

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 246

[FNS-2006-0037]

RIN 0584-AD77

#### Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Revisions in the WIC Food Packages Rule To Increase Cash Value Vouchers for Women

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

**ACTION:** Interim rule.

**SUMMARY:** This rule increases the amount of cash value vouchers from \$8.00 to \$10.00 issued to pregnant, postpartum and partially breastfeeding women participants for the purchase of fruits and vegetables as part of the WIC food packages. In the "WIC Food Package" interim rule published December 6, 2007, the Department was not able to provide all women participants fruit and vegetable cash value vouchers at the level recommended by the National Academies' Institute of Medicine (IOM). To be cost neutral, only fully breastfeeding women were provided the IOM recommended amount of \$10.00 per month fruit and vegetable cash value vouchers; all other women participants were provided \$8.00 per month fruit and vegetable cash value vouchers. This rule amends the interim rule to provide all Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) women participants with \$10.00 per month fruit and vegetable cash value vouchers, consistent with IOM's recommendations. The Fiscal Year 2010 Agriculture Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (Pub. L.

111-80), enacted on October 21, 2009, provides the funding for this increase.

**DATES:** *Effective Date:* This rule is effective on December 31, 2009. State agencies may begin applying the provisions set forth in this rule beginning October 21, 2009.

*Implementation Date:* State agencies must implement the provisions of this rule no later than April 30, 2010.

*Comment Date:* To be considered, comments on this interim rule must be postmarked on or before February 1, 2010.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit comments on this interim rule. Comments may be submitted by one of the following methods:

- *Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov>. Preferred method; follow the online instructions for submitting comments on docket FNS-2006-0037.

- *Mail:* Comments should be addressed to Debra Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305-2746.

- *Hand Delivery or Courier:* Deliver comments to Debra Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305-2746. Hours of operation: 8:30 a.m.-5:30 p.m., Monday through Friday.

All comments submitted in response to this interim rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Sandy Clark, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305-2746, or [Sandy.Clark@fns.usda.gov](mailto:Sandy.Clark@fns.usda.gov).

**SUPPLEMENTARY INFORMATION:**

## Background

An interim rule revising the WIC food packages was published in the **Federal Register** on December 6, 2007 (72 FR 68966). The interim rule revisions largely reflected recommendations made by the IOM of the National Academies in its report, "WIC Food Packages: Time for a Change," with certain cost containment and administrative modifications found necessary by the Department to ensure cost neutrality.

Based on cost constraints, the Department was not able to provide all women participants fruit and vegetable cash value vouchers at IOM's recommended amount. To be cost neutral, only fully breastfeeding women were provided the IOM recommended amount of \$10.00 per month fruit and vegetable cash value vouchers; all other women participants were provided \$8.00 per month fruit and vegetable cash value vouchers. This rule amends the interim rule to provide all WIC women participants with \$10.00 per month fruit and vegetable cash value vouchers, consistent with IOM's recommendations. The funding for this increase is provided by the Fiscal Year 2010 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, Public Law 111-80, enacted on October 21, 2009.

## Executive Order 12866

The Office of Management and Budget designated this rule as not significant under Executive Order 12866; therefore, no OMB review is required.

## Regulatory Flexibility Act

The Food, Nutrition and Consumer Services has certified that this rule will not have a significant economic impact on a substantial number of small entities. The provisions of this rule are applicable to all State and local agencies, vendors and farmers and farmers' markets regardless of their size or the volume of WIC business they conduct.

## Regulatory Impact Analysis

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

## Need for Action

This action amends the interim rule to provide all women WIC participants

with \$10.00 per month in cash value vouchers for fruits and vegetables as recommended by the Institute of Medicine. IOM's intent was to move WIC participants toward increased fruit and vegetable consumption.

#### *Benefits*

The increase in the cash value vouchers for women participants will improve their ability to increase their consumption of fruits and vegetables. WIC authorized vendors will also realize increased sales by the implementation of this provision.

#### *Costs*

The provisions of this interim rule are not expected to increase significantly the administrative burden to the Department or to State agencies, nor will they affect overall program costs since the WIC Program is funded by an annual appropriation.

#### **Public Law 104-4**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

#### **Executive Order 12372**

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance under No. 10.557. For reasons set forth in the final rule at 7 CFR part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is included in the scope of Executive Order 12372, that

requires intergovernmental consultation with State and local officials.

#### **Federalism Summary Impact Statement**

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

##### *1. Prior Consultation With WIC State and Local Agency Officials*

Over the years FNS has received numerous requests from WIC State and local agencies to modify the current food packages to permit greater substitution of foods or introduction of additional foods. These requests have come from formal and informal discussions with State and local officials on an ongoing basis regarding program implementation and food package policy issues, and from written proposals and comments submitted to FNS by WIC State and local agencies to allow modifications and/or substitutions to the WIC food packages. Requests for revisions to the WIC food packages have also been received from Congress, participants, and organizations with interests in the welfare of WIC participants. FNS commissioned the National Academies' IOM to independently review the WIC Food Packages. IOM solicited public comment on revisions to the WIC food packages, via 3 public hearings, letters and e-mail, throughout its 22-month study period. IOM published its reports of these recommendations on April 27, 2005: "WIC Food Packages: Time for a Change." Based largely on the recommendations from this report, with certain cost containment and administrative modifications found necessary by the Department to ensure cost neutrality, an interim rule revising the WIC food packages was published in the **Federal Register** on December 6, 2007 (72 FR 68966).

##### *2. Nature of Concerns and the Need To Issue This Rule*

Based on cost constraints, the Department was not able to provide all women participants fruit and vegetable cash value vouchers at IOM's recommended amount in the December 6, 2007 interim rule. To be cost neutral, only fully breastfeeding women were provided the IOM recommended amount of \$10.00 per month fruit and vegetable cash value vouchers; all other

women participants were provided \$8.00 per month fruit and vegetable cash value vouchers.

##### *3. Extent to Which We Meet Those Concerns*

This rule amends the December 6, 2007 Interim Rule to provide all WIC women participants with \$10.00 per month fruit and vegetable cash value vouchers, consistent with IOM's recommendations.

#### **Executive Order 12988**

This 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 implementation. This rule is not intended to have retroactive effect unless specified in the **DATES** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

#### **Civil Rights Impact Analysis**

FNS has reviewed this rule in accordance with Departmental Regulations 4300-4, "Civil Rights Impact Analysis", and 1512-1, "Regulatory Decision Making Requirements." FNS has determined that this interim rule's intent and provisions will not adversely affect access to WIC services by eligible persons. All data available to FNS indicate that protected individuals have the same opportunity to participate in WIC as non-protected individuals. FNS specifically prohibits State and local agencies operating the WIC Program from discrimination based on race, color, national origin, gender, age, and disability. Discrimination in any aspect of program administration is prohibited by Department of Agriculture regulations on non-discrimination (7 CFR Parts 15, 15a, and 15b), the Age Discrimination Act of 1975 (Pub. L. 94-135), the Rehabilitation Act of 1973 (Pub. L. 93-112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accordance with 7 CFR Part 15.

#### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal

agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

### E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act, 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 purposes.

### Good Cause Determination

As discussed above, the Fiscal Year 2010 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (Pub. L. 111–80), enacted on October 21, 2009, provided the funding for this increase. Therefore, women should be

afforded the immediate opportunity to benefit from increased access to fruits and vegetables. As the funding increases fruit and vegetable cash value vouchers to the amount recommended by the IOM to improve the nutrition of women participants, the Department finds that delaying the effective date of this rule would be contrary to the public interest. As such, it has been determined, in accordance with 5 U.S.C. 553(b)(B), that prior notice and comment would be unnecessary, and that good cause exists for making this rule effective without first publishing a proposed rule. However, the Department will consider all comments submitted in response to this interim rule, in addition to the comments received on the interim WIC Food Package rule published on December 6, 2007 (72 FR 68966). The comment period for both rules will end on February 1, 2010.

### List of Subjects in 7 CFR Part 246

Food assistance programs, Grant programs—Social programs, Indians,

Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

■ Accordingly, for the reasons set forth in the preamble, 7 CFR Part 246 is amended to read as follows:

### PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

■ 1. The authority citation for 7 CFR part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

■ 2. Sections 246.10(e)(10) and (e)(11) are revised to read as follows:

#### § 246.10 Supplemental foods.

\* \* \* \* \*

(e) \* \* \*

(10) *Maximum monthly allowances of supplemental foods in Food Packages IV through VII.* The maximum monthly allowances, options and substitution rates of supplemental foods for children and women in Food Package IV through VII are stated in Table 2 as follows:

TABLE 2—MAXIMUM MONTHLY ALLOWANCES OF SUPPLEMENTAL FOODS FOR CHILDREN AND WOMEN IN FOOD PACKAGES IV, V, VI AND VII

Foods <sup>1</sup>	Children	Women		
	Food Package IV 1 through 4 years	Food Package V: Pregnant and partially breastfeeding (up to 1 year postpartum) <sup>2</sup>	Food Package VI: Postpartum (up to 6 months postpartum) <sup>3</sup>	Food Package VII: Fully breastfeeding (up to 1 year postpartum) <sup>4 5</sup>
Juice, single strength <sup>6</sup> .	128 fl oz .....	144 fl oz .....	96 fl oz .....	144 fl oz.
Milk, fluid .....	16 qt <sup>7 8 9 10</sup> .....	22 qt <sup>7 8 11 12</sup> .....	16 qt <sup>7 8 11 12</sup> .....	24 qt <sup>7 8 11 12</sup> .
Breakfast cereal <sup>13</sup>	36 oz .....	36 oz .....	36 oz .....	36 oz.
Cheese .....	N/A .....	N/A .....	N/A .....	1 lb.
Eggs .....	1 dozen .....	1 dozen .....	1 dozen .....	2 dozen.
Fruits and vegetables <sup>14 15</sup> .	\$6.00 in cash value vouchers.	\$10.00 in cash value vouchers.	\$10.00 in cash value vouchers.	\$10.00 in cash value vouchers.
Whole wheat bread or other whole grains <sup>16</sup> .	2 lb .....	1 lb .....	N/A .....	1 lb.
Fish (canned) .....	N/A .....	N/A .....	N/A .....	30 oz.
Legumes, dry <sup>17</sup> ....	1 lb .....	1 lb .....	1 lb .....	1 lb.
And/or	Or	And	Or	And
Peanut butter .....	18 oz .....	18 oz .....	18 oz .....	18 oz.

**Table 2 Footnotes:** N/A = the supplemental food is not authorized in the corresponding food package.

<sup>1</sup> Table 4 of paragraph (e)(12) of this section describes the minimum requirements and specifications for the supplemental foods.

<sup>2</sup> Food Package V is issued to two categories of WIC participants: Women participants with singleton pregnancies and breastfeeding women whose partially breastfed infants receive formula from the WIC Program in amounts that do not exceed the maximum formula allowances for Food Packages I–BF/FF–A, I–BF/FF–B, I–BF/FF–C, or II–BF/FF, as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

<sup>3</sup> Food Package VI is issued to two categories of WIC participants: Non-breastfeeding postpartum women and breastfeeding postpartum women whose partially breastfed infants receive more than the maximum infant formula allowances for Food Packages I–BF/FF–A, I–BF/FF–B, I–BF/FF–C, or II–BF/FF, as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

<sup>4</sup> Food Package VII is issued to three categories of WIC participants: Fully breastfeeding women whose infants do not receive formula from the WIC Program; women pregnant with two or more fetuses; and women fully or partially breastfeeding multiple infants.

<sup>5</sup> Women fully breastfeeding multiple infants are prescribed 1.5 times the maximum allowances.

<sup>6</sup> Combinations of single-strength and concentrated juices may be issued provided that the total volume does not exceed the maximum monthly allowance for single-strength juice.

<sup>7</sup> Whole milk, as specified in FDA standards, is the only type of milk allowed for 1-year-old children (12 through 23 months). Reduced fat milks, as specified in FDA standards, i.e., 2% milk fat, are the only types of milk allowed for children ≥ 24 months of age and women.

<sup>8</sup> Evaporated milk may be substituted at the rate of 16 fluid ounces of evaporated milk per 32 fluid ounces of fluid milk or a 1:2 fluid ounce substitution ratio. Dry milk may be substituted at an equal reconstituted rate to fluid milk. When a combination of different milk forms is provided, the full maximum monthly fluid milk allowance must be provided.

<sup>9</sup>For children, cheese may be substituted for milk at the rate of 1 pound of cheese per 3 quarts of milk. No more than 1 lb. of cheese may be substituted for milk. With medical documentation, additional amounts of cheese may be substituted in cases of lactose intolerance or other qualifying conditions, up to the maximum allowance for fluid milk.

<sup>10</sup>For children, soy-based beverage and calcium-set tofu may be substituted for milk only with medical documentation for qualifying conditions. Soy-based beverage may be substituted for milk, with medical documentation, for children in Food Package IV on a quart for quart basis up to the total maximum allowance of milk. Tofu may be substituted for milk, with medical documentation, for children in Food Package IV at the rate of 1 pound of tofu per 1 quart of milk up to the total maximum allowance of milk.

<sup>11</sup>For women, cheese or calcium-set tofu may be substituted for milk at the rate of 1 pound of cheese per 3 quarts of milk or 1 pound of tofu per 1 quart of milk. A maximum of 4 quarts of milk can be substituted in this manner in Food Packages V and VI; however, no more than 1 pound of cheese may be substituted for milk. A maximum of 6 quarts of milk can be substituted in this manner in Food Package VII; therefore, no more than 2 lbs. of cheese may be substituted for milk. With medical documentation, additional amounts of cheese or tofu may be substituted, up to the maximum allowances for fluid milk, in cases of lactose intolerance or other qualifying conditions.

<sup>12</sup>For women, soy-based beverage may be substituted for milk at the rate of 1 quart of soy-based beverage for 1 quart of milk up to the total maximum monthly allowance of milk.

<sup>13</sup>At least one-half of the total number of breakfast cereals on the State agency's authorized food list must have whole grain as the primary ingredient and meet labeling requirements for making a health claim as a "whole grain food with moderate fat content" as defined in Table 4 of paragraph (e)(12) of this section.

<sup>14</sup>Processed (canned, frozen, dried) fruits and vegetables may be substituted for fresh fruits and vegetables. Dried fruit and dried vegetables are not authorized for children in Food Package IV.

<sup>15</sup>The monthly value of the fruit/vegetable cash-value vouchers will be adjusted annually for inflation as described in § 246.16(j).

<sup>16</sup>Brown rice, bulgur (cracked wheat), oatmeal, whole-grain barley, soft corn or whole wheat tortillas may be substituted for whole wheat bread on an equal weight basis.

<sup>17</sup>Canned legumes may be substituted for dried legumes at the rate of 64 oz. of canned beans for 1 lb. dried beans. Under Food Packages V and VII, two additional combinations of dry or canned beans/peas are authorized: 1 lb. Dry and 64 oz. Canned beans/peas (and no peanut butter); or 2 lb. Dry or 128 oz. Canned beans/peas (and no peanut butter) or 36 oz. peanut butter (and no beans).

(11) *Maximum monthly allowances of supplemental foods for children and women with qualifying conditions in Food Package III.* The maximum monthly allowances, options and substitution rates of supplemental foods for participants with qualifying conditions in Food Package III are stated in Table 3 as follows:

TABLE 3—MAXIMUM MONTHLY ALLOWANCES OF SUPPLEMENTAL FOODS FOR CHILDREN AND WOMEN IN FOOD PACKAGE III

Foods <sup>1</sup>	Children	Women		
	1 through 4 years	Pregnant and partially breastfeeding (up to 1 year postpartum) <sup>2</sup>	Postpartum (up to 6 months postpartum) <sup>3</sup>	Fully breastfeeding (up to 1 year postpartum) <sup>4,5</sup>
Juice, single strength <sup>6</sup> .	128 fl oz .....	144 fl oz .....	96 fl oz .....	144 fl oz.
WIC Formula <sup>7,8</sup> .....	455 fl oz liquid concentrate	455 fl oz liquid concentrate	455 fl oz liquid concentrate	455 fl oz liquid concentrate.
Milk .....	16 qt <sup>9,10,11,12</sup> .....	22 qt <sup>9,10,13,14</sup> .....	16 qt <sup>9,10,13,14</sup> .....	24 qt <sup>9,10,13,14</sup> .
Breakfast cereal <sup>15,16</sup> .....	36 oz .....	36 oz .....	36 oz .....	36 oz.
Cheese .....	N/A .....	N/A .....	N/A .....	1 lb.
Eggs .....	1 dozen .....	1 dozen .....	1 dozen .....	2 dozen.
Fruits and vegetables <sup>17,18</sup> .	\$6.00 in cash value vouchers.	\$10.00 in cash value vouchers.	\$10.00 in cash value vouchers.	\$10.00 in cash value vouchers.
Whole wheat bread <sup>19</sup> .	2 lb .....	1 lb .....	N/A .....	1 lb.
Fish (canned) .....	N/A .....	N/A .....	N/A .....	30 oz.
Legumes, dry <sup>20</sup> .....	1 lb .....	1 lb .....	1 lb .....	1 lb.
And/or .....	Or .....	And .....	Or .....	And .....
Peanut butter .....	18 oz .....	18 oz .....	18 oz .....	18 oz.

**Table 3 Footnotes:** N/A = the supplemental food is not authorized in the corresponding food package.

<sup>1</sup> Table 4 of paragraph (e)(12) of this section describes the minimum requirements and specifications for the supplemental foods.

<sup>2</sup> Food Package V is issued to two categories of WIC participants—women participants with singleton pregnancies and breastfeeding women whose partially breastfed infants receive formula from the WIC Program in amounts that do not exceed the maximum formula allowances for Food Packages I-BF/FF-A, I-BF/FF-B, I-BF/FF-C, or II-BF/FF, as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

<sup>3</sup> Food Package VI is issued to two categories of WIC participants—non-breastfeeding postpartum women and breastfeeding postpartum women whose partially breastfed infants receive more than the maximum formula allowances for Food Packages I-BF/FF-A, I-BF/FF-B, I-BF/FF-C or II-BF/FF, as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

<sup>4</sup> Food Package VII is issued to three categories of WIC participants—fully breastfeeding women whose infants do not receive formula from the WIC Program; women pregnant with two or more fetuses; and women fully or partially breastfeeding multiple infants.

<sup>5</sup> Women fully breastfeeding multiple infants are prescribed 1.5 times the maximum allowances.

<sup>6</sup> Combinations of single-strength and concentrated juices may be issued provided that the total volume does not exceed the maximum monthly allowance for single-strength juice.

<sup>7</sup> WIC formula means infant formula, exempt infant formula, or WIC-eligible medical food.

<sup>8</sup> Powder and Ready-to-Feed may be substituted at rates that provide comparable nutritive value.

<sup>9</sup> Whole milk, as specified in FDA standards, is the only type of milk allowed for 1-year-old children (12 through 23 months). Reduced fat milks, as specified in FDA standards, i.e., 2% milk fat, are the only types of milk allowed for children > 24 months of age and women. With medical documentation, whole milk may be substituted for reduced fat milk for children > 24 months of age and women.

<sup>10</sup> Evaporated milk may be substituted at the rate of 16 fluid ounces of evaporated milk per 32 fluid ounces of fluid milk or a 1:2 fluid ounce substitution ratio. Dry milk may be substituted at an equal reconstituted rate to fluid milk. When a combination of different milk forms is provided, the full maximum monthly fluid milk allowance must be provided.

<sup>11</sup> For children, cheese may be substituted for milk at the rate of 1 pound of cheese per 3 quarts of milk. No more than 1 lb. of cheese may be substituted for milk. With medical documentation, additional amounts of cheese may be substituted in cases of lactose intolerance or other qualifying conditions, up to the maximum allowance for fluid milk.

<sup>12</sup> For children, soy-based beverage and tofu may be substituted for milk only with medical documentation for qualifying conditions. Soy-based beverage may be substituted for milk, with medical documentation, for children in Food Package IV on a quart for quart basis up to the total maximum allowance of milk. Tofu may be substituted for milk, with medical documentation, for children in Food Package IV at the rate of 1 pound of tofu per 1 quart of milk up to the total maximum allowance of milk.

<sup>13</sup> For women, cheese or calcium-set tofu may be substituted for milk at the rate of 1 pound of cheese per 3 quarts of milk or 1 pound of tofu per 1 quart of milk. A maximum of 4 quarts of milk can be substituted in this manner in Food Packages V and VI; however, no more than 1 pound of cheese may be substituted for milk. A maximum of 6 quarts of milk can be substituted in this manner in Food Package VII; therefore, no more than 2 lbs. of cheese may be substituted for milk. With medical documentation, additional amounts of cheese or tofu may be substituted, up to the maximum allowances for fluid milk, in cases of lactose intolerance or other qualifying conditions.

<sup>14</sup> For women, soy-based beverage may be substituted for milk at the rate of 1 quart of soy-based beverage for 1 quart of milk up to the total maximum monthly allowance of milk.

<sup>15</sup> 32 dry ounces of infant cereal may be substituted for 36 ounces of breakfast cereal.

<sup>16</sup> At least one half of the total number of breakfast cereals on the State agency's authorized food list must have whole grain as the primary ingredient and meet labeling requirements for making a health claim as a "whole grain food with moderate fat content" as defined in Table 4 of paragraph (e)(12) of this section.

<sup>17</sup> Processed (canned, frozen, dried) fruits and vegetables may be substituted for fresh fruits and vegetables. Dried fruit and dried vegetables are not authorized for children.

<sup>18</sup> The monthly value of the fruit/vegetable cash-value vouchers will be adjusted annually for inflation as described in § 246.16(j).

<sup>19</sup> Brown rice, bulgur (cracked wheat), oatmeal, whole-grain barley, soft corn or whole wheat tortillas may be substituted for whole wheat bread on an equal weight basis.

<sup>20</sup> Canned legumes may be substituted for dried legumes at the rate of 64 oz of canned beans for 1 lb dried beans. Issuance of two additional combinations of dry or canned beans/peas is authorized for the Pregnant and Partially Breastfeeding (up to 1 year postpartum) category and Fully Breastfeeding (Enhanced) (up to 1 year postpartum) category: 1 lb. Dry and 64 oz. Canned beans/peas (and no peanut butter); or 2 lb. Dry or 128 oz. Canned beans/peas (and no peanut butter) or 36 oz. peanut butter (and no beans).

\* \* \* \* \*

#### § 246.16 [Amended]

■ 3. Paragraph 246.16(j) (2) (ii) is amended by revising "\$8" to read "\$10"

Dated: December 24, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9-30991 Filed 12-30-09; 8:45 am]

BILLING CODE 3410-30-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-0637; Directorate Identifier 2008-NM-183-AD; Amendment 39-16153; AD 2009-26-14]

RIN 2120-AA64

**Airworthiness Directives;**  
**Construcciones Aeronauticas, S.A.**  
**(CASA), Model CN-235, CN-235-100,**  
**CN-235-200, and CN-235-300**  
**Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

\* \* \* As a consequence of cracks [that were originally] detected on some CN-235 aircraft, in flap fittings P/N 35-15501-0101, -0102, -0201 and -0202, attaching the structure of the outer flaps to their rear supports and, in the adjacent structure, DGAC Spain issued AD Nr. 01/97[.] \* \* \*

Since AD 1/97 Rev.1 was published, similar cracks have been detected in flaps longerons. \* \* \*

\* \* \* \* \*

Fatigue cracking of the rear internal support fittings and longerons of the outer flap structure could result in failure of the outer flaps, and consequent reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective February 4, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 4, 2010.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1112; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 15, 2009 (74 FR 34272). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

As a consequence of cracks [that were originally] detected on some CN-235 aircraft, in flap fittings P/N 35-15501-0101, -0102, -0201 and -0202, attaching the structure of the outer flaps to their rear supports and, in the adjacent structure, DGAC [Dirección General de Aviación Civil] Spain issued AD Nr. 01/97 which required, pending the analysis of the problem, boroscopic inspections of the attachment zones between both outer flaps to their rear support. After concluding that process and based on the investigation results, DGAC Spain issued AD Nr. 1/97 Rev.1 [which corresponds to FAA AD 99-07-13] to require the replacement of the outer flaps with new designed parts, as specified in EADS-CASA Service Bulletin (SB) 235-57-20.

Since AD 1/97 Rev.1 was published, similar cracks have been detected in flaps longerons. EADS-CASA issued SB 235-57-20 Revision 1, extending the scope of the inspection to these flaps longerons, instructing the drilling of holes to facilitate the inspection and introducing an improved outer flap replacement kit that included a new improved longeron. SB 235-57-20 Revision 2 has been issued to add useful references and to update the applicability.

For the reasons described above, this new EASA [European Aviation Safety Agency] AD retains the requirements of DGAC Spain AD Nr. 1/97 Rev.1, which is superseded, and confirms the approval of additional outer flaps replacement options, as specified in paragraph 2 E.2 of EADS-CASA SB 235-57-20 R2.

Fatigue cracking of the rear internal support fittings and longerons of the outer flap structure could result in failure of the outer flaps, and