



State of New Mexico
HUMAN SERVICES DEPARTMENT
HUMAN SERVICES REGISTER



I. DEPARTMENT

NEW MEXICO HUMAN SERVICES DEPARTMENT

II. SUBJECT

REPORTING REQUIREMENTS OF ILLEGAL ALIENS
ELIGIBILITY OF HUMANITARIAN REFUGEES

III. PROGRAM AFFECTED

NEW MEXICO WORKS
SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

IV. ACTION

FINAL REGULATIONS

V. BACKGROUND

A hearing was held to receive public comment on April 15, 2011, there were no attendees and written comment was received from one commenter. The commenter provided two comments to the proposed rules.

The first comment requests the Department to “make clear that Iraqi and Afghan Special Immigrants are eligible for SNAP benefits to the same extent as refugees.” The commenter proposed language specifying eligibility for two groups based on language from “The Department of Defense Act of 2010” conferring the eligibility for federal public benefits.

The Department did not include these two groups as eligible in the proposed regulation as they are not included in the SNAP Code of Federal Regulations. The Department issued an Interim Policy and Procedure to inform the field staff of the guidance issued by the U.S. Department of Agriculture Memo issued January 29, 2010.

The second comment requests the Department to “make the rules governing reporting of undocumented non-citizens to DHS clear and consistent.” The commenter identified the language in 8.102.410 NMAC is not consistent with 8.139.410 NMAC.

The Department has corrected the inconsistency as identified.

VI. FINAL REGULATIONS

8.139.410.9 CITIZENSHIP AND ALIEN STATUS: Participation in the food stamp program is limited to individuals who live in the United States, and who are U.S. citizens or aliens with eligible alien status. Among those ineligible for participation are alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in another country.

A. Eligibility: No individual is eligible to participate in the food stamp program unless that individual is otherwise eligible and is:

(1) **a U.S. citizen:**

(2) **a U.S. non-citizen national**

(3) **an American Indian who is:**

(a) an American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply; or

(b) a member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;

(4) **Hmong or Highland Laotian who is:**

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

(b) the spouse, or surviving spouse of such Hmong or Highland Laotian, or

(c) an unmarried or surviving dependent child who is under the age of 18 or if a full-time student under the age of 22; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the person prior to the child's 18th birthday of such Hmong or Highland Laotian.

(5) **Human trafficking victim who is:**

(a) certified by the DHS, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

(b) under the age of 18, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

(c) the spouse, child, parent or unmarried minor sibling of a victim of a severe form of trafficking in persons under 21 years of age, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

(d) the spouse or child of a victim of a severe form of trafficking in persons 21 years of age or older, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA.

(6) **Qualified and eligible alien:** An individual who is both a “qualified alien” and an “eligible alien” as defined in Subsection B of 8.139.410.9 NMAC.

B. Qualified and eligible aliens: An alien may qualify for participation in the food stamp program if the alien meets at least one definition of “qualified alien” from Paragraph (1) below and one definition of “eligible alien” as defined in Paragraph (2) below.

- (1) **Qualified alien:** A “qualified alien” means:
- (a) an alien who is lawfully admitted for permanent residence under the INA;
 - (b) an alien who is granted asylum under section 208 of the INA;
 - (c) a refugee who is admitted to the United States under section 207 of the INA;
 - (d) an alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;
 - (e) an alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;
 - (f) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;
 - (g) an alien, an alien child’s parents or an alien child who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse;
 - (h) an alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980[-].

(2) **Eligible aliens not subject to the five year bar:** A qualified alien, as defined in Paragraph (1) of this Subsection, is eligible to receive food stamps and is not subject to the requirement to be in a qualified status for five years as set forth in Subparagraph (b) of Paragraph (2) of this section, if the individual meets at least one of the criteria of Paragraph (2):

- (a) an alien age 18 or older lawfully admitted for permanent residence under INA who has 40 qualifying quarters as determined under Title II of the SSA, including qualifying quarters of work not covered by Title II of the SSA, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.
- (b) an alien admitted as a refugee under section 207 of the INA;
- (c) an alien granted asylum under section 208 of the INA;
- (d) an alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;
- (e) an alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);
- (f) an Amerasian admitted pursuant to section 584 of Public Law 100-202, as amended by Public Law 100-461;
- (g) an alien with one of the following military connections:
 - (i) a veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C 5303A(d), including an individual who died in active military, naval or air service;
 - (ii) an individual on active duty in the armed forces of the U.S. (other than for training);

(iii) the spouse or surviving spouse of a veteran or active duty military alien described above provided the spouse has not remarried;

(iv) a child or surviving child of a deceased veteran (provided such child was dependent upon the veteran at the time of the veteran's death) who is under the age of 18 (if a full-time student, under the age of 22); or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday;

(h) a qualified alien who is lawfully residing in the U.S. and is receiving benefits or assistance for blindness or disability as defined in Paragraph (23) of Subsection A of 8.139.100.7 NMAC.

(i) an individual who on August 22, 1996, was lawfully residing in the U.S., and was born on or before August 22, 1931; or

(j) an individual who is lawfully residing in the U.S. and is under 18 years of age.

(3) Eligible aliens subject to the five year bar: The following qualified aliens, as defined in Paragraph (1), must be in a qualified status for five years before being eligible to receive food stamps. The five years in qualified status may be either consecutive or non-consecutive. Temporary absences of less than six months from the United States with no intention of abandoning U.S. residency do not terminate or interrupt the individual's period of U.S. residency. If the resident is absent for more than six months, the department shall presume that U.S. residency was interrupted unless the alien presents evidence of their intent to resume U.S. residency. In determining whether an alien with an interrupted period of U.S. residency has resided in the U.S. for five years, the agency shall consider all months of residency in the U.S., including any months of residency before interruption:

(a) an alien 18 or older lawfully admitted for permanent residence under the INA;

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

(c) an alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of abuse, an alien whose child has been battered or subjected to cruelty, or an alien child whose parent has been battered;

(d) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980.

(4) Quarters of coverage:

(a) SSA reports quarters of coverage through the quarters of coverage history system (QCHS).

(b) An alien lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(i) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of food stamp eligibility.

(ii) If eligibility of an alien is based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, the caseworker shall determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(c) **Disputing quarters:** If an applicant disputes the SSA determination of quarters of coverage reported by QCHS, the individual may participate for up to six (6) months pending the results of an SSA investigation. The individual or HSD must have requested an investigation from SSA in order to participate. The household is responsible for repayment of any food stamp benefits issued for such individual during the investigation if SSA determines that the individual cannot be credited with 40 quarters of coverage under Title II of the Social Security Act.

(5) **Federal means-tested benefit:** After December 31, 1996, a quarter in which an alien received any federal means-tested public benefit, as defined by the agency providing the benefit, or actually received food stamps is not creditable toward the 40-quarter total. A parent's or spouse's quarter is not creditable if the parent or spouse actually received any federal means-tested public benefit or actually received food stamps in that quarter. If the alien earns the 40th quarter of coverage prior to applying for food stamps or any other federal means-tested public benefit in that same quarter, the caseworker shall allow that quarter toward the 40 qualifying quarters total.

(a) Federal means-tested benefits include, but may not be limited to, benefits from:

(i) the food stamp program;

(ii) the food assistance block grant programs in Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(iii) supplemental security income (SSI);

(iv) TANF block grant under Title IV of the Social Security Act.

(b) For purposes of determining whether an alien has or has not received a federal means-tested benefit during a quarter, the definition of federal means-tested benefit shall not include:

(i) medical assistance under Title XIX of the Social Security Act (medicaid) for emergency treatment of an alien, not related to an organ transplant procedure, if the alien otherwise meets eligibility for medical assistance under the state plan;

(ii) short-term, non-cash, in-kind emergency disaster relief;

(iii) assistance or benefits under the National School Lunch Act;

(iv) assistance or benefits under the Child Nutrition Act of 1966;

(v) public health assistance (not including any assistance under Title XIX medicaid) for immunizations, and testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by communicable diseases;

(vi) payments for foster care and adoption assistance under Part B and E of Title IV of the Social Security Act for a parent or child who would, in the absence of the restriction of eligibility for aliens contained in the Personal Responsibility and Work

Opportunity Reconciliation Act of 1996, be eligible for such payments made on the child's behalf, but only if the foster or adoptive parent (or parents) of such child is a qualified alien;

(vii) programs, services, or assistance, delivering in-kind services at the community level and necessary for the protection of life or safety, that do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided, on the individual recipient's income or resources;

(viii) programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965, and titles III, VII, and VIII of the Public Health Service Act;

(ix) means-tested programs under the Elementary and Secondary Education Act of 1965;

(x) benefits under the Head Start Act;

(xi) benefits under the Workforce Investment Act.

(6) **Adjustments in status:** Each category of eligible alien status stands alone for purposes of determining eligibility.

(a) When a qualified alien determined to be an eligible alien not required to meet the five year bar adjusts to an eligible alien status that must meet the five year bar they will not lose food stamp eligibility.

(b) Upon expiration of one eligibility status, the department must determine if eligibility exists under another status.

C. Verification of citizenship/eligible alien status: U.S. citizenship is verified only when client statement of citizenship is inconsistent with statements made by the applicant or with other information on the application, previous applications, or other documented information known to HSD.

(1) **U.S. citizenship:** Any member whose U.S. citizenship is questionable is ineligible to participate until proof of U.S. citizenship is obtained. The member whose citizenship is questionable shall have all of his resources and a pro rata share of income considered available to any remaining household members.

(2) **Eligible alien status:** Verification of eligible alien status is mandatory at initial certification. Only those household members identified as aliens with qualified and eligible alien status are eligible to participate in the FSP.

(3) **Ineligible or questionable alien status:** Any household member identified as an ineligible alien, or whose alien status is in question cannot participate in the FSP. The caseworker is responsible for offering to contact the immigration and naturalization service if the alien has a document that does not clearly indicate eligible or ineligible alien status.

D. Need for documentation:

(1) Household members identified as aliens must present documentation, such as but not limited to, a letter, notice of eligibility, or identification card which clearly establishes that the alien has been granted legal status.

(2) A caseworker shall allow aliens a reasonable time to submit acceptable documentation of eligible alien status. A reasonable time shall be 10 days after the date the caseworker requests an acceptable document, or until the 30th day after application, whichever is longer.

(3) If verification of an individual's eligible status is not provided by the deadline, the eligibility of the remaining household members shall be determined. Verification of eligible

alien status provided at a later date shall be treated as a reported change in household membership.

(4) During the application process, if an individual has been determined to be a qualified alien and either the individual or HSD submits a request to a federal agency for documentation to verify eligible alien status, HSD must certify the individual for up to six months pending the results of the inquiry. The six-month time limit begins in the month the original request for verification is made.

(5) If a caseworker accepts a non-INS document and determines that it is reasonable evidence of eligible alien status, the document shall be copied and sent to INS for verification. The caseworker shall not delay, deny, reduce, or terminate the individual's participation pending verification from INS.

(6) **Inability to obtain INS documentation:** If a household indicates an inability to provide documentation of alien status for any member of the household, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to contact INS when the alien does not provide any documentation from INS.

E. Failure to cooperate: If a household, or a household member, indicates an unwillingness to provide documentation of alien status for any member, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to get documentation.

F. Reporting illegal aliens:

(1) HSD shall inform the local DHS office only when an official determination is made that any member of a household who is applying for or receives benefits is present in the US in violation of the INA. An official determination that an illegal alien is in the US in violation of the INA is only made when:

(a) the illegal alien's unlawful presence is a finding of fact or conclusion of law that is made by HSD as part of a formal determination about the individual's eligibility; and

(b) HSD's finding is supported by a determination by DHS or the executive office of immigration review (EOIR) that the non-citizen is unlawfully residing in the US, such as a final order of deportation.

(2) A systematic alien verification for entitlements (SAVE) response showing no service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present.

(3) Illegal alien status is considered reported when the caseworker enters the information about the non-citizen on the household's computer file.

G. Income and resources of ineligible aliens: All the resources and a prorated share of income of an ineligible alien, or of an alien whose alien status is unverified, shall be considered in determining eligibility and food stamp benefit amount for the remaining eligible household members.

8.102.410.10 CITIZENSHIP AND ALIEN STATUS:

K. Reporting undocumented (illegal) non-citizens:

(1) HSD shall inform the local DHS office only when an official determination is made that any mandatory member of a benefit group who is applying for and receiving benefits is present in the U.S. in violation of the INA. A determination that a non-citizen is in the US in violation of the INA is made when:

(a) the non-citizens unlawful presence is a finding of fact or conclusion of law that is made by HSD as part of a formal determination about the individuals eligibility or;

(b) HSD's finding is supported by a determination by DHS or the executive office of immigration review (EOIR) that the non-citizen is unlawfully residing in the U.S. such as a Final Order of Deportation.

(2) An non-citizen who resides in the US in violation of the INA shall be considered an ineligible benefit group member until there is a finding or conclusion of law through a formal determination process by the INS or EOIR.

(3) Illegal non-citizen status is considered reported when the caseworker enters relevant information about the non-citizen on the benefit group's computer file.

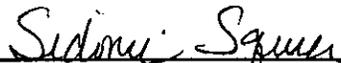
(4) A systematic alien verification for entitlements (SAVE) response showing no service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present.

VII. EFFECTIVE DATE

June 1, 2011

X. PUBLICATION

Publication of the proposed regulations and comment period approved on 5/4/11
by:



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HUMAN SERVICES DEPARTMENT