

## Food and Nutrition Service, USDA

## § 249.6

(20) A description of the procedures the State agency will use to comply with the civil rights requirements described in § 249.7(a), including the processing of discrimination complaints.

(21) A copy of the State agency's fair hearing procedures for SFMNP participants and the administrative appeal procedures for local agencies, farmers, farmers' markets, roadside stands, and/or CSA programs.

(22) State agencies that have not previously participated in the SFMNP must provide:

(i) A description of the need for the SFMNP in that State agency;

(ii) The specific goals and objectives of the SFMNP, designed to fulfill the purpose of the Program as set forth in § 249.1; and

(iii) A capability statement that includes a summary description of any prior experience with farmers' market projects or programs, including information and data describing the attributes of such projects or programs.

(23) For State agencies making expansion requests, documentation that demonstrates:

(i) The need for an increase in funding;

(ii) That the use of the increased funding will be consistent with serving eligible SFMNP participants by expanding benefits to more persons, by enhancing current benefits, or a combination of both, and expanding the awareness and use of farmers' markets, roadside stands, and CSA programs;

(iii) The ability of the State agency to operate the existing SFMNP satisfactorily;

(iv) The management capabilities of the State agency to expand; and

(v) Whether, in the case of a State agency that intends to use the funding to increase the value of the Federal benefits received by a participant, the funding provided will increase the rate of coupon redemption.

(b) *Amendments.* At any time after approval, the State agency may amend the State Plan to reflect changes. The State agency shall submit such amendments to FNS for approval. The proposed amendments shall be signed by the State-designated official responsible for ensuring that the SFMNP is operated in accordance with the State

Plan. The amendments must be approved by FNS prior to implementation.

(c) *Retention of copy.* A copy of the approved State Plan shall be kept on file at the State agency for public inspection.

### § 249.5 Selection of new State agencies.

In selecting new State agencies, FNS will use objective criteria to rank and approve State plans submitted in accordance with § 249.4. In making this ranking, FNS will consider the amount of funds necessary to operate the SFMNP successfully in the State compared with other States and with the total amount of funds available to the SFMNP, the number of participants estimated to be served, and the projected benefit level. Approval of a State Plan does not equate to an obligation on the part of FNS to fund the SFMNP within that State.

## Subpart C—Participant Eligibility

### § 249.6 Participant eligibility.

(a) *Eligibility for certification.* Individuals who are eligible to receive Federal benefits under the SFMNP are those who meet the following criteria:

(1) *Categorical eligibility.* Participants must be not less than 60 years of age, except that State agencies may exercise the option to deem Native Americans who are 55 years of age or older as categorically eligible for SFMNP benefits. State agencies may, at their discretion, also deem disabled individuals less than 60 years of age who are currently living in housing facilities occupied primarily by older individuals where congregate nutrition services are provided, as categorically eligible to receive SFMNP benefits.

(2) *Residency requirement.* The State agency may establish a residency requirement for SFMNP applicants. 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.

(3) *Income eligibility.* The State agency must ensure that local agencies determine income eligibility through the use of a clear and simple application process approved by the State agency. Participants must have a maximum household income of not more than 185 percent of the annual poverty income guidelines, or be determined automatically income eligible based on current participation/eligibility to receive benefits in another means-tested program, as designated by the State agency, for which income eligibility is set at or below 185 percent of the poverty income guidelines and for which documentation of family income is required. FNS will announce the income poverty guidelines annually.

(b) *Documentation of income eligibility.*

(1) *Automatically income eligible applicants.* The State or local agency must require applicants determined to be automatically income eligible to provide documentation of their eligibility to participate in another means-tested assistance program, as designated by the State agency.

(2) *Other applicants.*

(i) The State or local agency must require all other applicants to provide, at a minimum, a signed statement affirming that their household size and income does not exceed the maximum income eligibility standard in use by the State agency.

(ii) If the State agency offers a benefit of more than \$50 per participant through a CSA program, it must require documentation of household size and income from all participants receiving the higher benefit level.

(iii) The State agency has the option to require all applicants to provide documentation of family income at certification, and/or to require verification of the information provided by the applicant.

(c) *Certification periods.* Participants may be certified only for the current fiscal year's SFMNP period of operation. Eligibility must be determined at the beginning of each period of operation. Prior fiscal year certifications may not be carried over into subsequent fiscal years, but the State agency may make use of its participant enrollment listings from the prior fiscal

year in its outreach efforts for the current fiscal year.

(d) *Participant rights and responsibilities.* Where a significant number or proportion of the population eligible to be served needs information regarding participation in the SFMNP in a language other than English, reasonable steps must be taken to provide this information in the appropriate language(s) to such persons, considering the scope of the Program and the size and concentration of such population(s). In order to inform applicants and participants or their authorized representatives/proxies of SFMNP rights and responsibilities, State/local agencies must provide the following information:

(1) During the certification process, every program applicant or authorized representative must be informed of the illegality of dual participation, i.e., obtaining SFMNP benefits from more than one service delivery area or from more than one SFMNP program model (coupon system and CSA program) within the same service delivery area.

(2) At the time of certification, each SFMNP applicant or authorized representative must read or have read to him or her the following statements or similar statements:

I have been advised of my rights and obligations under the SFMNP. I certify that the information I have provided for my eligibility determination is correct, to the best of my knowledge. This certification form is being submitted in connection with the receipt of Federal assistance. Program officials may verify information on this form. I understand that intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts may result in paying the State agency, in cash, the value of the food benefits improperly issued to me and may subject me to civil or criminal prosecution under State and Federal law.

Standards for eligibility and participation in the SFMNP are the same for everyone, regardless of race, color, national origin, age, disability, or sex.

I understand that I may appeal any decision made by the local agency regarding my eligibility for the SFMNP.

(3) During the certification visit, each participant or authorized representative must:

(i) Receive an explanation of how to use his/her SFMNP coupons at farmers'

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markets and roadside stands, and/or how SFMNP foods will be provided under the CSA program in that service delivery area; and

(ii) Be advised of the other types of services that are available to SFMNP participants, where such services are located, how they may be obtained, and why they may be useful.

(4) Persons found ineligible for the SFMNP during a certification visit must be advised in writing of their ineligibility, of the reasons for their ineligibility, and of their right to a fair hearing. The reasons for ineligibility must be properly documented and must be retained on file at the local agency. Such notice is not required when participation is denied solely because of lack of sufficient funding to provide SFMNP benefits to all eligible applicants.

(5) When a State or local agency pursues collection of a claim pursuant to § 249.20(c) against an individual who has been issued SFMNP benefits for which she/he is not eligible, the person must be advised in writing of the reason(s) for the claim, the value of the improperly issued benefits that must be repaid, and of his/her right to a fair hearing.

(e) *Certification without charge.* Certification for the SFMNP must be performed at no cost to the applicant or the authorized representative.

(f) *Use of proxies or authorized representatives.* At the State agency's discretion, a senior may designate an authorized representative (proxy) to apply for certification, shop at the farmers' market or roadside stands, and/or pick up their eligible foods from CSA program distribution sites on his/her behalf if the senior is unable to perform these actions. The State agency must obtain a signed statement from the eligible senior designating another individual as his/her authorized representative. A senior who has been certified to receive SFMNP benefits may designate an authorized representative at any point during the program's period of operation.

(g) *Processing standards.* (1) Applicants for the SFMNP must be notified of their eligibility or ineligibility for benefits, or of their placement on a waiting list, as described in paragraph

(g)(2) of this section, within 15 days from the date of application.

(2) When all available program benefits have been allocated to eligible participants, and there is a reasonable expectation that additional funds may become available to provide further SFMNP benefits to eligible seniors, the local agency must maintain a waiting list of individuals who contact the local agency to apply for the Program. Individuals must be notified of their placement on a waiting list within 15 days after they contact the local agency to request Program benefits. To enable the local agency to contact these individuals when caseload space becomes available, the waiting list must include the name of the applicant, the date placed on the waiting list, and an address or phone number of the applicant.

(h) *Limitations on certification.* If necessary to limit the number of participants, State agencies may impose additional eligibility requirements, such as limiting participant certification to certain geographic areas. Each State agency must specifically identify these limitations on certification in its State Plan.

### § 249.7 Nondiscrimination.

(a) *Civil rights requirements.* (1) The State agency must comply with the following requirements to ensure that no person shall, on the grounds of race, color, national origin, age, sex or disability, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the SFMNP:

(i) Title VI of the Civil Rights Act of 1964;

(ii) Title IX of the Education Amendments of 1972;

(iii) Section 504 of the Rehabilitation Act of 1973;

(iv) The Age Discrimination Act of 1975;

(v) Department of Agriculture regulations on nondiscrimination (parts 15, 15a and 15b of this title); and

(vi) Applicable FNS Instructions, including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and annual reviews of each local agency's racial and