



STATE OF NEW MEXICO  
HUMAN SERVICES DEPARTMENT  
**HUMAN SERVICES REGISTER**

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**I. DEPARTMENT**

HUMAN SERVICES DEPARTMENT

**II. SUBJECT**

AMENDMENTS TO GENERAL PROVISIONS FOR PUBLIC ASSISTANCE PROGRAMS

AND

AMENDMENTS TO THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

**III. PROGRAMS AFFECTED**

GENERAL PROVISIONS FOR PUBLIC ASSISTANCE PROGRAMS

AND

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

**IV. ACTION**

FINAL RULE

**V. BACKGROUND**

The Department is finalizing regulations that were proposed in the Human Services Register Vol. 39 No.09.

The following sections of New Mexico Administrative Code (NMAC) are being finalized for alignment with the Code of Federal Regulations (CFR) to include:

- The responsibilities of the Department and applicants regarding the application/recertification process, which includes general application procedures and processes for potentially eligible households and anyone who requests information of these processes;

- The responsibilities of the Department and applicants/recipients relative to procedures when determining the initial benefits, interim reporting and recertification for continued eligibility for SNAP benefits;
- The Department is updating the consequences of non-compliance for failure to comply with work requirements.

A public hearing was held on May 18, 2016, where three people attended and provided verbal comments. Written comments were also received. The comments and responses are summarized below.

**Comment:** *HSD Workers Need a Comprehensive Manual. The NMAC is the current HSD policy manual for all HSD employees. HSD also uses Interim Policies and Procedures (IPPs), General Information Memoranda (GI's) and Manual Revision Forms (MRs) to clarify, update, and sometimes supersede the NMAC. These miscellaneous memoranda are stored on a shared drive that is not indexed, making it impossible for a worker to know what the correct and most up to date policy is. HSD is required to have "uniformity in office application processing practices." HSD will not have uniform application processing if workers have to rely on multiple, and disorganized, sources of policy and procedure. We recommend that HSD create a comprehensive online worker manual that reflects the up to date NMAC requirements as well as content of IPPs, GI's and MRs. This is particularly important if the Department intends to cite to CFR in the NMAC without further explanation.*

**Response:** Thank you for your comment. HSD is open to developing such a tool in the future.

**Comment:** *ISD must document the date the application was filed by recording on the application the date it was received by the office.*

**Response:** The Department added language to NMAC 8.100.110.9 to include this statement.

**Comment:** *The existing regulations and the proposed changes use "department," "ISD," and "caseworker" interchangeably, which is confusing. HSD should ensure that whichever term is used in the final regulation, it is clearly defined and used consistently throughout the NMAC.*

**Response:** HSD has changed "department" and "caseworker" to read ISD where appropriate. In some instances, "department" is retained because it is appropriate, and ISD would not be correct – for example, ISD does not administer all public assistance programs and thus when the rule addresses general information for all public assistance programs, "department" is appropriate.

**Comment:** *When HSD certifies a household for SNAP benefits, HSD must assign the household a certification period in accordance with federal law. Certified households are required to report changes according to the change reporting requirement assigned to their household. The current NMAC provisions conflate these two separate concepts*

*and fail to fully explain what length of certification period or what reporting requirement to assign a household, in accordance with federal requirements.*

**Response:** Thank you for your comment. While the department believes the NMAC provisions as to certification periods and reporting requirements are compliant with federal law based upon options that the department has chosen, the department is open to reorganizing the information in the future.

**Comment:** *When HSD receives an application it must be screened for expedite SNAP eligibility the day they request assistance.*

**Response:** The Department added language to NMAC 8.100.110.8(A)(1) to include a statement to clarify that the application must be screened the same day that the application is received.

**Comment:** *Instead of stating generally that applications identified as expedite eligible at screening will be "processed in accordance with timeframes outlined in federal and state laws and regulations," the regulations should cite to the specific NMAC provision governing timeframes for processing expedite SNAP applications, listed in NMAC 8.139.110.16.*

**Response:** Thank you for the comment. HSD disagrees that specific citations to NMAC are necessary in this subsection. The exact timeframes are detailed in NMAC where appropriate.

**Comment:** *ISD must provide households that complete an on-line application in person at the local field office the opportunity to review the information and must provide them with a copy of that information for the household's records.*

**Response:** The Department agrees and added language to 8.100.110.9C to state this.

**Comment:** *The proposed language uses the word "should be held." The scheduling time frame is a legal requirement, not a best practice.*

**Response:** The Department agrees and has made the applicable changes.

**Comment:** *This section explains that some applicants can request a telephone or out of office interview as an alternative interview format, and that each assistance program has its own standards for granting alternative interviews. In order to prevent confusion about which requirements apply to which program, include a specific NMAC cite to each one of the applicable requirements for requesting alternative interview formats.*

**Response:** The department does not believe a change is necessary; the current rule states:

**“Alternative interviews:** Specific requirements for telephone and out of office interviews are outlined in each program's chapter on this topic.”

**Comment:** *NMAC 8.100.110.8 (C): The existing NMAC language requires HSD to screen applications for eligibility for all benefit programs and for expedite SNAP eligibility. The proposed regulation says that HSD will screen all applications submitted by alternative means, but the proposed language does not include the statement language that HSD will screen for all benefit programs and expedite SNAP eligibility.*

**Response:** HSD agrees and has made the applicable change.

**Comment:** *NMAC 8.100.110.8(D): This section requires HSD to provide all applicants for all benefit programs a resource planning session within 45 days of applying. Currently, HSD does not provide resource planning sessions. The Department should either create a process for offering such a session, without making it a requirement for eligibility or eliminate the provision.*

**Response:** HSD agrees and has removed the provision.

**Comment:** *HSD must provide every household at the time of application with a notice that informs the household of the verification requirements the household must meet as part of the application process, and that the state agency's duty to assist the household in obtaining required verification. At a minimum, the notice shall contain examples of the types of documents the household should provide and explain the period of time the documents should cover.*

**Response:** The Department added language to NMAC 8.100.110.8 to clarify when this notice should be provided to the household and what must be included on the form.

**Comment:** *ISD must schedule an interview within 10 business days of the application being submitted. ISD must send a notice of interview to applicants for whom interviews are scheduled.*

**Response:** The Department updated language in NMAC 8.100.110.8A(3) to include this language.

**Comment:** *NMAC 8.100.110.11(B)(1): This section states that if HSD takes an action to change a household's SNAP benefits or certification period based on a change reported after a household is certified for SNAP benefits, HSD will send a notice about the change that meets the notice requirements. In order to prevent confusion about which notice requirement applies, HSD should include the specific cite to the applicable notice requirements: NMAC 8.100.180.10 and .11.*

**Response:** The Department agrees and has added the specific cite.

**Comment:** *ISD cannot request participant to provide additional information or documentation unless it cannot be obtained electronically or the electronic information is not reasonably compatible.*

**Response:** The Department added language to NMAC 8.100.139.9(C) to state this.

**Comment:** *NMAC 8.100.130.11(A)(4) and NMAC 8.100.139.11(I)(4) HSD must make a needs based eligibility determination for SNAP within 30 days of the date of the application. If one or more household members has failed to turn in required verification, but the HSD has all required verification for other household members, HSD may deny the household members who are missing verification and must determine eligibility for SNAP for the other household members who have submitted all required verifications. The current proposed language says that HSD has to make a needs based eligibility decision for the household, and not for each household member, as required. HSD must add the requirement to make a needs based eligibility determination for each possible household member to the NMAC. This requirements to process all eligible household members should also be accurately stated in NMAC 8.139.110.11(I)(4).*

**Response:** The comment includes a citation not on point-8.100.139.11(I)(4). The department agrees to revise 8.100.130.11 NMAC and has added the following verbiage: “ISD must make an eligibility determination for SNAP within 30 days of the date of the application if all mandatory verification has been received. If one or more household members have failed to turn in mandatory individual verification that is not required for all the mandatory members of a household, ISD will deny those members missing verification, and will determine eligibility for the remaining members. If the missing verification is required for all members of the household, a determination for eligibility will not be made until verification is received.”

**Comment:** *NMAC 8.100.130.15: We support HSD’s proposed language that states only those seeking benefits are required to verify that they have met the social security number enumeration requirement. However, HSD must clarify that there are some benefit programs which do not have the enumeration requirement. NMAC 8.100.130.15(B) states that there is no enumeration requirement for newborn Medicaid, but this is not a complete list of circumstances in which an applicant does not have to verify that they have met the enumeration requirement. HSD must include a complete list of benefits programs that do not require a person seeking benefits to enumerate their social security numbers.*

**Response:** The department disagrees that it must specifically list all benefit groups and immigrant statuses that may preclude the need to meet the enumeration requirement. The department has revised as follows: “Verification that the enumeration requirement for an applicant/recipient has been met is mandatory for applicants who are seeking benefits for themselves unless the benefit program does not require enumeration, or the applicant seeking benefits is in an immigration status not requiring enumeration.”

**Comment:** *NMAC 8.139.110.8, NMAC 8.130.110.9 and NMAC 8.100.110.8: The proposed additions to NMAC 8.139.100.8 and NMAC 8.139.110.9 state that applications are “readily accessible.” HSD also added language to NMAC 8.100.110.8 stating that paper applications must be “readily accessible in the HSD local office lobby.” The regulation must make it clear that “readily accessible” means that paper applications for assistance are available in ISD offices without having to wait, as required by 7 CFR 273.2(c)(3).*

**Response:** The department disagrees. 7 CFR 273.2(c)(3) states that: “The State agency shall make application forms readily accessible to potentially eligible households. The State agency shall also provide an application form to anyone who requests the form.” The department updated language to NMAC 8.100.110.8 to state that: Paper applications must be readily accessible in the ISD local office lobby and provided to any person who requests the form. The department also stated in NMAC: All forms and notices will be readily accessible to individuals with limited-English or disabilities. ISD will post signs in local field offices which explain the application processing standards and the right to file an application on the day of the initial contact.

**Comment:** *NMAC 8.139.110.9(C)(2)(a)(ii): An application shall be denied upon receipt if the applicant is not otherwise eligible, except for the resident of an institution provision as found at 8.139.110.9 NMAC. This is an incomplete and/or incorrect cite. NMAC 8.139.110.9 contains many provisions; none are titled “resident of an institution.” Please cite to the appropriate subsection of the NMAC and rigorously check each cite contained in the regulation to ensure accuracy and coherence.*

**Response:** The department has revised as follows: “An application shall be denied upon receipt if the applicant is not otherwise eligible, except for the resident of an institution provision as found at 8.139.110.9(C)(2)(a) and 8.139.400.13(A) and (B) NMAC.”

**Comment:** *NMAC 8.139.110.11(F) NMAC, 8.139. 110.1 1(F) (1): Currently, the regulation does not contain a complete list of everything that ISD is supposed to review with applicants during the interview. The following requirements must be enumerated in this section:*

- *Review all household information received from a data scans with the household during the interview;*
- *Review all information that ISD previously on file that does not have to be verified because it is not subject to change;*
- *Explain what information still needs to be verified and how to verify, including an explanation of what a “readily available” document is and the ability to verify through collateral contacts and sworn statements if documentary evidence is not readily available;*
- *Explain that ISD has a responsibility to help applicants obtain verification if necessary and offer to assist with obtaining verification if it appears the household will not be able to obtain it; and*
- *For households applying for cash assistance programs and SNAP, ISD must explain that limits and other requirements do not apply to SNAP benefits.*

**Response:** The department has extended the list enumerating what ISD will go over with each applicant. Details such as “readily available” document and collateral contacts are enumerated in 8.100.130.9 and .10 NMAC and will not be repeated in this section.

**Comment:** *NMAC 8.139.110.11(F)(1): Do not remove the text that requires caseworkers to explain during an interview that they are available to assist the household in gathering information. As discussed above, the Decree requires that workers offer and provide assistance if the applicants accepts the offer.*

**Response:** This section contains the following sufficient language: “ISD has a responsibility to help applicants obtain verification if the applicant indicates that the verification may be difficult for the applicant to obtain and offer to assist with obtaining verification if it appears the household will not be able to obtain it.”

**Comment:** *NMAC 8.139.110.11(F)(1)(f): HSD should make the following changes to make it clear that regular reporting requirements will only be explained to households who are assigned regular reporting and not those households assigned to simplified reporting. The current regulation requires workers to explain regular reporting requirements to households regardless of whether those requirements apply to them. We propose the following edit to the proposed regulation enumerating information that all applicants shall be provided with at initial certification and recertification:*

*(f) regular reporting requirements for households assigned to regular reporting including the following:*

*(i) A written and oral explanation of how regular reporting works as defined at NMAC 8.139.120.12;*

*(ii) A written and oral explanation of the reporting requirements which includes: what needs to be reported and verified; when the report is due; how to obtain assistance; and the consequences of failing to file a report.*

*defined. Regular reporting requirements are found at NMAC 8.139.120.12; ~~to report changes within ten days of the date the change becomes known to the household;~~*

**Response:** The department will be reviewing and updating this section in the future.

**Comment:** *NMAC 8.139.110.11(F)(1)(g) and (l): These provisions require HSD to explain how simplified reporting works during the certification or recertification interview, or when the household is changed to simplified reporting. HSD should cite directly to NMAC 8.139.120.9, which should list the simplified reporting requirements a household must meet.15*

**Response:** The department will be reviewing and updating this section in the future.

**Comment:** *NMAC 8.139.110.11(F)(3)(a) “Denial of expedite service” ;NMAC 8.139.110.16(B)(7) “Denial of expedite service”; and NMAC 8.100.110.8(A)(1)(b): Provide all applicants, including online applicants, with information about eligibility for expedite SNAP benefits and the right to an agency conference within 48 hours if denied. The three provisions cited above require HSD to tell a household that they can have an agency conference within 48 hours if they are denied expedite SNAP benefits. Currently, HSD notifies people about this right on the paper application, but not on the online application for benefits. In order to ensure that all households are timely informed of their right to expedite benefits and an agency conference in the event their expedite SNAP is denied, HSD must include this information on the online application for assistance as well.*

**Response:** This is not a comment on the proposed rule promulgation.

**Comment:** *NMAC 8.139.110.11(1): HSD should create a separate subpart which explains the verification requirements at initial certification and after initial certification. We recommend renumbering this section on verification standards as its own section of the NMAC, rather than listing it under the section on interviews, as these verification standards are applicable at certification and anytime a household reports a change as required after initial certification: not just when a household is interviewed.*

**Response:** The department cannot create a separate NMAC section for verification during this rule promulgation. However, the department has moved the verification subsection from “Interviews” to “Processing Applications” which is a more logical fit. The new subsection for verification standards will be 8.139.110.12(C).

**Comment:** *NMAC 8.139.110.11(1)(2):*

*Federal law limits verification that can be required subsequent to initial certification:*

- 1. Income if the source changed or the if the amount changed by \$50 or more;*
- 2. total medical expenses, or actual utility expenses claimed by households which changed by \$25 or more;*
- 3. newly obtained social security numbers;*
- 4. hours worked for people subject to the time limit and not using a state agency program to fulfill the requirement.*

*Any other information that has changed may be verified. Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated. These verification standards apply to all changes reported after initial certification, including changes reported on the interim report and the recertification form.*

*The regulation must clearly state these verification requirements that apply at Interim Report and any time a change is reported after initial certification, not just at Recertification. We recommend changing NMAC 8.139.100.11(1)(2) to be called “Verification subsequent to initial certification” rather than “Recertification” to establish the limited verification that is required. Again, we recommend moving verification out of the interview section (beyond stating that the applicant must be given information about verification requirements) and making the actual verification standards a subpart of the NMAC.*

**Response:** The department has revised to reflect the verification that can be required subsequent to initial certification and has updated the section to be called “Verification subsequent to initial certification.”

**Comment:** *NMAC 8.139.110.11(1)(3) : Delete this section - This section states that there are separate verification requirements for households on simplified reporting. This is incorrect. The regulation confuses reporting and verification requirements. Simplified reporting refers to when a household has to report changes, not what verification is required. An individual on simplified reporting has a more limited obligation to report changes, and thus verification will be required less often than an individual on regular reporting. However, the verification standards for changes reported after initial certification are the same for all households. This subsection should be removed.*



**Response:** Subsection (3) has been removed

**Comment:** *NMAC 8.139.120.8(C): The federal requirements for processing delayed applications also apply to delayed applications for recertification. HSD must specifically cite to NMAC 8.139.110.13(D) in describing the delay notice that must be sent when processing of an application for recertification is delayed.*

**Response:** The department has revised to read as follows: ISD caused delayed processing: If an eligible household files an application before the end of the certification period but the recertification process cannot be completed within 30 days after the date of application because of ISD fault, ISD must continue to process the case and provide a full month's allotment for the first month of the new certification period, and will send a delay notice in accordance with 8.139.110.13(D). ISD shall determine cause for any delay in processing a recertification application in accordance with the provisions of 7 C.F.R. 273.2(h)(1).

**Comment:** *NMAC 8.139.110.13(D)(4): If it is the household's fault that an eligibility decision is delayed beyond thirty days, and the household takes the required action within 60 days of the date of the application, HSD must provide benefits from the month following the month of application. The current regulation states that HSD will only grant benefits from the date the required action was taken. This violates federal law which provides that households are eligible in the entire month subsequent to application if they take the required action within 60 days of applying. HSD must amend this section to meet the federal requirement.*

**Response:** The department is using language provided by USDA/FNS:  
“(4) **Benefits provided when delay is fault of applicant:** If the household does not provide the missing verification until the second 30 days after filing an application, the State agency will reopen the application and provide benefits from the date the household furnished the missing verification.”

**Comment:** *NMAC 8.139.110.13 (D)(5): Federal law requires HSD to take immediate corrective action to process a SNAP application or recertification packet when it determines that the delay is HSD's fault. HSD must amend this section to include this federal requirement*

**Response:** The department revised to read “ISD will take immediate corrective action.”

**Comment:** *NMAC 8.139.110.16(B)(4)NMAC The purpose of this section appears to be to explain when an expedite household can receive a full certification of benefits and what certification period to assign. However, the regulation is incorrect because:*  
*1) the certification periods can go up to 24 months, not 12 months.*  
*2) the term “normal certification period” has no meaning in the regulations.*  
*NMAC does not explain when to assign every potential certification period length. We recommend clarifying this in the regulation and then citing to those requirements here. See Plaintiffs comments on NMAC 8.139.120.9, NMAC 8.139.120.10, and NMAC 8.139.120.11.*

**Response:** The department will be reviewing and updating this section in the future.

**Comment:** NMAC 8.139.120.9:

1. *The regulatory section on simplified reporting does not list the federal requirements for simplified reporting. They should be written in this section. Households that are assigned to simplified reporting must submit a periodic report once every four to six month during their certification period, unless they are certified for six months or less. Besides the periodic report, households assigned to simplified reporting are only required to report if there is a change in income that causes the household to exceed the income limits for the household size at the time of last certification. Able-bodied adults subject to the federal three month time limit who are assigned simplified reporting must report, within ten days of the change occurring, if their work hours fall below 80 hours per month. None of these federal requirements for simplified reporting are listed in this section. Instead they are listed under NMAC 8.139.110.10(B) and .11(B). The proposed language in those sections accurately lists the federal requirements for simplified reporting, but these requirements belong in the section on simplified reporting.*

*Instead of enumerating what households get simplified reporting, the regulation goes on to describe certification period lengths, as if they are reporting requirements. This is incorrect because reporting requirements refer to what changes the household has to report and certification periods refer to the length of time a household is approved for benefits. Households may have to complete renewal and interim report forms more often if their certification period is shorter, but the two should be listed in separate sections.*

*The current regulation incorrectly states that “[s]implified reporting includes two types of reporting requirements...semiannual and annual reporting.” There are no annual and semiannual reporting requirements defined in federal law. It appears as if this text was intended to make it clear that individuals with simplified reporting may have to renew annually or semiannually. List the simplified requirements as stated in federal law in this section.*

2. *Information about certification periods in this section is incomplete and should be in a separate section on certification periods only. Federal law requires the Department to “assign each household the longest certification period possible, consistent with its circumstances.” All households should receive at least a six month certification period, unless the household's circumstances are unstable or the household contains an ABAWD, in which case, the state should assign a certification period consistent with household circumstances, but no less than three months. Households may be assigned 1 or 2 month certification periods, only if it appears likely that the household will become ineligible for food stamps in the near future.*

*The existing NMAC provisions do not give these instructions. NMAC 8.139.120.9(C) describes certification periods for certain types of cases assigned to simplified reporting, but the list is not exhaustive. For example, there is no*

*directive on the length of a certification period for a family with children. Additionally, there is no explanation of what certification period to assign a household that is assigned a reporting requirement other than simplified reporting. We recommend that HSD create a section of the NMAC on certification periods only and make it comprehensive, rather than only applicable to individuals with certain reporting requirements.*

**Response:** The department will be reviewing and updating this section in the future.

**Comment:** *NMAC 8.139.110.10(B) and .11(B) Reporting Requirements. These sections belong in the description of simplified reporting as described above.*

**Response:** The sections cited in this comment do not pertain to reporting requirements.

**Comment:** *NMAC 8.139.120.10 "Requirements for Semiannual Households;" NMAC 8.139.120.11 "Requirements for Annual Households". The sections should explain the different lengths of certification periods and when they are assigned. This can be done in one subsection. Neither of these sections contains any guidance on how to determine whether a household should be assigned a 12 or 24 month certification period. Additionally, there is no explanation of what length of certification period a household should receive if it does not qualify for the longer 12 or 24 month certification period. We recommend that HSD remove both of these subsections entirely and create one new section that explains what length of certification period a household should be assigned depending on their circumstances, according to the federal requirements for certifying households described above.*

**Response:** The department will be reviewing and updating this section in the future.

**Comment:** *NMAC 8.139.120.12(A): This section does not explain which households should be assigned regular reporting requirements. This section states that all households who are not assigned simplified reporting shall be assigned regular reporting. However, as discussed above, the NMAC section on simplified reporting fails to clearly explain which households should be assigned simplified reporting. Currently, there is no NMAC provision which explains to workers how to determine if a household should get simplified or regular reporting requirements. HSD must clearly explain which households should be assigned regular reporting as opposed to simplified reporting.*

**Response:** The department will be reviewing and updating this section in the future.

**Comment:** *NMAC 8.139.410.12(C)(3) Cite to the reporting requirements in the NMAC, and not to federal law which lists reporting requirements that do not apply in New Mexico. HSD must remove the cite to federal reporting requirements in this section, 7 CFR 273.12, because it does not clearly explain what reported changes will trigger a change in a participants work registration status and requirements. 7 CFR 273.12 lists all the various reporting requirements that states can choose from, and many of them do not apply in New Mexico. Citing to this CFR does not make it clear which reporting requirements are applicable to SNAP participants in New Mexico and HSD*

*should instead cite to the reporting requirements in the NMAC (once they are fixed as described above).*

**Response:** The department has clarified with NMAC citations.

**VI. PUBLICATION DATE**

February 28, 2017

**VII. PUBLICATION**

Publication of these final regulations approved on February 15, 2017 by:

  
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BRENT EARNEST, SECRETARY  
HUMAN SERVICES DEPARTMENT