

CURRENT RULE	PROPOSED RULE	FINAL RULE	IMPLEMENTED		IF NO -(Explain plan of action and planned implementation date)	Add'l Info (Regional Office)
			Yes (explain how)	No		
1. Definitions - § 246.2 No current provision on electronic signatures.	1. Definitions - § 246.2 Adds new definitions of "sign or signature" and "electronic signature;" State agencies may use electronic signatures if reliability and integrity assured.	1. Definitions - § 246.2 Adds new definitions of "sign or signature" and "electronic signature" as proposed, but also adds "Employee fraud and abuse" and "7 CFR part 3021" and revision of "7 CFR part 3017" and "State."	WV P&P 2.19 Electronic Signatures for the Competent Professional Authority (CPA) Section B, Electronic Signatures Meet Signature Requirements As outlined in the Memorandum Opinion Regarding Computerized Progress Notes, dated August 1, 1994 by Geri Guerin, Senior Assistant Attorney General (WV) (see Attachment #1 2.19): The Comptroller General of the United States has held that electronic signatures fulfill the characteristics of a signature. WV WIC program does not currently use electronic signatures for WIC participants.		WV plans to give access to their policy and procedures by allowing the WV WIC policy and procedure manual to be accessed through the internet. WV will begin submitting their state plan electronically to FNS.	
2. State Plan Requirements - § 246.4(a) No current provisions requiring State Plan amendments reflecting requirements of the new rule.	2. State Plan Requirements – § 246.4(a) Technical requirements associated with changes described below.	2. State Plan Requirements – § 246.4(a) Same as proposed and additional provisions on proof of pregnancy and universal identifiers; also added is language revising the proposed State Plan provisions on conflict of interest and separation of duties.	Proof of Pregnancy: WV Policy 2.01 Certification of WIC participants Section D, states that documented proof of pregnancy is required as part of the eligibility determination process, though this process will not form a barrier to participation.			
3. Conflict of Interest	3. Conflict of Interest / Separation of Duties –	3. Conflict of Interest / Separation of Duties –	WV P&P 1.18, Separation of duties states that it is recognized	X	Conflict of Interest: Draft	

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No current provision, but 8/99 GAO report recommends policy on local agency staff conflict of interest.	<p>§ 246.4(a)(25)</p> <p>Requires State agencies to implement policies and procedures to prevent conflicts of interest within local agency staffs, and to implement separation of duties.</p>	<p>§ 246.4(a)(25)</p> <p>Same as proposed and separation of duties clarified to permit a local agency employee to take part in a certification of a participant and issue benefits to that participant if at least one other employee takes part in the certification.</p>	<p>that some agencies have a small staff. When coupled with employee absences or vacancies, some flexibility in maintaining separation of duties must be allowed.</p> <p>In those situations where a separation of duties is not possible, the Local Agency Director or designee will conduct a third party review in those WIC clinics on a quarterly basis.</p> <p>The Local Agency Director or designee will maintain a file with names of such participants and relationship to the employee by using the Separation of Duties Log and assign duties in accordance with policy.</p>		Policy was submitted for approval to FNS on 11/22/06 and recently was approved. This policy will be implemented by the third quarter of FY 07.	
<p>4. Participant/Employee Fraud/Abuse</p> <p>No current provision, but 8/99 GAO report recommends data collection on participant and staff fraud/abuse.</p>	<p>4. Participant or Employee Fraud and Abuse – § 246.4(a)(26)</p> <p>Requires the State agency assurance of a system(s) in place at the local level to collect information on fraud / abuse by employees and participants.</p>	<p>4. Participant or Employee Fraud and Abuse – § 246.4(a)(26)</p> <p>Same as proposed; also, definition of “Employee fraud and abuse” added, as noted above.</p>		X	See response to SFP 07-017 dated 2/18/07. A system of SA review of automated reports and manual review to collect fraud and abuse information at the local level has been submitted. Implementation is planned for 3/1/07.	
<p>5. Selection of New Local Agency – § 246.5</p> <p>Requires States to fund new local agencies in the order of need.</p>	<p>5. Selection of New Local Agency - § 246.5</p> <p>Deletes requirement for States to</p>	<p>5. Selection of New Local Agency – § 246.5</p> <p>Same as proposed.</p>	WV already provides services equally statewide.			

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	fund new local agencies <u>only</u> in the order of need.					
6. Basic Certification Procedures - § 246.7:	6. Basic Certification Procedures – § 246.7:	6. Basic Certification Procedures – § 246.7:				
State agencies may use State or local income guidelines instead of the Federal guidelines.	State agencies must use the WIC regulatory income and family definitions and exclusions.	Same as proposed.	WV P&P 2.06 states that applicants for WIC benefits will be considered economically eligible if their total income is no higher than one-hundred eighty-five (185) percent of the poverty income guidelines.			
No current provision in regulations on short-term non-secured loans.	Short-term, non-secured loans are added to the list of income exclusions.	Loans excluded to which applicant does not have constant or unlimited access.	Policy 2.06 excludes loans as income			
No current provision on proof of pregnancy.	Provides State agencies the option to require proof of pregnancy.	Same as proposed except that proof may be required when the pregnancy is not visibly noticeable as well as when not documented.	Proof of Pregnancy: WV P&P 2.01 Certification of WIC participants Section D, states that documented proof of pregnancy is required as part of the eligibility determination process, though this process will not form a barrier to participation.			
No limit required on the number of certifications based on regression.	Prohibits the use of “possibility of regression” for consecutive certifications.	Same as proposed and priority levels clarified for certifications based on regression.	WV P&P 2.11 attachment 1, 2 and 3 states that possibility of regression may be used only once for sub. cert. and the reason must be document reason in progress notes.			
Benefits must often be prorated.	Certification periods for all participant categories are extended to the end of the last month.	Same as proposed. Also pursuant to the Child Nutrition and WIC Reauthorization Act of 2004, P.L. 108-265, a breastfeeding woman’s certification may be extended up to her infant’s one-		X	Policy 2.01, Certification of Participants. We are not planning to extend certification periods to the end of month at this time.	

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		year birthday, or when she ceases to breastfeed, whichever occurs first.				
Requires disqualification if reassessment of program eligibility is conducted mid-certification.	Requires reassessment of income eligibility mid-certification based on new information, and disqualification if over-income.	Same as proposed, except that the reassessment is not required if sufficient time does not exist to effect the change; "sufficient time" means 90 days prior to the expiration of the certification period.	WV P&P 2.06 Section, N, #4, states that WIC personnel must follow-up on information brought to their attention that a WIC participant may not be income eligible. If such a participant is found to exceed income eligibility, all participating members of the family will be terminated during the certification period.			
State agency may not deviate from the mandated Participant Rights and Responsibilities language.	State agencies are permitted to use simpler language.	Same as proposed.	Our Participant Agreement was revised 5/04, using simpler language.			
7. Continuation of Benefits – § 246.9(g) Does not prohibit the continuation of benefits when a participant becomes ineligible while awaiting a hearing decision on other matters.	7. Continuation of Benefits – § 246.9(g) Prohibits participants who become ineligible from continuing to receive program benefits while awaiting a hearing decision.	7. Continuation of Benefits – § 246.9(g) Same as proposed.		X	Policy and Procedure 1.07, Fair Hearing Policy for Applicants and Participants Section B, Continuation of Benefits will need to be revised to reflect this change by third quarter by FY 07.	
8. Claims/Penalties – § 246.12(h)(3)(xx)&246.23(d) Maximum fine for criminal fraud is \$ 10,000.	8. Claims/Penalties – § 246.12(h)(3)(xx)&246.23(d) No revision proposed.	8. Claims/Penalties – § 246.12(h)(3)(xx)&246.23(d) Maximum fine for criminal fraud raised to \$ 25,000 per non-discretionary requirement of an amendment to the Natl. School Lunch Act.				

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9. Use of Program Funds - § 246.14 No current provision on retroactive benefits.	9. Use of Program Funds - § 246.14 Prohibits use of program funds to provide retroactive benefits to participants.	9. Use of Program Funds - § 246.14 Same as proposed.	The STORC computer system is set up so that retroactive benefits can not be printed.			
Only allows use of program funds for transportation in rural areas.	Allows use of program funds to provide transportation to and from WIC offices in non-rural as well as rural areas.	Same as proposed.		X	WV does not intend to use the transportation option at this time.	
10. Funding Issues - § 246.14, 15, 17	10. Funding Issues - § 246.14, 15, 17	10. Funding Issues - § 246.14, 15, 17				
§ 246.17 provides for a 150-day reporting cycle.	§ 246.17(b)(2) reduces food instrument closeout cycle from 150 to 120 days.	Same as proposed.	Yes. Issued drafts have a 30 day life and vendors have 60 days to redeem. Drafts will not be processed outside of this window.			
§ 246.14(d) requires prior approval for the costs of ADP systems and management studies.	§ 246.14(d) codifies the actual practice of deleting prior approval for costs of management studies.	Same as proposed Same as proposed	Yes. All purchases are part of our MIS cost plan that is approved by the regional office each year.			
§ 246.14(d) requires prior approval for capital expenditures over \$2,500.	Dollar threshold for prior approval of capital expenditures is deleted from § 246.14(d), designating FNS policy and guidance as the new reference for this, as per actual practice.	Same as proposed.	Yes. We follow FNS guidance with regard to all capital expenditures.			
§ 246.15(b) is currently silent on the addition method of applying program income, although 7 CFR 3016 allows this if stated in program regulations.	§ 246.15(b) codifies actual practice of using the addition method of applying program income.	Same as proposed.	The State follows Federal guidelines with regard to program income but does not currently use the addition method.			

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11. Audits/Reporting – § 246.20, 246.25	11. Audits/Reporting – § 246.20, 246.25	11. Audits/Reporting – § 246.20, 246.25	Yes. A statewide audit is performed annually under the Single Audit Act. The State has a policy in place that requires the retention of records for 3 years.			
§ 246.20(b)(1) refers to a dated citation.	§ 246.20(b)(1) refers to the current citation.	§ 246.20(b)(1) refers to the current citation.	Yes. A statewide audit is performed annually under the Single Audit Act.			
§ 246.25(b)(1) requires monthly reporting of certain information on participation, administrative funds, and local agencies.	§ 246.25(b)(1) no longer requires as much information monthly, allowing some information to be reported annually.	Same as proposed.	We report information as required by FNS on a monthly or annual basis.			
Under § 246.25(b)(3) and (c), FNS required certain participation, Civil Rights, and local agency data on a quarterly basis.	§ 246.25(b)(2) codifies annual or biennial reporting of this data, but requires change of local agency information whenever such change occurs, as per actual practice.	Same as proposed.	WV reports Local Agency address changes as they occur.			
12. Confidentiality – § 246.26(d):	12. Confidentiality – § 246.26(d) – (i):	12. Confidentiality - § 246.26(d) – (i):				
Pertains only to information obtained from participants / applicants.	Clarifies that all information about a participant or applicant is protected.	Same as proposed.	WV P&P 1.03 Confidentiality states that confidentiality requirements apply to information provided by an applicant/participant as well as that based on direct observation by			

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			WIC personnel.			
Information may be shared with persons directly administering or enforcing WIC, health and welfare programs, and the Comptroller General.	Clarifies that another State or local agency has access to confidential applicant / participant information.	Same as proposed; preamble clarifies that administration/enforcement includes the prevention of dual participation, and that persons administering/enforcing WIC includes WIC IT staff, contract Single Audit staff, and WIC contractor bank staff.	WV P&P 1.03 Confidentiality, section A states that the disclosure of WIC applicant/participant information is limited to persons directly connected with the administration or enforcement of WIC, including those investigating or prosecuting violations in the WIC Program under Federal, State or local authority.			
State option for information-sharing agreements with “health or welfare” programs; shared information may only be used for eligibility and outreach.	Allows information sharing with public organizations other than health and welfare, and for purposes other than eligibility in other programs and outreach; the additional allowed purposes include 1) enhancing the health, education, and well-being of participants and applicants, 2) streamlining administrative procedures, and 3) evaluating the State’s health system.	Same as proposed; preamble clarifies that the participant’s consent is not needed for information sharing under an MOU, that an MOU may permit information sharing with Child Protective Services upon request if WIC suspects abuse, and that “public organization” includes non-WIC public agencies, but not law enforcement or researchers.	The following policies define who our programs shares information and well as what information is shared: WV P&P 1.03, Confidentiality WV P&P 10.01-10.04 WV P&P 5.06 Guidelines for Serving High Risk Participants, Section G			
FNS Instruction 800-1 allows the sharing of WIC information through agreements with other programs administered by the State/local agency.	Allows a WIC State/local agency to share information through written agreements with its other programs.	Same as proposed.	WV P&P 10.01-10.04 which contain written policy and agreements with other programs. Before sharing information, we require a written agreement.			

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Providing information to private parties such as physicians must be through written consent obtained after certification.	Allows the use of signed release forms from applicants and participants as part of the WIC application and certification process in order to share information with private doctors.	Same as proposed.	Policy 5.06 Guidelines for Serving High Risk Participants, Section G states that a WIC Program Referral Form (WIC-35) will be completed when referring to a health care provider. This form requires a participant or payee signature.			
FNS Inst. 800-1 permits reporting on child abuse.	Clarifies that State and local agency staffs are permitted to share information to comply with required reporting of known or suspected child abuse.	Same as proposed; additional clarification added regarding information-sharing with Child Protective Authorities as noted above with respect to public organizations.	Policy 1.03, Confidentiality, Section G addresses the release of Information to Child Protective Services The State of West Virginia requires that any person who knows about, or has reason to suspect, child abuse or neglect report such information to Child Protective Services, whether the information is reported by a WIC applicant/participant or is observed by WIC personnel. Requests for information from Child Protective Services pertaining to an investigation of suspected abuse or neglect which was reported by WIC personnel to Child Protective Services may be provided by WIC personnel. A Consent for Release of Participant Information form (see attachment #1 1.03) will specify to whom the data is being released. WIC personnel releasing the information and the person			

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			receiving the information will sign the form. The completed form will be placed in the participant's chart.			
Requires notification to participant/applicant at certification on how confidential information will be shared.	Requires notification to participant/applicant at certification or later on how confidential information will be shared for non-WIC purposes.	Same as proposed.	Participants are notified through the WIC-05 Participant Agreement form which states that WIC staff can share information with my health care provider, another WIC clinic, health, education and welfare programs, Head Start, Right from the Start, the Expanded Food and Nutrition Program, Centers for Disease Control, Immunization Program, Medicaid and Maternal and Child Health. Also, participants give authorization for their child's immunization records to be released.			
Policy Memorandum 94-3 addresses subpoenas and search warrants.	Requires State / local agency to consult with legal counsel on subpoenas and comply with search warrants.	Same as proposed and final rule clarifies that no attempt is needed to quash a subpoena if it is withdrawn through the courts.	Policy 1.03 Confidentiality, Section H, states that in the following circumstances, the Local Agency will contact the State WIC Agency immediately upon receipt of a request for information in order to contact legal counsel: Requests for information made by a third party, such as Child Protective Services, which might substantiate allegations of child abuse; and			

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			Receipt of a court ordered subpoena for information (see attachment #2 1.03).			