any time during the current year or prior two calendar years.

* * * * *

6. In § 225.15, paragraph (d)(1) is amended by adding a new sentence after the first sentence to read as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(d) * * *

(1) * * * The State agency may waive these training requirements for operation of the Program during unanticipated school closures during the period from October through April. * * *

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Dated: October 1, 1998.

Samuel Chambers, Jr.,

Acting Administrator.

[FR Doc. 98–27316 Filed 10–9–98; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC64

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food and Nutrition Services and Administration Funding Formulas Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise both the food and the nutrition services and administration (NSA) funding formulas to improve the effectiveness of WIC funds distribution now that WIC is in a relatively stable funding environment. The revised food funding formula would help to ensure food funds are allocated to State agencies that can utilize the funds to maintain current participation as well as to direct funds, as available, to State agencies that are serving a lesser proportion of their WIC eligible population than other State agencies. The revised NSA funding formula would simplify the funding formula by deleting obsolete components and updating existing components to more equitably distribute funds among State agencies.

DATE: To be assured of consideration, written comments on this rule must be postmarked by January 11, 1999. No electronically transmitted correspondence will be accepted.

ADDRESSES: Comments may be mailed to Ron Vogel, Acting Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, (703) 305–2746. All written comments will be available for public inspection during regular business hours (8:30 a.m.–5:00 p.m. Monday through Friday) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah McIntosh, Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2710. An analysis package containing the formula database, comparisons and mathematical computations is available upon request at the above address.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been reviewed by the Office of Management and Budget under Executive Order 12866 and has been determined to be significant. An impact analysis statement has been prepared and is available upon request.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4 (2 U.S.C.), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector of $100 million or more in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary, Food, Nutrition and Consumer Services, has certified that this rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect how FNS will calculate food and NSA grant allocations for State agencies. State agencies are not small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29114), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Dates'' paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted.

Background

Need for Revisions to the WIC Funding Formulas

The WIC Program has consistently demonstrated its effectiveness in promoting the health and nutritional well-being of low-income women, infants and children at nutritionally related medical or dietary risk. The WIC Program has grown and changed significantly during the past few years. However, as growth has plateaued, FNS believes that it is appropriate to propose changes to both the NSA and food funding formulas to enhance their effectiveness at distributing funds fairly and equitably among WIC State agencies

in an environment where appropriations are relatively stable.

The WIC Program is a fixed grant program, not a Federal entitlement program, and is not guaranteed unlimited funds. WIC State agencies must manage within a finite appropriation level; however, State agencies have considerable latitude to manage program costs to accommodate variable funding levels.

These revised formulas would better provide State agencies with the equal opportunity to serve eligible persons who apply for benefits. Currently, State agency funding levels are not necessarily proportional to their WIC eligible population. The revised formulas are intended to allocate funds more fairly among all State agencies under a relatively stable funding environment.

Stakeholder Input

FNS believes that the rulemaking process is enhanced by public opinion, and that, to the extent permissible, discussion and input on the most equitable and fair distribution of WIC funds should occur prior to publication of the final funding regulation. In fact, section 204(a) of UMRA requires meetings with our cooperators in State, local, and tribal governments so we may receive their ''meaningful and timely input in the development of regulatory proposals''. To fulfill this statutory obligation, FNS and the National Association of WIC Directors (NAWD) convened a committee to discuss the appropriateness of the current funding formula components and ways in which the allocation formula could be improved. This committee was composed of FNS employees, designated State agency employees, and a designated employee of a local municipal government agency.

To further the goal of obtaining stakeholder input into the regulatory process, this proposal actively solicits comments from State agencies, NAWD, advocacy groups and other interested parties on the proposed funding formula changes. We are particularly seeking comment on whether and how some components of the current funding formulas should be deleted or modified as a way to determine the most appropriate funding methodology to fairly and equitably distribute WIC funds.

Nutrition Services and Administration (NSA) Funding Formula

The current WIC NSA funding formula became effective April 1, 1988. The objectives of the formula were to ensure a reasonable measure of funding stability while providing funding levels that enabled equivalent services to participants across State agencies and to promote incentives for reducing food costs so that more persons may be served.

The current NSA formula is, however, complicated and a tremendous amount of data collection is required for the formula—some of which may no longer be needed or has little impact on the actual allocation of funds. Further, some data are not available in time to permit issuance of final grants at the beginning of the fiscal year. As a result, the current NSA funding formula may no longer be the most efficient and effective means of distributing NSA funds.

Current NSA Provisions—General

Section 246.16(c)(2) of the WIC regulations sets forth both the NSA funding requirements as established in section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786) and the process by which NSA funds are allocated to State agencies. The current NSA funding formula meets the legislative requirements by: (1) establishing a ''target'' NSA funding level, referred to as parity, that each State agency should receive as its fair share NSA grant; (2) preserving stability by guaranteeing, to the extent funds are available, the prior year NSA grant level, and then gradually moving State agencies to their parity target level; and (3) addressing the varying needs of each State agency by allocating regional discretionary funds based on regional and National priorities.

The following outlines the current provisions and proposed changes to the NSA funding formula:

Section 246.16(c)(2)(ii)(B)—Current NSA Parity Component

The current parity target level is based primarily on the number of participants projected to be served by State agencies. Using food grant levels allocated for the current fiscal year, FNS projects the number of participants each State agency is expected to serve taking into consideration its State-reported per participant food costs and inflation. In addition to projected participation, three adjustments are made to this participation-based formula to recognize factors believed to affect the cost of Program administration. These include:

(a) *Economies of scale*—Recognizes the higher per participant costs associated with smaller participation levels (currently an adjustment is made at three levels: 5,000 or fewer participants, 5,001–15,000 participants, and more than 15,000 participants);

(b) *Salary differentials*—Considers the differential salary levels paid within each State for employees in Public Administration, Health and Social Services; and

(c) *Targeting of benefits to high-risk participants*—Considers the proportion of Priority I participants served by the State agency.

Eighty percent of funds available for allocation through the parity component are allocated in accordance with projected participation, adjusted by the economy of scale factor. This is done on the basis of administrative grant per participant (AGP) rates that are adjusted for the higher per participant costs associated with smaller participation levels (15,000 or fewer participants per month). Twenty percent of funds available for the parity grant component are allocated on the basis of differential salary levels and service to Priority I participants.

Proposed ''Fair Share'' Component

Renaming the Parity Component

The term ''parity'' is used to describe the basic concept of gradually moving State agencies to a funding level that represents their respective ''fair share'' of available funds. FNS believes that the term ''fair share'' better describes the purpose and intent of this component and, therefore, proposes that the current ''parity'' component be renamed the ''NSA fair share'' component. This change would also provide continuity with terminology used in the food funding formula.

Food Cost Data Used in Calculating Projected Participation

The NSA funding formula projects the number of participants to be served by each State agency by dividing the current year food grant level by the State-reported per participant food cost, adjusted for inflation. The data currently used represents the closed-out per participant food cost data for the 12-month period beginning in July and ending in June prior to the fiscal year for which the grants are being calculated. This closed-out food cost data is usually available 150 days after the report month. Therefore, closed-out food cost data for June is available to FNS in late November. This data is then used in the calculation of final WIC grants, which are usually released by January 1.

To allow for the calculation of final WIC grants at the beginning of the fiscal year, FNS proposes that April through March closed-out food cost data be used. As is currently done, an inflation adjustment would be applied to the food cost data to more accurately project

actual food costs and to adjust for inflationary increases that may occur during the remainder of the fiscal year. While other timeframes were considered for use, it was felt that a 12-month base of food cost data was necessary to take into consideration seasonal fluctuations of food prices. While the current regulations do not address the specific months of food cost data used in the calculations, FNS did want to inform interested parties of the change in the timeframes that will be used when final regulations are issued.

Economy of Scale/Bands

As noted above, NSA costs are affected by economy of scale. There are certain fixed administrative costs in the delivery of program benefits incurred by a State agency that do not vary regardless of the size of the caseload. Therefore, State agencies with larger participation levels are able to realize reductions in costs per participant as these fixed costs are spread among more participants. Smaller State agencies, particularly Indian Tribal Organizations (ITOs), have comparatively higher costs per participant. Although the current NSA funding formula includes a size-adjusted cost factor, other alternatives and adjustment factors were examined to determine if the current adjustments adequately recognize the various range of administrative expenditures for State agencies of differing sizes.

The current adjustment factors were based on administrative expenditures per participant (AEP) calculated over 10 years ago. The expenditures per participant were evaluated and compared to the size of the State agency, creating ''bands'' or groupings. The size of the bands were determined using regression techniques that analyzed the relationship between the administrative cost per participant and total participation levels. By analyzing the positive correlation between these two factors, the band sizes were determined based on the grouping of State agencies of various sizes. For each State agency, an adjustment factor is used to establish a funding level applied to each band of participation. The first 5,000 participants are adjusted at a level that is no more than 68 percent higher than the per participant funding provided for average participation levels exceeding 15,000 monthly. The next 10,000 participants, or average monthly participation levels between 5,001 and 15,000 participants, are funded at a level that is no more than 2.4 percent higher than the per participant funding for participation levels exceeding 15,000 monthly. These percentages (68 percent and 2.4 percent) equal the percent differences between the weighted average AEP for the State agencies with participation levels up to 5,000 and in the range of 5,001 to 15,000, respectively, and the weighted average AEP for State agencies with participation levels over 15,000. The weighted average AEP for participation up to 5,000 was calculated by dividing the FY 1986 total Federal NSA expenditures for State agencies in that size group by their FY 1986 total cumulative participation. The weighted average AEPs for State agencies with participation levels between 5,001 and 15,000 and over 15,000 were calculated in a similar way using FY 1986 data and allowing for higher AEPs for the first 15,000 participants.

After lengthy consideration, FNS determined that the current bands should be retained because the updated NSA cost information needed to determine new band sizes is unavailable. It was felt that the data upon which the AEP bands are currently based remains the best available. However, more research and analysis is needed to understand how economies of scale actually affect WIC NSA costs, what specific costs are most influenced, the participation level(s) at which economies of scale vary and how much allowance should be made at each of those levels. Therefore, FNS will conduct further analysis in this area to examine how funding for different size State agencies might be acknowledged in the NSA funding formula. Until FNS's further analysis is completed and appropriate baseline data is available, it is proposed that the current bands of 5,000 or fewer; 5,001 to 15,000; and over 15,000 and the corresponding percent adjustment between bands be retained. Comments on this aspect of the funding formula are welcome as are suggestions as to how economies of scale can be objectively and fairly determined for future consideration.

Salary and Priority I Participant Targeting Component

The combined salary and targeting component determines 20 percent of a State agency's NSA fair share target level. In an effort to simplify the funding formula and to delete obsolete components, both the salary and targeting components were analyzed to determine whether they continue to have a significant and appropriate impact on the final NSA grant allocations.

Salary Component. Salary data were incorporated into the current funding formula in recognition that salary costs represent by far the most significant contributor to WIC NSA costs. Additionally, due to regional variations in labor costs, similar levels of service have different salary costs. The salary data used to compute differential salary levels for State agencies includes average annual salaries for State and local government workers provided by the Bureau of Labor Statistics (BLS) for the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. BLS does not gather this information for American Samoa, Guam or the ITOs. Therefore, the salary level for a GS–9, step 1 in the Federal Government's General Schedule pay scale is used for American Samoa, Guam and ITOs acting as State agencies. FNS determined that a GS–9, step 1 salary is a reasonable approximation of the salary costs incurred on an individual employee basis by State agencies in American Samoa, Guam and the ITOs. The most current data available from BLS reflects average salary levels paid 2 years prior to the applicable fiscal year for which funds are allocated. The GS–9 salary level used for American Samoa, Guam and ITO State agencies reflects the salary level for the same year as the available BLS data.

Overall, most State agencies are affected only slightly by the salary component, primarily because the salary component makes up only 10 percent of the total parity component (called the fair share target funding level in this proposed rule). An analysis of the final grants with and without the salary component reveals that for approximately 90 percent of WIC State agencies, the difference in final NSA grants without the salary component is within 3 percent (+/−) of a State's grant inclusive of the salary adjustment.

FNS recognizes that the salary component is a controversial area and that there are strong opinions and arguments supporting both the inclusion and deletion of the salary component in the NSA funding formula. Therefore, FNS proposes to retain the current salary component, which would continue to equal 10 percent of the NSA fair share component of the NSA funding formula. However, comments on whether the current salary factor contributes to an appropriate and fair allocation of NSA funds are welcomed.

Targeting Component. The targeting component was originally designed to provide an incentive for targeting benefits to the highest risk participants, Priority I women and infants, as defined in current Program regulations at § 246.7(e)(4)(i). At the time it was incorporated into the NSA funding formula in 1988, the food funding formula also included a targeting component. In a time when WIC was

not able to meet the need for Program benefits, targeting funds to those State agencies that were serving a greater proportion of high risk individuals was a necessary objective. Now, however, based on estimates derived from State-reported participation data, nationwide, virtually all fully eligible infants are receiving services through the WIC Program and most fully eligible women are participating at some point during their pregnancies. Therefore, FNS believes the targeting component is no longer needed to encourage and support service to Priority I participants.

The targeting component is based on a complex process, dependent on State reported data, requiring many computations to calculate a targeting index by which each State agency's share of targeting funds is determined. Its effect on the final NSA funding allocation today is negligible. Therefore, FNS proposes to delete this component. Targeting was deleted from the food funding formula in a final food funding rule published in the **Federal Register** October 6, 1994. Elimination of this feature from the NSA formula would result in formula consistency. By deleting the targeting component, 100 percent of the NSA ''fair share'' funds would be allocated based on projected participation levels, adjusted for State agency size (90 percent) and salary differentials (10 percent).

Section 246.16(c)(2)(i) NSA Stability Funds

Throughout the deliberations on the possible revisions to the NSA funding formula, it was recognized that a critical aspect of NSA funding is the stability component. The stability grant helps to guarantee, to the extent funds are available, some measure of funding continuity that acknowledges that State agencies have fixed NSA costs that are relatively stable from year to year and are necessary for continued Program operations. In the event that available funding is insufficient to fund State agencies at their prior year funding level, each State agency experiences a pro-rata reduction to its grant, as is done with the food funding formula.

The stability component would be continued in this proposed rule, with modifications. It is recognized that the funding formula, if properly designed, should calculate an NSA grant commensurate with a State agency's NSA funding needs. In the past, discretionary funding decisions made by FNS may have, over time, unnecessarily inflated the grant allocations provided to particular States due to additional funding allocated for large capital expenditures. These discretionary funds then become a permanent part of a State agency's stability grant the following year. Therefore, FNS proposes changes to the stability, or base, grant calculation to eliminate consideration of discretionary funding (or, as described below, ''operational adjustment funding'') allocations made in the prior fiscal year.

FNS proposes to revise § 246.16 (c)(2)(i) to provide each State agency a stability grant equal to its NSA grant from the previous year, less any discretionary fund adjustments for that year. As is currently the case, each State agency's stability grant would be reduced by a pro-rata share if insufficient funds were available.

Section 246.16(c)(2)(ii) NSA Residual Funds

Currently, after NSA stability grants are determined, any remaining funds available for allocation are referred to as residual funds and are distributed according to § 246.16(c)(2)(ii) of current Program regulations. Residual funds represent funding that either: (1) Helps to cover NSA costs associated with increases in projected participation, or (2) moves State agencies closer to their ''fair share'' target funding level. The fair share for NSA funds is an administrative grant per person (AGP) for each projected participant, adjusted for factors that affect NSA costs.

FNS proposes that priority for residual funds should be given only to State agencies below their NSA fair share target funding level. The fair share principle, which is participant-based, represents the amount of NSA funds needed by a State agency to support current participation projections based on the food grant the State agency will receive. The part of the current regulatory provision which provides funds on the basis of increased participation countervails the fair share objective by allocating funds to State agencies which are already over their fair share funding level.

Therefore, the proposed NSA formula grant for each State agency would be calculated based on each State agency's fair share target funding level, which considers the difference between the estimated cost of projected participation (as adjusted for economy of scale and salary differential) and the prior year NSA formula grant. If a State agency's NSA fair share target funding level is greater than its stability grant, the State agency would be eligible to receive additional NSA funds proportionate to their respective shortfall from the fair share target funding level.

Section 246.16 (c)(2)(iii) Discretionary Funds

The success of the WIC Program is due in large part to the flexibility of the program to accommodate individual State needs and initiatives. As the WIC Program continues to change and mature, the responsiveness of the Program to meet State agencies' varying needs and provide for program innovation becomes more critical.

Section 246.16 (c)(2)(iii) currently requires that ten percent of each State agency's total NSA grant level be subtracted and aggregated by region to form the FNS regional discretionary funding pools. In FY 1998, these pools amounted to over $100 million nationally. Each FNS regional office then allocates the discretionary funds back to State agencies within the region on the basis of the varying needs of State agencies and national guidelines. Through the regional allocation of discretionary administrative funds, the funding process can satisfy many of the administrative and structural needs not accounted for in the NSA funding formula (e.g., one-time acquisition costs for management information systems).

FNS considered the discretionary funding allocation process and the actual use of these funds. As a result of these considerations, it was determined that the term ''discretionary'' does not fully represent or accurately describe the use of these funds, and that many State agencies must use these funds for operational costs. Therefore, FNS proposes to change the name ''discretionary funds'' to ''operational adjustment funds'' (OAF). This change will help clarify that the use of the funds are for both capital investments as well as operational activities, and that, in many cases, the funds are a critical part of a State agency's WIC grant and are needed to support ongoing operations.

The degree to which FNS regions have been inconsistent in the methodology used to award discretionary fund allocations and the adherence to national guidelines was also considered. While some regions have used a competitive process to award the majority of available discretionary funds, other regions simply returned a large portion of the available discretionary funds to the State agencies in their region according to the distribution allocated through the funding formula. This inconsistency has caused concern as funding for projects becomes more competitive and funding levels for the program are being scrutinized. Further, FNS regions including large State agencies

contributing to the regional fund have more flexibility than regions with smaller State agencies. FNS recognizes that regions have various funding resources and needs and, for most regions, the process employed for discretionary fund allocations is a mutually acceptable one in which the State agencies and the regions are satisfied with the process. After much consideration of this issue, it was decided to allow up to 10 percent of the total regional NSA funds to be used for OAF (formerly discretionary fund) allocations. However, regions would be given the authority to withhold less than 10 percent of the total regional NSA funds available if deemed appropriate for that region's needs.

Food Funding Formula

Current Food Funding Provisions—General

The current food funding formula, finalized on October 6, 1994, was developed for use during a time of participation growth and annual increases in WIC appropriations. The primary objectives were to: (1) Provide a greater share of funds to State agencies receiving comparatively less than their fair share of funds; (2) simplify the food funding formula and delete obsolete components; and (3) provide for a level of stability for State agencies. While the current food funding formula has met those objectives, WIC has now entered a time in which, at least for the foreseeable future, increases in appropriations are not likely and emphasis must be placed on shifting available funds among State agencies to reflect demographic changes in the eligible population and to reach the maximum number of participants possible within available Program resources.

The following outlines the current provisions and proposed changes to the food funding formula:

Section 246.16 (c)(3)(ii) Current Food Stability Component

The stability component of the current food funding formula provides that each State agency receive its prior year food grant, adjusted for full inflation, contingent on available resources. If funding is inadequate to fund all State agencies at this level, each State agency would receive a reduced stability grant based on a pro-rata reduction of funds.

The current stability component, in a stable funding environment, results in little if any additional funding to assist State agencies that, for historical reasons or due to demographic shifts, do not have a share of WIC funding proportionate to their share of their eligible WIC population. These State agencies are considered to be ''under fair share''. Therefore, FNS proposes that the stability component of the food funding formula be modified to allow some funds to be available to allocate to under fair share State agencies to further the objective of funding equity among State agencies. In a relatively stable funding environment, mechanisms must be in place to allow for some movement of funds to correspond to shifts in eligible populations, and the ability of State agencies to fully utilize available funding to maximize participation.

Proposed Stability Component

Long consideration was given to stability food funding and whether full inflation should be guaranteed. Concerns were raised that if State agencies were not funded with full inflation, prior year end participation levels may not be sustained, thereby forcing some State agencies to cut caseload. This concern, however, was countered by the objective of making available, to the extent possible, additional funding to under fair share State agencies so that they have the opportunity to add participants to bring them closer to the level of service provided by State agencies that have received allocations above their fair share.

After exploring options available, FNS proposes to modify § 246.16 (c)(3)(ii) to redefine stability as the prior year food grant level, without any initial adjustments for inflation. Any funds remaining after guaranteeing prior year end grant levels would be split. Fifty percent of the remaining funding would be provided for an inflation allowance based on the fair share funding level allocated with the new year appropriation instead of the prior year grant levels currently used in the formula. The remaining 50 percent would be allocated to under fair share State agencies to bring them closer to their fair share level. The funds subject to the 50/50 split would include current year appropriated funds and unspent recoverable funds from the prior fiscal year.

These changes to the stability component would ensure that even in a funding environment in which the Program receives only a modest increase above prior year grant levels, State agencies with less than their fair share of funds would continue to receive a greater increase in funding relative to over fair share State agencies.

We recognize that the 50/50 split of the remaining funds after prior year grant levels are funded and the inflation calculation are different than what was discussed with the NAWD Committee. However, we were persuaded during the review process that a more aggressive approach was necessary to shift available funds to under fair share State agencies. Therefore, we are particularly interested in comments concerning the split of funds and the method used to calculate inflation adjustments.

To determine the amount of funds allocated to each State agency, State agencies would initially receive their prior year end food grant as their stability grant. As is currently done, if funds are insufficient to fund all State agencies at the prior year end grant level, each State agency would receive a pro-rata reduction to its grant. If funds are available in excess of prior year-end grant levels, 50 percent of such funds would be made available to each State agency for inflation. An inflation allowance will be calculated based on the difference between each State agency's inflated appropriated fair share grant level and their appropriated fair share grant level. The remaining 50 percent of available funds would be allocated to under fair share State agencies proportionate to their shortfall from their fair share target funding level. Once all State agencies have received their target food inflation level, 100 percent of all available funds would be allocated to under fair share State agencies. If sufficient funding is available to fund inflation and all under fair share State agencies up to their fair share target levels of funding, additional funds would be allocated according to § 246.16 (c)(3)(iii)(B) to any State agency requesting additional food funds.

Section 246.16 (c)(3)(i)(B) Adjustments for Higher Cost Areas

In calculating the fair share target food level for State agencies, the regulations permit an adjustment for the higher cost of food for State agencies located outside of the 48 contiguous States and the District of Columbia. This adjustment is done to ensure that the share of funds received by these State agencies is adequate to serve their share of the eligible population given their higher costs. Currently, five State agencies receive this adjustment. Current regulations allow for these adjustments after a State agency demonstrates that it has successfully implemented voluntary cost containment measures, such as improved vendor management practices, participation in multi-state agency infant formula rebate contracts or other cost containment efforts. FNS believes that the current adjustments

and conditions under which adjustments may be applied are consistent with Program objectives and consistent with high cost adjustments available to States in the National School Lunch Program and the School Breakfast Program and, therefore, no changes to this component of the food funding formula are proposed.

Section 246.16 (e) (2) (i) Food Spending Performance Standard

The current food spending performance standard was implemented in fiscal year 1995. Failure to meet this standard results in an adjustment of the current year grant. The current standard requires each State agency to expend at least 97 percent of its food grant. Typically, State agencies cannot spend 100 percent of their WIC grants due to factors that are inherent to the Program. For example, because the federal grant is the only source of funds for WIC in most states, State agencies must exercise caution to ensure that they do not spend more than their federal grant. In addition, because State agencies must estimate the value of vouchers and checks to distribute food benefits, they cannot determine the Program's actual food costs until the vouchers and checks have been redeemed and processed. While FNS recognizes that the structure of the Program may cause some State agencies to have difficulty meeting this expenditure standard, the majority of State agencies should be able to expend at least 97 percent of its food funds in a stable funding environment. Therefore, the 97 percent food spending performance standard would be retained and the obsolete references to the performance standards for fiscal years 1995–1997 would be deleted.

Eligibility Data

Data on the number of individuals estimated to be income eligible for Program benefits is produced annually at the national level. State-level estimates of income-eligible infants and children are produced using similar data. These estimates, in turn, are used to estimate the fair share funding levels for WIC food grants. Much consideration was given as to the reliability and accuracy of the income eligible data. Current regulations stipulate at § 246.16(c)(3)(i) that the income eligible data be calculated by FNS using the best available, nationally uniform, indicators. FNS continues to believe that the current methodology is the best available data and proposes no changes at this time. However, FNS will reevaluate the method for estimating the potential eligible population if new data sources or methods become available that could improve the current estimation process.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

For reasons set forth in the preamble, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S. C. 1786.

1. In § 246.16:

a. Paragraph (c)(2)(i) is revised.

b. Paragraph (c)(2)(ii) is revised.

c. Paragraphs (c)(2)(iii) and (c)(2)(iv) are redesignated as paragraphs (c)(2)(iv) and (c)(2)(v), respectively, and a new paragraph (c)(2)(iii) is added.

d. Newly redesignated paragraph (c)(2)(iv) is revised.

e. Newly redesignated paragraph (c)(2)(v) is amended by removing the word ''discretionary funds'' and adding, in its place, the word ''operational adjustment funds''.

f. The heading of paragraph (c)(3)(i) and the first sentence of paragraph (c)(3)(i)(A) are revised.

g. Paragraph (c)(3)(ii) is revised.

h. The heading of paragraph (c)(3)(iii)and the first sentence of paragraph (c)(3)(iii)(A) are revised.

i. The first sentence of paragraph (e)(2)(i) is revised.

The revisions and an addition read as follows:

§ 246.16 Distribution of funds.

* * * * *

(c) * * *

(2) * * *

(i) *Fair share target funding level determination.* For each State agency, FNS will establish, using all available NSA funds, an NSA fair share target funding level which is based on each State agency's average monthly participation level for the fiscal year for which grants are being calculated, as projected by FNS. Each State agency's projected participation level shall be adjusted to account for the higher per participant costs associated with small participation levels and differential salary levels relative to a national average salary level. The formula shall be adjusted to account for these cost factors in the following manner: 90 percent of available funds shall provide compensation based on rates which are proportionately higher for the first 15,000 or fewer participants, as projected by FNS, and 10 percent of available funds shall provide compensation based on differential salary levels, as determined by FNS.

(ii) *Stability allocation funding level.* To the extent funds are available and subject to the provisions of paragraph (c)(2)(iv) of this section, each State agency shall receive an amount equal to 100 percent of the final formula-calculated NSA grant of the preceding fiscal year, prior to any operational adjustment funding allocations made under paragraph (c)(2)(iv) of this section. If funds are not available to provide all State agencies with their stability allocation funding level, all State agencies shall have their stability allocation funding level reduced by a pro-rata share as required by the short fall of available funds.

(iii) *Fair share allocation.* Any funds remaining available for allocation for NSA after the stability allocation required by paragraph (c)(2)(ii) of this section has been completed and subject to the provisions of paragraph (c)(2)(iv) of this section shall be allocated to bring each State agency closer to its NSA fair share target funding level. FNS shall make fair share allocation funds available to each State agency based on the difference between the NSA fair share target funding level and the stability allocation funding level, which are determined in accordance with paragraphs (c)(2)(i) and (c)(2)(ii) of this section, respectively. Each State agency's difference shall be divided by the sum of the differences for all State agencies, to determine the percent share of the available fair share allocation funds each State agency shall receive.

(iv) *Operational adjustment funds.* Each State agency's final NSA grant shall be reduced by up to 10 percent, and these funds shall be aggregated for all State agencies within each FNS region to form an operational adjustment fund. The Regions shall allocate these funds to State agencies according to national guidelines and shall consider the varying needs of State agencies within the region.

* * * * *

(3) * * *

(i) *Fair share target funding level determination.* (A) For each State agency, establish a fair share target funding level which shall be an amount of funds proportionate to the State agency's share of the national aggregate population of persons who are income eligible to participate in the Program

based on the 185 percent of poverty criterion.

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(ii) *Stability allocation.* To the extent funds are available, each State agency shall receive a stability allocation equal to its final authorized grant level as of September 30 of the prior fiscal year. If funds are not available to provide all State agencies with their full stability allocation, all State agencies shall have their full stability allocation reduced by a pro-rata share as required by the short fall of available funds.

(iii) *Inflation/fair share allocation.* (A) If funds remain available after the allocation of funds under paragraph (c)(3)(ii) of this section, the funds shall be allocated as provided in this paragraph. First, FNS will calculate a target inflation allowance based on the fair share funding level determined for current year appropriated funds. This fair share funding level is then adjusted by the anticipated rate of food cost inflation as determined by the Department. Second, FNS will allocate 50 percent of the available funds to the State agencies in proportionate shares to meet the target inflation level. Third, FNS will allocate 50 percent of the available funds to each State agency which has a stability allocation, as determined in paragraph (c)(3)(ii) of this section and adjusted for inflation as determined in this paragraph, which is still less than its fair share target funding level. The amount of funds allocated to each State agency shall be based on the difference between its stability allocation plus target inflation funds and the fair share funding target level. Each State agency's difference shall be divided by the sum of the differences for all such State agencies, to determine the percentage share of the 50 percent of available funds each State agency shall receive. In the event a State agency declines any of its allocation under either this paragraph or paragraph (c)(3)(ii) of this section, the declined funds shall be reallocated in the percentages and manner described in this paragraph. Once all State agencies receive allocations equal to their full target inflation levels, any remaining funds shall be allocated or reallocated, in the manner described in this paragraph, to those State agencies still under their fair share target funding level.

* * * * *

(e) * * *

(2) * * *

(i) The amount allocated to any State agency for food benefits in the current fiscal year shall be reduced if such State agency's food expenditures for the preceding fiscal year do not equal or exceed 97 percent of the amount allocated to the State agency for such costs. * * *

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Dated: October 1, 1998.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 98–27282 Filed 10–9–98; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–75–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all British Aerospace Jetstream Model 3201 airplanes. The proposed AD would require accomplishing both a routine visual inspection and either a detailed visual inspection or x-ray inspection of the main landing gear (MLG) bay auxiliary spar booms for cracks or fuel leaks on both the left and right sides of the airplane. The proposed AD would also require obtaining and incorporating repair procedures for the MLG bay auxiliary spar where fuel leaks or cracks are found. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to prevent wing failure caused by cracks or fuel leaks in the area of the MLG bay auxiliary spar booms, which could result in loss of control of the airplane.

DATES: Comments must be received on or before November 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–75–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–75–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–75–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.