



Department of  
Job and Family Services

**Food Programs Manual**  
for the  
**Commodity Supplemental  
Food Program**  
and  
**The Emergency Food  
Assistance Program**

**Rev. February 2012**

Ohio Department of Job & Family Services  
Office of Family Assistance

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## **Section 1            Introduction**

### **Purpose of Manual**

The Food Programs Manual is provided by the Ohio Department of Job & Family Services (ODJFS) to clarify program procedures for local agencies participating in the Commodity Supplemental Food Program (CSFP) and The Emergency Food Assistance Program (TEFAP). The intent of this manual is to establish and maintain a consistent statewide minimum level of service for the emergency food provider network distributing CSFP and TEFAP commodities. The manual provides the framework for acceptable compliance to program guidelines established by ODJFS and the United States Department of Agriculture (USDA) federal program regulations found at 7 Code of Federal Regulations (CFR) 251 for TEFAP and 7 CFR 247 for CSFP.

### **Contents of Manual**

The manual contains information about the rules, regulations, reports and forms for CSFP and TEFAP incorporated into agreements with program providers. The manual includes a Table of Contents and program terms, definitions and acronyms. Updates to the manual may be made periodically. The 2012 revision affects the entire Food Programs Manual. Please discard all previous versions and updates.

### **Availability of Manual**

The Food Programs Manual is available online at the ODJFS website. All agencies participating in CSFP/TEFAP must have and maintain a manual on site.

The manual will be posted on the ODJFS website under the Food Programs Manual header at <http://jfs.ohio.gov/ofam/foodstamps.stm>

## **Section 2                      Definitions**

The following is a list of federal, state, and local terms, acronyms and definitions used throughout the manual for the program administration in Ohio.

### **Agricultural Marketing Service**

USDA agency responsible for purchasing food products such as meat, poultry, fruits and vegetables.

### **Back Pack Program**

A method of food distribution to school children for which shelf stable TEFAP commodities may be used.

### **Caseload**

The monthly average number of persons a state agency is authorized by USDA/FNS to serve over a specified period of time by the CSFP. Caseload is allocated to participating foodbanks.

### **Client Choice**

Refers to the practice of allowing food pantry clients a choice in determining the content of the food package received at the food pantry. The method of allowing client choice may vary based on product availability and or limited physical space at the pantry.

### **Code of Federal Regulations (CFR)**

Contains the regulations governing all federal programs. Regulations for CSFP are found at 7 CFR 247, for TEFAP at 7 CFR 251 and for both programs at 7 CFR 250, as applicable.

### **Commodities**

Food donated by USDA for distribution through CSFP and TEFAP.

### **Commodity Supplemental Food Program (CSFP)**

Federal nutrition assistance program targeting income eligible, nutritionally-at-risk persons in several categories (infant, children, pregnant/nursing post-partum women and elderly).

### **Cooperative Extension Office**

The Cooperative Extension Office system is a nationwide, non-credit educational network. Each U.S. state and territory has a state office at its land-grant university and a network of local or regional offices. These offices are staffed by one or more experts who provide useful, practical, and research-based information to agricultural producers, small business owners, youth, consumers, and others in rural areas and communities of all sizes.

### **Delivery**

The transfer of commodities from USDA to a Regional Agent or from a Regional Agent to a Sub-Regional Agent or a Local Distributor.

**Disbursement**

The delivery of commodities from a Regional Agent to a Sub-Regional Agent or Local Distributor or the pick-up of commodities by a Local Distributor from a Regional Agent or Sub-Regional Agent.

**Distribution**

The actual transfer of commodities from a Regional Agent, Sub-Regional Agent or Local Distributor to a recipient.

**Elderly**

Persons age sixty (60) and above.

**Farm Service Agency**

The Farm Service Agency implements agricultural policy, administers credit and loan programs, and manages conservation, commodity, disaster and farm marketing programs through a national network of offices.

**Federal Fiscal Year (FFY)**

A twelve-month period used for accounting and reporting purposes, October 1 through September 30.

**Federal Programs Reporting System (FPRS)**

The internet based online reporting system for federal programs.

**Fiscal Year (FY)**

A twelve-month period used for accounting and reporting purposes.

**Food and Nutrition Service (FNS)**

An agency of USDA responsible for the nationwide administration of several federal nutrition programs including CSFP and TEFAP.

**Foodbank**

A nonprofit, charitable organization qualified under provisions of Section 501(c) 3 of the Internal Revenue Code of 1986 which maintains an established operation involving the provision of food and grocery products to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.

**Food Pantry**

A public or private nonprofit organization that is a part of a foodbank network that distributes food and grocery products to low-income households, including food from sources other than USDA, to relieve situations of emergency and distress. It is housed in a standing facility that distributes commodities, among other food and grocery products, on a regular basis.

**Homeless Shelter**

A facility where the primary purpose is to provide temporary or transitional shelter for homeless individuals and families in general or for specific group populations (i.e. battered women, run-away youth) of homeless individuals and families.

**Household**

A group of related or non-related individuals living as one economic unit who buy and cook food together. It can also mean a single individual living alone.

**Local Distributor**

A private or public nonprofit organization which contracts with a Regional Agent or Sub-Regional Agent to receive and distribute commodities to eligible persons, such as a food pantry, soup kitchen or shelter.

**Midwest Regional Office (MWRO)**

USDA/FNS Region IV, headquartered in Chicago, Illinois, responsible for USDA programs in Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.

**Network**

Foodbank member agencies responsible for the provision of emergency and supplemental food services.

**Family Assistance (OFA)**

The office within ODJFS which administers federal and state food assistance programs.

**Ohio Department of Job & Family Services (ODJFS)**

The state agency which develops and oversees programs that provide health coverage, employment and economic assistance, child support and services to families and children. The programs and services offered are designed to help Ohioans be healthy and safe, while gaining and maintaining independence, and are delivered at the local level in a manner that recognizes and preserves individual rights, responsibilities and dignity.

**Poverty Guidelines**

Established by the United States department of health and human services as an indicator of poverty based on income and utilized in establishing income-based eligibility standards for program participants. The guidelines are updated annually.

**Recipient**

A person or persons living together in one household who have been determined eligible to receive commodities for consumption or for household use.

**Regional Agent**

A not-for-profit foodbank which contracts with the ODJFS to administer TEFAP and or CSFP in an assigned service region and to receive commodities directly from USDA.

**Regional Plan**

A document, submitted annually to ODJFS by a Regional Agent, which details the administration of TEFAP and or CSFP by a Regional Agent.

**Service Region**

An area of the state, determined by ODJFS, served by a Regional Agent or Sub-Regional Agent.

**Soup Kitchen**

A facility that is a clean, secure environment that offers prepared meals free of charge to predominately needy people. A Soup Kitchen serves nutritious meals in a congregate setting or take-home meals without charge, for homeless persons, transient persons and or others in need.

**State Fiscal Year (SFY)**

A twelve-month period used for accounting and reporting purposes, July 1 through June 30.

**Storage**

The holding of commodities for a period of time longer than twelve hours.

**Sub-Regional Agent**

A not-for-profit foodbank which contracts with a Regional Agent to provide service to a designated area within the service region of a Regional Agent. The Sub-Regional Agent may receive commodities directly from USDA and or a Regional Agent.

**Technology-Based Client Eligibility Process**

A client eligibility and delivery documentation method which utilizes a web-based or electronic process resulting in a paperless eligibility and record keeping system.

**The Emergency Food Assistance Program (TEFAP)**

A federal nutrition assistance program which provides government purchased and donated commodities to income eligible households.

**United States Department of Agriculture (USDA)**

Cabinet level agency responsible for federal programs related to agriculture.

**Web Based Supply Chain Management (WBSCM)**

An on-line system initiated by USDA to replace the aging Processed Commodity Inventory Management System (PCIMS) and satellite systems including USDA's Electronic Commodity Ordering System (ECOS). WBSCM is the system through which CSFP and TEFAP food orders are placed and receipted.

## **Section 3 Administration**

### **State Administration**

The ODJFS has been designated as the state agency responsible for the administration of CSFP and TEFAP. These two programs are housed within the Office of Family Assistance, Food Assistance Section. ODJFS enters into grant agreements with regional foodbanks for local level administration of the programs. Direct, daily operation is the responsibility of the Food Assistance Section. Currently, two full-time staff people are committed to the programs and are supervised by the Section Chief.

### **State Distribution Plan**

The State agency must submit for approval by the appropriate FNS Regional Office a plan which contains:

- A designation of the State agency responsible for distributing commodities and administrative funds provided under this part, and the address of such agency.
- A plan of operation and administration to expeditiously distribute commodities received under this part.
- A description of the standards of eligibility for recipient agencies, including any sub priorities within the two-tier priority system.
- A description of the criteria established which must be used by eligible recipient agencies in determining the eligibility of households to receive TEFAP commodities for home consumption.

The plan will be submitted to the Midwest Regional Office within the timeframe established by federal program regulations and will update the plan as necessary.

### **Local Administration**

For program purposes, Ohio's eighty-eight counties are divided into six regions of varying sizes. A foodbank within each region is designated as a Regional Agent responsible for the administration of the program within the service region. Ohio foodbanks have an established network of approximately 3000 member agencies (pantries, soup kitchens and shelters and similar non-profit organizations) responsible for the provision of emergency and supplemental food services which may include TEFAP and CSFP commodities to recipients and program participants. Foodbank member agencies are referred to as Local Distributors for program purposes.

ODJFS enters into grant agreements with a Regional Agent for CSFP and TEFAP local administration. The Regional Agent incorporates TEFAP commodities into their food banking operations providing an enhanced variety of products available for distribution. A Regional Agent which administers CSFP prepares the prescribed food boxes at the foodbank for distribution to program participants at designated locations in their service areas or provides appropriate case lot amounts to a contracted local site for packing and distribution.

The following criteria are assessed when determining local level administration of the programs.

- Ability to meet USDA Warehousing Standards for storage of USDA and non-USDA food items and non-food items.
- Ability to provide transportation to agencies in the service area for USDA foods and non-USDA products.
- Ability to obtain non-USDA items and food resources to supplement USDA food products.
- Ability to monitor local network and enforce state and federal guidelines within the required timeframe.
- Ability to maintain an established operation involving the distribution of donated food on a regular basis as an integral part of its normal activities.

## **Federal Allocation to States**

### *TEFAP Entitlement*

For TEFAP purposes, USDA has developed a formula based on 60% poverty and 40% unemployment population to allocate product and funding to the states. Each state's share of commodities and funds shall be based 60 percent on the number of persons in households within the state having incomes below the current poverty level and 40 percent on the number of unemployed persons within the state. This is known as the state's "fair share". Each state is offered its fair share of the entitlement food and storage and distribution funds according to the formula. USDA notifies the state agency when orders are to be placed, the product that is available for ordering and the value of each product. Orders may be placed by the states for monthly delivery. ODJFS orders product based on the entitlement allocation of dollars set by USDA. USDA/FNS makes every effort to fill orders as requested. Occasionally, due to unforeseen circumstances, USDA/FNS will eliminate or substitute products and or change delivery times.

### *TEFAP Bonus*

Bonus products are offered to each state based on the fair share of the federal allocation or on an open order basis. Bonus products are not purchased with entitlement funding. ODJFS may chose to accept all, part or none of the bonus offering.

### *CSFP Allocation*

CSFP allocation is based on caseload assignment as established annually by USDA/FNS. State agencies order product required to meet the prescribed amount of food contained in the monthly food box. Orders are placed for direct shipment and or multi food shipment.

## **ODJFS Allocation to Regional Agent**

ODJFS determines an allocation of TEFAP food dollars to each Regional Agent based on the percentage of eligible population residing in the Regional Agent's geographic service region. This allocation formula is applied to both entitlement and bonus product. The Regional Agent has the right to accept or decline all or part of the bonus product allocated. Bonus product declined by a Regional Agent will be offered to other foodbanks. Excess inventories may be

transferred between foodbanks with prior notice to and the consent of ODJFS. Records documenting the transfer must be maintained by both foodbanks.

ODJFS assigns CSFP caseload to a Regional Agent, who in turn, determines the allocation of caseload throughout the service region. A Regional Agent determines the method of distribution to program participants, either through a Local Distributor or by direct service by the Regional Agent. Food orders are placed for either direct or multi-food shipments. Direct shipments are single product loads. Multi-food shipments are single trucks containing a variety of food items. Orders are placed based on the amount needed to serve caseload. A Regional Agent should maintain between a two and two and one-half month supply of CSFP commodity food.

ODJFS receives allocation notices from USDA/FNS, establishes ordering deadlines and forwards the information on to a Regional Agent. A Regional Agent in turn place orders against their TEFAP entitlement dollar fair-share or for CSFP shipments electronically. If necessary, with or without consultation with the Regional Agent, ODJFS may place orders on behalf of the Regional Agent.

### **Shipment of Product from USDA to a Regional Agent or Sub-Regional Agent**

USDA provides for the transportation of program foods to the Regional Agent or Sub-Regional Agent warehouse. Federal program shipping policy allows for two stops and a final drop on loads, unless otherwise stated. ODJFS requests that all loads be shipped within the designated ship period and that the carrier provides a twenty-four hour advance notice request to the warehouse for a dock appointment. The shipper may also notify ODJFS and or the warehouse (this is a courtesy, NOT a requirement). Shippers may occasionally contact the state or warehouse requesting an early delivery prior to the contracted ship period. It is within the discretion of the warehouse to accept product early. USDA reserves the right to change the shipping period due to unforeseen circumstances or exchange ordered product with like product.

When the shipment is delivered to the warehouse, the receiving facility must count the product and note any damage, overages and/or shortages of product on the Bill of Lading with a signature and date. If there are problems, ODJFS must be notified immediately. ODJFS will contact USDA/FNS and work with all parties to resolve the problem. The FNS-57, Report of Shipment Received Over, Short and/or Damaged, must be completed at the time of the delivery. Information must include the disposition number, notice to deliver number, number of cases, time truck arrived and time truck left, type and amount of damaged product, overage and/or underage of the product.

### **Claim Action**

ODJFS shall begin claim action immediately upon receipt of information concerning the improper distribution or loss of or damage to commodities, and shall make a claim determination within thirty days of the receipt of information, as described in further detail in FNS Instruction 410-1, Non-Audit Claims-Food Distribution. The funds received from the collection of claims shall be returned to FNS. In instances in which it has been determined by the USDA that the collection of funds will have a significant adverse effect on the operation of the program, USDA may permit in-kind replacement of the donated foods in lieu of payment to

FNS. Replacement in-kind will only be permitted under such terms and conditions as agreed to by the Secretary of USDA.

If ODJFS determines that a claim exists against an eligible recipient agency, warehouseman, carrier or any other entity and the value of the lost commodities exceeds \$2500, ODJFS shall immediately transmit the claim determination to the MWRO with full documentation about the circumstances. If FNS determines from its review of the claim determination that a claim exists, ODJFS shall make demand for restitution upon the liable entity immediately upon receipt of notice from the MWRO. In the event ODJFS determines that a claim exists against an eligible recipient agency, warehouseman, carrier or any other entity and the value of the lost commodities does not exceed \$2500, the state agency shall immediately proceed to collect the claim.

No claim determination shall be required where the value of the lost commodities is \$100 or less. However, no such claim shall be disregarded where:

- There is evidence of fraud or a violation of Federal, State or local criminal law.
- Program operations would be adversely affected.

The state agency shall maintain records and substantiating documents on all claim actions and adjustments including documentation of those cases in which no claim was asserted because of the minimal amount involved. In making final claim determinations for commodity losses incurred by eligible recipient agencies when there is no evidence of fraud or negligence, ODJFS and MWRO shall consider the special needs and circumstances of the eligible recipient agencies, and adjust the claim and/or conditions for claim collection as appropriate. These special needs and circumstances include but are not limited to the eligible recipient agency's use of volunteers and limited financial resources and the effect of the claim on the organization's ability to meet the food needs of low-income populations.

## **Program Monitoring**

ODJFS is responsible for on-site monitoring of Regional Agents, Sub-Regional Agents and Local Distributors. The purpose of the monitoring process is to evaluate program operations. The process is to include, but not be limited to, a review of:

- Eligibility determination process.
- Food ordering procedures.
- Warehousing and storage facilities.
- Inventory control.
- Distribution and transportation.
- Approval of Local Distributors (member agencies).
- Network training and monitoring.
- Reporting and record keeping.
- Compliance and civil rights.

The review should be used to provide technical assistance for program improvement. The monitoring visit also provides an opportunity for the participating agency to ask questions, discuss concerns and make suggestions about the program. ODJFS will comply with federal program regulations set forth in 7 CFR 251.10(e) and 7 CFR 247.34 when determining the number of reviews conducted annually at participating agencies.

ODJFS will issue a report of review findings detailing recommended and or required corrective action to the participating agency. The participating agency will have forty-five days to respond to the findings and document compliance with corrective action.

USDA may visit the state agency and any Regional Agent, Sub-Regional Agent or Local Distributor at its discretion for review purposes.

### **Training and Technical Assistance**

The CSFP/TEFAP staff is available to provide training and technical assistance to a Regional Agent, Sub-Regional Agent or Local Distributor throughout the year upon request. ODJFS provides annual Civil Rights training for Regional Agent and Sub-Regional Agent front line staff and trainers.

Training should be ongoing between a Regional Agent, Sub-Regional Agent and a Local Distributor. Policy changes, updated eligibility guidelines, federal and/or state regulation amendments, or any other pertinent information should be forwarded to each of the Local Distributors in the Regional Agent's service region.

Cooperative Extension Offices are a good training resource for all participating agencies. The Cooperative Extension Office staff can provide training on health and safety procedures, instructions on the use of USDA food products and other pantry items in food preparation, and recipes and nutritional information. Local county health departments may also provide information on food safety policies pertaining to food distributors and preparers. Regularly scheduled training is beneficial to keep the network current on policies and procedures in all areas of food handling and distribution.

## **Section 4                    Regional Agent and Sub-Regional Agent**

### **Foodbanks**

Foodbanks that have a Regional Agent grant agreement with ODJFS or a Sub-Regional Agent agreement with a Regional Agent vary in size and scope of operation, but they are all required to meet obligations based in federal program regulations. The obligations include the establishment and maintenance of a member agency network, product ordering system, monitoring procedure, reporting and recording keeping systems and training. The criteria include the following:

- Have 501(C) (3) status.
- Abide by applicable federal and state program regulations.
- Properly store and distribute donated food.
- Have adequate refrigeration and freezer capacities.
- Maintain the required records and submit records to ODJFS on a timely basis.
- Maintain an emergency food provider network.
- Comply with the terms of the grant agreement.

### **Regional Plan**

A Regional Agent must develop a regional plan for the assigned service region which must include, but not be limited to:

- Criteria for soliciting and maintaining pantries/agencies for network.
- Procedure for the distribution of product throughout region.
- Procedure for inventory control.
- Procedure for Local Distribution delivery and or pick-up.
- Procedure for informing a Sub-Regional Agent and or a Local Distributor of Regional Agent, ODJFS, or USDA policy changes.
- Procedure for funding a Sub-Regional Agent and or a Local Distributor, if applicable.

The Regional Agent shall submit the regional plan for its service region to ODJFS at the beginning of each federal fiscal year and shall update as necessary.

### **Storage and Handling**

Every shipment of USDA commodities must be inspected upon delivery for possible shortages, overages and/or damage before the product is accepted. A Regional Agent or Sub-Regional Agent may not accept damaged product or sign the Bill of Lading until the Regional Agent or Sub-Regional Agent warehouse receiving count agrees with the amount stated on the Bill of Lading. Once the Bill of Lading is signed, title is transferred to the Regional Agent or Sub-Regional Agent. By signature of the Regional Agent or Sub-Regional Agent warehouse representative, the Regional Agent or Sub-Regional Agent assumes liability and will be held financially responsible for product shown on the Bill of Lading. The truck driver and Regional Agent or Sub-Regional Agent warehouse representative must sign, date and note any differences or concerns about the product on the Bill of Lading. A Regional Agent or Sub-

Regional Agent will document receipt of shipment via the Web Based Supply Chain Management System (WBSCM) and complete the FNS-57, if applicable.

A Regional Agent or Sub-Regional Agent becomes responsible for USDA product when physical delivery is taken. Liability for loss, theft or damage due to negligence is the sole responsibility of the Regional Agent or Sub-Regional Agent. All USDA commodities carry an assigned value based on USDA's cost of purchasing, processing and distribution of the food products to states. In order to guarantee its quality and safety, each Regional Agent or Sub-Regional Agent is responsible for the proper storage and handling of USDA food products. Premature deterioration of food products is often the result of improper storage conditions and practices. Every effort must be made to reduce loss due to spoilage, pest infestation and theft by following accepted warehousing methods. This action not only ensures quality products being distributed but also protects the Regional Agent or Sub-Regional Agent from claim action by ODJFS to recover the value of the spoiled or lost product.

Food storage areas should provide protection from weather, fire, theft and pests. Aisles between pallets should be wide enough to provide easy access for inspection, inventory and pulling of product. All USDA food products are to be stored at the Regional Agent or Sub-Regional Agent warehouse or at a storage facility contracted for by the Regional Agent or Sub-Regional Agent. A Regional Agent and Sub-Regional Agent must follow good warehouse and storage practices. Functional thermometers must be present and visible in all storage areas. Temperature logs should be maintained for all storage areas. The log should document the date and time, the registered temperature and signature or initials of person checking the temperatures. This log is an important document to support the ongoing maintenance of proper storage conditions. These practices include, but are not limited to:

- Keeping all food 6" off floor, stored on pallets, platforms or shelves.
- Keeping all food 6" away from walls. This promotes air circulation and accommodates pest control.
- Keeping all non-food items separate from food. Toxic items (soap, bleach, cleaning supplies, etc) must be kept away from food items.
- Keeping floors, pallets and shelving clean.
- Keeping doors, windows and roofs well sealed to prevent pest entry and water damage.
- Maintaining proper temperatures.
- Maintaining a good pest control system.
- Having a qualified person on staff or a contract with a licensed firm to handle pest control management.
- Maintaining equipment including: regularly checking for leaky compressors in freezer and refrigeration units, hydraulic forklift leaks, etc.
- Maintaining thermometers in all freezer and refrigeration units and dry storage areas.
- Maintaining temperature logs for each area.
- Assuring that all Local Distributors have thermometers in place and that freezer and refrigeration units are adequate, operative and temperature logs are utilized.

To assure the quality and freshness of USDA food products, the inventory practice of first in first out must be followed. Food must be stored so cases with the oldest pack dates are used

first. All USDA food products have the pack date on the cases. A Regional Agent or Sub-Regional Agent warehouse and contracted storage facilities must maintain a running inventory of all USDA food products. ODJFS staff shall routinely assess foodbank inventory levels to assure that TEFAP product inventories are not excessive.

## **Dry Food Storage**

Dry food products must be stored:

- At 50 - 70 degrees F,
- Away from direct sunlight,
- A minimum of 6" off the floor,
- A minimum of 6" away from walls, and
- In a clean and secure storage area that is inspected regularly.

The basic rules for stacking food products are:

- Limit the height of the stack so cases of food on the bottom layers will not be crushed; cross-stack cases on pallets to ensure the stack will be sturdy and solid and will not tip when being moved.
- Shrink wrapping provides added stability.
- Stack cases away from potential damage by heat, steam or water.

## **Refrigerated and Frozen Food Storage**

Food products requiring refrigeration must be:

- Refrigerated at temperatures of 35 - 40 degrees F,
- Stored to allow for proper air circulation, and
- In a refrigerator that is clean and inspected on a regular basis.

Frozen food products must be:

- Stored in a freezer that can maintain a temperature at 0 degrees F or below,
- Stored to allow for proper air circulation, and
- Stored in a freezer unit that is clean, secure and regularly inspected.

## **Maintenance of Storage Area**

- An ongoing system of pest control is required. Pest controls such as traps and glue boards are recommended. Place traps along walls and near doorways, moving the traps monthly.
- Pest control poisons must be approved by USDA for use in food storage and distribution facilities.
- Poisons may only be used by a licensed professional.
- Ensure there is a cleaning schedule established listing the necessary frequency of cleaning for each location. Floors, including under pallets, should be swept and cleaned at least monthly. Floors in high traffic areas require regular cleaning. Area soiled by

spillage or breakage must be cleaned immediately. Broken pallets should be discarded and dirty pallets cleaned.

- Empty pallets should be stored apart from food products.
- Maintenance of the exterior of the warehouse must not be overlooked. The building and grounds should be inspected regularly for signs of fire hazard, pest infestation, security problems and needed repairs. An eighteen inch exterior barrier of weed and grass control must be maintained to facilitate inspections. Garbage, waste or rubbish must be disposed of frequently and not allowed to become nesting areas for pests.

### **Damaged and or Out-Of-Condition Product**

Out-of-condition products are those food products, which appear to be contaminated, deteriorated, spoiled or infested, or have latent defects. All food products must be inspected upon receipt. Bulging cans or cans with sharp dents and rust on the seams are examples of out-of-condition products. Hidden damage may be found after the product has been accepted into the warehouse. All incidents of damaged and/or out-of-condition product must be reported to ODJFS on the Report of Storage Losses and or Damages. (See Section 7.) The information required is:

- Regional Agent or Sub-Regional Agent name,
- Address,
- USDA product information (commodity code, amount, date received),
- Type of damage or loss,
- Contact Person, and
- Date damage/loss discovered.

Before disposing of USDA commodity that is infested or spoiled a Regional Agent or Sub-Regional Agent must have the product inspected by a local health official who certifies that the product is unfit for human consumption. Product must be disposed of through a contracted service which provides a disposal or dump certificate. All information is to be forwarded to ODJFS for claim resolution, if applicable.

A Regional Agent or Sub-Regional Agent is required to establish a procedure to record instances of damage and or loss of commodities by a Local Distributor. The procedure should include the collection of the following information:

- Local Distributor name, address, contact person and phone number,
- Product name, delivery order number and quantity affected,
- Date damage/loss discovered,
- Explanation of damage/loss, and
- Disposition of product.

### **Program Monitoring**

A Regional Agent or Sub-Regional Agent will complete an annual monitoring review of one-tenth, or twenty, whichever are fewer of all TEFAP Local Distributors in their network. A Regional Agent will complete an annual monitoring review of all CSFP Local Distributors in their network, if applicable. The review will include, but not be limited to:

- Recipient eligibility process,
- Nutrition education, if applicable,
- Food ordering procedures,
- Storage and warehousing practices,
- Inventory controls,
- Reporting and record keeping, and
- Compliance and civil rights.

A copy of the report of review findings for completed reviews and documentation ensuring compliance with corrective action will be maintained by the Regional Agent or Sub-Regional Agent for review by ODJFS at the time of the foodbank site review.

USDA may visit the state agency and any Regional Agent, Sub-Regional Agent or Local Distributor at their discretion for review purposes.

### **Records Maintenance**

All program records are to be maintained for a period of three years from the close of the federal fiscal year to which they pertain, or longer if related to an audit or investigation in progress. The records must be reasonably accessible at all times for use during management evaluations, site reviews, audits or investigations. The records are subject to be reviewed and audited by the ODJFS and or USDA during normal business hours or be sent to ODJFS and or USDA upon request.

### **Technology-Based Client Eligibility Process**

A client eligibility and delivery documentation method, which utilizes a web-based or electronic process resulting in a paperless client eligibility and record keeping system may be approved by ODJFS for use in the Regional Agent network. A Regional Agent may request approval from ODJFS to implement a paperless client eligibility and record keeping system by submitting a written description of the process which must incorporate the current eligibility criteria and record keeping requirements. Virtual Case Manager™ is one example of a technology-based system that has been approved.

### **Prohibited Activity**

A Regional Agent and their network understand that program commodities are not to be sold, exchanged or used for personal gain. All Regional Agents, Sub-Regional Agents and Local Distributors are prohibited from repackaging USDA commodities. No commodities are to be opened, altered or removed from the unit containers except for meal preparation at Local Distributor meal sites.

## **Section 5                    Local Distributor**

A Local Distributor may be a food pantry, soup kitchen or shelter. A Local Distributor of federal program foods must follow the same storage and warehousing requirements as a Regional Agent or Sub-Regional Agent. A Local Distributor becomes responsible for USDA product when physical delivery is taken. Liability for loss, theft or damage due to negligence is the sole responsibility of the Local Distributor. All USDA commodities carry an assigned value based on USDA's cost of purchasing, processing and distribution of the food products to states. In order to guarantee its quality and safety, each Local Distributor is responsible for the proper storage and handling of USDA food products. Premature deterioration of food products is often the result of improper storage conditions and practices. Every effort must be made to reduce loss due to spoilage, pest infestation and theft by following accepted warehousing methods. This action not only ensures quality products being distributed but also protects the Local Distributor from claim action by ODJFS to recover the value of the spoiled or lost product. See Section 4 for specific storage guidelines.

A Regional Agent or Sub-Regional Agent may establish a geographic service area for a Local Distributor. A client may access food at a Local Distributor designated to serve the area in which the client resides. A client will need to provide proof of residency within the service area.

### **Food Pantry**

A food pantry is an integral component to the success of the federal food programs. Distribution of program foods may vary from site to site. TEFAP commodities are to be incorporated into the food pantry inventory and provided to all eligible clients as part of the food package. TEFAP commodities are not to be the singular source of food supply at a food pantry. Other sources of food may include foodbanks, donated food, food drives or food purchase plans. All food pantries are encouraged to establish a client choice model of distribution, permitting the client to have in-put into the food package they receive.

### **Soup Kitchen and Shelter**

A soup kitchen and shelter provides regularly scheduled on-site or home-delivered meals which may use TEFAP commodities in the meal preparation. TEFAP commodities must not be the singular source of food supply at a meal site. Other sources may include foodbanks, donated food, food drives or food purchase plans. A soup kitchen may be open to the general public or be located in a shelter that provides meals to only sheltered individuals or families. They may provide up to three regularly scheduled meals and a snack each day. Eligibility determinations are not required at meal sites.

### **Distribution**

A food pantry receiving TEFAP commodities must allow clients to access food, at a minimum, on a monthly basis. **A once-a-month give-away of only TEFAP commodities is prohibited.**

A once-a-month food give-away is discouraged. A food pantry must establish and post regular hours of operation and may establish a procedure for on-call access. This policy will help to establish and maintain a statewide minimum level of service.

### **Homebound Participants**

A client or program participant who is unable to visit a TEFAP food pantry or attend a CSFP distribution may designate a relative, friend or care-giver as their proxy for receipt of the food package. The proxy must provide appropriate identification to receive the client's benefit and must provide a signature on the client's behalf.

### **Technology-Based Client Eligibility Process**

A client eligibility and delivery documentation method, which utilizes a web-based or electronic process resulting in a paperless client eligibility and record keeping system may be approved by ODJFS for use by the Local Distributor. A Local Distributor may request approval from a Regional Agent and ODJFS to implement a paperless client eligibility and record keeping system by submitting a written description of the process which must incorporate the current eligibility criteria and record keeping requirements. Virtual Case Manager™ is one example of a technology-based system that has been approved.

### **TEFAP Eligibility**

Eligibility for receipt of a food package at a food pantry is established at up to 200% of the current federal poverty level as established by the United States Department of Health and Human Services. **No proof of income is required.** A client is required to show picture identification and proof of residency. A client is also required to sign a self-declaration of eligibility. The Regional Agent, Sub-Regional Agent or Local Distributor is not liable for an ineligible client who receives a federal food benefit by improperly self-declaring eligibility. The prescribed eligibility form is provided for use at the food pantry and may be found in Section 7 of this manual.

A client is not required to obtain a referral for service at a food pantry from another social service agency, church or referral service. Referral services may be utilized to maintain a flow of clients to geographic areas within the service territory, not to screen clients or to make eligibility determinations. The food pantry is responsible for the client eligibility screening. A client should NEVER be denied service for lack of a referral. A drop-in client is to be served in the same manner as one with a referral and, if applicable, advised of the appropriate geographic location for future service.

### **CSFP Eligibility**

CSFP in Ohio targets the elderly category of participation. Elderly people, age sixty and above, who meet income guidelines and reside in a designated service area are eligible for the program. Eligibility requires proof of age and residency of the applicant within the service area. Age is established by a birth certificate, baptismal certificate, state identification or

driver's license. Residency is established by recent utility bills, driver's license, state identification card or other proof of residency. Migrant and seasonal farm workers entering a CSFP service area will be considered as meeting the residency requirement. Homeless individuals may utilize the address of a shelter. Program eligibility for seniors is established at 130% of the current federal poverty level. Proof of income is not required. Applicants declare income eligibility when signing the CSFP application. The Local Distributor, Sub-Regional Agent or Regional Agent is not liable for ineligible clients who receive a federal food benefit by improperly self-declaring eligibility. **Eligibility does not guarantee the receipt of a food package.** See "CSFP Waiting List Procedures".

Eligibility determinations are conducted at each site by trained personnel. All certification data is recorded on a certification form. Certification information includes the applicant's name, address and phone number; income, household size, race and or ethnicity; the name and address of the proxy authorized to receive food on the participant's behalf; the date of the initial interview to apply for program participation; the date of certification; the applicant's certification that he or she is eligible for the program, and the signature and title of the person making the eligibility determination. The form also details the CSFP appeals process. The applicant must sign that they have read the form or have had it read to them and that they understand their rights.

Applicants determined eligible for participation will receive a notice of eligibility which indicates whether they are in active status or being placed on a waiting list. If in active status, the client will receive a notice with the location and scheduled dates for distributions. The notice will include the name, contact person, and phone number of the Local Distributor or Regional Agent responsible for the distribution. A re-certification interview will occur by the end of the sixth month without a formal review of eligibility as long as there has been no change in the active client's living arrangements. The date of re-certification will be noted on the original certification form. Applicants found ineligible for participation at the time of certification or re-certification will receive a notice of their ineligibility, the reason for the determination and their rights regarding the appeal process as detailed on the certification form.

Additionally, applicants are informed of the following:

- The standards for participation in the program are the same for everyone regardless of race, color, national origin, sex, age or disability,
- Nutrition education is available to them,
- How the food delivery system at the local agency operates, and
- Any specific nutritional needs on the certification form.

### **CSFP Dual Participation**

CSFP applicants are informed during the certification process that it is illegal to participate at multiple CSFP sites. Simultaneous participation in CSFP at more than one distribution site will result in immediate elimination from one of the sites. If dual participation has occurred due to a client's fraudulent information or action, the local agency may initiate claim action against the client to recover the value of the benefits improperly received. Applicants are required to certify on the application that they understand the illegality and consequences of dual participation.

This information is read to the participant or to the participant's representative if they are unable to read the information on their own.

### **CSFP Waiting List Procedures**

Certification workers at each of the distribution sites will have a maximum caseload based on the number of slots funded for the program year. When a maximum caseload is reached, a waiting list will be established. Caseworkers may continue to accept applications, but will personally inform applicants that their names are being placed on a waiting list and they will be notified as soon as there is an opening in the program. A notice of eligibility and waiting list status will be sent to all applicants in this category.

### **CSFP Nutrition Education**

The goal of the nutrition education component is to enable food program participants to obtain better nutritional status through increased understanding of basic nutrition principles and through effective use of food products. The following are essential to achieving that goal:

- Reinforcement of basic nutrition instruction,
- Instruction on the use of commodity supplemental foods including food preparation techniques, recipes, meal frequency and food cost savings,
- Recognition of the special health and nutritional problems of low-income individuals such as high blood pressure, sodium/potassium ratios, anemia and obesity,
- Dissemination of information on preventive health care and on community programs such as food conferences, food cooperatives, and health fairs,
- Consumer resource information and assistance, and
- Other program information (Food Assistance, HEAP, etc.).

### **Complaints About USDA Donated Commodities**

USDA makes every effort to ensure that commodities provided through CSFP and TEFAP are nutritious and of the highest quality. However, if there are concerns with the quality or safety of any commodity food, a client may file a complaint. ODJFS has developed a Commodity Complaint Form to be used by a Regional Agent, Sub-Regional Agent and or Local Distributor when filing a complaint or receiving a commodity complaint by a program recipient. The form is to be submitted to ODJFS, who will then forward the complaint to USDA/FNS. Complaints are registered via WBSCM. **If replacement product is being sought, the recipient must keep the defective product until ODJFS provides instructions on what to do with it.**

The information needed to complete the form is the:

- Product material number,
- Notice to deliver number,
- Contract number (may be stenciled on the outer carton),
- A description of the problem,
- Date the product was received,
- Location of the product, and
- Quantity of product involved.

The product material number and notice to deliver number will be on the paperwork that is received with the commodity, or ODJFS may be contacted to obtain it. USDA needs the numbers to determine which vendor produced the product and to resolve the complaint.

### **Prohibited Activity**

TEFAP and CSFP commodities are not to be sold, exchanged or used for personal gain. A Local Distributor is prohibited from repackaging USDA commodities. No commodities are to be opened, altered or removed from the unit containers except for meal preparation at a Local Distributor meal sites.

## Section 6 Civil Rights

In accordance with federal laws, regulations and USDA policy, ODJFS, RAs and LDs are prohibited from discriminating on the basis of race, color, national origin, sex, age or disability. All agencies must have posted at their facility, in plain sight, Form AD-475C "And Justice For All" poster.

Federal regulations require a CSFP and or TEFAP applicant to provide proof of residency within the service area and sign a disclaimer certifying that the household income is within the guidelines as established by USDA/FNS and or ODJFS. As a condition of receipt of commodities, RAs and LDs cannot require or coerce clients to:

- Attend a religious service,
- Participate in prayer,
- Join a counseling group,
- Attend budgeting, parenting or job training classes, and or
- Do odd jobs.

Activities unrelated to the distribution of CSFP or TEFAP foods or meal service may be conducted at sites as long as:

- The person(s) conducting the activity makes it clear that the activity is not part of CSFP and or TEFAP and is not endorsed by USDA and or ODJFS.
- Cooperation in the activity is not a condition of the receipt of program commodities.
- Information about the activity is not placed in or printed on bags or boxes in which commodities are distributed.
- Program participants cannot be solicited to contribute money, sign petitions or converse with the persons conducting the activity.
- The activity is not conducted in a manner that disrupts the distribution or meal service.

ODJFS, Regional Agents, Sub-Regional Agents and Local Distributors must promptly investigate discrimination complaints received in connection with the distribution of program commodities. All agencies shall maintain a record of complaints, investigations and resolutions. USDA reserves the right to conduct investigations and make the final determination on the proper handling of all complaints.

To file a complaint of discrimination, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992 (Voice). Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer.

## **Section 7   Records and Reports**

### **Regional Agent and Sub-Regional Agent Reports to ODJFS**

A Regional Agent or Sub-Regional Agent must maintain records to document the receipt, disposal and inventory of commodities that they, in turn, distribute to eligible local distributors or program participants. A Local Distributor must sign a receipt for program commodities which they receive for distribution to households or for use in preparing meals. A Client must sign for the receipt of TEFAP and or CSFP commodities. Records of all such receipts must be retained by both the foodbank and the local distributor, respectively. **A Regional Agent is required to submit a monthly report of all commodity activity to ODJFS.** A Sub-Regional Agent may be required to submit a monthly report to the Regional Agent for this purpose. All reporting is encouraged to be submitted via electronic means.

#### **TEFAP Inventory**

The TEFAP inventory report is due to ODJFS no later than the second Friday of the month following the month to which the report pertains and must include the beginning inventory, receipts, distribution amounts, gains, losses and reconciliation to physical count. A Regional Agent may develop a report of its own design as long as all pertinent information is captured and submitted as email attachment. The USDA short title and commodity code number must be referenced for each commodity on the report.

#### **CSFP Inventory**

The CSFP inventory report is due to ODJFS no later than the second Friday of the month following the month to which the report pertains. ODJFS has developed a state replicated version of the federal FNS-153 report for Regional Agent use. This report contains inventory activity as well as participation data. In addition, CSFP local agencies complete an annual report, FNS-191, which profiles racial and or ethnic group participation in the program. See Section 7, Report Forms, for description.

### **Local Distributor Reports to Regional Agent or Sub-Regional Agent**

A Local Distributor must sign a receipt for program commodities that they receive for distribution to households or for use in preparing meals. A Local Distributor must submit a monthly activity report, which provides statistical information on the number of individuals and households with and without children served as detailed on the form designed by ODJFS. The form may be amended by the Regional Agent or Sub-Regional Agent to secure additional information but not to exclude the detail required by ODJFS.

The Local Distributor reports will be consolidated by the Regional Agent or Sub-Regional Agent into one statistical report form providing a compilation of the local agency data. The consolidated report must be submitted to ODJFS by the end of the month following the month to which the report pertains. Reports designed for this purpose are described in Section 7 Report Forms.

## **Records Retention**

All program records are to be maintained for a period of three years from the close of the federal fiscal year to which they pertain, or longer if related to an audit or investigation in progress. The records must be reasonably accessible at all times for use during management evaluations, site reviews, audits or investigations.

## **Report Forms**

The following is a list and description of all CSFP and or TEFAP reports. (Links to all forms available online may be found in the Appendix.)

### **FNS-7 Destination Data for Delivery of Donated Foods**

Federal form to be completed by ODJFS for the assignment of an entity code number, which details delivery instructions for a specific destination.

### **FNS-57 Report of Shipment Received Over, Short and/or Damaged**

Federal report used for reporting commodity food truckload shipment received over/short or damaged. A receiving warehouse completes the report and sends to ODJFS along with supporting documentation (bill of lading, pictures, and narrative).

### **FNS-153 Report**

Federal report which details the monthly inventory and distribution of CSFP commodities, submitted in hard copy format electronically by ODJFS to USDA/FNS, Midwest Regional Office. ODJFS also enters the report data into the Federal Program Reporting System.

### **FNS-155 Report**

The report that provides detail of ODJFS TEFAP excess inventory.

### **FNS-191 Racial/Ethnic Group Participation Report**

This federal report compiles the racial/ethnic group participation in CSFP for the month of April in any given year. A Regional Agent completes the report, profiling all participants receiving a food box in the month of April and submits the report to ODJFS no later than May 31. ODJFS submits all of the reports via the Federal Program Reporting System.

### **FNS-663 Commodity Acceptability Progress Report (CAP)**

Federal report form completed by ODJFS, RAs and LDs which provides information on the form, quality, quantity, desirability and acceptability of USDA commodities. USDA uses this information in conjunction with nutrition objectives, budgetary factors and marketing indicators to make purchasing decisions, develop new products, improve commodity specifications and provide commodities which will help program participants meet dietary guidelines. Completion and submission of this report has been suspended by USDA policy memoranda FD-071 (see Section 8 for detail on the link to the online access of this and other policy memoranda).

**JFS 04220 CSFP Certification**

State form developed by ODJFS for use by a client in making application for participation in CSFP.

**JFS 01426 CSFP and TEFAP Site Review Foodbank**  
**JFS 01427 CSFP and TEFAP Site Review Local Agency**

State forms developed by ODJFS for site review purposes at foodbanks and local agencies.

**JFS 01432 Commodity Complaint**

State form developed by ODJFS to report instances of commodity complaints.

**JFS 01433 Report of Storage Loss and or Damage**

State report form to be used when reporting incidents of storage loss and or damage.

**JFS 01431 CSFP State 153 Report**

State report form, developed by ODJFS, for use by a Regional Agent in reporting monthly CSFP commodity inventory and distribution. The form is in electronic spreadsheet format detailing on-hand inventory, monthly receipts, distribution, gain and or loss and ending balances. CSFP commodity is detailed by commodity code, delivery order number and tracked by item lot. Statistical data on participants served is included on report. The report is transmitted electronically to ODJFS. A compilation of the foodbank reports is completed by ODJFS and submitted to FNS as the state agency FNS-153 Report.

**JFS 04221 TEFAP Household Eligibility**  
**JFS 04221-S TEFAP Household Eligibility Spanish**  
**JFS 04221-SO TEFAP Household Eligibility Somali**

State form developed by ODJFS based on sample provided by USDA/FNS to be used by food pantries for clients receiving benefits at the food pantry, available in English, Spanish and Somali.

**JFS 01428 Foodbank Monthly Statistical Report**

State form designed by ODJFS for use by a Regional Agent, Sub-Regional Agent and Local Distributor in reporting monthly participation statistics. The form for Regional Agent and Sub-Regional Agent use is in electronic format.

**JFS 01429 Local Agency Monthly Statistical Report**

State form designed by ODJFS for use by a Local Distributor in reporting monthly participation statistics to a foodbank. The form is offered in both electronic and word document formats.

## **Section 8**

## **USDA Food Distribution National Policy Memoranda**

USDA continually issues administrative guidance via policy memorandum for all food distribution programs. Copies of the memoranda can be obtained online at the USDA website: [http://www.fns.usda.gov/fdd/policy/allfd\\_policies.htm](http://www.fns.usda.gov/fdd/policy/allfd_policies.htm)

## Appendix

The Appendix provides hard copies of current USDA federal program regulations for CSFP and TEFAP. The USDA FNS forms may be found online at the USDA website: <http://www.fns.usda.gov/fns/forms.htm> The “And Justice for All” poster may be found online at: <http://www.fns.usda.gov/cr/justice.htm> The JFS forms for Regional Agent, Sub-Regional Agent and or Local Distributors as described in Section 7 may be found online at the JFS Forms Central website: <http://www.odjfs.state.oh.us/forms/inter.asp>

- A. CSFP Federal Regulations, 7 CFR 247 (1-01-09 edition)
- B. TEFAP Federal Regulations, 7 CFR 251 (1-01-09 edition)
- C. Form AD-475C “And Justice For All” Poster
- D. JFS 04224 TEFAP Household Eligibility Guidelines (effective July 2009)
- E. JFS 04224-S TEFAP Household Eligibility Guidelines Spanish (effective July 2009)
- F. JFS 04224-SO TEFAP Household Eligibility Guidelines Somali (effective July 2009)
- G. JFS 04222 CSFP Household Eligibility Guidelines (effective February 3, 2009)
- H. FNS-7 Destination Data for Delivery of Donated Foods
- I. FNS-57 Report of Shipment Received Over, Short and/or Damaged
- J. FNS-153 Report
- K. FNS-155 Report
- L. FNS-191 Racial/Ethnic Group Participation Report
- M. FNS-663 Commodity Acceptability Progress Report (CAP)
- N. JFS 04220 CSFP Certification
- O. JFS 01426 CSFP and TEFAP Site Review Foodbank
- P. JFS 01427 CSFP and TEFAP Site Review Local Agency
- Q. JFS 01432 Commodity Complaint
- R. JFS 01433 Report of Storage Loss and or Damage
- S. JFS 01431 CSFP State153 Report

- T. JFS 04221 TEFAP Household Eligibility
- U. JFS 04221-S TEFAP Household Eligibility Spanish
- V. JFS 04221-SO TEFAP Household Eligibility Somali
- W. JFS 01428 Foodbank Monthly Statistical Report
- X. JFS 01429 Local Agency Statistical Report

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Rhode Island, Vermont: U.S. Department of Agriculture, FNS, Northeast Region, 10 Causeway Street, room 501, Boston, Massachusetts 02222-1066.

(b) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Mid-Atlantic Region, Mercer Corporate Park, 300 Corporate Boulevard, Robbinsville, New Jersey 08691-1598.

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

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

(e) Arkansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, FNS, Southwest Region, 1100 Commerce Street, room 5-C-30, Dallas, Texas 75242.

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

(g) Alaska, American Samoa, Arizona, California, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Nevada, Oregon, Washington: U.S. Department of Agriculture, FNS, Western Region, 90 Seventh Street, Suite #10-100, San Francisco, California 94103.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985, as amended at 59 FR 11508, Mar. 11, 1994; 71 FR 56733, Sept. 27, 2006; 73 FR 11314, Mar. 3, 2008]

**§ 246.28 OMB control numbers.**

The following control numbers have been assigned to the information collection requirements in 7 CFR part 246 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511.

7 CFR part 246 section where requirements are described	Current OMB control no.
.4(a) (8), (9), (11) .....	0584-0386

7 CFR part 246 section where requirements are described	Current OMB control no.
.5 .....	0584-0043
.6 .....	0584-0043
.7(a) .....	0584-0386
.7(e), (h), (j) .....	0584-0043
.7(n) .....	0584-0386
.7(i) .....	0584-A536
.10 .....	0584-A536
.11(a)(3) .....	0584-0386
.11(d) .....	0584-0043
.12(f), (i), (i)(3), (j) .....	0584-0043
.14(d)(1) .....	0584-0043
.16(c) .....	0584-0043
.17(c)(1) .....	0584-0043
.19 .....	0584-0043
.20(a) .....	0584-0043
.25(a), (b) .....	0584-0043, 0584-0347

[50 FR 6121, Feb. 13, 1985, as amended at 53 FR 15653, May 3, 1988; 54 FR 51295, Dec. 14, 1989; 58 FR 11507, Feb. 26, 1993]

**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.
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- 247.20 Program violations.
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- 247.24 Recovery and redistribution of caseload and administrative funds.
- 247.25 Allowable uses of administrative funds and other funds.
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- 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); Pub. L. 107–171.

SOURCE: 70 FR 47063, Aug. 11, 2005, unless otherwise noted.

### § 247.1 Definitions.

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

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

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

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

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

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

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

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

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

*CSFP* means the Commodity Supplemental Food Program.

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

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

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

*Elderly persons* means persons at least 60 years of age.

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

*FNS* means the Food and Nutrition Service.

*Infants* means persons under one year of age.

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

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

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

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

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

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

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

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

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

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

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

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

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

### § 247.2 The purpose and scope of CSFP.

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

other foods. Participants also receive nutrition education.

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

### § 247.3 Administering agencies.

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

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

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

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

(c) *What Federal requirements must State, subdistributing, and local agencies*

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

### § 247.4 Agreements.

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

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

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

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

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

(1) An assurance that each agency will administer the program in accordance with the provisions of this part and with the provisions of part 250 of this chapter, unless they are inconsistent with the provisions of this part;

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

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

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

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

(6) A statement specifying:

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

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

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

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

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

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

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

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

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

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

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### § 247.5 State and local agency responsibilities.

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

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

- (1) Entering into required agreements;
- (2) Ordering commodities for distribution;
- (3) Storing and distributing commodities;
- (4) Establishing procedures for resolving complaints about commodities;
- (5) Complying with civil rights requirements;
- (6) Maintaining accurate and complete records; and

(7) Conducting program outreach.

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

- (1) Completing and submitting the State Plan;
  - (2) Selecting local agencies to administer the program in local areas of the State;
  - (3) Determining caseload needs, and submitting caseload requests to FNS;
  - (4) Assigning caseload, and allocating administrative funds, to local agencies;
  - (5) Establishing eligibility requirements, in accordance with the options provided to the State agency under §247.9. (This function may not be delegated to another agency.);
  - (6) Establishing nutritional risk criteria and a residency requirement for participants, if such criteria are to be used;
  - (7) Establishing a financial management system that effectively accounts for funds received for program administration;
  - (8) Developing a plan for the detection and prevention of dual participation, in coordination with CSFP local agencies and with the State WIC agency;
  - (9) Developing a plan for providing nutrition education to participants;
  - (10) Establishing appeals and fair hearing procedures for local agencies and program participants;
  - (11) Developing a management review system and conducting reviews of local agencies. (This function may not be delegated to another agency.);
  - (12) Determining and pursuing claims, and establishing standards for pursuit of claims against participants;
  - (13) Ensuring compliance with Federal audit requirements;
  - (14) Providing guidance to local agencies, as needed; and
  - (15) Ensuring that program participation does not exceed the State agency's caseload allocation on an average monthly basis.
- (c) *What are the major local agency responsibilities?* The major local agency responsibilities include:
- (1) Determining eligibility of applicants in accordance with eligibility criteria established by the State agency;

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

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

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

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

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

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

(8) Pursuing claims against participants.

**§ 247.6 State Plan.**

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

(b) *When must the State Plan be submitted?* The State Plan must be submitted by August 15 to take effect for the fiscal year beginning in the following October. FNS will provide notification of the approval or disapproval

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of the State Plan within 30 days of receipt, and will notify the State agency within 15 days of receipt if additional information is needed. Disapproval of the Plan will include a reason for the disapproval. Approval of the Plan is a prerequisite to the assignment of caseload and allocation of administrative funds, but does not ensure that caseload and funds will be provided.

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

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

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

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

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

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

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

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

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

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

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

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

(d) *When must the State agency submit amendments to the State Plan?* The State agency must submit amendments to FNS to reflect any changes in program operations or administration described

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

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### § 247.7 Selection of local agencies.

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

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

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

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

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

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

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

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

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agreement in accordance with the requirements of § 247.4.

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**§ 247.8 Individuals applying to participate in CSFP.**

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

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

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

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

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

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

“This application is being completed in connection with the receipt of Federal assistance. Program officials may verify information on this form. I am aware that deliberate misrepresentation may subject me to prosecution under applicable State and Federal statutes. I am also aware that I may not receive both CSFP and WIC benefits simultaneously, and I may not receive CSFP benefits at more than one CSFP site at the same time. Furthermore, I am aware that the information provided may be shared with other or-

ganizations to detect and prevent dual participation. I have been advised of my rights and obligations under the program. I certify that the information I have provided for my eligibility determination is correct to the best of my knowledge.

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

YES [ ]

NO [ ]”

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**§ 247.9 Eligibility requirements.**

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

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

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

(3) Pregnant women;

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

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

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

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

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

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under Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*); or

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

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

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

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

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

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

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

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

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

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

(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-

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month supply of commodities to participants every other month, in accordance with the food package guide rates established by FNS.

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

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

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

**§ 247.11 Applicants exceed caseload levels.**

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

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

- (1) Pregnant women, breastfeeding women, and infants;
- (2) Children ages 1 through 3;

- (3) Children ages 4 and 5;
- (4) Postpartum women; and
- (5) Elderly persons.

**§ 247.12 Rights and responsibilities.**

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

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

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

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

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

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

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

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

(a) *What must State and local agencies do to ensure that non-English or limited-English speaking persons are aware of their rights and responsibilities in the program?* If a significant proportion of the population in an area is comprised of non-English or limited-English speaking persons with a common language, the State agency must ensure that local agencies inform such persons of

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their rights and responsibilities in the program, as listed under § 247.12, in an appropriate language. State and local agencies must ensure that bilingual staff members or interpreters are available to serve these persons.

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

### § 247.14 Other public assistance programs.

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

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

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

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

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

(b) *What information on other public assistance programs must the local agency provide to elderly applicants?* The local

agency must provide elderly applicants with written information on the following programs, and make referrals, as appropriate:

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

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

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

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

### § 247.15 Notification of eligibility or ineligibility of applicant.

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

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

### § 247.16 Certification period.

(a) *How long is the certification period?*—(1) *Women, infants, and children.* For women, infants, and children, the State agency must establish certification periods that may not exceed 6 months in length. However, pregnant

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women may be certified to participate for the duration of their pregnancy and for up to six weeks post-partum.

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

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

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

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

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

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

(d) *What must the local agency do to ensure that participants are aware of the expiration of the certification period?* The local agency must notify program participants in writing at least 15 days before the expiration date that eligibility for the program is about to expire. The local agency must include a statement in the written notification that in-

forms the applicant that program standards are applied without discrimination by race, color, national origin, age, sex, or disability.

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**§ 247.17 Notification of discontinuance of participant.**

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

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

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

**§ 247.18 Nutrition education.**

(a) *What are the State agency's responsibilities in ensuring that nutrition education is provided?* The State agency must establish an overall nutrition education plan and must ensure that local agencies provide nutrition education to participants in accordance with the plan. The State agency may allow local agencies to share personnel

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and educational resources with other programs in order to provide the best nutrition education possible to participants. The State agency must establish an evaluation procedure to ensure that the nutrition education provided is effective. The evaluation procedure must include participant input and must be directed by a nutritionist or other qualified professional. The evaluation may be conducted by the State or local agency, or by another agency under agreement with the State or local agency.

(b) *What type of nutrition education must the local agency provide?* The local agency must provide nutrition education that can be easily understood by participants and is related to their nutritional needs and household situations. The local agency must provide nutrition education that includes the following information, which should account for specific ethnic and cultural characteristics whenever possible:

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

(2) Nutritious ways to use CSFP foods;

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

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

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

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

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

(d) *May CSFP foods be used in cooking demonstrations?* Yes. The State or local agency, or another agency with which it has signed an agreement, may use CSFP foods to conduct cooking demonstrations as part of the nutrition

education provided to program participants, but not for other purposes.

### § 247.19 Dual participation.

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

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

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**§ 247.20 Program violations.**

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

- (1) Intentionally making false or misleading statements, orally or in writing;
- (2) Intentionally withholding information pertaining to eligibility in CSFP;
- (3) Selling commodities obtained in the program, or exchanging them for non-food items;
- (4) Physical abuse, or threat of physical abuse, of program staff; or
- (5) Committing dual participation.

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

- (1) Intentionally making false or misleading statements to obtain CSFP commodities;
- (2) Intentionally withholding information to obtain CSFP commodities; or
- (3) Selling CSFP commodities, or exchanging them for non-food items.

(c) *What must the local agency do to notify the individual of disqualification from CSFP?* The local agency must provide the individual with written notification of disqualification from CSFP at least 15 days before the effective

date of disqualification. The notification must include the effective date and period of disqualification, the reason for the disqualification, and a statement that the individual may appeal the disqualification through the fair hearing process, in accordance with § 247.33(a).

**§ 247.21 Caseload assignment.**

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

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

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

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

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

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

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

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

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

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

(2) *Additional caseload.* Each participating State agency may request additional caseload to increase service to women, infants, and children, and the elderly. Requests by State agencies to increase service to women, infants, and children receive priority over requests

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to increase service to the elderly. Eligibility for and assignment of additional caseload are determined in the following manner:

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Of each eligible State agency's request for additional caseload, FNS assigns an amount that it determines the State needs and can efficiently utilize. In making this determination, FNS considers the factors listed below, in descending order of importance. If

all reasonable requests for additional caseload cannot be met, FNS assigns it to those States that are most likely to utilize it. The factors are:

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

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

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

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

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

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

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

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and the elderly, at new sites in this submission.

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

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

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

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

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

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

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

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

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

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

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cally accessing its Letter of Credit account.

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**§ 247.23 State provision of administrative funds to local agencies.**

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

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

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

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

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

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

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

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**§ 247.24 Recovery and redistribution of caseload and administrative funds.**

(a) *May FNS recover and redistribute caseload and administrative funds assigned to a State agency?* Yes. FNS may recover and redistribute caseload and administrative funds assigned to a State agency during the fiscal year. FNS will redistribute these resources to other State agencies in accordance with the provisions of §§ 247.21(a) and

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

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

### § 247.25 Allowable uses of administrative funds and other funds.

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

- (1) Storing, transporting, and distributing foods;
- (2) Determining the eligibility of program applicants;
- (3) Program outreach;
- (4) Nutrition education;
- (5) Audits and fair hearings;

(6) Monitoring and review of program operations; and

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

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

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

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

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

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

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

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

**§ 247.26 Return of administrative funds.**

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

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

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**§ 247.27 Financial management.**

(a) *What are the Federal requirements for State and local agencies with regard to financial management?* State and local public agencies must maintain a financial management system that complies with the Federal regulations contained in part 3016 of this title, while non-

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

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

- (1) Prompt and accurate payment of allowable costs;
- (2) Timely disbursement of funds to local agencies;
- (3) Timely and appropriate resolution of claims and audit findings; and
- (4) Maintenance of records identifying the receipt and use of administrative funds, funds recovered as a result of claims actions, program income (as defined under §247.25(e)), and property and other assets procured with program funds.

**§ 247.28 Storage and inventory of commodities.**

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

(b) *What are the requirements for the inventory of commodities?* A physical inventory of all USDA commodities must be conducted annually at each storage and distribution site where these commodities are stored. Results of the physical inventory must be reconciled

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with inventory records and maintained on file by the State or local agency.

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### § 247.29 Reports and recordkeeping.

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

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

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

(2) *FNS-153, Monthly Report of the Commodity Supplemental Food Program and Quarterly Administrative Financial Status Report.* The State agency must submit the FNS-153 on a monthly basis. FNS may permit the data contained in the report to be submitted less frequently, or in another format.

The report must be submitted within 30 days after the end of the reporting period. On the FNS-153, the State agency reports:

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

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

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

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

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

(d) *What data must the State agency collect related to local agencies?* (1) Each State agency must collect data related to local agencies that have an agreement with the State agency to participate in the program for each of Federal fiscal years 2006 through 2009; including those local agencies that participated only for part of the fiscal year. Such data shall include:

(i) The name of each local agency;

(ii) The city in which each participating local agency was headquartered and the name of the state;

(iii) The amount of funds provided to the participating organization, i.e., the amount of federal administrative funds provided to each participating local agency; and

(iv) The type of participating organization, e.g., government agency, educational institution, non-profit organization/secular, non-profit organization/faith-based, and "other."

(2) On or before August 31, 2007, and each subsequent year through 2010, State agencies must report to FNS data as specified in paragraph (d)(1) of this section for the prior Federal fiscal

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year. State agencies must submit this data in a format designated by FNS.

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[70 FR 47063, Aug. 11, 2005 as amended at 72 FR 24184, May 2, 2007]

### § 247.30 Claims.

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

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

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

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

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

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

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

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

(Approved by the Office of Management and Budget under control number 0584-0293)

### § 247.31 Audits and investigations.

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

(1) Financial operations are properly conducted;

(2) Financial reports are fairly presented;

(3) Proper inventory controls are maintained; and

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

(b) *When may the Department conduct an audit or investigation of the program?* The Department may conduct an audit of the program at the State or local agency level at its discretion, or may investigate an allegation that the State or local agency has not complied

with Federal requirements. An investigation may include a review of any State or local agency policies or practices related to the specific area of concern.

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

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

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

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

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

(Approved by the Office of Management and Budget under control number 0584-0293)

#### § 247.32 Termination of agency participation.

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

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

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

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

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

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

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local agency may appeal the termination in accordance with § 247.35.)

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

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

**§ 247.33 Fair hearings.**

(a) *What is a fair hearing?* A fair hearing is a process that allows a CSFP applicant or participant to appeal an adverse action, which may include the denial or discontinuance of program benefits, disqualification from the program, or a claim to repay the value of commodities received as a result of fraud. State and local agencies must ensure that CSFP applicants and participants understand their right to appeal an adverse action through the fair hearing process, which includes providing written notification of the individual's right to a fair hearing along with notification of the adverse action. Such notification is not required at the expiration of a certification period.

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

(c) *How may an individual request a fair hearing?* An individual, or an individual's parent or caretaker, may request a fair hearing by making a clear expression, verbal or written, to a

State or local agency official, that an appeal of the adverse action is desired.

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

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

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

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

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

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

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

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

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

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

(3) Bring witnesses;

(4) Present arguments;

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

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

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

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

(2) Ensuring that all relevant issues are considered;

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

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

(5) Making a hearing decision.

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

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

(l) *How does the hearing decision affect the individual's receipt of CSFP benefits?* If a hearing decision is in favor of an applicant who was denied CSFP benefits, the receipt of benefits must begin within 45 days from the date that the

hearing was requested, if the applicant is still eligible for the program. If the hearing decision is against a participant, the State or local agency must discontinue benefits as soon as possible, or at a date determined by the hearing official.

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

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

#### § 247.34 Management reviews.

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

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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 sub-distributing 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.

(Approved by the Office of Management and Budget under control number 0584-0293)

**§ 247.35 Local agency appeals of State agency actions.**

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

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

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

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

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

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

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

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quest for a hearing, and must be provided in writing to the local agency.

**§ 247.36 Confidentiality of applicants or participants.**

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

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

**§ 247.37 Civil rights requirements.**

(a) *What are the civil rights requirements that apply to CSFP?* State and local agencies must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. 6101

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*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 non-discrimination (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 non-discrimination 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.

### PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)

#### Subpart A—General

Sec.

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- 248.2 Definitions.
- 248.3 Administration.

#### Subpart B—State Agency Eligibility

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#### Subpart C—Recipient Eligibility

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- 248.10 Coupon and market management.
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- 248.17 Management evaluations and reviews.
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#### Subpart G—Miscellaneous Provisions

- 248.20 Claims and penalties.
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- 248.23 Records and reports.
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- 248.25 FMNP information.
- 248.26 OMB control number.

AUTHORITY: 42 U.S.C. 1786.

SOURCE: 59 FR 11517, Mar. 11, 1994, unless otherwise noted.

#### Subpart A—General

##### § 248.1 General purpose and scope.

This part announces regulations under which the Secretary of Agriculture shall carry out the WIC Farmers' Market Nutrition Program. The dual purposes of the FMNP are:

(a) To provide resources in the form of fresh, nutritious, unprepared foods (fruits and vegetables) from farmers' markets to women, infants, and children who are nutritionally at risk and who are participating in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) or are on the waiting list for the WIC Program; and

(b) To expand the awareness, use of and sales at farmers' markets.

This will be accomplished through payment of cash grants to approved State agencies which administer the FMNP and deliver benefits at no cost to eligible persons. The FMNP shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 *et seq.*) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

##### § 248.2 Definitions.

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

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shall file their request in writing to the FNSRO within 30 days following termination of the assistance. FNS will replace such foods to the extent that foods are available.

[62 FR 8366, Feb. 25, 1997. Redesignated at 73 FR 46185, Aug. 8, 2008]

### PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

Sec.

- 251.1 General purpose and scope.
- 251.2 Administration.
- 251.3 Definitions.
- 251.4 Availability of commodities.
- 251.5 Eligibility determinations.
- 251.6 Distribution plan.
- 251.7 Formula adjustments.
- 251.8 Payment of funds for administrative costs.
- 251.9 Matching of funds.
- 251.10 Miscellaneous provisions.

AUTHORITY: 7 U.S.C. 7501-7516.

SOURCE: 51 FR 12823, Apr. 16, 1986, unless otherwise noted.

#### § 251.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out certain provisions of the Emergency Food Assistance Act of 1983, (7 U.S.C. 612c note).

[51 FR 12823, Apr. 16, 1986, as amended at 64 FR 72902, Dec. 29, 1999]

#### § 251.2 Administration.

(a) *Food and Nutrition Service.* Within the United States Department of Agriculture (the "Department"), the Food and Nutrition Service (FNS) shall have responsibility for the distribution of food commodities and allocation of funds under the part.

(b) *State Agencies.* Within the States, distribution to eligible recipient agencies and receipt of payments for storage and distribution shall be the responsibility of the State agency which has: (1) Been designated for such responsibility by the Governor or other appropriate State executive authority; and (2) entered into an agreement with the Department for such distribution and receipt in accordance with paragraph (c) of this section.

(c) *Agreements.*—(1) *Agreements between Department and States.* Each State agency that distributes donated foods

to eligible recipient agencies or receives payments for storage and distribution costs in accordance with § 251.8 must perform those functions pursuant to an agreement entered into with the Department. This agreement will be considered permanent, with amendments initiated by State agencies, or submitted by them at the Department's request, all of which will be subject to approval by the Department.

(2) *Agreements between State agencies and eligible recipient agencies, and between eligible recipient agencies.* Prior to making donated foods or administrative funds available, State agencies must enter into a written agreement with eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds. State agencies must ensure that eligible recipient agencies in turn enter into a written agreement with any eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds before donated foods or administrative funds are transferred between any two eligible recipient agencies. All agreements entered into must contain the information specified in paragraph (d) of this section, and be considered permanent, with amendments to be made as necessary, except that agreements must specify that they may be terminated by either party upon 30 days' written notice. State agencies must ensure that eligible recipient agencies provide, on a timely basis, by amendment to the agreement, or other written documents incorporated into the agreement by reference if permitted under paragraph (d) of this section, any information on changes in program administration, including any changes resulting from amendments to Federal regulations or policy.

(d) *Contents of agreements between State agencies and eligible recipient agencies and between eligible recipient agencies.* (1) Agreements between State agencies and eligible recipient agencies and between eligible recipient agencies must provide:

(i) That eligible recipient agencies agree to operate the program in accordance with the requirements of this part, and, as applicable, part 250 of this chapter; and

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(ii) The name and address of the eligible recipient agency receiving commodities and/or administrative funds under the agreement.

(2) The following information must also be identified, either in the agreement or other written documents incorporated by reference in the agreement:

(i) If the State agency delegates the responsibility for any aspect of the program to an eligible recipient agency, each function for which the eligible recipient agency will be held responsible; except that in no case may State agencies delegate responsibility for establishing eligibility criteria for organizations in accordance with § 251.5(a), establishing eligibility criteria for recipients in accordance with § 251.5(b), or conducting reviews of eligible recipient agencies in accordance with § 251.10(e);

(ii) If the receiving eligible recipient agency is to be allowed to further distribute TEFAP commodities and/or administrative funds to other eligible recipient agencies, the specific terms and conditions for doing so, including, if applicable, a list of specific organizations or types of organizations eligible to receive commodities or administrative funds;

(iii) If the use of administrative funds is restricted to certain types of expenses pursuant to § 251.8(e)(2), the specific types of administrative expenses eligible recipient agencies are permitted to incur;

(iv) Any other conditions set forth by the State agency.

[51 FR 12823, Apr. 16, 1986, as amended at 51 FR 17933, May 13, 1987; 59 FR 16974, Apr. 11, 1994; 62 FR 53731, Oct. 16, 1997; 64 FR 72902, 72903, Dec. 29, 1999]

#### § 251.3 Definitions.

(a) The terms used in this part that are defined in part 250 of this chapter have the meanings ascribed to them therein, unless a different meaning for such a term is defined herein.

(b) *Charitable institution* (which is defined differently in this part than in part 250 of this chapter) means an organization which—

(1) Is public, or

(2) Is private, possessing tax exempt status pursuant to § 251.5(a)(3); and

(3) Is not a penal institution (this exclusion also applies to correctional institutions which conduct rehabilitation programs); and

(4) Provides food assistance to needy persons.

(c) *Distribution site* means a location where the eligible recipient agency actually distributes commodities to needy persons for household consumption or serves prepared meals to needy persons under this part.

(d) *Eligible recipient agency* means an organization which—

(1) Is public, or

(2) Is private, possessing tax exempt status pursuant to § 251.5(a)(3); and

(3) Is not a penal institution; and

(4) Provides food assistance—

(i) Exclusively to needy persons for household consumption, pursuant to a means test established pursuant to § 251.5 (b), or

(ii) Predominantly to needy persons in the form of prepared meals pursuant to § 251.5(a)(2); and

(5) Has entered into an agreement with the designated State agency pursuant to § 251.2(c) for the receipt of commodities or administrative funds, or receives commodities or administrative funds under an agreement with another eligible recipient agency which has signed such an agreement with the State agency or another eligible recipient agency within the State pursuant to § 251.2(c); and

(6) Falls into one of the following categories:

(i) Emergency feeding organizations (including food banks, food pantries and soup kitchens);

(ii) Charitable institutions (including hospitals and retirement homes);

(iii) Summer camps for children, or child nutrition programs providing food service;

(iv) Nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly), including projects that operate congregate Nutrition sites and projects that provide home-delivered meals; and

(v) Disaster relief programs.

(e) *Emergency feeding organization* means an eligible recipient agency which provides nutrition assistance to relieve situations of emergency and distress through the provision of food

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to needy persons, including low-income and unemployed persons. Emergency feeding organizations have priority over other eligible recipient agencies in the distribution of TEFAP commodities pursuant to § 251.4(h).

(f) *Food bank* means a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.

(g) *Food pantry* means a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress.

(h) *Formula* means the formula used by the Department to allocate among States the commodities and funding available under this part. The amount of such commodities and funds to be provided to each State will be based on each State's population of low-income and unemployed persons, as compared to national statistics. Each State's share of commodities and funds shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The surplus commodities will be allocated to States on the basis of their weight (pounds), and the commodities purchased under section 214 of the Emergency Food Assistance Act of 1983 will be allocated on the basis of their value (dollars). In instances in which a State determines that it will not accept the full amount of its allocation of commodities purchased under section 214 of the Emergency Food Assistance Act of 1983, the Department will reallocate the commodities to other States on the basis of the same formula used for the initial allocation.

(i) *State agency* means the State government unit designated by the Governor or other appropriate State executive authority which has entered into an agreement with the United States

Department of Agriculture under § 251.2(c).

(j) *Soup kitchen* means a public or charitable institution that, as an integral part of the normal activities of the institution, maintains an established feeding operation to provide food to needy homeless persons on a regular basis.

(k) *Value of commodities distributed* means the Department's cost of acquiring commodities for distribution under this part.

[64 FR 72903, Dec. 29, 1999]

### § 251.4 Availability of commodities.

(a) *General.* The Department shall make commodities available for distribution and use in accordance with the provisions of this part and also in accordance with the terms and conditions of part 250 of this chapter to the extent that the part 250 terms and conditions are not inconsistent with this part.

(b) *Displacement.* State agencies shall require that eligible recipient agencies receiving commodities under this part shall not diminish their normal expenditures for food because of receipt of commodities. Additionally, the Secretary shall withhold commodities from distribution if it is determined that the commodities would substitute for the same or a similar product that would otherwise be purchased in the market.

(c) *Allocations.* (1) Allocations of commodities shall be made to State agencies on the basis of the formula defined in § 251.3(h).

(2) FNS shall promptly notify State agencies regarding their allocation of commodities to be made available under this part.

(3) State agencies shall notify the appropriate FNSRO of the amount of the commodities they will accept not later than 30 days prior to the beginning of the shipping period.

(d) *Quantities requested.* State agencies shall:

(1) Request commodities only in quantities which can be utilized without waste in providing food assistance to needy persons under this part;

(2) Ensure that no eligible recipient agency receives commodities in excess of anticipated use, based on inventory

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records and controls, or in excess of its ability to accept and store such commodities; and

(e) *Initial processing and packaging.* The Department will furnish commodities to be distributed to institutions and to needy persons in households in forms and units suitable for institutional and home use.

(f) *Bulk processing by States.* Commodities may be made available to a State agency or, at the direction of the State agency, directly to private companies for processing bulk commodities for use by eligible recipient agencies.

(1) The Department will reimburse the State agency at the current flat rate for such processing.

(2) Minimum yields and product specifications established by the Department shall be met by the processor.

(3) The State shall require the processor to meet State and local health standards.

(4) The external shipping containers of processed products shall be clearly labeled "Donated by the U.S. Department of Agriculture—Not to be Sold or Exchanged". Internal packaging shall be clearly marked "Donated by the U.S. Department of Agriculture—Processed Under Agreement with the State of \_\_\_\_." FNS may grant waivers to the internal label requirement if the enforcement of this requirement precludes a State's participation in the program, or in cases where other processors are not available who are able to meet the labeling requirement within the allowed reimbursement.

(5) Processors and State agencies shall also meet the basic minimum requirements of § 250.30.

(g) *Availability and control of donated commodities.* Donated commodities will be made available to State agencies only for distribution and use in accordance with this part. Except as otherwise provided in paragraph (f) of this section, donated commodities not so distributed or used for any reason may not be sold, exchanged, or otherwise disposed of without the approval of the Department. However, donated commodities made available under section 32 of Pub. L. 74-320 (7 U.S.C. 612c) may be transferred by eligible recipient agencies receiving commodities under this part, or recipient agencies, as de-

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defined in § 250.3 of this chapter, to any other eligible recipient agency or recipient agency which agrees to use such donated foods to provide without cost or waste, nutrition assistance to individuals in low-income groups. Such transfers will be effected only with prior authorization by the appropriate State agency and must be documented. Such documentation shall be maintained in accordance with § 251.10(a) of this part and § 250.16 of this chapter by the distributing agency and the State agency responsible for administering TEFAP and made available for review upon request.

(h) *Distribution to eligible recipient agencies—priority system and advisory boards.* (1) State agencies must distribute commodities made available under this part to eligible recipient agencies in accordance with the following priorities:

(i) *First priority.* When a State agency cannot meet all eligible recipient agencies' requests for TEFAP commodities, the State agency must give priority in the distribution of such commodities to emergency feeding organizations as defined under § 251.3(e). A State agency may, at its discretion, concentrate commodity resources upon a certain type or types of such organizations, to the exclusion of others.

(ii) *Second priority.* After a State agency has distributed TEFAP commodities sufficient to meet the needs of all emergency feeding organizations, the State agency must distribute any remaining program commodities to other eligible recipient agencies which serve needy people, but do not relieve situations of emergency and distress. A State agency may, at its discretion, concentrate commodity resources upon a certain type or types of such organizations, to the exclusion of others.

(2) *Delegation.* When a State agency has delegated to an eligible recipient agency the authority to select other eligible recipient agencies, the eligible recipient agency exercising this authority must ensure that any TEFAP commodities are distributed in accordance with the priority system set forth in paragraphs (h)(1)(i) and (h)(1)(ii) of this section. State agencies and eligible recipient agencies will be deemed to be in compliance with the priority

system when eligible recipient agencies distribute TEFAP commodities to meet the needs of all emergency feeding organizations under their jurisdiction prior to making commodities available to eligible recipient agencies which are not emergency feeding organizations.

(3) *Existing networks.* Subject to the constraints of paragraphs (h)(1)(i) and (h)(1)(ii) of this section, State agencies may give priority in the distribution of TEFAP commodities to existing food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households, including food from sources other than the Department.

(4) *State advisory boards.* Each State agency receiving TEFAP commodities is encouraged to establish a State advisory board representing all types of entities in the State, both public and private, interested in the distribution of such commodities. Such advisory boards can provide valuable advice on how resources should be allocated among various eligible outlet types, what areas have the greatest need for food assistance, and other important issues that will help States to use their program resources in the most efficient and effective manner possible. A State agency may expend TEFAP administrative funds to support the activities of an advisory board in accordance with § 251.8 of this part.

(i) *Distribution of non-USDA foods.* Eligible recipient agencies may incorporate the distribution of foods which have been donated by charitable organizations or other entities with the distribution of USDA-donated commodities or distribute them separately.

(j) *Interstate cooperation.* State agencies may enter into interagency cooperative agreements to provide jointly or to transfer commodities to an eligible recipient agency that has signed an agreement with the respective State agencies when such organization serves needy persons in a contiguous area which crosses States' borders.

(k) *Distribution in rural areas.* State agencies shall encourage eligible recipient agencies to implement or expand commodity distribution activities to relieve situations of emergency and

distress through the provision of commodities to needy households in rural areas of the State.

(l) *Commodity losses.* (1) The State agency shall be responsible for the loss of commodities:

(i) When the loss arises from the State agency's improper distribution or use of any commodities or failure to provide proper storage, care, or handling; and

(ii) When the State agency fails to pursue claims arising in its favor, fails to provide for the rights to assert such claims, or fails to require its eligible recipient agencies to provide for such rights.

Except as provided in paragraph (l)(4) of this section, the State agency shall begin claims action immediately upon receipt of information concerning the improper distribution, loss of or damage to commodities, and shall make a claim determination within 30 days of the receipt of information, as described in further detail in FNS Instruction 410-1, *Non-Audit Claims—Food Distribution*. The funds received from the collection of claims shall be returned to FNS. In instances in which it has been determined by the Department that the collection of funds will have a significant adverse effect on the operation of the program, the Department may permit in-kind replacement of the donated foods in lieu of payment to FNS. Replacement in kind will only be permitted under such terms and conditions as agreed to by the Secretary.

(2) If the State agency itself causes the loss of commodities and the value exceeds \$250, the State agency shall immediately transmit the claim determination to the FNS Regional Office, fully documented as to facts and findings. Except as provided in paragraph (l)(4) of this section, if the State agency itself causes the loss of commodities, and the value does not exceed \$250, the State agency shall immediately return funds equal to the claim amount to FNS.

(3) If the State agency determines that a claim exists against an eligible recipient agency, warehouseman, carrier or any other entity and the value of the lost commodities exceeds \$250, the State agency shall immediately transmit the claim determination to

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the appropriate FNS Regional Office, fully documented as to facts and findings. If FNS determines from its review of the claim determination that a claim exists, the State agency shall make demand for restitution upon the entity liable immediately upon receipt of notice from the FNS Regional Office. Except as provided in paragraph (1)(4) of this section, if the State agency determines that a claim exists in favor of the State agency against an eligible recipient agency, warehouseman, carrier or any other entity and the value of the lost commodities does not exceed \$2500, the State agency shall immediately proceed to collect the claim.

(4) No claim determination shall be required where the value of the lost commodities is \$100 or less. However, no such claim shall be disregarded where:

(i) There is evidence of fraud or a violation of Federal, State or local criminal law; or

(ii) Program operations would be adversely affected.

(5) The State agency shall maintain records and substantiating documents, on all claims actions and adjustments including documentation of those cases in which no claim was asserted because of the minimal amount involved.

(6) In making final claim determinations for commodity losses incurred by eligible recipient agencies when there is no evidence of fraud or negligence, State agencies and FNS Regional Offices, as applicable, shall consider the special needs and circumstances of the eligible recipient agencies, and adjust the claim and/or conditions for claim collection as appropriate. These special needs and circumstances include but are not limited to the eligible recipient agency's use of volunteers and limited financial resources and the effect of the claim on the organization's ability to meet the food needs of low-income populations.

(Approved by the Office of Management and Budget under control number 0584-0313 and 0584-0341)

[51 FR 12823, Apr. 16, 1986, as amended at 52 FR 17933, May 13, 1987; 52 FR 42634, Nov. 6, 1987; 59 FR 16974, Apr. 11, 1994; 64 FR 72904, Dec. 29, 1999]

### § 251.5 Eligibility determinations.

(a) *Criteria for determining eligibility of organizations.* Prior to making commodities or administrative funds available, State agencies, or eligible recipient agencies to which the State agency has delegated responsibility for the distribution of TEFAP commodities or administrative funds, must ensure that an organization applying for participation in the program meets the definition of an "eligible recipient agency" under § 251.3(d). In addition, applicant organizations must meet the following criteria:

(1) *Agencies distributing to households.* Organizations distributing commodities to households for home consumption must limit the distribution of commodities provided under this part to those households which meet the eligibility criteria established by the State agency in accordance with paragraph (b) of this section.

(2) *Agencies providing prepared meals.* Organizations providing prepared meals must demonstrate, to the satisfaction of the State agency, or eligible recipient agency to which they have applied for the receipt of commodities or administrative funds, that they serve predominantly needy persons. State agencies may establish a higher standard than "predominantly" and may determine whether organizations meet the applicable standard by considering socioeconomic data of the area in which the organization is located, or from which it draws its clientele. State agencies may not, however, require organizations to employ a means test to determine that recipients are needy, or to keep records solely for the purpose of demonstrating that its recipients are needy.

(3) *Tax-exempt status.* Private organizations must—

(i) Be currently operating another Federal program requiring tax-exempt status under the Internal Revenue Code (IRC), or

(ii) Possess documentation from the Internal Revenue Service (IRS) recognizing tax-exempt status under the IRC, or

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(iii) If not in possession of such documentation, be automatically tax exempt as “organized or operated exclusively for religious purposes” under the IRC, or

(iv) If not in possession of such documentation, but required to file an application under the IRC to obtain tax-exempt status, have made application for recognition of such status and be moving toward compliance with the requirements for recognition of tax-exempt status. If the IRS denies a participating organization’s application for recognition of tax-exempt status, the organization must immediately notify the State agency or the eligible recipient agency, whichever is appropriate, of such denial, and that agency will terminate the organization’s agreement and participation immediately upon receipt of such notification. If documentation of IRS recognition of tax-exempt status has not been obtained and forwarded to the appropriate agency within 180 days of the effective date of the organization’s approval for participation in TEFAP, the State agency or eligible recipient agency must terminate the organization’s participation until such time as recognition of tax-exempt status is actually obtained, except that the State agency or eligible recipient agency may grant a single extension not to exceed 90 days if the organization can demonstrate, to the State agency’s or eligible recipient agency’s satisfaction, that its inability to obtain tax-exempt status within the 180 day period is due to circumstances beyond its control. It is the responsibility of the organization to document that it has complied with all IRS requirements and has provided all information requested by IRS in a timely manner.

(b) *Criteria for determining recipient eligibility.* Each State agency must establish uniform Statewide criteria for determining the eligibility of households to receive commodities provided under this part for home consumption. The criteria must:

(1) Enable the State agency to ensure that only households which are in need of food assistance because of inadequate household income receive TEFAP commodities;

(2) Include income-based standards and the methods by which households may demonstrate eligibility under such standards; and

(3) Include a requirement that the household reside in the geographic location served by the State agency at the time of applying for assistance, but length of residency shall not be used as an eligibility criterion.

(c) *Delegation of authority.* A State agency may delegate to one or more eligible recipient agencies with which the State agency enters into an agreement the responsibility for the distribution of commodities and administrative funds made available under this part. State agencies may also delegate the authority for selecting eligible recipient agencies and for determining the eligibility of such organizations to receive commodities and administrative funds. However, responsibility for establishing eligibility criteria for organizations in accordance with paragraph (a) of this section, and for establishing recipient eligibility criteria in accordance with paragraph (b) of this section, may not be delegated. In instances in which State agencies delegate authority to eligible recipient agencies to determine the eligibility of organizations to receive commodities and administrative funds, eligibility must be determined in accordance with the provisions contained in this part and the State plan. State agencies will remain responsible for ensuring that commodities and administrative funds are distributed in accordance with the provisions contained in this part.

[64 FR 72904, Dec. 29, 1999]

### § 251.6 Distribution plan.

(a) *Contents of the plan.* The State agency must submit for approval by the appropriate FNS Regional Office a plan which contains:

(1) A designation of the State agency responsible for distributing commodities and administrative funds provided under this part, and the address of such agency;

(2) A plan of operation and administration to expeditiously distribute commodities received under this part;

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(3) A description of the standards of eligibility for recipient agencies, including any subpriorities within the two-tier priority system; and

(4) A description of the criteria established in accordance with § 251.5(b) which must be used by eligible recipient agencies in determining the eligibility of households to receive TEFAP commodities for home consumption.

(b) *Plan submission.* A complete plan will be required for Fiscal Year 2001, to be submitted no later than August 15, 2000. Thereafter, a complete plan must be submitted every 4 years, due no later than August 15 of the fiscal year prior to the end of the 4 year cycle.

(c) *Amendments.* State agencies must submit amendments to the distribution plan to the extent that such amendments are necessary to reflect any changes in program operations or administration as described in the plan, or at the request of FNS, to the appropriate FNS Regional Office.

[64 FR 72905, Dec. 29, 1999]

### § 251.7 Formula adjustments. Formula adjustments.

(a) *Commodity adjustments.* The Department will make annual adjustments to the commodity allocation for each State, based on updated unemployment statistics. These adjusted allocations will be effective for the entire fiscal year, subject to reallocation or transfer in accordance with this part.

(b) *Funds adjustments.* The Department will make annual adjustments of the funds allocation for each State based on updated unemployment statistics. These adjusted allocations will be effective for the entire fiscal year unless funds are recovered, withheld, or reallocated by FNS in accordance with § 251.8(f).

[64 FR 72905, Dec. 29, 1999]

### § 251.8 Payment of funds for administrative costs.

(a) *Availability and allocation of funds.* Funds made available to the Department for State and local costs associated with the distribution of commodities under this part shall, in any fiscal year, be distributed to each State agen-

cy on the basis of the funding formula defined in § 251.3(h).

(b) *Uniform Federal Assistance Regulations.* Funds provided under this section shall be subject to the Department's regulations issued under 7 CFR part 3016 or part 3019, as applicable.

(c) *Payment to States.* (1) Funds under this section shall be made available by means of letters of credit in favor of the State agency. The State agency shall use any funds received without delay in accordance with paragraph (d) of this section.

(2) Upon notification by the FNS Regional Office that an agreement has been entered into in accordance with § 251.2(c) of this part, FNS shall issue a grant award pursuant to procedures established by FNS, and promptly make funds available to each State agency within the State's allocation through issuance of a letter of credit. To the extent funds are available and subject to the provisions of paragraph (f) of this section, funds will be made available to State agencies on an advance basis.

(3) Each State agency shall return to FNS any funds made available under this section either through the original allocation or through subsequent reallocations which are unobligated as of the end of the fiscal year for which they were made available. Such return shall be made as soon as practicable but in no event later than 30 days following demand made by FNS.

(d) *Priority for eligible recipient agencies distributing USDA commodities.* State agencies and eligible recipient agencies distributing administrative funds must ensure that the administrative funding needs of eligible recipient agencies which receive USDA commodities are met, relative to both USDA commodities and any non-USDA commodities they may receive, before such funding is made available to eligible recipient agencies which distribute only non-USDA commodities.

(e) *Use of funds—(1) Allowable administrative costs.* State agencies and eligible recipient agencies may use funds made available under this part to pay the direct expenses associated with the distribution of USDA commodities and commodities secured from other

sources to the extent that the commodities are ultimately distributed by eligible recipient agencies which have entered into agreements in accordance with § 251.2. Direct expenses include the following, regardless of whether they are charged to TEFAP as direct or indirect costs:

(i) The intrastate and interstate transport, storing, handling, repackaging, processing, and distribution of commodities; except that for interstate expenditures to be allowable, the commodities must have been specifically earmarked for the particular State or eligible recipient agency which incurs the cost;

(ii) Costs associated with determinations of eligibility, verification, and documentation;

(iii) Costs of providing information to persons receiving USDA commodities concerning the appropriate storage and preparation of such commodities;

(iv) Costs involved in publishing announcements of times and locations of distribution; and

(v) Costs of recordkeeping, auditing, and other administrative procedures required for program participation.

(2) *State restriction of administrative costs.* A State agency may restrict the use of TEFAP administrative funds by eligible recipient agencies by disallowing one or more types of expenses expressly allowed in paragraph (e)(1) of this section. If a State agency so restricts the use of administrative funds, the specific types of expenses the State will allow eligible recipient agencies to incur must be identified in the State agency's agreements with its eligible recipient agencies, or set forth by other written notification, incorporated into such agreements by reference.

(3) *Agreements.* In order to be eligible for funds under paragraph (e)(1) of this section, eligible recipient agencies must have entered into an agreement with the State agency or another eligible recipient agency pursuant to § 251.2(c).

(4) *Pass-through requirement-local support to emergency feeding organizations.* (i) Not less than 40 percent of the Federal Emergency Food Assistance Program administrative funds allocated to

the State agency in accordance with paragraph (a) of this section must be:

(A) Provided by the State agency to emergency feeding organizations that have signed an agreement with the State agency as either reimbursement or advance payment for administrative costs incurred by emergency feeding organizations in accordance with paragraph (e)(1) of this section, except that such emergency feeding organizations may retain advance payments only to the extent that they actually incur such costs; or

(B) Directly expended by the State agency to cover administrative costs incurred by, or on behalf of, emergency feeding organizations in accordance with paragraph (e)(1) of this section.

(ii) Any funds allocated to or expended by the State agency to cover costs incurred by eligible recipient agencies which are not emergency feeding organizations shall not count toward meeting the pass-through requirement.

(iii) State agencies must not charge for commodities made available under this part to eligible recipient agencies.

(f) *Recovery and reallocation.* If, during the course of the fiscal year, the Department determines that a State agency is unable to use all of the funds allocated to it during the fiscal year, the Department shall recover or withhold and reallocate such unused funds among other States.

[51 FR 12823, Apr. 16, 1986, as amended at 59 FR 16974, Apr. 11, 1994; 64 FR 72906, Dec. 29, 1999]

#### § 251.9 Matching of funds.

(a) *State matching requirement.* The State must provide a cash or in-kind contribution equal to the amount of TEFAP administrative funds received under § 251.8 and retained by the State agency for State-level costs or made available by the State agency directly to eligible recipient agencies that are not emergency feeding organizations as defined in § 251.3(e). The State agency will not be required to match any portion of the Federal grant passed through for administrative costs incurred by emergency feeding organizations or directly expended by the State agency for such costs in accordance with § 251.8(e)(4) of this part.

(b) *Exceptions.* In accordance with the provisions of 48 U.S.C. 1469a, American Samoa, Guam, the Virgin Islands and the Northern Mariana Islands shall be exempt from the matching requirements of paragraph (a) of this section if their respective matching requirements are under \$200,000.

(c) *Applicable contributions.* States shall meet the requirements of paragraph (a) of this section through cash or in-kind contributions from sources other than Federal funds which are prohibited by law from being used to meet a Federally mandated State matching requirement. Such contributions shall meet the requirements set forth in 7 CFR 3016.24. In accordance with part 3016 or 3019, as applicable, the matching requirement shall not be met by contributions for costs supported by another Federal grant, except as provided by Federal statute. Allowable contributions are only those contributions for costs which would otherwise be allowable as State or local-level administrative costs.

(1) *Cash.* An allowable cash contribution is any cash outlay of the State agency for a specifically identifiable allowable State- or local-level administrative cost, including the outlay of money contributed to the State agency by other public agencies and institutions, and private organizations and individuals. Examples of cash contributions include, but are not limited to, expenditures for office supplies, storage space, transportation, loading facilities and equipment, employees' salaries, and other goods and services specifically identifiable as State- or local-level administrative costs for which there has been a cash outlay by the State agency.

(2) *In-kind.* (i) Allowable in-kind contributions are any contributions, which are non-cash outlays, of real property and non-expendable personal property and the value of goods and services specifically identifiable with allowable State administrative costs or, when contributed by the State agency to an eligible recipient agency, allowable local-level administrative costs. Examples of in-kind contributions include, but are not limited to, the donation of office supplies, storage space, vehicles to transport the commodities, loading

facilities and equipment such as pallets and forklifts, and other non-cash goods or services specifically identifiable with allowable State-level administrative costs or, when contributed by the State agency to an eligible recipient agency, allowable local-level administrative costs. In-kind contributions shall be valued in accordance with part 3016 or 3019, as applicable.

(ii) In order for a third-party in-kind contribution to qualify as a State-level administrative cost for purposes of meeting the match, all of the following criteria shall be met:

(A) In its administration of food assistance programs, the State has performed this type of function over a sustained period of time in the past;

(B) The function was not previously performed by the State on behalf of eligible recipient agencies; and

(C) The State would normally perform the function as part of its responsibility in administering TEFAP or related food assistance programs if it were not provided as an in-kind contribution.

(d) *Assessment fees.* States shall not assess any fees for the distribution of donated foods to eligible recipient agencies.

(e) *Reporting requirements.* State agencies shall identify their matching contribution on the FNS-667, Report of TEFAP Administrative Costs, in accordance with §251.10(d).

(f) *Failure to match.* If, during the course of the fiscal year, the quarterly FNS-667 indicates that the State is or will be unable to meet the matching requirements in whole or in part, the Department shall suspend or disallow the unmatched portion of Federal funds subject to the provisions of paragraph (a) of this section. If, upon submission of the final FNS-667 for the fiscal year, the Department determines that the State has not met the requirements of paragraph (a) of this section in whole or in part, the unmatched portion of Federal funds subject to the requirements of paragraph (a) of this section shall be subject to disallowance by FNS.

[52 FR 17934, May 13, 1987, as amended at 59 FR 16975, Apr. 11, 1994; 64 FR 72906, Dec. 29, 1999]

**§ 251.10 Miscellaneous provisions.**

(a) *Records*—(1) *Commodities*. State agencies, subdistributing agencies (as defined in § 250.3 of this chapter), and eligible recipient agencies must maintain records to document the receipt, disposal, and inventory of commodities received under this part that they, in turn, distribute to eligible recipient agencies. Such records must be maintained in accordance with the requirements set forth in § 250.16 of this chapter. Eligible recipient agencies must sign a receipt for program commodities which they receive under this part for distribution to households or for use in preparing meals, and records of all such receipts must be maintained.

(2) *Administrative funds*. In addition to maintaining financial records in accordance with 7 CFR part 3016, State agencies must maintain records to document the amount of funds received under this part and paid to eligible recipient agencies for allowable administrative costs incurred by such eligible recipient agencies. State agencies must also ensure that eligible recipient agencies maintain such records.

(3) *Household information*. Each distribution site must collect and maintain on record for each household receiving TEFAP commodities for home consumption, the name of the household member receiving commodities, the address of the household (to the extent practicable), the number of persons in the household, and the basis for determining that the household is eligible to receive commodities for home consumption.

(4) *Record retention*. All records required by this section must be retained for a period of 3 years from the close of the Federal Fiscal Year to which they pertain, or longer if related to an audit or investigation in progress. State agencies may take physical possession of such records on behalf of their eligible recipient agencies. However, such records must be reasonably accessible at all times for use during management evaluation reviews, audits or investigations.

(b) *Commodities not income*. In accordance with section 206 of Pub. L. 98-8, as amended, and notwithstanding any other provision of law, commodities distributed for home consumption and

meals prepared from commodities distributed under this part shall not be considered income or resources for any purposes under any Federal, State, or local law.

(c) *Nondiscrimination*. There shall be no discrimination in the distribution of foods for home consumption or availability of meals prepared from commodities donated under this part because of race, color, national origin, sex, age, or handicap.

(d) *Reports*—(1) *Submission of Form FNS-667*. Designated State agencies must identify funds obligated and disbursed to cover the costs associated with the program at the State and local level. State and local costs must be identified separately. The data must be identified on Form FNS-667, Report of Administrative Costs (TEFAP) and submitted to the appropriate FNS Regional Office on a quarterly basis. The quarterly report must be submitted no later than 30 calendar days after the end of the quarter to which it pertains. The final report must be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.

(2) *Reports of excessive inventory*. Each State agency must complete and submit to the FNS Regional Office reports to ensure that excessive inventories of donated foods are not maintained, in accordance with the requirements of § 250.17(a) of this chapter.

(e) *State monitoring system*. (1) Each State agency must monitor the operation of the program to ensure that it is being administered in accordance with Federal and State requirements. State agencies may not delegate this responsibility.

(2) Unless specific exceptions are approved in writing by FNS, the State agency monitoring system must include:

(i) An annual review of at least 25 percent of all eligible recipient agencies which have signed an agreement with the State agency pursuant to § 251.2(c), provided that each such agency must be reviewed no less frequently than once every four years; and

(ii) An annual review of one-tenth or 20, whichever is fewer, of all eligible recipient agencies which receive TEFAP commodities and/or administrative

funds pursuant to an agreement with another eligible recipient agency. Reviews must be conducted, to the maximum extent feasible, simultaneously with actual distribution of commodities and/or meal service, and eligibility determinations, if applicable. State agencies must develop a system for selecting eligible recipient agencies for review that ensures deficiencies in program administration are detected and resolved in an effective and efficient manner.

(3) Each review must encompass, as applicable, eligibility determinations, food ordering procedures, storage and warehousing practices, inventory controls, approval of distribution sites, reporting and recordkeeping requirements, and civil rights.

(4) Upon concurrence by FNS, reviews of eligible recipient agencies which have been conducted by FNS Regional Office personnel may be incorporated into the minimum coverage required by paragraph (e)(2) of this section.

(5) If deficiencies are disclosed through the review of an eligible recipient agency, the State agency must submit a report of the review findings to the eligible recipient agency and ensure that corrective action is taken to eliminate the deficiencies identified.

(f) *Limitation on unrelated activities.* (1) Activities unrelated to the distribution of TEFAP foods or meal service may be conducted at distribution sites as long as:

(i) The person(s) conducting the activity makes clear that the activity is not part of TEFAP and is not endorsed by the Department (impermissible activities include information not related to TEFAP placed in or printed on bags, boxes, or other containers in which commodities are distributed). Recipes or information about commodities, dates of future distributions, hours of operations, or other Federal, State, or local government programs or services for the needy may be distributed without a clarification that the information is not endorsed by the Department;

(ii) The person(s) conducting the activity makes clear that cooperation is not a condition of the receipt of TEFAP commodities for home con-

sumption or prepared meals containing TEFAP commodities (cooperation includes contributing money, signing petitions, or conversing with the person(s)); and

(iii) The activity is not conducted in a manner that disrupts the distribution of TEFAP commodities or meal service.

(2) Eligible recipient agencies and distribution sites shall ensure that activities unrelated to the distribution of TEFAP foods or meal service are conducted in a manner consistent with paragraph (f)(1) of this section.

(3) *Termination for violation.* Except as provided in paragraph (f)(4) of this section, State agencies shall immediately terminate from further participation in TEFAP operations any eligible recipient agency that distributes or permits distribution of materials in a manner inconsistent with the provisions of paragraph (f)(1) of this section.

(4) *Termination exception.* The State agency may withhold termination of an eligible recipient agency's or distribution site's TEFAP participation if the State agency cannot find another eligible recipient agency to operate the distribution in the area served by the violating organization. In such circumstances, the State agency shall monitor the violating organization to ensure that no further violations occur.

(g) *Use of volunteer workers and non-USDA commodities.* In the operation of the Emergency Food Assistance Program, State agencies and eligible recipient agencies shall, to the maximum extent practicable, use volunteer workers and foods which have been donated by charitable and other types of organizations.

(h) *Maintenance of effort.* The State may not reduce the expenditure of its own funds to provide commodities or services to organizations receiving funds or services under the Emergency Food Assistance Act of 1983 below the level of such expenditure existing in the fiscal year when the State first began administering TEFAP, or Fiscal Year 1988, which is the fiscal year in which the maintenance-of-effort requirement became effective, whichever is later.

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(i) *Data collection related to eligible recipient agencies.* (1) Each State agency must collect data related to eligible recipient agencies that have an agreement with the State agency to participate in the program for each of Federal fiscal years 2006 through 2009, including those eligible recipient agencies that participated only for part of the fiscal year. Such data shall include:

(i) The name of each eligible recipient agency;

(ii) The city in which each participating eligible recipient agency was headquartered and the name of the state;

(iii) The amount of funds provided to the participating organization, i.e., the sum of the amount of federal administrative funds plus the value of the commodities purchased under Section 214 of the Emergency Food Assistance Act of 1983 provided to each participating eligible recipient agency; and

(iv) The type of participating organization, e.g., government agency, educational institution, non-profit organization/secular, non-profit organization/faith-based, and "other."

(2) On or before August 31, 2007, and each subsequent year through 2010, State agencies must report to FNS data as specified in paragraph (i)(1) of this section for the prior Federal fiscal year. State agencies must submit this data in a format designated by FNS.

(Approved by the Office of Management and Budget under control number 0584-0313)

[51 FR 12823, Apr. 16, 1986. Redesignated and amended at 51 FR 17934, May 13, 1987; 53 FR 15357, Apr. 29, 1988; 59 FR 16975, Apr. 11, 1994; 62 FR 53731, Oct. 16, 1997; 64 FR 72907, Dec. 29, 1999; 72 FR 24184, May 2, 2007]

## PART 252—NATIONAL COM-MODITY PROCESSING PRO-GRAM

Sec.

252.1 Purpose and scope.

252.2 Definitions.

252.3 Administration.

252.4 Application to participate and agreement.

252.5 Recipient agency responsibilities.

252.6 Miscellaneous provisions.

252.7 OMB control number.

AUTHORITY: Sec. 416, Agricultural Act of 1949 (7 U.S.C. 1431).

SOURCE: 51 FR 23518, June 30, 1986, unless otherwise noted.

### § 252.1 Purpose and scope.

(a) *Purpose.* This part provides a program whereby the Food and Nutrition Service (FNS) and private processors of food may enter into agreements under which the processor will process and distribute designated donated food to eligible recipient agencies. The intent of the program is to encourage private industry, acting in cooperation with the States and FNS, to develop new markets in which donated food may be utilized. It is expected that the processors will use their marketing abilities to encourage eligible recipient agencies to participate in the program. Additionally, recipient agencies will benefit by being able to purchase processed end products at a substantially reduced price.

(b) *Scope.* The terms and conditions set forth in this part are those under which processors may enter into agreements with FNS for the processing of commodities designated by the Secretary of Agriculture and the minimum requirements which NCP processors must meet. Also prescribed are distributing agency and recipient agency responsibilities.

(c) *Eligible recipient agencies.* Recipient agencies shall be eligible to participate in the NCP Program to the extent of their eligibility to receive the food involved in the NCP Program, pursuant to § 250.8 and part 251.

### § 252.2 Definitions.

The terms used in this part that are defined in §§ 250.3 and 251.3 shall have the meanings ascribed to them therein, except as set forth in this section.

*Agreement value of the donated commodity* means the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

*Distributing agencies* means State, Federal or private agencies which enter into agreements with the Department for the distribution of donated food to eligible recipient agencies and recipients; and FNS when it accepts title to commodities from the Commodity