

NOTICE OF SUPPLEMENTAL INFORMATION

The New Mexico Human Services Department (HSD) has extended the public comment period through December 14, 2015, to allow oral comment on the proposed amendment of the Supplemental Nutrition Assistance Program (SNAP) regulations. In addition to the public hearing scheduled on December 7, 2015, the Department will hold an additional public hearing on December 14, 2015. These hearings will be held on Monday, December 7, 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 and December 14, 2015, from 9:00 a.m. to 11:30 a.m., at the Department of Health (DOH) Harold Runnels Building Auditorium, 1190 St. Francis Drive, Santa Fe, NM.

The New Mexico register notice published on October 29, 2015, Human Services Register (HSR) Vol. 38 No. 32, gave a public comment deadline of 4:00 p.m. December 7, 2015; the deadline for public comment is being extended to December 14, 2015, at 4:00 p.m.

The Department is adding the following as additional background information to Human Services Register (HSR) Vol. 38 No. 32 regulation to the Supplemental Nutrition Assistance Program (SNAP), Employment and Training (E&T) Program.

- The proposed amendments to NMAC will have the effect of implementing the three month time limit in accordance with 7 CFR 273.24.

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 Americans with 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.

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 p.m., December 14, 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



STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT



HUMAN SERVICES REGISTER

I. DEPARTMENT

HUMAN SERVICES DEPARTMENT

II. SUBJECT

AMENDMENT TO SNAP EMPLOYMENT AND TRAINING (E&T) PROGRAM

III. PROGRAMS AFFECTED

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

IV. ACTION

RULE AMENDMENT

V. BACKGROUND

The Department is amending rules issued with Human Services Register (HSR) Vol. 38 No. 26 regulations to the Supplemental Nutrition Assistance Program (SNAP), Employment and Training (E&T) Program. The Department is amending 8.139.410.12 and 8.139.410.14 New Mexico Administrative Code (NMAC) and is submitting the proposed amendment for public input. The following is a summary of the proposed amendments:

- Defining the populations in the E&T Program.
- Providing further clarification of effective dates of mandatory E&T participants not subject to three month time limit.
- Clarifying how a participant registers for work.
- Clarification of mandatory E&T Program participation, waivers, exemptions.
- Amendment of examples of Good Cause.
- Amending sections within the rule clarifying responsibilities of both the Department and the participant.
- Providing clarification in regards to E&T components and activity requirements.
- Amending subsections of 8.139.410 12 and 14 NMAC that were not part of the initial proposal of HSR Vol. 38 No. 13.
- Revising sections of the rule by referring to Code of Federal Regulations 7.273.7 and 273.24 for clarity and alignment with Federal rules and regulations that administer the E&T Program located at:

http://www.ecfr.gov/cgi-bin/textidx?SID=f7a89add9d1e5f5ef4cf5e257c440c6c&mc=true&tpl=/ecfrbrowse/Title07/7cfr273_main_02.tpl

VI. PROPOSED AMENDED REGULATIONS

This is the PROPOSED amendment to 8.139.410 NMAC, Section 12

8.139.410.12 ~~[EMPLOYMENT, TRAINING AND WORK REGISTRATION]~~

EMPLOYMENT AND TRAINING PROGRAM (E&T): The E&T program consists of SNAP participants ages 16 through 59 years of age who do not meet an exemption in accordance with 7 Code of Federal Regulation (CFR) 273.7 or any state exemption as defined by the department. This is the general population of the E&T program. Individuals ages 18 to 49 years of age without dependents, also known as able-bodied adults without dependents (ABAWDs), who do not meet a federal exemption, will be subject to additional E&T activities in accordance with 7 CFR 273.24 to remain eligible for Supplemental Nutrition Assistance Program (SNAP) benefits. Effective October 1, 2016, all newly eligible SNAP participants from the general E&T population, who do not meet an exemption, will be mandatory to participate in required program activities as detailed in this section. Effective October 1, 2016, existing SNAP eligible participants from the general E&T population, who do not meet an exemption, will become mandatory for the E&T program at their next recertification as detailed in this section.

A. ~~[Employment and training]~~ **E&T work registration:** As a condition of eligibility for participation in SNAP every household member who is 16 years of age or older and younger than age 60, must register for work in accordance with 7 CFR 273.7(a) [Compliance with work registration is a prerequisite to certification], unless exempt by federal exemptions found at 7 CFR 273.7(b). All SNAP participants are considered registered for work with the head of household's signature on an application or recertification form for SNAP participation. [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 16 years of age or older and younger than age 60 and who is determined mandatory, must register for the E&T program.] Compliance with E&T requirements is considered to exist when an individual:

- (1) registers for work at the time of application and every 12 months thereafter, in a manner prescribed by the income support division (ISD);
- (2) participates in an E&T program if assigned by ISD, to the extent required by law;
- (3) provides ISD or its designee with sufficient information regarding employment status, participation in E&T program status, or availability for work;
- (4) report to an employer to whom referred by ISD or its designee if the potential employment meets the suitability requirements in accordance with 7CFR 273.7(h),
- (5) 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 80 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
- (6) does 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 in accordance with 8.139.410.13 NMAC.

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 income support division (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.] **Mandatory E&T program participation exemptions:** SNAP recipients not otherwise exempted or waived are subject to the E&T program participation requirements. Such individuals are mandatory participants. Requirements may vary among participants. Failure to comply with the requirements without good cause will result in disqualification in accordance with 8.139.410.12(K) NMAC.~~

~~(1) **Federal exemptions: Individuals exempt from all SNAP program work requirements.** Federal exemptions will be processed in accordance with 7 CFR 273.7. Physical and mental unfitness is defined as being diagnosed by a physician, physician's assistant, nurse, nurse practitioner, 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.~~

~~(2) **State exemptions: Individuals exempt from the E&T program.**~~

~~(a) a parent or other household member who is responsible for the care of a dependent child under age thirteen. If the child has their thirteenth 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;~~

~~(b) a pregnant woman;~~

~~(c) 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.~~

~~(d) any individual residing in or relocating to a county, tribe, pueblo, or nation that has an unemployment rate 20 percent above the national average as defined by the department, will not be required to participate in the E&T program. Any household member living in an exempt area or who is exempt may volunteer to participate in the E&T work program.~~

~~(3) **Interim changes in status:** Anyone losing or gaining exempt status because of changes according to reporting requirements in accordance with 7 CFR 273.12, will have their mandatory E&T status determined at the next recertification.~~

~~(4) **Processing changes:** Mandatory work participants who relocate within the state retain their E&T participation status at their new location, unless they become exempt or waived.~~

D. E&T [work requirements] program:

~~(1) **General conditions for registration:**~~

~~(a) Unless exempt, every household member 16 years of age or older and younger than age 60 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) 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) 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.~~

~~(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 16 years of age or an individual 60 years of age or older;~~

~~(b) an individual 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;~~

- ~~_____ (e) _____ an individual who is physically or mentally unfit for employment. This can be demonstrated by providing reliable medical and or behavioral health documentation.~~
- ~~_____ (i) _____ the caseworker shall review all information available to him/her, including documentation, when required, and will make the determination about whether an individual SNAP participant should be exempted from the E & T Program;~~
- ~~_____ (ii) _____ to obtain verification, the caseworker shall use electronic databases when available;~~
- ~~_____ (iii) _____ when electronic databases are not available; the SNAP participant is responsible for providing the necessary documentation in accordance with 8.100.130.8 NMAC;~~
- ~~_____ (iv) _____ to determine an exemption exists on the basis of pregnancy, physical or mental unfitness, the individual must provide written documentation 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. 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;~~
- ~~_____ (v) _____ in the case of a pregnancy, the documentation must verify the pregnancy and identify the expected date of delivery;~~
- ~~_____ (vi) _____ if a SNAP participant is deemed physically and mentally fit, and thus not exempt from the E&T Program, the participant will have an opportunity to appeal the mandatory status decision to the fair hearing bureau in accordance with 8.100.970.8 NMAC.~~
- ~~_____ (d) _____ a parent or other household member who is responsible for the care of a dependent child under age thirteen or an incapacitated person;~~
 - ~~_____ (i) _____ if the child has their thirteenth 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;~~
 - ~~_____ (iv) _____ a SNAP participant who is the sole provider of the care for an ill or incapacitated person. In order to meet this exemption, the SNAP participant must provide medical documentation (which could include a letter from the incapacitated individuals health provider) that the person is the sole caretaker for a disabled person and must demonstrate that the SNAP participant cannot be out of the home for the number of hours necessary, or on the computer as is necessary, to meet the work participation hours;~~
 - ~~_____ (v) _____ Only those care activities around which work program activities cannot be scheduled are taken into consideration. Food purchase and preparation activities, home maintenance chores, etc. are activities which may be scheduled and performed at time other than work program participation hours;~~
- ~~_____ (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 (UCB) 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 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 that has an unemployment rate 20 percent above the national average 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.]~~

~~(1) **Reporting changes to the E&T program service provider:** The following changes will be reported to the E&T work program service provider and shared with ISD:~~

~~(a) work participants who become exempt;~~

~~(b) work participants who are no longer certified for participation;~~

~~(c) work participants who relocate; or~~

~~(d) voluntary work participants who no longer choose to volunteer.~~

~~(2) **E&T program service provider responsibilities:** The E&T program service provider is responsible for providing mandatory and voluntary participants referred to the E&T 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 E&T program service provider will inform each participant of:

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

(ii) services; and

(iii) benefits.

(b) Placing a participant in a work activity: a mandatory or voluntary participant may be placed in any program activity deemed appropriate in accordance with 7 CFR 273.7(c) by the E&T program service provider;

(c) Authorizing reimbursements: the E&T program service provider staff will notify ISD of the reimbursement request. ISD will authorize allowable reimbursements up to the regulatory monthly limit for reasonable and necessary costs directly related to program participation, in accordance with 7 CFR 273.7(d).

(d) Reporting requirements: the following changes will be reported by the E&T program service provider to ISD:

(i) mandatory participants who fail or refuse to comply; and

(ii) voluntary work participants who no longer wish to volunteer.

(3) Good cause for noncompliance with E&T requirements: ISD will address good cause in accordance with 7 CFR 273.7(i).

(a) Good cause is determined by considering the facts and circumstances involved, including information submitted by the individual, the individual's representative, the work experience service site or community service site.

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

(i) participant illness;

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

(iii) an individual or family crisis or a family circumstance that may preclude participation;

(iv) lack of transportation and the distance to walk to the activity site exceeds five miles roundtrip;

(v) participant whose physical residence is more than 30 miles away from an income support field office, workforce solutions office or E&T program service provider;

(vi) court appearance of participant or household member;

(vii) 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;

(viii) an absence of dependent care or transportation support services necessary for participation;

(ix) participant's 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;

(x) participant is a victim of family violence; or

(xi) no available jobs within reasonable commuting distance; a distance is considered unreasonable if the round trip exceeds two hours by public or private transportation.

~~E. [E&T work program: 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, opportunities, training or experience that will improve their employment prospects or earning potential.~~

~~(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 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 the work experience or community service site.~~

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

- ~~(i) participant household member's illness;~~
- ~~(ii) illness of another household member requiring the presence of the participating member;~~
- ~~(iii) an individual or family crisis or a family circumstance that may preclude participation;~~
- ~~(iv) lack of transportation and the distance to walk to the activity site exceeds five miles roundtrip;~~
- ~~(v) individual whose physical residence is more than 30 miles away from an income support field office, workforce solutions office or employment services provider;~~
- ~~(vi) court appearance;~~
- ~~(vii) 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;~~
- ~~(viii) an absence of dependent care or transportation support services necessary for participation;~~
- ~~(ix) 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;~~
- ~~(x) individual is a victim of family violence;~~
- ~~(xi) no available jobs within reasonable commuting; or distance; a distance is considered unreasonable if the round trip exceeds two hours by public or private transportation;~~
- ~~(xii) the individual's monthly expenses for transportation and dependent care expenses, which are necessary and directly related to participation in the E&T program, exceed the allowable reimbursement amount.]~~ **Assessment:** An assessment must be completed by a mandatory participant and the E&T program service provider no later than 15 calendar days after an application is approved.

(1) Elements:

- (a) Assessment tools and forms will be used to address the participant's education, skills, prior work experience, employability, and barriers.**
- (b) The assessment may include referrals for counseling, if a barrier to employment exists related to alcohol or drug abuse or mental health.**

(2) Disqualification: Failure to complete the assessment by a mandatory general population participant, within the specified timeframe, may result in a disqualification from SNAP participation, unless good cause exists or the individual becomes exempt.

F. Orientation: Mandatory [P]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: 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.]~~ **Individual Responsibility Plan (IRP)** Mandatory participants may complete an IRP with the assistance of the E&T program service provider. The IRP shall include a specific achievable goal or goals and a plan for securing and maintaining employment.

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.]~~ **Work participation agreement (WPA):**

(1) Requirements: The WPA is an agreement between the participant and the department. Mandatory participants must complete the WPA with the E&T program service provider:

(a) no later than 30 calendar days from date of approval for benefits;

(b) no later than five days after the expiration of an existing WPA;
and

(c) the WPA will be reevaluated by the parties at recertification and for changes in circumstances.

(2) WPA Elements: The WPA will:

(a) list the participant's approved E&T allowable component(s);

(b) list the level of effort for each activity;

(c) list the support services available and 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 allowable component and support services, signed by the E&T program service provider.

(3) Disqualification: Failure to complete the WPA by a mandatory general population participant, within the specified timeframe, may result in a disqualification from SNAP participation, unless good cause exists or the individual becomes exempt.

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 the 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: 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.] E&T allowable components: ISD will administer E&T components in accordance with 7 CFR 273.7(e). At initial eligibility and recertification, general population participants will be required to participate in any combination of the components below for a minimum of 12 or 24 activity hours within a consecutive 3 month period during a consecutive 12 month period. Individuals completing their hours in activities subject to Fair Labor Standards Act (FLSA) may have different required hours as detailed in this section. Individuals residing in an area that is determined to be rural, as defined by the department, will be required to complete the 12 activity hours. Individuals residing in an area that is determined to be non-rural, as defined by the department, will be required to complete the 24 activity hours. ABAWDs subject to the 3 month time limit tracking will be required to participate in any combination of the components below in accordance with 8.139.410.14 NMAC.~~

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

(a) General: The purpose of the Job Search component is to provide the mandatory or voluntary participant a reasonable opportunity to find suitable employment. This is not a qualifying component for ABAWDs, but ABAWDs may participate in this activity in accordance with 8.139.410.14 NMAC.

(b) Component Activities: 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". The department will verify registration in accordance with 8.100.130.9 NMAC. All participants in this component are required to complete the individual or group job search training with employer contacts.

(c) Disqualification: Failure to complete each element of the individual and group job search component subjects the participants to disqualification from SNAP, unless good cause exists.

(d) Reimbursement: Participants who incurred an expense directly related to participation in this component, as defined by the department, are eligible for reimbursement, subject to available funding.

(2) Work Experience: This is a FLSA component.

(a) General: The purpose of the work experience component is to improve the employability of mandatory or voluntary participants. Support services such as transportation reimbursement and child care assistance may be available for participants.

(b) Component Activities:

(i) The monthly participation hours are calculated by dividing the total household SNAP benefits received by the state or Federal minimum wage, whichever is greater, up to the 12 or 24 hours required for the general mandatory population and up to 80 averaged monthly hours for ABAWDs.

(ii) On-the-job skills training.

(iii) Work experience related to their occupational interests.

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

(d) Reimbursement: Participants who incurred an expense directly related to participation in this component, as defined by the department, are eligible for reimbursement, subject to available funding.

(3) Community Service: This is a FLSA component.

(a) General: The purpose of the community service component is to provide on-the-job skills training and to assist the communities of mandatory and voluntary participants.

(b) Component Activities:

(i) The monthly participation hours are calculated by dividing the total household SNAP benefits received by the state or Federal minimum wage, whichever is greater, up to the 12 or 24 hours required for the general mandatory population and up to 80 averaged monthly hours for ABAWDs.

(ii) On-the-job skills training.

(iii) Work-like experience.

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

(d) Reimbursement: Participants who incurred an expense directly related to participation in this component, as defined by the department, are eligible for reimbursement, subject to available funding.

J. ~~E&T allowable components:~~

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

~~**(a) General:** The purpose of the Job Search component is to provide the participant a reasonable opportunity to find suitable employment. Individual or group job search with employer contacts is 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. This is a two-part component which may include class room training and requires a minimum of 12 or 24 employer contacts over a two month period.~~

~~**(b) Component Activities:** 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.~~

~~**(i)** All mandatory and voluntary participants in this component are required to complete the individual or group job search training with employer contacts.~~

~~**(ii)** 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.~~

~~(iii) 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.~~

~~(e) **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.~~

~~(d) **Successful completion:** Participants who successfully complete the individual or group job search and employer contact component are eligible for the transportation reimbursement, subject to available funding.~~

~~(2) **Work Experience:**~~

~~(a) **General:** The purpose of the work experience component is to improve the employability of household members through actual work experience or training, or both, and to enable individuals involved with such programs to move promptly into regular public or private employment. Support services such as the transportation reimbursement and child care assistance may be available for participants.~~

~~(b) **Component Activities:**~~

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

~~(ii) On the job skills training.~~

~~(iii) Work experience related to their occupational interests.~~

~~(e) **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 successfully complete the work experience component 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, improve employability and/or assistance to communities. Support services such as the transportation reimbursement and child care assistance may be available for participants.~~

~~(b) **Component Activities:**~~

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

~~(ii) On the job skills training.~~

~~(iii) Work like experience.~~

~~(e) **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 successfully complete the community service component are eligible for the transportation reimbursement, subject to available funding.] **E&T work program support services:** Support services may be available to participants in accordance with 7 CFR 273.7(d).~~

K. [E&T work program support services:

~~(1) **Child care:** Mandatory and volunteer participants may be eligible for child care services to meet the required E&T activities.~~

~~(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 transportation reimbursement as determined by the department if they have completed the required E&T activities as defined in Paragraph J of this section.~~

~~(3) **Support services are subject to the availability of state and federal funding.] Disqualification for noncompliance:** A mandatory individual who fails or refuses to comply with the E&T program requirements will be considered an ineligible household member in accordance with 7 CFR 273.7(f). This disqualification process does not apply to ABAWDs. The disqualification process for ABAWDs is found at 8.139.410.14 NMAC.~~

~~(1) **Individual disqualification:** Any individual who fails or refuses to comply with the E&T requirements, without good cause will be disqualified as follows:~~

~~(a) **first occurrence:** for three months or until compliance, whichever occurs earlier;~~

~~(b) **second occurrence:** for six months or until compliance, whichever occurs earlier;~~

~~(c) **third occurrence:** for one year or until compliance whichever occurs earlier.~~

~~(2) **Individual that is voluntarily participating:** Any individual that is voluntarily participating in the E&T program is not subject to disqualification for non-compliance.~~

~~(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 in accordance with 8.139.520 NMAC.~~

~~(4) **Notice of adverse action:** Within 10 days of determining that a participant has failed to meet an E&T requirement, the department shall issue a notice of adverse action in accordance with 7 CFR 273.7(c)(3).~~

~~(5) **Determining the SNAP ineligibility period:** ISD will determine, track and notify of disqualification periods in accordance with 7 CFR 273.7(f) and 273.13. ABAWDs must comply with requirements in accordance with 7 CFR 273.24 to remain eligible for SNAP benefits.~~

~~L. **[Disqualification for noncompliance:** 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. This disqualification process applies to participants who are not required to complete the 20-hour-a-week work requirement.~~

~~(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:** for three months or until compliance, whichever occurs earlier;~~

~~(b) **second occurrence:** for six months or until compliance, whichever occurs earlier;~~

~~(c) **third occurrence:** 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 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.~~

~~(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) **Simplified reporting households:** An individual who has failed or refused to comply with work requirements during a 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.~~

~~(6) **Disqualification in the last month of certification:** For all participating households, including households subject to 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.~~

~~(7) **Lifting the disqualification:** An individual who has been disqualified may resume participation 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.~~

~~(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 or meets a good cause 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.] **Head of household provisions:**~~

~~(1) **Designation:** The household may designate a head of household in accordance with 7 CFR 273, et. al.~~

(2) E&T requirements: For purposes of determining compliance with the E&T program, the head of household will be considered as an individual household member. If the head of household fails to comply, he or she will be disqualified in accordance with the disqualification penalties in 8.139.410.12 NMAC.

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.]~~ **Federal Financial Participation:** Federal financial participation will be in accordance with 7 CFR 273.7(d).

N. 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 Food Stamp Program work requirements, in accordance with 7 CFR 273.7(f)(6).

This is the PROPOSED amendment to 8.139.410 NMAC, Section 14

8.139.410.14 ~~[ABLE BODIED ADULTS WITHOUT DEPENDENTS (ABAWDS): An applicant or recipient who is a mandatory work participant in the 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 SNAP benefits. The ABAWD 20-hour-a-week work requirement will be in effect as of January 1, 2016 through December 31, 2018.~~

~~A. Exemptions: Certain individuals are exempt from the ABAWD 20-hour-a-week work:~~

~~(1) an individual determined to be exempt from work requirements of the SNAP E&T program set forth at Subsection D of this section;~~

~~(2) an individual under age 18 or age 50 or older;~~

~~(3) an individual medically certified as physically or mentally unfit for employment as defined in subsection D of 8.139.410 NMAC;~~

~~(4) a pregnant woman;~~

~~(5) an individual residing in a SNAP household that includes at least one child under the age of 18, even if the child is not eligible for SNAP benefits;~~

~~(6) a natural, adoptive or step parent residing in a SNAP household that includes at least one child under the age of 18, even if the child is not eligible for SNAP benefits;~~

~~(7) residing in a non-ABAWD county as documented by federal waiver or suspension of the 20-hour-a-week work requirement.~~

~~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 SNAP program as a member of any household if the individual received 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 January 1, 2016 through December 31, 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 work program or another state or local program that meets 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 SNAP E&T program;~~

~~(d) any other state or local program which is recognized by the department as meeting 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 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 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 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 SNAP work requirement.] **SPECIFIC REQUIREMENTS FOR ABLE BODIED ADULTS WITHOUT DEPENDENTS (ABAWD):** ISD will administer this program in accordance with 7 Code of Federal Regulation (CFR) 273.7; 7 CFR 273.24; and 8.139.410.12 NMAC. ISD will use a fixed 36-month period for measurement and tracking purposes. This rule will be in effect from January 1, 2016 through December 31, 2018.~~

VII. PUBLICATION DATE

October 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 Monday, December 7, 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 or to request a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, New Mexico 87504-2348, or by calling (505) 827-7250.

The Human Services Register outlining the amendments is available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. The corresponding State Plan can be found at <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>.

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 p.m. on the date of the hearing, December 7, 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 amended regulations approved on October 29, 2015 by:



BRENT EARNEST, SECRETARY
HUMAN SERVICES DEPARTMENT