individuals whose non-Federal employment might present a conflict of interest or appearance thereof. It may be that, in drawing such a broad distinction, some individuals might be included who need not have been and that some few individuals might not have been excluded who perhaps could have been. However, the distinction represents OGE's best view of how the line should be drawn under the specified circumstances here.

Drawing the distinction on the basis of whether an individual holds a policy-making position would be both cumbersome and unworkable. The exemption must set forth a bright-line distinction because both the Department of Commerce and the employees it hires need to know who is clearly covered by the exemption and who is not. Any incorrect decisions about who is covered by the exemption could potentially subject the employee to criminal penalties should 18 U.S.C. 208(a) be violated. In addition, attempting to define who does and does not serve in a policy-making position would seriously hamper and unnecessarily complicate and impede a truncated hiring process.

The commenter also believes that the exemption would prevent the Department of Commerce from issuing individual waivers which would permit some elected officials to perform work on the decennial census. However, the exemption does not prevent the Department of Commerce from issuing waivers in individual cases in accordance with 18 U.S.C. 208(b)(1) and the requirements set forth in OGE regulations at 5 CFR 2640.301. An agency may issue such waivers in individual cases where it determines that a disqualifying financial interest in a particular matter is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government.

Finally, the commenter believes that the exemption may not be necessary due to the nature of the work to be performed, the inability of the temporary employees to affect the census count to any significant degree, and the remoteness of the financial interests of their non-Federal government employers due to the number of various steps in the census process. However, on balance and in an abundance of caution, OGE believes that an exemption is in the best interest of the Department of Commerce which initiated the request for an exemption and in the best interest of individuals who will be employed by Commerce to work on the decennial census.

Matters of Regulatory Procedure

Executive Order 12866

In promulgating this final regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final regulation will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this final regulation does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2640

Conflict of interests, Government employees.

Approved: June 1, 2000.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is adopting the interim rule amending 5 CFR part 2640 which was published at 65 FR 16511–16513 on March 29, 2000, as a final rule without change.

[FR Doc. 00–19772 Filed 8–3–00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

RIN: 0584–AC81

Food Distribution Program on Indian Reservations: Income Deductions and Miscellaneous Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service is amending the regulations for the Food Distribution Program on Indian Reservations. The changes are intended to improve program service by allowing households two additional income deductions when proper verification is provided. The first income deduction will be given to households that pay legally required child support for a nonhousehold member. This change conforms to an income deduction allowed under the Food Stamp Program. The second income deduction will be provided to households that pay the premium for their Medicare Part B medical insurance. This deduction was prompted by a resolution passed by the National Association of Food Distribution Programs on Indian Reservations. This rule will also make technical amendments, such as changing outdated terminology, and revising or removing provisions that are obsolete or have changed.

EFFECTIVE DATE: This rule is effective October 3, 2000.

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 510, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or by telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

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

I. Procedural Matters

Executive Order 12866

This 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. 10.567, and for the reasons set forth in the final rule of 7 CFR part 3015, subpart V, and related Notice (48 FR 29115), is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

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 program participants and Indian Tribal Organizations and State agencies that administer the Food Distribution Program on Indian Reservations will be affected by this rulemaking, the economic effect will not be significant.

Executive Order 12988

This 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

The information collection requirements included in 7 CFR 253.7(a)(6)(i) have been approved by the Office of Management and Budget under OMB. No. 0584–0293.

II. Background and Discussion of the Final Rule

On January 14, 2000, the Food and Nutrition Service (FNS) published a rule in the **Federal Register** (65 FR 2358) proposing amendments to the regulations at 7 CFR part 253 for the Food Distribution Program on Indian Reservations (FDPIR). We indicated that the proposed changes would improve program service by allowing households two additional income deductions when proper verification is provided. The first income deduction would be given to households that pay legally required child support for a nonhousehold member. The second income deduction would be provided to households that pay the premium for their Medicare Part B medical insurance. The Department also proposed making certain technical amendments, such as changing outdated terminology, and revising or removing provisions that are obsolete or have changed.

Comments were solicited through March 14, 2000, on the provisions of the proposed rulemaking. FNS received two comments from the public on the proposed regulatory changes, and no comments on the proposed information collection burden changes. Both commenters wrote in support of the proposed changes. Consequently, we are adopting the proposed rule as final, with one minor change, which is discussed below. For a full understanding of the provisions of this final rule, the reader should refer to the preamble of the proposed rule.

One of the commenters requested clarification in regard to the verification requirements associated with this rulemaking. By this action, the regulations at 7 CFR 253.7(a)(6)(i)(B) and (C) require the verification of Medicare Part B premium withholdings or payments, and child support payments, before the income deductions can be granted to a household. The commenter asked whether the Medicare Part B premium must be verified if it is not included in the Social Security check received by the household member. The State agency is required to verify the payment of the Medicare Part B premium whenever this cost is incurred by a household member. When conducting an eligibility interview, the State agency should first determine whether any household members are Medicare beneficiaries. If none of the household members are Medicare beneficiaries, the income deduction cannot be granted. If the household contains a Medicare beneficiary, the State agency should determine whether the Medicare Part B premium is withheld from a Social Security, Railroad Retirement Board, or Civil Service Retirement payment, or if it is paid directly by the household member to Medicare. If the premium is withheld from one of the above retirement/disability payments, documentation of this expense could include a copy of the Social Security benefit statement (SSA–4926–SM) for the current calendar year, or a similar statement provided to Railroad Retirement Board and Civil Service Retirement beneficiaries. The proposed rule at 7 CFR 253.7(a)(6)(i)(C)(*1*) identified only the Social Security benefit statement as a source of documentation for premium withholdings. We have revised this provision to include Railroad Retirement Board and Civil Service Retirement benefit statements as additional sources of documentation. If the benefit statement does not reflect that the Medicare Part B premium is being withheld from the monthly retirement payment, the income deduction cannot be granted.

Some individuals make direct payments to Medicare because they do not receive a Federal retirement or disability payment from which the Medicare premium can be withheld. This may include persons under 65-years of age who have chronic kidney disease or other disabilities. Documentation for these individuals could include money order receipts, canceled checks, or other receipts showing payment for the current calendar year. Direct payments to Medicare are usually made on a quarterly basis; therefore, the premium payment in these cases must be averaged over the 3-month payment period to determine a monthly amount for certification purposes. If the household cannot provide adequate documentation of this expense, the income deduction cannot be granted.

Similarly, the State agency must verify the household's payment of child support to or for a non-household member. Specifically, the State agency must verify the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the

household actually pays. A court order, or similar documentation, is necessary to verify the household member's legal obligation to pay the child support, but it cannot be used to verify the household's actual monthly child support payments. Some non-custodial parents fail to fully meet their court-ordered obligation and owe hundreds of dollars in child support. Verification of actual payments will ensure that these non-custodial parents receive an income deduction for the amount of child support they pay—not the amount they are required, but fail, to pay each month.

During the eligibility interview, the State agency should determine the actual monthly amount of child support that has been paid by the household member, and obtain documentation of payment (for example, money order receipts or canceled checks). In many cases, the amount paid each month may fluctuate. In such instances, we recommend that the State agency average the amounts paid each month to determine the amount to be used for certification purposes. For example, Mr. Smith is legally obligated to pay $300 in child support each month. In December, he paid $300; in January, he only paid $200; in February, he paid $350, and in March he paid $350. The eligibility worker averages the total amount of child support paid over the four months ($1200 ÷ 4 months) and determines that Mr. Smith is entitled to receive an income deduction of $300.

List of Subjects in 7 CFR Part 253

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

Accordingly, 7 CFR Part 253 is amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

1. The authority citation for 7 CFR part 253 is revised to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2032).

2. In § 253.3, revise the third sentence of paragraph (d) to read as follows:

§ 253.3 Availability of commodities.

* * * * *

(d) * * * The food package offered to each household by the State agency shall contain a variety of foods from each of the food groups in the Food Distribution Program on Indian Reservations Monthly Distribution Guide Rates by Household Size—Vegetables, Fruit, Bread-Cereal-Rice-Pasta, Meat-Poultry-Fish-Dry Beans-Eggs-Nuts, Milk-Yogurt-Cheese, and Fats-Oils-Sweets. * * *

§§ 253.5 and 253.6 [Amended]

3. In § 253.5(a)(2)(vii) and § 253.6(e)(2)(iii)(B), remove the acronym ''AFDC'', wherever it appears, and add in its place the acronym ''TANF''.

§ 253.5 [Amended]

4. In § 253.5, remove paragraph (f)(2), and redesignate paragraph (f)(3) as paragraph (f)(2).

5. In § 253.6:

a. Remove paragraph (d)(2)(iv)(F);

b. Amend paragraph (e)(1)(ii) by removing the words ''January 1 and July 1'' and adding, in their place, the words ''October 1'';

c. Amend paragraph (e)(2)(i)(C) by removing the words ''Comprehensive Employment and Training Act'' and adding, in their place, the words ''Job Training Partnership Act'';

d. Amend paragraph (e)(2)(ii)(A) by removing the words ''Aid to Families with Dependent Children (AFDC)'' and adding, in their place, the words ''Temporary Assistance for Needy Families (TANF)'';

e. Remove paragraphs (e)(3)(x)(F) and (e)(3)(x)(G); and

f. Add new paragraphs (f)(3) and (f)(4) to read as follows:

§ 253.6 Eligibility of households.

* * * * *

(f) * * *

(3) Households will receive a deduction for legally required child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The State agency must allow a deduction for amounts paid towards overdue child support (arrearages). Alimony payments made to or for a nonhousehold member cannot be included in the child support deduction.

(4) Households will receive a deduction for the full amount of the Medicare Part B medical insurance premium that is withheld from the Federal retirement or disability payment of a household member or is paid by a household member directly to Medicare. This income deduction is not allowed in situations where the premium is paid by the State on behalf of the Medicare beneficiary or where household members are not Medicare beneficiaries because they receive their health care through the Indian Health Service.

6. In § 253.7, revise paragraph (a)(6)(i) to read as follows:

§ 253.7 Certification of households.

(a) * * *

(6) * * *

(i) *Mandatory verification.*

(A) *Gross non-exempt income.* The State agency must obtain verification of each household's gross non-exempt income prior to certification. Households certified under the expedited service processing standards at paragraph (a)(9) of this section are not subject to this requirement. Income does not need to be verified to the exact dollar amount unless the household's eligibility would be affected, since Food Distribution Program benefits are not reduced as income rises. If the eligibility worker is unable to verify the household's income, the worker must determine an amount to be used for certification purposes based on the best available information. Reasons for inability to verify income include failure of the person or organization providing the income to cooperate with the household and the State agency, or lack of other sources of verification.

(B) *Legal obligation and actual child support payments.* The State agency must obtain verification of the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. Documentation that verifies the household's legal obligation to pay child support, such as a court order, cannot be used to verify the household's actual monthly child support payments.

(C) *Medicare Part B medical insurance premium.* The State agency must obtain verification of the household's payment of the Medicare Part B medical insurance premium. Documentation of this expense could include:

(*1*) A copy of the current year Social Security benefit statement (SSA–4926–SM), or a similar statement provided to Railroad Retirement Board and Civil Service Retirement beneficiaries, which identifies the amount of the Medicare Part B premium withheld each month; or

(*2*) A receipt for Medicare Part B premium payments paid directly to Medicare by the household.

* * * * *

Dated: July 28, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–19726 Filed 8–3–00; 8:45 am]

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