



**NAISMA WEED FREE PRODUCTS PROGRAM: ANALYSIS OF STATE LEGAL
REQUIREMENTS**

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September 2025

Updated May 2026

NSGLC-25-05-02

Executive Summary

Invasive species laws across the country are very diverse. Some states, especially in the west where invasive plants have been a management priority for decades, have extensive regulatory programs to address the spread of unwanted species. Other states have limited regulation. The North American Invasive Species Management Association (NAISMA) Certified Weed Free Product (WFP) programs exist in both categories of states, but their structure and implementation vary with each state's legal framework.

In eight states, WFP programs are formally established through legislation with express directives to state agencies or third-party entities regarding implementation. In most states, however, WFP programs are implemented more informally through state agency policy or partnerships. States with existing programs can serve as models for how states looking to establish new or improve current programs can do so within existing legal and organizational constraints.

Background

As the WFP program expands across the country, legal and policy barriers have emerged that limit implementation. The WFP program was first established in 1993 by western local land managers that were aware that noxious weeds were being transported and introduced to new sites through hay and feed for cattle, horses, and other animals. The WFP program is the only program in North America that provides land managers with assurance that noxious weeds and other invasive plants will not be spread through the movement of forage, hay, mulch, gravel, or compost brought into the property. The WFP program maintains a list of standards, provides guidelines, and ensures uniform training and participation. NAISMA requires the use of a Memorandum of Understanding (MOU) to participate in the WFP Program.¹ There are currently 34 signatories of the WFP MOU from 25 states and 1 Canadian province.

To advance the WFP standards, the National Sea Grant Law Center at the University of Mississippi School of Law received funding from NAISMA to conduct a review of state law to assess the extent of agency authority to implement WFP programs. This research was supported by the U.S. Fish and Wildlife Service, U.S. Department of Interior under award number F22AP03014-00.

Methodology

The National Sea Grant Law Center's analysis started with a review of WFP program documents to become familiar with program requirements and processes. The documents reviewed included the WFP MOU, the minimum standards for all four products (forage/hay, gravel, mulch, and compost), as well as the inspection and transit certificate forms.² Following this review, the Law Center developed a list of 38 policy attributes associated with the various WFP requirements to provide a framework for the legal analysis. These attributes sought to capture all aspects of

¹ For states that are unable to sign MOUs, NAISMA uses a partnership agreement.

² All documents are available at <https://naisma.org/programs/weed-free-products/>. WFP standards are in development for soil products but were not included in this comparative analysis.

program implementation, including participation, definitions, agency authorities, enforcement, and funding mechanisms (see Appendix A). The policy attributes were reviewed and approved by NAISMA and the WFP Committee.

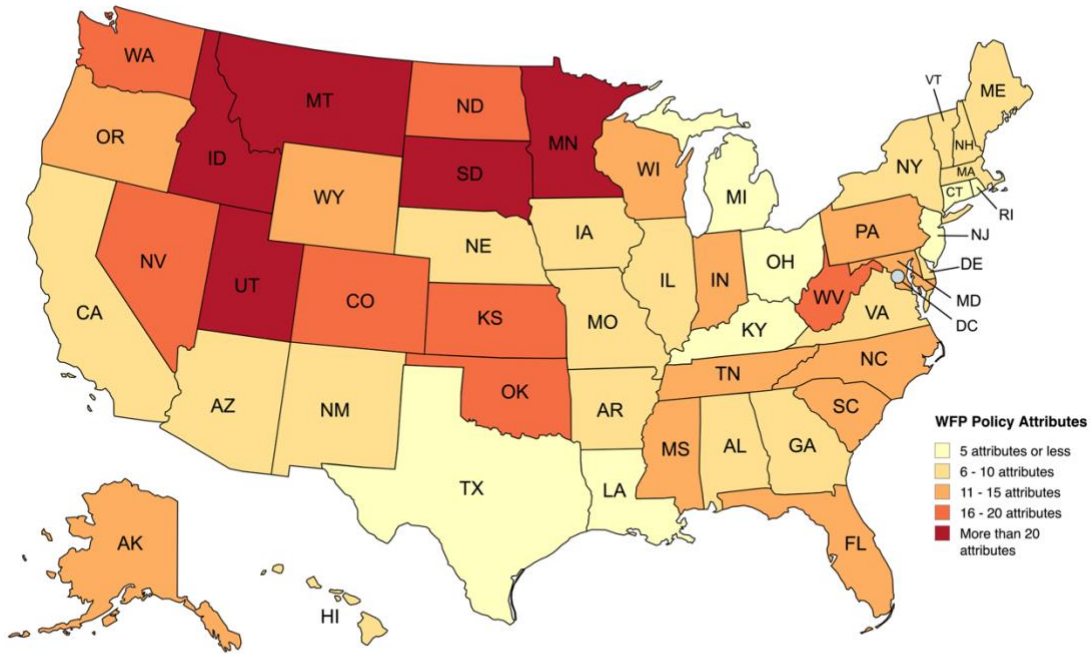
The Law Center then reviewed the law in each of the 50 states for the presence/absence of the 38 policy attributes. Searches of state laws and regulations were conducted in the Westlaw legal database using several broad search terms to identify noxious weed, plant pest, invasive species, and general agency authorities. The Law Center also reviewed relevant state agency and WFP partner websites for information on WFP programs and policies. Results were compiled in an Excel spreadsheet by state.

The Law Center completed the analysis at the end of September 2024 and presented preliminary findings at the NAISMA annual conference on October 3, 2024. Following the annual conference, the Law Center worked with NAISMA to facilitate state agency review of the data in early 2025. In Spring 2026, the Law Center conducted a policy review of the Alberta WFP program and updated the New Jersey information in the report to reflect changes associated with the passage of the New Jersey Invasive Species Management Act in February 2026.

This report summarizes the Law Center's key findings regarding existing state legal authorities to implement WFP programs. For the purposes of this report, the Law Center focused on a subset of 25 policy attributes most relevant to agency authority, including inspection, certification, and enforcement. This report does not include findings for the 13 attributes related to definitions and product types such as forage, cubed hay, gravel, raw mulch, and compost. Full research results for all 38 policy attributes are presented in the state and provincial summary tables attached as Appendix B.

Findings

Across the country, there is a huge range among states with respect to the presence of the examined policy attributes. All 25 attributes are present in Montana, but Rhode Island has only one (Figure 1). There are several reasons for this large disparity. First, invasive plant programs are generally more robust in western states and some have legislation authorizing WFP programs (e.g., MT, MN). States on the other end of the spectrum have no or very limited invasive plant legislation. However, the vast majority of states (70%) fall between these two extremes with a varied mix of authorities provided by noxious weed, plant pest, or agriculture commodity laws.



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Fig. 1. Map illustrating the presence of WFP policy attributes across the country.

Key Agency Authorizations

According to WFP program documents, program implementation requires the designated authority to have the authority to inspect, certify, and control the transport of relevant products, and sign the NAISMA MOU or partnership agreement. A MOU is a formal, non-binding agreement that outlines the intentions, roles, and responsibilities of the partnering organizations. In the NAISMA MOU, the parties agree “to provide uniform standards and policy of inspection, certificate of inspection, and transit certification procedures as applicable.” The designated authority also agrees to complete the required inspection and transit forms per the NAISMA standards.

The Law Center’s review revealed that most states (39) have the authority to inspect relevant products for the presence of prohibited plants. (Fig. 1). Most states (38) also have the authority to restrict or prohibit the transport of products containing prohibited plants. (Fig. 2). Note that the states that make up these two groups are slightly different. California, Kentucky, Maine, Missouri, and Nevada have authority to inspect, but no express authority to restrict the transport of invasive plants within the state. Connecticut, Delaware, Iowa, and Maryland have express authority to restrict transport, but no authority to inspect relevant products. Half of the states (25) have explicit authority to certify products as being free of prohibited plants.

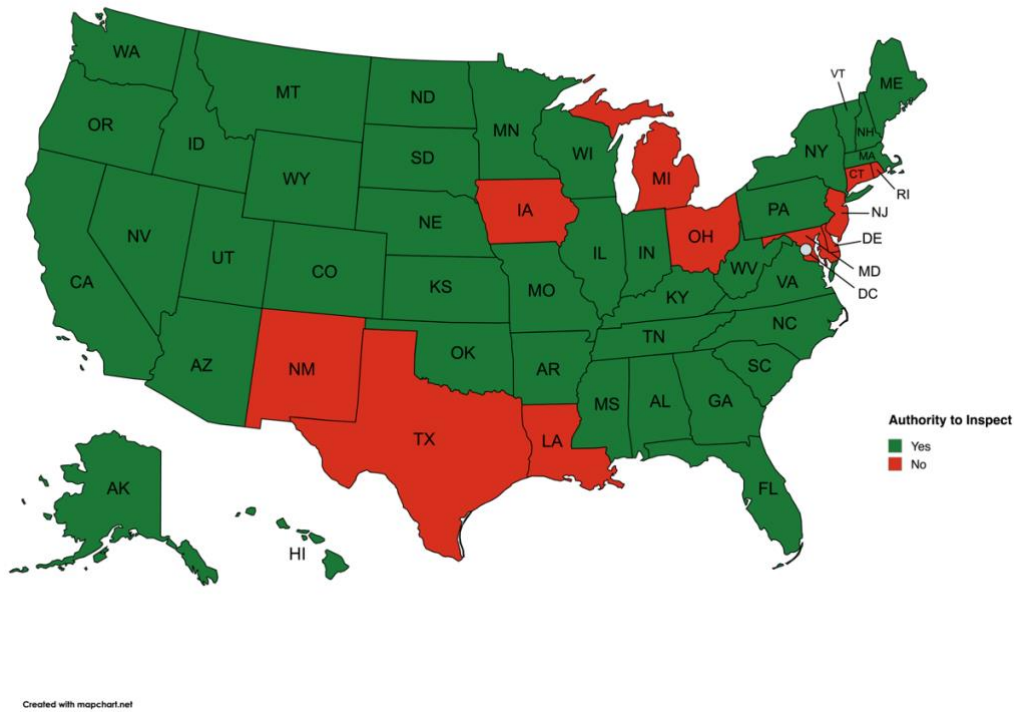


Fig 1. Map illustrating which states have legal authority to inspect for invasive plants.

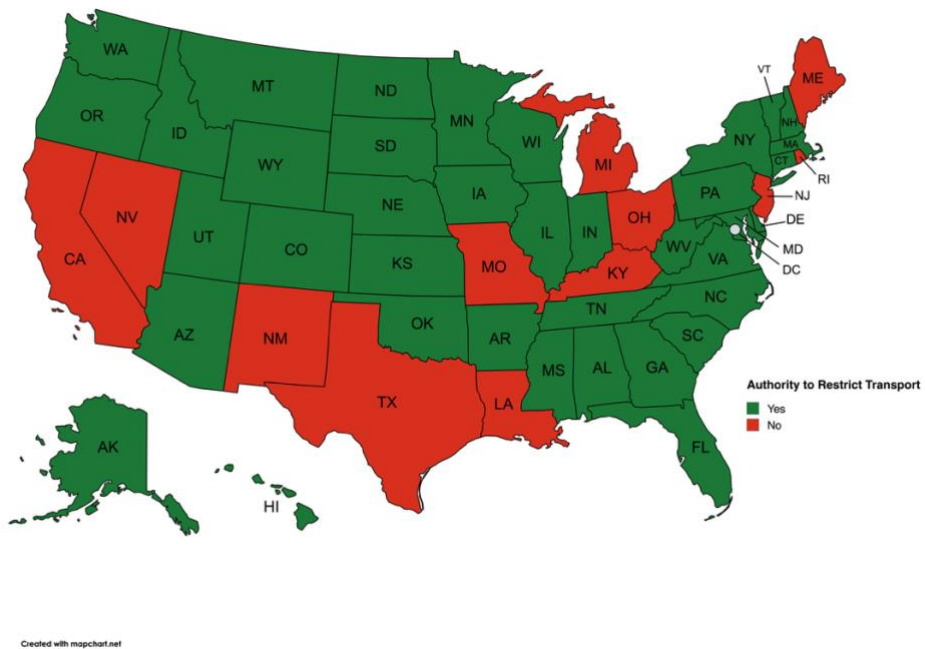
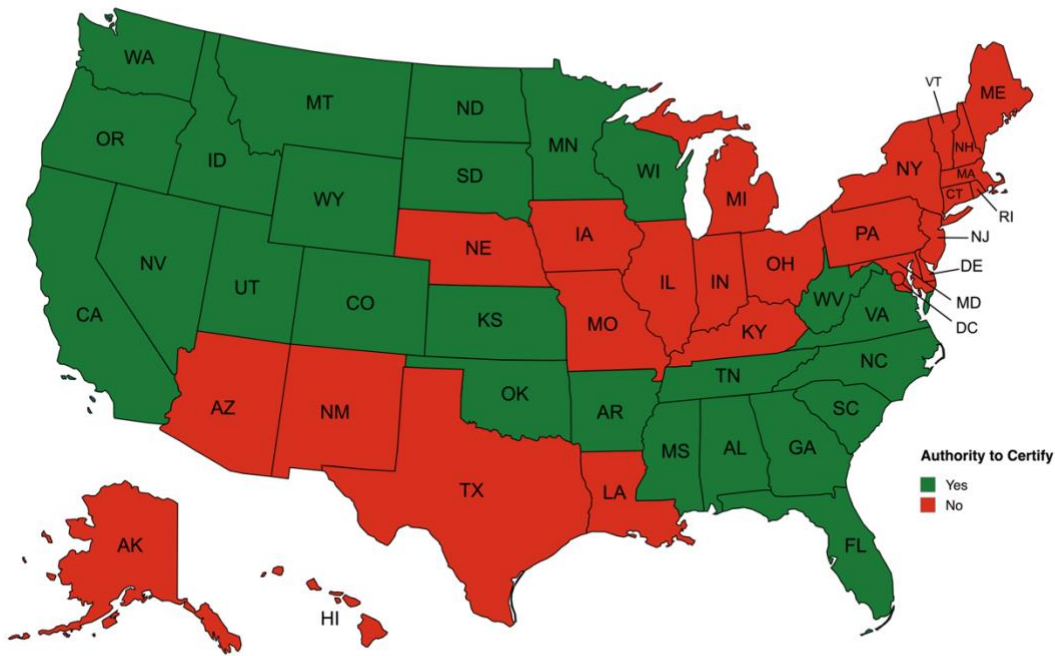


Fig 2. Map illustrating which states have express legal authority to restrict transport of products within the state due to the presence of invasive plants.



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Fig 3. Map illustrating which states with authority to certify relevant products.

Of note is the general lack of state agency authority to enter into an MOU with a non-governmental organization like NAISMA. Only twenty-five states have such explicit authority. (Fig. 4). This could present a significant barrier to full participation in the WFP program for the other half of the states, although NAISMA does allow the use of an alternative partnership agreement.

Table 1. WFP Program Legal Authorities

State	# of Attributes	WFP Program Law or Regulation	Designated Authority
Montana	25	Noxious Weed Seed Free Forage Act (Mt. Stat. § 80-7-913)	Montana Department of Agriculture and counties
Idaho	22	Idaho Code § 22-2404, Idaho Admin. Code r. 02.06.09.320	Department of Agriculture
Minnesota	22	Minn. Stat. § 18.79	Minnesota Crop Improvement Association
South Dakota	21	No reference	South Dakota Department of Agriculture
Utah	21	No reference	Utah Department of Agriculture and Food
Oklahoma	20	Weed Free Hay Certification Act. Okla. Stat. tit. 2, § 3-211	Oklahoma Department of Agriculture, Food, and Forestry
Colorado	19	Weed Free Forage Crop Certification Act (Co. Rev. Stat. § 35-27.5-103)	Department of Agriculture
Kansas	19	No reference	Department of Agriculture
Washington	19	No reference	Washington Department of Agriculture and county weed boards
West Virginia	18	No reference	West Virginia Associated Crop Growers
North Dakota	16	N.D. Code 4.1-14-01, N.D. Code 4.1-47-34	North Dakota Department of Agriculture
Oregon	16	No reference	Oregon Department of Agriculture
Nevada	15	Nev. St. 555.010, Nev. Admin. Code 555.015	Nevada Department of Agriculture
Wisconsin	15	Wis. Stat. § 94.40	Wisconsin Crop Improvement Association
Tennessee	13	No reference	Tennessee Department of Agriculture
California	13	No reference	California Department of Agriculture and counties
Alaska	12	No reference	DNR Division of Agriculture
North Carolina	12	2 N.C. Admin. Code 48A.1706	North Carolina Dept. of Agriculture (compost, gravel); North Carolina Crop Improvement Association (forage)
South Carolina	11	No reference	Clemson University - Plant Industry

Wyoming	11	No reference	Wyoming Department of Agriculture. The Wyo. Weed & Pest Council
Nebraska	10	No reference	Nebraska Weed Control Association
Illinois	9	No reference	Illinois Crop Improvement Association
Arizona	7	No reference	AZ Crop Improvement Association
Iowa	6	No reference	Iowa Crop Improvement Association
Michigan	4	No reference	Michigan Department of Agriculture & Rural Development (gravel, compost, mulch); Michigan Crop Improvement Association (Forage)
New Mexico	4	No reference	New Mexico State University
Ohio	4	No reference	Ohio Seed Improvement Association

While there is some correlation between WFP participation and the presence of a higher number of policies attributes, some states with WFP programs have only a few attributes. (Fig 5).



Fig. 5. Presence of policy attributes in participating states.

About two-thirds of the participating states have a significant number of the identified WFP policy attributes, with a third of the states having more than 75%. All policy attributes are present in Montana (25), followed closely by Idaho (22), Minnesota (22), South Dakota (21), Utah (21), and Oklahoma (20). Interestingly, not all these high scoring states have explicit authorizations for their WFP programs. While Montana, Minnesota, and Oklahoma have weed-free forage legislation and Idaho has a WFP regulation, South Dakota and Utah do not have any references in law or regulation to their WFP program. Both South Dakota and Utah have comprehensive

noxious weed or plant pest laws that provide broad agency authority to inspect, certify, and take other actions relevant to the WFP program.

In the three states with the fewest number of attributes, the WFP programs are run by third party organizations or institutions – the Michigan Crop Improvement Association (MCIA), New Mexico State University, and the Ohio Seed Improvement Association. In Michigan, authority is split with the Michigan Department of Agriculture & Rural Development administering the WFP programs for gravel, compost, mulch, and the MCIA handling forage. This program structure may explain the lack of explicit references, as these entities have broad delegated authority to run certification programs.

WFP Use Requirements

Although the WFP program is voluntary for producers and consumers, demand is driven in a few states by laws that require the use of WFP on certain lands. Some states require the use of WFPs. Colorado, Idaho, Kansas, Montana, New Mexico, Oregon, Utah, and Wyoming have a provision requiring users of certain lands to use certified WFP. For example, in Kansas, “all alfalfa, grass, hay or other forage, straw or mulch carried onto or used for any purpose within the boundaries of any lands owned or managed by the state and its agencies must be certified weed free.”⁴ In Oregon, a person on state forest land “must use hay, straw, and other livestock forage that is certified by The Oregon Department of Agriculture to be weed-free according to North American Weed Management Association standards.”⁵ Certified weed-free forage or hay is required in many national wildlife refuges⁶ and forest service lands.⁷

Program Enforcement and Funding

There are several policy attributes related to enforcement and funding mechanisms to support WFP program compliance and implementation. The presence of sanctions for failure to comply with program requirements is critical to the effectiveness of voluntary programs, such as NAISMA’s WFP Program. Common enforcement mechanisms include civil and criminal penalties for violations, the issuance of stop sale orders, and cancellation of certificates. Forty-two states have penalty provisions associated with invasive plant programs. Seventeen states have the authority to issue a stop-sale order to prevent the movement of products containing invasive plants. Sixteen states have express authority to cancel a certification issued for a product.

To implement a WFP program, the program lead must have the resources and capacity to conduct inspections, issue certifications, and monitor program compliance. The program lead cannot effectively implement a WFP without sufficient funding. The most common source of invasive plant program funding is annual legislative appropriations to the relevant agency as part of their

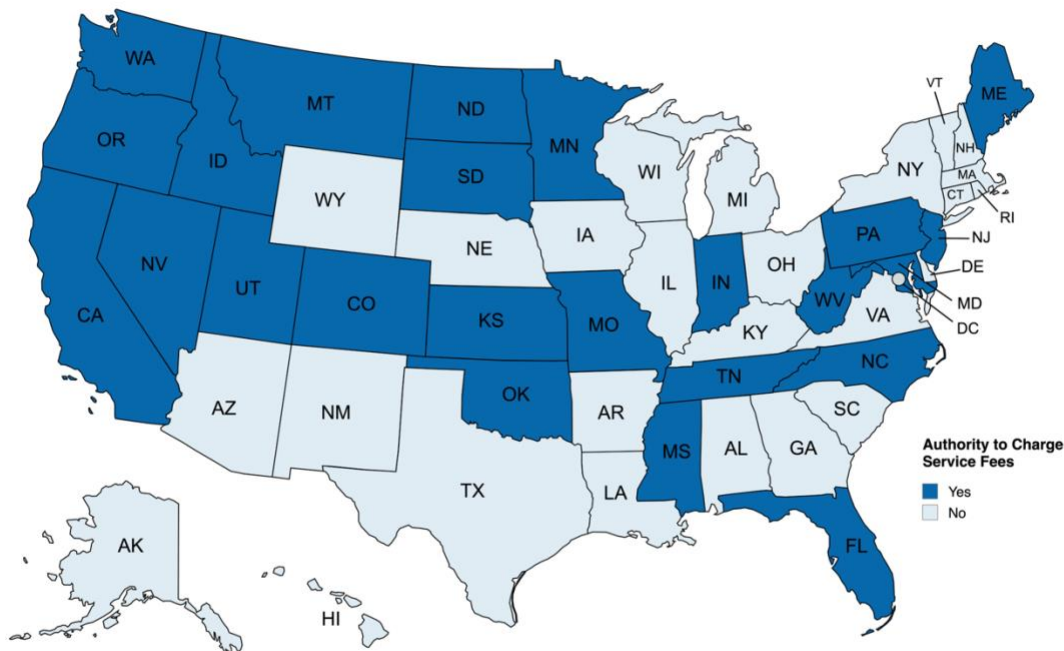
⁴ KAN. STAT. § 2-1319a.

⁵ OR. ADMIN. R. 629-025-0040. The North American Weed Management Association is the former name of NAISMA.

⁶ See, e.g., 50 C.F.R. §§ 32.50 and 36.39.

⁷ Restrictions on Use of Forage and Mulch Products, U.S. Department of Agriculture Forest Service, <https://www.fs.usda.gov/r06/alerts/restrictions-use-forage-and-mulch-products> (last visited Sept. 3, 2025).

operational budgets. This funding can be difficult to track due to differences in state budgeting processes and were not examined as part of this review. Other funding mechanisms for WFP programs which were included in this review are special funds established by a legislature and fees for inspection or certification services. Sixteen states have established a fund to support their state’s invasive plant program. Twenty-four states allow agencies to charge fees for inspection or similar services. (Fig. 6). Fee structures vary among states which may create barriers to participation or cost disparities among producers of similar products in different states.



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Fig 6. Map illustrating which states have authority to charge fees for inspection or certification services.

Key Takeaways

Valuable lessons can be learned from this legal review as NAISMA seeks to expand their WFP program beyond the 27 states currently participating. First, specific WFP legislation is not required for a state to implement a program. State agencies often have broad legislative mandates and authorities related to plant pests, noxious weeds, or invasive plants that they can draw upon to offer a voluntary certification program.

The limited scope of agency authority in some states may make it difficult for state agencies to administer WFP programs directly. Louisiana, New Jersey, Rhode Island, and Texas, for instance, do not currently have any authority to inspect or certify products as free of noxious weeds or

invasive plants. However, there may be third-party entities within those states that agencies could partner with to implement the program. Michigan, New Mexico, and Ohio are examples of this type of structure.

There are several states in the middle of the policy attribute continuum with a strong foundation from which to build a WFP program. Florida, Mississippi, and Virginia, for example, currently have authority to inspect, certify, and control the transport of relevant products. Indiana and Pennsylvania have the authority to inspect and control transport of relevant products, although there is no explicit authority to certify. These states have a similar mix of authorities to states with programs, including Alaska, North Carolina, South Carolina, and Wyoming.

WFP programs may be structured in a variety of ways. WFP programs may be formally established through legislation with express directives to state agencies or third-party entities regarding implementation. WFP programs may also be created more informally through state agency policy or partnerships. States with existing programs can serve as models for how states looking to establish new or improve current programs can work within existing legal and organizational constraints.