

Food and Nutrition Service, USDA

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or negligent issuance by them of prescriptions for supplemental foods; (vi) a statement that local agencies are responsible to the State agency for any Program losses caused by other agencies which have entered into agreements with the local agency; (vii) the names and address of each certification, food distribution and storage site under the jurisdiction of the local agency; and (viii) an assurance that the local agencies will maintain accurate and complete records with respect to their activities under the Program and retain such records for a period of 3 years following the date of submission of the final expenditure report for the period to which the report pertains.

(c) *Agreements between local agencies and other agencies.* A local agency which cannot fulfill one or more of these requirements shall enter into written agreement with another agency(s) in order to comply with these requirements. The written agreement shall state the Program responsibilities of the other agency, shall be approved by the State agency, and shall be on file at both the State agency and local agency. State agency approval of agreements with applicant agencies shall be accomplished during the application process.

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

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

§ 247.7 Certification.

(a) *Eligibility requirements.* To be certified as eligible to receive supplemental foods under the Program, each applicant shall meet the following requirements:

(1) Categorical eligibility as an infant, child, pregnant, postpartum or breastfeeding woman, or elderly person;

(2) For women, infants and children, income eligibility for local benefits under existing Federal, State or local food, health or welfare programs for low-income persons;

(3) For elderly persons certified on or after September 17, 1986, household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services. Elderly

persons certified before September 17, 1986, shall be subject to the terms and conditions in effect on the date of their certification.

(4) At the State agency's discretion, be determined by a physician, a staff member of the local agency or his or her designee to be at nutritional risk; and

(5) Meet a residency requirement if one is established by the State agency. The State agency may determine a service area for any local agency, and may require that an applicant be residing within the service area at the time of application to be eligible for the Program. However, the State agency may not impose any durational or fixed residency requirements. For example, migrant and seasonal farmworkers entering a CSFP service area shall be considered as meeting the residency requirement.

(b) *Processing standards.* (1) When there are no funds available to provide program benefits, the local agency shall maintain waiting lists of individuals who visit the local agency to apply for the Program. To enable the local agency to contact the individuals when caseload space becomes available, these waiting lists shall include the name of the applicant, the date placed on the waiting list, an address or phone number of the applicant and the applicant's status, i.e., pregnant, breastfeeding, child's age. Individuals shall be notified of their placement on a waiting list within 20 days after they visit the local agency during clinic office hours to request Program benefits.

(2) The following priorities based on categorical eligibility shall be applied when vacancies occur after the local agency has filled all caseload, except that these priorities shall not apply to the minimum protected caseload assigned under § 247.10(a) (2)(i).

(i) *Priority I.* Pregnant women, breastfeeding women, and infants.

(ii) *Priority II.* Children ages 1 through 3.

(iii) *Priority III.* Children ages 4 through 5.

(iv) *Priority IV.* Postpartum women.

(v) *Priority V.* Elderly persons.

(c) *Issuance of supplemental foods.* Participants shall be issued prescriptions for supplemental foods by personnel of

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the local agency or by such other personnel as the local agency may designate. The local agency may choose to issue either a one month supply of supplemental foods each month or a two month supply of supplemental foods every other month. However, local agencies which choose to issue a two month supply every other month shall inform participants that they may still receive one month's supply if they so request.

(d) *Certification forms.* All certification data for each applicant shall be recorded on a certification form. At a minimum the information on the form shall include the following:

- (1) The person's name and address.
- (2) The date of initial visit to apply for participation and the date of the certification or denial.
- (3) The criteria used to determine the person's eligibility or ineligibility and the signature and title of the persons making the eligibility determination.
- (4) The following statement shall be located directly above the applicant's signature line and shall be read by or to the applicant, or the applicant's parent or caretaker, before the application is signed:

This certification form is being completed in connection with the receipt of Federal assistance. Program officials may verify information on this form. I am aware that deliberate misrepresentation may subject me to prosecution under applicable State and Federal statutes. I have been advised of my rights and obligations under the Program. I certify that the information I have provided for my eligibility determination is correct to the best of my knowledge.

(e) *Applicant's rights.* The following sentences shall be read by, or read to, the applicant or the applicant's parent or caretaker at the time of certification. When a significant proportion of the population served by a local agency is composed of non-English or limited English speaking persons who speak the same language, the sentences shall be stated to such persons in a language they understand:

- (1) Standards for participation in the Program are the same for everyone regardless of race, color, or national origin.
- (2) You may appeal any decision made by the local agency regarding

your denial or termination from the Program.

(3) If your application is approved, the local agency will make nutrition education available to you and you are encouraged to participate.

(f) *Notification requirements.* The following responsibilities shall be performed by the State or local agency;

(1) Each applicant shall be informed during the certification procedure of the right to a fair hearing and of the illegality of participation in the Commodity Supplemental Food Program in more than one local agency, or simultaneous participation in the Commodity Supplemental Food Program and in the WIC Program.

(2) A person found ineligible for the Program during a certification visit shall be advised in writing of the ineligibility and of the right to a fair hearing in accordance with the provisions in §247.20. The reasons for ineligibility shall be properly documented and shall be retained on file at the local agency.

(3) A person found ineligible for the Program at any time during the certification period shall be advised in writing 15 days before termination of eligibility of the reasons for ineligibility and of the right to a fair hearing.

(4) Each participant shall be notified at least 15 days before the expiration of each certification period that eligibility for the Program is about to expire.

(5) Each participant shall receive an explanation of how the food delivery system in the local agency operates.

(6) Each participant shall be advised of the importance of participating in ongoing routine health care, the types of health services available, where they are located and how they may be obtained.

(g) *Certification periods.* (1) Program benefits shall be based upon certifications established in accordance with the following time frames.

(i) Pregnant women shall be certified for the duration of their pregnancy and for up to 6 weeks postpartum;

(ii) Postpartum and breastfeeding women, infants and children shall be certified at intervals prescribed by the State agency, provided such intervals do not exceed 6 months in length; and

(iii) Elderly persons, except those certified before September 17, 1986, shall be certified at intervals prescribed by the State agency, provided such intervals do not exceed 6 months in length. The Initial and any subsequent odd-numbered certifications of elderly persons first certified on or after September 17, 1986 shall be based on an assessment of newly submitted information for all applicable eligibility requirements, except that age need be established only at the first certification. The State agency may authorize local agencies to certify such elderly participants for an additional 6 months without reviewing the case record or collecting new eligibility data at the second and any subsequent even-numbered certifications if there are no women, infants or children waiting to be served. State agencies shall, however, require local agencies to establish contact with such participants prior to such even-numbered certifications in order to confirm each participant's address and continued interest in program participation.

(iv) Elderly persons certified before September 17, 1986 shall be subject to the terms and conditions in effect on the date of their certification.

(2) Program benefits may be continued until the end of the month in which categorical ineligibility begins, for example, until the end of the month in which a child reaches its sixth birthday.

(h) *Restrictions.* The following restrictions shall be observed by State agencies:

(1) Participants shall not be required to make any payments in money, materials or services for, or in connection with, the receipt of supplemental foods. Also, they shall not be solicited in connection with the receipt of supplemental foods for voluntary cash contributions for any purpose.

(2) Distribution of supplemental foods shall not be used as a means for furthering the political interest of any person or party.

(i) *Transfer of certification.* Each State agency shall ensure issuance of a verification of certification form to every participant who intends to relocate during the certification period. The State agency shall require the

local agencies under its jurisdiction to accept verification of certification forms from participants who have been participating in the Program or the WIC Program in another local agency within or outside of the jurisdiction of the State agency. The verification of certification is valid until the certification period expires, and shall be accepted as proof of eligibility for Program benefits. However, if the receiving local agency has waiting lists for participation, the transferring participant shall be placed on the list ahead of all waiting applicants. The verification of certification shall include the name of the participant, the date the certification was performed, the date the certification period expires, the signature and printed or typed name of the local agency official in the originating jurisdiction, the name and address of the certifying local agency and an identification number or some other means of accountability. The verification of certification form shall be uniform throughout the jurisdiction of the State agency.

(j) *Dual participation.* The State agency shall be responsible for the following:

(1) In conjunction with the local agency, the detection and prevention of dual participation within each local agency and between local agencies. As part of the certification process, applicants shall be informed of the illegality of simultaneous participation in the WIC Program and this Program or of simultaneous participation in more than one CSFP.

(2) In areas where a local agency serves the same area as an Indian State agency or WIC Program, the CSFP State agency for the Program or the WIC State agency shall agree to a plan for the detection and prevention of dual participation. The agreement must be in writing and must be made prior to operation within the same area.

(3) Participants found committing dual participation shall be terminated from one of the Programs immediately and shall be notified of termination from the other program as specified in § 247.7.

(4) At certification the local agency shall check the identification of each participant. For a child participant, an immunization record, birth certificate, or other records that local agency personnel consider adequate identification shall be acceptable. Also, when issuing supplemental foods, the local agency shall check the identification of each participant or the identity of the adult responsible for picking up the food for a child participant.

(k) *Disqualification.* (1) The State agency may disqualify applicants and participants from Program participation for a period not to exceed 3 months if it is established by the State or local agency that the applicant, participant, parent, or caretaker fraudulently applied for and/or obtained Program benefits. However, if the person who determined the participant's eligibility determines that a serious health risk will result from disqualification from the Program and the participant is currently eligible, the disqualification shall be waived. In addition, participants may request a fair hearing, as specified in §247.20, to contest a disqualification.

(2) For Program purposes, fraud includes, but is not limited to, the following actions if they are taken knowingly, willfully and deceitfully:

(i) Making false statements orally or in writing in order to obtain benefits to which the individual would not otherwise be eligible; (ii) concealing information in order to obtain benefits to which the individual is not eligible; (iii) altering Program documents for the purpose of receiving increased benefits to which the individual is not eligible or for the purpose of transferring benefits to an unauthorized individual; (iv) using supplemental foods in an unauthorized manner, such as trading or selling the foods; or (v) committing dual participation.

[46 FR 6341, Jan. 21, 1981, as amended at 51 FR 32901, Sept. 17, 1986; 53 FR 4839, Feb. 18, 1988]

§247.8 Nutrition education.

(a) *General.* Nutrition education shall be thoroughly integrated into Program operations. Nutrition education shall be designed to be easily understood by individual participants and shall bear a

practical relationship to their nutritional needs and household situations.

(b) *Goals.* Nutrition education shall be based on the following two broad goals: (1) To emphasize the relationship of proper nutrition to the total concept of good health, with special emphasis on the nutritional needs of pregnant, postpartum, and breastfeeding women, infants and children under 6 years of age; and

(2) To assist participants in obtaining a positive change in food habits, resulting in improved nutritional status and in the prevention of nutrition related problems through maximum use of the supplemental and other nutritious foods. This use is to be within the context of ethnic, cultural and geographic preferences. Consideration should also be given to tailoring nutrition education to meet any limitations experienced by groups of participants, such as lack of running water, lack of electricity, and limited cooking or refrigeration facilities.

(c) *State agency responsibilities.* The State agency shall ensure that the local agency fully performs its responsibilities as set forth in paragraph (d) of this section. The State agency shall also ensure that an evaluation procedure is maintained to determine the effectiveness of the nutrition education. Such evaluation procedure shall include a systematic procedure for participant input and may be conducted directly by State and local agencies or by contract for such services, so long as the evaluation is directed by a nutritionist or other professional determined by the State agency to be qualified to perform the evaluation procedure.

(d) *Local agency responsibilities.* (1) The local agency shall make nutrition education available to all adult participants and to parents or guardians of infant and child participants. Where appropriate, nutrition education for child participants is encouraged.

(2) The local agency shall direct Program funds for nutrition education to the benefit of participants and local agency staff members involved in nutrition education, in accordance with this part.

(3) The local agency shall conduct or arrange for nutrition education in a