# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 254

**RIN 0584–AB56**

### Food Distribution Programs: FDPIHO—Oklahoma Waiver Authority

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule amends the regulations for the Food Distribution Program for Indian Households in Oklahoma (FDPIHO). It reinstates the Food and Nutrition Service's authority to grant waiver requests from Indian Tribal Organizations in Oklahoma to allow Indian tribal households living in urban places to participate in FDPIHO.

**DATES:** In accordance with the parameters set forth in 62 FR 55141 (October 23, 1997), ''Use of Direct Final Rulemaking,'' this rule will become effective on March 9, 1999, unless the Department receives written adverse comments or notices of intent to submit adverse comments postmarked on or before February 8, 1999. If adverse comments within the scope of the rulemaking are received, the Department will publish timely notification of withdrawal of this rule in the **Federal Register**.

**ADDRESSES:** Comments should be sent to Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 502, 3101 Park Center Drive, Alexandria, Virginia 22302–1594. Comments in response to this request may be inspected at 3101 Park Center Drive, Room 502, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5 p.m., Mondays through Fridays).

**FOR FURTHER INFORMATION CONTACT:** Lillie F. Ragan at the above address or telephone (703) 305–2662.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This direct 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 program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.570, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule-related notices published at 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

#### Regulatory Flexibility Act

This 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 impact on a substantial number of small entities. While Indian Tribal Organizations that administer FDPIR and program participants within the State of Oklahoma will be affected by this rulemaking, any economic effect will not be significant.

#### Executive Order 12988

This direct 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. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the applications of its provisions.

#### Paperwork Reduction Act

This final rule reflects no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

#### Background

This direct final rule amends the FDPIHO regulations at 7 CFR 254.5(b). It reinstates the Food and Nutrition Service's (FNS) authority to grant waiver requests from Indian Tribal Organizations (ITOs) in Oklahoma to allow Indian tribal households living in urban places to participate in FDPIHO.

Part 253 of Title 7 of the Code of Federal Regulations contains the regulatory requirements for the implementation and operation of the Food Distribution Program on Indian Reservations (FDPIR) throughout the nation. However, the unique status of Indian land holdings in Oklahoma made it difficult to apply all of the provisions of Part 253 in that State. Much of the former reservation land in Oklahoma has been conveyed into the public domain. Part 254 of Title 7 resolves those difficulties by authorizing a Food Distribution Program for Indian tribal households in Oklahoma based on the unique circumstances of that State. All of the provisions of Part 253 apply to Part 254, except as specifically changed by Part 254.

On April 2, 1982, the Department issued final regulations (47 FR 14135) at 7 CFR 253.4(d) prohibiting Indian tribal households living in urban places (towns or cities with a population of 10,000 or more) outside reservation boundaries from participating in FDPIR. Because of the almost total absence of reservations in Oklahoma, the Department changed this policy in that State to apply to all urban places (7 CFR 254.5(b)). The Department implemented these requirements to support the basic purpose of FDPIR as an alternative to the Food Stamp Program—the primary Federal food assistance program. FDPIR was originally authorized out of concern that American Indians living on or near reservations may not have ready access to Food Stamp Program offices, or to food stores that are authorized to accept food stamps and have reasonable prices. However, FDPIR was not intended to replace the Food Stamp Program, particularly in urban areas. The Department believed that American Indian households living in off-reservation urban areas have reasonable access to food stamp services, and therefore, an alternative to the Food Stamp Program would not be needed for these households. Nevertheless, the regulations granted FNS the authority to approve exemption requests from ITOs that provide proper justification (see 7 CFR 253.4(d) and 7 CFR 254.5(b)). Since 1982, 16 exemption requests have been approved, including three from ITOs in Oklahoma. However, the waiver authority granted under FDPIHO regulations at 7 CFR 254.5(b) expired on September 30, 1985.

This rule reinstates FNS' authority to approve waiver requests from ITOs in Oklahoma to allow Indian tribal households living in urban places in that State to participate in FDPIHO. This rulemaking will provide all ITOs participating under either Part 253 or 254 with an equal opportunity to request waivers.

**List of Subjects in 7 CFR Part 254**

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

Accordingly, 7 CFR Part 254 is amended as follows:

## PART 254—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR INDIAN HOUSEHOLDS IN OKLAHOMA

1. The authority citation for Part 254 continues to read as follows:

**Authority:** Pub L. 97–98, sec. 1338; Pub. L. 95–113.

**§ 254.5 [Amended]**

2. In § 254.5, remove the last sentence of paragraph (b).

Dated: December 4, 1998.

**Samuel Chambers, Jr.,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 99–395 Filed 1–7–99; 8:45 am]

BILLING CODE 3410–30–P

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 7 CFR Part 353

**[Docket No. 95–071–2]**

**RIN 0579–AA75**

## Export Certification; Accreditation of Non-Government Facilities

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the export certification regulations to provide for the establishment of a program under which non-government facilities may become accredited to perform specific laboratory testing or phytosanitary inspection services that may serve as the basis for the issuance of a Federal phytosanitary certificate, export certificate for processed plant products, or phytosanitary certificate for reexport. Prior to this rule, only tests conducted by public laboratories or inspections carried out by Federal, State, or county inspectors or by agents could be used as the basis for the issuance of Federal certificates. The accreditation criteria for particular laboratory testing and phytosanitary inspection services will be developed by the Animal and Plant Health Inspection Service in cooperation with other interested government, industry, academic, or research entities. The accreditation program will provide a mechanism for qualified non-government facilities to become accredited to perform testing or inspection services that may be used as supporting documentation for the issuance of certificates for certain plants or plant products.

**EFFECTIVE DATE:** February 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Narcy G. Klag, Accreditation Program Manager, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8469.

**SUPPLEMENTARY INFORMATION:**

**Background**

The export certification regulations in 7 CFR part 353 (referred to below as the regulations) set forth the procedures for obtaining certification for plants and plant products offered for export or reexport. Under the regulations, tests conducted by public laboratories or inspections carried out by Federal, State, or county inspectors or by agents may be used as the basis for the issuance of Federal certificates. Export certification is not required by the regulations; rather, it is provided by the Animal and Plant Health Inspection Service (APHIS) as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry. After assessing the condition of the plants or plant products intended for export, relative to the receiving country's regulations, an inspector will issue an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), or an export certificate for processed plant products (PPQ Form 578), if warranted. The regulations also provide for an industry-based certification, under certain conditions, of certain low-risk plant products such as kiln-dried lumber offered for export.

On November 25, 1997, we published in the **Federal Register** (62 FR 62699–62707, Docket No. 95–071–1) a proposal to amend the regulations to provide for the establishment of a program under which non-government facilities could become accredited to perform specific laboratory testing or phytosanitary inspection services that could serve as the basis for the issuance of a Federal phytosanitary certificate, export certificate for processed plant products, or phytosanitary certificate for reexport.

We solicited comments concerning our proposed rule for 60 days ending January 26, 1998. We received 34 comments by that date. The comments were from processors and distributors of agricultural commodities, State and county agricultural agencies, a seed trade association, seed companies, crop improvement associations, a university laboratory, private testing and certification services, an association of State agricultural officials, laboratory accreditation organizations, a foreign plant health agency, and an association of seed certifying officials. Although all of the commenters supported the concept of an accreditation program, all but six of them had specific concerns, questions, or suggestions regarding the proposed accreditation program. The comments are addressed below.