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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 246

RIN 0584-AE13

#### Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of Nondiscretionary, Non-Electronic Benefits Transfer-Related Provisions

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule incorporates into the regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) several changes set forth in the Healthy, Hunger-Free Kids Act of 2010 (HHFK Act). These provisions address: certification periods for children participating in the WIC Program; increased emphasis on breastfeeding promotion and support; compiling and publishing data for partially and fully breastfed infants; sharing nutrition education materials with institutions participating in the Child and Adult Care Food Program (CACFP); and infant formula (and other foods) rebate management.

**DATES:** *Effective Date:* This rule is effective on October 28, 2011.

*Implementation Date:* The provisions in this rule must be implemented no later than October 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Debra R. Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 520, Alexandria, Virginia 22302; (703) 305-2746; *e-mail:* [Debbie.Whitford@fns.usda.gov](mailto:Debbie.Whitford@fns.usda.gov).

#### SUPPLEMENTARY INFORMATION:

### Background

This final rule amends the WIC regulations to implement five nondiscretionary provisions from Public Law 111-296, the Healthy, Hunger-Free Kids Act of 2010 (HHFK Act), signed into law on December 13, 2010. FNS previously issued policy and guidance to State agencies on implementation of the legislative requirements addressed in this rulemaking because four of the five nondiscretionary provisions of the HHFK Act were effective on October 1, 2010. The fifth provision, the recording of rebate payments, becomes effective on October 1, 2011. FNS anticipates that the current rule will accomplish the goals of the HHFK Act concerning participant certification, breastfeeding support and general program administration. Specifically, the WIC provisions are as follows:

#### 1. *Extended Certification Period for Children*

Section 131 of the HHFK Act amends section 17(d)(3) of the Child Nutrition Act (CNA) (42 U.S.C. 1786(d)(3)) to allow State agencies the option to certify participant children for a period of up to one year if the State agency electing this option ensures that participant children receive required health and nutrition assessments. Section 246.7(g)(1)(v) of the WIC regulations (7 CFR 246.7(g)(1)(v)) currently provides that children participating in the WIC Program shall be certified at intervals of approximately six months, ending with the last day of the month in which a child reaches his/her fifth birthday. The new legislative provision now allows a participant child, at the State agency's option, to be certified for a period of up to one year. This increased flexibility will provide administrative relief for participant children's parents, as well as for State and local agencies. In some cases, it will also allow a local WIC agency to certify a toddler, a breastfeeding mother, and an infant in the same household for the same relative period of time, as all three categories of participants may now be certified for up to one year if the State agency ensures that health care and nutrition services are not diminished. To comply with the legislative intent of the extended certification periods, *i.e.*, that participant children receive required health and nutrition assessments, WIC State agencies

electing the one-year option must continue to provide the nutrition services a participant would otherwise receive during a shorter certification period. Delivering quality nutrition services to WIC participants and to their parents/caregivers distinguishes WIC as an exemplary nutrition assistance program.

This provision became effective on October 1, 2010, as stipulated in the HHFK Act and was implemented via a March 11, 2011 memorandum #2011-2, "Implementation of the Nondiscretionary, Non-Electronic Benefits Transfer-Related Provisions of Public Law 111-296." This final rule amends § 246.7(g) to add the State agency option to allow certification of children for a period of up to one year, provided the local agency ensures that the participant child receives the required nutrition services. Section 246.4(a) is amended to require State agencies electing to implement this option to address in the State Plan of Operations how participants will receive required health and nutrition assessments when certified for a period of greater than six months.

A corresponding amendment is made to § 246.11(e)(3) to add that nutrition education contacts must be made available quarterly for participants certified for a period of time in excess of six months to ensure that health care and nutrition services are not diminished.

#### 2. *Increased Support for Breastfeeding in the WIC Program*

The Department has long been strongly committed to the support and promotion of breastfeeding. WIC has historically promoted breastfeeding to all pregnant women as the optimal infant feeding choice, unless medically contraindicated. Current WIC regulations (§§ 246.7(e)(1)(iii), 246.7(g)(1)(iii), 246.10(e)(7), and 246.11(c)) contain provisions to encourage women to breastfeed and to provide appropriate nutritional support for breastfeeding participants, including:

- Information provided to WIC mothers choosing to breastfeed through counseling and breastfeeding educational materials;
- Follow-up support through peer counselors;
- Eligibility to participate in WIC longer than non-breastfeeding mothers;

- Enhanced food package for mothers who exclusively breastfeed their infants; and

- Provision of breast pumps, breast shells or supplemental nursing systems to help support the initiation and continuation of breastfeeding as allowable WIC costs.

Section 231 of the HHFK Act amends several paragraphs in section 17 of the CNA to reinforce the importance of the promotion and support of breastfeeding as an integral element of WIC services and benefits. The specific changes are:

1. Section 17(a) of the CNA is amended to add references to breastfeeding promotion and support to the WIC Program's general purpose and to the benefits provided. This addition is incorporated by this rulemaking into § 246.1 and § 246.11(b) of the WIC regulations, but does not require any specific action on the part of WIC State agencies.

2. The definition of "Costs of nutrition services and administration" in Section 17(b)(4) of the CNA is amended to include "breastfeeding support and promotion." Breastfeeding support and promotion has always been an allowable cost under nutrition services and administration (NSA) funds as defined in § 246.2; this provision now makes the definitions in the CNA and the regulations consistent, and as with the amendment to the statement of purpose for the WIC Program cited above, does not require any specific action by WIC State agencies.

3. Section 17(c)(1) of the CNA is amended to include "breastfeeding support and promotion" as one of the specific services to be provided under the WIC Program. This phrase, and close variations of it, are added throughout the WIC regulations wherever references to WIC nutrition education services are found. While breastfeeding support and promotion have always been considered to be part of the nutrition services provided through the WIC Program, the HHFK Act now ensures that such functions are specifically named. This final rule amends § 246.11(a)(1) to include breastfeeding support and promotion as a benefit of the Program, and to clarify that breastfeeding support and promotion shall be made available at no cost to participants.

4. Section 17(e)(2) of the CNA is amended to expand WIC State and local agency staff training requirements to include breastfeeding support and education. Therefore, § 246.11(c) is amended to require State agencies to include breastfeeding promotion and support as part of their responsibilities. All WIC State agencies are now

expected to provide an assurance via the State Plan of Operations to the effect that any training related to nutrition education and counseling provided to State and local staff will include breastfeeding promotion and support as part of such training.

5. Section 17(f)(6)(B) of the CNA is amended to expand the limitations on State agencies' authority to provide WIC food instruments by a method other than direct pick-up at the local agency, specifically to include participants scheduled for breastfeeding counseling. Section 246.12(r)(4) is amended accordingly to require participants, parents and caretakers of infant and child participants, and proxies to pick up food instruments and cash value vouchers in person when scheduled for breastfeeding counseling. State agencies must also ensure that WIC EBT benefits will not be not loaded, nor will paper food instruments be mailed or otherwise issued to participants in some method besides face-to-face distribution at the local agency, if the participant is scheduled for nutrition education, breastfeeding counseling, or recertification.

All of these provisions became effective on October 1, 2010, as stipulated in the HHFK Act and were implemented via the March 11, 2011 memorandum, "Implementation of the Nondiscretionary, Non-Electronic Benefits Transfer-Related Provisions of Public Law 111-296."

#### 3. Data Collection for Breastfed Infants

Section 231 of the HHFK Act also amends section 17(h)(4)(A) of the CNA (42 U.S.C. 1786(h)(4)(A)) to require USDA to compile, and to publish annually, breastfeeding performance measurements based on program participant data on the number of partially and fully breastfed infants for each WIC State agency and each local WIC agency.

This requirement became effective on October 1, 2010. WIC State agencies currently report cumulative data on the number of partially and fully breastfed infants as part of their monthly participation report. WIC local agencies provide their data on partially and fully breastfed infants to the State agency for the cumulative monthly participation report; however, the individual local-level data are currently not reported by State agencies to FNS.

The local agency data on fully and partially breastfed infants reported monthly to the State will now be compiled by the State agency, using a format provided by FNS for the annual local level data reporting. This information will then be reported to

FNS and published annually by USDA. Section 246.25(a) is revised to reflect the reporting of this local level data to FNS by the State agency. No new burden is incurred since this information is currently collected by the local agency and submitted on a monthly basis to the State agency for its monthly participation report.

#### 4. Sharing Materials With CACFP

Nutrition education is an important component of WIC nutrition services. It is provided to all pregnant, breastfeeding and postpartum participants as well as to the parents or caregivers of infant and child participants, and when appropriate, to child participants directly. As such, the WIC Program develops a variety of nutrition education materials for use by State and local cooperators.

Section 351 of the HHFK Act amends section 17(e)(3)(B) of the CNA (42 U.S.C. 1786(e)(3)(B)) to allow local WIC agencies, at the State agency's option, to share nutrition education materials with institutions participating in the CACFP at no cost, if a written materials sharing agreement exists between WIC State or local agencies and CACFP institutions. WIC State agencies may initiate a sharing agreement with their State-level CACFP counterparts that would apply Statewide, or may authorize their local agencies or clinics to initiate a sharing agreement at the local level with their local level CACFP counterparts.

This requirement became effective on October 1, 2010, as stipulated in the HHFK Act, and was implemented via the March 11, 2011 memorandum, "Implementation of the Nondiscretionary, Non-Electronic Benefits Transfer-Related Provisions of Public Law 111-296." This final rule amends § 246.11(c)(3) to allow State agencies the option to allow their local agencies or clinics to share nutrition education materials with CACFP entities.

#### 5. Recording WIC Rebate Payments

Section 352(b) of the HHFK Act amends section 17(h)(8) of the CNA (42 U.S.C. 1786(h)(8)) to add a new paragraph (K) requiring WIC State agencies to report rebate payments received from manufacturers in the month in which the payments are received, rather than in the month in which the payments are earned. To assist State agencies in making the transition to this change in reporting, Section 352(f) of the HHFK Act amends section 17(i) of the CNA (42 U.S.C. 1786(i)) to add a new paragraph (8) providing for temporary adjustments in spending authority.

This provision requires State agencies to report rebate payments from manufacturers on the FNS-798 (Financial Management and Participation Report) in the month in which the payments are received, rather than in the month that rebates are earned. This change does not affect how rebates are earned and billed on rebate invoices to manufacturers, which will continue in accordance with current and future rebate contracts. Rather, this change in reporting will assist the State agency in more accurately estimating its annual amount of rebates, which is a key component in determining its need for food funds during the course of the fiscal year.

This requirement becomes effective on October 1, 2011, as stipulated in the HHFk Act. Section 246.14 is modified to incorporate the reporting change.

#### 6. New Rebate Bid Solicitation Requirements

Section 352(c) of the HHFk Act amends section 17(h)(9) of the CNA (42 U.S.C. 1786(h)(9)) to add several new requirements for the solicitation and billing of all rebates on authorized foods, including infant formula, specifically:

A. The bid solicitation must:

- Identify the composition of State alliances for the purposes of a cost containment measure, and
- Verify that no additional States shall be added to the State alliance between the date of the bid solicitation and the end of the contract.

B. The State agency must have a system to ensure that rebate invoices under competitive bidding provide a reasonable estimate or an actual count of the number of units sold to WIC participants.

C. The State agency must publicly open and read all bids aloud on the day the bids are due.

D. The State agency must provide a minimum of 30 days between the publication of the solicitation and the date on which the bids are due, unless exempted by the Secretary.

E. The State agency must extend current provisions and requirements regarding State alliances for infant formula rebates to all other authorized foods for which rebates are sought.

Rebates are offsets to food costs and allow the Program to serve a greater number of participants without increasing the annual appropriation of WIC funds by Congress. Infant formula rebates have been a very successful cost containment initiative in the WIC Program since the mid-1980's. Over the years, State agencies have also implemented rebate contracts for other

foods, such as infant cereal and juice; and more recently, infant foods such as fruit, vegetables and meat. A key to the success of rebate contracts is ensuring fair and open competition for the contracts.

The rebate bid solicitation requirements became effective on October 1, 2010, as stipulated by the HHFk Act. Section 246.16a is modified to incorporate these new requirements.

#### Notice and Comment

In accordance with the Secretary's Statement of Policy (36 FR 13804), it is found and determined with good cause that it is unnecessary to engage in the Notice and Comment provisions of 5 U.S.C. 553 normally required before the adoption of final regulations in an FNS-sponsored program. The provisions set forth in this rulemaking are nondiscretionary, *i.e.*, the Department has not exercised any authority to interpret the statutory provisions beyond the language that is specifically provided in the legislation. The nondiscretionary nature of the provisions contained in Public Law 111-296 means that notice and comment would serve no useful purpose in the promulgation of this rulemaking.

#### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been designated not significant under section 3(f) of Executive Order 12866.

#### Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget; therefore, a Regulatory Impact Analysis is not necessary.

#### Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Pursuant to that review, it has been certified that this rule will not have a significant economic impact on a substantial number of small entities.

This rule incorporates into the regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) several changes set forth in the Healthy, Hunger-Free Kids Act of 2010 (HHFK Act). The provisions of this rulemaking are applicable to all State and local agencies that administer the WIC Program.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, 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, 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 by 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 final 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, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

#### Executive Order 12372

WIC is listed in the Catalog of Federal Domestic Assistance under No. 10.557. For the reasons set forth in the final rule at 7 CFR part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

#### Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section 6(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and

has determined that this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

#### *Executive Order 12988*

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

In WIC, the administrative procedures are as follows: State and local agencies, farmers, farmers' markets, and roadside stands—State agency hearing procedures issued pursuant to 7 CFR 246.18; applicants and participants—State agency hearing procedures pursuant to 7 CFR 246.18; sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.16, and procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

#### *Civil Rights Impact Analysis*

FNS has reviewed this rule in accordance with Departmental Regulations 4300-4, "Civil Rights Impact Analysis," and 1512-1, "Regulatory Decision Making Requirements." After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits in the WIC Program. Federal WIC regulations specifically prohibit State agencies that administer the WIC Program, and their cooperators, from engaging in actions that discriminate against any individual in any of the protected classes (see 7 CFR 246.8 for the nondiscrimination policy in the WIC Program). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the WIC Program regulations set forth at § 246.8.

#### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to host periodic collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country. We are not aware of any current Tribal laws that could be in conflict with this final rule.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. While some of the provisions of this rule are related to the current collection of information for the WIC Program, this final rule has no new information collection requirements. The information collection burdens associated with collecting local agency breastfeeding data and the recording of rebates in this final rule have been previously approved under OMB No. 0584-0045, *WIC Financial Management and Participation Report with Addendum*.

#### *E-Government Act Compliance*

FNS is committed to complying with the E-Government Act of 2002 to promote the use of the internet and other information technologies to provide increased opportunities to provide for citizen access to government information and services, and for other purposes. State Plan amendments regarding the implementation of the provisions contained in this rule, as is the case with the entire State Plan, may be transmitted electronically by the

State agency to FNS. Also, State agencies may provide WIC Program information, as well as their financial reports, to FNS electronically.

#### **List of Subjects in 7 CFR Part 246**

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Nutrition education, Public assistance programs, WIC.

For reasons discussed above, 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:** 7 U.S.C. 1786.

#### **§ 246.1 [Amended]**

■ 2. Section 246.1 is amended by adding the phrase “, including breastfeeding promotion and support,” after the word “education” in the third sentence.

#### **§ 246.3 [Amended]**

■ 3. Section 246.3 is amended in paragraph (e) by adding the phrase “breastfeeding promotion and support,” after the word “education,” in the first sentence.

■ 4. In § 246.4:

■ a. Revise paragraph (a)(9);

■ b. Amend paragraph (a)(11)(ii) by adding the phrase “, including breastfeeding promotion and support,” after the word “education” in the first sentence; and

■ c. Redesignate paragraphs (a)(19) through (a)(26) as paragraphs (a)(20) through (a)(27), and add a new paragraph (a)(19).

The revisions and additions read as follows:

#### **§ 246.4 State plan.**

(a) \* \* \*

(9) The State agency's nutrition education goals and action plans to include:

(i) A description of the methods that will be used to provide drug and other harmful substance abuse information, to promote and support breastfeeding, and to meet the special nutrition education needs of migrant farmworkers and their families, Indians, and homeless persons.

(ii) State agencies have the option to provide nutrition education materials to institutions participating in the CACFP at no cost, as long as a written agreement for sharing such materials is in place between the relevant WIC and CACFP entities. State agencies may initiate a sharing agreement with their State-level CACFP counterparts that would apply statewide, or may

authorize their local agencies or clinics to initiate a sharing agreement at the local level with their local level CACFP counterparts.

\* \* \* \* \*

(19) The State agency's plan to ensure that participants receive required health and nutrition assessments when certified for a period of greater than six months.

\* \* \* \* \*

**§ 246.6 [Amended]**

- 5. In § 246.6 paragraph (b)(6) is amended by adding the phrase “, including breastfeeding promotion and support,” after the word “services”.
- 6. In § 246.7:

- a. Revise the fourth sentence in paragraph (e);
- b. Revise paragraph (g)(1)(v) to read as set forth below;
- c. Amend paragraph (j)(2)(iii) by removing the phrase “and nutrition education” and adding in its place the phrase “, nutrition education and breastfeeding support”; and
- d. Amend paragraph (m)(1)(i)(C) by removing the phrase “and nutrition education” and adding in its place the phrase “, nutrition education and breastfeeding support”;
- e. Amend paragraph (m)(4) by adding the phrase “, including breastfeeding promotion and support,” after the word “education”.

The revisions read as follows:

**§ 246.7 Certification of participants.**

\* \* \* \* \*

(e) \* \* \* Nutritional risk data shall be documented in the participant's file and shall be used to assess an applicant's nutritional status and risk; tailor the food package to address nutritional needs; design appropriate nutrition education, including breastfeeding promotion and support; and make referrals to health and social services for follow-up, as necessary and appropriate.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

A/an: Will be certified:

(v) Child ..... Approximately every six months ending with the last day of the month in which a child reaches his/her fifth birthday. The State agency may permit its local agencies to certify a child for a period of up to one year, provided the local agency ensures that the child receives the required health and nutrition assessments, as set forth in § 246.11(e)(3).

\* \* \* \* \*

- 7. In § 246.11:
  - a. Amend paragraphs (a)(1), and (b) introductory text, by adding the phrase “including breastfeeding promotion and support,” after the phrase “Nutrition education” wherever it appears;
  - b. Amend paragraph (a)(2) by adding the phrase “, including breastfeeding promotion and support, as appropriate,” after the word “education” in the first sentence;
  - c. Amend paragraph (c) introductory text by adding the phrase “, including breastfeeding promotion and support,” after the word “responsibilities”;
  - d. Add new paragraph (c)(8);
  - e. Amend paragraph (d) introductory text by adding the phrase “, including breastfeeding promotion and support,” after the word “responsibilities”;
  - f. Revise the first sentence in paragraph (d)(1);
  - g. Revise the first sentence in paragraph (d)(2);
  - h. Amend paragraph (e)(1) by adding the phrase “including breastfeeding promotion and support,” after the phrase “nutrition education” ; and
  - i. Revise paragraph (e)(3).

The revisions and additions read as follows:

**§ 246.11 Nutrition education.**

\* \* \* \* \*

(c) \* \* \*

(8) Determine if local agencies or clinics can share nutrition educational materials with institutions participating in the Child and Adult Care Food Program established under section 17 of

the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) at no cost to that program, if a written materials sharing agreement exists between the relevant agencies.

(d) \* \* \*

(1) Make nutrition education, including breastfeeding promotion and support, available or enter into an agreement with another agency to make nutrition education available to all adult participants, and to parents or caretakers of infant and child participants, and whenever possible and appropriate, to child participants.\* \* \*

(2) Develop an annual local agency nutrition education plan, including breastfeeding promotion and support, consistent with the State agency's nutrition education component of Program operations and in accordance with this part and FNS guidelines.\* \* \*

(e) \* \* \*

(3) Nutrition education contacts shall be made available at a quarterly rate to parents or caretakers of infant and child participants certified for a period in excess of six months. Nutrition education contacts shall be scheduled on a periodic basis by the local agency, but such contacts do not necessarily need to take place in each quarter of the certification period.\* \* \*

**§ 246.12 [Amended]**

- 8. Section 246.12(d) is amended by adding the phrase “, and breastfeeding counseling” after the word “education”.

- 9. In § 246.14:
  - a. Amend paragraph (c)(1) by adding the phrase “, including breastfeeding promotion and support, ” after the word “education” in the eleventh sentence;
  - b. Add a new paragraph (f).  
The addition reads as follows:

**§ 246.14 Program costs.**

\* \* \* \* \*

(f) *Use of funds received as rebates from manufacturers.* The State agency must credit and report rebate payments received from manufacturers in the month in which the payments are received.

- 10. In § 246.16a:
  - a. Revise the section heading;
  - b. Redesignate paragraphs (c)(1) through (c)(8) as paragraphs (c)(2) through (c)(9);
  - c. Remove introductory text of paragraph (c) and add a new paragraph (c)(1);
  - d. Amend newly designated paragraph (c)(3) by adding a third sentence; and
  - e. Revise paragraphs (g) and (k).

The additions and revisions read as follows:

**§ 246.16a Infant formula and authorized foods cost containment.**

\* \* \* \* \*

(c) *What is the single-supplier competitive system?*—(1) Under the single-supplier competitive system, a State agency solicits sealed bids from infant formula manufacturers to supply and provide a rebate for infant formulas. The State agency must conduct the

procurement in a manner that maximizes full and open competition consistent with the requirements of this section. A State agency must:

(i) Provide a minimum of 30 days between the publication of the solicitation and the date on which the bids are due, unless exempted by the Secretary; and

(ii) Publicly open and read all bids aloud on the day the bids are due.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \* The bid solicitation must identify the composition of the State alliances for the purpose of a cost containment measure, and verify that no additional State shall be added to the State alliance between the date of the bid solicitation and the end of the contract. \* \* \*

\* \* \* \* \*

(g) *May a State agency implement cost containment systems for other supplemental foods?* Yes, when a State agency finds that it is practicable and feasible to implement a cost containment system for any WIC food other than infant formula. The State agency must:

(1) Provide notification to FNS by means of the State agency's State Plan.

(2) Comply with paragraphs (c)(2) and (k) of this section.

(3) Provide a minimum of 30 days between the publication of the solicitation and the date on which the bids are due, unless exempted by the Secretary. The State must publicly open and read all bids aloud on the day the bids are due.

(4) Issue separate solicitations for authorized foods if any alliance served a monthly average of more than 100,000 infants during the preceding 12-month period.

\* \* \* \* \*

(k) *What are the requirements for infant formula and authorized food rebate invoices?* A State agency must have a system in place that ensures infant formula and authorized food rebate invoices, under competitive bidding, provide a reasonable estimate or an actual count of the number of units purchased by participants in the program.

\* \* \* \* \*

**§ 246.19 [Amended]**

■ 11. Section 246.19(b)(2) is amended by adding the phrase "breastfeeding promotion and support," after the word "education," in the first sentence.

■ 12. In § 246.25:

■ a. Amend paragraph (a)(1) by adding the phrase "including breastfeeding

promotion and support," after the word "education,";

■ b. Redesignate paragraphs (b)(1)(i)(C) and (D) as paragraphs (b)(1)(i)(D) and (E), and add a new paragraph (b)(1)(i)(C); and

■ c. Add new paragraph (b)(2)(iii).

The additions read as follows:

**§ 246.25 Records and reports.**

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(C) Actual and projected rebate payments received from manufacturers.

\* \* \* \* \*

(2) \* \* \*

(iii) The State agency must submit local agency breastfeeding participation data on an annual basis to FNS.

\* \* \* \* \*

Dated: September 20, 2011.

**Audrey Rowe,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2011-24722 Filed 9-27-11; 8:45 am]

**BILLING CODE 3410-30-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 95**

[Docket No. 30805; Amdt. No. 496]

**IFR Altitudes; Miscellaneous Amendments**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**DATES:** *Effective Date:* 0901 UTC, October 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Rick Dunham, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (*Mail Address:* P.O. Box

25082 Oklahoma City, OK 73125) *telephone:* (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

**The Rule**

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 95**

Airspace, Navigation (air).