



STATE OF NEW MEXICO  
HUMAN SERVICES DEPARTMENT



# HUMAN SERVICES REGISTER

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## I. DEPARTMENT

HUMAN SERVICES DEPARTMENT

## II. SUBJECT

**SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP):**

CITIZENSHIP AND ALIEN STATUS

## III. PROGRAMS AFFECTED

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

## IV. ACTION

FINAL RULE

## V. BACKGROUND

The Department is finalizing a section of the regulations that were proposed to the Supplemental Nutrition Assistance Program (SNAP) in the Human Services Register (HSR) Vol. 40 No. 4.

This HSR addresses all comments specific to citizenship and alien status. The remaining comments received regarding the other proposed sections (Simplified Reporting Requirements, mandatory SNAP Work Requirements, Employment and Training (E&T) program and the reinstatement of the Able Bodied Adults without Dependents (ABAWDs) requirements) will be addressed in a future HSR along with finalization of the remaining sections of the rule.

A public hearing was held on April 28, 2017, where 6 people attended and 5 provided verbal comment. Written comments were also received. The comments and responses are summarized below.

**Comment:**

*NMAC 8.139.410.9 Improve Drafting of (C) through (F). These subsections should make it clear that a non-citizen who is in both a qualified status and meets additional criteria is eligible for benefits, the current drafting structure makes it seem like battered spouses and children are the only immigrants in a qualified status that must meet the additional*

*criteria to be eligible. In addition, the repetition of pre-August 22, 1996 and post- August 22, 1996 criteria is unnecessary for SNAP. This distinction is used in charts that provide an expansive overview of immigrant eligibility for a multitude of Federal programs but is unnecessary in SNAP regulations alone.*

**NMHS D Response:**

The Department disagrees in part and has clarified the regulation in part.

**Comment:**

*There is an error in the referenced date. HSD's draft sentence reads "were 65 or older and were lawfully residing in the U.S. on September 22, 1996; or." The date listed of September 22, 1996 is incorrect and contrary to established Federal law. We recommend correcting this error and changing this date to August 22, 1996 as provided in Federal law.*

**NMHS D Response:**

The Department corrected the date to reflect August 22, 1996.

**Comment:**

*(D)(4) and (E)(3). There is an error in the language explaining the pre-requisite 40 quarters. Here, HSD's draft sentence reads "lawful permanent residents who have worked or can be credited with 40 hours of qualifying quarters; or." Eligible applicants must be credited with 40 quarters of coverage, not hours. The Department should use the following language: Lawful permanent residents age 18 or older who have worked or can be credited with 40 qualifying quarters as determined under Title II of the SSA;*

**NMHS D Response:**

The Department updated language in 8.139.410.9(D)(4) and (E)(3) NMAC to remove the word "hours" and retained the statement "credits with 40 qualifying quarters."

**Comment:**

*HSD must list the verification requirements for citizenship and immigration status. Verification requirements affect individuals outside the Department and therefore must be put into regulation. The Department must include verification requirements for immigration status in regulation and include information about the reasonable opportunity period for non-citizens to verify immigration status, as required by 42 U.S.C.A. § 1320b-7(d)(4) and USDA guidance following the Food Stamp Act of 2014.*

**NMHS D Response:**

Verification requirements are not required to be specifically detailed in the regulation. A section referencing the appropriate CFR regulations for both verification and reasonable opportunity was added.

**Comment:**

*HSD must include critical regulatory language it deleted concerning the federal restrictions on reporting illegal aliens. Regulatory language concerning "reporting illegal aliens" currently at NMAC 8.139.410.9(F) was added in 2011 after community members expressed concern about HSD workers improperly contacting Immigration and*

*Customs Enforcement to report undocumented immigrants. The regulatory language explicitly mirrors federal requirements that state agencies only notify INS of any alien state agencies "know" is not lawfully present in the United States. The definition of knowledge under federal law is very limited and is explained in the Notice published in the Federal Register Vol. 65, No. 189 at p. 58301. It is included with this letter as Attachment 2. The regulations were enacted by the Department pursuant to the attached notice because the content of the notice is not readily available to workers. Thus the regulatory section should not be deleted, as this is the only way that workers, benefit participants and members of the public can understand any reporting requirements that exist. Deleting this provision will result in eligible children from mixed status families not seeking or receiving benefits to which they are entitled because of fear family members will be reported. We urge the Department not to delete this provision, however, we do ask that the Department re-title the subsection, "Reporting undocumented aliens to the U.S. Department of Homeland Security."*

**NMHS D Response:**

The Department added language to the final rule to cover this policy:

"The department will determine eligibility for non-citizens in accordance with 7 CFR 273.2 and 7 CFR 273.4.

**Comment:**

*Citizen and immigration status for eligibility: The statement 'No individual is eligible to participate in SNAP unless that individual is otherwise eligible and is' might need restating or eliminated or keep the statement prior to this sentence. The term 'certain American Indians born abroad' is mentioned twice without definition and under Section F (2) it only mentions Canada (as only abroad nation) with American Indian blood pursuant to section 289 of the Immigration and Nationality Act.*

**NMHS D Response:**

The Department disagrees in part and has clarified that the two types of American Indians born in Canada and members of certain Indian tribes are not qualified immigrants, but are eligible for SNAP benefits.

**VI. PUBLICATION DATE**

June 27, 2017

**VII. PUBLICATION**

Publication of these proposed regulations approved on \_\_\_\_\_  
by:

June 5, 2017

  
\_\_\_\_\_  
BRENT EARNEST, SECRETARY  
HUMAN SERVICES DEPARTMENT

This is an amendment to 8.139.410 NMAC, Section 9, effective 07-01-2017.

**8.139.410.9 CITIZENSHIP AND [ALIEN STATUS] IMMIGRATION STATUS**

**FOR ELIGIBILITY:** [~~Participation in SNAP is limited to individuals who live in the United States, and who are U.S. citizens or aliens with eligible immigration status. Among those ineligible for participation are alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in another country.~~] Participation in SNAP is limited to individuals who live in the United States and who are U.S. citizens or are otherwise eligible per the criteria below. The department will determine eligibility for non-citizens in accordance with 7 CFR 273.2 and 7 CFR 273.4.

~~[~~ **A. Eligibility:** ~~No individual is eligible to participate in SNAP unless that individual is otherwise eligible and is:~~

- ~~(1) a U.S. citizen;~~
- ~~(2) a U.S. non-citizen national~~
- ~~(3) an American Indian who is:
  - ~~(a) an American Indian born in Canada who possesses at least fifty percent of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply; or~~
  - ~~(b) a member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;~~~~
- ~~(4) Hmong or Highland Laotian who is:
  - ~~(a) a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975 who is lawfully residing in the U.S.;~~
  - ~~(b) the spouse, or surviving spouse of such Hmong or Highland Laotian, or~~
  - ~~(c) an unmarried or surviving dependent child who is under the age of 18 or if a full-time student under the age of 22; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the person prior to the child's 18th birthday of such Hmong or Highland Laotian.~~~~
- ~~(5) Human trafficking victim who is:
  - ~~(a) certified by the DHS, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;~~
  - ~~(b) under the age of 18, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;~~
  - ~~(c) the spouse, child, parent or unmarried minor sibling of a victim of a severe form of trafficking in persons under 21 years of age, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;~~
  - ~~(d) the spouse or child of a victim of a severe form of trafficking in persons 21 years of age or older, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA.~~~~

~~B. Qualified and eligible alien: An individual who is in a qualified~~

immigration status for SNAP eligibility as defined in Subsection B below.

~~(1) **Qualified Eligible Status:** An alien may qualify for participation in SNAP if the alien meets at least one of the criteria from Paragraph (1) below and one definition of "eligible alien" as defined in Paragraph (2) below.~~

~~(2) **Qualified alien:** A "qualified alien" means:~~

~~(a) an alien who is lawfully admitted for permanent residence under the INA;~~

~~(b) an alien who is granted asylum under section 208 of the INA;~~

~~(c) a refugee who is admitted to the United States under section 207 of the INA;~~

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

~~(e) an alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;~~

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

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

~~(h) an alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.~~

~~(3) **Eligible aliens not subject to the five year bar:** A qualified alien, as defined in Paragraph (1) of this Subsection, is eligible to receive SNAP and is not subject to the requirement to be in a qualified status for five years as set forth in Subparagraph (b) of Paragraph (2) of this section, if the individual meets at least one of the criteria of Paragraph (2):~~

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

~~(b) an alien admitted as a refugee under section 207 of the INA;~~

~~(c) an alien granted asylum under section 208 of the INA;~~

~~(d) an alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;~~

~~(e) an alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);~~

~~(f) an Amerasian admitted pursuant to section 584 of Public Law 100-202, as amended by Public Law 100-461;~~

~~(g) an alien with one of the following military connections:~~

~~(i) a veteran who was honorably discharged for reasons~~

~~other than alien status, who fulfills the minimum active duty service requirements of 38 U.S.C 5303A(d), including an individual who died in active military, naval or air service;~~

~~(ii) an individual on active duty in the armed forces of the U.S. (other than for training);~~

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

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

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

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

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

~~(4) **Eligible aliens subject to the five year bar:** The following qualified aliens, as defined in Paragraph (1) above, must be in a qualified status for five years before being eligible to receive SNAP. The five years in qualified status may be either consecutive or non consecutive. Temporary absences of less than six months from the United States with no intention of abandoning U.S. residency do not terminate or interrupt the individual's period of U.S. residency. If the resident is absent for more than six months, ISD shall presume that U.S. residency was interrupted unless the alien presents evidence of their intent to resume U.S. residency. In determining whether an alien with an interrupted period of U.S. residency has resided in the U.S. for five years, the agency shall consider all months of residency in the U.S., including any months of residency before interruption:~~

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

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

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

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

~~(5) **Quarters of coverage:**~~

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

~~(b) An alien lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the~~

work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

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

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

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

~~(6) **Federal means tested benefit:** After December 31, 1996, a quarter in which an alien received any federal means tested public benefit, as defined by the agency providing the benefit, or actually received SNAP benefits is not creditable toward the 40 quarter total. A parent's or spouse's quarter is not creditable if the parent or spouse actually received any federal means tested public benefit or actually received SNAP in that quarter. If the alien earns the 40th quarter of coverage prior to applying for SNAP benefits or any other federal means tested public benefit in that same quarter, ISD shall allow that quarter toward the 40 qualifying quarters total.~~

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

~~(i) SNAP;~~

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

~~(iii) supplemental security income (SSI);~~

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

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

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

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

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

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

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

communicable diseases;

~~(vi) payments for foster care and adoption assistance under Part B and E of Title IV of the Social Security Act for a parent or child who would, in the absence of the restriction of eligibility for aliens contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, be eligible for such payments made on the child's behalf, but only if the foster or adoptive parent (or parents) of such child is a qualified alien;~~

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

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

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

~~(x) benefits under the Head Start Act;~~

~~(xi) benefits under the Workforce Investment Act.~~

~~(7) Adjustments in status: Each category of eligible alien status stands alone for purposes of determining eligibility.~~

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

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

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

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

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

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

~~D. Need for documentation:~~

~~(1) Household members identified as aliens must present information or documentation, such as but not limited to, an A number, an I-94 number, a letter, notice of eligibility, or identification card which allows ISD to establish that the alien is in an eligible immigration status.~~

~~(2) ISD shall allow aliens a reasonable opportunity to submit acceptable information or documentation of eligible alien status. Any individual missing~~



necessary verification of citizenship, national status or eligible immigration status is allowed a reasonable opportunity period in accordance with 8.200.410.10 NMAC

~~(3) If verification of an applying individual's eligible status is not provided by the deadline, the eligibility of the remaining household members shall be determined. Verification of eligible immigration status provided at a later date shall be treated as a reported change in household membership.~~

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

~~(5) **Inability to obtain verification:** If a household indicates an inability to provide attestation of an eligible immigration status for any applying member of the household, that member shall be considered an ineligible alien.~~

~~E. **Failure to cooperate:** If a household, or household member, indicates an unwillingness to provide attestation, information or documentation of an eligible immigration status for any applying member, that member shall be considered an ineligible alien. ISD shall not continue efforts to get the necessary information.~~

~~F. **Reporting illegal aliens:**~~

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

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

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

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

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

~~G. **Income and resources of ineligible aliens:** All the resources and a prorated share of income of an ineligible alien, or of an alien whose alien status is unverified, shall be considered in determining eligibility and SNAP benefit amount for the remaining eligible household members.] No individual is eligible to participate in SNAP unless that individual is otherwise eligible and is:~~

~~A. A U.S. citizen;~~

~~B. A U.S. non-citizen national;~~

~~C. An individual who is:~~

~~(1) a member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S.; (including a spouse, surviving spouse, or child of tribe member) who are lawfully present in the U.S.;~~

~~(2) an American Indian born in Canada who possesses at least fifty percent of blood of the American Indian race to whom the provisions of section 289 of~~

the Immigration and Nationality Act apply; or a member of an Indian tribe as defined at section 4(e) of 25 U.S.C. 450b(e) which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians; or

(3) a victim of human trafficking and their derivative beneficiaries, in accordance with 7 CFR 273.4(a)(5); or

D. A qualified immigrant meeting the criteria in Subsection D, Paragraph (2) below:

(1) A qualified immigrant is a:

(a) lawful permanent resident;

(b) refugee;

(c) asylee;

(d) person granted withholding of deportation or removal;

(e) conditional entrants, (in effect prior to April 1, 1980);

(f) person paroled into the U.S. for at least one year;

(g) Cuban/Haitian entrants;

(h) battered spouses and children with a pending or approved self-petition for an immigrant visa and whose need for benefits has a substantial connection to the battery or cruelty (including qualified parents, spouses, and children of same), or battered spouses and children with an application for cancellation of removal or suspension of deportation, and whose need for benefits has a substantial connection to the battery or cruelty (including qualified parents, spouses, and children of same).

(2) Qualified immigrants are eligible only if they:

(a) were 65 or older and were lawfully residing in the U.S. on August 22, 1996, or

(b) are under age 18, or

(c) have been in "qualified" immigrant status for at least five years, or

(d) are lawful permanent residents who have worked or can be credited with 40 qualifying quarters of employment, or

(e) were granted refugee or asylum status or withholding of deportation/removal; or

(f) are a Cuban/Haitian entrant, or Amerasian immigrant, or

(g) are receiving blindness or disability-related assistance or

(h) are a veteran, active duty military; or the spouse, or the surviving spouse who has not married, or the child.

(i) are in Iraqi or Afghan special immigrant status.

E. Verification of immigrant status is determined in accordance with 7 CFR 273.2(f) and reasonable opportunity is provided pursuant to 7 CFR 273.2(f)(1)(c). [02/01/95, 07/01/98, 02/01/99; 8.139.410.9 NMAC - Rn, 8 NMAC 3.SNAP PROGRAM.412, 05/15/2001; A, 02/14/2002; A, 10/01/2002; A, 04/01/2003; A, 10/01/2003; A, 06/01/2011; A, 03/01/2017; A, 07/01/2017]