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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

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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: Final rule.

SUMMARY: This final rule amends 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 amended food funding formula helps 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 receiving a smaller portion of funding relative to their proportion of the WIC eligible population than other State agencies. The amended NSA funding formula simplifies the funding formula by deleting obsolete components and revising existing components to more equitably distribute funds among State agencies.

EFFECTIVE DATE: This rule is effective October 1, 1999.

SUPPLEMENTARY INFORMATION:

Background

Proposed Rule

The Food and Nutrition Service (FNS) published a proposed rule on October 13, 1998 in the **Federal Register** (63 FR 54629) outlining the revisions of the food and nutrition services and administration funding formulas for WIC. The proposed rule provided for a 90-day comment period, which ended on January 11, 1999. Two hundred twenty-two comment letters were received from a variety of sources, including State and local agencies, Members of Congress, advocacy groups and other public interest groups. FNS has given all comments careful consideration in the development of this final rule and would like to thank all commenters who responded to the proposal.

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 change both the NSA and food funding formulas to enhance their effectiveness at distributing funds fairly and equitably among WIC State agencies in an environment in which 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.

The formulas in this rule 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 State agencies under a relatively stable funding environment.

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 requires a tremendous amount of data collection—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, FNS feels that the current NSA funding formula is no longer the most efficient and effective means of distributing NSA funds.

Current NSA Provisions—General

The WIC regulations at 7 CFR 246.16 (c)(2) set forth both the NSA funding requirements as established in Section 17 (h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) 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 is a discussion of each provision, as proposed, comments received on the proposal, and an explanation of the provisions set forth in this final rule.

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.

Currently, 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, proposed 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.

The majority of commenters addressing this issue agreed to change the term ''parity'' to ''fair share''—only two commenters disagreed with the change. The provision remains unchanged from the proposed rule.

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. Prior to fiscal year 1999, the data used was 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. Closed-out food cost data is usually available 150 days after the report month. Therefore, the closed-out food cost data for June is not available to FNS until late November, at which time the final grants could be calculated for release on January 1.

To allow for the calculation of final WIC grants at the beginning of the fiscal year, FNS proposed 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 time frames 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 wanted to obtain comments concerning the change in the time frames.

Based on lengthy deliberations, it was concluded that we had the statutory authority to use April through March closed out food cost data for the calculation of fiscal year 1999 grants. WIC State agencies were very supportive of this change, which allowed final grants to be issued on October 1, 1998.

This change was further supported in the comments received on this provision in the proposed rule. Although the time frame for the closed-out food costs will now be April through March, the final rule will continue to be silent on the actual dates used in the calculation for the funding formula.

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 administrative expenditures per person (AEP) 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 proposed rule recommended retention of the current bands until updated NSA cost information needed to determine new band sizes is available. 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.

Commenters were asked to provide suggestions as to how economies of scale can be objectively and fairly determined for future consideration. While no commenters provided concrete suggestions, the majority of commenters were in agreement that the current bands should be retained until further analysis could be conducted. FNS will study the economies of scale (bands) as part of its commitment to improve the data used in the funding formulas. Additionally, the General Accounting Office (GAO) is conducting a three-year study on WIC NSA costs which may provide additional data that can be utilized in determining appropriate band sizes and adjustment factors. Therefore, until FNS' further analysis is completed and appropriate baseline data is available, we will continue to use the current bands of 5,000 or fewer; 5,001 to 15,000; and over 15,000. The corresponding percent adjustment between bands will also be retained.

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 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 government workers provided by the Bureau of Labor Statistics (BLS). As previously determined by FNS, the salary level for a GS–9, step I in the Federal Government's General Schedule pay scale is used for those State agencies and territories for which BLS data is unavailable. The most current data available from BLS usually reflects average salary levels paid two years prior to the applicable fiscal year for which funds are allocated.

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. The proposed rule retained 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 were welcomed.

As anticipated, there were many comments on this provision. The majority of the commenters thought this provision should be retained. These commenters generally stated that the salary component is needed due to their States' higher cost of living and that salaries constitute the largest component of administrative budgets. However, States opposing the provision argued that the BLS data does not accurately reflect the cost of salaries paid to WIC staff and that many other factors, such as a state's geography or multilingual needs, affect the cost of providing services. Therefore, they believe it would be more appropriate to make grant adjustments based on these other factors when determining NSA funding needs.

After much consideration of this provision, FNS has decided to retain the current salary component. The salary component would continue to equal 10 percent of the NSA fair share component of the NSA funding formula. The provision is reflected at revised § 246.16(c)(2)(i) of program regulations.

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 of the highest risk individuals, 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 proposed that the targeting component be deleted since it is no longer needed to encourage and support service to Priority I participants.

The majority of commenters supported the deletion of the targeting component. Reasons cited by the commenters to support deletion included simplification, the effect on the overall NSA grant is negligible, and that it would promote consistency with the food funding formula, which deleted its targeting component in 1994. Therefore, the final rule retains the provision to delete the targeting component. This deletion is reflected at revised § 246.16(c)(2)(i) of program regulations. The deletion of the targeting components allows 100 percent of the NSA fair share funds to be allocated based on projected participation levels, adjusted for State agency size and salaries (90 percent) and salary differentials (10 percent).

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 stability funding level, each State agency experiences a pro-rata reduction to its grant, as is done with the food funding formula.

The stability component was continued in the proposed rule, with modification. The modification concerned the use of discretionary funding decisions when calculating the State agency's NSA stability grant level. Currently, discretionary funds become a permanent part of a State agency's stability grant the following year. Over time, discretionary funding decisions made by FNS may have unnecessarily inflated the grant allocations provided to particular States due to additional funding allocated for large one-time capital expenditures. Therefore, FNS proposed 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.

The majority of the commenters agreed that the NSA base funding level should be the prior year formula calculated grant prior to any discretionary funding adjustments. Commenters agreed that this change would eliminate the impact of large discretionary allocations made to States for one-time capital expenditures. Revised § 246.16(c)(2)(ii) reflects the provision as proposed, which provides each State agency a base funding level equal to its NSA grant from the previous year prior to any operational adjustment funding allocations for that year. As is currently the case, each State agency's base funding level would be reduced by a pro-rata share if insufficient funds were available.

As a result of this change in the calculation of the NSA base funding level, we believe the term stability no longer accurately reflects this component of the NSA funding formula. Therefore, the term NSA base funding level will be used, and represents the State agency's prior year formula calculated grant before any operational adjustment funding allocations are made. This change is reflected in the final rule in § 246.2 of program regulations, from which is deleted the definition of stability funds, and also in § 246.16 (c)(2) from which are deleted references to the term stability and the concept of stability funding.

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 parity, or, under the revised regulations, 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 proposed 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 that provides funds on the basis of increased participation countervails the fair share objective by allocating funds to State agencies that are already over their fair share funding level.

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

Only 15 comments were received with respect to this provision. Over half the commenters supported the deletion of the component of the NSA funding formula regulations that distributes NSA funding based on increases in projected participation. Those in support of deletion cited simplification as the primary justification. Therefore, FNS retains the provision as proposed as reflected in revised § 246.16(c)(2)(iii). As a result of this deletion, the term ''residual funds'' is deleted from § 246.2—Definitions.

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 FNS region to form FNS regional discretionary funding pools. In FY 1999, 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 proposed to change the name ''discretionary'' funds to ''operational adjustment'' (OA) funds. It was felt that 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.

All commenters on this proposal agreed to change the name ''discretionary'' funds to ''operational adjustment'' funds. The commenters felt that the new term better describes how the funds are used. Therefore, this provision of the final rule will stand as proposed.

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 that include large State agencies that contribute significant amounts of funding 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 funds allocation is a mutually acceptable one in which the State agencies and the regions are satisfied with the process. These views were reflected in the proposed rule, which allowed up to 10 percent of the total regional NSA funds to be used for OA funding (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.

The majority of commenters agreed with the proposal that OA allocations should be equal to up to 10 percent of the total regional NSA funds and that regions should be given the authority to withhold less than ten percent if deemed appropriate. Commenters believe that this allows the FNS regions to make decisions based on the needs of WIC State agencies. The final provision will stand as proposed and is reflected in revised § 246.16(c)(2)(iv) of program regulations.

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, significant increases in appropriations are not likely. The emphasis must now be placed on shifting available funds among State agencies to reflect changes in distribution of the eligible population and to reach the maximum number of participants possible with available program resources.

The following is a discussion of each provision, as proposed, and an explanation of the provisions set forth in this final rule:

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 the eligible WIC population. These State agencies are considered to be ''under fair share''. Therefore, FNS proposed 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 fiscal year 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. This would provide those States the opportunity to add participants to bring them closer to the level of service provided by State agencies that have received allocations at or above their fair share.

After exploring options available, FNS proposed 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 help to 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.

To determine the amount of funds allocated to each State agency, FNS proposed that 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. FNS proposed that an inflation allowance 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.

Approximately 99 percent of the 194 commenters on this provision were strongly opposed to the 50/50 split. The majority of commenters felt the 50/50 split was seriously flawed and strongly supported the original 80/20 split, *i.e.*, 80 percent for inflation, 20 percent for under fair share State agencies, that was discussed during meetings between FNS and its State and local partners. Only two commenters favored the 50/50 split and one commenter suggested a 60/40 split of the remaining funds. Additionally, approximately 99 percent of the commenters opposed the calculation of inflation based on the fair share target funding level. The commenters were in support of calculating inflation based on prior year grants.

The primary reason cited by the commenters supporting the 80/20 split was that the 50/50 split would provide too few funds to State agencies for inflation. Commenters felt strongly that the 50/50 distribution of funds could lead to reductions in current participation levels in over-fair-share State agencies.

The commenters were equally concerned with the methodology used to calculate inflation. Of those responding to this provision, it was unanimously agreed upon that basing inflation levels on each State agency's fair share target grant level would further threaten to reduce the funds to over-fair-share States and would jeopardize current participation levels.

FNS is persuaded by the concerns raised by commenters on this aspect of the proposed rule. Therefore, this final rule provides at § 246.16(c)(3)(iii) that if funds are available in excess of prior year-end grant levels, 80 percent of such funds would be made available to each State agency for inflation. An inflation allowance will be calculated based on the prior year-end grant. The remaining 20 percent of available funds would be allocated to under-fair-share State agencies proportionate to their shortfall from their fair share target funding level.

Many commenters recommended that the term ''prior year grant'' be used instead of ''stability'' funding. It was felt that the term ''stability'' connotes ''adequate'' funding, which may not be the case. Commenters also felt for clarity we should identify this funding level as what it is, which is the prior year grant.

FNS concurs with this suggestion. Therefore, the final rule uses the term ''prior year grant'' instead of ''stability funding'' and §§ 246.2 and 246.16(c)(3)(iii) are modified accordingly.

Adjustments for Higher Cost Areas

In calculating the fair share target food level for State agencies, current 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. No comments were received on this component of the funding formula. Therefore, the final rule reflects no changes at § 246.16(c)(3)(i)(B).

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. No comments were received on this provision of the proposed rule. Therefore, the 97 percent food spending performance standard will be retained in this final rule at § 246.16(e)(2)(i) and the obsolete references to the performance standards for fiscal years 1995–1997 will 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.

All commenters addressing this section were in support of continued work in estimating the potential eligible data. FNS is committed to ensuring that WIC eligibles estimates are developed using the best data and methods available. In prior years the agency has devoted substantial resources to research and analysis of data sources and technical approaches to eligibles estimation, and the estimation approaches have been improved as a result of these efforts. We fully anticipate that such efforts will continue and FNS will continue to update and improve the estimation process over time.

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866, and has been reviewed by the Office of Management and Budget. 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) (2 U.S.C. 1531 *et seq.*) 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 (2 U.S.C. 1532), 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 (2 U.S.C. 1535) generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This 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 rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This final 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 will not have a significant economic impact on a substantial number of small entities. This rule affects how FNS calculates food and NSA grant allocations for State agencies. State agencies are not small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act

This final rule does not contain reporting or record keeping requirements subject to approval by the Office of Management and Budget under section 3507 of 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 final 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 DATE 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 (7 U.S.C 6912(e)).

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 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.

§ 246.2 [Amended]

2. In § 246.2, the definitions of *Residual funds* and *Stability funds* are removed.

3. 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 words ''discretionary funds'' and adding, in their place, the words ''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 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 receives an adjustment 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) *Base 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 base funding level, all State agencies shall have their base funding level reduced by a pro-rata share as required by the shortfall of available funds.

(iii) *Fair share allocation.* Any funds remaining available for allocation for NSA after the base funding level 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 base 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, FNS will 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) *Prior year grant level allocation.* To the extent funds are available, each State agency shall receive a prior year grant 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 prior year grant level allocation, all State agencies shall have their full prior year grant level allocation reduced by a pro-rata share as required by the shortfall 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 (c)(3)(iii). First, FNS will calculate a target inflation allowance by applying the anticipated rate of food cost inflation, as determined by the Department, to the prior year grant funding level. Second, FNS will allocate 80 percent of the available funds to all State agencies in proportionate shares to meet the target inflation allowance. Third, FNS will allocate 20 percent of the available funds to each State agency which has a prior year grant level allocation, as determined in paragraph (c)(3)(ii) of this section and adjusted for inflation as determined in this paragraph (c)(3)(iii), 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 prior year grant level 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 20 percent of available funds each State agency shall receive. In the event a State agency declines any of its allocation under either this paragraph (c)(3)(iii) or paragraph (c)(3)(ii) of this section, the declined funds shall be reallocated in the percentages and manner described in this paragraph (c)(3)(iii). Once all State agencies receive allocations equal to their full target inflation allowance, any remaining funds shall be allocated or reallocated, in the manner described in this paragraph (c)(3)(iii), 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 13, 1999.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 99–27431 Filed 10–20–99; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB80

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; FCB Assistance to Associations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Final rule; effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 615 on September 15, 1999 (64 FR 49959). In this final rule, we remove the requirement that Farm Credit Banks and agricultural credit banks (collectively referred to as banks) obtain our prior approval before making certain transfers of capital to affiliated associations. Instead, we require banks to take into account certain considerations, and to notify bank shareholders and us, before making such transfers. This amendment benefits banks and their associations because it provides clear guidelines and streamlined procedures for banks to follow when they wish to transfer