



STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT

HUMAN SERVICES REGISTER

I. DEPARTMENT

HUMAN SERVICES DEPARTMENT

II. SUBJECT

GENERAL OPERATING PROCEDURES
RESTORATION AND CLAIMS

III. PROGRAMS AFFECTED

GENERAL PROVISIONS FOR PUBLIC ASSISTANCE PROGRAMS
SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

IV. ACTION

PROPOSED AMENDMENTS

V. BACKGROUND

The Department is promulgating proposed regulations for the Supplemental Nutrition Assistance Program (SNAP) under the General Provisions for Public Assistance Programs 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 section 17 of 8.100.100 NMAC and section 18 of 8.100.640 NMAC are being proposed to gain compliance with the Code of Federal Regulations (CFR) proposed in the 2018 Agricultural Act, effective September 1, 2021. In accordance with Section 4006 of the 2018 Farm Bill, this final rule amends the expungement timeframe from 12 months to nine months. The Department considers nine months to be equal to 274 days.

VI. CONCISE EXPLANATORY STATEMENT

The NMHSD is amending the rule to be in compliance with the with this final rule, the amended expungement provisions are at 7 CFR 274.2(i). 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, August 6, 2021 from 9:00am-10:00am**. The hearing will be held virtually through **GoTo Meeting** at this link: <https://global.gotomeeting.com/join/949602949> Anyone wishing to **join via phone may call +1 (571) 317-3112, Access Code: 949-602-949**. 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; 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 505-396-0314. 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 505-396-0314.

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, August 6, 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

July 7, 2021

VIII. PUBLICATION

Publication of these emergency regulations approved on 5/28/2021 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 8.100.100 NMAC, Section 17 effective 10/1/2021.

8.100.100.17 BENEFIT ISSUANCE SYSTEM:

A. Electronic benefit transfer (EBT): SNAP and cash benefits are issued through a direct deposit into an EBT account. The benefits are maintained in a central database and accessed by the household through an individual debit card issued to the household.

B. Initial issuance of EBT card: The EBT card is issued to the designated payee of the eligible household or to the designated authorized representative.

(1) The EBT card is mailed to the head of household or the designated authorized representative on the first working day after the application is registered. The applicant or recipient shall receive training on the use of the EBT card prior to activation of the EBT card.

(2) The EBT card shall be issued to the payee for an eligible household through the most effective means identified by HSD which may include issuance at the county office or by mail.

(3) The applicant or recipient must verify his or her identity.

(4) The payee for the eligible household may select the four-digit personal identification number that will allow access to the household's benefits.

C. Replacement of the EBT card: The recipient or designated authorized representative shall be instructed on the procedure for replacement of an EBT card that has been lost, stolen or destroyed.

(1) The recipient or designated authorized representative may report a lost, stolen or destroyed EBT card through the HSD EBT contractor customer service help desk, HSD EBT customer service help desk or any ISD field office.

(2) The lost, stolen, or destroyed EBT card shall be deactivated prior to a replacement card being issued to the household.

(3) ISD shall make replacement EBT cards available for client to pick up or place the card in the mail within two business days following notice by the household to ISD that the card has been lost, stolen or damaged.

(4) ISD may impose a replacement fee by reducing the monthly allotment of the household receiving the replacement card, however, the fee may not exceed the cost to replace the card.

D. Excessive replacement cards: The HSD office of inspector general (HSD OIG) will generate a warning letter to SNAP recipients that have replaced their EBT card five or more times in a 12 month period. The letter is a notice of warning and will explain that as a result of the recipient's high number of replacement EBT cards, their EBT SNAP transactions will be closely monitored. The letter will become part of the recipient's case record. The letter will:

(1) be written in clear and simple language;

(2) meet the language requirements described at 7 CFR 272.4(b);

(3) specify the number of cards requested and over what period of time;

(4) explain that the next request, or the current request if the threshold has been exceeded, requires contact with ISD before another card is issued;

(5) provide all applicable information on how contact is to be made in order for the client to comply, such as whom to contact, a telephone number and address; and

(6) include a statement that explains what is considered a misuse or fraudulent use of benefits and the possibility of referral to the fraud investigation unit for suspicious activity.

E. Inactive EBT accounts: EBT accounts which have not been accessed by the recipient in the last 90 days are considered a stale account. HSD may store stale benefits offline after notification to the household of this action.

(1) The notification to the household shall include the reason for the proposed action and the necessary steps required by the recipient to reactive the account.

(2) The recipient may request reinstatement of their EBT account anytime within 364 days after the date of the last benefit account activity.

F. EBT benefit expungement: When benefits have had no activity:

(1) **SNAP:** HSD may expunge benefits that have not been accessed by the household after a period of ~~365 days~~274 days. HSD must attempt to notify the household prior to expungement. Expunged benefits are no longer available to the household. Requests for reactivation must be received prior to expungement and a determination shall be made by the director or designee of the income support division.

(2) **Cash:** Cash assistance benefits which have had no activity for an excess of 180 days will be expunged. All benefits older than 180 days in the account will no longer be accessible to the household. The

household loses all rights to all expunged benefits. The department shall attempt to notify the household no less than 45 days prior to the expungement of the cash assistance benefits.
[8.100.100.17 NMAC - N, 3/1/2020; A, 10/1/2021]

This is an amendment to 8.100.640 NMAC, Section 18 effective 10/1/2021.

8.100.640.18 DORMANT BENEFIT ACCOUNTS: Stale benefit accounts are those SNAP and cash assistance accounts that have not been accessed for 90 days from the most recent date of withdrawal.

A. Offline accounts: If EBT accounts are not accessed for 90 days, the department may store such benefits in an offline account.

(1) **Notification:** The department shall notify the eligibility determination group of this action before storing benefits in an offline account and how to reactivate the account.

(2) **Reinstatement:** An adult eligibility determination group member or authorized representative may contact the department or the EBT customer service help desk and request reinstatement of their EBT account.

(a) **SNAP:** SNAP benefits may be restored within 364 days of the initial date of benefit activity. Initial date of benefit activity is the first deposit made to the account upon initial approval of the eligibility determination group's benefits.

(b) **Cash assistance:** Cash assistance benefits may be restored within 364 days of the initial date of benefit activity. Initial date of benefit activity is the first deposit made to the account upon initial approval of the eligibility determination group's benefits.

B. Expungements: SNAP and cash assistance benefits that have not been accessed in excess of the threshold for each program will be expunged. All benefits will no longer be available to the eligibility determination group. The eligibility determination group loses all rights to expunged benefits.

(1) **Stale benefit threshold:**

(a) **SNAP:** SNAP benefits will be expunged after no activity within ~~364 days~~ 274 days of the initial date of benefit activity.

(b) **Cash assistance:** Cash assistance benefits which have had no activity within 180 days of the initial date of benefit activity will be expunged.

(2) **Notification:** The contractor shall notify the department no less than five days prior to expungement of the SNAP benefits. The department shall identify any SNAP claims against the eligibility determination group and shall apply upon expungement.

(a) **SNAP:** The department shall notify the eligibility determination group no less than 30 days prior to the expungement of the SNAP benefits. Request from the participant to reinstate any benefit must be received prior to date of expungement.

(b) **Cash assistance:** The department shall attempt to notify the eligibility determination group no less than 45 days prior to the expungement of the cash assistance benefits. A request from the participant to reinstate any benefit must be received prior to the date of expungement.

(3) **Payments of claims against the eligibility determination group.** The contractor shall notify the department no less than five days prior to expungement of the SNAP or cash assistance benefits and any claims against the eligibility determination group shall be removed from the account and applied to the claims upon expungement.

[8.100.640.17 NMAC - N, 09/30/2013; A and Rn, 3/1/2020; A, 10/1/2021]

History of 8.100.640 NMAC: [RESERVED]