

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 246

RIN 0584-AC51

#### Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of WIC Mandates of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

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

**ACTION:** Interim rule.

**SUMMARY:** This interim rule amends regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to implement the nondiscretionary WIC provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, enacted on August 22, 1996. The provisions in this interim rule include elimination of the following provisions: required provision of written information on certain other assistance programs; State agency timeframes for action on local agency applications for participation in the WIC Program; annual evaluation of nutrition education and breastfeeding promotion efforts; and annual submission of a State Plan.

In addition, this rule implements the option which allows State agencies to limit WIC services to citizens and qualified aliens. This rulemaking is intended to simplify the State Plan submission and approval process by eliminating unnecessary duplication, and to increase State agency flexibility in the administration and operation of the WIC Program.

**DATES:** This rulemaking becomes effective October 5, 2000. To be assured of consideration, written comments on

this rule must be postmarked by November 6, 2000.

**ADDRESSES:** Comments may be mailed to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, (703) 305-2746. All written comments will be available for public inspection at this address during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Debra R. Whitford at (703) 305-2730.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 729 of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, enacted on August 22, 1996, amended a wide range of WIC Program provisions in such areas as program outreach; referral and access; coordination; nutrition education and breastfeeding promotion and support. Congress eliminated many WIC provisions to decrease the burden on State agencies and to give State agencies more flexibility in administering the program. WIC requirements that were eliminated include the annual evaluation of nutrition education and breastfeeding promotion and support efforts; provision of written information on Child Support, Temporary Assistance for Needy Families (TANF) (formerly known as AFDC), and the Food Stamp Program; the nutrition education "master file" documentation method; and timeframes for State agency action on local agency applications for participation in the program. In addition, several State Plan requirements were modified or eliminated. All of these provisions are mandatory, and have been incorporated into this interim rule exactly as they appear in the law itself. As such, they are considered to be nondiscretionary provisions, and cannot be modified based on any comments that may be submitted regarding them.

Section 742 of Public Law 104-193 also grants State agencies the option to prohibit service to persons other than citizens and qualified aliens. Comments are welcome regarding the Department's treatment of this provision, found at 7 CFR part 246.7(c)(2), and its anticipated

effect(s) upon the administration of the WIC Program.

The following is a discussion of each provision addressed in section 729 of Public Law 104-193 that is incorporated in this interim rule. The provision of Public Law 104-193 requiring the Secretary to establish criteria for the disqualification of WIC vendors who have been disqualified from the Food Stamp Program has been addressed in a separate rulemaking published on March 18, 1999, at 64 FR 13311.

#### 1. Definition of Homeless Individual—§ 246.2

The previous definition of "homeless individual" included an individual whose primary nighttime residence is a temporary accommodation in the residence of another individual. Section 729(a)(1) of Public Law 104-193 amended section 17(b)(15)(B)(iii) of the Child Nutrition Act of 1966 (CNA) by revising the definition of homeless individual to state that a temporary accommodation in the residence of another individual cannot exceed 365 days. The definition of homeless individual in § 246.2 has been revised to reflect this change.

#### 2. State Plan—§ 246.4(a), 246.4(a)(14)(ix), 246.4(a)(18), 246.4(a)(19), and 246.4(a)(21)

Previous WIC regulations required that by August 15 of each year, each State agency would submit to the Food and Nutrition Service (FNS) for approval a State plan for the following year as a prerequisite to receiving funds. Section 729(e)(1)(A)(i) of Public Law 104-193 amended section 17(f)(1)(A) of the CNA by modifying the State plan submission requirement. The State agency is now only required to submit an initial plan of operation and administration. Once approved, the State agency is only required to submit for approval substantive changes in the plan, as defined in WIC Policy Memorandum 97-4, issued by FNS July 16, 1997. Section 246.4(a) has been amended to reflect this change.

In addition to the annual submission change, there were several State plan requirements that were eliminated or modified. State agencies should keep in mind that while the required content of the State Plan has been reduced, the actual activities and operations that were previously described in the State Plan are still required or, if they are

conducted at the State agency's option, permitted. The only change is that FNS no longer requires a detailed explanation of these activities, as discussed below, as a condition of the State Plan's final approval.

Section 729(e)(1)(B)(iv) of Public Law 104-193 deleted, among other provisions, section 17(f)(1)(C)(xii), thus eliminating the State plan requirement for an estimate of increased participation when funds conversion authority is requested by the State agency. As such, § 246.4(a)(14)(ix) has been revised to eliminate the participation estimate.

Also, section 729(e)(1)(B)(iii) of Public Law 104-193 amended section 17(f)(1)(C)(vii) of the CNA by removing the requirement for a plan to provide program benefits to eligible individuals most in need of the benefits and to provide eligible individuals not participating in the program with information on the program, the eligibility criteria for the program, and how to apply for the program. Section 246.4(a)(18) has been amended to reflect this legislative change. Please note, however, that the statutory requirement that the State plan include a plan for reaching and enrolling women in the early months of pregnancy, including provisions to reach and enroll eligible migrant farmworkers, Indians and homeless individuals, is retained both in the CNA and in program regulations.

The requirement to include a plan addressing how incarcerated persons or juveniles in detention facilities will be provided WIC benefits was also eliminated. The Department would like to clarify that under the CNA, State agencies may continue to serve these individuals. Congress merely eliminated the requirement that State agencies include in their State plans their procedures for addressing the special needs of these individuals.

In addition, section 729(e)(1)(B)(iv) of Public Law 104-193 deleted, among other provisions, section 17(f)(1)(C)(x) of the CNA, thus eliminating the requirement that a State agency use statutorily specified techniques in its plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas. The statutory requirements for specific use of appointment scheduling, adjustment of clinic hours, clinic locations, and mailing of multiple vouchers were deleted. At the same time, an amendment was made to section 17(f)(1)(C)(vi) of the CNA to add a requirement for a plan to provide benefits to unserved and underserved areas in the State, including a plan to

improve access to the program for those participants and prospective applicants who are employed, or who reside in rural areas if sufficient funds are available to serve additional persons. The net result of these two amendments is that Congress eliminated only the specific methods or procedures to be used to address the special needs of employed participants as well as applicants and individuals who reside in rural areas. While the Department of Agriculture (Department) still encourages the scheduling of appointments and adjustment of clinic hours and locations, State agencies now determine the specific practices they will use to accommodate working and rural applicants and participants. Section 246.4(a)(21) is amended to reflect these changes.

### 3. Selection of Local Agencies— § 246.5(b)

Prior to the enactment of Public Law 104-193, § 246.5(b) required that the State agency act on local agency applications for participation in the program within specific timeframes. Upon the receipt of a completed application from a local agency for participation in the program, State agencies were required to notify the applicant agency in writing within 30 days of the approval or disapproval of its application. When an application was disapproved, the State agency was required to advise the applicant agency of the reasons for such disapproval. In addition, within 15 days after the receipt of an incomplete application the State agency was required to notify the applicant agency of additional information needed to complete the application. Section 729(e)(2) of Public Law 104-193 deleted, among other provisions, section 17(f)(6) of the CNA, thus eliminating all timeframes for State agency action on local agency applications to participate in the program. State agencies now determine the timeframes for such action. Section 246.5(b) has been amended to reflect this change. While timeframes for action are now left to State agency discretion, the Department encourages State agencies to continue to use the 30 and 15-day timeframes.

### 4. Certification of Participants— §§ 246.7(b)(1), 246.7(b)(4), 246.7(c), 246.7(d)(2)(vi)(1), 246.7(d)(2)(vi)(2), 246.7(h)(1), 246.7(j)(9), and 246.7(p)

#### Program Referral and Access

Section 729(d)(2) of Public Law 104-193 deleted section 17(e)(4)(A) of the CNA, thus eliminating the requirement that applicants be provided with written

information concerning the receipt of food stamps, TANF (formerly known as AFDC), and the child support enforcement program under part D of title IV of the Social Security Act, on at least one occasion, by each adult participant in and each applicant for the WIC Program. In addition, section 729(d)(2) also added new statutory authority allowing State agencies to provide local agencies with materials describing other programs for which a participant may be eligible. Section 246.7(b) has been amended to reflect these changes.

Section 729(e)(9) of Public Law 104-193 amended redesignated section 17(f)(18) (formerly section 17(f)(19)) of the CNA by making optional the requirement for a local agency to provide information about other potential sources of food assistance in the local area to individuals who apply in person to participate in the WIC Program, but who cannot be served because the WIC Program is operating at capacity in the local area. Section 246.7(b)(3) has been amended to reflect this change.

#### State Option To Limit WIC Participation to United States Citizens, Nationals, and Qualified Aliens

Section 742 of Public Law 104-193 specifies that States are neither required nor prohibited from providing program benefits to individuals who are not United States (U.S.) citizens, nationals, or qualified aliens. The use of the term "State" in the legislation conveys this authority to WIC State agencies and to Indian Tribal Organizations (ITOs) operating as WIC State agencies. Section 431(b) of Public Law 104-193 defines "qualified alien." Qualified aliens include: (1) Lawful permanent residents; (2) asylees; (3) refugees; (4) parolees admitted for at least one year; (5) certain aliens whose deportations are being withheld; (6) certain conditional entrants; (7) certain Cuban and Haitian entrants; and (8) certain battered aliens, alien parents of battered children, and alien children whose parents are battered. Therefore, under Public Law 104-193, States and WIC State agencies have the option to limit WIC participation to U.S. citizens, nationals, and qualified aliens. Section 246.7(c)(2) has been added to reflect this option.

Because a State agency's decision to implement this option will effectively reduce the State agency's eligible WIC population, FNS, by regulatory authority, will make a downward adjustment of that State agency's estimated WIC-eligible population to reflect the number of aliens the State agency declares no longer eligible. If a

State agency's participation decreases and food funds are not expended, for whatever reason, including the exclusion of certain categories of aliens, FNS may execute its regulatory authority to recover funds during the year from the State agency in question. FNS apprised State agencies on January 13, 1997, of these potential consequences of implementing the option to limit participation to U.S. citizens, nationals, and qualified aliens.

States/WIC State agencies choosing to implement the option have flexibility in the development of specific policies and procedures for implementation. States/WIC State agencies assume full liability for implementation of this option and are responsible for ensuring their procedures are not discriminatory or capriciously applied. Given the wide latitude under which State agencies may implement this option, State agencies are strongly encouraged to consult with their legal counsel regarding the development and implementation of procedures.

Section 432 of Public Law 104-193 requires the U.S. Attorney General to issue regulations requiring verification of eligibility for certain Federal public benefits.

Further, section 504 of the Illegal Immigration Reform and Immigrant Responsibility Act, Public Law 104-208, requires the U.S. Attorney General to establish procedures whereby persons applying for certain Federal public benefits would provide proof of citizenship. States or WIC State agencies that choose to implement the option to limit WIC participation to U.S. citizens, nationals, and qualified aliens are encouraged to review the guidance and regulations issued by the U.S. Attorney General when developing their specific policies and procedures to implement the option. The guidance (Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) was published at 62 FR 61344, Nov. 17, 1997. The proposed rule (Verification of Eligibility for Public Benefits) was published at 63 FR 41662, August 4, 1998. The final regulation on verifying alien eligibility for public benefits is forthcoming. However, States and State agencies who do elect to limit WIC participation to U.S. citizens, nationals, and qualified aliens are not required to implement the guidance and regulations issued by the Attorney General on these matters, even after the final rule has been published.

If a State/State agency, including an ITO serving as a WIC State agency,

chooses to implement this option, it must inform FNS of its intentions and provide written copies of the procedures it will establish. This documentation and notification are for informational purposes only. Neither the State agency's decision nor its procedures will be subject to FNS approval. To date, no State has chosen to implement this option.

#### Certification of Qualified Aliens

Three provisions in Public Law 104-193 address the certification of aliens but do not apply to WIC. This portion of the preamble is provided to clarify those provisions and their inapplicability to WIC. First, the law specifies in section 421 that in determining the eligibility and benefits of an alien for any Federal means-tested public benefit programs as provided in section 403 of the law, the income and resources of an alien shall include the income and resources of the person who sponsors the alien, *i.e.*, signs an affidavit of support, including the income of the sponsor's spouse. This provision, however, does not apply to the WIC Program. The WIC Program is specifically exempted from the application of the term "Federal means-tested public benefit" under section 403. In addition, FNS published a Notice in the **Federal Register** on July 7, 1998 at 63 FR 36653 which clarifies that the WIC Program is not a Federal means-tested public benefit program as that term is used in Public Law 104-193 and is exempt from the application of the term.

Second, section 551 of Public Law 104-208, codified at 8 U.S.C. 1183a (which replaced sections 423(a) through 423(c) of Public Law 104-193), provides that if a sponsored alien receives any means-tested public benefit, the appropriate official at the Federal, State, or local level shall request reimbursement by the sponsor in the amount of the assistance. However, section 423(d)(4) of Public Law 104-193, codified at 8 U.S.C. 1183a note, exempts benefits under the CNA, including the WIC Program, from the reimbursement requirement.

Third, section 403(a) of Public Law 104-193 imposes a five-year waiting period after a qualified alien enters the country before he or she is eligible for any Federal means-tested public benefit. Section 403(c), however, exempts benefits under the CNA, including the WIC Program, from this requirement. Therefore, qualified aliens are eligible for the WIC Program without regard to the length of time in the qualifying immigration status.

Section 246.7(q) has been added to clarify in regulations the requirements associated with the certification of qualified aliens.

#### Adjunct or Automatic Income Eligibility

Section 109(h) of Public Law 104-193 amended section 17(d)(2)(A)(ii)(II), and section 729(d)(2) deleted preexisting section 17(e)(4)(A) of the CNA to conform the CNA's adjunct or automatic income eligibility provisions with the redesignation of the Aid to Families with Dependent Children program as the Temporary Assistance for Needy Families program. Sections 246.7(d)(2)(vi)(1), 246.7(d)(2)(vi)(2), and 246.7(h)(1) are amended to reflect this name change.

#### Notification of Participant Rights and Responsibilities—§ 246.7(j)(9)

Section 729(e)(4) of Public Law 104-193 amended preexisting section 17(f)(9)(B) (redesignated as section 17(f)(8)(B)) by eliminating the requirement to include specific information on the categories of participants whose benefits are being suspended or terminated because of funding shortages in the notice provided to affected participants. State agencies must still provide notice to participants whose benefits are suspended or terminated because of funding shortages before taking action to suspend or terminate benefits. However, such notice no longer must include the categories of persons whose benefits are being suspended or terminated. Section 246.7(j)(9) has been amended to reflect this change.

#### 5. Nutrition Education—§ 246.11(c)(5) and § 246.11(e)(4)

##### State Agency Responsibilities

Section 729(d)(1) of Public Law 104-193 amended section 17(e)(2) of the CNA by eliminating the requirement that State agencies annually evaluate nutrition education and breastfeeding promotion and support activities. However, because State agencies must still spend a targeted amount of Nutrition Services and Administration funds on nutrition education and breastfeeding promotion and support activities, this is considered an important function. As such, State agencies are strongly encouraged to maintain a system to evaluate the effectiveness of their activities in these areas. Section 246.11(c)(5) has been deleted to reflect the elimination of the annual evaluation requirement.

**Participant Contacts—§ 246.11(e)(4)**

Section 729(d)(4) of Public Law 104–193 deleted preexisting section 17(e)(6) of the CNA, thus eliminating the requirement that local agencies use master files to document and monitor the provision of nutrition education. The Department wishes to point out that even though this provision was eliminated legislatively, local agencies may continue using a “master file” to document nutrition education contacts, rather than documenting them in individual participant case files. Recognizing that master file documentation was intended to minimize administrative burden at the local level, State agencies may continue to permit local agencies to use a “master file” to document second or any subsequent nutrition education contacts during a certification period that are provided to a participant, so long as the system also allows a local agency to retrieve the information by participant, so as to review the nutrition education provided to an individual.

**6. Distribution of Funds—  
§§ 246.16(a)(6), 246.16(f)**

Section 729(f)(1) of Public Law 104–193 amended section 17(g)(5) of the CNA by making a technical change to replace biennial participation report with reports on program participant characteristics. Section 246.16(a)(6) has been revised to reflect this technical change.

Section 729(g)(1)(B) further amended section 17(h)(8)(G) of the CNA by changing from “shall” to “may” the authority for FNS to promote the joint purchase of infant formula and other foods. The Department has always encouraged this practice as a cost containment measure and will, for the foreseeable future, continue to do so.

**7. Records and Reports—§ 246.25(b)(3)****Program Participant Characteristic Reports**

Prior to the enactment of Public Law 104–193, section 17(h)(4)(E) of the CNA required that each State agency collect data regarding the incidence and duration of breastfeeding for inclusion in a Department-compiled biennial report to Congress on participant characteristics. Section 729(g)(1)(A) of Public Law 104–193 amended section 17(h)(4)(E) of the CNA by making a technical correction to reflect the elimination of the biennial report to Congress that was to include data on the incidence and duration of breastfeeding. Although the Department is no longer required to send a biennial report to Congress, State agencies must continue

to collect the data for inclusion in the report on program participant characteristics that will replace the biennial report. This new report will continue to require the collection of data on breastfeeding incidence and duration. Section 246.25(b)(3) has been revised to reflect this technical change.

**Executive Order 12866**

This interim rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

**Regulatory Flexibility Act**

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities. This rule provides WIC State and local agencies with increased flexibility in providing program benefits to participants. Several program administration requirements have been reduced or eliminated by this rule.

**Paperwork Reduction Act**

This interim rule imposes no new reporting or recordkeeping requirements that are subject to OMB review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20).

**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 10.557. For reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Executive Order 12988**

This interim 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 **DATES** paragraph of this interim rule. Prior to any judicial challenge to the application of provisions of this rule, all applicable administrative procedures must be exhausted.

**Executive Order 13132**

FNS has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. As such, FNS has determined that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

**Public Law 104–4**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the 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 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. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Good Cause Determination**

As discussed above, Section 729 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 contained provisions affecting a wide range of WIC Program provisions, with the stated intention of decreasing the burden on State agencies and giving State agencies more flexibility in administering the program. These provisions of law are mandatory. Therefore, Under Secretary Shirley R. Watkins has determined in accordance with 5 U.S.C. 553(b) that prior notice and comment would be unnecessary, and that good cause exists for making this rule effective without first publishing a proposed rule.

**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, WIC, Women.

For 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 § 246.2, the definition of “Homeless individual” is revised to read as follows:

**§ 246.2 Definitions.**

\* \* \* \* \*

*Homeless individual* means a woman, infant or child:

(a) Who lacks a fixed and regular nighttime residence; or

(b) Whose primary nighttime residence is:

(1) A supervised publicly or privately operated shelter (including a welfare hotel, a congregate shelter, or a shelter for victims of domestic violence) designated to provide temporary living accommodation;

(2) An institution that provides a temporary residence for individuals intended to be institutionalized;

(3) A temporary accommodation of not more than 365 days in the residence of another individual; or

(4) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

\* \* \* \* \*

3. In § 246.4:

a. The ninth and tenth sentences of paragraph (a) introductory text are removed;

b. A new ninth sentence is added to paragraph (a) introductory text;

c. The last clause of paragraph (a) introductory text is revised; and

d. Paragraphs (a)(14)(ix), (a)(18) and (a)(21) are revised.

The revisions read as follows:

**§ 246.4 State plan.**

(a) *Requirements.* \* \* \* After receiving approval of the State Plan, each State agency shall only submit to FNS for approval substantive changes in the State Plan. A complete and approved Plan shall include:

\* \* \* \* \*

(14) \* \* \*

(ix) For State agencies applying for authority to convert food funds to nutrition services and administration

funds under § 246.16(g), a full description of their proposed cost-cutting system or system modification;

\* \* \* \* \*

(18) The State agency’s plan to reach and enroll migrants, and eligible women in the early months of pregnancy.

\* \* \* \* \*

(21) A plan to improve access to the Program for participants and prospective applicants who are employed or who reside in rural areas, by addressing their special needs through the adoption or revision of procedures and practices to minimize the time participants and applicants must spend away from work and the distances participants and applicants must travel. The State agency shall also describe any plans for issuance of food instruments to employed or rural participants, or to any other segment of the participant population, through means other than direct participant pick-up, pursuant to § 246.12(r)(8). Such description shall also include measures to ensure the integrity of Program services and fiscal accountability.

\* \* \* \* \*

4. In § 246.5, paragraph (b) is revised to read as follows:

**§ 246.5 Selection of local agencies.**

\* \* \* \* \*

(b) *Application of local agencies.* The State agency shall require each agency, including subdivisions of the State agency, which desires approval as a local agency, to submit a written local agency application. After the receipt of an incomplete application, the State agency shall provide written notification to the applicant agency of the additional information needed. After the receipt of a complete application, the State agency shall notify the applicant agency in writing of the approval or disapproval of its application. When an application is disapproved, the State agency shall advise the applicant agency of the reasons for disapproval and of the right to appeal as set forth in § 246.18. When an agency submits an application and there are no funds to serve the area, the applicant agency shall be notified that there are currently no funds available for Program initiation or expansion. The applicant agency shall be notified by the State agency when funds become available.

\* \* \* \* \*

5. In § 246.7:

a. Paragraph (b)(1) is removed, and paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) are redesignated as paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5), respectively;

b. Newly redesignated paragraph (b)(3) is revised;

c. Paragraphs (c)(1), (c)(2), and (c)(3) are redesignated as (c)(1)(i), (c)(1)(ii), (c)(1)(iii), respectively;

d. The introductory text of paragraph (c) is redesignated as paragraph (c)(1);

e. A new paragraph (c)(2) is added;

f. Paragraph (d)(2)(vi)(A)(1) is amended by removing the words “Aid to Families with Dependent Children (AFDC)” and adding in their place the words “Temporary Assistance for Need Families (TANF)”;

g. Paragraph (d)(2)(vi)(A)(2) is amended by removing the word “AFDC” and adding in its place the word “TANF”;

h. Paragraph (h)(1) is amended by removing the word “AFDC” wherever it appears and adding, in its place, the word “TANF”;

i. Paragraph (j)(9) is revised; and

j. A new paragraph (q) is added.

The revisions and additions read as follows:

**§ 246.7 Certification of participants.**

\* \* \* \* \*

(b) \* \* \*

(3) Local agencies may provide information about other potential sources of food assistance in the local area to adult individuals applying or reapplying in person for the WIC Program for themselves or on behalf of others, when such applicants cannot be served because the Program is operating at capacity in the local area.

\* \* \* \* \*

(c) \* \* \*

(2) A State, a State agency, and an Indian Tribal Organization (including, an Indian tribe, band, or group recognized by the Department of the Interior; or an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program) serving as a State agency, may limit WIC participation to United States citizens, nationals, and qualified aliens as these terms are defined in the Immigration and Nationality Laws (8 U.S.C. 1101 *et seq.*). State agencies that implement this option shall inform FNS of their intentions and provide copies of the procedures they will establish regarding the limitation of WIC services to United States citizens, nationals, and qualified aliens.

\* \* \* \* \*

(j) \* \* \*

(9) If a State agency must suspend or terminate benefits to any participant

during the participant's certification period due to a shortage of funds for the Program, it shall issue a notice to such participant in advance, as stipulated in paragraph (j)(6) of this section.

\* \* \* \* \*

(q) *Certification of qualified aliens.* In those cases where a person sponsors a qualified alien, (as the term is defined in the Immigration and Nationality Laws (8 U.S.C.1101 *et seq.*)), *i.e.*, signs an affidavit of support, the sponsor's income, including the income of the sponsor's spouse, shall not be counted in determining the income eligibility of the qualified alien except when the alien is a member of the sponsor's family or economic unit. Sponsors of qualified aliens are not required to reimburse the State or local agency or the Federal government for WIC Program benefits provided to sponsored aliens. Further, qualified aliens are eligible for the WIC Program without regard to the length of time in the qualifying status.

**§ 246.11 [Amended]**

6. In § 246.11:  
 a. Paragraph (c)(5) is removed; and  
 b. Paragraphs(c)(6), (c)(7), and(c)(8) are redesignated as paragraphs (c)(5), (c)(6), and (c)(7), respectively.

7. In § 246.16, paragraph (a)(6) is revised to read as follows:

**§ 246.16 Distribution of funds.**

(a) \* \* \*  
 (6) Up to one-half of one percent of the sums appropriated for each fiscal year, not to exceed \$5,000,000, shall be available to the Secretary for the purpose of evaluating Program performance, evaluating health benefits, providing technical assistance to improve State agency administrative systems, preparing reports on program participant characteristics, and administering pilot projects, including projects designed to meet the special needs of migrants, Indians, rural populations, and to carry out technical assistance and research evaluation projects for the WIC Farmers' Market Nutrition Program.

\* \* \* \* \*

8. In § 246.25, paragraph (b)(3) is revised to read as follows:

**§ 246.25 Records and reports.**

\* \* \* \* \*

(b) \* \* \*  
 (3) *Program Participant Characteristic reports.* State and local agencies shall provide such information as may be required by FNS to prepare reports on participant characteristics which includes, at a minimum, information on

breastfeeding incidence and duration, income and nutritional risk characteristics of participants, and participation in the Program by members of families of migrant farmworkers.

\* \* \* \* \*

Dated: August 23, 2000.  
**Shirley R. Watkins,**  
*Under Secretary, Food, Nutrition and Consumer Services.*  
 [FR Doc. 00-22638 Filed 9-1-00; 8:45 am]  
**BILLING CODE 3410-30-U**

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

[Docket No. 00-034-2]

**Plum Pox**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.  
**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that established regulations to quarantine portions of Adams County, PA, due to the detection of plum pox and restrict the interstate movement of articles from the quarantined area that present a risk of transmitting plum pox. We took this action to prevent the spread of plum pox to noninfested areas of the United States.

**EFFECTIVE DATE:** The interim rule became effective on June 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Poe, Operations Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737; (301) 734-8899.

**SUPPLEMENTARY INFORMATION:**

**Background**

In an interim rule effective and published in the **Federal Register** on June 2, 2000 (65 FR 35261-35265, Docket No. 00-034-1), we amended the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart, "Plum Pox," composed of new §§ 301.74 through 301.74-4 and referred to below as the regulations. These regulations quarantine portions of Adams County, PA, due to the detection of plum pox and restrict the interstate movement of stone fruit budwood, root stock, and other plant material from the quarantined area that present a risk of transmitting plum pox. We took this action to prevent the spread of plum

pox to noninfested areas of the United States.

Comments on the interim rule were required to be received on or before August 1, 2000. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

**PART 301—DOMESTIC QUARANTINE NOTICES**

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 65 FR 35261-35265 on June 2, 2000.

**Authority:** Title IV, Pub. L. 106-224, 114 Stat. 438, 7 U.S.C. 7701-7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 29th day of August 2000.

**Bobby R. Acord,**  
*Acting Administrator, Animal and Plant Health Inspection Service.*  
 [FR Doc. 00-22635 Filed 9-1-00; 8:45 am]  
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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

[Docket No. 00-036-1]

**Citrus Canker; Addition to Quarantined Areas**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.  
**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the citrus canker regulations by adding portions of Hendry, Hillsborough, and Palm Beach Counties, FL, to the list of quarantined areas and by expanding the boundaries of the quarantined areas in Broward, Collier, Dade, and Manatee Counties, FL, due to recent detections of citrus