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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584-AE04

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Exclusion of Combat Pay From WIC Income Eligibility Determinations

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This final rule incorporates into the regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) a statutory provision set forth in Section 734(b) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2010 (Pub. L. 111–80). The provision excludes combat pay from inclusion in the WIC income eligibility determination for deployed service members. It also makes conforming nomenclature changes throughout part 246 of WIC regulations to include the name change for what was formerly known as the Food Stamp Program to its new name—the Supplemental Nutrition Assistance Program (SNAP), as set forth in the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246).

DATES: *Effective Date:* This rule is effective July 18, 2011.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 520, Alexandria, Virginia 22302; (703) 305–2746; *e-mail:* Debbie.Whitford@fns.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Combat Pay Exclusion

Section 734(b) of Public Law 111–80, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2010 (the Act), enacted on October 21, 2009, amended Section 17(d)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(2)) to exclude from the WIC income eligibility determination, combat pay that is received by or from a member of the United States (U.S.) Armed Services that is received in addition to basic pay as a result of the service member's deployment or service in a designated combat zone. In addition, the pay must not have been received prior to serving in a combat zone. Combat pay includes any additional pay received pursuant to Chapter 5 of Title 37 of the United States Code, or otherwise designated by the Secretary to be appropriate for exclusion as combat pay.

This provision was effective on October 21, 2009. On November 5, 2009, the Food and Nutrition Service directed WIC State and local agencies to implement this income exclusion immediately. This final rule amends 7 CFR 246.7, Certification of Participants, to reflect that combat pay is excluded from the WIC income eligibility determination process.

Food Stamp Program Name Change

Section 4001 of Public Law 110–246, the Food, Conservation, and Energy Act of 2008 (FCEA), which was enacted on June 18, 2008, amended and renamed the Food Stamp Act of 1977, 7 U.S.C. 2011, *et seq.*, as the Food and Nutrition Act of 2008. FCEA changed the name of the program from the “Food Stamp Program” to the “Supplemental Nutrition Assistance Program” or “SNAP”. This change in name reflects the fact that participants no longer receive stamps or coupons to make food purchases.

Additionally, the new name reflects a focus on the nutritional aspect of the program. SNAP not only provides food assistance to low-income people, but also promotes nutrition to improve their health and well-being.

Accordingly, this rule makes the following name changes in 7 CFR part 246 to make the Federal WIC regulations consistent with the name changes set forth in the FCEA:

| Previous name | New name |
|---------------------------|---|
| “Food Stamp Program”. | “Supplemental Nutrition Assistance Program (SNAP).” |
| “Food Stamp Act of 1977”. | “Food and Nutrition Act of 2008.” |
| “food stamp” | “SNAP.” |
| “food coupons” | “SNAP benefits” or “benefits.” |
| “Food stamps” | “SNAP benefits” or “benefits.” |

Notice and Comment

In accordance with the Secretary's Statement of Policy (36 FR 13804), it is found and determined with good cause that it is unnecessary to engage in the Notice and Comment provisions of 5 U.S.C. 553 normally required before the adoption of final regulations in an FNS-sponsored program. The exclusion of combat pay from consideration as income under the WIC Program is implemented in this final rule in accordance with Section 734(b) of the Act. The nondiscretionary nature of Section 734(b) means that notice and comment would serve no useful purpose in the promulgation of these regulations. The name changes related to SNAP are technical amendments designed to make the WIC portion of 7 CFR consistent with its SNAP counterparts.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Regulatory Impact Analysis

This rule has been designated as significant by the Office of Management and Budget; therefore, a Regulatory

Impact Analysis (RIA) is required, as summarized below. The complete RIA is available upon request from the Food and Nutrition Service by contacting Debra R. Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 520, Alexandria, Virginia 22302; (703) 305-2746; e-mail Debbie.Whitford@fns.usda.gov.

Need for Action

The final rule amends the WIC regulations to implement the exclusion of combat pay from income eligibility determination as mandated in Public Law 111-80, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010, and changes references to the Food Stamp Program to its new name—the Supplemental Nutrition Assistance Program.

Benefits

The benefit of this provision will extend eligibility to deployed service members who might otherwise not be eligible due to the inclusion of combat pay when determining income eligibility to receive WIC benefits.

Costs

The provisions of this final rule will have an insignificant effect upon the administrative burden to the Department or to State agencies. Applicants who were previously found ineligible due to being over the WIC income eligibility limits may now be found eligible when combat pay is excluded from the income eligibility determination. This, in turn, may increase the number of persons served, resulting in a small cost increase to the WIC Program. We estimate that the rule will increase WIC costs by less than \$1 million per year, or about \$4 million from FY 2010 when State agencies began implementing the combat pay exclusion through FY 2014.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it is certified that this rule would not have a significant impact on small entities.

The provisions of this rulemaking are applicable to all State and local agencies that administer the WIC Program.

Unfunded Mandates Reform Act

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, 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 by State, local, or Tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or 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.

Executive Order 12372

WIC is listed in the Catalog of Federal Domestic Assistance under No. 10.557. For the reasons set forth in the final rule at 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 that requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency’s considerations in terms of the three categories called for under Section 6(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any

State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Dates paragraph of the preamble to the final rule. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

In WIC, the administrative procedures are as follows: (1) State and local agencies, farmers, farmers’ markets, and roadside stands—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) Applicants and participants—State agency hearing procedures pursuant to 7 CFR 246.18; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.16, and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with Departmental Regulations 4300-4, “Civil Rights Impact Analysis,” and 1512-1, “Regulatory Decision Making Requirements.” After a careful review of the rule’s intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits in the WIC Program. Federal WIC regulations specifically prohibit State agencies that administer the WIC Program, and their cooperators, from engaging in actions that discriminate against any individual in any of the protected classes (see 7 CFR 246.8 for the nondiscrimination policy in the WIC Program). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the WIC Program regulations set forth at § 246.8. This rule simply excludes combat pay given to United States Armed Service members that is received in addition to basic pay as a result of the service member’s deployment or service in a designated combat zone from income eligibility determination for WIC, and codifies the name change for what was formerly known as the Food Stamp Program to its new name—SNAP.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

E.O. 13175 requires Federal agencies to consult and coordinate with Tribes

on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. In late 2010 and early 2011, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the impact of this rule on the Tribe or Indian Tribal governments, or whether this rule may preempt Tribal law. Reports from these consultations will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country.

The policies contained in this rule would not have Tribal implications that preempt Tribal law.

Paperwork Reduction Act

This rule does not constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

E-Government Act Compliance

FNS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities to provide for citizen access to government information and services, and for other purposes. State plan amendments regarding the implementation of the provision contained in this rule, as is the case with the entire State Plan, may be transmitted electronically by the State agency to FNS. Also, State agencies may provide WIC Program information, as well as their financial reports, to FNS electronically.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Nutrition education, Public assistance programs, WIC.

For reasons discussed above, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

■ 1. The authority citation for part 246 continues to read as follows:

Authority: 7 U.S.C. 1786.

■ 2. Part 246 of this chapter is amended as follows:

- a. Remove the words “Food Stamp Program” and “the Food Stamp Program” and add in their place, the word “SNAP” each time they appear in this part;
 - b. Remove the words “Food Stamp Act of 1977” and add in their place, the words “Food and Nutrition Act of 2008” each time they appear in this part;
 - c. Remove the words “food stamp” and add in their place, the word “SNAP” each time it appears in this part; and
 - d. Remove the words “food stamps” wherever they appear and add in their place, the words “SNAP benefits”.
- 3. In § 246.2, a definition of *Supplemental Nutrition Assistance Program (SNAP)* is added, to read as follows:

§ 246.2 Definitions.

* * * * *

Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program, is the program authorized by the Food and Nutrition Act of 2008 (7 U.S.C. 2011, *et. seq.*), in which eligible households receive benefits that can be used to purchase food items from authorized retail stores and farmers’ markets.

* * * * *

■ 4. In § 246.7, a new paragraph (d)(2)(iv)(D)(35) is added, to read as follows:

§ 246.7 Certification of participants.

* * * * *

(d) * * *

(2) * * *

(iv) * * *

(D) * * *

(35) Combat pay received by the household member under Chapter 5 of Title 37 or as otherwise designated by the Secretary.

* * * * *

Dated: June 8, 2011.

Kevin Concannon,
Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 2011-14904 Filed 6-15-11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2011-0010; Airspace Docket No. 11-AAL-1]

Amendment of Federal Airways; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action changes the effective date for the amendment of all Anchorage, AK, Federal Airways that are affected by the relocation of the Anchorage VHF Omnidirectional Range (VOR) navigation aid. The FAA is taking this action due to a failed flight inspection.

DATES: The effective date of the rule published on April 28, 2011 (76 FR 23687), is delayed until further notice.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace, Regulations and ATC Procedures Group, Office of Mission Support Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

Federal Register Document FAA-2011-0010, Airspace Docket No. 11-AAL-1, published in the **Federal Register** on April 28, 2011 (76 FR 23687), proposed the amendment of all Anchorage Federal Airways affected by the relocation of the Anchorage VOR navigation aid. Although satisfactory flight inspection reports were filed in April 2011, these reports were in error. These Federal airways are being impacted by flight inspection delays due to the relocation of the navigation aid, thereby delaying the effective date of June 30, 2011, until further notice. This will allow better coordination for the charting of the airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a significant regulatory action under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated