

**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:** Proposed rule.

**SUMMARY:** This proposed rule would rewrite the regulations for the Commodity Supplemental Food Program in “plain language” to help program operators and the general public better understand program requirements. It would also reduce the time and paperwork burden for State and local agencies, increase their flexibility in program operations, and strengthen program accountability. Other changes would be made to incorporate legislative provisions and improve program service and caseload management. The effect of this rule will be to make the Commodity Supplemental Food Program easier to understand and administer, and more effective and efficient in providing benefits to eligible persons.

**DATES:** Please send your comments to reach us on or before December 30, 2003. Comments received after the above date will not be considered in developing the final rule.

**ADDRESSES:** You can mail or hand-deliver comments to 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 22302-1594.

**FOR FURTHER INFORMATION CONTACT:** Lillie F. Ragan at the above address or telephone (703) 305-2662. A regulatory impact analysis has been prepared for this rule. You may request a copy of the analysis by contacting us at the above address.

**SUPPLEMENTARY INFORMATION:**

- I. Public Comment Procedures
- II. Procedural Matters
- III. Background and Discussion of the Proposed Rule

**I. Public Comment Procedures**

Your written comments on this proposed rule should be specific, confined to issues pertinent to the proposed rule, and should explain your reasons for any change recommended. Where possible, you should reference

the specific section or paragraph of the proposal you are addressing. Comments received after the close of the comment period (see **DATES**) will not be considered or included in the Administrative Record for the final rule.

The comments, including names, street addresses, and other contact information of commenters, will be available for public review at the Food and Nutrition Service, Room 500, 3101 Park Center Drive, Alexandria, Virginia, during regular business hours (8:30 a.m. to 5 p.m.), Mondays through Fridays, except Federal holidays.

**II. Procedural Matters***Clarity of the Regulations*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the rule clearly stated?
- (2) Does the rule contain technical language or jargon that interferes with its clarity?
- (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) make it more or less clear?
- (4) Would the rule be easier to understand if it were divided into more (but shorter) sections?
- (5) Is the description of the rule in the preamble section entitled “Background and Discussion of the Proposed Rule” helpful in understanding the rule? How could this description be more helpful?

*Executive Order 12866*

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

*Executive Order 13132*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Prior to drafting this proposed rule, we received input from State and local agencies at various times. Since the Commodity Supplemental Food Program (CSFP) is a State-administered, federally funded program, our regional offices have informal and formal discussions with State and local officials on an ongoing basis regarding program implementation and performance. Additionally, Food and Nutrition Service (FNS) Headquarters and regional office staff receive input from State and local

program staff at the annual national CSFP conference, and at various other meetings throughout the year. These contacts allow State and local agencies to provide feedback that forms the basis for proposals to amend program regulations. We will review all comments provided during the 60-day comment period following the publication of this rule and will develop the final rule after due consideration of the concerns expressed in the comments.

*Public Law 104-4*

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, 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 program addressed in this action is listed in the Catalog of Federal Domestic Assistance under 10.565, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V, and final rule-related notices published at 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

*Regulatory Flexibility Act*

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). 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 and State agencies and Indian Tribal Organizations that administer the programs will be affected by this rulemaking, the economic effect will not be significant.

#### *Executive Order 12988*

This proposed 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 application of CSFP rules, exhaustion of administrative remedies, as set out in 7 CFR 247.33, would be required.

#### *Regulatory Impact Analysis*

The regulatory amendments proposed in this rule will benefit State and local agencies by reducing the paperwork burden and increasing flexibility in program administration. Some of the changes will affect program eligibility, such as the establishment of income eligibility guidelines, the consideration of average income over the previous year, and counting the pregnant woman as two in considering income eligibility. However, these changes are not expected to result in appreciable changes in program participation or increase program costs.

Other changes will 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. These changes, too, are not expected to result in any appreciable changes in program participation or costs.

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), this proposed rule will contain information collections that are subject to review and approval by the Office of Management and Budget (OMB); therefore, FNS is submitting for public comment the changes in the information collection burden that would result from adoption of the proposals in the rule.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To be considered, comments must be postmarked on or before December 30, 2003. Please send comments to 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 22302-1594, and to Lauren Wittenberg, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. All comments will be summarized and included in the request for OMB approval of the proposed changes in the information collection burden. All comments will become a matter of public record. For further information, or for copies of the information collections discussed below, please contact Ms. Ragan at the above address or telephone (703) 305-2662.

**Title:** Food Distribution Forms (This information collection burden consolidates the reporting and recordkeeping requirements for 7 CFR parts 240, 247, 250, 251, 252, 253, and 254).

**OMB Number:** 0584-0293.

**Expiration Date:** October 31, 2006.

**Type of Request:** Revision of a currently approved collection.

**Abstract:** This proposed rule would affect only reporting and recordkeeping requirements under 7 CFR part 247. The reporting burden for this part would be reduced from 350,812 hours to 262,983 hours. The recordkeeping burden for this part would increase from 84 hours to 124 hours. The total information collection burden for OMB Number 0584-0293 would be reduced from 1,154,152 hours to 1,066,363 hours. Below, we describe all proposed changes under the sections proposed in this rule.

**Section 247.4, Agreements.** Agreement requirements, currently under §§ 247.3 and 247.6, would be moved to the proposed §§ 247.4. We propose to make the Federal-State agreement permanent, instead of annual, with amendments submitted as needed. The information collection burden for Federal/State agreements for

all food distribution and child nutrition programs is contained in a separate information collection—OMB Number 0584-0067. The proposal to make the Federal-State agreement for the CSFP permanent would require no change in the information collection burden, as this change was effected (erroneously, in the case of CSFP) when the agreement for other food distribution programs was made permanent in 1997. We propose to reduce the required elements for State agreements with local agencies, and for local agency agreements with other agencies. We estimate that these agreements would take 2 hours to complete, instead of the present 8 hours. We also propose to clarify that the duration of agreements between State and local agencies is determined by the State agency, and the duration of agreements between local agencies and other agencies is determined by the local agency. We estimate that 50 agreements between State and local agencies, and between local agencies and other agencies, would be completed each year. The total burden for completion of State and local agency agreements would be reduced from 480 to 100 hours.

**Section 247.6, State Plan.** State Plan requirements, currently under § 247.5, would be moved to the proposed § 247.6. We propose to make the State Plan permanent, with amendments submitted as needed, instead of annual. We also propose to remove several elements that are currently required to be included in the State Plan. We estimate that, on average, one State agency per year would submit a State Plan, which would require 50 hours to develop, instead of the current 100 hours. Thus, the total burden for State Plan submissions will be 50 hours. Since participating State agencies must submit amendments to request additional caseload for the following year, and to make any other changes in the Plan, we estimate that all 35 State agencies projected to be participating in fiscal year 2004 will submit an amendment to the Plan each year. We estimate that the submission of an amendment will require about 5 hours on average. Thus, the total burden for the submission of amendments to the State Plan would be 175 hours. The total information collection burden for development and submission of the State Plan and amendments would be reduced from 2,000 to 225 hours.

**Section 247.8, Individuals applying to participate in CSFP, and § 247.16, Certification period.** The application process for individuals applying to participate in CSFP, which is currently under § 247.7, would be moved to the

proposed § 247.8. The certification period requirements, which are also currently under § 247.7, would be moved to the proposed § 247.16. In this rule, we propose to allow State and local agencies to extend the certification of elderly participants for additional six-month periods without a formal review of eligibility. Local agencies would have to confirm the elderly participant's address and continued interest in receiving CSFP benefits. This change would reduce the time required for recertification, or contact with, elderly participants from 30 minutes to 15 minutes (0.25 hrs.). The burden for the twice-annual recertification of the approximately 381,000 elderly individuals projected to be participating in fiscal year 2004 would be 190,500 hours. The time required for recertification of women, infants, and children would remain the same (0.50 hrs.). The burden for the twice-annual recertification of the 66,000 women, infants, and children projected to be participating in fiscal year 2004 would be 66,000 hours. The total burden for applications and recertifications would be reduced from 342,000 hours to 256,500 hours. We propose to remove the current requirement that the local agency provide a verification of certification form to participants moving

to another location. This would remove the information collection burden of 110 hours for this activity.

Section 247.23, State provision of administrative funds to local agencies. The requirement that State agencies request approval to retain administrative funds above a specific limit, which is currently under § 247.11, would be moved to the proposed § 247.23. We propose to allow all State agencies, regardless of whether they are involved in storage of commodities, to request approval to retain more funds. We do not believe, however, that this will result in an increase in the present information collection burden for this requirement.

Section 247.30, Claims. Under the proposed § 247.30, we propose to require that the State or local agency pursue a claim against a participant to recover the value of benefits improperly received or used if it determines that the participant, or the parent or caretaker of the participant, received or used the commodities through fraud. The State agency would have to maintain all records regarding claims actions taken against participants. Since 7 CFR part 247 and 7 CFR part 250 do not currently address specific criteria relative to the establishment and pursuit of claims against participants, there is currently no recordkeeping burden regarding such

claims. We estimate that State and local agencies would initiate a total of 500 claims actions against participants each year. The recordkeeping burden would be 5 minutes (0.08 hrs.) for each claims action. The total recordkeeping burden for claims would be 40 hours.

Section 247.34, Management evaluation system. The requirement that State agencies perform management evaluations of local agencies, which is currently under § 247.21, would be moved to the proposed § 247.34. We propose to reduce the requirement for State agency on-site reviews of local agencies from annual to every two years. Thus, of the 103 local agencies currently participating, 52 would have to be reviewed each year. The total burden for management evaluations would be reduced from 480 hours to 416 hours.

*Respondents:* State, Local, or Tribal Government; program participants; business or other for profit; nonprofit institutions; Federal government.

*Total Annual Responses:* Current: 917,758; Proposed: 1,126,931.

*Estimate of Burden:* Current: 1,154,152; Proposed: 1,066,363.

The proposed changes in information collection burden for the reporting and recordkeeping requirements described above are included in the following table.

	Annual responses	Hours per response	Total hours
<b>Reporting</b>			
Section 247.4 State/local agreements:			
Present .....	60	8	480
Proposed .....	50	2	100
Section 247.6 State Plan/State Plan amendments:			
State Plan:			
Present .....	20	100	2,000
Proposed .....	1	50	50
State Plan amendments:			
Present .....	Included above under State Plan		
Proposed .....	35	5	175
Sections 247.8, 247.16 Applications/Recertifications:			
Present .....	684,000	0.50	342,000
Proposed .....	894,000	0.29	256,500
Verification of certification form:			
Present .....	1,325	0.08	110
Proposed .....	0	0	0
Section 247.34 Management reviews:			
Present .....	60	8	480
Proposed .....	52	8	416
<b>Recordkeeping</b>			
Section 247.30 Records of participant claims:			
Present .....	0	0	0
Proposed .....	500	0.08	40
Total			
Present .....	917,758		
Proposed .....	1,126,931		

### III. Background and Discussion of the Proposed Rule

This rule proposes to rewrite 7 CFR part 247 in "plain language." The proposed 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. We have increased the number of sections to ensure that each section addresses only one specific program area. Nevertheless, some current sections have been consolidated or deleted. This rule also proposes to amend provisions of this part to accomplish several objectives, including:

- (1) A reduction of the paperwork burden for State and local agencies, including making the Federal/State agreement and State Plan permanent, with amendments submitted as necessary;
- (2) An increase in the flexibility of program operators in providing benefits to eligible population groups, including changes in the recertification of elderly participants;
- (3) An increase in program accountability, including the requirement that State and local agencies initiate claims against program participants who improperly obtain benefits as a result of intentional misrepresentation;
- (4) Improvements in program service by requiring 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; and,
- (5) Incorporation of current legislative provisions.

In the following paragraphs, we describe each section of the proposed new 7 CFR part 247, including an explanation of any changes in content or format.

#### *Definitions, Section 247.1*

In this proposed section, we propose to include definitions relevant to CSFP, which are currently included under § 247.2. We propose to remove the definitions of administrative costs, A-90, A-102, A-110, categorical ineligibility, FMC 74-4, homebound elderly persons, participants, participation, pregnant women, program, Secretary, SFPD, and supplemental foods. The meaning of homebound elderly persons, participants, participation, pregnant women, and program is obvious to any reader. SFPD is the FNS division that formerly administered CSFP. Instead of the term categorical ineligibility, we

propose to refer instead to ineligible population groups. Wherever we refer to administrative costs, its meaning is clear. The numbered circulars are all obsolete, and have been replaced by other circulars or incorporated into Federal regulations, as cited in regulatory text. Wherever "the Secretary", or "supplemental foods", appears in current regulations we propose to refer instead to "the Department", and to "commodities", respectively.

The seven definitions that we propose to add include certification period, commodities, CSFP, 7 CFR part 250, 7 CFR part 3016, 7 CFR part 3019, and 7 CFR part 3052. A definition of certification period makes clear the time span of program eligibility before a review of eligibility is required. Definitions of commodities and CSFP simply ensure that readers are aware of the purpose of the foods distributed in the program and the program acronym. 7 CFR part 250 contains the regulations for donation of foods in USDA food distribution programs. 7 CFR parts 3016 and 3019 are the Departmental regulations for grants and cooperative agreements with State, local, and Indian tribal governments, and with nonprofit organizations, respectively. 7 CFR part 3052 is the Departmental regulation for audits of States, local governments, and nonprofit organizations. All of these regulations are referred to in this proposed part, and their inclusion in the definitions would help to ensure that readers understand their applicability to CSFP.

The definitions that we propose to revise include caseload, caseload cycle, certification, distributing agency, dual participation, elderly persons, fiscal year, local agency, nonprofit agency, postpartum women, State agency, and State agency plan of program operation and administration. Currently, the caseload cycle begins on December 1 or 30 days after enactment of appropriations legislation for the full fiscal year, and extends through November 30. We propose to establish January 1 through December 31 as the caseload cycle. This would ensure that the caseload cycle extends for a 12-month period even in the event of late passage of appropriations legislation. However, if enactment of a full year's appropriation has been delayed, it may be necessary to assign caseload on a tentative basis to reflect the amount of funds available to support the program under a Continuing Resolution(s). The revised definition of caseload establishes January 1 through December 31 as the caseload cycle, and includes reference to the caseload cycle rather

than the present reference to service over a "specified period of time".

We propose to define nonprofit agencies as private agencies or organizations that have tax-exempt status under 26 U.S.C. 501 of the Internal Revenue Code (IRC), or that have applied for tax-exempt status with the Internal Revenue Service (IRS). A discussion of the eligibility of nonprofit agencies for participation in CSFP, including the needed tax-exempt status, is contained under the proposed § 247.7.

We propose to delete the definition of distributing agency and to refer instead to the subdistributing agency, so that definitions of distributing agency and subdistributing agency will be consistent with corresponding provisions in 7 CFR part 250. We propose to define subdistributing agency as an agency that has entered into an agreement with the State agency to perform functions that would otherwise be 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. As in 7 CFR part 250, the definition of subdistributing agency does not include an agency that is only responsible for providing warehousing space or making deliveries to specified agencies. We also propose to remove the requirement that a distributing agency (*i.e.*, subdistributing agency under this proposed rule) sign an agreement with the Department as well as with the State agency. This is described in more detail under *Agreements*. Under this proposal, we would also eliminate the description of duties of local agencies currently included in the definition of local agency, since this information is more appropriately included in the regulatory text, and include Indian tribal organizations under the definition. Finally, we propose to revise the definitions of certification, dual participation, elderly persons, fiscal year, postpartum women, State agency, and State Plan for clarification purposes.

#### *The Purpose and Scope of CSFP, Section 247.2*

In this proposed section, we propose to describe the purpose and scope of CSFP, which are currently described under § 247.1. In paragraph (a), we propose to ask and answer the question, *How does CSFP help participants?* We describe, as in current regulations, the purpose of CSFP as the distribution of nutritious foods, and provision of

nutrition education, to low-income pregnant, postpartum, and breastfeeding women, infants, children ages 1 through 5, and the elderly. We also propose to describe the monthly distribution of foods to participants based on guide rates established by FNS, and to list some of the foods characteristically included in the food packages. A description of the distribution of foods to participants is currently included under § 247.7(c).

Under paragraph (b), *How many persons may be served in CSFP?*, we propose to provide basic information on caseload, and the caseload cycle, to help the reader understand the scope of the program.

#### *Administering Agencies, Section 247.3*

Currently, § 247.3 describes the responsible CSFP administering agencies at the Federal, State, and local levels, and the requirements for the State agency to submit a State Plan and enter into agreements with the Department and other agencies. We propose to include, in this proposed § 247.3, the description of responsible administering agencies and the Federal requirements that apply to administration of CSFP. We propose to include required agreements in the proposed § 247.4 and State Plan requirements in the proposed § 247.6.

In paragraph (a) of this proposed § 247.3, we propose to include a description of the responsible administering agencies, and to clarify that the State agency may delegate to a subdistributing agency (e.g., another State agency or a nonprofit organization) the responsibility for storage and distribution of commodities, and other program functions. We also propose to include in this paragraph the authority for local agencies and subdistributing agencies to delegate responsibility for specific program functions (e.g., food distribution or storage) to another agency, with the State agency's approval. This authority is currently included under § 247.6(c).

While the State agency is provided a great deal of flexibility in administering the program, and in selecting other agencies to perform specific program functions, the State agency must itself perform a few functions. Thus, in paragraph (b) of this proposed section, we propose to make it clear that the State agency may not delegate the responsibility for establishing eligibility requirements for which it has options (such as income limits for women, infants, and children), or for conducting management reviews of local agencies. Through management reviews, the State agency determines if the program is

being properly administered, and if corrective actions are needed.

In paragraph (c) of this proposed section, we propose to include the requirement that State, subdistributing, and local agencies administer the program in accordance with the provisions of this part, and with the provisions of 7 CFR part 250 of this chapter, except where they are inconsistent with this part. The current references to specific circulars in § 247.3 are deleted, since they are all obsolete.

#### *Agreements, Section 247.4*

Currently, the requirement that State agencies enter into an annual agreement with the Department to operate the program is included under § 247.3, as is the requirement that State agencies enter into agreements with distributing agencies. The requirement that State and local agencies enter into agreements, and the required contents of those agreements, are currently included under § 247.6. Also currently under § 247.6 is the requirement that local agencies and other agencies selected to perform specific program functions sign an agreement. We propose to include all agreement requirements in this proposed § 247.4.

In paragraph (a), we propose to include all of the current required agreements between administering agencies. However, we propose to remove the present requirement that, in addition to the agreement with the State agency, the subdistributing agency (currently referred to as the distributing agency) must also sign an agreement with FNS. Since the State agency is responsible for the administration of the program at the State level, an agreement between the subdistributing agency and FNS serves no real purpose. Also in this paragraph, we propose to clarify that the Federal-State agreement utilized is Form FNS-74.

Currently, a list of the required contents of agreements between State and local agencies is included under § 247.6(b). Additionally, under § 247.6(c), the agreement between the local agency and another agency must state the program responsibilities of the other agency. In paragraph (b) of this proposed section, we propose to include the required contents of all agreements, with the exception of the Federal-State agreement (which is a standard form). We propose to require that all agreements 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 7 CFR part 250, 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 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.

(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 these funds.

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

(6) A statement that the agreement may be terminated by either party upon 30 days written notice.

In paragraph (c) of this proposed § 247.4, we propose to list specific requirements for agreements between State and local agencies, which are in addition to the requirements of paragraph (b) of this section. We propose to require that the agreement between State and local agencies include:

(1) An assurance that the local agency will provide nutrition education as required under 7 CFR part 247.

(2) An assurance that the local agency will provide information to participants on the importance of health care and on other health, nutrition, and public assistance programs, and make referrals as appropriate, as required under 7 CFR part 247.

(3) An assurance that the local agency will distribute commodities in accordance with 7 CFR part 247, and with the approved food package guide rate.

(4) An assurance that the local agency will take steps to prevent and detect dual participation.

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

In paragraph (d), we propose to describe the duration of all required agreements. We propose to make the Federal-State agreement permanent, and amended at the initiation of State agencies or at the request of FNS, instead of annual. All amendments must be approved by FNS. We also propose to clarify that the duration of agreements between the State agency and local or subdistributing agencies is established by the State agency. Similarly, we propose to clarify that the State agency may establish, or permit

the local or subdistributing agency to establish, the duration of agreements between the local or subdistributing agency and other agencies. Current regulations do not address the duration of these agreements.

*State and Local Agency Responsibilities, Section 247.5*

Proposed § 247.5 includes an outline of the major responsibilities of State and local agencies in program administration. Since current regulations do not include such an outline, it is necessary to read through all of 7 CFR part 247 to determine the major responsibilities of the State or local agency in the program. This section is not, however, meant to be a comprehensive list of all State or local agency responsibilities. We propose to break out, in three separate paragraphs, the major responsibilities shared by the State and local agency, and specific responsibilities of the State agency and those of the local agency. We are not proposing to impose any new responsibilities on State or local agencies in this section. While some of the responsibilities listed are not specifically discussed in current regulations, they are inherent in the administration of the program (e.g., ordering commodities and maintaining caseload limits).

*State Plan, Section 247.6*

Currently, under § 247.3(a), the State agency is required to submit a State Plan on an annual basis and, under § 247.5, must submit a State Plan to initiate or continue program operations and to request additional caseload to expand service to women, infants, children, and elderly persons. Other State Plan requirements are also included under the current § 247.5. We propose to include all State Plan requirements in this proposed § 247.6. In paragraph (a), we propose to describe the purpose, general format, and duration of the State Plan. We propose to make the State Plan permanent, rather than annual, with amendments submitted at the State agency's initiative, or at FNS request, and with all amendments subject to FNS approval. In conjunction with this proposal, we also propose to require that the State agency submit a State Plan to initiate the program, while removing the requirement for continuing program operations. While a State Plan to initiate the program must continue to describe the caseload needed to serve eligible women, infants, children, and the elderly, we propose to require that requests for additional caseload be made in amendments to the Plan, as described under paragraph (d) of this section.

We also propose to remove the language which states that FNS will assign caseload in approving the State Plan submission, and which describes the factors that determine the caseload assignment. We propose to include requirements and procedures for caseload assignment under the proposed § 247.21. We retain the State agency's option to submit the State Plan in the format provided in FNS guidance, in an alternate format, or in combination with other documents required by Federal regulations. However, we propose to remove the requirement that FNS receive advance notification of submission in an alternate format. We propose to encourage the State agency to collaborate with the State agency administering the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) in development of the State Plan (collaboration with the State WIC agency is required in developing a plan to prevent and detect dual participation). Likely areas of collaboration include plans for serving women, infants, and children, program outreach, and nutrition education. These recommendations for collaboration with the State WIC agency would incorporate policy guidance provided to State CSFP and WIC agencies on August 31, 2000. As at present, the State Plan must be signed by the State agency official responsible for program operations.

In paragraph (b) of this proposed section, entitled *When must the State Plan be submitted?*, we propose to retain the current requirement that the State agency submit the State Plan by August 15, to receive approval by the beginning of the fiscal year. We also include unchanged the requirement that FNS provide written approval or disapproval within 30 days of the receipt of the Plan or amendments, and must indicate the reason for disapproval. FNS must notify the State agency within 15 days if further information is required to make a decision on the Plan. We propose to add, in paragraph (b), that the approval of the State Plan or amendments is a prerequisite for the assignment of caseload and the allocation of administrative funds but does not ensure that caseload and funds will be provided. Program resources are dependent upon appropriations, which often become available later in the year. As at present, we propose to include the requirement that a copy of the State Plan be available for public inspection at the State agency.

In paragraph (c) of this proposed section, we propose to include the required contents of the State Plan. In the interest of reducing the paperwork

burden for State agencies, we propose to remove several elements currently required to be included in the State Plan. We do not believe a description of these activities need be included in the State Plan, as Federal regulations sufficiently describe the requirements and the means by which the State agency must comply with them. We propose to remove the following elements:

(1) The names and addresses of all certification, food distribution, and storage sites under the jurisdiction of the local agency.

(2) A description of plans for requesting program expansion. Since the State Plan would be a one-time submission, expansion, or additional caseload requests, and plans for opening new sites, would be made in an amendment to the State Plan, as described previously.

(3) The requirement that the plan for nutrition education services provide for participant input and an evaluation component.

(4) A description of the manner in which the State agency plans to monitor local agencies.

(5) A description of plans to involve local agencies and other parties in the development of the Plan for the next fiscal year. Again, we are proposing that the Plan no longer be developed and submitted each year.

(6) A description of the financial management system that will be utilized.

(7) A description of the procedures for resolving commodity complaints.

(8) A description of the audit procedures.

(9) A description of procedures used to meet civil rights requirements.

(10) A description of the fair hearing procedures for participants. Since the procedures that the State agency must follow are detailed in the regulations, it is not necessary for the State agency to describe them in the Plan.

(11) A description of plans to initiate or expand service to elderly persons, including the means by which the homebound elderly will be served. We propose to retain only the requirement to address the means by which the homebound elderly will be served. Until 1986, the elderly could participate only under three pilot sites. Since general service to the elderly has long since become a standard part of the program, it is no longer necessary to specifically describe plans to serve them.

Currently, the State agency must describe in the State Plan the manner in which foods are distributed to local agencies and to participants. We propose to revise this to require that the

State agency describe the system of storage and distribution of commodities in the State Plan. Because of the importance of the proper storage of commodities and their safe and timely distribution to local agencies, we believe it is important for the State agency to describe the means by which it will meet these responsibilities. We also propose to require the State agency to include a description of the standards it will use in determining if the pursuit of a claim against a participant is cost-effective, in accordance with the proposed § 247.30(d).

In paragraph (d) of this proposed section, entitled *When must the State agency submit amendments to the State Plan?*, we propose to include the requirement that the State agency submit amendments to FNS for approval if it desires to amend the State Plan. As at present, the State agency may submit amendments at any time during the fiscal year. FNS may also require that the State Plan be amended to reflect changes in Federal law or policy. This change is necessary since the State Plan would be made permanent under this rule. We also propose to include the requirement that, 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 that conveys the request for additional caseload by November 5. The State agency must also describe any plans for serving women, infants, children, and the elderly at new sites in this submission. FNS currently allows State agencies until early November to submit additional caseload requests, as it allows the State agency sufficient time to review complete participation figures for the previous fiscal year, which are not available until October. The State agency cannot meaningfully request additional caseload until it knows what its base caseload will be, and its base caseload depends on its actual participation during the past fiscal year. FNS action on the State agency's request for additional caseload is part of the caseload assignment process, as described under the proposed § 247.21.

#### *Selection of Local Agencies, Section 247.7*

Currently, under section 247.6, a local agency must submit a written application to the State agency that includes sufficient information to allow the State agency to determine its eligibility. We propose to retain this requirement in paragraph (a) of this proposed § 247.7, entitled *How does a local agency apply to participate in CSFP?* We propose to clarify that the

information submitted must describe how the local agency will operate the program. We also propose to require that, for nonprofit agencies, the application must include the tax-exempt status of the agency.

Under current regulations, a nonprofit agency must have tax-exempt status under 26 U.S.C. 501 of the IRC. However, under 26 U.S.C. 501(c)(3) of the IRC, as amended since the current regulatory requirement was established, organizations are automatically tax-exempt if they are organized or operated exclusively for religious purposes. Thus, we propose to clarify that such nonprofit agencies already have the tax-exempt status required for participation in CSFP. Additionally, under other USDA food distribution programs, nonprofit organizations that have applied for tax-exempt status with the IRS, and are moving toward compliance with the requirements for recognition of tax-exempt status, are eligible to participate. We propose to include nonprofit agencies with this provisional tax-exempt status as eligible local agencies in CSFP as well, and to also propose conditions used in other programs to determine the continued participation of these organizations in CSFP. These conditions are described below, under paragraph (c).

We propose to state, in paragraph (a) of this proposed section, that, to be eligible to participate in CSFP, a nonprofit agency must have tax-exempt status under 26 U.S.C. 501 of the IRC, or must have applied for tax-exempt status with the IRS, and be moving towards such status. We propose to indicate that organizations organized or operated exclusively for religious purposes are automatically tax-exempt under 26 U.S.C. 501(c)(3) of the IRC. We also propose to indicate that organizations required to obtain tax-exempt status must provide documentation from the IRS that they have obtained such status, or have applied for it.

In paragraph (b) of this proposed section, entitled *On what basis does the State agency make a decision on the local agency's application?*, we propose to include the basic guidelines that the State agency must consider in making a decision on approval or denial of the local agency's application to participate in CSFP. These guidelines do not constitute an additional requirement. Their inclusion in these regulations is simply meant to assist State agencies—particularly new State agencies—in choosing which local agencies to participate. The criteria are:

(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.

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

In paragraph (c) of this proposed § 247.7, we propose to include the actions that the State agency must take if an agency that has been approved for CSFP participation is subsequently denied tax-exempt status by the IRS, or does not obtain this status within a certain period of time. We propose that, if a participating agency's application for tax-exempt status is subsequently denied by the IRS, the agency must immediately notify the State agency, which then must immediately terminate their participation in CSFP. If, after 180 days of the organization's approval for participation, the agency has not obtained, and submitted, documentation of its tax-exempt status, the State agency must terminate the agency's participation in CSFP until such time as recognition of tax-exempt status is obtained. However, the State agency may grant an extension of 90 days to an agency if the agency can demonstrate that its inability to obtain tax-exempt status within the 180-day period is due to circumstances beyond its control.

In paragraph (d) of this proposed section, we propose to indicate how much time the State agency has to act on the local agency's application to participate in CSFP. We propose to extend the period of time for deciding on approval or denial of the local agency's application from 30 days to 60 days. With a longer period of time for review, the State agency would be better able to make a determination of the local agency's eligibility to participate, and to consider other applicable criteria as described in paragraph (b) of this proposed section. We retain the requirement that a notification of denial of the application be in writing and that the State agency provide for an appeal of the denial, in accordance with the requirements of the proposed § 247.35.

We propose to remove current requirements that the State agency return the application to the local agency if a denial is based on lack of funds, and justify the need for approval of a local agency in an area already served by the WIC Program. We do not believe that the return of the application serves any useful purpose. Although both WIC and CSFP overlap somewhat



in the groups that they serve, the differences (especially in CSFP service to the elderly) are sufficient to justify the existence of both programs in the same area. However, under the proposed § 247.6, State agencies are encouraged to coordinate with the WIC State agency in formulating plans to serve women, infants, and children in common areas of service.

*Individuals Applying To Participate in CSFP, Section 247.8*

Currently, the process of applying for program benefits, determination of eligibility, and participant rights and responsibilities are included under § 247.7, entitled "Certification". We propose to split up these related topics into several sections for the sake of clarity. In this proposed § 247.8, we propose to include the specific information applicants must provide on the application to allow the local agency to make a determination of eligibility. This information is currently listed under § 247.7(d). Present regulations require that information be recorded on a "certification form", which we refer to as the application. The information must include, at a minimum, the applicant's name and address and other information necessary to make a determination of eligibility. Although "other information" must necessarily include data necessary to determine household income eligibility, and the applicant's age, or pregnancy, as applicable, we propose to specifically list the required information for the sake of clarity. We also propose to include in this section the requirement that each applicant present some form of identification, which is currently required under § 247.7(j)(4).

We propose to retain the requirement that the applicant, or adult parent or guardian of the applicant, sign the application form beneath a pre-printed statement attesting to the truthfulness of the information provided, and the applicant's liability to federal prosecution for deliberate misrepresentation. Presently, the statement must be read by, or to, the applicant (or adult parent or guardian) before signing. However, we propose to include in this statement the notification that information provided may be shared with other organizations to prevent dual participation. With the consent of the participant, this information may also be shared with other organizations to assist in outreach or in eligibility determination for other public assistance programs. This sharing of information would help to ensure that program applicants are aware of the benefits provided by other public

assistance programs. These proposed changes have been included in § 247.36.

*Eligibility Requirements, Section 247.9*

Currently, the eligibility requirements for CSFP, including the eligible population categories in the program, are listed under § 247.7(a). We propose to include the eligibility requirements and eligible population groups in this proposed § 247.9. In paragraph (a), we propose to include the current eligible population groups, with changes only to improve clarity. For example, we propose to list each population group in a numbered format, and to describe each group fully, as in the definitions listed under the proposed § 247.1. This avoids the need for the reader to refer to the definitions to see that, under CSFP, children means persons who are at least one year of age, but have not reached their sixth birthday.

In paragraph (b), we propose to include the income eligibility requirements for women, infants, and children. Currently, in order to be eligible for CSFP, women, infants, and children must have income eligibility for local benefits under existing Federal, State, or local food, health, or welfare programs for low-income persons. Although current regulations contain no parameters with regard to women, infants, and children, State agencies have established 185 percent of the Federal Poverty Income Guidelines as the income eligibility standard for this group, as this conforms to the upper limit used in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). For the purpose of clarification, we propose to require, in paragraph (b)(1) of this proposed section, that the State agency establish household income guidelines for women, infants, and children that are at or below 185 percent of the Federal Poverty Income Guidelines, but not below 100 percent of these guidelines. However, in conformance with the WIC Program, we propose to require that the State agency accept as income-eligible, regardless of actual income, any applicant who is: (1) Certified as eligible to receive food stamps under the Food Stamp Act of 1977, Temporary Assistance for Needy Families (TANF) under Part A of Title IV of the Social Security Act, or Medical Assistance (*i.e.*, Medicaid) under Title XIX of the Social Security Act; or, (2) 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. We also propose, in paragraph (b)(2), to allow the State agency to 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 guidelines for the program are equal to or lower than the established CSFP guidelines.

We also propose, in paragraph (b)(3), to require 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. If, for example, a pregnant woman with a 3-year old child applied for CSFP benefits for herself and her child, the local agency would consider them a household of three members, and not two, in determining their eligibility. This provision is already included as part of eligibility criteria in the WIC Program, and CSFP State agencies have been authorized to implement it by policy memorandum.

Currently, elderly persons must have household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services. However, elderly persons certified before September 17, 1986, are subject to the eligibility criteria in effect at the time of their certification. On the date referenced, FNS published an interim rule in the **Federal Register** at 51 FR 32895 to implement legislation allowing low-income elderly persons at all CSFP sites to be served, if resources remained after providing benefits to all eligible women, infants, and children at the sites. The rule also established the current income eligibility guidelines to ensure that the neediest elderly persons received benefits. Before that date, elderly persons were served only at three pilot sites in New Orleans, Louisiana, Detroit, Michigan, and Des Moines, Iowa. Elderly participants in the pilots were subject to the same income eligibility criteria used for women, infants, and children. We propose to include the income eligibility requirements for elderly persons in paragraph (c) of this proposed section, without change from the current requirements.

Each year, usually in February, the Department of Health and Human Services publishes the adjusted Federal Poverty Income Guidelines in the **Federal Register**. Currently, FNS publishes notification in the **Federal Register** each year of the adjusted income guidelines by household size, including adjustments for 185 percent and 130 percent of the poverty level, as applicable for specific FNS programs. Although CSFP regulations do not make any reference to it, CSFP State and local



agencies are currently notified of the adjusted guidelines for elderly persons annually. Prior to 2002, this notification was provided through publication of a separate notice. However, in order to expedite the implementation of the guidelines, in 2002 we provided notification of the adjusted guidelines by memorandum. We propose to include, in paragraph (d) of this proposed section 247.9, 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 will provide the adjusted guidelines for 185 percent, 130 percent, and 100 percent, of the poverty guidelines. We propose to require that the adjusted guidelines be implemented 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 help to ensure that elderly persons receiving Social Security benefits do not become temporarily ineligible for CSFP. We propose to require 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. These implementation dates are current practice in CSFP, even though implementation of adjusted guidelines is not currently addressed in regulations.

In paragraph (e) of this proposed section 247.9, we propose to more clearly indicate how income is defined and considered in determining eligibility for CSFP. In making this clarification, we propose to include the following WIC regulatory provisions:

(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 7 CFR 246.7(d)(2)(iv):

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

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

(3) The State agency must exclude from consideration all income sources excluded by legislation, and which are listed in 7 CFR 246.7(d)(2)(iv)(C). FNS notifies State agencies of any new forms of income excluded by statute through program policy memoranda.

(4) The State agency may 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. In instances in which the State makes the decision to permit 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.

Currently, the CSFP regulations do not define income, or list income exclusions. Thus, it is up to the State or local agency to determine how they are to define and consider income in determining eligibility for CSFP. Based on a review of State Plans, we believe that gross income has generally been used in eligibility determination. We also believe that the WIC income exclusions listed have generally been used, as most of them are established by law. However, the lack of guidance in regulations or policy has resulted in some questions and uncertainty. We believe that adoption of these proposals would help to alleviate the confusion in how income should be considered in CSFP, and would not have a significant impact on participation.

Annual cost-of-living increases in Social Security benefits usually take effect in January. Since the Department of Health and Human Services does not usually adjust the Federal Poverty Income Guidelines until February, these increases make some elderly participants ineligible for benefits for a few months. Providing the option of looking at average income over the previous 12 months, as well as present income, would allow these elderly participants to remain on the program, instead of being discontinued for a few months each year. Similar options are already available for WIC, see 7 CFR 246.7(d)(2)(vii), and school lunch, see 7 CFR 245.2(a)(a-2) free and reduced price eligibility determinations.

Currently, under § 247.7(a), the State has the option to establish "nutritional risk" criteria for CSFP eligibility, and to require that individuals reside within the local CSFP service area at the time of application. Under paragraph (f) of this proposed section, entitled *What other options does the State agency have in establishing eligibility requirements for CSFP?*, we propose to include these options substantially unchanged but reworded in the interest of clarity. As at present, the State agency may not require that an individual reside in the area for any fixed period of time.

#### *Distribution and Use of CSFP Commodities, Section 247.10*

Currently, § 247.7(c) describes the monthly issuance of CSFP foods to participants, and allows local agencies the option of distributing a two-month supply of foods every other month. We propose to include this option under this proposed § 247.10. However, we propose to remove the current requirement that the local agency choosing to distribute foods every other month provide the participant the option of continuing to receive foods on a monthly basis. Although the local agency may provide this option, we believe that the requirement to do so may place an undue burden on the local agency. We propose to include in this section the requirement that the local agency require each participant, or participant's proxy, to present some form of identification before receiving CSFP commodities. This requirement is currently under § 247.7(j)(4). We also propose to include in this section current restrictions in the distribution and use of CSFP commodities that are presently contained in §§ 247.7(h) and 247.8(e). As at present, State and local agencies may not require, or request, that participants make any payments, or provide any materials or services in connection with the distribution of CSFP commodities, and may not use commodities to further the political interests of any person or party. Also, CSFP commodities may be used for nutrition education for CSFP participants, but may not be used for outreach, refreshments, or for any purpose other than distribution to CSFP participants.

#### *Applicants Exceed Caseload Levels, Section 247.11*

Currently, under § 247.7(b), if all caseload slots are filled, the local agency is required to maintain waiting lists of applicants and, when caseload slots open up, provide benefits to eligible persons on the waiting list in a specific order of priority. This order of priority does not apply, however, to the caseload assigned to the original elderly pilot projects. The current order of priority in service is:

- (1) Pregnant women, breastfeeding women, and infants.
- (2) Children ages 1 through 3.
- (3) Children ages 4 and 5.
- (4) Postpartum women.
- (5) Elderly persons.

The local agency must include on the waiting list the date of application, the population group of the applicant, and information necessary to be able to contact the applicant if caseload space

becomes available. Applicants must be notified of their placement on a waiting list within 20 days of their request for benefits.

As described in the proposed § 247.15, we propose to require 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. The shorter time period is more reasonable for applicants seeking food assistance. We also propose to remove the current provision that protects the original elderly pilot caseload from the designated priority structure. The continued participation of the original elderly pilot participants, who are now few in number, is no longer threatened by limited caseload, since the administering local agencies have a much larger caseload assignment than they did 15 years ago.

#### *Rights and Responsibilities, Section 247.12*

Currently, under § 247.7, the local agency must inform the applicant of certain rights and responsibilities in CSFP. We propose to include the most basic of these rights and responsibilities, listed below, in this proposed § 247.12. In paragraph (a), which includes applicant rights, we propose to expand the right to receive benefits without discrimination to include age, disability, and sex, as well as race, color, and national origin, in accordance with current laws. The rights listed include:

(1) Program standards will be applied without discrimination by race, color, national origin, age, disability, or sex.

(2) 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.

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

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

In paragraph (b), which includes applicant responsibilities, we propose to expand the information that must be provided to applicants to include 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 violation, in accordance with provisions under the proposed § 247.30, which addresses claims. We also propose to add that the applicant must be informed that any

changes in household income or composition must be reported within 10 days after the change becomes known to the household. We believe that this will aid in deterring dual participation and submission of fraudulent information. The information that must be provided includes:

(1) Dual participation is not permitted.

(2) Improper 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 disqualification from CSFP.

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

We propose to include other applicant or participant rights currently listed under § 247.7 in separate sections under notification requirements, provisions for non-English speakers, and other public assistance programs. The breakout of these provisions into separate sections is done simply to increase clarity.

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

Currently, under §§ 247.7(e) and 247.19(b), if a significant proportion of the population in an area is composed of non-English or limited English speaking persons with a common language, State and local agencies are required to inform such persons of their rights in the program, and to ensure that other program information, except application forms, is provided, in an appropriate language. Additionally, the State agency must ensure that bilingual staff members or interpreters are available to serve these persons. We propose to consolidate these two related provisions of current regulations in this proposed § 247.13. We also propose to clarify that State and local agencies must inform such persons of their responsibilities, as well as their rights in the program, as listed in the proposed § 247.12, in an appropriate language.

#### *Other Public Assistance Programs, Section 247.14*

Currently, under § 247.7(f), the local agency is required to advise participants of the importance of receiving health care, the types of health services available, and their location. Additionally, section 1771(e) of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101-624, amended the Agriculture and Consumer Protection Act of 1973 (Pub. L. 93-86) to mandate that local agencies provide participating pregnant women, women with infants and children, and elderly

persons with written information on specific programs that may affect their health, nutrition, or general welfare. This statutory provision has been implemented by policy memorandum but has not been included in the regulations. We propose to combine these regulatory and legislative requirements in this proposed § 247.14.

Under paragraph (a), we propose to include the specific programs contained in the law that apply to women, infants and children. For these applicants, the local agency must provide written information about Medicaid (42 U.S.C. 1396 *et seq.*), the Food Stamp Program (7 U.S.C. 2011 *et seq.*), 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.*)(SSA), and the child support enforcement program established under part D of Title IV of the SSA (42 U.S.C. 651 *et seq.*). As required by the law, the State agency must provide local agencies with materials showing the income standards utilized in the Medicaid Program (42 U.S.C. 1396 *et seq.*). In addition to these programs, we propose to require also that the local agency provide information on the WIC Program, to allow individuals eligible for both CSFP and WIC to choose the program in which they wish to participate. The local agency must also make clear that an individual may not participate in both CSFP and WIC simultaneously. Local agencies must also make referrals to these programs, as appropriate.

In paragraph (b), we propose to include the programs referred to in the law that apply to the elderly. For these applicants, the local agency must provide written information on the Food Stamp Program, and supplemental security income and medical benefits provided under Title XVI (42 U.S.C. 1381 *et seq.*) and Title XIX (42 U.S.C. 1396 *et seq.*) (including medical assistance provided to a qualified medicare beneficiary—as defined in section 1905(p) (42 U.S.C. 1396d(5)) of the SSA. Local agencies must also make referrals to these programs, as appropriate.

Currently, § 247.23(a) states that the value of CSFP benefits may not be considered as income or resources in other public assistance programs, or for any purpose under Federal, State or local laws. We propose to include this statement, substantially unchanged, in paragraph (c) of this proposed § 247.14.

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

Currently, under § 247.7(f), the State or local agency is required to notify an applicant in writing of a determination that the applicant is not eligible for CSFP benefits, and must document and maintain on file the reason that the applicant is not eligible. However, there is currently no requirement that the notification be made within a certain period of time, or that the applicant be notified of the reason for the denial of benefits. Currently, under § 247.7(b), the local agency is required to notify applicants of their placement on a waiting list, if no caseload slots are available, and provides a time limit of 20 days for this notification.

We propose to require, in this proposed § 247.15, that the local agency provide applicants with notification of their ineligibility or eligibility for CSFP, or their placement on a waiting list, within 10 days from the date of application. This is a reasonable period 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 sources of assistance. We propose to retain the current requirement that notification of ineligibility be in writing, and include a statement of the individual's right to a fair hearing to appeal the decision. We propose to require that the written notification also include the reason that the applicant is ineligible. We propose to include the requirement to document and maintain on file the reasons for denying benefits to applicants under the proposed § 247.29, which addresses all reporting and recordkeeping requirements. We also propose to include in this section a requirement that the notification of approval of benefits be accompanied by information on the time, place and means of food distribution (e.g., once a month, every two months), and the length of the certification period. The requirement that this information be provided is currently under section 247.7(f).

*Certification Period, Section 247.16*

Currently, under § 247.7(g), the State agency must establish a certification period, which is the period of time participants may receive CSFP benefits before their eligibility must be reviewed. The certification period established by the State agency generally may not exceed six months in length, with the following exceptions:

(1) Pregnant women must be certified for the duration of their pregnancy, and up to six weeks postpartum.

(2) Elderly persons certified before September 17, 1986, are subject to the terms and conditions in place at the time of their original certification.

(3) The certification period for other elderly persons may be extended for an additional six months without a review of eligibility criteria if the person's address and continued interest in program benefits are confirmed and if no women, infants, or children are waiting to be served.

We propose to include certification period requirements under this proposed § 247.16. In paragraph (a), we propose to include the length of the certification period for women, infants, and children without change. However, to reduce the burden on local agencies, we propose to allow 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, the conditions listed above are met. However, we propose to state explicitly that local agencies must have sufficient reason to believe that the elderly participant continues to meet the income eligibility standards (e.g., the elderly person has a fixed income). In conjunction with this proposed extension of the certification period for the elderly, we propose to remove the current provision that provides separate certification period criteria for elderly persons certified before September 17, 1986.

In paragraph (b) of this proposed section, we propose to require that the certification period always 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). Under current regulations, the certification period may extend to this date. We believe that this certification period requirement should be uniform throughout the program.

Currently, under § 247.7(i), in the event that a CSFP or WIC participant moves to another area during the certification period, he or she may receive benefits under the local CSFP agency in the new area for the duration of the certification period. We propose to include this right of transfer of certification under paragraph (c) of this proposed section. We propose to add that, in the case of a WIC participant, the local agency must first determine that the participant is also eligible for CSFP, as eligibility requirements in both programs may not be the same. We also propose to remove the requirement that

the State (or local) agency issue a verification of certification form to the participant to effect this transfer. We believe that, in most cases, such a form would be unnecessary, as the participant will have received notification of the certification period when eligibility was determined. Alternatively, the local agency in the participant's new area may simply make a telephone call to the other local agency to verify the certification period. We propose to state, however, that the local agency must provide verification of the certification period to the participant upon request.

Under paragraph (d), we propose to include the current requirement that the local agency notify the participant at least 15 days before the expiration of the certification period that eligibility for the program is about to expire. Currently, this requirement is under § 247.7(f)(4).

*Notification of Discontinuance, Section 247.17*

Currently, under § 247.7(f)(3), the local agency must provide a participant who is found, during the certification period, to be no longer eligible for CSFP benefits with a notification of discontinuance at least 15 days prior to the effective date of termination from the program. The notification must include a reason for the participant's ineligibility, and a statement that the participant may appeal the discontinuance through the fair hearing process. We propose to include these notification requirements under this proposed § 247.17, and to require also that the notification include the effective date of program termination.

*Nutrition Education, Section 247.18*

Currently, under § 247.8, two broad goals of nutrition education are included, and State and local agency responsibilities for providing nutrition education are described.

The two broad goals address the relationship of proper nutrition to overall health, and achieving a positive change in food habits through use of CSFP foods. We propose to include nutrition education requirements in this proposed § 247.18.

In paragraph (a), we propose to outline the State agency's responsibilities in providing nutrition education. We propose to include here the current requirements that the State agency establish an overall nutrition education plan (which is part of the State Plan), and ensure that local agencies provide nutrition education in accordance with the plan. We also include the current requirement that the

State agency 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 performed by the State or local agency or, by another agency under agreement with the State or local agency.

In paragraph (b), entitled *What type of nutrition education must the local agency provide?*, we propose to clarify nutrition education requirements by consolidating the two broad goals currently included in regulations and the current information that the local agency must provide. We propose to reword the informational requirements to put more emphasis on the relationship of the program to overall diet and good health. We also propose to include in this paragraph the current requirement that the local agency provide nutrition education that is easily understood, that is related to participants' nutritional needs and household situations, and that accounts for ethnic and cultural characteristics whenever possible. We propose that the local agency provide the participant with information on:

(1) The nutritional value of the foods provided in the program, and their relationship to the overall dietary needs of the population groups served.

(2) Nutritious ways to use the 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.

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

We propose to remove the current language that the local agency direct program funds to nutrition education for participants and program staff. Local agencies may choose to meet nutrition education requirements through use of other available resources, such as those provided by the Expanded Food, Nutrition and Education Program (EFNEP) or the Indian Health Service.

Under paragraph (c), entitled *To whom must local agencies provide nutrition education?*, we propose to include the present requirement that local agencies make nutrition education available to all adult participants, and to parents or guardians of infants and child participants. We also propose to include the present encouragement to make

nutrition education available to children, where appropriate.

Under paragraph (d), entitled *May CSFP foods be used in cooking demonstrations?*, we include the current provision that the State or local agency, or an agency with which it has signed an agreement, may use CSFP foods in conducting cooking demonstrations as part of the nutrition education provided to program participants, but not for other purposes.

#### *Dual Participation, Section 247.19*

Currently, under § 247.7(j), State and local agencies are responsible for the detection and prevention of dual participation. Dual participation may entail simultaneous participation in WIC and CSFP, or simultaneous participation at more than one CSFP site. The State CSFP agency must agree on a plan with the State WIC agency to detect and prevent dual participation. The agreement must be in writing and must be included in the State Plan. To aid in preventing dual participation, the local agency must check the identification of each participant. We propose to include the requirements for the prevention and detection of dual participation without substantial change in paragraph (a) of this proposed § 247.19.

Currently, when a participant is determined to be committing dual participation, the participant must be terminated from one of the programs, and must be notified of termination from the other program, if, in accordance with § 247.7(k), the local agency exercises the option to disqualify the participant. In paragraph (b) of this proposed section, we propose to include the actions that the local agency must take against an individual determined to be committing dual participation. We propose to clarify that the local agency may, in some instances, be required to disqualify a participant determined to be committing dual participation, in accordance with requirements relative to program violations in the proposed § 247.20. We also propose to include that the local agency must initiate a claim against the participant to recover the value of benefits improperly received, in accordance with the proposed § 247.30(c).

#### *Program Violations, Section 247.20*

Currently, under § 247.7(k), the State agency may disqualify applicants and participants from CSFP if the applicant, participant, parent, or caretaker is found to have fraudulently applied for, or obtained, program benefits. The State agency may establish a period of disqualification of up to 3 months.

Fraud is defined in the current regulations as the commission of specific actions (which are listed) taken knowingly, willingly, and deceitfully. In this proposed § 247.20, we propose to list, in paragraph (a), actions which are subject to disqualification as program violations. Of the current list, we propose to remove the alteration of program documents to receive increased benefits or to transfer benefits; this action is included under intentionally making false or misleading statements, orally or in writing, which is retained from the current list. We propose to add as a program violation the physical abuse, or threat of physical abuse, of program staff. This problem has been related by some State and local agencies and has already been included as a program violation in regulations for the WIC Program. Other changes made to the current list are simply for the purpose of clarification.

In paragraph (b), we propose to describe the disqualification penalties for committing program violations. We propose to allow the State agency to establish a disqualification period of up to one year, instead of up to three months. Additionally, we propose to require that the State agency require local agencies to disqualify participants from CSFP for a period of up to one year for program violations that involve fraud, unless the local agency determines that disqualification would result in a serious health risk. We also propose to require that State agencies require local agencies to permanently disqualify participants who commit three program violations that involve fraud. For purposes of this program, we propose to clarify that fraud includes the following actions:

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

(2) Intentionally withholding information to obtain CSFP commodities.

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

Individuals who commit dual participation may have committed a fraudulent act and be subject to the required disqualification. CSFP program operators, as well as those for the WIC Program, have expressed the need for stronger sanctions against persons committing dual participation and other program violations. Similar proposals regarding the strengthening of penalties for program violations were adopted by the WIC Program in a final rule published in the **Federal Register** at 65 FR 83248 on December 29, 2000 (effective February 27, 2001). Thus, these proposals for CSFP would bring

the program into closer conformance with WIC in the important area of program integrity. They would also help to assure that CSFP benefits are available to those that really need the assistance.

In paragraph (c), we propose to include the requirement that the State or local agency provide an individual with written notification of disqualification from CSFP at least 15 days before the effective date of the disqualification. The notification must include the effective date and period of disqualification, the reason for the disqualification, and must indicate that the individual may appeal the disqualification through the fair hearing process. This is in accordance with the right of the individual to a fair hearing to appeal other adverse actions, including denial or discontinuance of benefits.

#### *Caseload Assignment, Section 247.21*

Currently, the processes of caseload assignment and allocation of administrative funds are described under § 247.10. We propose to include caseload assignment in this proposed § 247.21 and to describe the allocation of administrative funds in the proposed § 247.22. Currently, the order of caseload assignment is:

- (1) The three original elderly feeding projects.
- (2) Base caseload for each participating State agency, determined by participation in the previous year.
- (3) Expansion caseload requested by participating State agencies.
- (4) Caseload for States newly approved to participate in CSFP.

We propose to remove the assignment of caseload to the three original elderly feeding projects as the first step in the process of assigning caseload to State agencies. The original intent of this provision, which was included in the interim rule published in the **Federal Register** at 51 FR 32895 on September 17, 1986, was to ensure adequate caseloads to accommodate the original elderly pilot projects. Since that time, assigned caseloads have increased dramatically, far beyond the amount necessary to ensure continued participation of the elderly pilot participants.

We propose to change the terminology from "expansion" caseload to "additional" caseload. The term additional caseload is more appropriate, since it represents the caseload assigned to currently participating States in addition to the base caseload. The term expansion implies that the State is planning to expand to new areas of the State. However, more often caseload is

requested to allow service to additional participants at existing sites, or to return to the base caseload from the previous year.

Under § 247.10, State agencies are currently eligible to receive additional caseload if their monthly average participation during the preceding July through September or the prior fiscal year, or their participation during the month of September, equaled at least 90 percent of their assigned caseload level for the preceding caseload cycle. In addition to using participation in the month of September to meet the 90 percent caseload utilization requirement for the purpose of obtaining additional caseload, the month of September is also included in the determination of base caseload. In some instances, State agencies that cannot sustain an average participation rate of 90 percent over a prolonged period of time will significantly increase participation in the month of September in order to obtain additional caseload and administrative funds for the following caseload cycle.

As discussed in detail below, the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, 116 Stat. 134 (May 13, 2002)), requires that the Department provide State agencies with a grant per assigned caseload slot, adjusted annually to reflect inflation, to pay administrative costs. This change significantly increased the amount of funds available to support the program in 2003, and will continue to provide an enhanced, stable, and predictable administrative grant per assigned caseload slot. As a result, States are expected to more fully utilize assigned caseload. However, the establishment of an administrative grant per caseload slot also provides a greater incentive for States to request caseload in excess of what they can utilize. To ensure that additional caseload slots are allocated to States that are most likely to use them, we propose to implement more realistic, rigorous performance measures. The revised performance measures include (1) an increase in the caseload utilization requirement from 90 percent to 95 percent, and (2) the removal of participation during the month of September from the computation that determines base caseload and a State's eligibility for additional caseload.

In developing these proposals, we analyzed the performance of State agencies over the last three fiscal years. 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 rigorous 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 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 are specifically requesting comments on the removal of the month of September.

Currently, under § 247.10, State agencies are assigned the lesser of an equal share of caseload available for expansion (up to each State's expansion request), or the amount that FNS determines State agencies need and can effectively manage. The criteria for making this determination are currently described in general terms under § 247.5(a), as "demographic data" and "past performance of the State agency". We propose to include, in this proposed section, the more specific factors that FNS considers in assigning additional caseload to State agencies. The specific factors proposed here are those that we have used over the last few years, and that were described in policy guidance provided to State agencies in April 1999. The factors, in descending order of importance, include:

- (1) Program participation of women, infants, and children, and the elderly in the State in the previous fiscal year.
- (2) The percentage of caseload utilized by the State in the previous caseload cycle.
- (3) Program participation trends in the State in previous fiscal years.
- (4) Other information provided by the State agency in support of the request.

We propose to remove the current option to simply assign an equal amount of additional caseload to all States making requests. Since program needs and performances of States differ widely, it would not be a wise use of program resources to assign an equal amount of caseload to all.

We also propose to include the specific factors that FNS considers in determining how much caseload to assign to States approved to begin participation in the program. The factors include:

- (1) Justification provided by the State agency which includes names and locations of local agencies, the areas within the State that will be served, the amount of caseload necessary to support service to these areas; and
- (2) The total amount of caseload for new States that program funds will support.

We do not propose to change other important aspects of the caseload assignment process, including:

(1) Base caseload may not exceed the total caseload assigned in the previous year.

(2) Priority in assignment of additional caseload, or caseload for newly approved States, is given to requests to serve women, infants, and children over requests to serve the elderly.

(3) Priority in assignment of caseload is given to currently participating States over requests from non-participating States.

Under paragraph (b), we propose to respond to the question, *When does FNS assign caseload to State agencies?* We propose to revise the date by which FNS must assign caseload to December 31, or within 30 days after enactment of appropriations legislation for the full fiscal year. Currently, FNS must assign caseload by December 1, or 30 days after enactment of appropriations legislation. However, because of late appropriations in several years, caseload has often been assigned later than December 1. Hence, this proposed change reflects what has come to be current practice. We are also proposing to change the caseload cycle to conform to the proposed change in the timing of caseload assignment, as described under the proposed section 247.1.

Under paragraph (c), we propose to describe the means by which State agencies may request additional caseload for the next caseload cycle. As proposed under section 247.6(d), the State agency would be required to submit a request for additional caseload by November 5, as an amendment to the State Plan. The submission must also describe plans to serve women, infants, and children, and elderly, at new sites.

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

Currently, the allocation and disbursement of administrative funds to State and local agencies are addressed under §§ 247.9 and 247.10. We propose to address FNS's allocation and disbursement of administrative funds to State agencies in this proposed § 247.22, and to address the provision of funds by State agencies to local agencies in the proposed § 247.23.

In paragraph (a), we propose to include the current requirement that, in order to receive administrative funds, the State agency must have signed an agreement with FNS, in accordance with the proposed § 247.4(a)(1), and must have an approved State Plan, in

accordance with the proposed § 247.6(a).

The total amount of appropriated funds available each year for the administrative support of State and local agencies is established by law. In 1990, section 1771(d)(2) of Public Law 101-624 amended section 5(a)(2) of Public Law 93-86 to increase the maximum level of administrative funding available for State and local agencies from 15 percent of the program appropriation to 20 percent. Additionally, in 1996, section 402(b)(3) of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104-127, amended section 5 of Public Law 93-86 to mandate that the Department provide up to 20 percent of food funds carried over from the previous year for administrative support of State and local agencies.

Section 4201(b) of the Farm Security and Rural Investment Act of 2002 amended section 5 of Public Law 93-86 to mandate that the Department provide State agencies with a grant per assigned caseload slot, adjusted annually to reflect inflation, to pay administrative costs. It also deleted the limitation of total administrative funding for the program of 20 percent of the program appropriation and of food funds carried over from the previous year. Section 4201(b)(2) stipulates the per-caseload slot amounts State agencies are to receive in fiscal year 2003, and for subsequent fiscal years. For fiscal year 2003, the grant per assigned caseload slot is \$51.49, an amount equal to the per-caseload slot amount provided in fiscal year 2001 (\$50.89), adjusted by the percentage change between: (1) 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 (2) the value of that index for the 12-month period ending June 30, 2002. 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: (1) 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 (2) the value of that index for the 12-month period ending June 30 of the preceding fiscal year. In paragraph (b) of this proposed section, we propose to include the current legislative mandates for allocating administrative funds to State agencies. Although the statutory changes

described above are already in effect, we are amending the regulations at this time to incorporate these changes.

We propose to remove current language under § 247.10(b) that describes the formula once used for the separate allocation of administrative funds to support the distribution of surplus commodities provided to CSFP for distribution to households. This separate allocation of funds was eliminated by section 1771(d)(2) of Public Law 101-624.

In paragraph (c), we propose to include a description of the means by which State agencies access administrative funds. As currently described under § 247.9(g), FNS provides funds to State agencies on a quarterly basis, through 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.

#### *State Provision of Administrative Funds to Local Agencies, Section 247.23*

Currently, section 247.10(b) addresses the amount of federal administrative funds that State agencies may retain to meet State-level costs each fiscal year, and the provision of the remaining funds to local agencies for their use in meeting program costs. The amount of funds that State agencies may retain is determined by a specific formula, and may not exceed \$30,000. We propose to include these provisions substantially unchanged in paragraph (a) of this proposed § 247.23. We do not propose to change the formula, or the maximum amount of funds that State agencies may retain.

Under current regulations, the State agency may request approval from FNS to retain more than the maximum amount provided by the formula in any fiscal year. In paragraph (b), we propose to retain the State's option to request to retain more funds than allowed by formula. However, we propose to remove the limitation of this option to State agencies that provide warehouse services. Although food storage costs may make up a large part of a State agency's administrative costs, other administrative functions may also put a strain on State funds, and require the State agency to request to retain a larger share. As at present, however, State agencies must justify to FNS the need for the larger amount of funds, and must ensure that local agencies will not be unduly burdened by a reduction in their administrative funding.

Currently, under § 247.10(b)(6), the State agency must apportion funds among local agencies according to their

respective needs. We propose to include this provision in paragraph (c) of this proposed § 247.23, and also to include the statement that the State agency must apportion funds in a manner that ensures that the funds will be used to achieve program objectives.

*Recovery and Redistribution of Caseload and Administrative Funds, Section 247.24*

Currently, under § 247.10(c), FNS may recover, and reassign, caseload slots that are not being utilized, and may recover, and reallocate, administrative funds that are not being utilized. In redistributing these resources, FNS must use the same procedures used in the initial assignment of the resources. We propose to include in § 247.24 FNS's authority to recover and redistribute caseload and administrative funds. The redistribution of resources will be accomplished using the same procedures described in the proposed §§ 247.21(a) and 247.22(b). FNS will reassign caseload using the most up-to-date data on participation and caseload utilization, as well as other information provided by State agencies. We propose to make clear that whether a State agency voluntary gives up caseload slots or FNS takes action to recover caseload slots, the State must use 95 percent of its original caseload allocation to be eligible for expansion caseload.

We are requesting 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?).

The current limitation, found at § 247.10(b)(4), which allows FNS to recover no more than 25 percent of a State agency's administrative funds allocation during any fiscal year is included in this proposed rule. However, we are considering increasing or eliminating the 25 percent limitation. Therefore, we are requesting specific comments regarding what, if any, limitation should be imposed, and the potential impact on program administration at the State and local level should the current limitation be increased or eliminated. We also propose to clarify that in instances in which the State agency requests that FNS recover any portion of its assigned caseload, no limitation, should one be retained, will apply.

*Allowable Uses of Administrative Funds and Other Funds, Section 247.25*

Currently, under § 247.11, State and local agencies may use administrative funds only for costs identified by Federal regulations or circulars as allowable, and determined by the State agency to be necessary to carry out the program. Some examples of allowable costs in CSFP are included, as well as a list of costs allowable only with prior approval of FNS. Current regulations describe unallowable costs as those costs "not applicable to program objectives" and include some examples.

Currently, under § 247.14, State and local agencies may use the procurement and property management requirements established by their State and local regulations in procuring equipment or services with program funds, and utilizing and disposing of the equipment, provided that they do not conflict with the requirements of applicable Federal regulations.

Currently, § 247.12 contains the requirements for the use of program income, which is income directly generated from program activities. Program income does not include income from the sale of property. The State agency is currently required to use program income to further program objectives.

We propose to include regulatory guidance on allowable uses of administrative funds, program income, and funds recovered as a result of claims actions, in this proposed § 247.25. In paragraph (a), we propose to state that administrative funds may be used for costs that are necessary to ensure the efficient and effective administration of the program, in accordance with 7 CFR part 3016 and 7 CFR part 3019. 7 CFR part 3016 contains the rules for management of Federal grants to State, local, and Indian tribal governments, and incorporates the provisions of OMB Circular A-87 (Cost Principles for State and Local Governments) relating to allowable costs. 7 CFR part 3019 contains the grants management rules for nonprofit organizations and incorporates the provisions of OMB Circular A-122 relating to allowable costs. Since a discussion of the principles that determine whether specific costs are allowable is contained in the OMB circulars, we propose to include reference to the circulars as well as the Federal regulations. Reference to FMC 74-4 is removed, as this document has been superseded by the regulations and the OMB circulars. We also propose to include, in proposed § 247.25(a), some examples of allowable costs, including:

Storing, transporting, and distributing foods, eligibility determination, program outreach, nutrition education, audits and fair hearings, monitoring and review of program operations, and transportation of participants to and from the local agency, as necessary. This list is meant only to be representative of allowable costs in the program and is not meant to exclude other costs. If there is a question as to whether a particular cost is allowable, State and local agencies should refer to the above documents, or contact FNS.

In paragraph (b), we propose to include the examples of unallowable costs currently included in the regulations and make clear that the applicable Federal regulations must be referenced to determine if other costs are allowable or not.

Currently, under § 247.11(c), specific costs that require FNS approval are listed. These include automatic data processing equipment and system purchases, capital expenditures over \$2,500, rental or lease of facilities or equipment, and management studies performed by agencies or organizations other than the State or local agencies. However, the OMB Circulars referenced above, and parts 3016 and 3019 of this title, which incorporated their provisions, do not currently include rental or lease costs or management studies as costs requiring prior FNS approval. The regulations also currently define equipment as items with a cost of \$5,000 or more per unit. Accordingly, we propose to amend 7 CFR part 247 to conform with these revisions.

We propose to remove the current prior approval requirements for rental or lease costs and the cost of management studies. In paragraph (c) of this proposed § 247.25, we propose to require prior approval for capital expenditures, but to clarify that capital expenditures include the acquisition of facilities or equipment, or enhancements to such capital assets, with a cost per unit of at least \$5,000. We also propose to clarify that equipment includes automated information systems, automated data processing equipment, and other computer hardware and software, which are currently listed separately from capital expenditures. Equipment costs per unit under \$5,000 are considered supplies, and not capital expenditures, and may be made without prior FNS approval.

We propose to include the requirements for procuring property and services with program funds, and utilizing and disposing of property, in paragraph (d) of this proposed section, rather than in a separate section, as at



present. The use of administrative funds to procure property or services is an allowable cost (sometimes requiring FNS approval) and thus is appropriate to include in this section. We propose to include again the reference to 7 CFR parts 3016 and 3019, as these are the current Federal regulations that apply to procurement of property and services with program funds. As at present, State or local agencies may follow procurement procedures established by State or local regulations as long as these procedures do not conflict with Federal regulations. Also, as at present, Federal regulations do not relieve State or local agencies from responsibilities established in contracts relating to procurement of property, equipment, or services.

In paragraph (e), we propose to include the current requirements for the use of program income, rather than in a separate section. As at present, State and local agencies must use program income—income directly generated from program activities—for allowable program costs, in accordance with 7 CFR part 3016. We propose to provide two examples of program income: The sale of packing containers or pallets, and the salvage of commodities. We also state, as in current regulations, that program income does not include interest earned from administrative funds.

In paragraph (f), we propose to address the use of funds recovered as a result of claims against subdistributing and local agencies, and against participants. Currently, the State agency must use funds recovered through claims actions against subdistributing and local agencies in accordance with the provisions of 7 CFR 250.15 and FNS Instruction 410–1. We propose to incorporate this requirement in this paragraph for the sake of clarity. We also propose to require that the State agency use funds recovered as a result of claims against participants for allowable program costs. We propose to allow the State agency to authorize local agencies to utilize such funds for allowable program costs incurred at the local level, rather than returning them to the State. This authority is being proposed for State agencies since, in some instances, these funds can be used more efficiently and effectively at the local level.

#### *Return of Administrative Funds, Section 247.26*

Section 247.18 of the current regulations addresses closeout procedures. Under current procedures, if a State agency does not use all of the funds allocated to it for the fiscal year,

FNS recovers the unused funds at the end of the fiscal year. If, in the following fiscal year, OMB reapportions the recovered funds, FNS reallocates them to all State agencies. FNS reallocates to each State agency a share of the total reapportioned funds that is proportionate to its share of the total assigned caseload for the year in which the reallocation takes place.

As discussed in detail above, the Farm Security and Rural Investment Act of 2002 requires that the Department provide State agencies with a grant per assigned caseload slot to pay administrative costs. The law limits the amount of administrative funds provided State agencies to the amount provided under the formula described in proposed § 247.22. Therefore, administrative funds recovered at the end of the year and reapportioned by OMB will be used to support the program by generating caseload and the administrative funding that must accompany it. Such funds will not be reallocated to State agencies in the form of administrative funds in addition to the mandated grant per slot. We propose to include a description of this process in this proposed section 247.26.

#### *Financial Management, Section 247.27*

Currently, under § 247.9, State and local agencies must establish a financial management system that provides an accurate, current, and complete disclosure of the financial status of the program. Among the various aspects of the program's financial status, the State agency's system must include:

- (1) An accounting of all property and other assets procured with program funds.
- (2) An accounting of all program funds received and expended each fiscal year.
- (3) The accurate completion of required reports, and the maintenance of records identifying the source and use of administrative funds and program income (currently required under § 247.12).
- (4) Prompt resolution of audits and claims.
- (5) Prompt disbursement of funds for program costs.
- (6) Assurance that local agencies will develop and implement a financial management system that allows them to meet Federal requirements.

We propose to include financial management requirements for State and local agencies in this proposed § 247.27. In paragraph (a), we propose to state that State and local public agencies must establish a financial management system in accordance with the provisions of 7 CFR part 3016, and that

nonprofit organizations must follow financial management requirements contained under 7 CFR part 3019. We also propose to include the current statement that 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. We also propose to include the current requirement that the State agency must ensure that local agencies develop and implement a financial management system that allows them to meet Federal requirements.

In paragraph (b), we propose to include some of the important components of the State agency's financial management system, which are treated in more detail in 7 CFR part 3016. These include:

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

#### *Storage and Inventory of Commodities, Section 247.28*

Currently, under § 247.4, the State agency is required to protect commodities from theft, spoilage, damage or destruction, or other loss. Other requirements relating to the storage of commodities are contained in 7 CFR 250.14, and pertain also to CSFP. Currently, under § 247.13(c), a physical inventory of all foods at each storage and distribution site is required on an annual basis. We propose to include, in this proposed § 247.28, the current requirements for storage and inventory of commodities, with only minor changes.

Under paragraph (a), we propose to include the current requirement that State and local agencies must provide for storage of commodities to ensure their protection from theft, spoilage, damage or destruction, or other loss. We propose to state specifically that State and local agencies may contract with commercial facilities to store and distribute commodities, which is presently contained under § 250.14 of this chapter. We also propose to indicate that the required standards for warehousing and distribution systems,

and for contracts with storage facilities, are contained under § 250.14 of this chapter.

Under paragraph (b) of this proposed section, we propose to include the current requirement that a physical inventory of all USDA commodities be conducted annually at each State and local agency storage and distribution site where these commodities are stored. We also propose to include the current requirement under 7 CFR 250.14 that results of the physical inventory be reconciled with inventory records and maintained on file by the State or local agency.

#### *Reports and Recordkeeping, Section 247.29*

Currently, under §§ 247.9 and 247.13, State and local agencies are required to maintain records to demonstrate that the receipt, disposal, and inventory of commodities, and the use of administrative funds, are in accordance with program regulations. Records must also indicate the results of any claims brought by the State agency. Also, under current §§ 247.7 and 247.20, State and local agencies are required to maintain records relating to applicant eligibility and fair hearings. Additionally, under 7 CFR 250.16(a)(5), State and local agencies must maintain records related to the determination of participant eligibility for receipt of foods.

Currently, under §§ 247.13 and 247.18, the State agency must report financial data on Form SF-269, on a quarterly basis, and must submit a closeout report, using this form, within 90 days of the end of the fiscal year. The State agency must submit data on the receipt, disposal, and inventory of commodities on a monthly basis, utilizing Form FNS-153, Monthly Report of the Commodity Supplemental Food Program. Each local agency must submit data on racial/ethnic participation on an annual basis, utilizing Form FNS-191, Racial/Ethnic Group Participation.

We propose to include the reporting and recordkeeping requirements in this proposed § 247.29. In paragraph (a), we propose to consolidate recordkeeping requirements from this part and from 7 CFR part 250 without substantial change. However, in the interest of clarity, we propose to be more specific in referring to some of the areas for which records must be maintained. We propose to require State and local agencies to 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. We propose to retain the present language that State and local agencies must also maintain records pertaining to liability for any improper distribution, 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. At present, 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. Also, all records must 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). We propose to remove current language under § 247.13 that all reports must be traceable to their source documentation. While it is true that the data in reports must coincide with source data, we do not believe that it is necessary to state this in the regulations. We also propose to remove the language indicating that FNS will use reports in evaluating the program performance of State and local agencies, which need not be stated in the regulations.

In paragraph (b) of this proposed section, we propose to include the reporting requirements. Currently, under 7 CFR 250.17(a), the FNS-153 is required to be submitted monthly, but FNS may require less frequent submission, or submission in another format, if this is determined to be sufficient to meet program needs. This allows FNS to reduce the reporting requirement in the future without regulatory action. For the sake of clarity, we propose to incorporate this language into this section. We also propose to include the major data elements that are reported on the FNS-153: The number of program participants in each population category; the distribution and receipt of commodities; beginning and ending inventories; and quarterly use of administrative funds. A number of years ago, a policy change moved the quarterly reporting of administrative funds use to the FNS-153 from the previous quarterly submission of the SF-269.

Although the CSFP regulations currently reference the SF-269, Financial Status Report, that reference is imprecise because the underlying Departmental regulations at 7 CFR part 3016 recognize two variations of this form: The SF-269 (Long Form) and the SF-269A (Short Form). OMB Circular A-102 and 7 CFR part 3016 require Federal grant-making agencies to require

one or the other of these forms for use by their grantees in reporting the status of funds for non-construction programs. We have required the SF-269A for this purpose because this form is more appropriate for programs that do not have matching requirements or other complicating transactions. Therefore, we propose to clarify in this regulation the existing requirement for State agencies to use the SF-269A in reporting end-of-year financial data. Since use of administrative funds is reported quarterly on the FNS-153, we propose, in this new section, to formally require the SF-269A to be submitted only at the end of the fiscal year, as the closeout report. For the same reason, we propose to remove the current requirement, under § 247.18(a), that the State agency submit a preliminary financial report within 30 days of the end of the fiscal year. We also propose to remove the current language that refers to submittal of Form FNS-155. This form, which also reports data on commodity inventories, is not required for CSFP, and was included in this part in error.

Currently, under § 247.23(b), FNS may require that State and local agencies provide data collected in the program to aid in the evaluation of the effect of program benefits on the low-income populations served. Such data requests must not include information on particular individuals. We propose to include this requirement, without change, in paragraph (c) of this proposed § 247.29.

#### *Claims, Section 247.30*

Currently, under § 247.17, FNS must pursue a claim against the State agency if it determines that the State or local agency has misused program funds through negligence, fraud, theft, embezzlement, or other causes. The State agency must repay to FNS the full value of the misused funds. Currently, the requirements for pursuit of claims for the loss, or improper distribution, of commodities are contained under 7 CFR 250.15(c). FNS may initiate and pursue a claim against the State agency for commodities improperly distributed, or lost, stolen, spoiled or damaged as a result of improper care, storage, or handling. The State agency has the option of replacing the misused commodities with like foods. The State agency is responsible for initiating and pursuing claims against local agencies, subdistributing agencies, or other agencies or organizations for such losses.

We propose to include the basic requirements for the initiation and pursuit of claims for the misuse of

program funds and commodities in this proposed § 247.30, without substantial change from current requirements. We propose to address actions in response to misuse of funds in paragraph (a), and to address actions in response to the loss of commodities in paragraph (b). We propose to include in the regulations reference to 7 CFR 250.15(c) for procedural requirements relative to claims.

Under 7 CFR 250.15, State agencies are required to pursue claims for improper distribution or loss of commodities. However, specific criteria relative to the establishment and pursuit of claims against CSFP participants are not currently addressed in 7 CFR parts 247 or 250. We propose to establish such criteria in paragraph (c) of this proposed section. The WIC Program, under 7 CFR 246.23(c), requires that a State agency initiate a claim to recover the value of benefits improperly obtained or disposed of as the result of a participant violation. We propose to include a similar requirement, but to tie the initiation and pursuit of claims to those cases involving fraud, as defined in these regulations. As under the proposed § 247.20, we propose to consider the selling of CSFP commodities, or their exchange for non-food items, as fraud, in addition to intentional false or misleading statements or the withholding of information by the participant, or the parent or caretaker. The State or local agency must also disqualify the participant from CSFP, unless the local agency determines that disqualification would result in a serious health risk, in accordance with the requirements of proposed § 247.20(b). The State or local agency must advise the participant of the opportunity to appeal the claim through the fair hearing process, in accordance with proposed § 247.33(a).

In paragraph (d) of this proposed section, we propose to address the procedures that State and local agencies must follow in pursuing claims against participants. We propose to include the following requirements, which correspond to similar requirements in the WIC regulations:

(1) 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.

(2) The local agency must issue a letter demanding repayment for the value of the commodities improperly received or used.

(3) If repayment is not made in a timely manner, the local agency must

take additional collection actions that are cost-effective, in accordance with the standards established by the State agency.

(4) The local agency must maintain all records regarding claims actions taken against participants, in accordance with proposed § 247.29.

We believe that inclusion of these criteria would prove an effective deterrent, and would help to ensure that more program resources will be available to those who really need the assistance. These benefits would outweigh the small extra burden placed on State and local agencies in initiating and pursuing claims. State and local agencies would be able to exercise their judgment in determining if the actions necessary to recover the value of improperly obtained benefits are cost-effective, in accordance with the State-established standards.

#### *Audits and Investigations, Section 247.31*

Currently, requirements for Federal and State-sponsored audits are contained under § 247.15. Under § 247.16, the Department is authorized to conduct investigations of any allegation that the State or local agency has not complied with Federal regulations. We propose to address audit requirements and the Department's authority to conduct investigations in this proposed § 247.31. Legislation, and subsequent regulatory action by the Department, have modified requirements for State-sponsored audits somewhat, and this proposed section contains the amended requirements. All changes to current provisions described here merely reflect current audit requirements contained in 7 CFR part 3052, which contains the audit requirements for State and local governments and for nonprofit organizations.

The Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*), and the Single Audit Act Amendments of 1996 (Pub. L. 104–156), amended Federal requirements for State-sponsored audits of agencies operating Federal programs. The OMB implemented the laws by publishing OMB Circular A–133, on June 30, 1997, and the Department implemented the provisions of the law and circular by publishing regulations under 7 CFR part 3052 on August 29, 1997. OMB Circular A–128 was repealed, while OMB Circular A–102 now addresses only Federal agency audits.

The audit requirements were amended to increase the dollar threshold that determines when an audit is required from \$25,000 to

\$300,000. Thus, Federal regulations do not require State and local governments or nonprofit organizations which expend less than \$300,000 in Federal awards in any fiscal year to have an audit for that year. This allows limited resources for audits to be used more efficiently. However, the new audit requirements require State and local agencies to have an audit conducted for each fiscal year in which they expend at least \$300,000 in Federal awards, as detailed in 7 CFR part 3052. Thus, fewer agencies are now required to conduct audits; however, for those agencies that are required to conduct them, the requirement is now annual, instead of the two-year audit cycles previously required. As before, not all of the programs administered by an agency must be included in the audit, if the agency chooses to conduct a single, and not a program-specific, audit. The new audit requirements also modified the way in which auditors select which of the agency's programs are to be included in a single audit.

In paragraph (a) of this proposed § 247.31, we propose to describe the purpose of an audit, as currently described under § 247.15(d). In paragraph (b), we propose to clarify that the Department may conduct an audit of the program at the State or local agency level at its discretion, and may conduct an investigation of an allegation that the State or local agency has not complied with program requirements.

In paragraph (c), we propose to include the following current responsibilities of the State agency in responding to a Departmental audit:

(1) The State agency must provide access to records or documents compiled by State or local agencies or contractors.

(2) The State agency must submit a corrective action plan, with time frames for implementation and completion of corrective actions, and must take additional actions, if determined necessary by the Department.

In paragraph (d), we propose to include the current requirements under 7 CFR part 3052, as described above, that determine when a State and local agency audit is required. We propose to clarify that the value of CSFP commodities distributed by the agency or organization must be considered as part of the Federal award, in determining if an audit is required.

In paragraph (e) of this proposed § 247.31, we propose to note that State and local agency audits must be conducted in accordance with the requirements of 7 CFR part 3052. We also propose to include current requirements that State and local

agencies are responsible for follow-up and corrective actions in response to audit findings. Lastly, we propose to include that the State agency must ensure that local agencies meet audit requirements, and must ensure that all State or local agency audit reports are available for FNS review.

*Termination of Agency Participation, Section 247.32*

Currently, under § 247.18, FNS may terminate a State agency's participation in CSFP, in whole or in part, if the State agency does not comply with program requirements. The State agency must terminate a local agency's program, in whole or in part, if the State agency or FNS determines that the local agency has not complied with program requirements. Termination of a program must be effected by written notification, including the reasons and effective date. The State agency must provide the local agency with an opportunity to appeal the action. The State or local agency may also terminate its program, in whole or in part, by written notification to the administering agency (FNS or the State agency, as applicable), stating the reasons and effective date. Finally, program participation may also be terminated, in whole or in part, upon the agreement of both parties. The specific actions and procedures in program termination are more fully described in 7 CFR part 3016.

In paragraph (a) of this proposed § 247.32, we propose to describe when a State agency's program participation may be terminated, in whole or in part, without change to current requirements. However, for clarification, we propose to include the reference that 7 CFR part 3016 contains the specific actions and procedures relative to program termination. We propose to remove the description of specific procedures relating to the return and recovery of funds currently included under § 247.18, as these procedures are included in 7 CFR part 3016. We also propose to include a reference to the requirement, in the proposed § 247.4(b), that either party to the program agreement provide 30 days' written notice of termination of the agreement.

In paragraph (b), we propose to describe when a local agency's program participation may be terminated, in whole or in part. In accordance with the language contained in 7 CFR part 3016, we propose to state that the State agency may terminate a local agency's participation, or may be required to terminate the local agency's participation, in whole or in part, if the local agency does not comply with program requirements. This would

allow the State agency to take less drastic actions than termination, whether complete or partial, in response to less serious violations. It also preserves the right of FNS, as the awarding agency, to require termination if the State agency does not take the action. We also propose to clarify in this paragraph that termination requires 30 days' written notification, in accordance with the agreements signed to operate the program.

*Fair Hearing Procedures, Section 247.33*

Currently, under § 247.20, the State agency must establish a fair hearing process to allow individuals to appeal the denial or discontinuance of CSFP benefits, or disqualification from CSFP. The specific procedures that the State agency is required to include in this process are also described in this section. We propose to include the fair hearing requirements in this proposed § 247.33, with a clearer explanation of the nature and purpose of a fair hearing, and the procedures that State and local agencies must follow in providing individuals with an opportunity to request a hearing, and in conducting the hearing. Additionally, in paragraph (a) of this proposed section, we propose to include the appeal of a claim brought against a participant as one of the adverse actions for which a fair hearing may be requested.

In paragraph (f) of this proposed section, we include the current provision that a participant who appeals the discontinuance of 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 (unless the certification period ends before the decision is made). However, we propose to include that, if the hearing decision finds that a participant received program benefits fraudulently, the local agency must include the value of benefits received for the period of time that the hearing was pending, as well as for any previous period, in its initiation and pursuit of a claim against the participant.

*Management Reviews, Section 247.34*

Currently, under § 247.21, FNS and the State agency must establish a management evaluation system to assess the accomplishment of program objectives and compliance with program regulations. Specific responsibilities of FNS and the State agency are outlined. Currently, as part of its management review, the State agency must conduct annual reviews of local agencies that include a review of all aspects of program administration. More frequent

reviews may be conducted if the State agency determines that this is necessary. The evaluation must include on-site reviews, including reviews of storage facilities. The State agency must then identify problem areas and follow up to ensure that all problems are corrected.

We propose to include the management review requirements for State agencies in this proposed § 247.34, but to remove the FNS requirements. While FNS will continue its role in program oversight, these regulations should address only requirements for State and local agencies in monitoring the program. In paragraph (a), we propose to clarify that State agencies 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 on-site reviews of local agencies that include an evaluation of all aspects of program administration, and must also review program reports, including financial and inventory reports, food orders, and audits, on an ongoing basis. As at present, on-site reviews must include a review of all storage facilities. However, to reduce the burden on State agencies in conducting reviews, we propose to require that the State agency perform on-site reviews of local agencies and storage facilities at least once every two years, instead of annually. We believe that, in most cases, effective communication and review of reports, in conjunction with the less frequent on-site reviews, will be sufficient to ensure the effective and efficient operation of the program at the local level.

In paragraph (b), we propose to clearly state what the State agency must do if it finds that a local agency or subdistributing agency is deficient in any aspect of program administration. As at present, the State agency must record all deficiencies identified during the review, and ensure that the deficiencies are corrected within a reasonable period of time. Currently, the State agency must also require local agencies to establish review procedures for their programs irrespective of their program success or efficiency. We propose to state instead that, to ensure improved efficiency in program operations for the future, the State agency may require that local agencies adopt specific review procedures for their programs.

*Local Agency Appeals of State Agency Actions, Section 247.35*

Currently, under § 247.22, the State agency must establish a hearing procedure to allow local agencies to appeal any State agency decision that adversely affects a local agency's program participation. Such adverse action may include a denial or termination of participation, or a claim against the local agency. We propose to include this requirement in this proposed § 247.35 without substantial change. As at present, the State agency must include specific procedures to allow the local agency to make an adequate presentation of its case at the hearing. The hearing decision must be made by an impartial person, and must be based solely on the evidence presented at the hearing and on program legislation and regulations. We propose only to revise the format to include three separate paragraphs in this new section, and to reduce the detail in current regulatory language to improve clarity.

*Confidentiality of Applicants or Participants, Section 247.36*

Currently, under § 247.23(c), State and local agencies must restrict the use or disclosure of information provided by program applicants or participants to only those persons directly connected with the administration or enforcement of the program. We propose to include the requirements for protection of confidentiality of program applicants or participants in this proposed § 247.36. In paragraph (a), we propose to clarify that the disclosure of information to persons connected to the enforcement of the program includes those persons investigating or prosecuting program violations. This includes State or local agency WIC administrators investigating dual participation in CSFP and WIC. We also propose to allow the State or local agency to exchange information related to the determination of an individual's eligibility for other health or welfare programs, or for program outreach, with the participant's consent. Before doing this, however, the State agency must sign an agreement with the administering agencies for those programs to ensure that the information will be used only for the specified purposes, and that agencies receiving the information will not further share it. This exchange of information is currently allowed in the WIC program, and allows WIC agencies to provide information necessary for CSFP and other agencies to effectively outreach to, and enroll, eligible individuals. It is important that CSFP regulations also

allow this sharing of information to ensure that CSFP agencies may similarly assist WIC agencies.

Currently, under § 247.16(b), the State agency must protect the confidentiality, and other rights in the program, of any person making allegations or complaints against any participant or program official, except as necessary to conduct an investigation, hearing, or judicial proceeding. We propose to include this requirement in paragraph (b) of this proposed section, as it relates to the protection of the confidentiality of program applicants or participants.

*Civil Rights Requirements, Section 247.37*

Currently, under § 247.19, the State agency must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), FNS Civil Rights Instruction 113-2, and the Department's regulations (7 CFR Part 15) regarding nondiscrimination. We propose to include civil rights requirements under this proposed § 247.37, and to add references to the more recent legislation relating to nondiscrimination, including 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. 790 *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.*). In accordance with the legislation, we also propose to amend the current regulatory language to state that no person shall, on the grounds of race, color, national origin, age, sex, or disability, be subjected to discrimination under the program. We also propose to include in this proposed section the current instructions under § 247.19 for the filing of a complaint of discrimination.

We propose to delete the current § 247.23(d), which indicates how interested persons may acquire program information and includes a list of the addresses of all FNS Regional Offices. We believe that program materials provided by State and local agencies and information on the FNS Web site at <http://www.fns.usda.gov/fns> are readily accessible sources of program contacts and information, and may also be more easily revised in the event any changes are made regarding this information.

**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 proposed to be revised to read as follows:

**PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM**

Sec.

- 247.1 Definitions.
- 247.2 The purpose and scope of CSFP.
- 247.3 Administering agencies.
- 247.4 Agreements.
- 247.5 State and local agency responsibilities.
- 247.6 State Plan.
- 247.7 Selection of local agencies.
- 247.8 Individuals applying to participate in CSFP.
- 247.9 Eligibility requirements.
- 247.10 Distribution and use of CSFP commodities.
- 247.11 Applicants exceed caseload levels.
- 247.12 Rights and responsibilities.
- 247.13 Provisions for non-English or limited English speakers.
- 247.14 Other public assistance programs.
- 247.15 Notification of eligibility or ineligibility of applicant.
- 247.16 Certification period.
- 247.17 Notification of discontinuance of participant.
- 247.18 Nutrition education.
- 247.19 Dual participation.
- 247.20 Program violations.
- 247.21 Caseload assignment.
- 247.22 Allocation and disbursement of administrative funds to State agencies.
- 247.23 State provision of administrative funds to local agencies.
- 247.24 Recovery and redistribution of caseload and administrative funds.
- 247.25 Allowable uses of administrative funds and other funds.
- 247.26 Return of administrative funds.
- 247.27 Financial management.
- 247.28 Storage and inventory of commodities.
- 247.29 Reports and recordkeeping.
- 247.30 Claims.
- 247.31 Audits and investigations.
- 247.32 Termination of agency participation.
- 247.33 Fair hearings.
- 247.34 Management reviews.
- 247.35 Local agency appeals of State agency actions.
- 247.36 Confidentiality of applicants or participants.
- 247.37 Civil rights requirements.

**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).

**§ 247.1 Definitions.**

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

*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.

*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.

*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, children ages 1 through 5, 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.
- (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.

(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.

(6) A statement that the agreement may be terminated by either party upon 30 days' written notice.

(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.

(d) *What is the duration of required agreements?* All 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.

#### **§ 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 specific responsibilities to another agency, the State agency is ultimately responsible for all aspects of program administration. 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.

(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.

(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.

(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.

(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.

**§ 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 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.

(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.

**§ 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 guardian 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.

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

(b) *What else is required on the application form?* After informing the applicant (or adult parent or guardian) 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 guardian 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 guardian) 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 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 ☐

**§ 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.

(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.*).

(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). 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.

(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.

(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.

(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) Program standards are applied without discrimination by race, color, national origin, age, disability, or sex.

(2) 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).

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

(4) 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) Individuals may not receive both CSFP and WIC benefits simultaneously, and may not receive CSFP benefits at more than one CSFP site simultaneously.

(2) Improper 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.

(3) 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 an 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.*).

(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)).

(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, and a statement of the individual's right to a fair hearing to appeal the decision.

**§ 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 must 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).

(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 extent 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.

**§ 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 be included in the notification of discontinuance?* The notification of discontinuance must include the effective date of discontinuance, the reason for the participant's ineligibility, and a statement of the individual's right to appeal the discontinuance through the fair hearing process, in accordance with § 247.33(a).

**§ 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 must also 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.

(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 guardians 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 § 247.12(b)(1), the local agency must inform applicants that dual participation is not allowed and must check the identification of all

participants when they are certified or recertified.

(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).

#### **§ 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.
- (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.

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

(ii) Each State agency that has participated in two or more caseload cycles receives caseload in an amount equal to its highest average monthly participation in one of the two periods of the previous fiscal year listed below. However, the State agency may not receive a base caseload in excess of its total caseload assignment for the previous cycle. The two periods are:

- (A) The full fiscal year; or
- (B) The final quarter of the fiscal year.

(2) *Additional caseload.* Each participating State agency may request, and receive, 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. State agencies which did not utilize at least 95 percent of their assigned caseload in one of the periods

of the previous fiscal year listed under paragraph (a)(1)(ii) of this section are not eligible for additional caseload. Of the 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:

- (i) Program participation of women, infants, and children, and the elderly in the State, in the previous fiscal year;
- (ii) The percentage of caseload utilized by the State in the previous caseload cycle;
- (iii) Program participation trends in the State in previous fiscal years; and
- (iv) 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 is 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, 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.

**§ 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.

(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.

**§ 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 instances in which FNS recovers caseload slots, the State agency must use 95 percent of its original caseload allocation to be eligible for expansion caseload.

(b) *Is there a limit on the amount of caseload slots or administrative funds that FNS may recover?* Yes. Caseload will be recovered and reassigned only to the extent permitted by recovered administrative funding. FNS will not involuntarily recover caseload that would result in the recovery of more than 25 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 25 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 and Local Governments) and A-122 (Cost Principles for Non-Profit Organizations), which set out the principles for determining whether specific costs are allowable. 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.

(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.

(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 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.

#### **§ 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.

(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.

#### **§ 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, 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, except medical case records of participants (unless they are the only source of certification data).

(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.

(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.

#### **§ 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 may 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 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.

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

#### **§ 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.

(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.

(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?* In accordance with part 3052 of this title, which contains the Department's regulations pertaining to audits of States, local governments, and nonprofit organizations, a State or local government agency, or a nonprofit organization, that expends \$300,000 or more in Federal awards in a fiscal year must have a single, or a program-specific, audit conducted for that year. The value of CSFP commodities distributed by the agency or organization must be considered part of the Federal award. Federal regulations do not require agencies and organizations that expend less than this amount in Federal awards in a fiscal year to have an audit for that year.

(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. State and local agencies are responsible for follow-up and corrective actions in response to audit findings. The State agency must ensure that local agencies meet audit requirements. The State agency must ensure that all State or local agency audit reports are available for FNS review.

#### **§ 247.32 Termination of agency participation.**

(a) *When may a State agency's participation in CSFP be terminated?* While the following paragraphs 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 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 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 the following paragraphs 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.

(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 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 guardian, 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.

(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.

(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.

(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, the State or local agency must describe to the individual any State-level review or rehearing process, and 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.

#### **§ 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 denial or 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

(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.

(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. 790 *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: September 25, 2003.

**Eric M. Bost,**

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

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