

§ 247.18

7 CFR Ch. II (1-1-01 Edition)

B—Food Distribution. The State agency shall have full opportunity to submit evidence, explanations or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

§ 247.18 Closeout procedures.

(a) *Fiscal year closeout reports.* State agencies shall submit preliminary and final closeout reports for each fiscal year or part thereof. All obligations shall be liquidated before final closure of a fiscal year grant. Obligations shall be reported for the fiscal year in which they occur State agencies shall:

(1) Submit to FNS, within 30 days after the end of the fiscal year, preliminary financial reports which show cumulative actual expenditures and obligations for the fiscal year, or part thereof, for which Program funds were made available; and

(2) Submit to FNS, within 90 days after the end of the fiscal year, final fiscal year closeout reports.

(b) *Revised closeout reports.* Revised closeout reports may be submitted at any time. However, FNS shall not be responsible for reimbursing unpaid obligations later than one year after the close of the fiscal year in which they were incurred.

(c) *Grant closeout procedures.* When grants to State agencies are terminated, the following closeout procedures for the Program shall be performed in accordance with OMB Circular A-102.

(1) *Termination for cause.* FNS may terminate a State agency's participation under the Program, in whole or in part, whenever FNS determines that the State agency has failed to comply with the conditions prescribed in this part. FNS shall promptly notify the State agency in writing of the termination and the reasons for the termination, including the effective date. A State agency shall terminate a local agency's participation under the Program by written notice whenever it is determined by FNS or the State agency that the local agency has failed to comply with the requirements of the Program. When a State agency's participation under the Program is terminated for cause, any payments made to

the State agency, or any recoveries by FNS from the State agency, shall be in conformance with the legal rights and liabilities of the parties.

(2) *Termination for convenience.* FNS or the State agency may terminate the State agency's participation under the Program, in whole or in part, when both parties agree that continuation under the Program would not produce beneficial results commensurate with the further expenditure of funds. The State agency or the local agency may 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 Division, Food and Nutrition Service, U.S.D.A., Washington, DC 20250.

(Approved by the Office of Management and Budget under control number 0584-0063)

(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;