

(iv) Coordinates ADR activities throughout the Department; and

(vi) Monitors Agency ADR programs and reports at least annually to the Secretary on the Department's ADR activities.

(b) [Reserved]

14. A new § 2.95 is added to read as follows:

§ 2.95 Director, Office of Ethics.

(a) *Delegations.* Pursuant to the Office of Government Ethics regulations at 5 CFR part 2638, and the Delegations of Authority from the Secretary dated April 28, 1998, the Director, Office of Ethics, shall be the USDA Designated Agency Ethics Official and shall exercise all authority pursuant to that designation.

(b) [Reserved]

15. A new Subpart Q is added to read as follows:

Subpart Q—Delegations of Authority by the Chief Information Officer

§ 2.200 Deputy Chief Information Officer.

Pursuant to § 2.37, the following delegation of authority is made by the Chief Information Officer to the Deputy Chief Information Officer, to be exercised only during the absence or unavailability of the Chief Information Officer: perform all duties and exercise all powers which are now or which may hereafter be delegated to the Chief Information Officer.

For Subpart C:
Dated: November 28, 2000.

Dan Glickman,
Secretary of Agriculture.

For Subpart E:
Dated: November 28, 2000.

Richard E. Rominger,
Deputy Secretary of Agriculture.

For Subpart P:
Dated: November 28, 2000.

Paul W. Fiddick,
Assistant Secretary for Administration.

For Subpart Q:
Dated: November 28, 2000.

Ira L. Hobbs,
Acting Chief Information Officer.
[FR Doc. 00-31513 Filed 12-12-00; 8:45 am]
BILLING CODE 3410-01-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584-AC93

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Final Rule—WIC Nondiscretionary Funding Modifications of P.L. 106-224

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the WIC Program regulations to incorporate two nondiscretionary funding provisions mandated by the Agricultural Risk Protection Act of 2000. The first change modifies the methodology used to calculate the national administrative grant per person, which is used to determine the amount of WIC funds to be used for food benefits and nutrition services and administration (NSA). The second change provides greater flexibility for State agencies in noncontiguous States containing a significant number of remote Indian or Native villages by permitting them to convert food funds to cover allowable NSA costs incurred in providing services and breastfeeding support to those areas.

EFFECTIVE DATE: This rule is effective October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia Daniels, (703) 305-2746.

SUPPLEMENTARY INFORMATION:

Background

Why Is This Rule Being Promulgated?

The Agriculture Risk Protection Act of 2000 (Pub. L. 106-224), was enacted on June 20, 2000, and, among other things, mandates two modifications to WIC funding procedures. The first change modifies the methodology used to calculate the national administrative grant per participant, which is used to determine the amount of WIC funds to be used for food benefits and NSA. This change calls for a revision of the inflation rate calculation methodology. The second change provides greater flexibility for State agencies in noncontiguous States containing a significant number of remote Indian or Native villages by permitting them to convert food funds to cover allowable NSA costs incurred in providing services and breastfeeding support to those areas. This provision recognizes the higher costs associated with service delivery to these remote sites.

Why Are no Comments Being Taken on This Rule and Why Is It Effective October 1, 2000?

The changes to the WIC regulations made by this rule are mandated by Congress and require no Agency discretion. Further, section 263 of Pub. L. 106-224 requires that FNS promulgate regulations to implement these provisions as soon as practicable after the date of enactment without regard to the Administrative Procedure Act's notice and comment provisions at 5 U.S.C. 553; the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804, July 24, 1971), relating to notices of proposed rulemaking and public participation in rulemaking; and the Paperwork Reduction Act at 44 U.S.C. chapter 35. In addition, section 172 of Pub. L. 106-224 requires us to promulgate rules to carry out the Act and its amendments not later than 120 days after the date of enactment. For these reasons, we are not taking public comment prior to promulgating this rule. Finally, section 244(f)(2) of Pub. L. 106-224 provides that the WIC funding changes take effect on October 1, 2000. Accordingly, this rule is effective October 1, 2000.

Why Is This Rule and Preamble in Question and Answer Format?

We have used this opportunity to rewrite the affected provisions in a question and answer format to improve readability. This approach also complies with the President's Executive Memorandum requiring all Federal regulations published after January 1, 1999 to be in Plain Language, as recommended by the National Partnership for Reinventing Government.

What Is the Change to the Calculation of the National Administrative Grant Per Participant?

The national administrative grant per person (AGP) is used in the WIC funding formula to determine the amount of funds allocated for: (1) Food benefits; and (2) NSA costs. The Child Nutrition and WIC Reauthorization Act of 1989 (Pub.L. 101-147), amended section 17(h)(1) of the Child Nutrition Act of 1966 (CNA) to require a specific methodology be used to calculate the AGP. (Section 17 of the CNA is codified at 42 U.S.C. 1786.) This legislation required the AGP for any fiscal year to be calculated by adjusting the actual national average per participant grant for fiscal year 1987 to reflect the percentage change between: (1) the value of the index for State and local government purchases (S&LP), using the

implicit price deflator, for the 12-month period ending June 30, 1986; and (2) the estimate of the value of the index for the 12-month period ending June 30 of the previous fiscal year. This index is published by the Department of Commerce, Bureau of Economic Analysis (BEA) in the National Income and Product Accounts as a component of the Gross Domestic Product (GDP).

A potential concern is that the implicit price deflator, although appropriate at the time, is no longer the best index to calculate the AGP for the WIC Program. The BEA recommends the use of the chain-type price index rather than the implicit price deflator for measuring inflation. The Office of Management and Budget (OMB) also requires the use of the State and Local chain-type price index rather than the implicit price deflator in projection of State and local costs in budget estimates. The continued use of the implicit price deflator in the WIC AGP calculations, rather than conversion to the now standard chain-type price index, is undesirable.

In addition, the primary problem of using current rules is that they require the AGP to be based upon the 1987 S&LP data, including annual and benchmark revisions. Occasionally, as in 1992, 1995 and 1999, the National Income and Product Accounts undergo benchmark or comprehensive revisions. These revisions typically involve revision of the entire S&LP series. The revisions over the last few years have led to a downward shift in the AGP from the level it would have been if the index had not been revised. Index revisions cause instability in the AGP because, although the S&LP continues to rise from year to year, the AGP has the potential to go down or up disproportionately when the historical series is adjusted. In turn, WIC NSA grants to State agencies are unstable.

In recognition of these concerns, section 244(d) of Pub. L. 106-224 amended section 17(h)(1)(B)(ii)(I) of the CNA by removing the requirement to use the implicit price deflator. In addition, section 244(d) amended section 17(h)(1)(B)(ii) to remove the reference to fiscal year 1987 as the base year and requires instead that the adjustment be made to the AGP for the "preceding fiscal year" with conforming changes to the adjustment methodology. This rule amends § 246.16(c)(2) of the WIC regulations to reflect these changes.

What Is the Additional Flexibility for State Agencies in Noncontiguous States Containing a Significant Number of Indian or Native Villages?

In recognition of higher costs associated with delivery of WIC services to remote Indian and Native villages, section 244(e) of Pub. L. 106-224 added a new section 17(h)(5)(D) to the CNA to allow for State agencies to convert food funds to NSA funds to cover allowable NSA expenditures necessary to provide WIC services and breastfeeding support in those areas. This new conversion authority is limited to State agencies in noncontiguous States containing a significant number of Indian or Native villages.

Current conversion authority, described in section 17(h)(5)(A) of the CNA and § 246.16(f) in Program regulations, allows for the conversion of food funds to NSA funds under two conditions: (1) An approved plan outlining food cost reduction strategies and increases in participation levels above the FNS-projected participation levels; and (2) actual participation increases achieved in excess of participation projected by FNS. Conversion of food funds to NSA funds are allowed to the extent that the funds are used to cover current year allowable NSA expenditures and the current fiscal year's per participant NSA grant for each State agency is maintained.

Under this new authority, food funds may be converted to NSA funds to the extent the conversion is necessary to cover expenditures incurred in providing services (including the full cost of air transportation and other transportation) to remote Indian or Native villages and to provide breastfeeding support in those areas. This rule amends § 246.16(g) of the WIC regulations to add this new conversion authority. New paragraph (g)(2) makes clear that funds may only be converted as necessary to cover costs in providing service and breastfeeding support in remote Indian or Native villages to the extent that they exceed the State agency's NSA funds, including any spent forward funds, for the fiscal year. This rule also revises § 246.16(i) to clarify how the converted funds will be treated in calculating a State agency's prior year food grant and base NSA grant. Finally, this rule also makes a conforming change to § 246.16(f)(2)(i) to incorporate the limitation in current § 246.16(g).

Section 244 (a) of Pub. L. 106-224 amended section 17(b) of the CNA to add a new definition of "remote Indian or Native village." This definition is used both in connection with the new

conversion authority and with a new provision concerning proof of residency by residents of remote Indian or Native villages. The new proof of residency provision and the definition of "remote Indian or Native village" were added to the WIC regulations by the WIC Certification Integrity final rule (published on December 11, 2000).

Procedural Matters

Executive Order 12866—Regulatory Planning and Review

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 (OMB).

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, Samuel Chambers, Jr., Administrator of the Food and Nutrition Service (FNS), has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule will only affect State and local WIC agencies. Although some of these agencies may fall within the definition of "small entities," the number of affected entities will not be substantial. Further, the impact of the changes on small entities is not significant. Finally, because this rule contains only nondiscretionary provisions required by statute, we could not consider any alternatives.

Paperwork Reduction Act

This final rule does not contain reporting or record keeping requirements subject to approval by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-20).

Executive Order 12372—Intergovernmental Review of Federal Programs

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, and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V, and final rule-related Notice published June 24, 1983 (48 FR 29114)).

Executive Order 12988—Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil

Justice Reform. It 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—Unfunded Mandates Reform Act

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 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 Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of that 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 today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132—Federalism

Executive Order 13132 does not require consultation with State and local officials and a federalism impact statement for rules that are required by statute. This rule is required by Pub. L. 106-244. Therefore, we determined that this rule does not meet the threshold criteria for further review under Executive Order 13132.

List of Subjects in 7 CFR Part 246

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

For 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 § 246.16:

- a. Revise paragraph (c)(2) introductory text;
- b. Revise the heading of paragraph (f);
- c. Revise the introductory text of paragraph (f)(1);
- d. Revise paragraph (f)(2)(i);
- e. Revise paragraph (g);
- f. Amend paragraph (h) by revising the paragraph heading, removing the reference to "paragraph (f)", and adding in its place a reference to "paragraphs (f) and (g)"; and
- g. Revise paragraph (i).

The revisions read as follows:

§ 246.16 Distribution of funds.

* * * * *

(c) * * *

(2) *How is the amount of NSA funds determined?* The funds available for allocation to State agencies for NSA for each fiscal year must be sufficient to guarantee a national average per participant NSA grant, adjusted for inflation. The amount of the national average per participant grant for NSA for any fiscal year will be an amount equal to the national average per participant grant for NSA issued for the preceding fiscal year, adjusted for inflation. The inflation adjustment will be equal to the percentage change between two values. The first is the value of the index for State and local government purchases, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year. The second is the best estimate that is available at the start of the fiscal year of the value of such index for the 12-month period ending June 30 of the previous fiscal year. Funds for NSA costs will be allocated according to the following procedure:

* * * * *

(f) *How do I qualify to convert food funds to NSA funds based on increased participation?* (1) *Requirements.* The State agency qualifies to convert food funds to NSA funds based on increased participation in any fiscal year in two ways:

* * * * *

(2) * * *

(i) To cover NSA expenditures in the current fiscal year that exceed the State agency's NSA grant for the current fiscal year and any NSA funds which the State agency has spent forward into the current fiscal year; and

* * * * *

(g) *How do I qualify to convert food funds to NSA funds for service to remote Indian or Native villages?* (1) *Eligible State agencies.* Only State agencies located in noncontiguous States containing a significant number of remote Indian or Native villages qualify to convert food funds to NSA funds under this paragraph (g) in any fiscal year.

(2) *Limitation.* In the current fiscal year, food funds may be converted only to the extent necessary to cover expenditures incurred:

(i) In providing services (including the full cost of air transportation and other transportation) to remote Indian or Native villages; and

(ii) To provide breastfeeding support in those areas that exceed the State agency's NSA grant for the current fiscal year and any NSA funds which the State agency has spent forward into the current fiscal year.

(h) *What happens at the end of the fiscal year in which food funds are converted?* * * *

(i) *How do converted funds affect the calculation of my prior year food grant and base NSA grant?* For purposes of establishing a State agency's prior year food grant and base NSA grant under paragraphs (c)(2)(i) and (c)(3)(i) of this section, respectively, amounts converted from food funds to NSA funds under paragraphs (f) and (g) of this section and § 246.14(e) during the preceding fiscal year will be treated as though no conversion had taken place.

Dated: December 7, 2000.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 00-31731 Filed 12-12-00; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 00-111-1]

Change in Disease Status of Artigas, Uruguay, Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.