



Food and
Nutrition
Service

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Park Office
Center

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SUBJECT: Questions & Answers Concerning SNAP: Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008 Final Rule – Set #1

TO: All Regional Directors
Supplemental Nutrition Assistance Program (SNAP)

The attached questions and answers address the SNAP: Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008 final rule. The Food and Nutrition Service (FNS) is releasing this memorandum as formal guidance based on questions received from State agencies. This memorandum comprises the first part of a series of questions and answers on this rule. The memorandum contains information on the removal of the dependent care cap, copies of client applications in an electronic format, the impact of the rule on administrative waivers, and telephonic signature systems. Additional question and answer documents will be forthcoming.

Please distribute this guidance to your State agencies and advise them to contact their respective FNS Regional Offices with any questions and for technical assistance. FNS Regional Offices should contact Sasha Gersten-Paal at Sasha.Gersten-Paal@fns.usda.gov with any questions concerning this memorandum.

Sincerely,

Lizbeth Silbermann
Director
Program Development Division

Attachment

Dependent Care Cap Removal

1. When is this provision effective?

The elimination of the cap for dependent care expenses was effective on October 1, 2008, per the Food, Conservation, and Energy Act of 2008 (the Act). The regulatory changes are effective May 8, 2017.

2. May State agencies allow the cost of transportation associated with dependent care costs incurred by households?

Yes, transportation costs to and from dependent care facilities may be included as part of a household's total dependent care costs.

3. How should State agencies calculate mileage rates for dependent care related transportation costs?

State agencies have discretion for developing a reasonable mileage rate to be applied consistently Statewide or within a project area. For this purpose, the Internal Revenue Service (IRS) standard rate could also be used.

4. Are State agencies required to verify transportation costs?

Like other dependent care costs, verification of transportation costs associated with dependent care is not required unless the amount being claimed is considered questionable. SNAP regulations also provide States the option to verify eligibility factors that are not otherwise required under Federal regulations, so long as such verification is required Statewide or throughout a project area and is not imposed on a selective, case-by-case basis on particular households.

5. What are activity fees? Which activity fees are allowable dependent care costs?

Activity fees are fees that are associated with the care provided to the dependent that are necessary for the household to participate in the care. Although the fees do not have to be mandatory to be deductible under this provision, like all dependent care costs they must be specific and identifiable. Examples of activity fees that may be deductible as dependent care costs include the cost of an art class for an after-school program or an adult day care program, additional equipment fees charged for attending a sports camp, or the cost of field trips sponsored by summer camps.

Like all dependent care costs, activity fees are allowable if they are necessary for a household member to search for employment, or to accept or continue employment, training, or education in preparation for a job.

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6. Is there a limit on dependent care costs based on age or incapacitation?

The final rule includes all children under the age of 18 or adults of any age who are incapacitated. For the purpose of this provision, incapacitation refers to any permanent or temporary condition that prevents an individual from participating fully in normal activities without supervision (including but not limited to work or school) and that requires the care of another person to ensure the health and safety of the individual, or a condition or situation that makes a lack of supervision risky to the health and safety of that individual.

7. How should costs that are allowable as dependent care costs or excess medical expenses be considered?

Allowable medical expenses may be deducted under the excess medical deduction or the dependent care deduction but not both provisions. Language at 7 CFR 273.9(d)(3)(x) and 273.9(d)(4) has been revised to ensure that dependent care costs are not double counted.

8. Will there be a Quality Control hold harmless period for this provision?

Per Section 16(c)(3)(A) of the Act, provisions of the final rule discussed in this section are subject to a 120-day hold harmless period beginning on May 8, 2017.

Copies of Client Applications in an Electronic Format

1. What constitutes a copy of an application in an electronic format?

State agencies have discretion in determining what constitutes an electronic format. A copy of a client application in an electronic format could be made available to a household via secure electronic mail or a State's online application portal, if available. FNS would also consider copies of applications provided to households in a digital form on a physical device (e.g., CD-ROM or jump drive) to meet the electronic format requirements under this rule.

2. Are State agencies required to provide households copies of their completed applications?

Regardless of the method by which a household applies, the State agency is required to offer the household a copy of its completed application. Households that choose to request a copy of their completed application may select the format of the copy – paper or electronic – and the State agency must provide it in the format the household requests.

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3. Can you provide clarification as to what is required if the household completes a paper application and requests a copy of their application?

State agencies must offer households a copy of their completed application. The copy may be provided in paper or electronic format, unless the household requests the copy in electronic format, in which case the State agency must provide the copy in electronic format.

4. Is there a set process States must follow to implement this provision?

No. The State agency will have discretion to determine the most efficient means to offer this option. For example, it may add a question on the application as to the household's request for a copy of the completed application with options for receipt in a preferred format, or it may add this question to the interview.

5. When does this provision of the rule become effective and will there be a Quality Control hold harmless period?

Because State agencies may have to update their application process to implement this provision, the amendments to 273.2(c)(1)(v) are effective March 9, 2018. Once this provision becomes effective it will be subject to a 120-day Quality Control hold harmless period per Section 16(c)(3)(A) of the Act.

Impact of Rule on Administrative Waivers

1. Which administrative waivers are now obsolete because of publication of the final rule?

The following administrative waivers become obsolete on May 8, 2017:

- *\$100 Reporting Threshold for Changes in Gross Monthly Income* – this waiver allowed State agencies to adjust the reporting threshold for unearned income from private sources from \$50 to \$100 for those SNAP households subject to change reporting.
 - waiver made obsolete by increased reporting threshold amount of \$100 at 273.12(a)(1)(i)(A)
- *Change Reporting Households to Report by 10th Day of the Month* – this waiver aligned the reporting timelines of Change Reporting and Simplified Reporting households so all changes would be reported no later than 10 days from the end of the calendar month in which the change occurred.

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- waiver made obsolete by State option at 273.12(a)(2)
- *Averaging Student Work Hours* – this waiver allowed State agencies to average student work hours for the purpose of determining SNAP eligibility as long as they maintained an average of 20 hours per week or 80 hours per month.
 - waiver made obsolete by State option at 273.5(b)(5)
- *Telephonic Interview in Lieu of Face-to-Face Interview* – this waiver allowed State agencies to offer telephone interviews in lieu of face-to-face interviews at initial application and recertification without documenting hardship in the case file.
 - waiver made obsolete by State option at 273.2(e)(2)

The following waiver becomes obsolete on March 9, 2018:

- *Supply Paper Copy of Application for Online Submission* – this waiver allowed State agencies to provide households the option to print their information at the time of application or provide paper copies upon client request rather than provide all applicants with copies of their records.
 - waiver made obsolete by regulatory requirement that State agencies offer to provide a copy of the application rather than require a copy be supplied to all households at 273.2(c)(1)(5)

2. What should States with waivers made obsolete by the rule do about notifying FNS?

State agencies that wish to select any option made available to them in this rule should inform their FNS Regional Office in writing of the selection of the option and its effective date. State agencies must include this information in their State Plans of operation pursuant to regulatory changes in 272.2.

3. Do changes in this rule at 273.12 mean State agencies no longer need the reinstatement waiver?

It depends on the approved alternative procedures for the State agency's waiver. Most currently approved reinstatement waivers allow States to reinstate the eligibility of a household that was terminated for failure to submit a periodic report and/or required verification and other information. Under these waivers, the household must have submitted the required information or document within 30 days of the termination. The final rule provides State agencies with the option to reinstate the eligibility of households that were terminated for failure to timely submit a complete periodic report. The final rule does not offer the option to reinstate households that were terminated for lack of required verification or other information.

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As such, State agencies that wish to reinstate households missing required verification or other information will still require a waiver.

State agencies that currently have a reinstatement waiver should notify their FNS Regional Office of their intended reinstatement processes after the effective date of this rule. FNS will work with State agencies to withdraw obsolete waivers or adjust the waiver terms and conditions upon request for renewal.

4. Can States eliminate face-to-face interviews because of changes in this rule?

The final rule allows State agencies to use a telephone interview rather than a face-to-face interview without the need to document hardship at both initial application and recertification. The State agency may use a telephone interview for all applicant households, for specified categories for households, or on a case-by-case basis because of household hardship situations.

However, the rule requires that State agencies inform households of the opportunity for a face-to-face interview at application or recertification and provide a face-to-face interview to any household that requests one. Additionally, all State agencies must provide any household that meets hardship criteria a telephone interview.

5. How does this rule affect home-based interviews?

The rule requires that State agencies may only conduct a home-based interview if a household meets the established hardship criteria and requests a home-based interview. Previously, the regulations did not require that the household request a home-based interview.

6. Will there be a Quality Control hold harmless period for this provision?

Per Section 16(c)(3)(A) of the Act, provisions of the final rule discussed in this section are subject to a 120-day hold harmless period beginning on May 8, 2017.

Telephonic Signature Systems

1. What should a State agency do if it wants to implement the telephonic signature option?

A State agency that wants to implement the telephonic signature option must specify the selection of this option and its effective date in its State Plan of operation.

2. If a State agency contracts with a third party, like a community-based organization, who is responsible for maintaining a record of the telephonic signature?

If a State agency implements a telephonic signature process with a contracted third party, or a third party acting on behalf of the State agency through a memorandum of understanding (MOU), the third party must make its records readily accessible to the State agency.

In the event a State agency's relationship with a third party entity ends, that organization cannot retain telephonic signature records or any other data produced under the contract and must transfer all materials to the State agency. State agencies must comply with Federal record retention requirements in 272.1(f), which state that State agencies must retain all SNAP records for audit and review for no less than 3 years from the month of origination date.

3. What should State agencies consider entering into a third-party agreement consider?

FNS encourages State agencies entering into a third-party agreement to consider the following items:

- State agencies must follow the appropriate merit system personnel policy;
- Regardless of where a telephonic signature file is stored, the State agency owns the signature and any other data produced under contract by a third party entity using Federal funding;
- Telephonic signature files and any other related data must be transferred to the State agency in a usable format should the relationship between the third party and the State end; and
- Appropriate language in MOUs and/or contractual agreements with third party entities to ensure they are in compliance with all program requirements.

4. How does publication of this rule change guidance provided in the May 12, 2014, memo entitled "SNAP Telephonic Signature Guidance"?

This rule further defines the parameters for what must be included for a telephonic signature to be valid. In addition to the audio recording of a household member's verbal assent, State agencies must also record a summary of the information to which the household assents. FNS will consider a recording that reiterates the household's details agreed to during the telephone conversation as an allowable summary under this provision.

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5. How must States that select to implement the telephonic signature option ensure client information is safeguarded?

FNS expects State agencies to develop a telephonic signature process that safeguards against impersonation, identity theft, and invasions of privacy as is required by the Act. States have discretion to determine those safeguards.

FNS recommends that State agencies wishing to pursue this option consult their legal counsel to ensure that 1) the captured telephonic signature meets the legal definition of a signature in the State; and 2) that there are necessary safeguards in place to protect a client against impersonation, identity theft, and invasions of privacy.

6. Will there be a Quality Control hold harmless period for this provision?

Per Section 16(c)(3)(A) of the Act, provisions of the final rule discussed in this section are subject to a 120-day hold harmless period beginning on May 8, 2017.