

For the reasons stated in the foregoing preamble, the General Accounting Office Personnel Appeals Board amends 4 CFR Chapter I, Subchapter B, Part 28 as follows:

**PART 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT PRACTICES AT THE GENERAL ACCOUNTING OFFICE**

1. The authority citation for Part 28 continues to read as follows:

**Authority:** 31 U.S.C. 753.

2. Amend § 28.12 by adding a new paragraph (g) to read as follows:

**§ 28.12 General Counsel procedures.**

\* \* \* \* \*

(g) If 180 days have elapsed since the filing of the charge, and the General Counsel has not completed the investigation and issued a Right to Appeal Letter, the charging party may bring his or her case directly to the Board by filing a petition for review in accordance with § 28.18. If a charging party exercises this option to file a petition for review with the Board without waiting for the completion of the investigation, the General Counsel shall not represent the charging party in proceedings before the Board. The charging party may represent him- or herself or obtain other representation. The General Counsel shall close the investigation of the charge upon being notified by the Clerk of the Board that the charging party has filed a petition for review with the Board under this paragraph (g).

3. Amend § 28.18 by revising paragraphs (a) and (b) to read as follows:

**§ 28.18 Filing a petition for review with the Board.**

(a) *Who may file.* Any person who is claiming to be affected adversely by GAO action or inaction that is within the Board's jurisdiction under subchapter IV of chapter 7 of title 31, United States Code, or who is alleging that GAO or a labor organization engaged or is engaging in an unfair labor practice, may file a petition for review if one of the following is met:

(1) The person has received a Right to Appeal Letter from the Board's General Counsel; or

(2) At least 180 days have elapsed from the filing of the charge with the Board's General Counsel and the General Counsel has not issued a Right to Appeal Letter; or

(3) The person was separated due to a Reduction in Force and chooses to file an appeal directly with the Board,

without first filing with the Board's General Counsel, as provided in § 28.13.

(b) *When to file.* (1) Petitions for review filed pursuant to paragraph (a)(1) of this section must be filed within 30 days after service upon the charging party of the Right to Appeal Letter from the Board's General Counsel.

(2) Petitions for review filed pursuant to paragraph (a)(2) of this section may be filed at any time after 180 days have elapsed from the filing of the charge with the Board's General Counsel, provided that the General Counsel has not issued a Right to Appeal Letter concerning the charge.

(3) Petitions for review filed pursuant to paragraph (a)(3) of this section must be filed within 30 days after the effective date of the separation due to a Reduction in Force.

\* \* \* \* \*

**Michael Wolf,**  
*Chair, Personnel Appeals Board, U.S. General Accounting Office.*  
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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): Clarification 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:** Final rule.

**SUMMARY:** This final rule amends the regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to clarify one of the provisions required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, enacted on August 22, 1996. The nondiscretionary provisions of that act were incorporated in the WIC Program regulations in an interim rule published September 5, 2000.

**EFFECTIVE DATE:** This rulemaking becomes effective January 22, 2001.

**FOR FURTHER INFORMATION CONTACT:** Debra R. Whitford at (703) 305-2746.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 5, 2000, we published an interim rule (65 FR 53523) that

amended the WIC Program regulations to incorporate certain nondiscretionary requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-103). We received ten comments on the interim rule.

Nine of the comments concerned the provision in § 246.7(c)(2) providing WIC State agencies the option to limit WIC participation to U.S. citizens, nationals, and qualified aliens contained in section 742 of Pub. L. 104-193 (8 U.S.C. 1615). In particular, the commenters suggested that we incorporate into the regulations our statement in the preamble concerning the effect of a provision to implement this option on the State agency's WIC-eligible population. In the preamble (65 FR 53524-25) we said:

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.

We use the estimated WIC-eligible population for each State agency to determine the State agency's fair share allocation of food funds. We believe that adjusting the State agency's WIC-eligible population to reflect the more limited population eligible for that State agency's WIC Program is a logical result under the current regulations. As such, we have adopted the commenters' suggestion. Accordingly, this final rule amends § 246.16(c)(3)(i)(A) to provide that if a State agency chooses to exercise the option in § 246.7(c)(2), FNS will reduce the State agency's population of income eligible persons to reflect the number of aliens the State agency declares no longer eligible.

Another commenter raised two concerns. First, the commenter objected to the change in § 246.7(b)(3) that makes food assistance referrals optional. We had no discretion on this point as the change was required by Pub. L. 104-193. Second, the commenter encouraged FNS to provide State and local agencies with two years' advance notice when making changes to the data required for the participant characteristic reports. Traditionally, we have worked closely with our State, tribal, and local government partners on any changes to the reporting on participant characteristics. We recognize that

system changes are often needed in order to collect different data and typically provide at least two years notice of any changes. We plan to continue this approach.

**Executive Order 12866**

This final rule has been determined to be not significant and, therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

**Regulatory Flexibility Act**

This final 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 relates to a provision providing WIC State agencies with increased flexibility in determining which individuals to serve. Although some WIC local agencies are small entities, the effect of this flexibility on local agencies will not be significant.

**Paperwork Reduction Act**

This final 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 final rule has been reviewed under Executive Order 12998, 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 final 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.

**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.

Accordingly, the interim rule amending 7 CFR part 246, which was published at 65 FR 53523 on September 5, 2000, is adopted as final with the following change:

**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. Amend § 246.16(c)(3)(i)(A) by adding a new sentence at the end of the paragraph to read as follows:

**§ 246.16 Distribution of funds.**

- \* \* \* \* \*
- (c) \* \* \*
- (3) \* \* \*
- (i) \* \* \*
- (A) \* \* \*

If the State agency chooses to exercise the option in § 246.7(c)(2) to limit program participation to U.S. citizens, nationals, and qualified aliens, FNS will reduce the State agency’s population of income eligible persons to reflect the number of aliens the State agency declares no longer eligible.

\* \* \* \* \*

**George A. Braley,**  
*Acting Administrator, Food and Nutrition Service.*

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**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Parts 212, 236, and 241**

[INS No. 2029–00; AG Order No. 2349–2000]  
**RIN 1115–AF82**

**Detention of Aliens Ordered Removed**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Immigration and Naturalization Service (Service) regulations by providing a uniform review process governing the detention of criminal, inadmissible, and other aliens, excluding Mariel Cubans, who have received a final administrative order of removal, deportation, or exclusion but whose departure has not been effected within the 90-day removal period. Such a process is necessary to ensure periodic custody reviews for aliens detained beyond the removal period and to provide for consistency in decision-making. Because the Service is developing a specialized, ongoing administrative review process for these custody determinations, this rule eliminates the appellate role of the Board of Immigration Appeals (Board) in post-final order custody determinations. This rule also amends the Service’s regulations to reflect the authority of the Commissioner, and through her, other designated Service officials, to release certain aliens from Service custody, issue orders of supervision, and grant stays of removal.