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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC30

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Bloodwork Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations governing the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) to allow State agencies the option to defer the collection of blood test data for up to 90 days after the date of certification, so long as the applicant is determined to have at least one qualifying nutrition risk factor at the time of certification. In addition, this final rule will expand the current regulatory standard of the maximum age of blood test data used to assess nutritional risk for WIC certification.

Although blood tests may no longer be a mandatory part of each WIC applicant's certification intake process, such tests are still required for the purposes of assessing nutritional status, nutrition surveillance, providing nutrition education, further tailoring food packages to meet nutritional needs, and referring to appropriate health and social services in the community.

EFFECTIVE DATE: January 18, 2000.

FOR FURTHER INFORMATION CONTACT: Debbie Whitford at (703) 305–2730 during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This 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 rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Samuel Chambers, Jr., 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 provides State and local agencies with increased flexibility in meeting certification requirements for the Program. Participants and applicants are also affected by changes in the certification process which should result in expedited receipt of program services.

Paperwork Reduction Act

This rule imposes no new reporting or recordkeeping requirements. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), current reporting and recordkeeping requirements for Part 246 were approved by the Office of Management and Budget under Control Number 0584–0043.

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 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 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 this preamble. Prior to any judicial challenge to the application of the 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 required under section 202 of the UMRA, section 205 generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective 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

On November 19, 1998, the Department published a proposal at 63 FR 64211 regarding changes in bloodwork requirements for the WIC Program. Three specific concerns compelled the Department to reassess the blood testing requirements.

First, current WIC blood test requirements do not generally correspond with State, local, and generally accepted periodicity schedules and guidelines. Second, the move towards managed care programs as the primary source of health care has affected the ability of WIC local agencies to obtain hematological referral data in a timeframe that coincides with WIC certification periods. The source of health care for WIC participants and others has been shifting in many States from local health department clinics, many of which collected bloodwork to meet WIC's needs on site at the WIC clinic, to managed care settings in which blood tests are performed off site from the WIC clinic and thus provided to WIC on a referral basis. Third,

bloodwork data obtained from referral sources is becoming more frequently the norm in WIC because of Federal, State and local policies limiting blood handling only to persons or laboratories with specified medical credentials, thereby precluding some WIC local agencies from collecting or analyzing blood samples.

A total of one hundred comment letters were received during the comment period, which ended on January 19, 1999. The Department has given all comments careful consideration in the development of this final rule and would like to thank all commenters who responded to the proposal. Following is a discussion of each provision, as proposed, comments received, and an explanation of the provisions set forth in this final rule.

1. Hematological Tests for Anemia (§ 246.7(e), (e)(1), and (e)(1)(i)–(ii))

The vast majority of commenters supported the Department's proposal to no longer require a blood test at the time of each WIC applicant's certification intake process as long as at least one qualifying nutrition risk factor is present for the applicant. Such tests must, however, be collected within 90 days of the certification date. Several commenters wrote that this provision will remove a barrier to service that many applicants experience. As one commenter wrote, ''While these changes will certainly be appreciated by WIC Programs and practitioners, the main beneficiaries will be the families themselves.''

Given the importance of anemia testing in WIC's target population and WIC's long and successful track record in reducing national rates of anemia, § 246.7(e)(1)(i) continues to require a blood test but will permit its completion within 90 days of the date of certification, except as noted for infants (discussed later in this preamble). The test data will be used for the critical purposes of appropriately assessing an applicant's nutritional status, nutrition surveillance, providing nutrition education, tailoring food packages and referring to health care or social services. Although the Department considers the collection of blood test data at certification as optimal to assist with performing the most timely and complete nutrition assessment and providing appropriate nutrition education and referrals, this rule addresses the practical realities faced by State agencies and the difficulties some participants encounter obtaining blood tests at the time of, or previous to, the certification intake process. The Department believes that this provision, if implemented with the proper controls, will provide greater flexibility and reduce barriers to service without lessening program quality. State agencies will, however, be required to provide for blood tests at certification for income eligible applicants with no other documented risk condition (with the exception of presumptively eligible pregnant women as discussed below) in order to determine if the applicant is at nutritional risk due to anemia.

2. Timing of Nutritional Risk Data (§ 246.7(e), (e)(1), and (e)(1)(i)–(ii))

Timing of Bloodwork

The proposed rule was intended to allow sufficient flexibility to State agencies to accommodate generally accepted recommendations of maternal and child health and medical experts. In April 1998, the Centers for Disease Control and Prevention (CDC) issued a document titled, ''Recommendations to Prevent and Control Iron Deficiency in the United States.'' These recommendations are intended to guide primary health care providers in preventing and controlling iron deficiency in infants, preschool children, and women of childbearing age, particularly pregnant women—populations served by the WIC Program which are at high risk for iron-deficiency anemia. Another recognized organization, the American Academy of Pediatrics (AAP), also provides guidance for anemia screening in their publication ''Recommendations for Preventive Pediatric Health Care.'' However, these recommendations are for children not at risk or who ''* * * have no manifestations of any important health problems, and are growing and developing in satisfactory fashion.'' Taking into consideration that the CDC ''Universal Screening'' recommendations specifically address the WIC target population, they were adopted as the basis for the periodicity of anemia screening outlined in the proposed rule. Commenters generally supported the anemia screening provisions outlined in the proposal. As such, they have been adopted as final at § 246.7(e)(1)(ii)(B). The screening timeframes are discussed below.

Women

For pregnant, breastfeeding (those being certified at 0–6 months postpartum), and other postpartum women, results of a hematological test for anemia must be obtained at certification or within 90 days of the date of certification (when the applicant has at least one qualifying nutritional risk present at certification). Such test may be performed by the WIC agency or test results may be obtained from a referral source. The CDC recommends that anemia screening be done at the earliest opportunity during pregnancy and at 4 to 6 weeks after delivery for postpartum and breastfeeding women. Blood test results must be reflective of women applicants' categories, meaning that the test must have been taken for pregnant women during pregnancy and for postpartum or breastfeeding women following termination of pregnancy. For breastfeeding women who are 6–12 months postpartum, no additional blood test is necessary if a test was performed after the termination of their pregnancy.

Regarding pregnant women, current WIC regulations at Section 246.7(e)(1)(iii), provide State agencies additional flexibility by allowing them to presume that income-eligible pregnant women are nutritionally at risk and thus eligible to participate in the program. Presumptively eligible women can be certified immediately and can receive program benefits for 60 days from the date they were certified, by which time a nutrition assessment must be conducted to establish nutritional risk. If the subsequent assessment determines that the woman does not meet qualifying nutritional risk criteria, the certification terminates on the date of the determination, or 60 days after the participant was presumptively certified, whichever is sooner. This final rule defers the bloodwork requirement at certification or within the 60-day presumptive certification period for these women, for up to 90 days after the certification date. However, if the nutrition assessment performed during the 60-day period does not include anemia testing and does not identify any other qualifying risk factor, a blood test must be performed or obtained from referral sources before that 60-day period elapses to permit continuity of service for women found to be anemic. This requirement enables such pregnant women to have the temporary presumptive certification extended to a full certification period without disruption to continued receipt of WIC benefits, should they be found anemic.

Infants

Consistent with the 1998 CDC recommendations Section 246.7 (e)(1)(ii)(B) requires all infants 9 months of age or older to have a hematological test for anemia between 9 and 12 months of age. Such test may be performed by the WIC agency or test results may be obtained from a referral source. A blood test taken between 6 and 9 months of age may be used to meet the test requirement, however

State agencies are encouraged to obtain blood test data between 9 and 12 months of age as recommended by CDC. In addition, recognizing that the CDC guidelines state that blood tests for anemia for infants under 6 months of age may be appropriate for preterm infants and low birthweight infants who were not fed iron-fortified formula, this final rule permits, but does not require, blood tests for such infants.

The Department also wishes to clarify that in cases where the State agency has opted to certify infants under 6 months of age up to their first birthday, as permitted in Section 246.7(g)(1)(iv), such infants must receive a blood test between 9 and 12 months of age. The extension of the certification period up to the first birthday is only permitted provided the quality and accessibility of health care services are not diminished. A blood test for anemia is considered a critical component of health care services and thus, must be performed or obtained from referral services. The CDC recommendations identify the period between 9 and 12 months as the optimal timeframe for anemia testing for infants. Also considered as a critical component of health care services during the one-year period, is securing current length and weight measurements in order to assess the infant's growth.

State agencies that certify infants at 6 month intervals must ensure that infants 9 months of age or older receive a blood test. If a blood test is taken at the 6 month certification, such test can be used to meet the infant bloodwork requirement.

Children

For children, a hematological test for anemia must be obtained at certification or within 90 days of the date of certification (when the applicant has at least one qualifying nutritional risk). Such test may be performed by the WIC agency or test results may be obtained from a referral source. State agencies must perform a blood test for children between 12 and 24 months of age and at least annually for children over the age of 2 years.

For children over 1 year, CDC recommends that children have a blood test 6 months after the infant test, i.e., around 15 to 18 months of age, and annually thereafter from ages 2 to 5 years. The provision requiring a blood test between 12 and 24 months allows the State Agency flexibility in accommodating the CDC recommended 6-month follow-up to the infant bloodwork. While for most children, this would fall between 15 and 18 months of age, this final rule expands the allowable timeframe to accommodate practical logistical difficulties and circumstances. For example, if there is no bloodwork done during infancy, or it is taken during infancy at a time other than the recommended 9 to 12-month period, or there are other logistical complications, it could be impractical to obtain bloodwork during the optimal 15 to 18-month period. Nevertheless, because pediatric health authorities generally recommend that children have a blood test during the most vulnerable period of 15 to 18 months, when anemia is more likely to become manifest, State agencies are expected to make every effort to coordinate the scheduling of bloodwork for children between 12 and 24 months old within the recommended 15 to 18 month timeframe.

The Department also wishes to clarify that although bloodwork data obtained when an infant was between 9 and 12 months old may be used to certify a 12-month old as a child, such data cannot be used to fulfill the blood test that is required between 12 and 24 months. Children who had an inadequate iron intake during infancy are at greatest risk of developing anemia between 12 and 24 months of age. Thus, for example, a child who is first certified for WIC and first tested at or before 12 months of age, must have a follow-up test by 24 months of age and preferably at 18 months of age (as recommended by CDC and which coincides with WIC 6 month certification periods). As such, the provision at Section 246.7(e)(1) which allowed the blood test for children to be waived, has been modified to state that for children ages two and older who were determined to be within the normal range at their last certification, the blood test may be waived, provided that a blood test is performed at least once every 12 months. For those children ages two and older with a positive anemia screening result at their last certification a blood test is required at six-month intervals.

The following table summarizes the anemia screening requirements as set for in this rule:

BLOODWORK REQUIREMENTS FOR WIC CERTIFICATION

Category	Anemia screening schedule
Women.	
Pregnant	During their current pregnancy.
Postpartum	After the termination of their pregnancy.
Breastfeeding	After the termination of their pregnancy.*
Infants	Once between the ages of 9–12 months.* *
Children	Once between the ages of 12–24 months.* * * (One blood test at or before 12 months *cannot* fulfill the requirement for the infant and the 12–24 month child screening) Annually between the ages of 24–60 months.****

* For Breastfeeding women 6–12 months postpartum, no additional blood test is necessary if a blood test was obtained after the termination of pregnancy.
** A blood test taken between 6–9 months of age can be used to meet this screening requirement.
*** A blood test is recommended 6 months after the infant test, at around 15 to 18 months of age.
**** Children ages 24–60 months with a positive anemia screening result require a follow-up blood test at 6 month intervals.

Age of Bloodwork

As a result of comments received on the proposed rule and to be more consistent with CDC guidelines, the Department has revised its position with regard to the age of hematological referral data. Under the proposal, hematological referral data could not be more than 90 days old. Commenters questioned why the 90-day time frame was necessary given the specifics of the CDC guidelines we were proposing to adopt. Commenters viewed the 90-day limit as an unnecessary administrative barrier to coordination with other health providers. In response to commenter concerns, the Department has determined there is no longer a need to establish a maximum allowable age of referral hematological data. Instead, referral hematological data must meet the following conditions regardless of the age of such data:

(1) must be reflective of a woman applicant's category, meaning the test must have been taken for pregnant

women during pregnancy and for postpartum or breastfeeding women following termination of pregnancy;

(2) must conform to the anemia screening schedule for infants and children as outlined in the above table; and

(3) the date and results of the anemia screening must be obtained and recorded on the certification form as currently required in Section 246.7(i)(4).

This decision recognizes that if blood test results are within normal limits and meet the conditions as stated above, a WIC agency need not perform an additional anemia screening.

Failure to Provide Bloodwork Data Within 90 Days

Many commenters requested clarification for situations when a participant fails to provide referral bloodwork data within 90 days following certification. The Department would like to emphasize that if a State agency chooses to implement the option to obtain blood test data within 90 days of certification, the State agency must put into place procedures to ensure receipt of the data. Examples of appropriate procedures may include reminders and/or instituting monthly food instrument pick-up for participants who have not provided the test data. Because the participant has a risk condition that makes the individual eligible for participation, the Department does not believe it would be appropriate to impose sanctions on the participant for failure to provide the referral data. However, recognizing WIC's important role in anemia screening, it is important that blood test data be obtained. Therefore, the Department reserves the right to disallow this option for those State agencies that exhibit poor performance in obtaining the referral data. (Poor performance would include, for example, if a management evaluation indicates that bloodwork data for participants are frequently *not* collected within 90 days after certification.) A State agency exercising the option to allow data up to 90 days after the date of certification may in turn disallow this provision in a local agency that has exhibited poor performance in obtaining referral data. The Department believes that this approach fairly balances the need for accountability and State flexibility.

Weight and Height or Length

The Department considers the effort at certification to measure and record height or length and weight and collect dietary and other medical data for all applicants to be minimal but necessary during the intake process, and not subject to the difficulties related to bloodwork assessment. These timely measurements and data are fundamental to the accuracy of nutritional risk assessment for all categories of applicants, but especially for infant and pregnant women applicants. Using weight and length data that were taken at 2 months of age as a basis to certify that same infant at 4 months of age represents questionable nutrition services standards. However, almost all who commented on this provision requested that the acceptable age of anthropometric data remain at 60 days. Many commented that the common use of referral data for WIC certification necessitates flexibility in terms of age of data and that reducing the allowable age of data could result in a barrier to service for the participant. In recognition of these comments, the Department has left this provision unchanged. State agencies have the option to use anthropometric data up to 60 days old. However, the Department is concerned about current State agency practice regarding the measurement of weight and height or length. Analysis of the participant characteristics data indicates that, as of April 1996, approximately 5 percent of all enrollees for whom data were submitted had anthropometric measurements that were more than 60 days old at certification. By State agency, the range was from 0 to 20 percent. However, 61 out of 88 State agencies had rates of less than 1 percent. Applicants not providing appropriate referral data are expected to be weighed and measured at certification. Current regulations do not allow for deferring the measurement of weight and height or length beyond the date of certification.

The Department wishes to stress that anthropometric data must reflect current health and categorical status. Therefore, although data may be up to 60 days old, such data may not be appropriate for pregnant women, or infants and children during critical periods of growth. As such, State agencies should use appropriate judgment in applying this option. The Department will continue to monitor, via management evaluations, the appropriate use of this provision to ensure the integrity of nutrition assessment in the WIC Program.

State Agency Options for Implementation

Many commenters requested clarification on a State's option to implement the various provisions outlined in the proposal. A State agency may choose to implement some, none or all of the options contained in this final rule. For example,

- a State agency may choose to allow the use of referral bloodwork data [as long as it meets the conditions described in Section 246.7 (e)(1)(i)], and not implement the option that permits bloodwork data to be collected up to 90 days after certification.
- a State agency may choose to establish a more restrictive timeframe for the collection of bloodwork data, e.g., 45 days prior to or after certification date, rather than 90 days as allowed in this rule.
- a State agency may allow local agency variations to accommodate differences in local health care delivery systems.
- a State agency may choose to collect weight and height or length data at certification, but allow the use of referral bloodwork data [as long as it meets the conditions described in Section 246.7(e)(1)(i)] or the collection of bloodwork data within 90 days of certification.

3. Allowable Costs for Anemia Tests (§ 246.14 (c)(2)(i)–(iv))

The proposal would have allowed State agencies to perform one additional hematological test as medically necessary in follow-up to a finding of anemia within a certification period. This follow-up test would be an allowable WIC cost for nutrition assessment purposes when deemed necessary for health monitoring as determined by the WIC competent professional authority (CPA). Commenters generally supported this provision, but expressed concern that WIC could experience increased pressure from Health Departments to perform such tests. The Department has retained in this final rule at § 246.14(c)(2)(i) the option to perform the follow-up test. The Department wishes to emphasize that while this rule would permit WIC to pay for one follow-up test, State agencies are encouraged to weigh the cost effectiveness of WIC expenditures for such purposes against other competing and critical WIC needs. The Department generally believes that follow up monitoring of blood values of persons with anemia is largely the responsibility of health care providers, and should be treated as a medical, rather than solely a nutritional, concern. As such, the Department encourages State agencies to explore other locally available sources for ongoing health care and assessments for WIC participants with anemia.

4. State Plan (§ 246.4 (a)(11)(i))

The proposal would have required State agencies to incorporate their blood test data requirements and timeframes in detail in the ''Certification Procedures'' section of their State Plan Procedure Manual. Commenters supported this provision and it has been adopted in this final rule at § 246.4(a)(11)(i). The Department wishes to point out that given the new flexibility regarding the timeframe for the collection of bloodwork data, it is important to document the date of the bloodwork results on certification forms, as required in Section 246.7(i)(4). The recording of the date is important especially in the context of nutrition surveillance and participant characteristic information that is collected at periodic intervals and provides invaluable information. Appropriate procedures that must be followed when blood test data are obtained include: (1) make notations in the participant's file with respect to nutrition risk factors listed and priority as appropriate; (2) document the date the nutrition risk data were taken if different from the date of certification; (3)inform the woman or parent/guardian of the outcome and meaning of the blood test if the results show anemia; (4) provide follow-up nutrition education, if appropriate; (5) make adjustments in the food package, as appropriate; and (6) make referrals to health care or social services, as appropriate.

List of Subjects in 7 CFR Part 246

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

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 § 246.4, paragraph (a)(11)(i) is revised to read as follows:

§ 246.4 State plan.

(a) * * *

(11) * * *

(i) Certification procedures, including a list of the specific nutritional risk criteria by priority level which cites conditions and indices to be used to determine a person's nutritional risk, hematological data requirements including timeframes for the collection of such data, the State agency's income guidelines for Program eligibility, and any adjustments to the participant priority system made pursuant to § 246.7(e)(4) to accommodate high-risk postpartum women or the addition of Priority VII;

* * * * *

3. In § 246.7:

a. The introductory text of paragraph (e) is revised;

b. The introductory text of paragraph (e)(1) is removed;

c. Paragraphs (e)(1)(i), (e)(1)(ii), (e)(1)(iii), and (e)(1)(iv) are redesignated as paragraphs (e)(1)(iii), (e)(1)(iv), (e)(1)(v), and (e)(1)(vi) respectively;

d. New paragraphs (e)(1)(i) and (e)(1)(ii) are added; and

e. A heading is added to newly redesignated paragraphs (e)(1)(iii), (e)(1)(iv), and (e)(1)(vi).

f. Newly redesignated paragraph (e)(1)(v) is revised.

The revisions and additions read as follows:

§ 246.7 Certification of participants.

* * * * *

(e) *Nutritional risk.* To be certified as eligible for the Program, applicants who meet the Program's eligibility standards specified in paragraph (c) of this section must be determined to be at nutritional risk. A competent professional authority on the staff of the local agency shall determine if a person is at nutritional risk through a medical and/or nutritional assessment. This determination may be based on referral data submitted by a competent professional authority not on the staff of the local agency. Nutritional risk data shall be documented in the participant's file and shall be used to assess an applicant's nutritional status and risk, tailor the food package to address nutritional needs, design appropriate nutrition education, and make referrals to health and social services for follow-up, as necessary and appropriate.

Except as stated in paragraph (e)(1)(v) of this section, at least one determination of nutritional risk must be documented at the time of certification in order for an income eligible applicant to receive WIC benefits.

(1) *Determination of nutritional risk.*

(i) *Required nutritional risk data.* (A) At a minimum, height or length and weight measurements shall be performed and/or documented in the applicant's file at the time of certification. In addition, a hematological test for anemia such as a hemoglobin, hematocrit, or free erythrocyte protoporphyrin test shall be performed and/or documented at certification for applicants with no other nutritional risk factor present. For applicants with a qualifying nutritional risk factor present at certification, such test shall be performed and/or documented within 90 days of the date of certification. However, for breastfeeding women 6–12 months postpartum, such hematological tests are not required if a test was performed after the termination of their pregnancy. In addition, such hematological tests are not required, but are permitted, for infants under nine months of age. All infants nine months of age and older (who have not already had a hematological test performed or obtained, between the ages of six and nine months), shall have a hematological test performed between nine and twelve months of age or obtained from referral sources. This hematological test does not have to occur within 90 days of the date of certification. Only one test is required for children between 12 and 24 months of age, and this test should be done 6 months after the infant test, if possible. At the State or local agency's discretion, the hematological test is not required for children ages two and older who were determined to be within the normal range at their last certification. However, the hematological test shall be performed on such children at least once every 12 months. Hematological test data submitted by a competent professional authority not on the staff of the local agency may be used to establish nutritional risk. However, such referral hematological data must:

(*1*) Be reflective of a woman applicant's category, meaning the test must have been taken for pregnant women during pregnancy and for postpartum or breastfeeding women following termination of pregnancy;

(*2*) Conform to the anemia screening schedule for infants and children as outlined in paragraph (e)(1)(ii)(B) of this section; and

(*3*) Conform to recordkeeping requirements as outlined in paragraph (i)(4) of this section.

(B) Height or length and weight measurements and, with the exceptions specified in paragraph (e)(1)(v) of this section, hematological tests, shall be obtained for all participants, including those who are determined at nutritional risk based solely on the established nutritional risk status of another person,

as provided in paragraphs (e)(1)(iv) and (e)(1)(v) of this section.

(ii) *Timing of nutritional risk data.* (A) *Weight and height or length.* Weight and height or length shall be measured not more than 60 days prior to certification for program participation.

(B) *Hematological test for anemia.* (*1*) For pregnant, breastfeeding, and postpartum women, and child applicants, the hematological test for anemia shall be performed or obtained from referral sources at the time of certification or within 90 days of the date of certification. The hematological test for anemia may be deferred for up to 90 days from the time of certification for applicants who have at least one qualifying nutritional risk factor present at the time of certification. If no qualifying risk factor is identified, a hematological test for anemia must be performed or obtained from referral sources (with the exception of presumptively eligible pregnant women).

(*2*) Infants nine months of age and older (who have not already had a hematological test performed, between six and nine months of age, by a competent professional authority or obtained from referral sources), shall between nine and twelve months of age have a hematological test performed or obtained from referral sources. Such a test may be performed more than 90 days after the date of certification.

(*3*) For pregnant women, the hematological test for anemia shall be performed during their pregnancy. For persons certified as postpartum or breastfeeding women, the hematological test for anemia shall be performed after the termination of their pregnancy. For breastfeeding women who are 6–12 months postpartum, no additional blood test is necessary if a test was performed after the termination of their pregnancy. The participant or parent/guardian shall be informed of the test results when there is a finding of anemia, and notations reflecting the outcome of the tests shall be made in the participant's file. Nutrition education, food package tailoring, and referral services shall be provided to the participant or parent/guardian, as necessary and appropriate.

(iii) *Breastfeeding dyads.* * * *

(iv) *Infants born to WIC mothers or women who were eligible to participate in WIC.* * * *

(v) *Presumptive eligibility for pregnant women.* A pregnant woman who meets the income eligibility standards may be considered presumptively eligible to participate in the program, and may be certified immediately without an evaluation of nutritional risk for a period up to 60 days. A nutritional risk evaluation of such woman shall be completed not later than 60 days after the woman is certified for participation. A hematological test for anemia is not required to be performed within the 60-day period, but rather within 90 days, unless the nutritional risk evaluation performed does not identify a qualifying risk factor. If no qualifying risk factor is identified, a hematological test for anemia must be performed or obtained from referral sources before the 60-day period elapses. Under the subsequent determination process, if the woman does not meet any qualifying nutritional risk criteria, including anemia criteria, the woman shall be determined ineligible and may not participate in the program for the reference pregnancy after the date of the determination. Said applicant may subsequently reapply for program benefits and if found to be both income eligible and at qualifying nutritional risk may participate in the program. Persons found ineligible to participate in the program under this paragraph shall be advised in writing of the ineligibility, of the reasons for the ineligibility, and of the right to a fair hearing. The reasons for the ineligibility shall be properly documented and shall be retained on file at the local agency. In addition, if the nutritional risk evaluation is not completed within the 60-day timeframe, the woman shall be determined ineligible.

(vi) *Regression.* * * *

* * * * * *

4. In § 246.14, paragraph (c)(2) is revised to read as follows:

§ 246.14 Program costs.

* * * * * *

(c) * * *

(2) The cost of Program certification, nutrition assessment and procedures and equipment used to determine nutritional risk, including the following:

(i) Laboratory fees incurred for up to two hematological tests for anemia per individual per certification period. The first test shall be to determine anemia status. The second test may be performed only in follow up to a finding of anemia when deemed necessary for health monitoring as determined by the WIC State agency;

(ii) Expendable medical supplies;

(iii) Medical equipment used for taking anthropometric measurements, such as scales, measuring boards, and skin fold calipers; and for blood analysis to detect anemia, such as spectrophotometers, hematofluorometers and centrifuges; and

(iv) Salary and other costs for time spent on nutrition assessment and certification.

* * * * * *

Dated: December 10, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–32586 Filed 12–15–99; 8:45 am]

BILLING CODE 3410–30–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AC31

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Board of Directors of the FDIC (Board) is amending its regulation governing assessments to change the reporting date used to determine the capital component of the assessment risk classifications assigned by the FDIC to insured depository institutions. This change moves that date closer by one calendar quarter to the semiannual assessment period for which the capital component is assigned, and it permits the FDIC to use more up-to-date information in determining institutions' assessment risk classifications. The new date coincides with the date currently used to determine the supervisory component of the assessment risk classification.

To permit the use of more current capital information, the Board is further amending the assessments regulation to shorten from 30 days to 15 days the prior notice the FDIC sends to institutions advising them of their assessment risk classifications for the following semiannual assessment period. The Board is adopting the same reduction for the invoice sent by the FDIC each quarter showing the amount of the assessment payment due for the next quarterly collection. At the other end of the process, the Board is increasing from 30 days to 90 days the time within which an institution may request review of its assessment risk classification.

Additionally, to reflect a shift of certain assessment functions within the FDIC, the Board is revising two of the references to FDIC offices in the regulation. Also, as proposed, the amendment corrects a typographical error in the form of a misstated cross-reference to another FDIC regulation.

Finally, in response to concerns raised by comments that the FDIC