The original documents are located in Box 15, folder "Food Stamps (10)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

Food Stamps

THE WHITE HOUSE

WASHINGTON

May 28, 1976

MEMORANDUM FOR: ART QUERN

FROM: JIM CANNON JMC

SUBJECT: Food Stamp Reform Restraining Order

Would you call Rex Lee at Justice and ask him to let us know as soon as the court decides whether there will be a restraining order, either way.

Then, prepare a brief statement for Ron Nessen to make on behalf of the President:

If the restraining order is denied, point out that we are pleased to put these reforms into effect.

If the restraining order is granted, point out the President's determination to push these reforms through the courts to affirm the executive responsibility to make reforms which Congress has declined, with the additional point that it is costing us $3 million per day while effective action is being postponed.

Art called 8:35 jm

ASSISTANT ATTORNEY GENERAL
WASHINGTON

May 28, 1976

Mr. Jim Cannon
Director, Domestic Council
West Wing
White House

Dear Jim:

I enclose copies of the briefs that were filed in connection with the restraining order hearing this morning. These briefs give a much better understanding of the issues in the case than would the complaint, which is 218 pages long. If you would like to see the complaint, however, please advise and we will employ three strong men to carry it over to you.

Sincerely,

REX E. LEE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RUTH TRUMP, et al.,	)	
	)	
Plaintiffs,	)	
	)	Civil Action
v.	)	
	)	
EARL L. BUTZ, et al.,	)	
	)	
Defendants.	)	

POINTS AND AUTHORITIES IN
OPPOSITION TO MOTION FOR TEMPORARY
RESTRAINING ORDER

Introduction

Plaintiffs have presented to this Court their Motion for a Temporary Restraining Order that would forestall the implementation of certain changes in the Department of Agriculture's Regulations under the Food Stamp Act of 1964, 7 U.S.C. § 2011, et seq. (the Act). That Act was designed to provide needy persons an opportunity to obtain a nutritionally adequate diet through the medium of stamps which can be exchanged for food in normal retail channels. The administration of the Act was entrusted by the Congress to the Secretary of Agriculture. Broad authority and wide discretion were granted the Secretary to enable him to apply the Act in the most efficient manner consistent with its goals. For instance, the authority and responsibility to establish "uniform national standards of eligibility" for household participation in the program was vested in the Secretary. 7 U.S.C. § 2014(b). Even more sweeping an authority is the following:

> (c) The Secretary shall issue such regulations, not inconsistent with this chapter, as he deems necessary or appropriate for the effective and efficient administration of the food stamp program.

7 U.S.C. § 2013(c). It is the most recent exercise of this authority that plaintiffs seek to have this Court enjoin. Without doubt the new Regulations embody fundamental changes in the existing program. Obviously, they reflect a basic shift in policy. It would seem, then, that a brief discussion of the background against which these changes were made would help to place them in proper perspective. That background is nothing less than a legislative mandate to overhaul the present food stamp regulatory pattern. That mandate springs from the express terms and the legislative history of P.L. 94-157. In the bill itself Congress appropriated $100,000 for one purpose and one purpose only: ". . . for revising program regulations as authorized by existing law. . . ."

Even a cursory review of the legislative history behind this provision reveals a clear Congressional intent that the Secretary of the Department of Agriculture rapidly effect fundamental reforms in the administration of the food stamp program to put an end to widespread program abuses which had resulted in wildly escalating costs. The enactment by Congress of P.L. 94-157 was in direct response to a widespread concern that the existing regulations had operated to pervert the original goal of the Food Stamp Act -- assisting the legitimately needy in meeting their nutritional needs -- by providing benefits to large numbers of individuals never intended by Congress to participate in the program. Moreover, the existing regulations were deemed by Congress to be directly responsible for wholesale certification errors and massive program abuses. According to Rep. Whitten, Chairman of the Subcommittee on Agriculture of the House Appropriations Committee in his report on P.L. 94-157,[1/]

1/ This quotation and all further quotations relating to the legislative history of P.L. 94-157 may be found at 121 Cong. Rec. H 11071 et seq. (Nov. 13, 1975).

> The conferees are extremely concerned about the increasing reports of widespread irregularities and abuses in the Food Stamp Program, resulting in greatly increased costs. Unless this situation is corrected it could jeopardize the program. This cannot be allowed to happen since food stamp assistance to the truly needy is an accepted responsibility.

The magnitude of the increase in program costs as presented to Congress is truly staggering. The food stamp caseload had skyrocketed from less than one-half million in 1965 to approximately nineteen million in 1975 with a corresponding increase in program costs from approximately forty million dollars in 1965 to approximately five billion dollars in 1975. It was quite generally felt that the existing regulations had to be substantially revised to control these spiraling costs and thereby preserve program benefits for those truly in need of assistance. According to Rep. Whitten's report, the contemplated reforms would save at least one billion dollars a year:

> Some officials estimate that close to 1 out of every 5 food stamp dollars are used improperly. Improper issuance lax regulations, fraud, blackmarketing and loose eligibility standards may be costing $1 billion per year. . . . It becomes evident that at least a billion dollars a year could be saved if the Department would change the regulations and enforce them.

That Congress fully intended that the eligibility standards be tightened as part of the overhaul of the program is clear beyond peradventure. In his remarks on the bill, Rep. Whitten specifically reported that the subcommittee had determined that the existing eligibility standards failed to conform to the statutory standard of eligibility, with the result that participation in the food stamp program had not been limited to those intended by Congress to benefit from it. According to his report on the bill:

> I think it is generally accepted that about 1 outof every 5 people now receiving food stamps are ineligible. I pointed out earlier, the problem is not because of the law, but because of a failure to set proper regulations which conform to the law.

> I would like to repeat again what the law says. The Secretary of Agriculture is authorized to establish eligibility standards, and it specifically provides in the Food Stamp Act:
>
> > participation in the food stamp program shall be limited to those households whose income and other financial resources are determined to be substantial limiting factors in permitting them to purchase a nututionally adequate diet.
>
> That is the "law." I grant that the program has not been carried out according to the law. I say that based on the evidence before our committee.

The committee's intent that the Department of Agriculture dramatically reduce program costs by revising the eligibility standards and eliminating other program abuses was impressed upon the director of the Food Stamp Program and Nutution Service, defendant Hekman, who appeared before the committee during its hearings on the bill. According to Rep. Burlison, a member of the committee, Mr. Hekman was specifically advised that the current eligibility regulations did not comply with the statutory language and that the committee, by the legislation in question, expected the regulations to be appropriately modified.

As expressed by Rep. Mahon of the Appropriations Committee:

> We propose to hold the feet of the director of this program to the fire so to speak and see to it that he applies this perfectly reasonable application of the law to the handling of the food stamp program. . . .
>
> In this appropriation bill, we have substantially reduced the funds that were requested for the food stamp program and we have exacted a commitment from the Department of Agriculture that this program will be reformed.

P.L. 94-157 thus was not intended as a vague directive to the Department of Agriculture to review its administration of the food stamp program; its legislative background makes it

abundantly clear that Congress intended P.L. 94-157 to act as a mandate to the Department of Agriculture to make fundamental changes in the food stamp program so as to check the program's skyrocketing costs, and preserve its benefits for those truly in need of assistance as contemplated by the Food Stamp Act. Further, it is apparent that Congress felt that the existing statutory language not only permitted but actually required that such basic revisions in the regulations be made to allow the original purpose of the food stamp program to be served. In promulgating the regulations now under attack, it is thus clear that the Secretary of the Department of Agriculture has sought to do no more than comply with the clear mandate of Congress. The discretion exercised by the Secretary in making the difficult policy judgments inherent in the reform of a program as complex as the food stamp program, must be evaluated against this background.

This suit confronts this Court with an eleventh-hour attempt, on a massive scale, to halt the operation of the reforms defendants have undertaken pursuant to this Congressional mandate. For the reasons set forth below, all too briefly because of the time pressure imposed by plaintiffs, the Court should reject that attempt.

Argument

It is familiar law in this Circuit that four conditions must be met by a party seeking the extraordinary remedy of a temporary restraining order: (1) the party must demonstrate the imminence of irreparable injury that temporary relief would forestall; (2) he must show a substantial likelihood of success on the merits of his action; (3) he must demonstrate an absence of harm to others; and (4) the public interest must be in favor of the temporary relief. Virginia Petroleum Jobbers Assoc. v. FPC, 259 F.2d 921 (D.C. Cir. 1959). As is developed below, none of those conditions has been met in this action.

I.

In reality there are two types of plaintiffs pleading two different types of injury in this case. The individual plaintiffs (and the organizational plaintiffs, on behalf of their members) assert an injury arising from a change in their status vis-a-vis the food stamp program during the pendency of this suit, namely the denial of stamps or increase in purchase requirement that will occur. The state plaintiffs' injury is predicated solely on the administrative burden of the new regulations, which they perceive to be intolerable. Neither injury is of the sort that justifies a temporary restraining order.

The injury alleged by the individual plaintiffs is simply not irreparable. Compensation for lost food stamp benefits is by now a well-accepted -- indeed, judicially established -- principle. The leading case decreeing compensation by forward adjustment (discount) comes from the District of Columbia Circuit, Bermudez v. United States Department of Agriculture, 490 F.2d 718 (D.C. Cir. 1973). That decision affirmed Bermudez v. United States Department of Agriculture, 348 F. Supp. 1279 (D.D.C. 1972) where the Court described the mechanics of forward adjustment as follows:

> Forward adjustments mean that each member of the class is issued an adequate number of stamps per month at no cost until he recovers the excess money spent for food when stamps were withheld. Thus, if a hypothetical recipient had received a monthly allotment of $100 worth of food stamps at a cost of $20, he was receiving $80 worth of food at no cost. If wrongly denied stamps for one month, plaintiff has lost $80, which can be amortized over a period of four months by giving plaintiff the next four months worth of food stamps at no cost per month, see Torez v. Roberts, S.D. Fla., September 20, 1972, Case No. 72-1300 Civ--JE.

348 F. Supp. at 1281, n.3. See also Hein v. Burns, 402 F. Supp. 398 (S.D. Iowa 1975); Stewart v. Butz, 356 F. Supp. 1345 (W.D. Ky. 1973); Tindall v. Hardin, 337 F. Supp. 563 (W.D. Pa. 1972), aff'd. sub nom. Carter v. Butz, 479 F.2d 1084 (3rd Cir. 1973).

It is obvious, then, that should the Regulations at issue ultimately be found invalid, any loss in purchasing power plaintiffs might experience can be made up to them in a very simple manner. It has been done before. There is no reason it cannot be done again, should it be necessary.

In this connection it should be pointed out that food stamps share many of the characteristics of money, in fact approach fungibility with money. The actual consequence to plaintiffs, should temporary relief be denied, will be the temporary diversion of some of their income from other expenditures to food purchases. A loss of income during the pendency of litigation has been held by the Supreme Court to be no grounds for the award of interim injunctive relief however severely it may affect a particular individual; quoting Virginia Petroleum Jobbers, the Court said:

> "The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm."

Sampson v. Murray, 415 U.S. 61, 90 (1974). (Emphasis in original). That principle applies here with equal force.

Two other factors should be noted. First, the poorest people, including those receiving public assistance, not only remain eligible for food stamps, but in many instances will receive greater benefits under the new regulation. Secondly, should plaintiffs' suit prove unsuccessful, a result defendants believe likely, it would not be possible for defendants to recover the public money expended in the

interim period. The only irreparable injury possible will accrue to defendants. See Torres v. N.Y. State Dept. of Labor, 318 F. Supp. 1313 (S.D.N.Y. 1970).

Finally, the pressure of time is not as dramatic as plaintiffs have portrayed it. The new regulations, by their own terms, need not be applied by the state before September 1st. The presence of 26 states as plaintiffs in this action is in itself a strong indication that the Regulations are not going into force on June 1st. Thus, the individual plaintiffs' claimed injury is far from immediately threatened.

As to the state plaintiffs, their allegation of irreparable injury is an unusual one: they seem to be pleading their own inefficiency. Apparently the state plaintiffs ground a claim of injury in the administrative chaos they predict will ensue and in their decided belief that they can never achieve the September 1st deadline. If they were merely claiming that the deadline is unreasonable, their suit would be premature, to say the least. However, the injury they conceive to be irreparable is the cost of changing their procedures to implement the new Regulations.

This is not a typical claim of injury, by any means, for it rests solely on the merits of their action. In other words, this "injury" is contingent for its very status as an injury on the ultimate success of this lawsuit. This is not actual, immediate harm; it is only conjectural, future harm. Plaintiffs have their cart well before their horse. A temporary restraining order is drastic relief and should not be based upon such speculation.

Furthermore, it should be emphasized that there is no compulsion on the plaintiff states to take any action right away. */ The only intransigent deadline is September 1st, three months hence. Thus the states have the passive option of inaction; if they are

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*/ Indeed, state participation in the food stamp program is itself voluntary. Plaintiffs want to insist, it seems, on their terms, when the statute provides a take-it-or-leave-it choice.

confident in their cause of action they should exercise that opinion. If plaintiffs do nothing and win, nothing will have been lost. Likewise, if they obtain a temporary restraining order and win. If plaintiffs do nothing and lose they are then closer to a deadline they already indicate they cannot meet anyway, so little is lost. Of course, if plaintiffs obtain a temporary restraining order and lose they are still faced with the same deadline. Given these four possible outcomes, the state plaintiffs' case for a temporary restraining order is a plea for redundant relief, to assuage an uncertain injury. It should be denied.

In sum, one group of plaintiffs cannot demonstrate an injury that is irreparable, and the other cannot show that interim relief would do them any good. These circumstances fall far short of justifying a temporary restraining order.

II.

Another condition of interim relief is a substantial probability of success on the merits of the action. Plaintiffs' probability in this regard is quite low. Plaintiffs' major contentions will be considered in turn below. At the outset, however, it appears that plaintiffs are experiencing some confusion over the standard of review applicable to this case. Plaintiffs pay lip service to the "arbitrary and capricious" measure of review, the proper one, but direct the thrust of their arguments to challenging defendants on the facts, and presenting facts of their own, as if the standard were one of "substantial evidence." It assuredly is not.

The substantial evidence test under 5 U.S.C. 706 applies only when the law requires that a formal hearing, adjudicatory or fact finding in nature, be held. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971). As stated by the court in California Citizens Band Ass'n. v. United States, 375 F.2d 43 (9th Cir. 1967) at 54:

> "Under these circumstances, and pursuant to 5 U.S.C. §553(c), it is not necessary for the Commission to receive any evidence as such, in this rulemaking proceeding. It was necessary only for the Commission to provide opportunity for, and consider, 'written data, views, or arguments with or without opportunity for oral presentation.' and this it did. See 1 Davis-Administrative Law (Treatise) §§6.01-.02. It follows that section 706(2)(E) does not entitle the petitioner to request this court to review the substantiality of the evidence.
>
> When, as here, the statute does not require that a particular kind of rulemaking be on a record made after a public hearing, the Commission is not confined to evidence presented in some formal manner. It may act not only on the basis of the comments received in response to its notice of rulemaking, but also upon the basis of information available in its own files, and upon the knowledge and expertise of the agency. Pacific Coast European Conference v. United States, 9 Cir., 350 F.2d 197, 205. See also, American Airlines, Inc. v. Civil Aeronautics Board, 123 U.S. App. D.C. 301, 359 F.2d 624, 629." [375 F.2d 43, at 54].

The correct standard for review in this case should be the standard applied to informal rulemaking under 5 U.S.C. 553. That standard is the "arbitrary and capricious" standard, and the regulations must be upheld if the Secretary's decision is found to be "reasonable."

The correct scope of review in such matters is a review by the court of the whole record of the agency as it existed at the time the decision was made. Citizens to Preserve Overton Park, supra. As stated by the Court in Camp v. Pitts, 411 U.S. 138 (1973) at 142, "the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing courts."

It is against this narrow standard, and in light of the significant weight which the defendants' interpretation of the Act carries, Udall v. Tallman, 380 U.S. 1, 16 (1965), that plaintiffs' contentions must be viewed.

A. The Three-Month Retrospective Accounting Period.

Plaintiffs argue that the three-month retrospective income accounting regulations [271.3(c)(2)] are inconsistent with the goal of the Food Stamp Act which is to "permit low income households to purchase a nutritionally adequate through normal channels of trade," (7 U.S.C. § 2011) and with the statutory directive that "participation in the food stamp program shall be limited to those households whose income and other financial resources are determined to be substantially limiting factors in permitting them to purchase a nutritionally adequate diet." [7 U.S.C. § 2014(a)]

Plaintiffs erroneously interpret these provisions to require eligibilility standards which define current need for benefits solely on the basis of current or anticipated income, as is the case under the existing system. The Act itself, of course, nowhere provides that current income is to be the sole determinant of eligibility for program benefits. Had the intent of Congress in this regard been as obvious as contended by plaintiffs, Congress surely would have provided for specific eligibility standards. Instead, recognizing that such a complex task required the deliberate exercise of administrative rather than legislative discretion, Congress granted to the Secretary a broad grant of authority to promulgate specific eligibility standards to further the purposes of the Act. Pursuant to this authority, the Secretary has made the entirely rational determination that current or anticipated income does not necessarily provide the only indication of need for food stamp assistance. Under such an eligibility standard, those middle and upper income individuals, with monthly earnings substantially above the income eligibility limit, become immediately eligible whenever their current monthly earnings drop below the limit.

As pointed out by plaintiffs, the existing system permitted an individual who was recently laid-off from work or went on strike to participate in the program despite the fact that immediately prior to such a financial setback the individuals earnings were substantially in excess of the income eligibility limits. Since prior earnings were irrelevant in determining eligibility, many non low-income households were able to receive food stamps resulting in a fundamental perversion of the goal of the program to limit benefits only to those chronically poor families in need of assistance.

Moreover, the abuses permitted under the existing eligibility regulations were well recognized in the house report on P.L. 94-157, pursuant to which the regulations were revised, as noted above.

> For example, testimony before the Committee revealed that under existing regulations an individual could own a $100,000 home and a new luxury automobile, but as long as he was unemployed and had less than $1,500 in the bank he could get food stamps; two airline pilots with income in the $50,000 per year bracket drew food stamps during an airline strike. . . .

Congress has thus clearly expressed its belief that the receipt of food stamps by individuals with a demonstrated earning capacity far in excess of the income eligibility standards constituted an intolerable abuse of the program. The legislative history of P.L. 94-157 makes it apparent that Congress expected the Secretary to use the broad authority granted to him by the Act to "establish national standards of eligibility" [7 U.S.C. §2014(b)] to put an end to such abuses.

The three-month retrospective accounting period will accomplish precisely that goal. A food stamp applicant's average income over the three-month period will provide a reasonably reliable indication of those households truly in need of assistance. Moreover, the new regulations will

substantially reduce the massive number of certification and issuance errors which resulted from the existing requirement that an applicant attempt to predict future income. This system will only eliminate from immediate participation individuals recently unemployed who enjoyed earnings substantially in excess of the income eligibility standards. It is an entirely reasonable determination by the Secretary that such individuals who may be experiencing only a temporary interruption of substantial income are not the "low-income households" intended to receive food stamp benefits by the clear terms of the Act, for such individuals invariably will have other resources available to satisfy their nututional needs, including unemployment compensation. The three-month retrospective accounting period is not only consistent with the statute, it better serves its goal than the existing system, by assuring that only those who truly need assistance receive its benefits. In sum, while the approaches utilized by both the old and new regulations are necessarily inexact, one cannot be said to be less rational than the other.

Plaintiffs further contend that the three-month retrospective income accounting regulation [271.3(c)(2)] establishes the irrebutable presumption that a household's past income is now available to purchase a nutritionally adequate diet. Plaintiffs, however, have misperceived or mischaracterized defendants' action. "Irrebuttable presumption" is a dramatic constitutional catch-phrase but it does not apply here.

Defendants have not created an irrebuttable presumption. Indeed, defendants in forthcoming papers to be filed with this Court will pointedly question the very viability of the irrebuttable presumption doctrine in light of recent Supreme Court decisions. (see, e.g., Weinberger v. Salfi, 422 U.S. 749 (1975)). Since the isues are of some complexity, suffice it to say here that defendants have taken no act in a sphere in which the irrebuttable presumption doctrine is applicable.

The irrebutable presumption doctrine is part of due process jurisprudence, and only eligible participants in the program have due process rights in it. The definition of eligibility itself is left to the Secretary. The provisions at issue are no more nor less than that definition, and the standard of review is not of a constitutional order. Only the APA standards are applicable. A case in point is Patrick v. Tennessee, 386 F. Supp. 744 (E.D Tenn. 1975) aff'd. sub nom., Compton v. Butz, 6th Cir., Civ. No. 75-1314 (March 26, 1976) in which the Court found no irrebuttable presumption where HUD rent subsidies, paid to plaintiffs' landlords, were counted as income to plaintiffs for food stamp purposes. The Court also held the inclusion a reasonable exercise of the Secretary's discretion. The same principles should apply here to produce the same result, as defendants will amplify in their motion for summary judgment.

B. Equal Protection

It is claimed by plaintiffs that the new Regulations violate the Equal Protection Clause because households receiving public assistance (PA households) are eligible for stamps at income levels at which non-PA households are ineligible. This distinction, of course, inevitably arises from the fact of categorical eligibility for food stamps of PA households. However, the effect of this distinction, under the new Regulations, will be de minimus at worst.

Plaintiffs, in launching this attack, have apparently forgotten the uniform purchase requirement, 30% of income, which they so vigorously besiege a scant ten pages later in their motion papers. This provision acts as a balance to forestall any such injury. It may well be, as plaintiffs suggest, that a household in New York City with a $1300-a-month income (30%

of which is $390) is categorically eligible for food stamps. The amount of coupons available to that household would be $166 and the bonus amount available to that household is limited to $5. (It would be non-existent if the 30% requirement were rigorously applied, but the maximum purchase is limited to the allotment minus $5). In other words, the difference between PA and non-PA households in plaintiffs' example is $5. This rationally prevents the anomaly of eligible persons being forbidden by arithmetic from all participation in the program. Plainly, any impact it may have on plaintiffs is purely de minimus. See Dandridge v. Williams, 397 U.S. 471 (1970). Moreover, in defendants' interpretation, which is entitled to significant weight, Udall v. Tallman, 380 U.S. 1, 16 (1965), eligibility for food stamps by those in welfare programs was intended by Congress.

C. Elimination Of Itemized Deductions For Payroll Withholdings And Work Related Expenses From Income Calculation Is Consistent With Both The Food Stamp Act And The Fifth Amendment

1. Violation of the Food Stamp Act.

The new regulations eliminate the previously authorized itemized deductions from income for mandatory payroll deductions, work-related expenses (up to $30), and child care payments made necessary by acceptance of employment. The new regulations permit a uniform deduction of $100 per household from income and $125 per household with a member aged 65 or over. (7 C.F.R. § 271.3(c)(1)(i) and (iii).

Plaintiffs contend that elimination of the aforementioned itemized deductions violates the provisions of the Food Stamp Act. No indication is given as to which provision of the Act is thought to be violated. Section 5 of the Act limits participation to "those households whose income and other financial resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet,"

(7 U.S.C. § 2014(a)) (emphasis added), and we assume this the section to which plaintiffs refer.

It is apparent that this section does not necessarily require that only income currently available to purchase food serve as the basis for determining eligibility.

Assuming, in the interest of further discussion, that only currently available income may appear in an eligibility calculation, the standard deduction, when applied to gross income, yields a fair and reasonable reflection of a household's available income. The average amount of deductions itemized by participating households is only $77 and is only $93 for households actually itemizing deductions. (USDA Survey of Household Characteristics: Sept. 1975). The institution of a standard deduction will benefit the lowest income families, who are least able to afford and claim itemized deductions. It is precisely this group which the Act was designed to provide with the largest share of the program benfits.

2. Violation of the Fifth Amendment.

Plaintiffs contend that premising eligibility and benefit levels on gross income minus a standard deduction creates two classes of recipient households, the employed and the unemployed. Plaintiffs allege that categorically eligibile (unemployed) households are certified for program benefits based upon actually available income minus the standard deduction while employed households are certified based upon partially unavailable income minus the standard deduction. Defendants refer to the discussion in the subsection immediately above in refuting plaintiff's contention that employed households are certified based upon unavailable income. Assuming, arguendo, that a distinction is drawn between the certification treatment of employed and unemployed households, the distinction is a rational one based upon the inherent difference between incomes derived from employment and public assistance benefits. Obviously,

the former is subject to taxation, withholding and costs of production while the latter is not. This is inevitable and beyond the control of defendants at any rate. In addition, the program is intended to provide a nutritionally adequate diet, not a subsidy for other expenditures, no matter how worthy. Furthermore, the program, although requiring work registration and a job search was not implemented primarily to promote full employment but rather seeks to provide a nutritionally adequate diet to truly needy low income households.

D. Thirty Percent Purchase Requirement.

Plaintiffs vigorously assert that the new regulation which requires each eligible household to pay thirty percent of its adjusted gross monthly income for its total coupon allotment is inconsistent with the Food Stamp Act and is, hence, invalid. This contention is premised upon an entirely erroneous interpretation of Section 7(b) of the Food Stamp Act which states, inter alia, that the amount to be charged eligible households ". . . shall represent a reasonable investment on the part of the household, but in no event more than 30 percentum of the household's income . . ." [7 U.S.C. § 2016(b)]. Plaintiffs read this provision to mandate a variable charge for food stamps well below thirty percent of household income for most eligible households.

If Congress had intended that a sliding scale be employed to determine a household's purchase requirement, it certainly could have specifically so provided. Instead, Congress entrusted to the Secretary of the Department of Agriculture the responsibility for determining what shall constitute a reasonable investment for food stamps, so long as it not exceed thirty percent of household income. By its own clear terms the statute defines any charge not in excess of thirty percent to represent a reasonable investment for food stamps. In other words the purpose of the section is to assure that, for instance, 40% of income is not fixed as a reasonable investment. In exercising his statutory discretion

to set purchase requirements, the Secretary has, thus, clearly stayed within the perimeter imposed by Congress.

This conclusion is further buttressed by the fact that the new regulations require that an eligible household pay thirty percent of adjusted gross income, that is, gross income less the amount of the new standard deduction. Therefore, under the new regulation; no household will be required to pay more than 24.6 percent of its gross income and only those households at the highest allowable income levels will be required to pay at that rate. It is, thus, patently clear that the thirty percent purchase requirement, operating in concert with the standard deduction, imposes a maximum charge for food stamps which is actually substantially below the maximum charge specifically permissible under the Act. The unreasonable position on this point has been taken by plaintiffs, not defendants.

E. The Provisions For Minors

Plaintiffs overstate the impact of the regulatory provision excluding a minor from the computation of household size under certain conditions. The purpose of the provision is to encourage the adult, bearing legal responsibility for the minor's support, to discharge that responsibility. Further, it is additionally supported by a familiar principle, recognized by the very intent of the Food Stamp Act, that one should utilize one's own resources before turning to the public for assistance.

However, the Regulation does not impose such a harsh standard as requiring adoption or legal guardianship to include the minor in the household. As defendants' definition of in locoparentis makes clear, it is quite enough if an adult member of the household will informally stand in the place of the minor's parent. No more is asked than that someone be responsible for the child who is otherwise alone and unable to reach his other resources.

However, the Regulation is frankly intended to exclude

minors who have available to them untapped sources of support and is equally intended to place the burden of establishing lack of resources on the minor. There is nothing unreasonable in this objective. See Lavine v. Milne, ___ U.S. ___, 44 U.S.L.W. 4295 (March 3, 1976).

F. The Job Search Requirements

The revised work requirements are not inconsistent with statutory criteria, and plaintiffs' contention to the contrary is based upon a misreading of the relevant section. 7 U.S.C. §2013(c) authorizes the Secretary of Agriculture to "issue such regulations, not inconsistent with this chapter, as he deems necessary or appropriate for the effective and efficient administration of the Food Stamp Program." Plaintiffs suggest that the new work requirements are inconsistent with 7 U.S.C. §2014(c). That section provides, in pertinent part:

> (c) Notwithstanding any other provisions of law, the Secretary shall include in the uniform national standards of eligibility to be prescribed under subsection (b) of this section a provision that each State agency shall provide that a household shall not be eligible for assistance under this chapter if it includes an able-bodied adult person between the ages of eighteen and sixty-five . . . who either (a) fails to register for employment at a State or Federal employment office or, when impractical, at such other appropriate State or Federal office designated by the Secretary, or (b) has refused to accept employment or public work . . . .

It is clear from a reading of the foregoing statute that the statute was aimed at establishing certain minimum requirements rather than exclusive requirements. It sets forth a provision which the Secretary "shall include" among the standards of eligibility, but does not prohibit inclusion of other provisions. Moreover, the required provision, which by its terms limits the scope of eligible households, does not preclude the Secretary from further narrowing that scope.

Nor are the challenged work requirements inconsistent with 7 U.S.C. §2014(b) which directs the Secretary to "establish uniform national standards of eligibility for participation by households in the food stamp program . . . ."

The requirement in 7 C.F.R. §271.3(b)(1)(iv) that a household member "[i]nquire regularly about employment with prospective employers . . . and regularly engage in activities directly relating to securing employment . . ." is a nationwide requirement. As a practical matter, however, the nature and frequency of the required job-searching activities cannot, and should not, be absolutely uniform. Job-seeking activities which are reasonable in one part of the country may be unreasonable in another, because of differing economic conditions, and, particularly, varying conditions in local job-markets. The purpose behind the new job-search requirements are explained in the Comment Analysis accompanying the new regulations as follows:

> Rather than allow a registrant to wait to be contacted by the already overburdened Employment Service Office, the job search requirement is intended to require the registrant to actively inquire about job opportunities. The requirement is also an attempt to broaden the registrant's job search beyond those opportunities listed with Employment Service Offices. It is not unreasonable to expect job seekers to actively pursue employment opportunities rather than passively rely upon food stamp assistance to meet their nutritional needs.
>
> . . .
>
> The regulatory language has purposely been left broad enough to enable FNS to cooperate with the States in order to accommodate the varying needs of divergent economic circumstances.

41 Fed. Reg. 18784 (May 7, 1976). Moreover, the flexibility necessary in order to meet the needs of divergent economic circumstances can be accomplished without the "hodgepodge of interpretations" that plaintiffs predict. Through implementing instructions issued by FNS, requirements may be clarified without sacrificing the necessary flexibility. And, by means of such implementing instructions, as well as instructions and advice provided by State agencies to

registrants, registrants can be afforded a reasonably clear standard by which to determine what they must do in order to meet the job-search requirements. It therefore cannot be said that the regulations, as implemented, will be unconstitutionally vague.

Plaintiffs also contend that the revised work requirements unlawfully eliminate the Food Stamp Act's minimum wage requirements for piece-rate work. However, FNS has indicated, and their implementating instructions will reflect, that by deleting the provision contained in the previous regulations concerning piece-rate workers, the draftsmen of the new regulations did not intend to change prior practice in this regard.

G. Plaintiffs' Other Contentions

The balance of plaintiffs' claims are, on the whole meritless and insubstantial. For instance, the new accounting procedures complained of are designed to tighten up loose cash handling practices. Thus, a requirement of daily deposits will eradicate the practice of "lapping," by which a weekend's interest is earned on money collected in the program. Plaintiffs' main complaint here in truth centers on the states' unwillingness to assume any more work.

As for plaintiffs' claim that the APA was not observed, defendants assert that the procedures followed in this rule-making meet its ~~worst~~ MOST rigorous standards. For example, if, as plaintiffs allege, the notice did not permit effective comment, why were 5,207 comments received? Plaintiffs express disbelief that that volume could be processed in the time allowed, yet they offer no basis for this skepticism of defendants' ability to work. Other alleged irregularities rise only to the level of "post-hoe rationalizations" for the failure of plaintiffs' theories to be fully reflected in the final regulations. See Citizens for Overton Park, supra.

III.

Harm will come to others should plaintiffs prevail. First, as pointed out in Section I, should defendants successfully resist this suit, the money lost as a result of a temporary restraining order cannot be recovered. Secondly, and more importantly, the persons intended to be benefitted by the new Regulations, the poorest of our society, the ones most in need, will be denied the extra help they would otherwise be afforded. This harm strongly militates against the relief requested. As to the public interest, it squarely lies in favor of a much-needed overhaul of the food stamp program, to return it to its original purpose of helping truly low-income families.

Conclusion

It is impossible for plaintiffs to demonstrate an injury that is irreparable. Their probability of eventual success is very slight. Others will suffer if they prevail, and the public interest demands revision of the food stamp program. It could not be more clear that plaintiffs' Motion for a Temporary Restraining Order should be denied.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RUTH TRUMP, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO. _____
	)	
EARL L. BUTZ, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This matter, having come before the Court on plaintiffs' Motion for a Temporary Restraining Order and defendants' opposition thereto, and the Court having considered the briefs of the parties and heard the argument of counsel, and after due consideration, it is this _____day of _____, 1976,

ORDERED that plaintiffs' Motion be, and hereby is, denied.

_____
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Points and Authorities in Opposition to Plaintiffs' Motion for a Temporary Restraining Order, on plaintiffs' counsel.

NATHAN M. NORTON
Attorney
Department of Justice

Tel: 202-739-3358

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RUTH TRUMP, et al.,	:	
Plaintiffs,	:	Civil Action
vs.	:	No._____
EARL L. BUTZ, et al.,	:	
Defendants.	:	

PLAINTIFFS' MEMORANDUM IN SUPPORT
OF THEIR MOTION FOR A TEMPORARY RESTRAINING ORDER

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RUTH TRUMP, et al.,	:	
Plaintiffs,	:	
-vs.-	:	Civil Action No. _____
EARL L. BUTZ, et al.,	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER

This civil action is brought by the plaintiffs -- needy families, States, cities, and various organizations -- to enjoin the implementation of new food stamp regulations that were recently promulgated by the United States Department of Agriculture. [41 Fed. Reg. 18781 et seq. (May 7, 1976)] Pursuant to these regulations, commencing on June 1, 1976, 5.3 million needy food stamp recipients will be terminated from the Food Stamp Program, and an additional 5.5 million recipients will receive substantial reductions in food stamp aid. Thus, out of 18.8 million current food stamp recipients, 57 percent of them will be eliminated entirely, or will receive substantial reductions, from their food stamp aid.

Insofar as the harm that will be created by these regulations is imminent, it is critical that a temporary restraining order be issued to maintain the status quo pending further adjudication on a preliminary injunction motion and a final determination on the merits. In order to facilitate a determination on plaintiffs' temporary restraining order motion, plaintiffs' memorandum of law

will: first, set forth the standards for a temporary restraining order and demonstrate, briefly, their applicability to this case; second, summarize the severe and irreparable harm that will be visited upon the plaintiffs, both in human and in administrative terms; and third, briefly set forth the points and authorities upon which plaintiffs rely, thereby demonstrating that there is a probability that plaintiffs will succeed on the ultimate merits of this case. (Plaintiffs will immediately begin the preparation of a more thorough statement of points and authorities which will be submitted with their motion for a preliminary injunction.)

I. Standards for Issuing a Temporary Restraining Order

Plaintiffs seek a temporary restraining order, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, to prohibit the implementation of wholesale revisions in the Federal food stamp regulations. The overriding purpose of a temporary restraining order is the preservation of the status quo in order to prevent irreparable injury pending the resolution of a request for a preliminary injunction. [Granny Goose Foods, Inc. v. Brotherhood of Teamsters and Auto Truck Drivers, 415 U.S. 423, 439 (1974); Jews for Urban Justice v. Wilson, 311 F. Supp. 1158, 1159 (D.D.C. 1970)] The standards governing the issuance of a temporary restraining order are the same as the standards governing the issuance of a preliminary injunction. [Thompson Van Lines, Inc. v. United States, 381 F. Supp. 184, 185 (D.D.C. 1974); International Association of Machinists and Aerospace Workers v. National Railway Labor Conference, 310 F. Supp. 904, 905 (D.D.C. 1970)] Those standards consider: (1) the extent of irreparable injury that will be suffered; (2) the probability of success on the merits; (3) the harm to interested parties; and (4) the public interest. [Asher v. Laird, 475 F.2d 360, 362 (D.C. Cir. 1973)]

Plaintiffs Seek to Preserve the Status Quo: The Agriculture

Secretary published final Food Stamp Program regulations on May 7, 1976 [41 Fed. Reg. 18781 et seq.] which are scheduled to take effect on June 1, 1976. [41 Fed. Reg. 18793] Thus, within one week, a substantial portion of these regulations will be implemented, and vast numbers of needy people will be precluded from obtaining the food aid that they need for proper health sustenance. In asking the Court to restrain the implementation of the revised regulations, plaintiffs seek no more than to defer their implementation until a full hearing on their legality. Until that resolution, the regulations under which the Food Stamp Program presently operates will continue in effect. Thus, the entry of a temporary restraining order will preserve the status quo.

Imminence and Irreparability: Unless this Court grants a temporary restraining order, the plaintiffs will suffer immediate irreparable injury. The revised Federal regulations provide for implementation on June 1. [41 Fed. Reg. 18793 (May 7, 1976)] Implementation of the revised regulations will terminate 5.3 million food stamp recipients from participation in the Food Stamp Program and will substantially reduce benefits to an additional 5.5 million food stamp recipients. [See affidavits of Rodney E. Leonard, at 3, para. 8; Marshall L. Matz, at 3, paras. 13-15.] Thus, 10.8 million of the 18.8 million food stamp recipients (or 57 percent of the nation's food stamp caseload) will suffer termination or reduction of their health-vital food stamp benefits. In short, over half the present food stamp recipients will be irrevocably denied the opportunity to purchase a nutritionally adequate diet. At best, those present recipients will be confronted with a Hobson's choice: either suffer a nutritionally inadequate diet (risking serious and permanent illness and injury), or divert to food purchases the funds that are necessary for shelter and medical care (risking serious and permanent illness and injury). For the less fortunate, the new regulations will deprive

them of the very means by which to survive.

No amount of retroactive relief at the conclusion of this litigation can replace the benefits wrongfully withheld. The impact of inadequate nutrition is immediate; its consequences are often permanent. It simply is impossible to retroactively alleviate hunger and malnutrition. It is, thus, peradventure clear that the harm to plaintiffs and their class will be irreparable. [See Goldberg v. Kelly, 397 U.S. 254, 264 (1970).*]

Moreover, the administrative tasks required of the plaintiff States will be staggering, costing very substantial amounts of money. Within the short period of time set forth in the defendants' regulations [41 Fed. Reg. 18793 (May 7, 1976)]: States must draft and implement new regulations in accordance with their respective administrative procedure acts; they must write new operating manuals; they must design and print new forms; they must train staff; they must create new computer programs and, then, re-program the computer; they must re-determine the eligibility of every food stamp recipient in the United States; and they must do all of this within the confines of legislatively imposed budget

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*As the Supreme Court said in Goldberg:

> For qualified recipients, welfare provides the means to obtain essential food, clothing, housing, and medical care. Cf. Nash v. Florida Industrial Commission, 389 U.S. 235, 239, 19 L. Ed. 2d 438, 442, 88 S. Ct. 362 (1967). Thus the crucial factor in this context...is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. [397 U.S., at 264] (footnotes omitted) (emphasis in original)

The 10.8 million indigents harmfully affected by the food stamp regulations will be no less harmed by these regulations than the plaintiffs in Goldberg. This is because the Food Stamp Program is "limited to those households whose income and other financial resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet." [7 U.S.C. §2014(a)] Such households are eligible only if they have less than $1500 in resources [7 C.F.R. §271.3(c)(4)], and the very purpose of the Program is to provide all needy and hungry families with access to nutritionally adequate diets. [See 7 U.S.C. §§2011, 2013(a), 2014(a) and 2016(a).]

constraints. [See, e.g., affidavits of John T. Dempsey (Director of the Michigan Department of Social Services), at 1-2 and 6, paras. 5 and 18; Horace Bass (Commissioner of the Tennessee Department of Human Services), at 1-2, para. 3; L. E. Rader (Director of the Department of Institutions, Social and Rehabilitative Services of the Oklahoma Public Welfare Commission), at 2-3, para. 6; Edward W. Maher (Commissioner of the Connecticut Department of Social Services), at 4-5, paras. 13-15 Paul R. Philbrook (Commissioner of the Vermont Department of Social Welfare), at 3, paras. 9-10; Marjorie T. Stewart (Louisiana Food Stamp Program Administrator), at 4-5, paras. 15-17; Charles Lopez (Director of the New Mexico Welfare Agency), at 5, para. 13; Paul Levecque (Maine Income Maintenance Manager), at 3-4, paras. 10-11; Orval Westby (Secretary of the South Dakota Department of Social Services), at 4-5, paras. 10-12.]

The cost to the States of early implementation cannot be measured in dollars alone. In preparing for the implementation of the revised regulations, State agency staff will be forced to neglect the present operation of the Food Stamp Program. The inevitable consequence of that neglect will be increased error rates in the operation of the Program. [Ibid.] Moreover, the consequences of early implementation cannot be undone easily. Should the revised regulations be declared invalid subsequent to implementation, States will have to dismantle the vast administrative changes to revert to the system now in effect. The end result will be a substantially more inefficient Food Stamp Program. Taxpayers will measure the cost of that inefficiency in wasted dollars; the nation's needy will measure it in hunger.

The potential for irreparable injury is enormous. Over 10 million needy individuals, who must depend on the Food Stamp Program for nutritional adequacy, face termination or reduction of benefits. Where the threatened irreparable injury is great,

a temporary restraining order or preliminary injunction is appropriate upon a showing that there are serious and substantial questions going to the merits. [Graphic Sciences, Inc. v. International Mogul Mines Ltd., 397 F. Supp. 112, 117 (D.D.C. 1974), quoting Hamilton Watch Co. v. Benrus Watch Co., 206 F.2d 738, 740 (2d Cir. 1953)] Where the probability of success on the merits is great, the degree of irreparable injury necessary diminishes accordingly. [District 50, United Mine Workers of Americ v. International Union, United Mine Workers of America, 412 F.2d 16 168 (D.C. Cir. 1969)] In the instant case, plaintiffs will demonstr an enormous degree of irreparable injury and a very high probability of success on the merits. Clearly the balance of hardships tips decidedly toward plaintiffs. Accordingly, the Court should enter a temporary restraining order prohibiting the defendants from implementing the regulatory changes appearing at 41 Fed. Reg. 18781 et seq.

The Public Interest: The public interest clearly lies with the plaintiffs in this case. The promulgation of the revised regulations comes in the midst of a thorough Congressional review of the Food Stamp Program. The United States Senate began the process of rewriting the Food Stamp Act in the Fall of 1975. That process culminated with the passing of a comprehensive National Food Stamp Reform bill on April 8, 1976, a measure which rejected the substance of virtually all of the provisions contained in the revised regulations. [122 Cong. Rec. S4935-4952, S5044-5061, S5097-5115, and S5232-5288 (daily ed., April 5, 6, 7, and 8, 1976)] The United States House of Representatives held hearings on food stamp reform during March and April, 1976. Committee markup of a proposed bill is presently taking place, and it is probable that the House will pass its own comprehensive reform legislation by the end of June, 1976.

The public interest lies in the orderly revision of the Food

Stamp Program in accordance with Congressional policy. Implementation of the challenged regulations will frustrate the carefully considered Congressional effort to reform the Program. The likelihood that Congress shortly will complete its revision raises the prospect that States will have to implement two very different but fundamental Program changes in the space of three months, a prospect that all but ensures administrative chaos together with consequent public expense and recipient suffering. [See, e.g., affidavits of Paul Levecque (Maine Income Maintenance Manager), at 5-6, para. 16; Ann Klein (New Jersey Commissioner of the Department of Institutions and Agencies), at 1-2, para. 3; Paul R. Philbrook (Commissioner of the Vermont Department of Social Welfare), at 3-4, para. 11; Philip L. Toia (Commissioner of the New York State Department of Social Services), at 7, para. 13; Betty R. Bellairs (Georgia Director of Benefits Payments), at 1, para. 4; John T. Dempsey (Director of the Michigan Department of Social Services), at 5, para. 17.]

The Harm to Interested Parties: The defendants will suffer no harm from the issuance of a temporary restraining order. The effect of such an order would be to maintain the status quo. Under such an order, the defendants would continue to operate the Food Stamp Program under the same regulations that they promulgated [see 7 C.F.R. §270 et seq.] and which have governed the Program for the last several years.

In recent years, a rule has emerged holding that, in cases in which Federal statutes have been violated, no showing with respect to the equities (the harm to interested parties, the public interest) is necessary. In Atchison, Topeka & Santa Fe Railway Co. v. Callaway, 382 F. Supp. 610, 623 (D.D.C. 1974), this Court stated that "when...federal statutes have been violated, it has been the long standing rule that a court should not inquire into the traditional requirements for equitable relief." [Id.,

at 623. Accord, Lathan v. Volpe, 455 F.2d 1111, 1116 (9th Cir. 1971); Sierra Club v. Coleman, 405 F. Supp. 53 (D.D.C. 1975); see, generally, United States v. City and County of San Francisco, 310 U.S. 16 (1940).] In the instant case, the defendants' plain violations of the Food Stamp Act, standing alone, support the grant of injunctive relief. When considered together with the resulting injury to plaintiffs and the public interest in the orderly legislative process, those violations fairly compel the issuance of a temporary restraining order.

This Court previously issued a nationwide temporary restraining order in litigation arising under the Food Stamp Act in Moreno v. United States Department of Agriculture, 345 F. Supp. 310 (D.D.C. 1972), aff'd., 413 U.S. 508 (1973). Plaintiffs, in Moreno, challenged on Constitutional grounds the statutory provision excluding households containing unrelated individuals from the Food Stamp Program. [7 U.S.C. §2012(e)] Contemporaneously with the filing of their Complaint, plaintiffs applied for a temporary restraining order to prohibit the denial of benefits to unrelated households. On April 6, 1972, Judge Smith entered a nationwide restraining order. [Moreno v. United States Department of Agriculture, No. 615-72 (D.D.C. 1972) (Temporary Restraining Order)]

Similarly, temporary or preliminary relief has been provided in many other cases arising from the Food Stamp Act or comparable Federal food programs. [See, e.g., Knowles v. Butz, 358 F. Supp. 228 (N.D. Calif. 1973), wherein a preliminary injunction was issued requiring the Agriculture Department to revise their application of the term "household" so as to prevent thousands of needy families from being terminated from the Food Stamp Program in violation of the Food Stamp Act; Bennett v. Butz, 386 F. Supp. 1059 (D. Minn. 1974), wherein a preliminary injunction was issued prohibiting the Agriculture Department from returning substantial food stamp appropriations to the Treasury; Banks v.

Trainor, No. 75 C 2156 (N.D. Ill. 7/7/75), aff'd., 525 F.2d 837 (7th Cir. 1975), wherein the Department of Agriculture was preliminarily enjoined from reducing food stamp benefits based on a form notice of reduction, and ordered to restore lost benefits within 14 days; Miller v. United States Department of Agriculture, CCH Pov. L. Rep. ¶11,821, Civ. No. 2038 (N.D. Ind. 7/20/70), wherein a preliminary injunction was issued ordering the Agriculture Department to establish a Food Stamp or Commodity Distribution Program in numerous Indiana counties; Hafer v. Hardin, CCH Pov. L. Rep. ¶11,384, No. C-70-519 (N.D. Calif. 3/11/70), wherein the Secretary of Agriculture was ordered to distribute food stamps and commodities to fourteen California counties as a result of emergency conditions; Hernandez v. Freeman, CCH Pov. L. Rep. ¶9255, Civ. No. 50333 (N.D. Calif., 12/30/68), wherein the Agriculture Secretary was temporarily enjoined "from refusing to put into effect in the shortest time feasible one of the two federal programs" -- the Food Stamp or Commodity Distribution Program -- in 16 California counties;* Shaw v. Governing Board of Modesto City School District, 310 F. Supp. 1282, 1284 (E.D. Calif., 1970), wherein the defendants were ordered to provide free meals to needy children under the School Lunch Program.]

In this case, the need for a temporary restraining order is even more compelling than in the afore-cited cases. The magnitude of the harm -- as will be set forth in greater detail hereinbelow -

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*The decision granting preliminary relief in the Miller case was never appealed and the order is still in full force and effect. In the Hafer case, the District Court later transferred the action to another district, for venue reasons; plaintiffs and defendants eventually entered into a stipulated consent order dismissing the case. In the Hernandez case, the temporary restraining order remained in effect for about seven months; at that point, after the defendants had agreed and provided full relief pursuant to plaintiffs' prayer for relief in the Complaint, the parties entered into a stipulated consent order dismissing the case on the basis of mootness.

is virtually unprecedented. Thus, a nationwide temporary restraining order, safeguarding the status quo pending further litigation, is justified.

II. The Harm That Will Be Caused If A Temporary Restraining Order Is Not Issued Will Be Enormous and Irreparable

A. The Harm to Food Stamp Recipients

The harm that will be caused by the new regulations, commencing on June 1, 1976, is enormous. Indeed, to the best of counsel's knowledge, the new regulations appear to represent the largest administrative cutback in a social welfare program in the history of the United States. As Marshall L. Matz, General Counsel to the United States Senate Select Committee on Nutrition and Human Needs (the only Committee in Congress whose sole concern is hunger problems) indicated, the harm to Program recipients will be most substantial. He stated:

> A public assistance (PA) household is one in which every household member receives some form of state or Federal public assistance. The vast majority of the 8.7 million PA food stamp recipients are receiving Aid to Families With Dependent Children (AFDC).
>
> A non-public assistance (NPA) household is one in which some household members receive welfare and others do not, or in which no one receives welfare. The 10.1 million NPA food stamp recipients have incomes from a variety of sources, including work, Social Security, Supplemental Security Income (SSI), and public and private pensions and retirement plans.
>
> If the regulations which are the subject of this action are allowed to take effect, approximately 5.3 million persons in the NPA category will be eliminated from the Food Stamp Program. This represents over one quarter of the entire caseload, and half of the NPA caseload.
>
> Of the 14 million people who will be left in the Food Stamp Program, another 5.5 million in both the PA and NPA categories will have to pay at least $5.00 more per month than they now pay to obtain the same benefits they are currently receiving.

> Altogether, USDA intends to terminate or reduce benefits to 10.8 million food stamp recipients -- over half of all the people now in the Program. This action is totally without precedent in the history of government nutrition programs, and marks a major step backward in the commitment to end hunger that was made by the previous Administration following the 1969 White House Conference on Food, Nutrition and Health. [Affidavit of Marshall L. Matz, at 3, paras. 11-15]

Similarly, Rodney E. Leonard -- a former Administrator of the Agriculture Department's Consumer and Marketing Division (which Division, at that time, was the administering agency of the Food Stamp Program) -- set forth the enormity of the damage that will be caused by the new regulations:

> If the regulations, as published in their final form, are allowed to become effective, approximately 10.8 million food stamp recipients will be adversely affected. More than 5.3 million persons in the NPA category will be totally eliminated from the Food Stamp Program, while another 5.5 million in both the PA and NPA categories who remain eligible will experience a significant reduction in benefits. These 10.8 million people represent almost 57 percent of the current food stamp caseload.
>
> The immediate harm to food stamp recipients under these regulations is caused by USDA's revision of the method by which eligibility and benefits are determined. The Poverty Line will replace the present practice of basing monthly income maximums on the cost of food; the standard deduction will replace the system of itemized deductions; income will be projected backward rather than forward; and the graduated purchase price scale now in use will be eliminated in favor of a uniform thirty percent purchase price for households at all income levels.
>
> USDA estimates that the combined effect of the Poverty Line and the standard deduction will exclude from the Food Stamp Program about 3.6 million people, or 19 percent of the people now receiving food stamps.
>
> A sizeable number of additional food stamp recipients will be eliminated by the retrospective income accounting regulation, which will base a household's eligibility and benefits on its average income for the prior three months. USDA estimates that this provision will sever about 1.7 million people from the rolls, though the Congressional Budget Office places its estimate considerably higher, at 2.8 million persons.

> Thus, by the most conservative estimate, the three provisions of these regulations which relate to the definition of income will terminate assistance to almost 28 percent of all food stamp recipients. Because PA households will continue to be eligible without regard to income, however, all 5.3 million people who will be eliminated from the Program are on the NPA side of the caseload.
>
> While these regulations represent the largest cut-back in a governmental assistance program in the nation's history, the figures on the numbers of persons who will lose all or part of their benefits understate the adverse impact of USDA's actions, for there are other, non-financial provisions of the regulations that will make it so difficult for impoverished Americans to obtain the nutritional assistance they need that they will simply give up their rights to food stamp aid. [Affidavit of Rodney E. Leonard, at 3-4, paras. 8-13]

But they won't

The affidavits submitted by State Food Stamp Program administrators underscore the harm that will be created by the regulations commencing on June 1. For example, the following harm will occur to food stamp recipients in some of the plaintiff and non-plaintiff States that have submitted affidavits in this case. As is obvious from the examples below, the harm that recipients will suffer will know no geographic boundaries.

> Michigan: "50% to 70% of our entire caseload [will] be adversely affected by these regulations"; 55,000 will be eliminated from the Program and "375,000 people will have their benefits significantly reduced." Persons "eliminated from the Program will have no place to turn for food aid and, consequently, their chances for obtaining nutritional adequacy will be slim." [Affidavit of John T. Dempsey (Director of the Michigan Department of Social Services), at 1, paras. 4-5]
>
> Montana: "The new regulations will cause severe hardships to the nutritionally needy in the State of Montana." Almost two-thirds of the State's caseload will be harmed by the regulations. Of the 34,675 people in the Program, 10,700 indigents (31%) will be terminated from the Program and 10,800 (31%) "will suffer significant reductions" in aid. "As a result of their being terminated from the Program or receiving reduced aid, these Montanans who will be adversely affected by the new regulations will lose access to nutritionally adequate diets." [Affidavit of Jack Carlson (Administrator of the Economic Assistance Division of the Montana Social and Rehabilitation Services Agency), at 2, paras. 4-5]

Connecticut: 26% of the NPA households (more than 30,000 people) will be eliminated from the Program. Over 50% of the working families in the Program will be terminated from assistance. Approximately 44% of all NPA families with three or four household members will be rendered ineligible. "A large portion of those eliminated from the Food Stamp Program by the new regulations will no longer have access to nutritional adequacy." Over 48% of the NPA households that remain in the Program "will have their bonus value reduced." [Affidavit of Edward W. Maher (Commissioner of the Connecticut Department of Social Services), at 1-2, paras. 4-6]

Oklahoma: "Approximately 29% of our entire caseload, or over 50,000 people, will be eliminated from the Food Stamp Program. An additional 24%, or over 46,000 people, will suffer a significant reduction in food stamp aid.... A large number of people terminated from the Food Stamp Program as a result of the new eligibility standards will be unable to obtain adequate diets." Moreover, it is estimated "that over 25,000 people, who will still be eligible for food stamp aid under the new regulations, will be unable to participate due to the increased purchase price." [Affidavit of L. E. Rader (Director of the Department of Institutions, Social and Rehabilitative Services of the Oklahoma Public Welfare Commission), at 1-2, paras. 3-4]

Louisiana: 33,000 non-public assistance households, with over 98,000 people, "will suffer reductions in aid that average $15.15 a month." Over 8,500 working households will receive an average benefit reduction of $18.82 per month. In total, over 130,000 people in Louisiana will have their food stamp benefits either terminated or reduced. [Affidavit of Marjorie T. Stewart (Food Stamp Administrator of the Louisiana Health and Human Resources Administration, Division of Family Services), at 2, paras. 4-5]

Delaware: 28% of the 2-person households in the Program will be terminated from aid, and an additional 14% will receive reductions in aid. 56% of the 3-person households participating in the Program will receive reductions in aid, and these reductions will average approximately $45 per month. 16% of the 4-person households will be terminated from the Program; 50% of the 4-person households will receive reductions in aid, and these reductions will average $38 per month. 50% of the 5-person households in the Program will have their aid terminated and an additional 33% will have their benefits reduced. 60% of the 6-person households in the Program will have their benefits terminated; an additional 20% will have their benefits reduced by an average of $134 each month. [Affidavit of Charles Smith (Director of the Division of Social Services of the Delaware Department of Health and Social Services), at 1-2, paras. 3-7]

> Oregon: "[W]e estimate that over 36,000 people will be terminated from the Program, and approximately 90,000 people will suffer reductions in benefits. All in all, about 65% of our food stamp caseload will be adversely affected by these regulations." [Affidavit of Dwayne Prather (Manager of the Food Stamp Program Operations Unit, Public Welfare Division, Oregon Department of Human Resources), at 1, para. 3]
>
> Texas: "Almost half a million people, or 45% of our current caseload, will either be eliminated from the program or suffer reduced benefits." About 22.5% of the public assistance (PA) caseload will have their benefits reduced. "The average benefit reduction for all non-public assistance households in Texas, as a result of the new regulations, will be more than $22 per month. As a result, large numbers of needy families in the State will be unable to obtain nutritionally adequate diets." [Affidavit of Raymond W. Vowell (Commissioner of the Texas Department of Public Welfare), at 2-3, paras. 4-6]

See, also, affidavits of Paul Levecque (Income Maintenance Manager for the Bureau of Social Welfare of the Maine Department of Health Services), at 1-2, paras. 4-5; Orval Westby (Secretary of the South Dakota Department of Social Services), at 1-3, paras. 3-5; Ann Klein (Commissioner of the New Jersey Department of Institutions and Agencies), at 2-3, paras. 6-10; Betty R. Bellairs (Director of the Division of Benefits Payments of the Georgia Department of Human Resources), at 1-2, paras. 5-8; Ewing B. Gourley (Director of the Division of Family Services of the Missouri Department of Social Services), at 4, para. 12; Francis S. L. Williamson (Commissioner of the Alaska Department of Health and Social Services), at 1, para. 4; Robert Dugan (Chief Supervisor of the Food Stamp Program of the Rhode Island Department of Social and Rehabilitative Services), at 1-2, paras. 4-6; Sidney T. Brooks (Director of the Food Stamp Program for the Department of Social Services of the City of New York), at 1-2, paras. 4-5; John H. Baw (Food Services Consultant with the Social Services Division of the Arkansas Department of Social and Rehabilitative Services), at 1, para. 3; Paul R. Philbrook (Commissioner of the

Vermont Department of Social Welfare), at 4, para. 12; Vera Likins (Commissioner of the Minnesota Department of Public Welfare), at 2, paras. 6-8; Horace Bass (Commissioner of the Tennessee Department of Human Services), at 4, para. 9.

The numbers of people who will be hurt by these regulations, however, provide only one dimension of the harm that will begin on June 1, 1976. Behind those numbers are very needy people who will suffer grievous and irreparable injury.

Plaintiff Ruth Trump, for example, has a total monthly income of $263.70, derived entirely from Social Security. Plaintiff Trump, who is 67 years of age, suffers from diverticulitis, abdominal adhesions, a spastic colon and arthritis. As a result, she has monthly medical expenses of $166.67. In addition, she has monthly shelter expenses of $73.35. Thus, after she pays for her medical and shelter expenses, she has only $23.68 to pay for food and other necessities. Under the previous regulations, she was entitled to $50 in monthly food stamps at a cost of $8. However, under the new regulations, her food stamp purchase price will be raised to $41 -- a price she cannot afford. Consequently, she will lose her Food Stamp Program aid, and her health and nutrition status is likely to deteriorate drastically. [See affidavit of Ruth Trump.]

Similarly, plaintiff Florence Mason, who is 75 years old, lives with her 64 year old husband Charles. Their monthly income is $286.90, which is derived entirely from Social Security. Insofar as Mr. Mason has circulatory system problems, hardening of the arteries, and has suffered five heart attacks, the Mason household has high medical and drug bills. Currently, they pay $154.77 monthly for medical-related expenditures. In addition, the household's total shelter expenses equal $131.70. Thus, after the Masons pay for their shelter and medical expenses, they have less than $1 left for all other necessities, including food.

Currently, the Masons participate in the Food Stamp Program and receive an $85 monthly bonus. However, under the new regulations, they will have to pay $48 a month for $92 in food stamps, a purchase price they cannot afford to pay. As a result, the Masons will be unable to obtain adequate food sustenance, and Mr. Mason's health will be irreparably harmed. [See affidavit of Florence Mason.]

Plaintiffs Trump and Mason will continue to be eligible for assistance but will no longer be able to obtain it. Contrariwise, plaintiff Geraldine Lane, her husband and her daughter will be rendered ineligible for food stamp aid. Plaintiff Lane's household receives $510.70 per month in Social Security disability benefits. Since Mrs. Lane's household is in very ill health, they have very high expenses. (Mr. Lane has a serious heart condition. Mrs. Lane has undergone 13 major tumor operations in the abdominal area; her back is severely injured; and she is missing a cervical disc. Patricia, Mrs. Lane's daughter, has asthma and allergic bronchitis and cannot attend a regular school due to health hazards.) As a result, plaintiff Lane has the following monthly expenses:

$ 30.00	(tuition for private school)
150.50	(nursing care for Mrs. Lane)
10.00	(doctor's bill)
34.00	(hospitalization insurance)
175.00	(rent)
39.29	(natural gas)
41.81	(electricity
8.50	(telephone)
$489.10	Total

Consequently, the three-person Lane household has only $21.60 per month for food and other necessities. Currently, the household receives $130 in food stamps at a cost of $21, a $109 monthly bonus. However, if the regulations are implemented and their food stamp aid is terminated, the Lanes will go hungry and will suffer irreparable injury. [Affidavit of Geraldine Lane]

Plaintiff Elizabeth Hardin will also suffer severe injury as a result of these regulations. She receives $400 a month in

income -- $270 from her deceased husband's railroad retirement benefits and $130 for housing rentals. Out of this small income, plaintiff Hardin pays the following monthly expenses:

$389.75	(medical bills)
10.53	(telephone)
12.00	(hospital insurance)
54.00	(utilities)
$466.28	Total

Consequently, she has greater expenses than income. Currently, she is receiving $50 worth of food stamps for free. However, under the new regulations, she will be deemed ineligible for assistance. As a result, she will be very hungry, and her heart, arthritis and diabetes conditions will suffer. [Affidavit of Elizabeth Hardin]

For each of these plaintiffs, and for the other 10.8 million indigents harmfully affected, the new regulations will cause considerable hardships. The vast percentage of them will no longer have "an opportunity to obtain a nutritionally adequate diet." [7 U.S.C. §2013(a); see, also, 7 U.S.C. §§2011, 2014(a) and 2016(a)] Thus, the purpose of the Food Stamp Act will be frustrated, and numerous needy families will become hungry and undernourished. Therefore, it is important that a temporary restraining order be issued pending further proceedings by this Court.

B. The Harm to Program Administration

Despite the substantial decrease in Food Stamp Program aid that will result from the implementation of the new regulations, "the administrative costs of the Food Stamp Program for both the States and the Federal government will at least double." [Affidavit of Rodney E. Leonard, at 24, para. 86] (emphasis in original) Indeed, just one of the new provisions alone -- the one relating to monthly reporting of income -- will cause "more than 70 million" new forms a year to be used in the Food Stamp Program. [Affidavit of Marshall L. Matz, at 21, para. 97]

According to State Food Stamp Program administrators, the administrative chaos, inefficiency, and wasted expense that will be caused by the new regulations cannot be over-estimated. A brief synopsis of the severe and irreparable administrative problems that will be faced by the States is set forth below:

> Washington: "The new regulations adopted by the Department of Agriculture will have a devastating effect on the administration of the Food Stamp Program in the State of Washington. Had these regulations been deliberately designed to increase the complexity of the Food Stamp Program to the point of insuring that states would fail in their attempt to properly administer it, they could not have been more successful." [Affidavit of Gerald E. Thomas (Director of the Bureau of Social Services of the Washington Department of Social and Health Services), at 1, para. 2; see, also, at 3-4, para. 10]
>
> Connecticut: The State's operational, or administrative costs, will increase by 400%. The regulations will "so encumber the administration of the Program that costs and error rates will soar." [Affidavit of Edward W. Maher (Commissioner of the Connecticut Department of Social Services), at 1 and 5, paras. 3, 15-16]
>
> New York: Administrative expenses will increase by no less than $50 million per year, and it is anticipated that the monthly reporting of income regulation alone will increase the State's administrative costs by 200%. [Affidavit of Philip L. Toia (Commissioner of the New York State Department of Social Services), at 5-6, para. 10]
>
> Tennessee: "As a result of the precipitous changes required by these regulations -- and the individualized eligibility and benefit determinations that will have to be made -- I believe that our error rates will increase by substantial amounts." The State agency "will be swamped by a monthly avalanche of forms" and the State's "administrative and personnel costs will soar." [Affidavit of Horace Bass (Commissioner of the Tennessee Department of Human Services), at 2 and 3, paras. 3 and 6]
>
> Maine: "In terms of cost, the new regulations will increase our state and local operational expenses by almost 300% or 3 to 4 million dollars. Implementing the regulations will cause our error rate to soar to an astronomical rate." [Affidavit of Paul Levecque (Income Maintenance Manager for the Bureau of Social Welfare of the Maine Department of Health Services), at 4, para. 11; see, also, at 5-6, para. 16]

Michigan: The Program's administrative expenses will increase by 50% and the "regulations will create havoc for program administrators and recipients." [Affidavit of John T. Dempsey (Director of the Mighigan Department of Social Services), at 2, paras. 5-6]

Louisiana: The new regulations, as a result of their complexity, will cause a substantial number of Program errors to be made. As a result of the regulations, administrative expenses will increase by at least $20 million. [Affidavit of Marjorie Stewart (Food Stamp Program Administrator of the Louisiana Health and Human Resources Administration, Division of Family Services), at 5-7, paras. 16 and 20-21]

Rhode Island: In order to implement the new regulations, the State will have to triple its staff -- an apparent "impossibility given the State's hiring freeze." The monthly reporting of income requirement is so cumbersome that it "may well mean the end of the Food Stamp Program in Rhode Island." The implementation of these regulations will cause "almost irreversible damage to the administration of the Program." [Affidavit of Robert Dugan (Chief Supervisor of the Food Stamp Program for the Rhode Island Department of Social and Rehabilitative Services), at 4-5, paras. 13-15]

Texas: The State will have to hire an additional 120 staff workers in order to implement portions of the regulations. Error rates in the Program will increase and "the new food stamp regulations [will] cause severe administrative problems for the State of Texas." [Affidavit of Raymond W. Vowell (Commissioner of the Texas Department of Public Welfare), at 4 and 6, paras. 11 and 16]

See, also, the affidavits of Dwayne Prather (Manager of the Food Stamp Program Operations Unit, Public Welfare Division of the Oregon Department of Human Resources), at 2 and 5, paras. 4 and 11; Betty R. Bellairs (Director of the Division of Benefits Payments of the Georgia Department of Human Resources), at 1 and 2-3, paras. 3 and 9; Francis S. L. Williamson (Commissioner of the Alaska Department of Health and Social Services), at 7, para. 17; Janet L. Partridge (Staff Director of the Committee on Human Resources for the City Council of the District of Columbia), at 3-4, paras. 10-11; Vera Likins (Commissioner of the Minnesota Department of Public Welfare), at 5 and 7, paras. 15 and 22;

Charles Lopez (Director of the Welfare Agency of the New Mexico Health and Social Services Department), at 5, paras. 13-14; Paul R. Philbrook (Commissioner of the Vermont Department of Social Welfare), at 1, paras. 3-4; John H. Baw (Food Services Consultant with the Social Services Division of the Arkansas Department of Social and Rehabilitative Services), at 1-2, paras. 3-4; Sidney T. Brooks (Director of the Food Stamp Program of the New York City Department of Social Services), at 1, 3 and 5, paras. 3, 11 and 14; Ewing B. Gourley (Director of the Division of Family Services of the Missouri Department of Social Services), at 4, para. 11; L. E. Rader (Director of the Department of Institutions, Social and Rehabilitative Services of the Oklahoma Public Welfare Commission), at 3-4, paras. 8-10; Ann Klein (Commissioner of the New Jersey Department of Institutions and Agencies), at 2, para. 4; Jack Carlson (Administrator of the Economic Assistance Division of the Montana Social and Rehabilitation Services Agency), at 5-6, paras. 16-19.

In sum, each of the State agencies will be required to devote valuable resources and personnel to administrative changes that are cumbersome, complex and expensive, and these changes will cause administrative chaos and huge increases in Program error rates. Since Congress is about to complete its legislative reform of the Food Stamp Program -- and since that legislation apparently will be substantially different than the new regulations, particularly insofar as the Senate's bill rejected the substance of virtually all of the provisions in the revised regulations [122 Cong. Rec. S 4935-4952, S 5044-5061, S 5097-5115, and S 5232-5288 (daily ed., April 5, 6, 7 and 8, 1976)] -- the "ordeal of making profound program changes, as required by the regulations, and then repeating the process in response to a Congressional mandate, can only cause irreparable injury to both the administration of the Food Stamp Program and to nutritionally

needy families...." [Affidavit of Paul Levecque (Income Maintenance Manager of the Bureau of Social Welfare in the Maine Department of Health Services), at 6, para. 16] Indeed, a massive double conversion of regulations will create tremendous administrative confusion, and many Program recipients will be denied assistance solely due to this confusion. Thus, the irreparable harm that will be caused commencing on June 1 must be avoided, and plaintiffs respectfully submit that a temporary restraining order should be granted.

III. There Is A Substantial Likelihood That Plaintiffs Will Ultimately Prevail on the Merits of This Case

As the plaintiffs' Complaint makes clear, there are numerous and serious causes of action that arise as a result of the defendants' regulations. [41 Fed. Reg. 18781 et seq. (May 7, 1976)] A thorough briefing of those issues is impracticable given the nature of this temporary restraining order proceeding, and it was impossible for plaintiffs' counsel to prepare a complete memorandum setting forth all of the relevant points and authorities in the short time between the promulgation of the regulations (May 7) and the implementation date (June 1). Preparation of such a thorough memorandum of law will proceed immediately, and plaintiffs' counsel will file it with their motion for a preliminary injunction. However, in order to demonstrate the likelihood of plaintiffs' success on the ultimate merits of this case, plaintiffs hereinbelow will set forth a very abbreviated statement about the points and authorities upon which the claims are based.

A. The Three-Month Retrospective Income Accounting and Monthly Reporting of Income Regulations Violate the Food Stamp Act and the Fifth Amendment

The defendants' new regulations drastically alter the method of determining a household's income for food stamp eligibility purposes, thereby severing food stamp eligibility determinations from current need, and totally ignoring

current food purchasing power. By premising eligibility on income received as much as two to five months prior to application or recertification, the regulations violate plaintiffs' rights under the Food Stamp Act and the Fifth Amendment to the Constitution.

1. How the Regulations Work

Recognizing that "the limited food purchasing power of low-income households contributes to hunger and malnutrition" [7 U.S.C. §2011], Congress enacted a Food Stamp Program to enable participating households to purchase a nutritionally adequate diet. [See 7 U.S.C. §§2011, 2013(a), 2014(a) and 2016(a).] In recognition of that Congressional mandate, the defendants previously defined income as "all income which is received or anticipated to be received during the month." [7 C.F.R. §271.3(c)(1), prior to re-promulgation] Thus, eligibility and purchase requirements rested upon income in fact currently available, the measure of a household's purchasing power. Households whose incomes varied from month to month were certified monthly based upon actual current income for the month of certification; and households with stable incomes were certified for longer periods based upon predicted monthly income. [Ibid.; 7 C.F.R. §271.4(a)(4), prior to re-promulgation] The prior regulations required households, whose income changed during the certification period, to report the change within 10 days, enabling State agencies to make prompt appropriate changes in eligibility. [7 C.F.R. §271.3(a)(1)(iii-iv), prior to re-promulgation] Thus, a change in current income -- a change in current ability to purchase a nutritionally adequate diet -- resulted in a corresponding change in eligibility and purchase requirements.

In recent statements to this Court and to Congress, defendants acknowledged that the prior scheme of certification was mandated by statute, and that a system of certification based upon past income would violate the Food Stamp Act. [See

statement of defendant Edward J. Hekman, Administrator of the Agriculture Department's Food and Nutrition Service, submitted on June 6, 1975 in Gutierrez v. Butz, Civil Action No. 74-1252 (D.D.C.);* Food Stamp Program -- A Report in Accordance With

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*Defendant Hekman, in his submission in Gutierrez, stated as follows:

> The so-called "anticipated income" basis for determining household income for program purposes is not only consistent with the statutory directives pertaining to income but it is a reasonable approach to the problem. The household's eligibility and the amount that it must pay for its coupon allotment are thereby tied closely to the income which it is actually receiving. Admittedly, there are difficulties in determining the income of households whose circumstances fluctuate frequently, such as migrant farm workers. Because of this difficulty, such households are given relatively brief certification periods, ordinarily one month. Short of almost continuous certifications on a weekly, or shorter, basis -- which would entail great inconvenience to the households as well as tremendous administrative burdens and expense for State agencies -- there would appear to be no other reasonable basis upon which to operate the program so that a household's income would have a current and rational relationship to its program participation.
>
> On the other hand, reliance on past income as the determining factor for household income for program purposes was found to have serious, indeed unacceptable, shortcomings. There is obviously no assurance that a household's income for next month will be the same as it was last month. This is particularly true with respect to households whose income fluctuates -- migrant households being a prime example. Further, it was evident that the statutory provisions bottomed on household income would be rendered meaningless if the household's participation in the future were to be governed by its income in the past. For example, 30 percent of a household's income for last month would constitute an exorbitant price for its coupon allotment for next month if, due to any of a host of factors, its income next month declined substantially. And surely the result would be egregious if the household of a breadwinner suddenly unemployed were to be found ineligible for the program on the basis of the household's income the previous month.
>
> While a "past income" approach would have the advantage of certainty of ease of administration, it was concluded that its other deficiencies outweighed whatever advantages it might have for program purposes. Although past income may, for certain households, be a useful guideline for determining anticipated income (and the program instructions permit its use, among other aids, for this purpose), it was not adopted as the basis for determining household income for the Food Stamp Program. In connection with this and many

Footnote continued.

Senate Resolution 58, prepared by the Food and Nutrition Service, U.S. Department of Agriculture, for the Committee on Agriculture and Forestry of the U. S. Senate, 94th Cong., 1st Sess. (July 21, 1975), at 86.**] Yet, now the defendants have totally reversed their position, promulgating a patently illegal scheme of certification based upon past income.

Under the revised regulations, "income" is determined by averaging the household's monthly income for the three months prior to certification irrespective of actual current income, a system known as three-month retrospective income accounting. [7 C.F.R. §271.3(c)(2), as re-promulgated at 41 Fed. Reg. 18788 (May 7, 1976)] Once found eligible, most participating households must file a report within the first 10 days of each month, reporting income for the prior month, even if there has been no

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Footnote continued.

> other aspects of the program, consideration was also afforded to uniformity and consistency. It was believed that households similarly situated should be treated in a similar manner, particularly in view of the 1971 amendments to the Act which evisioned uniform national eligibility standards. [Ibid.] (emphasis added)

**In the Agriculture Department's report to the Congress, it said the following:

> A unique feature of the Food Stamp Program is the fact that income is counted and averaged over different periods of time for different people but income is always anticipated income for the future. Most income maintenance programs have the same income accounting period for all participants and include income from some period of time in the past.
>
> The food stamp income accounting period is geared to respond flexibly to immediate and anticipated need so that no household will have to forego food regardless of its financial status. [Ibid.] (emphasis in original)

change. [7 C.F.R. §271.3(a)(1)(iv), as re-promulgated at 41 Fed. Reg. 18787 (May 7, 1976)] Each month, the certification worker must review the monthly forms, and calculate a new three-month average of income received two-five months prior to the month in which food stamps will be purchased. The regulations thus establish a mechanistic certification scheme based upon past need which rigorously ignores currently available income and present ability to purchase a nutritionally adequate diet. [See plaintiffs' Complaint, part IX, paras. 9-12, for illustrations.] The impact upon plaintiffs Darris Dalton, Mildred Baker and Kathleen Rumley, as shown by their affidavits, as well as upon the millions of migrant workers, recently unemployed, and others with fluctuating incomes, will be immediate and egregious. By basing eligibility and benefit levels on past income and totally ignoring currently available income, the defendants' regulations will deny aid to those indigents when they need it the most, and they will violate the Food Stamp Act and the Due Process Clause.

2. Violations of the Food Stamp Act

As amended in 1971, the Food Stamp Act guarantees eligible households an opportunity to purchase a nutritionally adequate diet. [7 U.S.C. §2013(a); see, generally, Rodway v. United States Department of Agriculture, 514 F.2d 809, 818-820 (D.C. Cir. 1975)] The guarantee is repeated throughout the Act. [7 U.S.C. §§2011, 2013(a), 2014(a) and 2016(a)] Participation is limited to "those households whose income and other financial resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet." [7 U.S.C. §2014(a)] In establishing uniform national eligibility standards, the Secretary "shall prescribe the amounts of household income and other financial resources including both liquid and non-liquid assets, to be used as criteria of eligibility...." [7 U.S.C. §2014(b)] Participating households are charged "a reasonable investment...but

in no event more than thirty per centum of the household's income..." [7 U.S.C. §2016(b)]

It is evident that Congress intended the creation of a need-based Food Stamp Program with eligibility and benefit levels based upon current household income resources. Household income must be read in the context of Congress' stated intention to limit participation to nutritionally needy households and to guarantee those households a nutritionally adequate diet; it must be read to mean currently available income, for currently available income defines the purchasing power of a household. A household which cannot purchase a nutritionally adequate diet with currently available income is needy, irrespective of past income; a household which can purchase a nutritionally adequate diet with currently available income is no longer needy, irrespective of past need. Regulations which define income as past income rather than currently available income thus violate the Act.*

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*Senate floor debate on revisions to the Food Stamp Act confirm the illegality of retrospective income accounting. The Senate defeated a proposal to require ninety-day retrospective income accounting by a vote of 57-20 [122 Cong. Rec. S4951 (daily ed., April 5, 1976)] and Senator after Senator rose to condemn USDA's regulations as violative of the current Act. See, e.g., statements of Senator Humphrey [122 Cong. Rec. S5240, 5242 (daily ed., April 8, 1976)]; Senator Hugh Scott [Id., at S5243]; Senator McGovern [Id., at S5247]; Senator Clark [Id., at S5270]; Senator Philip Hart [Id., at S5273]; Senator Leahy [Id., at S5274]; and Senator Javits [Id., at S5276-77].

Similarly, by passing a substitute bill that replaced the bill reported out of the Senate Committee on Agriculture and Forestry, the United States Senate denied any new authority to establish a monthly reporting of income requirement; the Committee bill had granted such authority for the first time, but the authority was deleted in the substitute bill. [Compare section 4(c) of the Committee's bill, as explained and set forth at Sen. Rep. No. 94-697, 94th Cong., 2d Sess. (1976), at 16, 49, and 110, with the substitute bill passed by the Senate, 122 Cong. Rec. S5283-5288 (daily ed., April 8, 1976).] At that time, numerous Senators indicated that the monthly reporting of income regulations violate the current statute. See, e.g., statements of Senator Humphrey [122 Cong. Rec. S5242 (daily ed., April 8, 1976)]; Senator Hugh Scott [Id., at S5243]; Senator McGovern [Id., at S5247]; Senator Clark [Id., at S5270]; Senator Philip Hart [Id., at S5273-5274]; Senator Leahy [Id., at S5275]; and Senator Javits [Id., at S5276-5277].

Heretofore, the Secretary, with few exceptions, has recognized the statutory requirement that eligibility and benefit levels be based upon current need and income. In those few instances when the Secretary has attempted to define as income funds not currently or actually available to the household, courts have struck down such provisions. [See Hein v. Burns, 402 F. Supp. 398, 405 (S.D. Iowa 1975) (treating educational travel allowances as income without allowing deductions for travel expenses violates the Act because such allowances do not affect food purchasing power); Turchin v. Butz, 405 F. Supp. 1263 (D. Minn 1976) (inclusion of training allowances as income violates the Act); Anderson v. Butz, ___ F. Supp. ___, Civil Action No. S-75-401 (E.D. Calif., 12/6/75) (inclusion of rent subsidies as household income violates the Act since such subsidies do not affect food purchasing power).]

In analogous public assistance programs, courts have consistently and uniformly held that income and resources mean only such income and resources as are actually available for current use. [See Lewis v. Martin, 397 U.S. 552, 558-559 (1970); Van Lare v. Hurley, 421 U.S. 338 (1975); Shea v. Vialpando, 416 U.S. 251 (1974); King v. Smith, 392 U.S. 309 (1968).]

The Supreme Court set forth the "currently available" definition of income in invalidating as unconstitutional the tax dependency provision of the Food Stamp Act in United States Department of Agriculture v. Murry, 413 U.S. 508 (1973). Pursuant to 7 U.S.C. §2014(b), a household was ineligible if an 18 year old member had been claimed as a dependent child for tax purposes by a person outside of the household who was participating in the Food Stamp Program; ineligibility continued for the year following the claim. The Court stated that "[h]ousehold participation is based on current circumstances, not past needs." [413 U.S., at 512, n.2] The Court, therefore, invalidated the provision on Due Process grounds as a conclusive, irrebuttable

and erroneous presumption that the household was not presently needy.

Recent analogous public assistance cases have struck down Federal regulations which violate the currently available definition of income and resources. In National Welfare Rights Organization v. Weinberger, 377 F. Supp. 861 (D.D.C. 1974), this Court struck down an HEW regulation authorizing recoupment of prior accidental AFDC overpayments from current grants, reasoning that the regulation assumed the prior overpayments were available for current use. The Court stated:

> The statute [42 U.S.C. §602(a)(7)] excludes from consideration resources or income which are presumed or assumed to be available without any factual basis actually supporting their existence. [377 F. Supp., at 868]

More recently, in National Welfare Rights Organization v. Mathews, No. 75-1741 (D.C. Cir., 2/20/76), the Court of Appeals struck down an HEW regulation valuing resources at gross value rather than net value because the regulation violated the currently available definition of income and resources. Because the revised food stamp regulations base eligibility upon an average of income received as much as five months earlier, they violate the currently available definition of income, deviating from the clear mandate of the Act and its unambiguous legislative history.

3. The Three-Month Retrospective Income Accounting and Monthly Reporting of Income Regulations Create Unconstitutional Conclusive, Irrebuttable and Erroneous Presumptions of Current Abilities to Purchase Nutritional Adequacy

The three-month retrospective income accounting and monthly reporting of income regulations conclusively, irrebuttably, arbitrarily and erroneously presume that a household's income of two to five months past is now available to purchase a nutritionally adequate dict. Indeed, the regulations are premised on the assumption that such past income is the best evidence of current needs. [See 41 Fed. Reg. 8501 (Feb. 27, 1976) and 41 Fed. Reg.

18781 (May 7, 1976).] Under the regulations, evidence of a household's income over the three-month period will constitute conclusive and irrebuttable proof of current ability to purchase food. Information that a household now has little or no income is totally irrelevant to eligibility and benefit levels and cannot be considered by a certification worker. At no point in the administrative process -- either during processing of the application or at a subsequent fair hearing -- may households adduce evidence about their current need. As a result, the rigid and inflexible regulations arbitrarily eliminate many thousands of needy households, force many more thousands to pay extortionate percentages of current income for benefits, leaving them hungry and malnourished in complete defiance of the Act's overriding purpose.

It is settled law that the Due Process Clause forbids conclusive and irrebuttable presumptions which are frequently erroneous, arbitrarily and adversely affecting the rights of private parties. Heiner v. Donnan, 285 U.S. 312, 329 (1932); Hoeper v. Tax Commission, 284 U.S. 206, 215 (1931); and Schlesinger v. Wisconsin, 270 U.S. 230 (1926), all struck down tax provisions conclusively presuming the existence of taxable income or assets which were contrary to fact. More recently, the Court has struck down a variety of erroneous conclusive presumptions. [Turner v. Unemployment Compensation Board, ___ U.S. ___, 46 L. Ed. 2d 181 (1975); Jimenez v. Weinberger, 417 U.S. 628 (1974); Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974); Vlandis v. Kline, 412 U.S. 441 (1973); Dunn v. Blumstein, 405 U.S. 330 (1972); Stanley v. Illinois, 405 U.S. 645 (1972); Bell v. Burson, 402 U.S. 535 (1971)]

In United States Department of Agriculture v. Murry, 413 U.S. 508 (1973), the Court struck down the Food Stamp Act's tax

dependency provision, holding that the provision "creates a conclusive presumption that the 'tax dependent's' household is not needy and has access to nutritional adequacy." [413 U.S., at 512] Since ineligibility under the provision "rests upon an irrebuttable presumption often contrary to the fact" [Id., at 514], the provision was arbitrary and irrational, in violation of the Due Process Clause. Three-month retrospective income accounting and monthly reporting of income produce results that are equally erroneous and arbitrary, and they, therefore, must also fall. [See examples set forth in the Complaint, Part IX, paras. 9-12.]

The Secretary attempts to justify his new regulations on the grounds of administrative convenience. [41 Fed. Reg. 8501 (Feb. 27, 1976) and 41 Fed. Reg. 18783 (May 9, 1976)] However, the Supreme Court has repeatedly ruled that administrative convenience will not save an erroneous, irrational and conclusive presumption. [Stanley v. Illinois, supra, at 96; Bell v. Burson, supra, at 540-51] Accordingly, the conclusive and irrebuttable presumption, that proof of present need can be ascertained by resort to past income, must fall under the Due Process Clause.

B. The New Regulations [7 C.F.R. §271.3(c)] Violate Equal Protection By Denying Food Stamps to Needy Non-Public Assistance Households While Providing Food Stamps to Public Assistance Households With Equal or Higher Incomes

The defendants' new regulations establish two different and wholly unequal income eligibility criteria for participation in the Food Stamp Program by equally needy persons. The choice of which criteria to apply is dictated solely by the source of an applicant's income. 7 C.F.R. §271.3(b), as re-promulgated at 41 Fed. Reg. 18788 (May 7, 1976), provides blanket eligibility for all public assistance (PA) households*, thus providing food

*A public assistance (PA) household is one in which every member of the household receives a Federal or State public welfare assistance grant. A non-public assistance (NPA) household is one in which one or more or all of the members do not receive a Federal or State public welfare assistance grant. [See 7 C.F.R. §271.3(b), as re-promulgated at 41 Fed. Reg. 18788 (May 7, 1976)]

stamps to all such households even if their income is above the Federal (June, 1975) Poverty Line. By contrast, the defendants' newly-promulgated regulation, 7 C.F.R. §271.3(c)(3), restricts the eligibility of non-public assistance (NPA) households to those whose income is below an arbitrary income ceiling based upon the Federal (June, 1975) Poverty Line. (Under the previous regulations, as a practical matter -- due to a limitless ceiling on itemized deductions [see 7 C.F.R. §271.3(c)(1)(iii), prior to re-promulgation] -- no such real distinctions in income eligibility standards existed.)

Thus, the new regulations create two classes of persons for the purpose of determining food stamp eligibility. The first class is composed of persons who reside in households in which the household income may exceed the Federal (June, 1975) Poverty Line*, but who receive food stamps because all the members of the household are included in a public assistance grant. The second class is composed of persons having incomes equal to, or lower than, those in the first class -- and who are, thus, at least equally unable to obtain a nutritious diet without food stamps -- but who are denied food stamps solely because all members of the household are not included in a public assistance grant and the household's income is in excess of the Federal (June, 1975) Poverty Line plus the standard deduction of $100 a month. In dollars, this means a four-person household in this class cannot

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*Because the laws governing public assistance programs allow PA households to obtain income from employment while still receiving public assistance benefits, households lawfully can have a combined income from earnings and public assistance benefits which exceed the Federal (June, 1975) Poverty Line by a substantial amount. [See affidavit of Jay C. Lipner, at 5, para. 10(b and c); Id., at Appendices B and C.]

receive food stamps if its gross income exceeds $558 a month.

As is set forth below, the extreme disparity in the treatment accorded these two classes by the defendants' regulations is readily apparent from an examination of the maximum monthly incomes -- well in excess of the $558 monthly food stamp eligibility limit for NPA households -- that four-person PA households can receive and still receive public assistance and, thus, food stamps. Such maximum monthly income eligibility limits for four-person PA households, in various example States, are as follows:

California	$ 850.04
Connecticut	934.06
Michigan	1050.00
Minnesota	1053.43
New Hampshire	779.18
New Jersey	809.10
New York	1293.32
Oregon	849.09
Pennsylvania	961.90
Rhode Island	849.57
Vermont	971.49
Washington	833.77
Wisconsin	975.50

[See affidavit of Jay C. Lipner, at Appendix B] Thus, four-person PA households can have incomes between $558 (the NPA income eligibility limit) and almost $1300 and still qualify for between $60 and $343.20 in food stamp aid [Id., Appendix C], while NPA households are ineligible for aid once they reach the $558 monthly income level.

For seven-member households, the discrimination is even more egregious. NPA households are denied food stamp eligibility if their incomes exceed $783 per month. By contrast, PA households can continue to receive public assistance and, hence, food stamp aid, if their income is well above the $783 monthly income level. This is clearly demonstrated from the public assistance income eligibility limits in the following illustrative States:

California	$1170.83
Connecticut	1253.37
Michigan	1643.81
Minnesota	1379.15
New Hampshire	1007.89

New Jersey	1092.40
New York	2488.24
Oregon	1246.08
Pennsylvania	1249.63
Rhode Island	1163.26
Vermont	1220.42
Washington	1165.40
Wisconsin	1244.82

[Id., at Appendix B] Consequently, seven-person households can have incomes between $783 (the NPA income eligibility limit) and almost $2500 and still qualify for between $60 and $685.20 in food stamp aid [Id., Appendix C], while NPA households are ineligible for aid once they reach the $783 monthly income level.

Except for the different source of their income, the members of both classes are indistinguishable. Yet, nutritionally needy members of the first (PA) class will be provided with food stamp assistance while equally or more needy members of the second (NPA) class will be totally denied aid because of circumstances they are without power to alter. By creating these discriminatory and irrational eligibility rules, defendants have violated the Fifth Amendment's implicit guarantee of Equal Protection.

The Fifth Amendment guarantee of Equal Protection prohibits those classifications which do not rationally relate to and further a legitimate governmental purpose, resulting in discriminatory treatment of similarly situated groups. [Weinberger v. Wiesenfield, 420 U.S. 636 (1975); Jimenez v. Weinberger, 417 U.S. 628 (1974); Reed v. Reed, 404 U.S. 71, 75-76 (1971)]

The defendants' new income eligibility regulations represent precisely the kind of arbitrary and irrational classification prohibited by the Fifth Amendment. It is wholly unrelated to the purposes of the Food Stamp Act. As the Supreme Court observed in United States Department of Agriculture v. Moreno, 413 U.S. 528, 533 (1973), the purposes of the Act were explicitly set forth in its Declaration of Policy. [7 U.S.C. §2011] In the Declaration of Policy, and throughout the Act, Congress clearly stated that its purpose was to guarantee nutritionally needy households the

opportunity to purchase a nutritionally adequate diet. [Rodway v. United States Department of Agriculture, 514 F.2d 809, 819-820 (D.C. Cir. 1975)] While needy members of the PA class are given the opportunity to obtain nutritional adequacy through Food Stamp Program participation, members of the NPA class -- with lower incomes and greater need -- are denied that opportunity on the happenstance that their source of income is not public welfare assistance.* The Supreme Court struck down a Food Stamp Act classification which discriminated against equally needy households on the basis of familial ties [United States Department of Agriculture v. Moreno, 413 U.S. 528 (1973)]; discrimination between equally needy households on the basis of the source of their income is equally irrational.

C. Defendants' Refusal to Allow Working Households to Deduct Mandatory Payroll Withholdings and Essential Work-Related Expenses From the Income Calculation Violates the Food Stamp Act and the Fifth Amendment

1. Violation of the Food Stamp Act

Prior to the new regulations, working households were permitted the following deductions from gross income: (1) mandatory payroll deductions, such as Federal, State and local income taxes, as well as Social Security (FICA) withholdings and union dues;

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*In plaintiffs' memorandum for a preliminary injunction, plaintiffs will document the inadequacy of the Poverty Line as an income eligibility standard for the Food Stamp Program. Moreover, plaintiffs will demonstrate that the Poverty Line -- that the defendants are using for food stamp eligibility purposes from June 1, 1976 to May 31, 1977 -- is the Poverty Line as of June, 1975. Thus, the income eligibility standard of the Food Stamp Program under the new regulations will always be one to two years out-of-date, and households with incomes below the current Poverty Line will be ineligible for food stamps. [See affidavits of Maurice MacDonald, at 2-6; Marshall L. Matz, at 7-10; and Rodney E. Leonard, at 4-7.] Consequently, in addition to violating the dictates of Equal Protection, the NPA eligibility standards established by the defendants violate the Food Stamp Act, which requires that all needy households have access to nutritionally adequate diets. [7 U.S.C. §§2011, 2013(a), 2014(a) and 2016(a)]

(2) 10 percent of gross earned income, not to exceed $30 (to provide compensation for work-related expenses); and (3) child care payments necessary to accept employment. [7 C.F.R. §271.3(c)(1)(iii)(a, b and d), prior to re-promulgation] Additionally, several other itemized deductions were allowed for working and non-working households alike. [See 7 C.F.R. §271.3(c)(1)(iii)(c and e-h), prior to re-promulgation.] The income remaining, after these deductions were computed, was the basis for eligibility and purchase price determinations.

Defendants' revised food stamp regulations premise eligibility for Program participation on a household's gross income, minus a monthly $100 standard deduction. [7 C.F.R. §271.3(c)(1)(i) and (iii), as re-promulgated at 41 Fed. Reg. 18788 (May 7, 1976)] The $100 standard deduction is subtracted from a working household's gross income, and no consideration is given to mandatory payroll withholdings (such as Federal, State and local income taxes, Social Security withholdings, and mandatory union dues) nor to the essential expenses that working household members must incur in order to work (such as transportation to and from work, child care, uniforms and tools).* The effect of the regulations to is to assume the availability of income not in fact available to the household, in clear violation of the Food Stamp Act and the Fifth Amendment.

Mandatory payroll deductions cause a substantial reduction in available income and, therefore, in food purchasing power. For example, a four-person household with a gross income of $558 per month (the maximum income eligibility limit plus the standard deduction), living in Philadelphia, will take home only $479.83 --

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*It is noteworthy to point out that the Food Stamp Act requires able-bodied household members to accept employment as a condition of food stamp eligibility. [See 7 U.S.C. §2014(c)] If an able-bodied household member refuses to accept employment, then the entire household is disqualified from Food Stamp Program aid. [Ibid.; see, also, 7 C.F.R. §271.3(d), prior to and after re-promulgation]

with $78.17 withheld for Federal, State, local and Social Security (FICA) taxes, but not including mandatory deductions for union dues and necessary work-related expenses. [See affidavit of Jay C. Lipner, at Appendix D, p.1.] However, in accordance with the average deductions that such a household would take if all mandatory payroll withholdings and work-related expenses were calculated, such a household would actually have an available income of only $381.27. [Id., at Appendix F, p.1; see, also, affidavit of James Springfield, at Appendix C.] Thus, the household's imputed income -- for Food Stamp Program purposes under the new regulations -- will be considerably higher than the income it actually has available for the expenditure for food.

Similarly, a seven-person household with a gross income of $873 per month (the maximum income eligibility limit plus the standard deduction), living in Philadelphia, will take home only $669.40 -- with $113.60 withheld for Federal, State, local and social Security (FICA) taxes, but not including mandatory deductions for union dues and necessary work-related expenses. [See affidavit of Jay C. Lipner, at Appendix D, p.2.] As a result, merely the deduction of Federal, State, local and Social Security (FICA) taxes will bring the household's actual income below its imputed food stamp income under the regulations. Moreover, in accordance with the average deductions that such a household would take if all mandatory payroll withholdings and work-related expenses were calculated, such a household would actually have an available income of only $592.78. [Id., at Appendix F, p.2; see, also, affidavit of James Springfield, at Appendix C] Thus, the household's imputed income -- for Food Stamp Program purposes under the new regulations -- will be $90.22 per month, or $1082.64 per year, higher than the income it actually has available for the expenditure for food.*

*This calculation does not even include the amount of excess medical expenses or shelter costs that are also unavailable for food and that were previously deducted from the income calculation. [See 7 C.F.R. §271.3(c)(1)(iii)(c and h), prior to re-promulgation.]

As previously established in part III(A)(2) herein [see pp. 25-28, supra.], the Food Stamp Act requires that eligibility and benefit levels be based on currently and actually available income. [United States Department of Agriculture v. Murry, 413 U.S. 508, 512, n.2 (1973); Hein v. Burns, 402 F. Supp. 398, 405 (S.D. Iowa 1975); Turchin v. Butz, 405 F. Supp. 1263 (D. Minn. 1976); Anderson v. Butz, ___ F. Supp. ___, Civil Action No. S-75-401 (E.D. Calif. 12/6/75)] Settled law holds that in analogous need-based public assistance programs, income must mean income in fact currently and actually available. [National Welfare Rights Organization v. Mathews, No. 75-1741 (D.C. Cir., 2/20/76) (prohibiting an HEW regulation valuing resources at gross value rather than net value); National Welfare Rights Organization v. Weinberger, 377 F. Supp. 861 (D.D.C. 1974) (invalidating an HEW regulation that prior overpayments of welfare benefits are currently available and therefore can be recouped from current grants); Cooper v. Laupheimer, 316 F. Supp. 264 (E.D. Pa. 1970) (prohibiting recoupment of past overpayments from current grants, insofar as such income is not currently available)] As this Court stated in National Welfare Rights Organization v. Weinberger, supra:

> The statute excludes from consideration resources or income which are presumed or assumed to be available without any factual basis actually supporting their existence. [377 F. Supp., at 868]

In the instant case, the "income" withheld as payroll deductions, and the "income" which must be spent on work-related expenses, are not available to purchase nutritional adequacy. Accordingly, the new regulations which presume their availability are violative of the Food Stamp Act.*

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*It is noteworthy that the recently-passed Senate Food Stamp Reform bill requires that all mandatory income tax withholdings be deducted from the food stamp income calculation and that working households be allowed an extra $25 monthly deduction for work-related expenses. [See 122 Cong. Rec. S5284 (daily ed. (April 8, 1976).] Numerous Senators criticized the defendants' regulations

Footnote continued.

2. Violation of Equal Protection

The defendants' regulations, premising eligibility and benefit levels on gross income minus a standard $100 monthly deduction, with no additional deductions for mandatory payroll withholdings or work-related expenses, create two classes of food stamp recipients. The first class consists of needy households that derive their income from gainful employment. The second class consists of those needy households that derive their income from unearned sources (such as welfare or unemployment compensation). The sole difference between the two classes is that the former class derives its available income from work, and the latter does not. Nevertheless, households in the latter (unemployed) class are certified based upon actually available income (less the standard deduction) whereas households in the former (employed) class are certified based upon income which is not actually available. Incredibly, the new regulations discriminate against working households.

The discriminatory effect against working families is devastating. For example, a working four-person family in Philadelphia, with $6700 in annual gross income -- but only $5758 in actual take-home pay (subtracting Federal, State, local and Social Security taxes but not union dues or work-related expenses) -- will be ineligible for food stamp aid, even though a non-working four-person Philadelphia household, with $5758 in income (from unemployment compensation or other unearned sources), will qualify for $624 in food stamp aid annually. [See affidavit of Jay C. Lipner, at Appendix D, p.1.] Similarly, a working seven-person family in Philadelphia, with $9400 in annual gross income -- but

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Footnote continued

because they unlawfully fail to deduct mandatory payroll deductions and work-related expenses. See, e.g., statements by Senator Humphrey [Id., at S5242]; Senator Hugh Scott [Id., at S5243]; Senator McGovern [Id., at S5246-5247]; Senator Philip Hart [Id., at 5274]; Senator Leahy [Id., at S5275].

only $8,032.80 in actual take-home pay (subtracting taxes but not union dues or work-related expenses) -- will be ineligible for food stamp aid, even though a non-working seven-person Philadelphia household, with $8,032.80 in income, will qualify for $1094 in food stamp aid annually. [Id., at Apendix D, p.2.] The discriminatory effect in other localities throughout the country is similarly devastating. [See Complaint, Part X, paras. 29-30.]

Except for their employment circumstances, the members of both classes are indistinguishable. Yet, nutritionally needy members of the second (unemployed) class will be provided with food stamp assistance, while equally or more needy members of the first (employed) class will be denied assistance. This unconscionable discrimination against the working poor is not only irrational, it is contrary to the purposes of the Food Stamp Act.

Under the Food Stamp Act, working recipients must continue to work as long as they are able-bodied and the work is suitable. [See 7 U.S.C. §2014(c); 7 C.F.R. §271.3(d).] Unemployed recipients must register for, and accept, suitable work. [Ibid.] These provisions represent a Congressional judgment that food stamp recipients should not be discouraged from working. Yet, the defendants' discrimination against the working poor creates an obvious disincentive to work. Thus, the discrimination does not merely fail to further a legitimate governmental purpose, it wholly frustrates the statute's clear policies.*

In United States Department of Agriculture v. Moreno, 413 U.S. 528 (1973), the Supreme Court struck down a Food Stamp Act classification which discriminated between equally needy households on the basis of familial ties because it was wholly unrelated to the avowed purpose of providing nutritional adequacy. The discrimination against needy working families, as compared to equally needy unemployed households, is equally unrelated to the provision of nutritional adequacy, and it is also contrary to

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*Even the defendants have acknowledged this clear frustration of Congressional purposes, and the establishment of unjustified inequities, as a result of the failure to deduct mandatory payroll withholdings. In their report to the Congress last year, the Agriculture Department concluded:

> Even with a standard deduction it may be desirable to continue to allow participants to deduct mandatory

Footnote continued.

Congressional efforts to create work incentives. Accordingly, the discrimination against the working poor denies them equal protection of law. [See, generally, Weinberger v. Wiesenfeld, 420 U.S. 636 (1975); Jiminez v. Weinberger, 417 U.S. 628 (1974); Reed v. Reed, 404 U.S. 71, 75-76 (1971); Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).]

D. The Defendants' Regulations Requiring All Households to Pay 30 Percent of Adjusted Gross Income for Food Stamp Benefits Violates Section 7(b) of the Food Stamp Act

Under prior regulations, the purchase price charged a household for its food stamps was determined by calculating net, available income (gross income less certain exclusions and deductions) [7 C.F.R. §271.3(c)(1)(ii) and (iii), prior to re-promulgation] and comparing that net income to a chart establishing nationally-uniform purchase requirements. [See, e.g., 40 Fed. Reg. 55655 (Dec. 1 1975).] The chart utilized a variable percentage of household income for the purchase requirement; the actual percentage varied with household size and income, ranging upward by small gradations from zero (for the poorest of households) to higher percentages for larger and higher income households. While one percent of the households paid 30 percent of their net income for food stamps, participating households paid an average of 24 percent of adjusted net income. [See affidavit of Rodney E. Leonard, at 20-21, para. 71; Marshall L. Matz, at 17, para. 81.]

The new regulations require all households -- irrespective of household size, income and expenses -- to pay 30 percent of adjusted gross income (i.e., gross income less $100 per month, or $125 for households containing one or more elderly persons). [41 Fed. Reg. 18794-18798 (May 7, 1976)] As a result of these new regulations, 5.5 million food stamp recipients will be required to pay substantially more for their food stamps. [Affidavit of

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Footnote continued.

payroll withholding for Federal taxes, State taxes, and Social Security. Allowance of these deductions would increase equity between households with income from public assistance which is not taxed and those with earned income that is taxed. This will also maintain work incentives. [Food Stamp Program -- A Report in Accordance With Senate Resolution 58, prepared by the Food and Nutrition Service, USDA, for the Senate Committee on Agriculture and Forestry (July 21, 1975), at 90]

Marshall L. Matz, at 19, para. 85] The overwhelming percentage of these households will be unable to buy their way into the Food Stamp Program and will be unable to obtain nutritionally adequate diets. [See the affidavits of the State Food Stamp Program administrators.]

Section 7(b) of the Food Stamp Act provides that households must pay "a reasonable investment" of their income, "but in no event more than 30 percentum of the household's income" [7 U.S.C. §2016(b)] for their food stamps. As plaintiffs will set forth at far greater length in the memorandum for a preliminary injunction, the Congressional intent behind section 7(b) -- as reflected by an overwhelming abundance of legislative history -- is that food stamp purchase prices should be reasonably and flexibly calculated so that eligible needy families can afford to buy their way into the Food Stamp Program. Moreover, that legislative history clearly reflects the intent of Congress that food stamp purchase prices not be established at an inflexibly uniform 30 percent of adjusted net income (let alone 30 percent of adjusted gross income), and that "a reasonable investment" shall constitute a sliding (percentage of adjusted net income) scale, with the poorest families paying considerably less than 30 percent of their adjusted net incomes.

Although the most abundant legislative history (that plaintiffs will set forth in their preliminary injunction motion memorandum) occurred contemporaneously with the 1971 Food Stamp Act amendments,* recent legislative actions clearly underscore the Congressional conclusion that a flat 30 percent of income charge violates section 7(b). When the defendants promulgated

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*P.L. 88-525 (Aug. 31, 1964), 78 Stat. 705, section 7, required households to pay "the equivalent to their normal expenditures for food" for food stamps. That statute was amended in 1971 to the current version of section 7(b). [P.L. 91-671 (Jan. 11, 1971), 84 Stat. 2048]

a regulation last year that all households pay 30 percent of their adjusted net income for food stamps [40 Fed. Reg. 3483-3484 (Jan. 22, 1975)], Congressional reaction was swift. By a 374 to 38 margin in the House of Representatives [121 Cong. Rec. H505 (daily ed., Feb. 4, 1975)], and by a 76 to 8 margin in the Senate [121 Cong. Rec. S1593-1594 (daily ed., Feb. 5, 1975)], food stamp purchase prices were frozen throughout 1975 at prior levels -- effectively nullifying the defendants' regulation.

During the debate, speaker after speaker condemned the flat 30 percent (of adjusted net income) charge as a violation of the Food Stamp Act. [See, e.g., 121 Cong. Rec. S1579 (daily ed., Feb. 5, 1975) (remarks of Senator Humphrey); id., at S1575 (colloquy between Senator McGovern and Senator Curtis); 121 Cong. Rec. H491 (daily ed., Feb. 4, 1975) (remarks of Rep. Richmond); id., at H489 (remarks of Rep. Abzug).] Congress limited the duration of the price freeze in anticipation of enacting broad food stamp reform legislation; but it clearly did not intend the expiration of 1975 to authorize a return to a flat 30 percent (of adjusted net income) purchase price. [See 121 Cong. Rec. S1572-1573 (daily ed., Feb. 5, 1975) (remarks of Senator Dole); id., at S1573, S1575 (remarks of Sen. McGovern); id., at S1575 (remarks of Senator Curtis); 121 Cong. Rec. H483 (daily ed., Feb. 4, 1975) (remarks of Rep. Wampler); id., at H491 (remarks of Rep. Daniels)]

Despite this clear indication of Congressional purpose, the defendants' new regulations go one step further in the direct opposite direction that Congress intended. The new regulations will require households to pay a flat 30 percent of adjusted gross income for their food stamps. Hence, the new regulations violate the "reasonable investment" standard of section 7(b) of the Act and clear Congressional intentions pursuant thereto.

On April 8, 1976, the Senate -- during the pendency of the proposed regulations -- passed a comprehensive Food Stamp Reform

bill. That bill, which was offered as a substitute to the Committee's bill,* mandates that food stamp purchase prices shall be 25 percent of adjusted net income. [122 Cong. Rec. S5284-5285 (daily ed., April 8, 1976)] One of the sponsors of that bill, Senator Hugh Scott, compared the Senate bill to the proposed (and now final) regulations, and he clearly indicated how the regulations violate the current Food Stamp Act:

> One of the most important features of the substitute bill is our retention of the 25-percent purchase requirement. Current law states that food stamp purchase prices should represent a reasonable investment on the part of eligible households, meaning that food stamp purchase prices should not be too high so that eligible households are forced out of the food stamp program due to overly high prices.
>
> The current regulations establish food stamp prices that average 24 percent of net income minus various itemized deductions. New regulations, recently published by the Department of Agriculture, would increase these purchase prices to 30 percent of gross income minus a standard deduction. This newly proposed price system would increase food stamp purchase prices even higher than the purchase price increases that the Agriculture Department sought to implement last year but were overwhelmingly rejected by the Congress. As a result, vast numbers of needy people will be forced out of the food stamp program. Consequently, these prices constitute an unreasonably high investment on the part of hungry families. [122 Cong. Rec. S5243 (daily ed., April 8, 1976)]

Similarly, Senator Humphrey -- a co-sponsor of the substitute, and a member of the Senate Committee on Agriculture and Forestry as well as the Senate Select Committee on Nutrition and Human Needs -- commented on the 30 percent purchase requirement regulations after he analyzed the content of his substitute bill. In

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*When the Senate Committee on Agriculture and Forestry reported out its bill, it noted in its report that the bill "modifies the current sliding scale of coupon purchase requirements..." [Sen. Rep. No. 94-697, 94th Cong., 2d Sess. (March 13, 1976), at 17] Thus, the Committee implicitly restated the statutory requirement that purchase prices not be a flat, uniform 30 percent of income.

so doing, he indicated in unmistakably clear terms that the new regulations violate the "reasonable investment" standard in the current Food Stamp Act. He stated:

> The new regulations with regard to increasing the food stamp purchase requirement -- from an average 24 percent of adjusted net income to a uniform 30 percent of adjusted net gross income -- is also illegal. The statute requires that food stamp purchase prices constitute a reasonable investment and that they remain within 30 percent of adjusted income ceiling. We never intended that an across-the-board 30 percent of adjusted gross income be established. Quite the contrary. Such a system would make the food stamp program out of reach for millions of needy Americans since they could not afford the food stamp purchase prices.
>
> Consequently, these increases in the purchase price do not constitute a reasonable investment on the part of most needy households, and they violate section 7(b) of the Food Stamp Act. Indeed, we made precisely such a finding last year when we rejected the President's proposal to increase food stamp prices to 30 percent. [122 Cong. Rec. S5242 (daily ed., April 8, 1976)]

Other remarks clearly buttressed the conclusions of Senators Scott and Humphrey that the new regulatory purchase prices represent an unreasonable investment and violate section 7(b) of the Act. [See 122 Cong. Rec. S5247 (daily ed., April 8, 1976) (remarks of Senator McGovern); id., at S5269 (remarks of Senator Clark); id., at S5272-5273 (remarks of Senator Philip Hart); id., at S5274 (remarks of Senator Leahy); id., at S5276 (remarks of Senator Javits).]

As the affidavits of State Food Stamp Program administrators explicitly conclude, the new regulatory purchase requirements: "will make the cost of stamps unreasonably high and will drive needy people from the Program" [affidavit of Edward W. Maher (Connecticut), at 2, para. 7]; will cause a "large percentage of Montana's current food stamp caseload -- especially the persons who a receiving Social Security, Supplemental Security Income Program relief, and old age pensions -- ...to drop out of the Food Stamp Program because they cannot afford to pay more for their food stamps" [affidavit of Jack Carlson (Montana), at 2, para. 6];

will force 28 percent of South Dakota's PA caseload to drop out of the Program because they "will be unable to participate due to the unreasonably high purchase prices" [affidavit of Orval Westby (South Dakota), at 2, para. 4]; "will make it virtually impossible for many indigent households in Georgia to pay for their food stamps" and the purchase price regulations, therefore, "will increase incidences of hunger and malnutrition" [affidavit of Betty R. Bellairs (Georgia), at 2, para. 5]; will be "far too expensive" and "will cause many households to lose food aid that is essential to them" [affidavit of Francis S.L. Williamson (Alaska), at 4, para. 11]; will cause "many families" to be "unable to participate [in the Program] because they won't be able to afford the price of the stamps" [affidavit of Charles Lopez (New Mexico), at 2, para. 6]; "will make those prices unreasonably high and will drive thousands of people out of the Food Stamp Program" and, consequently, "we will be faced with a situation in which large numbers of eligible and needy people -- who do not have access to adequate nutrition -- will be unable to buy their way into the Food Stamp Program" [affidavit of Ann Klein (New Jersey), at 5, para. 16]; will render "63 percent of our public assistance population...unable to participate in the Food Stamp Program as a result of these new high purchase requirements." [Affidavit of Charles Smith (Delaware), at 2, para. 8]

These findings are typical of State Food Stamp Program administrators in virtually every area. [See, also, the affidavits of Vera Likins (Minnesota), at 3-4, para. 12; Horace Bass (Tennessee), at 2, para. 4; Janet L. Partridge (Washington, D.C.), at 1-2, para. 5; L.E. Rader (Oklahoma), at 2, para. 4; Ewing B. Gourley (Missouri), at 2, para. 6; Paul Levecque (Maine), at 2, para. 5; Dwayne Prather (Oregon), at 4, para. 8; John T. Dempsey (Michigan), at 4, para. 13; Marjorie T. Stewart (Louisiana), at 2, paras. 6-7; Robert Dugan (Rhode Island), at 2, para. 6; John H. Baw (Arkansas), at 3, para. 7; Paul R. Philbrook (Vermont), at 4,

para. 12; Sidney T. Brooks (New York City), at 2, para. 6] Consequently, it is extraordinarily clear that the new food stamp purchase prices are far too high, and they constitute an unreasonable investment in violation of section 7(b) of the Food Stamp Act. [7 U.S.C. §2016(b)]

E. The Regulatory Exclusion of Minors Who Do Not Reside With Legally Responsible Relatives Violates the Food Stamp Act

Under the Food Stamp Act, households which satisfy the economic and work requirements set forth in section 5 of the Act [7 U.S.C. §2014] must be provided with food stamp aid. Section 4(a) of the Act plainly requires that "eligible households within the State shall be provided with an opportunity to obtain a nutritionally adequate diet through the issuance to them of a coupon allotment..." [7 U.S.C. §2013(a)] However, a condition precedent for eligibility in the Program -- and hence entitlement to food stamp aid -- is that a person, or group of persons, be deemed a technical "household"; eligibility for Program benefits is predicated on a statutory "household" status. [See, e.g., 7 U.S.C. §§2011,2012(b,d and m), 2013(a-b),2014(a-c),2015(a-c),2016(a-c),2019(b,c,e,and h), and 2026.]

The Food Stamp Act specifically sets forth the Program's technical definition of the term "household." Section 3(e) of the Act, in its relevant part, states as follows:

> The term "household" shall mean a group of related individuals* (including legally adopted children and legally assigned foster children) or non-related individuals over age 60 who are not residents of an institution or boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common. The term "household" shall also mean (1) a single individual living alone who has cooking facilities and who purchases and prepares food for home consumption, (2) an elderly person who meets the requirements of section 10(h) of

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*The statutory requirement that a group of individuals be related -- in order to qualify as a Program "household" -- is no longer statutorily operative insofar as that requirement was invalidated, as being violative of Equal Protection, by the United States Supreme Court. [United States Department of Agriculture v. Moreno, 413 U.S. 528 (1973)]

> this Act, or (3) any narcotics addict or alcoholic who lives under the supervision of a private nonprofit organization or institution for the purpose of regular participation in a drug or alcoholic treatment and rehabilitation program.... [7 U.S.C. §2012(e)]

Thus, for a group of individuals that do not live in an institution or boarding house, they qualify as a household, for Food Stamp Program purposes, if: (1) they live as one economic unit; (2) they share common cooking facilities; and (3) they purchase food in common. Similarly, a single person qualifies as a household, for Food Stamp Program purposes, if: (1) [s]he lives alone; (2) [s]he has cooking facilities; and (3) [s]he purchases and prepares food for home consumption.

Contrary to this clear statutory definition of a "household," the defendants' new regulations exclude from the "household" definition: any minor who is not living with a person who has a legal duty to support him/her, or does not have a person or agency acting in a capacity of in loco parentis, if another person outside of the household has a legal obligation and ability to support said minor. The new regulation, set forth at 7 C.F.R. §271.3(f) [41 Fed. Reg. 18790 (May 7, 1976)], states as follows:

> (1) No individual who is a minor in the State where application is made shall be considered a household member for Food Stamp Program purposes if such minor resides in a household in which no other member has a legal duty to support such minor, unless: (a) the individual who has a duty to support such minor is financially unable to perform such duty and so certifies; (b) such individual cannot be found or does not exist; or (c) an adult or public or private agency stands in loco parentis.
>
> (2) Notwithstanding any other provisions of this subchapter, the income and resources of an individual who is not considered a household member under subparagraph (1) of this paragraph and who resides with eligible household members or elderly persons, shall not be considered available to the household members of elderly persons nor shall his presence be considered in determining the household's eligibility and coupon allotment.

> (3) Notwithstanding any other provisions of this subchapter verification of the financial inability of an individual having a duty to support a minor, even though he has a duty to do so, will be required whenever the financial status of such individual is questionable. Because the individual having the duty of support is ordinarily the best source of the information, the failure of such an individual to respond to the request for verification will be grounds for considering the minor as not being a household member of the household in which he resides, although the remainder of such household may be certified if otherwise eligible. However, the minor shall, through the fair hearing procedures under §271.1(o), have an opportunity to demonstrate that the individual having the duty of support is unable to do so. (emphasis added)

The effect of this regulatory provision will be to exclude from the "household" definition, and hence from the Food Stamp Program, minors living apart from individuals legally responsible for their support unless the minor can prove that the legally responsible adult is unable to provide support, or such an adult does not exist, or there is a person or agency that stands in loco parentis to the minor. Under the defendants' regulations, therefore, a minor residing apart from legally-responsible relatives will not qualify as a "household" member for Food Stamp Program purposes unless he/she can demonstrate one of the three extenuating circumstances. Thus, a minor who is neglected or who has been abandoned by his/her parents, may not be included in the "household" definition -- and may not obtain food stamp aid -- even though said minor is hungry and destitute.

Plaintiffs Nancy Mitchell (who is 15 years old) and Carie Stedtfeld (who is 17 years old) are extremely needy and live away from their parents. They both are receiving substantial food stamp aid currently. Their parents are locatable and have an obligation to support them but refuse to do so; both plaintiffs were ordered out of the homes of their parents and have been abandoned. Plaintiff Mitchell is pregnant, and plaintiff Stedtfeld has a two-month old son. As a result, the regulatory

denial of food stamp aid to the plaintiffs will have severe and irreparable consequences for themselves and their infants. [See the affidavits of Nancy Mitchell and Carie Stedtfeld.]

Defendants' minors regulation clearly alters the Congressional definition of a "household"; in so doing, it excludes from the Program those whom Congress intended to assist, and thus violates the statutory prohibition against regulations which are inconsistent with the Act. [7 U.S.C. §2013(c)] In Knowles v. Butz, 358 F. Supp. 228 (N.D. Calif. 1973), the District Court held the defendants were without power, under the Food Stamp Act, to define households in a manner different from the statutory definition in section 3(e). The Court observed that:

> in this particular case, there is little that the Secretary may properly interpret, because in §2012(e) the statute provides a definition of the term "household." Thus, the Secretary's rulemaking power is limited in this case, despite the express statutory authorization. [Id., at 231]

Like the regulation invalidated in Knowles v. Butz, the new regulation varies from the statutory definition of a "household" and must therefore fall before 7 U.S.C. §2012(e).* As this Court observed in Bermudez v. United States Department of Agriculture, 348 F. Supp. 1279 (D.D.C. 1972), aff'd, 490 F.2d 718 (D.C. Cir.), cert. denied, 414 U.S. 1104 (1973):

> The federal eligibility standard creates a class to whom stamps must be issued and the standard can only be altered by Congress itself. [Id., at 1281, n.4] (emphasis added)

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*It is noteworthy to point out that the Senate Committee on Agriculture and Forestry, when it reported out its Food Stamp Reform bill, included a provision on minors that is identical in intent and effect as the challenged regulation. [See Sen. Rep. No. 94-679, 94th Cong. 2d Sess. (March 13, 1976), at 16, 27 and 110.] However, when the bill came to the floor of the Senate, a substitute bill was passed in its place that specifically excluded this minors provision. [See 122 Cong. Rec. S5283-5288 (daily ed., April 8, 1976).] In so doing, numerous Senators indicated that the regulatory minors provision violates the current Food Stamp Act. [Id., at S5270 (remarks by Senator Clark); id., at 5242 (remarks by Senator Humphrey); id., at S5247 (remarks by Senator McGovern)]

The principle is settled law. [Carleson v. Remillard, 406 U.S. 598 (1972); Townsend v. Swank, 404 U.S. 282 (1971)] The new regulation is in defiance of that law and, accordingly, its implementation should be enjoined.

F. The Revised Regulatory Work Requirements Violate the Food Stamp Act and the Fifth Amendment

Under the previous regulations, non-exempt, able-bodied household members were required to: register for employment with the relevant Federal or State employment service; report for interviews at those offices; accept bona fide offers of suitable employment referred by those offices; and continue suitable employment referred by such offices. [7 C.F.R. §271.3(d)(1)(i-v), prior to re-promulgation] If a household member refused, without good cause, to comply with any of these requirements, the entire household was ineligible for food stamps for one year, or until the household member complied, whichever was earlier. [7 C.F.R. §271.3(d)(2)(i-ii), prior to re-promulgation]

Under the revised regulations, non-exempt, able-bodied household members must, in addition to previous requirements, "[i]nquire regularly about employment with prospective employers whether or not such member is referred to such employers by the State or Federal employment office, and regularly engage in activities directly related to securing employment." [7 C.F.R. §271.3(d)(1)(iv), as re-promulgated at 41 Fed. Reg. 18789 (May 7, 1976)] If a household member fails to comply with the requirement, the entire household is ineligible until the household member leaves the household or resumes an independent job search. [7 C.F.R. §§271.3(d)(2)(i) and 271.3(d)(2)(ii)(E), as re-promulgated at 41 Fed. Reg. 18789 (May 7, 1976)] Job search activities must be undertaken even if households reside in an area of high unemployment. The regulations provide no further definition of the nature,

scope and extent of the required activity.

1. Violations of the Food Stamp Act

a. Violation of Section 5(c) of the Act

Since the 1971 revision of the Food Stamp Act, eligibility has been dependent upon two criteria specifically set forth in section 5 of the Act: (1) under section 5(b), income and resources cannot exceed national maximums established by the Secretary [7 U.S.C. §2014(b)]; and (2) under section 5(c), non-exempt household members must register for work and accept suitable employment. [7 U.S.C. §2014(c)] While the prior regulations tracked the statutory work registration requirement, the revised regulations expand, alter, and amend the specific work registration requirement of section 5(c).

Because section 5(c) is quite specific, the defendants have no authority to add to it a job-search requirement. It is settled that "where the provisions of [an] act are unambiguous and its directions specific, there is no power to amend it by regulation." [Koshland v. Helvering, 289 U.S. 441, 447 (1936). See, also, United States v. Calamaro, 354 U.S. 351 (1957); Campbell v. Galeno Chemical Co., 281 U.S. 559 (1930); Massachusetts Medical Society v. United States, 514 F.2d 153 (1st Cir. 1975).] In Knowles v. Butz, 358 F. Supp. 228 (N.D. Calif. 1973), a case arising under the Food Stamp Act, the Court invalidated defendants' definition of a "household" because it differed from the specific statutory definition. Because Congress has specified the contours of the work registration requirement, the defendants have no power to redraw them. Indeed, not only does the new regulation expand and alter the specific statutory work requirement in section 5(c), but, in so doing, it frustrates the very careful and lengthy deliberations and compromises that Congress reached when it enacted the work requirement in 1971. [P.L. 91-671 (Jan. 11, 1971), 84 Stat. 2048; see, e.g., House Rep. No. 91-1402, 91st

Cong., 2d Sess. (Aug. 10, 1970), at 10-11 (stating that "this [work] amendment is the result of long and arduous debate and deliberation in the committee"); 116 Cong. Rec. 41979-42035 (Dec. 16, 1970)]

The effect of the job search requirement is to add an eligibility criterion which is not authorized by the Act. The Supreme Court has repeatedly held invalid the imposition of public assistance eligibility criteria not authorized by statute.* [Philbrook v. Glodgett, 421 U.S. 707 (1975); Lascaris v. Shirley, 420 U.S. 730 (1975); Carleson v. Remillard, 406 U.S. 598 (1972); Townsend v. Swank, 404 U.S. 282 (1971); King v. Smith, 392 U.S. 309 (1968)] Because the job search requirement is not authorized by section 5(c) of the Act, it is invalid.

b. Violation of Section 5(b) of the Act

Under section 5(b) of the Food Stamp Act, the defendants must "establish uniform national standards of eligibility for participation by households in the food stamp program..." [7 U.S.C. §2014(b)] (emphasis added) Contrary to this explicit requirement, the job-search regulations give the various States authority to define the job-search requirements as they see fit. Indeed, the defendants refused many requests by State agencies to further define job searches, stating:

> FNS has not further defined job search as requested by a number of comments. The regulatory language has purposely been left broad enough to enable FNS to cooperate with the States in order to accommodate the varying needs of divergent economic circumstances. [41 Fed. Reg. 18784 (May 7, 1976)]

As a result, States must define "regularly" and "activities directly relating to securing employment." The inevitable result

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*New York Department of Social Services v. Dublino, 413 U.S. 405 (1973), allowing New York to impose additional work rules on a cooperative State-Federal welfare program, is inapposite. Dublino was predicated upon the cooperative nature of AFDC; the State's contribution of a substantial portion of the benefits gave rise to a separate State regulatory power. By contrast, USDA is not an independent entity which participates financially in a Federal program; it is, in essence, an agent of Congress whose sole interest is the enforcement of the law as it is written.

will be a hodgepodge of interpretations, varying from State to State, locality to locality, and caseworker to caseworker. As Philip L. Toia, Commissioner of the New York State Department of Social Services, stated:

> A further burden placed on recipients and State food stamp workers is the new job search regulation. This regulation is not administratively feasible and is unrealistic due to current economic conditions. Currently, New York's unemployment rate is nearly 11%. To superimpose a vague job search requirement, in addition to work registration with an employment office, is insensitive to the actual employment situation in the State of New York.
>
> Equally important is how such a requirement will be administered. No definitions or guidelines have been provided on: what constitutes an appropriate job search; how many inquiries about employment are necessary; or what constitutes evidence to show an adequate search was actually undertaken. USDA is proposing an unenforceable regulation which will only lead to increased errors in our eligibility determinations.... [Affidavit of Philip L. Toia, at 4-5, paras. 8-9] (emphasis added)

Similarly, Ann Klein, the Commissioner of New Jersey's Department of Institutions and Agencies, stated:

> The new search-for-work regulations will be difficult to administer, and will create uneven standards of enforcement, because the Agriculture Department has not provided clear guidelines to state agencies for the purpose of determining what constitutes an adequate search-for-work. [Affidavit of Ann Klein, at 7, para. 23]

[See, also, affidavits of Betty R. Bellairs (Georgia), at 3, para. 13; Jack Carlson (Montana), at 5, para. 15; John T. Dempsey (Michigan), at 4, para. 14; Ramon Garcia Santiago (Puerto Rico), at 3, para. 9.] Thus, there will be no nationally uniform eligibility standard relating to job-searches. Accordingly, the job-search regulations violate section 5(b) of the Food Stamp Act. [7 U.S.C. §2014(b)]

2. The Job-Search Requirement is Unconstitutionally Vague

Food stamp recipients have a due process interest in continued receipt of benefits. [See, e.g., United States Department of Agriculture v. Murry, 413 U.S. 508 (1973); Bermudez v. Butz, 490

F.2d 710 (D.C. Cir. 1973), cert. denied, 414 U.S. 1104 (1973); Stewart v. Butz, 356 F. Supp. 1345 (W.D. Ky. 1973), aff'd., 491 F.2d 165 (6th Cir. 1974)] Due process, in criminal and civil contexts, prohibits a regulatory provision, affecting protected property interests, which is so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. [Connolly v. General Construction Co., 269 U.S. 385 (1926); Brennan v. Occupational Safety and Health Review Commission, 505 F.2d 869 (10th Cir. 1974); Undergraduate Student Association v. Peltason, 367 F. Supp. 1055 (N.D. Ill. 1973); Tyson v. New York City Housing Authority, 369 F. Supp. 513, 520 (S.D. N.Y. 1974)]

The revised regulations fail to provide recipients any ascertainable standard to determine what is required to comply with the job-search requirements. Consequently, a recipient cannot determine whether he must reply to every daily want ad, ask for work in every commercial establishment, advertise his availability for work on bulletin boards or in newspapers, or conduct some other job-search activity. Since the regulations set no ascertainable standards for determining compliance, they leave that determination to the whim and caprice of individual certification workers. Accordingly, the job-search regulations are void for vagueness.

3. The Revised Work Requirement Unlawfully Eliminates the Food Stamp Act's Minimum Wage Requirement For Piece-Rate Work

Section 5(c) of the Food Stamp Act [7 U.S.C. §2014(c)] provides that a recipient may refuse offered employment which pays less than the applicable Federal minimum wage. Under the Fair Labor Standards Act, the applicable minimum hourly wage must be paid even though an employer calculates wages on a piece-rate or job basis. [29 C.F.R. §800.111] In recognition of Congressional intent, the previous regulation deemed employment unsuitable

when:

> [t]he employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified under subdivision (i) of this subparagraph. [7 C.F.R. §271.3(d)(3)(ii), prior to re-promulgation]

However, the revised regulations delete this important and essential protection for piece-rate workers. Thus, migrant farmworkers and other piece-rate workers must accept sub-minimum wages for piece-rate work or risk loss of their food stamp assistance. Accordingly, 7 C.F.R. §271.3(d)(3), as re-promulgated at 41 Fed. Reg. 18789 (May 7, 1976), violates section 5(c) of the Food Stamp Act. [7 U.S.C.§2014(c)]

G. The Defendants' Cash and Coupon Accountability Regulations Violate Section 4(c) of the Food Stamp Act

Prior to the recent re-promulgation of the food stamp regulations, defendants imposed reasonable cash and coupon accountability requirements upon State agencies and vending agents. [7 C.F.R. §271.6, prior to re-promulgation] Those regulatory provisions struck an appropriate balance between efficient accountability and efficient operation, enabling States (which must pay 50 percent of all administrative costs) [7 U.S.C. §2024(b)], to operate within their legislatively-imposed budget constraints. However, the revised cash and coupon accountability regulations burden State agencies with greatly increased costs, fail to take into consideration State laws which prohibit certain regulatory requirements, and generate vast and needless additional administrative efforts, contributing to general administrative chaos.

Under 7 C.F.R. §271.6(h), as re-promulgated at 41 Fed. Reg. 18792 (May 7, 1976), State agencies must establish a special bank account to be used solely for the deposit of coupon sales. Funds transmitted by coupon vendors to the State must be deposited into the account each day, and each day, all funds deposited into

the account on the previous day must be transmitted to the appropriate Federal Reserve Bank. [Ibid.] Under past practice, vendors simply transmitted funds directly to Federal Reserve Banks.

The revised cash accountability procedures will generate chaos. The required special checking accounts are illegal in a number of States. Those States which sell coupons directly will have to cease coupon sales in time to deposit funds in banks which, in rural areas, may be many miles away; thus, many eligible recipients will only be able to purchase food stamps in morning hours.

In those States in which banks sell food stamps, the results will be particularly egregious. In the past, banks transmitted coupon receipts directly to Federal Reserve Banks -- a process consuming 24 hours from beginning to arrival of funds. Now, those banks must transmit the funds to a central State bank account, a more cumbersome process for which the State will be charged. [Ibid.; see, also 7 C.F.R. §271.7, as re-promulgated at 41 Fed. Reg. 18792 (May 7, 1976).] Thereafter, the State must transmit the same funds to the Federal Reserve Bank. [Ibid.]

This process must be repeated daily [Ibid.], creating substantially extra work and expense for banks and State agencies. Inevitably, some banks will discontinue selling stamps, imposing hardships on recipients as well as State agencies. The requirement of a single, centralized State account -- virtually impossible to implement in States where the Program is separately administered in each county, or where such accounts are illegal -- establishes an extraordinary burden on State agencies as an apparent cure for defendants' own failure to properly monitor the direct transmittal system. To impose that burden on States operating with limited budgets is to ensure the ineffective and inefficient administration of the Food Stamp Program in contravention of 7 U.S.C. §2013(c).

Similarly, 7 C.F.R. §271.6(f), as re-promulgated at 41 Fed. Reg. 18792 (May 7, 1976), imposes new burdens on State agencies. For the first time, States must account every month for coupon inventories, coupon issuances, sums received, and must also reconcile coupon issuances to a master eligibility file. Piled atop the daily cash accounting procedures, the provisions create double bookkeeping which will require substantially increased staff.

In combination, the new cash and coupon accountability regulations will create an expensive and unmanageable administrative morass which may be impossible to administer. As Jack Carlson, Administrator of the Economic Assistance Division of the Montana Social and Rehabilitation Services Agency, stated:

> [T]he new coupon accountability regulations are completely unworkable in a large but sparsely populated state like Montana. Frequently, many of our food stamp vendors are not within a daily driving distance of a banking institution and, consequently, daily depositing of food stamp coupons will be an impossibility. Also, we see the imposition of new cash and coupon accountability regulations as causing substantial damage to the administration of the Food Stamp Program. These regulations will bring about an additional drain on county and State agency staffing and will result in new or increased charges for bank services -- which, in turn, may very well result in banks refusing to service the Food Stamp Program. As a result, many recipients will be denied the opportunity to purchase food stamps, thereby effectively denying them access to nutritionally adequate diets. [Affidavit of Jack Carlson, at 6, para. 18]

Similary, Orval Westby, the Secretary of the South Dakota Department of Social Services, set forth the administrative impracticability of the cash and coupon accountability regulations. He stated:

> The new regulations concerning cash and coupon accountability will cause immediate negative results to the operation of the Food Stamp Program in South Dakota. The provision that requires us to renegotiate issuance contracts with 65 county and tribal governments, and establishing various fiscal sanctions in those contracts, will probably result in several counties abandoning their role in the Food Stamp Program.

> The daily cash deposit requirements are not administratively feasible for a number of reasons. First, many cashiers are part-time employees of county government. Second, many cashiers sell coupons no more than two times each month and would have to cut already limited sale hours to reconcile cash transactions and purchase bank drafts. Third, several cashiers, including those cashiers whose services are available daily, are not within a reasonable driving distance of a banking institution at the end of the sale day.
>
> As a result of these new accountability provisions, we expect that banks previously providing services at no charge will charge for their services.
>
> The new cash and coupon accountability provisions will also have an immediate and negative effect on issuance personnel, many of whom are part-time employees, and many of whom are county employees whose issuance activities are secondary to their primary duties. They will be unable to perform their work responsibilities properly.
>
> The provision requiring us to transmit consolidated deposits to appropriate Federal Reserve Banks "on a daily basis" will cause a major conflict within established state accounting schedules. The State of South Dakota presently processes financial transactions, both revenue and expenditures, on a twice-a-week schedule. This schedule has been established based on sound budgetary reasons and has been found to be consistent with demands from our central system users. In addition, this schedule has been found to be compatible with the computer time available for operating our central accounting system. The implementation of these regulations will have a major negative impact on the State's financial system. The imposition of both cash and coupon accountability regulations is viewed as seriously damaging to the administration of the program and a serious drain for county, tribal and state agencies' staffing patterns, and the regulations appear particularly unreasonable as no one concerned will have the opportunity to program cost increases into the budgeting process. [Affidavit of Orval Westby, at 6-7, paras. 15-19]

That these cash and coupon accountability regulations will create an ineffective and inefficient Program operation -- more aptly viewed as an administrative morass -- is verified by other State Food Stamp Program directors as well. [See, e.g., affidavits of Edward W. Maher (Connecticut), at 4-5, paras. 13-14; Paul Levecque (Maine), at 5, paras. 13-14; Vera Likins (Minnesota), at 6-7, paras. 18-21; Gerald Thomas (Washington), at 3, para. 7;

Charles Smith (Delaware), at 4, para. 18; Raymond W. Vowell (Texas), at 5, paras. 13-14; Ann Klein (New Jersey), at 8, para. 27; Marjorie T. Stewart (Louisiana), at 6, para. 22.] Insofar as these regulations are extraordinarily inefficient and ineffective, they clearly violate section 4(c) of the Food Stamp Act. [7 U.S.C. §2013(c)]

H. The Defendants' Regulations Are Violative of the Administrative Procedure Act

The plaintiffs' claims under the Administrative Procedure Act (hereinafter "APA") are set forth in part XV of the Complaint. A thorough analysis of those claims will be set forth in plaintiffs' memorandum for a preliminary injunction. In this memorandum, plaintiffs will merely set forth the APA stanadards that are applicable to this controversy and will list several examples of the defendants' non-compliance with those standards. However, in the memorandum in support of plaintiffs' preliminary injunction motion, a much more detailed analysis of defendants' non-compliance with those standards will be prepared.

Although the Food Stamp Program involves public grants or benefits, it is established that the Department of Agriculture is required to follow the informal rulemaking provisions of section 4 of the APA in promulgating regulations in that Program. [See 36 Fed. Reg. 13804 (July 24, 1971); Rodway v. United States Department of Agriculture, 514 F.2d 809, 814 (D.C. Cir. 1975).]

In promulgating the regulations at issue in this case, it might appear, from a superficial reading, that the defendants complied with the Act. A Notice of Proposed Rulemaking was published at 41 Fed. Reg. 8501 et seq. (Feb. 27, 1976). Comments were submitted and the proposed regulations were published together with what purports to be the basis and purpose statement required by 5 U.S.C. §553(c) at 41 Fed. Reg. 18781 et seq. (May 7, 1976).

On closer analysis, however, it is evident that the defendants have not met the requirements of the APA. The Court of Appeals for this Circuit has established standards for compliance with the informal rulemaking provisions of 5 U.S.C. §553. [See National Welfare Rights Organization v. Mathews, ___ F.2d ___ (D.C. Cir., 2/20/76, Slip Opinion, at 23-26); Amoco Oil Co. v. Environmental Protection Agency, 501 F.2d 722, 739 (D.C. Cir. 1974); Rodway v. United States Department of Agriculture, 514 F.2d 809, 817 (D.C. Cir. 1975); Portland Cement Association v. Ruckelhaus, 486 F.2d 375, 393 (D.C. Cir. 1973).] The more recent of these cases specifically adopt much of the substance of Circuit Judge J. Skelly Wright's views expressed in his article, "The Courts and the Rulemaking Process: The Limits of Judicial Review," 59 Cornell L. Rev. 375 (1974), and specifically his analysis at pages 394-95 of that article.

The general principle which emerges from these cases is that the informal rulemaking procedure must operate to create an administrative record which will permit a reviewing Court to apply the "arbitrary and capricious" standard of section 7 of the APA. [5 U.S.C. §706(2)(A)] The Court of Appeals adopted Judge Wright's summary of the requirements of section 553 in the recent National Welfare Rights Organization v. Mathews decision, supra:

> Step one of section 553 will yield the agency's initial proposal, its tentative empirical findings, important advice received from experts, and a description of the critical experimental and methodological techniques on which the agency intends to rely. Step two will produce the written or oral replies of interested parties to the agency's proposals and to all the other "step one" materials. And step three will furnish the final rule, accompanied by a statement both justifying the rule and explaining its normative and empirical predicates through reference to those parts of the record developed in steps one and two. [Slip Opinion, at 25; quoting from 59 Cornell L. Rev., at 395]

In the present action, the defendants have failed at step one, the notice stage, to disclose information necessary to allow for

effective participation by commentors in step two of the process. The defendants also failed to comply with the standards set by the Court of Appeals for step three, the basis and purpose statement.

The standards to be applied in judging the adequacy of the notice of proposed rulemaking must be viewed in light of the rights interested parties have to comment on the proposal, as guaranteed by 5 U.S.C. §553(c) -- a right described by Professor Davis as "the mainstay of rule-making procedure" and "the principal requirement of the APA." [1 Davis, Administrative Law Treatise, para. 6.02, at 363 (1958)] When factual issues are presented, such as a financial eligibility standard, the agency must disclose (in the initial notice) tentative empirical findings upon which the eligibility standard was based and the method by which that standard was developed. [National Welfare Rights Organization v. Mathews, supra.; Portland Cement Association v. Ruckelhaus, 486 F.2d 375, 393 (D.C. Cir. 1973)] Even where regulations involve only policy judgments for which empirical findings are inappropriate, it is incumbent upon the agency to articulate the underlying policy considerations which prompted the proposal for change. [National Welfare Rights Organization v. Mathews, supra., Slip Opinion, at 23, n.17; cf. American Public Power Association v. Federal Power Commission, 522 F.2d 142, 146 (D.C. Cir. 1975).]

The primary deficiencies in the Notice of Proposed Rulemaking in this action are in those sections of the proposed regulations dealing with the standard deduction, the (June, 1975) OMB poverty guidelines, and the 30 percent purchase price. Although financial eligibility standards are involved, not even tentative empirical findings were discussed. In the cash and coupon accountability provisions, the defendants failed in the Notice to state, even in general terms, the abuses to be remedied by the proposed changes.

The Notice with respect to retrospective income accounting seemed straightforward enough until the final regulations were issued and it became apparent, for the first time, that a major shift in the Program (to serve only the long-term poor) had been intended, although not disclosed. In general, given the major changes sought in the Food Stamp Program with these proposed regulations, the Notice given simply did not provide the information necessary for effective comments.

After comments are submitted, the agency must prepare the basis and purpose statement required by 5 U.S.C. §553(c). The defendants have wholly failed to prepare a statement which meets the standard applicable in this Court. In Amoco Oil Co. v. Environmental Protection Agency, supra., the Court stated the standard in the following terms:

> The "basis and purpose" statement required by section 4(c) of the APA must be sufficiently detailed and informative to allow a searching judicial scrutiny of how and why the regulations were actually adopted. In particular, the statement must advert to administrative determinations of a factual sort to the extent required for a reviewing court to satisfy itself that none of the regulatory provisions were framed in an "arbitrary" or "capricious" manner. [502 F.2d, at 739] (citations omitted)

This standard was restated in National Welfare Rights Organization v. Mathews, supra., Slip Opinion, at 24. A similar standard was set forth in Rodway v. United States Department of Agriculture 514 F.2d 809, 817 (D.C. Cir. 1975):

> The basis and purpose statement is not intended to be an abstract explanation addressed to imaginary complaints. Rather, its purpose is, at least in part, to respond in a reasoned manner to the comments received, to explain how the agency resolved any significant problems raised by the comments, and to show how that resolution led the agency to the ultimate rule. (footnote omitted)

From these and other recent decisions in this Circuit, five principles applicable to the present action can be stated:

1. When the rulemaker's decision turns on factual issues, such as in choice of income limitations or in any similar provision

which sets a monetary standard, the fundamental rationality of the choices made by the rulemaker must be evident from supporting empirical data. [National Welfare Rights Organization v. Mathews, supra.; Amoco Oil Co. v. Environmental Protection Agency, supra., 501 F.2d, at 740-41]

2. When policy determinations are involved which do not turn directly on factual questions, the rulemaker's basis and purpose statement must incorporate a reasoned explanation of why the ultimate rule was adopted. [Amoco Oil Co. v. Environmental Protection Agency, supra., at 741; Rodway v. United States Department of Agriculture, supra., at 817]

3. In any case, the basis and purpose statement, while it need not respond to every comment made nor to every suggestion for change, must respond in a reasoned fashion to all significant problems raised by the comments submitted. [National Welfare Rights Organization v. Mathews, supra., Slip Opinion, at 24-25; Rodway v. United States Department of Agriculture, supra., at 817]

4. When long-standing agency policy is being revised or substantially altered, the basis and purpose statement must deal directly, and in a reasoned manner, with the change in policy and not gloss over or ignore the fact that a fundamental policy judgment is being altered. [Greater Boston Television Corp. v. Federal Communications Commission, 444 F.2d 841, 852 (D.C. Cir. 1970), cert. denied, 406 U.S. 950 (1971)]

5. When an agency addresses a particular problem area, the nature of the problem to be remedied must be stated in sufficient detail to allow the reviewing Court to determine that the changes proposed are responsive to that problem. [City of Chicago v. Federal Power Commission, 458 F.2d 731, 742 (D.C. Cir. 1972), cert. denied, 405 U.S. 1074 (1972)]

These five principles were violated repeatedly by the defendants. A thorough analysis of the basis and purpose statement and the comments will establish this fact. Only examples are noted at this time. There were no empirical findings set forth to justify the standard deduction amounts of $100 and $125. (There are facts in the statement, but a careful reading still discloses nothing about how the agency arrived at the amounts incorporated in the regulations.) No empirical findings justify adoption of the June, 1975 OMB poverty guidelines, although that eligibility standard must be consistent with the Food Stamp Act's requirement that persons are eligible if they lack income and resources to purchase a nutritionally adequate diet. [7 U.S.C. §2014(a)] No empirical findings justify the 30 percent purchase price, although that provision must, in order to be consistent with 7 U.S.C. §2016(b), represent a reasonable investment on the part of the household.

Reasoned explanations for the regulation adopted and reasoned responses to comments are the exception rather than the rule in the basis and purpose statement. For example, with respect to the standard deduction, no response whatsoever is made to comments demonstrating that elimination of mandatory payroll deductions and work-related expenses, as itemized deductions, would have a devastating effect on the working poor. Regarding the June, 1975 OMB Poverty guidelines, the defendants inexplicably reason that they know of no better system for determining eligibility, although the Food Stamp Program has been based on a different system developed by those defendants for the past five years. No reasoned response is given to numerous State agency comments, made by persons more directly involved with the recipients of the Program than the defendants, which stated that many poor persons could not actually afford the 30 percent purchase

price. To numerous comments indicating that the three-month retrospective income accounting system will unfairly penalize the newly poor, the defendants responded by creating a new purpose for the Food Stamp Program -- to serve the long-term poor. Despite overwhelming criticism from the State agencies regarding monthly reporting, the defendants gave no reasons why they considered the new system worth the expense it would cost. In the work registration section, the defendants refused to define "job search" and then suggested that State agencies could effectively train their personnel to implement this undefined "job search" requirement.

Major shifts in policy in the Food Stamp Program are exemplified by the retrospective accounting system, the 30% purchase price, and the new eligibility guidelines. Yet, the defendants never explained in any reasoned, much less candid, terms why these changes in policy are being made.

Finally, the "abuses" which prompted the cash and coupon accountability provisions are still not defined.

When the comments submitted are actually before this Court, a more detailed analysis can be made of the basis and purpose statement. However, a close reading of both the Notice of Proposed Rule Making and the Basis and Purpose Statement indicate that there is a high probability that the plaintiffs will establish that the defendants have not complied with the APA in promulgating these regulations.

IV. Conclusion

Since the granting of plaintiffs' temporary restraining order motion would maintain the status quo; insofar as the plaintiffs will suffer severe and irreparable injury (commencing on June 1, 1976) if the temporary restraining order motion is denied; since a temporary restraining order would be in the public interest; insofar as the defendants would not be harmed by the issuance of a temporary restraining order; and since there

is a high probability that plaintiffs will ultimately prevail on the merits of this case, it is respectfully submitted that a temporary restraining order -- enjoining the implementation of the new food stamp regulations -- should be granted.

Respectfully submitted,

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THE WHITE HOUSE
WASHINGTON

Spencer:
OK

June 24, 1976

TO: JIM CANNON

FROM: SPENCE JOHNSON

This point is essentially correct. This was one of the matters that was considered when the new Food Stamp regulations were drafted.

THE WHITE HOUSE
WASHINGTON

June 17, 1976

TO: SPENCER JOHNSON

FROM: JIM CANNON

Would you check this point for me for Bill Seidman?

j

THE WHITE HOUSE
WASHINGTON

6/16/76

TO JIM CANNON

FROM BILL SEIDMAN

Is this a sound point?

per handwritten note.

Bill — This is an unfair program — see below

PRESIDENT FORD'S NEWLY PROPOSED REGULATIONS FOR FOOD STAMP PROGRAMS

Jim Connor
Is this a sound point for Sec Bergland

President Ford has moved to by-pass Congress, and put into effect his proposals for Food Stamp Program "reform" by ordering the Department of Agriculture (USDA) to issue new regulations. These proposed regulations were published in the Federal Register on February 27, 1976 (page 8501). These regulations, like the legislation he has proposed to Congress, would eliminate 5.3 million people — almost 30% of present recipients — from the program and reduce benefits for 5-6 million more.

USDA estimates that the

Ironically, in this Bicentennial year, the regulations represent the second largest cutback of any social program in America's 200-year history. They represent bad social policy, take food from the mouths of people who are least able to afford it, and will complicate the Program's administration unnecessarily. Of particular interest to day care providers:

The "Poverty Line" is completely inadequate as a measure of the need for nutrition assistance. If it is adopted as the food stamp eligibility cutoff, it

tion would replace the current itemized deductions allowed in the program for necessary non-food expenses such as mandatory payroll deductions, *child care costs,* medical costs and excessive shelter costs. Under Ford's regulations, this standard deduction would be applied to gross income before any payroll deductions are subtracted. This means that working households which pay taxes will have far fewer of their other expenses covered by the standard deduction than non-working households with no payroll taxes. An equitable system demands that the standard deduction be applied to the same "income" for all households. Thus, "income" must be redefined to mean income after the mandatory payroll deductions of working households have been deducted.

The proposed Regulation to exclude from program participation all minors who live away from home is unfair and contrary to the purposes of the food stamp program. Under the Ford regulations, any minor (as defined by the state where the minor lives) would be ineligible for food stamp assistance if there were someone with the legal duty to support the child regardless of whether or

file

THE WHITE HOUSE

WASHINGTON

July 19, 1976

old

MEMORANDUM FOR: THE PRESIDENT

FROM: JIM CANNON

SUBJECT: STATUS OF FOOD STAMP REFORM EFFORT

This is to give you a status report on food stamp reform. In brief, the efforts you initiated to reform the food stamp program have been frustrated by resistance from the courts and the Congress.

LEGISLATION

On October 20, 1975, you sent to the Congress a food stamp reform proposal. Final Senate action on food stamp reform legislation resulted in the adoption of only a few minor pieces of your reform package. All of the major pieces of the reform legislation were either deleted entirely or adopted in significantly altered form as part of S. 3136 (the clean bill reported out of the Agriculture Committee). The Senate-passed food stamp reform bill would increase rather than decrease future program expenditures.

Debate on food stamp reform continues on the House side. Again the principal vehicle of reform, H.R. 13613 (introduced by Congressman Foley), contains few of the original Administration reform proposals. It is uncertain if the committee will report out any food stamp reform legislation or if the full House will pass any such legislation. Any reform legislation enacted is unlikely, however, to contain any of the major reform provisions the Administration introduced last October.

REFORM BY REGULATION

In February, 1976, since the Congress had not enacted food stamp reform, you directed Secretary Butz to issue regulations to effect reform. On June 18, 1976, a Federal judge issued a preliminary injunction forbidding the Administration to make reforms. The court suit looks like it will be prolonged.

USDA plans to issue regulations to implement the Emergency Food Stamp Accountability Act of 1976 (P.L. 94-339), a substantial portion of which will be a republication of accountability provisions of the reform regulations. These regulations may have to be submitted to the court for approval.

It is doubtful that USDA will be able to implement any reform provisions except possibly some of the accountability provisions.

[Sept. 1976] J.M.C

THE WHITE HOUSE

WASHINGTON

Welfare - Food Stamps

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Status of Food Stamp Reform Effort

In brief, your efforts to reform the food stamp program continue to be frustrated in Congress and in the courts.

LEGISLATION

On October 20, 1975, you sent to the Congress a food stamp reform proposal. It was designed to increase benefits to those with the lowest income, eliminate from the program those with higher incomes, reduce fraud and abuse and save more than $1 billion.

Senate Action:

Final Senate action on food stamp reform legislation on April 8, 1976, resulted in the adoption of only a few minor pieces of your reform package. All of the major pieces of your reform legislation were either deleted or significantly altered. The Senate-passed food stamp reform bill would increase rather than decrease future program expenditures. The Department of Agriculture estimates that approval of S. 3136 would result in a cost increase of $328.8 million annually.

House Action:

The House Committee on Agriculture reported H.R. 13613, introduced by Congressman Foley, on August 10, 1976. The Department estimates that approval of H.R. 13613 would save $393.8 million annually.

No action is currently scheduled on this measure. However, our Congressional Relations staff believes the Democrats in both Houses will pass a Food Stamp bill in the final days of the session -- and challenge you to veto it.

ADMINISTRATIVE REFORM

On February 20, 1976, you indicated that you could no longer wait for Congressional action, and directed Secretary Butz to issue regulations which would set in motion the reforms needed to eliminate abuses, control costs and concentrate benefits on those truly in need.

The Agriculture Department published the regulations on May 7, 1976 with an effective date of July 1, 1976.

On May 26, 1976, however, the Food Research and Action Center (FRAC), joined by 26 States, several cities, the U.S. Conference of Mayors, 73 food stamp households and over 100 civic, labor, religious and community organizations sued to prevent the regulations from going into effect.

On May 28, 1976 the U.S. District Court in the District of Columbia blocked, with a restraining order, the new regulations which would have permitted your Administrative reforms. On June 18, 1976, the same Court issued an injunction forbidding the Agriculture Department to make Administrative reforms. The Justice Department and Agriculture promptly filed a motion to dismiss the injunction, but this motion was denied on July 30, 1976.

On August 17, 1976, Justice and Agriculture filed a notice of appeal on the injunction.

The Justice Department advises us that it may take four months to file briefs and responses by both sides before the Court of Appeals can set a hearing date. Consequently, no ruling is likely to be handed down before the end of December.

BUDGET

Since the budget assumptions for the Transition Quarter were based on expected reforms in the Food Stamp Program, Agriculture initially thought that it would need a supplemental appropriation.

However, the improvement in the economy brought a decline in the number of food stamp program participants.

In addition, OMB learned that Agriculture was putting aside more reserve funds for outstanding food stamps than was necessary.

As a result, OMB and Agriculture now agree that the food stamp program will not require a supplemental appropriation during the transition quarter.

file
[ca. Sept. 1976]

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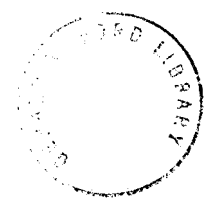

draft [Sept. 1976]

Food Stamps

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Administration Reform

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Need latest version with dates

Although final regulations were published they did not go into effect because of a lawsuit to block their implementation. On June 18th, the District Court issued a preliminary injunction forbidding the Administration to vacate the preliminary injunction, or change it to a permanent one, but the Motion was denied.

Justice is appealing the preliminary injunction but does not expect any action by the Court, except possibly the issuance of a permanent injunction, before November.

The reason for this lengthy process is twofold:

--those bringing the suit have an additional time period, after Justice files its appeal, to respond; and

--if the case is lost in District Court, as expected, then it must again be appealed in Circuit Court.

BUDGET

According to a review of the Food Stamp Program funding projections by Agriculture and OMB, a supplemental appropriation for the Transition Quarter will not be necessary in order to meet Program commitments.

I want more specifics in this part.

THE WHITE HOUSE

WASHINGTON

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Date Motion to vacate was denied: July 30

Date notice of appeal was filed by Justice: August 17

Estimated date decision must be handed down in District Court: end of October

pending
Food Stamp

THE WHITE HOUSE
WASHINGTON
9/14/76

TO: ART QUERN

FROM: JIM CANNON

Please ask Spencer Johnson to look into the status of the application for this grant.

8:00
folder

THE WHITE HOUSE
WASHINGTON

Date 9-13-76

TO: Jim Cannon

FROM: Max L. Friedersdorf

For Your Information _____

Please Handle ✓

Please See Me _____

Comments, Please _____

Other

Schmults

091311

ALERT

THE WHITE HOUSE

WASHINGTON

September 11, 1976

MEMORANDUM FOR: MAX FRIDERSDORF

FROM: CHARLES LEPPERT, JR. CLJr.

SUBJECT: Rep. Bob Michel (R. - Ill.)

Tom McMurray called on behalf of Rep. Bob Michel to state that Mr. Ron Pollack of the Food Reserve and Action Center is the individual that brought suit against the President and/or the Administration to enjoin the Administration attempt to reform the food stamp program.

McMurray states that Pollack's salary and perhaps funds to bring the law suit were part of a $300,000 grant to the Food Reserve and Action Center from the Community Services Administration.

McMurray claims that he has found out that the Food Reserve and Action Center has renewed its application for a grant from the Community Services Administration for the sum of ~~$700,000.~~ McMurray says that Michel would like to know if the Community Services Administration is planning or will renew the grant for $700,000 to the Food Reserve and Action Center.