

§ 246.8

7 CFR Ch. II (1–1–03 Edition)

any other accommodations in the area which meet these conditions.

(o) *Drug and other harmful substance abuse screening.* When a State agency determines that screening is necessary to fulfill the referral requirements in this part, the State agency must require screening for the use of drugs and other harmful substances. When such screening is required, it shall:

(1) Be limited to the extent the State agency deems necessary to fulfill the referral requirement of § 246.4(a)(8) of this part and the drug and other harmful substance abuse information requirement of § 246.11(a)(3) of this part; and

(2) Be integrated into certification process as part of the medical or nutritional assessment.

(p) *Are applicants required to be physically present at certification?* (1) *In general.* The State or local agency must require all applicants to be physically present at each WIC certification.

(2) *Exceptions.—(i) Disabilities.* The State or local agency must grant an exception to applicants who are qualified individuals with disabilities and are unable to be physically present at the WIC clinic because of their disabilities or applicants whose parents or caretakers are individuals with disabilities that meet this standard. Examples of such situations include:

(A) A medical condition that necessitates the use of medical equipment that is not easily transportable;

(B) A medical condition that requires confinement to bed rest; and

(C) A serious illness that may be exacerbated by coming in to the WIC clinic.

(ii) *Receiving ongoing health care.* The State agency may exempt from the physical presence requirement, if being physically present would pose an unreasonable barrier, an infant or child who was present at his/her initial WIC certification and has documented ongoing health care from a health care provider other than the WIC local agency.

(iii) *Working parents or caretakers.* The State agency may exempt from the physical presence requirement an infant or child who was present at his/her initial WIC certification and was present at a WIC certification or recertification determination within the 1-

year period ending on the date of the most recent certification or recertification determination and is under the care of one or more working parents or one or more primary working caretakers whose working status presents a barrier to bringing the infant or child in to the WIC clinic.

(q) *Certification of qualified aliens.* In those cases where a person sponsors a qualified alien, (as the term is defined in the Immigration and Nationality Laws (8 U.S.C.1101 *et seq.*)), *i.e.*, signs an affidavit of support, the sponsor's income, including the income of the sponsor's spouse, shall not be counted in determining the income eligibility of the qualified alien except when the alien is a member of the sponsor's family or economic unit. Sponsors of qualified aliens are not required to reimburse the State or local agency or the Federal government for WIC Program benefits provided to sponsored aliens. Further, qualified aliens are eligible for the WIC Program without regard to the length of time in the qualifying status.

[50 FR 6121, Feb. 13, 1985, as amended at 52 FR 21236, June 4, 1987; 53 FR 35301, Sep. 13, 1988; 54 FR 51295, Dec. 14, 1989; 55 FR 3387, Feb. 1, 1990; 57 FR 34506, Aug. 5, 1992; 58 FR 11506, Feb. 26, 1993; 59 FR 11500, Mar. 11, 1994; 60 FR 19490, Apr. 19, 1995; 63 FR 63974, Nov. 18, 1998; 64 FR 70177, Dec. 16, 1999; 65 FR 3378, Jan. 21, 2000; 65 FR 53527, Sept. 5, 2000; 65 FR 77249, Dec. 11, 2000; 65 FR 83278, Dec. 29, 2000; 67 FR 66304, Oct. 31, 2002]

§ 246.8 Nondiscrimination.

(a) *Civil rights requirements.* The State agency shall comply with the requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a and 15b), and FNS instructions to ensure that no person shall, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under the Program. Compliance with title VI of the Civil Rights Act of 1964, title IX of the Education Amendments

Food and Nutrition Service, USDA

§ 246.9

of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and regulations and instructions issued thereunder shall include, but not be limited to:

(1) Notification to the public of the nondiscrimination policy and complaint rights of participants and potentially eligible persons;

(2) Review and monitoring activity to ensure Program compliance with the nondiscrimination laws and regulations;

(3) Collection and reporting of racial and ethnic participation data as required by title VI of the Civil Rights Act of 1964, which prohibits discrimination in federally assisted programs on the basis of race, color, or national origin; and

(4) Establishment of grievance procedures for handling complaints based on sex and handicap.

(b) *Complaints.* Persons seeking to file discrimination complaints may file them either with the Secretary of Agriculture, or the Director, Office of Equal Opportunity, USDA, Washington, DC 20250 or with the Office established by the State agency to handle discrimination grievances or complaints. All complaints received by State or local agencies which allege discrimination based on race, color, national origin, or age shall be referred to the Secretary of Agriculture or Director, Office of Equal Opportunity. A State or local agency may process complaints which allege discrimination based on sex or handicap if grievance procedures are in place.

(c) *Non-English materials.* Where a significant number or proportion of the population eligible to be served needs service or information in a language other than English in order effectively to be informed of or to participate in the Program, the State agency shall take reasonable steps considering the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to required Program information except certification forms which are used only by local agency staff. The State agency shall also ensure that all rights and responsibilities listed on the certifi-

cation form are read to these applicants in the appropriate language.

§ 246.9 Fair hearing procedures for participants.

(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 a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the Program.

(b) *Hearing system.* The State agency shall provide for either a hearing at the State level or a hearing at the local level which permits the individual to appeal a local agency decision to the State agency. The State agency may adopt local level hearings in some areas, such as those with large case-loads, and maintain only State level hearings in other areas.

(c) *Notification of appeal rights.* At the time of a claim against an individual for improperly issued benefits or at the time of participation denial or of disqualification from the Program, the State or local agency shall inform each individual 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.

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

(e) *Time limit for request.* The State or local agency shall provide individuals a reasonable period of time to request fair hearings; provided that, such time limit is not less than 60 days from the date the agency mails or gives the applicant or participant the notice of adverse action.