

**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****7 CFR Part 249**

RIN 0584-AD35

**Senior Farmers' Market Nutrition Program Regulations****AGENCY:** Food and Nutrition Service (FNS), USDA.**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule implements the provision of the Farm Security and Rural Investment Act of 2002 that gives the Department of Agriculture the authority to promulgate regulations for the operation and administration of the Senior Farmers' Market Nutrition Program (SFMNP). The purposes of the SFMNP are to provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agriculture programs to low-income seniors; to increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and community supported agriculture programs; and to develop or aid in the development of new and additional farmers' markets, roadside stands, and community supported agriculture programs.

**DATES:** To be assured of consideration, comments on this proposed rule must be received by the Food and Nutrition Service on or before July 25, 2005.

**ADDRESSES:** The Food and Nutrition Service invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Mail:* Send comments to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305-2746.

- *Web site:* Go to <http://www.fns.usda.gov/wic>. Follow the online instructions for submitting comments through the link at the Supplemental Food Programs Division Web site.

- *E-Mail:* Send comments to [WICHQ-SFPD@fns.usda.gov](mailto:WICHQ-SFPD@fns.usda.gov). Include "Docket ID Number 0584-AD35, SFMNP Proposed Rule," in the subject line of the message.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. All written submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FNS may also make the comments publicly available by posting a copy of all comments on the FNS Web site at <http://www.fns.usda.gov/wic>.

**FOR FURTHER INFORMATION CONTACT:**

Debra Whitford or Donna Hines, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia, 22302, (703) 305-2746, OR

*Debbie.Whitford@fns.usda.gov*, or *Donna.Hines@fns.usda.gov*.

**SUPPLEMENTARY INFORMATION:****Executive Order 12866**

This rule has been determined to be Significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

**Regulatory Impact Analysis**

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Economic Impact Analysis was developed for the SFMNP Proposed Rule. A complete copy of the Impact Analysis is available by contacting FNS as indicated in the **ADDRESSES** section of this Preamble.

In summary, this analysis concludes that the proposed rule to establish the SFMNP is not likely to have a significant impact on the nutritional health of seniors, nor is it likely to have a substantial impact on the market for agricultural commodities, farmers, farmers' markets, community supported agriculture programs (CSAs), or roadside stands without additional program funding. While some alternatives to the proposed rule (set forth in the complete Regulatory Economic Impact Analysis) may increase the number of eligible seniors served or the number of SFMNP recipients, the SFMNP at its authorized funding level will still have minimal impact on the constituencies the program intends to serve. The current fiscal situation of the States further impedes possible program growth, as States may be unable to contribute their own funds for expansion. However, analysis undertaken by FNS indicates

that the pilot program has been beneficial in areas where the SFMNP now operates. The proposed rule does allow for future growth, should additional funding be made available.

**Regulatory Flexibility Act**

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Eric Bost, Under Secretary of Agriculture for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. The provisions of this proposed rulemaking are applicable to all State and local agencies, farmers, farmers' markets, roadside stands, and community supported agriculture programs, regardless of their size or of the volume of SFMNP business they conduct.

**Public Law 104-4, Unfunded Mandate Reform Act of 1995 (UMRA)**

Title II of the UMRA 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, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by 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 FNS 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 proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

**Executive Order 12372**

The Senior Farmers' Market Nutrition Program (SFMNP) is listed in the Catalog of Federal Domestic Assistance under No. 10.576. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115), this program is included in the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

**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 that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Dates paragraph of the preamble of the final rule, which will be promulgated once the comment period for this proposed rule has closed. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted. In the Senior Farmers' Market Nutrition Program, the administrative procedures are as follows: (1) Local agencies, farmers, farmers' markets, roadside stands, and community supported agriculture programs—State agency hearing procedures issued pursuant to 7 CFR 249.16; (2) Applicants and recipients—State agency hearing procedures pursuant to 7 CFR 249.16; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 249.17—administrative appeal in accordance with 7 CFR 249.16, and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

**Federalism Summary Impact Statement**

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. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

**Civil Rights Impact Analysis**

FNS has reviewed this rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of SFMNP recipients,

FNS has determined that none of the provisions in this rule have a discernible impact on minorities, women, or persons with disabilities that are likely to result in inequitable treatment. FNS specifically prohibits the State agencies, and their cooperators, that administer the SFMNP from engaging in actions that discriminate against any individual in any of the protected classes (see proposed § 249.7 for the nondiscrimination policy in the SFMNP). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the SFMNP regulations as proposed at 7 CFR 249.7.

**Paperwork Reduction Act (60-Day Notice)**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public 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 proposed rule contains information collections that are subject to review and approval by OMB; therefore, FNS is submitting for public comment the new information collection burden that would result from adoption of the proposals in the rule.

Comments on this proposed rule must be received by July 25, 2005.

Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection, please contact Debra R. Whitford at the above address.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

*Title:* Senior Farmers' Market Nutrition Program.

*OMB Number:* To be assigned.

*Expiration Date:* Not applicable.

*Type of Request:* New information collection (new program).

*Abstract:* This proposed rule implements Section 4402 of the Farm Security and Rural Investment Act of 2002 that gives the Department of Agriculture the authority to promulgate regulations for the operation and administration of the Senior Farmers' Market Nutrition Program (SFMNP). The purposes of the SFMNP are to provide fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agriculture programs to low-income seniors; to increase the consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and community supported agriculture programs, and to develop or aid in the development of new and additional farmers' markets, roadside stands, and community supported agriculture programs.

**1. Reporting**

*Estimated Number of Respondents:* 904,088.

Respondents include State agencies, local agencies, recipients, and authorized SFMNP outlets (farmers, farmers' markets, roadside stands, and community supported agriculture (CSA) programs).

*Estimated Average Number of Responses per Respondent:* 1.

*Estimated Time per Response:* .26 hours.

*Estimated Total Annual Burden on Respondents:* 235,153 hours.

**2. Recordkeeping**

*Estimated Number of Recordkeepings:* 282.

Respondents include State agencies, local agencies, SFMNP recipients, and authorized SFMNP outlets (farmers, farmers' markets, roadside stands, and community supported agriculture (CSA) programs).

*Estimated Average Number of Recordkeepings per Respondent:* 1.

*Estimated Time Per Recordkeeping:* 8 hours.

*Estimated Total Annual Burden on Respondents:* 2,256 hours.

### 3. Total Annual Reporting/Recordkeeping Requirements

237,409 hours.

#### *Government Paperwork Elimination Act Compliance*

FNS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

#### **Background**

##### *SFMNP—FY 2001*

USDA's Commodity Credit Corporation (CCC) established the Senior Farmers' Market Nutrition Program (SFMNP) in November 2000 as a pilot program (65 FR 65825, Nov. 2, 2000). Under the program, CCC made grants to State agencies and Indian tribal governments on a competitive basis. The grants were to be used to provide low-income seniors with coupons they could exchange for eligible foods at farmers' markets, roadside stands, and community supported agriculture programs. Eligible foods were defined as fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs. Grant funds could be used only to support the costs of the foods provided under the program; no administrative funding was available. Because of its prior experience and expertise in the administration of the WIC Farmers' Market Nutrition Program (a similar program that provides farmers' market coupons to participants in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC)), the Food and Nutrition Service evaluated the grant applications and administered the SFMNP on behalf of CCC in its pilot year.

From the inception of the program, the purposes of the SFMNP have been to: (1) Provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agriculture programs to low-income seniors; (2) increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and community supported agriculture programs; and (3) develop or aid in the development of new and additional farmers' markets, roadside stands, and community supported agriculture programs.

A total of \$15 million was made available for the pilot SFMNP grants for a one-year period ending December 31, 2001. The opportunity to submit grant applications for the SFMNP pilot was announced as a **Federal Register** Notice on November 2, 2000 (65 FR 65825). This Notice set out the basic requirements for the grant application as well as the evaluation criteria against which each application would be reviewed and scored. An evaluation panel made up of staff from both CCC and FNS reviewed the applications that were received. The initial competitive grant process resulted in awards to 30 States, 5 Indian tribal governments, and the District of Columbia. These grants ranged in amounts from \$9,000 to \$1.2 million.

Funds for the pilot program in Fiscal Year (FY) 2001 were made available pursuant to the CCC Charter Act ("the Act"). Section 5(e) of the Act (15 U.S.C. 714c(e)) authorizes CCC to use its resources to "[i]ncrease the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities."

During the 2001 market/harvest season, nearly 420,000 low-income seniors received coupons that were accepted by 8,500 farmers through 1,200 farmers' markets, nearly 900 roadside stands, and 49 community supported agriculture programs. For the pilot year, individual coupon allotments ranged from \$10 to \$540, with a median value of \$40 per recipient per season. Close to 85 percent of the total grant funds awarded were expended for the purchase of eligible fruits, vegetables, and herbs.

##### *SFMNP—FY 2002 Through 2004*

The Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2002 (Pub. L. 107-76) provided \$10 million from the Department's Commodity Assistance Program account to continue the SFMNP for a second year. An additional \$5 million was provided from CCC funds by Section 4402 of the Farm Security and Rural Investment Act of 2002 (the Farm Bill), Pub. L. 107-171 (7 U.S.C. 3007). The Farm Bill also authorized the SFMNP for FY 2003 through FY 2007, and provided funding at \$15 million for each of those years (7 U.S.C. 3007(a)). Section 4402 of the Farm Bill also gave the Department the authority to develop regulations deemed necessary for the SFMNP (7 U.S.C. 3007(c)).

FNS announced the opportunity to apply for SFMNP funding during FY 2002 on December 13, 2001. A competitive process was once again used to review and evaluate applications that were received, and 32 States, 3 Indian tribal governments, and the District of Columbia were awarded SFMNP grants. As in FY 2001, State agencies were responsible for all administrative expenses associated with the operation and administration of the SFMNP; the grant awards could only be used for food costs. In FY 2002, just over 500,000 individuals received SFMNP coupons for produce made available from approximately 10,000 farmers at 1,500 farmers' markets, 1,000 roadside stands, and 200 community supported agriculture programs. Just over 89 percent of the SFMNP funds awarded were expended during the FY 2002 grant period, which ended on December 31, 2002.

While still administered as a competitive grant for FY 2003, the SFMNP grant application process was modified slightly. State agencies that received SFMNP grants in FY 2002 ("current grantees") were not required to compete against "new" State agencies, *i.e.*, State agencies that had not previously received an SFMNP grant. Current grantees were guaranteed funding in FY 2003 equal to the amount of SFMNP funds they spent in FY 2002; proposals for funds over and above that level were reviewed against a specific set of evaluation criteria, separately from the criteria addressed in grant applications from new State agencies. Once FNS had met its commitment to the FY 2002 SFMNP grantees at the level of their prior-year expenditures, remaining funds were made available for allocation to new SFMNP State agencies and to current State agencies to support expansion or growth in their present program models. FNS was able to award grants to 4 new State agencies, as well as to 14 current grantees for expansion of their existing programs. Participation in the SFMNP for FY 2003 exceeded the FY 2002 totals by a factor of more than 30 percent, serving over 800,000 senior recipients, with a redemption rate (percentage of coupons actually used to purchase eligible foods based on the total number of coupons issued to eligible recipients) of approximately 90 percent.

The process used to award SFMNP grants in FY 2004 was the same as that used in FY 2003: Grant applications were solicited from State agencies who wished to receive funds above their FY 2003 expenditure levels and from State agencies who were interested in initiating the SFMNP. Again, two

separate panels reviewed and scored the applications. Once FNS had met its commitment to the FY 2003 SFMNP grantees at the level of their prior-year expenditures, remaining funds were made available for allocation to new SFMNP State agencies and to current State agencies to support expansion or growth in their present program models. In FY 2004, FNS was able to award grants to 7 new State agencies, as well as to 15 current grantees for expansion of their existing programs. Consistent with the pattern that is developing as the SFMNP matures, participation is expected to increase slightly over the FY 2003 level, and the redemption rate is expected to remain at between 85 and 90 percent.

#### *Consistency With the WIC Farmers' Market Nutrition Program (FMNP)*

USDA's Food and Nutrition Service has administered the FMNP since its inception as a pilot program in 1988, through its transition to an authorized independent program when the WIC Farmers' Market Nutrition Act of 1992 (Pub. L. 102-314) amended Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)). The FMNP provides coupons to eligible WIC participants (or to individuals on WIC waiting lists) for the purchase of fresh, nutritious, unprepared fruits, vegetables and herbs at farmers' markets and, at the State agency's option, at roadside stands or farmstands. Many of the State agencies that have received SFMNP grant awards since FY 2001 were already established as administering agencies for the FMNP in that State. Based on the similar natures of the FMNP and the SFMNP, and in an effort to create consistency between the two programs, this proposed rule is constructed on the framework of the FMNP regulations, for which the final rule was published in the **Federal Register** on September 27, 1995 (60 FR 49739).

#### *Difference Between SFMNP Competitive Grants and the SFMNP as an Established Nutrition Assistance Program*

As proposed, the SFMNP is very similar to the programs that have been operated by State agency grantees through the competitive grant program since the program's inception in FY 2001. For example, State agencies will continue to have some flexibility in the basic design of their programs. However, several significant modifications have been made to the SFMNP that must be implemented by all participating State agencies in order to receive future SFMNP grants. These

modifications have been designed to achieve greater consistency within the SFMNP on a nationwide basis, and fall into 5 major categories:

1. State agency eligibility;
2. Recipient eligibility;
3. Benefit level;
4. Funding; and
5. Community supported agriculture programs.

Following is a discussion of each section of the proposed rule, in the order presented; the major provisions set forth in each section, including the specific issues noted above; and the Department's rationale for each provision.

#### *1. General Purpose and Scope (§ 249.1)*

While the essential purpose of the SFMNP is very similar to that of the FMNP, it differs from the FMNP purpose in one significant aspect: it includes community supported agriculture (CSA) programs as allowable outlets for accepting SFMNP coupons or funds. CSA programs, while fairly familiar to the small farmer and sustainable agriculture communities, have not previously been associated with FNS programs. Thus, the purposes and scope of the SFMNP are retained in regulation as directed by the provisions of Pub. L. 107-171 (7 U.S.C. 3007); *i.e.*, to improve/enhance the diets of low-income seniors by enabling them to obtain fresh fruits and vegetables from farmers' markets, roadside stands, and CSA programs, and to develop or expand these outlets by broadening their customer bases.

#### *2. Definitions (§ 249.2)*

Most of the definitions used in this rulemaking for the SFMNP are either the same as those used in the FMNP or are definitions used in the SFMNP competitive grant program. Some of the definitions used in this proposed rule warrant additional explanation, whereas others are more straightforward and self-explanatory.

"Administrative costs." The proposed rule defines "administrative costs" as allowable SFMNP costs as defined in § 249.12(b). Further discussion of the Department's intention to provide administrative funding for the SFMNP can be found below in Section 12 of this preamble. Allowable administrative costs, which have not previously been permitted in the SFMNP, are specifically listed at § 249.12(b) of this proposed rulemaking, and generally include any expense associated with the operation of the SFMNP except the actual value of the coupons or CSA shares provided to eligible recipients.

"Community supported agriculture programs." CSA programs are discussed in greater detail in Section 10(i) of this preamble. In the proposed rule, "community supported agriculture program" refers to a less traditional program model under which one or more farmer(s) grows food for a group of shareholders (or subscribers) who pledge to buy a portion of the farmer's crop for that season. State agencies may purchase shares or subscribe to a CSA program on behalf of individual SFMNP recipients.

"Compliance buy." State agencies may conduct compliance buys as part of their monitoring efforts. Compliance buys are generally covert, on-site investigations in which a SFMNP representative poses as a SFMNP recipient or authorized representative and transacts one or more coupons and/or in the case of a CSA program, attempts to obtain produce purchased with SFMNP funds at a distribution site. Because the busy, informal atmosphere of a farmers' market and/or CSA program distribution site may make it difficult to detect program violations, compliance buys can provide an objective measure of whether farmers are violating SFMNP rules by providing change for SFMNP coupons, collecting sales tax on purchases made with SFMNP coupons, or providing ineligible foods to SFMNP recipients.

"Coupon." In the SFMNP proposed rule, the term "coupon" is used to refer to a check or to some other negotiable financial instrument by which benefits under the program are transferred to program recipients. While many State agencies issue checks (to eligible recipients) that can be endorsed and deposited directly into the farmer's checking account for immediate payment, others issue an actual coupon that must be submitted to the State agency, or to its agent, for review and payment. For the purposes of this rule, the term "coupon" is used generically to refer to either type of instrument.

"Distribution site." It is not always possible in the CSA program model for SFMNP recipients to travel to the farm where the fruits and vegetables are actually grown. Nor is it always cost-efficient for the State agency to include in its CSA contract a provision for the farmer to assemble and deliver the food packages to individual SFMNP recipients. Therefore, many State agencies work with their CSA program farmers to identify one or more locations where recipients or local agency staff can go on a predetermined schedule to obtain their SFMNP foods. This rule includes a definition of

“distribution site” to refer to such locations.

“Eligible foods.” One of the stated purposes of the SFMNP is to provide eligible recipients with “fresh, nutritious, unprepared foods (such as fruits and vegetables).” The Department realizes that a broad variety of foods are available at farmers’ markets and roadside stands, and through CSA programs, that are not fresh and unprepared, including jams and jellies, baked goods, maple syrup, cider and fruit juices, and cheese. Such foods are not eligible foods for the SFMNP.

Among the remaining food choices that meet the fresh, nutritious and unprepared criteria, the Department decided to limit eligible foods to fresh fruits, vegetables, and herbs. As a result, although some foods in addition to fruits, vegetables, and herbs may be considered “fresh, nutritious, and unprepared,” they are excluded as eligible foods. These include honey, as well as protein foods such as eggs, raw seeds and nuts, meats, fish and seafood. Honey is neither a fruit nor a vegetable; it is further excluded from consideration as an eligible food in the interest of consistency with the FMNP, which does not allow the purchase of honey with program benefits.

The definition of “eligible foods” in the SFMNP regulation is consistent with the one that has been used consistently in the SFMNP grant solicitations since the inception of the program, and is the one with which participating SFMNP State agencies are most familiar. This definition, which specifically addresses questions regarding the eligibility of certain specific food items, as well as certain types of foods, is in the Department’s opinion more responsive to the issues that have arisen or are likely to arise in the operation of the SFMNP. For example, the proposed definition at § 249.2 states that dried fruits and vegetables, such as prunes, raisins, sun-dried tomatoes, or dried chili peppers are ineligible for purchase with SFMNP benefits. Potted fruit, vegetable, or herb plants, dried herbs, wild rice, and nuts of any kind are likewise ineligible.

“Farmer.” The term “farmer” in this rulemaking refers to someone who has been authorized by the SFMNP State agency to sell produce at participating farmers’ markets and/or roadside stands, and/or through CSA programs. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the SFMNP. This is consistent with the definition of farmer under the FMNP and the Department’s belief that the SFMNP

should benefit smaller, local farmers. The SFMNP State agency may authorize individual farmers or farmers’ markets, roadside stands, and/or CSA programs, at its discretion.

“Farmers’ market.” Pursuant to 7 U.S.C. 3007, two of the three stated purposes of the SFMNP are to increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers’ markets, roadside stands, and CSA programs, and to develop or aid in the development of new and additional farmers’ markets, roadside stands, and CSA programs. Because the stated purpose of the SFMNP is virtually identical to that of the FMNP, as proposed in § 249.2, the definition of “farmers’ market” is the same as the definition used for the FMNP.

“Federally recognized Indian tribal government.” Federally recognized Indian tribal governments are defined at 7 CFR 3016.3, the Department’s Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local governments. Federally recognized Indian tribal governments are recognized as independent entities, and as such are eligible to apply for and receive SFMNP grants under the same terms and conditions as geographic State agencies. These entities may also participate in the SFMNP as local agencies under the auspices and jurisdiction of the SFMNP-administering State agency in the geographic State where the tribe or tribal organization is located.

“Fiscal year.” As with all Federal grant programs, “fiscal year” refers to the Federal fiscal year which begins on October 1.

“Food costs” refers only to the cost of eligible foods purchased at authorized farmers’ markets, roadside stands, and/or through CSA programs. Such costs may not include expenses associated with printing or issuing SFMNP coupons or benefits in any form.

“Household.” The definition of “household” for the SFMNP is the same as that used in the FMNP, *i.e.*, a group of related or nonrelated individuals who are living together as one economic unit (7 CFR 248.2).

“Local agency.” FNS proposes that “local agency” mean a nonprofit entity or local government agency that is responsible for one or more administrative functions of the SFMNP’s program operation. Such functions include certifying eligible recipients, issuing SFMNP coupons, arranging for the distribution of produce through CSA programs, and/or providing nutrition education or

information on the operational aspects of the Program to SFMNP recipients.

“Locally grown.” Under the SFMNP, “locally grown” refers to eligible foods (fruits, vegetables, and herbs) grown within the borders of the administering State and at State option, areas in counties adjacent to that State. Consistent with the WIC Program, the FMNP, and other food assistance programs administered by the Department, the SFMNP values its partnership with American agriculture and therefore promotes the use of SFMNP coupons to purchase domestically grown products at participating outlets. Many States already prohibit the use of SFMNP coupons to purchase foods grown outside of that State. However, some States define “locally grown” as including the counties outside but adjacent to the State boundary. Therefore, this proposed rulemaking provides State agencies the option to define “locally grown” to include produce grown in areas of States adjacent to that State, as long as such areas are part of the United States. State agencies may want to consider the advantages of establishing “locally grown” guidelines for the purpose of improving marketing opportunities for local farmers. State agencies other than State Departments of Agriculture that are administering the SFMNP should work closely with their Agriculture counterparts to establish a definition of locally grown that is satisfactory to both entities, *i.e.*, that offers SFMNP recipients a broad choice of eligible foods while serving to benefit that State’s small or mid-size farmers.

“Nonprofit agency.” Consistent with other FNS programs, “nonprofit agency” refers to a private agency that is exempt from Federal income tax under the Internal Revenue Code of 1986, as amended (26 U.S.C. 1, *et seq.*). While a nonprofit agency may participate as a local agency in the operation and administration of the SFMNP, it may not serve as the lead State agency for the Program.

“Nutrition education.” Nutrition education is an integral component of all FNS nutrition assistance programs, including the SFMNP. The Department does not prescribe specific requirements as to how nutrition education must be provided for the SFMNP. Instead, this proposed rule offers a definition that addresses the principal elements of nutrition education. That definition includes individual or group sessions that encourage SFMNP recipients to build healthful eating patterns and take action for good health, and the provision of materials that emphasize

relationships between nutrition and health. All nutrition education models, whether they involve individual counseling, group demonstrations, or written materials such as recipes and pamphlets about food safety, must be designed to take into consideration the individual's personal, cultural, and socioeconomic preferences and the current Dietary Guidelines for Americans.

"Proxy." Many seniors are eligible to receive SFMNP benefits but are unable to participate in the Program for a variety of reasons. Some of these obstacles include frail health or other physical limitations, and lack of transportation to and from the farmers' market, roadside stand, or CSA program distribution site. Several State agencies have addressed these problems by allowing an eligible senior to designate another individual as his/her authorized representative, or "proxy", to conduct the SFMNP transactions. Proxies may perform a number of functions, including applying for the SFMNP on behalf of the eligible senior, accepting and signing for SFMNP coupons or CSA program shares when they are issued, shopping for eligible foods at the market or roadside stand, and/or picking up and delivering eligible foods from a CSA program distribution site. Therefore, "proxy" is defined in this proposed rule to mean an individual authorized by an eligible senior to perform any and all of these functions, as long as the eligible senior ultimately receives the SFMNP benefits. State agencies generally require a proxy to present documentation, signed by the eligible senior, of his/her authorization to represent the senior in any SFMNP activity or transaction, and to be equally responsible for any program abuse or violation. The terms "proxy" and "authorized representative" may be used interchangeably for purposes of this program.

"Recipient." "Recipient" is defined for the SFMNP in this proposed rule as someone whose SFMNP eligibility has been determined based on the eligibility requirements of the program (described in detail in Section 6 of this preamble), and to whom coupons or equivalent benefits have been issued. A recipient may, at State agency option, be either an individual or a household. This distinction is discussed in greater detail later in this preamble.

"Roadside stand." Also known as a farmstand, "roadside stand" in the SFMNP refers to an outlet through which an individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a

farmers' market or through a CSA program.

"Senior." For the SFMNP, "senior" generally refers to an individual not less than 60 years of age. However, State agencies have the option to establish the minimum age at older than 60. Some SFMNP State agencies currently use 62 or 65 as the minimum age for SFMNP eligibility. On the other hand, as discussed in proposed § 249.6(a)(1), State agencies may exercise the option to deem Native Americans who are 55 years of age or older as categorically eligible for SFMNP benefits. State agencies may also, at their discretion, deem disabled individuals under 60 years of age who are currently living in housing facilities occupied primarily by older individuals (60 years or older) where congregate nutrition services are provided, as categorically eligible to receive SFMNP benefits.

"Shareholder." Sometimes called a subscriber, a shareholder means a SFMNP recipient who does not receive his/her program benefits in the form of checks or coupons that can be used at established farmers' markets or roadside stands. Instead, the SFMNP State agency may elect to purchase a full or partial share in a community supported agriculture program, and to provide the eligible senior with SFMNP benefits in the form of actual eligible foods.

"State." Consistent with Section 15(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1784(i)), "State" for the purposes of the SFMNP means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and as applicable, American Samoa or the Commonwealth of the Northern Marianas.

"State agency." "State agency" means the organizational unit within the State, U.S. Territory, or federally recognized Indian tribal government that has administrative responsibility for the SFMNP. This includes a State Department of Agriculture, Health, Social Services, a State Agency on Aging, or any other agency approved by the chief executive officer of the State (generally the Governor or Tribal Chief). A nonprofit agency may not be designated as a State agency for the SFMNP, but may operate as a local agency under the oversight of the State agency.

"SFPD." "SFPD," the entity within FNS that oversees the administration of the SFMNP on a national basis, refers in this proposed rule to the Supplemental Food Programs Division of the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture.

"State Plan." "State Plan" means a plan of SFMNP operation and

administration that must be submitted annually to FNS. The State Plan describes the manner in which the State agency intends to implement, operate, and administer all aspects of the SFMNP within its jurisdiction. Specific requirements of the SFMNP State Plan are set out in § 249.4 of this proposed rule.

"WIC Farmers' Market Nutrition Program" or "FMNP." The WIC Farmers' Market Nutrition Program (FMNP) refers to an existing program, originally authorized by the Farmers' Market Nutrition Act of 1992 (Pub. L. 102-314), that was designed to provide resources to women, infants, and children who are nutritionally at risk (*i.e.*, WIC participants), in the form of fresh, nutritious, unprepared foods (such as fruits and vegetables) that can be purchased at farmers' markets; to expand the awareness and use of farmers' markets; and to increase sales at such markets. Legislative language pertaining to the FMNP is found at Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)).

### 3. Administration (§ 249.3)

FNS is responsible for the administration of the SFMNP within the Department, and will provide assistance to State agencies and evaluate all levels of Program operations to ensure that the goals of the Program are effectively and efficiently achieved. The Supplemental Food Programs Division and the FNS Regional offices are responsible for administration within FNS. Each State agency is responsible for the effective and efficient administration of the SFMNP within that State, and must provide guidance to cooperating State and local agencies on all aspects of SFMNP operations. State SFMNP coordinators/program managers are expected to communicate with the designated SFMNP contacts in the appropriate FNS Regional offices, as set forth in § 249.26 of this proposed rule, regarding SFMNP operations.

SFMNP grant funds will be provided to the administering State agency or agencies designated by the Chief Executive Officer of the State or Indian tribal organization. A State agency may be the agriculture department, the health department, the State agency on aging, or other comparable agency within State government; an Indian tribe, band, or group recognized by the Department of the Interior; an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior and that has an ongoing relationship with such tribes, bands, or groups for other purposes and has

contracted with them to administer the Program; or the appropriate area office of the Indian Health Service of the Department of Health and Human Services.

As set forth in this proposed rule, the Chief Executive Officer of the State would be responsible for coordination between the agency designated to administer the SFMNP and any other State, local or nonprofit agency, as necessary, by requiring written agreements between the agencies. In order to guarantee further successful operation, State agencies will need to ensure that sufficient staff is available to administer an efficient and effective Program, and to provide an outline of administrative staff and job descriptions for staff whose salaries will be provided in any part from SFMNP funds. Also as set forth in this proposed rulemaking, the availability of up to 8 percent of the Federal SFMNP grant for administrative funding for SFMNP operations (which was not available when the SFMNP was administered as a competitive grant program) is expected to aid the staffing and administrative requirements of the Program.

In the absence of Federal administrative funds for the SFMNP under the pilot program and the competitive grant program, State agencies operating the program have established effective and often creative networks and collaborations with other State, local, and private nonprofit agencies and organizations in order to accomplish their goals and objectives for the SFMNP. The Department encourages all participating SFMNP State agencies to continue not only working within the networks that have already been established, but also to broaden and enhance these collaborations within the framework of the SFMNP as a permanent program. Although some administrative costs may now be covered by the Federal SFMNP grant (*see* section 14–c of this preamble), State agencies should keep in mind that SFMNP funds used to defray an administrative expense may also represent a reduction in the number of eligible recipients to whom SFMNP benefits can be provided. The Department does not intend to impose a stringent maintenance of effort provision that would require SFMNP State agencies to sustain the current level of non-Federal administrative support (cash as well as in-kind contributions) that has been available for the operation and administration of the SFMNP when it was a competitive grant program. The Department believes that in addition to protecting State agencies from the potential of

significantly reducing their recipient base, there are many other benefits to maintaining these coordinated relationships wherever possible—streamlined service delivery, effective cross-program referrals, and better-targeted nutrition education modules, to name a few.

#### 4. State Plan Provisions (§249.4)

In establishing the SFMNP as a permanent program, Congress gave the Department the authority to set out basic standards and requirements for its operation. Consistent with other FNS nutrition assistance programs, each State agency that desires to receive a SFMNP grant, including State agencies currently participating in the SFMNP, will need to submit a State Plan of Operation for approval by the Department. These State Plans will be due by November 15 of each year.

The State plan process replaces the grant application process that was used for the SFMNP since its inception in FY 2001. This proposed rule sets out at § 249.4(a) the specific elements that are necessary to the approval of each State Plan submitted to the Secretary. A complete list of the proposed State Plan requirements is contained in proposed § 249.4.

The Department recognizes that many State agencies administering the SFMNP also administer the FMNP. Furthermore, many of the administrative provisions required for the SFMNP and FMNP State plans are identical. In an effort to minimize the administrative burden for these State agencies, the Department will allow them to submit one consolidated State Plan of Operation for both programs in accordance with guidance provided annually by FNS. This option will be available only to those State agencies that serve as the lead State agency for both programs. If the FMNP is administered by the WIC State agency and the SFMNP in that same State is administered by the State Department of Agriculture, then two separate State Plans of Operation must be submitted to FNS. Similarly, if the State Department of Agriculture administers the FMNP but the State Agency on Aging is the lead agency for the SFMNP, both of these State agencies must submit separate State Plans to the appropriate FNS Regional Office. In instances such as these, the individual State agencies will be responsible for coordinating any joint or overlapping functions, and for ensuring that all areas of overlapping functions are fully described in both State Plans. Examples of overlapping functions may include authorization, training, and monitoring of farmers, farmers' markets, and/or

roadside stands; nutrition education classes and food demonstrations; and certification of and issuance to SFMNP recipients.

Some of the issues related to the CSA program models used to deliver SFMNP benefits are addressed separately in this preamble. However, because CSA programs differ so significantly from the traditional coupon model, specific provisions pertaining to CSA programs will also be required as part of the SFMNP State Plan, as proposed at § 249.4(a)(12).

As noted above, State Plans of Operation are due to FNS by November 15 of each year. Substantive changes in SFMNP operations that are anticipated for the coming year or market season, such as the addition of new service delivery areas or new procedures for certifying eligible recipients should be included, and fully described in the regular November 15 submission, whenever possible. The Department understands that alterations and modifications are sometimes necessary for the current year's program operation after the State Plan has already been submitted and approved. In the event that a State agency significantly modifies any aspect of its program operation or administration, *e.g.*, the addition of a new partner agency or a change in its procedure for issuing coupons to eligible recipients during the course of the market season, a State Plan amendment must be submitted to FNS for approval. The State agency may not implement the requested modification until formal (written) approval has been received from FNS. These clarifications are described in proposed § 249.4(b) of this rule. In addition, FNS plans to issue detailed guidance regarding the required content of the State Plan of Operation to all currently participating SFMNP State agencies, as well as to other interested State agencies, in advance of the November 15, 2005 deadline.

#### 5. Selection of State Agencies (§249.5)

Two major questions arose out of the Department's consideration of this issue:

- a. What entities should be eligible to serve as SFMNP State agencies, and
- b. Should current SFMNP grantees be grandfathered into the permanent program as participating State agencies?

In regard to the first question (What entities should be eligible to serve as SFMNP State agencies?), the Department wishes to recognize and express its appreciation to those nonprofit organizations and local agencies, such as the Area Agencies on Aging, for their support and assistance in assuring the smooth operation of the

SFMNP at the local level. However, the nutrition assistance programs administered by FNS are generally structured so that Federal program grants are allocated to designated State agencies. All States, United States Territories, and federally recognized Indian tribal governments were eligible to receive SFMNP grants through a competitive process. As defined in the SFMNP grant solicitations used in the past, SFMNP State agency eligibility was limited to State Departments of Agriculture, Aging, Health, or any other agency approved by the chief executive officer of the State. The FMNP regulations at 7 CFR 248.2 provide a broader definition of State agency to include an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior and that has an ongoing relationship with such tribes, bands, or groups for other purposes, and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service. Because of the FMNP, many of these entities—including all six of the Indian tribal organizations currently participating in the SFMNP—already have structures in place to administer the program.

Therefore, at proposed § 249.2, the Department sets out a specific definition of “State agency” for the SFMNP. We believe that the entities included in this definition are the most appropriate entities to administer the SFMNP. As appropriate, these entities may subcontract with nonprofit or local level organizations to perform specific functions, such as recipient outreach and certification, nutrition education, coupon issuance, market management, and/or coupon reconciliation.

The implications of the second question (Should current SFMNP grantees be grandfathered into the permanent program as participating State agencies?) are significant with respect to the future growth and/or expansion of the SFMNP. Since the inception of the pilot program in FY 2001, SFMNP grants have been awarded through a competitive grant process. In FY 2002, funds were not sufficient to award grants to all State agencies that operated the program in FY 2001 and applied in FY 2002. Therefore, State agencies that operated the program in FY 2001 and wanted to continue had to compete with new State agencies for available program funds. Initially, given limited funds, some State agencies that operated the program in FY 2001 were not chosen to operate the SFMNP in FY 2002. However, through Section 4402 of the Farm Bill (Pub. L. 107–171),

Congress authorized the use of additional Commodity Credit Corporation funds for the SFMNP. During a Senate floor colloquy between Senators Kohl and Harkin on the day that the Farm Bill was passed by the Senate (May 8, 2002), and later confirmed in a letter to the Secretary of Agriculture, FNS was directed to provide funding to State agencies that were not selected during the FY 2002 grant review process, but who operated the SFMNP in FY 2001. For FY 2003 and FY 2004, current grantees were guaranteed a base level of funding. Therefore, based on Congress’ intent in FY 2002, the Department has set a precedent of guaranteeing funding to State agencies that have participated in the SFMNP in the prior year and who wish to continue operating during the next year. The Department, therefore, will grandfather all current SFMNP grantees into the permanent program as participating SFMNP State agencies. This means that any State agency that received an SFMNP grant award in FY 2005 will be guaranteed an SFMNP grant in FY 2006. As proposed at § 249.14, the actual amount of each State agency’s base grant would be equal to the total Federal funds received in FY 2005, contingent upon the availability of sufficient funds for the SFMNP and an approved State Plan. The National Association of Farmers’ Market Nutrition Programs (NAFMNP) supports this provision.

New State agencies wishing to participate in the SFMNP will have their State plans approved and ranked based on objective criteria established by FNS. Such criteria may include: the amount of funding requested (in proportion to the amount of funding available), the number of recipients projected to be served, and the projected benefit level.

#### 6. Recipient Eligibility (§ 249.6)

##### a. Categorical Eligibility

Based primarily on other FNS programs that serve low-income elderly persons, categorical eligibility was established for the SFMNP pilot program in FY 2001 to refer to individuals 60 years of age and older, unless grantees applying to operate the SFMNP could provide justification to FNS for a lower age limit. Most State agencies have used the age of 60 as the minimum age for SFMNP recipients, with a few notable exceptions. FNS is proposing that all SFMNP State agencies would have the option to establish a higher age limit, such as 62 or 65 years of age, at their discretion, based on the

particular needs of the elderly populations in their States.

Both the Food Stamp Program (7 CFR 271.2) and the Commodity Supplemental Food Program (CSFP) (7 CFR 247.2) define “elderly” to mean at least 60 years old. However, the Bureau of Indian Affairs defines “elders” and “elderly” for the Native American population as 55 years of age or older. Therefore, federally recognized Indian tribal governments that receive SFMNP grants, and other State agencies that serve Native American seniors, generally use 55 or older as the minimum age for Native Americans and 60 years of age for all other SFMNP recipients.

In §§ 249.2 and 249.6(a)(1) of this proposal, the Department defines a person categorically eligible for the SFMNP (a “senior”) as an individual 60 years of age or older. Indian tribal organizations administering the SFMNP are afforded the option to deem Native Americans who are 55 years of age or older as categorically eligible for SFMNP benefits. This position is consistent with existing legislation, policy and practice in other FNS and Department of Health and Human Services (HHS) programs serving elderly individuals, such as congregate meals provided under the Older Americans Act, 42 U.S.C. 3001, *et seq.* Under Section 339 of the Older Americans Act, Pub. L. 86–73, as amended by Section 313 of the Older Americans Act Amendments of 2000, Pub. L. 106–501, (42 U.S.C. 3030g.21(2)(h)), FNS has also approved requests from some SFMNP grantees to provide benefits to disabled individuals who live in senior housing facilities but have not yet reached the age of 60. It is permissible, but not required, to provide services to disabled individuals who reside in housing facilities occupied primarily by older individuals where congregate nutrition services are provided. HHS’ Administration on Aging has advised us that most States require service to disabled individuals in these circumstances.

Therefore, in proposed § 249.6(a)(1), the Department allows State agencies the option to deem disabled individuals under 60 years of age, who live in housing facilities occupied primarily by older individuals where congregate nutrition services are provided, as categorically eligible for SFMNP benefits. SFMNP State agencies opting to serve such disabled individuals would be responsible for weighing the relative benefits of serving those persons in certain housing facilities against serving additional elderly recipients who are 60 years of age and older in the



same, or possibly another, service delivery area.

#### b. Residency Requirement

In this proposed rulemaking, the Department allows State agencies to establish a residency requirement for SFMNP applicants, in § 249.6(a)(2). Further, the Department allows State agencies the option to determine a service area for any local agency, and may require an applicant to reside within the service area at the time of application. However, State agencies are not permitted to impose any durational or fixed residency requirement. A “fixed residency requirement” is one that would require an applicant to have a permanent domicile in order to be eligible to receive SFMNP benefits.

#### c. Income Eligibility

In developing this proposed rulemaking, FNS identified and considered three major aspects to the determination of income eligibility for the SFMNP, as follows:

1. What should be the maximum allowable household income?
2. Should FNS allow automatic income eligibility based on an individual's participation in other programs? If so, which programs should be included?
3. How much documentation or verification of income eligibility should be required for SFMNP applicants?

*Income eligibility guidelines.* Since the inception of the SFMNP, the maximum household income has been 185 percent of the annual poverty income guidelines, consistent with the WIC Program (Section 17(d)(A)(i) of the Child Nutrition Act of 1966, 42 U.S.C. 1786(d)(A)(i)), unless the grant applicant could provide justification to FNS for a higher limit. In FY 2004, 36 of the 47 participating SFMNP State agencies used a maximum income level of 185 percent of the poverty guidelines to determine income eligibility for the program. Seven State agencies linked SFMNP income eligibility to the maximum income limit used in the Commodity Supplemental Food Program (CSFP), *i.e.*, 130 percent (7 CFR 247.7(a)(3)). Other variations existed, such as between 150 and 200 percent of the poverty income guidelines.

In § 249.6(a)(3), the Department proposes to retain the maximum income limit of 185 percent level for the SFMNP in this proposed rulemaking. The NAFMNP supports this proposal.

*Automatic income eligibility based on participation in other programs.* Many SFMNP grantees use participation in other means-tested programs to determine eligibility for the SFMNP.

The programs most frequently used to establish automatic SFMNP income eligibility are, as might be expected, the Food Stamp Program, the CSFP, and the Food Distribution Program on Indian Reservations (FDPIR). As indicated above, all of these programs use an income eligibility limit that is at or below 130 percent of poverty. Allowing eligibility for the SFMNP to be based on participation in another program for which income eligibility has already been established enables SFMNP State agencies to reduce their administrative burden significantly in terms of cost as well as staffing resources. It also facilitates the certification process for elderly recipients by minimizing the burden and amount of time involved in establishing eligibility for the SFMNP.

Under this proposal, the Department will continue to allow State agencies the option to deem applicants automatically eligible for the SFMNP based on participation/certified eligibility to receive benefits in another means-tested assistance program, as determined by the State agency, as long as (1) income eligibility is set at or below the SFMNP maximum income, *i.e.*, 185 percent of the annual poverty income guidelines, and (2) some form of documentation is required to establish income eligibility for that program.

*Documentation of income eligibility.* Currently, most SFMNP grantees deem applicants automatically income eligible for the program based on participation in (or certified eligibility to receive benefits in) another means-tested program, such as the Food Stamp Program, CSFP, or FDPIR. In general, the remaining grantees have applicants either provide proof of participation in such a program, or sign an affidavit affirming that their household income does not exceed the State agency's maximum income limit for their individual household size.

While the burden on participants is significantly lessened by allowing State agencies to deem seniors eligible for the SFMNP based on a signed affidavit, the Department is concerned that such convenience may be achieved at the expense of program integrity.

Therefore, proposed § 249.6(b) requires SFMNP applicants who are not automatically income eligible for the program based on participation in or certified eligibility for another means-tested program to provide documentation of family income at certification. State and local agencies have the option to verify reported income further, in order to confirm an applicant's income eligibility for the SFMNP.

#### d. Certification Periods

The Department proposes to establish in § 249.6(c) a certification period for SFMNP recipients. This is consistent with the establishment of certification periods for other FNS programs. Recipients may be certified only for the current fiscal year's SFMNP period of operation. Prior fiscal year certifications may not be carried over into subsequent fiscal years; however, the State agency may use recipient enrollment listings from the prior fiscal year in its outreach efforts for the current fiscal year. Certification for the SFMNP must be performed at no cost to the applicant or the authorized representative/proxy.

#### e. Rights and Responsibilities

In § 249.6(d), the Department would require State/local agencies to inform applicants or authorized representatives/proxies of their SFMNP rights and responsibilities. This includes informing such individuals of:

- The illegality of dual participation, *i.e.*, obtaining SFMNP benefits from more than one service delivery area or from more than one SFMNP program model within the same service delivery area;
- Their rights and obligations under the program; and
- Information about the use of SFMNP coupons and/or access to produce under a CSA program.

This section also requires State/local agencies to notify applicants in writing if they are ineligible for SFMNP benefits (including the reasons for the determination of ineligibility), and of their right to a fair hearing. In addition, State/local agencies must provide written notification, including specified information, if a claim is assessed against an individual for improperly issued SFMNP benefits.

#### f. Use of Authorized Representatives/ Proxies

The Department allows State agencies in this proposal to permit seniors to designate authorized representatives/proxies to act on their behalf to apply for certification and/or redeem SFMNP coupons or pick up eligible foods at distribution sites. This provision is intended to accommodate those seniors who may be unable to apply in person or travel to markets, roadside stands and/or pick up eligible foods at CSA distribution sites. Currently, many SFMNP grantees authorize the use of authorized representatives/proxies.

#### g. Processing Standards/Waiting Lists

SFMNP State agencies are required, in proposed § 249.6(g), to notify applicants

of their eligibility or ineligibility for benefits, or placement on a waiting list, within 10 days from the date of application. Further, the Department requires State agencies to keep a waiting list of individuals who apply for benefits but cannot be served. This information will enable State/local agencies to certify individuals if funding within the State is reallocated based on need. The waiting list must include the name of the applicant, the date he/she was placed on the waiting list, and an address or phone number in order to contact the applicant. These requirements are consistent with the FNS-administered CSFP, which also serves seniors.

#### h. Limitations on Certification

As set forth in § 249.6(h) of this proposed rule, State agencies may impose other eligibility requirements or priorities for receiving SFMNP benefits as may be deemed necessary. For instance, most State agencies limit distribution to specific geographic areas, and some give priority to homebound seniors.

#### 7. Nondiscrimination (§ 249.7)

This section of the proposed rule describes the requirements of the SFMNP related to compliance with existing civil rights provisions, including racial/ethnic participation reporting and provisions for handling complaints of alleged discrimination based on race, color, national origin, age, sex, or disability.

As indicated in § 249.7(a) of the proposed rule, Title VI of the Civil Rights Act of 1964 requires that racial and ethnic participation data be collected from all SFMNP benefit recipients. This requirement represents a departure not only from what has been required of SFMNP State agencies as grantees under the competitive grant process, but also from the data collection requirements of the FMNP. Participants in the FMNP are by definition WIC participants, and as such, the racial/ethnic information on these individuals is collected and reported through the WIC Program. The necessary racial and ethnic data for SFMNP recipients must be reported on a form provided by FNS, according to the categories established by the Office of Management and Budget's regulations at 62 FR 58781.

#### 8. Level of Benefits and Eligible Foods (§ 249.8)

Unlike the FMNP, for which minimum and maximum benefit levels were established by law, SFMNP State agencies have since the inception of the

program been permitted to choose their benefit levels without any restriction on the amount provided to recipients. This has resulted in variation from State to State in the total food benefit level per person. In FY 2003, the total food benefit level per person in the SFMNP ranged from \$10 to \$315, with an average annual benefit level of \$44. This variation occurred because State agencies had the flexibility to experiment with the factors contributing to the determination of an appropriate benefit level for their SFMNP recipients. Such factors included but were not limited to: the locations of farmers' markets relative to where seniors generally live and/or shop; the ability of farmers to offer a variety of fruits and vegetables over the course of a market season; the senior's physical ability to use the produce he/she purchases effectively; and the length of the growing season. However, as a permanent program, the Department believes that there should be specific guidelines for a minimum and maximum benefit level in the SFMNP. In FY 2003, even with a wide range of recipient benefit levels, the majority (80 percent) of grantees had a benefit level of \$50 or below. Only 6 of the 40 grantees had a benefit level of less than \$20.

By law, Section 17(m)(5)(C) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(5)(C)), the total food benefit level per participant, per year, in the FMNP is a minimum of \$10, and a maximum of \$30. This level was not changed from the start of the program in 1989 until the enactment of Public Law 108-265, the Child Nutrition and WIC Reauthorization Act of 2004. When the original FMNP maximum benefit level of \$20 is adjusted for inflation over the past 13 years, the benefit level increases to \$40. Further, FMNP participants tend to belong to multi-member households receiving multiple program benefits, whereas the majority of SFMNP recipients tend to live alone or with only one other person.

Based on these considerations, the Department proposes to set the SFMNP minimum and maximum annual benefit levels at \$20 and \$50, respectively, for all coupon issuance program models (farmers' markets, roadside stands and/or CSA programs). These levels should accommodate the majority of State agencies that already use a \$20 benefit level, and are consistent with the current average benefit level of SFMNP benefits issued nationwide.

Another issue related to SFMNP benefit levels involves whether the same benefit level should be required on a statewide basis. Currently, a few

SFMNP State agencies provide different benefit levels to eligible recipients within their State. Their rationale for this disparity is that there are more markets in some areas of the State; therefore, the senior recipients in those areas are better able to utilize more coupons. However, this policy penalizes senior recipients who live in a different part of the State by assuming that they would not be able to use the higher benefit level if it were provided to them. State agencies have also justified the variation in SFMNP benefit levels by expressing a concern that when the SFMNP is expanding into other areas within that State, the recipients in the "new" area may not use some or any of their benefits, resulting in a low redemption rate. Thus, some State agencies provide a lower benefit level in order to determine the level of interest in program participation by eligible seniors. The Department is concerned that in program models such as this, all senior recipients are not given an equal opportunity to spend an equivalent value of benefits within the State. State agencies have the flexibility to reallocate any unspent funds to other areas of the State where the demand is greater if it becomes necessary at any time during the market season. In order to ensure equitable treatment in and access to the SFMNP, the Department proposes in § 249.8(c) that all SFMNP recipients served by the State agency must be offered the same level of SFMNP benefits. Subsequently, the State agency may reallocate unspent SFMNP funds within local agencies/areas served based on need.

However, the Department's experience with CSA programs as a benefit delivery model in the SFMNP has shown that it may not be practical to mandate exactly the same benefit level for CSA program recipients in the same State as SFMNP recipients to whom coupons are issued for use at farmers' markets and/or roadside stands. Therefore, the Department has determined that the same statewide benefit level does not have to be applied for SFMNP recipients who are receiving benefits through a CSA program; such recipients are eligible to receive up to \$50 in SFMNP benefits, even if SFMNP recipients in that same State are issued only \$20 in coupons to use at farmers' markets or roadside stands.

Finally, the Department considered whether SFMNP benefits should be issued only on an individual basis, or if a provision should be included in the proposed rule to allow SFMNP benefits to be issued on a household basis. State agencies currently have the option to issue SFMNP benefits on an individual

or a household basis. For example, in a household of two seniors, each person could receive an individual benefit of \$30, equaling a combined benefit of \$60. Another option would be to limit the SFMNP benefits allocated to a single household to only \$30, enabling the State agency to serve more eligible seniors with the \$30 it has "saved" through a limitation on household benefit issuance. A few SFMNP State agencies that issue benefits on a household basis argue that this policy allows them to provide benefits to more seniors because the household benefit is more cost effective than the individual benefit level. FMNP regulations also permit State agencies to issue program benefits on a household basis rather than upon the number of persons in a household that are individually eligible to receive such benefits. However, the vast majority of SFMNP State agencies currently issue benefits on an individual basis. Regardless of which system is used, all State agencies are required to report recipient information on an individual basis. In the interests of consistency with the FMNP and the Department's desire to offer SFMNP State agencies flexibility, to the extent possible, in their program design, proposed § 249.8(c) would allow SFMNP State agencies the continued option to issue program benefits on either an individual or a household basis, as long as State agencies continue to report recipient information to FNS on an individual basis. This option, if SFMNP State agencies choose to implement it, also allows more recipients to be served with limited funds.

While this proposed rule defines in §§ 249.2 and 249.8(a) eligible foods as fresh, nutritious, unprepared fruits, vegetables, and herbs, States must specifically identify in their State Plans those foods that may be purchased (§ 249.4(a)(4)(vii)). The value of the Federal benefits received by any recipient under the SFMNP may not be less than \$20 or more than \$50 per year, as discussed above. Most States participating in the SFMNP competitive grant program found that the most practical distribution of coupons for the SFMNP is in booklets made up of small-denomination coupons—\$1, \$2, \$3, or \$5. If the SFMNP coupon's face value exceeds the purchase price of the selected produce, farmers are prohibited from giving cash change to recipients. Instead, this difference may be made up by providing recipients with extra eligible foods in the approximate value of the difference.

In the interest of enhancing local revenues, the Department recognizes

and proposes to establish in § 249.8(a) a State agency's option to allow only locally grown produce, as defined by the State agency, to be purchased by SFMNP coupon recipients. Some States may consider this an attractive option for ensuring that SFMNP benefits remain in the State. State agencies also have the option to define what they consider to be "locally grown". For instance, some State agencies, for various reasons such as availability of an adequate volume and variety of produce, may consider produce grown in adjacent States as locally grown. At the same time, other State agencies may define "locally grown" only to be produce grown within the State boundaries. SFMNP State agencies other than State Departments of Agriculture should remember to include their agriculture counterparts in any discussions of how to define "locally grown" for purposes of the SFMNP.

Section 249.8(c)(3) proposes to prohibit sharing of food purchased through the SFMNP with non-participating household members. The Department recognizes the difficulty of enforcing such a provision, but maintains that it is nonetheless an extremely important one. SFMNP benefits are, in the vast majority of instances, issued to individuals with particular nutritional needs with the intention of improving that individual's diet by increasing his/her consumption of fresh fruits and vegetables. Therefore, program administrators can discuss this issue when recipients are certified and/or provided basic information about the SFMNP.

#### 9. Nutrition Education (§ 249.9)

The Department believes nutrition education to be an integral component of any effective nutrition assistance program. For this reason, SFMNP State agencies have been required, since the inception of the pilot program in FY 2001, to include nutrition education as part of their program design in order to receive a Federal SFMNP grant.

Nutrition education has also long been the hallmark of several other FNS-assisted nutrition assistance programs, particularly the WIC Program and the FMNP, upon which the SFMNP is closely modeled. While nutrition education is being made increasingly available in other FNS programs, such as the Food Stamp Program, FDPIR, and CSFP, there is still no guarantee that SFMNP recipients are also participating in any of these programs, or that the focus of the nutrition education that is offered is appropriate for the SFMNP recipient population.

This proposed rule, at § 249.9, requires all participating State agencies to describe the nutrition education that will be provided to SFMNP recipients, including the agencies that will be responsible for providing the nutrition education (e.g., Cooperative Extension Service, local Area Agencies on Aging, etc.), the format(s) in which the nutrition education will be provided (e.g., recipe cards, cooking demonstrations, etc.), and the locations where the nutrition education is likely to be offered (e.g., senior centers, farmers' markets, common rooms in assisted living facilities). The content of the nutrition education should be age- and circumstance-appropriate for SFMNP recipients. FNS will continue to encourage State agencies to take advantage wherever possible of existing nutrition education opportunities for senior recipients.

#### 10. Coupon, Market and CSA Program Management (§ 249.10)

##### a. General

The proposed requirements in § 249.10 regarding coupon and market management in the SFMNP are the same or similar to corresponding requirements in the FMNP, 7 CFR 248.10, which are predicated on legislative provisions contained in Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)). In those States where both the SFMNP and the FMNP are operating, State agencies are encouraged to consolidate and/or coordinate their policies and activities whenever possible. State agencies may deem farmers, farmers' markets and/or roadside stands as automatically authorized to operate the SFMNP based on current authorization to operate the FMNP. This will not only save time and money for both programs, but will also aid participating farmers and market managers by establishing the same rules and requirements for both programs.

The State agency is responsible for the fiscal management of, and accountability for, all authorized SFMNP outlets (farmers, farmers' markets, roadside stands and/or CSA programs). Farmers' markets are authorized by the State agency, which may administer the SFMNP directly or through a sub-agency such as a farmers' market association. Each State agency may authorize individual farmers, farmers' markets, CSA programs, or all three. Roadside stands are operated by individual farmers, so State agencies authorizing such outlets will have to have procedures for authorizing these individual farmers at a minimum. When the State agency authorizes farmers'

markets, the farmers' markets may authorize the farmers within the market to accept SFMNP coupons. Market managers often play an important role in the day-to-day management of the SFMNP, such as in the receipt of coupon batches from farmers and the reimbursement to farmers. Experience with the FMNP demonstration project (1989–1991) shows that the strongest markets were often those where the market manager had an active role in farmer training, compliance monitoring, reimbursing farmers, and redeeming coupons. Farmers at these markets were more likely to have a sound understanding of the demonstration project and to comply strictly with program guidelines. In contrast, where the market manager's role in the FMNP demonstration project was limited, there was usually greater misunderstanding among participating farmers about FMNP operations. In addition, FMNP participation was typically lower at markets with only minimal market manager involvement.

State agencies have broad discretion in developing systems for SFMNP coupon, market, and CSA program management. They should keep in mind, however, that it is the State agency that is ultimately responsible for the fiscal management of, and accountability for, all authorized outlets. The State agency is responsible for establishing criteria for the authorization of farmers, farmers' markets, and/or roadside stands, as well as the number of outlets that it plans to authorize, as provided in § 249.10 of this proposed rule. As indicated earlier in this preamble, the Department believes that the SFMNP is in significant part intended to help small, local farmers. State agencies may limit the foods eligible for purchase under the SFMNP to those locally grown, as defined by the State. To support this objective further, individuals who exclusively sell produce grown by someone else (such as wholesale distributors) are not eligible to participate in the SFMNP. This requirement does not apply to individuals who have been employed by an authorized farmer to sell his produce at the farmers' market or roadside stand, to individuals hired by a nonprofit organization to sell produce at urban farmstands on behalf of local farmers, or to individuals hired by a CSA program to represent the farm(s) offering shares in that season's harvest.

When SFMNP coupon reimbursement is delegated to farmers' market managers, farmers' market associations or non-profit organizations, or farmers' cooperatives (in the case of some CSA

programs), State agencies may establish appropriate bonding procedures for these entities. The State agency may determine the best procedures to put in place for bonding. Costs of such bonding are not reimbursable administrative expenses. Additional criteria and requirements for authorizing farmers, farmers' markets, and/or CSA programs are identified in § 249.10 of this proposed rule.

#### b. Agreements

Section 249.10(b) of this proposed rule outlines the contents of the farmers' market/CSA program agreement. These agreements may be between the State agency and an authorized farmer, an authorized farmers' market, or an authorized CSA program, and may be no more than 3 years in duration. State agencies have the option to authorize individual farmers, as long as written agreements with these individuals are executed. State agencies that operate both the SFMNP and the FMNP may execute a single agreement that includes both programs, as long as any requirements specific to only one of the programs, such as CSA programs for the SFMNP, are included either in the body of or as an appendix to the agreement.

It is important that the agreement be signed by a representative who has the legal authority to obligate the farmer, farmers' market, roadside stand, and/or CSA program. The specific items that must be included in these agreements are listed in proposed § 249.10(b), but the State agency may determine the exact wording to be used.

The proposed rule also stipulates that the farmer, farmers' market, and/or roadside stand may neither seek restitution from SFMNP recipients for coupons not paid by the State agency, nor issue cash change for purchases that are in an amount less than the value of the SFMNP coupon(s). Regarding the second proposed prohibition, the Department recommends that SFMNP coupons be in small denominations, preferably \$1 or \$2, to present less of a problem in this area. Based on this recommendation, the difference between the purchase price and the value of the coupon should be less than \$2. The Department, therefore, encourages farmers to adjust for any difference by adding more eligible produce to the purchase, such as an extra ear of corn or a small handful of cherries. Some State agencies, based on their experience with the FMNP, also encourage participating farmers to offer their produce for sale in units that are consistent with the coupon denominations, e.g., \$2 baskets of tomatoes rather than \$3 ones that would

require the recipient to use \$4 in coupons to make the \$3 purchase.

Because they differ significantly from the traditional coupon model of SFMNP operations, the agreement provisions for CSA programs are set out separately under proposed § 249.10(b)(3) and (b)(4).

#### c. Training

Pursuant to § 249.10(d), FNS is proposing that State agencies conduct annual training for farmers, farmers' market managers, and (as appropriate) CSA program managers. State agencies have discretion in determining the method used for training purposes. Training must include, at a minimum, dissemination of information concerning eligible foods, proper SFMNP coupon redemption procedures, including deadlines for submission of coupons for payment, and/or receipt of payment for CSA programs' distribution of eligible foods. Other points that must be covered in training are listed at proposed § 249.10(d).

Although these regulations would permit State agency discretion in determining the method of annual training, the State agency would be required to conduct a documented on-site visit. The visit could occur prior to or at the time of authorization, and must include, at a minimum, information concerning eligible foods, proper coupon redemption procedures, and/or proper payment procedures for CSA programs. For example, in a State with a 3-year agreement, a State agency could conduct an in-person training prior to or at the time of authorization, and if the agreement is renewed 3 years later, conduct another in-person training at least once during the next 3-year period. Other less comprehensive forms of training such as information handouts may be more appropriate for State agencies in the second or third years of operation under a SFMNP agreement. If a farmer or farmers' market is authorized to participate in both the SFMNP and the FMNP, State agencies are encouraged to consolidate the training offered to include both programs in the same visit or other training activity. However, State agencies must be careful to ensure that the differences between the SFMNP and the FMNP, such as different-colored coupons or checks, are highlighted in the training that is provided.

#### d. Monitoring

The SFMNP has not had specific monitoring requirements as a competitive grant program, although grantees have been responsible for ensuring that only authorized outlets

accepted SFMNP coupons. In the case of CSA programs, grantees have been required to ensure that only authorized outlets accepted SFMNP funds; that only eligible foods were purchased with SFMNP monies; that no cash change was given for coupons. The monitoring requirements set out at § 249.10(e) of the proposed rule are identical to those required under the FMNP, most of which have their basis in the experience gleaned from the FMNP demonstration projects that were operated from 1989 through 1991.

Pursuant to the proposed rule, State agencies would be required to conduct on-site monitoring visits to at least: 10 percent of authorized farmers, starting with the highest risk farmers and working down; 10 percent of the highest risk farmers' markets and working down; and if applicable, 10 percent of the highest risk CSA programs and working down. Mandatory high-risk indicators are set out at § 249.10(e)(2)(ii) of this proposed rule.

Participating State agencies have the option to conduct compliance buys and the Department encourages such activity when possible. A State agency may be required to conduct compliance buys as a follow-up measure when a farmer/farmers' market in a State is found to be out of compliance during an FNS management evaluation.

Compliance activity can provide an objective measure of whether farmer training is adequate and whether farmers are following SFMNP rules such as not providing change, selling or providing only eligible foods to SFMNP recipients, and ensuring participation only by authorized farmers. In addition, compliance buys can induce compliance and provide a justification for sanctions and removal of noncompliant farmers.

#### e. Coupon Control and Payment

Under proposed § 249.10(f), State agencies would be responsible for the overall control and accountability of the receipt and issuance of SFMNP coupons. The State agency must also ensure that there is secure transportation and storage of unissued SFMNP coupons, and must design and implement a system of review of SFMNP coupons to detect errors. At a minimum, such errors must include a missing recipient signature (if required by the State agency), a missing farmer and/or market identifier, and redemption by a farmer outside of the valid date. The State agency must also implement procedures to reduce the number of errors in transactions, where possible. Section 249.10(g) of the proposed rule would require State

agencies to ensure that farmers, farmers' markets, roadside stands, and/or CSA programs are promptly paid for all legitimate food costs.

#### f. Coupon Reconciliation

Section 249.10(h), as proposed, requires the State agency to identify the disposition of all SFMNP coupons as validly redeemed, lost or stolen, expired, or not matching issuance records. This identification must be determined on a one-to-one reconciliation basis. Validly redeemed coupons are those that are issued to a certified recipient or his/her proxy, and redeemed by an authorized farmer, farmers' market, or roadside stand before the expiration date. Coupons that are redeemed but cannot be traced to a certified recipient/proxy or authorized farmer will be subject to claims action in accordance with § 249.20 of this proposed rule. A State agency has the option to replace lost, stolen, or damaged coupons (or proof of shareholder status, for CSA programs), and must describe its system for doing so in the State Plan of Operations. A State agency must use uniform SFMNP coupons within its jurisdiction, which must include at a minimum, the specific information as proposed at § 249.10(h)(3).

Inclusion of individual farmer identifiers on all SFMNP coupons is a requirement in the SFMNP in this proposed rule in order to trace coupon redemption to an authorized farmer. This procedure is consistent with the system currently in place for FMNP coupon reconciliation. State agencies have the option to authorize either farmers' markets, individual farmers, or both. However, if the State agency authorizes farmers' markets and not farmers, an individual farmer identifier must be included on the coupon and a farmers' market identifier included on the batch set of coupons submitted by the farmers' market manager for reimbursement. Those State agencies that have agreements directly with individual farmers and not markets must include individual farmer identifiers on each redeemed coupon. A farmer identifier will provide protection for the farmers' market, because it is the individual farmer who may be identified and penalized for abuse rather than the entire market, if appropriate.

#### g. Instructions to Recipients

In order for the SFMNP to be fully successful, § 249.10(i) proposes that each SFMNP recipient receive instructions on the proper use of coupons, or participation in a CSA

program (where applicable). Section 249.10(i) provides minimum standards for recipient education, including where and when SFMNP coupons may be used; what foods can be purchased with the checks or coupons; a reminder that cash change cannot be given for SFMNP purchases; how to designate a proxy or authorized representative if the recipient cannot do his/her own shopping; and how to complain about any aspect of the SFMNP that may be troublesome or unsatisfactory. SFMNP recipients who will be participating in the program through a CSA will also need information about the participating farmer(s) in the CSA; what foods will be provided to them; how often the foods will be distributed; and where it can be picked up.

#### h. Complaints and Sanctions

Consistent with requirements already in place for the FMNP, proposed § 249.10(j) requires that the State agency have procedures in place to document the handling of complaints from recipients and farmers/farmers' markets, roadside stands, and/or CSA programs. Complaints and allegations of civil rights discrimination are to be handled in accordance with § 249.7(b) of this proposed rule.

Section 249.10(k) proposes a number of provisions related to sanctions that would be applied in the SFMNP. The State agency would be required to establish policies that determine the type and level of sanctions to be applied against recipients and farmers, farmers' markets, roadside stands, and/or CSA programs, based on the severity and nature of the SFMNP violations observed, and such other factors as the State agency may determine to be appropriate. Farmers, farmers' markets, roadside stands, and/or CSA programs may be sanctioned, disqualified, or both, when appropriate. Sanctions may include fines for improper SFMNP coupon redemption procedures and the penalties outlined in § 249.20, in cases of deliberate fraud.

As mentioned earlier in this preamble, in those instances where compliance purchases are conducted, the results of covert compliance purchases can be a basis for farmer, farmers' market, and/or roadside stand sanctions. Any authorized farmer or outlet committing fraud or other unlawful activities is liable to prosecution under applicable Federal, State or local laws.

State agency policies are required to ensure that a farmer who is disqualified from the SFMNP at one market, roadside stand, or CSA program may not participate in the SFMNP at any other

farmers' market, roadside stand, or CSA program within the State agency's jurisdiction during the disqualification period. Finally, State agency policies must require that a farmer, farmers' market, roadside stand, and/or CSA program that is disqualified from participating in the FMNP is also disqualified from participating in the SFMNP under the State agency's jurisdiction during the disqualification period. In those State agencies where different agencies or offices administer the SFMNP and the FMNP, the respective State agencies must develop a system for the prompt exchange of such disqualification information, given the relatively short operating timeframe for these programs.

#### i. Community Supported Agriculture (CSA) Programs

As proposed in this rulemaking, the most significant difference between the FMNP and the SFMNP regarding market management procedures falls in the area of CSA programs, which are not allowable outlets for program funds in the FMNP. A detailed discussion of CSA programs and their unique requirements is provided below.

Since its inception, the SFMNP was designed to permit recipients to use program benefits to obtain fresh fruits and vegetables at farmers' markets, roadside stands, and/or through CSAs. The use of CSA programs is a different program model from the standard issuance of paper coupons that are used at the more popular farmers' markets and roadside stands. In this alternative program model for the SFMNP, shares of an individual grower's or a group of growers' crops for that season are purchased by the SFMNP State agency on behalf of a certain number of eligible senior recipients, at the beginning of the planting season. Once the crops are ready to be harvested, standard packages of eligible foods, depending on the variety and types of fruits and vegetables that are available, are assembled and delivered to a central location (such as the local senior center) for distribution, or are delivered directly to recipients' homes. The majority of State agencies that include a CSA program component in their SFMNP operations only do so on a limited basis, in combination with the more traditional coupon model. However, at least two State agencies have operated their SFMNP programs exclusively through the CSA program model since the SFMNP began in FY 2001.

A SFMNP State agency that operates exclusively through a CSA program presents some unique challenges for effective Departmental oversight of the

program. When the SFMNP was initiated as a pilot program, State agencies were given considerable latitude in their program design. CSA-based program models help to promote innovative ways to assist the small farmer who may not have the resources to transport his harvest and set up a booth at an established market. They may also work very well for programs that target homebound seniors who cannot get to markets to select and purchase their own produce.

However, it is extremely difficult to ensure that program benefits are provided equitably to all recipients when CSAs are included as a component of the SFMNP. The actual value of the produce offered each week, or every other week, is dependent on a number of factors, some of which are entirely beyond the control of the farmer or the SFMNP State or local agency—weather, success of the crop, soil conditions, etc. If a SFMNP recipient is locked into a CSA program and one crop is unsuccessful, the recipient does not have the latitude simply to purchase another type of fruit or vegetable in its place or from an alternate authorized farmer. Currently, the benefit levels issued to coupon recipients may differ widely from the value of the shares provided to CSA program recipients within the same State when both program models are used.

These intrinsic uncertainties, combined with the fact that the mission of FNS includes making sure that all of the programs administered by this agency are focused on providing nutritional benefits to as many eligible recipients as possible, have led the Department to propose in this rulemaking at § 249.10(a)(3) that a State agency must limit the number of CSA programs to represent no more than 50 percent of the total Federal SFMNP food grant. This limitation is intended to allow the State agency the opportunity to work with its small farmers toward the development and use of a creative program operations model that also fulfills the expectations of programs funded through the Commodity Credit Corporation, yet balances the mission of FNS to ensure that recipients actually receive the food benefits in exchange for the coupons. The only exception to this requirement is allowed for SFMNP State agencies that are grandfathered into the SFMNP. A State agency that received a SFMNP grant under the competitive grant process and whose operations committed more than 50 percent of its SFMNP grant to a CSA program model before the implementation of this proposed rule may continue to use a larger portion of its grant for CSA's, at

its discretion. However, all State agencies, regardless of grandfathered status, must abide by the requirements set forth in this rulemaking regarding maximum individual recipient benefit levels and accountability, as discussed at greater length later in this section of the preamble. State agencies that begin participation in the SFMNP after the publication of a final rule would not be permitted to use more than 50 percent of their grants for CSA program operations. This provision would also apply to current State agencies that under the competitive grant process did not exceed this limit.

The Department proposes to establish at § 249.8(b) one minimum and one maximum benefit level in the SFMNP, regardless of the program model used by the State agency. This requirement is likely to have a direct (and possibly prohibitive) impact on the CSA program models in use by SFMNP State agencies around the country. One of the difficulties FNS has encountered in its oversight of SFMNP State agencies that make extensive use of CSA programs to deliver program benefits to eligible recipients is the grantee's limited ability to attribute a specific benefit level to each individual recipient, and to ensure that the specific benefit level is consistently provided to each recipient. When crop shares are purchased at the beginning of the season, there is no positive assurance of the total value of produce that each shareholder will receive by the end of the season. Individual shares may be purchased, for example, at \$100 each, but if there is a drought, flood, insect infestation or blight that adversely impacts the harvest, the farmer holding the SFMNP contract(s) may not be able to provide the full value of produce that was initially purchased by the State agency. In the more traditional coupon issuance system, however, if one farmer experiences a problem with his production, the SFMNP recipient still has a negotiable currency that can be used at another authorized farmer's booth and/or roadside stand.

Beyond the inherent risk of inequitable benefit distribution systems among SFMNP recipients, CSA programs also present a challenge in terms of general program accountability. Currently, State agencies can only estimate the per-recipient benefit level when CSA program shares are purchased. As the SFMNP matures, it becomes increasingly important to be able to collect and compile aggregate data on specific aspects of program operations. SFMNP State agencies have not been required to provide data at this level of detail up to now; with the

implementation of the SFMNP as a permanent nutrition assistance program, such information will be essential.

Therefore, in § 249.10(b)(3)(vi), the Department proposes to require State agencies to enter into written agreements with CSA programs, to ensure that CSA programs track the value of program benefits actually provided to individual recipients and the remaining value owed, provide State agencies with access to such a tracking system, and ensure that the value of program benefits provided is consistent with program requirements addressing minimum and maximum benefit levels for each recipient.

Finally, a few SFMNP State agencies have used a portion of their grants to purchase CSA program shares that are then used to supplement meals served at congregate feeding sites. While such a practice was technically allowable under the SFMNP competitive grants, primarily because there were no legislative or regulatory provisions to prevent it and the grants provided an opportunity to look at various program models, it is not consistent with the underlying intent of the SFMNP, which is to provide individual low-income seniors with a resource that benefits their diets directly, rather than through any type of congregate feeding program. Therefore, at § 249.12(a)(3), this proposed rule specifically prohibits the use of any SFMNP funds to supplement congregate meal programs.

#### 11. Financial Management System (§ 249.11)

Based on the Department's experience with the SFMNP as a competitive grant program, participating SFMNP State agencies have financial management systems in place that provide accurate, current, and complete disclosure of the financial status of the SFMNP. State agencies have been cautioned expressly about the importance of maintaining separate accounts for the SFMNP and the FMNP, when applicable, and most State agencies are using a check system that expedites payment to farmers for SFMNP purchases. In accordance with the provisions of this proposed rulemaking, participating State agencies will be required to implement procedures that ensure prompt and accurate payment of allowable costs, and that ensure the allowability and allocability of costs in accordance with the cost provisions set forth in § 249.11 of this proposed rule, 7 CFR Part 3016, and FNS guidelines and Instructions.

#### 12. SFMNP Costs (§ 249.12)

##### a. Administrative Funding

Since the inception of the SFMNP as a pilot program in fiscal year 2001, funds provided to State agencies through the competitive grant process have only been available to support the cost of the eligible foods obtained by SFMNP recipients. SFMNP grant funds have not been available to State agencies to cover any administrative costs associated with the operation and administration of the program, such as administrative oversight, printing coupons, coupon issuance, and/or authorization of farmers, farmers' markets, roadside stands, and/or CSA programs. Therefore, State agencies have heretofore been responsible for 100 percent of the administrative costs necessary to operate the SFMNP. In general, State agencies have indicated that their administrative costs for the SFMNP have amounted to approximately 16 percent above the total Federal grant awards.

Once the SFMNP is no longer operated as a competitive grant program and becomes one of the FNS' established nutrition assistance programs, there is a greater expectation that administrative costs be allowed as part of the Federal grant. Compensation for administrative costs is generally an allowable cost under FNS grant programs. However, SFMNP funds that are earmarked and used for administrative costs will reduce available program funds to provide eligible foods to eligible SFMNP recipients. The Department is willing, therefore, to allow a State agency to use up to 8 percent of its total Federal grant to defray administrative costs associated with the SFMNP, as described at § 249.12(a)(1)(i). This position is consistent with OMB Circular A-87 and the mission of this Agency to provide a level of administrative funding to help reasonably offset the costs for administering the program. The NAFMNP also supports allowing a portion of the Federal SFMNP grant funds to be used for administrative expenses.

##### b. Food and Administrative Costs

In light of the preceding discussion, FNS is proposing that SFMNP costs consist of both food and administrative costs. Food costs, as set forth in § 249.12(a)(1)(i) of this proposed rule, are the costs of eligible foods provided to SFMNP recipients. As discussed in Section 10 of this preamble, SFMNP funds may not be used to supplement congregate meal programs.

Administrative costs are those costs associated with providing benefits and services to recipients. A list of allowable administrative costs is set forth at proposed § 249.12(b).

#### 13. SFMNP Income (§ 249.13)

Program income, as defined and explained in this proposed rule at § 249.13, means gross income the State agency earns from grant supported activities. It includes fees for services performed and receipts from the use or rental of real or personal property acquired with Federal grant funds, but does not include proceeds from the disposition of such property. For example, if the SFMNP State agency, in the process of authorizing farmers and farmers' markets, also agrees to distribute an unrelated survey form to the farmers and markets visited by SFMNP staff on behalf of another State agency, the second State agency (who needs the survey form distributed) may agree to pay the SFMNP State agency a fee for performing this service. Any SFMNP income earned during the agreement period must be fully documented, retained by the SFMNP State agency, and used for SFMNP purposes in accordance with the addition method described in 7 CFR 3016.25(g)(2). Fines, penalties, or assessments paid by local agencies or farmers, farmers' markets, roadside stands, and/or CSA programs are also deemed to be program income.

#### 14. Distribution of Funds (§ 249.14)

##### a. Base Grants

In order to grandfather in those State agencies currently participating in the SFMNP competitive grant program, as previously discussed in Section 5 of this preamble, Selection of State Agencies, it is necessary to establish some fundamental principles for the allocation of SFMNP funds. In the grant program, the Department has established a base grant level for the SFMNP. For FYs 2002, 2003, and 2004, SFMNP grants were based on each State agency's expenditure level from the prior fiscal year. Using this process, grant awards could not be announced until after closeout of the prior FY's operations in order to determine each State agency's prior year expenditure level. Many State agencies begin to plan program operations, print coupons, and certify senior recipients in advance of the announcement of grant awards. Basing SFMNP grants on expenditure levels from the prior year presents challenges for State agencies in their ability to plan current and future SFMNP operations effectively.

Therefore, § 249.14(b) proposes that the base grant levels will be based on the prior fiscal year's grant levels, rather than on that fiscal year's expenditure levels. Providing each State agency a base grant level that consists of the total Federal funds received in the prior year allows them to plan their program operations more effectively and accurately. This procedure is also consistent with the allocation of FMNP base grants, and many SFMNP State agencies participate in both programs. Since the two programs are similar in their operations and their missions, there is interest in making SFMNP and FMNP requirements consistent wherever possible.

In proposed § 249.14(c), the Department states that if amounts appropriated for any fiscal year for the SFMNP are not sufficient to maintain prior fiscal year funding levels for each State participating in the SFMNP, each State's grant will be ratably reduced by FNS. For example, a State agency whose prior fiscal year's final grant represented 10 percent of the total SFMNP allocation in that fiscal year would receive 10 percent of whatever amount of funding is available for the SFMNP in the current fiscal year.

#### b. Expansion Funding

For FY 2003 and FY 2004, current SFMNP State agencies wanting to expand, and new State agencies wanting to participate in the SFMNP for the first time, competed equally for the money left over after funding current States at their prior year's expenditure (base grant) levels. Given that the SFMNP is relatively new and with the initial success of the program, many current State agencies will likely want to expand their programs, and new State agencies will want to participate in the program. Additionally, in the first year of the SFMNP's operation as a permanent program, currently participating State agencies may need to request additional funds to replace those monies that may now be used to defray administrative expenses. Other State agencies that have been providing recipients with a benefit level lower than the minimum of \$20 established in § 249.8 of this proposed rule may need to request additional SFMNP funds in order to bring their program fully into compliance with the proposed requirements. Therefore, while the Department in no way guarantees that State agencies in either of these situations will be provided the additional funds they may need, a funding structure is needed to accommodate growth in both areas. The FMNP regulations at 7 CFR 248.14

provide a funding structure for expansion of participating State agencies and new State agencies that could be used in the SFMNP. Under this FMNP regulation, after satisfying base grants, 75 percent of the remaining funding is available to those State agencies that wish to serve additional recipients, increase benefit levels, or offer program services in additional areas within the State. The remaining 25 percent is available to State agencies that have not previously participated in the FMNP. If either amount is greater than that necessary to satisfy requests for that category (e.g., current State agencies), the unallocated amount is then applied toward satisfying any unmet need in the other category (e.g., new State agencies). The Department describes at proposed § 249.14(d) through (f) its intention to adopt this same process for the SFMNP. This will allow current State agencies to expand, and still allow new State agencies to participate in the SFMNP. Also, this process will provide consistency between the SFMNP and the FMNP. FNS' proposal is consistent with the NAFMNP recommendations that a funding structure and regulations be developed for the SFMNP that allow for the addition of new SFMNP State agencies.

#### 15. Closeout Procedures (§ 249.15)

This section of the proposed rule requires SFMNP State agencies to submit to FNS a final closeout report for each fiscal year on a form and by a date specified by FNS. It also establishes procedures to be followed, in accordance with 7 CFR Part 3016, when SFMNP grants to State agencies are terminated. All of the provisions proposed at § 249.15 are identical to those currently in place for the FMNP under 7 CFR Part 248.

#### 16. Administrative Appeal of State Agency Decisions (§ 249.16)

As proposed in § 249.16 of this rulemaking, SFMNP State agencies will be required to provide a hearing procedure whereby any entity (applicants, recipients, local agencies and farmers, farmers' markets, roadside stands, and/or CSA programs) adversely affected by certain actions of the State agency may appeal those actions. This section provides a list of the adverse actions that may be appealed. It also sets out the procedures that must be followed when an appeal is requested, and clarifies that appealing an adverse action does not relieve the entity that has been permitted to continue in the SFMNP while its appeal is pending from responsibility for continued

compliance with the terms of the written agreement or contract with the State agency. Finally, § 249.16 would require that the State agency explain the appellant's right to judicial review of any State level decision rendered against the appellant, and sets forth additional proposed appeals procedures for State agencies that authorize farmers' markets rather than individual farmers.

#### 17. Management Evaluations and Reviews (§ 249.17)

This proposed rulemaking would require FNS and each SFMNP State agency to establish a management evaluation system in order to assess the accomplishment of SFMNP objectives, the State Plan, and the written agreement with the Department. FNS will provide assistance to State agencies in discharging this responsibility, will establish standards and procedures to determine how well the objectives of this Part are being accomplished, and will implement sanction procedures as warranted by State SFMNP performance.

The monitoring responsibilities of the SFMNP State agency (set out at proposed § 249.17(c)) would be the same as those in place for the FMNP. As in the FMNP, this proposed rule would mandate that an authorized outlet's first year of operation in the SFMNP be considered a high-risk indicator. Other indicators are to be defined by the State agency. This section also proposes that all local SFMNP agencies within the State agency's jurisdiction be reviewed at least once every two years, and itemizes the aspects of program operation that should be monitored. Monitoring activities for the SFMNP and the FMNP should be coordinated and consolidated when a State agency administers both programs.

#### 18. Audits (§ 249.18)

SFMNP programs would be subject to audits under the same terms and conditions as the FMNP. This section assures access to any books, records, papers, and documents of the State agency and its contractors, for the purpose of making surveys, audits, examinations, excerpts, and transcripts, by the Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, or by duly authorized State auditors. This section also describes the ability of the State agency to take exception to particular audit findings and recommendations, and the process to be used by FNS in obtaining corrective action regarding any SFMNP deficiencies identified in an audit. Finally, the Department requires State



and local SFMNP agencies to conduct independent audits in accordance with 7 CFR part 3015, § 3016.26, or part 3051, as applicable, and allows a State or local agency to elect to obtain either an organization-wide audit or an audit of the SFMNP if it qualifies to make such an election under applicable regulations.

#### 19. Investigations (§ 249.19)

The Department would be allowed under this proposal to make an investigation of any allegation of noncompliance with this part and FNS guidelines and instructions. Further, under this proposed rule, at § 249.19(b), the identity of every complainant must be kept confidential except to the extent necessary to carry out the investigation, or any related administrative hearing or judicial proceeding.

#### 20. Claims and penalties (§ 249.20)

This section identifies the circumstances under which the Department could assess a claim against a State agency, and establishes opportunity for the State agency to submit evidence, explanations, or information challenging such claim. The proposed rule also stipulates that interest must be charged on any outstanding claim or the unpaid balance of such a claim, and sets forth the penalties that must be applied in the event of embezzlement, willful misapplication, theft, or the fraudulent acquisition of any funds, assets, or property associated with the SFMNP. Such penalties may involve monetary restitution, imprisonment, or both.

#### 21. Procurement and Property Management (§ 249.21)

SFMNP State agencies would be required under this rule to comply with the same requirements set forth for the FMNP, at 7 CFR 248.21, for the procurement of supplies, equipment, and other services with SFMNP funds. These requirements are proposed by FNS to ensure that such materials and services are obtained for the SFMNP in an effective manner and in compliance with the provisions of applicable law and executive orders. The State agency is responsible for the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the SFMNP. However, the State agency may use its own procurement regulations that reflect applicable State and local regulations, as long as procurements made with SFMNP funds adhere to the standards set forth in 7 CFR part 3016.

#### 22. Nonprocurement/Suspension, Drug-Free Workplace, and Lobbying Restrictions (§ 249.22)

SFMNP State agencies, under this proposed rule, are required to ensure compliance with the requirements of the Department's regulations governing nonprocurement debarment and suspension (7 CFR 3017), drug-free workplace (7 CFR 3021), and the Department's regulations governing restrictions on lobbying (7 CFR part 3018), where applicable.

#### 23. Records and Reports (§ 249.23)

The Department proposes to require each State agency to maintain full and complete records concerning SFMNP operations. This section sets forth the types of records that must be maintained, the retention requirements for such records, and the requirements pertaining to access and availability of such records. The Department also requires State agencies to submit financial and SFMNP performance data on a yearly basis as specified by FNS, and identifies the minimum data that must be reported. Source documentation should be on file for all financial and SFMNP performance reports. These reports will also need to be certified as complete and accurate by the person given that responsibility by the State agency. The Department intends to use State agency reports to measure progress in achieving objectives set forth in the State Plan, the SFMNP regulations, and/or other State agency performance plans.

#### 24. Confidentiality (§ 249.24)

Consistent with the FMNP regulations, 7 CFR 248.24(c), the Department proposes that State agencies restrict the use or disclosure of information obtained from SFMNP applicants and recipients and generated by the program to certain individuals and/or entities. To ensure confidentiality, SFMNP State agencies may execute a written agreement to share certain information with other public organizations designated by the chief State agency officer that administer food, nutrition, or other assistance programs that serve persons categorically eligible for the SFMNP. Proposed § 249.24(b) sets forth the specific terms of such a written agreement.

#### 25. Other Provisions (§ 249.25)

SFMNP recipients are often eligible to receive benefits under other Federal or State food or nutrition assistance programs, such as the Food Stamp Program, CSFP, or Meals on Wheels. Proposed § 249.25(a) would clarify that

participation in the SFMNP does not preclude a recipient from participating in food or nutrition assistance programs for which s/he may also be eligible. It also delineates, in proposed § 249.25(b), the circumstances and conditions under which FNS is authorized to use information that is obtained from the SFMNP.

#### 26. SFMNP Information (§ 249.26)

This section lists the seven Regional offices of FNS, provides their contact information, and identifies the State agencies that are covered by each one.

#### 27. OMB Control Number (§ 249.27)

When provided, this section will identify the control number assigned by the Office of Management and Budget indicating its approval of the collection of information requirements for Part 249.

### List of Subjects in 7 CFR Part 249

Aging, Community supported agriculture programs, Elderly, Farmers, Farmers' Markets, Food assistance programs, Food donations, Grant programs, Nutrition education, Public assistance programs, Seniors, Social programs.

Accordingly, 7 CFR part 249 is added to read as follows:

### **PART 249—SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP)**

#### **Subpart A—General**

- Sec.
- 249.1 General purpose and scope.
- 249.2 Definitions.
- 249.3 Administration.

#### **Subpart B—State Agency Eligibility**

- 249.4 State Plan.
- 249.5 Selection of new State agencies.

#### **Subpart C—Recipient Eligibility**

- 249.6 Recipient eligibility.
- 249.7 Nondiscrimination.

#### **Subpart D—Recipient Benefits**

- 249.8 Level of benefits and eligible foods.
- 249.9 Nutrition education.

#### **Subpart E—State Agency Provisions**

- 249.10 Coupon, market, and CSA program management.
- 249.11 Financial management system.
- 249.12 SFMNP costs.
- 249.13 Program income.
- 249.14 Distribution of funds.
- 249.15 Closeout procedures.
- 249.16 Administrative appeal of State agency decisions.

#### **Subpart F—Monitoring and Review of State Agencies**

- 249.17 Management evaluations and reviews.
- 249.18 Audits.

249.19 Investigations.

#### Subpart G—Miscellaneous Provisions

249.20 Claims and penalties.

249.21 Procurement and property management.

249.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.

249.23 Records and reports.

249.24 Confidentiality.

249.25 Other provisions.

249.26 SFMNP information.

249.27 OMB control number.

Authority: 7 U.S.C. 3007.

#### Subpart A—General

##### § 249.1 General purpose and scope.

(a) This part announces regulations under which the Secretary of Agriculture shall carry out the Senior Farmers' Market Nutrition Program (SFMNP). The purposes of the SFMNP are to:

(1) Provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs from farmers' markets, roadside stands, and community supported agriculture (CSA) programs to low-income seniors;

(2) Increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and CSAs; and

(3) Develop or aid in the development of new and additional farmers' markets, roadside stands, and CSAs.

(b) These goals will be accomplished through payment of cash grants to approved State agencies. The SFMNP shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011, *et seq.*), and to any other Federal or State food or nutrition assistance program under which foods are distributed to needy families in lieu of food stamps.

##### § 249.2 Definitions.

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

*Administrative costs* means those direct and indirect costs (as defined in § 249.12(a)(1)(ii)), exclusive of food costs, which State agencies determine to be necessary to support SFMNP operations. Administrative costs include, but are not limited to, the costs associated with administration and start-up; the provision of nutrition education; SFMNP coupon issuance; recipient education covering proposed coupon redemption procedures; eligibility determinations; outreach services; printing SFMNP coupons,

processing redeemed coupons, and training farmers, market managers, and/or farmers who operate CSA programs on the food delivery system; monitoring and reviewing Program operations; required reporting and recordkeeping; determining which local sites will be utilized; recruiting and authorizing farmers, farmers' markets, roadside stands, and/or CSA programs to participate in the SFMNP; preparing contracts for farmers, farmers' markets, roadside stands, and/or CSA programs; developing a data processing system for redemption and reconciliation of coupons; designing program training and informational materials; and coordinating SFMNP implementation responsibilities between designated administering agencies.

*Community supported agriculture (CSA) program* means a program under which a farmer or group of farmers grows food for a group of shareholders (or subscribers) who pledge to buy a portion of the farmer's crop(s) for that season. State agencies may purchase shares or subscribe to a community supported agriculture program on behalf of individual SFMNP recipients.

*Compliance buy* means a covert, on-site investigation in which a SFMNP representative poses as a SFMNP recipient or authorized representative and attempts to transact one or more SFMNP coupons, or, in the case of CSA programs, attempts to obtain eligible foods purchased with SFMNP funds at a distribution site.

*Coupon* means a check or other negotiable financial instrument by which benefits under the program are transferred to program recipients.

*Days* means calendar days.

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

*Distribution site* means the location where packages of eligible foods are assembled for and/or distributed to SFMNP recipients who are shareholders in CSA programs.

*Eligible foods* means fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. Dried fruits or vegetables, such as prunes (dried plums), raisins (dried grapes), sun-dried tomatoes, or dried chili peppers are not considered eligible foods. Potted fruit or vegetable plants, potted or dried herbs, wild rice, nuts of any kind (even raw), honey, maple syrup, cider, seeds, eggs, meat, cheese and seafood are also not eligible foods for purposes of the SFMNP.

*Farmer* means an individual authorized to sell eligible foods at participating farmers' markets and/or roadside stands, and through CSAs. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the SFMNP. A participating State agency has the option to authorize individual farmers or farmers' markets, roadside stands, and/or CSA programs.

*Farmers' market* means an association of local farmers who assemble at a defined location for the purpose of selling their produce directly to consumers.

*Federally recognized Indian tribal government* means the same as the definition of that term found at 7 CFR 3016.3, *i.e.*, the governing body or a governmental agency of any Indian tribe, band, organization, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

*Fiscal year* means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

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

*Food costs* means the cost of eligible foods purchased at authorized farmers' markets, roadside stands, and/or through CSA programs.

*Household* means a group of related or nonrelated individuals who are living together as one economic unit.

*Local agency* means any nonprofit entity or local government agency that certifies eligible recipients, issues SFMNP coupons, arranges for distribution of eligible foods through CSA programs, and/or provides nutrition education or information on operational aspects of the Program to SFMNP recipients.

*Locally grown* means grown within the borders of the State that the project serves. If the State agency chooses, "locally grown" may also mean grown in areas of States adjacent to that State, as long as such areas are part of the United States.

*Nonprofit agency* means a private agency that is exempt from the payment of Federal income tax under the Internal Revenue Code of 1986, as amended, (26 U.S.C. 1, *et seq.*).

*Nutrition education* means:

(1) Individual or group sessions; and

(2) The provision of relevant materials, in keeping with the individual's personal, cultural, and socioeconomic preferences and the Dietary Guidelines for Americans, that:

(i) Emphasize relationships between nutrition and health; and

(ii) Encourage participants to build healthful eating patterns, and to take action for good health.

*OIG* means the Department's Office of Inspector General.

*Program or SFMNP* means the Senior Farmers' Market Nutrition Program authorized by Section 4402 of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 3007.

*Proxy* means an individual authorized by an eligible senior to act on the senior's behalf, including application for certification, receipt of SFMNP coupons or other benefits, use of SFMNP coupons at authorized outlets, and/or acceptance of SFMNP foods provided through a CSA program, as long as the SFMNP benefits are ultimately received by the eligible senior. The terms "proxy" and "authorized representative" may be used interchangeably for purposes of this program.

*Recipient* means a person or household who meets the eligibility requirements of the SFMNP and to whom coupons or equivalent benefits have been issued.

*Roadside stand* means a location at which an individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a farmers' market or through a CSA program. The term "roadside stand" may be used interchangeably with the term "farmstand" as defined in § 248.2 of this chapter.

*Senior* means an individual 60 years of age or older, or as defined in § 249.6(a)(1).

*SFPD* means the Supplemental Food Programs Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

*Shareholder* means a SFMNP recipient for whom a full or partial share in a community supported agriculture program has been purchased by the State agency, and who receives SFMNP benefits in the form of actual eligible foods rather than coupons that must be exchanged for eligible foods at farmers' markets and/or roadside stands.

*State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and as applicable, American Samoa or the Commonwealth of the Northern Marianas.

*State agency* means the agriculture, aging, or health department, or any other agency approved by the Chief Executive Officer of the State that has administrative responsibility for the SFMNP; an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior and that has an ongoing relationship with such tribes, bands, or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service, a division of the Department of Health and Human Services.

*State Plan* means a plan of SFMNP operation and administration that describes the manner in which the State agency intends to implement, operate and administer all aspects of the SFMNP within its jurisdiction in accordance with § 249.4.

*WIC* means the Special Supplemental Nutrition Program for Women, Infants and Children authorized by Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

*WIC Farmers' Market Nutrition Program (FMNP)* means the nutrition assistance program authorized by Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)), to provide resources to women, infants, and children who are nutritionally at risk, in the form of fresh, nutritious, unprepared foods (such as fruits and vegetables) from farmers' markets; to expand the awareness and use of farmers' markets; and to increase sales at such markets.

#### § 249.3 Administration.

(a) *Delegation to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of the SFMNP. Within FNS, SFPD and the FNS Regional Offices are responsible for SFMNP administration. FNS shall provide assistance to State agencies and evaluate all levels of SFMNP operations to ensure that the goals of the SFMNP are achieved in the most effective and efficient manner possible.

(b) *Delegation to State agency.* The State agency is responsible for the effective and efficient administration of the SFMNP in accordance with the requirements of this Part; the requirements of the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a and 15b), administration of grants (7 CFR part 3016), nonprocurement debarment/suspension (7 CFR part 3017), drug-free workplace (7 CFR part 3021), and lobbying (7 CFR part 3018); FNS guidelines; FNS Instructions issued under the FNS Directives Management

System; and Office of Management and Budget Circular A-130 (For availability of OMB Circulars referenced in this section, see 5 CFR 1310.3). The State agency shall provide guidance to cooperating State and local agencies on all aspects of SFMNP operations. State agencies may operate the SFMNP locally through nonprofit organizations or local government entities and must ensure coordination among the appropriate agencies and organizations.

(c) *Agreement and State Plan.* Each State agency desiring to administer the SFMNP shall annually submit a State Plan of Operations and enter into a written agreement with the Department for administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this Part. If the State agency administers both the SFMNP and the WIC Farmers' Market Nutrition Program (FMNP), one consolidated State Plan may be submitted for both programs, in accordance with guidance provided by FNS.

(d) *Coordination with other agencies.* The Chief Executive Officer of the State shall ensure coordination between the designated administering State agency and any other State, local, or nonprofit agencies or entities involved in administering any aspect of the SFMNP by ensuring that the agencies enter into a written agreement. The written agreement shall delineate the responsibilities of each agency, describe any compensation for services, and shall be signed by the designated representative of each agency.

This agreement shall be submitted each year along with the State Plan.

(e) *State staffing standards.* Each State agency shall ensure that sufficient staff is available to administer the SFMNP efficiently and effectively. This shall include, but not be limited to, sufficient staff to identify and certify eligible SFMNP recipients, provide program information and nutrition education to recipients, and to oversee coupon, market, and/or CSA program management, fiscal reporting, monitoring, and training. The State agency shall provide in its State Plan an outline of administrative staff and job descriptions for staff whose salaries will be paid from program funds.

#### Subpart B—State Agency Eligibility

##### § 249.4 State Plan.

(a) *Requirements.* By November 15 of each year, each applying or participating State agency shall submit to FNS for approval a State Plan for the following year as a prerequisite to receiving funds under this section. If the

State agency administers both the SFMNP and the FMNP, one consolidated State Plan may be submitted for both programs, in accordance with guidance provided by FNS. The State Plan must be signed by the State-designated official responsible for ensuring that the Program is operated in accordance with the State Plan. FNS will provide written approval or denial of a completed State Plan or amendment within 30 days of receipt. Portions of the State Plan that do not change annually need not be resubmitted. However, the State agency shall provide the title of the sections that remain unchanged, as well as the year of the last Plan in which the sections were submitted. At a minimum, the Plan must include the following items, which must include sufficient detail to demonstrate the State agency's ability to meet the requirements of the SFMNP:

(1) A copy of the agreement between the designated administering State agency and any other cooperating State, local, or nonprofit agencies or organizations for services such as certification of eligible recipients, issuance of SFMNP coupons or benefits, and/or nutrition education, as required in § 249.3(d).

(2) A description of the State agency's procedures for identifying and certifying eligible SFMNP recipients, including the specific age and income criteria that will be used to determine SFMNP eligibility.

(3) An estimated number of recipients for the fiscal year, and proposed months of operation.

(4) A detailed budget for the SFMNP, including:

(i) The minimum amount necessary to operate the SFMNP;

(ii) A description of the Federal and non-Federal funds that will be used to operate the Program; and

(iii) An assurance that no more than 50 percent of the Federal SFMNP grant will be used to support a CSA program model for the delivery of SFMNP benefits.

(5) An outline of administrative staff and job descriptions.

(6) A detailed description of the SFMNP recordkeeping system including, but not limited to, the system for maintaining separate records for SFMNP funds pertaining to financial operations, coupon issuance and redemption, authorization of farmers, markets, and/or CSA programs, distribution of eligible foods through CSA programs, and SFMNP participation.

(7) A detailed description of the State agency's financial management system,

including how the system will provide accurate, current and complete disclosure of the program's financial status and required reports.

(8) A detailed description of the service area, including:

(i) the number and addresses of authorized participating markets, roadside stands, and community supported agriculture programs; and  
(ii) SFMNP certification/issuance sites (such as senior centers or senior housing facilities), including a map outlining the service area and proximity of markets, roadside stands, and/or community supported agriculture programs to certification/issuance or distribution sites.

(9) A description of the coupon issuance system including:

(i) A description of how the State agency will target areas with the highest concentrations of eligible persons and greatest access to farmers' markets and/or roadside stands;

(ii) The benefit level per recipient, or household if benefits are issued on a household basis, including:

(A) How coupons will be issued;

(B) The value of benefits provided to each recipient or household at each issuance during the year;

(C) The frequency of coupon issuance; and

(D) The total amount of SFMNP benefits issued to each recipient or household during the year;

(iii) A method for instructing recipients on the proper use of SFMNP coupons and the purpose of the SFMNP;

(iv) A method for ensuring that SFMNP coupons are issued only to eligible recipients; and

(v) A method for preventing and identifying dual participation in accordance with § 249.6(d)(1).

(10) If the agency is using a "paperless" system, *i.e.*, a system that does not issue actual coupons, a complete description of how such a system will be operated in a manner that ensures the integrity of SFMNP funds and benefits.

(11) A detailed description of the SFMNP coupon redemption process including:

(i) The procedures for ensuring the secure transportation and storage of SFMNP coupons;

(ii) A system for identifying and reconciling SFMNP coupons; and  
(iii) The timeframes for SFMNP coupon redemption by recipients, submission for payment by farmers or authorized outlets (farmers' markets and/or roadside stands), and payment by the State agency.

(12) A description of the State agency's CSA program, if applicable, including:

(i) How the State agency will target and select community supported agriculture programs designed to provide SFMNP benefits to eligible recipients;

(ii) The annual benefit amount per recipient or household, if benefits are issued on a household basis;

(iii) How CSA program contracts are developed, negotiated, and executed by the State agency;

(iv) How CSA program shares are allocated to eligible SFMNP recipients;

(v) A method for instructing recipients and farmers participating in the CSA program on the purpose of the SFMNP, and the procedures for delivery and distribution of eligible foods provided for the SFMNP through the CSA;

(vi) A system to ensure receipt by eligible recipients of eligible foods provided through a CSA program. Such a system should include a written receipt or distribution log, with the recipient's signature (or that of the eligible recipient's proxy, if proxies are allowed) and the date of each distribution;

(vii) The payment procedures for the CSA program(s) used by the State agency;

(viii) How the State agency ensures that the full value of eligible foods for which it has contracted is provided regularly throughout the SFMNP season;

(ix) A listing of delivery dates and distribution sites for CSA program-provided eligible foods; and

(x) A system for ensuring that each SFMNP shareholder receives an equitable amount of eligible foods at each delivery, and that the total value of the eligible foods provided under the SFMNP falls within the minimum and maximum Federal SFMNP benefit levels, as specified in § 249.8(b).

(13) A complete description of age- and circumstance-appropriate nutrition education to be provided to SFMNP recipients, including:

(i) The agencies that will provide the nutrition education;

(ii) The format(s) in which the nutrition education will be provided; and

(iii) The locations where nutrition education is likely to be provided.

(14) A detailed description of the State agency's system for managing its coupon, market, and CSA program management systems, including:

(i) The criteria for authorizing farmers' markets, roadside stands, and/or community supported agriculture programs, including the agency responsible for authorization;

(ii) The procedures for training farmers, market managers, and/or CSA

program farmers at authorization, and annually thereafter;

(iii) The procedures for monitoring farmers' markets, roadside stands, and/or community supported agriculture programs;

(iv) A description of the State agency's system for identifying high-risk farmers and farmers' markets, roadside stands, and/or community supported agriculture programs, as set forth at § 249.10(e)(2)(ii);

(v) The procedures for sanctioning farmers, farmers' markets, roadside stands, and/or community supported agriculture programs;

(vi) A facsimile of the SFMNP coupon, including the denominations of coupons that will be issued, and a clear indication of where the recipient/proxy and (if applicable) farmer are required to sign, stamp, or otherwise endorse the coupon before it can be redeemed;

(vii) A complete listing of the fresh, nutritious, unprepared fruits, vegetables, and herbs eligible for purchase under the SFMNP;

(viii) A description of SFMNP coupon replacement policy or statement that coupons will not be replaced;

(ix) The State agency's procedures for handling recipient and farmer/farmers' market, roadside stands, and CSA program complaints.

(15) A system for ensuring that SFMNP coupons are redeemed only by authorized farmers/farmers' markets/roadside stands, and only for eligible foods.

(16) A system for identifying SFMNP coupons that are redeemed or submitted for payment outside valid dates or by unauthorized farmers/farmers' markets/roadside stands.

(17) A copy of the written agreement to be used between the State agency and authorized farmers/farmers' markets, roadside stands, and/or community supported agriculture programs. In those States that authorize farmers' markets, but not individual farmers, this agreement shall specify in detail the role of and procedures to be used by farmers' markets for monitoring and sanctioning farmers, and the appropriate procedures to be used by a farmer to appeal a sanction or disqualification imposed by a farmers' market.

(18) If available, information on the change in consumption of fresh fruits, vegetables, and herbs by SFMNP recipients. This information shall be submitted as an addendum to the State Plan and shall be submitted at a date specified by the Secretary.

(19) If available, information on the effects of the program on farmers' markets, roadside stands, and/or community supported agriculture

programs. This information shall be submitted as an addendum to the State Plan and shall be submitted at a date specified by the Secretary.

(20) A description of the procedures the State agency will use to comply with the civil rights requirements described in § 249.7(a), including the processing of discrimination complaints.

(21) A copy of the State agency's fair hearing procedures for SFMNP recipients and the administrative appeal procedures for local agencies, farmers, farmers' markets, roadside stands, and/or CSA programs.

(22) State agencies that have not previously participated in the SFMNP must provide:

(i) A description of the need for the SFMNP in that State agency;

(ii) The specific goals and objectives of the SFMNP, designed to fulfill the purpose of the Program as set forth in § 249.1; and

(iii) A capability statement that includes a summary description of any prior experience with farmers' market projects or programs, including information and data describing the attributes of such projects or programs.

(23) For State agencies making expansion requests, documentation that demonstrates:

(i) The need for an increase in funding;

(ii) That the use of the increased funding will be consistent with serving eligible SFMNP recipients by expanding benefits to more persons, by enhancing current benefits, or a combination of both, and expanding the awareness and use of farmers' markets, roadside stands, and CSA programs;

(iii) The ability of the State agency to operate the existing SFMNP satisfactorily;

(iv) The management capabilities of the State agency to expand; and

(v) Whether, in the case of a State agency that intends to use the funding to increase the value of the Federal benefits received by a recipient, the funding provided will increase the rate of coupon redemption.

(b) *Amendments.* At any time after approval, the State agency may amend the State Plan to reflect changes. The State agency shall submit such amendments to FNS for approval. The proposed amendments shall be signed by the State-designated official responsible for ensuring that the SFMNP is operated in accordance with the State Plan. The amendments must be approved by FNS prior to implementation.

(c) *Retention of copy.* A copy of the approved State Plan shall be kept on file

at the State agency for public inspection.

#### § 249.5 Selection of new State agencies.

In selecting new State agencies, the Department will use objective criteria to rank and approve State plans submitted in accordance with § 249.4. In making this ranking, the Department will consider the amount of funds necessary to operate the SFMNP successfully in the State compared with other States and with the total amount of funds available to the SFMNP, the number of recipients estimated to be served, and the projected benefit level. Approval of a State Plan does not equate to an obligation on the part of the Department to fund the SFMNP within that State.

#### Subpart C—Recipient Eligibility

##### § 249.6 Recipient eligibility.

(a) *Eligibility for certification.*

Individuals who are eligible to receive Federal benefits under the SFMNP are those who meet the following criteria:

(1) *Categorical eligibility.* Recipients must be not less than 60 years of age, except that State agencies may exercise the option to deem Native Americans who are 55 years of age or older as categorically eligible for SFMNP benefits. State agencies may, at their discretion, also deem disabled individuals less than 60 years of age who are currently living in housing facilities occupied primarily by older individuals where congregate nutrition services are provided, as categorically eligible to receive SFMNP benefits.

(2) *Residency requirement.* The State agency may establish a residency requirement for SFMNP applicants. The State agency may determine a service area for any local agency, and may require that an applicant be residing within the service area at the time of application to be eligible for the Program. However, the State agency may not impose any durational or fixed residency requirements.

(3) *Income eligibility.* The State agency must ensure that local agencies determine income eligibility through the use of a clear and simple application process approved by the State agency. Recipients must have a maximum household income of not more than 185 percent of the annual poverty income guidelines, or be determined automatically income eligible based on current participation/eligibility to receive benefits in another means-tested program, as designated by the State agency, for which income eligibility is set at or below 185 percent of the poverty income guidelines and for which documentation of family income

is required. FNS will announce the income poverty guidelines annually.

(b) *Documentation of income eligibility.* (1) *Automatically income eligible applicants.* The State or local agency must require applicants determined to be automatically income eligible to provide documentation of their eligibility to participate in another means-tested assistance program, as designated by the State agency.

(2) *Other applicants.* The State or local agency must require all other applicants to provide documentation of family income at certification.

(c) *Certification periods.* Recipients may be certified only for the current fiscal year's SFMNP period of operation. Eligibility must be determined at the beginning of each period of operation. Prior fiscal year certifications may not be carried over into subsequent fiscal years, but the State agency may make use of its recipient enrollment listings from the prior fiscal year in its outreach efforts for the current fiscal year.

(d) *Recipient rights and responsibilities.* Where a significant number or proportion of the population eligible to be served needs this information in a language other than English, reasonable steps must be taken to provide the information in the appropriate language(s) to such persons, considering the scope of the Program and the size and concentration of such population(s). In order to inform applicants and participants or their authorized representatives/proxies of SFMNP rights and responsibilities, State/local agencies must provide the following information:

(1) During the certification process, every program applicant or authorized representative must be informed of the illegality of dual participation, *i.e.*, obtaining SFMNP benefits from more than one service delivery area or from more than one SFMNP program model (coupon system and CSA program) within the same service delivery area.

(2) At the time of certification, each SFMNP applicant or authorized representative must read or have read to him or her the following statements or similar statements:

"I have been advised of my rights and obligations under the SFMNP. I certify that the information I have provided for my eligibility determination is correct, to the best of my knowledge. This certification form is being submitted in connection with the receipt of Federal assistance. Program officials may verify information on this form. I understand that intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts may result in paying the State agency, in cash, the value of the food benefits improperly issued to me and may subject me

to civil or criminal prosecution under State and Federal law.

Standards for eligibility and participation in the SFMNP are the same for everyone, regardless of race, color, national origin, age, handicap, or sex.

I understand that I may appeal any decision made by the local agency regarding my eligibility for the SFMNP."

(3) At least during the initial certification visit, each recipient or authorized representative must:

(i) Receive an explanation of how to use his/her SFMNP coupons at farmers' markets and roadside stands, and/or how SFMNP foods will be provided under the CSA program in that service delivery area; and

(ii) Be advised of the other types of services that are available to SFMNP recipients, where such services are located, how they may be obtained, and why they may be useful.

(4) Persons found ineligible for the SFMNP during a certification visit must be advised in writing of their ineligibility, of the reasons for their ineligibility, and of their right to a fair hearing. The reasons for ineligibility must be properly documented and must be retained on file at the local agency.

(5) When a State or local agency pursues collection of a claim pursuant to § 249.20(c) against an individual who has been issued SFMNP benefits for which s/he is not eligible, the person must be advised in writing of the reason(s) for the claim, the value of the improperly issued benefits that must be repaid, and of his/her right to a fair hearing.

(e) *Certification without charge.* Certification for the SFMNP must be performed at no cost to the applicant or the authorized representative.

(f) *Use of proxies or authorized representatives.* At the State agency's discretion, a senior may designate an authorized representative (proxy) to apply for certification, shop at the farmers' market or roadside stands, and/or pick up their eligible foods from CSA program distribution sites on his/her behalf if the senior is unable to perform these actions. The State agency must obtain a signed statement from the eligible senior designating another individual as his/her authorized representative. A senior who has been certified to receive SFMNP benefits may designate an authorized representative at any point during the program's period of operation.

(g) *Processing standards.* (1) Applicants for the SFMNP must be notified of their eligibility or ineligibility for benefits, or of their placement on a waiting list, as described in paragraph (g)(2) of this section,

within 10 days from the date of application.

(2) When all available program benefits have been allocated to eligible recipients, the local agency must maintain a waiting list of individuals who contact the local agency to apply for the Program. Individuals must be notified of their placement on a waiting list within 10 days after they contact the local agency to request Program benefits. To enable the local agency to contact these individuals when caseload space becomes available, the waiting list must include the name of the applicant, the date placed on the waiting list, and an address or phone number of the applicant.

(h) *Limitations on certification.* If necessary to limit the number of recipients, State agencies may impose additional eligibility requirements, such as limiting recipient certification to certain geographic areas. Each State agency must specifically identify these limitations on certification in its State Plan.

#### § 249.7 Nondiscrimination.

(a) *Civil rights requirements.* (1) The State agency must comply with the following requirements to ensure that no person shall, on the grounds of race, color, national origin, age, sex or disability, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the SFMNP:

(i) Title VI of the Civil Rights Act of 1964;

(ii) Title IX of the Education Amendments of 1972;

(iii) Section 504 of the Rehabilitation Act of 1973;

(iv) The Age Discrimination Act of 1975;

(v) Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a and 15b); and

(vi) Applicable FNS Instructions, including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and annual reviews of each local agency's racial and ethnic participation data (as required by title VI of the Civil Rights Act of 1964).

(2) Compliance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and regulations and instructions issued thereunder shall include, but not be limited to:

(i) Notification to the public of the nondiscrimination policy and complaint rights of recipients and potentially eligible persons, which may be satisfied

through the Department's required nondiscrimination statement on brochures and publications;

(ii) Review and monitoring activity to ensure SFMNP compliance with the nondiscrimination laws and regulations; and

(iii) Establishment of grievance procedures for handling recipient complaints based on sex and handicap.

(b) *Complaints.* Persons seeking to file discrimination complaints may file them either with the Secretary of Agriculture, or the Director, Office of Civil Rights, USDA, Washington, DC 20250 or with the office established by the State agency to handle discrimination grievances or complaints. All complaints received by State agencies that allege discrimination based on race, color, national origin, or age shall be referred to the Secretary of Agriculture or the Director of the Office of Civil Rights, USDA. A State agency may process complaints that allege discrimination based on sex or disability if grievance procedures are in place.

#### Subpart D—Recipient Benefits

##### § 249.8 Level of benefits and eligible foods.

(a) *General.* State agencies must identify in the State Plan the fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs that are eligible for purchase under the SFMNP. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. Dried fruits or vegetables, such as prunes (dried plums), raisins (dried grapes), sun-dried tomatoes, or dried chili peppers are not considered eligible foods in the SFMNP. Potted fruit or vegetable plants, potted or dried herbs, wild rice, nuts of any kind (even raw), honey, maple syrup, cider, seeds, eggs, meat, cheese, and seafood are also not eligible for purposes of the SFMNP. "Locally grown" means produce grown only within a State's borders but may be defined by State agencies to include border areas in adjacent States. Under no circumstances may produce grown outside of the United States and its territories be considered eligible food.

(b) *The value of the Federal benefits received.* The Federal SFMNP benefit level received by each recipient, whether individual or household, may not be less than \$20 per year or more than \$50 per year, except that recipients who are participating in the SFMNP through a CSA program may receive a higher total benefit level than recipients participating in a check or coupon program model, as long as that level is

consistent for all Senior CSA program participants and does not exceed the \$50 annual maximum per individual or household.

(c) *Recipient or household benefit allocation.* (1) All SFMNP recipients living in the areas served by the State agency must be offered the same amount of SFMNP benefits, regardless of the program model(s) used by that State agency.

(2) Benefits may be allocated on an individual or on a household basis.

(3) Foods provided are intended for the sole benefit of SFMNP recipients and are not to be shared with other non-participating household members.

(4) Recipients must receive SFMNP benefits free of charge.

##### § 249.9 Nutrition education.

(a) *Goal.* Nutrition education shall emphasize the relationship of proper nutrition to the total concept of good health, including the importance of consuming fruits and vegetables.

(b) *Requirement.* The State agency shall integrate nutrition education into SFMNP operations and may satisfy nutrition education requirements through coordination with other agencies within the State. State agencies wishing to coordinate nutrition education with another State agency or organization must enter into a written cooperative agreement with such agencies to offer nutrition education relevant to the use and nutritional value of foods available to SFMNP recipients. In cases where SFMNP recipients are receiving relevant nutrition education from an agency other than the administering State agency, the provision of nutrition education is an allowable administrative cost under the SFMNP.

#### Subpart E—State Agency Provisions

##### § 249.10 Coupon, market, and CSA program management.

(a) *General.* This section sets forth State agency responsibilities regarding the authorization of farmers, farmers' markets, roadside stands, and/or CSA programs. The State agency is responsible for the fiscal management of and accountability for SFMNP-related activities for farmers, farmers' markets, roadside stands, and CSA programs. Each State agency may decide whether to authorize individual farmers and farmers' markets separately, or to authorize only farmers' markets. In addition, each State agency may decide whether to authorize roadside stands and/or CSA programs. The State agency may authorize a farmer for participation in a farmers' market, a roadside stand,

and/or CSA program simultaneously. All contracts or agreements entered into by the State agency for the management or operation of farmers, farmers' markets, roadside stands, and/or CSA programs shall conform with the requirements of 7 CFR part 3016.

(1) Only farmers, farmers' markets, and/or roadside stands authorized by the State agency may redeem SFMNP coupons. Only farmers authorized by the State agency, or having a valid agreement with an authorized farmers' market, may redeem coupons. Only CSA programs authorized by the State agency may receive payment from the State agency at the beginning of the planting season, in order to provide eligible foods to senior recipients who are shareholders.

(2) The State agency must establish criteria for the authorization of individual farmers and/or farmers' markets, roadside stands, and/or CSA programs. Any authorized farmer, farmers' market, roadside stand and/or CSA program must agree to sell recipients only those foods identified as eligible by the State agency. State agencies may determine farmers, farmers' markets and/or roadside stands as automatically authorized to participate in the SFMNP based on current authorization to operate in the FMNP under Part 248 of this chapter. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the SFMNP, except individuals employed by a farmer otherwise qualified under these regulations, or individuals hired by a nonprofit organization to sell produce at roadside stands on behalf of local farmers.

(3) The State agency must ensure that an appropriate number of farmers, farmers' markets, roadside stands, and/or CSA programs are authorized for adequate recipient access in the area(s) proposed to be served and for effective management of the farmers, farmers' markets, roadside stands, and/or CSA programs by the State agency. The State agency may establish criteria to limit the number of authorized farmers, farmers' markets, and/or roadside stands. The State agency must limit the value of shares awarded to CSA programs to no more than 50 percent of their total Federal SFMNP food grant. The State agency shall make efforts to select the CSA program(s) that provides the greatest variety of eligible foods.

(4) The State agency shall ensure that face-to-face training is conducted prior to start up of the first year of SFMNP participation of an individual farmer, farmers' market, roadside stand, and/or

CSA program. The face-to-face training shall include at a minimum those items listed in paragraph (d) of this section.

(5) Authorized farmers shall display a sign stating that they are authorized to redeem SFMNP coupons.

(6) Authorized farmers, farmers' markets, roadside stands, and/or CSA programs shall comply with the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a and 15b), and FNS Instructions as outlined in § 249.7.

(7) The State agency shall ensure that there is no conflict of interest between the State or local agency and any participating farmer, farmers' market, roadside stand and/or CSA program.

(b) *Farmer, farmers' market, roadside stand, and/or CSA program agreements.* The State agency shall ensure that all participating farmers' markets, roadside stands, and/or CSA programs enter into written agreements with the State agency. State agencies that authorize individual farmers shall also enter into written agreements with the individual farmers. The agreement must be signed by a representative who has legal authority to obligate the farmer, farmers' market, roadside stand, and/or CSA program. Agreements must include a description of sanctions for noncompliance with SFMNP requirements and shall contain, at a minimum, the following specifications, although the State agency may determine the exact wording to be used:

(1) The farmer, farmers' market and/or roadside stand shall:

(i) Provide such information as the State agency may require for its periodic reports to FNS;

(ii) Assure that SFMNP coupons are redeemed only for eligible foods;

(iii) Provide eligible foods at or less than the price charged to other customers;

(iv) Accept SFMNP coupons within the dates of their validity and submit such coupons for payment within the allowable time period established by the State agency;

(v) In accordance with a procedure established by the State agency, mark each transacted coupon with a farmer identifier. In those cases where the agreement is between the State agency and the farmer and/or roadside stand, each transacted SFMNP coupon shall contain a farmer identifier and shall be batched for reimbursement under that identifier. In those cases where the agreement is between the State agency

and the farmers' market, each transacted SFMNP coupon shall contain a farmer identifier and be batched for reimbursement under a farmers' market identifier.

(vi) Accept training on SFMNP procedures and provide training to farmers and any employees with SFMNP responsibilities on such procedures;

(vii) Agree to be monitored for compliance with SFMNP requirements, including both overt and covert monitoring;

(viii) Be accountable for actions of farmers or employees in the provision of eligible foods and related activities;

(ix) Pay the State agency for any coupons transacted in violation of this agreement;

(x) Offer SFMNP recipients the same courtesies as other customers;

(xi) Comply with the nondiscrimination provisions of USDA regulations as provided in § 249.7; and

(xii) Notify the State agency if any farmer, farmers' market or roadside stand ceases operation prior to the end of the authorization period.

(2) The farmer, farmers' market and/or roadside stand shall neither:

(i) Seek restitution from SFMNP recipients for coupons not paid by the State agency; nor

(ii) Issue cash change for purchases that are in an amount less than the value of the SFMNP coupon(s).

(3) The CSA program shall:

(i) Provide such information as the State agency may require for its periodic reports to FNS;

(ii) Assure that SFMNP recipients receive only eligible foods;

(iii) Provide eligible foods to their SFMNP shareholders at or less than the price charged to other customers;

(iv) Assure that the shareholder receives eligible foods that are of equitable value and quantity to their share;

(v) Assure that all funds from the State agency are used for planting of crops for SFMNP shareholders;

(vi) Provide to the State agency access to a tracking system that determines the value of the eligible foods provided and the remaining value owed to each SFMNP shareholder;

(vii) Assure that SFMNP shareholders/authorized representatives provide written acknowledgement of receipt of eligible foods;

(viii) Accept training on SFMNP procedures and provide training to farmers and any employees with SFMNP responsibilities for such procedures;

(ix) Agree to be monitored for compliance with SFMNP requirements,

including both overt and covert monitoring;

(x) Be accountable for actions of farmers or employees in the provision of eligible foods and related activities;

(xi) Offer SFMNP shareholders the same courtesies as other customers;

(xii) Notify the State agency immediately when the CSA program is experiencing a problem with its crops, and may be unable to provide SFMNP shareholders with the complete amount of eligible foods agreed upon between the CSA program and the State agency;

(xiii) Comply with the nondiscrimination provisions of USDA regulations as provided in § 249.7; and

(xiv) Notify the State agency if any CSA program ceases operation prior to the end of the authorization period.

(4) The CSA program shall not substitute ineligible produce when eligible foods are not available.

(5) Neither the State agency nor the farmer, farmers' market, roadside stand, and/or CSA program has an obligation to renew the agreement. The State agency or the farmer, farmers' market, roadside stand and/or CSA program may terminate the agreement for cause after providing advance written notification.

(6) The State agency may deny payment to the farmer, farmers' market and/or roadside stand for improperly redeemed SFMNP coupons and may demand refunds for payments already made on improperly redeemed coupons.

(7) The State agency may demand a refund from any CSA program that fails to provide the full benefit to all SFMNP shareholders as specified in its contract, or that provides ineligible foods as substitutes for eligible foods.

(8) The State agency may disqualify a farmer, farmers' market, roadside stand, and/or CSA program for SFMNP violations. The farmer, farmers' market, roadside stand, and/or CSA program has the right to appeal a denial of an application to participate, a disqualification, or a SFMNP sanction by the State agency. Expiration of a contract or agreement with a farmer, farmers' market, roadside stand, and/or CSA program, and claims actions under § 249.20, are not appealable.

(9) A farmer, farmers' market, roadside stand, and/or CSA program, which commits fraud or engages in other illegal activity is liable to prosecution under applicable Federal, State or local laws.

(10) Agreements may not exceed 3 years.

(c) *Agreements with farmers' markets that do not authorize individual farmers.* Those State agencies that authorize farmers' markets but not



individual farmers shall require authorized farmers' markets to enter into a written agreement with each farmer within the market that is participating in SFMNP. The State agency must set forth the required terms for the agreement and provide a sample agreement that may be used.

(d) *Annual training for farmers, farmers' market managers and/or farmers that operate a roadside stand or CSA program.* State agencies shall conduct annual training for farmers, farmers' market managers, and/or farmers who operate a CSA program in the SFMNP. The State agency must conduct a face-to-face training for all farmers and farmers' market managers who have never previously participated in the SFMNP. After a farmer/farmers' market manager's first year of SFMNP operation, State agencies have discretion in determining the method used for annual training purposes. At a minimum, annual training shall include instruction emphasizing:

- (1) Eligible food choices;
- (2) Proper SFMNP coupon redemption procedures, including deadlines for submission of coupons for payment, and/or receipt of payment for CSA programs' distribution of eligible foods;
- (3) Equitable treatment of SFMNP recipients, including the availability of eligible foods to SFMNP recipients that are of the same quality and cost as that sold to other customers;
- (4) Civil rights compliance and guidelines;
- (5) Guidelines for storing SFMNP coupons safely; and
- (6) Guidelines for cancelling SFMNP coupons, such as punching holes or rubber-stamping.

(e) *Monitoring and review of farmers, farmers' markets, roadside stands, CSA programs and local agencies.* The State agency shall be responsible for the monitoring of farmers, farmers' markets, roadside stands, CSA programs and local agencies within its jurisdiction. This shall include developing a system for identifying high risk farmers, farmers' markets, roadside stands, and/or CSA programs, and ensuring on-site monitoring, conducting further investigation, and sanctioning of such farmers, farmers' markets, roadside stands, and/or CSA programs as appropriate. In States where both the SFMNP and the FMNP are in operation, these monitoring/review requirements may be coordinated to avoid duplication. If the same farmers, farmers' markets, roadside stands, and/or CSA programs are authorized for both programs, a review conducted by one

program may be counted toward the requirement for the other program.

(1) Where coupon reimbursement responsibilities are delegated to farmers' market managers, farmers' market associations, or nonprofit organizations, the State agency may establish bonding requirements for these entities. Costs of such bonding are not reimbursable administrative expenses.

(2)(i) Each State agency shall rank participating farmers, farmers' markets, roadside stands, and/or CSA programs by risk factors, and shall conduct annual, on-site monitoring of at least 10 percent of farmers, 10 percent of farmers' markets, 10 percent of roadside stands, and 10 percent of the CSA programs or one of each program model, whichever is greater, which shall include those farmers, farmers' markets, roadside stands, and/or CSA programs identified as being the highest-risk.

(ii) Mandatory high-risk indicators include:

(A) A proportionately high volume of SFMNP coupons redeemed by a farmer within a farmers' market or at a single roadside stand (as compared to other farmers within the farmers' market or within the State);

(B) Recipient complaints;

(C) In the case of CSA programs, an extended or ongoing inability to provide the full SFMNP benefit to each shareholder as contracted; and

(D) Farmers, farmers' markets, roadside stands, and/or CSA programs in their first year of SFMNP operation. States are encouraged to formally establish other high-risk indicators for identifying potential problems.

(iii) If additional high-risk indicators are established, they must be set forth in the farmers, farmers' market, roadside stand, and/or CSA program agreement and in the State Plan. If application of the high-risk indicators results in fewer than 10 percent of farmers, farmers' markets, roadside stands, and/or CSA programs being designated as high-risk, the State agency shall randomly select additional farmers, farmers' markets, roadside stands, and/or CSA programs to be monitored in order to meet the 10 percent minimum. The high-risk indicators listed above generally apply to a State agency already participating in the SFMNP. A State agency participating in the SFMNP for the first time shall, in lieu of applying the high-risk indicators, randomly select 10 percent of its participating farmers, 10 percent of its participating farmers' markets, 10 percent of its participating roadside stands, and 10 percent of its participating CSA programs or at least one farmers' market, roadside stand,

and/or CSA program, whichever is greater, for monitoring visits.

(3)(i) The following shall be documented for all on-site monitoring visits to farmers, farmers' markets, roadside stands, and/or CSA programs, at a minimum:

(A) Names of both the farmer, farmers' market, roadside stand, and/or CSA program and the reviewer;

(B) Date of review;

(C) Nature of problem(s) detected or the observation that the farmer, farmers' market, roadside stand, and/or CSA program appears to be in compliance with SFMNP requirements;

(D) Record of interviews with recipients, market managers, farmers, and/or farmers who operate a CSA program; and

(E) Signature of the reviewer.

(ii) Reviewers are not required to notify the farmer, farmers' market, roadside stand, and/or CSA program of the monitoring visit before, during, or immediately after the visit. The State agency shall do so after a reasonable delay when necessary to protect the identity of the reviewer(s) or the integrity of the investigation.

(iii) In instances where the farmer, farmers' market, roadside stand, and/or CSA program will be permitted to continue participating in the SFMNP after being informed of any deficiencies detected by the monitoring visit, the farmer, farmers' market, roadside stand, and/or CSA program shall provide plans as to how the deficiencies will be corrected.

(4) At least every 2 years, the State agency must review all local agencies within its jurisdiction.

(f) *Control of SFMNP coupons.* The State agency must:

(1) Control and provide accountability for the receipt and issuance of SFMNP coupons;

(2) Ensure that there is secure transportation and storage of unissued SFMNP coupons; and

(3) Design and implement a system of review of SFMNP coupons to detect errors. At a minimum, the errors the system must detect are a missing recipient signature (if such signature is required by the State agency), a missing farmer and/or market identification, and redemption by a farmer outside of the valid date. The State agency must implement procedures to reduce the number of errors in transactions, where possible.

(g) *Payment to farmers, farmers' markets, roadside stands, and/or CSA programs.* The State agency must ensure that farmers, farmers' markets, roadside stands, and/or CSA programs are promptly paid for food costs.

(h) *Reconciliation of SFMNP coupons.* The State agency shall identify the disposition of all SFMNP coupons as validly redeemed, lost or stolen, expired, or not matching issuance records. Validly redeemed SFMNP coupons are those that are issued to a valid recipient and redeemed by an authorized farmer, farmers' market, and/or roadside stand within valid dates. SFMNP coupons that were redeemed but cannot be traced to a valid recipient or authorized farmer, farmers' market, and/or roadside stand shall be subject to claims action in accordance with § 249.20.

(1) If the State agency elects to replace lost, stolen or damaged SFMNP coupons, it must describe its system for doing so in the State Plan.

(2) The State agency must use uniform SFMNP coupons within its jurisdiction.

(3) SFMNP coupons must include, at a minimum, the following information:

(i) The last date by which the recipient may use the coupon. This date shall be no later than November 30 of each year.

(ii) A date by which the farmer or farmers' market must submit the coupon for payment. When establishing this date, State agencies shall take into consideration the date financial statements are due to the FNS, and allow time for the corresponding coupon reconciliation that must be done by the State agency prior to submission of financial statements. Financial statements are due to FNS by January 30.

(iii) A unique and sequential serial number.

(iv) A denomination (dollar amount).

(v) A farmer identifier for the redeeming farmer when agreements are between the State agency and the farmer.

(vi) In those instances where State agencies have agreements with farmers' markets, there must be a farmer identifier on each coupon and a market identifier on the cover of coupons that are batched by the market manager for reimbursement.

(i) *Instructions to recipients.* Each recipient must receive instruction on the redemption of the SFMNP coupons, or participation in a CSA program (where applicable), including, but not limited to:

(1) A list of names and addresses of authorized farmers, farmers' markets, and/or roadside stands at which SFMNP coupons may be redeemed, or procedures on the home-delivery process;

(2) Procedures to designate a proxy;

(3) The name and address of the authorized farmer of the CSA program, and locations of distribution sites;

(4) A description of eligible foods and the prohibition against cash change for SFMNP purchases of eligible foods;

(5) A description of eligible foods that will be provided through the CSA program;

(6) A schedule outlining a timeframe for distribution of the eligible foods from the CSA program; and

(7) An explanation of his/her right to complain about improper farmer, farmers' market, roadside stand, and/or CSA program practices with regard to SFMNP responsibilities and the process for doing so.

(j) *Recipient and farmer, farmers' market, roadside stand, and/or CSA program complaints.* The State agency must have procedures that document the handling of complaints from recipients and farmers/farmers' markets, roadside stands, and/or CSA programs. Complaints of civil rights discrimination shall be handled in accordance with § 249.7(b).

(k) *Recipient and farmer, farmers' market, roadside stand, and/or CSA program sanctions.* (1) The State agency must establish policies which determine the type and level of sanctions to be applied against recipients and farmers, farmers' markets, roadside stands, and/or CSA programs based upon the severity and nature of the SFMNP violations observed, and such other factors as the State agency determines appropriate, such as whether repeated offenses have occurred over a period of time. Farmers, farmers' markets, roadside stands, and/or CSA programs may be sanctioned, disqualified, or both, when appropriate. Sanctions may include fines for improper SFMNP coupon redemption and the penalties outlined in § 249.20, in the case of deliberate fraud.

(2) In those instances where compliance purchases are conducted, the results of covert compliance purchases can be a basis for farmer, farmers' market, and/or roadside stand sanctions.

(3) A farmer, farmers' market, roadside stand, and/or CSA program committing fraud or other unlawful activities are liable to prosecution under applicable Federal, State or local laws.

(4) State agency policies must ensure that a farmer that is disqualified from the SFMNP at one market, roadside stand, or CSA program shall not participate in the SFMNP at any other farmers' market, roadside stand or CSA program in the State's jurisdiction during the disqualification period.

(5) State agency policies must ensure that a farmer, farmers' market, roadside stand, and/or CSA program that is disqualified from participating in the WIC Farmers' Market Nutrition Program is also disqualified from participating in the SFMNP in the State's jurisdiction during the disqualification period.

#### § 249.11 Financial management system.

(a) *Disclosure of expenditures.* The State agency must maintain a financial management system that provides accurate, current and complete disclosure of the financial status of the SFMNP. This must include an accounting for all property and other assets and all SFMNP funds received and expended each fiscal year.

(b) *Internal controls.* The State agency shall maintain effective controls over and accountability for all SFMNP funds. The State agency must have effective internal controls to ensure that expenditures financed with SFMNP funds are authorized and properly chargeable to the SFMNP.

(c) *Record of expenditures.* The State agency must maintain records that adequately identify the source and use of funds expended for SFMNP activities. These records must contain, but are not limited to, information pertaining to authorization, receipt of funds, obligations, unobligated balances, assets, liabilities, outlays, and income.

(d) *Payment of costs.* The State agency must implement procedures that ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocability of costs in accordance with the cost principles and standard provisions of this part, 7 CFR part 3016, and FNS guidelines and Instructions.

(e) *Identification of obligated funds.* The State agency must implement procedures that accurately identify obligated SFMNP funds at the time the obligations are made.

(f) *Resolution of audit findings.* The State agency shall implement procedures that ensure timely and appropriate resolution of claims and other matters resulting from audit findings and recommendations.

(g) *Reconciliation of food instruments.* The State agency must reconcile SFMNP coupons in accordance with § 249.10(h).

(h) *Transfer of cash.* The State agency must establish the timing and amounts of its cash draws against its Letter of Credit in accordance with 31 CFR part 205.

#### § 249.12 SFMNP costs.

(a) *General.* (1) *Composition of allowable costs.* In general, a cost item will be deemed allowable if it is

reasonable and necessary for SFMNP purposes and otherwise satisfies allowability criteria set forth in 7 CFR 3016.22 and this Part. SFMNP purposes include the administration and operation of the SFMNP. Allowable SFMNP costs may be classified as follows:

(i) *Food costs and administrative costs.* Food costs are the costs of eligible foods provided to SFMNP recipients. Administrative costs are the costs associated with providing SFMNP benefits and services to recipients and generally administering the SFMNP. Specific examples of allowable administrative costs are listed in paragraph (b) of this section. A State agency may use up to 8 percent of its total Federal SFMNP grant to cover administrative costs. Any costs incurred for food and/or administration above the Federal grant level will be the State agency's responsibility.

(ii) *Direct and indirect costs.* Direct costs are food and administrative costs incurred specifically for the SFMNP. Indirect costs are administrative costs that benefit multiple programs or activities, and cannot be identified to any one program or activity without effort disproportionate to the results achieved. In accordance with the provisions of 7 CFR part 3016, a claim for reimbursement of indirect costs shall be supported by an approved allocation plan for the determination of such costs. An indirect cost rate developed through such an allocation plan may not be applied to a base that includes food costs.

(2) *Costs allowable with prior approval.* A State or local agency must obtain prior approval in accordance with 7 CFR 3016.22 before charging to the SFMNP any capital expenditures and other cost items designated by 7 CFR 3016.22 as requiring such approval.

(3) *Unallowable costs.* Costs that are not reasonable and necessary for SFMNP purposes, or that do not otherwise satisfy the cost principles of 7 CFR 3016.22, are unallowable. Notwithstanding any other provision of 7 CFR Part 3016 or this Part, the cost of constructing or operating a farmers' market is unallowable. The use of SFMNP funds to supplement congregate meal programs is prohibited. Unallowable costs may never be claimed for Federal reimbursement.

(b) *Specified allowable administrative costs.* Allowable administrative costs include the following:

(1) The costs associated with administration and start-up;

(2) The costs associated with the provision of nutrition education that meets the requirements of § 249.9;

(3) The costs of SFMNP coupon issuance, or recipient education covering proper coupon redemption procedures;

(4) The cost of eligibility determinations and outreach services;

(5) The costs associated with the coupon and market management process, such as printing SFMNP coupons, processing redeemed coupons, and training farmers, market managers, and/or farmers who operate CSA programs on SFMNP operations;

(6) The cost of monitoring and reviewing Program operations;

(7) The cost of SFMNP training;

(8) The cost of required reporting and recordkeeping;

(9) The cost of determining which local sites will be utilized;

(10) The cost of recruiting and authorizing farmers, farmers' markets, roadside stands, and/or CSA programs to participate in the SFMNP;

(11) The cost of preparing contracts for farmers, farmers' markets, roadside stands, and/or CSA programs;

(12) The cost of developing a data processing system for redemption and reconciliation of SFMNP coupons;

(13) The cost of designing program training and informational materials; and

(14) The cost of coordinating SFMNP responsibilities between designated administering agencies.

#### § 249.13 Program income.

Program income means gross income the State agency earns from grant supported activities. It includes fees for services performed and receipts from the use or rental of real or personal property acquired with Federal grant funds, but does not include proceeds from the disposition of such property. The State agency must retain Program income earned during the agreement period and use it for Program purposes in accordance with the addition method described in 7 CFR 3016.25(g)(2). Fines, penalties or assessments paid by local agencies or farmers, farmers' markets, roadside stands, and/or CSA program are also deemed to be Program income. The State agency must ensure that the sources and applications of Program income are fully documented.

#### § 249.14 Distribution of funds.

(a) *State Plan and agreement.* As a prerequisite to the receipt of Federal funds, a State agency must have its State Plan approved and must execute an agreement with the Department in accordance with § 249.3(c).

(b) *Distribution of SFMNP funds to previously participating State agencies.* Provided that sufficient SFMNP funds

are available, each State agency that participated in the SFMNP in any prior fiscal year, shall receive not less than the amount of funds the State agency received in the most recent fiscal year in which it received funding, if it otherwise complies with the requirements established in this Part.

(c) *Ratable reduction.* If amounts appropriated for any fiscal year for grants under the SFMNP are not sufficient to pay to each previously participating State agency at least an amount as identified in paragraph (b) of this section, each State agency's grant must be ratably reduced. However, to the extent permitted by available funds, each State agency shall receive at least \$75,000 or the amount that the State agency received for the most recent prior fiscal year in which the State participated, if that amount is less than \$75,000.

(d) *Expansion of participating State agencies and establishment of new State agencies.* Any SFMNP funds remaining for allocation after meeting the requirements of paragraph (b) of this section shall be allocated in the following manner:

(1) Of the remaining funds, 75 percent shall be made available to State agencies already participating in the SFMNP that wish to serve additional recipients or increase the current benefit level. If this amount is greater than that necessary to satisfy all State Plans approved for expansion, the unallocated amount shall be applied toward satisfying any unmet need in paragraph (d)(2) of this section.

(2) Of the remaining funds, 25 percent shall be made available to State agencies that have not participated in the SFMNP in any prior fiscal year. If this amount is greater than that necessary to satisfy the approved State Plans for new States, the unallocated amount shall be applied toward satisfying any unmet need in paragraph (d)(1) of this section. The Department reserves the right not to fund every State agency with an approved State Plan.

(e) *Expansion for current State agencies.* In providing funds to State agencies that participated in the SFMNP in the previous fiscal year, the Department must consider on a case-by-case basis, the following factors:

(1) Whether the State agency utilized at least 80 percent of its prior year food grant. States that did not spend at least 80 percent of their prior year food grant may still be eligible for expansion funding if, in the judgment of the Department, good cause existed which was beyond the management control of the State, such as severe weather conditions or unanticipated decreases in participant caseload;

(2) Documentation supporting the funds expansion request as outlined in § 249.4(a)(23).

(f) *Funding of new State agencies.* Funds will be awarded to new SFMNP State agencies in accordance with § 249.5.

(g) *Administrative funding.* A State agency will have available for administrative costs an amount not greater than 8 percent of total SFMNP funds.

(h) *Recovery of unused funds.* State agencies must return to FNS any unexpended funds made available for a given fiscal year by February 1 of the following fiscal year.

#### § 249.15 Closeout procedures.

(a) *General.* State agencies must submit to FNS a final closeout report for the fiscal year on a form prescribed by FNS and on a date specified by FNS.

(b) *Grant closeout procedures.* When grants to State agencies are terminated, the following procedures shall be followed in accordance with 7 CFR part 3016.

(1) FNS may disqualify a State agency's participation under the SFMNP, in whole or in part, or take such remedies as may be appropriate, whenever FNS determines that the State agency failed to comply with the conditions prescribed in this part, in its Federal-State Agreement, or in FNS guidelines and Instructions. FNS will promptly notify the State agency in writing of the disqualification together with the effective date.

(2) FNS may terminate a grant when both parties agree that continuation under the SFMNP would not produce beneficial results commensurate with the further expenditure of funds.

(3) Upon termination of a grant, the affected agency may not incur new obligations after the effective date of the disqualification, and must cancel as many outstanding obligations as possible. FNS will allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to disqualification, and the State agency shall do the same for farmers, farmers' markets, roadside stands, and/or CSA programs.

(4) A grant closeout shall not affect the retention period for, or Federal rights of access to, SFMNP records as specified in § 249.23(a). The closeout of a grant does not affect the responsibilities of the State agency regarding property or with respect to any SFMNP income for which the State agency is still accountable.

(5) A final audit is not a required part of the grant closeout and should not be

needed unless there are problems with the grant that require attention. If FNS considers a final audit to be necessary, it shall so inform OIG. OIG will be responsible for ensuring that necessary final audits are performed and for any necessary coordination with other Federal cognizant audit agencies or State or local auditors. Audits performed in accordance with § 249.18 may serve as final audits providing such audits meet the needs of requesting agencies. If the grant is closed out without an audit, FNS reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

#### § 249.16 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby applicants, recipients, local agencies and farmers, farmers' markets, roadside stands, and/or CSA programs adversely affected by certain actions of the State agency may appeal those actions.

(1) *What may be appealed.*

(i) An applicant may appeal denial of certification of SFMNP benefits.

(ii) A recipient may appeal disqualification/suspension of SFMNP benefits.

(iii) A local agency may appeal an action of the State agency disqualifying it from participating in the SFMNP.

(iv) A farmer, farmers' market, roadside stand, and/or CSA program may appeal an action of the State agency denying its application to participate, imposing a sanction, or disqualifying it from participating in the SFMNP.

(2) *What may not be appealed.* Expiration of a contract or agreement shall not be subject to appeal.

(b) *Time limit for request.* The State or local agency must provide individuals, local agencies, farmers, farmers' markets, roadside stands, and/or CSA programs a reasonable period of time to request a fair hearing. Such time limit must not be less than 30 days from the date the agency mails or otherwise issues the notice of adverse action.

(c) *Postponement pending decision.* An adverse action may, at the State agency's option, be postponed until a decision in the appeal is rendered.

(1) In a case where an adverse action affects a local agency or farmer, farmers' market, roadside stand, and/or CSA program, a postponement is appropriate where the State agency finds that recipients would be unduly inconvenienced by the adverse action. In addition, the State agency may

determine other relevant criteria to be considered in deciding whether or not to postpone an adverse action.

(2) Applicants who are denied benefits at initial certification may appeal the denial, but must not receive SFMNP benefits while awaiting the hearing. Recipients who appeal the termination of benefits within the period of time provided under paragraph (b) of this section must continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to recipients whose certification period has already expired or who become otherwise ineligible for SFMNP benefits. Recipients who become ineligible during a certification, or whose certification period expires, may appeal the termination, but must not receive benefits while awaiting the hearing.

(d) *Procedure.* The State agency hearing procedure shall at a minimum provide the recipient, local agency or farmer, farmers' market, roadside stand, and/or CSA program with the following:

(1) Written notification of the adverse action, the cause(s) for the action, and the effective date of the action, including the State agency's determination of whether the action shall be postponed under paragraph (c) of this section if it is appealed, and the opportunity for a hearing. Such notification shall be provided within a reasonable timeframe established by the State agency and in advance of the effective date of the action.

(2) The opportunity to appeal the action within the time specified by the State agency in its notification of adverse action.

(3) Adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing.

(4) The opportunity to present its case and at least one opportunity to reschedule the hearing date upon specific request. The State agency may set standards on how many hearing dates can be scheduled, provided that a minimum of two hearing dates is allowed.

(5) The opportunity to confront and cross-examine adverse witnesses.

(6) The opportunity to be represented by counsel or, in the case of a recipient appeal, by a representative designated by the recipient, if desired.

(7) The opportunity to review the case record prior to the hearing.

(8) An impartial decision maker, whose decision as to the validity of the State agency's action shall rest solely on the evidence presented at the hearing

and the statutory and regulatory provisions governing the SFMNP. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal findings of fact and conclusions of law.

(9) Written notification of the decision in the appeal, within 60 days from the date of receipt of the request for a hearing by the State agency.

(e) *Continuing responsibilities.* When a farmer, farmers' market, roadside stand, CSA program, and/or local agency appeals an adverse action (and is permitted to continue in the SFMNP while its appeal is pending), it continues to be responsible for compliance with the terms of the written agreement or contract with the State agency.

(f) *Judicial review.* If a State level decision is rendered against the recipient, local agency, farmer, farmers' market, roadside stand, and/or CSA program and the appellant expresses an interest in pursuing a further review of the decision, the State agency shall explain any further State level review of the decision and any available State level rehearing process. If neither is available or both have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

(g) *Additional appeals procedures for State agencies that authorize farmers' markets and not individual farmers.* A State agency that authorizes farmers' markets and not individual farmers shall ensure that procedures are in place to be used when a farmer seeks to appeal an action of a farmers' market or association denying the farmer's application to participate, or sanctioning or disqualifying the farmer. The procedures shall be set forth in the State Plan and in the agreements entered into by the State agency and the farmers' market and the farmers' market and the farmer.

## Subpart F—Monitoring and Review of State Agencies

### § 249.17 Management evaluations and reviews.

(a) *General.* FNS and each State agency shall establish a management evaluation system in order to assess the accomplishment of SFMNP objectives as provided under these regulations, the State Plan, and the written agreement with the Department. FNS will:

(1) Provide assistance to State agencies in discharging this responsibility;

(2) Establish standards and procedures to determine how well the

objectives of this Part are being accomplished; and

(3) Implement sanction procedures as warranted by State SFMNP performance.

(b) *Responsibilities of FNS.* FNS will establish evaluation procedures to determine whether State agencies carry out the purposes and provisions of this part, the State Plan, and the written agreement with the Department. As a part of the evaluation procedure, FNS will review audits to ensure that the SFMNP has been included in audit examinations at a reasonable frequency. These evaluations shall also include reviews of selected local agencies, and on-site reviews of selected farmers, farmers' markets, roadside stands, and community supported agriculture programs. These evaluations will measure the State agency's progress toward meeting the objectives outlined in its State Plan and the State agency's compliance with these regulations.

(1) FNS may withhold up to 8 percent of the State agency's total SFMNP grant if FNS determines that the State agency has:

(i) Failed, without good cause, to demonstrate efficient and effective administration of its SFMNP; or

(ii) Failed to comply with the requirements contained in this section or the State Plan.

(2) Sanctions imposed upon a State agency by FNS in accordance with this section (but not claims for repayment assessed against a State agency) may be appealed in accordance with the procedures established in § 249.20(a). Before carrying out any sanction against a State agency, the following procedures will be followed:

(i) FNS will notify the chief departmental officer of the administering agency in writing of the deficiencies found and of FNS' intention to withhold administrative funds unless an acceptable corrective action plan is submitted by the State agency to FNS within 45 days after mailing of notification.

(ii) The State agency shall develop a corrective action plan, including timeframes for implementation to address the deficiencies and prevent their future recurrence.

(iii) If the corrective action plan is acceptable, FNS will notify the chief departmental officer of the administering agency in writing within 30 days of receipt of the plan. The letter will advise the State agency of the sanctions to be imposed if the corrective action plan is not implemented according to the schedule set forth in the approved plan.

(iv) Upon notification from the State agency that corrective action has been taken, FNS will assess such action and, if necessary, perform a follow-up review to determine if the noted deficiencies have been corrected. FNS will then advise the State agency of whether the actions taken are in compliance with the corrective action plan, and whether the deficiency is resolved or further corrective action is needed. Compliance buys can be required if, during FNS management evaluations by regional offices, a State agency is found to be out of compliance with its responsibility to monitor and review farmers, farmers' markets, roadside stands, and community supported agriculture programs.

(v) If an acceptable corrective action plan is not submitted within 45 days, or if corrective action is not completed according to the schedule established in the corrective action plan, FNS may withhold the award of SFMNP administrative funds. If the 45-day warning period ends in the fourth quarter of a fiscal year, FNS may elect not to withhold funds until the next fiscal year. In such an event, FNS will notify the chief departmental officer of the administering State agency.

(vi) If compliance is achieved before the end of the fiscal year in which the SFMNP administrative funds are withheld, the funds withheld may be restored to the State agency. FNS is not required to restore funds withheld beyond the end of the fiscal year for which the funds were initially awarded.

(c) *Responsibilities of State agencies.* The State agency is responsible for meeting the following requirements:

(1) The State agency must establish evaluation and review procedures and document the results of such procedures. The procedures must include, but are not limited to:

(i) Conducting annual monitoring reviews of participating farmers' markets, roadside stands, and community supported agriculture programs. This includes on-site reviews of a minimum of 10 percent of farmers and 10 percent of each type of authorized outlet (farmers' markets, roadside stands, and community supported agriculture programs), and includes those farmers and authorized outlets identified as being at the highest risk. The first year of operation in the SFMNP shall be considered a high-risk indicator. More frequent reviews may be performed, as the State agency deems necessary. In States where both the SFMNP and the WIC Farmers' Market Nutrition Program are in operation, these reviews may be coordinated to avoid duplication. A review by one

program may be counted by the other program toward the monitoring requirement, provided that appropriate sanction action is taken for all violations found.

(ii) Conducting monitoring reviews of all local agencies within the State agency's jurisdiction at least once every 2 years. Monitoring of local agencies shall encompass, but not be limited to, evaluation of management, accountability, certification, nutrition education, financial management systems, and coupon and/or CSA program management systems. When the State agency conducts a local agency review outside of the SFMNP season, a review of documents and procedural plans of the SFMNP, rather than actual SFMNP activities, is acceptable.

(iii) Instituting the necessary follow-up procedures to correct identified problem areas.

(2) On its own initiative or when required by FNS, the State agency must provide special reports on SFMNP activities, and take positive action to correct deficiencies in SFMNP operations.

#### **§ 249.18 Audits.**

(a) *Federal access to information.* The Secretary of the U.S. Department of Agriculture, the Comptroller General of the United States, or any of their duly authorized representatives, or duly authorized State auditors shall have access to any books, documents, papers, and records of the State agency and their contractors, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *State agency response.* The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FNS as to the action taken or planned regarding the findings. A proposed corrective action plan developed and submitted by the State agency must include specific time frames for its implementation and for completion of the correction of deficiencies and problems leading to the deficiencies.

(c) *Corrective action.* FNS will determine whether SFMNP deficiencies identified in an audit have been adequately corrected. If additional corrective action is necessary, FNS shall schedule a follow-up review, allowing a reasonable time for such corrective action to be taken.

(d) *State sponsored audits.* State and local agencies must conduct independent audits in accordance with 7 CFR parts 3015, 3016 (§ 3016.26), or 3051, as applicable. A State or local agency may elect to obtain either an

organization-wide audit or an audit of the Program if it qualifies to make such an election under applicable regulations.

#### **§ 249.19 Investigations.**

(a) *Authority.* The Department may make an investigation of any allegation of noncompliance with this part and FNS guidelines and instructions. The investigation may include, where appropriate, a review of pertinent practices and policies of any State and local agency, the circumstances under which the possible noncompliance with this Part occurred, and other factors relevant to a determination as to whether the State and local agency has failed to comply with the requirements of this Part.

(b) *Confidentiality.* No State or local agency, recipient, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this Part because that person has made a complaint or formal allegation, or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purposes of this Part, including the conducting of any investigation, hearing, or judicial proceeding.

#### **Subpart G—Miscellaneous Provisions**

##### **§ 249.20 Claims and penalties.**

(a) *Claims against State agencies.* (1) If FNS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any SFMNP funds provided to a State agency for food or administrative purposes were, through State agency negligence or fraud, misused or otherwise diverted from SFMNP purposes, a formal claim will be assessed by FNS against the State agency. The State agency must pay promptly to FNS a sum equal to the amount of the administrative funds or the value of coupons and/or eligible foods so misused or diverted.

(2) If FNS determines that any part of the SFMNP funds received, coupons printed, and/or eligible foods otherwise lost by a State agency were lost as a result of theft, embezzlement, or unexplained causes, the State agency must, on demand by FNS, pay to FNS a sum equal to the amount of the money or the value of the SFMNP funds or coupons/eligible foods so lost.

(3) The State agency will have full opportunity to submit evidence, explanation or information concerning

alleged instances of noncompliance or diversion before a final determination is made in such cases.

(4) FNS is authorized to establish claims against a State agency for unreconciled SFMNP coupons, and/or for failure to comply with the terms of duly executed CSA program contracts or agreements. When a State agency can demonstrate that all reasonable management efforts have been devoted to reconciliation and 99 percent or more of the SFMNP coupons issued, or of the eligible foods contracted for delivery by the CSA program, have been accounted for by the reconciliation process, FNS may determine that the reconciliation process has been completed to satisfaction.

(b) *Interest charge on claims against State agencies.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit within 30 days from the date of the first demand letter from FNS, FNS will assess an interest (late) charge against the State agency. Interest accrual shall begin on the 31st day after the date of the first demand letter, bill or claim, and shall be computed monthly on any unpaid balance as long as the debt exists. From a source other than the SFMNP, the State agency shall provide the funds necessary to maintain SFMNP operations at the grant level authorized by FNS.

(c) *Penalties.* Penalties will be assessed on whoever embezzles, willfully misapplies, steals or obtains by fraud funds, assets or property (whether received directly or indirectly) provided under Section 4402 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171). The same penalties apply to whoever receives, conceals or retains such funds, assets or property for his or her own interest, knowing that such funds, assets or property were obtained illegally. For funds, assets or property valued at \$100 or more, a fine of not more than \$25,000 or imprisonment of not more than five years (or both) shall apply. For funds, assets or property valued at less than \$100, a fine not more than \$1,000 or imprisonment for not more than one year (or both) shall apply.

##### **§ 249.21 Procurement and property management.**

(a) *Requirements.* State agencies must comply with the requirements of 7 CFR part 3016 for procurement of supplies, equipment and other services with SFMNP funds. These requirements are adopted for use by FNS to ensure that such materials and services are obtained for the SFMNP in an effective manner

and in compliance with the provisions of applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in 7 CFR part 3016 do not relieve the State agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the SFMNP. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State agency may use its own procurement regulations provided that:

(1) Such regulations reflect applicable State and local regulations; and

(2) Any procurements made with SFMNP funds adhere to the standards set forth in 7 CFR part 3016.

(d) *Property acquired with program funds.* State and local agencies shall observe the standards prescribed in 7 CFR part 3016 in their utilization and disposition of real property and equipment acquired in whole or in part with SFMNP funds.

**§ 249.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.**

The State agency must ensure compliance with the requirements of the Department's regulations governing nonprocurement debarment/suspension (7 CFR part 3017) and drug-free workplace (7 CFR part 3021), as well as the Department's regulations governing restrictions on lobbying (7 CFR part 3018), where applicable.

**§ 249.23 Records and reports.**

(a) *Recordkeeping requirements.* Each State agency must maintain full and complete records concerning SFMNP operations. Such records must comply with 7 CFR part 3016 and the following requirements:

(1) Records must include, but not be limited to, information pertaining to certification, financial operations, SFMNP coupon issuance and redemption, CSA program agreements, invoices, delivery receipts, equipment purchases and inventory, nutrition education, and civil rights procedures.

(2) All records must be retained for a minimum of 3 years following the date of submission of the final expenditure report for the period to which the report pertains. If any litigation, claim,

negotiation, audit or other action involving the records has been started before the end of the 3-year period, the records must be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later. If FNS deems any of the SFMNP records to be of historical interest, it may require the State agency to forward such records to FNS whenever the State agency is disposing of them.

(3) Records for nonexpendable property acquired in whole or in part with SFMNP funds must be retained for three years after its final disposition.

(4) All records must be available during normal business hours for representatives of the Department of the Comptroller General of the United States to inspect, audit, and copy. Any reports resulting from such examinations shall not divulge names of individuals.

(b) *Financial and recipient reports.*

State agencies must submit financial and SFMNP performance data on a yearly basis as specified by FNS. Such information must include, but shall not be limited to:

(1) Number and type of recipients served with Federal SFMNP funds;

(2) Value of coupons issued and/or eligible foods ordered under CSA programs;

(3) Value of coupons redeemed and/or eligible foods provided to recipients under CSA programs; and

(4) Number of authorized outlets by type; *i.e.*, farmers, farmers' markets, roadside stands, and CSA programs.

(c) *Source documentation.* To be acceptable for audit purposes, all financial and SFMNP performance reports must be traceable to source documentation.

(d) *Certification of reports.* Financial and SFMNP reports must be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(e) *Use of reports.* FNS will use State agency reports to measure progress in achieving objectives set forth in the State Plan, and this part, or other State agency performance plans. If it is determined, through review of State agency reports, SFMNP or financial analysis, or an audit, that a State agency is not meeting the objectives set forth in its State Plan, FNS may request additional information including, but not limited to, reasons for failure to achieve these objectives.

**§ 249.24 Confidentiality.**

The State agency must restrict the use or disclosure of information obtained from SFMNP applicants and recipients to:

(a) Persons directly connected with the administration or enforcement of the SFMNP, including persons investigating or prosecuting violations in the SFMNP under Federal, State or local authority;

(b) Representatives of public organizations designated by the chief State agency officer (or, in the case of Indian Tribal governments acting as SFMNP State agencies, the governing authority) that administer food, nutrition, or other assistance programs that serve persons categorically eligible for the SFMNP. The State agency must execute a written agreement with each such designated organization:

(1) Specifying that the receiving organization may employ SFMNP information only for the purpose of establishing the eligibility of SFMNP applicants and recipients for food, nutrition, or other assistance programs that it administers and conducts outreach to SFMNP applicants and recipients for such programs; and

(2) Containing the receiving organization's assurance that it will not, in turn, disclose the information to a third party.

(c) The Comptroller General of the United States for audit and examination authorized by law.

**§ 249.25 Other provisions.**

(a) *No aid reduction.* Any programs for which a grant is received under this part shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 as amended (7 U.S.C. 2011, *et seq.*) and to any other Federal or State food or nutrition assistance program.

(b) *Statistical information.* FNS reserves the right to use information obtained under the SFMNP in a summary, statistical or other form that does not identify particular individuals.

**§ 249.26 SFMNP information.**

(a) Any person who wishes information, assistance, records or other public material must request such information from the State agency, or from the FNS Regional Office serving the appropriate State as listed below:

(1) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont: U.S. Department of Agriculture, FNS, Northeast Region, 10 Causeway Street, Room 501, Boston, Massachusetts 02222-1066.

(2) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Mid-Atlantic Region, Mercer Corporate Park, 300 Corporate

Boulevard, Robbinsville, New Jersey, 08691-1598.

(3) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 61 Forsyth Street, SW., Room 8T36, Atlanta, Georgia 30303.

(4) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FNS, Midwest Region, 77 West Jackson Boulevard—20th floor, Chicago, Illinois 60604-3507.

(5) Arkansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, FNS, Southwest Region,

1100 Commerce Street, Room 555, Dallas, Texas 75242.

(6) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S. Department of Agriculture, FNS, Mountain Plains Region, 1244 Speer Boulevard, Suite 903, Denver, Colorado 80204.

(7) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, Washington: U.S. Department of Agriculture, FNS, Western Region, 550 Kearny Street, Room 400, San Francisco, California 94108.

(b) Inquiries pertaining to the SFMNP administered by a federally recognized

Indian tribal organization (ITO) should be addressed to the FNS Regional Office responsible for the geographic State in which that ITO is located.

**§ 249.27 OMB control number.**

The information collection requirements for part 249 are under review by the Office of Management and Budget. The OMB approval number will be included in this section upon publication of the final rule.

Dated: May 17, 2005.

**Eric M. Bost,**

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

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