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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 278 and 279

RIN 0584–AD44

Food Stamp Program: Revisions to Bonding Requirements for Violating Retail and Wholesale Food Concerns

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This action provides final rulemaking for a proposed rule. It revises the current bonding requirements imposed against participating retailers and wholesalers who have violated the Food Stamp Program rules and regulations. Currently, all violating retailers and wholesalers that are disqualified for a specified period of time or have a civil money penalty imposed in lieu of a disqualification for a specified period of time are required to submit a valid collateral bond, usually on an annual basis, if they wish to continue to participate in the Food Stamp Program. Over the years, securing a collateral bond has become increasingly more difficult for retailers and wholesalers. Thus, this final rule revises the current requirement in order to help alleviate the financial burden to those retailers and wholesalers who are required to submit such a bond and also to reduce the recordkeeping burden with respect to the FNS field offices which have to keep track of the expirations and renewals of these bonds.

This final rule also places in the Food Stamp Program regulations the longstanding policy FNS has adopted to accept irrevocable letters of credit (LOC) in lieu of collateral bonds. Lastly, this rule establishes a specified period of time for retailers and wholesalers to be removed from the program for accepting food stamp benefits in payment for eligible food on credit, a violation of the Food Stamp Program regulations.

DATES: This rule is effective March 2, 2009.

FOR FURTHER INFORMATION CONTACT: Andrea Gold, Chief, Retailer Management and Issuance Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 406, Alexandria, VA 22302, or telephone (703) 305–2456.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

Need for Action

The regulation reduces and better targets the current bonding and letter of credit (LOC) requirements that are imposed on authorized retailers and wholesalers who violate Food Stamp Program rules. It: (1) Eliminates the bond requirements for retailers who are disqualified for six months or incur a civil money penalty in lieu of a six month disqualification; and, (2) limits the bond requirement to five years for retailers whose disqualification or civil money penalty exceeds six months. Retailers who have previously been disqualified for any length of time or been issued a civil money penalty and who subsequently become disqualified again will be subject to the five year bonding requirement, even if the subsequent disqualification is for a period of six months or less or the civil money penalty imposed is in lieu of a disqualification of six months or less.

Benefits

Currently, a retailer who is sanctioned as a result of violations is required to submit a bond or LOC in order to continue to participate in the Food Stamp Program regardless of the type and extent of those violations. In this rule, however, retailers who commit less egregious violations will be exempt from the bonding requirement. The cost of securing and maintaining a bond has increased significantly over the years; this change will alleviate the financial burden on retailers who have committed relatively minor violations as well as on those who have served their program sanction. The agency will also realize a reduced burden in that the implementation of this rule will eliminate the labor associated with monitoring the bonds and letters of credit. The rule will have a modest effect on the revenue FNS collects from retailers who commit violations. No impacts on household food stamp participation or associated benefit costs are expected.

Costs

These provisions are expected to produce a small dollar loss to the Government of $14,793 in FY 2008 and less than $75,000 over the five-year period FY2008 through FY 2012.

While the reduction in labor hours for monitoring bonds and letters of credit cannot be counted as a direct savings to the Government, the time made available has significant value. It can be used to enhance FNS' capacity to manage the authorization and monitoring of food stamp retailers.

When food stamp retailers who have secured bonds or letters of credit commit a subsequent violation, the Government may recover its losses against the bonds. Historically, such draw downs have been very infrequent, less than one percent of all bonds.

The rule change will eliminate the need for bonds and letters of credit among retailers who are disqualified for six months or who pay a civil money penalty in lieu of a six month disqualification. Approximately 44 percent of retailer violations are associated with a six month period of disqualification. A majority of these involve bonds with a face value of $1,000. Based on an average of 10.8 bond or letter of credit forfeitures per year among this group, the potential loss of revenue to the Government over five years is $74,000:

- 44% of 3,070 retailers currently in the Program who have prior violations that are associated with a 6 month disqualification period and who have been reinstated and submitted a bond or LOC = 1,351 retailers.
- <1% (.008) of 1,351 retailers = 10.8 who commit a second violation that results in bond forfeiture or letter of credit draw down.
- 86.5% of 10.8 = 9.35 retailers with bonds/LOCs that have a face value of

$1,000 and 13.5% of 10.8 = 1.45 with bonds/LOCs that have an average face value of $3,754.

- The annual forfeiture amount is equal to $9,350 (9.35 × $1,000) + $5,443 (1.45 × $3,754) or $14,793.
- $14,793 × 5 years = $73,965.

The estimates of revenue forfeited are reasonably certain as they are based on averages created from historical information from the Government's administrative files on food stamp retailer disqualifications and civil money penalties.

The financial impact for all food retailers (regardless of when they are authorized, both new and current participants) is substantially larger than the cost to the Federal Government. The rule eliminates the cost of bonds/letters of credit and associated processing fees for retailers disqualified for six months or who pay a civil money penalty in lieu of a six month disqualification:

- 386 is the average number of retailers who are disqualified for six months or pay a civil money penalty in lieu of a six month disqualification per year.
- These 386 retailers pay an average cost of $668 per bond or LOC = $257,848 each year.
- $257,848 per year × five years = $1,289,240 savings for such stores over five years.

When effective, the rule also eliminates the expense of maintaining a bond indefinitely to retailers who have been previously disqualified and reinstated, or paid a civil money penalty in lieu of a disqualification and were required to post a bond/LOC:

- 3,070 retailers currently in the Program who previously have been disqualified or paid a civil money penalty in lieu of disqualification and been reinstated.
- 3,070 retailers who pay an estimated annual renewal fee for bond/LOC of $100 = $307,000 for first year (2008);
- 3,070 retailers × 6.1% = 187 stores who will withdraw or otherwise leave the Program. In 2009, 3070 stores − 187 stores 2,883 stores who pay $100 renewal fee = $288,300.
- In 2010, 2,883 − 187 stores =2,696 retailers × $100 renewal fee = $269,600.
- In 2011, 2,696 − 187 stores = 2,509 retailers × $100 renewal fee = $250,900.
- In 2012, 2,509 − 187 stores = 2,322 retailers × $100 renewal fee = $232,200.
- Cost over five years = $307,000 + $288,300 + $269,600 + $250,900 + $232,200 = $1,348,000 savings for such stores over five years.

Finally, retailers who, during 2008, (1) Have a previous disqualification(s) or civil money penalty in lieu of disqualification and receive an additional disqualification penalty of any length or (2) are disqualified for more than six months or pay a civil money penalty in lieu of a disqualification period of more than six months will have fulfilled their bond/LOC requirement in 2013. During this five year period they will continue to pay the fees associated with the annual renewal or such bond/LOCs. For each year beyond 2013, the number of retailers who no longer pay renewal fees should increase by the number of stores who fit in one of the two categories described above and remain in the Food Stamp Program. For example:

In 2014, 2040 + 491 retailers − 6.1% of them who leave the Program or 2,377 retailers will no longer incur the average $100 cost of bond renewal fees. The total cost associated with this change in 2014 is $237,700.

Since 1969, more than 75% of the stores that have been disqualified or subject to a civil money penalty are convenience stores and medium or small grocers.

This regulation also codifies current policy regarding retailers with credit violations. Such retailers are disqualified from the Program for one year and are required to submit a bond or letter of credit for five years. From 1998 to 2005, 244 stores provided documentation proving that credit violations were taking place in their stores (equal to an average of 30.5 stores each year). Based on historical data, securing a bond or letter of credit results in an average out-of-pocket cost to each of these retailers of $668. Total cost to retailers for this provision is therefore projected to be $20,374 per year (30.5 retailers times $668 = $20,374) and $101,870 over five years. This out-of-pocket expense is, however, offset by the opportunity for these businesses to resume the food stamp portion of their sales after the one year disqualification period.

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). Nancy Montanez Johner, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule will impact FNS field offices and all participating retailers and wholesalers who have violated the Food Stamp Program rules. Currently, all violating retailers and wholesalers who have been removed from the program for a specified period of time or assessed a civil money penalty in lieu of such removal are required to submit a collateral bond or irrevocable LOC as a condition of continued participation in the Food Stamp Program. The collateral bond or irrevocable LOC must be periodically renewed and valid at all times during the period in which the firm is authorized to participate in the program. This rule will limit the requirement to five years, benefiting the retailers and wholesalers who are affected by this requirement. Also, in this rule, a one year removal from participation in the program will be imposed against retailers and wholesalers that accept food stamp benefits in payment for items sold to a household on credit. It is estimated that only an average of 30.5 stores per year of all the stores commit credit violations and will be subject to a one year disqualification.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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, the Department 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 the Department 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 rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

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 in 7 CFR part 3015, subpart V and related Notice (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.

Executive Order 13132, Federalism

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Food and Nutrition Service (FNS) has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This 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 unless specified in the DATES section of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with Departmental Regulations 4300–4, ''Civil Rights Impact Analysis'', and 1512–1, ''Regulatory Decision Making Requirements.'' After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of protected classes of individuals to receive food stamp benefits on the basis of their race, color, national origin, sex, age, disability, religion or political belief nor will it have a differential impact on minority owned or operated business establishments, and woman owned or operated business establishments that participate in the Food Stamp Program.

The changes in this regulation do not apply to the food stamp recipients participating in the Food Stamp Program. The regulation affects or may potentially affect the retail food stores and wholesale food concerns that participate (accept or redeem food stamp benefits) in the Food Stamp Program. The only retail food stores and wholesale food concerns that will be directly affected, however, are those firms that violate the Food Stamp Program rules and regulations.

FNS does not collect data from retail food stores or wholesale food concerns regarding any of the protected classes under Civil Rights. As long as a retail food store or wholesale food concern meets the eligibility criteria stipulated in the Section 3 of the Food Stamp Act and 7 CFR 278.1 of the Food Stamp Program regulations they can participate in the Food Stamp Program. Also, FNS specifically prohibits retailers and wholesalers that participate in the Food Stamp Program to engage in actions that discriminate based on race, color, national origin, sex, age, disability, religion or political belief.

This rule will not change any requirements related to the eligibility or participation of protected classes or individuals, minority owned or operated business establishments, or woman owned or operated business establishments in the Food Stamp Program. As a result, this rule will have no differential impact on protected classes of individuals, minority owned or operated business establishments, or woman owned or operated business establishments.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Background

On July 12, 1984, the Department published a rule entitled, Bonding of Authorized Firms, that required all violating retailers and wholesalers that have been disqualified for a specified period of time or have had a civil money penalty imposed in lieu of such disqualification to submit a collateral bond if they wish to continue to participate in the Food Stamp Program after satisfying their penalty. The rule became effective on August 13, 1984. The bonding requirements are authorized by section 12(d) of the Food Stamp Act of 1977, (Act), and set out in Parts 278 and 279 of the Food Stamp Program regulations. Essentially, the bond covers the value of the food stamp benefits which the authorized firm may in the future accept and redeem in violation of the Act. The minimum face value of a bond is $1,000. The vast majority of the bonds have a face value of $1,000.

Currently, the regulations require that the bond be valid at all times during the period which the firm is authorized to participate in the program. Retailers and wholesalers are required to renew their bonds through a bonding agent or financial institution on a periodic basis. Most bonds are renewed on an annual basis. The renewal fee for a bond can range from $50 to $1,000, and does not include the accountant and lawyer fees that can range from $75 to more than $200. Firms have expressed concern to FNS on numerous occasions about the exorbitant costs of renewing a collateral bond.

Several other problems have arisen since the inception of the current bonding requirement. Namely, we found that collateral bonds from some companies do not meet the requirements set forth in the rules, collateral bonds are not available in some areas, and collateral bonds are not always available in the required increments. As a result, we established written policy to allow firms to submit irrevocable letters of credit in lieu of collateral bonds.

In accordance with section 12(d) of the Act, the Secretary has the authority to prescribe the amount, terms, and conditions of this statutory requirement. Thus, on March 13, 2007, the FNS published a proposed rule that would do the following: (1) Amend the regulation to provide for irrevocable letters of credit as an acceptable instrument in lieu of collateral bonds; (2) Eliminate the bond requirement for retailers who have never previously been disqualified and who are disqualified for a period of six months or have a civil money penalty imposed in lieu of a six month disqualification period; and (3) Limit the bonding requirement to five years for retailers who are disqualified for a specified period of time greater than six months or for retailers who have been assessed a civil money penalty in lieu of a specified period of disqualification of greater than six months. [72 FR 11291].

Under the proposed rule, retailers who have previously been disqualified for any length of time or been issued a civil money penalty and who subsequently become disqualified again would be subject to the five year bonding requirement, even if the subsequent disqualification is for a period of six months or less or the civil money penalty imposed is in lieu of a disqualification for six months or less.

One June 18, 2008, Congress passed the Food, Conservation, and Energy Act. Effective on October 1, 2008, the Food and Nutrition Act of 2008 directs the Secretary to require a retail food store or wholesale food concern that has been disqualified for more than 6 months, or has been subjected to a civil penalty in lieu of a disqualification period of more than 6 months, to furnish a collateral bond or irrevocable letter of credit for a period of not more than 5 years to cover the value of benefits that the store or concern may in the future accept and redeem in violation of the Act.

Lastly, the proposed rule addressed a separate issue pertaining to stores that accepted food stamp benefits for items sold on credit, a violation of the food stamp rules. The rule proposed to establish a specified period of time for firms to be removed from the program (*i.e.*, one year) for accepting food stamp benefits in payment for items on credit. Food Stamp Program regulations at 7 CFR 278.2(f) stipulate that retail food stores may not accept food stamp benefits in payment for any eligible food sold to food stamp households on credit. Nevertheless, the Agency has seen an increase in this type of violative activity since the implementation of the electronic benefit transfer (EBT) system. Though this has been prohibited behavior, there has been no specific penalty associated with that violation. As a result, the Agency proposed a specific one year disqualification for stores that engage in credit transactions.

Three comments were received in response to the proposed rule. Two of the comments were received from the public at large and one was received from the Food Marketing Institute. In general, the commenters supported the proposed revisions to the current regulatory bonding requirement. The Food Marketing Institute applauded the Department's effort to eliminate the bond requirement for retailers who have never previously been disqualified from the Food Stamp Program and who are disqualified for six months, as well as allowing irrevocable letters of credit as an acceptable instrument in lieu of collateral bonds. One commenter agreed that there should be limitations on the bonding requirement and that violating retailers should not be required to submit a collateral bond or letter of credit indefinitely. Two commenters asked that we define ''less egregious violations.'' In the preamble of the proposed rule and in this final rule we have stated that retailers who commit less egregious violations would be exempt from the bonding requirement. ''Less egregious violations'' is a term meant to describe those violations that would not typically lead to more than a six month disqualification (in this rule the threshold beyond which a bond is necessary). So, while it is based on specific violative circumstances, we offer the following as an example: The sale of inexpensive, conspicuous non-food items such as toothpaste, toilet paper, toothpicks, etc., usually committed by store clerks because of careless and poor supervision of store ownership or management. A six month disqualification is normally imposed against stores that commit such violations. Under this rulemaking, a firm that receives a six month disqualification period will not be required to submit a collateral bond or letter of credit.

The comments were supportive of the revisions to the bonding requirement established in the proposed rule and this rule is being published in final without change. Moreover, no comments were received with regard to establishing a one year disqualification in the regulations for retailers who commit credit violations. No revisions have been made to the final rule regarding credit violations.

List of Subjects

7 CFR Part 278

Food Stamps, Grant programs—social programs, Penalties.

7 CFR Part 279

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

Accordingly, 7 CFR parts 278 and 279 are amended as follows:

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

Authority: 7 U.S.C. 2011–2036.

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

■ 2. In § 278.1, revise paragraph (b)(4) to read as follows:

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

* * * * *

(b) * * *

(4) *The submission of collateral bonds or irrevocable letters of credit for firms with previous sanctions.* (i) If the applicant firm has been sanctioned for violations of this part, by withdrawal, or disqualification for a period of more than six months, or by a civil money penalty in lieu of a disqualification period of more than six months, or if the applicant firm has been previously sanctioned for violations and incurs a subsequent sanction, regardless of the disqualification period, FNS shall, as a condition of future authorization, require the applicant to present a collateral bond or irrevocable letter of credit that meets the following conditions:

(A) The collateral bond must be issued by a bonding agent/company recognized under the law of the State in which the applicant is conducting business and which is represented by a negotiable certificate only. The irrevocable letter of credit must be issued by a commercial bank;

(B) The collateral bond or irrevocable letter of credit must be made payable to the Food and Nutrition Service, U.S. Department of Agriculture;

(C) The collateral bond cannot be canceled by the bonding agent/company for non-payment of the premium by the applicant. The irrevocable letter of credit cannot be canceled by the commercial bank for non-payment by the applicant;

(D) The collateral bond or irrevocable letter of credit must have a face value of $1,000 or an amount equal to ten percent of the average monthly food stamp benefit redemption volume of the applicant for the immediate twelve months prior to the effective date of the most recent sanction which necessitated the collateral bond or irrevocable letter of credit, whichever amount is greater;

(E) The applicant is required to submit a collateral bond or irrevocable letter of credit that is valid for a period of five years when re-entering the program; and

(F) The collateral bond or irrevocable letter of credit shall remain in the custody of FNS unless released to the applicant as a result of the withdrawal of the applicant's authorization, without a fiscal claim established against the applicant by FNS.

(ii) Furnishing a collateral bond or irrevocable letter of credit shall not eliminate or reduce a firm's obligation to pay in full any civil money penalty or previously determined fiscal claim which may have been assessed against the firm by FNS prior to the time the bond or letter of credit was required by

FNS, and furnished by the firm. A firm which has been assessed a civil money penalty shall pay FNS as required, any subsequent fiscal claim asserted by FNS. In such cases a collateral bond or irrevocable letter of credit shall be furnished to FNS with the payment, or a schedule of intended payments, of the civil money penalty. A buyer or transferee shall not, as result of the transfer or purchase of a disqualified firm, be required to furnish a bond or letter of credit prior to authorization.

* * * * *

■ 3. In § 278.2, revise paragraph (f) to read as follows:

§ 278.2 Participation of retail food stores.

* * * * *

(f) *Paying credit accounts.* Food stamp benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the Food Stamp Program for a period of one year.

* * * * *

■ 4. In § 278.6:

■ a. Revise paragraph (e)(4); and

■ b. Amend paragraph (h) by adding the words ''or irrevocable letter of credit'' after the word ''bond'' wherever it appears. The revision reads as follows:

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

* * * * *

(e) * * *

(4) Disqualify the firm for 1 year if:

(i) It is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as the sale of common nonfood items in amounts normally found in a shopping basket, and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(ii) The firm has accepted food stamp benefits in payment for items sold to a household on credit.

* * * * *

■ 5. In § 278.7, revise paragraph (b) to read as follows:

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

* * * * *

(b) *Forfeiture of a collateral bond or draw down on an irrevocable letter of credit.* If FNS establishes a claim against an authorized firm which has previously been sanctioned, collection of the claim may be through total or partial forfeiture of the collateral bond or draw down of the irrevocable letter of credit. If FNS determines that forfeiture or a draw down is required for collection of the claim, FNS shall take one or more of the following actions, as appropriate.

(1) Determine the amount of the bond to be forfeited or irrevocable letter of credit drawn down on the basis of the loss to the Government through violations of the Act, and this Part, as detailed in a letter of charges to the firm;

(2) Send written notification by method of proof of delivery to the firm and the bonding agent or commercial bank of FNS' determination regarding forfeiture or draw down of all or specified part of the collateral bond or irrevocable letter of credit and the reasons for the forfeiture or draw down action;

(3) Advise the firm and the bonding agent or commercial bank of the firm's right to administrative review of the claim determination;

(4) Advise the firm and the bonding agent or commercial bank that if payment of the current claim is not received directly from the firm, FNS shall obtain full payment through forfeiture of the bond or draw down of the irrevocable letter of credit;

(5) Proceed with collection of the bond or irrevocable letter of credit in the amount forfeited or drawn down if a request for review is not filed by the firm within the period established in § 279.5 of this chapter, or if such review is unsuccessful; and

(6) Upon the expiration of time permitted for the filing of a request for administrative and/or judicial review, deposit the bond or irrevocable letter of credit in a Federal Reserve Bank account or in the Treasury Account, General. If FNS requires only a portion of the face value of the bond or irrevocable letter of credit to satisfy a claim, the entire bond or irrevocable letter of credit will be negotiated, and the remaining amount returned to the firm.

* * * * *

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

■ 6. In § 279.1, revise paragraph (a)(6) to read as follows:

§ 279.1 Jurisdiction and authority.

* * * * *

(a) * * *

(6) Forfeiture of part or all of a collateral bond or a draw down of part or all of a letter of credit under § 278.1 of this chapter, if the request for review is made by the authorized firm. FNS shall not accept requests for review made by a bonding company or agent or commercial bank.

* * * * *

■ 7. In § 279.4, revise the last sentence in paragraph (a) to read as follows:

§ 279.4 Action upon receipt of a request for review.

* * * If the administrative action in question involves the denial of a claim brought by a firm against FNS, or the forfeiture of a collateral bond or the draw down on an irrevocable letter of credit, the designated reviewer shall direct the firm not be approved for participation, not be paid any part of the disputed claim, or not be reimbursed for any bond forfeiture or irrevocable letter of credit withdrawal, as appropriate until the designated reviewer has made a determination.

* * * * *

Dated: December 18, 2008.

Nancy Montanez Johner,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. E8–30951 Filed 12–29–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 217

RIN 1601–AA54

Designation of Malta for the Visa Waiver Program

AGENCY: Office of the Secretary; DHS.

ACTION: Final rule; technical amendment.

SUMMARY: Citizens and eligible nationals of participating Visa Waiver Program countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant aliens for a period of 90 days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. This rule adds Malta to the list of countries authorized to participate in the Visa Waiver Program.

DATES: This final rule is effective on December 30, 2008.

FOR FURTHER INFORMATION CONTACT: Marc Frey, Department of Homeland Security, Office of Policy, (202) 282–9555.

SUPPLEMENTARY INFORMATION: