DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 253 and 254

RIN 0584–AB67

Food Distribution Programs: Definition of ''Indian Tribal Household''

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule makes final an interim rule published in the **Federal Register** on January 11, 1994. It broadens the regulatory definition of ''Indian tribal household'' in the Food Distribution Program on Indian Reservations (FDPIR) and the Food Distribution Program for Indian Households in Oklahoma (FDPIHO). Previous to the amendment of the definition, households residing in areas approved for service near Indian reservations (''near areas''), or in FNS service areas in Oklahoma, that contained Native American children, but no Native American adults, were excluded from the programs. Also, households in near areas were excluded from FDPIR if they did not contain a tribal member of the administering Indian tribe or tribes in that area. The intended effect of the change is to allow more low-income households to be served in FDPIR and FDPIHO.

EFFECTIVE DATE: This final rule is effective on December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 612, 4501 Ford Ave., Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters
II. Background and Discussion of the Final Rule

I. Procedural Matters

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.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 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, the Food and Nutrition Service 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 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 the Food and Nutrition Service 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.

Executive Order 12372

The programs addressed in this action are listed in the Catalog of Federal Domestic Assistance under 10.550 and 10.570, and for the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related Notice (48 FR 29115), are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Since the provisions contained in this rule were implemented under the interim rule published in the **Federal Register** on January 11, 1994 (59 FR 1447), it will have no impact.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The 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. Prior to any judicial challenge to the provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

This final rule does not contain information collection requirements subject to the approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

II. Background and Discussion of the Final Rule

FDPIR was established by section 4(b) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2013(b)), as an alternative to food stamps for low-income Native Americans who, because they live on or near Indian reservations in sparsely populated areas, may not have convenient access to food stamp certification offices or authorized food stamp retailers. On January 11, 1994, the Department published an interim rule in the **Federal Register** (59 FR 1447) that amended the definition of ''Indian tribal household'' in 7 CFR 253.2(c) and 254.2(d) to read, ''* * * a household in which at least one household member is recognized as a tribal member by any Indian tribe* * *'' (as ''Indian tribe'' is defined in 7 CFR Part 253). Prior to implementation of the interim rule, the definition restricted Indian tribal households to those which contained an adult Native American member. This excluded households containing Native American children, but no Native American adults, from participation in FDPIR in areas near Indian reservations that had been approved for service (''near areas'') or, in FDPIHO, in the areas approved for service (''FNS service areas'').

Prior to implementation of the interim rule, the definition contained in 7 CFR 253.2(c) also restricted Indian tribal households to those households which contained a member recognized by the administering Indian tribal organization as a tribal member. This excluded from participation in FDPIR those households containing a Native American member or members from any Indian tribes other than the tribe administering the program in the ''near areas'' in which the household resided. Households with a Native American member of any Indian tribe residing in an FNS service area have always been eligible for participation in FDPIHO. However, the language in 7 CFR 254.2(d) was amended by the interim rule simply to provide greater clarity.

The interim rule also clarified in 7 CFR 253.6(b)(1) that all households living on Indian reservations on which FDPIR is available, and that meet other program eligibility requirements, are eligible to receive program benefits, regardless of whether they contain a

Native American member. Although not previously expressed clearly in Federal regulations, this has always been the policy under which FDPIR has operated on all participating reservations. In the same section, amended language makes clear that Indian tribal organizations (or State agencies) must serve all Indian tribal households living in ''near areas'' and meeting other eligibility requirements. Indian tribal organizations and State agencies must accept official documentation of an individual's membership in an Indian tribe in determining the household's eligibility for program benefits.

The Department received no comments on the interim rule, and is adopting the interim rule as final without change.

List of Subjects

7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 254

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, the interim rule amending 7 CFR Parts 253 and 254, which was published at 59 FR 1447 on January 11, 1994, is adopted as a final rule without change.

Dated: December 21, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

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BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV00–993–1 IFR]

Dried Prunes Produced in California; Changes in Producer District Boundaries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule realigns the boundaries of seven districts established for independent producer representation on the Prune Marketing Committee (Committee) under Marketing Order No. 993. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes grown in California. Due to shifts in the production areas, the current seven production districts for independent producer representation on the Committee are out of balance. The realignment provides for more equitable independent producer representation on the Committee, consistent with current industry demographics.

EFFECTIVE DATE: The interim final rule is effective December 30, 1999. Comments which are received by January 28, 2000 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, 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 by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended [7 CFR Part 993], regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The marketing agreement and order are 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. This rule is not intended to have retroactive effect. 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 8c(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. A 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 in equity 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.

Paragraph (a) of § 993.128 of the order's administrative rules and regulations lists and describes the boundaries of each of the seven independent grower districts. This rule realigns the boundaries of the seven districts based on a unanimous recommendation of the Committee made on November 30, 1999. To be consistent with current industry demographics, this rule ensures that, insofar as practicable, each district represents an equal number of independent producers and an equal volume of prunes grown by such producers.

Section 993.24 of the order provides that the Committee shall consist of 22 members, of which 14 shall represent producers, 7 shall represent handlers, and 1 shall represent the public. The 14 producer member positions are apportioned between cooperative producers and independent producers. The apportionment, insofar as is practicable, is the same as the percentage of the total prune tonnage handled by the cooperative and independent handlers during the year preceding the year in which nominations are made is to the total handled by all handlers. In recent years