Rules and Regulations

Federal Register
Vol. 64, No. 170
Thursday, September 2, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC80

WIC Farmers' Market Nutrition Program: Legislative Changes From the William F. Goodling Child Nutrition Reauthorization Act of 1998

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements three WIC Farmers' Market Nutrition Program (FMNP) related nondiscretionary provisions mandated in the William F. Goodling Child Nutrition Reauthorization Act of 1998. The three provisions pertain to the use of program income as a State matching fund source, elimination of specific State Plan ranking criteria used to determine funding preferences, and use of expansion funds to increase the value of benefits to recipients.

DATES: This regulation is effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 542, Alexandria, Virginia 22302. (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1998, the President signed Pub. L. 105–336, the William F. Goodling Child Nutrition Reauthorization Act of 1998 (the Goodling Act), which included three non-discretionary provisions regarding the FMNP. The three provisions address: program income as an allowable State matching fund source, elimination of specific State Plan ranking criteria used to determine funding preferences, and use of expansion funds to increase the value of benefits to recipients. This final rule implements those nondiscretionary FMNP provisions as reflected in section 203(o) of the Goodling Act. These provisions serve the interests of the President and Congress by providing greater flexibility for FMNP State agencies in the operation of the program, and expanding the allowable sources for meeting the State matching fund requirement. Because of the nondiscretionary nature of these legislative provisions, the Administrator of the Food and Nutrition Service has determined that, in accordance with 5 U.S.C. 553, prior notice and comment is unnecessary and contrary to the public interest, and for the same reason, that good cause exists for the publication of this rule less than 30 days prior to its effective date. The effective date of this rule is October 1, 1998, the same date on which the Goodling Act was signed.

Program Income

Section 203(o)(1) of the Goodling Act amended section 17(m)(3) of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1786(m)(3)) to allow States to use program income as a source for meeting the FMNP State matching fund requirement. The conference report accompanying the Goodling Act [House Report No. 105–786, October 6, 1998] stated that the term ''program income'' was to be defined as in the Uniform Federal Assistance Regulations (7 CFR Part 3016.25), thereby permitting donations by companies and vendor fines for violations in the WIC Program to be used to meet the State matching fund requirement. Sections 248.2 and 248.14(a)(1) of the FMNP regulations are hereby amended to reflect this change. Current section 248.13 defines program income for FMNP purposes.

Expansion Funds

Section 203(o)(2) of the Goodling Act amended Section 17(m)(6)(C) of the CNA, (42 U.S.C. 1786(m)(6)(C)) by permitting use of Federal expansion funds for increases in the value of benefits in lieu of, or in addition to, the criterion that State agencies must serve additional recipients in order to receive the expansion funds. It also replaced the requirement for documentation that justifies the need for an increase in participation when seeking expansion funds with language requiring the Department of Agriculture (the Department) to consider the State agency's need for an increase in funding, and whether the use of the increased funding would be consistent with serving nutritionally at-risk persons and expanding program awareness. The law also added a requirement that the Department consider whether the rate of coupon redemption will be increased in those State agencies that use expansion funds to increase the value of benefits provided to individual recipients. The Department wishes to point out that under section 17(m)(5)(C) 42 U.S.C. 1786(m)(5)(C), the maximum Federal FMNP benefit level remains unchanged at $20 per recipient, per year. Sections 248.4(a)(19) and 248.14(e) are hereby amended to reflect these changes.

Selection of New State Agencies

Section 203(o)(3) of the Goodling Act eliminated section 17(m)(6)(F) of the CNA (42 U.S.C. 1786(m)(6)(F)) which outlined specific criteria and preferences for consideration by the Department in ranking State Plans from new FMNP State agencies for the purposes of determining the amount of Federal funds to be allocated. Accordingly, section 248.5 is hereby amended to reflect elimination of the criteria and preferences.

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 final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Samuel Chambers, Jr., Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant impact on a substantial number of small entities. This rule provides additional flexibility in program initiation and operation for FMNP State agencies, some of whom are small entities.

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 WIC Farmers Market Nutrition Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.572. For 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 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 the final rule. Prior to any judicial challenge to the application of provisions of this rule, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law (Pub. L.) 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 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 248

Administrative practice and procedure, Civil rights, Food assistance programs, Food donations, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Public assistance programs, Reporting and recordkeeping requirements, WIC, Women.

For the reasons set forth in the preamble, 7 CFR part 248 is amended as follows:

PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)

1. The authority citation for part 248 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 248.2 the definitions of ''FMNP funds'' and ''Matching requirement'' are revised to read as follows:

§ 248.2 Definitions.

* * * * *

FMNP funds means Federal grant funds provided for the FMNP, plus the required matching funds.

* * * * *

Matching requirement means State, local or private funds, or program income equal to not less than 30 percent of the total FMNP costs for the fiscal year. The Secretary may negotiate with an Indian State agency a lower percentage of matching funds, but not less than 10 percent of the total cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. The match may be satisfied through expenditures for similar farmers' market programs which operate during the same period as the FMNP. Similar programs include other farmers' market programs which serve low-income women, infants and children (who may or may not be WIC participants or on the waiting list for WIC services), as well as other categories of low-income recipients, such as, but not limited to, low-income elderly persons.

* * * * *

3. In § 248.4, paragraph (a)(19) is revised to read as follows:

§ 248.4 State Plan.

(a) * * *

(19) For States making expansion requests, documentation which demonstrates:

(i) The need for an increase in funding;

(ii) That the use of the increased funding will be consistent with serving WIC participants, or persons on a waiting list for WIC benefits, by expanding benefits to more persons, by enhancing current benefits, or a combination of both, and expanding the awareness and use of farmers' markets;

(iii) The ability to satisfactorily operate the existing FMNP;

(iv) The management capabilities of the State agency to expand; and

(v) Whether, in the case of a State agency that intends to use the funding to increase the value of the Federal share of the benefits received by a recipient, the funding provided will increase the rate of coupon redemption.

* * * * *

4. Section 248.5 is revised to read as follows:

§ 248.5 Selection of new State agencies.

In selecting new State agencies, the Department will use objective criteria to rank and approve State plans submitted in accordance with § 248.4. In making this ranking, the Department will consider the amount of funds necessary to successfully operate the FMNP in the State compared with other States and with the total amount of funds available to the FMNP. Approval of a State Plan does not equate to an obligation on the part of the Department to fund the FMNP within that State agency.

5. In § 248.14, paragraphs (a)(1)(i) and (e) are revised to read as follows.

§ 248.14 Distribution of funds.

(a) * * *

(1) * * *

(i) *Match amount.* As a prerequisite to the receipt of Federal funds, a State agency must agree to contribute State, local or private funds, or program income, equal to not less than 30 percent of its total FMNP cost. The Secretary may negotiate a lower percentage of matching funds, but not lower than 10 percent of the total cost of the program, in the case of an Indian State agency that demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. The State agency may contribute more than this minimum amount. State, local or private funds for similar programs as defined in (248.2 may satisfy the State matching requirement.

* * * * *

(e) *Expansion for current State agencies.* In providing funds to State agencies that participated in the FMNP in the previous fiscal year, the Department shall consider on a case-by-case basis, the following:

(1) Whether the State agency utilized at least 80 percent of its prior year food grant. States that did not spend at least 80 percent of their prior year food grant may still be eligible for expansion funding if, in the judgment of the Department, good cause existed which

was beyond the management control of the State, such as severe weather conditions, or unanticipated decreases in participant caseload in the WIC Program.

(2) Documentation supporting the funds expansion request as outlined in § 248.4(a)(19).

* * * * *

Dated: August 23, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–22903 Filed 9–1–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 924

[Docket No. FV99–924–1 FR]

Fresh Prunes Grown in Designated Counties in Washington and Umatilla County, Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Washington-Oregon Fresh Prune Marketing Committee (Committee) under Marketing Order No. 924 for the 1999–2000 and subsequent fiscal periods from $1.00 to $1.50 per ton of fresh prunes handled. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon. Authorization to assess fresh prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1999–2000 fiscal period began April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 924, as amended (7 CFR part 924), regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon, hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington-Oregon fresh prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable fresh prunes beginning April 1, 1999, and continue until modified, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from $1.00 to $1.50 per ton of fresh prunes handled.

The Washington-Oregon fresh prune marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of six producer members and three handler members, each of whom is familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The budget and assessment rate were discussed at a public meeting and all directly affected persons had an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $1.00 per ton that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 27, 1999, and unanimously recommended 1999–2000 expenditures of $7,630 and an assessment rate of $1.50 per ton of fresh prunes handled. In comparison, last year's budgeted expenditures were $7,003. The assessment rate of $1.50 is $0.50 higher than the rate currently in effect. The Committee recommended an increased assessment rate because assessable 1999–2000 tonnage is expected to be less than the 5-year average of 4,985 tons, and the current rate will not generate enough income to adequately administer the program. The Committee also plans on hiring an additional part-time staff person which will increase its salary expense.

Major expenses recommended by the Committee for the 1999–2000 fiscal period include $3,560 for salaries, $1,000 for travel, $528 for rent and maintenance, and $475 for its annual audit. Budgeted expenses for these items in 1998–99 were $2,880, $1,000, $528, and $475, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington-Oregon fresh prunes. Fresh prune shipments for the year are estimated at 4,600 tons, which should provide $6,900 in assessment