

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

#### 7 CFR Chapter II

RIN 0584-AB53

#### Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Homelessness/Migrancy as Nutritional Risk Conditions

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

**SUMMARY:** This final rule amends regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to comply with the mandate of section 204 of the Child Nutrition Amendments of 1992, enacted on August 14, 1992. Consistent with that legislation, and as proposed on April 6, 1994, this rulemaking adds homelessness and migrancy to the predisposing nutritional risk conditions for the WIC Program.

For purposes of the WIC Program's nutritional risk priority system, this rule allows State agencies to place individuals certified for WIC solely due to homelessness or migrancy in Priorities IV, V, VI, or, at their option, Priority VII. The use of Priority VII for service to certified participants who might regress in nutritional status without continued provision of supplemental foods would remain a State agency option.

The intended effect of this rule is to allow categorical and income-eligible homeless or migrant individuals, who lack any other documented nutritional or medical condition, to receive WIC Program assistance.

This final rule also responds to two provisions of section 204 of the Healthy Meals for Healthy Americans Act of 1994 by making technical changes in the

WIC Program rules without prior notice and comment. The name of the Program is changed from the Special Supplemental Food Program for Women, Infants, and Children to the Special Supplemental Nutrition Program for Women, Infants, and Children. Also, in light of modifications in the statutory definition of "nutritional risk", the Department has reclassified as "direct" nutritional risk factors certain medical and health conditions previously identified as "predisposing" nutritional risk factors.

**DATES:** This rule is effective on April 19, 1995. This rule must be implemented not later than April 19, 1996.

**FOR FURTHER INFORMATION CONTACT:** Contact Barbara Hallman, Supplemental Food Programs Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 542, Alexandria, Virginia 22302, (703) 305-2730.

#### SUPPLEMENTARY INFORMATION:

#### 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, William E. Ludwig, Administrator of the Food and Consumer Service has certified that this rule will not have a significant impact on a substantial number of small entities. WIC local agency participant caseloads may potentially increase and thereby increase local food vendor business. The net effect on State and local agencies is expected to be minimal.

#### Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

#### 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 and is subject to Executive Order 12372, which requires

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intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and 48 FR 29114 June 24, 1983).

#### Executive Order 12778

This final rule has been reviewed under Executive Order 12778, 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 preamble. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

In the WIC Program, the administrative procedures are as follows: (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9; and (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 246.22; and (4) procurement by State and local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

#### References and Notice Provisions

1. Chavin, Kristal, Seabron, and Guigli; *The Reproductive Experience of Women Living in Hotels for the Homeless in New York City*; New York State Journal of Medicine, 1987.

2. The Homeless Families Program newsletter, Home Again, February edition, 1994.

3. National Advisory Council on Maternal, Infant, and Fetal Nutrition, *1992 Biennial Report on the Special Supplemental Food Program for Women, Infants, and Children (WIC) and on the Commodity Supplemental Food Program (CSFP)*.

4. 1992 Recommendations of the National Advisory Council on Migrant Health; *Farmworkers Health for the Year 2000*.

5. Technical Paper No. 12 prepared for USDA/FNS by Awal Dad Khan; *Homeless Mothers and Children: What is the Evidence for Nutritional Risk?*, 1991.

6. United States Conference of Mayors survey, *A Status Report on Hunger and Homelessness in America's Cities*, 1993.

The Department adopts as final, two technical Program changes in response to provisions of Pub. L. 103-448, the Healthy Meals for Healthy Americans Act of 1994. Section 204(w)(1)(A) of Pub. L. 103-448 changed the name of the Special Supplemental Food Program for Women, Infants, and Children to the Special Supplemental Nutrition Program for Women, Infants, and Children.

Secondly, in section 204(a) of Pub. L. 103-448, Congress redefined the Program term "nutritional risk". Before the amendment, alcoholism, drug addiction, homelessness and migrancy were identified as conditions that predisposed persons to "inadequate nutritional patterns or nutritionally related medical conditions, \* \* \*" 42 U.S.C. § 1758(b)(8). Section 204(a) of Pub. L. 103-448 amended this definition to indicate that alcoholism and drug abuse will henceforth be considered conditions that directly affect nutritional health. Homelessness and migrancy are still considered predisposing conditions. In light of this change, the Department, at 7 CFR 246.7(e)(2)(iv), is reclassifying those medical and health conditions identified in the regulation as similar to alcoholism and drug abuse as "direct" risk factors.

Pursuant to 5 U.S.C. 553(b)(3)(A), "notice and public procedure thereon" are not required prior to the implementation of a final rule if those procedures are "unnecessary". We view the term unnecessary in this context as meaning that if a statutory provision requires a particular regulatory result or if a regulatory change only clarifies an already existing regulation and the change will have no real effect on the public, notice and comment are unnecessary. Both of the regulatory changes made herein as final rules in response to section 204 of Pub. L. 103-448 qualify for exemption from notice and comment procedures because those procedures are "unnecessary", as that term is used in 5 U.S.C. 553(b)(3)(A).

## Background

Homelessness is not a new issue, but the plight of the homeless has captured much public attention in the last several years as the nature and number of homeless have changed. Homelessness is variably defined as a housing problem, an employment problem, a problem brought on by the deinstitutionalization of mentally ill persons, a symptom of the breakdown of family traditions and/or of an

inadequate social welfare system, or any combination of these factors (Rossi and Wright, 1987). According to a 1993 *Status Report on Hunger and Homelessness in America's Cities*, released by the United States Conference of Mayors, it is suggested that as many as seven million people were homeless during some part of the 1980s, and the problem is more than ten times as widespread as previously acknowledged. City officials participating in the Mayors' Conference identified unemployment and/or underemployment, poverty, and the high cost of housing as the major causes of hunger and homelessness.

The homeless of today defy the traditional definitions and notions of shiftless, skid row vagrants for whom alcoholism was their nemesis. Today's homeless population contains a sizeable number of women and children—over one-third of the total homeless population in America (Wright, 1988; Breakey, 1989; Bassuk and Rosenberg, 1990). Studies show forty-three percent of today's homeless are families, and an increasing number of the "new homeless" include economically displaced individuals who have lost their jobs, exhausted their resources, and recently entered into the ranks of the homeless and consider their condition to be temporary. It is clear that the homeless population is heterogeneous and includes many subgroups. The Homeless Families Program (HFP), a joint initiative of the Robert Wood Johnson Foundation and the Department of Housing and Urban Development, urges that informed public policy resist the temptation to simplify the complex issue of homelessness and distinguish homeless families from single unattached adults. HFP asserts that the demographics, causes of homelessness, length of time homeless, and health issues differ significantly between these subgroups.

There is very little data on the health and/or nutritional status of migrants. However, that which does exist reveals an extremely bleak and disturbing picture, e.g., infant mortality rates are considerably higher than the general U.S. population; incidence of malnutrition is higher than among any subpopulation in the nation; and rates of parasitic disease among migrant children are many times higher than among the general population. Public hearings before the National Advisory Council on Migrant Health, of the Department of Health and Human Services (DHHS), have indicated that housing is the number one need of this subpopulation. As stated in the preamble of this rule's proposed version

dated April 6, 1994, studies suggest that migrants suffer many of the circumstances and conditions afflicting the homeless.

The changing nature of the homeless and the chronic conditions of migrants have necessitated a re-examination of the causes, circumstances, and approaches to addressing the needs of both these vulnerable groups. Because of the increased nutritional risks associated with homelessness and migrancy, the National Advisory Council on Maternal, Infant, and Fetal Nutrition recommended in its 1992 Report to the President and Congress that Section 17(b)(8) of the Child Nutrition Act of 1966 (CNA), 42 U.S.C. 1786(b)(8), be amended to include homelessness and migrancy as predisposing nutritional risk conditions for the WIC Program. Congress and the President accepted this recommendation and, in section 204 of the Child Nutrition Amendments of 1992, Public Law 102-342, specifically identified homelessness and migrancy as predisposing nutritional risk conditions for purposes of WIC Program eligibility.

## The Homelessness/Migrancy as Nutritional Risk Conditions Proposed Rule

A proposed rule on homelessness/migrancy as predisposing nutritional risk conditions was published for comment on April 6, 1994 at 59 FR 16146. The rule proposed to place individuals certified for WIC due solely to homelessness or migrancy in Priority VII, along with previously certified participants who might regress in nutritional status without continued provision of supplemental foods. While the use of Priority VII for this latter group of individuals would have remained a State agency option, State agencies would have been required to use Priority VII for homeless or migrant individuals who are certified solely due to their homelessness or migrancy. Because income-eligible homeless and migrant individuals with documentable nutritional deficiencies or medical conditions would already be certified for WIC Program assistance, the intended effect of the proposed rule was to appropriately place income-eligible homeless or migrant individuals, without a documented nutritional or medical condition, in a lower priority than individuals, including the homeless and migrants, with documented risk conditions.

## Comments on the Proposed Rule

In the April 1994 proposed version of this rule, the Department cited various

studies which support including homelessness and migrancy as predisposing nutritional risk conditions. Such studies suggest there is a high likelihood of various health-related problems associated with homelessness and migrancy. However, despite a decade of active advocacy of homeless issues, there is very little systematic and reliable information available on the health and nutritional status of the homeless or any of its subgroups. Nevertheless, WIC State agencies have gained an impressive amount of practical knowledge and experience from which the Department benefits in planning its outreach efforts. This practical knowledge, as demonstrated in the comments received from both public and private homeless advocacy groups on the proposed rule, was instrumental in formulating the final rule.

A total of 43 comment letters were received from both public and private individuals, groups, and State and local agencies. All except one commenter agreed that homelessness and migrancy should be considered predisposing nutritional risk conditions for the WIC Program. However, most commenters opposed the proposed placement in Priority VII of individuals certified for WIC based solely on their migrancy or homelessness. Those who objected to this provision suggested that the many risk conditions associated with homelessness and migrancy, as cited in the proposed rule, warrant a higher placement of homeless and migrant persons in WIC's nutritional risk priority system, even though they may not show signs of such risks at the time of certification. The common suggestion of commenters was that State agencies should be allowed to determine which priority best suits the needs of its homeless and migrant community. Second, many commenters claimed that, in times of limited funding, States could not serve participants certified for Priority VII and therefore, the intended beneficiaries of this rule—homeless and migrant individuals who are at nutritional risk solely due to their homelessness or migrancy—would not receive WIC services. Third, several commenters mentioned the difficulty of contacting homeless or migrant individuals placed on waiting lists during times of funding shortages, who frequently do not have mailing addresses or telephones, to inform them of caseload availability. In fear of losing the opportunity to serve this vulnerable and mobile population, commenters suggested that homeless and migrant individuals be provided benefits at the earliest opportunity. The

forementioned three reasons comprised the major objections or opposition to the proposed rule. In addition to these comments, one commenter suggested that WIC's nutritional risk definition be amended to include homelessness and migrancy among the listed conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

The Department appreciates the comments of all those who responded to the proposed rule, and values their commitment to providing the best possible WIC service to the homeless and migrant community. The Department has carefully and thoughtfully considered all of the comments submitted in response to the proposed rule. We believe the revisions that have been made in the final rule, in response to the comments received, improve both the acceptability and quality of the rule.

#### **Priority Placement of Individuals Certified Solely Due to Homelessness/Migrancy**

In response to the many commenters who objected to the required placement in Priority VII of homeless and migrant individuals certified at nutritional risk solely due to their homelessness/migrancy, and who preferred that State agencies be granted the discretion to place such individuals in a higher priority, the Department has made a partial concession to this preference. Pregnant, breastfeeding, or postpartum women, infants, and children who are certified for WIC solely due to their homelessness/migrancy may be placed in Priority IV, V, and VI, based on their respective category. Alternatively, Priority VII may be used to serve any of the above mentioned categorically eligible homeless or migrant individuals, at the discretion of the State agency. For instance, a homeless or migrant pregnant or breastfeeding woman may be placed either in Priority IV, or she could be placed in Priority VII if the State agency chose to use Priority VII to serve all homeless or migrant individuals whose only nutritional risk condition was homelessness or migrancy.

WIC's nutritional risk priority system was developed to prioritize service according to the seriousness of demonstrated nutritional risk conditions. As stated in the proposed rule, given the facts revealed through studies on the homeless and migrants, there is a high likelihood that these groups are already being served by the WIC Program by virtue of other documented nutritional risk(s). The Department strongly stands by the logic

and fairness of the WIC priority system, which advocates serving individuals with documented nutritionally related medical risk conditions before persons with dietary risk only or persons likely to regress to a former risk. To serve applicants with no documentable medical or nutritional risk condition, even when their lifestyle may predispose them to risk conditions, before someone with verifiable nutritionally-related risk conditions, would be contrary to the purpose and intent of WIC's service priority system. Finally, the Department recognizes the limitations of the services it can provide to address the many needs of homeless and migrant individuals. Although it is clear that WIC services can contribute to improving the nutrition and health of these vulnerable groups, such services cannot change their homeless or migrant circumstances. Homelessness and migrancy are socio-economic conditions which require more than the provision of supplemental foods and nutrition services to change the individual's circumstances. In addition, as stated earlier, the homeless are a heterogeneous group with a wide range of characteristics, circumstances, and needs. The definition of a homeless individual, as specified in section 17(b)(15) of the CNA, 42 U.S.C. 1786(b)(15), covers a wide range of circumstances and includes persons who are temporarily living with relatives or friends, individuals housed in a shelter which serves meals and can offer nutrition education, or individuals whose nighttime residence is not designed or ordinarily used as a regular sleeping accommodation. These examples or conditions reflect the diversity in the homeless population as defined by WIC legislation.

The Department reminds those commenters who stressed the importance of seizing the opportunity to provide services to homeless and migrant applicants, that section 246.7(e)(2)(iii)(A) of the WIC regulations already requires State agencies to establish criteria for identifying categories of persons at special nutritional risk who require expedited services. In addition, this provision of the Program regulations requires that migrant farmworkers and their family members who soon plan to leave the jurisdiction of the local agency be considered as special nutritional risk applicants. Added to these provisions by this final rule is the allowance for States, at 246.7(d)(4), to include homeless individuals in their criteria for expedited services, along with migrant farmworkers and their family members.

In response to those commenters who suggested that WIC add homelessness and migrancy to the list of predisposing nutritional risk conditions at section 246.7(e)(2)(iv), the following changes are made. This final rule designates homelessness and migrancy as predisposing nutritional risk conditions, and redesignates conditions currently listed at section 246.7(e)(2)(iv) as direct nutritional risks (chronic infections, alcohol or drug abuse, mental retardation in women, lead poisoning, history of high-risk pregnancies or factors associated with high-risk pregnancies such as smoking; conception before 16 months postpartum; history of low birth weight, premature births, or neonatal loss; adolescent pregnancy; or current multiple pregnancies in pregnant women, or congenital malformations in infants or children, or infants born of women with alcohol or drug abuse histories or mental retardation). The redesignation of these currently listed predisposing conditions to a new status as direct risks is a technical change the impact of which will only affect recordkeeping. It was done to reflect two realities. First, section 204(a) of Pub. L. 103-448 revised the legislative definition of "nutritional risk" by adding a new subparagraph that includes conditions that directly affect the nutritional health of a person, such as alcoholism or drug abuse. Therefore, consistent with the legislation, this final rule removes the aforementioned conditions, along with alcoholism and drug abuse, from the predisposing category and more appropriately groups them as conditions that directly affect a person's nutritional health. The revision of the definition of nutritional risk in Pub. L. 103-448 further delineates nutritional risk conditions by retaining homelessness and migrancy as examples of conditions that predispose persons to inadequate dietary patterns or nutritionally related medical conditions. Homelessness and migrancy are now the only examples of conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions that remain in the CNA. Second, in addition to the legislative directive, the change was made to reflect current practices, which in the Department's estimation, is appropriate. Most if not all State agencies classify the aforementioned conditions as direct nutritionally related medical risk conditions.

#### **Definition of Homelessness/Migrancy**

In the April 1994 proposed version of this rule the Department proposed that it keep the current definitions of both a

"homeless individual" and "migrant farmworker" outlined in section 246.2, and asserted that both should accommodate all individuals Congress intended to include in their references to homelessness and migrancy in section 204 of the Child Nutrition Amendments of 1992, Public Law 102-342. No commenters opposed this. Therefore, these definitions will remain as currently stated in section 246.2 for purposes of this final rule.

#### **WIC Priority System**

The current WIC nutritional risk priority system was designed to ensure that persons at greatest health and nutritional risk are served first with available program funds. The priority system therefore follows a logical order of progression to determine priority for service. Applicants with documented nutritionally related medical conditions are served first, followed by those at nutritional risk due to inadequate dietary patterns. Finally, and as a State agency option, previously certified participants whose nutritional status might regress without continued provision of supplemental foods are certified in Priority VII.

This final rule requires State agencies to include pregnant, breastfeeding or postpartum women, infants, and children who are certified at nutritional risk solely because of their homelessness or migrancy in one of the respective priorities (Priority IV through VI, or VII) of the WIC nutritional risk priority system. State agencies must indicate in their State Plans which Priority(ies) they will use to certify pregnant, breastfeeding or postpartum women, infants, and children at nutritional risk solely because of their homelessness or migrancy. State agencies may also continue to use Priority VII to identify certified participants who might regress in nutritional status without continued provision of supplemental foods. State agencies must implement the provisions of this rule by no later than October 1, 1995.

The Department does not intend for State agencies to use administrative shortcuts in certifying homeless and migrant individuals. The Department fully expects that homeless and migrant applicants will receive all the normal and necessary health assessments that are routinely performed to determine the presence of a medical or nutritional risk which would determine their proper priority placement, and assist in identifying other health and social services to which such individuals may be referred.

#### **Change in Name of Program**

Section 204(w)(1) of Pub. L. 103-448, changed the name of the WIC Program from the "Special Supplemental Food Program for Women, Infants, and Children" to the "Special Supplemental Nutrition Program for Women, Infants, and Children". This final rule implements that statutory change.

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

Accordingly, 7 CFR Chapter II and Part 246 are amended as follows:

1. In 7 CFR Chapter II (consisting of Parts 210-299) all references to "the Special Supplemental Food Program for Women, Infants, and Children" are revised to read "the Special Supplemental Nutrition Program for Women, Infants, and Children".

#### **PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN**

2. The authority citation for Part 246 continues to read as follows:

**Authority:** 42 U.S.C. 1786.

4. In § 246.7, paragraphs (e)(2)(ii), (e)(2)(iv), the introductory text of paragraph (e)(4) and paragraph (e)(4)(vii) are revised to read as follows:

##### **§ 246.7 Certification of participants.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) Other documented nutritionally related medical conditions, such as clinical signs of nutritional deficiencies, metabolic disorders, pre-eclampsia in pregnant women, failure to thrive in an infant, chronic infections in any person, alcohol or drug abuse or mental retardation in women, lead poisoning, history of high risk pregnancies or factors associated with high risk pregnancies (such as smoking; conception before 16 months postpartum; history of low birth weight, premature births, or neonatal loss; adolescent pregnancy; or current multiple pregnancy) in pregnant women, or congenital malformations in infants or children, or infants born of women with alcohol or drug abuse histories or mental retardation.

\* \* \* \* \*

(iv) Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical

conditions, such as homelessness or migrancy.

\* \* \* \* \*

(4) *Nutritional risk priority system.* The competent professional authority shall fill vacancies which occur after a local agency has reached its maximum participation level by applying the following participant priority system to persons on the local agency's waiting list. Priorities I through VI shall be utilized in all States. The State agency may, at its discretion, expand the priority system to include Priority VII. The State agency may set income or other sub-priority levels within any of these seven priority levels. The State agency may expand Priority III, IV, or V to include high-risk postpartum women. The State agency may place pregnant or breastfeeding women and infants who are at nutritional risk solely because of homelessness or migrancy in Priority IV; children who are at nutritional risk solely because of homelessness or migrancy in Priority V; and postpartum women who are at nutritional risk solely because of homelessness or migrancy in Priority VI, OR, the State agency may place pregnant, breastfeeding or postpartum women, infants, and children who are at nutritional risk solely because of homelessness or migrancy in Priority VII.

\* \* \* \* \*

(vii) *Priority VII.* Individuals certified for WIC solely due to homelessness or migrancy and, at State agency option, and in accordance with the provisions of paragraph (e)(1)(iii) of this section, previously certified participants who might regress in nutritional status without continued provision of supplemental foods.

\* \* \* \* \*

Dated: April 11, 1995.

**William E. Ludwig,**

*Administrator, Food and Consumer Service.*

[FR Doc. 95-9657 Filed 4-18-95; 8:45 am]

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#### **Food Safety and Inspection Service**

#### **9 CFR PARTS 318, 381 and 391**

**[Docket No. 94-033F]**

**RIN 0583-AB87**

#### **Reduction of Accreditation Fees for FSIS Accredited Laboratories**

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Confirmation of interim rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is confirming the interim regulations amending provisions of the Federal meat and poultry products inspection regulations to reduce the fees charged participants in the Agency's voluntary Accredited Laboratory Program (ALP). Non-Federal analytical laboratories are qualified under the ALP to conduct analyses of official meat and poultry samples. The payment by laboratories of annual accreditation fees that cover the costs of the ALP is mandated by the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Farm Bill), as amended. FSIS determined late last year that reduced ALP administrative expenditures for fiscal year 1995 would enable the Agency to charge a smaller accreditation fee than it did last year. Since the amount of the laboratory accreditation fee is set forth in the regulations, the regulations had to be changed before the Agency could charge a different fee. To meet fee billing deadlines, FSIS found it necessary to publish the fee reduction rule on an interim basis.

The Agency also took the opportunity to make some editorial corrections to the regulations.

**EFFECTIVE DATE:** April 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jess Rajan, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 516A, Annex Building, 300 12th Street SW., Washington DC 20250-3700, (202) 205-0679.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 1327 (7 USC 138f) of the Food, Agriculture, Conservation, and Trade Act of 1990 (PL 101-624), as amended, known as the 1990 Farm Bill, requires USDA to charge a nonrefundable accreditation fee for laboratories seeking accreditation by the Secretary under the authority of the FMIA or PPIA. The fee is required to be in an amount that offsets the cost of the ALP administered by FSIS under the authority of the FMIA and PPIA.

Fees are billed annually on a per-accreditation basis at a rate that is established by regulation (9 CFR 391.5). The ALP regulations define an accreditation to be a determination by FSIS that a laboratory is qualified to analyze official samples of meat and poultry products for the presence and amount of four food chemistry analytes or a determination that a laboratory is qualified to analyze official samples of product for the presence and amount of one of several classes of chemical

residue. The per-accreditation fee for fiscal year 1994 was \$3,500.

FSIS projected late last year that the expenses of administering the ALP during fiscal year 1995 would be less than the expenses for fiscal year 1994. The reduction came about because of management savings and, to a lesser extent, a smaller enrollment in the ALP than anticipated. The Agency determined that the smaller overall cost of running the program meant that it could reduce the fee per accreditation. The Agency determined that, for fiscal year 1995, the fee for original accreditations and renewals would be \$2,500.

In order to meet billing deadlines for accreditation renewals, avoid rebates for renewals paid for at the old rate, and avoid unnecessary administrative burdens on the Government and industry, the Agency found it necessary to promulgate an interim rule with request for comments on December 27, 1994 (59 FR 66446), effective the same date. The interim rule amended the administrative provisions of the Federal meat and poultry inspection regulations to change the fee. Also, some editorial corrections were made to the ALP regulations.

The interim rule provided a 30-day comment period ending January 26, 1995. During this period one comment was received from a trade association favoring the fee reduction.

#### **Executive Order 12866**

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

#### **Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule reduces the accreditation fees for non-Federal analytical chemistry laboratories accredited under the Federal Meat and Poultry Products Inspection Acts and regulations promulgated thereunder.

States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any requirements with respect to federally inspected premises and facilities, and operations of such establishments, that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions are also preempted under the FMIA and PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat or poultry products that are in addition to, or different than,