

# Proposed Rules

Federal Register

Vol. 72, No. 48

Tuesday, March 13, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 278 and 279

RIN 0584-AD44

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

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

**ACTION:** Proposed rule.

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

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

**DATES:** Comments must be received on or before May 14, 2007 to be assured of consideration.

**ADDRESSES:** The Food and Nutrition Service invites interested persons to submit comments on the proposed rule. Comments may be sent to Andrea Gordon, Chief, Retailer Management Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 406, Alexandria, VA 22302; FAX number (703) 305-1863; E-mail: [BRDHQ-WEB@fns.usda.gov](mailto:BRDHQ-WEB@fns.usda.gov). Comments may also be sent through the Federal e-Rulemaking Portal by going to <http://www.regulations.gov>. Follow the online instructions for submitting comments. All submitted comments should refer to the title of this proposal.

**Read Comments:** All written comments will be open for public inspection at the office of the Food and Nutrition Service during business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 406, Alexandria, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Andrea Gordon at (703) 305-2456.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

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

##### Regulatory Impact Analysis

###### Need for Action

The proposed regulation would reduce and better target the current bonding and letter of credit (LOC) requirements that are imposed on authorized retailers and wholesalers who violate Food Stamp Program rules. It would: (1) Eliminate the bond requirements for retailers who have never previously been disqualified and who are disqualified for six months or incur a civil money penalty in lieu of a six month disqualification; and, (2) limit the bond requirement to five years for retailers whose disqualification or civil money penalty exceeds six months. Retailers who have previously been disqualified for any length of time or been issued a civil money penalty and who subsequently become disqualified again will be subject to the five year bonding requirement, even if the subsequent disqualification is for a

period of six months or less or the civil money penalty imposed is in lieu of a disqualification for six months or less.

##### Benefits

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

##### Costs

These provisions are expected to produce a small dollar loss to the Government of \$14,793 in FY 2006 and less than \$75,000 over the five-year period FY 2006 through FY 2010.

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

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

The proposed rule change would eliminate the need for bonds and letters of credit among retailers who are disqualified for six months or who pay a civil money penalty in lieu of a six month disqualification. Approximately 44 percent of retailer violations are associated with a six month period of disqualification. A majority of these involve bonds with a face value of

\$1,000. Based on an average of 10.8 bond or letter of credit forfeitures per year among this group, the potential loss of revenue to the Government over five years is \$74,000, determined as follows:

- 44% of 3,070 retailers currently in the Program who have prior violations that are associated with a 6 month disqualification period, been reinstated and submitted a bond or LOC = 1,351 retailers.

- <1% (.008) of 1,351 retailers = 10.8 who commit a second violation that results in bond forfeiture or letter of credit draw down.

- 86.5% of 10.8 = 9.35 retailers with bonds/LOCs that have a face value of \$1,000 and 13.5% = 1.45 with bonds/LOCs that have an average face value of \$3,754.

- The annual forfeiture amount is equal to  $(9.35 \times \$1000) \$9350 + (1.45 \times \$3754) \$5,443$  or \$14,793.

- $\$14,793 \times 5 \text{ years} = \$73,965$ .

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

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

- 386 is the average number of retailers who are disqualified for six months or pay a civil money penalty in lieu of a six month disqualification per year.

- These 386 retailers pay an average cost of \$668 per bond or LOC = \$257,848 each year;

- $\$257,848 \text{ per year} \times \text{five years} = \$1,289,240$ .

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

- 3,070 retailers who previously have been disqualified or paid a civil money penalty in lieu of disqualification and been reinstated.

- 3,070 retailers who pay an estimated annual renewal fee for bond/LOC of \$100 = \$307,000 for first year (2006);

- $3,070 \text{ retailers} \times 6.1\% = 187 \text{ stores}$  who will withdraw or otherwise leave the Program. In 2007, 3070 stores – 187 stores = 2,883 stores who pay \$100 renewal fee = \$288,300.

- In 2008,  $2,883 - 187 \text{ stores} = 2,696 \text{ retailers} \times \$100 \text{ renewal fee} = \$269,600$ .

- In 2009,  $2,696 - 187 \text{ stores} = 2,509 \text{ retailers} \times \$100 \text{ renewal fee} = \$250,900$ .

- In 2010,  $2,509 - 187 \text{ stores} = 2,322 \text{ retailers} \times \$100 \text{ renewal fee} = \$232,200$ .

- Cost over five years =  $\$307,000 + \$288,300 + \$269,600 + \$250,900 + \$232,200 = \$1,348,000$ .

Finally, retailers who, during 2005, (1) Have a previous disqualification(s) or civil money penalty in lieu of disqualification and receive an additional disqualification penalty of any length or (2) are disqualified for more than six months or pay a civil money penalty in lieu of a disqualification period of more than six months will have fulfilled their bond/LOC requirement in 2010. During this five year period they will continue to pay the fees associated with the annual renewal of such bonds/LOCs. For each year beyond 2010, the number of retailers who no longer pay renewal fees should increase by the number of stores who fit into one of the two categories described above and remains in the Food Stamp Program. For example:

In 2011,  $2,040 + 491 \text{ retailers} - 6.1\%$  of them who leave the Program OR 2377 retailers will no longer incur the average \$100 cost of bond renewal fees. The total cost associated with this change in 2011 is \$237,700.

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

From 1998 to 2005, 2,065 stores were facing a permanent disqualification from participation in the Food Stamp Program because of indications that trafficking violations were occurring in those establishments. Two hundred forty-four of those stores provided documentation proving that in fact credit violations were taking place. That is equal to an average of 30.5 stores per year or 11.8% of all the stores facing a permanent disqualification each year between 1998 and 2005.

Under the proposed regulation, these stores would instead be given a one year disqualification and required to submit a bond or letter of credit for five years, upon return to the Food Stamp Program.

Based on historical data, there would be an average out-of-pocket cost to each of these retailers of \$668. Total cost to retailers for this provision is projected to be \$20,374 per year and \$101,870 over five years.

This out-of-pocket cost is, however, offset by the opportunity for these businesses to resume the food stamp portion of their sales after the one year disqualification period.

### Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Nancy Montanez Johner, Under Secretary, of the Food, Nutrition and Consumer Services has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule will impact FNS field offices and all participating retailers and wholesalers who have violated the Food Stamp Program rules. Currently, all violating retailers and wholesalers who have been imposed a specified period of time to be removed from the program or assessed a civil money penalty in lieu of such removal are required to submit a collateral bond or irrevocable letter of credit as condition of continued participation in the Food Stamp Program. The collateral bond or irrevocable letter of credit must be periodically renewed and valid at all times during the period in which the firm is authorized to participate in the program. This rule will limit the requirement to five years, benefiting the retailers and wholesalers who are affected by this requirement. Also, in this rule, a one year removal from participation in the program will be imposed against retailers and wholesalers that accept food stamp benefits in payment for items sold to a household on credit. It is estimated that an average of 30.5 stores per year or 11.8% of all the stores facing a permanent disqualification will be imposed a one year disqualification because of committing credit violations.

### Unfunded Mandates Reform Act

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

alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Executive Order 12372**

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

#### **Executive Order 13132, Federalism**

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

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless specified in the **DATES** section of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

#### **Civil Rights Impact Analysis**

FNS has reviewed this proposed rule in accordance with Departmental

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

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

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

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

#### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal

agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

#### **E-Government Act Compliance**

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

#### **Background**

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

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

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

written policy to allow firms to submit irrevocable letters of credit in lieu of collateral bonds.

In accordance with Section 12(d) of the Act, the Secretary has the authority to prescribe the amount, terms, and conditions of this statutory requirement. Thus, the proposed rule would do the following: (1) Amend the regulation to provide for irrevocable letters of credit as an acceptable instrument in lieu of collateral bonds; (2) Eliminate the bond requirement for retailers who have never previously been disqualified and who are disqualified for a period of six months or have a civil money penalty imposed in lieu of a six month disqualification period; and (3) Limit the bonding requirement to five years for retailers who are disqualified for a specified period of time greater than six months or imposed a civil money penalty in lieu of a specified period of time greater than six months. Retailers who have previously been disqualified for any length of time or been issued a civil money penalty and who subsequently become disqualified again will be subject to the five year bonding requirement, even if the subsequent disqualification is for a period of six months or less or the civil money penalty imposed is in lieu of a disqualification for six months or less.

Lastly, the proposed rule would also establish a specified period of time for firms to be removed from the program (i.e., one year) for accepting food stamp benefits in payment for items on credit. Section 278.2(f) of the Food Stamp Program regulations stipulates that retail food stores may not accept food stamp benefits in payment for any eligible food sold to food stamp households on credit. We have seen an increase in this type of violative activity since the implementation of the electronic benefit transfer (EBT) system. As a result, we issued clarification of FNS' policy regarding such activity (Benefit Redemption Division Policy Memorandum #98-01, entitled, Handling Electronic Benefit Transfer Cases Involving Retailers Who Admit to Accepting Food Stamp Benefits for Payment on Credit Accounts). We are now proposing to establish by regulation a specific one year disqualification for stores that engage in credit transactions.

List of Subjects

7 CFR Part 278

Food Stamps, Grant programs—social programs, Penalties.

7 CFR Part 279

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

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

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

Authority: 7 U.S.C. 2011–2036.

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

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

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

\* \* \* \* \*

(b) \* \* \*

(4) The submission of collateral bonds or irrevocable letters of credit for firms with previous sanctions.

(i) If the applicant firm has been sanctioned for violations of this part, by withdrawal, or disqualification for a period of more than six months, or by a civil money penalty in lieu of a disqualification period of more than six months, or if the applicant firm has been previously sanctioned for a violation and incurs a subsequent sanction regardless of the length of the disqualification period, the FNS officer-in-charge shall, as a condition of future authorization, require the applicant to present a collateral bond or irrevocable letter of credit that meets the following conditions:

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

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

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

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

the collateral bond or irrevocable letter of credit whichever amount is greater;

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

(F) The collateral bond or irrevocable letter of credit shall remain in the custody of 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 or irrevocable letter of credit shall not eliminate or reduce a firm's obligation to pay in full any civil money penalty or previously determined fiscal claim which may have been assessed against the firm by FNS prior to the time the bond or letter of credit was required by FNS, and furnished by the firm. A firm which has been assessed a civil money penalty shall pay FNS as required, any subsequent fiscal claim asserted by FNS. In such cases a collateral bond or irrevocable letter of credit shall be furnished to FNS with the payment, or a schedule of intended payments, of the civil money penalty. A buyer or transferee shall not, as a result of the transfer or purchase of a disqualified firm, be required to furnish a bond or letter of credit prior to authorization.

\* \* \* \* \*

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

§ 278.2 Participation of retail food stores.

\* \* \* \* \*

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

\* \* \* \* \*

4. In § 278.6:

- a. Revise paragraph (e)(4); and
b. Amend paragraph (h) by adding the words "or irrevocable letter of credit" after the word "bond" wherever it appears.

The revision reads as follows:

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

\* \* \* \* \*

(e) \* \* \*

(4) Disqualify the firm for 1 year if:

(i) It is to be the first sanction for the firm and the ownership or management personnel of the firm have committed

violations such as the sale of common nonfood items in amounts normally found in a shopping basket, and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

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

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

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

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

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

(6) Upon the expiration of time permitted for the filing of a request for administrative and/or judicial review, deposit the bond or irrevocable letter of

credit in a Federal Reserve Bank account or in the Treasury Account, General. If FNS requires only a portion of the face value of the bond or irrevocable letter of credit to satisfy a claim, the entire bond or irrevocable letter of credit will be negotiated, and the remaining amount returned to the firm.

\* \* \* \* \*

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

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

**§ 279.1 Jurisdiction and authority.**

\* \* \* \* \*

(a) \* \* \*

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

\* \* \* \* \*

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

**§ 279.4 Action upon receipt of a request for review.**

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

\* \* \* \* \*

Dated: March 1, 2007.

**Nancy Montanez Johner,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. E7-4520 Filed 3-12-07; 8:45 am]

**BILLING CODE 3410-30-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2007-27496; Directorate Identifier 2005-SW-37-AD]

**RIN 2120-AA64**

**Airworthiness Directives; Bell Helicopter Textron, Inc. Model 205A, 205A-1, 205B, 212, 412, 412CF, and 412EP Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes superseding an existing airworthiness directive (AD) for the specified Bell Helicopter Textron, Inc. (Bell) helicopters. That AD currently requires inspecting each affected tail rotor blade (blade) forward tip weight retention block (tip block) and the aft tip closure (tip closure) for adhesive bond voids, and removing any blade with an excessive void from service. That AD also requires modifying certain blades by installing shear pins and tip closure rivets. This action would contain the same requirements but would expand the applicability to include other part and serial-numbered blades. This AD would also clarify the requirement to re-identify the modified blade by adding "FM" after the part number and would require dynamically balancing the tail rotor. The existing AD was prompted by five occurrences of missing tip blocks or tip closures resulting in minor to substantial damage. This proposal was prompted by the determination that the AD should apply to other affected part and serial-numbered blades. The actions specified by this proposed AD are intended to prevent loss of a tip block or tip closure, loss of a blade, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before May 14, 2007.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD:

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically;

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically;

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400