

Nature and Concerns and the Need To Issue this Rule

State agencies have generally wanted greater flexibility in the establishment of criteria for the reporting of changes in circumstances by participating households. FNS has responded to these concerns through the granting of waivers of current regulatory criteria with respect to household reporting. State agencies have indicated that they would prefer to have greater discretion without the need to go through the time-consuming and cumbersome waiver process. They believe that such discretion would enhance their ability to more efficiently administer the FSP.

Extent to Which FNS Meets Those Concerns

FNS has considered the impact on State and local agencies. In response to State agency concerns we are amending 7 CFR 273.12 to provide State agencies with greater discretion regarding requirements for the reporting of changes in household circumstances. The rule also reduces the burden on households and State agencies by eliminating the need to report relatively small changes in income.

This rule is intended to have a preemptive effect on any State law that conflicts with its provisions or that would otherwise impede its full implementation. FNS is not aware of any case where the provisions of the rule would preempt State law. To the extent the rule includes discretionary changes, the Department has established compliance time frames which give due consideration to State agency processes for notification of customers and stakeholders and for the implementation of the new procedures in local offices.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Dates paragraph 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.

Regulatory Impact Analysis

Need for Action

This action is needed to respond to requests from State Food Stamp Program agencies for revision of the

requirements for reporting changes in the amount of income received, to clarify procedures for averaging income, and to assist recipients in meeting their responsibility to comply with FSP requirements.

Benefits

State agencies will benefit from this rule because households will better understand which changes in income they are required to report, and the number of reports requiring State agency action will be reduced. Recipients who work will benefit because they will have to report only significant changes in their income rather than changes that are minor and temporary.

Costs

The revisions in requirements for reporting changes in income and acting on reported changes are estimated to cost \$58 million over the 2003 to 2007 period.

II. Background

On December 17, 1996, we published a rule at 61 FR 66233 in which we proposed to revise FSP regulations at 7 CFR 273.10 and 7 CFR 273.12 governing the income changes food stamp households are required to report during the certification period and the treatment of this income in determining benefits. Comments were solicited on the provisions of the proposed rule through February 18, 1997, and a total of 29 comments were received. This final rule addresses the commenters' concerns. Readers are referred to the proposed rule for a more complete description of the basis for the rule. Following is a discussion of the provisions of the proposed rule, the comments received, and changes made in the final rule.

1. Income Averaging—7 CFR 273.10(c)(3)(i)

The proposed rule retained current 7 CFR 273.10(c)(3)(i) which provides that households (except destitute migrant and seasonal farm worker households) may elect to have their income averaged and that the State agency shall use the household's anticipation of monthly income fluctuations over the certification period. We proposed to provide in addition that an average must be recalculated at recertification and in response to changes in income in accordance with 7 CFR 273.12(c).

We solicited comments on whether to continue to allow households the option of determining whether their income is averaged or whether to allow State agencies to make the determination.

Seven commenters objected to the proposed continuation of the current provision allowing households to determine whether or not their income should be averaged. The commenters indicated that averaging should be at the option of the State agency, rather than the household. According to these commenters, use of an averaged income amount is administratively easier and an average more accurately reflects income received over the certification period. They believe income averaging is beneficial for households because it reduces the household's need to report changes, simplifies instructions to households concerning reporting responsibilities, and provides households a consistent level of benefits from month to month. One State agency recommended that to minimize administrative costs and to offer States more flexibility, FNS should allow States the option to average monthly income, except for destitute households or unless averaging would result in denial of an otherwise eligible case.

The income of food stamp households frequently fluctuates from month to month, making it difficult for change reporting households to correctly report changes and for the State agency to provide accurate benefits based on the income received in a particular month. Averaging is an effective alternative to monthly reporting and retrospective budgeting, which is more costly for the State agency and burdensome for the household. State agencies have requested the flexibility to determine when averaging is appropriate so that the household's income can be budgeted consistently for food stamps and other assistance programs. Basing allotments on an average also assists households in budgeting for their needs by providing the same level of benefits over several months. Therefore, as revised by this rule, 7 CFR 273.10(c)(3)(i) provides that the State agency may develop methods to be applied Statewide for averaging the income of categories of households. If income has been averaged, we believe State agencies should inform the household of the amount used to calculate the allotment, as many State agencies already do. Therefore, paragraph (c)(3)(i) also contains a provision to that effect.

Another commenter suggested that the rule should prohibit income averaging for migrant and seasonal farm worker households if the income is earned by contract from one employer in less than a 12-month period. We are not adopting this suggestion because, as pointed out by the commenter, 7 CFR 273.10(c)(3)(ii) already prohibits treating the income of migrant or seasonal farm