

to the requirements of sections 202 and 205 of the UMRA.

Background

This rule revises Food Stamp Program regulations affecting the administrative review process for retail food stores and wholesale food concerns participating in the program. The revisions streamline administrative review rules by eliminating repetitive and unnecessary provisions and consolidating other provisions in 7 CFR parts 278 and 279. These revisions do not change the rights of aggrieved food retailers and wholesale food concerns to request and obtain an administrative review from FNS. This rule also makes technical corrections involving regulatory cites listed in § 278.1.

Only one trade association submitted comments; no other comments were received. One of their comments dealt with program compliance that is beyond the scope of this rule and another comment expressed support for most revisions in the rule as being “helpful changes that clarify the regulations and the program.” Their remaining comments relate to the elimination of in-person meetings between aggrieved retailers and administrative review staff.

The commenter questioned the “not significant” designation of the rule under Executive Order 12866 in the preamble of the proposed rule and questioned the legality of not submitting it to the Office of Management and Budget (OMB) for review. The Department submitted a workplan with a detailed outline of the proposed rule to OMB for review. OMB designated the proposed rule as “not significant” based on that information, which is standard procedure, and no further review of the proposed rule by them was required.

The commenter also questioned the Department’s determination under the Regulatory Flexibility Act in the preamble that the rule will not have a significant impact on a substantial number of small businesses. The commenter suggested that eliminating in-person meetings would result in “more small businesses being barred from the program.” As stated previously, administrative reviews are based on the facts of the case, not on in-person meetings, and eliminating them will not affect the outcome of reviews; therefore, the Department does not believe this rule will have a significant impact on a substantial number of small businesses.

Content of Request—7 CFR 279.6

Content of request for review: Current regulations at 7 CFR 279.6 include language regarding requests for in-

person meetings with administrative review officers. However, there are only three locations where such meetings occur and most firms that request such meetings must travel long distances to participate. The Department believes the travel cost disparity between those retailers located near review offices and those located a long distance away places many retailers at a disadvantage.

The commenter opposed the elimination of in-person meetings feeling it will disadvantage retailers who wish to explain their position in person. The Department makes administrative review determinations based on the documented facts of the case, and whether or not aggrieved retailers meet with review staff has no bearing on the outcome. Firms can and do talk with reviewers by phone as a follow-up to written documentation, but review staff base their determinations on the facts of the case, not on a meeting or phone conversation. Even though very few firms request in-person meetings, the Department believes that offering them gives the impression that stores not able to avail themselves of the meetings are disadvantaged. Therefore, the rule eliminates these meetings. Aggrieved retailers are still able to participate in conference calls with administrative review staff.

Implementation

Provisions of this rulemaking will be implemented 60 days after publication of the rule.

List of Subjects

7 CFR Part 278

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

7 CFR Part 279

Administrative practice and procedure, Food stamps, General line—wholesalers, Groceries, Groceries—retail.

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

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

Authority: 7 U.S.C. 2011–2036.

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

§ 278.1 [Amended]

■ 2. In § 278.1:

■ a. Paragraph (k)(1) is amended by removing the reference “(g) or (h)” and

adding in its place the reference “(g), (h) or (i)”;

■ b. Paragraph (k)(2) is amended by removing in the first sentence the words “the Food Stamp Act of 1977, as amended;” and adding in its place the words “paragraph (b)(1)(i) of this section;” and by removing the reference “(b)(1)(iv)” and adding in its place the reference “(b)(1)(vi)”;

■ c. Paragraph (l)(1)(ii) is amended by removing the reference “(g), or (h)” and adding in its place the reference “(g), (h) or (i)”;

■ d. Paragraph (l)(1)(iii) is amended by removing the words “the Food Stamp Act of 1977, as amended,” and adding in its place the words “paragraph (b)(1)(i) of this section;” and by removing the reference “(b)(1)(iv)” and adding in its place the reference “(b)(1)(vi)”.

■ e. The reference “§ 279.5” is removed in paragraph (l)(2) and the reference “part 279” is added in its place; and

■ f. The reference “§ 278.8” is removed in paragraph (p) and the reference “part 279” is added in its place.

§ 278.6 [Amended]

■ 3. In § 278.6, the reference “§ 279.5” is removed wherever it appears in paragraphs (b), (c) and (n), and the reference “part 279” is added in its place.

§ 278.7 [Amended]

■ 4. In § 278.7, the reference “§ 278.8” is removed in paragraph (f) and the reference “part 279” is added in its place.

§ 278.8 [Removed and Reserved]

■ 5. § 278.8 is removed and reserved.

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

■ 6. In part 279:

■ a. The words “administrative review officer” are removed wherever they appear and the words “designated reviewer” are added in their place; and

■ b. The words “review officer” are removed wherever they appear and the words “designated reviewer” are added in their place.

■ 7. Subpart A is further amended by removing the word “—General” in the Subpart heading.

■ 8. Revise § 279.1 to read as follows:

§ 279.1 Jurisdiction and authority.

A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 of this chapter may, within a period stated in this Part, file a written request for review of the administrative action with FNS. On receipt of the request for