



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-601
Regulation title	Supplemental Nutrition Assistance Program
Action title	Revise regulation on counting income of ineligible immigrants toward the eligibility of eligible persons for SNAP benefits
Date this document prepared	June 15, 2011

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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The regulatory action will add a new section 70 to 22 VAC 40-601, requiring local Department of Social Services eligibility workers to use all of the income of ineligible immigrants to determine Supplemental Nutrition Assistance Program (SNAP) eligibility of the remaining eligible household members. This action will alter current processes by using the full amount of ineligible immigrants' income instead of a pro rata share of the income. Income will be considered uniformly for all citizen and immigrant households by counting all income available to household members.

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., 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 authority to the State Board of Social Services to promulgate rules and regulations to operate assistance programs in Virginia. Title 7 of the Code of Federal Regulations (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) permits states the option to either count all the income of ineligible immigrants or to count a prorated amount of ineligible immigrants' income.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Department of Social Services (DSS) would like to change the method for evaluating the income of immigrants who do not meet the eligibility requirements to receive SNAP benefits. Citizens and certain immigrants are eligible for SNAP benefits. Federal regulations at 7 CFR 273.4 outline eligibility requirements for those who are not citizens. Nothing in this proposed action is intended to alter or establish requirements to identify which immigrants are eligible for SNAP benefits or to establish separate or additional SNAP eligibility rules or allowances.

DSS would like to require local eligibility workers evaluate all the income of ineligible immigrants for SNAP benefits toward the eligibility determination of remaining household members. Local eligibility workers have observed that counting only a prorated amount of income often results in uneven eligibility determinations when compared to citizen or eligible immigrant households with similar income amounts. This action will also align SNAP guidance with Medicaid and TANF policies as both programs count the full amount of an illegal immigrants' income.

This amendment will not affect the health, safety, or welfare of citizens.

Reprogramming the computer system will be needed count all the income of ineligible immigrants as the computer system currently prorates the income ineligible immigrants.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

22 VAC 40-601-70 will allow local eligibility workers to use the full monthly income of all households that apply for or receive SNAP benefits instead of a prorated amount for households with immigrant members who are not eligible for SNAP benefits.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Federal regulations allow only two methods for evaluating the income of ineligible immigrant household members. States may count all the income of ineligible immigrant household members or use a prorated

amount of income. All other calculations and actions to determine SNAP eligibility and benefit level are unaffected.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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 comments may do so via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email, or fax to Celestine Jackson, Virginia Department of Social Services, Division of Benefit Programs, 801 E. Main Street, Richmond, Virginia 23219. The telephone number is (804) 726-7376 and the fax number is (804) 726-7357. The e-mail 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 day of the public comment period.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

DSS has sought guidance from a subcommittee of the Benefit Programs Organization (BPRO) of Virginia, an organization open to local eligibility workers and supervisors of every Virginia locality. DSS has also received numerous accounts from local social services staff through other forums of the incongruent SNAP eligibility impact resulting from similar income amounts that involve citizen or eligible immigrant households in contrast with households that include ineligible immigrant members. The Department is committed to using the participatory approach in the development of the proposal.

Family impact

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

The regulation does not change the standards for determining which households are eligible for SNAP benefits. By counting the full amount of income received instead of a prorated amount, the regulation may result in some households being denied benefits that they might have previously received or may result in households receiving fewer benefits.. The majority of SNAP applicants or recipient households will be unaffected by the regulation. The regulation could indirectly alter disposable family income as the amount of SNAP benefits a household receives helps to supplement the amount of money available for food purchases.