available information. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on March 16, 1998.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum will be held by mail during the period of April 27–May 1, 1998. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Tabor City-Whiteville and Loris are in favor of, or opposed to, the designation of the consolidated market for the 1998 and succeeding crop years. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor the consolidation, a new market will be designated as and will be called Tabor City-Whiteville-Loris.

To be eligible to vote in the referendum a tobacco producer must have sold flue-cured tobacco on either the Tabor City-Whiteville, North Carolina, or Loris, South Carolina, auction markets during the 1997 marketing season. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by April 27, 1998, should immediately contact William Coats at (202) 205–0508.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations for such referendum set forth in 7 CFR 29.74.

Dated: April 15, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–10458 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–97–16]

Tobacco Inspection—Growers Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This document announces that a referendum will be conducted by mail during the period of April 27–May 1, 1998, for producers of flue-cured tobacco who sell their tobacco at auction in Clarksville and Chase City, Virginia, to determine producer approval of the designation of the Clarksville and Chase City tobacco markets as one consolidated auction market.

DATES: The referendum will be held April 27–May 1, 1998.

FOR FURTHER INFORMATION CONTACT: William Coats, Associate Deputy Administrator, Tobacco Programs, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090–6456; telephone number (202) 205–0508.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated auction market at Clarksville and Chase City, Virginia. Clarksville and Chase City were designated on June 26, 1942 (7 CFR 29.8001) as flue-cured tobacco auction markets under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Under this Act those markets have been receiving mandatory grading services from USDA.

On September 3, 1997, an application was made to the Secretary of Agriculture to consolidate the designated markets of Clarksville and Chase City, Virginia. The application, filed by warehouse operators on those markets, was made pursuant to the regulations promulgated under the Tobacco Inspection Act (7 CFR Part 29.1–29.3). On November 7, 1997, a public hearing was held in Clarksville, Virginia, pursuant to the regulations. A Review Committee, established pursuant to § 29.3(h) of the regulations 7 CFR 29.3(h)), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, and other available information. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on March 16, 1998.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum will be held by mail during the period of April 27–May 1, 1998. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Clarksville and Chase City are in favor of, or opposed to, the designation of the consolidated market for the 1998 and succeeding crop years. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor this consolidation, a new market will be designated as and will be called Clarksville-Chase City.

To be eligible to vote in the referendum a tobacco producer must have sold flue-cured tobacco on either Clarksville or Chase City, Virginia, auction markets during the 1997 marketing season. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by April 27, 1998, should immediately contact William Coats at (202) 205–0508.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations for such referendum set forth in 7 CFR 29.74.

Dated: April 15, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–10457 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC50

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): WIC/Food Stamp Program (FSP) Vendor Disqualification

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to implement a mandate of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which requires the disqualification of WIC vendors who are disqualified from the Food Stamp Program (FSP). According to the law, the disqualification shall be for the same length of time as the FSP disqualification and may begin at a later date than the FSP disqualification. Furthermore, the law states that disqualification from WIC on the basis of an FSP disqualification is not subject to judicial or administrative review.

This proposed rule would also mandate uniform sanctions across States for the most serious WIC Program vendor violations, including seven specific WIC Program violations that result in FSP disqualification in addition to WIC Program

disqualification. The implementation of these mandatory sanctions is intended to promote WIC and FSP coordination in the disqualification of retailers and vendors who violate program rules.

DATES: To be assured of consideration, written comments must be postmarked by July 20, 1998.

ADDRESSES: Comments should be sent to Barbara Hallman, Acting Director, Supplemental Food Program Division, FNS, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302. Comments on this rule should be labeled ''WIC/Food Stamp Vendor Disqualification.'' All written comments will be available for public inspection during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at the above noted address.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, at (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Yvette Jackson, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant impact on a substantial number of small entities. This rule will only impact WIC vendors who have committed fraud and abuse against the WIC Program or who have been disqualified from the Food Stamp Program.

Paperwork Reduction Act

This proposed rule imposes no new reporting or recordkeeping requirements that are subject to OMB review in accordance with the Paperwork Reduction Act of 1995.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children is listed in the Catalog of Federal Domestic Assistance Programs under 10.577. For reasons set forth in the final rule in 7 CFR Part 3015, Subpart V, and related notice (48 FR 29115) this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

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

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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 Food and Nutrition Service 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 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 Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

Background

Section 729(j) of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), amends section 17 of the Child Nutrition Act of 1996 (42 U.S.C. 1786) (CNA), by adding a new section(n) that requires the Secretary of Agriculture to issue regulations providing the criteria for the disqualification of WIC vendors who have been disqualified as retailers from the FSP. This provision also states that the WIC disqualification shall be for the same length of time as the FSP disqualification. It may begin at the same time or at a later date than the FSP disqualification, and shall not be subject to judicial or administrative review. This new provision is designed to strengthen WIC Program integrity by promptly removing vendors from the WIC Program who have been disqualified from the FSP due to FSP violations.

In addition, a September 1995 Office of Inspector General (OIG) audit, number 27601–0004–Ch, on Disqualification of Vendors from Food and Nutrition Service (FNS) Programs recommended that FNS develop uniform regulatory sanction provisions to be applied to WIC vendors for each of seven specific WIC Program vendor violations. These WIC violations are deemed to be so serious that, under current FSP regulations, they result in the loss of FSP authorization in response to the WIC Program disqualification. This proposed rule would establish mandatory uniform sanctions against violating WIC vendors and would also remove the current three-year limit on WIC vendor disqualification, thus permitting permanent WIC vendor disqualification under specified circumstances. State agencies can sanction vendors for violations other than those listed in proposed § 246.12(k)(1) as long as vendors are made aware of such violations and sanctions, and such sanctions do not result in disqualification from the WIC Program for more than six months.

Criteria for Disqualification of WIC Vendors Who Have Been Disqualified From the FSP

Section 729(j) of the PRWORA amends section 17 of the CNA by adding a new section(n) that requires the Secretary of Agriculture to issue regulations providing the criteria for the disqualification of WIC vendors who have been disqualified from participating as retailers in the FSP. In response to that mandate, the Department has determined that **any** FSP violation that is serious enough to warrant disqualification from the FSP should also warrant disqualification from the WIC Program. The Department believes that retailers that are disqualified from the FSP should not be eligible to participate in either the WIC Program or the FSP. This proposed rule would require the disqualification of such vendors from WIC, with the only exception being for participant hardship. That is, WIC State agencies would not be required to disqualify a WIC vendor that has been disqualified from the FSP when such WIC disqualification would cause undue hardship for WIC participant access.

The Department recognizes that WIC vendors play a vital role in ensuring that WIC Program goals are achieved. While the vast majority of vendors follow

program rules, abuse cannot and will not be tolerated. Current program rules (§§ 246.12(k) (iii) and (iv)) allow but do not require a State agency to disqualify a WIC vendor who is currently disqualified from any FNS program or who has been assessed a civil money penalty (CMP) by the FSP in lieu of disqualification. To strengthen program integrity, WIC State agencies would be required under this proposed rule to disqualify a vendor from WIC who has been disqualified from the FSP, unless such disqualification would create undue hardship for WIC participant access, in which case WIC State agencies will assess a CMP. In cases where a retailer has been assessed a CMP in lieu of disqualification by the FSP, WIC State agencies will continue to have the option of disqualifying the vendor under § 246.12(k)(iv). However, since the disqualification is not based upon a reciprocal FSP disqualification, the vendor must be offered an opportunity to appeal the WIC disqualification.

Length of Disqualification

Section 729(j) of the PRWORA also states that the WIC disqualification shall be for the same length of time as the FSP disqualification and may begin at the same time or at a later date than the FSP disqualification. Because FSP regulations provide for permanent disqualification, there will be instances in which a WIC vendor is disqualified for more than the current three-year maximum disqualification period reflected in § 246.12(k)(1)(ii) of the WIC Program regulations. Therefore, this proposed rule would remove the three-year limitation from the regulations. This permits reciprocal permanent disqualification, as required by the PRWORA.

Vendor Appeals

This proposed rule would amend § 246.18(a) to modify the current requirement to provide a hearing procedure whereby a WIC vendor adversely affected by State or local agency actions may appeal such action. Section 729(j) of the PRWORA specifically states that WIC vendors who are disqualified as a result of their disqualification as retailers from the FSP are not entitled to administrative or judicial review proceedings in the WIC Program. As such, § 246.18(a) would be amended to reflect this change. This change should reduce WIC State agency expenses and administrative burdens and eliminate a duplicative administrative process. The WIC Program disqualification will not be imposed until after all FSP administrative and judicial processes have been completed.

Section 729(j) of the PRWORA only eliminates the WIC appeal for vendors who are disqualified as a result of the FSP disqualification. The law does not eliminate appeal rights for vendors who are disqualified from WIC because they have been assessed a CMP in lieu of disqualification from the FSP. Therefore, WIC State agencies that utilize the option at § 246.12(k)(iv) which allows the State agency to disqualify a vendor who has been assessed a CMP in lieu of FSP disqualification must continue to offer such vendors an opportunity to appeal the WIC disqualification.

Vendor Agreements

To ensure that all WIC vendors are aware that disqualification from the FSP will result in disqualification from the WIC Program or, under certain circumstances, assessment of a CMP in lieu of disqualification, § 246.12(f) has been amended to require a statement to this effect in the vendor agreement.

Mandatory WIC Program Vendor Sanctions

In September 1995, the OIG released audit report number 27601–0004–Ch, Disqualification of Vendors from FNS Programs. The purpose of the audit was to evaluate FNS' controls to ensure that retailers/vendors who committed serious violations in one FNS program are considered for disqualification from participation in all FNS programs for which they were authorized.

The audit disclosed widely inconsistent sanction policies among the States for WIC vendors who commit similar or identical WIC Program violations. A previous nationwide OIG audit of WIC Program vendor operations, audit report 27661–2–Ch issued June 1988, also disclosed inconsistent sanction policies across States. For example, a vendor who overcharged a WIC State agency for WIC foods could receive a sanction that varied from additional mandatory training, to a voluntary withdrawal, to a warning letter, or a one to three year disqualification, depending upon the particular State. To ensure that appropriate and consistent sanctions are taken against vendors abusing the WIC Program, the audit recommended that FNS revise WIC Program regulations to mandate specific uniform sanctions for each of seven categories of WIC Program violations that, under current regulations, result in the loss of FSP authorization in addition to WIC disqualification. This would promote consistency of sanction treatment for violative WIC vendors. This proposed rule would implement the OIG's recommendation.

In 1987, the FSP issued codified regulations at 7 CFR § 278.1(o) that required FNS Field Offices to withdraw the FSP authorization of any firm that is disqualified from the WIC Program based in whole or in part on any act that constitutes a violation of that program's regulations, and which is shown to constitute a misdemeanor or felony violation of law, or for any of the following specific program violations:

(1) Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specific period of time;

(2) Exchanging WIC food instruments for cash or credit;

(3) Receiving, transacting and/or redeeming WIC food instruments outside of authorized channels;

(4) Accepting WIC food instruments from unauthorized persons;

(5) Exchanging non-food items for a WIC food instrument;

(6) Charging WIC customers more for food than non-WIC customers or charging WIC customers more than current shelf price; or

(7) Charging for food items not received by the WIC customer or for food provided in excess of those listed on the food instrument.

The Department proposes two modifications to the above-noted seven violations. First, the Department proposes to add trafficking to this list of violations. Trafficking is generally recognized as the most flagrant and egregious example of program fraud and abuse. As such, under this proposed rule, vendors found to be committing trafficking would be subject to permanent disqualification from the WIC Program upon their first offense, as in the FSP. The Department proposes to adopt the FSP's definition of trafficking, with some minor revisions to accommodate WIC terminology. Trafficking, in this proposal, is defined as the buying or selling of WIC food instruments for cash or consideration other than eligible food; or the exchange of firearms, ammunition, explosives, or controlled substances (i.e, drugs) as the term is defined in section 802 of title 21, United States Code, for food instruments. Consideration other than eligible food would include items such as furniture, appliances or other property, etc.

Second, the Department proposes to add the sale of alcohol, or alcoholic beverages or tobacco products in exchange for WIC food instruments to the list of violations that would result in

a mandatory sanction in recognition of their obvious inappropriate nature with respect to WIC food instrument exchanges. ''Alcoholic Beverage'' is defined by 27 U.S.C. § 214 as ''any beverage in liquid form which contains not less than one-half of one percent of alcohol by volume and is intended for human consumption.'' In recognition of the addition of this new violation, number (5) above would be modified to read ''exchanging non-food items, other than alcohol or alcoholic beverages or tobacco products, for WIC food instruments.'' The proposed penalty for the first disqualification for this violation is three years, consistent with the FSP sanction for this type of violation.

Third, the Department has removed the word ''cash'' from number (2) above, exchanging WIC Food Instruments for cash and credit, because exchanging food instruments for cash is included in the trafficking violation as explained earlier in this preamble.

The Department is proposing mandatory WIC Program disqualifications for the nine violations. The proposed WIC disqualifications set forth herein are similar to disqualifications imposed by the FSP for similar violations. This will conform WIC sanctions among the States, and establish WIC disqualifications that are similar to FSP disqualifications. The following chart illustrates the mandatory WIC disqualifications that would be imposed for the noted violation. Although the Department only proposes to address nine violations in this regulation, of course there are other violations that may occur. We have left to State agency discretion the authority to establish disqualifications for additional violations they deem appropriate. However, such State agency established disqualifications cannot exceed six months.

WIC violation	WIC sanction
Trafficking	Permanent Disqualification (DQ).
Sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC food instruments	1st—3 year DQ; 2nd—6 year DQ; 3rd—Permanent DQ.
Accepting WIC food instruments from unauthorized persons	Same as above.
Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory for food item for a specific period of time.	Same as above.
Receiving, transacting and/or redeeming WIC food instruments outside authorized channels	Same as above.
Charging WIC customers more for food than non-WIC customers or charging WIC customers more than current shelf price.	Same as above.
Charging for food items not received by the WIC customer or for food provided in excess of those listed on the food instrument.	Same as above.
Exchanging non-food items, except alcohol or alcoholic beverages or tobacco, for WIC food instruments.	1st—1 year DQ; 2nd—2 year DQ; 3rd—Permanent DQ.
Exchanging WIC food instruments for credit	Same as above.

To ensure that WIC vendors are aware that disqualification from the WIC Program will also result in the loss of FSP authorization, proposed amendments to § 246.18(b) would require that the State agency provide formal written notice of possible disqualification by FSP in the formal notice of WIC disqualification. Such written notice shall be made to such vendors prior to the time available for the WIC vendor to request appeal of the WIC action.

Voluntary Withdrawal and/or Non-renewal of Contract/Agreements in Lieu of Disqualification

The September 1995 OIG audit revealed that some WIC State agencies allowed vendors to voluntarily withdraw from the WIC Program or pay a CMP in lieu of disqualification. The Department does not support such a practice. It provides a means for a vendor to circumvent reciprocal disqualification from the FSP. The two programs must cooperate in every reasonable manner to facilitate the detection and removal of abusive vendors and retailers. The result of such cooperation is more effective and efficient vendor/retailer management in both programs. Therefore, under proposed § 246.12(k)(2), State agencies would not be able to accept voluntary withdrawal of the vendor from the program or an offer by the vendor to pay a CMP in lieu of disqualification where a disqualification is required under this proposed rule.

In addition, some State agencies fail to disqualify a noncompliant WIC vendor from the program, opting instead to not renew the vendor's contract or agreement at the next available renewal period. State agencies take this action because it is believed to be less costly and burdensome than disqualifying the vendor and going through the appeals process. However, unless the vendor is actually disqualified from the WIC Program, the mandatory reciprocal FSP disqualification cannot be imposed. In addition, without disqualification, the opportunity for abuse continues until expiration of the agreement. Therefore, the Department proposes at § 246.12(k)(2) to prohibit the practice of nonrenewal of the contract/agreement as an alternative to or in lieu of disqualification.

Timely Referral of WIC Disqualified Vendors

In order to effectively remove disqualified WIC vendors from participating as retailers in the FSP, WIC State agencies must provide the FNS field offices with timely information on disqualified WIC vendors. The September 1995 OIG report found that timely referrals were not occurring. The delays in notifying FNS field offices ranged from 9 to 349 days with the majority of cases over 100 days. These untimely referrals have delayed or prevented noncompliant WIC vendors who have been disqualified from WIC from being promptly disqualified from the FSP. Therefore, to assure that action to remove abusive retailers is taken in a timely manner, the Department is proposing at § 246.12(k)(3) that State agencies provide the FNS field office with written notification, including fax or e-mail, on vendors it has disqualified from WIC for any one of the nine violations noted above that result in a mandatory disqualification period. This information shall be provided within 15 days after the opportunity to file for a WIC administrative appeal has expired or all WIC administrative and judicial appeals have been exhausted.

Participant Access

Impact on participant access has always been a primary consideration when determining whether to disqualify an abusive vendor from the WIC Program. When disqualifying a vendor

from WIC, either because of WIC Program abuse, or based on an FSP disqualification, the State agency will continue to be required to document its determination that participants will have access to WIC supplemental foods notwithstanding the disqualification of the vendor in question.

In assessing participant access, the State agency would need to consider factors such as availability of other authorized vendors in the same area and geographic barriers to such vendors. The Department would like to point out that a FSP CMP, granted in lieu of disqualification due to a participant access concern, does not obligate the WIC State agency to concur with the FSP hardship determination. Nor does it require reciprocal disqualification from the WIC Program. Recognizing that FSP and WIC serve different populations, it is possible that there may be instances where a disqualification in one program would not negatively affect participant access for recipients in the other Program.

For example, a retailer found to be abusing the FSP may have a large FSP population that is predominantly elderly. This establishment may also serve a small population of younger more mobile WIC participants. The FSP may determine that it would jeopardize FSP participant access if the retailer were disqualified and instead issues a CMP in lieu of disqualification. The WIC State agency may determine that WIC participant access would not be unduly harmed and therefore choose to disqualify the abusive WIC vendor under § 246.12(k)(iv). Of course, full appeal rights would be available to the WIC vendor under these circumstances.

In the rare instance where the State agency determines that disqualification of a WIC vendor would jeopardize access for participants, the State agency shall assess a CMP against the vendor in lieu of disqualification. The WIC State agency should actively monitor the vendor to ensure that the vendor complies with program rules as a condition to remain an authorized vendor.

The State agency must include in the file of each WIC vendor who is disqualified from the Program or receives a CMP in lieu of disqualification, a written record of its participant access determination and any supporting justification. The State agency, with its knowledge of the locations of authorized WIC vendors and the geographical distribution of WIC participants, is uniquely qualified to determine whether any given vendor is needed to ensure participant access to WIC foods, and whether a disqualification will not adversely affect participant access to authorized foods. The WIC State agency determination regarding participant access is, therefore, not subject to appeal by the vendor.

Formula for Calculating Civil Money Penalties

To ensure that WIC State agencies are using a consistent method in determining the amount of a CMP issued in lieu of disqualification, the Department proposes to establish a formula for calculating the CMP. The proposed formula is currently used by several WIC State agencies and is identical to the CMP formula used by the FSP. The proposed formula is as follows: (1) Determine the vendor's average monthly WIC redemptions for the 12-month period ending with the month immediately preceding the month during which the store was charged with violations; (2) Multiply the average monthly redemptions figure by 10 percent (.10); (3) Multiply the product from Step 2 by the number of months for which the store would have been disqualified. This is the amount of the CMP. The amount of the CMP may not exceed $10,000 for each violation. Following is an example using this methodology:

Monthly WIC Redemptions

Jan.—$10,000
Feb.—$8,500
Mar.—$12,300
Apr.—$9,000
May.—$7,000
June—$5,000
July—$6,000
Aug.—$4,000
Sept.—$5,500
Oct.—$7,000
Nov.—$7,000
Dec.—$5,000

Average Monthly Redemptions	$7,192.00
Multiply by 10 Percent	×.10
	$719.00
Proposed disqualification period=1 year or 12 months:	×12
Civil Money Penalty	$8,630.00

Disposition of Civil Money Penalties

Money collected from imposition of civil money penalties or vendor fines shall be treated as program income. Authority granted the Department in 7 CFR 3016.25 permits the characterization of such fines as program income. As program income, their use will be governed by § 246.15 of the WIC regulations. This change will be reflected in § 246.15(b).

Definition of Food Instrument

In recognition of emerging technology in the retail food delivery area relative to electronic benefits transfer (EBT), the Department proposes to revise the definition of ''food instrument'' to include an EBT transfer card. ''Food instrument'' is now proposed to be defined as a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used by a participant to obtain supplemental foods.

List of Subjects in 7 CFR Part 246

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

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

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

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

Authority: 42 U.S.C. 1786.

2. In § 246.2, the definition of ''Food instrument'' is revised to read as follows:

§ 246.2 Definitions

* * * * *

Food instrument means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used by a participant to obtain supplemental foods.

* * * * *

3. In § 246.12:

a. paragraphs (f)(2)(xix) and (f)(2)(xx) are redesignated as paragraphs (f)(2)(xx) and (f)(2)(xxi), respectively;

b. new paragraph (f)(2)(xix) is added;

c. paragraph (f)(3) is revised;

d. paragraph (k)(1) introductory text is revised;

e. paragraph (k)(1)(iii) is removed, paragraphs (k)(1)(i),(k)(1)(ii),(k)(1)(iv) and (k)(1)(v) are redesignated as (k)(1)(v), (k)(1)(vi),(k)(1)(vii) and (k)(1)(viii), respectively, and revised, and new paragraphs (k)(1)(i) through (k)(1)(iv) and (k)(1)(ix) are added;

f. paragraphs (k)(2) and (k)(3) are redesignated as (k)(4) and (k)(5), respectively; and new paragraphs (k)(2) and (k)(3) are added.

The revisions and additions read as follows:

§ 246.12 Food delivery systems.

* * * * *

(f) * * *

(2) * * *

(xix) The State agency shall disqualify a vendor who has been disqualified from the Food Stamp Program. However, if the State agency determines that such disqualification will create hardship for participant access to authorized foods, the State agency shall issue a civil money penalty in lieu of WIC disqualification.

* * * * *

(3) Other provisions shall be added to the contracts or agreements to implement the State agency option in paragraph (r)(5)(iv) of this section.

* * * * *

(k) * * *

(1) The following sanctions shall be used by each State agency. The State agency shall provide adequate procedures for vendors to appeal a disqualification from participation under the Program as specified in § 246.18. The State agency sanctions shall include:

(i) Permanent disqualification for:

(A) Buying or selling of WIC food instruments for cash or consideration other than eligible food (trafficking); or the exchange of firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, for food instruments; or

(B) When a vendor has twice before been sanctioned for any violation listed in paragraphs (k)(1)(ii) and (k)(1)(iii) of this section.

(ii) Disqualification for three years if it is the vendor's first sanction for:

(A) The sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC food instruments; or

(B) Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specific period of time; or

(C) Charging WIC customers more for food than non WIC customers or charging WIC customers more than the current shelf or contract price; or

(D) Accepting WIC food instruments from unauthorized persons; or

(E) Receiving, transacting and/or redeeming WIC food instruments outside of authorized channels; or

(F) Charging for food items not received by the WIC customer or for food provided in excess of those listed on the food instrument.

(iii) Disqualification for one year if it is the vendor's first sanction for:

(A) Exchanging WIC food instruments for credit; or

(B) Exchanging non-food items, other than alcohol or alcoholic beverages or tobacco, for WIC food instruments.

(iv) The sanctions for violations in paragraphs (k)(1)(ii) and (k)(1)(iii) of this section shall be doubled if the vendor has once before been assigned a sanction. In addition, the State agency does not have to provide the vendor with prior notice that violations were occurring and the possible consequences of the violations prior to implementing any of the mandatory sanctions in this paragraph.

(v) Food vendors may be subject to sanctions in addition to, or in lieu of, disqualification, such as claims for improper or overcharged food instruments and the penalties outlined in § 246.23, in the case of deliberate fraud.

(vi) The State agency may impose sanctions for violations that are not specified in paragraphs (k)(1)(i) through (k)(1)(iii) of this section as long as the vendor is made aware of such violations and sanctions. The period of disqualification from Program participation for such State-established violations shall not be more than six months as determined by the State agency.

(vii) The State agency shall disqualify a vendor who has been disqualified from the Food Stamp Program. The disqualification shall be for the same length of time as the FSP disqualification; may begin at a later date than the FSP disqualification; shall not be subject to administrative or judicial review under the WIC Program. If the State agency determines that such disqualification will create hardship for participant access to authorized foods, the State agency shall issue a civil money penalty in lieu of WIC disqualification. The State agency may disqualify a vendor who has been assessed a civil money penalty in the Food Stamp Program, as provided under 7 CFR 278.6, only if the State agency:

(A) Documents that any such disqualification will not create undue hardship for participants; and

(B) Includes notification that it will take such disqualification action in its vendor agreement, in accordance with paragraph (f)(3) of this section.

(viii) Prior to disqualifying a food vendor, the State agency shall consider whether the disqualification would create undue hardship for participants. The State agency shall include documentation of its participant access determination and any supporting documentation in the file of each vendor who is disqualified or receives a civil money penalty in lieu of disqualification.

(ix) The State agency shall use the following formula to calculate a civil money penalty issued in lieu of disqualification:

(A) Determine the vendor's average monthly WIC redemptions for the 12-month period ending with the month immediately preceding the month during which the store was charged with violations;

(B) Multiply the average monthly redemptions figure by 10 percent (.10);

(C) Multiply the product from Step 2 by the number of months for which the store would have been disqualified. This is the amount of the civil money penalty. The amount of the civil money penalty may not exceed $10,000 for each violation.

(2) The State agency shall not accept voluntary withdrawal of the vendor from the Program as an alternative to disqualification, but shall enter the disqualification on the record. In addition, the State agency shall not use nonrenewal of the vendor agreement as an alternative to disqualification.

(3) The State agency shall provide the appropriate FNS office with written notification and information on vendors it has disqualified for any of the violations listed in (k)(1)(i) through (k)(1)(iv) of this section. This information shall include the name of the vendor, address, identification number, the type of violation, and the length of disqualification, and shall be provided within fifteen days after the opportunity to file for a WIC administrative appeal has expired or all WIC administrative appeals have been exhausted and all judicial appeal rights have expired or have been exhausted.

* * * * *

4. In § 246.15, a sentence is added to the end of paragraph (b) to read as follows:

§ 246.15 Program income other than grants.

* * * * *

(b) * * * Money received by the State agency as a result of civil money penalties or fines assessed against a WIC vendor shall be considered as program income.

5. In § 246.18, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 246.18 Administrative appeal of State agency decisions.

(a) * * *

(1) The right of appeal shall be granted when a local agency's or a food vendor's application to participate is denied or, during the course of the contract or agreement, when a local agency or vendor is disqualified or any other adverse action which affects participation is taken. The following actions shall not be subject to judicial or administrative review:

(i) Expiration of a contract or agreement with a food vendor;

(ii) Disqualification of a food vendor as a result of disqualification from the Food Stamp Program; and

(iii) The State agency's determination that participant access would not be adversely affected by disqualification of the vendor.

* * * * *

(b) * * *

(1) Written notification of the administrative action, the procedures to file for an administrative review, the cause(s) for and the effective date of the action. Such notification shall be provided to participating food vendors not less than 15 days in advance of the effective date of the action. When a vendor is disqualified due in whole or in part to violations specified in § 246.12(k)(1), such notification shall include the following statement: ''This disqualification from WIC may result in disqualification as a retailer in the Food Stamp Program.''

In the case of disqualification of local agencies, the State agency shall provide not less than 60 days advance notice of pending action.

* * * * *

Dated: April 13, 1998.

Yvette S. Jackson,

Administrator, Food and Nutrition Service.

[FR Doc. 98–10255 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–250–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require repetitive rotating probe inspections of fastener holes and/or the adjacent tooling hole of a former junction of the aft fuselage, and corrective action, if necessary. This AD also provides for optional terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the aft fuselage caused by fatigue cracking of the former junction at frame 68.

DATES: Comments must be received by May 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–250–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that it has received a report indicating that, during fatigue tests on a Model A320 test article, at 85,734 simulated flights, four cracks developed in the fastener holes of the former junction at frame 68. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the aft fuselage of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1089, dated November 22, 1995, which describes procedures for performing a rotating probe inspection of the fastener holes and/or the adjacent tooling hole of the former junction at frame 68, as applicable (depending upon the configuration of the airplane), and follow-on repetitive inspections, if necessary.

Airbus also has issued Service Bulletin A320–53–1090, dated November 22, 1995, which describes procedures for cold working the fastener holes and/or adjacent tooling hole (Modifications 21780 and 21781), which would eliminate the need for the repetitive inspections specified in Airbus Service Bulletin A320–53–1089.

The DGAC classified Airbus Service Bulletin A320–53–1089 as mandatory and issued French airworthiness directive 96–298–093(B)R1, dated January 29, 1997, in order to assure the continued airworthiness of these airplanes in France. (The DGAC approved Airbus Service Bulletin A320–53–1090.)

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral