



Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-601
Regulation title	Food Stamp Program
Action title	Repeal of regulations and replacement with a comprehensive regulation for the Food Stamp Program
Date this document prepared	June 14, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This is a joint action to repeal three regulations that affect different aspects of the Food Stamp Program and incorporate them into a single regulation to streamline the regulatory structure for the program. The new regulation, 22 VAC40-601, will serve as a comprehensive regulation for the Food Stamp Program. The regulation addresses eligibility determination through the conversion of weekly or biweekly income to monthly amounts and use of a standard amount for the basic cost for telephone service. The regulation also includes an administrative hearing process to determine intentional program violations. 22 VAC 40-20, 22 VAC 40-540, and 22 VAC 40-600 are being repealed.

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.

§ 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. Section 271.4 of the Code of Federal Regulations delegates responsibility to administer the Food Stamp Program within a state to the agency assigned responsibility for other federally funded public assistance programs.

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.

This is a joint action to repeal three regulations related to the Food Stamp Program and replace them with a single comprehensive regulation. The proposed regulation outlines processes that are not mandated by federal or state law or regulation. Procedures in the regulation apply to the eligibility determination process for the Food Stamp Program and the process to calculate the amount of food stamp benefits eligible households receive. The regulation also outlines the administrative disqualification hearing process to determine when households receive benefits to which they are not entitled.

The regulation ensures that local workers perform the eligibility determination process and the calculation of benefits uniformly for all households by factoring the same standard for telephone expenses and by converting income to monthly amounts. The regulation also requires uniform evaluation of determining if individuals intentionally break program rules to obtain benefits to which they are not entitled. Uniform application of program rules protects the general welfare of food stamp applicant and recipient households. The regulation does not address environmental benefits or provide for the health or safety of citizens.

Substance

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

The proposed regulation covers issues related to the Food Stamp Program that were previously addressed in three separate regulations. There are no substantive changes between the proposed regulation and the three separate regulations being repealed.

The proposed regulation addresses the conversion of income to monthly amounts. Local social services workers must use conversion factors of 4.3 for weekly income amounts and 2.15 for biweekly amounts when calculating income to determine households' eligibility and benefit levels.

The proposed regulation also addresses using a telephone standard amount in the calculation to determine food stamp eligibility and benefit level. Local workers must use a set standard amount for all households for telephone costs instead of actual costs.

The proposed regulation outlines the administrative disqualification hearing process to determine whether food stamp recipients have committed fraudulent acts against the program; to identify persons who commit program violations and to disqualify them from participation; and, to establish requirements to advise individuals of the process, findings, and consequences.

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 so indicate.

The provisions of this regulation offer advantages to workers of local departments of social services when they determine eligibility for applying households. Workers must determine eligibility and benefit level based on the amount of income applicants expect to receive in a month. Using a conversion factor with an averaged amount in the calculation allows workers to certify households for longer periods rather than to attempt to guess at the exact amount that will be received. The calculations must be done prospectively instead of retrospectively.

Use of the conversion-factored income also offers advantages to applying and recipient households through the longer eligibility periods before reapplying for benefits. This process is also beneficial to households by leveling monthly income. A more stable or even view of eligibility by excluding periodic fluctuations or income that results from a fifth weekly pay period or a third biweekly period when calendar months have additional periods.

Use of a standard telephone amount benefits households and the department by no longer requiring applicants to provide a current telephone bill to verify the expense. This is beneficial to the department by using the time of eligibility staff more efficiently instead by of pursuing telephone bills to determine the basic rate for each household. Use of a standard amount for all households is less error prone than evaluating actual expenses.

The procedures for conducting administrative disqualification hearings for the program offer uniform application of the process to determine if households intentionally provide incorrect or misleading information to receive food stamp benefits to which they are not entitled. Uniform guidelines offer protections to households instead of a process that is variable or subject to change.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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	\$0. The provisions of the regulation do not represent a change in how food stamp benefits are currently determined or in how administrative hearings are conducted.
Projected cost of the regulation on localities	\$0. The provisions of the regulation do not represent a change in how food stamp benefits are currently determined or in how administrative hearings are conducted.

<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>All applicants/recipients for food stamps could be affected if they receive income on a weekly or biweekly basis; have a telephone expense; or, if local social services workers have evidence that an applicant has committed a fraudulent act to get benefits by purposely withholding information or by providing misleading or incorrect information.</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>Over 223,000 households received food stamp benefits in April 2006. The entire recipient population could be affected by the provisions of the regulation. Very small percentages of the caseload traditionally are found to have overpayments in general and an even smaller amount is likely to be determined to have committed an intentional act.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>\$0. The eligibility process and structure for the program have not changed. There is no way to determine the portion of administrative costs related solely to the regulation.</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.

Three methods exist in federal regulations to anticipate monthly income for Food Stamp Program purposes when household members receive income on a weekly or biweekly basis. State agencies may elect to: 1) use conversion factors of 2.15 and 4.3 to multiply biweekly and weekly amounts respectively; 2) use a conversion standard that is used for other public assistance programs in the state; or, 3) use the exact amount expected in the month. While the methods are available, two are not practical. There is no reasonable way to anticipate exact amounts to be received in the future and there is no other income conversion standard used by public assistance programs in Virginia. The Board prefers to use the conversion factors of 2.15 and 4.3 to calculate monthly income amounts when households expect to receive income for the full month from a specific source.

In calculating telephone costs for basic telephone service, state agencies may choose between having a standard amount or to use the actual costs for basic service for a single telephone line. There are multiple service providers for Virginia and what constitutes as basic service may vary from provider to provider or may be dependent on where households reside within Virginia. Having a single rate for the entire state is less error prone and saves eligibility worker time from having to assess telephone bills for each household or contacting the service provider for each household to determine the cost of providing basic telephone service for one telephone and one line.

Regarding administrative hearings, the process itself is an alternative to having local social services departments pursue all cases through courts to determine if individuals have committed intentional violations of the Food Stamp Program. Representatives of local departments of social services may elect to channel some cases through the court system and decide to go through the administrative route for other cases.

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.

There are no alternative regulatory methods available. The process to determine eligibility for the Food Stamp Program is constrained by the federal income and resource limits that all households must meet.

Public comment

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

The Department did not receive any comments during the public comment period.

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 regulation does not impact 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 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.

The regulation may alter disposable family income by potentially changing the amount of food stamp benefits a household receives or by determining that a household is not eligible for benefits. The amount of benefits a household receives helps to supplement the amount of money available for food purchases.

The regulation requires an acceptance of responsibility for one's actions to receive only the food stamp benefits to which the household is entitled rather than to attempt or to receive benefits or additional benefits by intentionally providing misleading or incorrect information on which eligibility is based.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes 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 and rationale
22 VAC 40-600-10	22 VAC 40-601-10	Definitions	Consistent with 22 VAC 40-600-10, definition of local department added.
22 VAC 40-20-10	22 VAC 40-601-20	A conversion factor of 4.3 is used to convert weekly income to a monthly amount and 2.15 is used for biweekly income amounts.	A conversion factor of 4.3 is used to convert weekly income to a monthly amount and 2.15 is used for biweekly income amounts.
22 VAC 40-540-10	22 VAC 40-601-30	Households may not use the actual telephone expense to determine the total shelter amount. Households must use a set standard amount.	Households may not use the actual telephone expense to determine the total shelter amount. Households must use a set standard amount.
22 VAC 40-600-20 through 22 VAC 40-600-240	22 VAC 40-601-40	Local social services workers must refer cases to court or through the administrative hearing to determine if an individual has committed an intentional act to receive benefits. Duties are identified for the hearing officer and rights of the household are listed. Persons who commit intentional acts are disqualified.	Local social services workers must refer cases to court or through the administrative hearing to determine if an individual has committed an intentional act to receive benefits. Duties are identified for the hearing officer and rights of the household are listed. Persons who commit intentional acts are disqualified.

The existing regulations are being repealed. The provisions of this regulation are unchanged from the previous regulations.