

STATEMENT OF EMERGENCY
921 KAR 3:035E

This emergency administrative regulation is necessary in order to immediately implement new Supplemental Nutrition Assistance Program (SNAP) certification periods in order to assist with caseload management and to eliminate reference to a program disqualification that is no longer in place. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1. and 4. as this amendment reduces the risk of applicant or system errors in the SNAP program that could jeopardize the food security of Kentucky residents who participate in the program. The lack of food is an imminent threat to public health, safety, and welfare and this amendment is necessary in order to protect human health. Assistance in purchasing food and reducing program error is especially necessary to many affected by the COVID-19 pandemic. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 3:035E. Certification process.

EFFECTIVE: July 29, 2020

RELATES TO: 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015(d), 42 U.S.C. 5122, 5179

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of SNAP.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household's circumstance for the entire period for which each household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households shall require special or additional certification procedures as established in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), the cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsection (3) of this section, a household shall be certified for:

(a) Four (4) months if the household contains an able-bodied adult without dependent (ABAWD) in accordance with 7 U.S.C. 2015(d);

(b) Twelve (12) [~~Six (6)~~] months if the household includes a member who is not ABAWD or elderly or disabled with no earned income; or

(c) Twenty-four (24) [~~Twelve (12)~~] months if all household members:

1. Are elderly or have a disability as defined in 921 KAR 3:010; and
2. Have no earned income.

(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:

1. Expedite benefits in accordance with 7 C.F.R. 273.2(i)(1); and
2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a four (4), twelve (12) [~~six (6)~~], or twenty-four (24) [~~twelve (12)~~] month certification as established in subsection (2) of this section.

(4)(a) In accordance with 7 C.F.R. 273.12, a household certified for twelve (12) or twenty-four (24) months in accordance with subsection (2)(b) or (c) of this section[~~, which reports a change during the household's initial five (5) months of the certification period of earned income or a new member who is not elderly or disabled,~~] shall complete an interim report using the FS-2, MID [SNAP] REVIEW NOTICE, during the sixth month or twelfth month of the household's certification period, respectively.

(b) If a household fails to return a completed FS-2 or the required verification, the cabinet shall take action in accordance with 7 C.F.R. 273.12(a)(5).

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

- (1) Notice of eligibility;
- (2) Notice of denial; or
- (3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as established in 921 KAR 3:030, Section 1, as follows:

(1) If a household files the application:

(a) By the 15th day of the last month of the certification, the cabinet shall:

1. Allow the household to return verification or complete a required action through the last calendar day of the application month; and

2. Provide uninterrupted benefits, if the household is otherwise eligible; or

(b) After the 15th day, but prior to the last day of the last month of the certification, the cabinet shall allow the household thirty (30) days to return verification or complete a required action; or

(2) If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other households and therefore shall require special or additional certification procedures. (1) A household with a self-employed member shall have its case processed as established in this subsection.

(a) Income shall be annualized over a twelve (12) month period, if self-employment income:

1. Represents a household's annual income; or
 2. Is received on a monthly basis that represents a household's annual support.
- (b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.
- (c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.
- (d) The cabinet shall calculate the self-employment income on anticipated earnings if the:
1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and
 2. Household has experienced a substantial increase or decrease in business.
- (2) A household with a boarder shall have its case processed as established in this subsection.
- (a) Income from the boarder shall:
1. Be treated as self-employment income; and
 2. Include all direct payments to the household for:
 - a. Room;
 - b. Meals; and
 - c. Shelter expenses.
- (b) Deductible expenses shall include:
1. Cost of doing business;
 2. Twenty (20) percent of the earned income; and
 3. Shelter costs.
- (3) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as established in this subsection.
- (a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.
- (b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.
- (c) The ineligible member shall not be included if:
1. Assigning benefit levels;
 2. Comparing monthly income with income eligibility standards; and
 3. Comparing household resources with resource eligibility standards.
- (4) A household with a member ineligible due to failure to provide a Social Security number[; delinquency in payment of court-ordered child support through the Department of Income Support, Child Support Enforcement Program in accordance with 921 KAR 3:025, Section 3(11);] or ineligible alien status[;] shall be processed as established in this subsection.
- (a) All resources of an ineligible member shall be considered available to the remaining household members.
- (b) A pro rata share, as established in 7 C.F.R. 273.11(c)(2)(ii), of the ineligible member's income shall be attributed to remaining household members.
- (c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.
- (d) The ineligible member's share of dependent care and shelter expenses shall not be counted.
- (e) The ineligible member shall not be included as established in subsection (3)(c) of this section.

(5) A household with a nonhousehold member shall be processed as established in this subsection.

(a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered available to the household with whom they reside.

(b) If the earned income of a household member and a nonhousehold member are combined into one (1) wage, the cabinet shall:

1. Count that portion due to the household as earned income, if identifiable; or

2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.

(c) A nonhousehold member shall not be included in the household size, if determining the eligibility and benefits for the household.

(6) The cabinet shall process the case of a drug or alcoholic treatment program resident, as established in 7 C.F.R. 271.2, as established in this subsection.

(a) An eligible household shall include:

1.a. A narcotic addict; or

b. An alcoholic; and

2. A child of the narcotic addict or alcoholic.

(b) Certification shall be accomplished through use of the treatment program's authorized representative.

(c) SNAP processing standards and notice provisions shall apply to a resident recipient.

(d) A treatment program shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the treatment program, the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The treatment program shall be responsible for knowingly misrepresenting a household circumstance.

(7) The case processing procedures established in this subsection shall apply to residents of a group living arrangement, as defined in 7 C.F.R. 271.2.

(a) Application shall be made by a resident or through use of the group living arrangement's authorized representative.

(b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who files the application:

1. If a resident applies, the household shall report a change in household circumstance to the cabinet; or

2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.

(e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

(8) A case of a resident in a shelter for battered women and children shall be processed as established in this subsection.

(a) The shelter shall:

1. Have FNS authorization to redeem SNAP benefits at wholesalers; or

2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g).

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(9) The case of an SSI recipient shall be processed as established in this subsection.

(a) An application may be filed at the:

1. Social Security Administration (SSA) Office; or
2. Local Department for Community Based Services office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to approving benefits.

(d) Certification periods shall conform to Section 2 of this administrative regulation.

(e) A household change in circumstance shall conform to Section 7 of this administrative regulation.

(10) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike, to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(11) Sponsored aliens.

(a) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:

1. Deemed income from a sponsor and sponsor's spouse, which shall:

a. Include total monthly earned and unearned income; and

b. Be reduced by:

(i) The twenty (20) percent earned income disregard, if appropriate; and

(ii) The SNAP gross income eligibility limit for a household equal in size to the sponsor's household;

2. Subject to appropriate income exclusions as established in 921 KAR 3:020, Section 3; and

3. Reduced by the twenty (20) percent earned income disregard, if appropriate.

(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be pro-rated among each sponsored alien.

(c) A portion of income, as established in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:

1. Becomes a naturalized citizen;

2. Is credited with forty (40) qualifying quarters of work;

3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(3);

4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or

5. Dies, or the sponsor dies.

(d) In accordance with 7 U.S.C. 2014(i)(2)(E), deeming requirements shall not apply to sponsored alien children under eighteen (18) years of age.

Section 6. Disaster Certification. The cabinet shall distribute emergency SNAP benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C. 5179 and 7 C.F.R. 280.1.

Section 7. Reporting Changes. (1) Within ten (10) days of the end of the month in which the change occurs, a household shall report a change that causes:

(a) The household's gross monthly income to exceed 130 percent of poverty level based on household size; or

(b) A household member, who does not have an exemption from work requirements, as established in 921 KAR 3:025, Section 3(8)(b), to work less than twenty (20) hours per week.

(2) An applying household shall report a change related to its SNAP eligibility and benefits:

(a) At the certification interview; or

(b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview, but prior to receipt of the notice.

Section 8. Incorporation by Reference. (1) The "FS-2, MID [SNAP] REVIEW NOTICE", 8/20 [9/16], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 16, 2020

FILED WITH LRC: July 29, 2020 at 4 p.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification process used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation establishes the certification process necessary to determine SNAP eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the certification process for SNAP eligibility determination.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statutes by establishing the certification process for SNAP.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation extends SNAP certification periods, potentially to decrease applicant or system error. For households including elderly members or members with a disability and no earned income, the certification period is changed from twelve (12) months to twenty-four (24) months. For households including members who are not able-bodied adults without dependents or elderly or disabled with no earned income, the certification period is changed from six (6) months to twelve (12) months. The certification period for households with an able-bodied adult without dependents will remain at four (4) months. The amendment also removes reference to the disqualification of a household member who is a non-custodial parent with child support arrears as this program disqualification no longer exists. The amendment incorporates the 8/20 revision of form FS-2, MID REVIEW NOTICE, which amends the title of the form and makes minor technical amendments.

(b) The necessity of the amendment to this administrative regulation: This regulatory amendment is necessary to decrease the possibility of certification errors that could jeopardize

the food security of Kentucky residents who participate in the SNAP program and assists in department caseload management. The lack of food is an imminent threat to public health, safety, and welfare and assistance in purchasing food and reducing program error is especially necessary to many affected by the COVID-19 pandemic.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning SNAP certification periods with state options found in Public Law 110-246 and 7 C.F.R. 273.2.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its modification of certification periods to improve the overall administration of SNAP and ensure assistance in purchasing food is available to those eligible.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All households participating in SNAP will be affected by this regulatory amendment. In January 2020, there were 218,060 active SNAP households.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulatory amendment will require affected SNAP households to submit an interim report during their extended certification time periods.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to SNAP households affected by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Although an interim report is required, affected households will have a longer period of time before program recertification. This should result in less hardship associated with participating in SNAP and less chance of applicant or system error.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The initial cost for system design changes to implement this regulatory amendment is \$94,000.00.

(b) On a continuing basis: Implementation of this regulatory amendment will require mailing costs for issuing interim report forms to SNAP households, but will decrease the administrative burden on staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

SNAP benefits are 100% federally funded. Administrative functions are funded at a 50% state and 50% federal match rate. The funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required to implement this administrative regulation amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015, 42 U.S.C. 5122, 5179
2. State compliance standards. KRS 194A.050(1)
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional, or different responsibilities or requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015, 42 U.S.C. 5122, 5179, KRS 194A.050(1)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate new revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate new revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This administrative regulation will result in new technology costs for the administering agency in its first year, but these costs are not ongoing and the amendment should decrease administrative burden for staff.

(d) How much will it cost to administer this program for subsequent years? There is no new ongoing costs to administer this program as a result of this administrative regulation in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: