

Appendix A.
Regulations Authorizing
Biennial Reports

Code of Federal Regulations

Title 7, Section 246.25(b)(3) (2011)

Food and Nutrition Service, USDA

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program funds improperly spent as a result of dual participation, if FNS determines that the State agency has not complied with the requirements in § 246.7(1)(1).

(3) *Delegation of claims responsibility.* The State agency may delegate to its local agencies the responsibility for collecting participant claims.

(d) *Penalties.* In accordance with section 12(g) of the National School Lunch Act, whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under section 17 of the Child Nutrition Act of 1966, as amended, whether received directly or indirectly from USDA, or whoever receives, conceals or retains such funds, assets or property for his or her own interest, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets or property are of the value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years, or both, or if such funds, assets or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

[50 FR 6121, Feb. 13, 1985, as amended at 52 FR 21238, June 4, 1987; 65 FR 83288, Dec. 29, 2000; 71 FR 56731, Sept. 27, 2006; 72 FR 68998, Dec. 6, 2007; 79 FR 12300, Mar. 4, 2014]

§ 246.24 Procurement and property management.

(a) *Requirements.* State and local agencies shall ensure that subgrantees comply with the requirements of 7 CFR part 3016, the nonprocurement debarment/suspension requirements of 7 CFR part 3017, and if applicable, the lobbying restrictions as required in 7 CFR part 3018 concerning the procurement and allowability of food in bulk lots, supplies, equipment and other services with Program funds. These requirements are adopted to ensure that such materials and services are obtained for the Program in an effective manner and in compliance with the provisions of applicable law and executive orders.

(b) *Contractual responsibilities.* The standards contained in A-130 and 7 CFR part 3016 do not relieve the State or local agency of the responsibilities arising under its contracts. The State

agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State or local agency may use its own procurement regulations which reflect applicable State and local regulations, provided that procurements made with Program funds adhere to the standards set forth in A-130 and 7 CFR part 3016.

(d) *Property acquired with Program funds.* State and local agencies shall observe the standards prescribed in 7 CFR part 3016 in their utilization and disposition of real property and equipment, including automated data processing equipment, acquired in whole or in part with Program funds.

[50 FR 6121, Feb. 13, 1985, as amended at 59 FR 11508, Mar. 11, 1994]

§ 246.25 Records and reports.

(a) *Recordkeeping requirements.* Each State and local agency shall maintain full and complete records concerning Program operations. Such records shall comply with 7 CFR part 3016 and the following requirements:

(1) Records shall include, but not be limited to, information pertaining to financial operations, food delivery systems, food instrument issuance and redemption, equipment purchases and inventory, certification, nutrition education, including breastfeeding promotion and support, civil rights and fair hearing procedures.

(2) All records shall be retained for a minimum of three years following the date of submission of the final expenditure report for the period to which the report pertains. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the three-year period, the records shall be kept until all issues are resolved, or until the end of the regular three-year period, whichever is later. If FNS deems any of the

Program records to be of historical interest, it may require the State or local agency to forward such records to FNS whenever either agency is disposing of them.

(3) Records for nonexpendable property acquired in whole or in part with Program funds shall be retained for three years after its final disposition.

(4) All records shall be available during normal business hours for representatives of the Department and the Comptroller General of the United States to inspect, audit, and copy. Any reports or other documents resulting from the examination of such records that are publicly released may not include confidential applicant or participant information.

(b) *Financial and participation reports*—(1) *Monthly reports.* (i) State agencies must submit financial and program performance data on a monthly basis, as specified by FNS, to support program management and funding decisions. Such information must include, but may not be limited to:

(A) Actual and projected participation;

(B) Actual and projected food funds expenditures;

(C) Actual and projected rebate payments received from manufacturers.

(D) A listing by source year of food and NSA funds available for expenditure; and,

(E) NSA expenditures and unliquidated obligations.

(ii) State agencies must require local agencies to report such financial and participation information as is necessary for the efficient management of food and NSA funds expenditures.

(2) *Annual reports.* (i) Every year, State agencies must report to FNS the average number of migrant farmworker household members participating in the Program during a 12-month period of time specified by FNS.

(ii) State agencies must submit itemized NSA expenditure reports annually as an addendum to their WIC Program closeout reports, as required by §246.17(b)(2).

(iii) The State agency must submit local agency breastfeeding participation data on an annual basis to FNS.

(3) *Biennial reports.* (i) *Participant characteristics report.* State and local

agencies must provide such information as may be required by FNS to provide a biennial participant characteristics report. This includes, at a minimum, information on income and nutritional risk characteristics of participants, information on breastfeeding incidence and duration, and participation in the Program by category (i.e., pregnant, breastfeeding and postpartum women, infants and children) within each priority level (as established in §246.7(e)(4)) and by migrant farmworker households.

(ii) *Civil rights report.* Racial and ethnic participation data contained in the biennial participant characteristics report will also be used to fulfill civil rights reporting requirements.

(c) *Other reports.* State agencies must submit reports to reflect additions and deletions of local agencies administering the WIC Program and local agency address changes as these events occur.

(d) *Source documentation.* To be acceptable for audit purposes, all financial and Program performance reports shall be traceable to source documentation.

(e) *Certification of reports.* Financial and Program reports shall be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(f) *Use of reports.* FNS will use State agency reports to measure progress in achieving objectives set forth in the State Plan, and this part, or other State agency performance plans. If it is determined, through review of State agency reports, Program or financial analysis, or an audit, that a State agency is not meeting the objectives set forth in its State Plan, FNS may request additional information including, but not limited to, reasons for failure to achieve its objectives.

(g) *Extension of reporting deadline.* FNS may extend the due date for any Financial and Participation Report upon receiving a justified request from the State agency. The State agency should not wait until the due date if an extension is to be requested, but should submit the request as soon as the need is known. Failure by a State agency to

submit a report by its due date may result in appropriate enforcement actions by FNS in accordance with § 246.19(a)(2), including withholding of further grant payments, suspension or termination of the grant.

[50 FR 6121, Feb. 13, 1985, as amended at 52 FR 21238, June 4, 1987; 53 FR 15653, May 3, 1988; 59 FR 11508, Mar. 11, 1994; 65 FR 53528, Sept. 5, 2000; 71 FR 56731, Sept. 27, 2006; 72 FR 24183, May 2, 2007; 76 FR 59890, Sept. 27, 2011]

§ 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 in-

formation 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 § 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 SNAP 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 SNAP 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 SNAP retailer information.* Except as otherwise provided in this section, the State agency must restrict the use or disclosure of information about SNAP retailers obtained from SNAP, including information provided pursuant to Section 9(c) of the Food and Nutrition Act of 2008 (7 U.S.C. 2018(c)) and § 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 § 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 §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 §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]

§ 246.27 Program information.

Any person who wishes information, assistance, records or other public material shall request such information from the State agency, or from the FNS Regional Office serving the appropriate State as listed below:

(a) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont: U.S. Department of Agriculture, FNS, Northeast Region, 10 Causeway Street, room 501, Boston, Massachusetts 02222-1066.

(b) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Mid-Atlantic Region, Mercer Corporate Park, 300 Corporate Boulevard, Robbinsville, New Jersey 08691-1598.

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 61 Forsyth Street, SW., room 8T36, Atlanta, Georgia 30303.

(d) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FNS, Midwest Region, 77 West Jackson Boulevard—20th Floor, Chicago, Illinois 60604-3507.

(e) Arkansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, FNS, Southwest Region, 1100 Commerce Street, room 5-C-30, Dallas, Texas 75242.

(f) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S.

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Department of Agriculture, FNS, Mountain Plains Region, 1244 Speer Boulevard, suite 903, Denver, Colorado 80204.

(g) Alaska, American Samoa, Arizona, California, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Nevada, Oregon, Washington: U.S. Department of Agriculture, FNS, Western Region, 90 Seventh Street, Suite #10-100, San Francisco, California 94103.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985, as amended at 59 FR 11508, Mar. 11, 1994; 71 FR 56733, Sept. 27, 2006; 73 FR 11314, Mar. 3, 2008]

§ 246.28 OMB control numbers.

The following control numbers have been assigned to the information collection requirements in 7 CFR part 246 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511.

7 CFR part 246 section where requirements are described	Current OMB control no.
4(a) (8), (9), (11)	0584-0386
5	0584-0043
6	0584-0043
7(a)	0584-0386
7(e), (h), (j)	0584-0043
7(n)	0584-0386
7(i)	0584-A536
10	0584-A536
11(a)(3)	0584-0386
11(d)	0584-0043
12(f), (i), (i)(3), (j)	0584-0043
14(d)(1)	0584-0043
16(c)	0584-0043
17(c)(1)	0584-0043
19	0584-0043
20(a)	0584-0043
25(a), (b)	0584-0043, 0584-0347

[50 FR 6121, Feb. 13, 1985, as amended at 53 FR 15653, May 3, 1988; 54 FR 51295, Dec. 14, 1989; 58 FR 11507, Feb. 26, 1993]

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

- Sec.
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- 247.2 The purpose and scope of CSFP.
- 247.3 Administering agencies.
- 247.4 Agreements.
- 247.5 State and local agency responsibilities.
- 247.6 State Plan.
- 247.7 Selection of local agencies.

- 247.8 Individuals applying to participate in CSFP.
- 247.9 Eligibility requirements.
- 247.10 Distribution and use of CSFP commodities.
- 247.11 Applicants exceed caseload levels.
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- 247.13 Provisions for non-English or limited-English speakers.
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- 247.15 Notification of eligibility or ineligibility of applicant.
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- 247.17 Notification of discontinuance of participant.
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- 247.20 Program violations.
- 247.21 Caseload assignment.
- 247.22 Allocation and disbursement of administrative funds to State agencies.
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- 247.24 Recovery and redistribution of caseload and administrative funds.
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- 247.30 Claims.
- 247.31 Audits and investigations.
- 247.32 Termination of agency participation.
- 247.33 Fair hearings.
- 247.34 Management reviews.
- 247.35 Local agency appeals of State agency actions.
- 247.36 Confidentiality of applicants or participants.
- 247.37 Civil rights requirements.

AUTHORITY: Sec. 5, Pub. L. 93-86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97-98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98-8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98-92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99-198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100-202; sec. 1771(a), Pub. L. 101-624, 101 Stat. 3806 (7 U.S.C. 612c note); sec. 402(a), Pub. L. 104-127, 110 Stat. 1028 (7 U.S.C. 612c note); sec. 4201, Pub. L. 107-171, 116 Stat. 134 (7 U.S.C. 7901 note); sec. 4221, Pub. L. 110-246, 122 Stat. 1886 (7 U.S.C. 612c note); sec. 4221, Pub. L. 113-79, 7 U.S.C. 612c note).

SOURCE: 70 FR 47063, Aug. 11, 2005, unless otherwise noted.

§ 247.1 Definitions.

Following is a list of definitions that apply to the Commodity Supplemental Food Program (CSFP).