

§ 247.19

7 CFR Ch. II (1–1–99 Edition)

terminate the local agency's participation, in whole or in part, under the same conditions. The two parties shall agree upon the termination conditions, including the effective date thereof and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. FNS shall allow full credit to the State agency for the Federal share of the noncancellable obligations, properly incurred by the State agency prior to termination.

§ 247.19 Nondiscrimination.

(a) *Requirement.* The State agency shall comply with the requirements of title VI of the Civil Rights Act of 1964, the FNS Civil Rights Instruction 113-2 and the Department's regulations concerning nondiscrimination (7 CFR part 15), including requirements of racial and ethnic participation data collection, public notification of the nondiscrimination policy, and annual reviews of each local agency to assure compliance with such policy, to the end that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program.

(b) *Non-English materials and staff.* Where a significant proportion of the population of the area served by a local agency is composed of non-English or limited English speaking persons who speak the same language, the State agency shall take action to ensure that Program information, except certification forms, is provided to such persons in the appropriate language orally and in writing. The State agency shall ensure that there are bilingual staff members or interpreters available to serve these persons.

(c) *Complaints.* Complaints of discrimination filed by applicants or participants shall be referred to the Director, Supplemental Food Programs Divi-

sion, Food and Nutrition Service, U.S.D.A., Washington, DC 20250.

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(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.20 Fair hearing procedures.

(a) *Availability of hearings.* The State agency shall provide a hearing procedure through which any individual may appeal a State or local agency action which results in the denial or termination of benefits to the individual. The State agency shall conform to Program hearing procedures as outlined in this section at all times unless the State has an alternate hearing procedure whereby participants can appeal State or local agency actions. This alternate procedure may be used with FNS approval.

(b) *Notification of appeal rights.* At the time of application each applicant shall be informed of the right to a fair hearing.

At the time of denial or termination of benefits, each individual shall be informed in writing of the right to a fair hearing, of the method by which a hearing may be requested, and that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Such notification is not required at the expiration of a certification period.

(c) *Request for hearing.* A request for a hearing is defined as any clear expression by the individual or the individual's parent, guardian or other representative, that an opportunity to present its case to a higher authority is desired. The State or local agency shall not limit or interfere with the individual's freedom to request a hearing.

(d) *Time limit for request.* The State or local agency shall provide individuals a reasonable period of time to request fair hearings. Such time limit shall not be less than 60 days from the date the agency mails or gives the applicant or

participant the notice of adverse action to deny or terminate benefits, as required in §247.7(f)(2).

(e) *Denial or dismissal of request.* A request for a hearing shall not be denied or dismissed unless:

(1) The request is not received within the time limit set by the State agency in accordance with paragraph (d) of this section.

(2) The request is withdrawn in writing by the applicant or a writing by the applicant or a representative.

(3) The applicant or representative fails, without good cause, to appear at the scheduled hearing.

(f) *Continuation of benefits.* Participants who appeal the termination of benefits within the 15 day advance adverse notice period provided by §247.7(f)(2) shall continue to receive Program benefits until the hearing official reaches a decision. Applicants who are denied benefits at initial certification or at subsequent certifications may appeal the denial but shall not receive benefits while awaiting the hearing.

(g) *Rules of procedure.* The State and local agency shall process each request for a hearing under uniform rules of procedure. The uniform rules of procedure shall be available for public inspection and copying. At a minimum, the uniform rules of procedure shall include: The time limits for requesting and conducting a hearing; all advance notice requirements; the rules of conduct at the hearing; and the rights and responsibilities of the applicant. The procedures shall not be unduly complex or legalistic and the applicant's background shall be taken into consideration.

(h) *Hearing official.* Hearings shall be conducted by an impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested. The hearing official shall:

(1) Administer oaths or affirmations if required by the State;

(2) Ensure that all relevant issues are considered;

(3) Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised;

(4) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;

(5) Render a hearing decision which will resolve the dispute.

(i) *Conduct of the hearing.* The hearing shall be accessible to the applicant. The State or local agency shall provide the applicant with a minimum of 10 days advance written notice of time and place of the hearing and shall enclose the rules of procedure. The State and local agency shall also provide the applicant or representative an opportunity to:

(1) Examine, prior to and during hearing, the documents and records presented to support the decision under appeal; (2) be assisted or represented by an attorney or other persons; (3) bring witnesses; (4) advance arguments without undue interference; (5) question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and (6) submit evidence to establish all pertinent facts and circumstances in the case.

(j) *Hearing decisions.* (1) Decisions of the hearing official shall comply with Federal law or regulations and shall be based on facts in the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding shall constitute the exclusive record for a final decision by the hearing official. This record shall be retained in accordance with §247.13. This record shall also be available, for copying and inspection, to the appellant or representative at any reasonable time.

(2) A decision by the hearing official shall be binding on the local agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations. The decision shall become a part of the record.

(3) Within 45 days of the request for the hearing, the applicant or representative shall be notified in writing of the decision and the reasons for the decision in accordance with paragraph (j)(2) of this section. Also, if the decision is

in the favor of the applicant and benefits were denied, benefits shall begin within this 45-day time period. If the decision is in favor of the agency, as soon as administratively feasible any continued benefits shall be terminated as decided by the hearing official.

(4) All State and local agency hearing records and decisions shall be available for public inspection and copying, subject to the disclosure safeguards provided in §247.22(d), and provided the names and addresses of participants and other members of the public are kept confidential.

(k) *Judicial review.* If a State level decision upholds the agency action, the State agency shall explain any available State review of the decision and any State rehearing process. If neither are available or have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

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[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§247.21 Management evaluation and reviews.

(a) *General.* FNS and each State agency shall establish a management evaluation system in order to assess the accomplishment of Program objectives as provided under these regulations, the State Plan, and the written agreement with the Department. FNS will provide assistance to States in discharging this responsibility, and will establish standards and procedures to determine how well the objectives of this part are being accomplished.

(b) *Responsibilities of FNS.* FNS shall establish evaluation procedures to determine whether State agencies carry out the purposes and provisions of this part, the State Plan, and the written agreement with the Department. As a part of the evaluation procedure, FNS shall review audits performed by the State agency to ensure that the Program at both the State and local levels has been included in audit examinations at a reasonable frequency. These evaluations shall include a review of each State agency, including on-site

reviews of selected local agencies. These evaluations will measure the State agency's progress toward meeting the objective outlined in its State Plan and compliance with these regulations.

(c) *Responsibilities of State agencies.* The State agency is responsible for meeting the following requirements:

(1) The State agency shall establish evaluation and review procedures and document the results of such procedures. The procedures shall include, but not be limited to:

(i) Annual monitoring of the operation of all local agencies to evaluate certification procedures, management, nutrition education, civil rights compliance, food storage, inventory accountability, and financial management systems. However, more frequent reviews may be performed as the State agency deems necessary. The State agency shall provide a continuing evaluation of each local agency through on-site reviews of the local agency, reviews of local agency reports including inventory reports, reviews of storage facilities and safeguards for supplemental foods.

(ii) Instituting the necessary follow-up procedures to correct identified problem areas.

(2) On its own initiative or when required by FNS, the State agency shall provide special reports on Program activities, and take positive action to correct deficiencies in Program operations.

(3) The State agency shall require that local agencies establish Program review procedures to be used in reviewing their own operations and those of subsidiaries or contractors.

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[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§247.22 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby a local agency adversely affected by a State action may appeal the action. The right to appeal shall be