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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 247

RIN 0584-AE31

Commodity Supplemental Food Program (CSFP): Implementation of the Agricultural Act of 2014

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

ACTION: Final Rule.

SUMMARY: This final rule amends the regulations for the Commodity Supplemental Food Program (CSFP) to phase out the eligibility of women, infants, and children, in accordance with the amendments made by the Agricultural Act of 2014 (the 2014 Farm Bill). Under amendments made to the Agriculture and Consumer Protection Act of 1973 by Section 4102 of the 2014 Farm Bill, women, infants, and children who apply to participate in CSFP on February 7, 2014, or later cannot be certified to participate in the program. Under these amendments the population served by CSFP will only be low-income elderly persons at least 60 years of age. However, Section 4102 also included amendments for a phase-out provision, which requires State and local agencies to continue providing assistance to all women, infants, and children who were certified and receiving CSFP benefits as of February 6, 2014. Those individuals can continue to receive assistance until they are no longer eligible under the program rules in effect on February 6, 2014.

DATES: Effective Date: This rule will become effective on [insert date 30 days after date of publication in the Federal Register], without further notice.

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SUPPLEMENTARY INFORMATION:

I. Background

The Food and Nutrition Service (FNS) is amending CSFP regulations at 7 CFR part 247 to incorporate the requirements of the Agricultural Act of 2014 (P.L. 113-79, the 2014 Farm Bill). Prior to enactment of the 2014 Farm Bill on February 7, 2014, the Agriculture and Consumer Protection Act of 1973, 7 U.S.C. 612c note, provided for the eligibility of women, infants, and children in CSFP.

Amendments made by Section 4102 of the 2014 Farm Bill phase out the participation of women, infants, and children in CSFP and transition it to a low-income, elderly-only program. The participation of elderly persons in CSFP began as a pilot program at limited sites in the early 1980s, following which the Food Security Act of 1985 (P. L. 99-198) provided for the provision of benefits to the elderly at all CSFP sites, provided that all eligible women, infants, and children were already served. The Food, Conservation, and Energy Act of 2008, (P.L. 110-246), eliminated the priority status given to women, infants, and children effective October 1, 2008.

FNS issued a policy memorandum on March 10, 2014, implementing the amendments made by Section 4102; the memorandum is available on the FNS website at

http://www.fns.usda.gov/sites/default/files/CSFP_Farm_Bill_Implementation_Memo.pdf.

As a result of the change, no women, infants, or children applicants are eligible to be newly certified to participate in CSFP. However, women, infants, and children who were certified and receiving CSFP benefits as of February 6, 2014, the day before enactment of the 2014 Farm Bill, remain eligible for CSFP benefits until such time as they are no longer eligible to receive assistance under the program rules in effect on that date. As stated in the implementing memorandum, prospective applicants who are no longer eligible for CSFP participation as a result of the 2014 Farm Bill provisions should be referred to other nutrition programs such as the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Assistance Program for Women, Infants and Children (WIC).

The number of women, infants, and children participating in CSFP has declined steadily in recent years. In Fiscal Year (FY) 1998, 34 percent of CSFP participants were women, infants, or children and 66 percent were low-income elderly persons. In FY 2013, only three percent of CSFP participants were women, infants, or children and 97 percent of participants were elderly. At the same time, with WIC serving as an alternative to CSFP for eligible women, infants, and children, and due to greater demand for WIC benefits nationally, WIC participation increased by approximately 1.3 million over that same period.

The 2014 Farm Bill amendments recognize 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, post-partum and breastfeeding women, infants, and children up to the age of five WIC

operates in all areas that CSFP serves and provides nutrition assistance benefits, as well as nutrition education and health referrals.

II. Discussion of the Final Rule

A. Eligibility of Women, Infants, and Children for CSFP

In this final rule, we amend several sections of 7 CFR part 247 to establish that new applications from women, infants, and children are not eligible for certification on or after February 7, 2014. References to women, infants, and children are removed from the regulations, except where they are necessary for the continued provision of benefits to those individuals still eligible for CSFP under the phase-out provision. Conforming amendments are made where necessary to clarify that these remaining regulatory provisions apply only to this limited group of women, infants, and children.

Amendments to 7 CFR part 247 are summarized as follows:

1. Section 247.2 describes the purpose and scope of CSFP. This section is revised to state that the population served by CSFP is elderly, low-income individuals 60 years of age or older, but includes a limited group of women, infants, and children who were certified for CSFP and receiving benefits as of February 6, 2014.

2. Sections 247.5 and 247.19 describe State and local agency responsibilities and dual participation, respectively. These sections are amended to clarify that coordination between CSFP State and local agencies and State WIC agencies on the detection and prevention of dual participation is required only when women, infants, or children remain enrolled in CSFP in the State.

3. Section 247.6 describes the requirements for State Plans. This section is amended to remove the recommendation that State agencies collaborate with WIC agencies in the

development of State Plans. This recommendation is no longer relevant because women, infants, and children will not be served by States who join CSFP in the future. Existing State Plans are considered permanent. These plans will already reflect needed collaboration and will continue to apply in States with women, infant, or children participants until they are phased out of the program. This section is additionally amended to clarify that several requirements specific to women, infant, and children participants only pertain where applicable.

4. Section 247.9 describes the eligibility requirements for participation in CSFP. The eligibility requirements for women, infants, and children are retained in this rulemaking as they will continue to be necessary for the administration of the program until the Section 4102 phase-out is complete. However, language is added to this section to clarify that the eligibility requirements for women, infants, and children apply only to individuals who were certified and receiving CSFP benefits as of February 6, 2014.

5. Section 247.16 describes certification periods. This section is amended to clarify that the certification period for women, infants, and children applies only to the recertification of individuals who remain eligible under the Section 4102 phase-out provision.

6. Sections 247.8, 247.12, 247.14, 247.18, 247.20, 247.21, 247.30 and 247.33, are amended to make conforming revisions to wording specific to women, infants and children.

B. Corrections and Updated Reporting Requirements

A correction is made to the regulatory citation in § 247.9(e)(3) and outdated reporting requirements are updated in § 247.29.

III. Procedural Matters

Executive Order 12866 and 13563

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

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget, therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

This final 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under Section 202 of the UMRA, the Department 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 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 the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most 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 and 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

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.

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 13121. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications.

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.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. While this rule does impact the eligibility of women, a protected group, for CSFP, the rule's intention is not to exclude, limit, or otherwise disadvantage any group or class of person in one or more of the prohibited bases from receiving federal nutrition assistance. This change is mandated by statute.

After a careful review of the rule's intent and provisions, the Department has determined that this final rule will not otherwise limit or reduce the ability of participants to receive the benefits of USDA Foods in food distribution programs on the basis of an individual's or group's race, color, national origin, sex, age, political beliefs, religious creed, or disability. The Department found no factors that would negatively affect any group of individuals.

Executive Order 13175

The Programs affected by the provisions in this final rule are all State or Tribally administered federally funded programs. FNS' national and regional offices have formal and informal discussions with State agency officials and representatives on an ongoing basis regarding program issues relating to CSFP. Additionally, FNS meets periodically throughout the year with the National CSFP Association to discuss issues relating to the program. The changes in this final rulemaking are required by federal law. This rulemaking was the subject of formal consultation in May 2014. Reports from the consultation session will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all additional Tribal government requests for consultation concerning this final rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve regulations in Indian country.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency 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 new information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995. Existing information collection requirements associated with this rule have been approved by OMB under OMB #0584-0025, 0584-0067, and 0584-0293.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying 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.

Final Action

This action is being finalized without prior notice or public comment under the authority of 5 U.S.C. 553(a)(2). Section 4102 of the 2014 Farm Bill amends Section 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) to phase out the eligibility of women, infants, and children in CSFP. Existing CSFP regulations are therefore inconsistent with Section 5 of the Agriculture and Consumer Protection Act of 1973. The 2014 Farm Bill language is clear and mandatory, leaving no room for discretion.

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); sec. 4221, Pub. L. 113-79, 7 U.S.C. 612c note).

2. In § 247.2, revise paragraph (a) to read as follows:

§ 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 elderly persons. CSFP also helps State and local agencies meet the nutritional needs of women, infants, and children who were certified and receiving CSFP benefits as of February 6, 2014. 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 canned fruits and vegetables, canned meat, poultry and other protein items, and grain products such as pasta, as well as other foods. Participants are offered the opportunity to receive nutrition education.

* * * * *

3. In § 247.5, revise paragraph (b)(8) to read as follows:

§ 247.5 State and local agency responsibilities.

* * * * *

(b) * * *

(8) Developing a plan for the detection and prevention of dual participation, in coordination with CSFP local agencies and with the WIC State agency, unless no women, infants, and children remain enrolled in CSFP in the State;

* * * * *

4. In § 247.6:

- a. Revise paragraph (a);
- b. In paragraph (c)(2) add “if applicable,” after “children,”;
- c. In paragraph (c)(4), remove “women, infants, children, and elderly”;
- d. In paragraph (c)(5), remove “women, infants, children, and”;
- e. In paragraph (c)(8), add “, if applicable,” after the word “including” and remove the comma after “collaboration with the State WIC agency”;
- f. In paragraph (d), remove the phrase “women, infants, children, and the elderly” and add in its place “participants”.

The revision reads as follows:

§ 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 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.

* * * * *

5. In § 247.8:

- a. In paragraph (a) introductory text, revise the first sentence;
- b. In paragraph (a)(4), remove “or pregnancy, as applicable”;
- b. In paragraph (b), revise the second and third sentences.

The revisions read as follows:

§ 247.8 Individuals applying to participate in CSFP.

(a) * * * To apply for CSFP benefits, the applicant or caretaker of the applicant must provide the following information on the application: * * *

(b) * * * After informing the applicant or caretaker of the applicant of his or her rights and responsibilities, in accordance with § 247.12, the local agency must ensure that the applicant or caretaker signs the application form beneath the following pre-printed statement. The statement must be read by, or to, the applicant or caretaker before signing. * * *

6. In § 247.9:

- a. Revise paragraph (a);
- b. Add a new paragraph (b)(4);

- c. In paragraph (d), revise the last sentence;
- d. In paragraph (e)(3), remove the regulatory citation “§ 246.7(d)(2)(iv)(C)” and add in its place “§ 246.7(d)(2)(iv)(D)”.

The revisions and addition read as follows:

§ 247.9 Eligibility requirements.

(a) Who is eligible for CSFP? To be eligible for CSFP, individuals must be at least 60 years of age and meet the income eligibility requirements outlined in paragraph (c) of this section; or the individual must be a woman, infant, or child who was certified and receiving CSFP benefits as of February 6, 2014, and whose enrollment in CSFP has continued without interruption.

(b) * * *

(4) The eligibility requirements in this section apply only to women, infants, and children who were certified and receiving CSFP benefits as of February 6, 2014, and whose enrollment has continued without interruption. Effective February 7, 2014, no new applications from women, infants, or children may be approved.

* * * * *

(d) * * * However, for the recertification of women, infants, and children, the State agency must implement the adjusted guidelines at the same time that the WIC agency implements the adjusted guidelines in WIC.

* * * * *

- 7. In § 247.12, revise paragraph (a)(2) to read as follows:

§ 247.12 Rights and responsibilities.

(a) * * *

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

* * * * *

8. In § 247.14(a), revise the paragraph heading to read as follows:

§ 247.14 Other public assistance programs.

(a) What information on other public assistance programs must the local agency provide to women, infants, and children applying for recertification? * * *

* * * * *

9. In § 247.16:

- a. In paragraph (a)(1), add a new final sentence;
- b. Revise paragraph (b);
- c. In paragraph (c), revise the second sentence.

The revisions and addition read as follows:

§ 247.16 Certification period.

(a) * * *

(1) * * * This paragraph only applies to the recertification of women, infants, and children who were certified and receiving CSFP benefits as of February 6, 2014, and whose enrollment in CSFP has continued without interruption.

* * * * *

(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.

(c) * * * The State agency must ensure that local agencies serve a CSFP participant who moves from another area to an area served by CSFP and whose certification period has not expired. * * *

* * * * *

10. In § 247.18, revise paragraph (c) to read as follows:

§ 247.18 Nutrition education.

* * * * *

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

* * * * *

11. In § 247.19:

- a. Revise paragraph (a);
- b. In paragraph (b), revise the fourth sentence.

The revisions read as follows:

§ 247.19 Dual participation.

(a) What must State and local agencies do to prevent and detect dual participation?

Unless no women, infants, or children remain enrolled in the program, 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 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 caretaker of the applicant signs an application form which includes a statement advising the applicant that he or she may not receive CSFP benefits at more than one CSFP site at the same time.

(b) * * * In accordance with § 247.20(b), if the dual participation resulted from the participant 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. * * *

12. In § 247.20, remove “or the parents” in each place it occurs.

13. In § 247.21:

- a. Revise the paragraph heading and first sentence of paragraph (a)(3);
- b. Remove the phrase “women, infants, children, and the elderly,” from the last sentence of paragraph (c) and add in its place the word “participants”.

The revision reads as follows:

§ 247.21 Caseload assignment.

(a) * * *

(3) New caseload. Each State agency requesting to begin participation in the program, and with an approved State Plan, may receive caseload to serve the elderly, as requested in the State Plan. * * *

* * * * *

14. In § 247.29:

- a. Revise the paragraph heading and first sentence of (b)(1);
- b. Remove paragraph (d).

The revision reads as follows:

§ 247.29 Reports and recordkeeping.

* * * * *

(b) * * *

(1) SF-425, Federal Financial Report. The State agency must submit the SF-425, Federal Financial Report, to report the financial status of the program at the close of the fiscal year. * * *

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15. In § 247.30(c), remove “, or the parent” where it occurs and remove the comma before “fraudulently” in the first sentence.

16. In § 247.33, revise the sentence following the heading of paragraph (c) to read as follows:

§ 247.33 Fair hearings.

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(c) * * * An individual or an individual's 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.

* * * * *

Audrey Rowe
Administrator
Food and Nutrition Service

July 2, 2014
Date

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