



Virginia

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## Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40-601
<b>Regulation title</b>	Supplemental Nutrition Assistance Program
<b>Action title</b>	Revise Guidelines for Counting Income Toward SNAP Eligibility
<b>Date this document prepared</b>	April 17, 2014

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

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

This regulatory action requires eligibility for the Supplemental Nutrition Assistance Program (SNAP) be based on the full income of ineligible aliens instead of a prorated amount for the remaining eligible household members. The full amount of the ineligible alien's deductible expenses would also be allowed through this amendment. The action does not alter which non-citizens are eligible for SNAP benefits.

The regulation was revised from the proposed stage to remove references to the countable resources of ineligible aliens because federal regulations do not offer states any options in determining the applicable amounts of resources to count for SNAP eligibility. In addition, the term "Immigrants" is replaced by "aliens" for consistency with federal regulation.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.*

The State Board of Social Services took final action on 22VAC40-601, Supplemental Nutrition Assistance Program, on April 17, 2014.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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. Section 63.2-801 of the Code of Virginia authorizes the Board to implement a food stamp program according to federal law and regulations. Section 271.4 of Title 7 of the Code of Federal Regulations (CFR) 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 and deductible expenses of ineligible aliens or to count a prorated amounts of ineligible aliens' income and deductible expenses.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The amended regulation changes the method for evaluating income and deductible expenses in determining eligibility for SNAP benefits for households that contain persons who do not meet the immigration eligibility requirements to receive SNAP benefits. Only citizens and certain aliens are eligible for SNAP benefits. Federal regulations at 7 CFR 273.4 outline eligibility requirements for persons who are not citizens. This proposed action will not alter or establish requirements to identify which aliens are eligible for SNAP benefits or to establish separate or additional SNAP eligibility rules or allowances.

The amended regulation requires that all the income and deductible expenses of household members who are ineligible aliens for SNAP purposes be used in determining SNAP eligibility and benefit level for the remaining household members. This regulatory action means that SNAP eligibility is no longer determined by using a prorated amount of income and expenses of ineligible aliens, except those categories of aliens who would have been ineligible prior to 1996.

Prior to the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), states were required to prorate the income and expenses of the ineligible alien and use the prorated amounts toward the eligibility of the remaining household members. PRWORA allowed each state the option to count all of the income and expenses of the ineligible alien or to prorate the income and expenses. Prorating the income results in less money being counted as available to the SNAP household and conceivably results in a higher benefit if the household is eligible for benefits. In SNAP households that do not include an ineligible alien or other persons who are disqualified from receiving SNAP benefits, all of the income of all the members is counted toward the household's eligibility which results in a lower benefit. Prorating income, instead of counting the full income amount, results in

inequitable eligibility determinations when compared to citizen or eligible alien households with similar income amounts.

This action aligns SNAP guidance in Virginia with policies for the Medicaid and Temporary Assistance for Needy Families Programs as these programs count the full amount of ineligible aliens' income to the eligibility determination. This regulatory action 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 identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

This regulatory action requires eligibility for SNAP and the benefit level to be determined using the full amount of income and deductible expenses for household members who are ineligible for SNAP because of their immigration status. This amendment requires the use of the full amount of income instead of a prorated amount. Federal SNAP rules require that income of persons who are ineligible for benefits because of their immigration status be used, in whole or in part, towards the eligibility of remaining household members. No other section of 22 VAC 40-601 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 there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantage of changing the income calculation method for SNAP households with ineligible aliens will be to end the perceived inequitable treatment of households comprised of citizens or eligible aliens with similar income amounts. Adoption of this amendment will not end SNAP calculations that involve prorated income or expense amounts for remaining household members. DSS will continue to prorate the income and expenses 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 by this regulatory action. The action poses no disadvantages to the public or Commonwealth.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
70	The income and resources of an ineligible alien shall count in their entirety, and the ineligible alien's deductible expenses shall continue to apply to the remaining household members. The requirements of this section do not apply to those aliens described in 7 CFR 273.11(c)(3)(i)(A) through (G).	The income of an ineligible alien shall count in its entirety and the ineligible alien's deductible expenses shall apply to the remaining household members. in determining SNAP eligibility and benefit level.  The term, "immigrants" is replaced by "aliens."	Federal regulations do not allow states any alternatives in assessing resources of ineligible aliens.  Needed for consistency with federal regulations.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

Commenter	Comment	Agency response
Local eligibility workers, supervisors, and directors and a state quality assurance analyst provided the bulk of the comments. Some comments were posted only with a single name but the comments appear to be from a local agency perspective.	There were 87 comments received in response to the regulation. The comments were offered 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 aliens and citizens alike. It appears that several comments were posted by the same individuals.	SNAP calculations to determine gross and net income limits for households with members who are ineligible aliens will mirror the calculations used for households with eligible aliens and citizen members.

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
n/a	70	n/a	<p>The income and deductible expenses of persons who are ineligible for SNAP benefits because of their immigration status will be used in their entirety towards the SNAP eligibility of the remaining household members.</p> <p>The term, "immigrants" is replaced by "aliens."</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 aliens; it is intended that households with similar income amounts will have similar eligibility outcomes.</p> <p>Terms were changed for consistency with federal regulation.</p>