

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 Consumer Service

7 CFR Part 273

[Amendment No. 369]

RIN: 0584-AC08

Food Stamp Program: Failure to Comply With Federal, State, or Local Welfare Assistance Program Requirements

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend Food Stamp Program regulations to prohibit an increase in food stamp benefits when a household's Federal, State or local welfare assistance payment decreases as a result of a penalty for failure to comply with a Federal, State or local welfare program requirement. The revision is necessary to more fully implement congressional intent that the Food Stamp Program should reinforce, not mitigate, another program's penalties.

DATES: Comments must be received on or before September 22, 1995, to be assured of consideration.

ADDRESSES: Comments should be submitted to Margaret Thiel, Acting Supervisor, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Mrs. Thiel at (703) 305-2454. All written comments will be open to public inspection at the offices of the Food and Consumer Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed rulemaking should be addressed to Mrs.

Thiel at the above address or by telephone at (703) 305-2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant for purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this 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. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-Quality Control liabilities) or Part 283 (for rules related to Quality Control liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR 3105, subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has also been reviewed with respect to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354,

94 Stat. 1164, September 19, 1980). William E. Ludwig, Administrator of the Food and Consumer Service (FCS), has certified that this proposal would not have a significant economic impact on a substantial number of small entities. The changes would affect food stamp applicants and recipients who intentionally fail to comply with other Federal, State or local welfare assistance program requirements. The proposal would also affect State and local welfare agencies which administer the Food Stamp Program. State welfare agencies are reimbursed at a 50/50 matching rate for Food Stamp Program administrative costs.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

The Food Stamp Act Amendments of 1982 (Pub. L. 97-2253, Subtitle E, Sec. 164, Sept. 8, 1982) amended the Food Stamp Act of 1977, as amended, (Act) to add a new provision (Section 8(d)) which prohibits increases in food stamp benefits which are due to decreases in household income resulting from a penalty levied by a Federal, State, or local welfare assistance program for intentional failure to comply with the other program's requirements. 7 U.S.C. 2017(d). As currently written in the Food Stamp Program regulations at 7 CFR 273.11(k), the prohibition only applies to penalty situations in which overissued benefits resulting from such intentional noncompliance are being recouped from the household's public assistance benefits which would otherwise result in a reduction in countable income for Food Stamp Program purposes.

The Department is proposing to expand the current regulations to include all situations in which a decrease in public assistance income occurs as a result of a penalty being imposed for intentional failure to comply with a Federal, State, or local welfare program requirement. This proposal stems from several incidents in recent years when States, working with the Department in developing welfare reform proposals, have asked that we not allow food stamp benefits to rise

when work sanctions are imposed on recipients of other benefits for failure to comply with work requirements. Also, any other sanctions for an intentional failure to comply with welfare program requirements could not be used to allow food stamp benefits to rise.

When a recipient of the Aid to Families with Dependent Children (AFDC) Program, for example, fails to comply with a Jobs Opportunity and Basic Skills (JOBS) program requirement, the assistance unit is sanctioned by excluding the individual's needs in determining the unit's need for AFDC benefits and the amount of the payment. Unless the JOBS requirement is "comparable" to a Food Stamp Employment and Training (E&T) requirement, the household's food stamp allotment will increase as a result of the decrease in income it sustains because of the JOBS sanction. Raising the food stamp benefit level lessens the impact of the penalty imposed by AFDC. If a comparable E&T requirement exists, failure to comply with JOBS is treated the same as if the individual failed to comply with an E&T requirement, and the individual (or household) is ineligible for food stamp benefits for 60 days.

Because the Department does not have the authority to waive the current restrictive provision at 7 CFR 273.11(k), the Department has had to deny State requests to hold food stamp benefits constant when sanctioning a person for noncompliance with another program's requirements. The Department believes the current policy should be broadened to more fully reflect Congressional intent which indicates that the Food Stamp Program should reinforce, not mitigate, another program's penalties (Sen. Rpt. No. 97-504, July 26, 1982, p. 44).

Accordingly, the Department proposes to amend 7 CFR 273.11(k) to provide that when a recipient's benefit under a Federal, State, or local means-tested welfare assistance program (such as but not limited to Supplemental Security Income, Aid to Families with Dependent Children, General Assistance) is decreased due to a penalty for intentional noncompliance with a requirement under such program, food stamp allotments will not increase as a result. This proposal more fully reflects the Food Stamp Amendments of 1982. A penalty for purposes of this provision is the amount by which a welfare assistance payment has been decreased. The Department intends that the term decrease for the purposes of this rule means a reduction, suspension or termination. The language of the Food Stamp Act specifically addresses a

penalty which results in a decrease in income (termination or reduction of benefits) as a result of a penalty.

It is important to note that some State welfare reform projects have policies that cause the benefits of other programs to be held constant even though changes in household circumstances occur that would otherwise cause a rise in benefits. The Department is clarifying in this proposed rulemaking that situations which result in a freeze on the other program's current benefit level do not constitute a penalty subject to the provisions of this proposal. Also, changes in household circumstances which are not related to the penalty and result in an increase in food stamp benefits shall likewise not be affected by the provisions of this paragraph. For example, a household may be receiving a reduced level of general assistance benefits for a 6-month period as the result of a penalty imposed because one of its members refused to comply with a work requirement of that program. The household's food stamp benefits would not go up as a result of the decreased benefits. However, if during the 6-month period another member of the household suffered a reduction in nonassistance income, the food stamp benefits could go up even though the penalty was still in effect. This is because the factors resulting in the increase in food stamp benefits were unrelated to the penalty.

This proposal does not imply that Food Stamp Program administrators take a role in determining whether an individual's failure to comply with another program's requirements was intentional or not. That determination is left to those responsible for administering those other programs. Under this proposal, Food Stamp Program administrators would only determine if a decrease in public assistance benefits is the result of a penalty being levied for intentional noncompliance. If so, Food Stamp Program eligibility workers would calculate food stamp benefits in such situations by using the assistance payment which would have been issued by the other assistance program if no penalty had been imposed for the violation.

Implementation

The provisions of this rulemaking are proposed to be effective and to be implemented by State welfare agencies on the first day of the month following 120 days from the publication date of the final rule.

List of Subjects in 7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR part 273 is proposed to be amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

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

Authority: 7 U.S.C. 2011-2032.

2. In § 273.11, paragraph (k) is revised to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(k) *Failure to comply with another assistance program's requirements.* The State agency shall ensure that there is no increase in food stamp benefits to a household as the result of a penalty imposed for intentional failure to comply with a Federal, State, or local means-tested welfare program which distributes publicly funded benefits. When a recipient's current benefit level under a Federal, State, or local means-tested welfare assistance program (such as but not limited to SSI, AFDC, GA) is decreased (by reduction, suspension or termination) due to a penalty for intentional noncompliance with a requirement under such program, the State agency shall identify that portion of the decrease which is the penalty. The penalty for purposes of this provision shall be that portion of the decrease attributed to the repayment of benefits overissued as a result of the household's intentional noncompliance or the amount by which the other program's benefits have been otherwise decreased as the result of the intentional noncompliance. The State agency shall calculate the food stamp benefits using the benefit amount which would be issued by that program if no penalty had been applied against the benefit amount. A situation which results in the benefits of the other program being frozen at the current level shall not constitute a penalty subject to the provisions of this paragraph. Changes in household circumstances which are not related to the penalty and result in an increase in food stamp benefits shall likewise not be affected by the provisions of this paragraph.

Dated: August 2, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95-19525 Filed 8-7-95; 8:45 am]

BILLING CODE 3410-30-U

Agricultural Marketing Service

7 CFR Part 1280

[No. LS-95-008]

Sheep Promotion, Research, and Information Program: Procedures for the Conduct of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Sheep Promotion, Research, and Information Act of 1994 (Act) authorizes a program of promotion, research, and information to be developed through the promulgation of the Sheep and Wool Promotion, Research, Education, and Information Order (Order). The Act requires that after the issuance of the final Order, the Secretary shall conduct an initial referendum among sheep producers, sheep feeders, and importers of sheep and sheep products to determine whether the Order will go into effect. For the program to become operational, the final Order must be approved by sheep producers, sheep feeders, and importers of sheep and sheep products voting in the initial referendum. Importers who only import raw wool are not eligible to participate in the referendum. This proposed rule sets forth the procedures for conducting the initial referendum to determine if producers, feeders, and importers approve the final Order. These rules would also apply to any additional referendum conducted pursuant to the Act.

DATES: Written comments must be received by September 7, 1995.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, Room 2606-S; P.O. Box 96456; Washington, D.C. 20090-6456. Comments hours at the above address in room 2606 South Agriculture Building, 14th and Independence Avenue SW., Washington, D.C. Comments on the information collection requirements contained in the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Attention: Desk Officer for

the Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720-1115.

SUPPLEMENTARY INFORMATION: This proposed rule is authorized under the Act (7 U.S.C. 7101-7111).

Regulatory Impact Analysis

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This proposal has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and requesting a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner will have the opportunity for a hearing on the petition. Thereafter the Secretary will issue a decision on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review a ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's decision. The petitioner must exhaust his or her administrative remedies before he or she can initiate any such proceedings in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Administrator of AMS has considered the economic impact of this proposed action on small entities.

According to the January 27, 1995, issue of "Sheep and Goats," published by the U.S. Department of Agriculture's (Department) National Agricultural Statistics Service, there are approximately 87,350 operations with sheep in the United States that may be eligible to vote in the referendum. To obtain the estimated number of importers of sheep and sheep products who would be subject to an assessment and who may be eligible to vote in the referendum, the Department consulted

with major importer organizations whose members import sheep and sheep products into the United States. Based on its consultations with these organizations, the Department estimates that the number of sheep and sheep product importers in the United States who would be subject to these rules and regulations is approximately 9,000. Nearly all of the sheep operations in the United States and nearly all of the importers of sheep and sheep products would be classified as small entities by the Small Business Administration (13 CFR 121.601).

This action has also been reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This proposed rule would establish procedures for the conduct of a referendum to determine whether an Order promulgated under the Act becomes operational. Such procedures would permit all eligible sheep producers, sheep feeders, and importers of sheep and sheep products, excluding importers who import only raw wool, who have been engaged in sheep production, sheep feeding, or the importation of sheep and sheep products to vote in the referendum. Participation in the referendum is voluntary. Votes may be cast either by mail ballots or in-person at polling places. Casting votes by mail or in-person would not impose a significant economic burden on participants. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), we have submitted the information collection requirements contained in this proposed rule to OMB for approval. OMB has assigned OMB control number 0581-0093. The information collection requirements in this proposed rule include the following:

- (a) For in-person voting:
 - (1) Each sheep producer, sheep feeder, or importer of sheep and sheep products, except an importer who imports only raw wool, who vote in person in the referendum, must sign the Voter Registration List (Form LS-61-3) and complete a Ballot (Form LS-61) at the county Cooperative Extension Service (CES) office of the Department. The voter must complete the ballot and insert the ballot into the SHEEP BALLOT envelope (Form LS-61-1).
 - (2) Each producer, feeder, and importer must complete the Certification and Registration Form that