

# 7 CFR 246.26 - Other provisions.

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Title 7: Agriculture

Subtitle B: Regulations of the Department of Agriculture (Continued)

CHAPTER II: FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A: CHILD NUTRITION PROGRAMS

PART 246: SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

Subpart G: Miscellaneous Provisions

246.26 - Other provisions.

- (a) No aid reduction.** The value of benefits or assistance available under the Program shall not be considered as income or resources of participants or their families for any purpose under Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare and public assistance programs.
- (b) Statistical information.** FNS reserves the right to use information obtained under the Program in a summary, statistical or other form which does not identify particular individuals.
- (c) Medical information.** FNS may require the State or local agencies to supply medical data and other information collected under the Program in a form that does not identify particular individuals, to enable the Secretary or the State agencies to evaluate the effect of food intervention upon low-income individuals determined to be at nutritional risk.
- (d) Confidentiality of applicant and participant information**

*(1) WIC purposes*

(i) Confidential applicant and participant information is any information about an applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation, that individually identifies an applicant or participant and/or family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other Federal, State or local law.

(ii) Except as otherwise permitted by this section, the State agency must restrict the use and disclosure of confidential applicant and participant information to persons directly connected with the administration or enforcement of the WIC Program whom the State agency determine have a need to know the information for WIC Program purposes. These persons may include, but are not limited to: personnel from its local agencies and other WIC State or local agencies; persons under contract with the State agency to perform research regarding the WIC Program, and persons investigating or prosecuting WIC Program violations under Federal, State or local law.

*(2) Non-WIC purposes.*

(i) Use by WIC State and local agencies. Any WIC State or local agency may use confidential applicant and participant information in the administration of its other programs that serve

persons eligible for the WIC Program in accordance with paragraph (h) of this section.

(ii) Disclosure to public organizations. The State agency and its local agencies may disclose confidential applicant and participant information to public organizations for use in the administration of their programs that serve persons eligible for the WIC Program in accordance with paragraph (h) of this section.

(3) *Child abuse and neglect reporting.* Staff of the State agency and its local agencies who are required by State law to report known or suspected child abuse or neglect may disclose confidential applicant and participant information without the consent of the participant or applicant to the extent necessary to comply with such law.

(4) *Release forms.* Except in the case of subpoenas or search warrants (see paragraph (i) of this section), the State agency and its local agencies may disclose confidential applicant and participant information to individuals or entities not listed in this section only if the affected applicant or participant signs a release form authorizing the disclosure and specifying the parties to which the information may be disclosed. The State or local agency must permit applicants and participants to refuse to sign the release form and must notify the applicants and participants that signing the form is not a condition of eligibility and refusing to sign the form will not affect the applicant's or participant's application or participation in the WIC Program. Release forms authorizing disclosure to private physicians or other health care providers may be included as part of the WIC application or certification process. All other requests for applicants or participants to sign voluntary release forms must occur after the application and certification process is completed.

(5) *Access to information by applicants and participants.* The State or local agency must provide applicants and participants access to all information they have provided to the WIC Program. In the case of an applicant or participant who is an infant or child, the access may be provided to the parent or guardian of the infant or child, assuming that any issues regarding custody or guardianship have been settled. However, the State or local agency need not provide the applicant or participant (or the parent or guardian of an infant or child) access to any other information in the file or record such as documentation of income provided by third parties and staff assessments of the participant's condition or behavior, unless required by Federal, State, or local law or policy or unless the information supports a State or local agency decision being appealed pursuant to FNS regulation 246.9.

**(e) Confidentiality of vendor information.** Confidential vendor information is any information about a vendor (whether it is obtained from the vendor or another source) that individually identifies the vendor, except for vendor's name, address, telephone number, Web site/e-mail address, store type, and authorization status. Except as otherwise permitted by this section, the State agency must restrict the use or disclosure of confidential vendor information to:

(1) Persons directly connected with the administration or enforcement of the WIC Program or the Food Stamp Program who the State agency determines have a need to know the information for purposes of these programs. These persons may include personnel from its local agencies and other WIC State and local agencies and persons investigating or prosecuting WIC or Food Stamp Program violations under Federal, State, or local law;

(2) Persons directly connected with the administration or enforcement of any Federal or State law or local law or ordinance. Prior to releasing the information to one of these parties (other than a Federal agency), the State agency must enter into a written agreement with the requesting party specifying that such information may not be used or redisclosed except for purposes directly connected to the administration or enforcement of a Federal, or State law; and

(3) A vendor that is subject to an adverse action, including a claim, to the extent that the confidential information concerns the vendor subject to the adverse action and is related to the

adverse action.

(4) At the discretion of the State agency, all authorized vendors and vendor applicants regarding vendor sanctions which have been imposed, identifying only the vendor's name, address, length of the disqualification or amount of the civil money penalty, and a summary of the reason(s) for such sanction provided in the notice of adverse action. Such information may be disclosed only following the exhaustion of all administrative and judicial review, in which the State agency has prevailed, regarding the sanction imposed on the subject vendor, or the time period for requesting such review has expired.

**(f) Confidentiality of Food Stamp Program retailer information.** Except as otherwise provided in this section, the State agency must restrict the use or disclosure of information about Food Stamp Program retailers obtained from the Food Stamp Program, including information provided pursuant to Section 9 (c) of the Food Stamp Act of 1977 (7 U.S.C. 2018(c)) and FNS regulation 278.1(q) of this chapter, to persons directly connected with the administration or enforcement of the WIC Program.

**(g) USDA and the Comptroller General.** The State agency must provide the Department and the Comptroller General of the United States access to all WIC Program records, including confidential vendor, applicant and participant information, pursuant to FNS regulation 246.25(a)(4).

**(h) Requirements for use and disclosure of confidential applicant and participant information for non- WIC purposes.** The State or local agency must take the following steps before using or disclosing confidential applicant or participant information for non-WIC purposes pursuant to paragraph (d)(2) of this section.

*(1) Designation by chief State health officer.* The chief State health officer (or, in the case of an Indian State agency, the governing authority) must designate in writing the permitted non-WIC uses of the information and the names of the organizations to which such information may be disclosed.

*(2) Notice to applicants and participants.* The applicant or participant must be notified either at the time of application (in accordance with FNS regulation 246.7(i)(11)) or through a subsequent notice that the chief State health officer (or, in the case of an Indian State agency, the governing authority) may authorize the use and disclosure of information about their participation in the WIC Program for non-WIC purposes. This statement must also indicate that such information will be used by State and local WIC agencies and public organizations only in the administration of their programs that serve persons eligible for the WIC Program.

*(3) Written agreement and State plan.* The State or local agency disclosing the information must enter into a written agreement with the other public organization or, in the case of a non-WIC use by a State or local WIC agency, the unit of the State or local agency that will be using the information. The State agency must also include in its State plan, as specified in FNS regulation 246.4(a)(24), a list of all organizations (including units of the State agency or local agencies) with which the State agency or its local agencies has executed or intends to execute a written agreement. The written agreement must:

(i) Specify that the receiving organization may use the confidential applicant and participant information only for:

(A) Establishing the eligibility of WIC applicants or participants for the programs that the organization administers;

(B) Conducting outreach to WIC applicants and participants for such programs;

(C) Enhancing the health, education, or well-being of WIC applicants or participants who are currently enrolled in such programs, including the reporting of known or suspected

child abuse or neglect that is not otherwise required by State law;

(D) Streamlining administrative procedures in order to minimize burdens on staff, applicants, or participants in either the receiving program or the WIC Program; and/or

(E) Assessing and evaluating the responsiveness of a State's health system to participants' health care needs and health care outcomes; and

(ii) Contain the receiving organization's assurance that it will not use the information for any other purpose or disclose the information to a third party.

**(i) Subpoenas and search warrants.** The State agency may disclose confidential applicant, participant, or vendor information pursuant to a valid subpoena or search warrant in accordance with the following procedures:

*(1) Subpoena procedures.* In determining how to respond to a subpoena duces tecum (i.e., a subpoena for documents) or other subpoena for confidential information, the State or local agency must use the following procedures:

(i) Upon receiving the subpoena, immediately notify its State agency;

(ii) Consult with legal counsel for the State or local agency and determine whether the information requested is in fact confidential and prohibited by this section from being used or disclosed as stated in the subpoena;

(iii) If the State or local agency determines that the information is confidential and prohibited from being used or disclosed as stated in the subpoena, attempt to quash the subpoena unless the State or local agency determines that disclosing the confidential information is in the best interest of the Program. The determination to disclose confidential information without attempting to quash the subpoena should be made only infrequently; and,

(iv) If the State or local agency seeks to quash the subpoena or decides that disclosing the confidential information is in the best interest of the Program, inform the court or the receiving party that this information is confidential and seek to limit the disclosure by:

(A) Providing only the specific information requested in the subpoena and no other information; and,

(B) Limiting to the greatest extent possible the public access to the confidential information disclosed.

*(2) Search warrant procedures.* In responding to a search warrant for confidential information, the State or local agency must use the following procedures:

(i) Upon receiving the search warrant, immediately notify its State agency;

(ii) Immediately notify legal counsel for the State or local agency;

(iii) Comply with the search warrant; and,

(iv) Inform the individual(s) serving the search warrant that the information being sought is confidential and seek to limit the disclosure by:

(A) Providing only the specific information requested in the search warrant and no other information; and

(B) Limiting to the greatest extent possible the public access to the confidential information disclosed.

**(j) Data collection related to local agencies.**

(1) Each State agency must collect data related to local agencies that have an agreement with the State agency to participate in the program for each of Federal fiscal years 2006 through 2009, including those local agencies that participated only for part of the fiscal year. Such data shall include:

(i) The name of each local agency;

(ii) The city in which each local agency was headquartered and the name of the state;

(iii) The amount of funds provided to the participating organization, i.e., the amount of federal funds provided for nutrition services and administration to each participating local agency; and

(iv) The type of participating organization, e.g., government agency, educational institution, non-profit organization/secular, non-profit organization/faith-based, and “other”.

(2) On or before August 31, 2007, and each subsequent year through 2010, State agencies must report to FNS data as specified in paragraph (j)(1) of this section for the prior Federal fiscal year. State agencies must submit this data in a format designated by FNS.

**(k) Program Evaluations.** State and local WIC agencies and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department, related to programs authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 (42 U.S.C. 1786).

[50 FR 6121, Feb. 13, 1985, as amended at 53 FR 35301, Sept. 13, 1988; 65 FR 83288, Dec. 29, 2000; 71 FR 56731, Sept. 27, 2006; 72 FR 24184, May 2, 2007; 73 FR 21811, Apr. 23, 2008; 76 FR 37983, June 29, 2011]