maternal and child health, public health nutrition, or dietetics; or

(iv) Be qualified as a Senior Public Health Nutritionist under the Department of Health and Human Services guidelines; or

(v) Meet the IHS standards for a Public Health Nutritionist; and

(vi) Have at least one of the following: Program development skills, education background and experience in the development of educational and training resource materials, community action experience, counseling skills or experience in participant advocacy.

(4) A designated breastfeeding promotion coordinator, to coordinate breastfeeding promotion efforts identified in the State plan in accordance with the requirement of § 246.4(a)(9) of this part. The person to whom the State agency assigns this responsibility may perform other duties as well.

(5) A staff person designated for food delivery system management. The person to whom the State agency assigns this responsibility may perform other duties as well.

(6) The State agency shall enforce hiring practices which comply with the nondiscrimination criteria set forth in § 246.8. The hiring of minority staff is encouraged.

(f) *Delegation to local agency*. The local agency shall provide Program benefits to participants in the most effective and efficient manner, and shall comply with this part, the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a, 15b), the Department's regulations governing the administration of grants (7 CFR part 3016), Office of Management and Budget Circular A–130, and State agency and FNS guidelines and instructions.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985, as amended at 52 FR 21236, June 4, 1987; 59 FR 11499, Mar. 11, 1994; 65 FR 83277, Dec. 29, 2000]

Subpart B—State and Local Agency Eligibility

§ 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 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 list of the specific nutritional risk criteria by priority level which cites conditions and indices to be used to determine a person's nutritional risk, hematological data requirements including timeframes for the collection of such data, the State agency's income guidelines for Program eligibility, and any adjustments to the participant priority system made pursuant to § 246.7(e)(4) to accommodate high-risk postpartum women or the addition of Priority VII;

(ii) Methods for providing nutrition education, including drug and other harmful substance abuse information, to participants, including homeless individuals;

(iii) Instructions concerning all food delivery operations performed at the local level;

(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.

(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) *Vendor agreement.* A sample vendor agreement, including the sanction schedule, which may be incorporated as an attachment or, if the sanction schedule is in the State agency's regulations, through citation to the regulations. 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(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 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.* A facsimile of the food instrument, if used, and a description of the system the State agency will use to account for the disposition of food instruments 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 consent. 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 proceed with a cost containment system judged by FNS to comply with the provisions of this part. If the State agency does not comply, it will be subject to the penalties set forth in §246.16a(i);

(xi) *Vendor training.* The procedures the State agency will use to train vendors in accordance with §246.12(i). State agencies that intend to delegate

any aspect of training to a local agency, contractor, or vendor representative must describe the State agency supervision and instruction that will be provided to ensure the uniformity and quality of vendor training;

(xii) *Food instrument security*. A description of the State agency's system for ensuring food instrument security in accordance with § 246.12(p);

(xiii) *Participant access determination criteria*. A description of the State agency's participant access determination criteria consistent with § 246.12(l); and

(xiv) *Mobile stores*. The special needs necessitating the authorization of mobile stores, if the State agency chooses to authorize such stores.

(xv) *Vendor cost containment*. A description of the State agency's vendor peer group system, competitive price criteria, and allowable reimbursement levels that demonstrates that the State agency is in compliance with the cost containment provisions in § 246.12(g)(4); information on non-profit above-50-percent vendors that the State agency has exempted from competitive price criteria and allowable reimbursement levels in § 246.12(g)(4)(iv); a justification and documentation supporting the State agency's request for an exemption from the vendor peer group requirement in § 246.12(g)(4), if applicable; and, if the State agency authorizes any above-50-percent vendors, information required by FNS to determine whether the State agency's vendor cost containment system meets the requirements in § 246.12(g)(4)(i).

(xvi) *Other cost containment systems*. A description of any other food cost containment systems (such as juice and cereal rebates and food item restrictions).

(15) The State agency's plans to prevent 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.

(16) A description of the procedures the State will use to comply with the civil rights requirements described in § 246.8, including the processing of discrimination complaints.

(17) A copy of the State agency's fair hearing procedures for participants and the administrative appeal procedures for local agencies and food vendors.

(18) The State agency's plan to reach and enroll migrants, and eligible women in the early months of pregnancy.

(19) 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.

(20) 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.

(21) 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 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.

(22) 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.

(23) A description of the State agency's plans to provide and maintain a drug-free workplace.

(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.

[50 FR 6121, Feb. 13, 1985, as amended at 52 FR 21236, June 4, 1987; 53 FR 25314, July 6, 1988; 54 FR 51294, Dec. 14, 1989; 55 FR 9717, Mar. 15, 1990; 57 FR 34506, Aug. 5, 1992; 58 FR 11506, Feb. 26, 1993; 59 FR 11499, Mar. 11, 1994; 63 FR 63973, Nov. 18, 1998; 64 FR 13322, Mar. 18, 1999; 64 FR 70177, Dec. 16, 1999; 65 FR 51223, Aug. 23, 2000; 65 FR 53527, Sept. 5, 2000; 65 FR 83278, Dec. 29, 2000; 70 FR 71722, Nov. 29, 2005]

§ 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 disqualification of local agencies already in operation. In making decisions to intitiate, continue, and discontinue the participation of local agencies, the State agency shall give consideration to the need for Program benefits as delineated in the Affirmative Action Plan.

(b) *Application of local agencies*. The State agency shall require each agency, including subdivisions of the State agency, which desires approval as a local agency, to submit a written local agency application. After the receipt of an incomplete application, the State agency shall provide written notification to the applicant agency of the additional information needed. After the receipt of a complete application, the State agency shall notify the applicant agency in writing of the approval or disapproval of its application. When an application is disapproved, the State agency shall advise the applicant agency of the reasons for disapproval and of the right to appeal as set forth in § 246.18. When an agency submits an application and there are no funds to serve the area, the applicant agency shall be notified that there are currently no funds available for Program initiation or expansion. The applicant agency shall be notified by the State agency when funds become available.

(c) *Program initiation and expansion*. The State agency shall meet the following requirements concerning Program initiation and expansion:

(1) The State agency shall fund local agencies serving those areas or special populations most in need first, in accordance with their order of priority as listed in the Affirmative Action Plan described in § 246.4(a)(5). The selection criteria cited in paragraph (d)(1) of this section shall be applied to each area or special population before eliminating that area from consideration and serving the next area of special population. The State agency shall consider the number of participants in each priority level being served by existing local agencies in determining when it is appropriate to move into additional areas in the Affirmative Action Plan or to expand existing operations in an area. Additionally, the State agency shall consider the total number of people potentially eligible in each area compared to the number being served. Expansion of existing operations shall be in accordance with the Affirmative Action Plan and may be based on the percentage of need being met in each participant priority level.

(2) The State agency shall provide a written justification to FNS for not funding an agency to serve the highest priority area or special population. Such justification may include its inability to administer the Program, lack of interest expressed for operating the Program, or for those areas or special populations which are under consideration for expansion of an existing operation, a determination by the State agency that there is a greater need for funding an agency serving an area or special population not operating the Program. The State agency shall use the participant priority system in § 246.7 as a measurement of greater need in such determination.

(3) The State agency may fund more than one local agency to serve the same area or special population as long