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AUTHORITY: 7 U.S.C. 3007.

SOURCE: 71 FR 74630, Dec. 12, 2006, unless otherwise noted.

Subpart A—General

§ 249.1 General purpose and scope.

(a) This part announces regulations under which the Secretary of Agriculture shall carry out the Senior Farmers' Market Nutrition Program (SFMNP). The purposes of the SFMNP are to:

(1) Provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables, honey, and herbs from farmers' markets, roadside stands, and community supported agriculture (CSA) programs to low-income seniors;

(2) Increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and CSAs; and

(3) Develop or aid in the development of new and additional farmers' markets, roadside stands, and CSAs.

(b) These goals will be accomplished through payment of cash grants to approved State agencies. The SFMNP shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011, et seq.), and to any other Federal or State food or nutrition assistance program under which foods are distributed to needy families in lieu of food stamps.

[71 FR 74630, Dec. 12, 2006, as amended at 74 FR 48374, Sept. 23, 2009]

§ 249.2 Definitions.

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

Administrative costs means those direct and indirect costs (as defined in—249.12(a)(1)(ii)), exclusive of food costs, which State agencies determine to be necessary to support SFMNP operations. Administrative costs include, but are not limited to, the costs associated with administration and start-up; the provision of nutrition education; SFMNP coupon issuance; participant education covering coupon redemption procedures; eligibility determinations; outreach services; printing SFMNP coupons, processing redeemed coupons, and training farmers, market managers, and/or farmers who operate CSA programs on the food delivery system; monitoring and reviewing program operations; required reporting and recordkeeping; determining which local sites will be utilized; recruiting and authorizing farmers, farmers' markets, roadside stands, and/or CSA programs to participate in the SFMNP; preparing contracts for farmers, farmers' markets, roadside stands, and/or CSA programs; developing a data processing system for redemption and reconciliation of coupons; designing program training and informational materials;

and coordinating SFMNP implementation responsibilities between designated administering agencies.

Bulk purchase means a program model in which bulk quantities of certain produce items, such as apples or sweet potatoes, are purchased directly from authorized farmers by the State agency, and are then equitably divided among and distributed directly to eligible SFMNP participants, either at a central distribution point (such as a local senior center) or through some type of home delivery network.

Community supported agriculture (CSA) program means a program under which a farmer or group of farmers grows food for a group of shareholders (or subscribers) who pledge to buy a portion of the farmer's crop(s) for that season. State agencies may purchase shares or subscribe to a community supported agriculture program on behalf of individual SFMNP participants.

Compliance buy means a covert, on-site investigation in which a SFMNP representative poses as a SFMNP participant or authorized representative and attempts to transact one or more SFMNP coupons, or, in the case of CSA programs, attempts to obtain eligible foods purchased with SFMNP funds at a distribution site.

Coupon means a check or other negotiable financial instrument by which benefits under the program are transferred to program participants.

Days means calendar days.

Department means the U.S. Department of Agriculture.

Distribution site means the location where packages of eligible foods are assembled for and/or distributed to SFMNP participants who are shareholders in CSA programs.

Eligible foods means fresh, nutritious, unprepared, locally grown fruits, vegetables, honey, and herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. Dried fruits or vegetables, such as prunes (dried plums), raisins (dried grapes), sun-dried tomatoes, or dried chili peppers are not considered eligible foods. Potted fruit or vegetable plants, potted or dried herbs, wild rice, nuts of any kind (even raw), maple syrup, cider, seeds, eggs,

meat, cheese and seafood are also not eligible foods for purposes of the SFMNP.

Farmer means an individual authorized to sell eligible foods at participating farmers' markets and/or roadside stands, and through CSAs. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the SFMNP. A participating State agency has the option to authorize individual farmers or farmers' markets, roadside stands, and/or CSA programs.

Farmers' market means an association of local farmers who assemble at a defined location for the purpose of selling their produce directly to consumers.

Federally recognized Indian tribal government means the same as the definition of that term found at §3016.3 of this chapter, i.e., the governing body or a governmental agency of any Indian tribe, band, organization, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by the Secretary through the Bureau of Indian Affairs.

Fiscal year means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

FNS means the Food and Nutrition Service of the U.S. Department of Agriculture.

Food costs means the cost of eligible foods purchased at authorized farmers' markets, roadside stands, and/or through bulk purchases or CSA programs.

Household means a group of related or nonrelated individuals who are living together as one economic unit.

Local agency means any nonprofit entity or local government agency that certifies eligible participants, issues SFMNP coupons, arranges for distribution of eligible foods through CSA programs, and/or provides nutrition education or information on operational aspects of the Program to SFMNP participants.

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Locally grown means grown within State borders. If the State agency chooses, *locally grown* may also mean grown in areas of States adjacent to that State, as long as such areas are part of the United States.

Nonprofit agency means a private agency that is exempt from the payment of Federal income tax under the Internal Revenue Code of 1986, as amended (26 U.S.C. 1, et seq.).

Nutrition education means:

- (1) Individual or group sessions; and
- (2) The provision of relevant materials, in keeping with the individual's personal, cultural, and socioeconomic preferences and the Dietary Guidelines for Americans, that:
 - (i) Emphasize relationships between nutrition and health; and
 - (ii) Encourage participants to build healthful eating patterns, and to take action for good health.

OIG means FNS' Office of Inspector General.

Participant means a person or household who meets the eligibility requirements of the SFMNP and to whom coupons or equivalent benefits have been issued.

Program or SFMNP means the Senior Farmers' Market Nutrition Program authorized by Section 4402 of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 3007.

Proxy means an individual authorized by an eligible senior to act on the senior's behalf, including application for certification, receipt of SFMNP coupons or other benefits, use of SFMNP coupons at authorized outlets, and/or acceptance of SFMNP foods provided through a CSA program, as long as the SFMNP benefits are ultimately received by the eligible senior. The terms *proxy* and *authorized representative* may be used interchangeably for purposes of this program.

Roadside stand means a location at which an individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a farmers' market or through a CSA program. The term *roadside stand* may be used interchangeably with the term *farmstand* as defined in §248.2 of this chapter.

Senior means an individual 60 years of age or older, or as defined in §249.6(a)(1).

SFPD means the Supplemental Food Programs Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

Shareholder means a SFMNP participant for whom a full or partial share in a community supported agriculture program has been purchased by the State agency, and who receives SFMNP benefits in the form of actual eligible foods rather than coupons that must be exchanged for eligible foods at farmers' markets and/or roadside stands.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and as applicable, American Samoa or the Commonwealth of the Northern Marianas.

State agency means the agriculture, aging, or health department, or any other agency approved by the Chief Executive Officer of the State that has administrative responsibility for the SFMNP; an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by FNS of the Interior and that has an ongoing relationship with such tribes, bands, or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service, a division of FNS of Health and Human Services.

State Plan means a plan of SFMNP operation and administration that describes the manner in which the State agency intends to implement, operate and administer all aspects of the SFMNP within its jurisdiction in accordance with §249.4.

WIC means the Special Supplemental Nutrition Program for Women, Infants and Children authorized by Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

WIC Farmers' Market Nutrition Program (FMNP) means the nutrition assistance program authorized by Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)), to provide resources to women, infants, and children who are nutritionally at risk, in

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the form of fresh, nutritious, unprepared foods (such as fruits and vegetables) from farmers' markets; to expand the awareness and use of farmers' markets; and to increase sales at such markets.

[71 FR 74630, Dec. 12, 2006, as amended at 74 FR 48374, Sept. 23, 2009]

§ 249.3 Administration.

(a) *Delegation to FNS.* Within FNS, FNS shall act on behalf of the Department in the administration of the SFMNP. Within FNS, SFPD and the FNS Regional Offices are responsible for SFMNP administration. FNS shall provide assistance to State agencies and evaluate all levels of SFMNP operations to ensure that the goals of the SFMNP are achieved in the most effective and efficient manner possible.

(b) *Delegation to State agency.* The State agency is responsible for the effective and efficient administration of the SFMNP in accordance with the requirements of this Part; the requirements of FNS' regulations governing nondiscrimination (parts 15, 15a and 15b of this title), administration of grants (part 3016 of this title), nonprocurement debarment/suspension (part 3017 of this title), drug-free workplace (part 3021 of this title), and lobbying (part 3018 of this title); FNS guidelines; FNS Instructions issued under the FNS Directives Management System; and Office of Management and Budget Circular A-130 (For availability of OMB Circulars referenced in this section, see 5 CFR 1310.3). The State agency shall provide guidance to co-operating State and local agencies on all aspects of SFMNP operations. State agencies may operate the SFMNP locally through nonprofit organizations or local government entities and must ensure coordination among the appropriate agencies and organizations.

(c) *Agreement and State Plan.* Each State agency desiring to administer the SFMNP shall annually submit a State Plan of Operations and enter into a written agreement with FNS for administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this Part. If the State agency administers both the SFMNP and the WIC Farmers' Market Nutrition Program (FMNP),

one consolidated State Plan may be submitted for both programs, in accordance with guidance provided by FNS.

(d) *Coordination with other agencies.* The Chief Executive Officer of the State shall ensure coordination between the designated administering State agency and any other State, local, or nonprofit agencies or entities involved in administering any aspect of the SFMNP by ensuring that the agencies enter into a written agreement or letter/memorandum of understanding. The written agreement or letter/memorandum of understanding must delineate the responsibilities of each agency, describe any compensation for services, and must be signed by the designated representative of each agency. This agreement must be submitted each year along with the State Plan.

(e) *State staffing standards.* Each State agency shall ensure that sufficient staff is available to administer the SFMNP efficiently and effectively. This shall include, but not be limited to, sufficient staff to identify and certify eligible SFMNP participants, provide program information and nutrition education to participants, and oversee coupon, market, and/or CSA program management, fiscal reporting, monitoring, and training. The State agency shall provide in its State Plan an outline of administrative staff and job descriptions for staff whose salaries will be paid from program funds.

Subpart B—State Agency Eligibility

§ 249.4 State Plan.

(a) *Requirements.* By November 15 of each year, each applying or participating State agency shall submit to FNS for approval a State Plan for the following year as a prerequisite to receiving funds under this section. If the State agency administers both the SFMNP and the FMNP, one consolidated State Plan may be submitted for both programs, in accordance with guidance provided by FNS. The State Plan must be signed by the State-designated official responsible for ensuring that the Program is operated in accordance with the State Plan. FNS will provide written approval or denial of a completed State Plan or amendment