USDA

United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive

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SUBJECT: FMNP Policy Memorandum: #2004-1
Implementation of P.L. 108-265

TO: Regional Directors
Supplemental Food Programs
All Regions

This policy memorandum authorizes the implementation of the nondiscretionary WIC Farmers' Market Nutrition Program (FMNP) provisions as contained in Public Law 108-265, the Child Nutrition and WIC Reauthorization Act of 2004, enacted on June 30, 2004. The new law requires the Department to issue guidance to implement certain provisions as soon as possible following enactment of the law.

As you know, this law reauthorizes the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the FMNP through September 30, 2009, and establishes several new provisions designed to improve the nutrition of participants and the integrity of the programs. Attached for your use and information is a copy of the FMNP provisions in the new law. The three FMNP provisions addressed in the law include: roadside stands, State matching funds, and the Federal benefit level.

Roadside Stands

P.L. 108-265 provides State agencies the option to authorize roadside stands. As set forth in the law, this provision is effective October 1, 2004. As a result of the new law, authorization of farmstands or roadside stands will no longer be limited to situations where recipient access to farmers' markets is an issue, nor will prior FNS approval be necessary.

State Matching Funds

The new law requires State agencies to match 30 percent of the administrative cost of the program. As set forth in the law, this provision is effective October 1, 2004. Therefore, State agencies will no longer be required to match 30 percent of the total cost of the program, which includes administrative and food costs.

Federal Benefit Level

P.L. 108-265 increases the maximum benefit level to $30. As set forth in the law, this provision is effective **June 30, 2004**. Previously, the maximum Federal benefit level was $20.

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

The fiscal year 2005 FMNP State Plan Guidance will reflect these changes. In addition, we will codify these requirements in a final rulemaking.

Patricia N. Daniels

PATRICIA N. DANIELS
Director
Supplemental Food Programs Division

Attachment

(11)(D)(ii)(I) that provides incentive items or other free merchandise, except food or merchandise of nominal value (as determined by the Secretary), to program participants unless the vendor provides to the State agency proof that the vendor obtained the incentive items or merchandise at no cost.".

(f) SPEND FORWARD AUTHORITY.—Section 17(i)(3)(A)(ii)(I) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)(3)(A)(ii)(I)) is amended by striking "1 percent" and inserting "3 percent".

(g) MIGRANT AND COMMUNITY HEALTH CENTERS INITIATIVE.—Section 17(j) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(j)) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraph (5) as paragraph (4).

(h) FARMERS' MARKET NUTRITION PROGRAM.—

(1) ROADSIDE STANDS.—Section 17(m)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(1)) is amended by inserting "and (at the option of a State) roadside stands" after "farmers' markets".

(2) MATCHING FUNDS.—Section 17(m)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(3)) is amended by striking "total" both places it appears and inserting "administrative".

(3) BENEFIT VALUE.—Section 17(m)(5)(C)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(5)(C)(ii)) is amended by striking "$20" and inserting "$30".

(4) REAUTHORIZATION.—Section 17(m)(9)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(9)(A)) is amended by striking clause (i) and inserting the following:

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2004 through 2009.".

(i) DEMONSTRATION PROJECT RELATING TO USE OF WIC PROGRAM FOR IDENTIFICATION AND ENROLLMENT OF CHILDREN IN CERTAIN HEALTH PROGRAMS.—

(1) IN GENERAL.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended by striking subsection (r).

(2) CONFORMING AMENDMENT.—Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by striking subsection (p).

SEC. 204. LOCAL WELLNESS POLICY.

(a) IN GENERAL.—Not later than the first day of the school year beginning after June 30, 2006, each local educational agency participating in a program authorized by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall establish a local school wellness policy for schools under the local educational agency that, at a minimum—

(1) includes goals for nutrition education, physical activity, and other school-based activities that are designed to promote student wellness in a manner that the local educational agency determines is appropriate;

(2) includes nutrition guidelines selected by the local educational agency for all foods available on each school campus under the local educational agency during the school day with