

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 246

[FNS-2007-0041]

RIN 0584-AD36

#### Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Miscellaneous Vendor-Related Provisions

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations governing the WIC Program to clarify issues that have arisen subsequent to the publication of the WIC Food Delivery Systems Final Rule on December 29, 2000, and to strengthen further the requirements for State vendor management and infant formula cost-containment systems. This rule contains provisions that would prohibit a State agency from requiring an infant formula manufacturer to provide free infant formula or other items in its infant formula rebate bid solicitation and contract; require that a State agency provide an abbreviated administrative review when a vendor receives a WIC civil money penalty (CMP) as a result of a Food Stamp Program (FSP) disqualification; and expand the types of vendor information that a State agency may release for general program purposes. Technical changes were also made to 7 CFR 246.16a due to revisions made to the WIC Food Packages, published in the **Federal Register** December 6, 2007. This rule updates regulatory citations contained in 7 CFR 246.16a that refer to 7 CFR 246.10.

**DATES:** *Effective Date:* This rule is effective June 23, 2008.

*Implementation Date:* State agencies must implement the provisions of this rule no later than October 23, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Debra R. Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, 3101 Park Center Drive, Room 522, Alexandria, Virginia 22302, (703) 305-2746.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be non-significant and was not reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

##### Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). The Administrator, Food and Nutrition Service, has certified that this rule will not have a significant impact on a substantial number of small entities. This rule modifies language used in WIC infant formula rebate solicitations and contracts, as well as in vendor agreements. The effect of these changes would fall primarily on State agencies. Vendors authorized by the WIC Program to provide supplemental foods, some of which are small entities, could also be affected. However, the impact on small entities is expected to be minimal.

##### Unfunded Mandates Reform Act

Title II of the 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 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) that impose costs on State, local, or tribal governments or to the private sector of \$100 million or more in any one year. This rule is, therefore, 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 Programs under No. 10.557. For reasons set forth in the final rule in 7 CFR Part 3015, Subpart V, and related Notice (48 FR 29114), 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 13121.

##### Prior Consultation With State Officials

Prior to drafting the final rule, a comment period was provided to permit State and local agencies and the general public the opportunity to comment on the proposed changes. Further, because the WIC Program is a State-administered, federally funded program, FNS regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program and policy issues. This arrangement allows State and local agencies to provide comments that form the basis for many discretionary decisions in this and other WIC Program rules. We have also received oral and written requests for policy guidance on the implications of the Food Delivery Systems Final Rule from State agencies that deliver WIC services.

##### Nature of Concerns and the Need To Issue This Rule

This rule addresses the need to assure the soundness of infant formula rebate solicitations and contracts. With limited

exceptions, as provided for at 42 U.S.C. 1786(h)(8) and WIC regulations at 7 CFR 246.16a(a), all State agencies must continuously operate a cost containment system for infant formula. Some also have rebates for other supplemental foods, such as infant juice and cereal. As a result, in Fiscal Year 2006, State agencies received approximately \$1.7 billion in rebates on infant formula and other supplemental foods purchased by WIC participants. The rebates that State agencies receive allow the WIC Program to serve an estimated 2 million additional participants annually.

Infant formula manufacturers have questioned the inclusion of requirements to provide free infant formula and other items in infant formula rebate bid solicitations. Receipt of free infant formula reduces the amount of formula that the State agency potentially could purchase under rebate contracts and may lower the level of rebate bids received. A lower rebate could lead to a reduction in the number of eligible persons that the WIC Program is able to serve. This rule modifies the requirements for rebate solicitations and contracts to address this issue and thereby helps to maintain sound infant formula cost containment systems.

Technical changes were made to 7 CFR 246.16a due to revisions made to the WIC Food Packages, published in the **Federal Register** December 6, 2007. This rule updates regulatory citations contained in 7 CFR 246.16a that refer to 7 CFR 246.10.

The rule also addresses two issues affecting WIC vendors. First, State agencies have questioned the need to offer a full administrative review to vendors who receive a WIC civil money penalty as a result of FSP disqualification. State agencies are required to impose a civil money penalty when they determine that an authorized vendor that has been disqualified from the FSP is needed to ensure participant access to supplemental foods. In responding to this issue, the rule seeks to assure a vendor's right to due process while encouraging the most cost-effective use of State agency resources.

In addition, while implementing the WIC Food Delivery Systems Final Rule, State agencies have sought approval to release basic vendor information that the rule designates as confidential. This rule seeks to accommodate State agency requests to release such information, while preserving the overall confidentiality of vendor information.

### **Extent To Which Those Concerns Have Been Met**

The rule would substantially resolve the vendor management problems State agencies have identified. It increases a State agency's flexibility in conducting appeals of a civil money penalty imposed in lieu of reciprocal disqualification from the WIC Program, and in disclosing vendor information as part of sound program management. It also supports the integrity of State agency infant formula rebate systems by prohibiting gratis provision requirements in infant formula rebate solicitations and contracts.

### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. 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 final rule in accordance with Departmental Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts this rule might have on minorities, women, and persons with disabilities. All data available to FNS indicate that protected individuals have the same opportunity to participate in the WIC Program as non-protected individuals. FNS specifically prohibits State and local government agencies that administer the WIC Program from engaging in actions that discriminate against any individual in any of the protected classes; see 7 CFR 246.8(a) for the non-discrimination policy of 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 regulations at 7 CFR 246.8.

### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that 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 the Office of Management and Budget under the Paperwork Reduction Act of 1995.

### **E-Government Act Compliance**

FNS is committed to complying with the E-Government Act, 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.

### **Background**

On July 27, 2005, the Department published a proposed rule at 70 FR 43332, concerning revisions of miscellaneous vendor-related provisions of the WIC Program regulations. The comment period ended on November 25, 2005. Thirteen comment documents were submitted to the Department to provide comments on the proposed revisions. We greatly appreciate these comments, all of which were carefully considered in the development of this final rule. Following is a discussion of each provision as proposed, the comments received, and an explanation of the provisions set forth in this final rule.

#### *1. Gratis Provisions in Infant Formula Rebate Solicitations and Contracts (7 CFR 246.16a(j)(4))*

The Department proposed prohibiting the requirement of gratis infant formula or other items in infant formula rebate solicitations and contracts. The receipt of free infant formula or other items by the State agency from the manufacturer may lower the level of rebate bids received. Therefore, the Department proposed to amend 7 CFR 246.16a(j), by adding to a list of provisions that are prohibited to be included in cost containment contracts the requirement for gratis infant formula and other items.

All but one of the comment letters received supported this proposal. Some of the comment letters supporting the provision also recommended allowing: (1) Exceptions from the gratis prohibition for labels and other inexpensive educational materials that are germane to the contract; (2) gratis provisions only for new brands of infant formula introduced to participants as a result of the bid process; (3) State agencies that choose to provide sample infant formula to pay for it at the net contract price; (4) capping the purchase amount of infant formula samples to no more than one percent of the previous year's volume of infant formula; and (5) gratis provisions as voluntary components of bids which would not be

used in evaluating the bidder's qualifications, or economics of the bid.

One commenter opposing the provision agreed that the elimination of sample or gratis formula would result in lower cost to the manufacturer, more favorable bids, and ultimately lower WIC food costs. However, the commenter stated that formula is needed by clinics for formula challenges and substitutions for a different type of formula when an infant cannot tolerate the formula initially issued. This commenter requested that the Department require State agencies to evaluate the levels and uses of gratis infant formulas to ensure cost effectiveness and to ensure the needs of infant participants are addressed. The Department has considered these recommendations and discusses them below.

One commenter requested State agencies be allowed to purchase limited quantities of sample infant formula. Currently, WIC State agencies are allowed to pay for sample infant formula for clinics to use for formula challenges and substitutions. Contracts can include a provision to allow a State agency to purchase sample formulas at the same net cost as other contract infant formulas. WIC Program funds may not be used to purchase formula for applicants or other individuals who are not WIC participants (7 CFR 246.14(b)(1)(i)). Therefore, State agencies that choose to purchase sample infant formula would be expected to ensure that such formula is issued to a WIC participant only.

Commenters also suggested State agencies be given the authority to request the manufacturer provide labels and mixing instructions for safe handling and safe storage of its products. It is not the intent of this regulation to prohibit such practices by State agencies; however, such items may not be included as a required provision in an infant formula rebate solicitation and contract.

Several commenters suggested State agencies be required to limit the purchase amount of infant formula samples. If a State agency purchases infant formula to be distributed as samples, or receives sample infant formula voluntarily from an infant formula manufacturer, State agencies may want, as a prudent business decision, to consider capping the amount of sample infant formula that is issued, or to establish other procedures for the control and issuance of sample infant formula. However, no changes will be added to this rule requiring such a cap.

FNS continues to believe that contract solicitations should not require any gratis infant formulas, even if these gratis formulas are not included as part of the bid evaluation. Such provisions are considered inappropriate and could have the effect of reducing rebate savings not only to individual State agencies, but also to the WIC Program nationally.

Accordingly, after careful consideration of the comments received, 7 CFR 246.16a(j)(4) in this final rule remains as proposed.

## *2. Abbreviated Administrative Reviews (7 CFR 246.18(a)(1)(ii))*

The Department proposed to require a State agency to offer an abbreviated administrative review when a vendor appeals a WIC CMP imposed in lieu of a disqualification that stems from an FSP disqualification unless, as in the case of all adverse actions subject to abbreviated administrative review, the State agency decides to provide a full administrative review. As a result of the WIC/FSP Vendor Disqualification Rule, 64 FR 13311, March 18, 1999, a reciprocal disqualification imposed by a WIC State agency, *i.e.*, a disqualification based on an FSP disqualification, is not currently subject to administrative or judicial review under the WIC Program. However, if the State agency determines that the vendor is needed to ensure participant access to supplemental foods, the State agency must impose a CMP in lieu of a disqualification as provided in 7 CFR 246.12(l)(1)(ix); under 7 CFR 246.18(a)(1)(i), the imposition of a CMP in lieu of disqualification is subject to a full administrative review.

The Department took the position that a CMP imposed in lieu of a reciprocal disqualification does not warrant a full administrative review, and instead should be subject to an abbreviated administrative review, because at issue are two factual questions only, namely, whether the vendor has been disqualified from FSP and whether the State agency correctly calculated the amount of the CMP. Answers to these questions can easily be established within the context of an abbreviated review; an abbreviated review would be the more cost-effective means of honoring the vendor's due process protections. This would be consistent with the adverse actions for which WIC Program regulations currently allow abbreviated reviews.

All commenters supported the proposal, although one commenter recommended that adverse actions for two other reasons also be made subject to abbreviated administrative review,

including denial of authorization based on an absence of FSP authorization and disqualification resulting from failure to pay a CMP.

The Department agrees that denial of authorization based on an absence of FSP authorization should also be subject to an abbreviated administrative review. Like termination based on change of location, or denial of an application submitted outside of the timeframe for submitting applications, which are subject to abbreviated administrative review under the current regulations, determination of whether an applicant vendor is currently FSP-authorized is also a narrow factual determination. Many WIC State agencies require FSP authorization as a selection criterion for WIC authorization. Although not a mandatory selection criterion, requiring FSP authorization as a selection criterion for WIC authorization helps the WIC State agency to screen vendor applicants regarding common requirements of the two programs such as business integrity and valid documentation of ownership.

However, unlike the absence of FSP authorization, failure to pay a CMP may involve issues that are beyond a narrow factual determination. Therefore, the Department will consider seeking public comment on whether an abbreviated administrative review rather than a full administrative review should be provided for failure to pay a CMP in a future rulemaking.

Accordingly, 7 CFR 246.18(a)(1)(ii) in this final rule remains as proposed except that denial of authorization based on an absence of FSP authorization will be included as an additional adverse action which is subject to an abbreviated administrative review.

## *3. Confidentiality of Vendor Information (7 CFR 246.26(e))*

The current 7 CFR 246.26(e) restricts the use or disclosure of information that individually identifies a vendor, except for the vendor's name, address and authorization status, to persons directly connected with the administration or enforcement of WIC or FSP; persons directly connected with the administration or enforcement of any Federal or State law; or vendors who are subject to an adverse action.

The Department proposed to amend 7 CFR 246.26(e) to expand the types of vendor information allowed for general release and thus not be subject to confidentiality restrictions, including the vendor's telephone number, Web site and e-mail address, WIC identification number, and store type. The term "store type" refers to ordinary

terms for retail food stores, such as "grocery store," "chain store," and "convenience store," but not to specialized regulatory terms such as "above-50-percent vendor" or "WIC-only store". "Store type" was included in the preamble of the proposed rule, but inadvertently omitted from the proposed rule itself. The Department believed that this increased information would allow WIC State agencies to provide participants with vendors' telephone numbers and Web sites and/or e-mail addresses to assist them with locating authorized vendors in their neighborhood or local service area, and that knowing a vendor's store type also would help participants to determine where to transact their food instruments. Further, the Department proposed to allow WIC State agencies to issue public notices of vendor disqualifications (including the length of disqualification and the reason for the disqualification) and to provide this information to authorized vendors and program participants; the Department believed that issuing public notices of WIC vendor disqualifications would deter vendor fraud and abuse in the WIC Program.

The comments were generally supportive, but requested several clarifications and revisions. Many of the commenters objected to release of the vendor identification number, contending that this would not assist the participants or public, and may lead to fraud, *e.g.*, creation of a counterfeit vendor stamp. Also, one of the commenters asserted that knowing the store type of a vendor would not help participants to choose where to shop. Finally, one of the commenters stated that the name of the owner should be released, since this would assist the State health licensing process. The Department agrees that the vendor identification number would be of little value, and that making WIC vendor identification numbers public could lead to fraud.

However, the Department cannot consider making the name of the owner available to the general public in this final rule, since the name of the owner was not specified in 7 CFR 246.26(e) of the proposed rule. Removing the confidentiality of such personal information should not be undertaken without an opportunity for comment. Also, the Department disagrees that the store type should not be made available to the general public, since, unlike the name of the owner, there is no privacy issued involved. Accordingly, the vendor identification number and the name of the owner are not included in 7 CFR 246.26(e) of this final rule, while

the store type of the vendor is included in 7 CFR 246.26(e).

One of the commenters recommended that 7 CFR 246.26(e)(2) should be revised to include local ordinances as well as Federal and State laws regarding the persons directly connected with administration or enforcement, because a city may be responsible for licensing grocery stores, and also because the WIC State agency could benefit by having another source of information on ownership. Another commenter asserted that FNS should clarify that infant formula manufacturers participating in the cost containment process are persons directly connected with the administration or enforcement of the WIC Program in 7 CFR 246.26(e)(1). This commenter pointed out that these companies play a unique and important role regarding WIC, and thus need to know how the retail presence of their products will be impacted by the acceptance of a bid in order to reduce uncertainties which might impede aggressive bidding, and also need to ensure that participants have access to infant formula when a State agency transitions to a new contractor or during periods of inventory shortages. The information of interest includes only the names of the top 20 retailers and their associated percentage of WIC volume.

The Department agrees that the State agency should be able to share confidential vendor information with persons who are directly connected with the administration or enforcement of local laws or ordinances on such matters as licensing grocery stores, under agreement with the State agency restricting third party disclosure. Accordingly, 7 CFR 246.26(e)(2) of this final rule includes the reference to local laws and ordinances as well as Federal and State laws. However, the Department does not agree that infant formula manufacturers are persons directly connected with the administration or enforcement of the WIC Program within the meaning of 7 CFR 246.26(e)(1). Although infant formula manufacturers have a unique and important role regarding the WIC Program, these manufacturers do not administer or enforce the Federal, State, or local laws, rules, regulations, or ordinances which govern the WIC Program. Their contracts with WIC State agencies do not include responsibilities for such programmatic activities as the certification of participants, the authorization of vendors, the operation of State agency Management Information Systems, the conducting of audits or investigations on behalf of State agencies, or any other activities applying the Federal WIC-related laws,

rules, and regulations, or for such responsibilities related to State or local laws or ordinances. The redemption volume of individual WIC vendors is confidential vendor information under 7 CFR 246.26(e), and thus may not be disclosed by WIC State agencies to infant formula manufacturers under 7 CFR 246.26(e)(1) because infant formula manufacturers are not persons directly connected with the administration or enforcement of the WIC Program.

Finally, several commenters expressed reservations or recommended restrictions regarding State agencies issuing public notices of WIC vendor disqualifications. One of the commenters objected to release of the disqualification information because the proposed provision is so broad that it could compromise investigative techniques and lead to release of investigative reports, and that release of derogatory information could unfairly damage the reputation of a vendor who later prevails on appeal. One commenter objected to release of the disqualification information because this may be used to justify an expansive discovery process in legal proceedings regarding information on vendors other than the vendor seeking discovery, recommending that the proposed provision needs to be more specific and should cover CMPs as well as disqualifications. Another commenter asserted that there should be equal treatment for participants and program officials, *i.e.*, public notification of participants and program officials found guilty of fraud; this commenter also asserted that such notification should only occur after due process has been exhausted.

The Department agrees with many of these concerns. To accommodate all of these issues, disqualification information is addressed by a new 7 CFR 246.26(e)(4) in this final rule. This new provision explicitly provides that a State agency may release such information at its discretion, that the imposition of CMPs may be included as well as disqualifications, and that State agencies are only permitted to release the vendor's name, address, length of the disqualification or amount of the CMP, and a summary of the reason(s) for such sanction provided in the notice of adverse action. Further, the new provision provides that such information may not be disclosed unless the vendor's right to appeal through the judicial as well as administrative review procedures has been exhausted. Finally, under this new provision, this information may only be disclosed to other authorized vendors or vendor applicants, since such disclosure is

intended to deter vendor violations, not the violations of participants or program officials. If a State agency does not view this revised language as meeting all of its concerns, then the State agency may exercise its discretion to not issue such notices.

#### 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.

Accordingly, for the 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

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

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

■ 2. In § 246.16a:

■ a. Amend paragraph (c)(3)(i), (c)(3)(ii)(A) and (B) by removing the reference “§ 246.10(c)(1)(i)” wherever it appears and replacing it with “§ 246.10(e)(1)(iii) and § 246.10(e)(2)(iii)”.

■ b. Amend paragraph (c)(4)(i) by removing the reference “§ 246.10(c)(1)(vi)” and replacing it with “§ 246.10(e)(9)(Table1)”.

■ c. Amend paragraph (e) by removing the reference “§ 246.4(a)(14)(xi)” and replacing it with “§ 246.4(a)(14)(x)”.

■ d. Amend paragraph (j)(2) by removing the reference “§ 246.10(f); or” and replacing it with “§ 246.10(g);”.

■ e. Amend paragraph (j)(3) by removing the period at the end of the paragraph and adding in its place a semicolon followed by the word “or”; and

■ f. Add paragraph (j)(4) to read as follows:

#### § 246.16a Infant formula cost containment.

\* \* \* \* \*

(j) \* \* \*

■ (4) Require infant formula manufacturers to provide gratis infant formula or other items.

\* \* \* \* \*

■ 3. In § 246.18, add new paragraphs (a)(1)(ii)(I) and (a)(1)(ii)(J) to read as follows:

#### § 246.18 Administrative review of State agency actions.

(a) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(I) A civil money penalty imposed in lieu of disqualification based on a Food

Stamp Program disqualification under § 246.12(l)(1)(vii) and,

(J) Denial of an application based on a determination of whether an applicant vendor is currently authorized by the Food Stamp Program.

\* \* \* \* \*

■ 4. In § 246.26:

■ a. Amend the first sentence of the introductory text of paragraph (e) by removing the words “and authorization status” and by adding, in their place, the words “, telephone number, Web site/e-mail address, store type, and authorization status”;

■ b. Amend paragraph (e)(2) by adding the words “or local law or ordinance” at the end of the first sentence; and,

■ c. Add a new paragraph (e)(4) to read as follows:

#### § 246.26 Other provisions.

\* \* \* \* \*

(e) \* \* \*

■ (4) At the discretion of the State agency, all authorized vendors and vendor applicants regarding vendor sanctions which have been imposed, identifying only the vendor's name, address, length of the disqualification or amount of the civil money penalty, and a summary of the reason(s) for such sanction provided in the notice of adverse action. Such information may be disclosed only following the exhaustion of all administrative and judicial review, in which the State agency has prevailed, regarding the sanction imposed on the subject vendor, or the time period for requesting such review has expired.

\* \* \* \* \*

Dated: April 10, 2008.

**Roberto Salazar,**

*Administrator, Food and Nutrition Service.*

[FR Doc. E8-8767 Filed 4-22-08; 8:45 am]

**BILLING CODE 3410-30-P**

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-0411; Directorate Identifier 2008-NM-061-AD; Amendment 39-15488; AD 2008-09-07]

**RIN 2120-AA64**

#### Airworthiness Directives; Boeing Model 757 Airplanes and Model 767-200, 767-300, and 767-300F Series Airplanes

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Boeing Model 757 airplanes and Model 767-200, 767-300, and 767-300F series airplanes. This AD requires revising the Limitations section of the airplane flight manual to advise the flight crew of procedures to follow to ensure that a fuel filter impending bypass condition due to gross fuel contamination is detected in a timely manner. This AD was prompted by an error in the operating program software (OPS) of the engine indication and crew alerting system (EICAS). The error prevents the display of an advisory message to the flight crew of a left engine fuel filter contamination and imminent bypass condition, which may indicate an imminent multiple engine thrust loss or engine malfunction event due to fuel contamination. We are issuing this AD to prevent malfunction and thrust loss on both engines, which could result in a forced off-airport landing.

**DATES:** This AD is effective May 8, 2008.

We must receive comments on this AD by June 23, 2008.

**ADDRESSES:** You may send comments by any of the following methods:

• **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

• **Fax:** 202-493-2251.

• **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Judy Coyle, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind