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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2415, 2416, 2424, and 2429

Employee Responsibilities and Conduct; Enforcement of Nondiscrimination in Programs or Activities; Filing Procedures

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule; technical amendments.

SUMMARY: The Federal Labor Relations Authority (Authority) is making technical amendments to its regulations. The amendments update rules and regulations that prescribe uniform ethical conduct standards and disclosure requirements applicable to all executive branch personnel and update regulations to reconcile with the Rehabilitation Act of 1973 and update or delete several outdated provisions and citations. The amendments also make technical revisions to the requirements for documents filed in negotiability disputes and make technical revisions regarding when filings made by commercial delivery are considered served.

DATES: *Effective Date:* November 9, 2009.

FOR FURTHER INFORMATION CONTACT:

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Parts 2424 and 2429: Donald S. Harris, Chief, Office of Case Intake and Publication, (202) 218-7740.

SUPPLEMENTARY INFORMATION: The Federal Labor Relations Authority (Authority) is making technical amendments to parts 2415, 2416, 2424, and 2429 of the Authority's regulations in Title 5 of the Code of Federal Regulations.

I. Technical Amendments to Part 2415

In part 2415, the Authority, the General Counsel of the Authority, and the Federal Service Impasses Panel adopt rules and regulations in Title 5 of the Code of Federal Regulations prescribing standards of ethical conduct and governing statements reporting employment and financial interests. First, the citation to 5 CFR part 737 is being revised to reflect its redesignation as 5 CFR part 2637. Part 2637 contains the regulations of the Office of Government Ethics concerning post employment conflict of interest. Second, a citation to 5 CFR part 2635, regulations prescribing standards of ethical conduct for all executive branch personnel, is being added. These regulations supplement 5 CFR part 735, which already is cited in part 2415. Third, a citation to 5 CFR part 2634, regulations concerning executive branch financial disclosure, is being added.

II. Technical Amendments to Part 2416

The Authority is making several technical amendments to part 2416, which was initially promulgated in 1988 and, except for a revision in 2003 to reflect a change in the address of the Authority's offices, has not been amended previously. The technical amendments are as follows:

1. Terminology is updated to reflect that Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794(a), was amended to replace the term "handicap" with the term "disability". Specifically, terminology is updated in the heading and text as follows:

a. By removing the term "handicap" wherever it appears and adding, in its place, the term "disability".

b. By removing the term "handicaps" wherever it appears and adding, in its place, the term "disabilities".

c. By removing the term "handicapped person(s)" wherever it appears and adding, in its place, the term "individual(s) with a disability".

d. By removing the term "nonhandicapped person(s)" wherever it appears and adding, in its place, the term "individual(s) without a disability".

2. In section 2416.103, the reference to the definition of "qualified handicapped person" in 29 CFR 1613.702(f) is replaced by a reference to the definition of "qualified individual with a disability" in 29 CFR 1615.103.

3. The requirement to conduct a self-evaluation by September 6, 1989, previously located in section 2416.110, is deleted as outdated, and 2416.111—Notice—is renumbered as section 2416.110.

4. The references, in section 2416.140 and paragraph (b) of section 2416.170 to 29 CFR part 1613 are revised to reflect that it was superseded by 29 CFR part 1614.

5. Paragraphs (c) and (d) of section 2416.150 are being deleted. The deadlines for compliance with program accessibility requirements and for a transition plan in these paragraphs have passed.

III. Technical Amendments to Part 2424

The Authority is making several technical amendments to part 2424. Four subparagraphs, which require that certain papers filed in negotiability cases contain a table of contents and a table of legal authorities cited, if the papers exceed 25 double-spaced pages in length, are being removed. These subparagraphs are:

a. Subparagraph (b)(5) of section 2424.22, pertaining to an exclusive representative's petition for review;

b. Subparagraph (c)(5) of section 2424.24, pertaining to an agency's statement of position;

c. Subparagraph (c)(3) of section 2424.25, pertaining to an exclusive representative's response to an agency's statement of position; and

d. Subparagraph (c)(3) of 2424.26, pertaining to an agency's reply to an exclusive representative's response.

These subparagraphs will be replaced by a new section 2429.29 added to part 2429. This new section requires that papers filed in negotiability cases and in other proceedings that are before the Authority or the Office of Administrative Law Judges include a table of contents if they exceed 10 double-spaced pages in length.

IV. Technical Amendments to Part 2429

The Authority is making several technical amendments to part 2429. Paragraph (b) of section 2429.21 and paragraph (d) of section 2429.27 are revised to change the date on which filings served by commercial delivery are considered served. The current rule is that filings served by commercial delivery are deemed served when received by the Authority. Under the new rule, such filings will be deemed

served on the day they are deposited with a commercial delivery service that will provide a record showing the date the document was tendered to the delivery service. The intended effect of this new rule is to avoid the inequities that would result from rejecting certain documents that arrive late through no fault of the party filing them. Section 2429.22 is revised to provide a party five additional days after service to respond to a notice or paper served by commercial delivery. Section 2429.25 is revised to require four legible copies to be provided with the filing of the original, rather than the current requirement of five legible copies. Finally, a new section 2429.29 is added to require that a document filed in proceedings before the Authority or the Office of Administrative Law Judges include a table of contents if the document exceeds 10 double-spaced pages in length.

Publication of this document constitutes final agency action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedures are unnecessary because the Authority is making only non-substantive technical amendments to its regulations.

Waiver of Proposed Rulemaking

The Authority for good cause finds that prior notice and opportunity for comment on these amendments are unnecessary pursuant to 5 U.S.C. 553(b)(3)(B) because the revisions to the affected sections are merely technical in nature and propose no substantive changes regarding which public comment could be solicited.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the regulations, as amended, will not have a significant impact on a substantial number of small entities, because they apply only to Federal employees, Federal agencies, and labor organizations representing federal employees.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or record keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects

5 CFR Part 2415

Conflict of interests, Government employees.

5 CFR Part 2416

Government employees, Enforcement of nondiscrimination on the basis of disability in programs or activities conducted by the Federal Labor Relations Authority.

5 CFR Part 2424

Administrative practice and procedure, Government employees, Labor-management relations.

5 CFR Part 2429

Administrative practice and procedure, Government employees, Labor-management relations.

■ For the reasons set forth in the preamble, the Federal Labor Relations Authority amends parts 2415, 2416, 2624, and 2629 of title 5 of the Code of Federal Regulations as follows:

PART 2415—EMPLOYEE RESPONSIBILITIES AND CONDUCT

■ 1. The authority cited for part 2415 is revised to read as follows:

Authority: E.O. 12674, 54 FR 15159 (April 12, 1989), as modified by E.O. 12731, 55 FR 42547 (October 17, 1990); 5 CFR 735.101, *et seq.*, 2634.101, *et seq.*, 2635.101, *et seq.*, and 2637.101, *et seq.*

■ 2. Section 2415.1 is revised to read as follows:

§ 2415.1 Employee responsibilities and conduct.

The Federal Labor Relations Authority, the General Counsel of the

Federal Labor Relations Authority and the Federal Service Impasses Panel, respectively, hereby adopt the rules and regulations contained in parts 735, 2634, 2635, and 2637 of title 5 of the Code of Federal Regulations, prescribing standards of conduct and responsibilities, and governing statements reporting employment and financial interests for officers and employees, including special Government employees, for application, as appropriate, to the officers and employees, including special Government employees, of the Authority, the General Counsel and the Panel.

PART 2416—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL LABOR RELATIONS AUTHORITY

■ 3. The authority cited for part 2416 continues to read as follows:

Authority: 29 U.S.C. 794.

■ 4. Section 2416.101 is revised to read as follows:

§ 2416.101 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

■ 5. Section 2416.102 is revised to read as follows:

§ 2416.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with disabilities in the United States.

■ 6. Section 2416.103 is amended by removing the definitions for “individual with handicaps”, “qualified individual with handicaps”, and “qualified handicapped person” and adding, in alphabetical order, definitions for “individual with disabilities”, “qualified disabled person”, and “qualified individual with disabilities”.

§ 2416.103 Definitions.

* * * * *

Individual with disabilities means any person who has a physical or mental impairment that substantially limits one

or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

* * * * *

Qualified individual with disabilities means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with disabilities who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with disabilities who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with disabilities who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified disabled person* as that term is defined for purposes of employment in 29 CFR 1615.103, which is made applicable to this regulation by § 2416.140.

* * * * *

■ 7. Section 2416.130 is revised to read as follows:

§ 2416.130 General prohibitions against discrimination.

(a) No qualified individual with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with disabilities the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with disabilities an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with disabilities with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain

the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with disabilities the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with disabilities the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to

discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.

(c) The exclusion of individuals without a disability from the benefits of a program limited by Federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive order to a different class of individuals with disabilities is not prohibited by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

■ 8. Section 2416.140 is revised to read as follows:

§ 2416.140 Employment.

No qualified individual with disabilities shall, on the basis of disability, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

■ 9. Section 2416.149 is revised to read as follows:

§ 2416.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 2416.150, no qualified individual with disabilities shall, because the agency's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

■ 10. Section 2416.150 is revised to read as follows:

§ 2416.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) In the case of historic preservation programs, require the agency to take any

action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 2416.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General*. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs*. In meeting the requirements of § 2416.150(a) in historic preservation programs, the agency shall give priority

to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of § 2416.150(a) (2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

■ 11. Section 2416.151 is revised to read as follows:

§ 2416.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

■ 12. Section 2416.160 is amended by revising paragraphs (a) and (d) to read as follows:

§ 2416.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with disabilities.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

* * * * *

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 2416.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

■ 13. Section 2416.170 is amended by revising paragraphs (a), (b), and (f) to read as follows:

§ 2416.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

* * * * *

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) is not readily accessible to and useable by individuals with disabilities.

PART 2424—NEGOTIABILITY PROCEEDINGS

■ 14. The authority cited for Part 2424 continues to read as follows:

Authority: 5 U.S.C. 7134.

§ 2424.22 [Amended]

- 15. Amend section 2424.22 as follows:
- a. In paragraph (b)(3), add “and” after the semi-colon;
 - b. In paragraph (b)(4), remove the semi-colon and the word “and” from the end of the paragraph and add a period in their place; and
 - c. Remove paragraph (b)(5).

§ 2424.24 [Amended]

- 16. Amend section 2424.24 as follows:
- a. In paragraph (c)(3), add the word “and” after the semi-colon;
 - b. In paragraph (c)(4), remove the semi-colon and the word “and” from the end of the paragraph and add a period in their place; and
 - c. Remove paragraph (c)(5).

§ 2424.25 [Amended]

- 17. Amend section 2424.25 by removing paragraph (c)(3).

§ 2424.26 [Amended]

- 18. Amend section 2424.26 as follows:
- a. Add the word “and” after the semi-colon at the end of paragraph (c)(1)(iv);
 - b. In paragraph (c)(2), remove the semi-colon and the word “and” from the end of the paragraph and add a period in their place; and
 - c. Remove paragraph (c)(3).

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

- 19. The authority cited for part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134; § 2429.18 also issued under 28 U.S.C. 2112(a).

- 20. Section 2429.21 is amended by revising paragraph (b) to read as follows:

§ 2429.21 Computation of time for filing papers.

* * * * *

(b) Except when filing an unfair labor practice charge pursuant to part 2423 of this subchapter, a representation petition pursuant to part 2422 of this subchapter, and a request for an extension of time pursuant to § 2429.23(a) of this part, when this subchapter requires the filing of any paper with the Authority, the General Counsel, a Regional Director, or an Administrative Law Judge, the date of filing shall be determined by the date of mailing indicated by the postmark date or the date a facsimile is transmitted. If no postmark date is evident on the mailing, it shall be presumed to have been mailed 5 days prior to receipt. If the date of facsimile transmission is unclear, the date of transmission shall be the date the facsimile transmission is received. If the filing is by personal

delivery, it shall be considered filed on the date it is received by the Authority or the officer or agent designated to receive such materials. If the filing is deposited with a commercial delivery service that will provide a record showing the date the document was tendered to the delivery service, it shall be considered filed on the date when the matter served is deposited with the commercial delivery service.

* * * * *

- 21. Section 2429.22 is revised to read as follows:

§ 2429.22 Additional time after service by mail or commercial delivery.

Except as to the filing of an application for review of a Regional Director's Decision and Order under § 2422.31 of this subchapter, whenever a party has the right or is required to do some act pursuant to this subchapter within a prescribed period after service of a notice or other paper upon such party, and the notice or paper is served on such party by mail or commercial delivery, 5 days shall be added to the proscribed period: Provided, however, that 5 days shall not be added in any instance where an extension of time has been granted.

- 22. Section 2429.25 is revised to read as follows:

§ 2429.25 Number of copies and paper size.

Unless otherwise provided by the Authority or the General Counsel, or their designated representatives, as appropriate, or under this subchapter, and with the exception of any prescribed forms, any document or paper filed with the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, as appropriate, under this subchapter, together with any enclosure filed therewith, shall be submitted on 8½ by 11 inch size paper, using normal margins and font sizes. The original and four (4) legible copies of each document or paper must be submitted. Where facsimile filing is permitted pursuant to § 2429.24(e), one (1) legible copy, capable of reproduction, shall be sufficient. A clean copy capable of being used as an original for purposes such as further reproduction may be substituted for the original.

- 23. Section 2429.27 is amended by revising paragraph (d) to read as follows:

§ 2429.27 Service; statement of service.

* * * * *

(d) The date of service or date served shall be the day when the matter served is deposited in the U.S. mail, delivered

in person, deposited with a commercial delivery service that will provide a record showing the date the document was tendered to the delivery service or, in the case of facsimile transmissions, the date transmitted.

- 24. Add § 2429.29 to subpart B to read as follows:

§ 2429.29 Content of filings.

Any document that a party files in a proceeding covered by this subchapter that is before the Authority or the Office of Administrative Law Judges must include a table of contents if the document exceeds 10 double-spaced pages in length.

Dated: September 25, 2009.

Carol Waller Pope,
Chairman.

[FR Doc. E9–23552 Filed 10–7–09; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE**Food and Nutrition Service****7 CFR Part 246**

[FNS–2009–0001]

RIN 0584–AD71

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Vendor Cost Containment

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, with changes, an interim rule published on November 29, 2005 amending the WIC regulations. The final rule incorporates into program regulations new legislative requirements for vendor cost containment that affect the selection, authorization, and reimbursement of retail vendors. These requirements are contained in the Child Nutrition and WIC Reauthorization Act of 2004, enacted on June 30, 2004. The final rule reflects the statutory provisions that require State agencies to implement a vendor peer group system, competitive price criteria, and allowable reimbursement levels in a manner that ensures the WIC Program pays authorized vendors competitive prices for supplemental foods. It also requires State agencies to ensure vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments (“above-50-percent vendors”) do not cause higher food costs for the program than do other vendors (“regular vendors”). The intent