

| Geographic coverage                                                      | Allowance rate (percent) |
|--------------------------------------------------------------------------|--------------------------|
| County of Kauai .....                                                    | 25                       |
| County of Maui and County of Kalawao .....                               | 25                       |
| Territory of Guam and Commonwealth of the Northern Mariana Islands ..... | 25                       |
| Commonwealth of Puerto Rico .....                                        | 13                       |
| U.S. Virgin Islands .....                                                | 25                       |

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BILLING CODE 6325-39-P

**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****7 CFR Part 248**

[FDMS 2007-0008]

RIN 0584-AD74

**WIC Farmers' Market Nutrition Program (FMNP): Nondiscretionary Provisions of Public Law 108-265, the Child Nutrition and WIC Reauthorization Act of 2004**

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule amends the WIC Farmers' Market Nutrition Program (FMNP) regulations to codify three FMNP nondiscretionary provisions mandated in the Child Nutrition and WIC Reauthorization Act of 2004. The three nondiscretionary provisions include the option to authorize roadside stands, a reduction in the required amount of State matching funds, and an increase in the maximum Federal benefit level. These changes are intended to increase State agency flexibility in managing the Program. The first two provisions became effective on October 1, 2004, while the increased maximum Federal FMNP benefit level was effective as of June 30, 2004.

The provisions set forth in this rulemaking are nondiscretionary, i.e., the Department has not exercised any authority to interpret the statutory provisions beyond the language that is specifically provided in the legislation. However, the Department believes that at least one of the provisions in this rulemaking may generate additional questions or comments concerning its implementation. Therefore, the rule is being issued as an interim final rule, to afford the public the opportunity to comment on the possible implications of the provisions contained herein.

**DATES:** This rule will become effective on December 3, 2008.

**Comment Date:** To be considered, comments on this interim rule must be postmarked on or before January 2, 2009.

**ADDRESSES:** The Food and Nutrition Service (FNS) invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link under "How to Use This Site". Go to "More Search Options" for alternative search methods, including searching by agency, viewing documents with an open comment period, or searching by document type. To make comments on this interim final rule, enter "WIC Farmers' Market Nutrition Program (FMNP): Nondiscretionary Provisions of Public Law 108-265, the Child Nutrition and WIC Reauthorization Act of 2004" or "FDMS 2007-0008" under "Search documents"; click "go" and then use the features available on the left side of the results page to narrow your results. Under the document listing, click on "Send a comment or submission."

- **Mail:** Send comments to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305-2746.

Comments submitted in response to this interim rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via <http://www.regulations.gov>. Information regarding the interim rule will be available on the FNS Web site at <http://www.fns.usda.gov/wic>.

**FOR FURTHER INFORMATION CONTACT:** Debra R. Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, USDA/FNS 3101 Park Center Drive,

Room 529, Alexandria, VA 22302 or at (703) 305-2746 during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

**SUPPLEMENTARY INFORMATION:****I. Procedural Matters***A. Executive Order 12866*

This interim final rule has been determined to be significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

*B. Regulatory Impact Analysis*

A Regulatory Impact Analysis (RIA) was developed for this interim final rule. It follows this regulation as an Appendix. The conclusions of this analysis are summarized below.

**Need for Action.** The interim final rule amends the FMNP regulations to implement three nondiscretionary provisions mandated in Public Law 108-265, the Child Nutrition and WIC Reauthorization Act of 2004. The three provisions, which give State agencies the option to authorize roadside stands, reduce the required amount of State matching funds, and increase the maximum Federal benefit level. These provisions became effective in fiscal year 2005.

**Benefits.** The benefit of this interim final rule is to provide State agencies with added flexibility in operating the FMNP.

**Costs.** The provisions in this interim final rule are not expected to increase significantly the administrative burden to the Department or to State agencies, nor will they affect overall program costs since the FMNP is funded by an annual appropriation.

*C. Regulatory Flexibility Act*

This interim final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Nancy Montanez Johner, Under Secretary, Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities. In addition, this interim final rule provides State and local agencies with greater flexibility in operating the

FMNP and reduces the amount of required State matching funds. Recipients and applicants are not expected to be adversely impacted by the changes set forth in this rulemaking.

#### *D. 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 to 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 generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local or 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.

#### *E. Executive Order 12372*

The WIC Farmers’ Market Nutrition Program (FMNP) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.572. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V, and related Notice (48 FR 29115, June 24, 1983), this Program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### *F. 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.

#### *1. Prior Consultation With State Officials*

Prior to drafting, State agencies provided input to Congress and FNS on recommended changes to the FMNP legislation and regulations. Meetings were held to provide State and local agencies with the opportunity to make recommendations on changes to the FMNP. The changes in the legislation, as reflected in this interim final rule, represent input from State and local agencies. Further, because the FMNP is a State-administered, Federally funded program, FNS regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program and policy issues.

#### *2. Nature of Concerns and the Need To Issue This Rule*

This interim final rule implements nondiscretionary provisions in Public Law 108–265 that provide FMNP State and local agencies greater flexibility in authorizing roadside stands, increase the maximum Federal benefit level and reduce the amount of State matching funds that State agencies are required to provide. These changes represent recommendations made by FMNP State agencies.

#### *3. Extent to Which We Meet Those Concerns*

This interim final rule provides FMNP State and local agencies with greater flexibility in how they operate the program and reduces the amount of State matching funds needed to operate the program.

#### *G. Executive Order 12988*

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have 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 unless so specified in the **DATES** section of the final rule preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Farmers’ Market Nutrition Program, the administrative procedures are as follows: Farmers, farmers’ markets, and roadside stands—State agency hearing procedures issued pursuant to 7 CFR 248.16.

#### *H. Civil Rights Impact Analysis*

FNS has reviewed this interim final rule in accordance with the Departmental 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. After a careful review of the rule’s intent and provisions, and of the characteristics of WIC Program participants who comprise the target population served by the FMNP, FNS has determined that there is no way to soften their effect on any of the protected classes. All data available to FNS indicate that protected individuals have the same opportunity to participate in the FMNP as non-protected individuals. FNS specifically prohibits State and local agencies operating the FMNP from discrimination based on race, color, national origin, gender, age, and disability (see FMNP nondiscrimination policy at 7 CFR 248.7(a)). Discrimination in any aspect of program administration is prohibited by title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 (Pub. L. 94–135), and WIC Program regulations and instructions.

#### *I. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they are 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 information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995. The regulations for the FMNP at 7 CFR part 248 contain information collections that have been approved by OMB under #0584–0447.

#### *J. E-Government Act Compliance*

FNS 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. State Plan amendments regarding the implementation of the provisions contained in this rule, as is the case with the entire State Plan, may be transmitted electronically by the State

agency to FNS. Also, State agencies may provide FMNP program information, as well as their financial reports, to FNS electronically.

#### Good Cause Determination

As discussed above, the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265, contained provisions related to the FMNP that must be implemented exactly as set forth in the legislation, with no discretion exercised by the Department regarding such implementation. Further, State agencies have already been informed that these nondiscretionary provisions must be implemented prior to the issuance of amendments to the program regulations. Therefore, Under Secretary Nancy Montanez Johner has determined, in accordance with 5 U.S.C. 553(b), that prior notice and comment would be unnecessary, and that good cause exists for making this rule effective without first publishing a proposed rule.

## II. Background

### A. What are the new legislative changes to the FMNP?

On June 30, 2004, President George W. Bush signed Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004, hereinafter referred to as “the Act”, which included three nondiscretionary provisions regarding the FMNP. The three provisions include an option for State agencies to authorize roadside stands, a change in the required State matching funds to operate the program, and an increase in the maximum Federal benefit level. This interim final rule implements these nondiscretionary FMNP provisions verbatim as reflected in section 203(h) of the Act. No discretion has been exercised by the Department in the implementation of these provisions.

#### 1. Roadside Stands

Section 203(h)(1) of the Act amended Section 17(m)(1) of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1786(m)(1)) by providing State agencies the option to authorize roadside stands to accept FMNP coupons from recipients. This provision of the law was effective October 1, 2004.

Previously, State agencies could authorize farmstands or roadside stands only in situations where recipient access to farmers’ markets was an issue and only with prior FNS approval. In fiscal year (FY) 2003, just over 1,000 roadside stands nationwide were authorized to accept FMNP coupons. In FY 2006, more than 2,100 roadside

stands were authorized to accept FMNP coupons.

Accordingly, the regulatory definition of “farmer” has been revised to include farmers with roadside stands. Therefore, if not otherwise specified, references in the FMNP regulations to the term “farmer” will also refer to farmers with roadside stands.

The regulatory definition of “farmers’ market” has been revised to delete the existing reference to FNS approval of farmstands or roadside stands when there are participant access issues. With this revision, the definition of “farmers’ market” will be consistent in the FMNP and the Senior Farmers’ Market Nutrition Program. In addition, the definition of “Farmstand” in § 248.2 has been removed and the definition of “Roadside stand” has been added; the definition of “Roadside stand” remains the same as the prior definition of “Farmstand.” Further, throughout 7 CFR part 248 the term “Farmstand” has been changed to “Roadside stand”. References throughout 7 CFR part 248 to farmers and farmers’ markets have been revised to add the words “roadside stand,” such as in § 248.4, § 248.10, and § 248.17.

#### 2. State Matching Funds

Section 203(h)(2) of the Act amended Section 17(m)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(3)) by reducing the amount of matching funds necessary to operate the FMNP. Previously, State agencies were required to match 30 percent of the total cost of the program, i.e., both administrative and food costs. The new provision requires State agencies to match 30 percent of administrative costs, which constitute up to 17 percent of total program costs, or up to 19 percent of total program costs for State agencies that receive additional FMNP administrative funds for market development or technical assistance. Indian State agencies are still permitted to provide a lower match, but not less than 10 percent matching of the administrative cost of the program. This provision of the law was also effective October 1, 2004.

Following is an example of the amount of the State match requirement under the new and old requirements. The maximum administrative cost rate of 17 percent contained in 7 CFR 248.12 (a)(1)(i) is used for purposes of this example.

#### NEW MATCH REQUIREMENT

|                           |           |
|---------------------------|-----------|
| Federal Grant .....       | \$500,000 |
| Administrative Rate ..... | × 17%     |

#### NEW MATCH REQUIREMENT— Continued

|                                  |           |
|----------------------------------|-----------|
| Total Fed. Admin. Amount .....   | \$85,000  |
| Percent of Federal Cost .....    | + 70%     |
| Total Estimate Admin. Cost ..... | \$121,429 |
| State Admin. Percent .....       | × 30%     |
| State Admin. Match .....         | \$36,429  |

#### OLD MATCH REQUIREMENT

|                             |           |
|-----------------------------|-----------|
| Federal Grant .....         | \$500,000 |
| Percent Federal Cost .....  | + 70%     |
| Total Estimated Cost .....  | \$714,286 |
| State Percent of Cost ..... | × 30%     |
| State Match .....           | \$214,286 |

Under FMNP regulations, there are a variety of sources that State agencies can use to meet the State matching requirement. These sources continue to include State, local or private funds, program income and in-kind contributions.

The net effect of only requiring a State match on the total administrative costs of the program has resulted in a lower burden on State agencies to come up with matching funds on the total cost of the program. However, State agencies are encouraged to continue to seek State, local and/or private financial support to help supplement the food funds previously required as part of the match requirement. As noted below, this provision in combination with the increase in the maximum Federal benefit level could put more demand on potentially fewer food funds available to operate the program. Therefore, continued financial support in the State becomes increasingly important.

Accordingly, the definition of “Matching requirement” has been revised to reflect that State agencies must match 30 percent of the administrative cost of the program. In addition, in § 248.14(a)(1)(i) and (a)(1)(iii) has been revised to reflect this new requirement. Further, a newly designated § 248.14(f) has been revised to reflect the matching requirement for administrative costs.

#### 3. Federal Benefit Level

Section 203(h)(3) of the Act amended Section 17(m)(5)(C)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(5)(C)(ii)) to increase the maximum Federal FMNP benefit level from \$20 to \$30 annually. The legislative provision to increase the maximum Federal FMNP benefit level was effective June 30, 2004. The minimum benefit level of \$10 is unchanged.

State agencies now have the option to increase their FMNP benefit levels to \$30, but are not required to do so. Therefore, a State agency must determine, within its grant level, whether it intends to implement this option. Accordingly, § 248.8(b) has been revised to change the maximum Federal benefit level to \$30.

*B. What other changes are made by the final rule?*

The definition of "Total FMNP costs" has been removed since it is no longer needed. This term was used when State agencies were required to provide State matching funds that equaled 30 percent of the total cost of the FMNP. In addition, § 248.7, Nondiscrimination, has been amended to change the Department's address for the submission of discrimination complaints.

Currently, in § 248.17(c)(1)(i) of the FMNP regulations, each State agency must conduct onsite monitoring visits of a minimum of 10 percent of its authorized farmers and a minimum of 10 percent of its authorized farmers' markets, including those authorized farmers and outlets identified by the State agency as being at the highest risk for program violations and noncompliance. This interim final rule, in §§ 248.10(e) and 248.17(c)(1)(i), clarifies the Department's current policy that State agencies are also required to monitor roadside stands, including a minimum of 10 percent of its authorized roadside stands annually. In addition, as currently required in FMNP regulations for newly authorized farmers and farmers' markets, a newly authorized roadside stand's first year of operation in the FMNP is considered a high-risk indicator. Other high-risk indicators for roadside stands may be defined by the State agency.

State agencies are encouraged to coordinate and consolidate monitoring activities when a State agency administers both the FMNP and the Senior Farmers' Market Nutrition Program. A review by one program can be counted by the other program toward the monitoring requirement, provided that appropriate sanction action is taken for all violations found.

**List of Subjects in 7 CFR Part 248**

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

■ For the reasons set forth in the preamble, 7 CFR part 248 is amended as follows:

**PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)**

■ 1. The authority citation for part 248 continues to read as follows:

**Authority:** 42 U.S.C. 1786.

■ 2. In § 248.2:

- a. Revise the first and last sentences of the definition of "Farmer";
- b. Revise the definition of "Farmers' market";
- c. Remove the definition of "Farmstand";
- d. Revise the first and second sentences of the definition of "Matching requirement";
- e. Revise the definition of "Program or FMNP";
- f. Add the definition for "Roadside stand" in alphabetical order; and
- g. Remove the definition of "Total FMNP costs".

The revisions and addition read as follows:

**§ 248.2 Definitions.**

\* \* \* \* \*

*Farmer* means an individual authorized to sell produce at participating farmers' markets and/or roadside stands. \* \* \* A participating State agency has the option to authorize individual farmers, farmers' markets and/or roadside stands.

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

\* \* \* \* \*

*Matching requirement* means State, local or private funds, or program income, equal to not less than 30 percent of the administrative FMNP cost for the fiscal year. The Secretary may negotiate with an Indian State agency a lower percentage of matching funds, but not less than 10 percent of the administrative cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. \* \* \*

\* \* \* \* \*

*Program or FMNP* means the WIC Farmers' Market Nutrition Program authorized by section 17(m) of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1786(m)), as amended. The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is authorized by section 17 of the CNA, as amended. Within section 17, section 17(m) authorizes the FMNP.

\* \* \* \* \*

*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.

\* \* \* \* \*

■ 3. Amend Part 248 by removing the words "farmstand" or "farmstands" wherever they appear and add in their place the words "roadside stand" or "roadside stands".

■ 4. In § 248.4:

- a. Revise paragraph (a)(10)(i);
- b. Remove paragraph (a)(10)(ii);
- c. Redesignate paragraphs (a)(10)(iii) through (a)(10)(ix) as paragraphs (a)(10)(ii) through (a)(10)(viii);
- d. Revise newly redesignated paragraphs (a)(10)(iii) and (a)(10)(iv); and
- e. Revise paragraphs (a)(12) and (a)(13), and the first sentence in paragraph (a)(14).

The revisions read as follows:

**§ 248.4 State Plan.**

(a) \* \* \*

(10) \* \* \*

(i) Criteria for authorizing farmers' markets and/or roadside stands;

\* \* \* \* \*

(iii) Procedures for monitoring farmers, farmers' markets and/or roadside stands;

(iv) Description of system for identifying high risk farmers, farmers' markets and/or roadside stands and procedures for sanctioning farmers, farmers' markets and/or roadside stands:

\* \* \* \* \*

(12) System for ensuring that FMNP coupons are redeemed only by authorized farmers, farmers' markets and/or roadside stands and only for eligible foods.

(13) System for identifying FMNP coupons which are redeemed or submitted for payment outside valid dates or by unauthorized farmers, farmers' markets and/or roadside stands.

(14) A copy of the written agreement to be used between the State agency and authorized farmers, farmers' markets and/or roadside stands. \* \* \*

\* \* \* \* \*

■ 5. In § 248.7, revise the first sentence in paragraph (b) to read as follows:

**§ 248.7 Nondiscrimination.**

\* \* \* \* \*

(b) \* \* \* Persons seeking to file discrimination complaints may file them either with the Secretary of Agriculture, or the Director, USDA, Office of Adjudication and Compliance, Room 326-W, Whitten Building, 14th and Independence Avenue, SW., Washington, DC 20250-9410 (or call (800) 795-3272 (voice) or (202) 720-

6382 (TTY)), or with the office established by the State agency to handle discrimination grievances or complaints. \* \* \*

■ 6. In § 248.8, revise paragraph (b) to read as follows:

**§ 248.8 Level of benefits and eligible foods.**

\* \* \* \* \*

(b) *The value of the Federal benefits received.* The value of the Federal FMNP benefit received by each recipient, or by each family within a household in those States which elect to issue benefits on a household basis under § 248.6(c) may not be less than \$10 per year nor more than \$30 per year.

■ 7. In § 248.10:

■ a. Revise the introductory text of paragraph (a);

■ b. Revise paragraphs (a)(1), (a)(2), (a)(3), (a)(6) and (a)(7);

■ c. Revise the second sentence in the introductory text of paragraph (b);

■ d. Revise paragraph (b)(1) introductory text, paragraph (b)(1)(xii), paragraph (b)(2) introductory text, and paragraphs (b)(3), (b)(4), (b)(5), and (b)(6);

■ e. Revise the introductory text of paragraph (e);

■ f. Revise the first and last sentences in paragraph (e)(2);

■ g. Revise the first and second sentences in paragraph (e)(3);

■ h. Revise paragraph (i)(1); and

■ i. Revise the last sentence in paragraph (k).

The revisions read as follows:

**§ 248.10 Coupon and market management.**

(a) *General.* This section sets forth State agency responsibilities regarding the authorization of farmers, farmers' markets, and roadside stands. The State agency is responsible for the fiscal management of, and accountability for, FMNP-related activities for farmers, farmers' markets and roadside stands. Each State agency may decide whether to authorize farmers individually, farmers' markets, roadside stands, or all of the above. All contracts or agreements entered into by the State agency for the management or operation of farmers, farmers' markets and roadside stands shall conform with the requirements of 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(1) Only farmers, farmers' markets and roadside stands authorized by the State agency may redeem FMNP coupons. Only farmers authorized by the State agency or that have a valid agreement with an authorized farmers' market may redeem coupons.

(2) The State agency shall establish criteria for the authorization of individual farmers, farmers' markets and roadside stands. Any authorized farmer, farmers' market and roadside stand must agree to sell recipients only those foods identified as eligible by the State agency, in exchange for FMNP coupons. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the FMNP, except individuals employed by a farmer otherwise qualified under these regulations, or individuals hired by a nonprofit organization to sell produce at farmers' markets or roadside stands on behalf of local farmers.

(3) The State agency shall ensure that an appropriate number of farmers, farmers' markets and/or roadside stands are authorized for adequate recipient access in the area(s) proposed to be served and for effective management of the farmers, farmers' markets and/or roadside stands by the State agency. The State agency may establish criteria to limit the number of authorized farmers, farmers' markets and/or roadside stands.

\* \* \* \* \*

(6) Authorized farmers, farmers' markets and roadside stands shall comply with the requirements of Title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on non-discrimination (7 CFR parts 15, 15a and 15b), and FNS Instructions as outlined in § 248.7.

(7) The State agency shall ensure that there is no conflict of interest between the State or local agency and any participating farmer, farmers' market and roadside stand.

(b) \* \* \* The agreement shall be signed by a representative who has legal authority to obligate the farmer, farmers' market and/or roadside stand. \* \* \*

(1) The farmer, farmers' market and roadside stand shall:

\* \* \* \* \*

(xii) Notify the State agency if any farmer, farmers' market and/or roadside stand ceases operation prior to the end of the authorization period.

(2) The farmer, farmers' market and roadside stand shall not:

\* \* \* \* \*

(3) Neither the State agency nor the farmer, farmers' market nor a roadside stand has an obligation to renew the agreement. Either the State agency or the farmer, farmers' market or a roadside stand may terminate the agreement for cause after providing advance written notification.

(4) The State agency may deny payment to the farmer, farmers' market or roadside stand for improperly redeemed FMNP coupons and may demand refunds for payments already made on improperly redeemed coupons.

(5) The State agency may disqualify a farmer, farmers' market or roadside stand for FMNP abuse. The farmer, farmers' market and/or roadside stand has the right to appeal a denial of an application to participate, a disqualification, or a FMNP sanction by the State agency. Expiration of a contract or agreement with a farmer, farmers' market or roadside stand, and claims actions under § 248.20, are not appealable.

(6) A farmer, farmers' market or a roadside stand which commits fraud or engages in other illegal activity is liable to prosecution under applicable Federal, State or local laws.

\* \* \* \* \*

(e) *Monitoring and review of farmers, farmers' markets, roadside stands and local agencies.* The State agency shall be responsible for the monitoring of farmers, farmers' markets, roadside stands and local agencies within its jurisdiction. This shall include developing a system for identifying high risk farmers, farmers' markets, and roadside stands and ensuring on-site monitoring, conducting further investigation, and sanctioning of such farmers, farmers' markets, or roadside stands as appropriate.

\* \* \* \* \*

(2) Each State agency shall rank participating farmers, farmers' markets and roadside stands by risk factors, and shall conduct annual, on-site monitoring of at least 10 percent of farmers, 10 percent of farmers' markets and 10 percent of roadside stands which shall include those farmers, farmers' markets and roadside stands identified as being the highest risk. \* \* \* A State agency participating in the FMNP for the first time shall, in lieu of applying the high-risk indicators, randomly select 10 percent of its participating farmers, 10 percent of its participating farmers' markets, and 10 percent of its participating roadside stands for monitoring visits.

(3) The following shall be documented for all on-site farmers, farmers' markets, and roadside stands monitoring visits. At a minimum, documentation must include the names of the farmer, farmers' market or roadside stand and the reviewer; date of review; nature of problem(s) detected or the observation that the farmer, farmers' market or roadside stand appears to be in compliance with FMNP

requirements; a record of interviews with recipients, market managers and/or farmers; and the signature of the reviewer. \* \* \*

\* \* \* \* \*

(i) \* \* \*

(1) A list of names and addresses of authorized farmers, farmers' markets and roadside stands at which FMNP coupons may be redeemed.

\* \* \* \* \*

(k) \* \* \* State agency policies shall ensure that a farmer that is disqualified from the FMNP at one market or roadside stand shall not participate in the FMNP at any other farmers' market or roadside stand in the State's jurisdiction during the disqualification period.

■ 8. In § 248.14, revise paragraphs (a)(1)(i) and (a)(1)(iii) to read as follows:

**§ 248.14 Distribution of funds.**

(a) \* \* \*

(1) \* \* \*

(i) *Match amount.* As a prerequisite to the receipt of Federal funds, a State agency must agree to contribute State, local or private funds, or program income, equal to not less than 30 percent of the total administrative FMNP cost. The Secretary may negotiate a lower percentage of matching funds, but not lower than 10 percent of the administrative cost of the program, in the case of an Indian State agency that demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. The State agency may contribute more than the minimum amount. State, local or private funds for similar programs as defined in § 248.2 may satisfy the State matching requirement.

\* \* \* \* \*

(iii) *Failure to match.* A State agency's failure to meet the State matching requirement will result in the establishment of a claim for the amount of Federal grant funds not matched. The matching requirement will be considered satisfied if State or other non-Federal matching contributions reported on the final closeout report (required by § 248.15(a)) amount to at least 30 percent of the administrative costs. This match amount may be lower for those Indian State agencies that have demonstrated to the Secretary financial hardship as set forth in paragraph (a)(1)(i) of this section.

\* \* \* \* \*

■ 9. In § 248.17:

- a. Revise the third sentence in the introductory text of paragraph (b);
- b. Revise paragraph (b)(2)(iv); and
- c. Revise the first sentence of paragraph (c)(1)(i).

The revisions read as follows:

**§ 248.17 Management evaluations and reviews.**

\* \* \* \* \*

(b) \* \* \* These evaluations shall also include reviews of selected local agencies, and on-site reviews of selected farmers, farmers' markets and roadside stands. \* \* \*

\* \* \* \* \*

(2) \* \* \*

(iv) Upon notification from the State agency that corrective action has been taken, FNS will assess such action, and if necessary, perform a follow-up review to determine if the noted deficiencies have been corrected. FNS will then advise the State agency of whether the actions taken are in compliance with the corrective action plan, and whether the deficiency is resolved or further corrective action is needed. Compliance buys can be required if, during FNS management evaluations by regional offices, a State agency is found to be out of compliance with its responsibility to monitor and review farmers, farmers' markets and roadside stands.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Annual monitoring reviews of participating farmers, farmers' markets and roadside stands, including on-site reviews of a minimum of 10 percent of farmers, 10 percent of farmers' markets, and 10 percent of roadside stands, which includes those farmers, farmers' markets, and roadside stands identified as being the highest risk. \* \* \*

\* \* \* \* \*

■ 10. In § 248.25, revise paragraphs (c) and (g) to read as follows:

**§ 248.25 FMNP information.**

\* \* \* \* \*

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 61 Forsyth Street, SW., Room 8T36, Atlanta, Georgia 30303.

\* \* \* \* \*

(g) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, Washington: U.S. Department of Agriculture, FNS, Western Region, 90 Seventh Street, Suite #10-100, San Francisco, California 94103.

Dated: October 17, 2008.

**Kate Houston,**

*Acting Under Secretary, Food, Nutrition, and Consumer Services.*

**Note:** This appendix will not be published in the Code of Federal Regulations.

**Appendix: Regulatory Impact Analysis**  
*Title*

7 CFR 248: WIC Farmers' Market Nutrition Program: Nondiscretionary Provisions of Public Law 108-265, the Child Nutrition and WIC Reauthorization Act of 2004 Rule

*Action*

a. *Nature:* Interim Final Rule

b. *Need and purpose:* The interim final rule amends the WIC Farmers' Market Nutrition Program (FMNP) regulations to implement three nondiscretionary provisions mandated in Public Law 108-265, the Child Nutrition and Reauthorization Act of 2004. The three provisions, which (1) give State agencies the option to authorize roadside stands, (2) reduce the required amount of State matching funds, and (3) increase the maximum Federal benefit level, are intended to increase State agency flexibility in managing the Program.

c. *Affected parties:* The parties affected by these regulations are the U.S. Department of Agriculture, WIC FMNP State and local agencies, WIC FMNP recipients, and authorized farmers participating in the WIC FMNP.

*Background*

*Overview*

The WIC FMNP was established by Congress in 1992 to provide fresh, unprepared, locally grown fruits and vegetables to participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Women, infants (over 4 months old) and children that have been certified to receive WIC program benefits or who are on a waiting list for WIC certification are eligible to participate in the program. State agencies may serve some or all of the recipient categories. The WIC FMNP also assists farmers by expanding the awareness of, use of, and sales at farmers' markets.

Lists of the fresh fruits, vegetables, and herbs that can be purchased with WIC FMNP coupons are developed by State agencies. Recipients receive coupons to purchase produce from authorized farmers at any authorized farmer's market or roadside stand. Currently, 37 State agencies, 5 Indian Tribal Organizations (ITOs), the District

of Columbia, Guam, and Puerto Rico operate the FMNP.

Between fiscal years (FY) 1998 and 2006, the total number of WIC FMNP

recipients increased by 86 percent. Breastfeeding and postpartum women accounted for the largest average annual growth among all WIC FMNP recipients

over the eight year period. However, children continued to make up the largest number of recipients comprising over 50 percent of all recipients in 2006.

TABLE 1—WIC FMNP RECIPIENTS, 1998–2006

| Fiscal year | Pregnant women | Breastfeeding women | Postpartum women | Infants | Children  | Total recipients |
|-------------|----------------|---------------------|------------------|---------|-----------|------------------|
| 1998 .....  | 258,281        | 76,022              | 81,993           | 109,813 | 819,611   | 1,345,720        |
| 1999 .....  | 309,647        | 87,005              | 124,669          | 128,628 | 882,850   | 1,532,799        |
| 2000 .....  | 339,659        | 147,721             | 134,409          | 144,745 | 1,134,604 | 1,901,138        |
| 2001 .....  | 343,849        | 156,108             | 179,599          | 164,266 | 1,308,135 | 2,151,957        |
| 2002 .....  | 361,914        | 149,382             | 164,181          | 182,640 | 1,304,265 | 2,162,382        |
| 2003 .....  | 393,283        | 176,497             | 202,003          | 212,183 | 1,388,290 | 2,372,256        |
| 2004 .....  | 418,803        | 194,261             | 212,395          | 207,395 | 1,483,870 | 2,516,724        |
| 2005 .....  | 449,118        | 220,196             | 231,477          | 244,143 | 1,541,276 | 2,686,210        |
| 2006 .....  | 433,632        | 186,724             | 207,329          | 386,194 | 1,283,283 | 2,497,162        |

Source: FNS administrative data.

Among State agencies, grant levels can differ widely. In FY 2006, over \$23 million in WIC FMNP grants were issued. Six percent of the State agencies received grants between \$1,000,000 and \$4,000,000 and almost 48 percent received grants less than \$500,000. The minimum grant was in the amount of \$6,337 and the maximum grant was \$3,769,708.

TABLE 2—SUMMARY OF 2006 WIC FMNP STATE GRANT FUNDING (\$)

|                            |           |
|----------------------------|-----------|
| Mean grant amount .....    | 529,109   |
| Median grant amount .....  | 310,342   |
| Minimum grant amount ..... | 6,337     |
| Maximum grant amount ..... | 3,769,708 |

TABLE 2—SUMMARY OF 2006 WIC FMNP STATE GRANT FUNDING (\$)—Continued

|                          |            |
|--------------------------|------------|
| Total grant amount ..... | 23,809,901 |
|--------------------------|------------|

Source: FNS administrative data.

#### WIC FMNP Benefits

The WIC FMNP provides benefits to women, infants, and children who have been certified to participate in WIC or who are on a WIC waiting list. WIC FMNP benefits are in the form of coupons, which recipients redeem for fresh produce and nutrition education. Prior to the Child Nutrition and Reauthorization Act of 2004, State agencies could issue coupons to recipients with a maximum Federal

benefit level of \$20 per year. Typically, all recipients within a State receive the same benefit level. As shown in Table 3 below, over the past ten years, both the aggregate value of issued WIC FMNP coupons and the aggregate value of the redeemed coupons have increased by approximately 238 percent from \$11,330,202 to \$38,244,123 and from \$7,007,902 to \$22,493,077, respectively. During the same period of time, the rate of redemptions remained relatively constant averaging 60 percent. However, despite redemption rates averaging around 60 percent, most State agencies spend over 80 percent of the Federal food dollars received for the WIC FMNP by taking redemption rates into account when issuing coupons to eligible participants.

TABLE 3—WIC FMNP REDEMPTION RATES, 1994–2006

| Fiscal year               | WIC FMNP coupons issued (\$) | WIC FMNP coupons redeemed (\$) | WIC FMNP redemptions/issuances (%) |
|---------------------------|------------------------------|--------------------------------|------------------------------------|
| 1994 .....                | 11,330,202                   | 7,007,902                      | 62                                 |
| 1995 .....                | 14,483,209                   | 8,963,640                      | 62                                 |
| 1996 .....                | 14,712,669                   | 9,086,455                      | 62                                 |
| 1997 .....                | 14,088,940                   | 8,434,526                      | 60                                 |
| 1998 .....                | 21,021,239                   | 12,440,730                     | 59                                 |
| 1999 .....                | 24,439,166                   | 13,931,410                     | 57                                 |
| 2000 .....                | 30,826,175                   | 17,572,939                     | 57                                 |
| 2001 .....                | 36,593,280                   | 20,613,402                     | 56                                 |
| 2002 .....                | 36,193,585                   | 20,809,843                     | 57                                 |
| 2003 .....                | 39,009,229                   | 24,271,575                     | 62                                 |
| 2004 .....                | 43,760,565                   | 26,946,970                     | 62                                 |
| 2005 .....                | 40,295,432                   | 23,444,438                     | 58                                 |
| 2006 .....                | 38,244,123                   | 22,493,077                     | 59                                 |
| Average (1994–2006) ..... | 28,076,755                   | 16,616,6855                    | 59                                 |

Source: FNS administrative data.

Nutrition education is provided to FMNP recipients by the State agency, often through an arrangement with the local WIC agency. Other educators and

program partners may provide nutrition education and/or educational information to FMNP recipients. For example, Cooperative Extension

Programs, local chefs, farmers or farmers' markets associations, and various other non-profit or for-profit organizations may provide nutrition

education to FMNP recipients. These educational arrangements help to encourage FMNP recipients to improve and expand their diets by adding fresh fruits and vegetables, as well as educate them on how to select, store and prepare the fresh fruits and vegetables they buy with their FMNP coupons.

WIC FMNP regulations do not specify the number of nutrition education "contacts" each recipient must receive. Nutrition education requirements in the Program may be satisfied through coordination with other agencies within the State. Nutrition education is typically provided to WIC FMNP recipients through an arrangement with the local WIC agency. State agencies can enter into agreements with the WIC program to provide FMNP nutrition education in conjunction with WIC nutrition education. The WIC FMNP

State/local agency or other educators and program partners may also provide nutrition education and/or educational information to Program recipients. These educational arrangements help to encourage recipients to improve and expand their diets by adding fresh fruits and vegetables, as well as educate them on how to select, store, and prepare the fresh fruits and vegetables they buy with their WIC FMNP coupons. State agencies use administrative funds to support nutrition education.

Eligible WIC participants are issued FMNP coupons in addition to their regular WIC food instruments. These coupons can be used to buy fresh, unprepared fruits, vegetables and herbs from farmers, farmers' markets or roadside stands that have been approved by the State agency to accept FMNP coupons. The farmers, farmers'

markets or roadside stands then submit the coupons to the bank or State agency for reimbursement. The Federal food benefit level for FMNP recipients may not be less than \$10 and no more than \$30 per year, per recipient. However, State agencies may supplement the benefit level.

In addition to providing benefits to low-income women, infants, and children, the WIC FMNP provides small farmers who participate in the Program with additional income through the sale of their produce to FMNP recipients. In FY 2006, 14,259 farmers were authorized to sell their produce at 2,896 authorized farmer's markets and 2,136 authorized roadside stands (see Table 4). These farmers received over \$22 million from redemption of WIC FMNP coupons.

TABLE 4—NUMBER OF AUTHORIZED FARMERS, FARMER'S MARKETS, AND ROADSIDE STANDS

| Fiscal year | WIC FMNP<br>number of authorized<br>farmers | WIC FMNP<br>number of authorized<br>farmer's markets | Number of authorized<br>farm/roadside stands |
|-------------|---------------------------------------------|------------------------------------------------------|----------------------------------------------|
| 1998 .....  | 9,589                                       | 1,253                                                | 276                                          |
| 1999 .....  | 11,439                                      | 1,591                                                | 236                                          |
| 2000 .....  | 12,897                                      | 1,622                                                | 471                                          |
| 2001 .....  | 13,741                                      | 1,824                                                | 708                                          |
| 2002 .....  | 13,176                                      | 1,911                                                | 913                                          |
| 2003 .....  | 16,226                                      | 2,345                                                | 1,078                                        |
| 2004 .....  | 14,050                                      | 2,548                                                | 1,583                                        |
| 2005 .....  | 14,323                                      | 2,715                                                | 1,999                                        |
| 2006 .....  | 14,259                                      | 2,896                                                | 2,136                                        |

Source: FNS administrative data.

### *Cost/Benefit Assessment of Economic and Other Effects*

#### Summary

The interim final rule will amend the WIC FMNP regulations to reflect changes mandated by Public Law 108–265. These changes include allowing WIC FMNP State agencies to authorize roadside stands, increasing the maximum Federal benefit level, and changing the State matching requirement.

The interim final rule is not expected to significantly increase administrative burden upon the Department or State agencies and is intended to provide State agencies with added flexibility in operating the WIC FMNP. The potential costs and benefits that may result from the provisions of the interim final rule will depend on the financial environment in which State agencies operate the WIC FMNP as well as what objectives States will seek to accomplish in their respective programs. For example, if a State agency with a financially constrained WIC FMNP is seeking to preserve its existing number

of participants, there will likely be little increase in Federal benefit levels.

However, if a State agency chooses to increase its Federal benefit level, the number of participants able to be served may decrease.

#### Option To Authorize Roadside Stands

Under Public Law 108–265, State agencies now have the option to authorize roadside stands without prior FNS approval and without the requirement that access be an issue for recipients. Based on the results of an informal survey conducted by FNS regional staff, it appears that this provision has not had a significant effect on the number of roadside stands that have been authorized since this provision went into effect on October 1, 2004. In State agencies where the number of authorized stands did increase, this increase appeared to be a result of normal growth rather than of changes in the authorization process. However, for at least one State agency (Oregon), the number of roadside stands in the WIC FMNP did increase as a result of the provision. This State

agency indicated that additional roadside stands were authorized so that the same stands that were already authorized under the Senior Farmer's Market Nutrition Program (SFMNP) would also be authorized under the WIC FMNP. In such an instance, there would likely be little burden imposed on State agencies since they already incur the administrative costs of monitoring those stands. FNS realizes that the effects of this provision may not be fully realized in such a short period of time and have therefore considered various other effects which may occur as a result of the provision to allow State agencies to authorize roadside stands.

Under the interim final rule, in areas where there is a relatively large population of WIC FMNP recipients and where access to farmer's markets and/or roadside stands is not an issue, farmers operating roadside stands will now have an incentive to seek authorization to participate in the WIC FMNP. If State agencies authorize more roadside stands in areas where there is already sufficient access, the interim final rule might result in a higher concentration of

roadside stands and farmer's markets within commuting areas. In this case, the increase in the number of farmers from which to buy fresh produce may allow recipients to stretch the value of their coupons by being able to comparison-shop and find the best prices. It is, however, not expected that a higher concentration of farmers will lead to a significant decrease in the price of fresh fruits, vegetables, and herbs among all WIC FMNP market outlets given the relatively small number of FMNP recipients within States.

If the quantity of roadside stands increases in areas where access is limited, WIC FMNP recipients will have better access to fresh, locally grown fruits, vegetables, and herbs and may be more likely to redeem their coupons. It is possible that increases in the number of authorized stands above normal growth levels may result in an increase in redemptions if WIC FMNP recipients who previously were not redeeming their coupons begin to do so as a result of the increased access and/or convenience that additional roadside stands might provide. However, because roadside stands could already be

authorized in areas where access was limited, with FNS approval, it is not expected that the interim final rule will significantly increase the number of authorized roadside stands in isolated areas. Due to limited available information and various possible scenarios, there is some uncertainty regarding the long term effects of this provision.

#### Change in State Matching Requirements

Prior to Public Law 108–265, State agencies have been required to match 30 percent of the total cost of the WIC FMNP program. Because of fiscal conditions, some State agencies have had difficulty meeting the 30 percent program match. The match has been characterized as an “obstacle to program growth” in participating WIC FMNP State agencies and limited “expansion to new states”.<sup>1</sup> Public Law 108–265 changed the basis for the amount of matching funds necessary to operate the WIC FMNP so that State agencies would only be required to match 30 percent of the total administrative cost of the program, which by statute continues to be limited to 17 percent of program costs. Indian Tribal Organizations are still permitted to provide a lower match,

but not less than a 10 percent match of the total administrative cost.

This provision reduces the financial requirement States must make in order to operate the WIC FMNP. However, if State agencies do not continue to use State or local funds, private funds, or in-kind contributions to match the food as well as the administrative portion of the Federal grant, their total funds available to operate the FMNP will decrease. For example, in FY 2004, the total Federal grant for the State of Minnesota was \$396,667, which was about the median FY 2004 grant. Under the requirement for a 30 percent match of total program costs, the total WIC FMNP funds available in FY 2004 were \$566,667. Under the new matching requirement, the Federal grant amount would not change. However, the State of Minnesota would only be required to match 30 percent of the total administrative cost of the program. As shown below, the total WIC FMNP funds available would be \$425,567. This is \$141,100 less than under the old matching requirement. The amount of the shortfall is equal to the State food match under the old matching requirement.

TABLE 5—DIFFERENCE BETWEEN OLD AND NEW MATCHING REQUIREMENTS

| Federal grant = \$396,667           | Old matching requirements |           | New matching requirements |           |
|-------------------------------------|---------------------------|-----------|---------------------------|-----------|
|                                     | Administration            | Food      | Administration            | Food      |
| Percentage Split .....              | 17%                       | 83%       | 17%                       | 83%       |
| Federal Contribution .....          | \$67,433                  | \$329,234 | \$67,433                  | \$329,234 |
| Federal Percent Contribution .....  | 70%                       | 70%       | 70%                       | 100%      |
| Estimated Available Funds .....     | \$96,333                  | \$470,334 | \$96,333                  | \$329,234 |
| State Percent Contribution .....    | 30%                       | 30%       | 30%                       | 0%        |
| State Match .....                   | \$28,900                  | \$141,100 | \$28,900                  | \$0       |
| Total Program Funds Available ..... | \$566,667                 |           | \$425,567                 |           |

A decrease in food funds may result in State agencies having to either decrease recipient benefit levels and/or serve fewer recipients. However, some State agencies may choose to decrease the share of funds allocated towards administration so as to increase the share of funds allocated for food. To compensate for reduced administration and nutrition education funding, WIC FMNP State agencies may enter into agreements with local WIC programs to provide relevant WIC nutrition education sessions that can be used to meet the nutrition education requirement of the WIC FMNP. Based on guidance issued in OMB Circular A–

87 and the Department's WIC Policy Memo #2002–5, allowable FMNP nutrition education costs may be charged to WIC funds since under the new matching requirement State agencies may choose to spend the matching funds on food, administration, or both.

Farmers participating in the WIC FMNP will lose income earned from the redemption of WIC FMSP coupons resulting from a decrease in food funds. However, by lowering the financial commitment that State agencies must make in order to receive WIC FMNP funds, current State agencies will be more likely to take expansion funds, if

offered, and new State agencies will have an easier time joining the Program.

#### Change in Maximum Federal Benefit

Since the inception of the FMNP, the maximum Federal benefit, which unlike some other nutrition programs whose benefits are annually adjusted for inflation, has not changed. The maximum Federal benefit of \$20 per year was established in 1992 and would be equivalent to \$33 in 2005 dollars.<sup>2</sup> The proposed rule amends current regulations to implement the provision in Public Law 108–265, which increases the annual maximum Federal WIC FMNP benefit level from \$20 to \$30

<sup>1</sup> Wambles, Don. National Association of Farmers' Market Nutrition Programs. *Statement Presented to*

*U.S. Senate Agriculture, Nutrition, and Forestry Committee*. April 3, 2003.

<sup>2</sup> Inflation rate obtained from the Bureau of Labor Statistics, Consumer Price Index for fresh fruits and vegetables. (<http://www.bls.gov/cpi/home.htm>).

with the \$10 minimum benefit level remaining the same. State agencies have the option of increasing their WIC FMNP benefit level up to the new maximum, but are not required to do so.

Because of the changes made to the matching requirement, which may lower the amount of program funds available, it is expected that many State

agencies will not be able to increase the benefit level. If State agencies do raise benefits, it is possible that not as many people will be able to be served by the Program. For example, given the number of WIC FMNP recipients and the benefit level in Minnesota in FY 2004, with a redemption rate of 60 percent, the total value of redeemed

coupons would have been \$584,664.<sup>3</sup> If funds available for the WIC FMNP remain constant at approximately \$585,000 as the benefit level increased, the number of recipients able to be served would decrease from 48,722 recipients receiving a \$20 coupon to 32,500 receiving a \$30 coupon.

#### EXAMPLE: MINNESOTA

| Benefit level per recipient        | Value of coupon (\$) | Number of WIC FMNP recipients, FY 2004 | Average percentage of redeemed coupons | Total cost of redeemed FMNP coupons (\$) |
|------------------------------------|----------------------|----------------------------------------|----------------------------------------|------------------------------------------|
| Previous Benefit Level .....       | 20.00                | 48,722                                 | 60%                                    | 584,664                                  |
| FY2005 Maximum Benefit Level ..... | 30.00                | 32,500                                 | 60%                                    | 585,000                                  |

The state of Minnesota did not increase the value of WIC FMNP coupons in 2005. The calculation was done for the purpose of an example only. The average percent of redeemed coupons is based on the average national rate of redemption for FY 2000–FY 2004.

If State agencies choose to increase benefit levels, WIC FMNP recipients will benefit from the ability to purchase and consume more fresh fruits, vegetables, and herbs. Additionally, it is possible that redemption rates will increase as some participants, who previously did not utilize their coupons, may be enticed to start utilizing them given the higher value.

FNS regional offices have indicated that in FY 2005, less than 10 State agencies increased the Federal benefit level and not all of those State agencies increased it to the \$30 annual maximum. Of the State agencies that did increase benefits, the number of WIC FMNP recipients served did not decrease. Some State agencies indicated that they would have increased their benefit level, but were unable to do so because of their Federal 2005 grant levels. This implies that if provided with sufficient Federal funding to maintain current caseloads, many of the State agencies would increase their Federal benefit level, but would choose not to increase it if it meant serving fewer recipients.

[FR Doc. E8–26099 Filed 10–31–08; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 94

[Docket No. APHIS–2008–0107]

#### Addition of Russia and Azerbaijan to the List of Regions Where African Swine Fever Exists

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations concerning the importation of animals and animal products by adding Russia and Azerbaijan to the list of regions where African swine fever exists. We are taking this action because outbreaks of African swine fever have been detected in Russia and Azerbaijan. This action will restrict the importation of pork and pork products into the United States from Russia and Azerbaijan and is necessary to prevent the introduction of African swine fever into the United States.

**DATES:** This interim rule is effective November 3, 2008. However, we are imposing these restrictions retroactively to November 19, 2007, for Russia, and to January 28, 2008, for Azerbaijan. We will consider all comments that we receive on or before January 2, 2009.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS->

2008–0107 to submit or view comments and to view supporting and related materials available electronically.

• *Postal Mail/Commercial Delivery:*

Please send two copies of your comment to Docket No. APHIS–2008–0107, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0107.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Javier Vargas, Animal Scientist, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–0756.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including

<sup>3</sup> This calculation only takes into account the Federal food benefits and does not make any

assumptions regarding the level of State food benefits.