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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 247

[FNS–2009–0015]

RIN 0584–AD93

#### Commodity Supplemental Food Program (CSFP): Amendment Removing Priority Given to Women, Infants, and Children Before the Elderly in Program Participation

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations for the Commodity Supplemental Food Program (CSFP) by removing the priority given to women, infants, and children before the elderly in program participation, in accordance with the amendment made by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). As a result of this amendment, local agencies are no longer required to prioritize benefit issuance based on population group. All CSFP applicants may be treated equally when caseload slots become available, provided all eligibility requirements are met.

**DATES:** *Effective Date:* This rule will become effective on March 8, 2010, without further notice.

**FOR FURTHER INFORMATION CONTACT:** Michelle Waters, Program Analyst, at Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 500, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or by telephone at (703) 305–2662.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Food and Nutrition (FNS) is amending CSFP regulations at 7 CFR

part 247 to incorporate the requirements of the Food, Conservation, and Energy Act of 2008, Public Law 110–246 (the 2008 Farm Bill). Before the 2008 Farm Bill, the Agriculture and Consumer Protection Act of 1973, 7 U.S.C. 612c note, required that low-income elderly persons could only be served by CSFP if funds were available after all women, infants, and children were first served. Section 4221 of the 2008 Farm Bill eliminated the priority status given to women, infants, and children effective October 1, 2008. Following enactment of the 2008 Farm Bill, on July 16, 2008, FNS issued a policy memorandum implementing Section 4221, which became effective on October 1, 2008. As a result of the memorandum, FNS has not required local agencies to prioritize women, infant, and children applicants over elderly applicants for participation in CSFP since the effective date.

The proportion of elderly individuals participating in CSFP has increased significantly in a relatively short amount of time. In fiscal year (FY) 1998, about two-thirds, or 66 percent, of all CSFP participants were elderly. Elderly participation increased to 93 percent by FY 2008. During the same time period, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) participation increased by over 1.3 million. The change in the CSFP participant population is due primarily to the prevalence of the WIC program. Because of greater accessibility of health care and nutrition education where it is available, WIC is more appropriate for women, infants, and children who are categorically eligible.

The 2008 Farm Bill provision recognizes the participation trend and the fact that most women, infants, and children who are eligible to participate in CSFP could alternatively participate in WIC, which provides nutrition services to eligible pregnant, postpartum and breastfeeding women, infants, and children up to the age of five, while low-income elderly do not enjoy a choice between the two programs. WIC operates in all areas that CSFP serves and provides food, as well as nutrition education and health referrals. Furthermore, WIC has the capability to serve all CSFP participants who are eligible for WIC.

## II. Discussion of the Final Rule Provisions

### A. Applicants Exceed Caseload Levels, 7 CFR Part 247.11

In this final rule, we remove the requirement in 7 CFR 247.11(a) that local agencies identify the population group of each CSFP applicant on its waiting list. This rule provides that CSFP local agencies have the discretion to continue to collect this information, if needed for food package planning purposes. In 7 CFR 247.11(b), we remove the requirement that local agencies provide benefits to eligible individuals on the CSFP waiting list in order of priority by specified population group. The 2008 Farm Bill removed the priority given to women, infants, and children, thus eliminating the need for this regulatory provision. In the revised 7 CFR 247.11(b), a local agency must certify eligible individuals consistent with civil rights requirements at 7 CFR 247.37. Furthermore, we specify in the revised 7 CFR 247.11(b) that local agencies may certify eligible individuals from the waiting list based on the date of their application, on a first-come, first-served basis.

### B. Certification Period, 7 CFR Part 247.16

In 7 CFR 247.16(a)(2)(iii), we remove the requirement that State agencies may only allow local agencies to extend the certification period for elderly persons without a formal review only if no eligible women, infants, or children are waiting to be served. However, the local agency must continue to verify the elderly person's address and continued interest in receiving CSFP benefits, and the local agency must have sufficient reason to believe the person still meets income eligibility standards. This change brings CSFP regulations into compliance with Section 4221 of the 2008 Farm Bill.

### C. Caseload Assignment, 7 CFR Part 247.21

In the introductory text to 7 CFR 247.21(a)(2), for additional caseload requests from State agencies, we eliminate the FNS priority consideration given to requests to increase service to women, infants, and children over requests to increase service to the elderly. In 7 CFR 247.21(a)(2)(iii)(A), we remove previous year program participation of women, infants, and

children, and the elderly in a State as a factor of consideration for determining the amount of additional caseload States should receive. Likewise, in 7 CFR 247.21(a)(3) we eliminate program participant categories as a factor of consideration in the FNS assignment of caseload to State agencies which have approved State Plans and begin to participate in CSFP. These three changes bring CSFP regulations into compliance with Section 4221 of the 2008 Farm Bill.

### III. Procedural Matters

#### A. Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

#### B. Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this action will not have a significant impact on a substantial number of small entities. Although State and local agencies administering CSFP will be affected by this rulemaking, the economic effect will not be significant.

#### C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of Sections 202 and 205 of the UMRA.

#### D. Executive Order 12372

CSFP is listed in the Catalog of Federal Domestic Assistance under

10.565. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29114, June 24, 1983), the donation of foods in such programs is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### E. 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.

#### F. Executive Order 12988

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

#### G. Civil Rights Impact Analysis (CRIA)

The Office of Civil Rights (OCR) has assessed civil rights implications and impacts of eligibility criteria, methods of administration, and other requirements associated with this rule, including strategies to eliminate, alleviate, or mitigate adverse and any disproportionate civil rights impacts identified in the CRIA. Based on a thorough review of this regulation, OCR has determined:

- This change will bring CSFP regulations into compliance with the 2008 Farm Bill;
- It is important to closely monitor changes in CSFP participation rates;
- CSFP policy has directed local agencies to refer women, infants, and children to WIC or other appropriate programs; and
- OCR will incorporate implementation of this rule change into Civil Rights Compliance Reviews to assess longitudinal trends.

#### H. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain any new information collection requirements that are subject to review and approval by OMB.

#### I. E-Government Act Compliance

FNS is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### J. Good Cause Determination

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3). Section 4221 of the 2008 Farm Bill amends Section 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note, 87 Stat. 249) by eliminating the requirement that all eligible women, infants, and children are to be served before elderly persons in CSFP. The 2008 Farm Bill language is clear and mandatory, leaving no room for discretion. CSFP regulations are therefore inconsistent with Section 5 of the Agriculture and Consumer Protection Act of 1973. Thus, the Department has determined in accordance with 5 U.S.C. 553(b) that Notice of Proposed Rulemaking and Opportunity for Public Comments is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(d), finds that good cause exists for making this action effective without prior public comment.

#### List of Subjects in 7 CFR Part 247

Education, Food assistance programs, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Investigations, Maternal and child health, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities, Women.

■ Accordingly, 7 CFR part 247 is amended as follows:

#### PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

1. The authority citation for 7 CFR part 247 is revised to read as follows:

**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); sec. 4201, Pub. L. 107-171, 116 Stat. 134 (7 U.S.C. 7901 note); sec. 4221, Pub. L. 110-246, 122 Stat. 1886 (7 U.S.C. 612c note).

2. Section 247.11 is amended by revising the second sentence in paragraph (a) and by revising paragraph (b) to read as follows:

**§ 247.11 Applicants exceed caseload levels.**

(a) \* \* \* In establishing the waiting list, the local agency must include the date of application and information necessary to allow the local agency to contact the applicant when caseload space becomes available. \* \* \*

(b) *What are the requirements for serving individuals on the waiting list once caseload slots become available?* The local agency must certify eligible individuals from the waiting list consistent with civil rights requirements at § 247.37. For example, a local agency may certify eligible individuals from the waiting list based on the date the application was received on a first-come, first-served basis.

**§ 247.16 [Amended]**

■ 3. Section 247.16 is amended in paragraph (a)(2)(i) by adding the word “and” after the semi-colon; paragraph (a)(2)(ii) by removing “; and”, and adding a period at the end of the sentence; and by removing paragraph (a)(2)(iii).

■ 4. In § 247.21:

- a. Revise the introductory text of paragraph (a)(2);
- b. Remove paragraph (a)(2)(iii)(A);
- c. Redesignate paragraphs (a)(2)(iii)(B) through (a)(2)(iii)(D) as paragraphs (a)(2)(iii)(A) through (a)(2)(iii)(C), respectively; and
- d. Remove the second sentence of paragraph (a)(3).

The revision reads as follows:

**§ 247.21 Caseload assignment.**

(a) \* \* \*

(2) *Additional caseload.* Each participating State agency may request additional caseload to increase program participation. Eligibility for and assignment of additional caseload are determined in the following manner:

\* \* \* \* \*

Dated: January 27, 2010.

**Julia Paradis,**

*Administrator, Food, Nutrition, and Consumer Services.*

[FR Doc. 2010-2594 Filed 2-4-10; 8:45 am]

**BILLING CODE 3410-30-P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 925 and 944**

**[Doc. No. AMS-FV-06-0184; FV03-925-1 FIR]**

**Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Change in Regulatory Periods**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule revising the regulatory period when minimum grade, size, quality, and maturity requirements apply to southeastern California grapes under Marketing Order No. 925 (order), and to imported grapes under the table grape import regulation, from April 20 through August 15 of each year to April 10 through July 10 of each year. The order regulates the handling of grapes grown in a designated area of southeastern California and is administered locally by the California Desert Grape Administrative Committee (Committee). The change to the regulatory period beginning date is needed to help ensure that imported table grapes marketed in competition with domestic grapes are subject to the grade, size, quality, and maturity requirements of the order. Section 8e of the Agricultural Marketing Agreement Act of 1937 (Act) provides authority for such change. The change to the regulatory period ending date is needed to realign the regulatory period with current shipping trends for grapes in the order's production area. This rule also continues in effect the action that clarified the maturity (soluble solids) requirements for southeastern California and imported Flame Seedless variety grapes.

**DATES:** *Effective Date:* February 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland,

Oregon 97204; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: [Barry.Broadbent@ams.usda.gov](mailto:Barry.Broadbent@ams.usda.gov); or Kurt Kimmel, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@ams.usda.gov](mailto:Jay.Guerber@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 925 (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.”

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. The table grape import regulation is specified in § 944.503 (7 CFR part 944.503).

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which