Rules and Regulations

Federal Register
Vol. 65, No. 238
Monday, December 11, 2000

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC76

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Certification Integrity

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts an interim rule amending 7 CFR part 246 which was published on January 21, 2000, at 65 FR 3375 for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). The interim rule and this final rule implement three legislative requirements that affect the application and certification process for the WIC Program. These legislative requirements can be found in the William F. Goodling Child Nutrition Reauthorization Act of 1998. In addition, this final rule implements several nondiscretionary legislative requirements in the Agricultural Risk Protection Act of 2000 that also affect the WIC application and certification process. One of these provisions was subsequently amended by the Grain Standards and Warehouse Improvement Act of 2000, Public Law 106–472, enacted November 9, 2000. Therefore, this final rule adopts requirements that WIC applicants, except in limited circumstances, present documentation of family income at certification for those individuals who are not certified based on adjunctive income eligibility procedures; present proof of residency as part of a State agency's system to prevent dual participation; and, physically present themselves at certification. In addition, this final rule allows individuals residing in a remote Indian or Native village or served by an Indian tribal organization and residing on a reservation or pueblo, to provide the name of the village and mailing address as proof of residency, and defines ''remote Indian or Native village.'' Further, this final rule provides State agencies, in determining an applicant's eligibility for WIC, the option to exclude from consideration as income any cost-of-living allowance provided to military personnel who are on duty outside the contiguous United States. The intent of these provisions is to strengthen the integrity of the WIC certification process and to consider the needs of special populations in determining eligibility for the WIC Program.

EFFECTIVE DATE: This rule is effective January 10, 2001.

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

SUPPLEMENTARY INFORMATION:

1. Why is This Regulation Necessary?

On January 21, 2000, the Department published an interim rule at 65 FR 3375 to implement three legislative requirements in the William F. Goodling Child Nutrition Reauthorization Act of 1998, Public Law 105–336, 112 Stat. 3143, enacted October 31, 1998, which affect the application and certification process. These provisions include, with limited exceptions, that WIC agencies require WIC applicants and participants to: (1) Provide proof or documentation of family income in cases where an individual is not determined adjunctively or automatically income eligible; (2) provide proof or documentation of an applicant's residency; and (3) physically present themselves at the WIC clinic at certification. Comments were requested by the Department on the interim rule. Comments received on the interim rule are discussed below.

Subsequently, legislation was enacted on June 20, 2000, the Agricultural Risk Protection Act of 2000, Public Law 106–224, 114 Stat. 224, which includes several nondiscretionary provisions that also affect the WIC application and certification process. One of these provisions was subsequently amended by the Grain Standards and Warehouse Improvement Act of 2000, Public Law 106–472, 114 Stat. 2058, enacted on November 9, 2000. The Agricultural Risk Protection Act of 2000 allows individuals residing in a remote Indian or Native village or served by an Indian tribal organization and residing on a reservation or pueblo, to provide their mailing address and name of the remote Indian or Native village as proof of residency. This legislation defines ''remote Indian or Native village.'' The Agricultural Risk Protection Act of 2000, subsequently amended by the Grain Standards and Warehouse Improvement Act of 2000, also provides State agencies, in determining an applicant's eligibility for WIC, the option to exclude from consideration as income any cost-of-living allowance provided to military personnel who are on duty outside the contiguous United States. These requirements, as set forth in this final rule, are reproduced verbatim from the legislation. Thus, they are considered nondiscretionary provisions.

Section 263 of the Agricultural Risk Protection Act of 2000 requires that FNS promulgate regulations to implement the provisions as soon as practicable after the date of enactment without regard to the Administrative Procedure Act's notice and comment provisions (5 U.S.C. 553); the State of Policy of the Secretary of Agriculture relating to notices of proposed rulemaking and public participation in rulemaking effective July 24, 1971 (36 FR 13804); and the Paperwork Reduction Act (44 U.S.C., chapter 35). In addition, section 172 of Public Law 106–224 requires us to promulgate regulations to carry out the Act and its amendments not later than 120 days after the date of enactment, June 20, 2000. For these reasons, and because we are obligated by law and have exercised no discretion in making the amendments set forth by Public Law 106–224, we are not taking public comment prior to promulgation of this final rule.

2. What Comments Were Received on the Interim Rule and What Provisions Have Been Added as a Result of New Legislation?

A total of 24 comment letters, faxes and emails were received on the interim rule published on January 21, 1999, at 65 FR 3375. Commenters were primarily WIC State and local agencies and staff. Other commenters represented industry, a professional health or nutrition-related group, and the general public. In

general, some commenters supported the legislative measures to improve the integrity of the WIC Program. However, the majority of commenters opposed various aspects of the requirements in the interim rule, primarily the requirements mandated by law. In addition, some commenters recommended changes to WIC eligibility, and certification requirements that were not addressed in the interim rule such as what is counted as income for WIC eligibility purposes.

The Department has carefully considered all comments in the development of this final rule and would like to thank all agencies, organizations and individuals that responded to the request for comments on the interim rule. The Department does not have the authority to eliminate or revise legislative requirements, or change other WIC requirements not addressed in the interim rule without first issuing proposed regulations and affording the public the opportunity to comment on the proposal. There are, however, several issues that need clarification, given the comments received. The following is a discussion of each provision, clarifications needed as a result of comments received, an explanation of the three nondiscretionary certification provisions contained in Public Law 106–224, with one provision subsequently amended by Pub. L. 106–472, and an explanation of the provisions in this final rule.

a. Definitions—§ 246.2

In the interim rule, the Department added new definitions for ''Applicants,'' ''Documentation'' and ''Individual with disabilities.'' One commenter recommended that the definition of ''documentation'' include cases where the local agency assists in obtaining the documentation such as contacting the Medicaid Program to establish eligibility for WIC adjunct income eligibility purposes. It is the Department's intention that the definition of ''documentation'' include situations where the applicant may bring in written information to confirm verbal statements or include, where feasible, the WIC clinic assisting the client in obtaining the required written documents. For example, WIC staff could contact the Medicaid Program or access Medicaid eligibility information to confirm that the applicant is adjunctively or automatically income eligible for WIC. No comments were received on the definitions of ''Applicants'' and ''Individual with disabilities.'' As such, the three definitions included in the interim rule are not changed in this final rule.

Further, a new definition of ''remote Indian or Native village'' has been added as a result of the Agricultural Risk Protection Act of 2000, Public Law 106–224, 114 Stat. 224, Section 244(a). As noted below, this law adds an additional exception to the proof of residency requirement for individuals residing in a remote Indian or Native village. Therefore, as defined in the Act, ''remote Indian or Native village'' means an Indian or Native village that: (1) Is located in a rural area; (2) has a population of less than 5,000 inhabitants; and, (3) is not accessible year-around by means of a public road, as defined in section 101 of title 23 of the United States Code (U.S.C.). Section 101 of title 23 of the U.S.C. defines public road as ''* * * any road or street under the jurisdiction of and maintained by a public authority and open to public travel.'' Accordingly, § 246.2 adds a new definition of ''remote Indian or Native village.''

b. Documentation of Family Income—§ 246.7(d)(2)(v)

The interim rule established, in accordance with legislation, that applicants, except those deemed adjunctively income eligible, must provide documentation of family income with limited exceptions. The limited exceptions include: (1) An individual for whom the necessary documentation is not available; or, (2) an individual, such as a homeless woman or child, for whom the agency determines the requirement would present an unreasonable barrier to participation. The Department also clarified in the interim rule that certain instream migrant farmworkers and their family members with expired Verification of Certification cards shall satisfy the State agency's income standard and income documentation requirements. The interim rule also addressed the Department's intent to continue to include a provision which affords State and local agencies the authority to verify an applicant's income, that is validating information provided by the applicant through an external source other than the applicant.

One commenter recommended the exceptions to the provision of documentation include individuals that have lost everything due to theft, fire, flood or other disaster. This example clearly falls within the parameters of one of the exceptions set forth in the legislation, that is an individual for whom the necessary documentation is not available.

One commenter recommended that all sources of family income be documented, not just income of one family member. It has been the Department's and State and local agencies' longstanding policy that all sources and amounts of family income are identified in determining WIC income eligibility.

Given the comments received and clarifications noted above, the interim requirements pertaining to the documentation of income are unchanged in this final rule.

c. Exclusion From Income—§ 246.7(d)(2)

Section 244(b) of Public Law 106–224 amended section 17(d)(2)(B) of the Child Nutrition Act (CNA) to make a technical correction. The technical correction is made to a provision which permits State agencies to exclude from income, in determining WIC eligibility, any basic allowance for quarters received by military personnel residing off military installations. First, Section 244(b) changes the reference from ''basic allowance for quarters'' to ''basic allowance for housing.'' This change is necessary and consistent with a revision in the terminology used in referring to this military allowance. Second, Section 244(b) of Public Law 106–224, subsequently amended by Section 307(b)(1) of Public Law 106–472, adds at the end of section 17(d)(2)(B) of the CNA a new provision. Under this provision, State agencies may choose to exclude, in determining WIC income eligibility, any cost-of-living allowance (COLA) provided under section 405 of title 37 of the United State Code, to a member of a uniformed service who is on duty outside the contiguous states of the United States. This allowance is referred to as the overseas continental United States (OCONUS) COLA.

The OCONUS COLA is provided to active duty uniformed service members in designated overseas high-cost areas including Hawaii, Alaska and Guam. Ultimately, the decision to choose whether to exclude the OCONUS COLA in determining WIC income eligibility affects all WIC State agencies. This is the case because some members of a military family may remain stateside and apply and/or participate in WIC while a family member on duty overseas receives the OCONUS COLA. In areas outside the contiguous U.S., such as Hawaii, Alaska and Guam, only one COLA is provided to active duty military personnel stationed in these locations, that is the OCONUS COLA. Therefore, each WIC State agency in which applying members of a military family reside within its borders must determine whether it will include or

exclude the OCONUS COLA provided to the family member who is stationed in a designated overseas high-cost area in determining WIC income eligibility. The determination to include or exclude the OCONUS COLA needs to be addressed in each State agency's policy and procedures manual.

While State agencies may choose to exclude the OCONUS COLA in determining WIC income eligibility, the amendments made by Public Laws 106–224 and 106–472 do not authorize or permit State agencies to choose whether to exclude the COLA provided to military personnel in designated high-cost areas within the continental United States. This allowance is referred to as the Continental United States (CONUS) COLA. Therefore, in all cases where a military family receives the CONUS COLA, the amount must be counted as income in determining WIC eligibility.

In reviewing military pay stubs, while some variation may exist to reflect the COLA, generally, the military pay stubs will identify whether a COLA is provided to a military person, either as an OCONUS OCOLA or a CONUS COLA. All Marines' pay stubs, whether they receive or do not receive a CONUS COLA, will reflect in the remarks section of the pay stub that the Marine is entitled to CONUS COLA; computed amount is reflected as ''O'' or a specific dollar amount. As indicated above, if a military family member applies for WIC and a household member receives a CONUS COLA, the amount received must be counted in determining WIC income eligibility.

Accordingly, § 246.7(d)(2)(iv)(A) is revised to change the reference from ''basic allowance for quarters'' to ''basic allowance for housing.'' This section also adds the option that State agencies may choose to exclude any cost-of-living allowance provided to military personnel on duty outside the contiguous United States.

d. Dual Participation Prevention—Proof of Residency—§ 246.7(l)(2)

Public Law 105–336 addresses a renewed emphasis on State and local agencies' systems for detecting dual participation. Therefore, the interim rule, at § 246.7(l)(2), added a requirement, in addition to checking identity at certification, that State and local agencies must require each applicant at certification to present proof of residency, that is the location or address where the applicant routinely lives or spends the night. As noted, for an infant or child applicant, documentation of residency must be provided for the person with whom the infant or child resides. Further, the requirement to provide documentation of residency also applies to a person who transfers from another area or State and presents a valid Verification of Certification (VOC) card at a new WIC site. As indicated in the interim rule, a post office box does not constitute sufficient documentation of residency.

Some commenters opposed the requirement for various reasons. For example, WIC commenters indicated that WIC applicants may forget to bring in documentation or bills may not be in the name of the applicant. However, a greater, overriding factor is the need to detect and prevent dual participation. The collection of such information is an important data element in identifying dual participation and necessary to improve the integrity of the WIC Program. Further, sufficient flexibility exists for State agencies in developing procedures in this area. For example, we support a commenter's suggestion that ''location'' should also mean, for example, directions on a map where the applicant routinely lives or spends the night. Such procedures may be necessary, for example, in areas/towns where only post office boxes exist or in rural areas where there are no street names.

Some commenters expressed concern that some applicants may view and misinterpret the requirement as requiring proof of citizenship or alien status. We strongly encourage State and local agencies to ensure any program eligibility information to WIC applicants and participants reflects the true intent of this requirement. While for WIC regulatory and policy purposes, the Department refers to this requirement as proof of residency, WIC applicants need to understand they are being asked to provide documentation of where they routinely live or spend the night. Such clarification is extremely important to ensure misunderstanding or miscommunication of the requirement does not create a barrier to WIC participation.

The residency requirement, i.e., the location or address where the applicant routinely lives or spends the night, has no durational aspect. That is, there is no requirement on the length of time an applicant must reside at the location or address where he/she routinely lives or spends the night.

Accordingly, the general requirements pertaining to documentation of residency, as set forth in the interim rule, are retained in this final rule.

(1) Special Residency Procedures

As specified in the preamble to the interim rule, current WIC regulations at section 246.7(c)(1) require all State agencies, except Indian State agencies to require applicants to reside within the jurisdiction of the State. WIC regulations authorize Indian/Native American State agencies to establish a requirement for applicants to reside within their area or legal jurisdiction.

Further, State agencies may also establish a local service area residency requirement. The residency requirement has no durational or formal legal aspect and need to represent a legal residence. Also, length of residency cannot be a prerequisite to receiving WIC benefits.

No comments were received on these current WIC residency requirements. Therefore, these requirements are retained in WIC regulations and policy.

(2) Exceptions to the Identity and Residency Documentation Requirements

As set forth in the interim rule in § 246.7(l)(2), State agencies are permitted, when no proof of residency or identity exists, to exempt an applicant from the residency and/or identity documentation requirements. In such cases, at a minimum, State or local agencies must require the applicant to confirm in writing his/her residency or identity. As noted in the interim rule, applicants to whom an exemption may apply include a victim of theft, loss, or disaster; a homeless individual; or, a migrant farm worker. No comments were received on this portion of the interim rule. Therefore, this final rule retains these requirements.

However, sections 244(a) and (c) of Public Law 106–224 have included an additional nondiscretionary exemption from the residency requirement. Section 244(c) of the law permits an individual residing in a remote Indian or Native village, or an individual served by an Indian tribal organization and residing on a reservation or pueblo, to establish proof of residency by providing to the State agency the mailing address of the individual and the name of the remote Indian or Native village. The Department has determined that no additional requirements or standards, as authorized by the Public Law 106–224, are necessary to implement this requirement. Accordingly, at the end of § 246.7(l)(2), a new sentence has been added to reflect this legislative provision.

e. Physical Presence—§ 246.7(p)

Many commenters opposed the general requirement set forth in Public Law 105–335 that individuals seeking participation in the WIC Program must be physically present at the initial WIC certification and subsequent recertifications, except in certain limited circumstances. Some

commenters recommended additional exemptions beyond those permitted by the legislation, such as permitting a non-WIC entity/individual such as any health professional, to confirm or verify an individual's physical presence. As indicated previously, the Department does not have the authority to change or expand legislative requirements. Further, the legislative mandate reinforces the Department's long-standing position that the physical presence of an individual at certification is basic to WIC Program effectiveness.

The Department wishes to emphasize, as set forth in the preamble to the interim rule, that although an applicant may be exempt from the physical presence requirement, State and local agencies must ensure that all necessary information and documentation, including income, residency, identity, and nutrition risk, are provided in order to make a WIC eligibility determination in the absence of the applicant. The applicant's parent, caretaker or proxy can bring in the documents necessary to determine eligibility for WIC.

Therefore, the general requirement that individuals must be physically present at the initial WIC certification and subsequent recertifications, except in certain limited circumstances as discussed below, has been retained in this final rule.

(1) Mandatory Exception to the Physical Presence Requirement Due to a Disability

As set forth in Public Law 105–336 and the interim rule, State and local agencies are required to exempt from the physical presence requirement applicants who are qualified individuals with disabilities and are unable to be physically present at the WIC clinic because of their disabilities. The interim rule further clarified that this requirement also applies to applicants whose parents or caretakers are individuals with disabilities that meet this standard. The interim rule set forth examples of situations that would warrant an exception to the physical presence requirement due to a disability. Those examples included: (1) A medical condition that necessitates the use of medical equipment that is not easily transportable; (2) a medical condition that requires confinement to bed rest; and (3) a serious illness that may be exacerbated by coming in to the WIC clinic.

One commenter supported the exceptions for disability and indicated the exceptions were reasonable and represented current State agency practices. Another commenter recommended that the regulatory text be revised to include an example of a highly contagious illness that may be readily communicated to others. The interim rule and regulatory text set forth examples of situations that warranted an exception due to a disability. Therefore, some State agency flexibility exists to identify other potential conditions similar to those cited in the interim rule. Certainly, an individual with a highly contagious illness most likely would require confinement to bed rest and/or the condition may be exacerbated by coming in to the WIC clinic. Therefore, such a situation may fall under one or more of the examples set forth in the interim rule.

Further, another commenter recommended that if a person meets the conditions and is unable to be physically present, that the State or local agency should permit a caregiver or representative to present documentation of income, residency, and bloodwork data. This is the Department's intent with regard to implementation of this exception. While the applicant may be determined to be exempt from the physical presence requirement, State and local agencies would need to schedule an appointment for another family member, caregiver or representative to bring in all documents and information necessary to determine the applicant's eligibility for the WIC Program.

As indicated in the interim rulemaking, all persons with disabilities are not automatically exempt from the physical presence requirement. Only those disabilities that create a current barrier to the physical presence requirement may serve as a basis for an exception from the requirement.

Accordingly, as set forth in the interim rule, section 246.7(p)(2)(i) is retained in this final rule.

(2) State Agency Option To Exempt Certain Infants and Children From the Physical Presence Requirement

Public Law 105–336, and the interim rule, provide State agencies the option, if physical presence would present an unreasonable barrier to participation, to exempt certain infants or children from the physical presence requirement in the following situations:

An infant or child:

- Who was present at his/her initial WIC certification; and,
- Has documented ongoing health care from a provider other than the local agency; or

An infant or child:

- Who was present at his/her initial WIC certification; and
- Was present at a WIC certification or recertification determination within the 1-year period ending on the date of the most recent certification or recertification determination; and,
- Is under the care of one or more working parents or one or more primary working caretakers whose working status presents a barrier to bringing the infant or child in to the WIC clinic.

Several comments were received on the option to exempt an infant or child with ongoing health care. One commenter recommended this option be extended to children in foster or shelter care. Others opposed the provision because the provider of the health care must be an entity other than the WIC local agency. However, as indicated previously, the Department does not have the authority to expand the option or exclude one or more aspects of the requirement because they are specified in law. One commenter expressed concern that under this option, an infant could present soon after birth and never have to physically present again at a WIC certification. We support the concern raised by the commenter and would encourage WIC State agencies to consider this issue in the development of policy. A limit on the number of consecutive times this option could be used may be appropriate, as in the case identified by the commenter. This option, as set forth in the interim rule, is retained in this final rule.

Several commenters also opposed the option to exempt an infant or child of working parents. Reasons cited by commenters for opposing the provision include that it will confuse working parents, it will be difficult for parents to meet the initial physical presence requirement, and the option fails to address an essential requirement that the infant or child have ongoing health care. Because the option, as noted above, is reproduced in the regulations verbatim from the legislation, the Department does not have the authority to change or revise the option.

However, given comments received on this provision, several clarifications are necessary with regard to this option. First, as a commenter noted, the requirement that the infant or child must have been present within a 1-year period does mean that an infant or child must have been physically present at a WIC certification at least once in the previous 12 months. Second, the report language which accompanies Public Law 105–336 specifies that the exemption for working parents means that in families where there are two parents or caretakers, both individuals must be working in order for the option to apply. The exception for one working parent in the legislation and the interim

rule refers to households where there is only one parent or caretaker.

As indicated above, commenters expressed concerns with both options for exempting an infant or child. However, the Department would emphasize that these are options that the State agency can determine whether or not to implement. State agencies are not required to implement these provisions. Therefore, for the reasons stated above, the option to exclude an infant or child in the case of working parents or caretakers is retained in this final rule, as set forth in the interim rule.

f. Certification Forms—§ 246.7(i)

Section 246.7(i)(3)–(i)(5) of the interim rule specifies that the certification form, which may be either paper or electronic, must reflect the type of document(s) used to determine or confirm income eligibility, residency and identity or include a copy of the document(s) in the file. Further, in those cases where there is no proof of income, the file must include a copy of the written statement by the applicant indicating why he/she cannot provide documentation of income, and in applicable cases, specify if the applicant has no income. Further, this section also requires an indication of whether the applicant is physically present at certification. Such an indication may consist of simply checking off an appropriate annotated box on a paper or electronic form. If that applicant is not physically present, the form must indicate the reason why an exception was granted or a copy of a document(s) must be placed in the file that explains the reason for the exception.

Several commenters opposed the requirements for State and local agencies to reflect the types of documents used to confirm income and residency. However, the Department believes these requirements are necessary to ensure the integrity of the WIC certification process. State agencies have been encouraged to adopt procedures to meet this requirement in a manner that imposes the least administrative burden on WIC clinic staff.

3. Procedural Matters

Executive Order 12866

This final 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 (5 U.S.C. 601–612). Pursuant to that review, Samuel Chambers, Jr., Administrator, Food and Nutrition Service, has certified that this rule would not have a significant impact on a substantial number of small entities. This rule would modify WIC certification procedures. Therefore, the effect of these changes would be primarily on State and local WIC agencies, some of which are small entities. However, the impact on small entities is not expected to be significant.

Executive Order 12372

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs 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 in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final 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** section of the preamble of this final rule. Prior to any judicial challenge to the application of the provisions of the final rule, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 ((UMRA) (2 U.S.C. 1531–38)) 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 (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 204 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final 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, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

This regulation contains information collection that is subject to review and approval by the Office of Management and Budget. The information collection contained in Section 246.7 (i)(3)—(i)(5) of this regulation is approved under OMB No. 0584–0043.

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, the interim rule amending 7 CFR Part 246 which was published at 65 FR 3375 on January 21, 2000, is adopted as a final rule with the following changes:

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, add a new definition of *Remote Indian or Native village* in alphabetical order to read as follows:

§ 246.2 Definitions.

* * * * *

Remote Indian or Native village means an Indian or Native village that is located in a rural area, has a population of less than 5,000 inhabitants, and is not accessible year-round by means of a public road (as defined in 23 U.S.C. 101).

* * * * *

3. In § 246.7, revise paragraphs (d)(2)(iv)(A) and (l)(2) to read as follows:

§ 246.7 Certification of participants.

* * * * *

(d) * * *

(2) * * *

(iv) * * *

(A) In determining income eligibility, the State agency may exclude from consideration as income any:

(*1*) Basic allowance for housing received by military services personnel residing off military installations; and

(*2*) Cost-of-living allowance provided under 37 U.S.C. 405, to a member of a

uniformed service who is on duty outside the contiguous states of the United States.

* * * * *

(l) * * *

(2) At certification, the State or local agency must require each applicant to present proof of residency (*i.e.,* location or address where the applicant routinely lives or spends the night) and proof of identity. The State or local agency must also check the identity of participants, or in the case of infants or children, the identity of the parent or guardian, or proxies when issuing food or food instruments. The State agency may authorize the certification of applicants when no proof of residency or identity exists (such as when an applicant or an applicant's parent is a victim of theft, loss, or disaster, a homeless individual, or a migrant farmworker). In these cases, the State or local agency must require the applicant to confirm in writing his/her residency or identity. Further, an individual residing in a remote Indian or Native village or an individual served by an Indian tribal organization and residing on a reservation or pueblo may establish proof of residency by providing the State agency their mailing address and the name of the remote Indian or Native village.

* * * * *

Dated: November 30, 2000.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 00–31452 Filed 12–8–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 00–33]

RIN 1557–AB88

Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure to adjust the maximum amount, as set by statute, of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required under the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996.

DATES: This rule is effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Attorney, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The Inflation Adjustment Act [1] requires the OCC, as well as other Federal agencies with CMP authority, to publish regulations to adjust each CMP authorized by a law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Inflation Adjustment Act requires adjustments to be made at least once every four years following the initial adjustment. The OCC's prior adjustment to each CMP was published in the **Federal Register** on January 22, 1997, [2] and became effective that same day.

The Inflation Adjustment Act requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the adjustment and June of the calendar year in which the amount was last set or adjusted. The Inflation Adjustment Act defines the Consumer Price Index as the Consumer Price Index for all urban consumers published by the Department of Labor (''CPI–U'').[3] In addition, the Inflation Adjustment Act provides rules for rounding off increases,[4] and provides that any increase in a CMP applies only to violations that occur after the date of the adjustment.

Description of the Rule

This final rule adjusts the amount for each type of CMP that the OCC has jurisdiction to impose in accordance with these statutory requirements. It does so by revising the table contained in section 19.240 of our regulations. The table identifies the statutes that provide the OCC with CMP authority, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision.

The inflation adjustment for the CMPs was calculated by comparing the CPI–U for June 1996 (156.7) with the CPI–U for June 1999 (166.2),[5] resulting in an inflation adjustment of 6.1 percent.[6] The amount of each CMP was multiplied by the appropriate percentage and the resulting dollar amount was rounded up or down according to the rounding requirements of the statute. In some cases, rounding resulted in no adjustment to the CMP. The table below shows both the present CMPs and inflation adjusted CMPs. The table as published in the rule includes only the CMPs as of the effective date of this rule.

---

[1] 28 U.S.C. 2461 note.

[2] *See* 62 FR 3199, January 22, 1997.

[3] *See* 28 U.S.C. 2461 note.

[4] *See id.* The statute's rounding rules require that an increase be rounded to the nearest multiple of: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000.

[5] The Department of Labor (DOL) computes the CPI–U using two different base time periods, 1967 and 1982–1984, and the Inflation Adjustment Act does not specify which of these base periods should be used to calculate the inflation adjustment. The OCC has used the DOL's CPI–U with 1982–84 as the base period because it reflects the most current method of computing the CPI–U.

[6] According to the statute, the inflation adjustment is computed by comparing the CPI–U for June of the year in which the CMPs were ''last set or adjusted'' with CPI–U for June ''of the calendar year preceding [sic] the adjustment.'' 28 U.S.C. 2461 note. Therefore, a different formula is required for three CMPs that did not increase when the OCC made its initial inflation adjustment in 1997. These CMPs—the $2,000 penalties under 12 U.S.C. 164 and 12 U.S.C. 3110(c) and the 4350 [penalty under 42 U.S.C. 4012a(f)(5)—did not increase as a result to application of the rounding rules. For those penalties that were not adjusted in 1997, we have used the year in which the CMP was last set by enactment. *See* footnotes a and b to the table.