



Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-601
Regulation title	Supplemental Nutrition Assistance Program (SNAP)
Action title	Revise Guidelines for Counting Income Toward SNAP Eligibility
Date this document prepared	February 15, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The proposed amendment to 22VAC40-601 will require that income of persons who are ineligible for SNAP benefits because of their immigration status will be used in its entirety to determine the SNAP eligibility of the remaining eligible household members. A new section, 70, will alter current processes by using the full amount of ineligible immigrants' income instead of a prorated amount of the income.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

CFR	Code of Federal Regulations
DSS	Department of Social Services
SNAP	Supplemental Nutrition Assistance Program
PRWORA	Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 63.2-217 of the *Code of Virginia* grants the State Board of Social Services authority to promulgate rules and regulations to operate assistance programs in Virginia. Title 7 of the CFR at section 271.4 delegates responsibility to administer SNAP within a state to the agency assigned responsibility for other federally funded public assistance programs. Federal Regulations at 7 CFR 273.11 (c)(3)(i) permit states the option to count all the income of ineligible immigrants or to count a prorated amount of ineligible immigrants' income.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

Amending 22VAC40-601 will change how income is evaluated in determining SNAP eligibility for households that contain immigrants who do not meet the eligibility requirements to receive SNAP benefits. Only citizens and certain immigrants are eligible for SNAP benefits. Federal regulation at 7 CFR 273.4 outline eligibility requirements for those who are not citizens. This proposed action will not alter or establish requirements to identify which immigrants are eligible for SNAP benefits or to establish separate or additional SNAP eligibility rules or allowances.

The amendment to 22VAC40-601 will require local eligibility workers to count all the income of household members who are ineligible immigrants for SNAP purposes towards the determination of eligibility for SNAP for the remaining household members. Prior to the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), states were required to prorate the income of the ineligible immigrant and use that prorated amount toward the eligibility of the remaining household members. PRWORA allowed each state the option to count all of the income of the ineligible immigrant or to prorate the income.

Prorating the income results in less money being counted as available to the SNAP household and conceivably results in a higher benefit. In SNAP households that do not include an ineligible immigrant or other persons who are disqualified from receiving SNAP benefits, all of the income of all members is counted toward the household's eligibility which results in a lower benefit. Prorating the income instead of counting the full income amount results in inequitable eligibility determinations, when compared to citizen or eligible immigrant households with similar income amounts.

This action will align SNAP guidance with that for Medicaid and Temporary Assistance for Needy Families, as these programs count the full amount of ineligible immigrants' income to the eligibility determination.

This regulation promotes the welfare of Virginia residents by providing equal access to SNAP benefits. Receipt of SNAP benefits expands available household resources by setting aside money for food and thereby enhancing the health and welfare of eligible households by granting greater access to nutritious food. This amendment will not affect the safety of Virginia residents.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

A new proposed section, 70, will require SNAP eligibility and benefit level to be determined by using the full monthly income of household members who are ineligible for SNAP benefits because of their immigration status. This amendment requires the use of the full amount of income instead of a prorated amount. No other section of 22VAC40-601 is affected by this provision.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage of changing the income calculation method for SNAP households with ineligible immigrants will be to end the perceived inequitable treatment of households comprised of citizens or eligible immigrants with similar income amounts. In most other circumstances, the entire amount of income for a disqualified individual is counted for the remaining household members. There are limited instances when a pro-rata share is counted to the remaining household members. DSS will continue to prorate the income of persons who are ineligible or disqualified for SNAP benefits for persons whose citizenship in the United States is questionable and persons who cannot or do not provide a Social Security number. DSS does not have authority to alter the income calculation method in these instances. All other calculations and actions to determine SNAP eligibility and benefit level are unaffected. The action poses no disadvantages to the public or Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed amendment does not exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

The provisions of this regulatory action do not necessarily affect one Virginia locality more than another. Areas with large concentrations of immigrants may be affected by the proposed action more than other areas as there may be more who are not eligible for SNAP benefits, or may have their SNAP benefits reduced. Unless an area has a specifically higher number of immigrants who are ineligible for SNAP due to their immigration status, there will not be a significant difference.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Celestine Jackson, Division of Benefit Programs, Virginia Department of Social Services, 801 East Main Street, Richmond, Virginia 23219. The telephone number is (804) 726-7376 and the fax number is (804) 726-7357. The email address is celestine.jackson@dss.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or changes in requirements create the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>The DSS statewide computer system must be reprogrammed to allow income of an ineligible immigrant to be counted fully instead of being prorated. Program guidance must be changed to reflect the amended regulation and training materials must be prepared. Training for local and state social services staff will be needed to incorporate the new procedures. These costs will be absorbed within existing applications.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>Training for local social services staff will be needed to incorporate the revised procedures. Local social services departments must invest the time and effort to attend training sessions or avail themselves of online training materials. The program manual is available online. Local social services agencies must print individual copies of the manual or manual sections, if a paper copy is desired. The official copy of the manual is online at</p>

<p>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p>	<p>http://dssiad.dss.state.va.us/FoodStampManual/pageview.html</p> <p>The amount of SNAP benefits eligible households receive is based on the amount of income and expenses of applicant or recipient households. This regulation may increase the amount of income that is attributed to a household by counting the full income amount for the month that belongs to an immigrant who does not meet the criteria to be eligible for SNAP benefits. Increased income amounts will result in a lower amount of SNAP benefits for eligible households or could result in a household being determined ineligible for benefits altogether.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Other than households with one or more persons who are ineligible for SNAP benefits because of their immigration status, no other entities should be affected by the implementation of the new regulations. As the amount of income each SNAP household has available is variable, depending on the general economic climate and the amount of work or other income sources are available, there is no way to project the number of eligible households or the number of households that might be determined ineligible because the income is over the eligible level.</p> <p>In September 2011, there were approximately 904,557 persons and 431,935 households participating in SNAP. There were approximately 15,614 persons who were excluded from the program because of their immigration status for the same period. There is no way to determine the number of households that contain the ineligible persons as a household may include one or more such persons.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There are no projected costs of the new regulations on individuals, businesses, or other entities; all costs will be absorbed within existing applications. SNAP benefits for eligible household are 100% federally funded.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The beneficial impact of the income calculation procedures may be felt minimally by eligibility staff of local social services. This change will neither increase nor reduce the work effort to determine SNAP eligibility; may slightly reduce the caseload since counting all income to the remaining household members may cause a case to be ineligible.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Federal regulations for SNAP allow only two methods for evaluating the income of ineligible immigrant household members. States may count the full amount of income or a prorated amount of income of each ineligible immigrant household members. DSS currently prorates the income. This regulatory action will end the practice of using a prorated amount of income and begin counting the full amount in determining SNAP eligibility for remaining household members.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

As addressed under “Alternatives,” only two alternatives are allowed by federal regulation. DSS is proposing this regulatory action in response to local worker sentiments about the inequitable results for comparable citizen or eligible immigrant household members’ income. There is no impact of the action on small businesses.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Local eligibility workers, supervisors, and directors	There were 112 comments in support of the proposed regulation to count the full income of persons who are ineligible because of their immigration status. The comments were often framed in terms of uniformly applying SNAP policy to immigrants and citizens alike.	The SNAP income calculations will begin at the same place for eligible immigrants, citizens and ineligible immigrants. As noted in the Issues section and in the next comment below, ineligible immigrants are not eligible to receive SNAP benefits and as such, their presence is not factored in assigning the allowable income limit for a household size. For example, there may be four people within the household but if one person is an ineligible immigrant, the household income limit will be for three members. As noted by many of the commenters, there have been situations when

		all household members meet the eligibility criteria but because all income is counted and not a pro-rata share, the household is over the income limits. Currently, a household with an ineligible immigrant may have the remaining members eligible for SNAP because only a pro-rata share of income is counted
D. Ramos, Dante Ramos and an entry from the City of Roanoke	There were three comments submitted that question the counting of income from persons who are not eligible for benefits when there is also no allowance for counting the ineligible member. This results in a reduction of benefits to the eligible members.	Federal law and regulations establish which immigrants are eligible for SNAP benefits. Federal regulations allow only two methods for handling the income of persons who live with others but who are not eligible to receive SNAP benefits. DSS has no authority to exclude all the income of ineligible persons in the SNAP household. DSS must count all such income or count only a portion.
Kristina Reitnauer	The commenter notes that her family's SNAP eligibility was ended as a result of a small increase in the hourly wage rate.	Establishing the monthly income limit for SNAP eligibility is beyond the authority of DSS. The commenter is correct that the income would be over the allowed limit for a household of three if there is an assumed 40-hour work week ($\$12.18 \times 40 \times 4.3 = \2094.96). Effective October 1, 2011, the allowable limit is \$2008. See §22 VAC 40-601-20 for converting SNAP income.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed action does not strengthen or erode the nurturing relationship between parents and their children and does not alter the rights of parents to direct the education or supervision of children. The regulation neither encourages nor discourages economic self-sufficiency or self-pride nor does it alter responsibility for oneself or family or affect marital commitment.

This regulation may determine whether some households are eligible for SNAP benefits or reduce the amount of benefits some eligible households receive and therefore may alter disposable family income. The amount of SNAP benefits a household receives helps to supplement the amount of money available for food purchases. Affected households will be comprised of at least one or more persons who are not eligible for SNAP benefits.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if

implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
n/a	70	n/a	<p>Income of persons who are ineligible for SNAP benefits because of their immigration status will be used in its entirety towards the SNAP eligibility of the remaining members.</p> <p>SNAP households with persons who are ineligible for SNAP benefits because of their immigration status will potentially have more income counted towards the SNAP eligibility of the remaining members. Counting more income for a SNAP household will reduce the amount of benefits a household may be entitled to receive or may cause a household to be ineligible for SNAP benefits. The intent is not to harm households with ineligible immigrants; it is intended that households with similar income amounts will have similar eligibility outcomes.</p>