

III. Background and Discussion of the Proposed Rule

This rule proposes to rewrite 7 CFR part 247 in "plain language." The proposed plain language format includes a question-and-answer structure under each section, and removal of the legalistic style that is currently reflected in the regulations. We have increased the number of sections to ensure that each section addresses only one specific program area. Nevertheless, some current sections have been consolidated or deleted. This rule also proposes to amend provisions of this part to accomplish several objectives, including:

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

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

Definitions, Section 247.1

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

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 The numbered circulars are all obsolete, and have been replaced by other circulars or incorporated into Federal regulations, as cited in regulatory text.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

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

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

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

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

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

The Purpose and Scope of CSFP, Section 247.2

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