

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 246

RIN 0584-AD34

#### Special Supplemental Nutrition Program for Women, Infants and Children: Exclusion of Military Housing Payments

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to incorporate a non-discretionary provision in the Farm Security and Rural Investment Act of 2002, that affects the WIC application and certification process. In determining an applicant's income eligibility for WIC, this final rule provides WIC State agencies the option to exclude payments to military personnel for privatized housing, whether on or off military installations.

**EFFECTIVE DATE:** This rule is effective May 13, 2002.

**FOR FURTHER INFORMATION CONTACT:** Debbie Whitford, Monday through Friday during regular business hours (8:30 a.m.–5 p.m.) at (703) 305-2746.

#### SUPPLEMENTARY INFORMATION:

##### 1. Why Is This Regulation Necessary?

Section 4306 of the Farm Security and Rural Investment Act of 2002, (Pub. L. 107-171), enacted May 13, 2002, amends section 17(d)(2)(B)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786), to allow WIC State agencies the option to exclude housing allowances paid to military personnel for privatized on-base or off-base housing in determining income eligibility for the

WIC Program. In accordance with Pub. L. 107-171, this provision became effective May 13, 2002.

##### 2. Why Is This Regulation a Final Rule?

This regulation is a final rule because the Department does not have discretion in how State agencies implement this provision. The provision, as set forth in this final rule, merely reflects the legislation. Thus, it is considered a non-discretionary provision.

##### 3. What Does This Regulation Require of WIC Agencies?

This regulation provides WIC State agencies the option to exclude payments to military personnel for privatized housing, whether on- or off-base. Therefore, in this final rule section 246.7(d)(2)(iv)(A)(1) of the WIC Program regulations is revised to include this State agency option. Previously, WIC legislation and regulations provided State agencies the option to exclude military housing allowances provided to military service personnel residing off military installations from consideration as income in determining WIC income eligibility. Since on-base housing has traditionally been provided to families without charge or indication of a cash allowance on their paychecks, WIC has considered this an in-kind benefit that has not been counted as income for WIC eligibility purposes. Therefore, the provision in Pub. L. 107-171 provides State agencies the option to extend the income exclusion to include privatized on-base military housing allowances.

The privatization of military housing is intended to provide improved, quality housing for military families living on base by contracting with private developers. An allowance is paid directly to military personnel that can be used only for rent. The household does not have the discretion to use this allowance for any other purpose, even though it is provided as a cash benefit and reflected as such on the employee's Leave and Earnings Statement (LES) as a Basic Allowance for Housing (BAH). Off-base military housing allowances are also reflected on the LES as BAH.

Since payments for privatized housing are reflected as BAH on military pay stubs, WIC agencies cannot readily determine whether this is an off-base or on-base housing allowance. Further, it is clear based on enactment of this provision that Congress intends WIC State agencies to have the option to

provide consistent treatment of military housing allowances in determining WIC income eligibility. Therefore, if a WIC State agency chooses to exclude BAH, in effect, it has chosen to exclude off-base housing allowances and payments for privatized on-base housing.

##### 4. Procedural Matters

###### *Executive Order 12866*

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

###### *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 provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

###### *Regulatory Flexibility Act*

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Roberto Salazar, Administrator, Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule modifies WIC application and certification procedures. Therefore, the effect of this change will be primarily on WIC applicants and State and local WIC agencies, some of which are small entities. However, the impact on small entities is not expected to be significant.

###### *Paperwork Reduction Act*

This final rule does not contain new 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). The information collection burden associated with certification and eligibility of WIC participants is approved under OMB No. 0584-0043.

*Executive Order 13132*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Food and Nutrition Service has determined that this final rule does not have Federalism implications under Executive Order 13132. This rule makes changes that are required by Pub. L. 107-171, and became effective on May 13, 2002. The Department does not have discretion in how State agencies implement this provision. The provision, as set forth in this final rule, is reproduced verbatim from the legislation.

*Executive Order 12372*

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Program is listed in the Catalog of Federal Domestic Assistance under 10.557. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related notice (48 FR 29115), this program is included from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

*Public Law 104-4*

Unfunded Mandate Reform Act of 1995 (UMRA) Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures 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 FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This 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. This rule is,

therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

*Civil Rights Impact Analysis*

FNS has reviewed this final rule in accordance with the Department 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. FNS has no discretion in implementing this change in income eligibility assessment. 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 the State and local government agencies that administer the WIC Program from engaging in actions that discriminate based on race, color, national origin, sex, age or handicap. Regulations at 7 CFR 246.8 specifically state that "Department of Agriculture regulations on non-discrimination (7 CFR parts 15, 15a and 15b), and FNS instructions ensure that no person shall on the grounds of race, color, national origin, age, sex, or handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under the Program." Discrimination in any aspect of program administration is prohibited by these regulations, Department of Agriculture regulations on non-discrimination (7 CFR parts 15, 15a, and 15b), the Age Discrimination Act of 1975 (Pub. L. 94-135), the Rehabilitation Act of 1973 (Pub. L. 93-112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15. 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.

*Public Participation*

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). This final rule implements a non-discretionary legislative provision in the Farm Security and Rural Investment Act of 2002, Pub. L. 107-171, by providing WIC State agencies the option to exclude payments to military personnel for privatized housing, whether on- or off-base, when determining income eligibility for the WIC Program. Thus, the Department has determined in accordance with 5 U.S.C. 553(b) that notice of proposed rulemaking and

opportunity for public comments is unnecessary and contrary to the public interest.

The provisions became effective May 13, 2002. Therefore, we are making this rule effective retroactively to May 13, 2002.

**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 education, Public assistance programs, WIC, Women.

Accordingly, 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 § 246.7, revise paragraph (d)(2)(iv)(A)(1) to read as follows:

**§ 246.7 Certification of participants.**

- \* \* \* \* \*
- (d) \* \* \*
- (2) \* \* \*
- (iv) \* \* \*
- (A) \* \* \*

(1) Basic allowance for housing received by military services personnel residing off military installations or in privatized housing, whether on- or off-base; and

\* \* \* \* \*

Dated: October 21, 2002.

**Roberto Salazar,**  
*Administrator, Food and Nutrition Service.*  
 [FR Doc. 02-27667 Filed 10-30-02; 8:45 am]  
**BILLING CODE 3410-30-P**

**DEPARTMENT OF AGRICULTURE**

**Farm Service Agency**

**7 CFR 718**

**RIN 0560-AG80**

**Equitable Relief From Ineligibility**

**AGENCIES:** Farm Service Agency, Commodity Credit Corporation, USDA.  
**ACTION:** Final rule.

**SUMMARY:** This rule implements provisions of section 1613 of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) relating to relief to participants in certain cases for certain Farm Service Agency and Commodity Credit Corporation programs. The relief applies to cases where the applicant for