

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

DCF

Department for Children and Families

BULLETIN NO.: 10-24F

FROM: Pam Dalley, Interim Deputy Commissioner
Economic Services Division

DATE: January 13, 2011

SUBJECT: Amendment to Food Stamp (3SquaresVT) Rules
to Comply with Federal Law and Regulations

CHANGES ADOPTED EFFECTIVE 1/14/2011

INSTRUCTIONS

- Maintain Manual - See instructions below.**
 Proposed Regulation - Retain bulletin and attachments until you receive Manual Maintenance Bulletin: _____
 Information or Instructions - Retain until _____

MANUAL REFERENCE(S):

273.9d 6 vi
273.9d 6 vii

The Department for Children and Families is required to administer the federal supplemental nutrition assistance program in accordance with the Food Stamp Act of 1977, as amended (the Act), regulations issued pursuant to the Act, and the State Plan of Operation approved by the USDA Food and Nutrition Service (FNS).

On September 7, 2010 FNS notified the department that the rule-making requirement specified under Food Stamp (now known as 3SquaresVT) rule number 273.9d 6 vi as a "Vermont Note" does not comply with Federal regulations. Consequently, the rule prevents the timely application of federally-mandated updates to standard utility allowances. The department thereby proposes to amend the rule by removing the noncompliant language. The department also proposes to amend rule number 273.9d 6 vii to incorporate a federal rule that prohibits states from prorating standard utility allowances among households sharing the cost of heating or cooling. The department implemented the federal requirement on January 16, 2004 by administrative directive.

Specific Changes to Rule Sections

- 273.9d 6 vi** Amends the Vermont rule by removing the “Vermont Note” specifying that annual decreases in standard utility allowances will be implemented via the Vermont Administrative Procedures Act. Specifies that annual updates to standard utility allowances will coincide with the annual issuance and updates of other federally-mandated standards to be effective October 1 and published in procedures.
- 273.9d 6 vii** Amends the Vermont rule by replacing it with language consistent with federal rules that prohibit the state from prorating heating and cooling standard utility allowances among households living together and sharing utility costs.

Rulemaking Process

A. Public Input Process

1. The proposed rule was filed with the Interagency Committee on Administrative Rules (ICAR) on October 1, 2010 and presented at its meeting on October 18, 2010.
2. The proposed rule was filed with the Secretary of State’s Office and the Legislative Committee on Administrative Rules (LCAR) on October 22 2010.
3. The Secretary of State published notice of rulemaking on their website on October 27, 2010.
4. The department posted the proposed rule on its website <http://dcf.vermont.gov/esd/rules> and notified advocates, subscribers, and members of the public of the proposed rule.

B. Formal Notice and Comment Period

1. A public hearing was held on Monday, November 29, 2010 at 2:00 p.m., in the DCF Commissioner’s Conference Room, 5 North, State Office Complex, Waterbury, Vermont.
2. The comment period on the proposed rules closed on Monday, December 6, 2010 at 4:30 p.m. The department received written comments from one commenter.
3. On or before Friday, December 17, 2010, copies of the final proposed rule are expected to be filed with the Secretary of State and the Legislative Committee on Administrative Rules (LCAR).
4. The department expects to present the rule to LCAR on January 13, 2011.
5. The department expects to file the final rule no later than Monday, January 17, 2011.
6. The rule is expected to be effective on February 1, 2011 or as soon as administratively feasible after February 1, 2011.

Comment

One commenter questioned overlay of federal and state rulemaking procedures for the SNAP program and the time constraints related to these procedures that would preclude using the Vermont APA process to change standards.

Response

SNAP program benefits are 100% federally funded (administrative costs are shared) and the federal funding depends on compliance with federal rules and procedures. Under federal SNAP rules, the state must implement changes to federally mandated and approved standards within the timeframes directed by the USDA Food and Nutrition Service, the federal regulatory agency for SNAP (3SquaresVT). The Department's request to waive the federal time constraint in order to comply with the state rule was denied by the federal agency. The Department believes that is unnecessary to retain a rule that requires a pro forma review under the Vermont APA process when that rule is subject to preemption under federal authority.

C. Changes Since Original Filing

Since the first filing of the proposed rule, the USDA Food and Nutrition Service (FNS) has given certain states (including Vermont) permission to extend fuel and utility standards in place prior to October 1, 2010 through March 31, 2011. All states will be required to implement new standards on April 1, 2011 and again on October 1, 2011. To accommodate the potential for changes to federal guidance, language has been added to the rule to clarify that standards will be updated annually on October 1 or as otherwise directed by FNS.

D. Changes Since Final Proposed Filing

Since the filing of the final proposed rule, the Department reached agreement with Vermont Legal Aid to add language to the rule that would ensure flexibility for the Department with respect to process (by elimination of the requirement for APA process). The added language reassures Legislative Committee on Administrative members and others that public concerns about transparency, and opportunity for notice and comment will be given a high priority by the Department. The Department commits to posting the methodology for and proposed and adopted updates to standard utility allowances on the Department's website.

To get more information about the Administrative Procedures Act and the rules applicable to state rulemaking go to the website of the Office of the Vermont Secretary of State at: <http://vermont-archives.org/aparules/> or call Louise Corliss at 828-2863.

For information on upcoming hearings before the Legislative Committee on Administrative Rules go to the website of the Vermont Legislature at: <http://www.leg.state.vt.us/schedule/schedule2.cfm> or call 828-5760.

Vertical lines in the left margin indicate significant changes. Dotted lines at the left indicate changes to clarify, rearrange, correct references, etc., without changing content.

Manual Maintenance

3SquaresVT Rules

Remove

273.9d 6 vi (10-22)

Insert

273.9d 6 vi (10-24)

1/14/2011

Bulletin No. 10-24

273.9d 6 vi

273.9 Income and Deductions

d. Income Deductions

6. Standard Utility Allowance (Continued)

- vi. The State agency shall review and adjust the standard utility allowance(s) annually to reflect changes in the cost of utilities. The State agency may use data gathered through quality control sampling, surveys of utility company rates, or other methods for updating the standard utility allowance(s). The State agency may vary the size of the standard utility allowance to reflect differences such as seasonal cost changes or cost variations between geographical areas.

The annual update to standard utility allowances will coincide with the update and issuance of other federally-mandated standards. Updated standards will be implemented on October 1 – or as otherwise directed by the Food and Nutrition Service of the USDA – and will be published in procedures.

Any update resulting in a decrease to the standard utility allowance shall be subject to public notice and hearing and/or an opportunity for public comment prior to adoption. The methodology for updates to the standard utility allowance – both proposed and adopted – shall be posted on the Department’s website.

- vii. If a household lives with and shares heating or cooling expenses with another individual, another household, or both, the State agency shall not prorate the standard for such households if the State agency mandates use of standard utility allowances in accordance with paragraph 273.9d 6 iii E of this section. The State agency may not prorate the SUA if all the individuals who share utility expenses but are not in the food stamp household are excluded from the household only because they are ineligible.