

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 199****[Docket ID: DoD-2024-HA-0119]****RIN 0720-AB91****Special Supplemental Food Program for Women, Infants, and Children (WIC) Overseas:****Revision to Definition of Drafts****AGENCY:** Defense Health Agency, Assistant Secretary of Defense for Health Affairs

(ASD(HA)), Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The ASD(HA) is issuing this final rule to revise the definition of drafts, currently defined as paper instruments, within the regulation governing the WIC Overseas Program. This final rule modernizes the definition of drafts to include not only paper instruments but also other methods and processes, including electronic benefit transfers. The rule is being published as a final rule as the change to the definition of drafts involve only a minor, technical amendment to the existing regulation. The Department has determined that notice and comment would be unnecessary and contrary to public interest.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Kimberly Stakes, 703-275-6055,

kimberly.l.stakes.civ@health.mil.

**SUPPLEMENTARY INFORMATION:****I. BACKGROUND****A. STATEMENT OF NEED FOR THIS RULE**

The WIC Overseas Program is a DoD nutrition education and supplemental food program, similar to the United States (U.S.) Department of Agriculture's WIC program in the United States, for U.S. active-duty military personnel and other support staff stationed overseas and their dependents. The program provides multiple benefits such as food vouchers (or drafts), nutrition education and health screenings to help families save money and lead healthier lives. Providing WIC Overseas participants a specific prescription of supplemental nutritious foods based on their nutritional needs is a cornerstone of WIC's mission. Counselors provide participants with an approved food list and redeemable food checks called "drafts," which participants exchange for specific foods and quantities in overseas commissaries and Navy Exchange Markets (NEXMARTs). Currently, WIC Overseas participants receive drafts, paper food instruments that contain their food prescription. The drafts are then transacted at participating overseas commissaries and NEXMARTs enabling the participant to receive their WIC Overseas Program food benefits.

Modernizing the definition of drafts in § 199.23 of title 32 of the Code of Federal Regulations (CFR) will provide the DoD with additional flexibility, similar to what already exists under the WIC program in the U.S., to issue drafts in the form of electronic benefit cards or other approved access devices or methods. For example, modernizing the definition of drafts in 32 CFR 199.23 could permit enrollees to use electronic benefit transactions, similar to a debit card, or other non-paper methods and processes, to purchase their authorized supplemental food items at their convenience and through multiple trips if desired or if required when items are temporarily out of stock. Existing paper instruments do not provide this level of flexibility as enrollees must use their monthly paper drafts in totality in a single shopping trip, regardless of whether they receive all the allotted foods authorized on the monthly paper draft. Expanding the definition of draft in the WIC Overseas Program allows both the WIC Overseas Program and its participants to use advanced technologies in the delivery of benefits and helps support the WIC Overseas Program's goal to improve client services through increased convenience, efficiency,

and flexibility in how and when participants may purchase the authorized food items. The DoD also anticipates that the use of advanced technologies will provide opportunities for increased data analysis and feedback on the type, brand, and cost of each food item to better control food cost and help manage the WIC Overseas Program more efficiently. Additionally, the use of advanced technologies will likely reduce the risk of fraud and abuse within the program.

Generally, the Administrative Procedure Act (APA) requires a Federal agency to provide the public with notice and an opportunity to comment on agency rulemaking. The APA, however, creates an exception in cases where an agency for good cause determines that notice and public procedures are impracticable, unnecessary, or contrary to public interest. The rule is being published as a final rule as the change to the definition of drafts involve only a minor, technical amendment to the existing regulation. The Department has good cause to determine that notice and comment would be unnecessary and contrary to public interest.

Furthermore, the APA generally provides that a final rule may not become effective until at least 30 days after its publication in the Federal Register unless the agency determines that good cause exists to dispense with this requirement. As noted above, given that the rule does not impose new requirements and the change to the definition of drafts involve only a minor, technical amendment to the existing regulation, the Department finds sufficient good cause exists to dispense with the 30-day effective date requirement. The rule will be effective immediately upon publication.

## **B. LEGAL AUTHORITY**

The legal authority for this final rule resides in chapter 53 of title 10, United States Code (U.S.C.). Within 10 U.S.C. chapter 53, section 1060a gives the Secretary of Defense the authority and responsibility to administer the Special Supplemental Food Program, known as the WIC Overseas Program, to provide supplemental foods and nutrition education to members of the armed forces on duty at stations outside the United States (and its territories and possessions) and to eligible civilians serving with, employed by, or accompanying the armed forces outside

the United States (and its territories and possessions). The text of 10 U.S.C. chapter 53 can be found at

[https://uscode.house.gov/view.xhtml?req=\(title:10%20section:1060a%20edition:prelim\)%20OR%200\(granuleid:USC-prelim-title-section1060a\)&f=treesort&edition=prelim&num=0&jumpTo=true](https://uscode.house.gov/view.xhtml?req=(title:10%20section:1060a%20edition:prelim)%20OR%200(granuleid:USC-prelim-title-section1060a)&f=treesort&edition=prelim&num=0&jumpTo=true).

### **C. APPLICABILITY**

This rule will modernize the definition of drafts under the DoD's WIC Overseas Program. It is anticipated that the Department's use of the additional flexibility provided by a modernized definition of drafts will have a positive impact on eligible participants living overseas as it will give them more flexibility to purchase WIC Overseas approved foods.

### **D. REGULATORY HISTORY**

Section 199.23 was added to 32 CFR part 199 when the final rule published on March 26, 2004 (69 FR 15678) and has not been revised since. The only change being made in this final rule is to revise the definition of drafts in § 199.23.

## **II. IMPACT OF THIS REGULATION**

There is no direct monetary impact to modernizing the definition of drafts in § 199.23 to provide greater flexibility in the future method(s) of issuing benefits for supplemental food prescribed under the program. It is anticipated that use of this flexibility will result in greater participant convenience and flexibility for the approximately 10,000 participants enrolled in the WIC Overseas Program.

## **III. REGULATORY COMPLIANCE ANALYSIS**

### **A. Executive Order 12866, "Regulatory Planning and Review," as amended by Executive Order 14094, "Modernizing Regulatory Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"**

Executive Orders 12866 (as amended by Executive Order 14094) 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; distribution of 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 rule has been designated not significant, under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

**B. Congressional Review Act (5 U.S.C. 801 et seq.)**

Pursuant to the Congressional Review Act, this rule has not been designated a major rule, as defined by 5 U.S.C. 804(2).

**C. Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)**

The ASD(HA) certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

**D. Sec. 202, Public Law 104-4, “Unfunded Mandates Reform Act”**

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, and will not affect private sector costs.

**E. Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

It has been determined that this rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The existing WIC Overseas Program information collection has been reviewed and approved by the Office of Management and Budget (OMB) under OMB Control Number 0720-0030, “Women, Infants, and Children Overseas—Eligibility Determination.”

**F. Executive Order 13132, “Federalism”**

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This rule will not have a substantial effect on State and local governments.

**G. Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments”**

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or effects the distribution of power and responsibilities between the Federal Government and Indian tribes. This rule will not have a substantial effect on Indian tribal governments.

**List of Subjects in 32 CFR Part 199**

Administrative practice and procedure, Claims, Dental health, Fraud, Health care, Health insurance, Individuals with disabilities, Mental health programs, Military personnel.

Accordingly, the Department of Defense amends 32 CFR part 199 as follows:

**PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)**

1. The authority citation for part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Amend § 199.23 by revising the first sentence of paragraph (b)(10) to read as follows:

**§ 199.23 Special Supplemental Food Program.**

\* \* \* \* \*

(b) \* \* \*

(10) *Drafts*. Food instruments, similar to a voucher (whether paper, card or other approved access device or method), issued in the WIC Overseas offices to program participants. \* \* \*

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Dated: January 14, 2025.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2025-01127 Filed: 1/16/2025 8:45 am; Publication Date: 1/17/2025]