trained workers coming to the United States in the occupations of occupational therapy and physical therapy on a permanent basis. This rule ensures that foreign-trained occupational therapists and physical therapists have the same training, education, and licensure as similarly employed United States workers.