§ 246.4 State plan.

(a) Requirements. By August 15 of each year, each State agency shall submit to FNS for approval a State Plan for the following fiscal year as a prerequisite to receiving funds under this section. The State agency may submit the State Plan in the format provided by FNS guidance. Alternatively, the State agency may submit the Plan in combination with other federally required planning documents or develop its own format, provided that the information required below is included. FNS requests advance notification that a State agency intends to use an alternative format. The State Plan shall be signed by the State designated official responsible for ensuring that the Program is operated in accordance with the State Plan. FNS will provide written approval or denial of a completed State Plan or amendment within 30 days of receipt. Within 15 days after FNS receives an incomplete Plan, FNS will notify the State agency that additional information is needed to complete the Plan. Any disapproval will be accompanied by a statement of the reasons for the disapproval. After receiving approval of the State Plan, each State agency shall only submit to FNS for approval substantive changes in the State Plan. A complete and approved Plan shall include:

1. An outline of the State agency’s goals and objectives for improving Program operations.
2. A budget for nutrition services and administration funds, and an estimate of food expenditures.
3. An estimate of Statewide participation for the coming fiscal year by category of women, infants and children.
4. The State agency staffing pattern.
5. An Affirmative Action Plan which includes:
   i. A list of all areas and special populations, in priority order based on relative need, within the jurisdiction of the State agency, the State agency’s plans to initiate or expand operations under the Program in areas most in need of supplemental foods, including plans to inform nonparticipating local agencies of the availability and benefits of the Program and the availability of technical assistance in implementing the Program, and a description of how the State agency will take all reasonable actions to identify potential local agencies and encourage agencies to implement or expand operations under the Program within the following year in the neediest one-third of all areas unserved or partially served;
   ii. An estimate of the number of potentially eligible persons in each area and a list of the areas in the Affirmative Action Plan which are currently operating the Program and their current participation, which participant

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priority levels as specified in §246.7 are being reached in each of these areas, and which areas in the Affirmative Action Plan are currently operating CSFP and their current participation; and

(iii) A list of the names and addresses of all local agencies.

(6) Plans to provide program benefits to eligible migrant farmworkers and their families, to Indians, and to homeless individuals.

(7) The State agency’s plans, to be conducted in cooperation with local agencies, for informing eligible persons of the availability of Program benefits, including the eligibility criteria for participation, the location of local agencies operating the Program, and the institutional conditions of §246.7(n)(1)(i) of this part, with emphasis on reaching and enrolling eligible women in the early months of pregnancy and migrants. Such information shall be publicly announced by the State agency and by local agencies at least annually. Such information shall also be distributed to offices and organizations that deal with significant numbers of potentially eligible persons, including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, organizations and agencies serving homeless individuals, and religious and community organizations in low-income areas.

(8) A description of how the State agency plans to coordinate program operations with other services or programs that may benefit participants in, or applicants for, the program.

(9) The State agency’s nutrition education goals and action plans, including a description of the methods that will be used to provide drug and other harmful substance abuse information, promote breastfeeding, and to meet the special nutrition education needs of migrant farmworkers and their families, Indians, and homeless persons.

(10) For Indian State or local agencies that wish to apply for the alternate income determination procedure in accordance with §246.7(d)(2)(vii), documentation that the majority of Indian household members have incomes below eligibility criteria.

(11) A copy of the procedure manual developed by the State agency for guidance to local agencies in operating the Program. The manual shall include—

(i) Certification procedures, including:

(A) A list of the specific nutritional risk criteria by priority level which explains how a person’s nutritional risk is determined;

(B) Hematological data requirements including timeframes for the collection of such data;

(C) The procedures for requiring proof of pregnancy, consistent with §246.7(c)(2)(ii), if the State agency chooses to require such proof;

(D) The State agency’s income guidelines for Program eligibility;

(E) Adjustments to the participant priority system (see §246.7(e)(4)) to accommodate high-risk postpartum women or the addition of Priority VII; and,

(F) Alternate language for the statement of rights and responsibilities which is provided to applicants, parents, or caretakers when applying for benefits as outlined in §246.7(i)(10) and (j)(2)(i) through (j)(2)(iii). This alternate language must be approved by FNS before it can be used in the required statement.

(ii) Methods for providing nutrition education to participants. Nutrition education will include information on drug abuse and other harmful substances. Participants will include homeless individuals.

(iii) Instructions concerning all food delivery operations performed at the local level, including the list of acceptable foods and their maximum monthly quantities as required by §246.10(b)(1).

(iv) Instructions for providing all records and reports which the State agency requires local agencies to maintain and submit; and

(v) Instructions on coordinating operations under the program with drug and other harmful substance abuse counseling and treatment services.

(12) A description of the State agency’s financial management system.
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(13) A description of how the State agency will distribute nutrition services and administration funds, including start-up funds, to local agencies operating under the Program.

(14) A description of the food delivery system as it operates at the State agency level, including—

(i) Type of system. All food delivery systems in use within the State agency’s jurisdiction;

(ii) Vendor limiting and selection criteria. Vendor limiting criteria, if used by the State agency, and the vendor selection criteria established by the State agency consistent with the requirements in §246.12(g)(3) and (g)(4);

(iii) A sample vendor and farmer, if applicable, agreement. The sample vendor agreement must include the sanction schedule, the process for notification of violations in accordance with §246.12(l)(3), and the State agency’s plans for improvement in the coming year in accordance with §246.12(j). The State agency must also include the criteria it will use to determine which vendors will receive routine monitoring visits. State agencies that intend to delegate signing of vendor agreements to local agencies must describe the State agency supervision and instruction that will be provided to ensure the uniformity and quality of local agency activities;

(iv) Vendor monitoring. The system for monitoring vendors to ensure compliance and prevent fraud, waste, and program noncompliance, and the State agency’s plans for improvement in the coming year in accordance with §246.12(l)(3). The State agency must also include the criteria it will use to determine which vendors will receive routine monitoring visits. State agencies that intend to delegate any aspect of vendor monitoring responsibilities to a local agency or contractor must describe the State agency supervision and instruction that will be provided to ensure the uniformity and quality of vendor monitoring;

(v) Options regarding trafficking convictions. The option exercised by the State agency to sanction vendors pursuant to §246.12(k)(1)(i).

(vi) Food instruments and cash-value vouchers. A facsimile of the food instrument and cash-value voucher, if used, and a description of the system the State agency will use to account for the disposition of food instruments and cash value vouchers in accordance with §246.12(q);

(vii) Names of contractors. The names of companies, excluding authorized vendors, with whom the State agency has contracted to participate in the operation of the food delivery system;

(viii) Nutrition services and administration funds conversion. For State agencies applying for authority to convert food funds to nutrition services and administration funds under §246.16(g), a full description of their proposed cost-cutting system or system modification;

(ix) Homeless participants. If the State agency plans to adapt its food delivery system to accommodate the needs of homeless individuals, a description of such adaptations;

(x) Infant formula cost containment. A description of any infant formula cost containment system. A State agency must submit a State Plan or Plan amendment if it is attempting to structure and justify a system that is not a single-supplier competitive bidding system for infant formula in accordance with §246.16a(d); is requesting a waiver for an infant formula cost containment system under §246.16a(e); or, is planning to change or modify its current system or implement a system for the first time. The amendment must be submitted at least 90 days before the proposed effective date of the system change. The plan amendment must include documentation for requests for waivers based on interference with efficient or effective program operations; a cost comparison analysis conducted under §246.16a(d)(2); and a description of the proposed cost containment system. If FNS disputes supporting plan amendment documentation, it will deem the Plan amendment incomplete under this paragraph (a), and will provide the State agency with a statement outlining disputed issues within 15 days of receipt of the Plan amendment. The State agency may not enter into any infant formula cost containment contract until the disputed issues are
resolved and FNS has given its consen. If necessary, FNS may grant a postponement of implementation of an infant formula cost containment system under §246.16a(f). If at the end of the postponement period issues remain unresolved the State agency must pro-
cceed with a cost containment system judged by FNS to comply with the pro-
visions of this part. If the State agency does not comply, it will be subject to
the penalties set forth in §246.16a(1);
(xvi) Other cost containment systems. A
description of any other food cost con-
tainment systems (such as juice and
cereal rebates and food item restric-
tions).
(xvii) List of infant formula whole-
salers, distributors, and retailers. The
policies and procedures for compiling
and distributing to authorized WIC re-
tail vendors, on an annual or more fre-
quen. basis, as required by
§246.12(g)(11), a list of infant formula
wholesalers, distributors, and retailers
licensed in the State in accordance
with State law (including regulations),
and infant formula manufacturers reg-
istered with the Food and Drug Admin-
istration (FDA) that provide infant for-
mula. The vendor may provide only the
authorized infant formula which the
vendor has obtained from a source in-
cluded on the list described in
§246.12(g)(11) to participants in ex-
change for food instruments specifying
infant formula.
(15) The State agency’s procedures
for accepting and processing vendor ap-
plications outside of its established
timeframes if the State agency deter-
mines there will otherwise be inade-
quate participant access to the WIC
Program.
(16) The State agency’s plans to pre-
vent and identify dual participation in
accordance with §246.7(l)(1)(i) and
(l)(1)(ii). In States where the Program
and the CSFP operate in the same
area, or where an Indian State agency
operates a Program in the same area as
a geographic State agency, a copy of
the written agreement between the
State agencies for the detection and
prevention of dual participation shall
be submitted.
(17) A description of the procedures
the State will use to comply with the
civil rights requirements described in
§246.8, including the processing of dis-
crimination complaints.
(18) A copy of the State agency’s fair
hearing procedures for participants and
the administrative appeal procedures
for local agencies and food vendors.
(19) The State agency’s plan to reach
and enroll migrants, and eligible
women in the early months of preg-
nancy.
(20) The State agency’s plan to establish, to the extent practicable, that homeless facilities, and institutions if it chooses to make the Program available to them, meet the conditions established in §246.7(n)(1)(i) of this part, if residents of such accommodations are to be eligible to receive WIC Program benefits.

(21) A plan to provide program benefits to unserved infants and children under the care of foster parents, protective services, or child welfare authorities, including infants exposed to drugs perinatally.

(22) A plan to improve access to the Program for participants and prospective applicants who are employed or who reside in rural areas, by addressing their special needs through the adoption or revision of procedures and practices to minimize the time participants and applicants must spend away from work and the distances participants and applicants must travel. The State agency shall also describe any plans for issuance of food instruments and cash-value vouchers to employed or rural participants, or to any other segment of the participant population, through means other than direct participant pick-up, pursuant to §246.12(r)(4). Such description shall also include measures to ensure the integrity of Program services and fiscal accountability. The State agency will also describe its policy for approving transportation of participants to and from WIC clinics.

(23) Assurance that each local agency and any subgrantees of the State agency and/or local agencies are in compliance with the requirements of 7 CFR part 3017 regarding nonprocurement debarment/suspension.

(24) A description of the State agency’s plans to provide and maintain a drug-free workplace in compliance with requirements in 7 CFR part 3021.

(25) A list of all organizations with which the State agency or its local agencies has executed or intends to execute a written agreement pursuant to §246.26(h) authorizing the use and disclosure of confidential applicant and participant information for non-WIC purposes.

(26) The State agency’s policies and procedures for preventing conflicts of interest at the local agency or clinic level in a reasonable manner. At a minimum, this plan must prohibit the following WIC certification practices by local agency or clinic employees, or provide effective alternative policies and procedures when such prohibition is not possible:

(i) Certifying oneself;

(ii) Certifying relatives or close friends; or,

(iii) One employee determining eligibility for all certification criteria and issuing food instruments, cash-value vouchers or supplemental food for the same participant.

(27) The State agency’s plan for collecting and maintaining information on cases of participant and employee fraud and abuse. Such information should include the nature of the fraud detected and the associated dollar losses.

(28) The State agency’s Universal Identifier number.

(b) Public comment. The State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.

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

(d) Retention of copy. A copy of the approved State Plan or the WIC portion of the State’s composite plan of operations shall be kept on file at the State agency for public inspection.

§ 246.5 Selection of local agencies.

(a) General. This section sets forth the procedures the State agency shall perform in the selection of local agencies and the expansion, reduction, and