



STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
HUMAN SERVICES REGISTER

I. DEPARTMENT

HUMAN SERVICES DEPARTMENT

II. SUBJECT

GAMBLING AND LOTTERY WINDFALL
STUDENT ELIGIBILITY
SNAP DISQUALIFICATION FOR CERTAIN CONVICTED FELONS

III. PROGRAMS AFFECTED

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

IV. ACTION

PROPOSED AMENDMENTS

V. BACKGROUND

The Department is promulgating proposed regulations to the Supplemental Nutrition Assistance Program (SNAP) administered by the Human Services Department (HSD), including its authority to promulgate regulation, and is governed by Chapter 9, Article 8, NMSA (Repl. 1983).

The Department is proposing to:

- Create consistency and be in compliance with 7 CFR 273.12(a)(2), SNAP households must report substantial lottery and gambling winnings within 10 days of the end of the month in which the household received the winnings. Section 4009 of the Agricultural Act of 2014 requires households with substantial lottery or gambling winnings, to immediately lose eligibility for SNAP benefits. As specified in the final rule, substantial lottery or gambling winnings are defined as a cash prize won in a single game, before taxes or other amounts are withheld, which is equal to or greater than the SNAP resource limit for elderly or disabled households.
- Clarify in 8.139.400.11 NMAC that participants in a SNAP Employment & Training (E&T) program are still eligible if they are enrolled in a course or program of study that is part of a career and technical education program (as defined in Section 3 of the Carl D. Perkins Education Act of 2006), or are participating in remedial courses, basic adult education, literacy instruction, or English as a Second Language.

- Update 8.139.400.12 NMAC to prohibit anyone convicted of Federal aggravated sexual abuse, murder, sexual exploitation and abuse of children, sexual assault, or similar State laws, and who are also not in compliance with the terms of their sentence or parole, or are a fleeing felon, from receiving SNAP benefits.

VI. CONCISE EXPLANATORY STATEMENT

The HSD is amending the rule to be in compliance with federal law which would otherwise place HSD in violation. The rule will be amended under the following statutory authority:

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 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. 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 these proposed amendments, pursuant to Section 14-4-5.6 NMSA 1978, will be held on **Friday, March 13, 2020 from 9:00am-10:00am**. The hearing will be held at the HSD Administrative Services Division (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505. The conference room is located on the first floor in the ASD Rodeo Building.

Individuals wishing to testify may contact the Income Support Division (ISD), P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling 505-827-7254. This register and proposed regulations are also available on the Human Services Department website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. If you do not have Internet access, a copy of the proposed regulations may be requested by contacting the Income Support Division, P.O. Box 2348, Santa Fe, New Mexico 87504-2348 or by calling 505-827-7250.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-6201 or through the New Mexico Relay system, toll free at #711. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, Friday, March 13, 2020. 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

February 11, 2020

VIII. PUBLICATION

Publication of these emergency regulations approved on JANUARY 29, 2020 by:



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

This is an amendment to 8.139.120 NMAC, Section 9 proposed to be effective 5/1/2020.

8.139.120.9 SIMPLIFIED REPORTING: All households will be assigned to simplified reporting (SR). Households must submit an interim report once every six or twelve months, depending on their certification period. Households assigned to a 12-month certification period have an interim report form due at six months. Households assigned to a 24-month certification period have an interim report form due at 12 months.

A. Household Certification Periods: A household that is approved for SNAP benefits shall be assigned the longest certification period possible in accordance with the household's circumstances. Households wherein all adult members are elderly or disabled, with no earned income, will be assigned a 24-month certification period. All other households will be assigned a 12-month certification period.

B. Household responsibility to turn in interim report form:

(1) A household assigned to a 12-month certification period shall be required to file an interim report form no later than the tenth day of the sixth month of the certification period in order to receive uninterrupted benefits.

(2) A household assigned to a 24-month certification period shall be required to file an interim report form no later than the tenth day of the twelfth month of the certification period in order to receive uninterrupted benefits.

C. Information that ISD is responsible to provide to households regarding simplified reporting:

At the initial certification and at recertification, ISD shall provide the household with the following:

(1) A written and oral explanation of how simplified reporting works;

(2) A written and oral explanation of the reporting requirements including:

(a) what needs to be reported and verified;

(b) when the interim report form is due;

(c) how to obtain assistance; and

(d) the consequences of failing to file an interim report form.

(3) Special assistance in completing and filing interim reports to households whose adult members are all either mentally or physically handicapped or are non-English speaking or otherwise lacking in reading and writing skills such that they cannot complete and file the required report; and

(4) A toll-free number which the household may call to ask questions or to obtain help in completing the interim report.

D. Information requirements for the interim report form: The interim report form will be written in clear, simple language, include information on the availability of a bilingual version of the document described in 7 CFR 272.4(b), and shall specify:

(1) the deadline date to submit the form to ISD to ensure uninterrupted benefits if the household is determined eligible;

(2) the consequences of submitting a late or incomplete form including whether ISD shall delay benefits if the form is not received by the due date;

(3) verification the household must submit with the form;

(4) a statement to be signed by a member of the household indicating his or her understanding that the information provided may result in a reduction or termination of benefits;

(5) where to call for help in completing the form;

(6) a statement explaining that ISD will not change certain deductions until the household's next recertification and identify those deductions if ISD has chosen to disregard reported changes that affect certain deductions in accordance with paragraph (c) of section 7 CFR 273.12;

(7) a brief explanation of fraud penalties; and

(8) how the agency may use social security numbers.

E. The following information, along with required verification, must be returned to ISD with the interim report form:

(1) a change of more than one hundred dollars (\$100) in the amount of unearned income, except changes relating to public assistance (PA) or general assistance (GA) programs when jointly processed with SNAP cases;

(2) a change in the source of income, including starting or stopping a job or changing jobs, if the change in employment is accompanied by a change in income;

(3) changes in either:

(a) the wage rate or salary or a change in full-time or part-time employment status as defined in Subsection C of 8.102.461.11 NMAC, provided the household is certified for no more than six months;

or

(b) a change in the amount earned of more than one hundred dollars (\$100) a month from the amount last used to calculate the household's allotment, provided the household is certified for no more than six months.

(4) all changes in household composition, such as the addition or loss of a household member;

(5) changes in residence and the resulting shelter costs;

(6) the acquisition of a licensed vehicle, unless the household is categorically eligible as defined at Sections 8 and 9 of 8.139.420 NMAC or the vehicle is not fully excludable under 8.139.527 NMAC;

(7) when cash on hand, stocks, bonds and money in a bank account or savings institution reach or exceed the resource limit set at 8.139.510.8 NMAC, unless the household is categorically eligible as defined at Sections 8 and 9 of 8.139.420 NMAC;

(8) changes in the legal obligation to pay child support; and

(9) for able-bodied adults subject to the time limit of 7 CFR 273.24, any changes in work hours that bring an individual below 20 hours per week, averaged monthly, as defined in 7 CFR 273.24(a)(1)(i).

F. ISD's responsibility with interim report forms:

(1) **Interim report form is not received:** If a household fails to file a report by the specific filing date, defined in Subsection B of 8.139.120.9 NMAC, ISD will send a notice to the household advising of the missing report no later than 10 calendar days from the date the report should have been submitted. If the household does not respond to the notice, the household's participation shall be terminated.

(2) **Incomplete interim report form is received:**

(a) An interim report form that is not signed shall be returned to the household for a signature. The household:

(i) shall be notified that the form is incomplete;

(ii) what needs to be completed to complete the interim report form; and

(iii) shall be given 10 calendar days to provide the signed interim report

form to be reviewed for completeness.

(b) An interim report form that is incomplete because required verification is not provided shall not be returned to the household. The household:

(i) shall be notified that the form is incomplete;

(ii) what information must be provided to complete the interim report form;

and

(iii) shall be given 10 calendar days to provide the verification to process

the interim report form.

(3) **Complete interim report form is received:**

(a) A form that is complete and all verifications are provided, shall be processed within 10 calendar days of receipt.

(b) A form that is complete, and all verifications are provided except for verification of an allowable deduction, shall be processed, unless the verification is otherwise questionable, in accordance with 8.100.130.12 NMAC. The household:

(i) shall be notified that verification is questionable; and

(ii) shall be given 10 calendar days to provide the verification to process

the allowable deduction.

(c) A deduction that is verified within the month the interim report form is due shall be processed as part of the interim report form.

(d) A deduction that is verified in the month after the interim report form is due shall be processed as a change reported by the household.

(e) If the household files a timely and complete report resulting in reduction or termination of benefits, ISD shall send a notice of case action. The notice must be issued so that the household will receive it no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, ISD will not terminate the household, but will instead determine the household's benefits excluding the deduction from the benefit calculation.

G. Changes that must be reported at any time during certification period: Households must report changes no later than 10 days from the end of the calendar month in which the change occurred, provided that the household has at least 10 calendar days within which to report the change. If there are not 10 days remaining in the month, the household must report within 10 days from the date the work hours fall below 20 hours per week,

averaged monthly or when income exceeding the gross federal poverty limit as mentioned below is first received. The interim report form is the sole reporting requirement for any information that is required to be reported on the form, except that a household must report at any time during the certification period:

(1) The household must report when its monthly gross income exceeds one hundred thirty percent of poverty level. A categorically eligible household defined in accordance with 8.139.420.8 NMAC, must report when its monthly gross income exceeds one hundred sixty-five percent of poverty level. The household shall use the monthly gross income limit for the household size that existed at the time of certification or recertification regardless of any subsequent changes to its household size; and

(2) Able-bodied adults subject to the time limit in accordance with 7 CFR 273.24 shall report whenever their work hours fall below 20 hours per week, averaged monthly.

(3) In accordance with 7 CFR 273.12(a)(2), SNAP households must report substantial lottery and gambling winnings within 10 days of the end of the month in which the household received the winnings.

(a) If the substantial lottery and gambling winning is won by multiple beneficiaries and is over the elderly and disabled resource standard, each SNAP member's share must be reported, if the winning is less than the elderly and disabled resource standard it does not need to be reported.

H. Action on changes reported outside of the interim report form: In addition to changes that must be reported in accordance with Subsection G of 8.139.120.9 NMAC, ISD must act on changes in between interim report forms, if it would increase the household's benefits. ISD shall not act on changes that would result in a decrease in the household's benefits unless:

(1) The household has voluntarily requested that its case be closed;

(2) ISD has information about the household's circumstances considered verified upon receipt. Verified upon receipt is defined:

(a) information is not questionable; and

(b) the provider of the information is the primary source of information; or

(c) the recipient's attestation exactly matches the information received from a third

party.

(3) A household member has been identified as a fleeing felon or probation violator in accordance with 7 CFR 273.11(n);

(4) There has been a change in the household's cash grant, or where cash and SNAP cases are jointly processed in accordance with 7 CFR 273.2(j)(2).

I. Responsibilities on reported changes outside of the interim report form: When a household reports a change, ISD shall take action to determine the household's eligibility or SNAP benefit amount within 10 working days of the date the change is reported.

(1) During the certification period, action shall not be taken on changes to medical expenses of households eligible for the medical expense deduction which ISD learns of from a source other than the household and which, in order to take action, requires ISD to contact the household for verification. ISD shall act only on those changes in medical expenses that it learns about from a source other than the household, if those changes are verified upon receipt and do not necessitate contact with the household.

(2) **Decreased or termination of benefits:** For reported and verified changes that result in a decrease or termination of household benefits, ISD shall act on the change as follows:

(a) Issue a notice of adverse action within 10 calendar days of the date the change was reported and verified unless one of the exemptions to the notice of adverse action in 7 CFR 273.13 (a)(3) or (b) applies.

(b) When a notice of adverse action is used, the decrease in the benefit level shall be made effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested.

(c) When a notice of adverse action is not used due to one of the exemptions in 7 CFR 273.13 (a)(3) or (b), the decrease shall be made effective no later than the month following the change. Verification which is required by 7 CFR 273.2(f) must be obtained prior to recertification.

(3) **Increased benefits:** For reported and verified changes that result in an increase of household benefits, ISD shall act on the change as follows:

(a) For changes which result in an increase in a household's benefits, other than changes described in paragraph (b) of this section, ISD shall make the change effective no later than the first allotment issued 10 calendar days after the date the change was reported to ISD.

(b) For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of

fifty dollars (\$50) or more in the household's gross monthly income, ISD shall make the change effective not later than the first allotment issued 10 calendar days after the date the change was reported.

(i) In no event shall these changes take effect any later than the month following the month in which the change is reported.

(ii) If the change is reported after the last day to make changes and it is too late for ISD to adjust the following month's allotment, ISD shall issue a supplement or otherwise provide an opportunity for the household to obtain the increase in benefits by the tenth day of the following month, or the household's normal issuance cycle in that month, whichever is later.

(4) **No change in SNAP benefit amount:** When a reported change has no effect on the SNAP benefit amount, ISD shall document the change in the case file and notify the household of the receipt of the report.

(5) **Providing verification:** The household shall be allowed 10 calendar days from the date a change is reported to provide verification, if necessary. If verification is provided at the time a change is reported or by the deadline date, the increase in benefits shall be effective in accordance with (a) and (b) above. If the household fails to provide the verification by the deadline date, but does provide it at a later date, the increase shall be effective in the month following the month the verification is provided. If the household fails to provide necessary verification, its' SNAP benefit amount shall revert to the original benefit amount.

J. Resolving unclear information:

(1) During the certification period, ISD may obtain information about changes in a household's circumstances from which ISD cannot readily determine the effect of the change on the household's benefit amount. The information may be received from a third party or from the household itself. ISD must pursue clarification and verification of household circumstances using the following procedure if unclear information received outside the periodic report is:

(a) information fewer than 60 days old relative to the current month of participation; and,

(b) if accurate, would have been required to be reported under simplified reporting rules, in accordance with 8.139.120.9 NMAC.

(c) ISD must pursue clarification and verification of household circumstances in accordance with the process outlined in Subsection B of 8.100.130.12 NMAC, for any unclear information that appears to present significantly conflicting information from that used by ISD, at the time of certification.

(2) **Unclear information resulting from certain data matches:**

(a) if the department receives match information from a trusted data source as described in 7 CFR 272.13 or 7 CFR 272.14, ISD shall send a notice in accordance with Subsection B of 8.100.130.12 NMAC in accordance with 7 CFR 272.13(b)(4) and 7 CFR 272.14 (c)(4). The notices must clearly explain what information is needed from the household and the consequences of failing to respond to the notice.

(b) if the household fails to respond to the notice or does respond but refuses to provide sufficient information to clarify its circumstances, ISD shall remove the individual and the individual's income from the household and adjust benefits accordingly. As appropriate, ISD shall issue a notice of adverse action.

K. Failure to report changes: If ISD discovers that the household failed to report a change as required, ISD shall evaluate the change to determine whether the household received benefits to which it was not entitled or if the household is entitled to an increased benefit amount.

(1) **Decreased benefit amount:** After verifying the change, ISD shall initiate a claim against the household for any month in which the household was over issued SNAP benefits. The first month of the over issuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced. No claim shall be established because of a change in circumstances that a household is not required to report in accordance with Subsection G of 8.139.120.9 NMAC above.

(2) **Increased benefit amount:** When a household fails to make a timely report of a change which will result in an increased SNAP benefit amount, the household is not entitled to a supplement for any month prior to and including the month in which the change was reported. The household is entitled to an increased benefit amount effective no later than the first benefit amount issued 10 calendar days after the date the change was reported.

[2/1/1995, 10/1/1995, 6/15/1996, 9/14/1996, 11/1/1996, 7/1/1998, 6/1/1999; 8.139.120.9 NMAC - Rn, 8 NMAC 3 FSP.123, 5/15/2001; 8.139.120.9 - N, 02/14/2002; A, 01/01/2004; A, 07/16/2008; A, 08/15/2008; A/E, 10/15/2008;

A, 12/31/2008; A, 09/01/2017]

This is an amendment to 8.139.400 NMAC, Section 11 and 12 proposed to be effective 5/1/2020

8.139.400.11 SPECIAL MEMBERS:

A. Students:

(1) **Eligibility:** An individual who is enrolled at least half time in an institution of higher education will be ineligible to participate in SNAP unless the individual qualifies for one of the exemptions contained in Paragraph (3) of Subsection A of 8.139.400.11 NMAC. Half-time enrollment status is determined by the definition of the institution in which the individual is enrolled or attending.

(2) **Enrollment:**

(a) Students enrolled in an institution of higher education less than half time are not considered students for purposes of SNAP eligibility, and do not have to meet an exemption at Paragraph (3) of Subsection A of 8.139.400.11 NMAC to be eligible for SNAP.

(b) Students who are enrolled at least half time in an institution of higher education in a program that normally requires a high school diploma or equivalency certificate for enrollment in a "regular curriculum," are students and have to meet an exemption at Paragraph (3) of Subsection A of 8.139.400.11 NMAC to be eligible for SNAP. The following programs are not in the "regular curriculum," and if enrolled in one of these programs, the student would not be considered a student for purposes of SNAP eligibility:

(i) Career or technical certificate programs. Career and technical certificate programs are programs which offer a sequence of courses that provide individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions; provide technical skill proficiency, an industry recognized credential, a certificate, or an associate degree; and may include prerequisite courses that meet the requirements of this subparagraph; and include competency based applied learning that contributes to the academic knowledge, higher order reasoning and problem solving skills, work attitudes, general employability skills, technical skills, and occupation specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual.

(ii) English as a second language;

(iii) adult basic education;

(iv) literacy; or

(v) community education courses

(c) Students who are enrolled at least half time in a "regular curriculum," at a college or university that offers degree programs regardless of whether a high school diploma is required are considered students for purposes of SNAP eligibility, and have to meet an exemption found at Paragraph (3) of Subsection A of 8.139.400.11 NMAC to be eligible for SNAP.

(d) The enrollment status of a student shall begin on the first day of the school term. Such enrollment shall be deemed to continue through normal periods of class attendance, vacation and semester breaks. Enrollment status shall terminate when the student graduates, is expelled, does not re-enroll or is suspended for a period in excess of 30 calendar days

(e) Students who reside on campus as defined at 34 CFR 668.46(a) and who have opted to or are required to purchase a meal plan which provides fifty percent or more of their meals are ineligible for SNAP in accordance with 7 CFR 273.1(b)(7)(vi).

(3) **Student exemptions:** To be eligible, a student must meet at least one of the following exemptions:

(a) **Age:** Be age 17 or younger or age 50 or older.

(b) **Physical or mental unfitness:** For exemption purposes, physical or mental unfitness per Paragraph (3) of Subsection A of 8.139.400.11 NMAC and 7 CFR 273.5(b)(2) is defined as follows: An individual who has a mental or physical illness or disability, temporary or permanent, which reduces their ability to financially support themselves. Unfitness can be obvious to the department and documented in the case file; or not obvious to the department, but is documented by a physician, physician's assistant, nurse, nurse practitioner, a licensed or certified psychiatrist or a licensed or certified psychologist, or social worker as being unfit to work; the claim of physical or mental unfitness must be substantiated by written documentation identifying the physical or mental condition and certifying that the person is unfit for employment.

(i) If an individual claims to be physically or mentally unfit for purposes of the student exemption, and the unfitness is not evident to ISD, verification may be required.

(ii) Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by government or private sources, or of a statement from a physician or licensed

or certified psychologist.

_____ (e) **Education/training program:** Assigned to or placed in an institution of higher education through or in compliance with the requirements of:

_____ (i) a program under the Job Training Partnership Act of 1974 (JTPA);

_____ (ii) an employment and training program under 7 CFR 273.7;

_____ (iii) a program under Section 236 of the Trade Act of 1974 [19 U.S.C. 2296]; or

_____ (iv) an employment and training program for low-income households that is operated by a state or local government where one or more of the components of such program is at least the equivalent to an acceptable SNAP employment and training program component.

_____ (d) **Employment:** Employed a minimum of 20 hours per week and paid for such employment, or, if self-employed, working a minimum of 20 hours per week, and receiving weekly earnings at least equal to the federal minimum wage multiplied by 20 hours. Students whose employment hours fluctuate week to week will be considered to have met the minimum work hour requirement, as long as they maintain an average of 20 hours per week or 80 hours per month.

_____ (e) **Work study:** Be participating in a state or federally financed work study program during the regular school year.

_____ (i) The student must be approved for work study at the time of application for SNAP benefits, the work study must be approved for the school term, and the student must anticipate actually working during that time.

_____ (ii) The exemption will begin with the month in which the school term begins or the month work study is approved, whichever is later.

_____ (iii) Once begun, the exemption will continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.

_____ (iv) The exemption will not continue between terms when there is a break of a full month or longer, unless the student is participating in work study during the break.

_____ (f) **Children:** Responsible for a dependent household member who:

_____ (i) is under age 6; or

_____ (ii) has reached the age of 6 but is under age 12 when ISD has determined that adequate child care is not available to enable the student to attend class and comply with the 20-hour work requirement in (d) or the work study requirement in (e) above.

_____ (g) **Single parents:** Enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12.

_____ (i) This provision applies when only one natural, adoptive or stepparent (single, widow/ widower, separated, divorced) is in the same SNAP household as the child.

_____ (ii) If there is no natural, adoptive or stepparent in the same SNAP household as the child, another full-time student in the same SNAP household as the child may qualify for eligible student status under this provision if he/she has parental control over the child and is not living with his/her spouse.

_____ (h) **Title IV-A:** Receiving Title IV-A cash assistance.

_____ (i) **Work incentive program:** Participation in the job opportunities and basic skills program under Title IV of the Social Security Act or its successor programs.

_____ (j) **On-the-job training:** Be participating in an on-the-job training program. An individual is considered to be participating in an on-the-job training program only during the period of time the individual is being trained by the employer.]

A. Students:

(1) **Eligibility:** An individual who is enrolled at least half-time in an institution of higher education will be ineligible to participate in SNAP unless the individual qualifies for one of the exemptions contained in Paragraph (3) of Subsection A of 8.139.400.11 NMAC. Half-time enrollment status is determined by the definition of the institution in which the individual is enrolled or attending.

(2) **Reside on Campus:** Students who reside on campus as defined at 34 CFR 668.46(a) and who have opted to or are required to purchase a meal plan which provides fifty percent or more of their meals are ineligible for SNAP in accordance with 7 CFR 273.1(b)(7)(vi).

(3) **Enrollment:** An individual is considered to be enrolled in an institution of higher education if the individual:

_____ (a) is enrolled in a business, technical, trade, or vocational school that normally requires a

high school diploma or equivalency certificate for enrollment in the curriculum; or

(b) is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

(4) **Student Exemptions:** To be eligible for SNAP, a student as defined in with section 3 paragraph (a) and (b) of the section must meet at least one of the following criteria.

(a) Be age 17 or younger or age 50 or older;

(b) Be physically or mentally unfit: For exemption purposes, physical or mental unfitness per Paragraph (3) of Subsection A of 8.139.400.11 NMAC and 7 CFR 273.5(b)(2) is defined as follows: An individual who has a mental or physical illness or disability, temporary or permanent, which reduces their ability to financially support themselves. Unfitness can be obvious to the department and documented in the case file; or not obvious to the department, but is documented by a physician, physician's assistant, nurse, nurse practitioner, a licensed or certified psychiatrist or a licensed or certified psychologist, or social worker as being unfit to work; the claim of physical or mental unfitness must be substantiated by written documentation identifying the physical or mental condition and certifying that the person is unfit for employment.

(i) If an individual claims to be physically or mentally unfit for purposes of the student exemption, and the unfitness is not evident to ISD, verification may be required.

(ii) Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by government or private sources, or of a statement from a physician or licensed or certified psychologist.

(c) Be receiving Temporary Assistance for Needy Families under Title IV of the Social Security Act;

(d) Be enrolled as a result of participation in the Job Opportunities and Basic Skills program under Title IV of the Social Security Act or its successor program;

(e) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours. For students whose employment hours fluctuate week to week will be considered to have met the minimum work hour requirement, as long as they maintain an average of 20 hours per week or 80 hours per month. Compliance with this requirement can be determined by calculating whether the student worked an average of 20 hours per week over the period of a month, quarter, trimester or semester.

(f) Be participating in a State or federally financed work study program during the regular school year.

(i) To qualify under this provision, the student must be approved for work study at the time of application for SNAP benefits, the work study must be approved for the school term, and the student must anticipate actually working during that time. The exemption shall begin with the month in which the school term begins or the month work study is approved, whichever is later. Once begun, the exemption shall continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.

(ii) The exemption shall not continue between terms when there is a break of a full month or longer unless the student is participating in work study during the break.

(g) Be participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer;

(h) Be responsible for the care of a dependent household member under the age of 6;

(i) Be responsible for the care of a dependent household member who has reached the age of 6 but is under age 12 when ISD has determined that adequate child care is not available to enable the student to attend class and comply with the work requirements of paragraph (3)(e) or (3)(f) above;

(j) Be a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12.

(i) This provision applies in those situations where only one natural, adoptive or stepparent (regardless of marital status) is in the same SNAP household as the child.

(ii) If no natural, adoptive or stepparent is in the same SNAP household as the child, another full-time student in the same SNAP household as the child may qualify for eligible student status under this provision if he or she has parental control over the child and is not living with his or her spouse.

(k) Be assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the programs identified in paragraphs (3)(k)(i) through (3)(k)(iv) of this section. Self-initiated placements during the period of time the person is enrolled in one of these employment and training programs shall be considered to be in compliance with the requirements of the employment and training program in

which the person is enrolled provided that the program has a component for enrollment in an institution of higher education and that program accepts the placement. Persons who voluntarily participate in one of these employment and training programs and are placed in an institution of higher education through or in compliance with the requirements of the program shall also qualify for the exemption. The programs are:

(i) A program under the Job Training Partnership Act of 1974 (29 U.S.C. 1501, *et seq.*);

(ii) An employment and training program in accordance with 7 CFR 273.7, subject to the condition that the course or program of study, as determined by the State agency:

(A) Is part of a program of career and technical education as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302) designed to be completed in not more than 4 years at an institution of higher education as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 2296); or

(B) is limited to remedial courses, basic adult education, literacy, or English as a second language.

(iii) A program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296); or

(iv) An employment and training program for low-income households that is operated by a State or local government where one or more of the components of such program is at least equivalent to an acceptable SNAP employment and training program component in accordance with 7 CFR 273.7(e)(1). Using the criteria in 7 CFR 273.7(e)(1), a determination be made as to whether or not the programs qualify.

(l) The enrollment status of a student shall begin on the first day of the school term of the institution of higher education. Such enrollment shall be deemed to continue through normal periods of class attendance, vacation 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 school).

(m) The income and resources of an ineligible student shall be handled in accordance with the requirements in Subsection D of 8.139.520.10 NMAC.

B. Strikers: Households with members on strike are ineligible to participate in the SNAP, unless the household was eligible for benefits the day before the strike began and is otherwise eligible at the time of application. A striker is anyone involved in a strike or concerted stoppage of work by employees, including a stoppage because of the expiration of a collective bargaining agreement, and any concerted slowdown or other concerted interruption of operations by employees. Employees participating in a sympathy strike will be considered strikers. The household will not receive an increased SNAP benefit amount as a result of the decrease in income of the striking member(s) of the household.

(1) Nonstrikers: The following individuals are not considered strikers and are eligible for program participation:

(a) any employee affected by a lockout;

(b) an individual who goes on strike who is exempt from work registration (Subsection B of 8.139.410.12 NMAC) the day before the strike, except those who were exempt because of employment;

(c) employees whose workplace is closed by an employer in order to resist demands of employees (i.e., a lockout);

(d) employees unable to work as a result of other striking employees (e.g., truck drivers who are not working because striking newspaper pressmen prevent newspapers from being printed;

(e) employees who are not part of the bargaining unit on strike but who do not want to cross a picket line for fear of personal injury or death;

(f) employees who are fired or laid off, or who are permanently replaced or officially resign; and

(g) employees who will not be permitted to return to their old jobs but are offered different ones.

(2) Striker eligibility:

(a) Striker eligibility is determined by considering the day before the strike as the day of application and assuming the strike did not occur.

(b) Eligibility at the time of application is determined by comparing the striking member's income before the strike to the striker's current income and adding the higher of the two to the current income of the nonstriking household members during the month of application.

(c) To determine benefits (and eligibility for households subject to the net income eligibility standard), deductions will be calculated for the month of application as for any other household. Whether the striker's prestrike earnings are used or the current income is used, the earnings deduction is allowed if

appropriate.

(d) Strikers whose households are eligible to participate in the SNAP will be required to register for work unless otherwise exempt.

C. **Boarders:** Boarders are defined as individuals or groups of individuals residing with others and paying reasonable compensation to those others for lodging and meals. An individual furnished both lodging and meals by a household, but paying less than reasonable compensation to the household for such services, will be considered a household member. Foster care children placed in the home of relatives or other individuals or families will be considered boarders. Foster care payments made to the household will not be counted as income, unless the household chooses to include the foster child. Payment to a household for lodging and meals will be treated as self-employment income to the household.

(1) **Reasonable compensation:** To determine if an individual is paying reasonable compensation for meals and lodging in making a determination of boarder status, only the amount paid for meals will be used, provided that the amount paid for meals can be distinguished from the amount paid for lodging. A reasonable monthly payment will be either of the following:

(a) A boarder whose board arrangement is for more than two meals a day must pay an amount which equals or exceeds the maximum SNAP benefit amount for the appropriate size of the boarder household.

(b) A boarder whose board arrangement is for two meals or less per day must pay an amount which equals or exceeds two-thirds of the maximum SNAP benefit amount for the appropriate size of the boarder household.

(2) **Included boarders:** A household which provides boarding services may request that the boarder be included as a member of the household. Boarders are not eligible to participate in the SNAP separately from the household providing the board. All the income and resources of included boarders will be counted in determining the eligibility and SNAP benefit amount of the household.

(3) **Excluded boarders:** The income and resources of boarders who are not included as household members will not be considered available to the household.
[02/01/1995, 10/01/1995, 02/15/1996, 05/15/1997, 07/01/1997/ 06/01/1999; 8.139.400.11 NMAC - Rn, 8 NMAC 3.FSP.403, 05/15/2001; A, 07/15/2013; A, 09/01/2017; A, 06/01/2018]

8.139.400.12 INELIGIBLE HOUSEHOLD MEMBERS: The following individuals shall be included as household members for the purpose of defining a household, but shall not be included as eligible members when determining the household's size, comparing the household's monthly income with the income eligibility standard, or assigning a benefit amount by household size.

A. **Excluded household members:**

(1) **Ineligible aliens:** Individuals who do not meet citizenship or eligible alien status requirements, or eligible sponsored alien requirements. The income and resources of such individuals shall be counted in determining the household's eligibility and benefit amount in accordance with the requirements in Subsection C of 8.139.520.10 NMAC.

(2) **Ineligible students:** Individuals enrolled in an institution of higher education who are ineligible because they do not meet the student eligibility requirements in Subsection A of 8.139.400.11 NMAC. Ineligible students are considered as non-household members in determining the household's eligibility and benefit amount. Income and resources are considered in accordance with the requirements in Subsection D of 8.139.520.10 NMAC.

B. **Disqualified household members:**

(1) **SSN disqualified:** Individuals who are disqualified for refusal or failure to provide a social security number.

(2) **Work noncompliance:** Individuals who have been disqualified for failure or refusal to comply with work requirements.

(3) **IPV:** Individuals disqualified for an intentional program violation.

C. **Disqualification for fleeing felons and probation/parole violators:** No member of an otherwise eligible household shall be eligible to participate in the FSP as a member of the household during any period in which the individual is:

(1) fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the individual is fleeing, for a crime or attempt to commit a crime, that is a felony, or in New Jersey a high misdemeanor, under the law of the place from which the individual is fleeing; or

(2) violating a condition of probation or parole imposed under a federal or state law.

(3) **Treatment of income and resources:** The income and resources of an individual described in Paragraphs (1) and (2) of Subsection C of 8.139.400.12 NMAC shall be attributed in their entirety to the household while the individual is in the home.

D. Disqualification for certain convicted felons. The disqualification contained in 8.139.400.12 D NMAC shall not apply to a conviction if the conviction is for conduct occurring on or before February 7, 2014. An individual shall not be eligible for SNAP benefits if the individual is convicted as an adult of:

(1) Aggravated sexual abuse under section 2241 of title 18, United States Code;

(2) Murder under section 1111 of title 18, United States Code;

(3) An offense under chapter 110 of title 18, United States Code;

(4) A Federal or State offense involving sexual assault, as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or

(5) An offense under State law determined by the Attorney General to be substantially similar to an offense described in clause (i), (ii), or (iii); and

(6) The individual is not in compliance with the terms of the sentence of the individual or the restrictions under 8.139.400.12 C NMAC.

[02/01/1995, 10/01/1995, 05/15/1997; 8.139.400.12 NMAC - Rn, 8 NMAC 3.FSP.404, 05/15/2001; A, 02/14/2002; A, 5/15/2002]

This is an amendment to 8.139.410 NMAC, Section 13 proposed to be effective 5/1/2020.

8.139.410.13 SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) EMPLOYMENT AND TRAINING PROGRAM (E&T): ISD will administer the E&T program requirements in accordance with 7 CFR 273.7(e). SNAP participants may choose to voluntarily participate in any of the E&T services available. Volunteers can participate to the extent that they wish and will not be subject to any E&T disqualification. Participants in a SNAP Employment & Training (E&T) program are still eligible if they are enrolled in a course or program of study that is part of a career and technical education program (as defined in Section 3 of the Carl D. Perkins Education Act of 2006), or are participating in remedial courses, basic adult education, literacy instruction, or English as a Second Language. Volunteers who incur transportation expenses that are reasonably necessary and directly related to participation in the E&T program will be reimbursed up to the monthly limit as determined by ISD, in accordance with 7 CFR 273.7(d)(4). [8.139.410.13 NMAC - N, 04/01/2010; Repealed, 03/01/2017; A, 09/01/2017]

This is an amendment to 8.139.420 NMAC, Section 8 effective 5/1/2020.

8.139.420.8 CATEGORICAL ELIGIBILITY (CE): All members of a food stamp household must maintain CE status for the household to be considered CE. Categorically eligible one and two person households are entitled to the minimum food stamp benefit amount, except in an initial month if the prorated benefit is less than \$10.

A. Determining CE: Households may be CE by receiving financial assistance or by receiving a non-cash TANF/MOE funded benefit or service, known as broad-based CE.

(1) Financial assistance/SSI CE: A food stamp household is considered CE for the entire month when all of its members receive or has been determined eligible to receive any combination of the benefits or services from the following:

- (a) financial assistance;
- (b) financial, in-kind benefits, or services funded either under Title IV-A of the Social Security Act or by the state as part of the TANF maintenance of effort;
- (c) SSI under Section 1619(a) or 1619(b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)).

(2) Broad-based CE due to receiving a non-cash TANF/MOE funded benefit or service: A food stamp household is considered to be a broad-based CE household for the month of application and the entire certification period when the household's gross income is less than 165% FPG and the household has received a non-cash TANF/MOE funded benefit or service.

(3) Households not entitled to CE: A household shall not be considered CE if:

- (a) any member is disqualified for an IPV;
- (b) any member is disqualified for failure to comply with work registration or E&T requirements, including voluntarily quitting a job or reducing employment hours without good cause;
- (c) any member is disqualified because of fleeing felon status or parole/probation violations;
- (d) the household is institutionalized; or
- (e) the household refuses to cooperate in providing information that is necessary to determine eligibility[-];

(f) households that lose eligibility because an individual member received substantial lottery or gambling winnings will remain ineligible until they meet the income and resource limits detailed in 7 CFR 273.8 and 273.9. The next time such a household reapplies and is certified for SNAP after losing eligibility under this rule, the household would not be considered categorically eligible. This requirement is not permanent; it applies only to the first time a household is certified under regular SNAP rules following the loss of eligibility for substantial lottery and gambling winnings.

(4) Households may be CE if they contain non-household members such as ineligible students, ineligible aliens, ABAWDs who are ineligible due to time limits.

B. Eligibility factors for CE households: All CE households are subject to food stamp eligibility requirements, including, but not limited to, verification of household composition, if questionable; benefit determination (income and deductions); disqualification for any reason; claims recovery and restored benefits; notices and fair hearings; and all reporting requirements.

(1) Financial assistance/SSI households: Households entitled to CE because of receipt of financial assistance or SSI do not have to provide verification of the following eligibility factors:

- (a) resources;
- (b) social security number;
- (c) sponsored alien information; and
- (d) residency.

(2) Broad-based households: Households entitled to CE because they received a non-cash TANF/MOE funded benefit or service do not have to verify resources.

C. Case management for all CE households:

(1) Applicant households: Caseworkers shall postpone denying a potentially CE household until the 30th day to allow financial assistance or SSI benefit approval. If within 30 days following the denial date, the caseworker becomes aware of, approval which makes the household CE benefits shall be paid using the original application and any other information which has become available since that time.

(2) Responsibility to report changes: CE households subject to simplified or regular reporting must report changes in accordance with 8.139.120 NMAC.

(3) Action on changes to CE status: When a household reports a change or the department

becomes aware of a change, the caseworker shall take action to determine if the household is still entitled to continue CE.

(a) **Financial assistance:** When the household reports a loss or the department becomes aware of a loss of SSI or financial assistance, the household should be evaluated for broad-based CE.

(b) **Broad-based CE:** The caseworker shall take action to determine if the household still meets the criteria for broad-based CE status per Paragraph (2) of Subsection A above. Should the reported change result in a loss of broad-based CE the household will be notified in writing. Any household no longer entitled to broad-based CE status may still participate in the food stamp program and are subject to all eligibility requirements including resource and reduced income limits.

[2/1/1995, 7/1/1997, 6/1/1999; 8.139.420.8 NMAC - Rn, 8 NMAC 3.FSP.426, 05/15/2001; A, 02/14/2002; A, 04/01/2010]

This is an amendment to 8.139.510 NMAC, Section 9 proposed to be effective 5/1/2020

8.139.510.9 STANDARDS:

- A. Liquid resources:** Liquid resources are readily negotiable resources such as, but not limited to:
- (1) cash on hand;
 - (2) money in checking and saving accounts;
 - (3) savings certificates, stocks and bonds (even if they are producing income consistent with their fair market value), credit union shares, promissory notes, U.S. savings bonds (after they become accessible six months from the date of purchase);
 - (4) loans, including loans from private individuals as well as from commercial institutions, are considered in the month received.
- B. Lump-sum payments:** Money received in the form of a nonrecurring lump sum payment is counted as a resource in the month received, unless specifically excluded by other federal laws.
- (1) Lump sum payments include, but are not limited to:
 - (a) income tax refunds, rebates, or credits, including earned income tax credit payments after 2 months;
 - (b) retroactive lump sum social security, SSI, cash assistance, railroad retirement benefits or similar payments;
 - (c) lump sum insurance settlements;
 - (d) refunds of security deposits on rental property or utilities[-];
 - (e) substantial lottery or gambling winnings are defined as a cash prize won in a single game, before taxes or other amounts are withheld, which is equal to or greater than the SNAP resource limit for elderly or disabled households as identified in 7 CFR 273.12(a)(2).
 - (2) Lump sum payments are delayed payments owed to a household for past periods.
- C. Other liquid resources:** Liquid resources also include:
- (1) funds held in individual retirement accounts (IRAs), and
 - (2) funds held in Keogh plans that do not involve a household member in a contractual relationship with individuals who are not household members; in determining the availability of IRAs or Keogh plans, the caseworker shall count the total cash value minus the amount of the penalty (if any) for early withdrawal of the entire amount.
- D. Non-liquid resources:** Non-liquid resources include personal property, boats, buildings, land, recreational property, and any other property, provided that the resource is not specifically excluded. Non-liquid resources shall be documented in sufficient detail to permit verification if the resource becomes questionable.
- E. Vehicles:** The entire value of any licensed or unlicensed vehicle shall be excluded in determining eligibility and benefit amount in the food stamp program.
- [2/1/1995, 10/1/1995, 10/1/1996; 8.139.510.9 NMAC - Rn, 8 NMAC 3.FSP511, 05/15/2001; A, 02/01/2002]