

Food and Nutrition Service, USDA

§ 248.4

the FMNP in accordance with the requirements of this part; the requirements of the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a and 15b), administration of grants (2 CFR part 200, subparts A, B, D, E and F and USDA implementing regulations 2 CFR part 400 and part 415), nonprocurement debarment/suspension (2 CFR part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension and USDA implementing regulations 2 CFR part 417), drug-free workplace (2 CFR part 182, Government-wide Requirements for Drug-Free Workplace), and lobbying (2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400, part 415 and part 418); and, Office of Management and Budget Circular A-130, FNS guidelines, and Instructions issued under the FNS Directives Management System. The State agency shall provide guidance to co-operating WIC State and local agencies on all aspects of FMNP operations. Pursuant to section 17(m)(2) of the CNA, State agencies may operate the FMNP locally through nonprofit organizations or local government entities and must ensure coordination among the appropriate agencies and organizations.

(c) *Agreement and State Plan.* (1) Each State agency desiring to administer the FMNP shall annually submit a State Plan and enter into a written agreement with the Department for administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(2) The written agreement must include a statement that supports full use of Federal funds provided to State agencies for the administration of the FMNP, and excludes such funds from State budget restrictions or limitations, including hiring freezes, work furloughs, and travel restrictions.

(d) *State agency ineligibility.* A State agency shall be ineligible to participate in the FMNP if State or local sales tax is collected on Program food purchases in the area in which it administers the Program, except that, if sales tax is collected on Program food purchases by sovereign Indian entities which are not State agencies, the State

agency shall remain eligible so long as any farmers' markets collecting such tax are disqualified.

(e) *Coordination with WIC agency.* The Chief Executive Officer of the State shall ensure coordination between the designated administering State agency and the WIC State agency, if different, by ensuring that the two agencies enter into a written agreement. Such coordination between agencies is necessary for the successful operation of the FMNP, because WIC participants or persons on the waiting list for WIC services are the only persons eligible to receive Federal benefits under the FMNP. The written agreement shall delineate the responsibilities of each agency, describe any compensation for services, and shall be signed by the designated representative of each agency. This agreement shall be submitted each year along with the State Plan.

(f) *State staffing standards.* Each State agency shall ensure that sufficient staff is available to efficiently and effectively administer the FMNP. This shall include, but not be limited to, sufficient staff to provide nutrition education in coordination with the WIC Program, coupon and market management, fiscal reporting, monitoring, and training. The State agency shall provide an outline of administrative staff and job descriptions for staff whose salaries will be paid from program funds in their State Plans.

[59 FR 11517, Mar. 11, 1994, as amended at 76 FR 37983, June 29, 2011; 81 FR 66496, Sept. 28, 2016]

Subpart B—State Agency Eligibility

§ 248.4 State Plan.

(a) *Requirements.* By November 15 of each year, each applying or participating State agency shall submit to FNS for approval a State Plan for the following year as a prerequisite to receiving funds under this section. 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. Portions of the State Plan which do not change annually need not be resubmitted. However,

§ 248.4

7 CFR Ch. II (1-1-21 Edition)

the State agency shall provide the title of the sections that remain unchanged, as well as the year of the last Plan in which the sections were submitted. At a minimum, the Plan must address the following areas in sufficient detail to demonstrate the State agency's ability to meet the requirements of the FMNP:

(1) A copy of the agreement between the designated administering State agency and the WIC State agency, if different, for services such as nutrition education, and documentation of coordinated efforts as required in § 248.3(e), as well as copies of agreements with agencies other than the WIC State agency.

(2) Estimated number of recipients for the fiscal year, and proposed months of operation.

(3) Estimated cost of the FMNP, including a minimum amount necessary to operate the FMNP.

(4) Description of how the Program will achieve its dual purposes of providing a nutritional benefit to WIC (or waiting list) participants and expanding the awareness and use of farmers' markets.

(5) Outline of administrative staff and job descriptions.

(6) Detailed description of the record-keeping system including, but not limited to, the system for maintaining records pertaining to financial operations, coupon issuance and redemption, and FMNP participation.

(7) Detailed description of the financial management system, including, but not limited to documentation of how the State will meet the matching requirement and procedures for obligating funds.

(8) Detailed description of the service area including:

(i) The number and addresses of participating markets, roadside stands and area WIC clinics including a map outlining the service area and proximity of markets/roadside stands to clinics; and

(ii) Estimated number of WIC participants and persons on the WIC waiting list that will receive FMNP coupons.

(9) Description of the coupon issuance system including:

(i) How the State agency will target areas with highest concentrations of eligible persons and greatest access to

farmers' markets within the broadest possible geographic area;

(ii) Annual benefit amount per recipient;

(iii) Method for instructing recipients on the proper use of FMNP coupons and the purpose of the FMNP; and

(iv) Method for ensuring that FMNP coupons are only issued to eligible recipients.

(10) Detailed description of the coupon and farmers' market management system including:

(i) Criteria for authorizing farmers' markets and/or roadside stands;

(ii) Procedures for training farmers and market managers, at authorization, and annually thereafter;

(iii) Procedures for monitoring farmers, farmers' markets and/or roadside stands;

(iv) Description of system for identifying high risk farmers, farmers' markets and/or roadside stands and procedures for sanctioning farmers, farmers' markets and/or roadside stands;

(v) Facsimile of the FMNP coupon;

(vi) Identification of the fresh, nutritious, unprepared fruits, vegetables, and herbs which are eligible for purchase under the Program;

(vii) Description of FMNP coupon replacement policy;

(viii) Procedures for handling recipient and farmer/farmers' market complaints.

(11) Detailed description of the FMNP coupon redemption process including:

(i) Procedures for ensuring the secure transportation and storage of FMNP coupons;

(ii) System for identifying and reconciling FMNP coupons;

(iii) Timeframes for FMNP coupon redemption by recipients; submission for payment by markets, and payment by the State agency;

(12) System for ensuring that FMNP coupons are redeemed only by authorized farmers, farmers' markets and/or roadside stands and only for eligible foods.

(13) System for identifying FMNP coupons which are redeemed or submitted for payment outside valid dates or by unauthorized farmers, farmers' markets and/or roadside stands.

(14) A copy of the written agreement to be used between the State agency

and authorized farmers, farmers' markets and/or roadside stands. In those States which authorize farmers' markets, but not individual farmers, this agreement shall specify in detail the role of and procedures to be used by farmers' markets for monitoring and sanctioning farmers, and the appropriate procedures to be used by a farmer to appeal a sanction or disqualification imposed by a farmers' market.

(15) If available, information on the change in consumption of fresh fruits and vegetables by recipients. This information shall be submitted as an addendum to the State Plan and shall be submitted at such a date specified by the Secretary.

(16) If available, information on the effects of the program on farmers' markets. This information shall be submitted as an addendum to the State Plan and shall be submitted at such a date specified by the Secretary.

(17) A description of the procedures the State agency will use to comply with the civil rights requirements described in § 248.7(a), including the processing of discrimination complaints.

(18) State agencies which have not previously participated in the FMNP, shall provide the following additional information:

(i) A statement assuring that if the State agency receives Federal funds, as specified under § 248.14 to operate the FMNP, and applies those funds to similar programs operated in the previous fiscal year with State or local funds, the amount of State and local funds that were available to similar programs in the fiscal year preceding the first year of operation shall not be reduced. The State agency shall include data in the State Plan showing that it did not reduce the amount of State and local funds available to the similar program in the preceding fiscal year.

(ii) A capability statement which 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.

(19) For States making expansion requests, documentation which demonstrates:

(i) The need for an increase in funding;

(ii) That the use of the increased funding will be consistent with serving WIC participants, or persons on a waiting list for WIC benefits, by expanding benefits to more persons, by enhancing current benefits, or a combination of both, and expanding the awareness and use of farmers' markets;

(iii) The ability to satisfactorily operate the existing FMNP;

(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 share of the benefits received by a recipient, the funding provided will increase the rate of coupon redemption.

(20) For those State agencies requesting the extra 2 percent administrative rate for market development or technical assistance to promote such development in disadvantaged areas or remote rural areas, an explanation of their justification and plans for the use of such funds.

(b) *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 FMNP is operated in accordance with the State Plan.

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

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49746, Sept. 27, 1995; 64 FR 48076, Sept. 2, 1999; 73 FR 65249, Nov. 3, 2008]

§ 248.5 Selection of new State agencies.

In selecting new State agencies, the Department will use objective criteria to rank and approve State plans submitted in accordance with § 248.4. In making this ranking, the Department will consider the amount of funds necessary to successfully operate the FMNP in the State compared with other States and with the total amount of funds available to the FMNP. Approval of a State Plan does not equate