



STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT

HUMAN SERVICES REGISTER

I. DEPARTMENT

HUMAN SERVICES DEPARTMENT

II. SUBJECT

GENERAL RECIPIENT REQUIREMENTS –
NONFINANCIAL ELIGIBILITY
CRITERIA

III. PROGRAMS AFFECTED

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

IV. ACTION

PROPOSED AMENDMENTS

V. BACKGROUND

The United States Department of Agriculture proposed regulations on March 17, 2020, in compliance with the 2018 Agriculture Act. These regulation changes take effect March 8, 2021. The Department is promulgating proposed regulations to the for the Supplemental Nutrition Assistance Program (SNAP) administered by the Human Services Department (HSD), including its authority to promulgate regulation, and is governed by Chapter 9, Article 8, NMSA (Repl. 1983). Proposed amendments to sections 12, 13, and 14 of 8.139.410 NMAC are being proposed to gain compliance with regulations mentioned above.

- Changes in 8.139.410.12D NMAC are being proposed to clarify notification to customer who gain compliance prior to the end of the adverse action period.
- Changes in 8.139.410.12D(1) NMAC to update the correct CFR citation.
- Changes in 8.139.410.13 NMAC is broadening the types of reimbursable expenses for those participating in the Employment and Training Program (E&T).
- Changes in in 8.139.410.14B NMAC are updating the Good Cause requirements for Able-Bodied Adults Without Dependents (ABAWD) to align with current federal policies.

VI. CONCISE EXPLANATORY STATEMENT

The NMHSD is amending the rule to comply with the CFR. The rule will be amended under the statutory authority of the food stamp program as authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011-2036). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282 and 45 CFR Parts 200-299. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).

VII. PUBLIC HEARING

A public hearing to receive testimony on this proposed rule, pursuant to Section 14-4-5.6 NMSA 1978, will be held on **Friday, May 7, 2021 from 9:00am-10:00am**. The hearing will be held virtually through GoTo Meeting at this link: <https://global.gotomeeting.com/join/752378941>. Anyone wishing to join via phone may call +1 (872) 240-3212, Access Code: 752-378-941. Written comment may be dropped off during the scheduled hearing time at the HSD Administrative Services Division (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505 if the individual wishes to provide written comment during the scheduled hearing; this drop off site will be for written comment only. The conference room is located on the first floor in the ASD Rodeo Building.

Individuals wishing to testify may contact the Income Support Division (ISD), P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling 505-827-7254. 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, Santa Fe, New Mexico 87504-2348 or by calling 505-827-7250.

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 505-827-6201 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.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, **Friday, May 7, 2021**. Please send comments to:

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

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

VII. PUBLICATION DATE

April 6, 2021

VIII. PUBLICATION

Publication of these emergency regulations approved on **3/10/2021** by:

DocuSigned by:
Angela Medrano

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DAVID R. SCRASE, M.D., SECRETARY
HUMAN SERVICES DEPARTMENT

Angela Medrano, Deputy Cabinet Secretary
Signing electronically on behalf of D.S.

This is an amendment to 8.139.410 NMAC, Sections 12, 13, and 14 effective 7/1/2021.

8.139.410.12 SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) GENERAL WORK REQUIREMENTS: Any SNAP recipient may be subject to general work requirements. SNAP recipients who do not meet a federal exemption must meet the general work requirements in accordance with Subsection C of this section. Federal exemptions from general work requirements are found at 7 Code of Federal Regulation (CFR) 273.7(a)(6) and (b).

A. General Work requirements: ISD will administer the general work requirements in accordance with 7 CFR 273.7. As a condition of eligibility for participation in SNAP, every household member who does not qualify for a federal exemption, must meet general work requirements as outlined in Subsection C of this section.

B. General work requirement exemptions: Federal exemptions from general work requirements are found at 7 CFR 273.7(a)(6) and 273.7(b). Physical and mental unfitness for the federal exemption is defined as an individual who has a mental or physical illness or disability, temporary or permanent, which reduces their ability to financially support themselves. Unfitness can be:

(1) obvious to ISD and documented in the case file; or
 (2) not obvious to ISD, but is documented by a physician, physician's assistant, nurse, nurse practitioner, a licensed or certified psychiatrist or a licensed or certified psychologist, or social worker as being unfit to work; the claim of physical or mental unfitness must be substantiated by written documentation identifying the physical or mental condition and certifying that the person is unfit for employment.

C. Compliance with general work requirements: An individual who is not temporarily waived or exempt in accordance with 7 CFR 273.7(a)(6) and (b) must:

(1) register for work at the time of application and every 12 months thereafter; all SNAP participants are considered registered for work with the head of household's signature on an application or recertification form for SNAP participation;
 (2) participate in an E&T program to the extent required by law;
 (3) participate in a workfare program if assigned by the department;
 (4) provide ISD or E&T program service provider with information regarding employment status, participation in E&T program status, or availability for work;
 (5) report to an employer referred to by ISD or its designee if the potential employment meets the suitability requirements in accordance with 7 CFR 273.7(h);
 (6) accept a bona fide offer of suitable employment at a site or plant not subject to a strike or lockout, at a wage equal to the higher of the federal or state minimum wage or eighty percent of the wage that would have governed had the minimum hourly rate of the Fair Labor Standards Act been applicable to the offer of employment; and
 (7) not voluntarily and without good cause quit a job of 30 or more hours a week or reduce work effort to less than 30 hours a week within the 30 day period prior to the household's application date, or any time after filing an application, or any time during the household's certification period in accordance with 7 CFR 273.7(a)(vii).

D. Failure to comply with SNAP general work requirements: An individual who is not exempt who refuses or fails without good cause, to comply with the SNAP general work requirements is ineligible to participate in SNAP, and will be considered an ineligible household member, in accordance with 7 CFR 273.1(b)(7). Prior to placing a disqualification for noncompliance with the work requirements, good cause will be determined in accordance with 7 CFR 273.7(i). When determining whether or not good cause applies to voluntary quit, voluntary quit will be evaluated up to the 30 day period prior to applying for SNAP benefits and at any time thereafter. Within 10 calendar days of establishing that the noncompliance was without good cause, ISD must provide the individual with a notice of adverse action, as specified in Section 273.13 7 CFR 273.13. **A participant who corrects the failure of compliance during the notice of adverse action 13-day time period shall not have the disqualification imposed against the household member.**

(1) Consequences of non-compliance with work requirements will be in accordance with 7 CFR 273.7(f) ~~(4)~~.
 (a) For the first occurrence of noncompliance, the individual will be disqualified for three months;
 (b) For the second occurrence of noncompliance, the individual will be disqualified for six months; and

(c) For the third or subsequent occurrence of noncompliance, the individual will be disqualified for 12 months.

(2) **Treatment of income and resources:** All the income and resources of an individual disqualified for non-compliance with general work requirements will be counted to determine the household's income and resource maximum levels and benefit amount in accordance with 8.139.520 NMAC.

(3) Households shall not be considered categorically eligible if any benefit group member is disqualified for failure to comply with general work requirements in accordance with 8.139.420.8 NMAC.

E. Fair hearings: Each individual or household has the right to request a fair hearing to appeal a denial, reduction or termination of benefits due to a determination of nonexempt status or a state agency determination of failure to comply with SNAP work requirements, in accordance with 7 CFR 273.7(f)(6). [2/1/1995, 7/1/1998; 8.139.410.12 NMAC - Rn, 8 NMAC 3.SNAP PROGRAM.415, 05/15/2001; A, 10/15/2003; A, 01/01/2004; A, 04/01/2010; A, 06/01/2013; A, 10/01/2014; A, 01/01/2016; A, 01/01/2016; A, 03/01/2017; A, 09/01/2017; A, 07/01/2021]

8.139.410.13 SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) EMPLOYMENT AND TRAINING PROGRAM (E&T): ISD will administer the E&T program requirements in accordance with 7 CFR 273.7(e). SNAP participants may choose to voluntarily participate in any of the E&T services available. Volunteers can participate to the extent that they wish and will not be subject to any E&T disqualification. [Volunteers who incur transportation] Participants who incur expenses that are reasonably necessary and directly related to participation in the E&T program will be reimbursed up to the monthly limit as determined by ISD, in accordance with 7 CFR 273.7(d)(4).

[8.139.410.13 NMAC - N, 04/01/2010; Repealed, 03/01/2017; A, 09/01/2017; A, 07/01/2021]

8.139.410.14 REQUIREMENTS FOR ABLE BODIED ADULTS: ISD will administer this program in accordance with 7 Code of Federal Regulation (CFR) 273.24. This program is referred to as the time limit rule or the able bodied adults without dependents ("ABAWD") program. The program is mandatory at all times unless there is a federally approved statewide waiver in place in accordance with 7 CFR 273.24(f). A statewide waiver makes the program non-mandatory for all ABAWDs who would otherwise be subject to the three month time limit requirement. When a statewide waiver is not in place, ABAWDs are mandatory for all requirements as detailed below. ISD will inform all potential ABAWD households of the ABAWD time limit prior to the expiration of a statewide waiver. ISD will use a fixed 36 month period for measurement and tracking purposes beginning June 1, 2017 through May 31, 2020, and every subsequent fixed three year period.

A. Able bodied adults can comply by: working 20 hours per week, averaged monthly; for purposes of this provision, 20 hours per week averaged monthly means 80 hours per month; work is defined as:

- (1) work in exchange for money;
- (2) work in exchange for goods or services ("in kind" work); or
- (3) unpaid work, which includes work without compensation that gives a person experience

in a job or industry, tests a person's job skills, or involves volunteer time and effort to a not-for-profit organization.

B. Good cause: As determined by ISD, if an individual would have worked an average of 20 hours per week but missed some work for good cause, the individual shall be considered to have met the work requirement if the absence from work is temporary [and the individual retains their job]. Good cause shall include circumstances beyond the individual's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation.

C. Waived from the time limit requirements: ISD will waive the three month time limit requirement for the following individuals in accordance with 7 CFR 273.24(f):

- (1) any individual residing in or relocating to a county that has an unemployment rate twenty percent above the national average as defined by ISD;
- (2) any individual residing in or relocating to pueblos, tribes, and nations, with an estimated employment to population ratio as a measure for insufficient job availability as determined by ISD.

D. Able bodied adults who are determined to be ineligible for SNAP benefits because of non-compliance with the time limit requirements can regain eligibility in accordance with 7 CFR 273.24(d)(i), (d)(ii), (d)(iii), or (d)(v).

E. Exceptions to the three month time limit:

(1) Exceptions to the three month time limit required participation are found at 7 CFR 273.24(c).

(2) Physical and mental unfitness for the three month time limit requirements exception is defined as an individual who has a mental or physical illness or disability, temporary or permanent, which reduces their ability to financially support themselves.

(a) unfitness can be obvious to ISD and documented in the case file; or

(b) not obvious, but is documented by a physician, physician's assistant, nurse, nurse practitioner, a licensed or certified psychiatrist or a licensed or certified psychologist or social worker as being unfit to work; this claim of physical or mental unfitness must be substantiated by written documentation identifying the physical or mental condition and certifying that the person is unfit for employment.

F. ISD will administer the ~~twelve~~ ^{fifteen} percent exemptions, as allowed by the food and nutrition service (FNS) and as determined by ISD, in accordance with 7 CFR 273.24(g). [8.139.410.14 NMAC - N, 04/01/2010; A, 10/01/2014; A, 2/13/2015; A, 01/01/2016; A, 01/01/2016; A, 09/01/2017; A, 07/01/2021]

HISTORY OF 8.139.410 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

ISD 430.0000, Certification of Eligible Households, 8/8/1980.

ISD-Rule 422.0000, Food Assistance - Residency, 11/4/1982.

ISD-Rule 422.0000, Residency, 2/9/1983.

ISD-Rule 422.0000, Residency, 8/13/1986.

ISD-Rule 423.0000, Food Assistance - Social Security Enumeration, 11/4/1982.

ISD-Rule 423.0000, Social Security Enumeration, 2/4/1983.

ISD-Rule 423.0000, Social Security Enumeration, 4/7/1983.

ISD-Rule 423.0000, Social Security Enumeration, 5/3/1984.

ISD Rule 423.0000, Food Assistance - Social Security Enumeration, 7/22/1987.

ISD-Rule 426.0000, Food Assistance - Citizenship and Alien Status, 11/4/1982.

ISD-Rule 426.0000, Citizenship and Alien Status, 2/11/1983.

ISD-Rule 426.0000, Citizenship and Alien Status, 4/2/1983.

ISD FS 310, Food Stamp Nonfinancial Eligibility Criteria, 2/29/1988.

History of Repealed Material: [RESERVED]