

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

FINAL

ORDER

**FOOD STAMP PROGRAM
9007.1 Citizenship and Alien Status**

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding *Citizenship and Alien Status*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the August 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

The proposed change described below amends the Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding *Citizenship and Alien Status*.

Statutory Authority

7 CFR §273.4, *Citizenship and Alien Status*

Summary of Proposed Changes

DSSM 9077.1, *Citizens and Qualified Aliens*: The proposed revisions at 9007.1 are being made to rename this section and replace with Citizenship and Alien Status and to reorganize and reformat the content to align text with federal regulations at 7 CFR §273.4.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

No public comments were received for this regulation.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the Food Stamp Program regarding *Citizenship and Alien Status* is adopted and shall be final effective October 10, 2008.

Vincent P. Meconi, Secretary, DHSS, September 11, 2008

DSS FINAL ORDER REGULATION #08-41

REVISIONS:

9007.1 Citizens and Qualified Aliens Citizenship and Alien Status

[7 CFR 273.4]

Citizens and qualified aliens

The following residents of the United States are eligible to participate in the Food Stamp Program without limitations based on their citizenship/alienage status:

1. Persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands. Children born outside the United States are citizens if they meet one of the following conditions:

- both parents are citizens of the United States and one parent has had a residence in the United States, or one of its outlying possessions, prior to the birth of the child; or
- one parent is a citizen of the United States who has been physically present in the United States, or one of its outlying possessions, for a continuous period of one year prior to the birth of the child, and the other parent is a national, but not a citizen of the United States; or
- one parent is a citizen of the United States who has been physically present in the United States, or one of its outlying possessions, for a continuous period of one year at any time prior to the birth of the child.

2. Naturalized citizens or a United States non-citizen national (person born in an outlying possession of the United States, like American Samoa or Sawin's Island, or whose parents are U.S. non-citizen nationals;

3. Individuals who are:

A. An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) apply;

B. A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;

C. Lawfully residing in the U.S. and was a member of the Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;

(i) The spouse or surviving spouse of such Hmong or Highland Laotian who is deceased, or

(ii) An unmarried dependent child of such Hmong or highland Laotian who is under the age of 18 or if a full-time student under the age of 22 of such a deceased Hmong or Highland Laotian provided that the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent prior to the child's 18th birthday.

4. Individuals who are eligible indefinitely due to being:

A. A lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited for the work of a parent

~~the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased. A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that time, eligibility is determined without crediting the alien with the former spouses quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means tested benefits or actually received food stamps in that quarter. If an alien earns the 40th quarter of coverage before applying for food stamps or any other Federal means tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);~~

~~B. lawfully living in the U. S. for five (5) years as a qualified alien beginning on the date of entry:~~

~~Qualified aliens include lawfully admitted residents (holders of green cards), those granted asylum, refugees, victims of a severe form of trafficking, those paroled in the United States under section 212(d)(5) of the INA for at least one year, those whose deportation is being withheld, those granted conditional entry under section 501(e) of the Refugee Education Assistance Act of 1980, Cuban or Haitian entrants, and under certain circumstances, a battered spouse, battered child or parent or child or battered person with a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA.~~

~~C. lawfully in US and is now under 18 years of age;~~

~~D. lawfully in US and is receiving disability or blind (payments listed under DSSM 9013.1)~~

~~E. lawfully in US and 65 or older on 8/22/96 (born on or before 8/22/31).~~

~~F. An alien with one of the following military connections:~~

~~(i) A veteran who was honorably discharged for reasons other than alien status who fulfills the minimum active duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service;~~

~~(ii) A veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 389 U.S.C. 107;~~

~~(iii) An individual on active duty in the Armed Forces of the U.S. other than for training; or~~

~~(iv) The spouse and unmarried dependent children (legally adopted or biological) of a person described above in (i) through (iii), including spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried child for the purposes of this section is: a child who is under the age of 18 or, if a full time student, under the age of 22; such unmarried dependent child of a deceased veteran was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday.~~

~~5. The following aliens with a seven year (7) time limit:~~

~~(A) refugees admitted under section 207 of the Act;~~

~~(B) asylees admitted and granted asylum under section 208 of the Act;~~

~~(C) aliens whose deportation or removal has been withheld under section 241(b)(3) and 243 (h) of the INA.~~

~~(D) Cuban and Haitians admitted under section 501(e) of the Refugee Education Act of 1980; and~~

~~(E) Amerasians admitted under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998.~~

~~The seven year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).~~

~~(F) Immigrants who are victims of severe trafficking in persons per Public Law 106 386 Trafficking Victims Protection Act of 2000. Severe forms of trafficking in persons is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude,~~

peonage, debt bondage, or slavery. Victims of trafficking are issued T visas by US Immigration and Citizenship Services.

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 expanded eligibility to include the minor children, spouses, and in some cases the parents and siblings of victims of severe trafficking. Under TVPRA, eligible relatives of trafficking victims are entitled to visas designated as T-2, T-3, T-4 or T-5 (known as Derivative T Visas) and are eligible for food stamps like the direct victims of severe trafficking.

If an alien is awarded a T visa and was under the age of 21 years on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse, children, unmarried siblings under 18 years of age, and parents.

If an alien is awarded a T visa and was age of 21 years or older on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse and children.

Adult victims of severe trafficking will be certified by the U. S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking, and eligible relatives awarded Derivative T Visas, are treated like refugees for food stamp purposes. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to receive food stamps.

When a direct victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees except DSS will:

1. Accept the original certification letter for child in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT CALL SAVE.)
2. Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Offices of Refugee Resettlement (ORR) of the benefits for which the individual has applied.
3. Note the "entry date" for refugee benefit purposes. The individual's "entry date" for refugee benefit purposes is the certification date, which appears in the body of the certification letter or letter for children.
4. Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.
5. Re-certification letters will be used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees.
6. The seven year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).
7. An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered.

When an eligible relative of a direct victim of severe trafficking applies for benefits:

1. Accept the nonimmigrant T-2, T-3, T-4 or T-5 Derivative Visa and follow the normal procedures for providing services and benefits to refugees.
2. Call the toll-free trafficking verification lines at 1 (866) 401-5510 to notify ORR of the benefits for which the individual has applied. (NOTE: the DHS Systematic Alien Verification for Entitlements (SAVE) system does not contain information about victims of a severe form of trafficking or nonimmigrant alien family members. DO NOT CONTACT SAVE concerning victims of trafficking or their nonimmigrant alien family members.)
3. Issue benefits to the same extent as a refugee provided the Derivative T Visa holder meets other program eligibility criteria like income.
4. For an individual who is already present in the United States on the date the Derivative T Visa is issued, the date of entry for food stamp purposes is the Notice Date on the I-797, Notice of Action of Approval of that individual's Derivative T Visas.

5. For an individual who enters the United States on the basis of a Derivative T Visa, the date of entry for food stamp purposes is the date of entry stamped on that individual's passport or I-94 Arrival Record.

The following residents of the United States (U.S.) are eligible to participate in the Food Stamp Program based on their citizenship or alien status:

A. U.S. Citizens

1. Persons born in the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands.

2. Children born outside the U.S. are citizens if they meet one of the following conditions:

a. Both parents are citizens of the U.S. and one parent has had a residence in the U. S., or one of its outlying possessions, prior to the birth of the child; or

b. One parent is a citizen of the U.S. who has been physically present in the U. S., or one of its outlying possessions, for a continuous period of one year prior to the birth of the child, and the other parent is a national, but not a citizen of the U. S; or

c. One parent is a citizen of the U.S. who has been physically present in the U. S., or one of its outlying possessions, for a continuous period of one year at any time prior to the birth of the child.

3. Naturalized citizens or a U.S. non-citizen national (person born in an outlying possession of the U. S., American Samoa or Swains Island, or whose parents are U.S. non-citizen nationals);

4. Individuals who are:

a. An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) apply; or

b. A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;

c. Lawfully residing in the U.S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;

d. The spouse or surviving spouse of such Hmong or Highland Laotian who is deceased, or

e. An unmarried dependent child of such Hmong or Highland Laotian who is:

- under the age of 22;
- an unmarried child under the age of 18, or if a full-time student under the age of 22, of a deceased Hmong or Highland Laotian provided that the child was dependent upon him or her at the time of his or her death; or
- an unmarried disabled child age 18 or older if the child was disabled and dependent prior to the child's 18th birthday.

B. An individual who is **BOTH** a **qualified** alien and an **eligible** alien as follows:

1. A **qualified** alien is:

a. An alien lawfully admitted for permanent residence (Immigration and Nationality Act [INA]);

b. An alien who is granted asylum to the U.S. (section 208 of INA);

c. A refugee who is admitted to the U.S. (section 207 of the INA);

d. An alien who is paroled into the U.S. for a period of at least one year (section 212[d][5] of the INA);

e. An alien whose deportation/removal is being withheld (sections 207[a][7] and 241[b][3] of the INA);

f. An alien who is granted conditional entry (section 203[a][7]);

g. An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse; [or]

h. An alien who is a Cuban or Haitian entrant (section 501[e] of the Refugee Education Assistance Act of 1980);[;]

2. An **eligible** alien is:

a. An alien lawfully admitted for permanent residence who has 40 quarters of work as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of:

- quarters the alien worked;
- quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and
- quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased.

(i) A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made.

If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien eligibility continues until the next recertification.

At that time, eligibility is determined without crediting the alien with the former spouse quarters of coverage.

(ii) Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent or spouse quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40th quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter counts toward the 40 qualifying quarters total.

- b. [PL]awfully living in the U.S. for five (5) years as a qualified alien beginning on the date of entry.
- c. A refugee who is admitted to the U.S. (section 207 of the INA);
- d. An alien who is granted asylum to the U.S. (section 208 of INA);
- e. An alien whose deportation/removal is being withheld (sections 207[a][7] and 241[b][3] of the INA);
- f. An alien who is a Cuban or Haitian entrant (section 501[e] of the Refugee Education Assistance

Act of 1980);

g. An Amerasian who is admitted to the U.S. (section 584 of P.L. 100-202, amended by P.L. 100-461);

- h. An alien with one of the following military connections:

(i) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service.

A veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 38 U.S.C. 107;

- (ii) An individual on active duty in the Armed Forces of the U.S. other than for training; or

(iii) The spouse and unmarried dependent children (legally adopted or biological) of a person described above in (i) through (ii), including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried child for the purposes of this section is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday.

- i. [PL]awfully in U.S. and is receiving disability or blind payments ([as] listed under DSSM 9013.1);

- j. [PL]awfully in U.S. and 65 or older on 8/22/96 (born on or before 8/22/31)

k. [PL]awfully in U.S. and is now under 18 years of age (when child turns 18, the child must meet another eligibility criteria like 40 quarters or the five-year residency rule to continue to get food stamps);

- l. [PL]awfully in U.S. in a qualified status for five years;

m. Immigrants who are victims of severe trafficking in persons per Public Law 106-386 Trafficking Victims Protection Act of 2000. Severe forms of trafficking in persons is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act

has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Victims of trafficking are issued T visas by U.S. Immigration and Citizenship Services.

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 expanded eligibility to include the minor children, spouses, and in some cases the parents and siblings of victims of severe trafficking. Under TVPRA, eligible relatives of trafficking victims are entitled to visas designated [~~at~~ as] T-2, T-3, T-4 or T-5 (known as Derivative T Visas) and are eligible for food stamps like the direct victims of severe trafficking.

If an alien is awarded a T visa and was under the age of 21 years on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse, children, unmarried siblings under 18 years of age, and parents.

If an alien is awarded a T visa and was age of 21 years or older on the date the T Visa application was filed, the Derivative T Visa[s] are available to the alien's spouse and children.

Adult victims of severe trafficking will be certified by the U.S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking, and eligible relatives awarded a Derivative T Visa, are treated like refugees for food stamp purposes. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to receive food stamps.

When a direct victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees except DSS will:

Accept the original certification letter or letter for children in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT CALL SAVE.)

Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Office of Refugee Resettlement (ORR) of the benefits for which the individual has applied.

Note the "entry date" for refugee benefit purposes. The individual "entry date" for refugee benefits purposes is the certification date, which appears in the body of the certification letter or letter for children.

Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.

Re-certification letters will be used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees.

When an eligible relative of a direct victim of severe trafficking applies for benefits:

Accept the nonimmigrant T-2, T-3, T-4 or T-5 Derivative Visa and follow the normal procedures for providing services and benefits to refugees.

Call the toll-free trafficking verification line at 1 (866) 402-5510 to notify ORR of the benefits for which the individual has applied. (NOTE: the DHS Systematic Alien Verification for Entitlements (SAVE) system does not contain information about victims of a severe form of trafficking or nonimmigrant alien family members. DO NOT CONTACT SAVE concerning victims of trafficking or their nonimmigrant alien family members.)

Issue benefits to the same extent as a refugee provided the Derivative T Visa holder meets other program eligibility criteria like income.

For an individual who is already present in the United States on the date the Derivative T Visa is issued, the date of entry for food stamp purposes is the Notice Date on the I-797, Notice of Action of Approval of that individual Derivative T Visa.

For an individual who enters the [~~United~~ United] States on the basis of a Derivative T Visa, the date of entry for food stamp purposes is the date of entry stamped on that individual passport or I-94 Arrival Record.

8 DE Reg. 1712 (6/1/05)

10 DE Reg. 1702 (05/01/07)

12 DE Reg. 455 (10/01/08) (Final)