

# Rules and Regulations

Federal Register

Vol. 69, No. 145

Thursday, July 29, 2004

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 273

#### [Amendment No. 396]

RIN 0584-AD13

#### Food Stamp Program: Vehicle and Maximum Excess Shelter Expense Deduction Provisions of Public Law 106-387

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Food Stamp Program regulations to implement sections 846 and 847 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Agriculture Appropriations Act of 2001). The rule allows State agencies the option to use their Temporary Assistance for Needy Families (TANF) Program vehicle allowance rules rather than the vehicle rules ordinarily used in the Food Stamp Program where doing so will result in a lower attribution of resources to food stamp households. The rule also increases the maximum amount of the Food Stamp Program excess shelter expense deduction and indexes it each fiscal year to the Consumer Price Index (CPI) for all Urban Consumers for the 12 month period ending the previous November 30. The rule will increase benefits for some participants, make additional households eligible for food stamps, and provide greater flexibility for States in determining the value of vehicles.

**DATES:** *Effective Date:* The rule is effective September 27, 2004.

*Implementation Date:* State agencies were required by statute to implement the maximum excess shelter expense deduction limits contained in section

846 of the Agriculture Appropriations Act of 2001 and reflected in § 273.9(d)(6)(ii) of this final rule when certifying or recertifying households on or after March 1, 2001. Section 847 of the same statute allowed State agencies to begin implementing the vehicle provision at § 273.8(f)(4) of this final rule, at State option, when certifying or recertifying households on or after July 1, 2001.

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#### SUPPLEMENTARY INFORMATION:

##### I. Procedural Matters

##### *Executive Order 12866*

This final rule has been determined to be economically significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

##### *Executive Order 12372*

The Food Stamp Program (FSP) is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, subpart V and related notice (48 FR 29115), the FSP is excluded from 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). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not regulate the activities of small businesses or other small entities; instead it regulates the administration of the FSP, which is administered only by State or county social service agencies.

##### *Executive Order 12988*

This 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 and timely implementation. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

##### *Paperwork Reduction Act*

The paperwork burden associated with the food stamp certification process is approved under OMB control number 0584-0064. The maximum excess shelter expense deduction provisions of this proposed rule would result in no change in the burden for either applicants or State agencies. For applicants and State agencies, the effect of this provision is simply to substitute new maximum deductions for the previous ones.

The vehicle provisions of this rule do not change the paperwork burden on applicants. States that elect to substitute their TANF vehicle rules for their food stamp vehicle rules will experience minor increases or decreases in burden associated with the complexity or simplicity of each case. States that elect to retain the food stamp vehicle rules will experience no change in burden. The Department has concluded that the burden will vary from case to case and State to State but not enough to affect the average total processing time data upon which all burden estimates for food stamp certification (and recertification) are based.

##### *Federalism Summary Impact Statement*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. We note that all references to State agencies when used in the context of Federalism also refer to local welfare agencies in States in which the FSP is administered by local governments. The Department has considered the impact of this rule on State agencies while drafting the rule. The rule codifies procedures mandated by statute and already implemented under the terms of a guidance memorandum issued on January 4, 2001.

##### *Prior Consultation With State Officials*

Prior to drafting this rule, we consulted with State and local agencies at various times. Because the FSP is a State-administered, Federally-funded

program, our regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program implementation and policy issues. This arrangement allows State and local agencies to provide comments that form the basis for many discretionary decisions in this and other FSP rules. We have also had numerous written requests for policy guidance on the implications of Public Law 106-387 from the State agencies that deliver food stamp services. These questions have helped us make the rule responsive to concerns presented by State agencies.

#### *Nature of Concerns and the Need To Issue This Rule*

State agencies generally want greater flexibility in their implementation of FSP asset policy, especially with regard to vehicle ownership. This rule provides much greater flexibility in this area and also addresses another major State concern, the need to conform FSP rules to the rules of other means-tested Federal programs. Specific policy questions submitted by State agencies after enactment of the Agriculture Appropriations Act of 2001, but prior to the promulgation of regulations, helped us identify issues that needed to be clarified in the rule.

#### *Extent to Which We Meet Those Concerns*

The Department has considered the impact of this rule on State and local agencies. The rule makes changes that the law required to be implemented in 2001. The effects on State agencies are minimal. While the vehicle provision of the rule requires eligibility workers to make additional computations in some cases, the ability to substitute TANF vehicle rules for FSP vehicle rules, when doing so results in a lower attribution of resources, allows a growing number of States to exclude some or all vehicles from household assets. The maximum excess shelter expense deduction provision simply increases the amount of the deduction and indexes it to the CPI, resulting in no additional requirements for State agencies. In this final rule, we have addressed every question submitted during the comment period by State agencies regarding both of these provisions.

#### *Unfunded Mandate Reform Act of 1995 (UMRA)*

Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under § 202 of the UMRA, the Department 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, § 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most 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. This rule is, therefore, not subject to the requirements of section 202 and section 205 of the UMRA.

#### *Civil Rights Impact Analysis*

The Department has reviewed this rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individual participants, the Department has determined that there is no adverse effect on any of the protected classes. The Department has minimal discretion in implementing many of these changes. The changes required by law have been implemented. All data available to the Department indicate that protected individuals have the same opportunity to participate in the FSP as non-protected individuals. The Department specifically prohibits the State and local government agencies that administer the program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that "State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act, the Age Discrimination Act of 1975 (Pub. L.

94-135), the Rehabilitation Act of 1973 (Pub. L. 93-112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15." Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

#### *Regulatory Impact Analysis*

##### *Need for Action*

This action is needed to implement § 846 and § 847 of the Agriculture Appropriations Act of 2001, Public Law 106-387. The rule increases the amounts of the maximum excess shelter expense deductions, and for future years, indexes them to the CPI. It also allows States the option of substituting their TANF vehicle rules for their food stamp vehicle rules when doing so would result in a lower attribution of resources to a household.

##### *Benefits*

Section 846 (maximum excess shelter expense deduction provision): this final rule allows a larger income deduction for shelter expenses to those low-income families whose shelter expenses exceed 50 percent of their monthly income, after all other applicable deductions have been made. The Department does not expect raising the excess shelter deduction limit to significantly increase FSP participation. Instead, we estimate that the change will raise benefits for 8.4 percent of current participants. Applying this percentage to the participation projections for the President's Fiscal Year (FY) 2005 budget baseline, we estimate that 1.98 million persons will each receive an average of \$6.23 more per month in food stamp benefits in FY 2004, compared to the benefits they would have received if the shelter cap had remained frozen as legislated prior to this provision. These impacts are already incorporated into the President's FY 2005 budget baseline.

Section 847 (vehicle provision): the rule allows food stamp applicants to benefit when State agencies elect to use more expansive TANF vehicle policy rules that will allow them to own a reliable vehicle and still be eligible for food stamps. The Department estimates that this provision will increase average participation in the FSP by 298,000 persons in FY 2004, compared to what participation would have been in its absence. Among those newly eligible, we estimate that their average monthly

food stamp benefit will be \$80.71. These impacts are already incorporated into the President's FY 2005 budget baseline. State agencies will benefit from the increased flexibility in program administration afforded by the rule and from an anticipated decrease in payment errors.

#### Costs

Although the provisions have already been implemented by State agencies, the Department estimates that the cost to the Government of section 846 will be \$148 million in FY 2004 and \$883 million over the five years, FY 2004 through FY 2008, compared to what costs would have been in its absence. Likewise, the Department estimates that the cost to the Government of section 847 will be \$289 million in FY 2004 and \$1.527 billion over the five years, FY 2004 through FY 2008, compared to what costs would have been in its absence. These impacts are already incorporated into the President's FY 2005 budget baseline.

## II. Background

On August 29, 2003, we published a rule at 68 FR 51932 in which we proposed to amend FSP regulations at 7 CFR 273.8 by adding a new paragraph (f)(4), and at 7 CFR 273.9(d)(6)(ii) by inserting new monthly shelter expense deduction limits mandated by Congress and by indexing future limits to the CPI. We solicited comments on provisions of the proposed rule through October 28, 2003, and received a total of 36 comments of which 28 expressed support for the rule as proposed without making specific suggestions for improvements. This final rule addresses issues raised by the remaining 8 comments.

#### *Vehicle Provisions—7 CFR 273.8(f)(4)*

The proposed rule added a new paragraph (f)(4) that explains how State agencies must administer the provision that allows substitution of the vehicle rules from a TANF-funded or TANF Maintenance-of-Effort-funded assistance program for those of the FSP. We received two comments that asked us to use the final rule to eliminate the long-standing equity test for vehicles at 7 CFR 273.8(f). The purpose of this final rule is to implement very specific statutory provisions, not to overhaul existing vehicle policy. Therefore, we will not adopt this suggestion. A commenter asked us to ensure that the final rule states that State agencies must exclude the most valuable vehicle that is not excluded under TANF rules if a TANF exclusion exists. While we agree with this suggestion, we also believe

that the rule, as originally proposed, conveys this meaning quite clearly. For this reason, we will not add further details to this provision. The same commenter suggested that the final rule should state clearly that it applies only to vehicles not excluded by food stamp regulations at 7 CFR 273.8(e)(5) and (e)(11). We agree and have added language to this effect. The same commenter asked us to integrate the rule into the existing vehicle rules instead of according it a separate paragraph. The commenter's opinion is that by presenting this State option in a separate paragraph, we appear to suggest that State agencies must compute vehicle valuations twice, once under TANF rules and once under FSP rules. We disagree for two reasons: first, the statute presents this State option as an "alternative vehicle allowance," which suggests to us the intent to offer it to States as a clear option rather than merge it with other aspects of the FSP vehicle rules; second, we issued guidance on January 4, 2001 that closely mirrors the proposed rule and States have long ago worked out their procedures for valuing vehicles under that guidance. As of February 2003, only 9 States had not elected to substitute TANF rules for FSP rules. We think the high level of response to this State option, and the absence of requests for clarification or simplification from the States themselves, shows that the rule as drafted will reduce rather than increase administrative complexities for State agencies.

Another commenter stated that the final rule should permit a State agency to substitute its TANF Fair Market Value (FMV) test for its FSP FMV test even if the TANF rules for that State do not include a FMV test. The comment argued that the absence of any reference to an FMV test is an FMV policy. We disagree. The statute allows the substitution of a State's TANF vehicle rules, as written, for the FSP vehicle rules, not the substitution of an unstated provision. Under the final rule, this commenter's State may use FSP vehicle rules or the vehicle rules of its TANF program. Another commenter asked how to treat the resources, including vehicles, of a household member disqualified for an intentional program violation. Our view is that a State agency can substitute its TANF vehicle rules for all food stamp rules affecting treatment of vehicles. Therefore, a State agency can exclude from resources vehicles owned by a household member disqualified for an intentional program violation if the State's TANF vehicle rules permit the

exclusion. The same interpretation holds for vehicles owned by persons disqualified for drug felony convictions, fleeing felon disqualifications, or workfare or work sanctions.

#### *Maximum Excess Shelter Expense Deduction Provision—7 CFR 273.9(d)(6)(ii)*

The proposed rule deleted the existing maximum excess shelter expense deductions and inserted the new ones contained in the statute. It also proposed in the preamble to index the maximum deductions for future years to the Shelter Component and Fuels and Utilities Component of the Consumer Price Index for all Urban Consumers (CPI-U). One commenter asked us to modify the regulatory language to include details on how these two components would be used in making future annual adjustments and recommended that the Department give them the same weights they receive within the overall CPI-U. When the Department made the adjustments for FY 2003 and FY 2004, we weighted the two components exactly as the commenter suggests, and will probably weight them the same way in future calculations. However, because the computation of the CPI-U and the weighting of components within it are not under the control of the Department, we have decided not to adopt the commenter's recommendation. We are concerned that future changes in the CPI-U, and unpredictable factors in the economy, may make the commenter's recommended methodology less favorable to food stamp participants than alternative methodologies at some point in the future. In addition, the rule, as drafted, is consistent with the Department's treatment of annual adjustments of the maximum excess shelter expense deduction in previous regulations.

## III. Implementation

The proposed rule, published August 29, 2003, closely mirrored the January 4, 2001 guidance memorandum sent to States by the Food and Nutrition Service (FNS). The proposed rule, however, specified no implementation dates for this final rule's two provisions: the vehicle provision is a State option that can be implemented at any time after July 1, 2001; the statute required State agencies to implement the new maximum excess shelter expense deduction limits beginning March 1, 2001.

#### **List of Subjects in 7 CFR Part 273**

Administrative practice and procedure, Food stamps, Fraud, Grant

programs, Social programs, Resources, Vehicles.

■ Accordingly, 7 CFR part 273 is amended as follows:

**PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

■ 1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 273.8, add new paragraph (f)(4) to read as follows:

**§ 273.8 Resource eligibility standards.**

\* \* \* \* \*

(f) \* \* \*

(4) A State agency may substitute for the vehicle evaluation provisions in paragraphs (f)(1) through (f)(3) of this section the vehicle evaluation provisions of a program in that State that uses TANF or State or local funds to meet TANF maintenance of effort requirements and provides benefits that meet the definition of “assistance” according to TANF regulations at 45 CFR 260.31, where doing so results in a lower attribution of resources to the household. States electing this option must:

(i) Apply the substituted TANF vehicle rules to all food stamp households in the State, whether or not they receive or are eligible to receive TANF assistance of any kind;

(ii) Exclude from household resources any vehicles excluded by either the substituted TANF vehicle rules or the food stamp vehicle rules at paragraphs (e)(3), (e)(5), (e)(11) and (f) of this section;

(iii) Apply either the substituted TANF rules or the food stamp vehicle rules to each of a household’s vehicles in turn, using whichever set of rules produces the lower attribution of resources to the household;

(iv) Apply any vehicle exclusions allowed by their TANF vehicle rules to the vehicles with the highest values; and

(v) Exclude any vehicle owned by any household in the State if it selects TANF vehicle rules that exclude all vehicles completely or contain no resource provisions at all.

\* \* \* \* \*

■ 3. In § 273.9, add two sentences after the second sentence of paragraph (d)(6)(ii) to read as follows:

**§ 273.9 Income and deductions.**

\* \* \* \* \*

(d) \* \* \*

(6) \* \* \*

(ii) \* \* \* For fiscal year 2001, effective March 1, 2001, the maximum

monthly excess shelter expense deduction limits are \$340 for the 48 contiguous States and the District of Columbia, \$543 for Alaska, \$458 for Hawaii, \$399 for Guam, and \$268 for the Virgin Islands. FNS will set the maximum monthly excess shelter expense deduction limits for fiscal year 2002 and future years by adjusting the previous year’s limits to reflect changes in the shelter component and the fuels and utilities component of the Consumer Price Index for All Urban Consumers for the 12 month period ending the previous November 30.

\* \* \*

\* \* \* \* \*

Dated: July 21, 2004.

**Eric M. Bost,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

**Appendix: Regulatory Impact Analysis**

*Title:* Vehicle and maximum excess shelter expense deduction provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001, Public Law 106–387.

*Action:*

(a) *Nature:* Final Rule.

(b) *Need:* This action is required as a result of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001, Public Law 106–387.

(c) *Background:* On October 28, 2000, the President signed the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001 (Agriculture Appropriations Act of 2001). This rule implements sections 846 and 847 of the Agriculture Appropriations Act of 2001. Section 846 increases the maximum amount of the food stamp excess shelter expense deduction for fiscal year 2001 and indexes it for future years to the Consumer Price Index for all Urban Consumers for the 12 month period ending the previous November 30. Section 847 allows State agencies the option to use their Temporary Assistance for Needy Families (TANF) Program vehicle allowance rules rather than the vehicle rules used in the Food Stamp Program (FSP) where doing so will result in a lower attribution of resources to food stamp households.

1. *Justification of Alternatives:* These provisions are statutorily mandated and have already been implemented. In the case of the vehicle provision, FNS could have interpreted the statute to offer a more restrictive definition of TANF-funded programs, which would have limited the number of households gaining eligibility due to the provision. Instead, we proposed and are adopting a comprehensive definition of TANF-funded programs, which maximizes the benefits of the provision and is consistent with both our understanding of

Congressional intent and prior policy guidance issued by the Food and Nutrition Service to States.

2. *Effects:* (a) Effects on food stamp recipients, and (b) Program costs: Although these provisions have already been implemented, they are expected to increase Food Stamp Program costs by \$437 million in FY 2004 and \$2.41 billion over the five years FY 2004 to FY 2008, compared to what program costs would have been in their absence. Likewise, these provisions are expected to add 298,000 new participants and increase benefits among 1.98 million current participants in FY 2004. These impacts are already incorporated into the President’s FY 2005 budget baseline.

**Section 846: Increase the Excess Shelter Deduction Limits**

*Discussion:* Recognizing that shelter expenses reduce the amount of income available to purchase food, the Food Stamp Act of 1977 (FSA) provides a deduction from income for households whose shelter expenses exceed 50 percent of their income, after other applicable deductions are made. Because households with larger shelter expenses relative to their income generally receive a larger excess shelter deduction for food stamp benefit determination, the deduction is a means of targeting benefits to those most in need.

The FSA also sets limits on how large the excess shelter deduction can be, often referred to as the “excess shelter deduction cap”. Since households with elderly or disabled members are not subject to the shelter deduction cap, most households affected by the cap are households with children. Legislation enacted since 1977 has adjusted the caps to the Consumer Price Index (Omnibus Budget Reconciliation Act of 1981); required that calculations of excess shelter deductions be rounded down to the next lower dollar (Omnibus Budget Reconciliation Act of 1982); removed the caps altogether (Omnibus Budget Reconciliation Act of 1993, Mickey Leland Childhood Hunger Relief Act); and most recently, reset caps and froze them at current levels for households without elderly or disabled members (Personal Responsibility and Work Opportunity Reconciliation Act of 1996). The excess shelter deduction caps in effect for FY 2001 were: \$300, \$521, \$429, \$364, and \$221 respectively, for the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam, and the United States Virgin Islands. Households with elderly or disabled members are not subject to the excess shelter caps.

Since the caps were frozen by the 1996 legislation, many FSP participants, State agencies, and advocacy organizations have sought legislation that would bring the maximum excess shelter expense deduction more closely in line with current housing costs and index it to the cost of living. Section 846 of the Agriculture Appropriations Act of 2001 accomplishes those objectives by: (a) setting the fiscal year 2001 maximum excess shelter expense deductions at \$340, \$543, \$458, \$399, and \$268 per month for, respectively, the contiguous 48 States and the District of

Columbia, Alaska, Hawaii, Guam, and the Virgin Islands, effective March 1, 2001; and (b) setting the maximum excess shelter expense deductions for fiscal year 2002 and beyond by adjusting the previous year's maximums to changes in the Consumer Price Index for All Urban Consumers for each 12-month period ending the preceding November 30.

*Effect on Low-Income Families:* This provision will affect low-income households without an elderly or disabled member, who certify or re-certify for food stamp benefits on or after March 1, 2001, who have shelter expenses that are high enough relative to their net income to be eligible for the excess shelter deduction, are subject to the current shelter cap, and are not already receiving the maximum benefit for their household size. Most households affected by the provision are households with children. It will allow affected households to claim a larger income deduction for shelter expenses and to obtain higher food stamp benefits.

*Cost Impact:* Although this provision has already been fully implemented, we estimate that the cost to the Government of this provision will be \$148 million in FY 2004, and \$883 million over the five years, FY 2004 through FY 2008, compared to what costs would have been in its absence. These impacts are already incorporated into the President's FY 2005 budget baseline.

Cost estimates were based on food stamp cost projections from the President's FY 2005 budget baseline of December 2003. While we recognize that the President's FY 2005 budget baseline is an imperfect baseline for this analysis because it already incorporates the impacts of this provision and subsequent legislation, it is preferable to the alternatives because it reflects the most recent economic and participation trends. The new values of the shelter cap for FY 2002 and beyond were calculated by inflating the FY 2001 values, using actual and projected values of the Consumer Price Index for All Urban Consumers from the Office of Management and Budget's economic assumptions for the President's FY 2005 budget. The benefit and participation impacts of raising the shelter deduction cap to the new values were modeled using data from the 2002 food stamp quality control sample regarding household characteristics, income and expenses. Using these data, we were able to measure expected changes in household benefits resulting from the changes in the shelter cap. The program suggested that raising the cap would increase program benefits by less than one percent nationally. The estimated percentage increase was multiplied by the baseline cost projections to estimate the expected cost increase for each fiscal year. Because this provision became effective on March 1, 2001 for households who are newly certified or re-certified, the provision was considered fully implemented in FY 2004. Cost estimates were rounded to the nearest million dollars.

*Participation Impacts:* We estimate that raising the shelter deduction cap will raise benefits among those households currently participating and subject to the shelter deduction cap. We do not expect any significant impacts on participation due to

nature of the rule change and the small benefit increase per recipient. FY 2002 quality control data indicate that 8.4 percent of food stamp participants will receive higher benefits due to this provision. (These are persons in households that claim the maximum shelter deduction but receive less than the maximum food stamp benefit. Households that already receive the maximum food stamp allotment cannot have their benefits raised as a result of this provision.) Applying this percentage to the participation projections for the President's FY 2005 budget baseline, we estimate that 1.98 million persons will each receive an average of \$6.23 more per month in food stamp benefits in FY 2004, when compared to the benefits they would have received if the cap had remained frozen as legislated prior to this provision.

*Uncertainty:* Because these estimates are based on detailed food stamp household data from the food stamp quality control system, they are associated with a fairly high degree of certainty. To the extent that actual shelter expenses in future years change more or less than forecasted in the President's FY 2005 baseline economic assumptions, future shelter deduction cap values could differ, and actual costs of this provision could be larger or smaller than estimated.

#### **Section 847: State Option To Use TANF Vehicle Rules**

*Discussion:* Since 1964, food stamp legislation has limited the value of resources households may own while remaining eligible for food stamps. The FSA specifically addresses the valuation of vehicles as resources that count toward the resource limit of \$2,000 per household, or \$3,000 for households with one or more members who are disabled, or aged 60 years or over. The fair market value (FMV) of vehicles in excess of \$4,500 was designated as a countable resource in the 1977 FSA. Subsequent laws have raised the FMV limit to \$4,650, excluded the value of vehicles used for various purposes from household resources, and designated vehicles whose sale would net no more than \$1,500, after payment of liens, as inaccessible resources. After excluding all vehicles exempted by the FSA, food stamp vehicle rules prior to the provision in this rule (referred to hereafter as the "basic" food stamp vehicle rules) apply the excess FMV test to one licensed vehicle per adult household member and any other licensed vehicle a teenager drives to work, school, job training, or job hunting. Additional non-exempt licensed vehicles are valued at the higher of excess FMV or equity value (fair market value minus any outstanding loan balance). Unlicensed vehicles are counted at their equity value.

Section 847 of the Agricultural Appropriations Act of 2001 amends section 5(g)(2) of the Food Stamp Act of 1977 to allow States to substitute their TANF vehicle rules for the food stamp vehicle rules when doing so would result in a lower attribution of food stamp resources to households. In lieu of the basic food stamp vehicle rules at 7 CFR 273.8(f), the Department proposes that States may substitute the vehicle rules from any program that receives TANF or TANF

maintenance of effort funds and meets the definition of "assistance" according to TANF regulations at 45 CFR 260.31.

Implementation of section 847 will streamline the process of determining eligibility, make many more households eligible for food stamps, reduce errors, and facilitate processing of TANF and food stamp joint applications. The effect of section 847 will vary from State to State, according to the TANF vehicle rules developed by each State and whether or not they implement this optional treatment of vehicles.

*Effect on Low-Income Families:* This provision will allow States to adopt more generous vehicle rules from their TANF-funded programs for use in determining food stamp eligibility. By adopting more generous TANF vehicle rules, some income-eligible food stamp households who were previously ineligible because of the basic food stamp vehicle rules valuation of their vehicle(s), are made eligible to participate. Persons will be affected by the provision to the extent that States adopt this provision and to the extent that States have less restrictive vehicle rules in their relevant TANF-funded programs.

*Cost Impact:* Although section 847 is already fully implemented, we estimate that the cost to the Government of this provision will be \$289 million in FY 2004 and \$1.527 billion over the five years FY 2004 to FY 2008, compared to what costs would have been in its absence. These impacts are already incorporated into the President's FY 2005 budget baseline.

In FY 2004, 31 States reported adopting their more generous TANF-cash vehicle rules for the purpose of determining food stamp eligibility. Ten other States reported adopting vehicle rules from their TANF-funded child care and foster care programs for the purpose of determining food stamp eligibility. For the impact analysis, it is assumed that States interested in adopting vehicle rules from any of their TANF-funded programs have done so and that no additional States will switch to TANF vehicle rules in the future.

In order to estimate the impact of this provision on food stamp participation and benefit costs, we used data from the 1999 Survey of Income and Program Participation (SIPP), which contains information about household characteristics, income and assets—including vehicle ownership data. Using this dataset, we created the 1999 MATH SIPP simulation program, which models food stamp eligibility, participation and benefits under FSP vehicle rules and allows us to compare them to participation and benefits under alternative vehicle rules. Ideally, we would use a model based on the basic food stamp vehicle rules and we would measure the impact of this provision by simulating the change to allow States to adopt TANF vehicle rules. Because the model was created after implementation of the Agricultural Appropriations Act of 2001, however, it already includes the State adoption of TANF vehicle rules as of January 2004. For each State that chose to adopt TANF vehicle rules for determining food stamp eligibility, the model uses their specific TANF vehicle rules based on the policy choices they made for FY 2004. We then backed out the cost and participation

impacts of this provision by simulating the restriction of States to the basic food stamp vehicle rules, and took the absolute value of that impact.

STATE VEHICLE RULES FOR DETERMINING FSP ELIGIBILITY (AS OF JANUARY 2004)

FSP vehicle rules (6 states)	TANF-cash vehicle rules (31 states)	TANF child care or foster care vehicle rules (10 states)	Other: states with expanded categorical eligibility (6 states)
GA, ID, IA, TN, VI, WA .....	AL, AK, AZ, AR, CT, DC, FL, GU, HI, IL, KS, KY, LA, ME, MD, MN, MS, MT, NV, NH, NJ, NC, OH, OK, PA, RI, SD, UT, VT, VA, WY.	CA, CO, IN, MA, MO, NE, NM, NY, WV, WI.	DE, MI, ND, OR, SC, TX.

The impact of States moving from FSP vehicle rules to TANF-based vehicle rules was estimated as a 2.38 percent increase in national benefits. This impact was multiplied by expected benefits for each fiscal year, based on the President's FY 2005 budget baseline of December 2003. While we recognize that the President's FY 2005 budget baseline is an imperfect baseline for this analysis because it already incorporates the impacts of this provision and subsequent legislation, it is preferable to the alternatives because it reflects the most recent economic and participation trends.

An additional adjustment was made to account for other policy choices available to States regarding their treatment of assets. The simulation impact assumes that, in the absence of this provision, States would use basic FSP vehicle rules in determining household assets. We believe, however, that some of these States would have chosen to adopt more expansive categorical eligibility policies as well. (The FSA permits some households to be categorically eligible for benefits. Those households do not need to meet the resource test, so the value of their vehicles is irrelevant to their eligibility determination. States have some choice in how to define categorical eligibility.) By expanding categorical eligibility, States would lower the number of households subject to the FSP vehicle asset rules. To account for this alternative policy available

to States, estimates were reduced by half in all years. Given that section 847 was effective on July 1, 2001, we considered it to be fully implemented in FY 2004 and no further adjustments were made. Cost estimates were rounded to the nearest million dollars.

*Participation Impacts:* Although already implemented, we estimate that this provision will increase average participation in the Food Stamp Program by 298,000 persons in FY 2004, compared to what participation would have been in its absence. Among those made eligible by this provision, we estimate that their average monthly food stamp benefit will be \$80.71. These impacts are already incorporated into the President's FY 2005 budget baseline.

Participation impacts were estimated using the same method as the cost impacts. The participation impact was estimated as a 2.52 percent expected increase in participation. This impact was multiplied by expected participation for each fiscal year, based on the President's FY 2005 budget baseline of December 2003. As with the cost estimate, participation estimates were reduced by half to reflect alternative policy choices available to States regarding the treatment of assets. Participation estimates were rounded to the nearest thousand persons.

*Uncertainty:* There is a great deal of uncertainty associated with this estimate. The 1999 MATH SIPP model produces fairly accurate impact estimates based on a national

dataset, details about State specific TANF vehicle policies, and known State policy choices. It is uncertain, however, how many States would have chosen to expand FSP categorical eligibility in the absence of this provision. The 50 percent reduction is our best estimate, based on the demonstrated desire of many States to liberalize their asset rules through the adoption of their TANF vehicle rules. To the extent that a greater or fewer number of States would have adopted expanded categorical eligibility, the cost of this provision to the Government would differ.

*Societal Costs:* While this regulatory impact analysis details the expected impacts on Food Stamp Program costs and the number of participants likely to be affected by the food stamp provisions of the Agricultural Appropriation Act of 2001, it does not provide an estimate of the overall social costs of the provisions, nor does it include a monetized estimate of the benefits they bring to society. We anticipate that the provisions will improve program operations by providing States with the ability to coordinate food stamp and TANF vehicle rules. In addition, by increasing food stamp benefits to low-income families, we believe that these statutory changes will increase food expenditures, which may strengthen food security.

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**Summary Table:**  
**Final Rule: Vehicle and Excess Shelter Expense Deduction and Provisions of the Agricultural Appropriations Act of 2001**

Fiscal Year	GOVERNMENT COST (in millions of dollars)					PARTICIPATION (in persons)		SOURCE OF ESTIMATE	
	2004	2005	2006	2007	2008	5- YEAR	# of New Participants	# w/Higher Benefits	
Section 846 Raise Shelter Cap	\$148	\$171	\$179	\$187	\$198	\$883	minimal	1,980,000 in 2004	FY 2005 baseline 2002 QC minimodel CPI-U
Section 847 TANF Vehicle Option	\$289	\$312	\$309	\$308	\$309	\$1,527	298,000 in 2004	n/a	FY 2005 baseline 1999 MATH-SIPP State Options Report
<b>TOTAL</b>	<b>\$437</b>	<b>\$483</b>	<b>\$488</b>	<b>\$495</b>	<b>\$507</b>	<b>\$2,410</b>			

[FR Doc. 04-17225 Filed 7-28-04; 8:45 am]

BILLING CODE 3410-30-C

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 906**

[Docket No. FV04-906-2 IFR]

**Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Decreased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Texas Valley Citrus Committee (Committee) for the 2004-05 and subsequent fiscal periods from \$0.14 to \$0.12 per 7/10-bushel carton or equivalent of oranges and grapefruit handled. The Committee locally administers the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective July 30, 2004.

Comments received by September 27, 2004, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or e-mail:

*moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov*. 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, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

**FOR FURTHER INFORMATION CONTACT:**

Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682-2833, Fax: (956) 682-5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber,

Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: *Jay.Guerber@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The 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 (USDA) 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, orange and grapefruit handlers in the Lower Rio Grande Valley 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 oranges and grapefruit beginning August 1, 2004, and continue until amended, 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.