



STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT



HUMAN SERVICES REGISTER

I. DEPARTMENT

HUMAN SERVICES DEPARTMENT

II. SUBJECT

MANDATORY PARTICIPATION IN SNAP EMPLOYMENT AND TRAINING (E&T) REQUIREMENTS FOR ADULTS WITH CHILDREN OVER THE AGE OF SIX

AND

REINSTATEMENT OF THE ABLE BODIED ADULTS WITHOUT DEPENDENTS WORK REQUIREMENTS AND TIME LIMITS

III. PROGRAMS AFFECTED

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

IV. ACTION

PROPOSED RULE

V. BACKGROUND

The Department is promulgating proposed regulations to the Supplemental Nutrition Assistance Program (SNAP), Employment and Training (E&T) program. The Food and Nutrition Act (the Act) of 2008 states that the purpose of E&T program is to provide SNAP participants opportunities to gain skills, training or experience that will improve their employment prospects and reduce their reliance on SNAP benefits. Within the proposed regulations, the Department is reinstating the program requirements that were in effect prior to the American Reinvestment and Recovery Act of 2009.

These changes include:

- Reinstatement of the Able Bodied Adults Without Dependents (ABAWD) work program requirements and time limits in accordance with the Food and Nutrition Act and Title 7 of the Code of Federal Regulations, part 273 as of October 1, 2015.

- Alignment of exemptions and participant ages from the Employment and Training requirements for Non-ABAWDs with the Federal SNAP regulations in 7 CFR 273.7. Non-ABAWDs will be voluntary from October 1, 2015 to February 29, 2016. As of March 1, 2016, all newly eligible SNAP participants who do not meet an exemption, will be required to participate in the E&T program. The existing SNAP eligible participants, who do not meet an exemption, as of March 1, 2016, will become mandatory for the E&T program at their next recertification.

The Department is proposing to align the E&T and TANF regulations for removing disqualifications when an individual has complied within the disqualification period. This proposal will ensure that individuals, who comply within the disqualification time period, will have access to the SNAP benefits earlier, rather than completing the entire disqualification period.

The Department is proposing to expand the definition of “Good Cause” for noncompliance with program requirements and to define the allowable time period.

The Department is proposing that individuals residing in an area that is determined to be a “rural” area, as defined by the Department, only be required to complete the 12 verifiable employer contacts, within a thirty-day period.

The Department is proposing to add two additional work activities that non-ABAWDs can participate in to complete their work program requirement.

The Department is proposing to align the notice of adverse action time frame in the SNAP regulations with the regulations regarding external communication in the General Provisions regulation at 8.100.180 NMAC.

The Department is proposing to update “food stamps” to “SNAP”.

VI. PROPOSED REGULATIONS

This is the PROPOSED amendment to 8.139.410 NMAC, Section 12

8.139.410.12 EMPLOYMENT, TRAINING AND WORK REGISTRATION

A. Employment and training E&T work registration: Compliance with work registration is a prerequisite to certification, unless exempt. Benefits may not be conditionally granted before registration of all mandatory household members, except when verification cannot be obtained prior to the expedited service time limit. Work registration exemptions must be verified before certification.

B. Compliance with E&T work requirements: As a condition of eligibility for participation in SNAP, every physically and mentally fit household member who is ~~[48]~~16 years of age or older and younger than age ~~[50]~~60 and who is determined mandatory, must register for the E&T program.

C. Non-compliance with E&T work requirements: Non-compliance with E&T work requirements is considered to exist when an individual:

(1) refuses, at the time of application and every 12 months thereafter, to register for employment in a manner prescribed by ISD; or

(2) fails or refuses to comply with the requirements under Title IV-A of the Social Security Act, or work requirements for individuals receiving UCB.

D. E&T work requirements:

(1) General conditions for registration:

(a) Unless exempt, every household member age ~~[18]~~16 through ~~[50]~~59 must register for employment. If a household member has their 16th birthday within a certification period, the work registration requirement must be fulfilled as part of the next scheduled recertification process, unless the member qualifies for an exemption.

~~(b) [If a household member has their 18th birthday within the established certification period, they must fulfill the E&T work program registration requirement as part of the next recertification.]~~An individual who does not qualify for an exemption must be registered for employment at initial certification or when added to the SNAP household and at least every 12 months thereafter, as a condition of eligibility.

~~[(c) — An individual who does not qualify for an exemption must be registered for employment at initial certification or when added to the SNAP household, and at least every 12 months thereafter, as a condition of eligibility.]~~

~~[(d)]~~(c) Strikers whose households are eligible to apply for assistance, as defined in Subsection B of 8.139.400.11 NMAC, must register for work, unless covered by an exemption.

~~[(e)]~~(d) Individuals exempt from registration may volunteer to participate in the E&T program.

(2) Individuals exempt from registration: The following individuals are exempt from the work registration requirement:

(a) an individual younger than ~~[18]~~16 years of age or an individual ~~[50]~~60 years of age or older;

~~(b) an individual [who is physically or mentally unfit for employment; if physical or mental unfitness is claimed but not evident, verification is required; verification may consist of receipt of temporary or permanent disability benefits issued by government or private sources, or a statement from a physician or licensed or certified psychologist]~~age 16 or 17 who is attending school or enrolled in an employment and training program at least half time, as defined by the school or employment and training program;

~~(c) [a natural parent, adoptive or step parent or individual residing in a SNAP household that includes a child younger than age 18, even if the child is not eligible for SNAP benefits]~~an individual who is physically or mentally unfit for employment, if physical or mental unfitness is claimed but not evident, verification is required; verification may consist of receipt of temporary or permanent disability benefits issued by government or private sources, or a statement from a physician or licensed or certified psychologist;

~~(d) a parent or other household member who is responsible for the care of [an incapacitated person; the incapacitated person need not be considered a member of the SNAP household or even reside with the household; the exemption will not apply if the dependent or incapacitated person resides with others who provide the care]~~a dependent child under age six or an incapacitated person;

(i) if the child has their sixth birthday during the certification period, the individual responsible for the care of the child is required to be registered as part of the next scheduled recertification, unless the individual qualifies for another exemption:

(ii) the exemption applies to the person who actually provides the care:

(iii) the dependent child or incapacitated person need not be considered a member of the SNAP household or even reside with the household:

(e) an individual subject to and complying with any work requirement under Title IV of the Social Security Act, including TANF work requirements or subject to and complying with ABAWD work requirements;

(f) an individual who receives unemployment compensation benefits and is subject to and complying with a federal or state unemployment compensation system; an individual who has applied for but who has not yet received UCB is exempt if required to register with the department of [~~labor~~] workforce solutions as part of the unemployment compensation application process;

(g) an individual who is a regular participant in a state certified drug or alcohol treatment and rehabilitation program;

(h) an individual who is employed or self-employed and working a minimum of 30 hours a week or receiving weekly earnings at least equal to the federal minimum wage multiplied by 30 hours;

(i) migrant and seasonal farm workers who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days are exempt, although this does not prevent such individuals from seeking services from the E&T program;

(j) workers in ACTION programs (such as VISTA) who average 30 or more hours of work per week are exempt, even though they earn less than minimum wage;

(k) a student who is eligible to participate in the SNAP program, and who is enrolled at least half time in any recognized school, high school, training program, or institution of higher education; this exemption remains in effect during normal periods of class attendance, vacations, and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer session);

(l) a household member who has made application for SSI and SNAP benefits at the social security administration, and whose application for SNAP benefits has been received by HSD, and who is determined eligible for SNAP benefits, shall be exempt from work registration until an SSI determination is made; a household member who is determined ineligible for SSI shall have the exemption from E&T work requirements evaluated at the time of the denial of SSI;

(m) a pregnant woman; or

(n) residing in a county with greater than 10 percent unemployment rate as defined by the department

(3) Interim changes in status:

(a) Anyone losing exempt status because of changes subject to the reporting requirements in Paragraph (2) of Subsection A of 8.139.120.9 NMAC, will be required to register at the next recertification.

(b) Anyone gaining or losing exempt status because of changes not subject to the reporting requirements in Paragraph (2) of Subsection A of 8.139.120.9 NMAC, will have his/her work status evaluated at the next recertification.

(4) **Processing changes:** Mandatory work participants who move from one county to another retain their work registration status at their new location, unless they become exempt.

(5) **Residing in a non-work program county:**

(a) The appropriate work registration code of any individual living in a county which does not administer a work program through the income support division (ISD), and who is not exempt from E&T work registration, will be entered into the individual's computer file. Those individuals will be dropped from referral to the E&T work program.

(b) Any household member living in a non-work program area may volunteer to participate in the E&T work program. The nearest county administering a work program through ISD will accept the participant.

E. E&T work program: The income support division (ISD) administers the work program for applicants and recipients of SNAP benefits who are mandatory and who voluntarily participate in the work program. The purpose of the work program is to assist household members participating in SNAP to gain skills that will increase an individual's ability to obtain and keep employment.

(1) **Work registrant responsibilities:** Each household member who must be registered for work is required to register at the time of initial application and every 12 months thereafter:

(2) **HSD responsibilities:** HSD is responsible for:

- (a) screening each household member to determine work registration status;
- (b) registering mandatory and voluntary participants;
- (c) providing information and explaining to each applicant the E&T work requirements, rights and responsibilities and consequences for failure or refusal to comply; such information must be provided at application, at recertification, and when a previously exempt or new household member must be registered;
- (d) disqualifying non-compliant individuals, and reinstating individuals who are subsequently determined to meet an exemption.

(3) **Reporting changes to the E&T work program:** The following changes will be reported to the E&T work program:

- (a) work participants who become exempt from work registration;
 - (b) work participants who are no longer certified for participation;
 - (c) work participants who move from the project area; and
 - (d) voluntary work participants who are deregistered.
- (e) In most cases, the changes listed above are reported by entering the appropriate information into the household's computer file. In some cases, a manual form is used to report new information to the work program.

(4) **Work program responsibilities:** The E&T work program service provider is responsible for providing mandatory and voluntary participants referred to the E&T work program with the orientation, assessment, and development of a work participation agreement (WPA) and an individual responsibility plan (IRP).

(a) Scheduling and conducting assessment sessions: the work program will inform each participant of:

(i) mandatory and voluntary E&T work program requirements, including rights and responsibilities;

(ii) services;

(iii) benefits;

(b) Placing a voluntary participant in a work activity: a participant may be placed in any work activity deemed appropriate by the work program;

(c) Authorizing reimbursements: the work program staff will authorize allowable reimbursements up to the regulatory monthly limit for reasonable and necessary costs directly related to work program participation.

(d) Reporting requirements: the E&T work program service provider is responsible for reporting the following to HSD:

(i) mandatory participants fail or refuse to comply;

(ii) voluntary work participants wish to de-register.

(5) Good cause for noncompliance with E&T work requirements:

The work program will report [~~registrants or~~] participants who fail or refuse to comply with work registration or who voluntarily quit a job, or reduce their work hours without good cause. The HSD has the primary responsibility to determine whether good cause exists for a failure or refusal to comply. Good cause will be evaluated on an individual basis and will only be granted until the cause no longer exists or at the next recertification, whichever is sooner.

(a) Good cause is determined by considering the facts and circumstances involved, including information submitted by the household member and employer.

(b) Good cause includes circumstances beyond an individual's control, such as, but not limited to:

(i) [~~registrant or~~] participant household member's illness;

(ii) illness of another household member requiring the presence of the participating member;

(iii) [household emergency] an individual or family crisis or a family circumstance that may preclude participation;

(iv) [~~unavailability~~] lack of transportation[;] or lack of allowable work activity within reasonable commuting distance;

(v) lack of adequate child care for children who have reached age six but are younger than age 12;

(vi) individual whose physical residence is more than 30 miles away from an income support field office, workforce solutions office or employment services provider;

(vii) court appearance;

(viii) farmworkers who are away from their permanent residence or home base who travel to work in agriculture or a related industry during part of the year and are under contract or similar agreement with an employer to begin work within 30 days of the date the individual notified HSD or E&T work program service provider ;

(ix) an absence of other support services necessary for participation;

(x) receipt of job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law; or

(xi) individual is a victim of family violence.

F. Orientation: Participants of E&T shall be provided an E&T work program orientation with their assessment, which explains the work program and its objectives to the participant. The orientation shall include the following information:

- (1) the participants rights and responsibilities;
- (2) support services;
- (3) benefits of participation in the E&T work program; and
- (4) consequences of non-compliance with the E&T work program

requirements.

G. Assessment:

(1) **Requirements:** No later than 15 calendar days after an application is approved, participants shall have an assessment done by the E&T work program service provider. The assessment is a necessary pre-cursor to the IRP, development of WPA, and is a crucial and necessary element in meeting the E&T work program requirements.

(2) **Elements:**

(a) Complete the assessment no later than 15 calendar days following approval of assistance for the participant in which the assessment is carried out; there are a variety of assessment tools and forms that may be used, provided that they address the participant's education, skills, prior work experience and employability.

(b) The assessment may include referrals for counseling, if a barrier to employment exists related to alcohol or drug abuse or mental health.

(3) **Disqualification:** ~~[Failure to participate in or to complete the assessment may result in an E&T work program disqualification, unless good cause exists]~~ No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in SNAP if the individual fails or refuses, without good cause, to comply with E&T allowable components.

H. Individual responsibility plan (IRP):

(1) **Requirements:** Mandatory participants may complete an IRP with the assistance of the E&T work program service provider no later than 15 days from the date of approval of assistance.

(2) **General purpose:** The IRP is:

(a) a personal planning tool, intended to assist the participant in long-term career planning, address barriers and secure and maintain employment;

(b) intended to assist the participant in setting realistic long-term employment goals and to identify those steps which must be taken to achieve the stated goals; and

(c) not intended to fulfill the limited purpose of identifying work activities which will meet E&T work program participation requirements; the participant is encouraged to use the IRP to assist in setting long-term employment goals.

(3) **Elements:** The IRP shall include a specific achievable employment goal or goals and a plan for securing and maintaining employment.

I. Work participation agreement (WPA):

(1) **General:** The purpose of the WPA is to assure the participant and the department that the work activities in which the participant is engaged meet the E&T

work program requirements and the participant is referred to receive available support services.

- (2) **Contents of the agreement:** At a minimum, the WPA shall:
- (a) list the participant's approved work component;
 - (b) list the level of effort for each activity;
 - (c) list the support services to be provided by the department;
 - (d) list the reasonable accommodations that may be necessary

to ensure meaningful engagement;

- (e) be signed by the participant; and
 - (f) upon approval of the component and support services,
- signed by the E&T work program service provider.

(3) **Completion of a WPA:** The participant must complete WPA with the E&T work program service provider:

- (a) no later than 30 calendar days from date of approval for benefits; or
- (b) prior to requesting support services associated with such activity;
- (c) no later than five days after the expiration of an existing WPA.

(4) **Disqualification:** ~~[Failure or refusal to develop, sign or meet the components outlined in the WPA may result in a disqualification, unless good cause exists]~~ No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in SNAP if the individual fails or refuses, without good cause, to comply with E&T allowable components.

J. E&T component:

~~(1) Allowable components: The E&T work program outlines allowable components annually through the supplemental nutrition assistance program employment and training state plan. The state plan is submitted and approved by the United States department of agriculture food and nutrition services. The annual state plan can be found on the human services department income support division website at the following link: <http://www.hsd.state.nm.us/isd/ISDPlans.html>.~~ **E&T allowable components:**

~~(2)~~**(1) Individual or group job search with employer contacts:**

(a) Individual or group job search with employer contacts is ~~[the only]~~ an allowable E&T component for mandatory and voluntary participants. Support services such as the transportation reimbursement and child care assistance is to be provided for participants in this component ~~[only]~~. This is a two part component which may include class room training and requires a minimum of 24 employer contacts over a two month period.

~~[(b) The individual and group job search training is designed to impart basic job search techniques in order to secure employment, and job maintenance habits necessary for continued employment.]~~

~~(b)~~**(b)** All mandatory and voluntary participants are required to register as a "job seeker" through the New Mexico department of workforce solutions (DWS), "New Mexico workforce connection" online portal for job-matching services and resources. The mandatory and volunteer participants are required to submit a copy of the registration to the E&T work program service provider to verify completion of the registration within 30 days after the WPA is approved.

~~[(ii)]~~**(c)** All mandatory and voluntary participants are required to complete the individual or group job search training with employer contacts ~~[no later than 60 days after the WPA is approved]~~. The participant is required to have completed and submitted verification of the completion of a minimum of 12 employer contacts within 30 days of the approved WPA and submit no later than 60 days of the approved WPA, verification of the additional 12 employer contacts to equal the requirement of 24 employer contacts. ~~[The participant is required to have completed and submit verification of 24 employer contacts within 60 days of the approved WPA.]~~ Individuals residing in an area that is determined to be “rural”, as defined by the department, will only be required to complete the 12 verifiable employer contacts, within a thirty-day period.

~~[(iii)]~~**(d)** **Disqualification:** Failure to complete each element of the individual and group job search training with employer contacts component is subject to disqualification from SNAP, unless good cause exists.

~~[(e)]~~**(e)** **Successful completion:** Participants who complete the individual or group job search and employer contact component within 90 days of the date of approval for newly certified and ongoing benefits are eligible for the transportation reimbursement, subject to available funding.

(2) Work Experience:

(a) General: The purpose of the work experience component is to provide opportunities for on-the-job skills training and work experience. Support services such as the transportation reimbursement and child care assistance may be available for participants.

(b) Component Activities:

(i) The maximum monthly participation rate is calculated by dividing the total household SNAP benefits received by the Federal minimum wage.

(ii) Activity will be for no more than 4 hours per day.

(iii) Participation in this component will be no longer than 3 months.

(iv) All mandatory and voluntary participants are required to complete the work experience no later than 90 days after the WPA is approved.

(c) Disqualification: Failure to complete each element of the work experience component is subject to disqualification from SNAP, unless good cause exists.

(d) Successful completion: Participants who complete the work experience component within 90 days of the date of approval for newly certified and ongoing benefits are eligible for the transportation reimbursement, subject to available funding.

(3) Community Service:

(a) General: The purpose of the community service component is to provide opportunities for on-the-job skills training and work-like experience. Support services such as the transportation reimbursement and child care assistance may be available for participants.

(b) Component Activities:

(i) The maximum monthly participation rate is calculated by dividing the total household SNAP benefits received by the Federal minimum wage.

(ii) Activity placement will be for no more than 4 hours per day.

(iii) Will be no longer than three months.

(iv) All mandatory and voluntary participants are required to complete the community service no later than 90 days after the WPA is approved.

(c) Disqualification: Failure to complete each element of the community service component is subject to disqualification from SNAP, unless good cause exists.

(d) Successful completion: Participants who complete the community service component within 90 days of the date of approval for newly certified and ongoing benefits are eligible for the transportation reimbursement, subject to available funding.

K. E&T work program support services:

(1) Child care: Mandatory and volunteer participant[s] may be eligible for child care services to meet the requirements of the individual and group job search component.

(a) Mandatory and volunteer participants must have a completed WPA from the E&T work program service provider to identify the number of hours child care will be needed to successfully complete the activity.

(b) E&T mandatory and volunteer participants may only receive child care services when they are placed in the approved E&T components.

(2) Transportation reimbursements: Mandatory and volunteer participants are eligible to receive a \$25.00 transportation reimbursement if they have successfully completed the E&T work program component as defined in Paragraph J of this section.

(3) Support services are subject to the availability of state and federal funding.

L. Disqualification for noncompliance: ~~[A mandatory individual who fails or refuses, without good cause, to comply with the E&T work requirements will not be eligible to participate in SNAP.]~~ No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in SNAP if the individual fails or refuses, without good cause, to comply with E&T allowable components.

(1) Individual disqualification: Any individual who fails or refuses to comply with the work registration, without good cause will be disqualified as follows:

(a) first occurrence: ~~[until compliance or for three months, whichever is later]~~ for three months or until compliance, whichever occurs earlier;

(b) second occurrence: ~~[until compliance or for six months, whichever is later]~~ for six months or until compliance, whichever occurs earlier;

(c) third occurrence: ~~[until compliance or for one year, whichever is later]~~ for one year or until compliance, whichever occurs earlier.

(2) Individual that is voluntarily participating: Any individual that is voluntarily participating in the work program is not subject to disqualification for non-compliance with work requirements.

(3) Treatment of income and resources: All the income and resources of an individual disqualified for noncompliance with work requirements will be counted to determine the household's income and resource maximum levels, and benefit amount (see Subsection C of 8.139.520.10 NMAC). Any reported change that does not relate to the individual disqualification shall be processed after the appropriate determination [~~in (a), (b) or (c) or (d) above~~] is made. SNAP benefits shall be increased or decreased according to the change processing requirements at 8.139.120.10 NMAC.

(4) Notice of adverse action: Within 10 days of determining that a participant has failed to meet an E&T requirement, the department or its designee shall issue notice of adverse action that the payment shall be reduced. The payment reduction shall take place with the first payment following expiration of the notice of adverse action.

~~(4)~~(5) Determining the disqualification period:

(a) At application: An individual who is a member in an applicant household, and who is in a prior disqualification period, will be denied SNAP benefits beginning with the month of application.

(b) During participation: An individual who has failed or refused to comply with work requirements while participating in SNAP will be ineligible to participate beginning with the month following the month in which the notice of adverse action time limit expires.

(c) ~~Semiannual~~Simplified reporting households: An individual who has failed or refused to comply with work requirements during a [~~semiannual~~]simplified reporting period, shall be ineligible to participate in SNAP beginning with the month following the month the notice of adverse action time limit expires. If the adverse action time limit will expire in the month after the notice would have been sent, the caseworker must wait until the first day of the following month to send the notice of adverse action.

~~(5)~~(6) Disqualification in the last month of certification: For all participating households, including households subject to [~~semiannual~~] simplified reporting:

(a) If a notice of noncompliance is received in the last month of the certification period, an adverse action notice will be sent to the household. The disqualification period begins the first month following the month the adverse action time limit expires, whether or not the household reapplies for SNAP benefits. If the household subsequently reapplies, either in the last month of the certification period or after the certification period has expired, the individual disqualification will continue for the duration of the appropriate penalty period.

(b) If the adverse action time limit expires in the last month of the household's certification period, the disqualification penalty will begin the following month, whether or not the household reapplies for SNAP benefits. If the household subsequently reapplies, either in the last month of the certification period or after the certification period has expired, the individual disqualification will continue for the duration of the appropriate penalty period.

~~(6)~~(7) Lifting the disqualification: An individual who has been disqualified may resume participation [~~during the disqualification period by becoming exempt from E&T work requirements listed in Paragraph (2) of Subsection D of 8.139.410.12 NMAC, if otherwise eligible.~~] in SNAP benefits if:

(a) The participant corrects the failure of compliance with E&T requirements during the notice of adverse action 13-day time period. Once corrected, the occurrence shall not count as an occurrence of noncompliance. This does not apply to a participant who has failed to meet work participation hours.

(b) Failure to comply during the notice of adverse action 13-day time period shall cause the occurrence to become effective.

(c) The participant becomes exempt from E&T work requirements listed in 8.139.410.12 NMAC or:

(d) The participant corrects the failure of compliance and has been disqualified a minimum of one month.

(i) The disqualification will continue until the participant complies or serves out the time frame for the occurrence level.

(ii) Participants disqualified due to not meeting the required hours, must demonstrate the hourly compliance prior to lifting disqualification.

M. Head of household provisions:

(1) **Designation:** The household may designate any adult parent of a child in the household as the head of household, if all adult household members making application agree to the selection. A household may designate the head of household each time the household is certified for participation in SNAP but may not change the designation during a certification period, unless there is a change in household composition.

(2) **Compliance with E&T work requirements:** For purposes of determining compliance with the work requirements in Subsection C of 8.139.410.12 NMAC, the head of household will be considered as an individual household member. The head of household will be disqualified in accordance with the disqualification penalties in Paragraph (1) of Subsection H of 8.139.410.12 NMAC.

(a) If the head of household leaves the household during a period of ineligibility, the disqualification follows the individual. The remaining household members, if otherwise eligible, continue to be eligible to participate in SNAP.

(b) If the head of household becomes the head of another household, the individual disqualification continues to apply. The other household members continue to be eligible to participate in SNAP.

This is the PROPOSED amendment to 8.139.410 NMAC, Section 14

8.139.410.14 ABLE BODIED ADULTS WITHOUT ~~[CHILDREN]~~ DEPENDENTS (ABAWDS): An applicant or recipient who is a mandatory work participant in the [~~food stamp~~] SNAP E&T program shall be considered for compliance with the 20-hour-a-week work requirement for ABAWDs. Unless determined exempt, any individual who is a mandatory ABAWD shall be required to comply with the 20-hour-a-week work requirement to maintain eligibility for [~~food stamp~~] SNAP benefits. [~~The ABAWD 20-hour-a-week work requirement has been suspended based on the American Recovery and Reinvestment Act of 2009 effective April 1, 2009 through September 30, 2011.~~] The ABAWD 20 hour-a-week work requirement will be in effect as of October 1, 2015 through September 30, 2018.

A. Exemptions:

(1) Certain individuals are exempt from the ABAWD 20-hour-a-week work:

- (a) an individual determined to be exempt from work requirements of the ~~[food-stamp]~~ SNAP E&T program set forth at Subsection D of this section;
- (b) an individual under age 18 or age 50 or older;
- (c) an individual medically certified as physically or mentally unfit for employment;
- (d) a pregnant woman;
- (e) an individual residing in a ~~[food-stamp]~~ SNAP household that includes at least one child under the age of 18, even if the child is not eligible for ~~[food-stamp]~~ SNAP benefits;
- (f) a natural, adoptive or step-parent residing in a ~~[food-stamp]~~ SNAP household that includes at least one child under the age of 18, even if the child is not eligible for ~~[food-stamp]~~ SNAP benefits;
- (g) residing in a non-ABAWD county as documented by federal waiver or suspension of the 20-hour-a-week work requirement.

(2) **Medical reports:** To determine an exemption from the 20-hour-a-week work requirement on the basis of pregnancy or physical or mental unfitness, the individual must provide a written report by a medical practitioner such as a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist or social worker.

(a) In the case of a pregnancy, the report must verify the pregnancy and identify the expected date of delivery.

(b) A claim of physical or mental unfitness must be substantiated by a written report identifying the physical or mental condition and certifying that the person is unfit for employment.

B. Time limited eligibility for ABAWDs: An ABAWD who is determined mandatory to comply with the 20-hour-a-week work requirement shall not be eligible to participate in the ~~[food-stamp]~~ SNAP program as a member of any household if the individual received ~~[food-stamp]~~ SNAP benefits but failed to comply with the 20-hour-a-week work requirement for three countable months in a 36-month period, until they subsequently meet the requirements to regain eligibility.

(1) **36 month period:** The 36 month period is a fixed calendar month period beginning on ~~[December 1, 2002. The period ends on November 30, 2005.]~~ October 1, 2015 and ending September 30, 2018.

(2) **Countable months in the 36-month time limit:** Within the fixed 36-month period, an ABAWD shall have a month counted toward the three-month time limit if the 20-hour-a-week work requirement is not met and the household received a full month's benefits.

(a) In no event shall a month be counted toward the three-month time limit if the individual has not attained the age of 18.

(b) A month that an ABAWD has used without fulfilling the work requirement in another state shall be counted toward the three-month time limit as long as the other state verifies the month has been used as a non-work month.

C. Fulfilling the 20-hour-a-week work requirement:

(1) **Working:** For purposes of determining the activities that count towards the 20-hour-a-week work requirement, the time spent working in exchange for

money, or working in exchange for goods or services, or unpaid work, or any combination of these activities shall be considered as employment and credited toward the 20-hour-a-week work requirement.

(2) **Work activities:** Allowable work activities that count towards the 20-hour-a-week work requirement include:

(a) employment for at least 20 hours a week averaged monthly or 80 hours a month, but not unreported employment; in the case of self-employment income, gross monthly earnings, as determined under Paragraph (2) of Subsection E of 8.139.520.10 NMAC, are divided by the federal minimum wage to determine the number of hours that are countable in meeting the work requirement;

(b) participation in and compliance with the requirements of a work program at least 20 hours a week;

(c) any combination of employment and participation in a work program for at least 20 hours a week;

(d) job search or job search training activities that are incorporated into the department's [a] work program or another state or local program that meets [~~food stamp~~]SNAP E&T requirements as long as the job search or job search training activities equal less than half the work requirement; or

(e) participation in and compliance with a workfare program.

(3) **Work program:** Allowable activities in a work program include those performed under:

(a) the Workforce Investment Act (Public Law 105-220);

(b) a program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296);

(c) the department's [~~food stamp~~] SNAP E&T program; and

(d) any other state or local program which is recognized by the department as meeting [~~food stamp~~] SNAP E&T program requirements.

D. Reporting and verifying work participation:

(1) It is the responsibility of the individual subject to the work requirement to report:

(a) whether or not that individual has worked or participated in a work program;

(b) the number of hours spent in work or work program activities;

(c) how the work requirement was fulfilled; and

(d) when the individual's work hours fall below 20 hours a week, averaged monthly, or 80 hours a month.

(2) Verification of the time spent working is mandatory in order to receive credit toward the work requirement. It is the responsibility of the individual subject to the work requirement to provide verification of participation in work activities by the fifth calendar day of each month following the month of participation in work activities.

E. Good cause for failure to meet the work requirement, as defined in Subsection E of 8.139.410.12 NMAC: An ABAWD may establish good cause for failure to meet the 20-hour-a-week work requirement if the absence from work is temporary and the individual retains employment, or if participation in work activities resulted from a temporary absence due to circumstances beyond the individual's control. Good cause reasons include, but are not limited to, illness, illness of another household member

requiring the presence of the ABAWD, a household emergency, or the unavailability of transportation. Good cause is established on an individual basis.

F. Regaining eligibility: An individual who becomes ineligible due to failure to meet the work requirement for three months can regain eligibility by working or participating in an approved work program for at least 80 hours during any 30 consecutive day-period following the date of ineligibility.

(1) An individual who regains eligibility is eligible on an ongoing basis provided he or she continues to meet the 20-hour-a-week work requirement.

(2) There is no limit to the number of times an individual may regain eligibility during the 36-month period.

G. Failure to meet the work requirement after regaining eligibility: An individual who has regained eligibility and who subsequently fails to meet the 20-hour-a-week work requirement in any month left in the 36-month period shall be eligible to receive [~~food stamp~~] SNAP benefits for a three consecutive month period.

(1) The three-month period begins with the month the work requirement was not met, provided the individual is otherwise eligible.

(2) Upon expiration of the three months, the individual becomes ineligible for the remainder of the fixed 36-month period.

(3) The individual may re-establish eligibility by either regaining eligibility or because a determination is made that the individual becomes exempt from the 20-hour-a-week work requirement.

H. Costs: Except for costs assumed by HSD pursuant to an approved [~~food stamp~~] SNAP E&T supportive services plan, HSD has no financial responsibility for any costs or liabilities incurred by persons electing to participate in a work program in order to meet the [~~food stamp~~] SNAP work requirement.

This register and proposed regulations are also available on the Human Services Department website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. If you do not have Internet access, a copy of the proposed regulations may be requested by contacting the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, New Mexico 87504-2348 or by calling 505-827-7250 or 505-827-7268.

VII. PUBLICATION DATE

May 29, 2015

VIII. PUBLIC HEARING

The New Mexico Human Services Department (HSD) will hold a public hearing to allow comment on the proposed amendment of the Supplemental Nutrition Assistance Program (SNAP) regulations. The hearing will be held on Friday, July 17, 2015 from 1:30 p.m. to 4:00 p.m., at the Department of Health (DOH) Harold Runnels Building Auditorium, 1190 St. Francis Drive, Santa Fe, NM. Individuals wishing to testify may contact the

Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling (505) 827-7268.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-7701 or through the New Mexico Relay system, toll free at #711. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

IX. ADDRESS

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 4:00 pm on the date of the hearing, July 17, 2015. Please send comments to:

Human Services Department
P.O. Box 2348, Pollon Plaza
Santa Fe, New Mexico 87504-2348

You may send comments electronically to: HSD-isdrules@state.nm.us

X. PUBLICATION

Publication of these proposed regulations approved on May 29, 2015
by:



BRENT EARNEST, SECRETARY
HUMAN SERVICES DEPARTMENT