

State agency describe the system of storage and distribution of commodities in the State Plan. Because of the importance of the proper storage of commodities and their safe and timely distribution to local agencies, we believe it is important for the State agency to describe the means by which it will meet these responsibilities. We also propose to require the State agency to include a description of the standards it will use in determining if the pursuit of a claim against a participant is cost-effective, in accordance with the proposed § 247.30(d).

In paragraph (d) of this proposed section, entitled *When must the State agency submit amendments to the State Plan?*, we propose to include the requirement that the State agency submit amendments to FNS for approval if it desires to amend the State Plan. As at present, the State agency may submit amendments at any time during the fiscal year. FNS may also require that the State Plan be amended to reflect changes in Federal law or policy. This change is necessary since the State Plan would be made permanent under this rule. We also propose to include the requirement that, 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 that conveys the request for additional caseload by November 5. The State agency must also describe any plans for serving women, infants, children, and the elderly at new sites in this submission. FNS currently allows State agencies until early November to submit additional caseload requests, as it allows the State agency sufficient time to review complete participation figures for the previous fiscal year, which are not available until October. The State agency cannot meaningfully request additional caseload until it knows what its base caseload will be, and its base caseload depends on its actual participation during the past fiscal year. FNS action on the State agency's request for additional caseload is part of the caseload assignment process, as described under the proposed § 247.21.

Selection of Local Agencies, Section 247.7

Currently, under section 247.6, a local agency must submit a written application to the State agency that includes sufficient information to allow the State agency to determine its eligibility. We propose to retain this requirement in paragraph (a) of this proposed § 247.7, entitled *How does a local agency apply to participate in CSFP?* We propose to clarify that the

information submitted must describe how the local agency will operate the program. We also propose to require that, for nonprofit agencies, the application must include the tax-exempt status of the agency.

Under current regulations, a nonprofit agency must have tax-exempt status under 26 U.S.C. 501 of the IRC. However, under 26 U.S.C. 501(c)(3) of the IRC, as amended since the current regulatory requirement was established, organizations are automatically tax-exempt if they are organized or operated exclusively for religious purposes. Thus, we propose to clarify that such nonprofit agencies already have the tax-exempt status required for participation in CSFP. Additionally, under other USDA food distribution programs, nonprofit organizations that have applied for tax-exempt status with the IRS, and are moving toward compliance with the requirements for recognition of tax-exempt status, are eligible to participate. We propose to include nonprofit agencies with this provisional tax-exempt status as eligible local agencies in CSFP as well, and to also propose conditions used in other programs to determine the continued participation of these organizations in CSFP. These conditions are described below, under paragraph (c).

We propose to state, in paragraph (a) of this proposed section, that, to be eligible to participate in CSFP, a nonprofit agency must have tax-exempt status under 26 U.S.C. 501 of the IRC, or must have applied for tax-exempt status with the IRS, and be moving towards such status. We propose to indicate that organizations organized or operated exclusively for religious purposes are automatically tax-exempt under 26 U.S.C. 501(c)(3) of the IRC. We also propose to indicate that organizations required to obtain tax-exempt status must provide documentation from the IRS that they have obtained such status, or have applied for it.

In paragraph (b) of this proposed section, entitled *On what basis does the State agency make a decision on the local agency's application?*, we propose to include the basic guidelines that the State agency must consider in making a decision on approval or denial of the local agency's application to participate in CSFP. These guidelines do not constitute an additional requirement. Their inclusion in these regulations is simply meant to assist State agencies—particularly new State agencies—in choosing which local agencies to participate. The criteria are:

(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.

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

In paragraph (c) of this proposed § 247.7, we propose to include the actions that the State agency must take if an agency that has been approved for CSFP participation is subsequently denied tax-exempt status by the IRS, or does not obtain this status within a certain period of time. We propose that, if a participating agency's application for tax-exempt status is subsequently denied by the IRS, the agency must immediately notify the State agency, which then must immediately terminate their participation in CSFP. If, after 180 days of the organization's approval for participation, the agency has not obtained, and submitted, documentation of its tax-exempt status, the State agency must terminate the agency's participation in CSFP until such time as recognition of tax-exempt status is obtained. However, the State agency may grant an extension of 90 days to an agency if the agency can demonstrate that its inability to obtain tax-exempt status within the 180-day period is due to circumstances beyond its control.

In paragraph (d) of this proposed section, we propose to indicate how much time the State agency has to act on the local agency's application to participate in CSFP. We propose to extend the period of time for deciding on approval or denial of the local agency's application from 30 days to 60 days. With a longer period of time for review, the State agency would be better able to make a determination of the local agency's eligibility to participate, and to consider other applicable criteria as described in paragraph (b) of this proposed section. We retain the requirement that a notification of denial of the application be in writing and that the State agency provide for an appeal of the denial, in accordance with the requirements of the proposed § 247.35.

We propose to remove current requirements that the State agency return the application to the local agency if a denial is based on lack of funds, and justify the need for approval of a local agency in an area already served by the WIC Program. We do not believe that the return of the application serves any useful purpose. Although both WIC and CSFP overlap somewhat