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Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-601
Regulation title(s)	Supplemental Nutrition Assistance Program
Action title	Revise Guidelines for Counting Income Toward SNAP Eligibility
Date this document prepared	April 19, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposed action adds a new section, 80, to 22VAC40-601, Supplemental Nutrition Assistance Program (SNAP). The new section will reduce countable income used in determining eligibility for SNAP benefits or used to determine the amount of SNAP benefits received. The amounts paid by SNAP household members for child support, pursuant to a court or administrative order, will be excluded as income in SNAP calculations. Current procedures allow for the deduction of support amounts paid as countable income instead of allowing the support amount paid as an exclusion of income. Changing how child support payments are allowed will not likely result in higher SNAP benefit amounts for households that pay support but, income exclusions for support amounts paid could potentially result in fewer households being denied SNAP benefits for having income amounts that exceed the allowable income limits.

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
SNAP - Supplemental Nutrition Assistance Program
VDSS - Virginia Department of Social Services

Legal basis

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

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 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 273.9(d) (5) permit states the option to either count legally obligated child support payments to non-household members as an income deduction or an income exclusion; Virginia currently uses the income deduction option.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation 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.

In an effort to encourage non-custodial parents to meet their obligations to pay child support, the agency proposes to change how legally obligated child support payments are evaluated when determining SNAP eligibility and in determining the amount of SNAP benefits these households may receive. States may evaluate child support payments for SNAP households as an income deduction or an income exclusion. States must select only one method to assess child support payments. The amount of SNAP benefits eligible households would receive would be the same regardless of the method used to assess child support payments but, by excluding the amount paid for child support as income, more households may meet the maximum income amount.

The agency is hopeful that, as more households meet the maximum income amounts, fewer households may be denied for being over the income limit. Having fewer households being denied for exceeding the maximum income limits may be an incentive for noncustodial parents to make their legally obligated child support payments regularly. Having parents meet their child support obligations regularly promotes the health, safety, or welfare of citizens by reducing reliance on public assistance programs and increases financial resources for affected families.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

22VAC40-601-80 will allow SNAP households to have mandatory child support paid to or for individuals outside the SNAP household to be excluded from their gross income when determining eligibility for SNAP benefits. Applicant households for SNAP benefits must meet a gross income test if the household does not contain at least one household member who is 60 years of age or older or one member who is permanently disabled. If the gross income exceeds the allowable limit for the size of the household, the application for SNAP benefits must be denied without any consideration of household expenses. Excluding child support payment amounts as income reduces the gross income amount for a household which conceivably may allow more households to meet the gross income eligibility test.

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.

Changing how child support payments are evaluated for SNAP applicants and recipients offers the potential advantage to affected households of reducing countable gross income. If households pass the gross income eligibility screening test, allowable household expenses are evaluated and deducted. After household expenses are deducted, the calculated net income for all applicant households must fall below the allowable new income limit based on household size in order to receive a SNAP benefit. Calculated SNAP benefit amounts are not affected by the adoption of income exclusion for child support payments over the income deduction method so program integrity is maintained. The advantage of this regulation is to incentivize the payment of child support from non-custodial parents by recognizing their commitment to their children and potentially offsetting some of the child support paid with SNAP benefits. If households are eligible for SNAP benefits, the likelihood of food insecurity is reduced.

A programming change to the eligibility computer system will be needed to allow for the exclusion as income for child support payments instead of a deduction from the income. Neither local departments of social services nor local eligibility workers should be adversely affected by a change in the evaluation of child support payments, as there is no change in the benefit amount or in the likely number of applicants for benefits.

There are no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need 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.

Federal regulations allow states the option to consider child support payments as a deduction from income or as an income exclusion. This amendment does not exceed 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.

All Virginia localities receive and evaluate applications for SNAP benefits and local food vendors receive SNAP benefits as payment for food purchases, so all Virginia localities are affected by the number of households that are eligible for SNAP benefits. This regulation has the potential to affect the number of households that are eligible for benefits.

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 Virginia Department of Social Services is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency 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 for the public comment file may do so 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) 726-7356. The email address is celestine.jackson@dss.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

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 change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>The agency's statewide computer system must be reprogrammed to allow for an exclusion from income for child support payments instead of allowing a deduction from income. The program certification manual must be changed to reflect the proposed regulation and training materials must be revised. Training for local and state social services staff is not needed to incorporate the new procedures but local workers need to be</p>
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	<p>advised about the changed process. These costs will be absorbed within existing appropriations.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>Training for local social services staff will not be needed to incorporate the revised procedures, but local workers need to be advised of the change. Local departments of social services will have to invest the time to review online materials. The program manual is available online. Local departments 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 http://dssiad.dss.state.va.us/FoodStampManual/pageview.html. An increase of staff is not anticipated. SNAP is 100% federally funded, with no general fund impact.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</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 will not increase the amount of SNAP benefits eligible households receive. This regulation will reduce the countable income attributed to a household by excluding as income the amount paid for child support to a person or entity outside the SNAP household.</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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>In August 2016, 382,460 households received SNAP benefits in Virginia. It is estimated that fewer than 2.2% or 8,414 households have legal obligations to pay child support. There is no way to determine the number of households that would be ineligible without the allowance of an income exclusion nor is there a way to estimate the number of households that would actually be eligible for SNAP benefits once they meet the gross income limit through the allowance of an income exclusion.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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 amendment 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>It is desired that households with children who are due child support may receive the money owed by offering an incentive to the noncustodial parent. The SNAP benefit amount is not increased through the amendment.</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 allow two methods for evaluating child support payments for SNAP calculations. Child support payments may be allowed as a deduction from households' monthly income or as an income exclusion. When child support payments were initially allowed for consideration for the food assistance program, the VDSS selected the income deduction option because this option uniformly applied the deduction. This change will have positive results for the non-custodial parent that pays the support as well as their children by providing a regular stream of income. This regulatory action is the only method to meet the purpose.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

No alternative regulatory methods were considered feasible. Reporting requirements, schedules and deadlines are not affected by this regulation. There is no impact to small business performance standards or operational standards. Because more households may qualify for SNAP benefits, the impact of the regulation is expected to be positive.

Public comment

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

No comments were received during the NOIRA comment period.

Family impact

Please assess the impact of this 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 amended regulation may strengthen the nurturing relationship between parents and their children as non-custodial parents must pay legally owed child support to have that amount excluded as income for SNAP calculations. This action 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 by excluding a portion of the income and result in households meeting the gross income eligibility level. These households will then have the opportunity to submit other household expenses and, if eligible, be determined eligible for a SNAP benefit amount. Households that are eligible for SNAP benefits may have more disposable family income. The amount of SNAP benefits a household receives helps to supplement the amount of money available for food purchases.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the pre-emergency regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
n/a	80	n/a	<p>The amounts paid by SNAP household members for child support, pursuant to a court or administrative order, will be excluded as income in SNAP calculations. Current procedures allow for the deduction of support amounts paid as countable income instead of allowing the support amount paid as an exclusion of income.</p> <p>Changing how child support payments are allowed will not likely result in higher SNAP benefit amounts for households that pay support, but income exclusions for support amounts paid could potentially result in fewer households being denied SNAP benefits for having income amounts that exceed the allowable income limits.</p>