

# Rules and Regulations

Federal Register

Vol. 74, No. 183

Wednesday, September 23, 2009

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 249

RIN 0584-AD92

#### Senior Farmers' Market Nutrition Program Regulations, Nondiscretionary Provisions of Public Law 110-246, the Food, Conservation, and Energy Act of 2008

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

**ACTION:** Final rule.

**SUMMARY:** This final rule incorporates into the Senior Farmers' Market Nutrition Program regulations, statutory provisions set forth in Section 4231 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, also known as the Farm Bill of 2008). The three provisions include adding honey as an eligible food for purchase with Senior Farmers' Market Nutrition Program (SFMNP) benefits, prohibiting the value of SFMNP benefits from consideration as income or resources when determining eligibility for other programs under any Federal, State or local law, and prohibiting the collection of State or local tax on a purchase of food with a benefit distributed under the SFMNP.

**DATES:** *Effective Date:* October 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Debra Whitford, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302; (703) 305-2746; e-mail [Debbie.Whitford@fns.usda.gov](mailto:Debbie.Whitford@fns.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Public Law 110-246, the Food, Conservation, and Energy Act of 2008 (also known as the Farm Bill,

hereinafter referred to as "the Act"), includes three nondiscretionary provisions regarding the SFMNP. The three provisions add honey as an eligible food; prohibit the value of SFMNP benefits from consideration as income when determining eligibility for other programs under any Federal, State or local law; and prohibit the collection of State or local tax on a purchase of food with SFMNP benefits. This final rule implements these nondiscretionary SFMNP provisions verbatim as reflected in Section 4231 of the Act. No discretion has been exercised by the Department in the implementation of these provisions.

##### 1. Honey as an Eligible Food

Section 4231 of the Act amends Section 4402(b)(1) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007) to add honey as an eligible food for purchase with SFMNP benefits. This provision of the law was effective October 1, 2008.

Previously, State agencies were only permitted to authorize fresh fruits, vegetables and herbs as eligible foods. This provision gives State agencies the flexibility to add honey to their eligible-foods lists for the SFMNP. The SFMNP regulations have been revised to reflect the addition of honey as an eligible SFMNP food.

##### 2. No Aid Reduction

Section 4231 of the Act amends Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007) to include a provision that excludes SFMNP benefits from consideration as income or resources for any purposes under any Federal, State or local law. This provision would exclude SFMNP benefits from the determination of eligibility for other means tested programs, bringing the SFMNP in line with other Department of Agriculture nutrition assistance programs such as the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and the WIC Farmers Market Nutrition Program (FMNP). Section 249.25 of the SFMNP regulations has been amended to include this provision.

##### 3. Prohibition on Collecting Sales Tax

Section 4231 of the Act further amends Section 4402 of the Farm

Security and Rural Investment Act of 2002 (7 U.S.C. 3007) to include a provision that prohibits the collection of State or local tax on the purchase of foods purchased with SFMNP benefits. This provision also brings SFMNP in line with other Department of Agriculture nutrition assistance programs such as SNAP, WIC and FMNP. Section 249.10 of the SFMNP regulations has been amended to include this provision.

#### Notice and Comment

In accordance with the Secretary's Statement of Policy (36 FR 13804), it is found and determined upon good cause that it is unnecessary to engage in the Notice and Comment provisions of 5 U.S.C. 553 normally required before the adoption of final regulations in an FNS-sponsored program. As indicated earlier, the three provisions of Section 4231 of the Act adopted as final rules in the SFMNP in this rulemaking are nondiscretionary. These provisions are being incorporated as regulations in language verbatim from the Act. The nondiscretionary nature of Section 4231 means that notice and comment would serve no useful purpose in the promulgation of these regulations.

#### Executive Order 12866

The Office of Management and Budget designated this rule as not significant under Executive Order 12866 therefore no OMB review is required.

#### Regulatory Flexibility Act

The Food, Nutrition, and Consumer Services has certified that this rule will not have a significant economic impact on a substantial number of small entities. The provisions of this rulemaking are applicable to all State and local agencies, farmers, farmers' markets, roadside stands, and community supported agriculture programs, regardless of their size or of the volume of SFMNP business they conduct.

#### Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget; therefore, a Regulatory Impact Analysis (RIA) is not necessary.

#### Need for Action

The final rule amends the SFMNP regulations to implement three provisions mandated in Public Law

110–234, the Food, Conservation, and Energy Act of 2008 (also known as the Farm Bill of 2008). One provision adds honey as an eligible food for purchase with SFMNP benefits; another provision prohibits the consideration of the value of SFMNP benefits as income or resources when determining eligibility for other programs under any Federal, State or local law; and the third provision prohibits the collection of State or local tax on a purchase of food with SFMNP benefits.

#### *Benefits*

The benefit of these provisions is twofold. It provides State agencies with the flexibility to add honey as an authorized food, and it brings the SFMNP into conformance with other nutrition assistance programs administered by USDA's Food and Nutrition Service (FNS).

#### *Costs*

The provisions of this final rule are not expected to increase significantly the administrative burden to the Department or to State agencies, nor will they affect overall program costs since the SFMNP is funded by an annual appropriation.

#### **Public Law 104–4**

Title II of the UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

#### **Executive Order 12372**

The SFMNP is listed in the Catalog of Federal Domestic Assistance under No. 10.576. For the reasons set forth in the

final rule at 7 CFR part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

#### **Executive Order 12988**

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

In the SFMNP, the administrative procedures are as follows: (1) Local agencies, farmers, farmers' markets, roadside stands, and community supported agriculture programs—State agency hearing procedures issued pursuant to 7 CFR 249.16; (2) Applicants and participants—State agency hearing procedures pursuant to 7 CFR 249.16; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 249.17—administrative appeal in accordance with 7 CFR 249.16, and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

#### **Federalism Summary Impact Statement**

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

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

FNS has reviewed this rule in accordance with FNS Regulation 4300–4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with

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

#### **Paperwork Reduction Act**

This rule does not constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

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

FNS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities to provide for citizen access to government information and services, and for other purposes. State plan amendments regarding the implementation of the provisions contained in this rule, as is the case with the entire State Plan, may be transmitted electronically by the State agency to FNS. Also, State agencies may provide SFMNP information, as well as their financial reports, to FNS electronically.

#### **List of Subjects in 7 CFR Part 249**

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Aging, Nutrition education, Public assistance programs, WIC, Senior citizens.

■ For reasons discussed above, 7 CFR Part 249 is amended as follows:

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

■ 1. The authority citation for part 249 continues to read as follows:

**Authority:** 7 U.S.C. 3007.

■ 2. In Part 249:

■ a. Add the word "honey," after "vegetables," wherever the phrase "fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs" appears; and

■ b. Remove the word “honey,” wherever the phrase “wild, rice, nuts of any kind (even raw), honey, maple syrup,” appears.

#### § 249.4 [Amended]

■ 3. In § 249.4, amend paragraph (a)(14)(vii) and the first sentence in paragraph (a)(18) by adding the word “honey,” after “vegetables,”.

■ 4. In § 249.10, amend paragraph (b)(2)(ii) by removing the period and adding “; nor” at the end of the sentence and add a new paragraph (b)(2)(iii) to read as follows:

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

\* \* \* \* \*

(b)\* \* \*  
(2)\* \* \*

(iii) Collect tax on SFMNP coupon purchases.

\* \* \* \* \*

■ 5. In § 249.25, add a new paragraph (c) to read as follows:

#### § 249.25 Other provisions.

\* \* \* \* \*

(c) *Exclusion of benefits in determining eligibility for other programs.* The value of any benefit provided to any eligible SFMNP recipient shall not be considered to be income or resources for any purposes under any Federal, State or local law.

Dated: September 4, 2009.

**Julia Paradis,**

*Administrator, Food and Nutrition Service.*  
[FR Doc. E9-22861 Filed 9-22-09; 8:45 am]

BILLING CODE 3410-30-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. APHIS-2008-0124]

### Tuberculosis in Cattle and Bison; State and Zone Designations; New Mexico

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the bovine tuberculosis regulations by establishing two separate zones with different tuberculosis risk classifications for the State of New Mexico. Prior to the interim rule, the entire State of New Mexico had been classified as modified accredited

advanced; however, all its affected herds were located in Curry and Roosevelt Counties, NM, along the State’s eastern border. The interim rule was necessary to relieve restrictions on the interstate movement of cattle and bison from areas of New Mexico outside those two counties.

**DATES:** Effective on September 23, 2009, we are adopting as a final rule the interim rule published at 74 FR 12055–12058 on March 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Dr. C. William Hench, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Veterinary Services, APHIS, 2150 Centre Ave, Bldg B, MSC 3E20, Ft. Collins, CO 80526; (970) 494-7378.

#### SUPPLEMENTARY INFORMATION:

##### Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by the bacterium *Mycobacterium bovis*. Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. While any body tissue can be affected, lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis*, the disease has been reported in several other species of both domestic and nondomestic animals, as well as in humans.

At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment in the United States of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock.

In carrying out the national eradication program, the Animal and Plant Health Inspection Service (APHIS) issues and enforces regulations. The regulations require the testing of cattle and bison for tuberculosis, define the Federal tuberculosis status levels for States or zones (accredited-free, modified accredited advanced, modified accredited, accreditation preparatory, and nonaccredited), provide the criteria for attaining and maintaining those status levels, and contain testing and movement requirements for cattle and bison leaving States or zones of a particular status level. These regulations are contained in 9 CFR part 77 (referred to below as the regulations) and in the Bovine Tuberculosis Eradication Uniform Methods and Rules, 1999, which is incorporated by reference into the regulations.

According to the regulations, if bovine tuberculosis is detected in a portion of a State, the State may request split-State status via partitioning into specific geographic regions or zones with differential status designations. With regard to cattle and bison, State animal health officials in New Mexico demonstrated to APHIS that New Mexico, excluding Curry and Roosevelt Counties, meets the criteria for accredited-free status set forth in the definition of *accredited-free State or zone* in § 77.5 of the regulations.

Therefore, we amended the regulations in an interim rule<sup>1</sup> effective and published in the **Federal Register** on March 23, 2009 (74 FR 12055–12058, Docket No. APHIS-2008-0124), by removing New Mexico from the list of modified accredited States in § 77.9(a), adding an area consisting of Curry and Roosevelt Counties, NM, to the list of modified accredited advanced zones in § 77.9(b), and adding the remainder of the State to the list of accredited-free zones in § 77.7(b).

Comments on the interim rule were required to be received on or before May 22, 2009. We did not receive any comments by that date. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

We note that the indefinite delay<sup>2</sup> in compliance with certain identification and certification requirements in § 77.10 of the regulations will continue to apply with respect to Curry and Roosevelt Counties, NM, which continue to hold modified accredited advanced status. The specific provisions of § 77.10 for which we delayed the compliance date were as follows:

- The identification of sexually intact heifers moving to approved feedlots and steers and spayed heifers moving to any destination (§ 77.10(b));
- The identification requirements for sexually intact heifers moving to feedlots that are not approved feedlots (§ 77.10(d)); and
- Because identification is required for certification, the certification requirements for sexually intact heifers moving to unapproved feedlots (§ 77.10(d)).

This action also affirms the information contained in the interim

<sup>1</sup> To view the interim rule, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0124>.

<sup>2</sup> The delay was put into place in an interim rule published in the **Federal Register** on September 11, 2008 (73 FR 52775–52777, Docket No. APHIS-2008-0068). The interim rule may be viewed on the Internet at <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0068>.