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FOOD STAMP PROGRAM

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Regulations Pertinent to Authorized Firms

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**PART 271—GENERAL INFORMATION
AND DEFINITIONS**

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§ 271.1 General purpose and scope.

(a) *Purpose of the food stamp program.* The food stamp program is designed to promote the general welfare and to safeguard the health and well being of the Nation's population by raising the levels of nutrition among low-income households. Section 2 of the Food Stamp Act of 1977 states, in part:

Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation's agricultural abundance and will strengthen the Nation's agricultural economy, as well as result in more orderly marketing and distribution of foods. To alleviate such hunger and malnutrition, a food stamp program is herein authorized

which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.

(b) *Scope of the regulations.* Part 271 contains general information, definitions, and other material applicable to all parts of this subchapter. Part 272 sets forth policies and procedures governing State agencies which participate in the program. Part 273 describes the eligibility criteria to be applied by State agencies and related processing requirements and standards. Part 274 provides requirements for the issuance of coupons to eligible households and establishes related issuance responsibilities. Part 275 sets forth guidelines for monitoring the food stamp program, analyzing the results and formulating corrective action. Part 276 establishes State agency liability and certain Federal sanctions. Part 277 outlines procedures for payment of administrative costs of State agencies. Part 278 delineates the terms and conditions for the participation of retail food stores, wholesale food concerns, meal services, and insured financial institutions. Part 279 establishes the procedures for administrative and judicial reviews requested by food retailers, food wholesalers, and meal services. Part 280 ex-

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plains procedures for issuing emergency coupon allotments to certain victims of disasters unable to purchase adequate amounts of food. Part 281 sets forth guidelines for designating Indian tribes as State agencies. Part 282 provides guidelines for initiation, selection, and operation of demonstration, research, and evaluation projects. Part 285 describes the general terms and conditions under which grant funds are provided to the Commonwealth of Puerto Rico.

§ 271.2 Definitions.

"Authorization to participate card (ATP)" means a document which is issued by the State agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

"Communal dining facility" means a public or nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for supplemental security income (SSI) recipients, and their spouses, a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients, and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at concessional prices to elderly persons or SSI recipients, and their spouses.

"Coupon" means any coupon, stamp or type of certification provided pursuant to the provisions of this subchapter for the purchase of eligible food.

"Coupon issuer" means any office of the State agency or any person, partnership, corporation, organization, political subdivision, or other entity with which a State agency has contracted for, or to which it has assigned responsibility for, the issuance of coupons to households.

"Department" means the U.S. Department of Agriculture.

"Drug addiction or alcoholic treatment and rehabilitation program" means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private nonprofit organization or institution which is certified by the State agency or agencies designated by the Governor as responsible for the administration of the State's programs for alcoholics and drug addicts pursuant to Pub. L. 91-616, Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act of 1970 and Pub. L. 92-255, Drug Abuse Office and Treatment Act of 1972 as providing treatment that can lead to the rehabilitation of drug addicts or alcoholics. If an alcoholic treatment and rehabilitation program is located on an Indian reservation and the State does not certify or license reservation-based centers, approval to participate may be granted if the program either is funded by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) pursuant to Pub. L. 91-616 or was so funded and has subsequently been transferred to Indian Health Service (IHS) funding.

"Elderly or disabled member" means a member of a household who: (1) Is 60 years of age or older; (2) receives supplemental security income benefits under title XVI of the Social Security Act or disability or blindness payments under titles I, II, XIV, or XVI of the Social Security Act; (3) is a veteran with a service-connected disabili-

ity rated or paid as total under title 38 of the United States Code or is considered in need of regular aid and attendance or permanently housebound under such title of the Code; (4) is a surviving spouse of a veteran and considered in need of aid and attendance or permanently housebound or a surviving child of a veteran and considered to be permanently incapable of self-support under title 38 of the United States Codes; or (5) is a surviving spouse or child of a veteran and entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death under title 38 of the United States Code and has a disability considered permanently under section 221(i) of the Social Security Act. "Entitled" as used in this definition refers to those veterans' surviving spouses and children who are receiving the compensation or benefits stated or have been approved for such payments, but are not receiving them.

"Eligible foods" means (1) any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption; (2) seeds and plants to grow foods for the personal consumption of eligible households; (3) meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals; or meals served by an authorized communal dining facility for the elderly, for SSI households or both, to households eligible to use coupons for communal dining; (4) meals prepared and served by a drug addict or alcoholic treatment and rehabilitation center to eligible households; (5) meals prepared and served by a group living arrangement facility to residents who are blind or disabled recipients of benefits under Title II or

Title XVI of the Social Security Act; (6) meals prepared by and served by a shelter for battered women and children to its eligible residents; and (7) in the case of certain eligible households living in areas of Alaska where access to food stores is extremely difficult and the households rely on hunting and fishing for subsistence, equipment for the purpose of procuring food for eligible households, including nets, lines, hooks, fishing rods, harpoons, knives, and other equipment necessary for subsistence hunting and fishing but not equipment for the purpose of transportation, clothing or shelter, nor firearms, ammunition or other explosives.

"Federal fiscal year" means a period of 12 calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

"Firm's practice" means the usual manner in which personnel of a firm or store accept food coupons as shown by the actions of the personnel at the time of the investigation.

"FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

"Food Stamp Act" means the Food Stamp Act of 1977 (Pub. L. 95-113), including any subsequent amendments thereto.

"Group living arrangement" means a public or private nonprofit residential setting that serves no more than sixteen residents that is certified by the appropriate agency or agencies of the State under regulations issued under section 1616(e) of the Social Security Act. To be eligible for food stamp benefits, a resident of such a group living arrangement must be blind or disabled and receiving benefits under Title II or Title XVI of the Social Security Act.

"House-to-house trade route" means any retail food business operated from a truck, bus, pushcart, or other mobile vehicle.

"Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.

"Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, U.S. Department of Justice.

"Indian tribe" means: (1) Any Indian tribe, Band, Nation, or other organized Indian group on a reservation for example, a Rancheria, Pueblo or Colony, and including any Alaska Native Village or regional or village corporation (established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688)), that is on a reservation and is recognized as eligible for Federal programs and services provided to Indians because of their status as Indians; or (2) any Indian tribe or Band on a reservation holding a treaty with a State government.

"Indian tribal organization (ITO)" means: (1) The recognized governing body of any Indian tribe on a reservation; or (2) the tribally recognized intertribal organization which the recognized governing bodies of two or more Indian tribes on a reservation authorizes to operate the Food Stamp Program or a Food Distribution Program on their behalf.

"Insured financial institution" means a financial institution insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC).

"Meal delivery service" means a political subdivision, a private nonprofit organization, or a private establishment with which a State or local agency has contracted for the preparation and delivery of meals at conces-

sional prices to elderly persons, and their spouses, and to the physically or mentally handicapped and persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

"Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

"Overissuance" means the amount by which coupons issued to a household exceeds the amount it was eligible to receive.

"Payment error rate" means the sum of the allotments issued to eligible households to which they were not entitled and the allotments issued to ineligible households, expressed as a percentage of all allotments issued to complete active sample cases excluding those cases processed by SSA personnel or participating in certain demonstration projects designated by FNS.

"Program" means the food stamp program conducted under the Food Stamp Act and regulations.

"Regulations" means the provisions of this subchapter. Regulatory citations refer to provisions of this subchapter unless otherwise specified.

"Reservation" means the geographically defined area or areas over which an ITO exercises governmental jurisdiction so long as such area or areas are legally recognized by the Federal or a State government as being set aside for the use of Indians.

"Retail food store" means (1) an establishment or recognized department of an establishment, or a house-to-house trade route, whose eligible food sales volume is more than 50 percent staple food items for home preparation and consumption; (2) public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic treatment and rehabilitation programs; public or private nonprofit group living arrangements; or public or private nonprofit shelters for battered women and children; (3) any stores selling equipment for procuring food by hunting and fishing to eligible households in Alaska, as specified in

the definition of eligible food; (4) any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; and (5) a farmers' market.

"Secretary" means the Secretary of the U.S. Department of Agriculture.

"Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

"Small project area" means those project areas/management units with a monthly active caseload of less than 250 households based on the most current information available at the time the small project area review schedule is developed.

"Spouse" refers to either of two individuals:

(1) Who would be defined as married to each other under applicable State law; or

(2) Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

"Staple food" means those food items intended for home preparation and consumption, which include meat, poultry, fish, bread and breadstuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products. Accessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices are not staple foods for the purpose of qualifying a firm to participate in the program as a retail food store or as a wholesale food concern.

"State" means any one of the fifty States, the District of Columbia, Guam, the Northern Mariana Islands, the Virgin Islands of the United States, and the reservation of an Indian tribe whose ITO meets the requirements of the Food Stamp Act of 1977 for participation as a State agency.

"State agency" means: (1) The agency of State government, including the local offices thereof, which is responsible for the administration of the federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which administer such assistance programs for the State agency, and (2) the Indian tribal organization of any Indian tribe determined by the Department to be capable of effectively administering a Food Stamp Program or a Food Distribution Program in accordance with provisions of the Food Stamp Act of 1977.

"Supplemental security income (SSI)" means monthly cash payments made under the authority of Title XVI of the Social Security Act, as amended, to the aged, blind, and disabled.

"Trafficking" means the buying or selling of coupons or ATP cards for cash.

"Wholesale food concern" means an establishment which sells eligible food to retail food stores or to meal services for resale to households.

§ 271.3 Delegations to FNS for administration.

(a) *Delegation.* Within the Department, FNS acts on behalf of the Department in the administration of the Food Stamp Program with the exception of those functions, which may be delegated to other agencies within the Department. The right is reserved at any time to withdraw, modify, or amend any delegation of authority. When authority is delegated to FNS, the responsibilities may be carried out by the Administrator or by another official of FNS, or by State agencies with respect to claims against households, as designated.

(b) *Claims settlement.* FNS shall have the power to determine the amount of and to settle and adjust any claim arising under the provisions of the Act or this subchapter, and to compromise or deny all or part of any claim.

(c) *Demonstration authority.* FNS is authorized to undertake demonstration projects which test new methods designed to improve program administration and benefit delivery. FNS is authorized to initiate program research and evaluation efforts for the purposes of improving and assessing program administration and effectiveness. The procedure for initiating and conducting these projects is established in Part 282.

§ 271.4 Delegations to State agencies for administration.

(a) *General delegation.* The State agency shall be responsible for the administration of the program within the State, including, but not limited to:

- (1) Certification of applicant households;
- (2) Issuance, control, and accountability of coupons;

(3) Developing and maintaining complaint procedures;

(4) Developing, conducting, and evaluating training;

(5) Conducting performance reporting reviews;

(6) Keeping records necessary to determine whether the program is being conducted in compliance with these regulations; and

(7) Submitting accurate and timely financial and program reports.

(b) *Claims delegation.* FNS delegates to the State agency, subject to the standards in § 273.18, the authority to determine the amount of, and settle, adjust, compromise or deny all or part of any claim which results from fraudulent or nonfraudulent overissuances to participating households.

§ 271.5 Coupons as obligations of the United States, crimes and offenses.

(a) *Coupons as obligations.* Pursuant to section 15(d) of the Food Stamp Act, coupons are an obligation of the United States within the meaning of 18 United States Code (U.S.C.) 8. The provisions of Title 18 of the United States Code, "Crimes and Criminal Procedure," relative to counterfeiting, misuse and alteration of obligations of the United States are applicable to coupons.

(b) *Penalties.* Any unauthorized issuance, use, transfer, acquisition, alteration, possession, or presentation of coupons or ATP's may subject an individual, partnership, corporation, or other legal entity to prosecution under sections 15(b) and (c) of the Food Stamp Act or under any other applicable Federal, State or local law, regulation or ordinance. Sections 15(b) and (c) of the Food Stamp Act read as follows:

(b)(1) Subject to the provisions of paragraph (b)(2) of this section, whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by this Act or the regulations issued pursuant to this Act shall, if such coupons or authorization cards are of a value of \$100 or more, be guilty of a felony and shall, upon the first conviction thereof, be fined not more than \$10,000 or imprisoned for not more than five years, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not less than six months nor more than five years and may also be fined not more than \$10,000 or, if such coupons or authorization cards are of a value of less than \$100, shall be guilty of a misdemeanor, and, upon the first conviction thereof, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than \$1,000. In addition to such penalties, any persons convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

(b)(2) In the case of any individual convicted of an offense under paragraph (b)(1) of this section, the court may permit such individual to perform work approved by the court for the purpose of providing restitution for losses incurred by the United States and the State agency as a result of the offense for which such individual was convicted. If the court permits such individual to perform such work and such individual agrees thereto, the court shall withhold the imposition of the sentence on the condition that such individual perform the assigned work. Upon the successful completion of the assigned work the court may suspend such sentence.

(c) Whoever presents, or causes to be presented, coupons for payment or redemption of the value of \$100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Act or the regulations issued pursuant to this Act, shall be guilty of a

felony and, upon the first conviction thereof, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not less than one year nor more than five years and may also be fined not more than \$10,000, or if such coupons are of a value of less than \$100, shall be guilty of a misdemeanor and, upon the first conviction thereof, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than \$1,000. In addition to such penalties, any persons convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

(c) *Security for coupons and ATP's.* All individuals, partnerships, corporations, or other legal entities including State agencies and their delegates (referred to in this paragraph as "persons") having custody, care and control of coupons and ATP's shall, at all times, take all precautions necessary to avoid acceptance, transfer, negotiation, or use of spurious, altered, or counterfeit coupons and ATP's and to avoid any unauthorized use transfer, acquisition, alteration or possession of coupons and ATP's. These persons shall safeguard coupons and ATP's from theft, embezzlement, loss, damage, or destruction.

(d) *Coupon issuers.* (1) Any coupon issuer or any officer, employee or agent, thereof convicted of failing to provide the monthly reports required in § 274.5 or convicted of violating Part 274 shall be subject to a fine of not more than \$1,000, or imprisoned for not more than 1 year, or both.

(2) Any coupon issuer or any officer, employee or agent, thereof convicted of knowingly providing false information in the reports required under § 274.5 shall be subject to a fine of not more than \$10,000, or imprisoned not more than 5 years, or both.

§ 271.6 Complaint procedure.

(a) *State agency responsibility*—(1) *General scope.* The State agency shall maintain a system of its choosing for handling program complaints filed by participants, potential participants, or other concerned individuals or groups. This shall not include complaints alleging discrimination on the basis of race, sex, age, religious creed, national origin, political beliefs or handicap; such complaints shall be handled in accordance with § 272.6. This procedure also need not include complaints that can be pursued through a fair hearing. Complaints regarding such areas as processing standards and service to participants and potential participants would generally be handled under this complaint procedure.

(2) *Minimum requirements.* The State agency shall follow up on complaints, resolve complaints and take corrective action where warranted, and respond to the complainant on the State agency's disposition of the complaint. The State agency shall make information on the complaint system and how to file a complaint available to participants, potential participants and other interested persons. The State agency may make the information available through written materials or posters at certification offices or other appropriate means.

(3) *Complaint analysis.* The State agency shall maintain records of complaints received and their disposition, and shall review records at least annually to assess whether patterns of problems may be present in local offices, project areas, or throughout the State. The results of this review shall be provided to the Performance Reporting System coordinator for appropriate action, and for inclusion, if appropriate, in the State Corrective Action Plan in accordance with § 275.16 of this chapter. The informa-

tion provided to the Performance Reporting System Coordinator shall include the identification, if any, of potential or actual patterns of deficiencies in local offices, project areas, or throughout the State, and any identification of causes of these problems.

(4) *Monitoring.* FNS shall monitor State compliance with these requirements through the Performance Reporting System.

(b) *Regional office responsibility.* (1) Persons or agencies desiring program information or wishing to file a complaint may contact the appropriate FNS Regional Office.

(i) For Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, the Virgin Islands of the United States, and West Virginia: Mid-Atlantic Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, CN 02150, Trenton, New Jersey 08650.

(ii) For Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 1100 Spring Street NW., Room 200, Atlanta, Ga. 30367.

(iii) For Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 50 East Washington Street, Chicago, Illinois, 60602.

(iv) For Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 1100 Commerce Street, Suite 5-C-30, Dallas, Tex. 75242.

(v) For Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon and Washington: Western Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 550 Kearny Street, Room 400, San Francisco, Calif. 94108.

(vi) For Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: New England Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 33 North Avenue, Burlington, Mass. 01803.

(vii) For Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 2420 West 26th Avenue, Suite 430-D, Denver, Colo. 80211.

(2) Complainants shall be advised of the appropriate State complaint handling and fair hearing procedures. Upon household request, other complaints shall be pursued by the Department rather than the State agency, unless the complaint is one upon which the complainant wishes to request a fair hearing.

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

Sec.

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

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

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

(1) *The nature and extent of the food business conducted by the applicant.*

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

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

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

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

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

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

(iv) A firm whose primary business is the sale of food at the wholesale level may not be authorized as a retail firm unless it has a significant volume of retail food sales. In addition to criteria applicable to all retail firms, the FNS officer in charge shall consider all of the following factors in determining whether a wholesaler qualifies to be authorized as a retailer: the volume of the firm's retail food business in relation to the volume of its wholesale food business, whether the firm holds itself out to the public as a food retailer, and whether the firm actively seeks retail food trade. The absence or presence of any one of the factors listed in this paragraph will not necessarily determine whether a wholesale firm qualifies for authorization as a retail food store. In determining whether a wholesale firm qualifies for authorization as a retailer, FNS shall consider each unit of a multi-unit firm separately. A firm authorized under this paragraph may not accept coupons as a wholesale food concern.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Furnishing a collateral bond shall not eliminate or reduce a firm's obligation to pay in full any civil money penalty or previously determined fiscal claim which may have been assessed against the firm by FNS prior to the time the bond 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 shall be furnished to FNS with the payment, or a schedule of intended payments, of the civil money penalty.

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

(c) *Wholesalers.* A wholesale food concern may be authorized to accept coupons only from a specified custom-

er or customers if it meets the requirements of paragraphs (a) and (b) of this section, and FNS determines it is required as a redemption outlet: (1) For one or more specified authorized drug addict or alcoholic treatment programs, (2) for one or more specified authorized group living arrangements, (3) for one or more specified authorized shelters for battered women and children, (4) for one or more specified authorized nonprofit cooperative food-purchasing ventures, or (5) for one or more specified authorized retail food stores which are without access to an insured financial institution which will redeem their coupons. No firm may be authorized to accept and redeem coupons concurrently as both a retail food store and a wholesale food concern. Authorizations of wholesale food concerns granted prior to January 28, 1982 shall expire on May 31, 1982. Wholesale food concerns desiring to participate in the program after that date must reapply for authorization in accordance with the provisions of this paragraph.

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

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

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

(3) It is a private establishment operating under a contract with a State or local agency to prepare and serve (or deliver) low-cost meals to elderly persons and SSI recipients (and, in the case of meal delivery services, to elderly persons or handicapped persons)

and their spouses. The contracts of private establishments must specify the approximate prices which will be charged.

(e) *Treatment programs.* Drug addict or alcoholic treatment and rehabilitation programs wishing to redeem through wholesalers food stamps received from or on behalf of their participants shall in addition to meeting the requirements of paragraphs (a), (b) and (d)(1) of this section, be certified by the agency or agencies of the State designated by the Governor as responsible for the State's programs for alcoholics and drug addicts under Pub. L. 91-616, "Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970," and Pub. L. 92-255, "Drug Abuse Office and Treatment Act of 1972," as providing treatment that can lead to the rehabilitation of drug addicts or alcoholics. If an alcoholic treatment and rehabilitation program is located on an Indian reservation and the State does not certify or license reservation-based centers, approval to participate may be granted if the requirements of paragraphs (a), (b), and (d)(1) of this section are met and the program either is funded by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) pursuant to Pub. L. 91-616, or was so funded and has subsequently been transferred to Indian Health Service (IHS) funding. In addition, the certification must show that the treatment program meets the standards required of treatment programs under the supervision of the agency or agencies of the State designated by the Governor as responsible for the State's programs for alcoholics and drug addicts. Approval to participate is automatically cancelled at any time that a program loses its certification from the responsible agency or agencies of the State.

(f) *Group living arrangements.* FNS shall authorize as retail food stores those group living arrangements wishing to redeem coupons directly through wholesalers. The group living arrangement must, in addition to meeting requirements of paragraphs (a), (b), and (d)(1) of this section, be certified by the appropriate agency or agencies of the State under regulations issued under section 1616(e) of the Social Security Act. Approval to participate is automatically cancelled at any time that a program loses its certification from the State agency or agencies.

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

(h) *House-to-house trade routes.* FNS shall, in consultation with the Department's Office of Inspector General, determine those locations where the operation of trade routes damages the program's integrity. FNS may limit the authorization of house-to-house trade routes to those trade routes whose services are required by participating households in such areas in order to obtain food. The FNS Officer in Charge, in deciding whether households in such areas require a trade route's services, shall consider the volume of food business the trade route

does and the availability of alternate sources of comparable food. An FNS official shall inspect any applicant trade route's vehicle to ensure that the trade route is a retail food store before authorizing it to accept coupons. An FNS official may require, as a condition of continuing authorization, that the trade route vehicle be reinspected semiannually to ensure that it continues to be a retail food store.

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

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

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

(2) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7. The FNS officer in charge shall issue a notice to the firm by certified mail or personal service of any authorization denial and shall advise the firm that it may request review of that determination.

(k) *Withdrawing authorization.* FNS shall withdraw the authorization of any firm authorized to participate in the program if it determines that the firm's continued participation will not further the purposes of the program, or the firm fails to meet the specifications of paragraph (b), (c), (d), or (e) of this section, or that the firm has been found to be circumventing a period of disqualification or a civil money penalty through a purported transfer of ownership. The FNS officer in charge shall issue a notice to the

firm by certified mail or personal service to inform the firm of the determination and of the review procedure. FNS shall remove the firm from the program if the firm does not request review within the period specified in § 279.5.

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

(1) Refuses to accept correspondence from FNS;

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

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

(m) *Updating information.* FNS may require, from time to time, but not more than once each Federal fiscal year, a firm to update any or all of the information on the firm's application form. Failure to provide this information may result in the withdrawal of the firm's approval to participate in the program.

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

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

(p) *Safeguarding privacy.* The contents of applications or other information furnished by firms, including information on their gross sales and food sales volumes and their redemptions of coupons, may not be used or disclosed to anyone except for purposes directly connected with the administration and enforcement of the Food Stamp Act and these regulations. Such purposes shall not exclude the audit and examination of such information by the Comptroller General of the United States authorized by any other provision of law.

(q) Each authorized retail food store shall post in a suitable and conspicuous location in the store a sign designed and provided by FNS which provides information on how persons may report abuses they have observed in the operation of the program. Refusal or repeated failure to display such a sign by an authorized retail food store may

result in the withdrawal of the firm's approval to participate in the program.

§ 278.2 Participation of retail food stores.

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

(b) *Equal treatment for coupon customers.* Coupons shall be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store. However, nothing in this part may be construed as authorizing FNS to specify the prices at which retail food stores may sell food. No retail food store may single out coupon users for special treatment in any way.

(c) *Accepting coupons.* No authorized retail food store may accept coupons marked "paid," "canceled," or "specimen." Nor may a retail food store accept coupons bearing any cancellation or endorsement, or coupons of other than the 1-dollar denomination which have been detached from the coupon books prior to the time of purchase or delivery of eligible food

unless the detached coupons are accompanied by the coupon books which bear the same serial numbers that appear on the detached coupons. It is the right of the household member or the authorized representative to detach the coupons from the book.

(d) *Making change.* An authorized retail food store shall use, for the purpose of making change, uncanceled and unmarked 1-dollar coupons which were previously accepted for eligible foods. If change in an amount of less than 1-dollar is required, the eligible household shall receive the change in cash. At no time may cash change in excess of 99 cents be returned in a coupon transaction. An authorized retail food store may not engage in a series of coupon transactions the purpose of which is to provide the same food stamp customer an amount of cash change greater than the maximum 99 cents cash change allowed in one transaction.

(e) *Accepting coupons before delivery.* Food retailers may not accept coupons before delivering the food, retain custody of any unspent coupons, or in any way prevent an eligible household from using coupons in making purchases from other authorized firms. However, a nonprofit cooperative food purchasing venture may accept coupons from a member of the cooperative at the time the member places a food order. The food ordered must be made available to the member within 14 days from the day the cooperative receives the member's coupons.

(f) *Paying credit accounts.* Coupons may not be accepted by an authorized retail food store in payment for any eligible food sold to a household on credit.

(g) *Redeeming coupons.* Authorized retail food stores may exchange coupons in accordance with this part for face value upon presentation through the banking system or through a wholesale food concern authorized to accept coupons from that retailer. Authorized drug addict or alcoholic treatment and rehabilitation programs, group living arrangements, and shelters for battered women and children may present coupons for redemption through authorized wholesale food concerns. A drug addict or alcoholic treatment center, group living arrangement, or shelter for battered women and children may purchase food in authorized retail food stores as the authorized representative of its participating households. Authorized drug addict and alcoholic treatment and rehabilitation programs, group living arrangements, and shelters for battered women and children shall not present coupons directly to an insured financial institution for redemption.

(h) *Identifying coupon users.* Coupons may not knowingly be accepted from persons who have no right to possession of coupons. If a food retailer has any cause to believe that a person presenting coupons has no right to use the coupons, the food retailer should request the person to show the ID card of the household to establish the right of that person to use the coupons. Where photo ID cards are in use, the person presenting the ID card need not be pictured on the card.

(i) *Checking meal delivery service recipients.* A nonprofit meal delivery service shall require the recipient of a delivered meal to show the marked ID card establishing the recipient's right to use coupons for that service the first time that the recipient offers coupons in payment for the service, and

shall request the marked ID card at any time the nonprofit meal delivery service has cause to question the continued eligibility of the recipient to use coupons for delivered meals.

(j) *Checking hunting and fishing equipment users.* Authorized Alaskan retailers shall require coupon customers wanting to purchase hunting and fishing equipment with coupons to show their ID cards to determine that they live in an area designated by FNS as one in which persons are dependent upon hunting and fishing for subsistence.

(k) *Checking participants in restaurants.* A restaurant operating under a State contract shall require a household purchasing meals to show the marked ID card establishing the household's right to purchase meals with coupons unless the personnel of the restaurant know that the program participant tendering coupons is eligible to use coupons to purchase meals.

§ 278.3 Participation of wholesale food concerns.

(a) *Accepting coupons.* An authorized wholesale food concern may accept endorsed coupons from one or more specified authorized retail food stores, from one or more specified authorized nonprofit cooperative food-purchasing ventures, from one or more specified authorized group living arrangements, from one or more specified authorized drug addict or alcoholic treatment programs, or from one or more specified authorized shelters for battered women and children if the coupons are accompanied by a properly filled-out and signed redemption certificate, and are not marked "paid," "canceled," or "specimen." A wholesaler authorized to accept coupons from an authorized drug addict or alcoholic treatment program, or from an au-

thorized group living arrangement, or from an authorized shelter for battered women and children, may accept coupons from that treatment program, or group living arrangement, or shelter for battered women and children, only in exchange for food.

(b) *Accepting legally obtained coupons.* No authorized wholesale food concern may accept coupons if the wholesaler knows or has reasonable cause to believe that the coupons were not legally obtained for eligible food.

(c) *Redeeming coupons.* An authorized wholesale food concern may redeem coupons, properly accepted from retailers, through the banking system, upon presentation of the coupons with:

(1) The authorized retail food store's properly filled-out and signed redemption certificate for the coupons; and

(2) The authorized wholesale food concern's properly filled-out and signed redemption certificate.

(d) *Handling retailer redemption certificates.* No authorized wholesale food concern may alter, prepare, or complete an authorized retail food store's redemption certificate.

§ 278.4 Procedure for redeeming coupons.

(a) *Coupons accepted without authorization.* Coupons accepted by a retail food store or a wholesale food concern before the receipt by the firm of an authorization card from FNS may not be presented for redemption unless the FNS officer in charge has approved the redemption under § 278.7(b). Burned or mutilated coupons shall be presented for redemption to the FNS officer in charge as provided in § 278.7(c).

(b) *Endorsing coupons.* Each authorized retail food store or authorized wholesale food concern shall mark its authorization number or name on each coupon before it presents the coupons for redemption.

(c) *Using redemption certificates.* FNS will provide all authorized firms with redemption certificates. Wholesale food concerns and retail food stores, except for drug addict and alcoholic treatment and rehabilitation programs, shall use the redemption certificates to present coupons to insured financial institutions for credit or for cash. All retail food stores which wish to redeem coupons at wholesale food concerns shall use the redemption certificates for that purpose. An authorized retail firm using redemption certificates to redeem coupons shall fill out the redemption certificate to show the value of the coupons redeemed, the name of the insured financial institution or wholesaler, the date, and the signature and title of the official of the firm redeeming coupons.

§ 278.5 Participation of insured financial institutions.

(a) *Accepting coupons.* (1) Financial institutions that are insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) may redeem coupons only from authorized retail food stores, meal services, and wholesale food concerns in accordance with the rules contained in this Part and instructions of the Federal Reserve Banks. Coupons submitted to insured financial institutions for credit or cash must be properly endorsed in accordance with § 278.4 of this part and shall be accompanied by a properly completed and signed redemption certificate.

(2) An insured financial institution shall verify the amount of the coupons being redeemed by recording its count on the redemption certificate. The count may either be encoded to permit Magnetic Ink Character Recognition (MICR) or handwritten. However, financial institutions are encouraged to MICR encode the count. Redemption certificates accepted by insured financial institutions shall be forwarded, with the corresponding coupon deposits, to the Federal Reserve Bank along with the transmitting Food Coupon Deposit Document (Form FNS-521).

(3) Redeemed coupons must be indelibly cancelled on the face of the coupon by the first insured financial institution receiving them. If the cancellation on the coupon face does not show the depositing institution's name or its routing symbol transit number, this identifying information must appear on the straps affixed to each bundle of coupons of like denomination. Deposits not meeting these cancellation requirements may be returned to the depositing institution for reprocessing. A portion of a coupon consisting of less than three-fifths of a whole coupon may not be redeemed.

(4) Insured financial institutions which are members of the Federal Reserve System, insured nonmember clearing institutions, and insured nonmember institutions which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member institution on the books of a Federal Reserve Bank may forward coupons directly to the Federal Reserve Bank. Other insured financial institutions may forward cancelled coupons through ordinary collection channels.

(b) *Role of Federal Reserve Banks.* Federal Reserve Banks, acting as fiscal agents of the United States, will receive canceled coupons for collection as cash items from armed forces installations, member insured financial institutions of the Federal Reserve System, nonmember clearing insured financial institutions, and nonmember insured financial institutions which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member insured financial institution on the books of the Federal Reserve Bank, and will charge those items to the general account of the Treasurer of the United States.

(c) *FNS liability for losses.* FNS shall not be liable for the value of any coupons lost, stolen, or destroyed while in the custody of an insured financial institution or for the value of coupons lost, stolen, or destroyed while in transit from an insured financial institution to a Federal Reserve Bank.

(d) *FNS use of coupons to detect violations.* Regardless of any other provision in these regulations, coupons may be issued to, purchased by, or redeemed by persons authorized by FNS to use those coupons in examining and inspecting program operations, and for other purposes determined by FNS to be required for proper administration of the program. Coupons which have been so issued and used, as well as any coupons which have been issued under paragraph (g) of this section, or which FNS believes may have been issued, transferred, negotiated, used, or received in violation of this subchapter or of any applicable statute, shall at the request of FNS and on issuance of a receipt for them be turned over to FNS by the insured financial institution receiving the coupons, or by any other person to whom the request is addressed, together with any

certificate(s) of redemption accompanying the coupons. Any coupons so requested shall not be eligible for redemption through Federal Reserve Banks or other collection channels. However, FNS may redeem coupons from any insured financial institution or person by payment of the face amount of the coupons upon determination by FNS that this direct redemption of coupons is warranted. FNS shall determine the proper disposition of any coupons held by FNS on completion of the examination or inspection in which the coupons were used. Claims or demands for unredeemed coupons surrendered to FNS may be mailed to the local FNS field office for the project area involved.

(e) *Selling coupons to stores for internal checks.* FNS may sell coupons at face value to any authorized retail food store which wishes to use coupons to conduct internal checks of coupon transactions. The retail food store must submit a written request to FNS which shall include a certification that the store recognizes that its use of coupons will not affect FNS action to enforce program regulations and that the requested coupons will be used only for internal checks of the store's employees and only to uncover sales of items other than eligible foods. The request shall also include the name of the city or county in which the stores to be checked through the use of the requested coupons are located and the name and address of any outside agency with which the retail food store has or will have a contract to conduct checks of the store's employees using coupons. The request shall be directed to the Coupon Issuance and Redemption Unit, FNS, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia, 22302, and shall be accompanied by a check or money

order made payable to the Food and Nutrition Service to cover the face value cost of the coupons requested. Coupons bought by retail food stores for use in internal checks may be later redeemed for full value in accordance with § 278.4, and in redeeming those coupons, retail food stores are authorized to make the certification required for redemption.

(f) *Continued participation of households under investigation.* Upon the written request of Federal, State, or local government agencies which have authority to investigate, and are investigating, suspected violations of Federal or State statutes concerning the enforcement of the Food Stamp Act or the regulations, the State agency may allow ineligible households to continue program participation. The State agency may allow the households to continue participation in the program until the earlier of (1) expiration of the period of 90 days after the request is received or any longer period which FNS, upon request of the State agency, may approve in a particular case, or (2) receipt of notification from the investigative agency that participation may be terminated or that the investigation has been completed. Regardless of any other provision of these regulations, FNS may not hold the State agency liable for the value of any coupons issued to households under this paragraph.

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

(a) *Authority to disqualify or subject to a civil money penalty.* FNS may disqualify any authorized retail food store or authorized wholesale food

concern from further participation in the program if the firm fails to comply with the Food Stamp Act or this part.

Disqualification shall be for from 6 months to 5 years for the firm's first sanction; for from 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a firm's third sanction or a disqualification based on trafficking in coupons or ATP cards. 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 Section 278.1 of this part 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. Except in the case of a permanent disqualification, FNS may, in lieu of a disqualification, subject the 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.

(b) *Charge letter.* Any firm considered for disqualification or imposition of a civil money penalty under paragraph (a) of this section shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before the determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification or imposition of a civil money penalty. The letter shall inform the firm that it may respond either orally or in writ-

ing to the charges contained in the letter within 10 days of receiving the letter. The firm's response shall set forth a statement of evidence, information, or explanation concerning the specified violations or acts. The firm shall make its response, if any, to the officer in charge of the FNS field office which has responsibility for the project area in which the firm is located.

(c) *Review of evidence.* The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination.

(d) *Basis for determination.* The FNS regional office making a disqualification or penalty determination shall consider: (1) The nature and scope of the violations committed by personnel of the firm, (2) any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and (3) any other evidence that shows the firm's intent to violate the regulations.

(e) *Penalties.* FNS shall take action as follows against any firm determined to have violated the Act or regulations. For the purposes of assigning a period of disqualification, a warning letter shall not be considered to be a sanction. A civil money penalty and a disqualification shall be considered a sanction for such purposes. The FNS regional office shall:

(1) Disqualify the firm permanently if:

(i) Personnel of the firm have trafficked in coupons or ATP cards; or

(ii) Violations such as, but not limited to, the sale of ineligible items occurred and the firm had twice before been sanctioned.

(2) Disqualify the firm for 5 years if it is to be the firm's first sanction, the firm had been previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations, and the evidence shows that:

(i) It is the firm's practice to sell expensive or conspicuous nonfood items, cartons of cigarettes, or alcoholic beverages in exchange for food coupons; or

(ii) The firm's coupon redemptions for a specified period of time exceed its food sales for the same period of time; or

(iii) A wholesale food concern's redemptions of coupons for a specified period of time exceed the redemptions of all the specified authorized retail food stores, nonprofit cooperative food-purchasing ventures, group living arrangements, drug addict and alcoholic treatment programs, and shelters for battered women and children which the wholesale food concern was authorized to serve during that time; or

(iv) A wholesale food concern's stated redemptions of coupons for a particular retail food store, nonprofit cooperative food-purchasing venture, group living arrangement, drug addict and alcoholic treatment program, or shelters for battered women and children exceeded the actual amount of coupons which that firm or organization redeemed through the wholesaler; or

(v) Personnel of the firm knowingly accepted coupons from an unauthorized firm or an individual known not to be legally entitled to possess coupons.

(3) Disqualify the firm for 3 years if it is to be the first sanction for the firm and the evidence shows that:

(i) It is the firm's practice to commit violations such as the sale of common nonfood items in amounts normally found in a shopping basket and the firm was previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(ii) Any of the situations described in paragraph (e)(2) of this section occurred and FNS has not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(iii) The firm is an authorized communal dining facility, drug addiction or alcoholic treatment and rehabilitation program, group living arrangement, meal delivery service, or shelter for battered women and children and it is the firm's practice to sell meals in exchange for food coupons to persons not eligible to purchase meals with food coupons and the firm had been previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(iv) A wholesale food concern accepted coupons from an authorized firm which it was not authorized to serve and the wholesale food concern had been previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(v) The firm is an authorized retail food store and personnel of the firm have engaged in food coupon transactions with other authorized retail stores, not including treatment programs, group living arrangements or shelters for battered women and children, and the firm had been previously advised of the possibility that viola-

tions were occurring and of the possible consequences of violating the regulations.

(4) Disqualify the firm for 1 year if 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 has not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations.

(5) Disqualify the firm for 6 months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as but not limited to the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

(6) Double the appropriate period of disqualification prescribed in paragraphs (e) (2) through (5) of this section as warranted by the evidence of violations if the same firm has once before been assigned a sanction.

(7) Send the firm a warning letter if violations are too limited to warrant a disqualification.

(f) *Criteria for civil money penalty.* FNS may impose a civil money penalty as a sanction in lieu of disqualification only when the firm subject to a disqualification is selling a substantial variety of staple food items, and the firm's disqualification would cause hardship to food stamp households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices. FNS may disqualify a store which meets the criteria for a civil money penalty if the store had previously been assigned a sanction. A civil money penalty may not be imposed in lieu of a permanent disqualification.

(g) *Amount of civil money penalty.* FNS shall determine the amount of the civil money penalty as follows:

(1) Determine the firm's average monthly redemptions of coupons for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.

(2) Multiply the average monthly redemption figure by 10 percent.

(3) Multiply the product arrived at in paragraph (g)(2) by the number of months for which the firm would have been disqualified under paragraph (e) of this section. The civil money penalty may not exceed \$10,000 for each violation.

(h) *Notifying the firm of civil money penalty.* A firm has 15 days from the date the FNS regional office notifies the firm in writing in which to pay the civil money penalty, or to notify the regional office in writing of its intent to pay in installments as specified by the regional office. The firm must present to FNS a collateral bond as specified in § 278.1(b)(4), within the same 15-day period. The civil money penalty must be paid in full by the end of the period for which the firm would have been disqualified. FNS shall:

(1) Disqualify the firm for the period determined to be appropriate under paragraph (e) of this section if the firm refuses to pay any of the civil money penalty;

(2) Disqualify the firm for a period corresponding to the unpaid part of the civil money penalty if the firm does not pay the civil money penalty in full or in installments as specified by the FNS regional office; or

(3) Disqualify the firm for the prescribed period if the firm does not present a collateral bond within the required 15 days. Any payment on a civil money penalty which have been received by FNS shall be returned to the firm. If the firm presents the required bond during the disqualification period, the civil money penalty may be reinstated for the duration of the disqualification period.

(1) *Review of determination.* The determination of the FNS regional office 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.

(j) *Delivery of notice.* The delivery by certified mail or personal service of any notice required of FNS by this part will constitute notice to the addressee of its contents.

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

(a) *Claims against violators.* FNS may establish and pursue claims against firms or other entities which have accepted or redeemed coupons in violation of the Food Stamp Act or this Part regardless of whether the firms or entities are authorized to accept food stamps. If a firm fails to pay a claim, FNS may collect the claim by offsetting against amounts due the firm on redemption of other coupons or by deducting the amounts due from bonds posted by firms in compliance with the provisions of § 278.1(b)(4). FNS shall deny an application for authorization or reauthorization by a firm which has failed to pay a claim.

(b) *Forfeiture of a collateral bond.* 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. If FNS determines that forfeiture 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 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 certified mail-return receipt requested to the firm and the bonding agent, of FNS' determination regarding forfeiture of all or a specified part of the collateral bond, and the reasons for the forfeiture;

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

(4) Advise the firm and the bonding agent that if payment of the current claim is not received directly from the firm, FNS shall obtain full payment through forfeiture of the bond;

(5) Proceed with collection on the bond for the amount forfeited if a request for review is not filed by the firm within the period established in § 279.5, 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 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 to satisfy a claim, the entire bond will be negotiated, and the remaining amount returned to the firm.

(c) *Coupons accepted without authorization.* (1) The FNS officer in charge may approve the redemption under § 278.4 of coupons accepted by firms before the receipt of an authorization card from FNS if the following conditions exist:

(i) The coupons were received in accordance with the requirements of this part governing acceptance of coupons except the requirement that the firm be authorized before acceptance;

(ii) The coupons were accepted by the firm in good faith, and without intent to circumvent this part; and

(iii) The firm receives authorization to participate in the program.

(2) Firms seeking approval to redeem coupons accepted without authorization shall present a written ap-

plication for approval to the local FNS field office. This application shall be accompanied by a written statement signed by the firm of all the facts about the acceptance of the coupons. The statement shall also include a certification that the coupons were accepted in good faith, and without any intent to circumvent this part.

(d) *Burned or mutilated coupons.* FNS may redeem burned or mutilated coupons only to the extent that the Bureau of Engraving and Printing of the United States Treasury Department can determine the value of the coupons. The firm presenting burned or mutilated coupons for redemption shall submit the coupons to the local FNS field office with a properly filled-out redemption certificate. In the section of the redemption certificate for entering the amount of coupons to be redeemed, an estimate of the value of the burned or mutilated coupons submitted for redemption shall be entered if the exact value of the coupons is unknown. The phrase "Deputy Administrator for Fiscal Management, FNS, USDA," should be entered in the section of the redemption certificate for entering the name and address of the insured financial institution or wholesaler.

(e) *Old series coupons.* FNS may redeem the old series food coupons issued in 50-cent, 2-dollar, and 5-dollar denominations when they are presented for redemption. Firms presenting the coupons for redemption shall submit the coupons to the local FNS field office with a properly completed redemption certificate and a written statement, signed by a representative of the firm, detailing the circumstances of the acceptance of the coupons.

(f) *Denials of claims brought by authorized firms against FNS.* If a claim brought by a firm against FNS under this section is denied in whole or in part, notification of this action shall be sent to the firm by certified mail or personal service. If the firm is aggrieved by this action, it may seek administrative review as provided in § 278.8.

(g) *Lost or stolen coupons.* FNS may not be held liable for claims from retail food stores, meal services, or wholesale food concerns for lost or stolen coupons.

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

(a) *Requesting review.* A food retailer or wholesaler aggrieved by administrative action under §§ 278.1, 278.6 or 278.7 may, within the period stated in § 279.5, file a written request for review of the administrative action with the review officer. 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. A disqualification for failure to pay a civil money penalty shall not be subject to an administrative review.

(b) *Addressing the request.* The request for review shall be filed with the Director, Administrative Review Division, U.S. Department of Agriculture, Food and Nutrition Service, Room 304, 3101 Park Center Drive, Alexandria, Virginia 22302.

(c) *Review procedure.* The procedure for food stamp reviews is published in Part 279 and is available upon request from the Director, Administrative Review Division.

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

(a) *Amendment No. 224.* Retail food stores shall have signs posted as required by this amendment no later than 30 days after distribution of the signs by FNS.

(b) *Amendment No. 257.* With the exception of the provisions in § 278.5 requiring redeeming financial institutions to verify that coupons are supported by redemption certificates, the revisions to Part 278 shall be effective September 14, 1984. Redeeming financial institutions shall begin verifying coupon deposits as required by § 278.5 in accordance with the schedule determined by the Federal Reserve Board. Insured financial institutions shall adhere to preexisting requirements for handling redemption certificates (at 7 CFR 278.5(a)) until their Federal Reserve District implements the procedures contained in this final rule. FNS shall not be liable for any losses of coupons in transit to Federal Reserve Banks or as a result of a burglary or robbery of an insured financial institution which occur after September 14, 1984.

**PART 279—ADMINISTRATIVE AND
JUDICIAL REVIEW—FOOD RETAIL-
ERS AND FOOD WHOLESALERS**

Subpart A—Administrative Review—General

Sec.

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Subpart C—Judicial Review

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**Subpart A—Administrative Review—
General**

§ 279.1 Scope and purpose.

Subpart A sets forth the procedure for the designation of the food stamp review officers and the authority and jurisdiction of those officers. Subpart B states the rules of procedure to be followed in the filing and disposition of the requests for review provided for in § 278.8. Subpart C concerns the rights of food retailers and food wholesalers to judicial review of the final determinations of the food stamp review officer.

§ 279.2 Food stamp review officer.

(a) *Designation of review officers.* The Administrator, FNS, shall designate one or more persons to act as food stamp review officers.

(b) *Assigning cases to review officers.*

The officers shall serve for periods which the Administrator, FNS, shall determine. Changes in designations and additional designations may be made from time to time at the discretion of the Administrator, FNS. When more than one food stamp review officer has been designated, requests for review will be assigned for handling to individual food stamp review officers by a person designated by the Administrator, FNS. The names of the food stamp review officers shall be on file in the Office of the Administrator, FNS.

§ 279.3 Authority and jurisdiction.

(a) *Jurisdiction.* A food stamp review officer shall act for the Department on requests for review filed by firms aggrieved by any of the following actions:

(1) Denial of an application or withdrawal of authorization to participate in the program under § 278.1;

(2) Disqualification from participation in the program or imposition of a civil money penalty under § 278.6;

(3) Denial of all or part of any claim asserted by a firm against FNS under § 278.7 (c), (d), or (e);

(4) Assertion of a claim under § 278.7(a); or

(5) Forfeiture of part or all of a collateral bond under § 278.1, if the request for review is made by the authorized firm. The food stamp review officer shall not accept requests for review made by a bonding company or agent.

(b) *Authority.* The determination of the food stamp review officer shall be the final administrative determination of the Department, subject, however, to judicial review under section 14 of the Food Stamp Act and Subpart C of this part.

§ 279.4 Rules of procedure.

Rules of procedure for the orderly filing and disposition of requests for review of firms submitted in accordance with § 279.5 are issued in Subpart B of this part. The Administrator, FNS, may later issue amendments to any rules of procedure which are appropriate.

Subpart B—Rules of Procedure

§ 279.5 Manner of filing requests for review.

(a) *Addressing requests for review.*

Requests for review submitted by firms shall be mailed to or filed with Director, Administrative Review Division, U.S. Department of Agriculture, Food and Nutrition Service, Room 304, 3101 Park Center Drive, Alexandria, Virginia 22302.

(b) *Content of requests.* Requests for review shall be in writing and shall state the name and business address of the firm involved, and the name, address and position with the firm of the person who signed the request. The request shall be signed by the owner of the firm, an officer or partner of the firm, or by counsel, and need not be under oath.

(c) *Time limit for requesting review.* A request for review shall be filed with the Director, Administrative Review Division, within 10 days of the date of delivery of the notice of the action for which review is requested. For purpose of determining whether a filing date is timely:

(1) The filing date shall be the postmark date of the request, or equivalent if the written request is filed by a means other than mail;

(2) In computing the 10 day period, the day of delivery of the notice of the action for which review is requested may not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. In that case, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. As used in this paragraph, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President or the Congress of the United States.

§ 279.6 Content of request for review.

(a) *Identifying the request.* Requests for review shall clearly identify the administrative action from which the review is requested. This identification shall include the date of the letter or other written communication notifying the firm of the administrative action, the name and title of the person who signed the letter or other communication, and whether the action under appeal concerns a denial of an application or a withdrawal of authorization to participate, a disqualification from further participation, a civil money penalty, or a denial of all or any part of a claim.

(b) *Supporting the request.* The request shall include information in support of the request showing the grounds on which review is being sought, or shall state that supporting information will be filed in writing at a later date. In the latter case, the review officer shall notify the firm of the date by which the information must be filed. The firm requesting

review may ask for an opportunity to appear before the review officer in person. However, any information submitted in person shall, if directed by the review officer, be put in writing by the firm and filed with the review officer within a period which the review officer shall specify.

§ 279.7 Action upon receipt of a request for review.

(a) *Holding action.* Upon receipt of a request for review of administrative action, the review officer shall notify the appropriate FNS regional office, in writing, of the action under review, and shall direct that the administrative action be held in abeyance until the review officer has made a determination.

If the administrative action in question involves a denial of approval of an application to participate in the program, a denial of a claim brought by a firm against FNS, or the forfeiture of a collateral bond, the review officer shall direct that the firm not be approved for participation, not be paid any part of the disputed claim, or not be reimbursed for any bond forfeiture, until the review officer has made a determination.

In any case, notice to the appropriate FNS regional office shall be accompanied by a copy of the request filed by the firm.

(b) *Filing supporting information.* If the request filed by the firm includes a request for an opportunity to file written information in support of its position at a later date, the food stamp review officer shall promptly notify the firm of the date by which the information shall be filed. If the firm fails to file any information in support of its position by the designated date, the information submitted with the original request shall be considered to be the only information submitted by the firm. In that case, if no information in support of the firm's position was submitted with the original request, the action of the appropriate FNS regional office shall be final.

(c) *Failure to meet with review officer.* If the firm filing the request for review asks to appear before the food stamp review officer in person, the review officer shall promptly notify the firm of the date, time and place set for the appearance. If the firm fails to appear before the food stamp review officer as specified, any written information timely submitted in accordance with this section shall be considered to be the only information submitted by the firm.

(d) *Basis for regional office determination.* The food stamp review officer shall require the appropriate FNS regional office to promptly submit, in writing, all information which was the basis for the administrative action for which the review has been requested.

§ 279.8 Determination of the food stamp review officer.

(a) *Basis for review officer determination.* The food stamp review officer shall make a determination based upon:

(1) The information submitted by the FNS regional office;

(2) Information submitted by the firm in support of its position; and

(3) Any additional information, in writing, obtained by the review officer from any other person having relevant information.

(b) *Review of denial of application or withdrawal of approval.* In the case of a request for review of a denial of an application or withdrawal of approval to participate in the program, the determination of the food stamp review officer shall sustain the action under review or shall direct that the firm be approved for participation.

(c) *Review of disqualification or civil money penalty.* In the case of a request for review of action disqualifying a firm from participation in the program or assessing a civil money penalty against the firm, the determination of the food stamp review officer shall sustain the action under review or specify a shorter period of disqualification or a reduced civil money penalty, direct that an official warning letter be issued to the firm in lieu of any period of disqualification or civil money penalty, or direct that no administrative action be taken. The food stamp review officer may change a disqualification of a firm selling a substantial variety of staple foods to a civil money penalty if the review officer receives information that the disqualification would cause a hardship to participating households because there are no other firms in the area selling as large a variety of staple food items at comparable prices, and this information was not available to the regional office when the regional office made its determination to disqualify the firm. In such a case, the food stamp review officer, before he/she makes a determination, shall provide the information to the regional office, which shall report to the food stamp review officer whether the new information warrants a civil money penalty in lieu of disqualification. If the food stamp review officer determines that a civil money penalty in lieu of a disqualification is warranted, the review officer shall determine the

amount of the penalty in accordance with § 278.6.

(d) *Review of denial of claim.* In the case of a request for review of a denial of all or part of a claim of a firm, the determination of the food stamp review officer shall sustain the action under review or shall specify the amount of the claim to be paid by FNS.

(e) *Notice of review officer determination.* The food stamp review officer shall notify the firm of the determination by certified mail. The notification shall be sent to the representative of the firm who filed the request for review.

(f) *Notifying the regional office.* The food stamp review officer shall send a copy of the notification to the firm to the appropriate FNS regional office, which shall take any action which may be necessary to comply with the determination of the review officer.

(g) *Effective date.* The determination of the food stamp review officer shall take effect 30 days after the date of delivery of the determination to the firm.

§ 279.9 Legal advice and extensions of time.

(a) *Advice from Office of the General Counsel.* If any request for review involves any doubtful questions of law, the food stamp review officer shall obtain the advice of the Department's Office of the General Counsel.

(b) *Extensions of time.* Upon timely written request to the food stamp review officer by the firm requesting the review, the food stamp review officer may grant extensions of time if, in the review officer's discretion, additional time is required for the firm to fully present information in support of its position. However, no extensions may be made in the time allowed for the filing of a request for review.

Subpart C—Judicial Review

§ 279.10 Judicial review.

(a) *Filing for judicial review.* A firm aggrieved by the determination of the food stamp review officer may obtain judicial review of the determination by filing a complaint against the United States in the U.S. district court for the district in which the owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. The complaint must be filed within 30 days after the date of delivery or service upon the firm of the notice of determination of the food stamp review officer in accordance with § 279.8(e); otherwise the determination shall be final.

(b) *Summons and complaint.* Service of the summons and complaint in any such action shall be made in accordance with the rules of civil procedure for the U.S. district courts. The copy of the summons and complaint required by the rules to be served on the officer or agency whose order is being attacked shall be sent by registered or certified mail to the person in charge of the applicable regional office of FNS.

(c) *Trial de novo.* The suit in the U.S. district court or in the State court, as the case may be, shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action. If the court determines that the administrative action is invalid, it shall enter a judgment or order which it determines is in accordance with the law and the evidence.

(d) *Stay of action.* Pending the judicial review, or any appeal from the judicial review, the administrative action under review shall remain in force, unless the firm makes application to

the court and, after a hearing on the action showing irreparable injury, the court temporarily stays the administrative action under review pending disposition of the de novo trial or an appeal from the trial.

Subpart D—Implementation

§ 279.11 Implementation of amendments relating to administrative and judicial review.

Amendment No. 257. The program change to § 279.3(a)(4) shall be effective September 14, 1984.