



United States Department of Agriculture  
Food and Nutrition Service

Western Region

Reply to  
Attn of:

FS-10-9-General

May 10, 2005

Subject:

FSP – Administrative Notice 05-21

To:

Same Sex Marriage and Civil Unions; Effect on Food Stamps; OGC's Opinion

ALL WESTERN REGION FOOD STAMP PROGRAM COORDINATORS

Our office of General Counsel (OGC) has given us an opinion about how the Food Stamp Program must treat married clients who are of the same sex, and also how we must treat partners in civil unions. FNS understanding is that currently same-sex marriage exists only in Massachusetts and that civil unions exist only in Vermont (though Connecticut may adopt this institution in the near future).

The Food Stamp Program contains certain requirements for spouses, most notably in defining what a household is. What follows below is the exact text of OGC's opinion. OGC, responding to questions submitted, opines that for the Food Stamp Program, partners in a same-sex marriage are not spouses. Further, they conclude that being a partner in a civil union has no effect on one's participation in the Food Stamp Program.

### OGC's Opinion

Section 3(i)(2) of the Food Stamp Act requires that, in determining household status and benefit levels, spouses who live together shall be considered to purchase their food and prepare their meals together even if they do not do so. The Food Stamp Act does not, however, define the term "spouse." Section 3 of the Defense of Marriage Act, 1 U.S.C. 7, corrects that omission by defining marriage, for purposes of any "Act of Congress, or any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States," as being a legal union between one man and one woman as husband and wife and defines the term spouse as only a person of the opposite sex who is a husband or a wife.

As the chain of e-mails accompanying your question indicates, tension exists between the definition of spouse in the Defense of Marriage Act and those States that permit marriage between same sex partners. Our opinion, based on the Supremacy Clause of the U.S. Constitution, is that in determining the household status of food stamp program applicants who are same sex spouses, the presumption that they purchase food and prepare meals together does not apply. In accordance with the Defense of Marriage Act, for purposes of the Food Stamp Act, same sex married partners can not be considered spouses. Such individuals could, of course, be considered households under Section 3(i)(1)(B) if they "live together and customarily purchase food and prepare meals together for home consumption."

The question of civil unions, as opposed to marriage between same sex partners, is not quite as clear but only because of a lack of clarity of whether these individuals would be considered spouses. Whether they are or not, however, does not have a bearing on their food stamp eligibility. If not spouses, the presumption of purchasing food and preparing meals together would not apply because it only applies to spouses; but even if considered spouses under state law they could not be under the Defense of Marriage Act.

Therefore, the status of being a partner to a civil union would not have a food stamp program implication.

If you have any questions about this information, please contact your State Desk Officer.

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HOPE RIOS, Policy Officer  
Food Stamp Program  
Western Region