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DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Chapter II

Use of Direct Final Rulemaking

AGENCY: Food and Consumer Service, USDA.

ACTION: Policy statement.

SUMMARY: The Food and Consumer Service is implementing a new rulemaking procedure to expedite making noncontroversial changes to regulations. Rules that the agency judges to be noncontroversial and unlikely to result in adverse comments will be published as "direct final" rules. ("Adverse comments" are comments that suggest that a rule should not be adopted or suggest that a change should be made to the rule.) Such direct final rules will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notices of intent to submit adverse comments are postmarked within the comment period, the revisions made by the rule will, in most instances, be effective 60 days from the date the direct final rule is published in the **Federal Register**. This new policy should expedite the promulgation of noncontroversial rules by reducing the time that would be required to develop, review, clear, and publish separate proposed and final rules.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, Park Office Center, Room 502, 3101 Park Center Drive, Alexandria, VA 22302-1594, or telephone (703) 305-2662.

SUPPLEMENTARY INFORMATION: In the interest of implementing needed

changes in program administrative procedures in a more expeditious manner, the Food and Consumer Service (FCS) plans to improve the efficiency of its regulatory procedures by employing the rulemaking technique known as "direct final rulemaking" to promulgate some of its rules.

The Direct Final Rule Process

Rules that the agency judges to be noncontroversial and unlikely to result in adverse comments may be published as direct final rules. The direct final rules will specify a comment period of at least 30 days. Such direct final rules will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notices of intent to submit adverse comments are postmarked within the comment period, the revisions made by the rule will, in most instances, be effective 60 days from the date the direct final rule is published in the **Federal Register**. In instances in which a waiting period other than 60 days is established, the effective date will be specified in the rule.

"Adverse comments" means comments that suggest that the rule should not be adopted, or that suggest that a change should be made to the rule. A comment expressing support for the rule as published would obviously not be considered adverse. Neither would a comment suggesting that requirements in the rule should, or should not, be employed by FCS in other programs or situations outside the scope of the direct final rule.

In accordance with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), this procedure gives the public general notice of FCS' intent to adopt a rule, and gives interested persons an opportunity to participate in the rulemaking through submission of comments. The major feature of direct final rulemaking is that if FCS receives neither written adverse comments nor written notices of intent to submit adverse comments that are postmarked within the comment period, the rule will, in most instances, be effective 60 days from the date the direct final rule is published in the **Federal Register**.

If FCS receives timely adverse comments or notices of intent to submit such comments, a notice of withdrawal of the direct final rule will be published

in the **Federal Register** and a proposed rule will be published establishing a comment period for the rulemaking action. Following the close of the comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, absent timely adverse comments or notices to submit such comments, the rule will, in most instances, become effective 60 days following the rule's publication. However, FCS will publish a notice in the **Federal Register** indicating that no adverse comments were received on the direct final rule, and confirming that it is effective on the date indicated in the direct final rule.

In some instances, FCS may choose to publish a document in the proposed rules section of the same issue of the **Federal Register** proposing approval of and soliciting comments on the same provisions contained in the direct final rule. In such instances, if timely written adverse comments or written notices of intent to submit adverse comments are received in response to the direct final rule, the direct final rule will be withdrawn and the comments received will be addressed, along with comments received in response to the proposed rule, in a subsequent final rule.

Determining When To Use Direct Final Rulemaking

Not all FCS rules are good candidates for direct final rulemaking. Many FCS rules address more complex issues for which the public may have a variety of opinions to offer on the need for the rule, or alternative methods for achieving the intended results. In these cases, FCS plans to continue to publish a proposed rule, and establish a comment period to allow submission of comments, followed by a final rule addressing the comments.

FCS plans to use direct final rulemaking on a case-by-case basis when we do not anticipate adverse comments. The decision to use direct final rulemaking for a rule would be based on our experience with similar rules. If similar rules were published in the past as proposals that did not elicit adverse comments, we would consider publishing such rules in the future as direct final rules.

Dated: October 15, 1997.

Yvette S. Jackson,

Acting Administrator, Food and Consumer Service.

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DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 247

RIN 0584-AC60

Commodity Supplemental Food Program—Caseload Assignment

AGENCY: Food and Consumer Service, USDA.

ACTION: Direct final rule.

SUMMARY: This direct final rule amends provisions of the Commodity Supplemental Food Program Regulations to provide for the allocation of a single caseload to State agencies each year, instead of the allocation of two separate caseloads, one for women, infants, and children, and one for the elderly. This rule will permit State agencies, and the local agencies with which they have signed agreements, to utilize this single caseload to serve low-income women, infants, and children and elderly populations as needed, provided they give priority in service to women, infants, and children over the elderly. This rule will also streamline and simplify program management at the State and local level.

DATES: This rule will become effective on December 8, 1997, unless the Department receives written adverse comments or notices of intent to submit adverse comments postmarked on or before November 24, 1997. If adverse comments within the scope of this rulemaking are received, the Department will publish timely notification of withdrawal of this rule in the **Federal Register**.

ADDRESSES: Comments should be sent to Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, Park Office Center, Room 502, 3101 Park Center Drive, Alexandria, VA 22302-1594. Comments in response to this rule may be inspected at 3101 Park Center Drive, Room 502, Alexandria, Virginia during normal business hours (8:30 a.m. to 5 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Lillie Ragan at the above address or telephone (703) 305-2662.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This direct final rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The Administrator of the Food and Consumer Service (FCS) has certified that this action will not have a significant economic impact on a substantial number of small entities. While procedures in this rulemaking will affect State and local agencies that administer the Commodity Supplemental Food Program, any economic effect will not be significant.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate 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, FCS 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 to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. Thus, this direct final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.565, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June

24, 1983 and 49 FR 22676, May 31, 1984).

Paperwork Reduction Act

This final rule reflects no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The existing recordkeeping and reporting requirements for 7 CFR part 247, which were approved by OMB under control number 0584-0293, will not change as a result of this final rule.

Executive Order 12988

This direct 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 **EFFECTIVE DATE** section of the preamble. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Background

The primary purpose of the Commodity Supplemental Food Program (CSFP) is to provide nutritious commodities and nutrition education to low-income pregnant, postpartum, and breastfeeding women, infants, and children up to the age of six, to help meet their dietary needs at a critical life stage of growth and development. This has been the program's basic goal since the initiation of a "supplemental food program" for pregnant and breastfeeding women and infants in 1968, utilizing funds appropriated for child feeding programs, and its subsequent designation as the "Commodity Supplemental Food Program" in the Food and Agriculture Act of 1977 (Pub. L. 95-113), which added sections 4 and 5 to the Agriculture and Consumer Protection Act of 1973 (Pub. L. 93-86). However, legislation expanded the eligible population in 1981 and 1982 to include elderly persons under a pilot project. With the passage of the Food Security Act of 1985 (Pub. L. 99-198) authority to provide program benefits to the low-income elderly was extended to all State agencies that had resources remaining after providing benefits to all eligible applicant women, infants, and children. Thus, while women, infants, and children retained priority in service, the elderly were established as a second eligible population group in the program. This requirement is found