Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

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: Proposed rule.

SUMMARY: The Department proposes to amend its 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). This rule would increase the maximum amount of the food stamp excess shelter expense deduction and index it to the Consumer Price Index, and allow 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. The proposed rule would 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: Send your comments to reach us by October 28, 2003.

ADDRESSES: You may mail comments to Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, attention Program Design Branch. You may fax comments to us at (703) 305–2486, attention Program Design Branch. You may also hand-deliver comments to us on the 8th floor at the above address. For information about filing electronically, see the **SUPPLEMENTARY INFORMATION** section under Electronic Access and Filing Address.

FOR FURTHER INFORMATION CONTACT: John Knaus, Chief, Program Design Branch, Program Development Division, Food Stamp Program, FNS, at (703) 305–2098. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

Electronic Access and Filing Address

You may view and download an electronic version of this proposed rule at *http://www.fns.usda.gov/fsp/rules/Regulations/default.htm.* You may also send comments to PRGDEV.WEB at the same Internet address after clicking ''Email Us'' in the yellow bar near the top of the screen. Please include ''Attention RIN 0584–AD13'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your message, please contact us directly at (703) 305–2098.

Written Comments

Please make your written comments on the proposed rule specific, confine them to issues pertinent to the proposed rule, and explain the reason for any change you recommend. Where possible, you should cite the specific section or paragraph of the proposed rule you are addressing. We may not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period or comments delivered to an address other than those listed above. We will make all comments, including names, street addresses, and other contact information of respondents, available for public inspection on the 8th floor, 3101 Park Center Drive, Alexandria, Virginia 22302 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday, excluding Federal holidays. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, or other contact information from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Background

Section 846: Recognizing that many low-income households have extremely high shelter expenses, Section 5(e)(7) of the Food Stamp Act of 1977 (FSA), 7 U.S.C. 2014(e)(7), provides a deduction from income for households whose shelter expenses exceed 50 percent of their income, after other applicable deductions are made. Because families with comparable amounts of income may have substantially different shelter expenses, affecting their ability to purchase food, the deduction is a means of targeting benefits to those in need. Households without elderly or disabled members are subject to a limit on the amount of shelter expenses that can be deducted. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) set limits that reached a maximum of $300 in fiscal year (FY) 2001. Those limits are set forth in Section 5(e)(7)(B) of the FSA. In FY 2000, the year prior to implementation of this provision, about three in five households participating in the Food Stamp Program received an excess shelter expense deduction. In FY 2000, 5.3 percent of all households (about 384,000 households) were at the shelter limit and could have received larger benefits if the limit were increased. Almost all of these households contained children. The excess shelter deduction limits in effect at the start of 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 limits.

Section 847: 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. In 1977, the FSA designated the fair market value (FMV) of vehicles in excess of $4,500 as a countable resource. Subsequent laws and regulations have raised the FMV exclusion 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.

Discussion of the Proposed Rule

Section 846: Section 846 of the Agriculture Appropriations Act of 2001 amends § 5(e)(7)(B) of the FSA to set new limits on the excess shelter expense deduction and to provide for annual fiscal year adjustments based on the Consumer Price Index. The Act set the fiscal year 2001 maximum excess shelter expense deductions at the levels specified in § 846: $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, 2001. Section 846 also amends § 5(e)(7)(B) of the FSA to set the maximum excess shelter expense deductions for fiscal year 2002 and beyond. For this reason, the Department proposes to amend 7 CFR 273.9(d)(6)(ii) to state its obligation to compute and announce maximum excess shelter expense deductions for FY 2002 and other future years 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. The Department proposes to use the Shelter and the Fuels and Utilities Components of the Consumer Price Index rather than the Consumer Price Index for All Items because doing so provides a more accurate measure of changes in shelter and utility expenses.

The Department posts the updated maximum excess shelter expense deductions annually at *http://www.fns.usda.gov/fsp/government/FY03_Allot_Deduct.htm.*

Section 847: 7 CFR 273.8 excludes from household resources the value of vehicles that produce income, are used as a home, transport a physically disabled household member, are used for long distance travel other than daily commuting, carry most of a household's heating fuel or drinking water, or are considered inaccessible resources because their sale would net $1,500 or less after any loans are repaid. The FMV (in excess of $4,650) of one licensed vehicle per adult household member is counted as a household resource, as is the FMV (in excess of $4,650) of any other licensed vehicles that teenagers in the household drive to work, job training, or job hunting. The value of any remaining licensed vehicles is included as a household resource, using the greater of the vehicle's FMV (in excess of $4,650) or its equity value. Unlicensed vehicles are counted at their equity value.

Section 847 of the Agriculture Appropriations Act of 2001 amends § 5(g)(2)(B)(iv) of the FSA 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 resources to households. Implementation of § 847 will streamline the process of determining eligibility, make more households eligible for food stamps, reduce errors, and facilitate conformance of TANF and food stamp vehicle policies. This proposed rule would amend 7 CFR 273.8(f)(4) to implement the vehicle provisions set forth in § 847. Below, we answer questions we believe are likely to arise in connection with the proposed rule.

Which TANF Programs Qualify as Sources of Substitute Vehicle Rules?

In lieu of the food stamp vehicle rules at 7 CFR 273.8(f), the Department proposes that a State may substitute the vehicle rules from a program in that State that uses TANF funds, or State or local funds to meet TANF maintenance-of-effort (MOE) requirements, *and* meets the definition of "assistance" according to TANF regulations at 45 CFR 260.31.

This definition includes cash payments, vouchers, and other forms of benefits designed to meet a household's ongoing basic needs, including benefits provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients and conditioned on participation in work experience, community service, or any other work activity under TANF regulations. It also includes supportive services such as transportation and child-care provided to families without employment.

How May State Agencies Apply § 847?

The Department proposes that State agencies electing to use § 847 must apply either the TANF or food stamp rules, whichever produces the lower attribution of resources to the household, on a vehicle-by-vehicle basis, using any exclusions allowed by either set of rules. The statute does not permit a blanket substitution of TANF rules for food stamp rules unless, of course, a State's TANF rules invariably result in a lower attribution of resources, as in States whose TANF policies exclude all vehicles from household assets. Although § 847 mentions only the food stamp FMV test, the rule proposes to apply it equally to the food stamp equity test because the intent of the law is to permit TANF policy to substitute for food stamp policy. Under the proposed rule, State agencies electing to apply § 847 must, therefore, apply their TANF rules to any vehicles that would previously have been subject to the food stamp equity test, where doing so would result in a lower attribution of resources. States whose TANF rules exclude one vehicle must apply the exclusion to the vehicle with the highest value unless prohibited by their rules. States whose TANF vehicle rules exclude all vehicles completely, or contain no resource provisions at all, would exclude any vehicle owned by any household in the State from resources when determining eligibility for food stamps. For example, suppose a State agency is evaluating a vehicle with a FMV of $5,000 and an unpaid loan balance of $2,400. The State's TANF vehicle rules exclude equity under $3,000, while food stamp rules exclude FMV under $4,650. In this case, the TANF rules result in the lower attribution of resources because they exclude the vehicle's entire equity value of $2,600, while the food stamp rules would count $350 excess FMV ($5,000–$4,650) toward household resources. Consequently, the State agency would use the TANF rules.

What Happens When a Household Owns Multiple Vehicles?

Where a household has more than one vehicle, the rule proposes that a State must exclude any vehicles it can under either TANF or food stamp rules, and evaluate each remaining vehicle separately under whichever rules will result in the lower attribution of resources to the household. For example, a State could exclude a vehicle used to transport a disabled household member (under food stamp rules), exclude one vehicle per licensed driver (under its TANF rules) and value a remaining vehicle at the greater of its equity value or its FMV in excess of $4,650 (under food stamp rules, assuming its TANF rules offered no option more favorable to the household).

Can a State Agency Mix Provisions of the TANF Vehicle Rules With Provisions of the Food Stamp Vehicle Rules When Evaluating the Same Vehicle?

No. The rule proposes that a State has the option to apply its TANF vehicle rules in lieu of food stamp vehicle rules,

not to combine them or parts of them to evaluate any given vehicle or category of vehicles. To illustrate how the TANF and FSP rules might interact, suppose that a State's TANF vehicle rules exclude equity under $3,000, while food stamp vehicle rules exclude FMV under $4,650. This State would improperly mix TANF and food stamp vehicle rules if it excludes equity under $4,650, thus combining the type of exclusion (equity) from its TANF rules and the exclusion limit ($4,650) from food stamp rules.

IV. Procedural Matters

Executive Order 12866

This proposed 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 (Program) 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), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of the final rule preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implication, agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Prior to drafting this proposed rule, we consulted with State and local agencies at various times. Because the Food Stamp Program (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. The proposed 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 Public Law 106–387, but prior to the promulgation of regulations, helped us identify issues that needed to be clarified in the proposed rule.

Extent To Which We Meet Those Concerns

The Department has considered the impact of the proposed rule on State and local agencies. This rule makes changes required by law, and made effective in 2001. The effects on State agencies are minimal. While the vehicle provision of the rule will require 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 Consumer Price Index, resulting in no additional requirements for State agencies. In the proposed rule, we have addressed every question submitted by State agencies regarding both of these provisions. The Department is not aware of any case where the discretionary provisions of the rule would preempt State law. In addition, the Department is willing to approve a waiver of any discretionary provision in this rule where (1) a State agency can demonstrate that its own procedures would be more effective and efficient; (2) such a waiver would not result in a material impairment of any statutory or regulatory rights of participants or potential participants; and (3) such a waiver would otherwise be consistent with the waiver authority set out at 7 CFR 272.39(c).

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 Food Stamp Program, which is administered only by State or county social service agencies.

Paperwork Reduction Act

Burden associated with the food stamp certification process is approved under OMB control number 0584–0064. Burden estimates in that submission are based on the only recent data available, data from the actual operation of the Food Stamp Program in Mississippi. The data provided by Mississippi indicate that the burden associated with completing a new food stamp application or a re-certification application is 19 minutes for each applicant and 36 minutes per applicant for each State agency. These burden estimates are based on total time required for certification (or re-certification) processing and are not broken down into sub-categories for gathering data on such variables as household income, resources, or deductions.

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 burden on applicants. Applicants will need to supply the same information as under current regulations, except in States that elect to use TANF vehicle rules that exclude the value of all vehicles from household resources. The vehicle provisions are exercised at State option and may be selected by many States or by few States. 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 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 re-certification) are based.

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, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This notice 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 § 202 and § 205 of the UMRA.

Civil Rights Impact Analysis

The Department has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis'' to identify and address any major civil rights impacts the proposed 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 individuals 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 Food Stamp Program 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 FSA, the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, § 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, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act 2001, Public Law 106–387. The proposed rule would increase the amounts of the maximum excess shelter expense deductions, and for future years, index them to the Consumer Price Index. It would also allow 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: the proposed rule would allow a larger income deduction for shelter expenses to 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 food stamp participation. Instead, we estimate that the change will raise benefits for 7.6 percent of current participants. Applying this percentage to the participation projections for the President's FY 2004 budget baseline, we estimate that 1.65 million persons will each receive an average of $6.02 more per month in food stamp benefits in FY 2004. These impacts are already incorporated into the President's FY 2004 budget baseline.

Section 847, vehicle provision: the proposed rule will allow food stamp applicants to benefit when State agencies elect to use more expansive 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 243,000 persons in FY 2004 and that their average monthly food stamp benefit will be $74.11. These impacts are already incorporated into the President's FY 2004 budget baseline. State agencies will benefit from the increased flexibility in program administration afforded by the proposed rule and from an anticipated decrease in payment errors.

Costs

Section 846: the Department estimates that the cost of implementing § 846 will be $119 million in FY 2004 and $705 million over the five years, FY 2004 through FY 2008. These impacts are already incorporated into the President's FY 2004 budget baseline.

Section 847: the Department estimates that the cost of implementing § 847 will be $216 million in FY 2004 and $1.115 billion over the five years, FY 2004 through FY 2008. These impacts are already incorporated into the President's FY 2004 budget baseline.

List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Food stamps, Fraud, Grant programs, Social programs, Resources, Vehicles.

Accordingly, the Department proposes to amend 7 CFR part 273 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;

(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.

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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.
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Dated: August 21, 2003.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

Note: This appendix will not be published in the Code of Federal Regulations.

Appendix: Regulatory Impact Analysis

1. *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.

2. *Action:*

(a) Nature: Proposed 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 is being proposed to implement 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. 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.

3. *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 propose 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.

4. *Effects:* (a) Effects on food stamp recipients, and (b) Program costs: These provisions are expected to increase Food Stamp Program costs by $335 million in FY 2004 and $1.82 billion over the five years FY 2004 to FY 2008. Likewise, these provisions are expected to add 243,000 new participants and increase benefits among 1.65 million current participants in FY 2004. These impacts are already incorporated into the President's FY 2004 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 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, and who have shelter expenses that are high enough relative to their net income to be eligible for the excess shelter deduction and subject to the current shelter cap. 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: We estimate that the cost of this provision will be $119 million in FY 2004, and $705 million over the five years,

FY 2004 through FY 2008. These impacts are already incorporated into the President's FY 2004 budget baseline.

Cost estimates were based on food stamp cost projections from the President's FY 2004 budget baseline of December 2002. While we recognize that the President's FY 2004 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 2004 budget. The benefit and participation impacts of raising the shelter deduction cap to the new values were modeled using data from the 2001 food stamp quality control sample regarding household characteristics, income and expenses. Using the 2001 quality control mini-model program, 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 2001 quality control data indicate that 7.6 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 2004 budget baseline, we estimate that 1.65 million persons will each receive an average of $6.02 more per month in food stamp benefits in FY 2004.

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. In 1977, the FSA designated the fair market value (FMV) of vehicles in excess of $4,500 as a countable resource. 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. Current 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 Agriculture 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 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.

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 value 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: We estimate that the cost of implementing section 847 will be $216 million in FY 2004 and $1.115 billion over the five years FY 2004 to FY 2008. These impacts are already incorporated into the President's FY 2004 budget baseline.

As of FY 2003, 27 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 1997 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 1997 MATH SIPP simulation program, which models food stamp eligibility, participation and benefits under regular FSP vehicle rules and allows us to compare them to participation and benefits under alternative vehicle rules. For each State that originally chose to adopt TANF vehicle rules for determining food stamp eligibility, we modeled their specific TANF vehicle rules and used the dataset to determine the cost and participation impacts on the Food Stamp Program. Information on State TANF vehicle rules was from a review of States in FY 2000 and is the most recent data available, as States are not required to regularly report such information to the U.S. Department of Health and Human Services. The cost and participation impacts were then adjusted to reflect the most recent choices States have made in FY 2003 regarding the adoption of TANF vehicle rules for determining food stamp eligibility. The adjustment reflected both the number of food stamp cases in each State and the relative generosity of their TANF vehicle rules.

FY 2003 STATE VEHICLE RULES FOR DETERMINING FSP ELIGIBILITY (AS OF 02/03)

FSP vehicle rules (9 States)	TANF-cash vehicle rules (27 States)	TANF child care or foster care vehicle rules (10 States)	Other: States with expanded categorical eligibility (7 States)
CA, GA, IA, MS, RI, TN, VI, VA, WA.	AL, AK, AZ, AR, CT, DC, FL, GU, HI, IL, KS, KY, LA, MD, MN, MT, NV, NH, NJ, NC, OH, OK, PA, SD, UT, VT, WY.	CO, ID, IN, MA, MO, NE, NM, NY, WV, WI.	DE, ME, MI, ND, OR, SC, TX

The adjusted impact was calculated as a 2.00 percent expected increase in benefits. This impact was multiplied by expected benefits for each fiscal year, based on the President's FY 2004 budget baseline of December 2002. While we recognize that the

President's FY 2004 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. Based on a January 1999 FNS report, *Relaxing the FSP Vehicle Asset Test: Findings from the North Carolina Demonstration,* an additional adjustment was made. The report indicates that the participation effects of this type of policy reform are about half of what our model predicts on the basis of the characteristics of current participants, so the estimates were adjusted by half for all years. Given that this provision 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: We estimate that this provision will increase average participation in the Food Stamp Program by 243,000 persons in FY 2004 and that their average monthly food stamp benefit will be $74.11. These impacts are already incorporated into the President's FY 2004 budget baseline.

Participation impacts were estimated using the same method as the cost impacts. The adjusted participation impact was calculated as a 2.25 percent expected increase in participation. This impact was multiplied by expected participation for each fiscal year, based on the President's FY 2004 budget baseline of December 2002. As with the cost estimate, participation estimates were adjusted by half to reflect the finding in the 1999 FNS vehicle report. Participation estimates were rounded to the nearest thousand persons.

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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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1159]

Bank Holding Companies and Change in Bank Control: Exception to Anti-Tying Restrictions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Board proposes to adopt an exception to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 in order to equalize the treatment of financial subsidiaries of banks under section 106. The proposed exception provides that a financial subsidiary of a state nonmember bank shall be treated as an affiliate of the bank, and not as a subsidiary of the bank, for purposes of section 106. The anti-tying restrictions of section 106 generally apply to subsidiaries, but not affiliates, of banks. Financial subsidiaries of national and state member banks already are treated as affiliates (and not subsidiaries) of the parent bank for purposes of section 106.

DATES: Comments must be received on or before September 30, 2003.

ADDRESSES: Comments should refer to Docket No. R–1159 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov* or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information (12 CFR 261.12 and 261.14).

FOR FURTHER INFORMATION CONTACT: Kieran J. Fallon, Senior Counsel (202–452–5270), Mark E. Van Der Weide, Counsel (202–452–2263), or Andrew S. Baer, Counsel (202–452–2246), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869.

SUPPLEMENTARY INFORMATION:

Background

Section 106 of the Bank Holding Company Act Amendments of 1970 (section 106) generally prohibits a bank from conditioning the availability or price of one product or service (the ''desired product'') on a requirement that the customer obtain another product or service (the ''tied product'') from the bank or an affiliate of the bank.[1] For example, the statute prohibits a bank from requiring that a prospective borrower purchase homeowners insurance from the bank or an affiliate of the bank in order to obtain a mortgage loan from the bank. Section 106 also contains several exceptions to its general prohibitions and authorizes the Board to grant any additional exception from the statute's prohibitions, by regulation or order, that the Board determines ''will not be contrary to the purposes'' of the statute.[2]

Section 106 applies only to tying arrangements imposed by a bank, and generally does not apply to tying arrangements imposed by a nonbank affiliate of a bank. Because a subsidiary of a bank is considered to be part of the bank for most supervisory and regulatory purposes under the Federal banking laws, the restrictions in section 106 generally apply to tying arrangements imposed by a subsidiary of a bank in the same manner that the statute applies to the parent bank itself. Thus, a subsidiary of a bank generally is prohibited from conditioning the availability or price of a product on the customer's purchase of another product from the subsidiary, its parent bank, or any affiliate of its parent bank.

The Board is publishing elsewhere in today's **Federal Register** a proposed interpretation of section 106 and related supervisory guidance with a request for public comment. The interpretation includes an extensive discussion of the scope and restrictions of section 106, as well as the statutory and regulatory exceptions to the statute's prohibitions.

Proposed Rule

Federal law authorizes national and state member banks that meet certain conditions to own or control a financial subsidiary.[3] A financial subsidiary of a national or state member bank may engage in certain activities—such as underwriting and dealing in corporate debt and equity securities—that the parent bank is not permitted to conduct directly. Unlike other subsidiaries, a financial subsidiary of a national or state member bank is treated as an

[1] 12 U.S.C. 1972(1)(A) and (B). Section 106 also prohibits a bank from conditioning the availability or price of one product on a requirement that the customer (i) *provide* another product to the bank or an affiliate of the bank; or (ii) *not* obtain another product from a competitor of the bank or from a competitor of an affiliate of the bank. 12 U.S.C. 1972(1)(C), (D), and (E).

[2] 12 U.S.C. 1972(1).

[3] *See* 12 U.S.C. 24a, 335. In order to be eligible to own or control a financial subsidiary, the national or state member bank and its depository institution affiliates must satisfy certain capital, managerial, Community Reinvestment Act (12 U.S.C. 2901 *et seq.*), and other requirements.