

# Rules and Regulations

Federal Register

Vol. 81, No. 40

Tuesday, March 1, 2016

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 246

RIN 0584-AE21

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule considers public comments submitted in response to the proposed rule published February 28, 2013 and implements the provisions set forth in the Healthy, Hunger-Free Kids Act of 2010 related to electronic benefit transfer (EBT) for the WIC Program (also referred to herein as “the Program”). The HRFKA amended provisions of the Child Nutrition Act of 1966 (CNA) and was enacted on December 13, 2010. EBT provisions of the HRFKA and other EBT implementation requirements included in this final rule are: A definition of EBT; a mandate that all WIC State agencies implement EBT delivery method by October 1, 2020; system management and reporting requirements; revisions to current provisions that prohibit imposition of costs on vendors; a requirement for the Secretary of Agriculture to establish minimum lane equipment standards; a requirement for the Secretary of Agriculture to establish technical standards and operating rules; and a requirement that State agencies use the National Universal Product Code (NUPC) database.

**DATES:**

*Effective Date:* This rule is effective on May 2, 2016.

*Implementation Dates:*

- The provisions found at 7 CFR 246.12(h)(3)(xxvii) and 7 CFR 246.12(z)(2) requiring minimum lane coverage deployment of Point of Sale (POS) terminals used to support the WIC Program shall be implemented by March 1, 2017.

- The provisions found at 7 CFR 246.12(h)(3)(xxx) and 7 CFR 246.12(aa)(4)(i) prohibiting a State agency from paying ongoing maintenance, processing fees or operational costs for multi-function vendor systems and equipment after statewide implementation shall be implemented either by March 1, 2018 or the date included in a Department-approved plan for continued support for these efforts.

- The provisions found at 7 CFR 246.12(h)(3)(xxxi) and 7 CFR 246.12(bb)(1) requiring each State agency, contractor and authorized vendor to comply with the published operating rules, standards and technical requirements and other industry standards identified by the Secretary shall be implemented either by March 1, 2018 or the date included in a Department-approved plan to incorporate the rules, standards and requirements in their system development plan.

**FOR FURTHER INFORMATION CONTACT:** Jerilyn Malliet, Chief, WIC EBT Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302; phone (703) 305-2746, OR email [Jerilyn.Malliet@fns.usda.gov](mailto:Jerilyn.Malliet@fns.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Overview**

This final rule addresses public comments submitted in response to the proposed rule published in the **Federal Register** on February 28, 2013 (78 FR 13549) which incorporated the provisions set forth in the HRFKA (Pub. L. 111-296), related to EBT for the WIC Program. The Department had previously issued policy and guidance in WIC Policy Memorandum #2011-3, issued March 22, 2011, to State agencies on implementation of the nondiscretionary provisions of the HRFKA that were effective on October 1, 2010. However, select areas of the law were discretionary, and therefore public comment was sought in the proposed rule. This final rule makes adjustments

to improve clarity of the provisions set forth in the proposed rule and implements EBT requirements for the Program.

**II. Background**

Providing WIC participants with a specific prescription of supplemental nutritious foods based on their nutritional needs is a cornerstone of WIC’s mission. Currently, the majority of WIC participants receive paper food instruments (FIs) containing their food prescription. However, in line with current trends and overall public expectation of doing business and receiving services electronically, the WIC Program has been gradually transitioning the benefit issuance methodology over the past several years from paper FIs to EBT. The use of EBT in the WIC Program allows both the WIC Program and its participants to use advanced technologies in the delivery of benefits and helps support WIC’s goal to improve client services. It is well recognized and accepted that EBT is by far the preferred method of benefit delivery for the WIC Program and it is endorsed by WIC participants, authorized vendors and State WIC administrators. The Department has continued to support and promote WIC EBT through collaborative efforts with WIC State agencies, vendor groups, the banking industry, EBT processors and a variety of other EBT stakeholders. As State agencies move forward with WIC EBT, it is critical that standard business practices, policies and requirements are followed to collaboratively expedite EBT implementation and maximize resource utilization.

Given the challenges of the food benefit and technology needed to support those complexities and the nationwide WIC EBT implementation deadline of October 1, 2020 required by the HRFKA, the provisions in this final rule are critical for WIC State agencies, vendors, system developers and EBT processors to effectively implement the mandate. Establishment of these provisions will promote consistency, save resources and streamline EBT implementation, which will ultimately reduce barriers as WIC moves to EBT to deliver food benefits. This final rule supports and facilitates this transition and addresses many important aspects of WIC EBT implementation.

### III. Summary of Comments Received on the Proposed Rule Related to EBT in the WIC Program

The proposed rule amending WIC regulations to incorporate WIC EBT provisions as set forth in the HHFKA provided a 90-day public comment period on the discretionary provisions of the proposed rule. The comment period was later extended by 30 days and ended on June 29, 2013.

A total of 45 comment letters were received on the proposed rule; of those, 12 comments were form letters. The comment letters were submitted from a variety of sources, including 18 WIC State agencies and Indian Tribal Organizations (ITOs), one from the National WIC Association, two from food retailer associations, seven from the electronic funds transfer industry including the Electronic Funds Transfer Association, 13 from hunger advocacy groups and four from members of the public.

In general, commenters expressed broad support for the proposed EBT provisions. Commenters also voiced concerns about various aspects of the proposed rule and made recommendations for clarifying or improving specific provisions. The Department considered all comments; importance was given to the substance of the comment, rather than the number of times a comment was submitted.

### IV. Discussion of the Final Rule Provisions

#### 1. Definitions: Section 246.2

The following definitions have been added or modified in the final rule:

**Electronic Benefit Transfer.** The proposed rule would have added the definition of EBT as a food delivery system that provides benefits using a card or other access device approved by the Secretary permitting electronic access to WIC Program benefits. Five comments were received on the definition of EBT; three were in full support of the definition as proposed. One commenter suggested the WIC Program use the plural “benefits,” citing that the Supplemental Nutrition Assistance Program (SNAP) uses the plural form and the two programs should be consistent. After verifying SNAP EBT regulations use the singular “benefit” in its definition of EBT at 7 CFR 274.12(b)(1), the definition retains the singular “benefit” as proposed which results in consistency between the two programs in using “benefit” rather than “benefits”.

The remaining comment on the definition of EBT stated that EBT is a form of payment for WIC food benefits,

not a food delivery system. The Department agrees with this comment and has modified the definition accordingly in the final rule. This final rule adds the definition of electronic benefit transfer at § 246.2 as follows: *Electronic Benefit Transfer (EBT)* means a method that permits electronic access to WIC food benefits using a card or other access device approved by the Secretary.

**Cash-Value Voucher/Cash-Value Benefit.** Two comments were received in support of expanding the definition of cash value voucher to acknowledge that in an EBT environment a cash value voucher is also a cash value benefit. Therefore, this final rule retains the definition of “cash-value voucher/cash-value benefit” at § 246.2 as proposed.

**Participant Violation.** As proposed, the definition of participant violation would be expanded to include the sale of cash-value vouchers, food instruments and EBT cards, or supplemental foods by participants and further expanded to specifically address the offer to sell WIC benefits in person, in print or online. As technology has advanced, opportunities to sell benefits have expanded to avenues such as the Internet. Protecting the integrity of the Program has always been a primary objective of the Department and WIC State agencies. The Department received 18 comments on the proposed change to the definition of participant violation. Three commenters were in full support of the change. Three commenters were in support of the change, but noted it is difficult for WIC State agencies to prove WIC-approved food items offered for sale by WIC participants are WIC benefits; therefore, the commenters recommended the Department establish, through regulation, the burden of proof required to impose a sanction on a participant suspected of selling WIC benefits. One of these commenters recommended removing the burden of proof from the WIC State agency altogether by making it a participant violation for a participant, caregiver or proxy to sell or offer to sell any item within the food package (or the food packages of any infants or children in his/her care). Since State agency administrative rules and procedures vary widely, the Department has opted not to establish the burden of proof in the regulatory definition of participant violation. It is incumbent upon WIC State agencies to work with their legal counsel and appropriate law enforcement agencies to determine the best course of action in situations where WIC participants are found to be selling or offering to sell food items they may have received as WIC benefits.

Twelve comments noted the word “intent,” as used in the expanded definition of participant violation in the proposed rule, was too broad and could result in the sanctioning of a WIC participant who merely spoke of or thought about selling WIC benefits, but took no further action. The Department concurs and the word “intent” has been replaced with “deliberate” as this more accurately conveys what is meant in the revised definition.

Eleven comments suggested the Department provide guidance on the types of policies WIC State agencies could develop in the future to address emerging issues. The WIC regulations already provide a framework for the types of policies State agencies may create for a variety of situations. The Department will continue to provide technical support to State agencies as issues emerge.

One commenter opposed the change and stated that WIC participants should not be sanctioned unless it is proven they sold WIC benefits. Given the importance of giving State agencies maximum flexibility to manage participant violations and to improve program integrity, the final rule slightly modifies the proposed definition of “participant violation” by substituting the word “deliberate” for “intent,” but otherwise retains the definition as proposed. Further, to ensure participants are aware that selling or offering to sell cash value vouchers, food instruments, EBT cards or supplemental foods is a participant violation, the final rule adds, at § 246.7(j)(10), a requirement for State agencies to include such a statement in the notification of rights and responsibilities provided to applicants and participants or their parents or caretakers.

Three commenters suggested adding a definition for “EBT Ready” or “EBT Capable” to clarify what equipment is required to support WIC as an authorized vendor and what the State agency would need to authorize the vendor. The Department recognizes these terms may cause confusion and thus a new definition of “EBT Capable” is added to § 246.2. The regulations no longer refer to “EBT Ready,” which has the same meaning as EBT Capable.

**EBT Capable** shall mean the WIC vendor demonstrates that their cash register system or payment device can accurately and securely obtain WIC food balances associated with an EBT card, maintain the necessary files such as the authorized product list, hot card file and claim file and successfully complete WIC EBT purchases. In accordance with the EBT Operating Rules, a State agency

may accept a cash register system or payment device as EBT Capable if it has been certified by another State agency. Certification criteria will be discussed later in this rulemaking.

Also, based on these comments, the Department added a new definition for Statewide EBT. *Statewide EBT* means the State agency has converted all WIC clinics to EBT and all authorized vendors are capable of transacting WIC EBT purchases. This definition allows State agencies to identify a unique and easily verifiable date when new WIC vendors must prove that they are EBT Capable. The new definition for Statewide EBT has been added to § 246.2.

Several industry and State agency commenters indicated that the cost and deployment of equipment provisions in § 246.12(z) and § 246.12(aa) were confusing. The Department agrees with these comments and has added two definitions—one definition for *single-function equipment* and one definition for *multi-function equipment*. The use of common definitions for these terms is designed to clarify the discussion in the preamble below and the regulation itself.

*Multi-function equipment* means Point-of-Sale equipment obtained by a WIC vendor through commercial suppliers that is capable of supporting WIC EBT and other payment tender types.

*Single-function equipment* means Point-of-Sale equipment, such as barcode scanners, card readers, PIN pads and printers, provided to an authorized WIC vendor solely for WIC EBT. Single-function equipment is provided by the State agency or its contractor.

## 2. Statewide Implementation of EBT by October 1, 2020 and Exemptions: Sections 246.12(a) and 246.12(w)(2)

Section 17(h)(12)(B) of the CNA (42 U.S.C. 1771 *et seq.*) requires that each State agency implement EBT throughout the State by October 1, 2020, unless the Secretary grants an exemption. The proposed rule reflected these requirements by amending § 246.12(a) to add the statewide implementation requirement of EBT by October 1, 2020 and by providing information and requirements on allowable exemption criteria at § 246.12(w)(2). In total, 26 comments were received on these provisions, of which 19 were in full support of the provisions as proposed.

Generally, commenters expressed support for the EBT mandate that each State agency achieve statewide EBT by October 1, 2020. However, four commenters expressed concern that

insufficient funding would delay or prohibit EBT implementation nationwide. The Department fully recognizes dedicated and sustained funding is critical to help State agencies implement EBT. The Department will continue to assist State agencies with their EBT implementation efforts, including exploring strategies to help make WIC EBT more affordable. As the mandate is legislatively required, however, the implementation date will remain as proposed at § 246.12(a).

Section 17(h)(12)(C) of the CNA authorizes the Secretary to grant exemptions to the statewide EBT requirement if the State agency can demonstrate one or more of the following: (1) There are unusual technical barriers; (2) operational costs of EBT are unaffordable within the nutrition services and administration (NSA) grant; or (3) it is in the best interest of the Program. In general, commenters expressed support for the exemptions provision, but again had concerns about the affordability of EBT, the need for a cost analysis and uncertainty as to what constitutes “is in the best interest of the Program.”

Pursuant to section 17(h)(12)(C) of the CNA, an exemption to EBT implementation may be requested if a State agency can demonstrate to the satisfaction of the Secretary that EBT is not operationally affordable. When the proposed rule was published, all WIC State agencies would have been required to conduct a cost analysis during their EBT planning process in order to ensure EBT operational costs after implementation are affordable within their individual NSA grant. The requirements of FNS Handbook 901, which outlines the approval requirements for State agency technical projects, to include EBT, have since been streamlined and a cost analysis is no longer required of a State agency. This procedural change addresses commenters’ concerns regarding the requirement to conduct a cost analysis for EBT approval. If a State agency requests an affordability exemption, the State agency must analyze costs to determine EBT affordability and provide this analysis to the Department. Accordingly, the provision allowing an exemption if EBT operational costs are not affordable within a State agency’s NSA grant is retained in the final rule at § 246.12(w)(2)(ii) as proposed.

While the majority of commenters were in full support of the proposed language at § 246.12(w)(2)(iii), one commenter sought further clarification on what constitutes an allowable exemption based on “is in the best interest of the Program.” The

Department is hesitant to establish regulatory criteria specifying scenarios or situations that would constitute such an exemption. Although EBT implementation by October 1, 2020 is mandated by law, the Department remains cognizant of the impact of EBT implementation on State agencies, vendors and WIC participants. There may be unusual circumstances within the State agency which may indicate EBT would not improve benefit delivery or would negatively affect WIC participants. Since this type of exemption would arise on a situational basis, the Department will evaluate each request on a case-by-case basis to determine if such an exemption would be in the best interest of the WIC Program. Therefore, § 246.12(w)(2)(iii) of this final rule retains the proposed language allowing an exemption to EBT implementation if a State agency demonstrates to the satisfaction of the Secretary such an exemption would be in the best interest of the Program.

No comments were received on the provision regarding exemptions based on unusual technological barriers; therefore, this provision remains as proposed at § 246.12(w)(2)(i).

Under the proposed rule, § 246.12(w)(3) would have limited approved exemptions to no more than three years, as the Department thought this is a reasonable timeframe for a State agency’s situation to change relative to the ability to implement EBT. Further, if an exemption is granted, it would not relieve a WIC State agency of the annual EBT status reporting requirement proposed in § 246.4(a), as the State agency would still have to demonstrate its progress toward EBT statewide implementation. One commenter noted it would be highly unlikely a State agency receiving a three-year exemption on the basis of affordability would suddenly be able to afford EBT three years later. The Department understands this concern; however, technology costs tend to trend downward over time and the concern in part rests on speculation regarding the State agency’s ability to obtain the needed funds in three years. While such cost trends are not possible to predict at this time, an exemption of three years continues to place responsibility on each WIC State agency to continue exploring options for implementing EBT within their funding level. Additional exemptions may be granted on a case by case basis within the criteria described in this regulation. Also, the State agency may realize cost efficiencies in other areas of nutrition services and administration which result in more funds within the grant being available to support EBT costs.

Consequently, the provision limiting any exemption to the 2020 mandate to a three year period is retained in this final rule at § 246.12(w)(3).

*3. Electronic Benefit Requirements. Last Date of Use—Section 246.12(x)(2)(iii)*

The Department proposed in § 246.12(x)(2)(iii) the last date on which the electronic benefit may be used to obtain authorized supplemental foods. This date must be a minimum of 30 days from the first date on which it may be used to obtain authorized supplemental foods except for the participant's first month of issuance, when it may be the end of the month or cycle for which the electronic benefit is valid. Several commenters expressed concern that because benefit months may vary in length from 28 to 31 days, this language required additional clarification. In 2007, the Department issued Policy Memorandum 2007–01, permitting a State agency to issue a food benefit from the first of the month through the last day of the month. To clarify further, the Department added language to § 246.12(x)(2)(iii) based upon our 2007 policy memorandum, permitting a State agency to shorten the 30-day benefit period for February to 28 or 29 days. A conforming amendment has been made to § 246.12(f)(2)(iii).

*4. EBT Management and Reporting: Section 246.12(y)*

Section 17(h)(12)(B) and (D) of the CNA require that each State agency be responsible for WIC EBT coordination and implementation and provide status reports on their EBT implementation progress. The proposed rule at § 246.12(y) outlined EBT management and reporting requirements, to include that State agencies must follow the Advanced Planning Document (APD) process, consult with State officials if incorporating additional programs in the WIC EBT project, have an active EBT planning project by August 1, 2016 and submit EBT status reports through their annual State Plan.

The APD process requires the State agency to submit Planning and Implementation APD's and appropriate updates for the Department's approval for their EBT project. Only one comment was received related to this provision. The commenter noted the need to streamline the APD process to promote faster implementation timeframes, especially given the fact that both on-line and off-line technologies are proven and cost-effective. After publication of the proposed rule, the Department revised the APD process for WIC EBT project approvals in order to streamline and

improve the outcomes of the Planning APD (PAPD) and Implementation APD (IAPD). These changes have been published in a revised FNS Handbook 901. In particular, the PAPD no longer requires a cost analysis, which was discussed earlier in this preamble, or an alternatives analysis, which specifically evaluated on-line and off-line technologies to determine the best option for the State agency. The alternatives analysis was determined to be optional as many State agencies already know which technology choice is optimal for their State. If, however, a State agency anticipates the need for an exemption to implement EBT based on affordability, or is unsure of the best technological approach to EBT, the Department continues to support and encourage State agencies to complete further analyses.

Recognizing the need for and the benefits of thorough planning and project management to fully meet the requirements to receive approval for Federal funding for EBT established by the Department, the provision requiring State agencies to follow Department APD requirements is retained in this final rule as proposed at § 246.12(y)(1).

Under the proposed rule, State agencies would have been required to consult with other benefit programs if they were considering obtaining an EBT benefit delivery method supporting WIC and one or more other benefit programs. One commenter representing vendors recommended the Department take this consultation a step further and require State agencies planning for WIC EBT to consult with State officials administering SNAP EBT in their respective State, regardless of whether a joint benefit delivery method is planned. The commenter noted the significant overlap in participation and authorized vendors between WIC and SNAP and suggested that every effort should be made to integrate the two Programs' benefit delivery methods. The Department recognizes the potential benefits of the two State agencies consulting on EBT implementation options and encourages WIC State agencies to work with SNAP officials when appropriate. However, we believe the provision is adequate as proposed due to WIC State agency variability in infrastructure, policy requirements or other factors. Consequently, the final rule retains the provision as proposed at § 246.12(y)(2) requiring consultation with State agency officials if a State agency plans to incorporate additional programs in the WIC EBT system.

To ensure progress is made towards the goal of nationwide EBT implementation by October 1, 2020, the

proposed rule at § 246.12(y)(3) would have required each State agency to have an active WIC EBT project by October 1, 2015. An active EBT project is defined as a formal process of planning, implementation or statewide operation of WIC EBT. Four commenters were in full support of this requirement as proposed and three commenters asked for additional flexibility in the timeframe due to extenuating circumstances and/or lack of funding. The Department recognizes planning and implementation for EBT projects is a lengthy and complex process and lack of funding may be an inhibiting factor in some State agencies. However, the magnitude of executing a WIC EBT project requires dedicated staff and resources and should not be underestimated; a typical EBT project currently takes 2–3 years to progress from planning to implementation of EBT statewide. As the EBT implementation mandate is required by law, it is incumbent upon each State agency to begin the planning process well ahead of the mandate to ensure compliance. Therefore and consistent with this concern, the provision requiring an active EBT project by October 1, 2015, is modified in this final rule at § 246.12(y)(3) to require each State agency to submit a plan 90 days after the effective date of this regulation.

The Department also recognizes that some WIC State agencies operate in remote areas with limited access to vendors who can provide WIC foods. In some instances, these State agencies have implemented food delivery methods such as direct delivery to meet the needs of their WIC participants. There are other State agencies with substantial cost concerns or other considerations they believe would qualify for an exemption under the CNA. The Department understands these considerations but continues to expect State agencies to initiate an EBT planning initiative to formally explore the viability of EBT in their area of operation. The planning process will enable the State agency to gather appropriate information on available implementation alternatives and assess if an exemption is warranted.

Pursuant to section 17(h)(12)(D) of the CNA, each WIC State agency must submit to the Department an EBT project status report to demonstrate the progress of the State agency toward statewide implementation. Under the proposed rule, § 246.4(a) and § 246.12(y)(4) would have required an annual update of the State agency's goals and objectives regarding EBT implementation to be submitted as part of the State agency's State Plan of

Operations. The annual update would also document the State agency's progress toward accomplishing EBT implementation by the 2020 deadline, or if already implemented statewide, address any updated information for future EBT activities, plans for EBT updates, re-procurements, or other major activities impacting EBT. The Department received 11 comments regarding the annual reporting requirement, most of which were supportive of the proposal. Several recommended that a report not be required from a State agency if there were no changes to EBT operations since last report. One commenter also recommended a bi-annual reporting cycle rather than an annual cycle.

The Department recognizes the time and effort State agencies incur gathering information and reporting to the Department. However, the status of EBT implementation is of interest to Congress and many of the Program's stakeholders and has critical resource implications. Since the State Plan of Operations is updated annually, the Department believes the proposed requirement is both timely and consistent with current annual reporting requirements and is well understood by State agencies and provides the necessary information the Department requires for adequate oversight of the EBT implementation mandate. Regarding the proposed requirement at § 246.12(y)(4)(ii) requiring an annual State Plan update for State agencies operating statewide EBT, the Department believes this is necessary to inform the Department of any information impacting EBT operations, to include new EBT procurements. To minimize the reporting burden, a State agency that is EBT statewide may indicate no changes have occurred since the previous reporting period, if appropriate. A State agency with an active EBT APD may cross reference the details from the APD in their annual State Plan update to minimize the reporting burden. Consequently, the provisions for requiring annual EBT project status reporting through the annual State Plan are retained in this final rule as proposed at § 246.4(a) and § 246.12(y)(4).

**5. EBT Cost Impositions on Vendors: Sections 246.12(h)(3)(xxvii–xxx) and 246.12(aa)**

Section 17(h)(12)(E)(i) of the CNA prohibits the imposition of costs on vendors for EBT equipment and systems used solely to support the program (*i.e.*, single-function equipment). Sections 17(h)(12)(E)(ii) and (iii) of the CNA outline requirements for cost sharing of

EBT equipment or systems not solely dedicated to transacting WIC EBT and guidelines for imposing processing and interchange fees and costs on vendors transacting WIC benefits. The CNA provisions related to cost impositions on vendors were incorporated into the proposed rule at § 246.12(h)(3)(xxvii–xxx) and § 246.12(aa). A total of 73 comments were received on these provisions and are discussed below.

**Cost Prohibitions.** Section 17(h)(12)(E)(i) of the CNA prohibits the imposition of costs on authorized vendors for single-function EBT equipment and systems. Two comments were received directly related to this provision, voicing concern that the potentially high costs associated with EBT equipment incurred by the retailer might be prohibitive, resulting in the retailer deciding WIC authorization is no longer viable. While the Department understands these concerns, the full costs of WIC single-function equipment will be borne by the State agency prior to statewide implementation and appropriate cost sharing will occur for multi-function cash register equipment and systems. This should eliminate undue hardships on WIC authorized vendors prior to statewide implementation. Therefore, the proposed provision has been modified at Section 246.12(aa)(4) to clarify the State shall continue to pay ongoing maintenance, processing fees and operational costs of single-function equipment when EBT is implemented statewide.. Section 246.12(g)(5) has been removed because the CNA superseded the prior cost prohibition language.

**Criteria for Cost Sharing.** Section 17(h)(12)(E)(ii) of the CNA requires the Secretary to establish cost sharing criteria to be used by WIC State agencies and vendors for equipment or systems that are not solely dedicated to transacting EBT for the WIC Program (*i.e.*, multi-function equipment). Under the proposed rule at § 246.12(aa)(2), State agencies would have been required to use cost sharing criteria in accordance with Federal cost principles set forth in 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards) to establish cost sharing criteria with their authorized WIC vendors for costs associated with any multi-function equipment.

A total of 13 comments were received on the cost sharing criteria provision. One commenter was in full support of the provision as proposed. Five commenters were supportive, but requested clarification on terminology and expansion on the provision. Seven commenters were opposed to the

provision, stating the proposed regulation was not consistent with the HRFKA, may be cost prohibitive for State agencies, or did not allow for State agency flexibility.

A number of commenters wanted clarification and expressed concern regarding what is meant by the term "equipment" as it applies to this provision, some suggesting the term "commercial equipment" be used when referring to the need for cost sharing criteria. While the Department recognizes the provision applies primarily to multi-function equipment or systems, the Department does not want to limit the type of equipment or system that may be subject to cost sharing. The Department, as explained earlier in the preamble, refers to multi-function equipment to include commercial equipment. To clarify, "equipment" can refer to commercially-obtained hardware with WIC EBT software owned or leased by a vendor from any of the cash register and payment system providers available in the market. Multi-function equipment can also refer to stand-beside equipment (and appropriate software) such as a card reader (magnetic stripe and/or smart card), display screen, PIN pad, printer and barcode scanner which are not integrated into the cash register. The stand-beside equipment may be a limited Point of Sale (POS) device with WIC EBT functionality, a POS device supporting WIC EBT and SNAP or cash EBT payments, or it may be an integrated cash register system installed separately in the checkout lane next to the existing electronic cash register. Ownership of the equipment can rest with the vendor, a third-party provider such as an acquirer, the State agency, or the State agency contractor. Other items considered equipment or part of EBT include a telephone line or Internet connection to submit purchases for an on-line approval, to submit daily EBT claim files for payment in an off-line environment, or to exchange the Authorized Product List (APL) and other files necessary to support a WIC EBT purchase.

Several commenters asked for clarification on whether the cost sharing requirement should be between the WIC Program and SNAP, rather than the vendor, if the stand-beside equipment supports both programs. Additional concerns were raised related to perceived discrepancies in the regulatory language in the cost sharing section and minimum lane coverage section regarding EBT equipment, with the point being made that as stated in the proposed rule at § 246.12(aa)(2), WIC Program equipment would only be

provided for use by the State agency as Stand-beside equipment and used solely by the Program and would therefore not be subject to cost sharing agreements.

If the equipment is single-function equipment, it is not subject to cost sharing. However, if the equipment is multi-function equipment, a cost sharing agreement between the State agency and vendor would be required if any costs are shared. Such agreements may reflect other state programs that may be included in the agreement. The Department has revised § 246.12(aa)(2) to clarify that cost sharing agreements shall be developed between the State agency and the vendor, depending on the type, scope and capabilities of shared equipment.

One commenter requested a review of the HHFKA language that corresponded with the provision set forth in the proposed rule, stating the proposed rule indicated State agencies shall establish cost sharing criteria, but the HHFKA indicated the Secretary shall establish criteria for cost-sharing. As discussed in the preamble language of the proposed rule, shared costs must be allocated, or fairly distributed, among all benefiting parties in accordance with the established Federal cost principles set out at 2 CFR part 200. Compliance with these Federal principles provides reasonable assurance the Federal Government and the State agency bear their respective fair share of costs incurred by the State agency to administer Federal assistance programs. To provide clarification and consistency and to ensure regulatory language does not become outdated/obsolete, this provision has been revised at § 246.12(aa)(2), requiring State agencies to develop cost sharing criteria following the Federal guidance established for cost allocation principles. This clarification underscores that Federal cost guidance establishes cost allocation principles, as required by the HHFKA and State agencies will use these principles to develop cost sharing criteria. The specific proposed reference to 2 CFR part 225 has been replaced by a general reference to Federal cost allocation principles to mitigate confusion in the future should the Federal regulations be revised or renumbered. The cost principles now reside at 2 CFR part 200.

To date, the Department has remained flexible in its approval of proposed State agency cost sharing criteria because of differences in State agency funding and operations that lead to variations; consequently, one set of cost sharing criteria does not fit all. To provide reasonable assurance Federal cost allocation principles are being followed

and the approach is applied fairly to all authorized WIC vendors, the State agency must furnish its allocation and/or cost sharing methodology to the Department for review and approval before incurring costs as part of the established APD approval process outlined in Handbook 901. As noted previously, § 246.12(y)(1) of the final rule requires adherence to the APD process.

*Processing Fees.* As provided in section 17(h)(12)(E)(iii)(I) of the CNA and incorporated into the proposed rule at § 246.12(h)(3)(xxviii) and § 246.12(aa)(3)(i), WIC authorized vendors would have been required to pay commercial processing costs and fees if multi-function equipment was utilized for WIC and other transactions. A vendor using multi-function equipment would pay commercial transaction processing costs and fees, imposed by a third-party processor, if the vendor elects to use commercial providers to connect to the State's EBT processing system. Five comments were received on this provision. Three were in full support of the proposed requirement and two commenters requested the Department to clarify: (1) The provision applies only to multi-function equipment; and (2) the complete regulatory language for this provision. While this final rule at § 246.12(h)(3)(xxviii) and § 246.12(aa)(3)(i) retains the intent of the proposed provision prohibiting State agencies from incurring third-party processing costs and fees for vendors that elect to accept EBT using multi-function equipment, the regulatory language has been modified slightly at § 246.12(aa)(3)(i) for clarity.

As noted, typically processing fees are not charged to vendors who accept WIC EBT equipment from a State agency or its contracted EBT provider if the equipment is single-function equipment. A WIC State agency is responsible for these processing fees and ongoing costs. The proposed rule at § 246.12(aa)(4)(i) would have permitted such processing fees to be charged to all WIC vendors after statewide implementation whether or not the equipment was single-function or multi-function. In response to related comments not specific to this provision; the proposed language is modified in the final rule at § 246.12(aa)(4)(i) to prohibit processing fees from being charged by a State agency or its contractor to WIC vendors for use of single-function equipment.

*Interchange Fees.* Section 17(h)(12)(E)(iii)(II) prohibits interchange fees on WIC EBT transactions. An interchange fee is the term used in the

payment card industry to describe a fee paid between banks for the acceptance of card based transactions. Interchange fees are currently paid by retail merchants for credit and debit card transactions in the commercial environment, but not for WIC or SNAP EBT transactions. Under the proposed rule, interchange fees would not have applied to WIC EBT. Additionally, language reflecting this prohibition would have been added to WIC vendor agreements, prohibiting the WIC vendor from charging the State agency for any interchange fees. Eight commenters addressed the proposed provision; seven were in full support of the proposed prohibition and one commenter was in support but requested the language be made clearer in the final rule. Consequently, the provisions prohibiting interchange fees from applying to WIC are modified slightly in the final rule at § 246.12(h)(3)(xxix) and § 246.12(aa)(3)(ii) and clearly state that a State agency shall not pay or reimburse the vendor for interchange fees on WIC EBT transactions.

*Costs After Statewide Implementation.* Section 17(h)(12)(E)(iv)(I) of the CNA permits State agencies that have implemented EBT statewide to no longer be required to incur the cost of ongoing maintenance of EBT multi-function cash register systems and equipment. Under the proposed rule at § 246.12(h)(3)(xxx) and § 246.12(aa)(4)(i), all costs for ongoing maintenance, equipment and operational expenses essential to and directly attributable to, EBT after statewide expansion would have been unallowable for both single-function and multi-function equipment, unless the State agency determined the vendor was needed for participant access.

The Department received numerous comments regarding the proposed regulations pertaining to vendor equipment and maintenance costs. Four comments in support of this requirement were received from WIC State agencies and participant advocates. Two large national retailer associations expressed concern the proposed elimination of State-supported single-function EBT equipment was not consistent with the HHFKA and would require vendors to shoulder the financial costs associated with EBT implementation. A payment industry association expressed concern the proposed requirement to eliminate State agency financing of single-function equipment may have a chilling effect on expansion of WIC EBT nationwide by 2020. Several commenters from the industry and State agencies urged the

Department to clarify whether the provision applied only to commercial equipment owned by a WIC vendor versus equipment installed and owned by a State agency or its EBT contractor.

After consideration of these comments, the Department has modified the final regulation to require a State agency to continue support of ongoing maintenance, processing fees and operational costs for single-function equipment or multi-function equipment if the vendor is necessary for participant access.

Two commenters raised concern that prohibiting ongoing maintenance fees after statewide implementation would not support small businesses or grocers in rural areas not able to afford an integrated system or ongoing maintenance costs, but who may be integral to the program in regards to participant access to benefits. The Department understands this concern. To remain consistent with legislative exceptions permitting State agencies to provide single-function equipment on behalf of the vendor, the provisions in this final rule at § 246.12(h)(3)(xxx) and § 246.12(aa)(4)(i) have been revised to require the State agency to pay ongoing maintenance and operational costs for single-function EBT equipment. A State agency may elect to share in the costs for multi-function equipment if the State agency determines the vendor is necessary for participant access. The wording was changed from “needed” for participant access to “necessary” for participant access to align with the legislative language and to clarify the intent of the provision. Additionally, a technical amendment is added to § 246.12(h)(3)(xxx) to correct a typographical error in the title in the proposed rule, clarifying the provision applies to EBT ongoing maintenance and operational costs.

One advocate organization commented that farmers and farmers’ markets should be given special consideration in applying the provisions of the post-statewide equipment installation rules which preclude State agencies from sharing in the cost of WIC EBT equipment. While the Department shares in the goal of enhancing access to fresh fruit and vegetables made available by farmers and farmers’ markets, it could be cost prohibitive for State agencies to equip every authorized farmer or farmers’ market. Therefore, § 246.12(h)(3)(xxx) and § 246.12(aa) of the regulation have been amended to apply to all authorized WIC vendors and also apply to authorized farmers and farmers markets and prohibit costs for ongoing maintenance, equipment and operational expenses of an EBT benefit

delivery method after EBT statewide, if the equipment is multi-functional.

*Capability To Accept EBT Benefits.* Section 246.12(aa)(4)(iii) of the proposed rule provided that once a State agency has implemented EBT statewide, WIC vendor applicants would have been required to demonstrate their capability to accept WIC EBT benefits electronically prior to authorization. In essence, the applying vendor would have been required to be “EBT capable” at the time they applied and there would have been no obligation for the State agency to provide funds to cover EBT costs in order for the vendor to participate in the program. When there is a need to ensure participant access to food benefits, a State agency would have been permitted, with USDA approval, to fund applicant vendor costs to obtain an EBT capable cash register system.

A total of 19 comments were received on this proposed provision. Seven comments, all from WIC State agencies, were in full support of the proposal, noting it is a vendor’s decision to seek WIC authorization and WIC Program funds should not be used for this purpose except if participant access is an issue. Other commenters expressed concerns as to the meaning of EBT capable/EBT ready, the upfront investment needed by the vendor to become EBT capable without assurances the vendor’s application for WIC would be accepted and the disadvantage that smaller vendors would face due to cost constraints.

To address several commenters’ questions and concerns on what EBT capable means, a broader discussion follows. WIC EBT delivery methods require the capability to process WIC EBT benefits by exchanging claim files and hot card files in off-line environment and transmitting on-line purchases to the EBT host for approval, which requires either a telephone or Internet line. Both on-line and off-line WIC EBT delivery methods require transmittal of the approved product list (APL), the electronic food list distributed by each State agency, at least every 48 hours.

WIC EBT also requires the vendor system to maintain the APL in order to match scanned food items’ UPC (Universal Product Code) or Price Lookup Codes (PLU) to ensure they are on a States’ APL. The one to one match is not necessary in a SNAP EBT transaction; consequently a SNAP authorized retailer does not necessarily have the capability to support WIC EBT transactions.

Therefore, WIC EBT capable would mean the vendor equipment and software is able to accurately scan or

enter WIC food item UPC/PLU codes, match them to the APL, determine if the WIC food balance on the participant’s card is sufficient to purchase the item and calculate the amount of the transaction. The vendor must also submit a claim file for payment in off-line EBT environment. The electronic cash register system must do this while managing WIC and non-WIC items (if multi-functional), the sales tax for non-WIC items and a variety of promotions or discounts, as appropriate.

Several comments were received regarding concerns that significant investments in cash register equipment and software may be incurred by a vendor who is applying for authorization to accept WIC before the vendor is determined to be eligible by a WIC State agency. A commenter suggested a two-stage vendor authorization process for State agencies to provide provisional authorization that a vendor could receive if they met a State agency’s vendor criteria before determining their EBT capability. The Department is not requiring new vendor authorization criteria in this rulemaking. Nonetheless, we recognize a two-step authorization process may be a practical approach for a State agency to consider. To assist applicant vendors in selecting an EBT capable system, State agencies should compile and maintain a list of certified systems the applicant can consider. This list would neither represent an endorsement for the listed systems nor prevent a prospective vendor from obtaining a different system.

One commenter representing a State agency expressed concern that the return on investment made prior to statewide operations was not defined in the proposed rulemaking. The commenter suggested that if a State agency shared in the cost of implementation, policies should be established to allow recovery of a prorated share of the investment if the vendor was terminated (voluntary or involuntary). State agencies already have this ability, as current Department guidelines permit State agencies to recoup a portion of any investment in vendor equipment in the event of termination. The Department does not believe this should be included in Federal regulations; rather, the Department recommends this be addressed in appropriate State agency policy and vendor agreements.

One commenter representing a retailer association expressed concern that State agencies should have flexibility to share in the cost of retail equipment and software certifications even after the State agency implements EBT statewide.

To date, State agencies have conducted tests to certify that a specific cash register system is capable of supporting all WIC EBT functions. The commenter further noted that the proposed rule was not clear on what constituted the requirements or timeframes of determining EBT capability. The commenter expressed concern this uncertainty could negatively impact the authorization of new chain stores or small businesses if a new EBT system or third party processor is used. The Department recognizes some situations may result in a significant increase in vendor costs for certification and may lengthen authorization timeframes. The Department encourages State agencies to work with new vendors seeking WIC authorization to minimize costs and timeframes to become an authorized WIC vendor. However, while the Department understands vendors may incur additional costs related to certifications after statewide EBT is achieved, the primary concern is to ensure participant access to WIC benefits. Therefore, as stated in the proposed rule, the State agency would have the option to elect to fund such an expense in the event there was a need to ensure WIC participant access.

The Department acknowledges and appreciates the various viewpoints and comments submitted related to vendor capability to accept WIC EBT benefits. However, the language in the proposed rule that would have required the vendor demonstrate EBT capability prior to authorization unless the vendor is determined to be necessary for participant access is considered appropriate and necessary and complies with the CNA. The Department has modified the proposed language at § 246.12(aa)(4)(ii) to further clarify the requirement for vendors to demonstrate their systems are EBT capable.

#### 6. Minimum Lane Coverage Guidelines

Section 17(h)(12)(F) of the CNA requires that the Department establish a minimum standard for installing WIC EBT equipment, or terminals, in WIC vendor locations. The proposed rule at § 246.12(z)(2) provided a national WIC EBT vendor equipment coverage formula that would have been consistent from state-to-state and established a minimum level of equipage for POS terminals used to support the WIC Program. The proposal was consistent with the legislative requirement to establish national standards for implementation of WIC EBT, including standards for lane coverage for payment terminals to accept WIC EBT transactions. These minimum standards apply to all systems

and equipment used to support WIC EBT, whether the equipment is multi-functional or used solely for the WIC Program.

Section 246.12(z)(2) of the proposed rule would have required a WIC EBT equipment installation formula similar to the SNAP equipment installation requirements. Specifically, under the proposed rule, WIC vendors would have been required to install a commercial multi-function terminal or a government-provided stand-beside terminal in their checkout lanes as follows: For superstores and supermarkets, one POS terminal for every \$11,000 in monthly WIC redemption; and, for all other authorized WIC vendors, one terminal for every \$8,000 in monthly WIC redemption. As a vendor's WIC redemption reaches the next equipment threshold, they would be eligible for an additional terminal if equipped by the State agency under the formula proposed by the Department or an alternate formula approved by the Department. POS terminals would have been installed up to a maximum of four lanes, but not more than the number of lanes in a WIC vendor location. This formula does not require all lanes to be equipped for stores conducting more than 15 percent or more of their food sales in WIC business, which differs from the SNAP regulations but is consistent with the provisions in the CNA. The proposed rule would have allowed a State agency to use an alternative installation formula with Department approval. Additionally, § 246.12(z)(2)(iii) of the proposed rule would have required a State agency to determine the number of terminals that would be installed to support authorized farmers or farmers' markets.

This section of the proposed rule received 26 comments from State agencies, advocates, WIC vendor associations and members of the electronic funds transfer industry. Many commenters expressed concern that the proposed lane coverage guidelines may be cost prohibitive for State agencies and/or vendors and funding constraints for all stakeholders should be taken into consideration when establishing guidelines. Other concerns were that the equipage requirements did not allow for variances among WIC State agencies, the use of the SNAP POS terminal equipage formula was applied arbitrarily and the experience among EBT WIC State agencies to date was insufficient to require a single equipage formula nationally that applied to all WIC State agencies. Several commenters suggested adding a requirement that POS devices

support multiple programs, most notably SNAP.

For the purposes of this equipment formula, State agencies may use the U.S. Census Bureau Census on Retail Trade definition of supermarkets as retail establishments having sales over \$2 million annually in food, which is consistent with the SNAP definition for supermarkets. Supercenters or superstores are retail establishments primarily engaged in retailing a general line of groceries in combination with general lines of new merchandise, such as apparel, furniture and appliances. A State agency that requires SNAP authorization as a criterion for authorization of a WIC vendor may also reference the store categories utilized by SNAP.

The Department believes the proposed POS equipment lane coverage formula allows for a consistent standard for the minimum number of lanes necessary to permit WIC participants to purchase their WIC foods using an EBT card. After evaluating both current WIC EBT State agency practices concerning lane equipage and SNAP equipment installation requirements, the Department believes the proposed equipment formula represents a reasonable and consistent basis to allow WIC participants to purchase their WIC foods in the same manner as all other non-program customers.

Numerous commenters suggested using a range of redemption values to determine lane equipage and to give State agencies more latitude in determining how to equip vendors with POS equipment based on State agency needs, technology and funding availability. The Department recognizes the variation among WIC State agencies and proposed a State agency be given flexibility to devise a formula fitting its specific environment if the national terminal coverage formula does not meet a specific State agency situation. Therefore, the proposed language at § 246.12(z)(2)(i) and (z)(2)(ii) is retained in the final rule and allows WIC State agencies to utilize an alternative terminal equipage installation formula with Department approval. This provision should allay State agency concerns that the national terminal equipage formula does not adequately consider a State agency's unique needs.

The Department understands there are scenarios where a vendor may choose not to install WIC EBT capable commercial equipment in every lane. As noted by a commenter, the preamble to the proposed rule assumed all vendors utilizing integrated multi-functional cash register systems would choose to equip all of their lanes with WIC

functionality. The Department agrees with the commenter and wishes to clarify that we encourage EBT transactions to be integrated into each WIC vendor's checkout lanes to allow WIC EBT cards to be utilized in all lanes both to promote efficiencies and to improve WIC benefit delivery, but it is not necessarily a universal business practice among vendors, nor is it a requirement.

While many vendors may prefer to integrate WIC EBT into their existing POS equipment, vendors may find integration costs prohibitive and therefore elect to use a single-function POS terminal for WIC transactions or may choose to have limited lanes integrated to accept WIC EBT. One commenter noted that when a vendor elects to equip fewer lanes than would have been required by this regulation, the State agency would have been required to install the additional stand-beside equipment at State agency expense. Prior to statewide EBT implementation, this would be the case. The Department recognizes the need may arise to install separate single-function terminals prior to statewide implementation either on an interim basis in order to allow more time for a WIC vendor to upgrade to an integrated system or as a permanent POS solution. As noted earlier in the preamble, retailer equipage would be included as part of a State agency's retailer enablement plan and would address the number and type of POS equipment in each vendor location. Once statewide EBT is achieved, the provision at § 246.12(aa)(4)(i) applies. Any ongoing State agency support for stand-beside terminals would be subject to a State agency's determination the vendor was necessary for participant access.

A few commenters noted the lane coverage formula was inconsistent with the requirement that WIC vendors offer WIC customers the same courtesies as other customers as required in current regulations at § 246.12(h)(3)(iii). The Department also recognizes the use of stand-beside equipment is not optimal for WIC participants because they must separately scan their WIC food items to complete the WIC portion of their purchases. Scanning and entering price information twice will be slower compared with the scanning process for other store customers. However, as noted previously, it may not be feasible or affordable for WIC vendors or a WIC State agency to equip all lanes with WIC functionality in excess of the minimal lane equipage formula using either additional stand-beside equipment or multi-functional terminals. The State agency and WIC vendor would need to

take steps to ensure WIC customers are directed to the WIC EBT capable lane(s) without designating these lanes as usable only by WIC customers. This could be done through the use of appropriate signage such as "WIC EBT accepted here." Provided a WIC vendor is complying with the lane equipment formula, a requirement to check out in specific lanes capable of accepting a WIC EBT card is not treating WIC customers differently than other customers provided the WIC lanes could also be used by other customers.

Although we have noted not all WIC vendors will choose to integrate WIC EBT into any and/or all of their POS devices, based on the experience with SNAP, the Department expects the majority of WIC vendors to equip all of their checkout lanes when they utilize commercial multi-functional WIC EBT capable solutions due to increased efficiencies and convenience in the checkout lanes for all customers. Given the concerns expressed about all lanes being WIC EBT capable for improved customer service versus the cost prohibitions to both WIC State agencies and authorized WIC vendors for doing so, the final rule modifies § 246.12(z)(2) to require that lanes be equipped according to the formula regardless whether the equipment is single-function or multi-function. The final rule retains the equipage formulas at § 246.12(z)(2)(i) and (z)(2)(ii) as proposed.

Commenters also expressed support for minimizing deployment of two POS terminals in a single checkout lane, one for WIC and one for SNAP, with one commenter suggesting joint WIC and SNAP EBT POS capabilities be a requirement. As noted in the preamble to the proposed rule, some WIC State agencies have worked with their SNAP agencies to acquire WIC and SNAP EBT services through a single contractor. This permits a single POS terminal to be installed in authorized vendor locations accepting both WIC and SNAP benefits. The Department expects the WIC State agency will consult with the SNAP EBT agency during planning to identify opportunities where vendor equipage could be coordinated and instances of duplicate equipment can be minimized. However, the Department recognizes separate terminals may be unavoidable in some instances due to contractual and funding issues and the need to upgrade software and other infrastructure to support transactions from the two programs. Because of these issues, the final rule is retained as proposed and does not require a single POS terminal capable of allowing both WIC and SNAP purchases.

Two commenters suggested amended language to protect a State agency from bearing fiscal liability in instances where a vendor is removed from the WIC program after receiving reimbursement from a State agency to acquire WIC EBT capable multi-functional equipment, especially after statewide implementation. One commenter was concerned policy guidance would be needed in a situation when a vendor is removed from participating in the WIC Program but has accepted reimbursement from the State agency prior to the removal. In such situations, the State agency may not be able to get a full return on the funds provided. When a State agency has devised a retailer enablement plan that includes investment in equipment owned and operated by individual vendors, the State agency must address recoupment of this investment. Some State agencies have added a provision to vendor agreements which allows the State agency to recover a pro rata share of any funding from a WIC vendor terminated or removed from the program. It is appropriate for State agencies to include recoupment of federal investment in their WIC vendor agreements or other agreements entered into regarding WIC EBT equipment.

Two commenters requested modification of the proposed language at § 246.12(z)(2)(v) which would have allowed an authorized vendor who has been equipped with a terminal by the State agency to submit evidence that additional terminals are necessary after the initial POS terminals are installed. One commenter suggested the additional terminals be added at the expense of the vendor. Another commenter requested timeframe limitations for requesting additional terminals be incorporated into the regulatory language, e.g. the vendor must request additional terminals within one year from the initial POS installation or prior to statewide rollout, whichever is sooner. To allow for greater State agency flexibility and to provide WIC authorized vendors an opportunity to request additional POS equipment should their business operations change or expand indicating the need for additional WIC EBT equipment, the language at § 246.12(z)(2)(v) remains as proposed.

No comments were received on the proposed provisions at § 246.12(z)(2)(iv), (z)(2)(vi) and (z)(2)(vii), which dealt with equipping vendors necessary for participant access, terminal equipage for obtaining benefit balances and the removal of excess terminals in the event of reduced redemption activity, respectively.

Therefore, these provisions remain as proposed.

Section 246.12(z)(3) of the proposed rule would have required the State agency to ensure vendors, farmers, farmers' markets and home food delivery contractors are paid promptly. Although the proposed rule did not mention farmers' markets which was an oversight by the Department, we have added farmers' markets to 246.12(z)(3) in this final rule. Payment must be made in accordance with the established Operating Rules and technical requirements after a valid electronic claim for payment has been submitted. Ten comments were received on this topic with the majority of the commenters indicating that the preamble language did not accurately reflect decisions made via the Operating Rules technical workgroup with regard to the timing of when a State agency should pay vendors. At the time the proposed rule was published, the Operating Rules required payment within two days of submitting a valid electronic claim for payment; subsequently the Operating Rules have been updated to require payment within two processing days of receipt of the claim for payment but allow exceptions to allow payment up to five days after receipt by the State agency. The Department acknowledges this generally accepted practice. However, the Department feels the number of days for submitting a valid claim for payment should not specifically be stated in the regulatory language, but rather is appropriately addressed in the Operating Rules. Consequently, the proposed language at § 246.12(z)(3) is retained as proposed.

#### 7. Technical Standards and Requirements

*General.* Section 17(h)(12)(G) of the CNA states that the Secretary shall establish technical standards and operating rules for WIC EBT and requires each State agency, contractor and authorized vendor participating in the WIC Program demonstrate compliance with established technical standards and operating rules. Two of the most comprehensive compilations of the standards and rules established for WIC EBT are the EBT Operating Rules and the Technical Implementation Guide (TIG), both of which were thoroughly discussed in the preamble of the proposed rule. The Department also requested comments on retail vendor certification procedures, the WIC Universal Management information System MIS-EBT Interface specification and other issues discussed in the preamble; and the minimum timeframes

that would have been required for replacing participant benefits and the establishment of a toll-free 24-hour customer service number proposed as regulations. These comments and the Department's response to the comments are addressed below.

As indicated in the proposed regulation, the Department has long recognized the standards and operating rules must be followed to facilitate EBT expansion efficiently and consistently from State to State and has worked collaboratively with State agencies and industry to establish WIC EBT standards. The proposed rule at § 246.12(bb)(1)(i) and (bb)(1)(ii) would have required State agencies, contractors and authorized WIC vendors to follow and demonstrate compliance with operating rules, standards and technical requirements as established by the Secretary, as well as to comply with other industry standards identified by the Secretary. Section 246.12(bb)(2) and (bb)(3) would have established requirements for replacing participant benefits and establishing a 24-hour toll free hotline number for customer assistance, respectively.

Under the preamble in the proposed rule, the Department sought comments on several aspects of the Operating Rules and technical standards documents in order to determine future regulatory or policy updates. A total of 87 comments were received on this section of the proposed rule. Many of the commenters requested clarification or suggested corrections to preamble language or provided general comments to preamble discussion of the operating rules, TIG, retail certifications and other standards. A discussion of each area follows.

*Operating Rules and Technical Implementation Guide (TIG).* The WIC EBT Operating Rules and the TIG were collaboratively developed over the past several years with State agency and industry input to address, respectively, the "what" and "how" of WIC EBT implementation. These documents have been accepted and implemented among EBT State agencies, their authorized vendors, processors and other stakeholders and have contributed to successful WIC EBT implementation and expansion. The Department's rationale for proposing the required use of the Operating Rules and TIG and maintaining these as stand-alone technical documents, allows for technological changes to be incorporated into the Operating Rules and technical standards as technology is updated and WIC EBT evolves. This process allows more timely updates to

these detailed documents while still allowing stakeholder input.

Overall, commenters were in support of the proposed requirement to follow and demonstrate compliance with technical standards and operating rules. A few commenters noted it was critical to have industry input to the standards and the standards remain flexible so WIC EBT can adapt to new technology. The Department intends for flexibility to be accomplished by maintaining the documents separate and apart from the regulatory process. One commenter stated current EBT State agencies should be grandfathered in and not be required to implement new or updated standards. The Department understands this concern but feels it is critical for all State agencies to incorporate the latest standards into their EBT benefits delivery methods as soon as practical so processors and vendors can cost effectively build to the standards. To acknowledge this concern and to allow State agencies flexibility in implementing the standards, State agencies currently operating WIC EBT delivery methods will be allowed to implement the standards into their EBT delivery methods up to two years from the date of publication of this rule.

One large retailer association, while supporting the need for standards and operating rules, suggested the standards and related documents be published for public comment. As noted in the preamble to the proposed rule, the Department has established a maintenance process allowing all stakeholders the opportunity to submit change requests necessary to clarify, change or add to the rules prompted by implementation activity. This process permits stakeholders to submit a change request to the Department for consideration. Once received, reviewed and analyzed for potential impact, the change request will be published on the established collaborative Web site, discussed on a conference call and published in a final bulletin for a 30-day comment period. Once this comment period is completed, a schedule for implementation will be identified in the final change request. Updates will be issued as technical bulletins and then incorporated into the periodic update for each document. A copy of the WIC EBT Operating Rules and TIG are available on the public Web site of the Food and Nutrition Service at <http://www.fns.usda.gov/wic/ebt-guidance>. Parties interested in reviewing and commenting on these documents can obtain access to the shared WIC EBT Technical Documents PartnerWeb shared Web site by sending an email

requesting access to: [WICEBTTECH@fns.usda.gov](mailto:WICEBTTECH@fns.usda.gov).

Several commenters suggested the Department be cautious in adopting commercial standards such as the Europay MasterCard Visa (EMV) Smartcard Payment System standards. For example, EMV includes technology such as Near Field Communications that, at the time of this writing, is not presently in use by any WIC EBT system to support contactless smart cards. The Department is paying close attention to EMV because we believe it is best to align EBT standards with commercial standards already in use to the greatest extent possible. Alignment with commercial standards sometimes referred to as 'piggy-backing' on commercial infrastructure, will help to reduce costs and development time for State agencies, WIC vendors and processors who must support WIC and other payment forms. This was the Department's perspective when SNAP was implementing EBT and the approach has continued. Consequently, should a State agency decide to adopt a smart card supporting Near Field Communication contactless purchases, it would be in the best interest of the WIC Program to consider adoption of the existing EMV or other industry standards.

We would like to clarify, as a few commenters noted, that the Accredited Standards Committee (ASC) X9, Inc. is the organization responsible for financial standards in the United States rather than the American National Standards Institute (ANSI), which was incorrectly referenced in the preamble of the proposed rulemaking. The two pertinent standards for WIC managed by the ASC X9 are the X9.93 messaging and file standards and the X9.131, which defines the interface between vendor card readers and EBT smart cards.

A number of commenters raised questions related to enforcement of the Operating Rules and TIG. Questions included the process by which WIC vendors and EBT processors would demonstrate compliance, which party would be required to pay the cost of compliance and how often must it be demonstrated. One commenter questioned the extent a vendor or cash register manufacturer would be responsible for State agency certification costs, such as staff time for testing and quality assurance review and travel costs. The Department strongly urges State agencies to coordinate their certifications to minimize and not duplicate the costs imposed on the industry and take advantage of collaborative certifications allowing a single certification with several State

agencies at one time, to save time, and establish policy and protocols to ensure standards such as the Operating Rules and TIG are being followed. Concerns and questions pertaining to retailer capability after statewide implementation will be discussed later in this preamble. Additionally, as many of these issues are outside the purview of this regulation, the Department will provide additional guidance and policy on these questions as necessary after publication of this final rule.

The Department believes the proposed regulatory language concerning standards provides adequate flexibility to establish new and/or changes to existing standards as WIC EBT evolves and allows for appropriate input from EBT stakeholders. Therefore, the provisions at § 246.12(h)(3)(xxxi), (bb)(1)(i), and (bb)(1)(ii) requiring compliance with Operating Rules, standards and technical requirements established and/or identified by the Secretary are retained as proposed in this final rule. Additional discussion of these provisions follows.

*Retail Vendor Certification Procedures for WIC EBT Capability.* In the proposed rule, the Department expressed interest in developing procedures and guidance for the certification of retail vendor electronic cash registers and associated payment devices, to include the development of common test scripts and testing criteria. The Department sought comments on the retailer certification process, noting however that discussions and comments related to retailer certification and consequently, what a vendor would need to demonstrate to the satisfaction of the WIC State agency that its system was EBT capable, would not be incorporated into the final rule. Rather, these comments would be considered in the larger discussion among all EBT stakeholders of what should be incorporated into associated standards and rules as to what constitutes a WIC EBT capable vendor system.

Specific standards for certifying vendors or other systems that may affect a WIC EBT transaction were not proposed other than the requirement at § 246.12(aa)(4)(ii) which would have required each WIC vendor applicant to demonstrate capability to accept WIC benefits electronically after statewide implementation. Several commenters expressed the need to provide a consistent process, to develop standards and processes as quickly as possible and to involve the retail community in the development of the vendor certification process.

While no clear consensus was supported by commenters on the vendor system certifications, we did receive many useful suggestions. Some commenters suggested the Department establish a lab for manufacturers to get certified or use a centralized process for certifying cash register systems. In each of these cases, the manufacturer of the cash register software would present the system to the lab or the Department whenever modifications to software affecting WIC activities was ready or a new system was to be certified for WIC EBT functionality. Individual State agencies could then test the actual implementation by each WIC vendor by conducting a few purchases or accepting the certification conducted by another State agency. Several State agencies suggested the use of a lead State agency which would maintain a national database of certified WIC EBT capable benefit delivery methods. Under this approach, the lead State agency would act on behalf of other State agencies in conducting and coordinating vendor system certifications which would reduce cost and the level of resources that would have been required by developers and State agencies.

The Department also established a workgroup to explore the feasibility of standardizing certification procedures and test scripts. However, after meeting for more than one year, the workgroup did not reach consensus on a common approach to be followed by all parties. While the group was unable to reach consensus on the overall approach, the State agencies and industry agreed to consolidate test scripts used during certifications for each technology to standardize this aspect of the testing. These test scripts are updated and are available on the EBT Technical Documents Partner Web site for use by State agencies and industry.

As a result, the Department has determined continued Departmental involvement in the process of certifying retailer cash register systems is no longer warranted. WIC State agencies will retain responsibility for the prompt and accurate payment of allowable costs as discussed at § 246.13(d). Each WIC State agency planning to implement WIC EBT must therefore ensure that all EBT transactions are processed correctly, securely and in accordance with current WIC regulations, policy and guidance. State agencies may conduct certification tests or accept certifications conducted by other State agencies of WIC vendor systems in accordance with the WIC EBT Operating Rules. As with the paper food instrument redemption by WIC vendors, State agencies shall take actions through

the provisions of their vendor agreements and associated administrative actions when vendors are found to be noncompliant. The Department will not dictate the steps the State agency must take to ensure its EBT benefit delivery method and the systems of its WIC authorized Vendors, are operating correctly.

*WIC Universal MIS-EBT Interface Specification.* The WIC Universal Management Information System (MIS)-EBT Universal Interface (WUMEI), commonly referred to as the Universal Interface or simply UI, is a specification that guides systems development for data exchanged between State agency clinic MIS systems and EBT processor systems. Several comments were received suggesting the interface specification should become one of the standards identified by the Secretary as a requirement for implementation. The Department expects all State agencies to build their interfaces consistent with the Universal Interface specification. Therefore, the Department does not believe there is a need for a separate standard reiterating use of the Universal Interface specification.

*Other Standards and Requirements.* As noted in the preamble to the proposed rule, other standards and requirements may be necessary over time and the Department must be able to establish these standards and/or incorporate these changes into the existing technical standards and guidelines and State agencies must accommodate and implement these changes. One such proposed requirement at § 246.12(bb)(2) would have required State agencies to establish policy permitting the replacement of participant benefits within five business days following notice by the participant to the State agency, at least one time in a three-month benefit issuance period. The replacement process would enable the remaining food balances associated with an EBT card to be transferred to another card (off-line) or linked to another EBT card with the same account (on-line). Current policy gives State agencies the option to replace lost or stolen food instruments.

The Department received 20 comments on the card and benefit replacement provision of the proposed rule. Three commenters were in full support of the provision as proposed. Several commenters expressed concern both with the five business day replacement timeframe as well as with the provision requiring replacement at least once in a consecutive three-month period. Four commenters suggested the provision be made optional. Eight commenters were in support of the

change, but requested the timeframe be extended beyond five business days to accurately reflect the State agencies' current WIC EBT replacement timeframe. Commenters also noted the background language contained in the proposed rule was inaccurate because it erroneously stated benefits can be lost when an EBT card is lost or stolen. To clarify, the balance of the electronic benefit at the time when a card is reported lost or stolen is transferred to a new card issued to the participant(s) or proxy and consequently, no loss of benefits occurs. Although the proposed rule did not specifically address card replacement if the card is damaged, this final rule is also applicable to replacement of damaged cards.

Under the proposed rule, the maximum timeframe that would have been required for electronic benefit replacement by an EBT State agency was five business days. Though initial implementations by off-line State agencies followed FNS policy guidance to replace lost or stolen cards within five business days, one State agency commenter indicated it could not consistently meet the standard due to constraints such as part-time outreach sites with variable hours of operation. Therefore, this State agency had established a policy permitting the replacement of the EBT card and transfer of participant benefit balances within ten days of notification. Other State agencies increased the timeframe from five business days to six because clinics could not consistently meet the five day replacement policy because it is not always possible to obtain the remaining balance immediately due to delays in WIC retail vendor settlement and in cases where off-line States clinics only operate a few days per week, particularly in remote areas.

The Department expects State agencies to replace a lost or stolen card as soon as possible, but no later than seven business days following notice by the participant or proxy to the State agency. This timeframe should allow for vendor settlement consistent with EBT business practice capabilities and recognizes limited clinic availability in some remote areas. Section 246.12(bb)(2) in this final rule has been amended to require the replacement of EBT cards and the transfer of associated participant benefit balances within seven business days following notice by the participant or proxy to the State agency.

The proposed rule included a requirement to replace participant benefits at least one time in a consecutive three-month period when a card is reported lost or stolen. This final

rule has been modified to clarify that the Department intends for card replacements and the remaining associated benefits to occur routinely and as soon as possible to afford time for the participant to obtain their WIC foods for the month. It is expected that should frequent card replacements occur, the State agency will advise the cardholder of their responsibilities and the need to protect the card at all times. The State agency may also determine if additional research is warranted to rule out any program integrity concerns.

A conforming amendment was added to § 246.4(a)(14)(xix) to include a description of the process the State agency will establish to replace EBT cards and transfer the associated benefits within seven business days.

Under the proposed rule, § 246.12(bb)(3) would have required a State agency to provide a toll-free 24-hour hotline number with live representatives for EBT cardholder assistance. The toll-free 24-hour hotline was proposed to enhance customer service to WIC participants who may need to contact the State agency or a WIC clinic to report a lost or stolen EBT card, request a replacement card, or to access other services. In proposing the toll-free 24-hour hotline number, the Department also recognized this requirement may have a potential impact on the affordability of WIC EBT and may strain State agency management of resources if the State agency needed to expand its operational hours. Therefore, the Department specifically sought comments regarding this proposed requirement.

The Department received 31 comments on this provision of the proposed rule. Ten commenters, all from the advocacy community, were in support of the change, with two of these commenters recommending the provision be broadened to provide hotline assistance to authorized vendors as well. While the Department supports the potential for enhanced business practices and customer service that EBT may provide, we also recognize this could create untenable costs for State agencies and tax their administrative capacity. Additionally, vendors have other means to receive assistance through their commercial equipment and payment service providers or by contacting the State agency vendor coordinator. Therefore, the final rule will not expand the requirement to accommodate vendors.

Twenty-one commenters, primarily State agencies, were opposed to the requirement for a toll-free 24-hour hotline number; of those, fourteen recommended the hotline be a State

agency option rather than a requirement. While many of these commenters were in agreement that EBT offers an opportunity for enhanced customer service to WIC participants, it was noted that requiring this level of customer service had not been determined necessary for the successful operations of WIC EBT in the early smart card implementations as well as in several on-line WIC EBT implementations. These EBT implementers, now statewide, found the 24-hour hotline to be of limited benefit or unnecessary and recommended that the Department eliminates the proposed requirement to establish a toll-free 24-hour hotline number. Furthermore, these commenters noted maintaining a 24-hour, 7 day a week toll-free customer service operation could create undue financial hardships to a State agency and should be a service a State agency may consider as an option if State agency resources allow.

Several commenters noted the demonstrated need for a 24-hour hotline number in the smart card WIC EBT implementations, now statewide, had not materialized nor had advocates for participants or participants themselves expressed the need for this level of service. One State agency commenter indicated there was very little a 24-hour customer service representative could do to assist a WIC participant with a smart card until the WIC clinic was open. Unlike an on-line EBT, current food balances for off-line cards are not available via a customer service number in real time and commenters indicated few instances of difficulty in reporting a card lost or stolen to the WIC clinic have occurred even when operating statewide. Additionally, several State agencies have operated statewide with little demonstrated need for toll-free 24-hour hotline capability through the use of State operated customer service during business hours that transitions to a contractor-supported number for WIC participants or merchants to call outside of business hours. In these State agencies, most cardholder issues are resolved through participant contacts with the local WIC clinic staff.

The Department concurs with the potential issues of affordability, unsubstantiated demand and impact on resource management that the proposed requirement for a 24-hour hotline available to assist participants may have on a State agency. Therefore, the Department is removing the toll-free 24-hour hotline assistance requirement and replacing it with the requirement for a State agency to establish procedures allowing WIC participants to, at a minimum, report cardholder issues,

report a lost or stolen card and receive information on the current food balance and benefit expiration date during non-business hours. While a State agency would not be required to provide a toll-free 24-hour hotline supported by customer service representatives and/or an automated Interactive Voice Response (IVR) system, this amended requirement leverages additional opportunities to enhance customer service by providing a means of access for participants to report issues and have fundamental services offered at all times. In addition, per the WIC EBT Technical Information Guide (TIG), participants' purchase receipts must provide food balances and benefit expiration date. The final rule at § 246.12(bb)(3) requires each State agency to establish procedures and systems to enable participants to report cardholder issues during non-business hours as well as receive other services. Procedures may include a toll-free 24-hour hotline or other alternatives to receive services or report card issues in an easily accessible manner. Additionally, the Department encourages State agencies to provide participants with services in the most accessible method as possible, such as mobile balance inquiries in addition to IVR. Other alternatives may become available in the future which would provide opportunities to further improve and enhance WIC customer service. The procedures for meeting the customer service requirements at § 246.12(bb)(3) must be described in the State Plan. A conforming amendment has been made to § 246.4(a)(14)(xx) requiring the description of the State agency's procedures for meeting the customer service requirements.

Three commenters suggested the Department provide guidance on what minimum services would be required in order to maintain compliance with the requirement for toll-free 24-hour hotline services. While this final regulation no longer requires a 24-hour toll-free hotline for WIC cardholders to report issues during non-business hours, the Department has set a minimum level of service participants must be able to receive during non-business hours.

The minimum participant services that must be offered during non-business hours are: (1) Receive information on the current food balance, (2) receive benefit expiration date and (3) report a lost or stolen card and other cardholder issues. The Department expects a State agency to respond to cardholder issues at the time the report is received or as soon as possible. Other customer service features may be included such as obtaining purchase

transaction detail, selecting or changing a PIN and finding the locations of WIC authorized vendors. If a State agency seeks to implement alternatives to the minimum service requirements, the agency must submit the plan to FNS for approval.

#### *8. National Universal Product Code (NUPC) Database*

Under the proposed rule at § 246.12(cc), the National UPC (NUPC) database would be used by all State agencies providing benefits via WIC EBT. The minimum requirement for usage of the NUPC database could be met by a State agency through the submittal of a copy of the State agency's current authorized product list (APL) for inclusion in the NUPC database. The proposed rule would have also required a State agency to submit a copy of its current APL file prior to the APL becoming effective or making it available to its authorized vendors.

As discussed in the proposed rule, the NUPC database is envisioned to be a repository of information about all food items authorized by each WIC State agency. Information in this repository will be organized in accordance with the National Category Subcategory Table. Additional food product information is included in the database to permit each State agency to determine whether or not to authorize the product for use within the State agency. The additional food product information would include items such as nutrition labeling, bar code symbol, product flat or a photograph of the container and ingredients. The intent of the repository is to facilitate the identification of WIC eligible food items and to provide the associated product information necessary to support EBT operations. For instance, once a State agency has determined a food item is eligible, the product UPC code, food category, subcategory and unit of measure can be easily incorporated into the State agency process for updating its APL file.

The Department received 27 comments on the proposed requirements regarding the use of the NUPC database. Comments were received in five broad areas: (1) Use of UPC terminology; (2) Mandating use of the National Food Category/Subcategory Table by all State agencies; (3) Authority for WIC State agencies to authorize WIC foods; (4) Department approval of APL files prior to distribution to authorized WIC vendors; and (5) The design and functioning of the NUPC clearinghouse. These issues are discussed in more detail below.

*Use of UPC Terminology.* Several commenters recommended adoption of the terminology used by GS1, which is a nonprofit organization setting industry standards for barcodes used in retail and supply chains. Under the GS1 umbrella, which can be found at [www.gs1.org](http://www.gs1.org), there are Global Trade Identification Numbers (GTINs) which include the UPC necessary during a WIC purchase. The GTINs are contained as UPCs in the APL file a State agency distributes to its authorized vendors. There are several different types of GTINs such as GTIN-8, GTIN-12, GTIN-13 and GTIN-14, which contain UPC numbers of different lengths. There are other GTIN's available for different purposes such as those used on larger cases of product not generally sold at retail. After checking with GS1-US, which is the organization supporting barcode adoption in the United States, GS1 advised the Department that the GTIN-12 and Universal Product Code are used synonymously in the industry; therefore, this rule continues to refer to the UPC as the more commonly recognized terminology used in WIC EBT.

The National UPC database also contains PLUs, which are the standard codes published by the International Federation of Produce Standards (IFPS) for fresh produce such as fruit and vegetables. We wish to correct the record as noted by several commenters that the PLU codes are 5 digits in length even though retail practice generally drops the initial zero for standard PLUs, unless it is genetically modified or organic. Under the IFPS coding structure, a fifth (leading) digit qualifier is allocated to some produce with specific qualities. As noted, the fifth digit qualifiers for global PLU codes are '0' for nonorganic products (referred to as non-qualified PLU codes), although generally this digit is omitted and '9' for organic produce. The '8' leading digit qualifier formerly used for genetically modified produce is no longer used for this purpose. One commenter urged the Department to remain flexible to accommodate future changes in the industry and technology in the supply chain. The Department agrees; during development of the NUPC database and within the WIC technical standards, future changes have been provided for where possible. For example, the longer length UPCs used in Europe and Asia, which are 13 and 14 digits, have not been widely adopted by food manufacturers marketing products in the United States at the time of this writing. To plan for future industry changes, the TIG and associated

standards as well the NUPC database currently allow these 13 and 14 digit UPC lengths if a WIC State agency authorizes the product for use or these longer UPCs become prevalent in the United States.

*Mandating Use of the National Food Category/Subcategory Table.* The proposed rule would not have required each State agency to make use of the National Food Category Subcategory Table, but input was sought on the potential barriers, obstacles and benefits State agencies would incur if conformity to a national standard food classification system would have been required by the Department. The Department also invited reader comment on how conformity could be effectively instituted. While a national standard format would have been required for the APL file, WIC State agencies currently would not be required to use the national category/subcategory table maintained by the Department. The Department believes it is necessary to preserve some flexibility for State agencies to deviate from the national category/subcategory table because of differences in product availability, varying demand for ethnic foods and the need to ensure WIC participants can obtain products such as infant formula in a timely manner.

Several comments were received specific to the National Food Category Subcategory Table. Most voiced concerns about making its use a requirement, particularly for existing EBT State agencies that may have compatibility issues. Two commenters requested flexibility in the use of the NUPC in general, one commenter suggested it be a State agency option and another commenter suggested all EBT stakeholders be included in any process and discussion concerning how conformity could effectively be instituted.

The Department strongly supports and recommends use of the National Food Category Subcategory table by all State agencies as they begin their EBT projects. The Department recognizes, however, how the variability in State agency EBT benefit delivery methods' capability and differences in product selection for approved WIC foods may cause changes to the National Category Subcategory table over time to accommodate individual State agencies. We are also concerned, as many commenters noted, that maintaining the National Food Category Subcategory table consistently for all State agencies places the Department in the middle of food authorization decisions, which is the role WIC State agencies play in building their APL.

Additionally, the current vendor cash register systems, which include most of the major systems available in the United States currently used by WIC vendors, have been able to handle variances in State agency-specific Category Subcategory tables. However, one State agency commented that the food category table and APL files are utilized to control food costs by assigning higher cost food items such as quart and half gallon milk containers to separate food subcategories. In this example, the maximum authorized reimbursement (MAR) amount is computed at the subcategory level and consequently does not affect larger sizes of milk. This State agency also uses its category and subcategory table for cost containment with the cereal, infant fruits and vegetables food categories. The Department recognizes there are high levels of variability in the approaches each State agency has implemented for cost containment. Therefore, while the Department sees value in standardized use of the National Food Category Subcategory Table and we require all new EBT State agencies to adopt it initially, this final rule does not mandate its use. In part, we are persuaded that flexibility is more appropriate than mandating a strict standard because electronic cash registers are able to successfully load APL files with State agency differences in the category, subcategory and unit of measure assigned to each product. The important level of standardization is accomplished by using the APL standard file format and adherence to the EBT Operating Rules and Technical Implementation Guide file formats.

*Authority for WIC State Agencies To Authorize WIC Foods.* A few commenters expressed support for continuing to allow State agencies to evaluate and authorize WIC foods within their State agency. The proposed rule did not alter current State agency responsibilities for authorizing WIC foods. As previously indicated, the NUPC database is only a repository of information about WIC foods that a WIC State agency may use to identify and select food items for use within the State agency. The determination of which food items are authorized remains a State agency responsibility and does not change now that the NUPC database is available for State agency use.

*Submission of APL Files Prior to Distribution.* Four commenters, one industry consultant and three State agencies expressed concern that a State agency must submit its APL file to the NUPC database prior to distributing the APL file to their authorized WIC

vendors. The Department wishes to clarify this requirement is only a submission of the APL file whenever it is updated. The APL file can be transmitted to the NUPC database at the same time the file is sent to vendors authorized by the State agency. We recognize the APL file contains critical information needed to accept WIC food items in WIC vendor checkout lanes. This information includes the effective date for new items, changes in the food item descriptions necessary for printing food balances on receipts and in some cases cost containment information (not-to-exceed or maximum authorized price is optional in an APL). It would not be practical or desirable for the Department to interfere with the timely distribution of the APL files.

Having considered all comments and clarifying its intent, the Department has determined the requirement for the State agency to submit a copy of an APL file to the NUPC database will not interfere with State agency operations necessary to support daily EBT activity. In addition, State agencies are currently required to provide a copy of their approved food list to FNS, including any changes to that list. Submitting a copy to FNS's NUPC data base meets this requirement.

*Design and Function of a NUPC Clearinghouse.* This portion of the proposed rulemaking generated a substantial number of comments on the future potential for enhancing the NUPC database to act as a clearinghouse for State agency APL files in addition to a data repository. Having considered these comments, the Department has decided to not proceed with development of a file clearinghouse capability at this time. The Department believes the proposed language in § 246.12(cc) is broad in nature and allows for flexibility in the use of the NUPC.

#### Technical Amendment

In a previous WIC final rule, "Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of Nondiscretionary, Non-Electronic Benefits Transfer-Related Provisions" (76 FR 59885, September 28, 2011), § 246.4 was amended by re-designating paragraphs (a)(19) through (26) as (a)(20) through (27) and adding a new paragraph (a)(19); however, the amendment could not be incorporated due to inaccurate amendatory instruction. An Editorial Note was published following this section in the CFR that brought the new information to the readers' attention. The correct amendment is included within § 246.4 in this rule.

#### Procedural Matters

##### *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 determined to be "Not Significant" and was not reviewed by the Office of Management and Budget in conformance with Section 3(f) of Executive Order 12866.

##### *Regulatory Impact Analysis*

This final rule has been designated as "Not Significant" by the Office of Management and Budget; therefore, no Regulatory Impact Analysis is required.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Administrator of the Food and Nutrition Service, Audrey Rowe, has determined this rule will not have a significant economic impact on a substantial number of small entities. This final rule applies to State and local agencies and provides increased flexibility in food delivery services for the 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, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most 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) that impose costs on State, local, or tribal governments or to 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*

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

##### *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.

The Department has considered the impact of this rule on State and local governments and has determined this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary is not required.

##### *Executive Order 12988, Civil Justice Reform*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have 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 and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

In WIC, the administrative procedures are as follows: (1) State and local agencies, farmers, farmers' markets and roadside stands—State agency hearing procedures issued pursuant to § 246.18; (2) Applicants and participants—State agency hearing procedures pursuant to § 246.18; (3) Sanctions against State agencies (but not claims for repayment assessed against a State agency)

pursuant to § 246.19—administrative appeal in accordance with § 246.16 and (4) procurement by State or local agencies—administrative appeal to the extent required by 2 CFR 200.318.

#### *Civil Rights Impact Analysis*

The Department has reviewed this final rule in accordance with Departmental Regulations 4300–4, “Civil Rights Impact Analysis,” and 1512–1, “Regulatory Decision Making Requirements,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After a careful review of the rule’s intent and provisions, the Department has determined 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 § 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*

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.

FNS provides regularly scheduled quarterly consultation sessions as a venue for collaborative conversations with Tribal officials or their designees. The most recent quarterly consultation sessions were held on August 20, 2014; November 19, 2014; February 18, 2015; and May 20, 2015. FNS will respond in a timely and meaningful manner to any Tribal government request for consultation concerning the Electronic Benefit Rule for the WIC program. We are unaware 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 would not have been required to respond to any collection of information unless it displays a current valid OMB control number. While a conforming amendment has added two additional State Plan requirements in addition to the requirement for an annual EBT status update, the Department considers these to be minimal reporting burden. The annual status report replaces existing updates required for benefit delivery methods using paper food instruments. The two conforming amendments clarify content for EBT delivery replacing the existing paper food instrument or other food delivery content. This final rule contains a small increase to the information collection requirements that are subject to OMB approval.

Section 246.12(y) requires each State agency to have an active EBT project by July 29, 2016. The Advance Planning Document (APD) is used to initiate the EBT planning process. Under the existing collection (0584–0043), it is estimated 15 APDs would be submitted each year. The current estimate of 15 submissions per year is unchanged. The existing recordkeeping and reporting requirements, related to APD documents, which were approved under OMB control number 0584–0043, will not change as a result of this rule.

FNS has identified a small burden increase associated with providing data to meet the requirement for State agencies to use the National UPC database (NUPC database). Section 246.12(cc) requires each State agency to use the NUPC database, at a minimum, to submit their APL as they begin statewide rollout and as it is updated. The APLs are updated as new products are added or removed by each WIC State agency. FNS estimates the burden under OMB control number 0584–0043 will increase by 40 hours annually based on an estimate of an average of 37 State agencies expected to have operational EBT systems and who will distribute APLs to their WIC-authorized vendors. We estimate approximately 30 seconds to submit an APL. Updates are estimated to occur 2.5 times per week. The resulting annual burden is increased by 40 hours total. FNS will publish a 60-Day **Federal Register** Notice requesting comment on this

burden increase concurrent with the publication of this rulemaking.

FNS will submit an Information Collection Request to OMB based on the provisions of this final rule and comments received on the 60-day notice published with this rulemaking. These amended information collection requirements will not become effective until approved by OMB. When OMB concludes its review, FNS will publish a notice in the **Federal Register** of the action.

#### *E-Government Act Compliance*

The Department 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 for citizen access to Government information and services and for other purpose. 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 the Department. Also, State agencies may provide WIC Program information, as well as their financial reports, to the Department electronically.

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

Administrative practice and procedure, Food assistance programs, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Penalties, Reporting and recordkeeping requirements, WIC, Women.

Accordingly, 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 (WIC)**

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

**Authority:** 42 U.S.C. 1786.

- 2. In § 246.2:
  - a. Amend the definition of “Cash-value voucher” by adding a second sentence.
  - b. Add the definitions of “Electronic Benefit Transfer (EBT)”, “EBT Capable”, “Multi-function equipment”, “Single-function equipment” and “Statewide EBT” in alphabetical order; and
  - c. Revise the definition of “Participant violation”.

The additions and revision read as follows:

**§ 246.2 Definitions.**

\* \* \* \* \*

*Cash-value voucher* \* \* \* Cash-value voucher is also known as cash-value benefit (CVB) in an EBT environment.

\* \* \* \* \*

*Electronic Benefit Transfer (EBT)* means a method that permits electronic access to WIC food benefits using a card or other access device approved by the Secretary.

*EBT Capable* means the WIC vendor demonstrates their cash register system or payment device can accurately and securely obtain WIC food balances associated with an EBT card, maintain the necessary files such as the authorized product list, hot card file and claim file and successfully complete WIC EBT purchases.

\* \* \* \* \*

*Multi-function equipment* means Point-of-Sale equipment obtained by a WIC vendor through commercial suppliers, which is capable of supporting WIC EBT and other payment tender types.

\* \* \* \* \*

*Participant violation* means any deliberate action of a participant, parent or caretaker of an infant or child participant, or proxy that violates Federal or State statutes, regulations, policies, or procedures governing the Program. Participant violations include, but are not limited to, deliberately making false or misleading statements or deliberately misrepresenting, concealing, or withholding facts, to obtain benefits; selling or offering to sell WIC benefits, including cash-value vouchers, food instruments, EBT cards, or supplemental foods in person, in print, or online; exchanging or attempting to exchange WIC benefits, including cash-value vouchers, food instruments, EBT cards, or supplemental foods for cash, credit, services, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument; threatening to harm or physically harming clinic, farmer, or vendor staff; and dual participation.

\* \* \* \* \*

*Single-function equipment* means Point-of-Sale equipment, such as barcode scanners, card readers, PIN pads and printers, provided to an authorized WIC vendor solely for use with the WIC Program.

\* \* \* \* \*

*Statewide EBT* means the State agency has converted all WIC clinics to an EBT delivery method and all authorized

vendors are capable of transacting EBT purchases.

\* \* \* \* \*

■ 3. In § 246.3, revise paragraph (b) to read as follows:

**§ 246.3 Administration.**

\* \* \* \* \*

(b) *Delegation to the State agency.* The State agency is responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a, and 15b); governing administration of grants (2 CFR part 200, subparts A through F and USDA implementing regulations 2 CFR part 400 and part 415); governing non-procurement debarment/suspension (2 CFR part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension and USDA implementing regulations 2 CFR part 417); governing restrictions on lobbying (2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400, part 415, and part 418); and governing the drug-free workplace requirements (2 CFR part 182, Government-wide Requirements for Drug-Free Workplace); FNS guidelines; and, instructions issued under the FNS Directives Management System. The State agency shall provide guidance to local agencies on all aspects of Program operations.

\* \* \* \* \*

■ 4. In § 246.4:

- a. Revise paragraph (a)(1).
- b. Add paragraph (a)(14)(xix).
- c. Add paragraph (a)(14)(xx).
- d. Redesignate paragraphs (a)(19) through (a)(28) as paragraphs (a)(20) through (a)(29) and add a new paragraph (a)(19).

The revision and additions read as follows:

**§ 246.4 State plan.**

(a) \* \* \*

(1) An outline of the State agency's goals and objectives for improving Program operations, to include EBT and/or EBT implementation.

\* \* \* \* \*

(14) \* \* \*

(xix) A description of how the State agency will replace lost, stolen, or damaged EBT cards and transfer the associated benefits within seven business days.

(xx) A description of the procedures established by the State agency to provide customer service during non-business hours that enable participants or proxies to report a lost, stolen, or damaged card, report other card or

benefit issues, receive information on the EBT food balance and receive the current benefit end date. The procedures shall address how the State agency will respond to reports of a lost, stolen, or damaged card within one business day of the date of report.

\* \* \* \* \*

(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.

\* \* \* \* \*

■ 5. In § 246.7, add paragraph (j)(10).

**§ 246.7 Certification of participants.**

\* \* \* \* \*

(j) \* \* \*

(10) During the certification procedure, every Program applicant, parent or caretaker shall be informed that selling or offering to sell WIC benefits, including cash value vouchers, food instruments, EBT cards, or supplemental foods in person, in print, or on-line is a participant violation.

\* \* \* \* \*

■ 6. Section 246.12 is amended as follows:

- a. The section heading is revised.
- b. Paragraph (a) introductory text is amended by removing the word "benefits" and adding in its place "benefit" and by adding a new sentence at the end of the paragraph.
- c. Paragraph (b) is amended by removing the word "three" and adding in its place "four"; and by removing the phrase "or direct distribution." at the end of the first sentence and adding in its place "direct distribution, or EBT."
- d. Paragraph (f)(2)(iii) is amended to add in the second sentence "or in the month of February, 28 or 29 days" after "may be used" and before ", except".
- e. Remove paragraph (g)(5) and redesignate paragraphs (g)(6) through (g)(11) as (g)(5) through (g)(10), respectively.
- f. Add paragraphs (h)(3)(xxvii) through (h)(3)(xxxi).
- g. Add paragraphs (w) through (cc).  
The revision and additions read as follows:

**§ 246.12 Food delivery methods.**

(a) \* \* \* By October 1, 2020, each State agency shall implement EBT statewide, unless granted an exemption under paragraph (w)(2) of this section.

\* \* \* \* \*

(h) \* \* \*

(3) \* \* \*

(xxvii) *EBT minimum lane coverage.* Point of Sale (POS) terminals used to support the WIC Program shall be deployed in accordance with the

minimum lane coverage provisions of § 246.12(z)(2). The State agency may remove excess terminals if actual redemption activity warrants a reduction consistent with the redemption levels outlined in § 246.12(z)(2)(i) and (z)(2)(ii).

(xxviii) *EBT third-party processing costs and fees.* The vendor shall not charge to the State agency any third-party commercial processing costs and fees incurred by the vendor from EBT multi-function equipment. Commercial transaction processing costs and fees imposed by a third-party processor that the vendor elects to use to connect to the EBT system of the State shall be borne by the vendor.

(xxix) *EBT interchange fees.* The State agency shall not pay or reimburse the vendor for interchange fees related to WIC EBT transactions.

(xxx) *EBT ongoing maintenance and operational costs.* The State agency shall not pay for ongoing maintenance, processing fees or operational costs for vendor systems and equipment used to support WIC EBT after the State agency has implemented WIC EBT statewide, unless the equipment is used solely for the WIC Program or the State agency determines the vendor using multi-function equipment is necessary for participant access. This provision also applies to authorized farmers and farmers' markets. Costs shared by a WIC State agency will be proportional to the usage for the WIC Program.

(xxxix) *Compliance with EBT operating rules, standards and technical requirements.* The vendor must comply with the Operating rules, standards and technical requirements established by the State agency.

\* \* \* \* \*

(w) *EBT—(1) General.* All State agencies shall implement EBT statewide in accordance with paragraph (a) of this section.

(2) *EBT exemptions.* The Secretary may grant an exemption to the October 1, 2020 statewide implementation requirement. To be eligible for an exemption, a State agency shall demonstrate to the satisfaction of the Secretary one or more of the following:

- (i) There are unusual technological barriers to implementation;
- (ii) Operational costs are not affordable within the nutrition services and administration grant of the State agency; or
- (iii) It is in the best interest of the program to grant the exemption.

(3) *Implementation date.* If the Secretary grants a State agency an exemption, such exemption will remain in effect until: The State agency no

longer meets the conditions on which the exemption was based; the Secretary revokes the exemption or for three years from the date the exemption was granted, whichever occurs first.

(x) *Electronic benefit requirements—*  
(1) *General.* State agencies using EBT shall issue an electronic benefit that complies with the requirements of paragraph (x)(2) of this section.

(2) *Electronic benefits.* Each electronic benefit must contain the following information:

(i) *Authorized supplemental foods.* The supplemental foods authorized by food category, subcategory and benefit quantity, to include the cash-value benefit;

(ii) *First date of use.* The first date of use on which the electronic benefit may be used to obtain authorized supplemental foods;

(iii) *Last date of use.* The last date on which the electronic benefit may be used to obtain authorized supplemental foods. This date must be a minimum of 30 days, or in the month of February 28 or 29 days, from the first date on which it may be used to obtain authorized supplemental foods except for the participant's first month of issuance when it may be the end of the month or cycle for which the electronic benefit is valid; and

(iv) *Benefit issuance identifier.* A unique and sequential number. This number enables the identification of each benefit change (addition, subtraction or update) made to the participant account.

(3) *Vendor identification.* The State agency shall ensure each EBT purchase submitted for electronic payment is matched to an authorized vendor, farmer, or farmers' market prior to authorizing payment. Each vendor operated by a single business entity must be identified separately.

(y) *EBT management and reporting.*  
(1) The State agency shall follow the Department Advance Planning Document (APD) requirements and submit Planning and Implementation APD's and appropriate updates, for Department approval for planning, development and implementation of initial and subsequent EBT systems.

(2) If a State agency plans to incorporate additional programs in the EBT system of the State, the State agency shall consult with State agency officials responsible for administering the programs prior to submitting the Planning APD (PAPD) document and include the outcome of those discussions in the PAPD submission to the Department for approval.

(3) Each State agency shall have an active EBT project by May 31, 2016.

Active EBT project is defined as a formal process of planning, implementation, or statewide implementation of WIC EBT.

(4) Annually as part of the State plan, the State agency shall submit EBT project status reports. At a minimum, the annual status report shall contain:

(i) Until operating EBT statewide, an outline of the EBT implementation goals and objectives as part of the goals and objectives in § 246.4(a)(1), to demonstrate the State agency's progress toward statewide EBT implementation;

(ii) If operating EBT statewide, any information on future EBT changes and procurement updates affecting present operations; and

(iii) Such other information the Secretary may require.

(5) The State agency shall be responsible for EBT coordination and management.

(z) *EBT food delivery methods: Vendor requirements—*(1) *General.* State agencies using EBT for delivering benefits shall comply with the vendor requirements in paragraphs (g) through (l) of this section. In addition, State agencies shall comply with requirements that are detailed throughout this paragraph (z).

(2) *Minimum lane coverage.* The Point-of-Sale (POS) terminals, whether single-function equipment or multi-function equipment, shall be deployed as follows:

(i) *Superstores and supermarkets.* There will be one POS terminal for every \$11,000 in monthly WIC redemption up to a total of four POS terminals, or the number of lanes in the location, whichever is less. At a minimum, terminals shall be installed for monthly WIC redemption threshold increments as follows: one terminal for \$0 to \$11,000; two terminals for \$11,001 to \$22,000; three terminals for \$22,001 to \$33,000; and four terminals for \$33,001 and above. A State agency may utilize an alternative installation formula with Department approval. The monthly redemption levels used for the installation formula shall be the average redemptions based on a period of up to 12 months of prior redemption;

(ii) *All other vendors.* One POS terminal for every \$8,000 in monthly redemption up to a total of four POS terminals, or the number of lanes in the location; whichever is less. At a minimum, terminals shall be installed for monthly WIC redemption thresholds as follows: one terminal for \$0 to \$8,000; two terminals for \$8,001 to \$16,000; three terminals for \$16,001 to \$24,000; and four terminals for \$24,001 and above. A State agency may utilize an alternative installation formula with

Department approval. The monthly redemption levels used for the installation formula shall be the average redemptions based on a period of up to 12 months of prior redemption;

(iii) The State agency shall determine the number of appropriate POS terminals for authorized farmers and farmers' markets;

(iv) For newly authorized WIC vendors deemed necessary for participant access by the State agency, the vendor shall be provided one POS terminal unless the State agency determines other factors in this location warrant additional terminals;

(v) Any authorized vendor who has been equipped with a POS terminal by the State agency may submit evidence additional terminals are necessary after the initial POS terminals are installed;

(vi) The State agency may provide authorized vendors with additional POS terminals above the minimum number required by this paragraph in order to permit WIC participants to obtain a shopping list or benefit balance, as long as the number of terminals provided does not exceed the number of lanes in the vendor location;

(vii) The State agency may remove excess POS terminals if actual redemption activity warrants a reduction consistent with the redemption levels outlined in paragraphs (z)(2)(i) through (ii) of this section.

(3) *Payment to vendors, farmers and farmers' markets.* The State agency shall ensure that vendors, farmers and farmers' markets are paid promptly. Payment must be made in accordance with the established Operating Rules and technical requirements after the vendor, farmer or farmers' market has submitted a valid electronic claim for payment.

(aa) *Imposition of costs on vendors, farmers and farmers' markets.* (1) *Cost prohibition.* Except as otherwise provided in this section, a State agency shall not impose the costs of any single-function equipment or system required for EBT on any authorized vendor, farmers or farmers' markets in order to transact EBT.

(2) *Cost sharing.* If WIC Program equipment is multi-function equipment, the State agency shall develop cost sharing criteria with authorized WIC vendors, farmers and farmers' markets for costs associated with such equipment in accordance with Federal cost principles. Any cost sharing agreements shall be developed between a State agency and its vendors, farmers, or farmers' markets depending on the type, scope and capabilities of shared equipment. The State agency must

furnish its allocation and/or cost sharing methodology to the Department as part of the Advanced Planning Document for review and approval before incurring costs.

(3) *Fees—(i) Third-party processor costs and fees.* The State agency shall not pay or reimburse vendors, farmers or farmers' markets for third-party processing costs and fees for vendors, farmers, or farmers' markets that elect to accept EBT using multi-function equipment. The State agency or its agent shall not charge any fees to authorized vendors for use of single-function equipment.

(ii) *Interchange fees.* The State agency shall not pay or reimburse the vendor, farmer or farmers' markets for interchange fees on WIC EBT transactions.

(4) *Statewide operations.* After completion of statewide EBT implementation, the State agency shall not:

(i) Pay ongoing maintenance, processing fees or operational costs for any vendor, farmer or farmers' market utilizing multi-function systems and equipment, unless the State agency determines that the vendor is necessary for participant access. The State agency shall continue to pay ongoing maintenance, processing fees and operational costs of single-function equipment;

(ii) Authorize a vendor, farmer, or farmers' market that cannot successfully demonstrate EBT capability in accordance with State agency requirements, unless the State agency determines the vendor is necessary for participant access.

(bb) *EBT Technical standards and requirements.* (1) Each State agency, contractor and authorized vendor participating in the program shall follow and demonstrate compliance with:

(i) Operating rules, standards and technical requirements as established by the Secretary; and

(ii) Other industry standards identified by the Secretary.

(2) The State agency shall establish policy permitting the replacement of EBT cards and the transfer of participant benefit balances within no more than seven business days following notice by the participant or proxy to the State agency.

(3) The State agency shall establish procedures to provide customer service during non-business hours that enable participants or proxies to report a lost, stolen, or damaged card, report other card or benefit issues, receive information on the EBT food balance and receive the current benefit end date. The State agency shall respond to any

report of a lost, stolen, or damaged card within one business day of the date of report. If a State agency seeks to implement alternatives to the minimum service requirements, the agency must submit the plan to FNS for approval.

(cc) *National universal product codes (UPC) database.* The national UPC database is to be used by all State agencies using EBT to deliver WIC food benefits.

Dated: February 19, 2016.

**Audrey Rowe,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2016-04261 Filed 2-29-16; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 905

[Doc. No. AO-13-0163; AMS-FV-12-0069; FV13-905-1]

### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Order Amending Marketing Order No. 905

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Marketing Order No. 905 (order), which regulates the handling of oranges, grapefruit, tangerines, and tangelos (citrus) grown in Florida. The amendments were proposed by the Citrus Administrative Committee (Committee), which locally administers the order, and is comprised of growers and handlers. These amendments: Authorize regulation of new varieties and hybrids of citrus fruit; authorize the regulation of intrastate shipments of fruit; revise the process for redistricting the production area; change the term of office and tenure requirements for Committee members; authorize mail balloting procedures for Committee membership nominations; increase the capacity of the financial reserve fund; authorize pack and container requirements for domestic shipments and authorize different regulations for different markets; eliminate the use of separate acceptance statements in the nomination process; and require handlers to register with the Committee. All of the proposals were favored by Florida citrus growers in a mail referendum, held September 14 through October 5, 2015. Of the 200 votes cast, 96 percent or more of the vote by number and 99 percent or more by volume approved all nine amendments. The amendments are intended to