

**§ 247.24 Temporary caseload assignment procedures.**

(a) *General.* The following procedures shall apply only to caseload allocations for the first caseload cycle to begin after December 1, 1987.

(b) *Currently participating State agencies.* State agencies participating in the program in 1987 shall under § 247.10(a)(2)(i)–(iv) be allocated caseload for service to 145,000 women, infants, and children and 80,000 elderly persons.

(c) *Approved applicant State agencies.* Caseload remaining after allocations pursuant to paragraph (b) of this section shall be made available to all applicant State agencies with approved State Plans as of the date of caseload allocation in proportion to each State agency's caseload request as a percentage of the total caseload requested by all such State agencies.

[53 FR 4841, Feb. 18, 1988]

**PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)**

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AUTHORITY: 42 U.S.C. 1786.

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**Subpart A—General**

**§ 248.1 General purpose and scope.**

This part announces regulations under which the Secretary of Agriculture shall carry out the WIC Farmers' Market Nutrition Program. The dual purposes of the FMNP are:

(a) To provide resources in the form of fresh, nutritious, unprepared foods (fruits and vegetables) from farmers' markets to women, infants, and children who are nutritionally at risk and who are participating in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) or are on the waiting list for the WIC Program; and

(b) To expand the awareness, use of and sales at farmers' markets.

This will be accomplished through payment of cash grants to approved State agencies which administer the FMNP and deliver benefits at no cost to eligible persons. The FMNP shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 *et seq.*) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

**§ 248.2 Definitions.**

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

*Administrative costs* means those direct and indirect costs, exclusive of food costs, as defined in §248.12(b), which State agencies determine to be necessary to support FMNP operations. Administrative costs include, but are not limited to, the costs of administration, start-up, training, monitoring, auditing, the development of and accountability for coupon and market management, nutrition education, outreach, eligibility determination, and developing, printing, and distributing coupons.

*Compliance buy* means a covert, on-site investigation in which a FMNP representative poses as a FMNP participant and transacts one or more FMNP food coupons.

*Coupon* means a coupon, voucher, or other negotiable financial instrument by which benefits under the FMNP are transferred to recipients.

*Days* means calendar days.

*Demonstration project* means the Farmers' Market Coupon Demonstration Project authorized by section 17(m) of the Child Nutrition Act of 1966 (CNA), (42 U.S.C. 1786(m)), as amended by section 501 of the Hunger Prevention Act of 1988 (Pub. L. 100-435), enacted September 19, 1988. Public Law 102-314 authorized the Secretary to competitively award, subject to the availability of funds, a 3-year grant (which was subsequently extended for an additional year by Public Law 102-142) to up to 10 States that submitted applications that were approved for the establishment of demonstration projects designed to provide WIC participants with coupons that could be exchanged for fresh, nutritious, unprepared foods at farmers' markets. Those States are: Connecticut, Iowa, Maryland, Massachusetts, Michigan, New York, Pennsylvania, Texas, Vermont, and Washington.

*Department* means the U.S. Department of Agriculture.

*Eligible foods* means fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. Honey, maple syrup, cider, nuts, seeds, eggs, meat, cheese and seaffod are examples of

foods not eligible for purposes of the FMNP. State agencies shall consider locally grown to mean produce grown only within State borders but may also define it to include areas in neighboring States adjacent to its borders. Under no circumstances can produce grown outside of the United States and its territories be considered eligible foods.

*Farmer* means an individual authorized to sell produce at participating farmers' markets. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the FMNP. For purposes of this part, the term "farmer" shall mean "producer" as that term is used in section 17(m)(6)(D) of the CNA (42 U.S.C. 1786(m)(6)(D)). A participating State agency has the option to authorize individual farmers or farmers' markets.

*Farmers' market* means an association of local farmers who assemble at a defined location for the purpose of selling their produce directly to consumers. In cases where recipient access to farmers' markets is an issue, with prior FCS approval this definition may be expanded at the State agency's option to include farmstands at which authorized farmers sell their produce.

*Farmstand* means a location at which a single, individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a farmers' market. With prior FCS approval, through the State Plan process, a State agency may authorize a farmstand or a nonprofit organization operating a farmstand to participate in the FMNP where necessary to ensure adequate recipient access to farmers' markets.

*Fiscal year* means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

*FMNP funds* means Federal grant funds provided for the FMNP, plus the required non-Federal match.

*FCS* means the Food and Consumer Service of the U.S. Department of Agriculture.

*Food costs* means the cost of eligible supplemental foods.

*Household* has the same definition as that of “family” defined in § 246.2 of this chapter. Each such family shall constitute a separate household for FMNP benefit issuance purposes.

*In-kind contributions* mean property or services which benefit the FMNP and which are contributed by non-Federal parties without charge to the FMNP.

*Local agency* means any nonprofit entity or local government agency which issues FMNP coupons, and provides nutrition education and/or information on operational aspects of the FMNP to FMNP recipients.

*Matching requirement* means non-Federal outlays in an amount equal to not less than 30 percent of the total FMNP costs for the fiscal year. The Secretary may negotiate with an Indian State agency a lower percentage of matching funds, but not lower than 10 percent of the total cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. The match may be satisfied through non-Federal expenditures for the FMNP or for similar farmers’ market programs which operate during the same period as the FMNP. Similar programs include other farmers’ market programs which serve low-income women, infants and children (who may or may not be WIC participants or on the waiting list for WIC services), as well as other categories of low-income recipients, such as, but not limited to, low-income elderly persons.

*Nonprofit agency* means a private agency which is exempt from income tax under the Internal Revenue Code of 1986, as amended, (26 U.S.C. 1 *et. seq.*).

*Nutrition education* means individual or group education sessions and the provision of information and educational materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual’s personal, cultural, and socio-economic preferences.

*OIG* means the Department’s Office of the Inspector General.

*Program or FMNP* means the WIC Farmers’ Market Nutrition Program authorized by section 17(m) of the CNA

(42 U.S.C. 1786(m)), as amended by Public Law 102-214, the WIC Farmers’ Market Nutrition Act of 1992, enacted on July 2, 1992. The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is authorized by section 17 of the Child Nutrition Act of 1966, as amended. Within section 17, section 17(m) authorizes the FMNP.

*Recipient* means a person chosen by the State agency to receive FMNP benefits. Such person must be a woman, infant over 4 months of age, or child, who receives benefits under the WIC Program or is on the waiting list to receive benefits under the WIC Program.

*SFPD* means the Supplemental Food Programs Division of the Food and Consumer Service of the U.S. Department of Agriculture.

*Similar programs* means other farmers’ market projects or programs which serve low-income women, infants and children, or other categories of recipients, such as, but not limited to, elderly persons.

*State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

*State agency* means the agriculture department, the health department or any other agency approved by the chief executive officer of the State; an Indian tribe, band or group recognized by the Department of the Interior; an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service (IHS), an agency of the Department of Health and Human Services.

*State Plan* means a plan of FMNP operation and administration that describes the manner in which the State agency intends to implement, operate and administer all aspects of the FMNP within its jurisdiction in accordance with § 248.4.

*Total FMNP costs* means the sum of all allowable costs incurred for FMNP

purposes, whether funded from the Federal or the State matching share of total FMNP funds.

*Total FMNP funds* means the sum of the Federal funds provided to the State agency and non-Federal contributions provided by the State agency for FMNP purposes.

*WIC* means the Special Supplemental Nutrition Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771 *et. seq.*).

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49745, Sept. 27, 1995]

### § 248.3 Administration.

(a) *Delegation to FCS.* Within the Department, FCS shall act on behalf of the Department in the administration of the FMNP. Within FCS, SFPD and the FCS Regional Offices are responsible for FMNP administration. FCS shall provide assistance to State agencies and evaluate all levels of FMNP operations to ensure that the goals of the FMNP are achieved in the most effective and efficient manner possible.

(b) *Delegation to State agency.* The State agency is responsible for the effective and efficient administration of 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 (7 CFR part 3016), nonprocurement debarment/suspension (7 CFR part 3017), drug-free workplace (7 CFR part 3017), and lobbying (7 CFR part 3018); and, Office of Management and Budget Circular A-130, FCS guidelines, and Instructions issued under the FCS Directives Management System. The State agency shall provide guidance to cooperating 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.* Each State agency desiring to administer the FMNP shall annually submit a State Plan and enter into a written agreement with the Department for ad-

ministration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(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.

## 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 FCS