

**List of Subjects in 5 CFR Part 330**

Armed Forces reserves, Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the interim rule which was published at 64 FR 40505 on July 27, 1999, is adopted as final with the following changes:

**PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)**

1. The authority citation for part 330 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310, subpart I also issued under sec. 4432 of Pub. L. 102–484, 106 Stat. 2315; subpart K also issued under sec. 11203 of Pub. L. 105–33, 111 Stat. 738; subpart L also issued under sec. 1232 of Pub. L. 96–70, 93 Stat. 452.

2. Subpart D of part 330 is revised to read as follows:

**Subpart D—Positions Restricted to Preference Eligibles**

Sec.

- 330.401 Competitive examination.
- 330.402 Direct recruitment.
- 330.403 Noncompetitive actions.
- 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.
- 330.405 Agency placement assistance.
- 330.406 OPM placement assistance.
- 330.407 Eligibility for the Interagency Career Transition Assistance Plan.

**Subpart D—Positions Restricted to Preference Eligibles****§ 330.401 Competitive examination.**

In each entrance examination for the positions of custodian, elevator operator, guard, and messenger (referred to in this subpart as *restricted positions*), OPM shall restrict competition to preference eligibles as long as preference eligibles are available.

**§ 330.402 Direct recruitment.**

In direct recruitment by an agency under delegated authority, the agency shall fill each restricted position by the appointment of a preference eligible as long as preference eligibles are available.

**§ 330.403 Noncompetitive actions.**

An agency may fill a restricted position by the appointment by noncompetitive action of a

nonpreference eligible only when authorized by OPM.

**§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.**

An individual agency and OPM both have additional responsibilities when the agency decides, in accordance with the Office of Management and Budget (OMB) Circular A–76, to contract out the work of a preference eligible who holds a restricted position. These additional responsibilities are applicable if a preference eligible holds a competitive service position that is:

- (a) A restricted position as designated in 5 U.S.C. 3310 and § 330.401; and
- (b) In retention tenure group tenure I or II, as defined in § 351.501(b) (1) and (2) of this chapter.

**§ 330.405 Agency placement assistance.**

An agency that separates a preference eligible from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 must, consistent with § 330.602, advise the employee of the opportunity to participate in available career transition programs. The agency is also responsible for:

- (a) Applying OMB's policy directives on the preference eligibles' right of first refusal for positions that are contracted out to the private sector; and
- (b) Cooperating with State dislocated worker units, as designated or created under title III of the Job Training Partnership Act, to retrain displaced preference eligibles for other continuing positions.

**§ 330.406 OPM placement assistance.**

OPM's responsibilities include:

- (a) Assisting agencies in operating positive placement programs, such as the Career Transition Assistance Plan, which is authorized by subpart F of this part;
- (b) Providing interagency selection priority through the Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part; and
- (c) Encouraging cooperation between local Federal activities to assist these displaced preference eligibles in applying for other Federal positions, including positions with the U.S. Postal Service.

**§ 330.407 Eligibility for the Interagency Career Transition Assistance Plan.**

(a) A preference eligible who is separated from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 has interagency selection priority under the

Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part. Section 330.704 covers the general eligibility requirements for the Interagency Career Transition Assistance Plan.

(b) A preference eligible covered by this subpart is eligible for the Interagency Career Transition Assistance Plan for 2 years following separation by reduction in force from a restricted position.

3. In subpart G, § 330.704, paragraph (c)(7) is added to read as follows:

**§ 330.704 Eligibility.**

\* \* \* \* \*

(c) \* \* \*

(7) Two years after separation, for those employees eligible under § 330.407(b).

[FR Doc. 00–21948 Filed 8–29–00; 8:45 am]

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**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****7 CFR Part 278**

[Amendment No. 383]

RIN 0584–AC05

**Food Stamp Program: Retailer Application Processing**

**AGENCY:** Food and Nutrition Service, USDA

**ACTION:** Final Rule.

**SUMMARY:** This final rule implements a revised processing timeframe for retail food stores and wholesale food concerns that apply for authorization to accept and redeem food stamp benefits and clarifies verification requirements. This rule lengthens the application processing timeframe from the current period of 30 days to 45 days. In addition to lengthening the time allowed for processing applications, this rule requires specific documentation from an applicant to verify a firm's eligibility.

This final rule also incorporates two provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of (PRWORA) 1996, related to the collection of tax information from firms applying for authorization or from firms being reauthorized in the program and the written permission for the Food and Nutrition Service (FNS) to verify such information with appropriate agencies.

**EFFECTIVE DATE:** The amendments in this rule are effective September 29, 2000.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this final rule

should be addressed to Karen J. Walker, Chief, Redemption Management Branch, Benefit Redemption Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305-2418.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This final rule has been determined to be non-significant under Executive Order 12866.

##### Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice(s) to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

##### Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-602). Samuel Chambers, Jr. the Administrator of the FNS, has certified that this final rule will not have a significant economic impact on a substantial number of small entities. The rule would have almost no impact on the majority of applicant firms, since most applicants are legitimate food stores.

##### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the preamble of the proposed rule published on November 3, 1999 at 64 FR 59665 included a notice that announced our intent to submit revisions to the Office of Management and Budget relative to the information collection and associated burden hours imposed on retailers applying for participation in the FSP.

There are currently 3 forms approved under Office of Management and Budget

No. 0584-0008. Each of these forms are used by retailers, wholesalers and meal services, including certain group living arrangements, shelters for battered women and treatment and rehabilitation programs for drug addicts and alcoholics, to apply to the FNS for authorization to accept and redeem food stamp benefits. Form FNS-252; Food Stamp Application for Stores, Form 252-2; Application to Participate in the FSP for Communal Dining Facility/ Others; and Form FNS-252R; Food Stamp Application for Stores-Reauthorization. Section 9(c) of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2018 (c)) provides the necessary authorization(s) to collect the information contained in these forms.

Comments were solicited for 60 days on the proposed increase in burden hours. No comments were received on the information collection proposal. The burden estimates as currently approved under OMB No. 0584-0008 through October 31, 2003 are shown on the following chart:

| Title                | Number of respondents | Responses per respondents | Total annual responses | Burden hours per response | Total annual burden hours |
|----------------------|-----------------------|---------------------------|------------------------|---------------------------|---------------------------|
| Form FNS-252 .....   | 20,580                | 1                         | 20,580                 | .4583                     | 9,432                     |
| Form FNS-252-2 ..... | 1,673                 | 1                         | 1,673                  | .2000                     | 334                       |
| Form FNS-252R .....  | 40,368                | 1                         | 40,368                 | .1250                     | 5,046                     |
| Totals .....         | 62,149                |                           | 62,149                 |                           | 14,812                    |

##### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. These provisions are as follows: (1) For Program benefit recipients-State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State Agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out as 7 CFR 276.7 (for rules related to non-quality control liabilities) or part 284 (for rules related to quality control liabilities); (3) for Program retailers and wholesalers—administrative procedures issued

pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

##### Unfunded Mandate Analysis

Title II of the Unfunded Mandated Reform Act of 1995 (UMRA) Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates under the regulatory

provision of Title II of the UMRA for state, local and tribal governments or the private sector of \$100 million or more in any one year. Thus, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

##### Executive Order 13132

FNS has analyzed this final in accordance with the principles set forth in Executive Order 13132.

As such, FNS has determined that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism impact statement is not required.

##### Background

On November 3, 1999, the FNS published a proposed rule (64 FR 59665) to improve the processing of applications from firms desiring to become authorized to accept and redeem food stamp benefits. The proposed rule sets forth four changes, two discretionary and two reflecting additional authorities provided under the Act, PRWORA Pub. L. 104-193. The

discretionary changes increase the timeframe within which FNS must approve or reject a firm's application from 30 days to 45 days and specify the types of documents firms might be asked to provide. Such documentation may include, but is not limited to, State and local business licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation and invoice records. Section 833 of PRWORA authorized the Department to require that applicant firms sign a release form allowing FNS to verify the accuracy of information submitted by firms. This section also provided that FNS may request the submission of tax records. These changes to existing food stamp law were intended to prevent the authorization of firms which do not qualify for participation in the FSP. Additionally, as provided for in another final rule published on April 30, 1999 at 64 FR 23165, FNS has the authority to require that a retail food store or wholesale food concern be visited to confirm eligibility prior to authorization or reauthorization of such firm. The Department wishes to emphasize that applicant firms or firms applying for reauthorization must cooperate with the store visit requirements.

The public was provided a 60-day period to submit comments on the proposed provisions. One commentator, a major nonprofit retail trade association, submitted comments. The major concerns raised by the commentator are discussed below.

#### **Application Processing Timeframes**

The two major comments provided by the commentator relate to the subject of application processing. The first comment suggested that, when on-site visits are not required, the application process should be continued and completed within 30 days instead of the extended period of 45 days. Although this rule provides FNS with the authority to use the full 45-day time period when it is needed, authorizations of qualified firms are completed more quickly whenever possible to avoid or minimize delay. Therefore, determinations on stores not requiring an on-site visit will likely be completed in less than 45 days.

The second comment suggested that no on-site visits should be necessary for reputable retailers. The commentator defines "reputable" retailers as those that are well-known and familiar to the Agency. Further, the commentator states that authorization of well-known, reputable retailers within 30 days will ensure the broadest selection of retailers as quickly as possible. The Department

expects that most applicant retailers are honest, reputable business persons or entities. Applications from such individuals (or business entities) applicants will continue to be processed in a timely fashion. Visits to stores will be made as circumstances require in the best interests of the FSP.

#### **List of Subjects in 7 CFR Part 278**

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

Accordingly, 7 CFR Part 278 is amended as follows:

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

1. The authority citation for Part 278 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

2. In § 278.1:

- a. Paragraph (a) is amended by removing the last sentence and adding three new sentences in its place; and
- b. The introductory text of paragraph (b) is revised.

The revisions read as follows:

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

(a) *Application.* \* \* \* FNS shall approve or deny the application within 45 days of receipt of a completed application. A completed application means that all information (other than an on-site visit) that FNS deems necessary in order to make a determination on the firm's application has been received. This information includes, but is not limited to, a completed application form, all information and documentation from the applicant, as well as any needed third-party verification and documentation.

(b) *Determination of authorization.* An applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. Upon request, an applicant shall provide documentation to FNS to verify information on the application. Such information may include, but is not limited to, State and local business licenses, Social Security cards, drivers' licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation, sales records, invoice records and business-related tax records. Retail food stores and

wholesale food concerns and other entities eligible for authorization also shall be required to sign a release form which will authorize FNS to verify all relevant business related tax filings with appropriate agencies. In addition, they must obtain corroborating documentation from other sources as deemed necessary to ensure the legitimacy of applicant firms, as well as the accuracy of information provided by the stores and concerns. Failure to comply with any request for information or failure to sign a written release form shall result in denial of the application for authorization or withdrawal of a firm or concern from the program. In determining whether a firm qualifies for authorization, FNS shall consider all of the following:

\* \* \* \* \*

3. In § 278.9, a new paragraph (m) is added to read as follows:

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

\* \* \* \* \*

(m) *Amendment No. 383.* The program changes made to § 278.1 by this amendment are effective September 29, 2000.

Dated: July 26, 2000.

**Samuel Chambers, Jr.,**

*Administrator, Food and Nutrition Service.*

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## **SECURITIES AND EXCHANGE COMMISSION**

### **17 CFR Part 250**

#### **General Rules and Regulations, Public Utility Holding Company Act of 1935**

#### *CFR Correction*

In Title 17 of the Code of Federal Regulations, Part 240 to end, revised as of April 1, 2000, on page 529, in §250.87 paragraph (b), third line down, "(b)" is removed and "(a)" is added in its place.

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