DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 247

RIN 0584–AC84

Commodity Supplemental Food Program—Plain Language, Program Accountability, and Program Flexibility

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule rewrites the regulations for the Commodity Supplemental Food Program (CSFP) in ''plain language'' to help program operators and the general public better understand program requirements. It also reduces the time and paperwork burden for State and local agencies, increases their flexibility in program operations, and strengthens program accountability. Other changes have been made to incorporate legislative provisions and improve program service and caseload management. This final rule makes the CSFP easier to understand and administer, and more effective and efficient in providing benefits to eligible persons.

EFFECTIVE DATE: This final rule is effective September 12, 2005.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 500, 3101 Park Center Drive, Alexandria, Virginia 22303–1594, or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Impact Analysis

Need for Action

This action is needed in order to rewrite the regulations for the CSFP in a plain language format, while reflecting current program conditions. Furthermore, this action is needed in order to improve program accountability, increase flexibility in program administration, and reduce the paperwork burden on State and local agencies.

Benefits

Rewriting the regulations in plain language helps program operators and the general public better understand program requirements. The plain language format includes a question-and-answer structure under each section, and removal of the legalistic style that is currently reflected in the regulations. The regulatory amendments set forth in this rule, such as the amendment making the State Plan permanent instead of annual, with amendments submitted as needed, will benefit State and local agencies by reducing the paperwork burden and increasing flexibility in program administration. The establishment of more rigorous performance measures will have a positive impact on the program as whole, facilitating the assignment of caseload slots to those State agencies most likely to use them. Changes that increase flexibility in program administration include the establishment of income eligibility guidelines, the consideration of average income over the previous year, and, for a pregnant woman, the counting of each fetus or embryo in utero as a household member when considering income eligibility. Other changes improve program accountability by increasing the penalties for program violations and requiring the initiation and pursuit of claims against participants who fraudulently obtain program benefits.

Costs

The changes in this final rule will not result in appreciable adjustments in program participation or costs. Most of the changes in this final rule offer burden relief to State agencies and local program operators, and are generally insignificant to the costs of the overall operations of the program.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Under Secretary of Food, Nutrition, and Consumer Services, Eric M. Bost, has certified that this action will not have a significant impact on a substantial number of small entities. While program participants, State agencies and Indian Tribal Organizations that administer the program will be affected by this rulemaking, the economic effect will not be significant.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Food and Nutrition Service (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 to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires 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 rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The CSFP is listed in the Catalog of Federal Domestic Assistance under No. 10.565. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

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. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any

State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial action challenging the provisions of this rule or the application of its provisions, all applicable administrative remedies, as set out in § 247.33 of this final rule, must be exhausted. Unless otherwise indicated, all regulation citations set out in this preamble and final rule may be found, or will be codified, in Title 7, Part 247 of the Code of Federal Regulations.

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, FNS has determined that it will not in any way limit or reduce the ability of participants to receive program benefits on the basis of an individual's race, color, national origin, age, gender, or disability. The rule applies equally to all participants in the CSFP who are eligible to receive program benefits. All data available to FNS indicates that protected individuals have the same opportunity to participate in the CSFP as non-protected individuals, subject to the program eligibility requirements. Program civil rights requirements are detailed in § 247.37 of this final rule.

Discrimination by State and local agencies in any aspect of program administration is prohibited by this final rule, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*). State and local agencies must also comply with 7 CFR Parts 15, 15a, and 15b of this title, and with the provisions of FNS Instruction 113–2. Enforcement action may be brought under any applicable Federal law.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency 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. Implementation of the data collection elements of the rule is contingent upon OMB approval under the Paperwork Reduction Act. Information collections in this final rule have been previously approved under OMB #0584–0293. Although FNS sought public comments specific to the estimated reporting and recordkeeping burden detailed in the proposed rule, no comments were received. Thus, the provisions contained in this final rule do not differ with regard to information collection burden requirements from those set forth in the proposed rule.

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The FNS–153, Monthly Report of the Commodity Supplemental Food Program and Quarterly Administrative Financial Status Report, is available online at the FNS Web site and may be downloaded electronically by State and local agencies. The SF–269A, Financial Status Report, is currently available online at the OMB Web site and may be downloaded electronically as well. FNS is willing to provide electronic copies of this form to State agencies upon request. FNS is also exploring the possible development and use of an automated inventory system that would positively impact the efficiency of FNS–153 reporting by streamlining this process at the State and local levels. Finally, FNS will replace the current reporting system, the Special Nutrition Programs Integrated Information System, or SNPIIS, with the Web-based Food Programs Reporting System, or FPRS. FPRS should offer increased program efficiency.

Background

On October 31, 2003, the Department published a proposed rule in the **Federal Register** (68 FR 62164) that would have rewritten the regulations for the CSFP in ''plain language'' to help program operators and the general public better understand program requirements. The rule also proposed changes that would have reduced the time and paperwork burden for State and local agencies, increased their flexibility in program operations, established more rigorous performance measures for State agencies, and strengthened program accountability. Other proposed changes would have incorporated current legislative provisions and improved program service and caseload management. The specific changes made by this final rule were discussed in detail in the preamble to the proposed rule, which provided a 60-day comment period.

Analysis of Comments Received

The Department received a total of eleven comment letters. However, two of the comment letters were not received within the specified comment period and, therefore, were not considered in the comment analysis. Four State CSFP agencies, two CSFP local agencies, the National CSFP Association, one State association, and one non-CSFP State government organization submitted comment letters. Of those nine commenters, five were generally supportive of the proposed rule in its entirety, with a limited number of suggested revisions. The generally supportive comments from those five commenters are not included in the discussion of specific provisions contained in the preamble to this final rule. Most of the proposed rule provisions proved to be non-controversial, either receiving few or no comments, or receiving very few comments in opposition. Provisions contained in the proposed rule that are being amended in this final rule in response to these comments are discussed in detail below. For a complete understanding of the provisions contained in this final rule, the reader should refer to the preamble of the proposed rule, as well as the preamble to this final rule.

Definitions, Section 247.1

Section 247.1, as proposed, would have addressed definitions associated with the administration of the program. As discussed in the proposed rule, definitions of ''certification period,'' ''commodities,'' ''CSFP,'' ''7 CFR Part 250,'' ''7 CFR Part 3016,'' ''7 CFR Part 3019,'' and ''7 CFR Part 3052'' are not found in current regulations. As no comments were received referencing the additions of these definitions, these seven definitions have been retained in § 247.1 of this final rule as proposed. In addition to these seven definitions, it has been brought to our attention that the inclusion of definitions of ''applicant,'' ''disqualification,'' and ''proxy'' would serve to help readers and program administrators better understand the administration of the program. Therefore, definitions of these terms have been included in § 247.1 of this final rule.

While the meaning of ''applicant'' is self-explanatory, it has been included for the sake of clarity. The term ''disqualification'' is defined to ensure that readers are better aware of the penalties for certain program violations. The definition of ''proxy'' makes clear to the reader those individuals who are qualified to obtain food packages for eligible participants. These added definitions do not in any way alter regulatory requirements.

The Purpose and Scope of CSFP, Section 247.2

As discussed in § 247.2 of the proposed rule, the purpose of CSFP is to distribute nutritious foods, and provide nutrition education to low-income pregnant, postpartum, and breastfeeding women, infants, children ages 1 through 5, and the elderly. One commenter suggested that instead of referring to children as those individuals ''ages 1 through 5,'' that we refer to this applicant or participant group as ''children ages 1 up to the 6th birthday.'' For the sake of clarity, we have amended the language in § 247.2 to read ''children who are at least one year of age but have not reached their sixth birthday.'' Furthermore, in order to clarify the difference between ''infants'' and ''children'' for the purposes of the CSFP, we have amended language pertaining to infants in § 247.2 to read ''infants under one year of age.'' Since no other comments were received relative to the provisions contained in § 247.2, all other provisions are retained in this final rule as proposed.

Administering Agencies, Section 247.3

A description of responsible administering agencies and the Federal requirements that apply to administration of the program was included in § 247.3 of the proposed rule.

Since no comments were received relative to the proposed provisions contained in § 247.3, they are retained in this final rule as proposed.

Agreements, Section 247.4

Section 247.4, as proposed, addressed the requirements associated with the duration and contents of agreements between agencies administering the program. Section 247.4(b), as proposed, would have required that all agreements, with the exception of the Federal-State agreement (which is a standard form), contain a statement that the agreement may be terminated by either party upon 30 days' written notice.

Two commenters expressed concerns over the proposed requirement. The commenters questioned whether a 30-day timeframe is adequate notice for termination, particularly for the distributing agency. The commenters cited the challenges associated with locating and procuring alternate providers within the service area, the potential difficulties in shifting commodity inventories to other sites within the 30-day timeframe, and, finally, the difficulties in notifying participants of schedule and food package pick-up location changes within the 30-day timeframe. Both commenters recommended that agreements establish the 30-day notice as a regulatory minimum, with State agencies authorized to extend this minimum if circumstances warrant. We agree with the commenters' suggestion, and have amended § 247.4(b)(6) to specify that the 30-day notice requirement is a regulatory minimum.

In addition to requiring those elements listed in § 247.4(b)(6), § 247.4(c) of the proposed rule would have required agreements between State and local agencies to include certain assurances and information. No comments were received relative to the provisions contained in § 247.4(c) of the proposed rule. However, in order to make clear the civil rights requirements of the Department, a nondiscrimination assurance has been added to the required contents of agreements between State and local agencies. Section 247.4(d) of the proposed rule would have established the duration requirements for agreements between administering agencies. One commenter supported the proposed provision that would have made agreements between FNS and State agencies permanent. No other comments were received relative to this section of the proposed rule. However, in order to make clear to the reader the duration of other types of agreements, such as agreements with storage facilities, we have amended § 247.4(d) of this final rule to include reference to 7 CFR 250.12(c).

Since no comments were received relative to the other provisions contained in § 247.4 of the proposed rule, they are retained in this final rule as proposed.

State and Local Agency Responsibilities, Section 247.5

Section 247.5, as proposed, would have outlined the major responsibilities of State and local agencies in administering the program. No comments were received relative to the provisions contained in § 247.5 of the proposed rule. Those provisions are retained in this final rule with the clarification in § 247.5(b)(15) that States must ensure that program participation does not exceed the State agency's caseload allocation on an average monthly basis.

State Plan, Section 247.6

Section 247.6, as proposed, would have addressed those requirements associated with the State Plan. One commenter concurred with § 247.6(c) of the proposed rule, which would have required that the State CSFP agency collaborate with the State WIC agency in developing plans to prevent and detect dual participation. To review, ''dual participation'' is the simultaneous participation by an individual in CSFP and the WIC Program, or in CSFP at more than one distribution site. Another commenter, although in support of the requirement for collaboration in the area of dual participation, requested that we require collaboration of the State CSFP agency with the State WIC agency in the development of multiple elements of the State Plans for the respective programs. We believe this requirement would create an undue burden on State agencies, since most States have already implemented the most efficient, cost effective systems for collaboration between programs in this regard. Thus, the requirements in this final rule will not be extended to include additional mandatory elements of collaboration.

One commenter requested that we require CSFP State agencies to maintain updated Memoranda of Understanding with WIC State agencies, since State Plans would be permanent. We do not consider this change necessary since § 247.6(d) requires the State agency to submit amendments to FNS to reflect any changes in aspects of program operations or administration that are addressed in the State Plan. This includes any changes to any elements of the State plan listed in § 247.6(c).

Since no other comments were received relative to the provisions contained in § 247.6 of the proposed rule, they are retained in this final rule as proposed.

Selection of Local Agencies, Section 247.7

The provisions contained in § 247.7 of the proposed rule would have addressed requirements associated with the submission of local agency applications for participation in the program, criteria that the State agency must consider in approving or denying such applications, and the amount of time the State agency has to act on a local agency's application.

Section 247.7(b) of the proposed rule would have set forth the basic guidelines a State agency must consider in making a decision on a local agency's

application for participation in the program. Two commenters recommended that the proposed local agency selection criteria be regulatory minimums, and that the State agency be permitted to specify additional criteria in the State Plan. The commenters cited differences between State agencies in the administration of the program, and the need for additional State-specified criteria as warranted. We agree that varied administration of the program from State to State may warrant additional local agency selection criteria. Therefore, this final rule amends § 247.7(b) to permit State agencies to consider additional criteria in approving or denying a local agency's application to participate in the program.

Section 247.7 of the proposed rule would have removed the requirement that the State justify the need for approval of a local agency in an area already served by the WIC Program. One commenter opposed the proposed removal of this requirement due to the possibility of dual participation. In relation to the dual participation issue, another commenter recommended that the Memorandum of Understanding between the State CSFP agency and the State WIC agency require the State CSFP agency to inform the State WIC agency when a new CSFP program application has been received in order to prevent occurrences of dual participation. However, we believe the provision contained in § 247.6 of this final rule, which encourages State agencies to coordinate with the WIC State agency in formulating plans to serve women, infants, and children in common areas of service, is sufficient in this regard. In addition, a recent guidance memorandum issued by FNS on May 6, 2004, entitled ''Dual Participation in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and the Commodity Supplemental Food Program (CSFP)'' makes clear the discretion that CSFP and WIC State agencies have in establishing the most efficient and effective procedures for use in addressing the issue of dual participation.

Since no other comments were received relative to the other provisions contained in § 247.7, they are retained in this final rule as proposed.

Individuals Applying to Participate in CSFP, Section 247.8

Section 247.8 of the proposed rule would have described specific requirements associated with individuals applying for participation in the program. One commenter expressed support for the requirement in § 247.8(a) of the proposed rule that individuals applying to participate in the CSFP show some form of identification. No other comments were received relative to the provisions contained in § 247.8(a). However, we have amended § 247.8(a) of this final rule to clarify that those individuals determined by the local agency to be automatically eligible under § 247.9(b)(1)(i) and (b)(1)(ii) are not required to provide household size or income information. These individuals are eligible to participate in the program based on their participation in other Federal means-tested programs and are, therefore, not required to provide this information. In addition, § 247.8(a) of this final rule has been amended to clarify that household size must be ascertained for all households, except those determined to be automatically eligible, in order to establish an applicant's income limit under the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services (HHS).

One commenter requested that § 247.8(b) be amended to require that a statement specifically referencing dual participation as a program violation be added to the application form that is signed by the applicant, adult parent, or caretaker. We agree that, in order to deter program participants from committing dual participation, a statement should be included on the application form. Therefore, this final rule amends § 247.8(b) to require that the application form include reference to the prohibition of simultaneously receiving CSFP and WIC benefits, or CSFP benefits at more than one CSFP site. As the application form is modified to reflect this information, § 247.12(b)(1) of the proposed rule, which would have required local agencies to provide this information separately to the applicant, is not included in this final rule.

In addition, in order to make clear the applicant's civil rights, this final rule amends § 247.8(b) to require inclusion of the Department's nondiscrimination statement on all application forms. FNS Instruction 113–2 provides an approved example of a program nondiscrimination statement for the State agency's reference.

Since no other comments were received relative to other provisions contained in § 247.8, they are retained in this final rule as proposed.

Eligibility Requirements, Section 247.9

Section 247.9 of the proposed rule would have addressed the requirements that must be used in determining an individual's eligibility to participate in the program. One commenter enthusiastically supported the proposed provision in § 247.9(b)(3), which would have required that, for a pregnant woman, each embryo or fetus in utero be counted as a household member in determining if the household meets the income eligibility standards for the program.

Section 247.9(d) of the proposed rule would have included reference to the notification, by memorandum, of the annual adjustment of the income guidelines by household size, and the effective date of the adjustments. The notification provides the adjusted guidelines for 185 percent, 130 percent, and 100 percent of the poverty guidelines.

Section 247.9(d) of the proposed rule would have further required that the State agency implement the adjusted guidelines for the elderly immediately upon receipt of the memorandum, in order to minimize the time gap between the adjustment of the guidelines and the cost-of-living adjustment in Social Security benefits, which is made in January. This requirement would have decreased the likelihood that elderly persons receiving Social Security benefits would become temporarily ineligible for CSFP. Finally, § 247.9(d) of the proposed rule would have required that the adjusted guidelines be implemented for women, infants, and children at the same time that the State WIC agency implements the adjusted guidelines for WIC eligibility in order to reflect current practices.

One commenter specifically supported the proposed requirements for implementation of the adjusted income guidelines for participants. The same commenter requested that the Department specifically issue separate CSFP and WIC Program adjusted income guidelines for women, infants, and children. We agree that the Department should separately issue adjusted income guidelines for the CSFP and WIC Programs. As the WIC Program currently issues adjusted income guidelines for women, infants, and children on an annual basis, we plan to issue separate adjusted income guidelines for women, infants, and children participating in the CSFP. Since § 247.9(d) of the proposed rule would have permitted such action, no change in this regard is necessary.

Two commenters expressed support for the provision contained in § 247.9(e) of the proposed rule, which would have permitted State agencies to allow local agencies to consider the household's average income during the previous 12 months and current household income

to determine which more accurately reflects the household's status.

Based on the comments received, the provisions contained in § 247.9 of the proposed rule are retained in this final rule as proposed.

Distribution and Use of CSFP Commodities, Section 247.10

Section 247.10, as proposed, would have described the requirements associated with the distribution and use of commodities donated by the Department for use in the program. One commenter concurred with the proposed removal of the current requirement that the local agency choosing to distribute foods every other month provide the participant the option to continue to receive foods on a monthly basis. The commenter agreed that, as stated in the preamble to the proposed rule, although the local agency may provide this option, the requirement to do so may place an undue burden on the local agency. In addition, the commenter suggested that a tri-monthly commodity issuance be offered for those households with participants in both the CSFP and WIC Program. We appreciate the commenter's request to add a third commodity issuance option. However, there is no evidence that there would be broad interest in such an issuance option with the potential to benefit only a small portion of the CSFP population. In addition, the weight of the food packages renders it impractical for many CSFP participants to transport three months' worth of supplemental food packages to their homes. Finally, allowing the issuance of three month's worth of commodities, some of which require refrigeration, increases the risk of commodities going out of condition which, in turn, could negatively affect needy participants. Therefore, the proposed provision is retained without change in the final rule. Since no other comments were received relative to the provisions contained in § 247.10 of the proposed rule, they are retained in this final rule as proposed.

Applicants Exceed Caseload Levels, Section 247.11

Section 247.11 of the proposed rule would have described the order of priority in serving the various population groups, and the requirements associated with assigning applicants to a waiting list. Section 247.11(b), as proposed, would have listed the order of priority in service, and would have required that women, infants, and children receive priority of service over the elderly, per the requirements of the Agriculture and Consumer Protection Act of 1973, Public Law 93–86.

One commenter requested that the Department reorder its priorities in service to make service to the elderly the first priority. The commenter cited the limited availability of nutrition assistance programs for elderly individuals in her area and observed that women, infants, and children have access to many programs, including the WIC Program, which adequately meet the needs of that population group. However, since legislation requires that priority in service be given to women, infants, and children, the Department does not have authority to adopt this recommendation.

No other comments were received relative to the provisions contained in this section of the proposed rule. Those provisions are retained in this final rule with a cross-reference in § 247.11(a) that clarifies notification policy to the reader. Section 247.11(a) of the final rule cross-references § 247.15, since § 247.15 requires that applicants be notified of their placement on a waiting list, or their ineligibility or eligibility for benefits, within 10 days from the date of application.

Rights and Responsibilities, Section 247.12

Section 247.12 of the proposed rule would have included the most basic rights and responsibilities of program applicants. Section 247.12(a) of the proposed rule would have included the right of applicants to receive benefits without discrimination based on race, color, national origin, age, sex, or disability. One commenter suggested that program standards do in fact discriminate by age. The commenter cited difficulties in providing services to senior housing sites where some residents are under sixty years of age, the minimum age required for seniors to qualify for participation in the program. By law, participation in the program is limited to those individuals who are ''categorically'' eligible. Therefore, the regulatory age limitations are not discriminatory. Section 247.12(a) of the proposed rule is, however, amended in this final rule to remove the requirement to inform applicants of the right to participate without discrimination, since § 247.8(b) of this final rule requires that an approved nondiscrimination statement to be printed on all application forms.

Section 247.12(b) of the proposed rule would have required that applicants be informed of the prohibition on dual participation, and the possibility of a claim against an individual who receives benefits improperly as a result of dual participation or other program violations, in accordance with the provisions contained in § 247.30, which addresses claims. However, § 247.8(b) of the proposed rule has been amended in this final rule to require that information regarding the prohibition on dual participation be included on the application form. Therefore, the requirement that this information be provided to applicants separately is not included in § 247.12(b) of this final rule.

One commenter suggested that the concept of dual participation is not well understood by participants and that local agency staff should be required to explain the concept to applicants and participants. It has been determined that the provisions set forth in § 247.12(b) and § 247.8 of this final rule are sufficient to ensure that program applicants are made aware of what constitutes dual participation, the prohibition against dual participation, and the possible consequences of such action. Therefore, this requirement has not been included in § 247.12(b) of this final rule.

Provisions for Non-English or Limited-English Speakers, Section 247.13

Section 247.13, as proposed, would have described the provisions associated with providing non-English or limited-English speaking persons program information in an appropriate language. Section 247.13(b) of the proposed rule would have required that, in areas where a significant proportion of the population speak little or no English but have a language in common, the State agency ensure that local agencies provide applicants with program information in an appropriate language, not including application materials. One commenter recommended that all application materials be required in appropriate languages, as several different languages may be prevalent in a given area. Section 247.13(a) of the proposed rule would have required State and local agencies to provide bilingual staff members and interpreters in areas where a significant proportion of the population is comprised of non-English or limited-English speaking persons with a common language. Since this requirement adequately accommodates the needs of the most diverse range of population groups without significantly increasing program costs at the local level, the provisions contained in § 247.13(b) of the proposed rule are retained in this final rule as proposed. However, the phrase ''to such persons in an appropriate language'' in proposed rule § 247.13(b) has been amended in this final rule to read ''to such persons

in their appropriate language'' for clarification purposes.

Since no other comments were received relative to the remaining provisions contained in § 247.13 of the proposed rule, they are retained in this final rule as proposed. It is important to note that the Department plans to clarify its policy in the future regarding the provisions for non-English or limited-English speaking persons. FNS will implement this policy once received.

Other Public Assistance Programs, Section 247.14

Section 247.14 of the proposed rule would have described the requirements associated with the provision of information to program applicants. Section 247.14(a) of the proposed rule would have required that the local agency provide applicants with written information on the specific, locally available programs that may affect their health, nutrition, or general welfare, including the WIC Program. This would allow individuals eligible for both CSFP and WIC to choose the program in which they wish to participate.

Local agencies would also be required to make referrals to these programs, as appropriate. One commenter recommended that we take the referral process one step further, and require local agencies to forego CSFP certification of applicants eligible for the WIC Program, and refer those applicants to the WIC Program instead. The Agriculture and Consumer Protection Act of 1973 requires that eligible women, infants, and children be given priority in access to the CSFP. Therefore, the Department does not have the authority to deny participation to those women, infants, and children that choose to participate in CSFP rather than WIC.

Another commenter recommended that, in addition to providing general WIC Program information to individuals, the CSFP local agency should also be required to provide the individual with information about the WIC Program's assistance with gaining access to health care, the addresses and phone number of one or more nearby WIC offices, and specific details about how individuals can apply for participation in the WIC Program. We believe that imposing additional, more specific requirements in this regard would create an undue burden on CSFP State and local agencies. In addition, administration of the program varies significantly among State and local agencies. Therefore, State agencies are better able to determine the type of information that should be provided when referring applicants to other programs, including WIC.

Since no other comments were received in reference to the provisions contained in § 247.14 of the proposed rule, they are retained in this final rule as proposed.

Notification of an Applicant's Eligibility or Ineligibility, or Placement on a Waiting List, Section 247.15

Section 247.15 of the proposed rule would have required that the local agency notify applicants in writing of their eligibility or ineligibility, or placement on a waiting list within 10 days from the date of the application. One commenter recommended that 20 days is a more adequate timeframe for notifying applicants. We believe that 10 days is a reasonable amount of time for a decision to be made on eligibility for food assistance, and to allow ineligible applicants to receive the information they need to seek other forms of assistance. No other comments were received relative to the provisions contained in § 247.15 of the proposed rule. The provisions contained in § 247.15 of the proposed rule are retained in this final rule with the clarification that, in order to make clear the applicant's civil rights, an approved Department nondiscrimination statement must be included on all written notifications of an individual's eligibility, ineligibility, or placement on a waiting list.

Certification Period, Section 247.16

Section 247.16 of the proposed rule would have addressed the requirements associated with the establishment of certification periods, the right of individuals to receive benefits under a transfer of certification when they move to a new area, and notification of individuals of the expiration of their certification period. To reduce the burden on local agencies, § 247.16(a) of the proposed rule would have permitted State agencies to authorize local agencies to extend the certification period of elderly persons without a review of eligibility criteria for additional six-month periods (and not just for one six-month period) if, at each six-month interval, certain conditions are met. One commenter specifically supported this proposed provision. However, another commenter argued that, as elderly participants do not experience any major income adjustments, they should be permanently certified. We agree that elderly participants do not experience as many income adjustments as women, infants, and children in the program. However, we believe that changes in household composition and income do occur, regardless of participant age, and periodic checks of this information yield increased program efficiency and effectiveness.

Section 247.16(a) of the proposed rule would have also required that the State agency establish certification periods for infants that do not exceed six months in length. Two commenters requested that certification requirements for infants be modified to allow infants to be certified up to their first birthday, or for a period of six months, whichever is longer. We appreciate the comments received in reference to this issue. However, we believe that fluctuations in household income are more commonplace for this population group in comparison to the elderly, and that the proposed rule provision regarding the length of infant certification periods is not unduly burdensome. Therefore, the proposed provision regarding infant certification periods is retained in this final rule.

Section 247.16(c) of the proposed rule would have included the right of transfer of certification for individuals certified to participate in the programs who move to another area. The proposed rule would have removed the requirement that the State (or local) agency issue a verification of certification (VOC) form to the participant to facilitate this transfer. Instead, the proposed rule would have required that the local agency provide verification of the certification period to the participant upon request. One commenter did not agree with the proposal to eliminate the requirement that a VOC form be provided to all program participants moving to another area. Requiring the issuance of a VOC form to all such participants creates an undue burden on State and local agencies; transfer of participation can be more efficiently facilitated through communication between the local agency and the participant.

No other comments were received relative to the provisions proposed in § 247.16. For the reasons stated above, the provisions contained in § 247.16 of the proposed rule are retained in this final rule, with the clarification that the local agency which determined the participant's eligibility must, upon request, provide to the participant verification of the expiration date of the certification period, instead of the extent of the certification period. This provides the participant with the most relevant information necessary to effect an efficient transfer of certification. In addition, in order to make clear the participant's civil rights, the requirement that an approved Department nondiscrimination

statement be included in the notice advising individuals that their certification period is about to expire has been included in § 247.16(d) of this final rule.

Notification of Discontinuance of Participant, Section 247.17

Requirements associated with notifying participants that their participation in the program is discontinued would have been addressed in § 247.17 of the proposed rule. While no specific comments were received relative to the provisions contained in § 247.17 of the proposed rule, § 247.17 of the proposed rule has been amended in this final rule to clarify that local agencies must provide the participant with prior written notification of discontinuance in instances where a participant's participation in the program must be discontinued prior to the end of the certification period, due to the lack of resources necessary to continue providing benefits to the participant. In addition, in order to make clear the participant's civil rights, the requirement that an approved Department nondiscrimination statement must be included in the notice of discontinuance has been included in § 247.17(c) of this final rule.

Since no other comments were received in reference to the remaining provisions contained in § 247.17 of the proposed rule, they are retained in this final rule as proposed.

Nutrition Education, Section 247.18

Section 247.18, as proposed, would have described nutrition education requirements. Section 247.18(a) of the proposed rule would have required that the State agency establish an evaluation procedure to ensure that the nutrition education provided is effective. The evaluation procedure would have included participant input and would have been directed by a nutritionist or other qualified professional. The evaluation would have been performed by the State or local agency or by another agency under agreement with the State or local agency. Two commenters, although strong supporters of nutrition education, asserted that the proposed requirement that the State agency establish a nutrition evaluation procedure under the direction of a nutritionist may be difficult to achieve, as many State agencies may not have immediate access to a nutritionist. We appreciate the commenters' concerns. However, § 247.18(a), as proposed, would have permitted State agencies to use other qualified professionals, and would have provided State agencies adequate flexibility in developing evaluation procedures. The above provisions of § 247.18(a) of the proposed rule are retained in this final rule, with the clarification that State agencies may allow local agencies to share personnel and educational resources with other programs in order to provide the best nutrition education possible to program participants. The remaining nutrition education evaluation procedure requirements detailed in § 247.18(a) of the proposed rule are retained without change in this final rule.

Section 247.18(b) of the proposed rule would have required that the local agency provide the participant with nutrition education information on certain specified subjects. Two commenters asserted that most local agency staff are not qualified to provide nutritional education to participants, especially in terms of special nutritional needs and how these needs may be met. While we appreciate the commenters' concerns, local agencies have discretion with regard to the manner in which the information is provided. In instances in which a qualified professional is not available to provide such information, the information can be provided in the form of printed materials. Therefore, § 247.18(b) of the proposed rule is retained in this final rule without change.

Since no other comments were received relative to the other provisions contained in § 247.18 of the proposed rule, they are retained in this final rule as proposed.

Dual Participation, Section 247.19

Section 247.19(a) of the proposed rule would have included the requirements for the prevention and detection of dual participation, including the requirement that the State agency agree on a plan with the State WIC agency to detect and prevent dual participation. For clarification purposes, we have included in this final rule reference to § 247.8(a)(1), which requires local agencies to check the identification of all applicants when they are certified or recertified. In addition, we have included reference to § 247.8(b) of this final rule, which requires that the local agency ensure that the applicant, or the adult parent or caretaker of the applicant, signs an application form which includes a statement advising the applicant that he or she may not receive both CSFP and WIC benefits simultaneously, or CSFP benefits at more than one CSFP site at the same time. Because the provision that references informing the applicant of the prohibition on dual participation contained in proposed rule § 247.12(b)(1) is not included in this final rule, and since this information is now required on the application form per § 247.8(b) of this final rule, reference to § 247.12(b)(1) has not been included in § 247.19(a) of this final rule.

One commenter suggested that the administrative burden for detecting and preventing dual participation be equally shared between CSFP and WIC State agencies. We appreciate the commenter's input in reference to this issue. However, as provided in the recent WIC/CSFP Dual Participation Guidance Memorandum issued by FNS on May 6, 2004, we recommend that WIC State agencies take the lead role in the detection of dual participation. WIC has a much larger database of women, infants, and children, and individuals eligible for both programs increasingly participate in WIC rather than CSFP. As provided in that guidance memorandum, we realize that in a number of States, CSFP State agencies take the lead role in the detection of dual participation. If such a system is already in place and both CSFP and WIC State agencies are satisfied with it, then we do not expect the State agencies to change their policies. To prescribe equal detection and prevention efforts by both State agencies would create an undue burden on many CSFP and/or WIC State agencies. Consistent with the recent guidance memorandum, discretion is given to CSFP and WIC State agencies to determine the best policy for the detection of dual participation. Therefore, the remaining provisions contained in § 247.19(a) of the proposed rule are retained in this final rule as proposed.

Two commenters requested that a specific process be included in the regulations that would establish clear parameters for dual participation enforcement. Section 247.19(b) of the proposed rule would have required, consistent with the dual participation guidance memorandum, that a participant found to be committing dual participation be disqualified from one of the programs (WIC or CSFP). In addition, § 247.19(b) of the proposed rule would have required the local agency to initiate a claim against the participant to recover the value of CSFP benefits improperly received in accordance with § 247.30(c) of the proposed rule. If applied in conjunction with the guidelines set forth in the dual participation guidance memorandum, we believe that the provisions of § 247.19(b) of the proposed rule would have adequately addressed dual participation enforcement measures. Therefore, the provisions contained in

§ 247.19(b) are retained in this final rule as proposed.

Program Violations, Section 247.20

Section 247.20, as proposed, would have described the conditions under which applicants and participants may be disqualified from the program, the disqualification penalties, and the requirements for notifying individuals of their disqualification. In reference to § 247.20(b) of the proposed rule, one commenter specifically supported the proposal to extend the maximum disqualification period from three months to one year, as well as the proposal requiring local agencies to permanently disqualify participants who commit three program violations that involve fraud. Since no other comments were received relative to the provisions contained in § 247.20 of the proposed rule, they are retained in this final rule as proposed.

Caseload Assignment, Section 247.21

Section 247.21 of the proposed rule would have described provisions associated with the assignment of caseload. To ensure that additional caseload slots are allocated to States that are most likely to use them, § 247.21(a) of the proposed rule would have established more realistic, rigorous performance measures. The revised performance measures would have included an increase in the caseload utilization requirement to establish eligibility for additional caseload from 90 percent to 95 percent, and the removal of participation data during the month of September as an independent time period used to determine base caseload and a State's eligibility for additional caseload.

Prior to proposing these more rigorous performance measures, we analyzed the performance of State agencies over a period of three fiscal years, beginning with fiscal year 2000 program performance data. Based on this analysis, and the availability of a specific enhanced level of administrative funds, it has been determined that State agencies can reasonably be expected to meet these more demanding measures. While these measures may negatively impact a small number of States in any given year, they will have a positive impact on the program as a whole by facilitating assignment of caseload slots to State agencies most likely to utilize them based on past performance. The allocation of caseload slots to such State agencies will ensure that the nutritional needs of low-income women, infants, children, and elderly persons are more fully met.

We specifically requested comments on the removal of the month of September as an independent consideration. Of the comments received, two commenters expressed support for the proposed provision with changes, and one commenter did not support the removal of the month of September.

One of the commenters expressed support for the removal of the month of September only if the highest quarter's participation is included as a time period used to determine a State's base caseload and eligibility for additional caseload. The goal of the provisions contained in § 247.21(a) of the proposed rule was to establish performance standards that would result in the allocation of caseload to State agencies that are most likely to utilize it. We do not believe that using a State's highest quarter of participation will be helpful in achieving that goal. This approach is not appropriate because it undervalues current participation data relative to performance during a single past quarter after which significant decreases in participation may have occurred.

One of the commenters argued that removal of the month of September as an independent consideration either in establishing base caseload or in determining eligibility for additional caseload would be misguided and shows a lack of understanding for how caseloads are managed at the State level. Our analysis indicates that many State agencies' highest participation period over the past few years has been the month of September, and that their participation often decreases significantly in the immediately following months. Eliminating the month of September as an independent measure should decrease the spiking in caseload utilization that frequently takes place in September and strengthen the incentive for States to fill available caseload slots sooner. Ensuring a more accurate and precise appraisal of States' performance should facilitate allocation of caseload to States that are most likely to utilize it. This will increase overall program efficiency and ensure that the nutritional needs of more low-income women, infants, children, and elderly persons are met during that caseload cycle.

One of the commenters argued that when appropriations are not enacted by December 31, the month of September should be restored as an allowable stand-alone performance measure. The commenter asserted that the removal of September would discourage State agencies from making extraordinary efforts to serve clients in unserved areas, especially in years when caseload is assigned late. We agree that September participation should be included as an independent consideration, but only in circumstances that could reasonably lead to participation growth in that month. Even in a year of delayed appropriations, a State agency that has participated in two or more caseload cycles that receives only base caseload would be expected to maintain participation within a relatively narrow range throughout the year rather than peak in September. In contrast, a State agency entering its second year of program participation that is working to fully establish its program may exhibit a lower caseload utilization level at the beginning of its first year than other, more established States. Thus, participation growth through September can reasonably be expected for States entering their second year. Furthermore, when appropriations are unduly delayed and a State receives considerable expansion caseload, participation growth through September can reasonably be expected as well. Finally, the same factors that contribute to participation increases in September should serve to sustain that higher participation level at least through the following month.

Therefore, for each State that has participated in two or more caseload cycles, § 247.21(a) of this final rule includes September as an independent performance measure for determining a State's base caseload and eligibility for additional caseload only when, as of February 15 of the previous fiscal year, full-year appropriations were not enacted (thus delaying caseload assignment until after that date), the State received additional caseload in the previous caseload cycle that increased the State's total caseload by 10 percent or more over and above its assigned base caseload, and the State achieved an October participation total in the current fiscal year which was equal to or greater than 95 percent of the State's September participation total in the previous fiscal year. For example, State A was entering its third caseload cycle in 2004. Full-fiscal-year 2003 appropriations were not enacted until February 20, 2003. For the 2003 caseload cycle, 25 caseload slots were allocated to State A in addition to its base caseload of 100, giving the State a total caseload of 125. State A's program participation for the month of September, fiscal year 2003, was 120 persons, and the State's October participation in fiscal year 2004 was 122 persons. When allocating caseload for the 2004 caseload cycle, September would be used as an independent

performance measure for determining base caseload and eligibility for additional caseload for State A because the 2003 full-year appropriation was not enacted before February 15, the State received additional caseload which increased its total caseload allocation by 25 percent over and above base caseload, and the State achieved an October participation level in fiscal year 2004 which represented over 101 percent of its September participation level in the previous fiscal year.

To provide a contrasting example, State B was entering its fourth caseload cycle in 2004. For the previous caseload cycle, State B was assigned a base caseload of 90. The State received five additional caseload slots in the 2003 caseload cycle to bring its total caseload allocation to 95. Regardless of the timing of the full-year appropriation or State B's participation level in October, the month of September would not be used in determining the State's base caseload or eligibility to receive additional caseload for the 2004 caseload cycle, because the additional caseload allocation of only five slots in the previous caseload cycle increased the State's total caseload allocation by less than six percent, which is under than the 10-percent required minimum.

Finally, State C was entering its seventh caseload cycle in 2004. For the previous caseload cycle, the State received 50 additional caseload slots over and above its base caseload of 25, bringing its total caseload to 75. State C's program participation for the month of September, fiscal year 2003, was 70 persons, but the State's October participation in the following fiscal year dropped to 50 persons. Because State C's October fiscal year 2004 participation was approximately 71 percent of its September fiscal year 2003 participation, and well below the required minimum of 95 percent, the month of September would not be used in determining the State's base caseload or eligibility to receive additional caseload for the 2004 caseload cycle.

For each State entering its second caseload cycle, § 247.21(a) of this final rule includes September as an independent performance measure for determining a State's eligibility for additional caseload only when, as of February 15 of the previous fiscal year, full-year appropriations were not enacted (thus delaying caseload assignment until after that date), and the State achieved an October participation total in the current fiscal year which was equal to or greater than 95 percent of the State's September participation total in the previous fiscal year. Because States entering their second year of program participation do not receive additional caseload in their first caseload cycle, those States cannot be expected to meet the 10-percent minimum caseload increase standard that is applied to States that have participated in two or more caseload cycles. Thus, the 10-percent minimum increase standard does not apply to these States.

To provide an example, State D was entering its second caseload cycle in 2004. To review, full-fiscal-year 2003 appropriations were not enacted until February 20, 2003. State D received caseload totaling 50 slots in the 2003 caseload cycle. The State's participation for September of fiscal year 2003 was 49, and its October participation for the following fiscal year was 50. When allocating caseload for the 2004 caseload cycle, September would be used as an independent performance measure for determining base caseload and eligibility for additional caseload for State D because full-year appropriations were not enacted before February 15, and the State achieved an October participation total in fiscal year 2004 which was 102 percent of the State's September participation total in the previous fiscal year, well above the 95-percent minimum requirement.

To provide a contrasting example, State E was entering its second caseload cycle as well in 2004. State E received caseload totaling 200 slots in the previous caseload cycle. The State's participation for September of fiscal year 2003 was 190, but its fiscal year 2004 October participation dropped to 150. Because State D's October participation was just under 79 percent of its September participation, and well below the required minimum of 95 percent, the month of September would not be used in determining the State's base caseload or eligibility to receive additional caseload for the 2004 caseload cycle.

Section 247.21(a)(2) of the proposed rule would have required that a State agency utilize 95 percent of its assigned caseload, rather than the current 90 percent, to be eligible for additional caseload in the following caseload cycle. Three commenters did not support the proposed increase from 90 to 95 percent. One commenter suggested that the combined effect of both the 95 percent caseload utilization requirement and the removal of the month September from the computation to determine base caseload would create a situation where many State agencies would not qualify for additional caseload. As discussed previously, the commenter also asserted that such a requirement would discourage State agencies from making extraordinary efforts to serve clients in unserved areas. However, our analysis of what the combined impact of both proposed provisions would have had over a recent period of three fiscal years indicates that implementation of these more rigorous performance measures would have negatively impacted only a small proportion of currently participating CSFP State agencies. The impact on the few States would be consistent with allocation of limited resources in a performance-based program with the goal of maximizing services to eligible applicants.

Two other commenters asserted that there might be legitimate reasons why the State agency does not meet the 95 percent performance measure, such as the introduction of additional caseload late in the year due to a late appropriation. The commenters further asserted that 95 percent requirement limits the Department's flexibility in moving caseload where it is most needed. As discussed in detail above, for each State that has participated in two or more caseload cycles, § 247.21(a) of this final rule mandates the use of September participation data as an independent consideration in determining the State's base caseload and eligibility for additional caseload when the full-year appropriation was not enacted prior to February 15, the State received additional caseload in the previous caseload cycle that increased the State's total caseload by 10 percent or more over and above its assigned base caseload, and the State achieved an October participation total in the current fiscal year which was equal to or greater than 95 percent of the State's September participation total in the previous fiscal year. States entering their second year of program participation receive base caseload equal to the amount of caseload assigned to them in their first year of program participation. For these States, the 10-percent minimum caseload increase standard does not apply with regard to eligibility for additional caseload. These revisions should allay commenters' concerns regarding a State agency's inability to utilize 95 percent of caseload in years when caseload assignment occurs late due to the lateness of the appropriation while ensuring that caseload is assigned to those States that are most likely to utilize it.

One commenter supported the proposed provision with changes. The commenter suggested that the increase from 90 to 95 percent caseload utilization is too large to make at one time. The commenter suggested that an

increase to 92 percent followed by a careful evaluation of the outcomes is more appropriate. As stated previously, our analysis of caseload utilization over a recent period of three fiscal years indicates that State agencies can reasonably be expected to meet these more rigorous measures. Therefore, the 95 percent caseload utilization requirement is retained in § 247.21(a)(2) of this final rule as proposed.

Allocation and Disbursement of Administrative Funds to State Agencies, Section 247.22

Section 247.22 of the proposed rule would have described those provisions associated with the allocation and disbursement of administrative funds. No comments were received relative to the provisions contained in § 247.22 of the proposed rule. Those provisions are retained in this final rule with the clarification that only the method of payment, not the frequency, may be subject to other funding arrangements.

State Provision of Administrative Funds to Local Agencies, Section 247.23

Section 247.23 of the proposed rule would have described those provisions associated with the allocation of administrative funds by State agencies to local agencies. Since no comments were received relative to the provisions contained in § 247.23 of the proposed rule, they are retained in this final rule as proposed.

Recovery and Redistribution of Caseload and Administrative Funds, Section 247.24

Section 247.24(a), as proposed, would have provided that when a State agency has voluntarily given up caseload slots or FNS has taken action to recover caseload slots, the State agency must use 95 percent of its original caseload allocation to be eligible for additional caseload. Two commenters did not support the proposed requirement that the State agency be held to its original caseload allocation for purposes of establishing a caseload standard. The two commenters that did not support the proposed provision asserted that this approach prevents a State agency from getting back on track in terms of growth on a more modest basis. However, recoveries of caseload would only occur if a State agency realizes that a certain number of caseload slots cannot be utilized and returns that unused portion of that assigned caseload, or FNS takes action to recover caseload in a State where significant under-utilization of caseload is occurring. Current performance that would lead to either of these actions would tend not to be consistent with a realistic expectation of even modest growth in the immediate future. Therefore, § 247.24(a) of this final rule retains the requirement that a State from which caseload has been recovered must utilize 95 percent of its originally assigned caseload to be eligible for additional caseload. However, it has come to our attention that the language contained in the proposed rule did not make it clear that a State agency would not have been permitted to exceed its assigned caseload on an average monthly basis through September of the caseload cycle in order to meet the 95-percent performance standard. Therefore, we have amended the language in § 247.24(a) of this final rule to clarify that the State agency must not exceed its reduced caseload allocation on an average monthly basis. Some States that experience greater caseload reductions will be unable to meet the 95-percent test. This result is consistent with effective allocation of limited resources in a performance-based program.

We requested in the proposed rule that State and local agencies provide specific comments regarding procedures FNS should use in recovering caseload and administrative funds (*e.g.,* is there a specific time during the caseload cycle that should be used to determine if there is a need to recover caseload and administrative funds?). One commenter suggested that, at minimum, six months' worth of participation data should be taken into consideration before action is contemplated. The commenter further argued that action should only be contemplated in instances when a State agency is severely underutilizing caseload. In addition, the commenter argued that a State's plans for increased caseload utilization should take precedence over caseload and administrative funds reductions initiated by FNS. Another commenter recommended that FNS review caseload participation in the fourth quarter only. The commenter further argued that caseload should only be recovered if the State agency demonstrates that it will not attain 95 percent caseload utilization by the end of the fourth quarter. Another commenter asserted that States should be allowed the full calendar year, or caseload cycle, to utilize assigned caseload before any recoveries are made.

We agree that the State agency should be given every opportunity to utilize assigned caseload before recovery and redistribution actions are taken. We plan to continue working jointly with State agencies to facilitate full caseload utilization in order to avoid the need for recovery and redistribution measures. Specific procedures for the recovery of caseload slots have not been included in § 247.24(a) of this final rule. However, we are aware that administrative funds could be targeted more efficiently in some circumstances, particularly in cases of significant underutilization of caseload. We will continue to explore options for ensuring that administrative funds are allocated in the most cost effective way possible in order to maximize the number of individuals served by the program.

Section 247.24(b) of the proposed rule would have limited the amount of administrative funds that can be involuntarily recovered by FNS to no more than 25 percent of the State agency's allocation during any fiscal year. The term ''involuntarily'' in the proposed rule has been deleted and replaced with the term ''unilaterally'' in this final rule for clarification purposes. The proposed rule requested that State and local agencies provide specific comments regarding increasing or eliminating the 25-percent limitation.

Three commenters did not support increasing or eliminating the 25-percent limitation. The three commenters that did not support the change argued that increasing or eliminating the 25-percent limitation on the recovery of administrative funds could cripple the State agency from which administrative funds are recovered. In particular, two of the commenters asserted that the amount of administrative funds needed to administer the program is driven by food handling costs such as warehousing, trucking, refrigeration, boxing of commodities, and related costs. The same two commenters further asserted that a 25-percent reduction halfway through the fiscal year is equivalent to a 50-percent reduction for the remainder of the fiscal year, and that some States would not be able to sustain a funding loss of that magnitude. We agree that the cost of administering the program is directly affected by the cost of procuring services from private sources. These costs vary significantly among State agencies and, in many instances, funds to pay such costs are obligated early in the caseload cycle.

However, in instances when a State significantly underutilizes allocated caseload during the year, and does not serve a large number of needy persons who could be served by other, more efficient States, FNS must have the capability to recover caseload and the administrative funds generated by that caseload over and above the 25-percent limit. Therefore, the provision which limits the caseload that FNS can recover to an amount which does not result in

the recovery of more than 25 percent of that State's administrative funds has been amended in § 247.24(b) of this final rule to reflect a 50-percent limit. This provides FNS with the added flexibility necessary to ensure maximum service to eligible applicants. States that utilize a high percentage of caseload generally would not experience unilateral recoveries. However, States may, for various reasons, request that FNS recover any portion of their caseload. In such instances, the regulatory limitation would not apply. Thus, the proposed provision contained in § 247.24(b) that removes the recoveries limit in such circumstances is retained in this final rule.

Allowable Uses of Administrative Funds and Other Funds, Section 247.25

Section 247.25, as proposed, would have described provisions relative to the allowable uses of administrative funds, procedures for utilizing administrative funds, program income, and the use of funds recovered as a result of claims actions. Section 247.25(f) of the proposed rule would have permitted the State agency to authorize local agencies to utilize funds recovered through claims actions for allowable program costs incurred at the local level, rather than returning them to the State. Granting State agencies this authority is appropriate since, in some instances, these funds can be used more efficiently and effectively at the local level.

Two commenters supported the proposed provision but recommended that this policy be documented in the State Plan. Requiring a State agency to stipulate its policy regarding the use of funds obtained through claims action is not appropriate since such decisions should be made on a case-by-case basis. Since no other comments were received relative to the provisions contained in § 247.25 of the proposed rule, they are retained in this final rule as proposed, with the clarification that the State agency must use funds recovered as a result of claims actions against subdistributing or local agencies in accordance with the provisions of 7 CFR 250.15(c).

Return of Administrative Funds, Section 247.26

The provisions contained in § 247.26, as proposed, would have addressed the return of unused administrative funds by State agencies and the use of such funds. Section 247.26(b) of the proposed rule would have stipulated that administrative funds recovered at the end of the year would not be reallocated to State agencies in the form of administrative funds in addition to the mandated grant per slot. Two commenters concurred with the proposed provision. The provisions contained in § 247.26 of the proposed rule reflect the current legislative requirements of Section 4201(b) of the Farm Security and Rural Investment Act of 2002, Public Law 107–171, and are, therefore, retained in this final rule as proposed.

Financial Management, Section 247.27

Section 247.27 of the proposed rule would have described financial management requirements for State and local agencies. Since no comments were received relative to the provisions contained in § 247.27 of the proposed rule, they are retained in this final rule as proposed.

Storage and Inventory of Commodities, Section 247.28

Section 247.28, as proposed, would have described those provisions associated with the storage and inventory of commodities provided by the Department for use in the program. Since no comments were received relative to the provisions contained in § 247.28 of the proposed rule, they are retained in this final rule as proposed.

Reports and Recordkeeping, Section 247.29

Section 247.29, as proposed, would have described requirements associated with the maintenance of records and submission of reports. Section 247.29(a) of the proposed rule would have included a requirement that all records be available during normal business hours for use in management reviews, audits, or investigations, except medical case records of participants (unless they are the only source of certification data). Two commenters objected to the suggested use of medical case records. The commenters reasoned that the program is not providing medical services, and the use of this term could have serious implications with respect to the Health Insurance Portability and Accountability Act of 1996, Public Law 104–191. We appreciate the commenters' concerns in reference to this issue and agree that reference to such records should be removed. Therefore, § 247.29(a) of this final rule contains no reference to medical case records. However, local agencies must ensure availability of certification records, other than medical case records, that document the information necessary to ensure that an individual was properly certified. Since no comments were received relative to the other provisions contained in § 247.29 of the proposed rule, they are retained in this final rule as proposed.

Claims, Section 247.30

Section 247.30, as proposed, would have described those provisions associated with establishing and pursuing claims against State, local, and subdistributing agencies, and program participants. Since no comments were received relative to the provisions contained in § 247.30 of the proposed rule, they are retained in this final rule as proposed, with the clarification that the State agency must use funds recovered as a result of claims actions against subdistributing or local agencies in accordance with the provisions of 7 CFR 250.15(c).

Audits and Investigations, Section 247.31

Section 247.31 of the proposed rule would have described those provisions associated with audit and investigation activities. No comments were received relative to the provisions contained in this section of the proposed rule. However, since publication of the proposed rule, the dollar threshold that determines when an audit is required has been increased from $300,000 to $500,000. To ensure that State and local agencies comply with provisions contained in 7 CFR part 3052, which are subject to change, § 247.31(d) of this final rule does not include a dollar threshold and instead contains the general requirement that State and local government agencies, and nonprofit organizations have an audit conducted in accordance with 7 CFR part 3052. All other provisions contained in § 247.31 of the proposed rule are retained in this final rule without change.

Termination of Agency Participation, Section 247.32

Section 247.32, as proposed, would have described those provisions associated with the termination of State and local agreements. As discussed in detail above, 30 days' notice of intent to terminate program operations is not always adequate. Therefore, § 247.32 of this final rule establishes the 30-day written notice-of-termination requirement as a regulatory minimum. In § 247.32(a) of the proposed rule, we inaccurately referenced ''local'' agency programs. We have corrected the inaccurate reference by including the term ''State'' for ''local'' in § 247.32(a) of this final rule. Since no comments were received relative to other provisions contained in § 247.32 of the proposed rule, they are retained in this final rule as proposed.

Fair Hearings, Section 247.33

Section 247.33 of the proposed rule would have described those provisions associated with the fair hearing process. No specific comments were received relative to the provisions contained in this proposed section. However, since Federal regulations do not require State agencies to implement a State-level review or rehearing process, § 247.33 of this final rule clarifies that the State or local agency must describe any State-level review or rehearing process in instances when one is available. In addition, § 247.33 of this final rule clarifies that the State or local agency must inform the individual of the right to pursue judicial review of the decision. All other provisions contained in § 247.33 of the proposed rule are retained in this final rule as proposed.

Management Reviews, Section 247.34

Section 247.34, as proposed, would have described those provisions associated with management reviews of agencies conducting program activities. To reduce the burden on State agencies in conducting management reviews, § 247.34(a) of the proposed rule would have required that the State agency perform on-site reviews of local agencies and storage facilities at least once every two years, instead of annually. Two commenters strongly concurred with the proposed requirement that the State agency perform on-site reviews of local agencies and storage facilities at least once every two years, instead of annually. Based on the comments received, the provisions contained in § 247.34 of the proposed rule are retained in this final rule as proposed.

Local Agency Appeals of State Agency Actions, Section 247.35

Section 247.35 of the proposed rule would have described those provisions associated with appeals by local agencies of State agency actions. Section 247.35 of the proposed rule incorrectly referred to the denial of a local agency's application for participation in the program as an example of a decision that local agencies may appeal. Therefore, reference to denial of a local agency's application for participation in the program is omitted from this final rule. Since no comments were received relative to the provisions contained in § 247.35 of the proposed rule, all other provisions are retained in this final rule as proposed.

Confidentiality of Applicants or Participants, Section 247.36

Section 247.36, as proposed, would have described those provisions associated with the disclosure of applicant and participant information. Since no comments were received relative to the provisions contained in § 247.36 of the proposed rule, they are retained in this final rule as proposed.

Civil Rights Requirements, Section 247.37

Section 247.37, as proposed, would have described the Department's civil rights requirements. Since no comments were received relative to the provisions contained in § 247.37 of the proposed rule, they are retained in this final rule as proposed.

List of Subjects in 7 CFR part 247

Agricultural commodities, Food assistance programs, Infants and children, Maternal and child health, Public assistance programs, nutrition, women, aged.

■ Accordingly, 7 CFR part 247 is revised to read as follows:

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

Sec.

Authority: Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L. 101–624, 101 Stat. 3806 (7 U.S.C. 612c note); sec. 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c note); Pub. L. 107–171.

§ 247.1 Definitions.

Following is a list of definitions that apply to the Commodity Supplemental Food Program (CSFP).

Applicant means any person who applies to receive program benefits. Applicants include program participants applying for recertification.

Breastfeeding women means women up to one year postpartum who are breastfeeding their infants.

Caseload means the number of persons the State agency may serve on an average monthly basis over the course of the caseload cycle.

Caseload cycle means the period from January 1 through the following December 31.

Certification means the use of procedures to determine an applicant's eligibility for the program.

Certification period means the period of time that a participant may continue to receive program benefits without a review of his or her eligibility.

Children means persons who are at least one year of age but have not reached their sixth birthday.

Commodities means nutritious foods purchased by USDA to supplement the diets of CSFP participants.

CSFP means the Commodity Supplemental Food Program.

Department means the U.S. Department of Agriculture.

Disqualification means the act of ending Program participation of a participant as a punitive sanction.

Dual participation means simultaneous participation by an individual in CSFP and the WIC Program, or in CSFP at more than one distribution site.

Elderly persons means persons at least 60 years of age.

Fiscal year means the period from October 1 through the following September 30.

FNS means the Food and Nutrition Service.

Infants means persons under one year of age.

Local agency means a public or private nonprofit agency, including an Indian tribal organization, which enters into an agreement with the State agency to administer CSFP at the local level.

Nonprofit agency means a private agency or organization with tax-exempt status under the Internal Revenue Code, or that has applied for tax-exempt status with the Internal Revenue Service.

Postpartum women means women up to one year after termination of pregnancy.

Proxy means any person designated by a participant, or by the participant's adult parent or caretaker, to obtain supplemental foods on behalf of the participant.

7 CFR part 250 means the Department's regulations pertaining to the donation of foods for use in USDA food distribution programs.

7 CFR part 3016 means the Department's regulations pertaining to administrative requirements for grants and cooperative agreements with State, local, and Indian tribal governments.

7 CFR part 3019 means the Department's regulations pertaining to administrative requirements for grants and cooperative agreements with nonprofit organizations.

7 CFR part 3052 means the Department's regulations pertaining to audits of States, local governments, and nonprofit organizations.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

State agency means the agency designated by the State to administer CSFP at the State level; an Indian tribe or tribal organization recognized by the Department of the Interior that administers the program for a specified tribe or tribes; or, the appropriate area office of the Indian Health Service of the Department of Health and Human Services.

State Plan means the document that describes the manner in which the State agency intends to administer the program in the State.

Subdistributing agency means an agency or organization that has entered into an agreement with the State agency to perform functions normally performed by the State, such as entering into agreements with eligible recipient agencies under which commodities are made available, ordering commodities and/or making arrangements for the storage and delivery of such commodities on behalf of eligible recipient agencies.

WIC Program means the Special Supplemental Nutrition Program for Women, Infants, and Children.

§ 247.2 The purpose and scope of CSFP.

(a) *How does CSFP help participants?* Through CSFP, the Department provides nutritious commodities to help State and local agencies meet the nutritional needs of low-income pregnant, postpartum, and breastfeeding women, infants under one year of age, children who are at least one year of age but have not reached their sixth birthday, and elderly persons. Through local agencies, each participant receives a monthly package of commodities, based on food package guide rates developed by FNS, with input from State and local agencies. Food packages include such nutritious foods as infant formula and cereal, juices, canned fruits and vegetables, canned meat or poultry and other protein items, and grain products such as pasta, as well as other foods. Participants also receive nutrition education.

(b) *How many persons may be served in CSFP?* State agencies may serve eligible persons up to the caseload limit assigned to them by FNS. Caseload is the number of persons that may be served on an average monthly basis over the course of the caseload cycle, which extends from January 1 through the following December 31.

§ 247.3 Administering agencies.

(a) *What agencies are responsible for administering CSFP?* CSFP is administered at the Federal level by the Department's Food and Nutrition Service (FNS), which provides commodities, assigns caseload, and allocates administrative funds to State agencies. State agencies are responsible for administering the program at the State level. The State agency may select local agencies to administer the program in local areas of the State. The State agency must provide guidance to local agencies on all aspects of program operations. The State agency may also select subdistributing agencies (*e.g.*, another State agency, a local governmental agency, or a nonprofit organization) to distribute or store commodities, or to perform other program functions on behalf of the State agency. Local or subdistributing agencies may also select other agencies to perform specific program functions (*e.g.*, food distribution or storage), with the State agency's approval. Although the State agency may select other organizations to perform specific activities, the State agency is ultimately responsible for all aspects of program administration.

(b) *Are there specific functions that the State agency cannot delegate to another agency?* Yes. The State agency may not delegate the performance of the following functions to another agency:

(1) Establishing eligibility requirements, in accordance with the options provided to the State agency under § 247.9; or

(2) Establishing a management review system and conducting reviews of local agencies, in accordance with § 247.34.

(c) *What Federal requirements must State, subdistributing, and local agencies follow in administering CSFP?* State, subdistributing, and local agencies must administer the program in accordance with the provisions of this part, and with the provisions contained in part 250 of this chapter, unless they are inconsistent with the provisions of this part.

§ 247.4 Agreements.

(a) *What agreements are necessary for agencies to administer CSFP?* The following agreements are necessary for agencies to administer CSFP:

(1) *Agreements between FNS and State agencies.* Each State agency must enter into an agreement with FNS (Form FNS–74, the Federal-State Agreement) prior to receiving commodities or administrative funds;

(2) *Agreements between State agencies and local or subdistributing agencies.* The State agency must enter into written agreements with local or subdistributing agencies prior to making commodities or administrative funds available to them. The agreements must contain the information specified in paragraph (b) of this section. Agreements between State and local agencies must also contain the information specified in paragraph (c) of this section. Copies of all agreements must be kept on file by the parties to the agreements; and

(3) *Agreements between local and subdistributing agencies and other agencies.* The State agency must ensure that local and subdistributing agencies enter into written agreements with other agencies prior to making commodities or administrative funds available to these other agencies. The agreements must contain the information specified in paragraph (b) of this section. Copies of all agreements must be kept on file by the parties to the agreements.

(b) *What are the required contents of agreements?* All agreements described under paragraphs (a)(2) and (a)(3) of this section must contain the following:

(1) An assurance that each agency will administer the program in accordance

with the provisions of this part and with the provisions of part 250 of this chapter, unless they are inconsistent with the provisions of this part;

(2) An assurance that each agency will maintain accurate and complete records for a period of three years from the close of the fiscal year to which they pertain, or longer if the records are related to unresolved claims actions, audits, or investigations;

(3) A statement that each agency receiving commodities for distribution is responsible for any loss resulting from improper distribution, or improper storage, care, or handling of commodities;

(4) A statement that each agency receiving program funds is responsible for any misuse of program funds;

(5) A description of the specific functions that the State, subdistributing, or local agency is delegating to another agency; and

(6) A statement specifying:

(i) That either party may terminate the agreement by written notice to the other; and

(ii) The minimum number of days of advance notice that must be given. (The advance notification period must be at least 30 days.)

(c) *What other assurances or information must be included in agreements between State and local agencies?* In addition to the requirements under paragraph (b) of this section, agreements between State and local agencies must contain the following:

(1) An assurance that the local agency will provide, or cause to be provided, nutrition education to participants, as required in § 247.18;

(2) An assurance that the local agency will provide information to participants on other health, nutrition, and public assistance programs, and make referrals as appropriate, as required in § 247.14;

(3) An assurance that the local agency will distribute commodities in accordance with the approved food package guide rate;

(4) An assurance that the local agency will take steps to prevent and detect dual participation, as required in § 247.19;

(5) The names and addresses of all certification, distribution, and storage sites under the jurisdiction of the local agency; and

(6) An assurance that the local agency will not subject any person to discrimination under the program on the grounds of race, color, national origin, age, sex, or disability.

(d) *What is the duration of required agreements?* Agreements between FNS and State agencies are considered permanent, but may be amended at the initiation of State agencies or at the request of FNS. All amendments must be approved by FNS. The State agency establishes the duration of agreements it signs with local agencies or subdistributing agencies. The State agency may establish, or permit the local or subdistributing agency to establish, the duration of agreements between local or subdistributing agencies and other agencies. However, State and local agencies must comply with the requirements in § 250.12(c) of this chapter when entering agreements with other entities.

(Approved by the Office of Management and Budget under control numbers 0584–0067, 0584–0293)

§ 247.5 State and local agency responsibilities.

State and local agencies are responsible for administering the program in accordance with the provisions of this part, and with the provisions of part 250 of this chapter, as applicable. Although the State agency may delegate some responsibilities to another agency, the State agency is ultimately responsible for all aspects of program administration. The following is an outline of the major responsibilities of State and local agencies; it is not intended to be all-inclusive.

(a) *What are the major responsibilities shared by State and local agencies?* The major responsibilities shared by State and local agencies include:

(1) Entering into required agreements;

(2) Ordering commodities for distribution;

(3) Storing and distributing commodities;

(4) Establishing procedures for resolving complaints about commodities;

(5) Complying with civil rights requirements;

(6) Maintaining accurate and complete records; and

(7) Conducting program outreach.

(b) *What are the major State agency responsibilities?* The major responsibilities of State agencies include:

(1) Completing and submitting the State Plan;

(2) Selecting local agencies to administer the program in local areas of the State;

(3) Determining caseload needs, and submitting caseload requests to FNS;

(4) Assigning caseload, and allocating administrative funds, to local agencies;

(5) Establishing eligibility requirements, in accordance with the options provided to the State agency under § 247.9. (This function may not be delegated to another agency.);

(6) Establishing nutritional risk criteria and a residency requirement for participants, if such criteria are to be used;

(7) Establishing a financial management system that effectively accounts for funds received for program administration;

(8) Developing a plan for the detection and prevention of dual participation, in coordination with CSFP local agencies and with the State WIC agency;

(9) Developing a plan for providing nutrition education to participants;

(10) Establishing appeals and fair hearing procedures for local agencies and program participants;

(11) Developing a management review system and conducting reviews of local agencies.

(This function may not be delegated to another agency.);

(12) Determining and pursuing claims, and establishing standards for pursuit of claims against participants;

(13) Ensuring compliance with Federal audit requirements;

(14) Providing guidance to local agencies, as needed; and

(15) Ensuring that program participation does not exceed the State agency's caseload allocation on an average monthly basis.

(c) *What are the major local agency responsibilities?* The major local agency responsibilities include:

(1) Determining eligibility of applicants in accordance with eligibility criteria established by the State agency;

(2) Complying with fiscal and operational requirements established by the State agency;

(3) Ensuring that participation does not exceed the caseload assigned by the State agency;

(4) Issuing foods to participants in accordance with the established food package guide rates;

(5) Providing nutrition education and information on the availability of other nutrition and health assistance programs to participants;

(6) Informing applicants of their rights and responsibilities in the program;

(7) Meeting the special needs of the homebound elderly, to the extent possible; and

(8) Pursuing claims against participants.

§ 247.6 State Plan.

(a) *What is the State Plan?* The State Plan is a document that describes how the State agency will operate CSFP and the caseload needed to serve eligible applicants. The State agency must submit the State Plan to FNS for

approval. Once submitted and approved, the State Plan is considered permanent, with amendments submitted at the State agency's initiative, or at FNS request. All amendments are subject to FNS approval. The State Plan may be submitted in the format provided in FNS guidance, in an alternate format, or in combination with other documents required by Federal regulations. The State agency is encouraged to collaborate with the State WIC agency in developing the State Plan, for example, in developing plans for serving women, infants, and children, program outreach, and nutrition education. (Collaboration with the State WIC agency is required in preventing and detecting dual participation.) The State Plan must be signed by the State agency official responsible for program administration. A copy of the State Plan must be kept on file at the State agency for public inspection.

(b) *When must the State Plan be submitted?* The State Plan must be submitted by August 15 to take effect for the fiscal year beginning in the following October. FNS will provide notification of the approval or disapproval of the State Plan within 30 days of receipt, and will notify the State agency within 15 days of receipt if additional information is needed. Disapproval of the Plan will include a reason for the disapproval. Approval of the Plan is a prerequisite to the assignment of caseload and allocation of administrative funds, but does not ensure that caseload and funds will be provided.

(c) *What must be included in the State Plan?* The State Plan must include:

(1) The names and addresses of all local agencies and subdistributing agencies with which the State agency has entered into agreement;

(2) The income eligibility standards to be used for women, infants, and children, and the options to be used relating to income or other eligibility requirements, as provided under § 247.9;

(3) The nutritional risk criteria to be used, if the State chooses to establish such criteria;

(4) A description of plans for serving women, infants, children, and elderly participants and the caseload needed to serve them;

(5) A description of plans for conducting outreach to women, infants, children, and the elderly;

(6) A description of the system for storing and distributing commodities;

(7) A description of plans for providing nutrition education to participants;

(8) A description of the means by which the State agency will detect and prevent dual participation, including collaboration with the State WIC agency, and a copy of the agreement signed with the State WIC agency to accomplish this;

(9) A description of the standards the State agency will use in determining if the pursuit of a claim against a participant is cost-effective;

(10) A description of the means by which the State will meet the needs of the homebound elderly; and

(11) Copies of all agreements entered into by the State agency.

(d) *When must the State agency submit amendments to the State Plan?* The State agency must submit amendments to FNS to reflect any changes in program operations or administration described in the State Plan, and to request additional caseload for the following caseload cycle. FNS may also require that the State Plan be amended to reflect changes in Federal law or policy. The State agency may submit amendments to the State Plan at any time during the fiscal year, for FNS approval. The amendments will take effect immediately upon approval, unless otherwise specified by FNS. If a State agency would like to receive additional caseload for the caseload cycle beginning the following January 1, it must submit an amendment to the Plan which conveys the request for additional caseload by November 5. The State agency must also describe in this submission any plans for serving women, infants, children, and the elderly at new sites. FNS action on the State agency's request for additional caseload is part of the caseload assignment process, as described under § 247.21.

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§ 247.7 Selection of local agencies.

(a) *How does a local agency apply to participate in CSFP?* Local agencies wishing to participate in CSFP must submit a written application to the State agency. The application must describe how the local agency will operate the program and, for nonprofit agencies, must include the agency's tax-exempt status. To be eligible to participate in CSFP, a nonprofit agency must have tax-exempt status under the Internal Revenue Code (IRC), or have applied for tax-exempt status with the Internal Revenue Service (IRS), and be moving towards such status. Nonprofit agencies organized or operated exclusively for religious purposes are automatically tax-exempt under the IRC. Nonprofit agencies required to obtain tax-exempt status must provide documentation from the IRS that they have obtained such status, or have applied for it.

(b) *On what basis does the State agency make a decision on the local agency's application?* The State agency must approve or disapprove the local agency's application based on, at minimum, the following criteria:

(1) The ability of the local agency to operate the program in accordance with Federal and State requirements;

(2) The need for the program in the projected service area of the local agency;

(3) The resources available (caseload and funds) for initiating a program in the local area; and

(4) For nonprofit agencies, the tax-exempt status, with appropriate documentation.

(c) *What must the State agency do if a nonprofit agency approved for CSFP is subsequently denied tax-exempt status by the IRS, or does not obtain this status within a certain period of time?* In accordance with paragraph (a) of this section, the State agency may approve a nonprofit agency that has applied to the IRS for tax-exempt status, and is moving toward compliance with the requirements for recognition of tax-exempt status. However, if the IRS subsequently denies a participating agency's application for recognition of tax-exempt status, the agency must immediately notify the State agency of the denial. The State agency must terminate the agency's agreement and participation immediately upon notification. If documentation of recognition of tax-exempt status is not received within 180 days of the effective date of the agency's approval to participate in CSFP, the State agency must terminate the agency's participation until such time as recognition of tax-exempt status is obtained. However, the State agency may grant an extension of 90 days if the agency demonstrates that its inability to obtain tax-exempt status in the 180-day period is due to circumstances beyond its control.

(d) *How much time does the State agency have to make a decision on the local agency's application?* The State agency must inform the local agency of approval or denial of the application within 60 days of its receipt. If the application is denied, the State agency must provide a written explanation for the denial, along with notification of the local agency's right to appeal the decision, in accordance with § 247.35. If the application is approved, the State and local agency must enter into an

agreement in accordance with the requirements of § 247.4.

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§ 247.8 Individuals applying to participate in CSFP.

(a) *What information must individuals applying to participate in CSFP provide?* To apply for CSFP benefits, the applicant, or the adult parent or caretaker of the applicant, must provide the following information on the application:

(1) Name and address, including some form of identification for each applicant;

(2) Household income, except where the applicant is determined to be automatically eligible under § 247.9(b)(1)(i) and (b)(1)(ii);

(3) Household size, except where the applicant is determined to be automatically eligible under § 247.9(b)(1)(i) and (b)(1)(ii); and

(4) Other information related to eligibility, such as age or pregnancy, as applicable.

(b) *What else is required on the application form?* The application form must include a nondiscrimination statement that informs the applicant that program standards are applied without discrimination by race, color, national origin, age, sex, or disability. After informing the applicant (or adult parent or caretaker) of his or her rights and responsibilities, in accordance with § 247.12, the local agency must ensure that the applicant, or the adult parent or caretaker of the applicant, signs the application form beneath the following pre-printed statement. The statement must be read by, or to, the applicant (or adult parent or caretaker) before signing.

''This application is being completed in connection with the receipt of Federal assistance. Program officials may verify information on this form. I am aware that deliberate misrepresentation may subject me to prosecution under applicable State and Federal statutes. I am also aware that I may not receive both CSFP and WIC benefits simultaneously, and I may not receive CSFP benefits at more than one CSFP site at the same time. Furthermore, I am aware that the information provided may be shared with other organizations to detect and prevent dual participation. I have been advised of my rights and obligations under the program. I certify that the information I have provided for my eligibility determination is correct to the best of my knowledge.

I authorize the release of information provided on this application form to other organizations administering assistance programs for use in determining my eligibility for participation in other public assistance programs and for program outreach purposes. (Please indicate decision by placing a checkmark in the appropriate box.)

YES [ ]

NO [ ]''

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§ 247.9 Eligibility requirements.

(a) *Who is eligible for CSFP?* To be eligible for CSFP, individuals must fall into one of the following population groups:

(1) Infants, *i.e.*, persons under one year of age;

(2) Children, *i.e.*, persons who are at least one year of age but have not reached their sixth birthday;

(3) Pregnant women;

(4) Breastfeeding women, up to one year after giving birth (post-partum);

(5) Post-partum women, up to one year after termination of pregnancy; or

(6) Elderly persons, *i.e.*, persons at least 60 years of age.

(b) *What are the income eligibility requirements for women, infants, and children?* (1) The State agency must establish household income limits that are at or below 185 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services, but not below 100 percent of these guidelines. However, the State agency must accept as income-eligible, regardless of actual income, any applicant who is:

(i) Certified as eligible to receive food stamps under the Food Stamp Act of 1977 (7 U.S.C. 2011 *et seq.*), Temporary Assistance for Needy Families (TANF) under Part A of Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), or Medical Assistance (*i.e.*, Medicaid) under Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*); or

(ii) A member of a family that is certified eligible to receive assistance under TANF, or a member of a family in which a pregnant woman or an infant is certified eligible to receive assistance under Medicaid.

(2) The State agency may consider women, infants, and children participating in another Federal, State, or local food, health, or welfare program as automatically eligible for CSFP if the income eligibility limits for the program are equal to or lower than the established CSFP limits.

(3) For a pregnant woman, the State agency must count each embryo or fetus in utero as a household member in determining if the household meets the income eligibility standards.

(c) *What are the income eligibility requirements for elderly persons?* The State agency must use a household income limit at or below 130 percent of the Federal Poverty Income Guidelines. Elderly persons in households with income at or below this level must be considered eligible for CSFP benefits (assuming they meet other requirements contained in this part). However, elderly persons certified before September 17, 1986 (*i.e.*, under the three elderly pilot projects) must remain subject to the eligibility criteria in effect at the time of their certification.

(d) *When must the State agency revise the CSFP income guidelines to reflect the annual adjustments of the Federal Poverty Income Guidelines?* Each year, FNS will notify State agencies, by memorandum, of adjusted income guidelines by household size at 185 percent, 130 percent, and 100 percent of the Federal Poverty Income Guidelines. The memorandum will reflect the annual adjustments to the Federal Poverty Income Guidelines issued by the Department of Health and Human Services. The State agency must implement the adjusted guidelines for elderly applicants immediately upon receipt of the memorandum. However, for women, infants, and children applicants, the State agency must implement the adjusted guidelines at the same time that the State WIC agency implements the adjusted guidelines in WIC.

(e) *How is income defined and considered as it relates to CSFP eligibility?* (1) Income means gross income before deductions for such items as income taxes, employees' social security taxes, insurance premiums, and bonds.

(2) The State agency may exclude from consideration the following sources of income listed under the WIC regulations at § 246.7(d)(2)(iv) of this chapter:

(i) Any basic allowance for housing received by military services personnel residing off military installations; and

(ii) The value of inkind housing and other inkind benefits.

(3) The State agency must exclude from consideration all income sources excluded by legislation, which are listed in § 246.7(d)(2)(iv)(C) of this chapter. FNS will notify State agencies of any new forms of income excluded by statute through program policy memoranda.

(4) The State agency may authorize local agencies to consider the household's average income during the previous 12 months and current

household income to determine which more accurately reflects the household's status. In instances in which the State makes the decision to authorize local agencies to determine a household's income in this manner, all local agencies must comply with the State's decision and apply this method of income determination in situations in which it is warranted.

(f) *What other options does the State agency have in establishing eligibility requirements for CSFP?* (1) The State agency may require that an individual be at nutritional risk, as determined by a physician or by local agency staff.

(2) The State agency may require that an individual reside within the service area of the local agency at the time of application for CSFP benefits. However, the State agency may not require that an individual reside within the area for any fixed period of time.

§ 247.10 Distribution and use of CSFP commodities.

(a) *What are the requirements for distributing CSFP commodities to participants?* The local agency must distribute a package of commodities to participants each month, or a two-month supply of commodities to participants every other month, in accordance with the food package guide rates established by FNS.

(b) *What must the local agency do to ensure that commodities are distributed only to CSFP participants?* The local agency must require each participant, or participant's proxy, to present some form of identification before distributing commodities to that person.

(c) *What restrictions apply to State and local agencies in the distribution of CSFP commodities?* State and local agencies must not require, or request, that participants make any payments, or provide any materials or services, in connection with the receipt of CSFP commodities. State and local agencies must not use the distribution of CSFP commodities as a means of furthering the political interests of any person or party.

(d) *What are the restrictions for the use of CSFP commodities?* CSFP commodities may not be used for outreach, refreshments, or for any purposes other than distribution to, and nutrition education for, CSFP participants.

§ 247.11 Applicants exceed caseload levels.

(a) *What must the local agency do if the number of applicants exceeds the local agency's caseload level?* If all caseload has been filled, the local agency must maintain a waiting list of individuals who apply for the program. In establishing the waiting list, the local agency must include the date of application, the population group of the applicant, and information necessary to allow the local agency to contact the applicant when caseload space becomes available. Unless they have been determined ineligible, applicants must be notified of their placement on a waiting list within 10 days of their request for benefits in accordance with § 247.15.

(b) *What are the requirements for serving individuals on the waiting list once caseload slots become available?* When caseload slots open up, the local agency must provide benefits to eligible individuals on the waiting list in the following order of priority:

(1) Pregnant women, breastfeeding women, and infants;

(2) Children ages 1 through 3;

(3) Children ages 4 and 5;

(4) Postpartum women; and

(5) Elderly persons.

§ 247.12 Rights and responsibilities.

(a) *What information regarding an individual's rights in CSFP must the local agency provide to the applicant?* The local agency is responsible for informing the applicant, orally or in writing, of the following:

(1) The local agency will provide notification of a decision to deny or terminate CSFP benefits, and of an individual's right to appeal this decision by requesting a fair hearing, in accordance with § 247.33(a);

(2) The local agency will make nutrition education available to all adult participants, and to parents or caretakers of infant and child participants, and will encourage them to participate; and

(3) The local agency will provide information on other nutrition, health, or assistance programs, and make referrals as appropriate.

(b) *What information regarding an individual's responsibilities in CSFP must the local agency provide to the applicant?* In addition to the written statement required by § 247.8(b), the local agency is responsible for informing the applicant, orally or in writing, of the following:

(1) Improper use or receipt of CSFP benefits as a result of dual participation or other program violations may lead to a claim against the individual to recover the value of the benefits, and may lead to disqualification from CSFP; and

(2) Participants must report changes in household income or composition within 10 days after the change becomes known to the household.

§ 247.13 Provisions for non-English or limited-English speakers.

(a) *What must State and local agencies do to ensure that non-English or limited-English speaking persons are aware of their rights and responsibilities in the program?* If a significant proportion of the population in an area is comprised of non-English or limited-English speaking persons with a common language, the State agency must ensure that local agencies inform such persons of their rights and responsibilities in the program, as listed under § 247.12, in an appropriate language. State and local agencies must ensure that bilingual staff members or interpreters are available to serve these persons.

(b) *What must State and local agencies do to ensure that non-English or limited-English speaking persons are aware of other program information?* If a significant proportion of the population in an area is comprised of non-English or limited-English speaking persons with a common language, the State agency must ensure that local agencies provide other program information, except application forms, to such persons in their appropriate language.

§ 247.14 Other public assistance programs.

(a) *What information on other public assistance programs must the local agency provide to women, infants, and children applicants?* The local agency must provide CSFP applicants eligible for both CSFP and WIC with written information on the WIC Program, to assist them in choosing the program in which they wish to participate. Additionally, the local agency must provide women, infants, and children applicants with written information on the following nutrition, health, or public assistance programs, and make referrals to these programs as appropriate:

(1) The Medicaid Program, which is the medical assistance program established under Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), and other health insurance programs for low-income households in the State. The State agency must provide local agencies with materials showing the income standards utilized in the Medicaid Program;

(2) The Temporary Assistance for Needy Families (TANF) program under part A of Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*);

(3) The Child Support Enforcement Program under part D of Title IV of the Social Security Act (42 U.S.C. 651 *et seq.*); and

(4) The Food Stamp Program (7 U.S.C. 2011 *et seq.*).

(b) *What information on other public assistance programs must the local agency provide to elderly applicants?* The local agency must provide elderly applicants with written information on the following programs, and make referrals, as appropriate:

(1) Supplemental security income benefits provided under Title XVI of the Social Security Act (42 U.S.C. 1381 *et seq.*);

(2) Medical assistance provided under Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), including medical assistance provided to a qualified Medicare beneficiary (42 U.S.C. 1395(p) and 1396d(5)); and

(3) The Food Stamp Program (7 U.S.C. 2011 *et seq.*).

(c) *Is the value of CSFP benefits counted as income or resources for any other public assistance programs?* No. The value of benefits received in CSFP may not be considered as income or resources of participants or their families for any purpose under Federal, State, or local laws, including laws relating to taxation and public assistance programs.

§ 247.15 Notification of eligibility or ineligibility of applicant.

(a) *What is the timeframe for notifying an applicant of eligibility or ineligibility for CSFP benefits?* Local agencies must notify applicants of their eligibility or ineligibility for CSFP benefits, or their placement on a waiting list, within 10 days from the date of application.

(b) *What must be included in the notification of eligibility or ineligibility?* The notification of eligibility must include information on the time, location, and means of food distribution, and the length of the certification period. Notification of ineligibility must be in writing, and must include the reason the applicant is not eligible, a statement of the individual's right to a fair hearing to appeal the decision, and a statement that informs the applicant that program standards are applied without discrimination by race, color, national origin, age, sex, or disability.

§ 247.16 Certification period.

(a) *How long is the certification period? (1) Women, infants, and children.* For women, infants, and children, the State agency must establish certification periods that may not exceed 6 months in length. However, pregnant women may be certified to participate for the duration of their pregnancy and for up to six weeks post-partum.

(2) *Elderly persons.* For elderly persons, the State agency must establish certification periods that may not exceed 6 months in length. However, the State agency may authorize local agencies to extend the certification period without a formal review of eligibility for additional 6-month periods, as long as the following conditions are met:

(i) The person's address and continued interest in receiving program benefits are verified;

(ii) The local agency has sufficient reason to believe that the person still meets the income eligibility standards (*e.g.*, the elderly person has a fixed income); and

(iii) No eligible women, infants, or children are waiting to be served.

(b) *On what day of the final month does the certification period end?* The certification period extends to the final day of the month in which eligibility expires (*e.g.*, the last day of the month in which a child reaches his or her sixth birthday).

(c) *Does the certification period end when a participant moves from the local area in which he or she was receiving benefits?* No. The State agency must ensure that local agencies serve a CSFP participant, or WIC participant (if also eligible for CSFP), who moves from another area to an area served by CSFP, and whose certification period has not expired. The participant must be given the opportunity to continue to receive CSFP benefits for the duration of the certification period. If the local agency has a waiting list, the participant must be placed on its waiting list ahead of all other waiting applicants. The local agency that determined the participant's eligibility must provide verification of the expiration date of the certification period to the participant upon request.

(d) *What must the local agency do to ensure that participants are aware of the expiration of the certification period?* The local agency must notify program participants in writing at least 15 days before the expiration date that eligibility for the program is about to expire. The local agency must include a statement in the written notification that informs the applicant that program standards are applied without discrimination by race, color, national origin, age, sex, or disability.

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§ 247.17 Notification of discontinuance of participant.

(a) *What must a local agency do if it has evidence that a participant is no longer eligible for CSFP benefits during the certification period?* If a local agency has evidence that a participant is no longer eligible for CSFP benefits during the certification period, it must provide the participant with a written notification of discontinuance at least 15 days before the effective date of discontinuance.

(b) *What must a local agency do if it has to discontinue a participant from participation in the program prior to the end of the certification period due to the lack of resources necessary to continue providing benefits to the participant?* If a local agency does not have sufficient resources, such as a sufficient number of caseload slots, to continue providing benefits to the participant(s) for the entire certification period, it must provide the participant(s) with a written notification of discontinuance at least 15 days before the effective date of discontinuance.

(c) *What must be included in the notification of discontinuance?* The notification of discontinuance must include the effective date of discontinuance, the reason for the participant's discontinuance, a statement of the individual's right to appeal the discontinuance through the fair hearing process, in accordance with § 247.33(a), and a statement that informs the applicant that program standards are applied without discrimination by race, color, national origin, age, sex, or disability.

§ 247.18 Nutrition education.

(a) *What are the State agency's responsibilities in ensuring that nutrition education is provided?* The State agency must establish an overall nutrition education plan and must ensure that local agencies provide nutrition education to participants in accordance with the plan. The State agency may allow local agencies to share personnel and educational resources with other programs in order to provide the best nutrition education possible to participants. The State agency must establish an evaluation procedure to ensure that the nutrition education provided is effective. The evaluation procedure must include participant input and must be directed by a nutritionist or other qualified professional. The evaluation may be conducted by the State or local agency, or by another agency under agreement with the State or local agency.

(b) *What type of nutrition education must the local agency provide?* The local agency must provide nutrition education that can be easily understood by participants and is related to their nutritional needs and household situations. The local agency must

provide nutrition education that includes the following information, which should account for specific ethnic and cultural characteristics whenever possible:

(1) The nutritional value of CSFP foods, and their relationship to the overall dietary needs of the population groups served;

(2) Nutritious ways to use CSFP foods;

(3) Special nutritional needs of participants and how these needs may be met;

(4) For pregnant and postpartum women, the benefits of breastfeeding;

(5) The importance of health care, and the role nutrition plays in maintaining good health; and

(6) The importance of the use of the foods by the participant to whom they are distributed, and not by another person.

(c) *To whom must local agencies provide nutrition education?* The local agency must make nutrition education available to all adult participants and to parents or caretakers of infants and child participants. Local agencies are encouraged to make nutrition education available to children, where appropriate.

(d) *May CSFP foods be used in cooking demonstrations?* Yes. The State or local agency, or another agency with which it has signed an agreement, may use CSFP foods to conduct cooking demonstrations as part of the nutrition education provided to program participants, but not for other purposes.

§ 247.19 Dual participation.

(a) *What must State and local agencies do to prevent and detect dual participation?* The State agency must work with the State WIC agency to develop a plan to prevent and detect dual participation.

In accordance with an agreement signed by both agencies. The State agency must also work with local agencies to prevent and detect dual participation. In accordance with § 247.8(a)(1), the local agency must check the identification of all applicants when they are certified or recertified. In accordance with § 247.8(b), the local agency must ensure that the applicant, or the adult parent or caretaker of the applicant, signs an application form which includes a statement advising the applicant that he or she may not receive both CSFP and WIC benefits simultaneously, or CSFP benefits at more than one CSFP site at the same time.

(b) *What must the local agency do if a CSFP participant is found to be committing dual participation?* A participant found to be committing dual participation must be discontinued from one of the programs (WIC or CSFP), or from participation at more than one CSFP site. Whenever an individual's participation in CSFP is discontinued, the local agency must notify the individual of the discontinuance, in accordance with § 247.17. The individual may appeal the discontinuance through the fair hearing process, in accordance with § 247.33(a). In accordance with § 247.20(b), if the dual participation resulted from the participant, or the parent or caretaker of the participant, making false or misleading statements, or intentionally withholding information, the local agency must disqualify the participant from CSFP, unless the local agency determines that disqualification would result in a serious health risk. The local agency must also initiate a claim against the participant to recover the value of CSFP benefits improperly received, in accordance with § 247.30(c).

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§ 247.20 Program violations.

(a) *What are program violations in CSFP?* Program violations are actions taken by CSFP applicants or participants, or the parents or caretakers of applicants or participants, to obtain or use CSFP benefits improperly. Program violations include the following actions:

(1) Intentionally making false or misleading statements, orally or in writing;

(2) Intentionally withholding information pertaining to eligibility in CSFP;

(3) Selling commodities obtained in the program, or exchanging them for non-food items;

(4) Physical abuse, or threat of physical abuse, of program staff; or

(5) Committing dual participation.

(b) *What are the penalties for committing program violations?* If applicants or participants, or the parents or caretakers of applicants or participants, commit program violations, the State agency may require local agencies to disqualify the applicants or participants for a period of up to one year. However, if the local agency determines that disqualification would result in a serious health risk, the disqualification may be waived. For program violations that involve fraud, the State agency must require local agencies to disqualify the participant from CSFP for a period of up to one year, unless the local agency determines that disqualification would result in a serious health risk. The State agency must require local agencies to permanently disqualify a participant who commits three program violations that involve fraud. For purposes of this program, fraud includes:

(1) Intentionally making false or misleading statements to obtain CSFP commodities;

(2) Intentionally withholding information to obtain CSFP commodities; or

(3) Selling CSFP commodities, or exchanging them for non-food items.

(c) *What must the local agency do to notify the individual of disqualification from CSFP?* The local agency must provide the individual with written notification of disqualification from CSFP at least 15 days before the effective date of disqualification. The notification must include the effective date and period of disqualification, the reason for the disqualification, and a statement that the individual may appeal the disqualification through the fair hearing process, in accordance with § 247.33(a).

§ 247.21 Caseload assignment.

(a) *How does FNS assign caseload to State agencies?* Each year, FNS assigns a caseload to each State agency to allow persons meeting the eligibility criteria listed under § 247.9 to participate in the program, up to the caseload limit. To the extent that resources are available, FNS assigns caseload to State agencies in the following order:

(1) *Base caseload.* The State agency may not receive base caseload in excess of its total caseload assigned for the previous caseload cycle. Base caseload is determined in the following manner:

(i) Each State agency entering its second year of program participation receives base caseload equal to the amount assigned to it in its first year of participation; and

(ii) A State agency that has participated in two or more caseload cycles receives base caseload equal to the highest of:

(A) Average monthly participation for the previous fiscal year; or

(B) Average monthly participation for the last quarter of the previous fiscal year; or

(C) Participation during September of the previous fiscal year, but only if:

(*1*) The full-year appropriation for the preceding fiscal year was enacted on or after February 15; and

(*2*) The State agency received additional caseload equal to or greater than 10 percent of its base caseload in the previous caseload cycle; and

(*3*) October participation in the current fiscal year was equal to or greater than 95 percent of September participation in the previous fiscal year.

(2) *Additional caseload.* Each participating State agency may request additional caseload to increase service to women, infants, and children, and the elderly. Requests by State agencies to increase service to women, infants, and children receive priority over requests to increase service to the elderly. Eligibility for and assignment of additional caseload are determined in the following manner:

(i) A State agency entering its second year of program participation qualifies to receive additional caseload if the State achieved a participation level which was equal to or greater than 95 percent of assigned caseload for the previous caseload cycle, based on the highest of:

(A) Average monthly participation for the previous fiscal year; or

(B) Average monthly participation for the last quarter of the previous fiscal year; or

(C) Participation during September of the previous fiscal year, but only if:

(*1*) The full-year appropriation for the preceding fiscal year was enacted on or after February 15; and

(*2*) October participation in the current fiscal year was equal to or greater than 95 percent of September participation in the previous fiscal year.

(ii) A State agency that has participated in two or more caseload cycles qualifies to receive additional caseload if the State achieved a participation level which was equal to or greater than 95 percent of assigned caseload for the previous caseload cycle, based on the highest of:

(A) Average monthly participation for the previous fiscal year; or

(B) Average monthly participation for the last quarter of the previous fiscal year; or

(C) Participation during September of the previous fiscal year, but only if:

(*1*) The full-year appropriation for the preceding fiscal year was enacted on or after February 15; and

(*2*) The State agency received additional caseload equal to or greater than 10 percent of its base caseload in the previous caseload cycle; and

(*3*) October participation in the current fiscal year was equal to or greater than 95 percent of September participation in the previous fiscal year.

(iii) Of each eligible State agency's request for additional caseload, FNS assigns an amount that it determines the State needs and can efficiently utilize. In making this determination, FNS considers the factors listed below, in descending order of importance. If all reasonable requests for additional caseload cannot be met, FNS assigns it to those States that are most likely to utilize it. The factors are:

(A) Program participation of women, infants, and children, and the elderly in the State, in the previous fiscal year;

(B) The percentage of caseload utilized by the State in the previous fiscal year;

(C) Program participation trends in the State in previous fiscal years; and

(D) Other information provided by the State agency in support of the request.

(3) *New caseload.* Each State agency requesting to begin participation in the program, and with an approved State Plan, may receive caseload to serve women, infants, and children, and the elderly, as requested in the State Plan. State agency requests to initiate service to women, infants, and children receive priority over requests to initiate service to the elderly. Of the State agency's caseload request, FNS assigns caseload in an amount that it determines the State needs and can efficiently utilize. This determination is made based on information contained in the State Plan and on other relevant information. However, if all caseload requests cannot be met, FNS will assign caseload to those States that are most likely to utilize it.

(b) *When does FNS assign caseload to State agencies?* FNS must assign caseload to State agencies by December 31 of each year, or within 30 days after enactment of appropriations legislation covering the full fiscal year, whichever comes later. Caseload assignments for the previous caseload cycle will remain in effect, subject to the availability of sufficient funding, until caseload assignments are made for the current caseload cycle.

(c) *How do State agencies request additional caseload for the next caseload cycle?* In accordance with § 247.6(d), a State agency that would like additional caseload for the next caseload cycle (beginning the following January 1) must submit a request for additional caseload by November 5, as an amendment to the State Plan. The State agency must also describe plans for serving women, infants, and children, and the elderly, at new sites in this submission.

§ 247.22 Allocation and disbursement of administrative funds to State agencies.

(a) *What must State agencies do to be eligible to receive administrative funds?* In order to receive administrative funds, the State agency must have signed an agreement with FNS to operate the program, in accordance with § 247.4(a)(1), and must have an approved State Plan.

(b) *How does FNS allocate administrative funds to State agencies?* (1) As required by law, each fiscal year FNS allocates to each State agency an administrative grant per assigned caseload slot, adjusted each year for inflation.

(2) For fiscal year 2003, the amount of the grant per assigned caseload slot was equal to the per-caseload slot amount provided in fiscal year 2001, adjusted by the percentage change between:

(i) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 2001; and

(ii) The value of that index for the 12-month period ending June 30, 2002.

(3) For subsequent fiscal years, the amount of the grant per assigned caseload slot is equal to the amount of the grant per assigned caseload slot for the preceding fiscal year, adjusted by the percentage change between:

(i) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(ii) The value of that index for the 12-month period ending June 30 of the preceding fiscal year.

(c) *How do State agencies access administrative funds?* FNS provides administrative funds to State agencies on a quarterly basis. Such funds are provided by means of a Letter of Credit, unless other funding arrangements have been made with FNS. The State agency obtains the funds by electronically accessing its Letter of Credit account.

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§ 247.23 State provision of administrative funds to local agencies.

(a) *How much of the administrative funds must State agencies provide to local agencies for their use?* The State agency must provide to local agencies for their use all administrative funds it receives, except that the State agency may retain for its own use the amount determined by the following formula:

(1) 15 percent of the first $50,000 received;

(2) 10 percent of the next $100,000 received;

(3) 5 percent of the next $250,000 received; and

(4) A maximum of $30,000, if the administrative grant exceeds $400,000.

(b) *May a State agency request to retain more than the amount determined by the above formula in the*

event of special needs? Yes, the State agency may request approval from FNS to retain a larger amount than is allowed under the formula prescribed in paragraph (a) of this section. However, in making its request, the State agency must provide justification of the need for the larger amount at the State level, and must ensure that local agencies will not suffer undue hardship as a result of a reduction in administrative funds.

(c) *How must the State agency distribute funds among local agencies?* The State agency must distribute funds among local agencies on the basis of their respective needs, and in a manner that ensures the funds will be used to achieve program objectives.

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§ 247.24 Recovery and redistribution of caseload and administrative funds.

(a) *May FNS recover and redistribute caseload and administrative funds assigned to a State agency?* Yes. FNS may recover and redistribute caseload and administrative funds assigned to a State agency during the fiscal year. FNS will redistribute these resources to other State agencies in accordance with the provisions of §§ 247.21(a) and 247.22(b). In reassigning caseload, FNS will use the most up-to-date data on participation and the extent to which caseload is being utilized, as well as other information provided by State agencies. In accordance with § 247.21(a)(2), in instances in which FNS recovers caseload slots, the State agency must use 95 percent of its original caseload allocation to be eligible for additional caseload. However, the State agency must not exceed its reduced caseload allocation on an average monthly basis.

(b) *Is there a limit on the amount of caseload slots or administrative funds that FNS may recover?* Yes. FNS will not unilaterally recover caseload that would result in the recovery of more than 50 percent of the State's administrative funds. However, in instances in which the State agency requests that FNS recover any portion of its assigned caseload, the 50-percent limitation will not apply.

§ 247.25 Allowable uses of administrative funds and other funds.

(a) *What are allowable uses of administrative funds provided to State and local agencies?* Administrative funds may be used for costs that are necessary to ensure the efficient and effective administration of the program, in accordance with parts 3016 and 3019 of this title. Part 3016 of this title contains the rules for management of Federal grants to State, local, and Indian tribal governments, and part 3019 of this title contains the grants management rules for nonprofit organizations. These departmental regulations incorporate by reference OMB Circulars A–87 (Cost Principles for State, Local, and Indian Tribal Governments) and A–122 (Cost Principles for Non-Profit Organizations), which set out the principles for determining whether specific costs are allowable. For availability of OMB Circulars referenced in this section, see 5 CFR 1310.3. Some examples of allowable costs in CSFP include:

(1) Storing, transporting, and distributing foods;

(2) Determining the eligibility of program applicants;

(3) Program outreach;

(4) Nutrition education;

(5) Audits and fair hearings;

(6) Monitoring and review of program operations; and

(7) Transportation of participants to and from the local agency, if necessary.

(b) *What are unallowable uses of administrative funds?* In addition to those costs determined to be unallowable by the principles contained in the OMB circulars referenced in paragraph (a) of this section, specific examples of unallowable uses of administrative funds in CSFP include:

(1) The cost of alteration of facilities not required specifically for the program; and

(2) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or by other means).

(c) *What costs are allowable only with prior approval of FNS?* Capital expenditures, which include the acquisition of facilities or equipment, or enhancements to such capital assets, with a cost per unit of at least $5,000, are allowable only with prior approval of FNS. Examples of equipment include automated information systems, automated data processing equipment, and other computer hardware and software.

(d) *What procedures must State and local agencies use in procuring property, equipment, or services with program funds, and disposing of such property or equipment?* The procedures that State and local agencies must follow in procuring property, equipment, or services with program funds, or disposing of such property or equipment, are contained in parts 3016 and 3019 of this title. State, local, and Indian tribal governments must comply with part 3016 of this title, while nonprofit subgrantees must comply with part 3019 of this title. State and local agencies may use procurement procedures established by State and local regulations as long as these procedures do not conflict with Federal regulations. Federal regulations do not relieve State or local agencies from responsibilities established in contracts relating to procurement of property, equipment, or services. The State agency is the responsible authority regarding the settlement of all contractual and administrative issues arising out of procurements for the program.

(e) *What is program income and how must State and local agencies use it?* Program income is income directly generated from program activities. It includes, for example, income from the sale of packing containers or pallets, and the salvage of commodities. Program income does not include interest earned from administrative funds. State and local agencies must use program income for allowable program costs, in accordance with part 3016 of this title.

(f) *How must State and local agencies use funds recovered as a result of claims actions?* The State agency must use funds recovered as a result of claims actions against subdistributing or local agencies in accordance with the provisions of § 250.15(c) of this chapter. The State agency must use funds recovered as a result of claims actions against participants for allowable program costs. The State agency may authorize local agencies to use such funds for allowable program costs incurred at the local level.

§ 247.26 Return of administrative funds.

(a) *Must State agencies return administrative funds that they do not use at the end of the fiscal year?* Yes. If, by the end of the fiscal year, a State agency has not obligated all of its allocated administrative funds, the unobligated funds must be returned to FNS.

(b) *What happens to administrative funds that are returned by State agencies at the end of the fiscal year?* If, in the following fiscal year, OMB reapportions the returned administrative funds, the funds are used to support the program. Such funds are not returned to State agencies in the form of administrative funds in addition to the legislatively mandated grant per assigned caseload slot.

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§ 247.27 Financial management.

(a) *What are the Federal requirements for State and local agencies with regard*

to financial management? State and local public agencies must maintain a financial management system that complies with the Federal regulations contained in part 3016 of this title, while nonprofit organizations must comply with the Federal regulations contained in part 3019 of this title. The State agency's financial management system must provide accurate, current, and complete disclosure of the financial status of the program, including an accounting of all program funds received and expended each fiscal year. The State agency must ensure that local agencies develop and implement a financial management system that allows them to meet Federal requirements.

(b) *What are some of the major components of the State agency's financial management system?* In addition to other requirements, the State agency's financial management system must provide for:

(1) Prompt and accurate payment of allowable costs;

(2) Timely disbursement of funds to local agencies;

(3) Timely and appropriate resolution of claims and audit findings; and

(4) Maintenance of records identifying the receipt and use of administrative funds, funds recovered as a result of claims actions, program income (as defined under § 247.25(e)), and property and other assets procured with program funds.

§ 247.28 Storage and inventory of commodities.

(a) *What are the requirements for storage of commodities?* State and local agencies must provide for storage of commodities that protects them from theft, spoilage, damage or destruction, or other loss. State and local agencies may contract with commercial facilities to store and distribute commodities. The required standards for warehousing and distribution systems, and for contracts with storage facilities, are included under § 250.14 of this chapter.

(b) *What are the requirements for the inventory of commodities?* A physical inventory of all USDA commodities must be conducted annually at each storage and distribution site where these commodities are stored. Results of the physical inventory must be reconciled with inventory records and maintained on file by the State or local agency.

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§ 247.29 Reports and recordkeeping.

(a) *What recordkeeping requirements must State and local agencies meet?* State and local agencies must maintain accurate and complete records relating to the receipt, disposal, and inventory of commodities, the receipt and disbursement of administrative funds and other funds, eligibility determinations, fair hearings, and other program activities. State and local agencies must also maintain records pertaining to liability for any improper distribution of, use of, loss of, or damage to commodities, and the results obtained from the pursuit of claims arising in favor of the State or local agency. All records must be retained for a period of three years from the end of the fiscal year to which they pertain, or, if they are related to unresolved claims actions, audits, or investigations, until those activities have been resolved. All records must be available during normal business hours for use in management reviews, audits, investigations, or reports of the General Accounting Office.

(b) *What reports must State and local agencies submit to FNS?* State agencies must submit the following reports to FNS:

(1) *SF–269A, Financial Status Report.* The State agency must submit the SF–269A, Financial Status Report, to report the financial status of the program at the close of the fiscal year. This report must be submitted within 90 days after the end of the fiscal year. Obligations must be reported for the fiscal year in which they occur. Revised reports may be submitted at a later date, but FNS will not be responsible for reimbursing unpaid obligations later than one year after the end of the fiscal year in which they were incurred.

(2) *FNS–153, Monthly Report of the Commodity Supplemental Food Program and Quarterly Administrative Financial Status Report.* The State agency must submit the FNS–153 on a monthly basis. FNS may permit the data contained in the report to be submitted less frequently, or in another format. The report must be submitted within 30 days after the end of the reporting period. On the FNS–153, the State agency reports:

(i) The number of program participants in each population category (*e.g.*, infants, children, and elderly);

(ii) The receipt and distribution of commodities, and beginning and ending inventories, as well as other commodity data; and

(iii) On a quarterly basis, the cumulative amount of administrative funds expended and obligated, and the amount remaining unobligated.

(3) *FNS–191, Racial/Ethnic Group Participation.* Local agencies must submit a report of racial/ethnic participation each year, using the FNS–191.

(c) *Is there any other information that State and local agencies must provide to FNS?* FNS may require State and local agencies to provide data collected in the program to aid in the evaluation of the effect of program benefits on the low-income populations served. Any such requests for data will not include identification of particular individuals.

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§ 247.30 Claims.

(a) *What happens if a State or local agency misuses program funds?* If FNS determines that a State or local agency has misused program funds through negligence, fraud, theft, embezzlement, or other causes, FNS must initiate and pursue a claim against the State agency to repay the amount of the misused funds. The State agency will be given the opportunity to contest the claim. The State agency is responsible for initiating and pursuing claims against subdistributing and local agencies if they misuse program funds.

(b) *What happens if a State or local agency misuses program commodities?* If a State or local agency misuses program commodities, FNS must initiate a claim against the State agency to recover the value of the misused commodities. The procedures for pursuing claims resulting from misuse of commodities are detailed in § 250.15(c) of this chapter. Misused commodities include commodities improperly distributed or lost, spoiled, stolen, or damaged as a result of improper storage, care, or handling. The State agency is responsible for initiating and pursuing claims against subdistributing agencies, local agencies, or other agencies or organizations if they misuse program commodities. The State agency must use funds recovered as a result of claims for commodity losses in accordance with § 250.15(c) of this chapter.

(c) *What happens if a participant improperly receives or uses CSFP benefits through fraud?* The State agency must ensure that a local agency initiates a claim against a participant to recover the value of CSFP commodities improperly received or used if the local agency determines that the participant, or the parent or caretaker of the participant, fraudulently received or used the commodities. For purposes of this program, fraud includes intentionally making false or misleading statements, or intentionally withholding information, to obtain CSFP commodities, or the selling or exchange

of CSFP commodities for non-food items. The local agency must advise the participant of the opportunity to appeal the claim through the fair hearing process, in accordance with § 247.33(a). The local agency must also disqualify the participant from CSFP for a period of up to one year, unless the local agency determines that disqualification would result in a serious health risk, in accordance with the requirements of § 247.20(b).

(d) *What procedures must be used in pursuing claims against participants?* The State agency must establish standards, based on a cost-benefit review, for determining when the pursuit of a claim is cost-effective, and must ensure that local agencies use these standards in determining if a claim is to be pursued. In pursuing a claim against a participant, the local agency must:

(1) Issue a letter demanding repayment for the value of the commodities improperly received or used;

(2) If repayment is not made in a timely manner, take additional collection actions that are cost-effective, in accordance with the standards established by the State agency; and

(3) Maintain all records regarding claims actions taken against participants, in accordance with § 247.29.

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§ 247.31 Audits and investigations.

(a) *What is the purpose of an audit?* The purpose of an audit is to ensure that:

(1) Financial operations are properly conducted;

(2) Financial reports are fairly presented;

(3) Proper inventory controls are maintained; and

(4) Applicable laws, regulations, and administrative requirements are followed.

(b) *When may the Department conduct an audit or investigation of the program?* The Department may conduct an audit of the program at the State or local agency level at its discretion, or may investigate an allegation that the State or local agency has not complied with Federal requirements. An investigation may include a review of any State or local agency policies or practices related to the specific area of concern.

(c) *What are the responsibilities of the State agency in responding to an audit by the Department?* In responding to an audit by the Department, the State agency must:

(1) Provide access to any records or documents compiled by the State or local agencies, or contractors; and

(2) Submit a response or statement to FNS describing the actions planned or taken in response to audit findings or recommendations. The corrective action plan must include time frames for implementation and completion of actions. FNS will determine if actions or planned actions adequately respond to the program deficiencies identified in the audit. If additional actions are needed, FNS will schedule a follow-up review and allow sufficient time for further corrective actions. The State agency may also take exception to particular audit findings or recommendations.

(d) *When is a State or local agency audit required?* State and local agency audits must be conducted in accordance with part 3052 of this title, which contains the Department's regulations pertaining to audits of States, local governments, and nonprofit organizations. The value of CSFP commodities distributed by the agency or organization must be considered part of the Federal award.

(e) *What are the requirements for State or local agency audits?* State and local agency audits must be conducted in accordance with the requirements of part 3052 of this title, which contains the Department's regulations pertaining to audits of States, local governments, and nonprofit organizations. The State agency must ensure that local agencies meet the audit requirements. The State agency must ensure that all State or local agency audit reports are available for FNS review.

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§ 247.32 Termination of agency participation.

(a) *When may a State agency's participation in CSFP be terminated?* While paragraphs (a)(1), (a)(2), and (a)(3) of this section, as applicable, describe the circumstances and basic procedures for terminating State agency programs, specific actions and procedures relating to program termination are more fully described in part 3016 of this title.

(1) *Termination by FNS.* FNS may terminate a State agency's participation in CSFP, in whole or in part, if the State agency does not comply with the requirements of this part. FNS must provide written notification to the State agency of termination, including the reasons for the action, and the effective date.

(2) *Termination by State agency.* The State agency may terminate the program, in whole or in part, upon written notification to FNS, stating the reasons and effective date of the action. In accordance with § 247.4(b)(6), which relates to the termination of agreements, either party must provide, at minimum, 30 days' written notice.

(3) *Termination by mutual agreement.* The State agency's program may also be terminated, in whole or in part, if both parties agree the action would be in the best interest of the program. The two parties must agree upon the conditions of the termination, including the effective date.

(b) *When may a local agency's participation in CSFP be terminated?* While paragraphs (b)(1), (b)(2), and (b)(3) of this section, as applicable, describe the circumstances and basic procedures in termination of local agency programs, specific actions and procedures relating to program termination are more fully described in part 3016 of this title.

(1) *Termination by State agency.* The State agency may terminate a local agency's participation in CSFP, or may be required to terminate a local agency's participation, in whole or in part, if the local agency does not comply with the requirements of this part. The State agency must notify the local agency in writing of the termination, the reasons for the action, and the effective date, and must provide the local agency with an opportunity to appeal, in accordance with § 247.35. (The local agency may appeal the termination in accordance with § 247.35.)

(2) *Termination by local agency.* The local agency may terminate the program, in whole or in part, upon written notification to the State agency, stating the reasons and effective date of the action. In accordance with § 247.4(b)(6), which relates to the termination of agreements, either party must provide, at minimum, 30 days' written notice.

(3) *Termination by mutual agreement.* The local agency's program may also be terminated, in whole or in part, if both the State and local agency agree that the action would be in the best interest of the program. The two parties must agree upon the conditions of the termination, including the effective date.

§ 247.33 Fair hearings.

(a) *What is a fair hearing?* A fair hearing is a process that allows a CSFP applicant or participant to appeal an adverse action, which may include the denial or discontinuance of program benefits, disqualification from the program, or a claim to repay the value of commodities received as a result of

fraud. State and local agencies must ensure that CSFP applicants and participants understand their right to appeal an adverse action through the fair hearing process, which includes providing written notification of the individual's right to a fair hearing along with notification of the adverse action. Such notification is not required at the expiration of a certification period.

(b) *What are the basic requirements the State agency must follow in establishing procedures to be used in fair hearings?* The State agency must establish simple, clear, uniform rules of procedure to be used in fair hearings, including, at a minimum, the procedures outlined in this section. The State agency may use alternate procedures if approved by FNS. The rules of procedure must be available for public inspection and copying.

(c) *How may an individual request a fair hearing?* An individual, or an individual's parent or caretaker, may request a fair hearing by making a clear expression, verbal or written, to a State or local agency official, that an appeal of the adverse action is desired.

(d) *How much time does an individual have to request a fair hearing?* The State or local agency must allow an individual at least 60 days from the date the agency mails or gives the individual the notification of adverse action to request a fair hearing.

(e) *When may a State or local agency deny a request for a fair hearing?* The State or local agency may deny a request for a fair hearing when:

(1) The request is not received within the time limit established in paragraph (d) of this section;

(2) The request is withdrawn in writing by the individual requesting the hearing or by an authorized representative of the individual; or

(3) The individual fails to appear, without good cause, for the scheduled hearing.

(f) *Does the request for a fair hearing have any effect on the receipt of CSFP benefits?* Participants who appeal the discontinuance of program benefits within the 15-day advance notification period required under §§ 247.17 and 247.20 must be permitted to continue to receive benefits until a decision on the appeal is made by the hearing official, or until the end of the participant's certification period, whichever occurs first. However, if the hearing decision finds that a participant received program benefits fraudulently, the local agency must include the value of benefits received during the time that the hearing was pending, as well as for any previous period, in its initiation and pursuit of a claim against the participant.

(g) *What notification must the State or local agency provide an individual in scheduling the hearing?* The State or local agency must provide an individual with at least 10 days' advance written notice of the time and place of the hearing, and must include the rules of procedure for the hearing.

(h) *What are the individual's rights in the actual conduct of the hearing?* The individual must have the opportunity to:

(1) Examine documents supporting the State or local agency's decision before and during the hearing;

(2) Be assisted or represented by an attorney or other persons;

(3) Bring witnesses;

(4) Present arguments;

(5) Question or refute testimony or evidence, including an opportunity to confront and cross-examine others at the hearing; and,

(6) Submit evidence to help establish facts and circumstances.

(i) *Who is responsible for conducting the fair hearing, and what are the specific responsibilities of that person?* The fair hearing must be conducted by an impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial adverse action that resulted in the hearing. The hearing official is responsible for:

(1) Administering oaths or affirmations, as required by the State;

(2) Ensuring that all relevant issues are considered;

(3) Ensuring that all evidence necessary for a decision to be made is presented at the hearing, and included in the record of the hearing;

(4) Ensuring that the hearing is conducted in an orderly manner, in accordance with due process; and

(5) Making a hearing decision.

(j) *How is a hearing decision made?* The hearing official must make a decision that complies with Federal laws and regulations, and is based on the facts in the hearing record. In making the decision, the hearing official must summarize the facts of the case, specify the reasons for the decision, and identify the evidence supporting the decision and the laws or regulations that the decision upholds. The decision made by the hearing official is binding on the State or local agency.

(k) *What is the time limit for making a hearing decision and notifying the individual of the decision?* A hearing decision must be made, and the individual notified of the decision, in writing, within 45 days of the request for the hearing. The notification must include the reasons for the decision.

(l) *How does the hearing decision affect the individual's receipt of CSFP benefits?* If a hearing decision is in favor of an applicant who was denied CSFP benefits, the receipt of benefits must begin within 45 days from the date that the hearing was requested, if the applicant is still eligible for the program. If the hearing decision is against a participant, the State or local agency must discontinue benefits as soon as possible, or at a date determined by the hearing official.

(m) *What must be included in the hearing record?* In addition to the hearing decision, the hearing record must include a transcript or recording of testimony, or an official report of all that transpired at the hearing, along with all exhibits, papers, and requests made. The record must be maintained in accordance with § 247.29(a). The record of the hearing must be available for public inspection and copying, in accordance with the confidentiality requirements under § 247.36(b).

(n) *What further steps may an individual take if a hearing decision is not in his or her favor?* If a hearing decision upholds the State or local agency's action, and a State-level review or rehearing process is available, the State or local agency must describe to the individual any State-level review or rehearing process. The State or local agency must also inform the individual of the right of the individual to pursue judicial review of the decision.

§ 247.34 Management reviews.

(a) *What must the State agency do to ensure that local agencies meet program requirements and objectives?* The State agency must establish a management review system to ensure that local agencies, subdistributing agencies, and other agencies conducting program activities meet program requirements and objectives. As part of the system, the State agency must perform an on-site review of all local agencies, and of all storage facilities utilized by local agencies, at least once every two years. As part of the on-site review, the State agency must evaluate all aspects of program administration, including certification procedures, nutrition education, civil rights compliance, food storage practices, inventory controls, and financial management systems. In addition to conducting on-site reviews, the State agency must evaluate program administration on an ongoing basis by reviewing financial reports, audit reports, food orders, inventory reports, and other relevant information.

(b) *What must the State agency do if it finds that a local agency is deficient in a particular area of program*

administration? The State agency must record all deficiencies identified during the review and institute follow-up procedures to ensure that local agencies and subdistributing agencies correct all deficiencies within a reasonable period of time. To ensure improved program performance in the future, the State agency may require that local agencies adopt specific review procedures for use in reviewing their own operations and those of subsidiaries or contractors. The State agency must provide copies of review reports to FNS upon request.

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§ 247.35 Local agency appeals of State agency actions.

(a) *What recourse must the State agency provide local agencies to appeal a decision that adversely affects their participation in CSFP?* The State agency must establish a hearing procedure to allow local agencies to appeal a decision that adversely affects their participation in CSFP—*e.g.*, the termination of a local agency's participation in the program. The adverse action must be postponed until a decision on the appeal is made.

(b) *What must the State agency include in the hearing procedure to ensure that the local agency has a fair chance to present its case?* The hearing procedure must provide the local agency:

(1) Adequate advance notice of the time and place of the hearing;

(2) An opportunity to review the record before the hearing, and to present evidence at the hearing;

(3) An opportunity to confront and cross-examine witnesses; and

(4) An opportunity to be represented by counsel, if desired.

(c) *Who conducts the hearing and how is a decision on the appeal made?* The hearing must be conducted by an impartial person who must make a decision on the appeal that is based solely on the evidence presented at the hearing, and on program legislation and regulations. A decision must be made within 60 days from the date of the request for a hearing, and must be provided in writing to the local agency.

§ 247.36 Confidentiality of applicants or participants.

(a) *Can the State or local agency disclose information obtained from applicants or participants to other agencies or individuals?* State and local agencies must restrict the use or disclosure of information obtained from CSFP applicants or participants to persons directly connected with the administration or enforcement of the program, including persons investigating or prosecuting program violations. The State or local agency may exchange participant information with other health or welfare programs for the purpose of preventing dual participation. In addition, with the consent of the participant, as indicated on the application form, the State or local agency may share information obtained with other health or welfare programs for use in determining eligibility for those programs, or for program outreach. However, the State agency must sign an agreement with the administering agencies for these programs to ensure that the information will be used only for the specified purposes, and that agencies receiving such information will not further share it.

(b) *Can the State or local agency disclose the identity of persons making a complaint or allegation against another individual participating in or administering the program?* The State or local agency must protect the confidentiality, and other rights, of any person making allegations or complaints against another individual participating in, or administering CSFP, except as necessary to conduct an investigation, hearing, or judicial proceeding.

§ 247.37 Civil rights requirements.

(a) *What are the civil rights requirements that apply to CSFP?* State and local agencies must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*). State and local agencies must also comply with the Department's regulations on nondiscrimination (parts 15, 15a, and 15b of this title), and with the provisions of FNS Instruction 113–2, including the collection of racial/ethnic participation data and public notification of nondiscrimination policy. State and local agencies must ensure that no person shall, on the grounds of race, color, national origin, age, sex, or disability, be subjected to discrimination under the program.

(b) *How does an applicant or participant file a complaint of discrimination?* CSFP applicants or participants who believe they have been discriminated against should file a discrimination complaint with the USDA Director, Office of Civil Rights, Room 326W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or telephone (202) 720–5964.

Dated: July 29, 2005.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

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