



STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT



HUMAN SERVICES REGISTER

I. DEPARTMENT

HUMAN SERVICES DEPARTMENT

II. SUBJECT

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)
ANNUAL ADJUSTMENTS TO
MINIMUM SNAP/FOOD STAMP ALLOTMENT and
UPDATING LANGUAGE USED IN 8.139.610 NMAC – PROGRAM BENEFITS –
ISSUANCE AND RECEIPT

III. PROGRAMS AFFECTED

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

IV. ACTION

FINAL RULE

V. BACKGROUND

The Department is finalizing regulations to the Supplemental Nutrition Assistance Program (SNAP).

Supplemental Nutrition Assistance Program (SNAP)

The Department is finalizing regulations that were proposed to the SNAP in the Human Services Register (HSR) Vol. 41 No. 7. The regulations are being updated to reflect correct language and citations used in accordance with the Code of Federal Regulations (CFR) and the following:

- Correct monthly minimum SNAP benefit amounts in 8.139.610 NMAC. The monthly minimum SNAP benefit amounts are determined by United States Department of Agriculture (USDA), Food and Nutrition Services (FNS).
- 8.139.610.9 NMAC was updated to remove references to the utilization of Identification Cards, as these cards are no longer used.
- 8.139.610.12 D (3) NMAC was added to include that all eligible households with three or more members which are entitled to no benefits (except because of the proration requirements and the provision precluding issuances of less than \$10.00 in an initial month as per Paragraph 2 of Subsection C of 8.139.610.12 NMAC),

shall be denied on the grounds that its net income exceeds the level at which benefits are issued.

- 8.139.610.15 A (3) NMAC was updated to clarify Reduction or Suspension of SNAP benefits. The Department shall be able to adjust SNAP benefits to provide for the rounding of benefit levels of one dollar (\$1.00), three dollars (\$3.00) and five dollars (\$5.00) to two dollars (\$2.00), four dollars (\$4.00) and six dollars (\$6.00), respectively, if there is an order from FNS for reduction or suspension of benefits.
- 8.139.610.8 C NMAC was updated to align with CFR clarifying the replacement of EBT cards and the imposition of an EBT card replacement fee.

Concise Explanatory Statement:

The Human Services Department is amending the rule to be in compliance with the CFR. 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. 2011-2036). 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).

This HSR addresses comments received regarding the proposed NMAC changes in HSR Vol. 41 No. 7. A public hearing was held on June 18, 2018 where there were no attendees. The Department received written comments, which are addressed below:

Comment:

Add Good Cause Exemptions for EBT replacement fees when participants lose their EBT cards Federal law provides that States may establish good cause policies that provide exception rules for cases where replacement card fees will not be collected. See 7 CFR 274.6(b)(3). However, the good cause exemption may also be required when the need for a new card is related to a legally protected reason such as disability to comply with the Americans with Disabilities Act. There may also be circumstances where individuals lose their EBT cards during difficult circumstances and through no fault of their own, e.g. when fleeing a household following domestic violence. Penalizing individuals by imposing a replacement fee increases food insecurity and is thus contrary to SNAP's purpose of increasing nutritional levels of low-income households. See 7 CFR 271.1(a). NMAC 8.139.610.8 must include good cause exemptions from the EBT card replacement fee.

NMHS D Response:

Thank you for your comment. The Department is federally compliant with 7 CFR 274.6(b)(3) as the regulation states that the department may establish good cause policies. We will explore future implementation of good cause policies that provide exception rules.

Comment:

The Department must provide adequate due process to families receiving notice regarding excessive replacement cards. HSD must include in the NMAC the federal notice requirements for an excessive replacement card notice. Federal law sets forth a number of requirements for the notice, including an explanation as to why transactions are being monitored, a statement as to what is considered misuse or fraudulent use of benefits, as well as contact information if participants would like to discuss the notice with the Department. See 7 CFR 274.6(b)(6)(ii)(A)-(F). These notice requirements ensures that families are aware and that HSD staff provides adequate notice as to the implications a finding of excessive replacements has on their case and an opportunity to challenge the decision, especially when the participant has good cause for requesting multiple replacement cards. The NMAC is the only source of policy for workers that details the requirements concerning excessive replacement cards. To comply with federal law, it must also include the notice requirement.

NMHS D Response:

Thank you for your comment. The Department has updated the rule to include the notice requirements set forth 7 CFR 274.6(b)(6)(ii)(A)-(F).

Comment:

HSD must provide replacement benefits in 10 days as required by federal law. Federal law requires that the issuance of replacement benefits occur within 10 days after a report of loss, or within 2 working days of receiving the signed household statement, whichever date is later. See 7 C.F.R. 274.6(a)(5)(i). The Department's proposed regulation at NMAC 8.139.610.14(A)(5) does not comply with federal law, because it sets the standard as "10 working days" rather than 10 days, as it is written in the CFR. The Department's proposed regulations extends the time frame for replacement beyond the federal standard because working days excludes weekends and holidays from a timeliness calculation. HSD must not add the proposed text lengthening the time frame for replacing cards. The current regulation complies with federal law.

NMHS D Response:

Thank you for your comment. The Department has updated language in 8.139.610.14 A (5) NMAC to comply with federal law as stated in the comment.

VII. PUBLICATION DATE

July 24, 2018

VIII. PUBLICATION

Publication of these proposed regulations approved on July 9, 2018
by:



BRENT EARNEST, SECRETARY
HUMAN SERVICES DEPARTMENT

2018 JUL 11 AM 11:15

This is an amendment to 8.139.610 NMAC, Sections, 3, 5, 6, 8, 9 and 11 thru 15, effective 07/24/2018.

8.139.610.3 STATUTORY AUTHORITY: The ~~[food stamp program]~~ supplemental nutrition assistance program (SNAP) is 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]~~ SNAP 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). [02/01/95; 8.139.610.3 NMAC - Rn, 8 NMAC 3.FSP.000.3, 05/15/2001; A, 07/24/2018]

8.139.610.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section. [02/01/95; 8.139.610.5 NMAC - Rn, 8 NMAC 3.FSP.000.5, 05/15/2001; A, 07/24/2018]

8.139.610.6 OBJECTIVE: Issuance of the revised ~~[food stamp program]~~ SNAP policy manual is intended to be used in administration of the ~~[food stamp program]~~ SNAP in New Mexico. This revision incorporated the latest federal policy changes in ~~[the food stamp program]~~ SNAP not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the human services department. [02/01/95; 8.139.610.6 NMAC - Rn, 8 NMAC 3.FSP.000.6, 05/15/2001; A, 07/24/2018]

8.139.610.8 BENEFIT ISSUANCE SYSTEM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) be written in clear and simple language;
- (2) meet the language requirements described at 7 CFR 272.4(b);
- (3) specify the number of cards requested and over what period of time;
- (4) explain that the next request, or the current request if the threshold has been exceeded, requires contact with ISD before another card is issued;
- (5) provide all applicable information on how contact is to be made in order for the client to comply, such as whom to contact, a telephone number and address; and
- (6) include a statement that explains what is considered a misuse or fraudulent use of benefits and the possibility of referral to the fraud investigation unit for suspicious activity.

[E.] E. EBT benefit expungement: HSD may expunge benefits that have not been accessed by the household after a period of 365 days. HSD must attempt to notify the household prior to expungement. Expunged benefits are no longer available to the household. Requests for reactivation must be received prior to expungement and a determination shall be made by the director or designee of the income support division.
[02/01/95; 8.139.610.8 NMAC - Rn, 8 NMAC 3.FSP.610, 05/15/2001; A, 02/28/2007; A, 07/15/2013; A, 07/24/2018]

8.139.610.9 [IDENTIFICATION CARDS:]

A. The caseworker shall provide a SNAP ID card to each certified household as proof of program eligibility.

- (1) The ID card is issued in the name of the household member to whom the SNAP benefits are issued.
- (2) The ID card contains a space for the name and signature of the household member to whom the SNAP benefits are issued, and for any authorized representative designated by the household.
- (3) Any individual listed on the ID card must sign the ID card before that individual can use it.
- (4) If a household does not designate an authorized representative, the caseworker shall void that section on the ID card to prevent names and signatures from being entered at a later date.

B. The caseworker shall issue an ID card to the household at initial certification, recertification, and when the ID card has been lost, stolen, or destroyed.

C. A replacement ID card will be issued when there is a change in the household member to whom the SNAP benefits are issued, or when the caseworker determines that a new ID card is needed.

D. Whenever possible, the caseworker shall collect the ID card being replaced. **[RESERVED]**
[02/01/95; 8.139.610.9 NMAC - Rn, 8 NMAC 3.FSP.611, 05/15/2001; A, 02/28/2007; A, 07/15/2013; Repealed, 07/24/2018]

8.139.610.11 USE OF [FOOD STAMP] SNAP BENEFITS: Pursuant to Section 15(d) of the Food Stamp Act, [food stamp] SNAP benefits are an obligation of the United States within the meaning of 18 United States Code (U.S.C.) 8. The provisions of Title 18 of the United States Code, "crimes and criminal procedures," relative to counterfeiting, misuse, and/or alteration of obligations of the U.S., are applicable to [food stamp] SNAP benefits. Any unauthorized issuance, redemption, use, transfer, acquisition, alteration, or possession of [food stamp] SNAP benefits may subject an individual, partnership, corporation, or other legal entity to prosecution under Sections 15(b) and (c) of the Food Stamp Act or other applicable federal, state, or local law, regulation, or ordinance.

A. General uses: [Food stamp] SNAP benefits are used by participants to purchase eligible foods, including seeds and plants, for home consumption. A household may designate other individuals to use [the food stamp] SNAP benefits to purchase food for them. A household is not required to have cooking facilities or access to cooking facilities to participate in the program.

B. Special uses: Although [food stamp] SNAP benefits were originally intended to be used by eligible households to purchase food for home consumption, certain households are authorized to use [food stamp] SNAP benefits to obtain prepared meals or to facilitate their obtaining food. Authorized special uses for [food coupons] SNAP include:

- (1) **Communal dining:** Eligible household members 60 years of age or over or SSI

recipients and their spouses may use ~~[food-stamp]~~ SNAP benefits to purchase meals prepared at communal dining facilities authorized by FNS. Communal dining facilities include senior citizen centers, apartment buildings occupied primarily by elderly persons or SSI households, public or private nonprofit establishments (eating or otherwise) that feed elderly persons or SSI recipients, and federally subsidized housing for the elderly at which meals are prepared and served to the residents. They also include private establishments under contract with an appropriate state or local agency to offer meals at concessional prices to elderly persons or SSI recipients.

(2) **Meals-on-wheels:** Eligible household members 60 years of age or over or members who are homebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare all their meals, and the spouses of such members, may use their ~~[food-stamp]~~ SNAP benefits to purchase meals prepared and delivered to them by a nonprofit meal delivery service authorized by FNS. A meal delivery service is a political subdivision, a private nonprofit organization, or a private establishment with which a state or local agency has contracted for the preparation and delivery of meals at concessional prices to elderly individuals and their spouses, and to the physically or mentally handicapped and individuals otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

(3) **Addicts and alcoholics in treatment programs:** Members of eligible households who are narcotics addicts or alcoholics who regularly participate in a drug or alcoholic treatment and rehabilitation program may use their ~~[food-stamp]~~ SNAP benefits to purchase meals prepared for them during the course of such programs by a nonprofit organization or institution or a publically operated community mental health center which is authorized by FNS to redeem ~~[food-stamps]~~ SNAP benefits.

(4) **Residents in group living arrangements:** Eligible residents of a group living arrangement may use their ~~[food-stamp]~~ SNAP benefits to purchase meals prepared especially for them at a group living arrangement authorized by FNS to redeem ~~[food-stamps]~~ SNAP benefits.

(5) **Residents of shelters for battered ~~[women and children]~~ persons:** Residents of shelters for battered ~~[women and children]~~ persons may use their ~~[food-stamp]~~ SNAP benefits to purchase meals prepared specifically for them at a shelter authorized by FNS to redeem ~~[food-stamps]~~ SNAP benefits.

(6) **Residents of shelters for the homeless:** Homeless households may use their ~~[food stamp]~~ SNAP benefits to purchase prepared meals from homeless meal providers authorized by FNS.

C. **[Food-stamp] SNAP benefits as income:** ~~[Food-stamp]~~ SNAP benefits provided to an eligible household will not to be considered income or resources for any purpose under federal, state, or local laws, including but not limited to, laws on taxation, welfare, and public assistance programs. No participating state or political subdivision may decrease any other assistance provided to an individual or individuals because such individuals receive ~~[food-stamp]~~ SNAP benefits.

[02/01/95; 8.139.610.11 NMAC - Rn, 8 NMAC 3.FSP.614, 05/15/2001; A, 07/24/2018]

8.139.610.12 GENERAL (BENEFIT AMOUNT)

A. The SNAP benefit amount to be issued depends on the number of eligible members in the household and the net monthly income used to determine eligibility.

(1) HSD uses a 30-day calendar month to determine a household's SNAP benefit amount. A household applying on the 31st of the month will be treated as if it applied on the 30th.

(2) When a household is determined eligible, the SNAP benefit amount is calculated, issuance authorization is processed that night, and SNAP benefits are issued the following work day.

B. **Maximum ~~[food-stamp-benefit-amount]~~ SNAP allotments:**

(1) ~~[The maximum food-stamp allotment (MPSA or maximum food-stamp benefit amount) "means the diet required to feed a family of four persons consisting of a man and a woman 20 through 30 years of age, a child six through eight years of age, and a child nine through 11 years of age determined in accordance with USDA calculations". The cost of such a diet is the basis for determining uniform SNAP benefit amounts for all households regardless of their actual composition. To develop maximum SNAP benefit amounts, USDA makes adjustments in the MPSA taking into account economies of scale and other adjustments required by law.]~~ The maximum SNAP allotment shall be based on the thrifty food plan (TFP). TFP means the diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child six through eight, and a child nine through 11 years of age, determined in accordance with USDA calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition. In order to develop maximum SNAP allotments, USDA shall make household size and other adjustments in the thrifty food plan taking into account economies of scale and other adjustments as required by law. The TFP amounts and maximum allotments are adjusted annually.

(2) Except when SNAP benefits are prorated and when reductions are made at the national

level, a household's monthly SNAP benefit amount is equal to the [MESA] maximum SNAP allotment for the household's size reduced by thirty percent of its net monthly income. ~~[The basis of issuance tables (supplement 400-B) contain the maximum SNAP benefit amounts by household size and income.]~~

(3) ~~[If the tables (supplement 400-B)] are not used, the maximum SNAP benefit amount]~~ The maximum SNAP allotment can be calculated by multiplying a household's net income by thirty percent, rounding the result up to the next whole dollar, and subtracting that amount from the [MESA] TFP for the appropriate household size ~~[(Subsection E of 8.139.500.8 NMAC)]~~ (<https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information>).

C. Initial month: A household's SNAP benefit amount for the initial month of certification will be based on the day of the month the household applies for SNAP benefits. The household receives SNAP benefits from the date of application to the end of the month, unless the applicant household consists of residents of a public institution.

(1) **Applying from institutions:** For households applying for SSI and SNAP benefits before release from an institution, the SNAP benefit amount for the initial month of certification will be based on the date of the month the household is released from the institution. The household will receive SNAP benefits from the date of the household's release from the institution to the end of the month.

(2) **Benefits less than [\$10] ten dollars (\$10.00):** If the initial month's calculations yield a SNAP benefit amount of less than ~~[\$10] ten dollars (\$10.00)~~, then no issuance will be made for the initial month. For households entitled to no SNAP benefits in the initial month, but eligible in subsequent months, ~~[the caseworker]~~ ISD shall certify a household beginning with the month of application.

D. Minimum benefit amount:

(1) Except during an initial month, all eligible one- and two-person households, including categorically eligible households, will receive a minimum monthly SNAP benefit amount.

(2) **Determination:** Minimum amounts are determined by federal guidelines and may be adjusted each year. All eligible one and two person households, including categorically eligible households, will receive the minimum monthly SNAP benefit amount, which can be found at <https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information>.

(3) All eligible households with three or more members which are entitled to no benefits (except because of the proration requirements and the provision precluding issuances of less than ten dollars (\$10.00) in an initial month as per Paragraph 2 of Subsection C of 8.139.610.12 NMAC), ISD shall deny the household's application on the grounds that its net income exceeds the level at which benefits are issued. [02/01/95, 07/01/98; 8.139.610.12 NMAC - Rn, 8 NMAC 3.FSP.620, 05/15/2001; A, 02/28/2007; A/E, 04/01/2009; A, 07/15/2013; A/E, 04/01/2018; A, 07/24/2018]

8.139.610.13 CALCULATING THE BENEFIT AMOUNT: A household's net income is used to determine its ~~[food-stamp]~~ SNAP benefit amount. The net income is the gross amount less allowable deductions. To determine the household's net income:

A. The gross monthly income earned by all household members is added to the total monthly unearned income of all household members, less income exclusions, to determine the household's total gross income. The household must qualify at the gross income calculation.

B. The total gross monthly earned income is multiplied by twenty percent; the result is subtracted from the total gross earned income; add the result to the total monthly unearned income; or multiply the total gross monthly earned income by eighty percent and add the result to the total monthly unearned income.

C. Subtract the standard deduction.

D. If the household is entitled to an excess medical deduction, determine if total medical expenses exceed ~~[\$35.00] 35 dollars (\$35.00)~~. If so, subtract the amount which exceeds ~~[\$35.00] 35 dollars (\$35.00)~~.

E. Subtract the child support deduction as determined by Paragraph 2 of Subsection G of 8.139.520.11 NMAC.

F. Subtract allowable monthly dependent care expenses, if any, up to the maximum amount per dependent; if the household has no shelter expenses, the net income has been determined at this point; go to step J.

G. If the household has shelter expenses, divide the result in Subsection F by two.

H. Determine if the household is entitled to an excess shelter expense deduction as follows:

(1) **For households not entitled to uncapped shelter:**

(a) total the allowable shelter expenses;

(b) subtract from the total shelter expenses fifty percent of the household's monthly income after all other deductions have been subtracted, i.e., the result in Subsection G;

(c) the remaining amount is the excess shelter expense; compare this amount to the current excess shelter deduction limit [~~in Paragraph 3 of Subsection F of 8.139.500.8 NMAC~~] as found at <https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information>;

(d) subtract the current excess shelter deduction amount or the result in Paragraph (c), whichever is less, from the household's monthly income determined in Subsection F; the household's net income has been determined; go to step I.

(2) **For households entitled to uncapped shelter:** Households containing an elderly or disabled member are entitled to an uncapped shelter expense deduction. Such households have the full amount of the shelter expense exceeding fifty percent of the households net income subtracted. To determine the net income for a household entitled to an uncapped shelter expense deduction, complete steps A through G as described above, and then:

(a) total the allowable shelter expenses;

(b) subtract from the total shelter expenses fifty percent of the household's monthly income after all other deductions have been have been subtracted (the result in Subsection G); the remaining amount is the excess shelter expense;

(c) subtract the amount in Paragraph (b) from the monthly income amount determined in Subsection F; the household's net income has been determined; go to step I.

I. Round each income calculation to the nearest dollar [~~(\$.01 through \$.49 round down; \$.50 through \$.99 round up)~~] (one cent (\$.01) through 49 cents (\$.49) round down; 50 cents (\$.50) through 99 cents (\$.99) round up).

J. Multiply the household's net income by thirty percent; round the cents up to the nearest dollar, and subtract that amount from the maximum [~~food stamp~~] SNAP benefit amount for the household's size. The [~~food stamp~~] SNAP benefit amount for the household is determined.

[02/01/95, 10/01/95; 8.139.610.13 NMAC - Rn, 8 NMAC 3.FSP.621, 05/15/2001; A, 07/24/2018]

8.139.610.14 REPLACEMENT OF BENEFITS:

A. Conditions for replacement: Subject to certain restrictions, households may be authorized a replacement issuance when the household reports the food purchased with [~~food stamp~~] SNAP benefits was destroyed in a household misfortune or natural disaster. The loss must be reported within ten calendar days of the day the food purchased with [~~food stamp~~] SNAP benefits was destroyed. The loss is ineligible for replacement if the loss is not reported timely.

(1) **Replacing benefits:** Subject to certain restrictions, households may be authorized a replacement issuance of [~~food stamp~~] SNAP benefits when the household reports that food purchased with the [~~food stamp~~] SNAP benefits was destroyed in a household misfortune or natural disaster.

(2) **Reporting the loss:** The loss of [~~food stamp~~] food purchased with SNAP benefits must be reported in a timely manner by the household. The report will be considered timely if the loss is reported within 10 days of the date the food purchased with [~~food stamp~~] SNAP benefits is destroyed in household misfortune or natural disaster.

(3) **Ineligible for replacement:** [~~Food stamp~~] Food purchased with SNAP benefits will not be replaced if:

(a) ~~the household reports that the food stamp benefits were lost, stolen, or misplaced after receipt;~~

(b) (a) the household reports that the [~~food stamp~~] food purchased with SNAP benefits [~~were~~] was destroyed after receipt in an event other than a household misfortune or natural disaster; or

(c) (b) the loss was not timely reported by the household.

(4) **Household responsibilities:** To qualify for a replacement, the household must:

(a) report the loss in a timely manner, either orally or in writing; and

(b) sign an affidavit or statement attesting to the loss of the household's [~~food stamp~~] food purchased with SNAP benefits.

(5) **HSD responsibilities:** HSD shall issue the replacement [~~food stamp~~] SNAP benefit amount if warranted, within 10 days after the report of loss, or within two working days of the date that HSD receives the signed affidavit or statement, whichever is later. Replacement of [~~food stamp~~] SNAP benefits will be delayed until a determination of the value of the benefits can be made.

(6) **Affidavits:** If a signed affidavit is not received by [~~the caseworker~~] ISD within 10 days of the date the loss is reported, there will be no replacement. If the 10th day falls on a weekend or holiday, the deadline is the day after the weekend or holiday. The affidavit is retained in the client electronic case record. It

attests to the ~~nonreceipt, theft, loss or~~ destruction of food purchased with ~~of~~ the original issuance and specifies the reason for the replacement. It shall also state that the household is aware of the penalties for intentional misrepresentation of the facts, including but not limited to, a charge of perjury for a false claim.

(7) **Authorization:** There will be no limit on the number of replacements a household may be authorized for food purchased with ~~food stamp~~ SNAP benefits which was destroyed in a household misfortune or natural disaster.

(8) **Verification of conditions for replacement:** Before replacing destroyed ~~food stamp benefits or destroyed~~ food purchased with ~~food stamp~~ SNAP benefits, ~~the caseworker~~ ISD shall determine that the destruction occurred in a household misfortune or natural disaster, such as a fire, as well as in natural disasters affecting more than one household. This is verified through one of the following:

- (a) collateral contacts; or
- (b) documentation from a community agency such as but not limited to, the fire department or the red cross; or
- (c) a home visit; or
- (d) FNS has issued a disaster declaration and a household is eligible for emergency ~~food stamp~~ SNAP benefits; a household cannot receive both the disaster ~~food stamp~~ SNAP benefit and a replacement benefit for a household misfortune or natural disaster.

B. Calculation of replacement: A replacement of the actual value of the loss not to exceed one month's ~~food stamp~~ SNAP benefit amount may be issued if food purchased with ~~food stamp~~ SNAP benefits is destroyed in a household misfortune or natural disaster affecting a participating household. HSD will provide a replacement issuance within 10 days of a reported loss.

C. Fair hearings: A household must be informed of its right to a fair hearing to contest denial of a replacement issuance. Replacements will not be authorized during the appeal process. A replacement is authorized if the appeal is decided in favor of the household.

[02/01/95; 8.139.610.14 NMAC - Rn, 8 NMAC 3.FSP.627, 05/15/2001; A, 02/28/2007; A, 07/24/2018]

8.139.610.15 NATIONAL REDUCTION OR SUSPENSION: If funding for ~~the food stamp program~~ SNAP is depleted, Section 18 of the Food Stamp Act of 1977, as amended, provides for reduction, suspension or cancellation of ~~food stamp~~ SNAP benefits for one or more months, or a combination of these three actions.

A. Reduction:

(1) If a reduction in ~~food stamp~~ SNAP ~~benefit amounts~~ allotments is deemed necessary, the ~~MFSA~~ maximum SNAP allotments amounts for all household sizes is reduced by a percentage specified by FNS. The ~~MFSA~~ maximum SNAP allotments amounts for each household size ~~is~~ are reduced by the same percentage. This results in all households of a given size having their benefits reduced by the same dollar amount. The dollar reduction is smallest for a one-person household and greatest for the largest households. Since the dollar amount is the same for all households of the same size, the rate of reduction is lowest for zero net income households and greatest for the highest net income households.

(2) All one- and two-person households affected by a reduction action are guaranteed a minimum monthly SNAP benefit ~~of \$10~~, unless the action is a cancellation of ~~food stamp~~ SNAP benefits, suspension of ~~food stamp~~ SNAP benefits, or reduction in ~~food stamp~~ SNAP benefits of ninety percent or more of the total amount of benefits projected to be issued in the affected month. The benefit reduction notice issued by USDA specifies whether the minimum ~~food stamp~~ SNAP benefit amount will be provided.

(3) SNAP benefits shall also be able to be adjusted to provide for the rounding of benefit levels of one dollar (\$1.00), three dollars (\$3.00) and five dollars (\$5.00) to two dollars (\$2.00), four dollars (\$4.00) and six dollars (\$6.00), respectively.

B. Suspension or cancellation:

(1) If a decision is made to suspend or cancel the distribution of ~~food stamp~~ SNAP benefits in a given month, FNS shall notify HSD of the date the suspension or cancellation will take effect. If ~~food stamp~~ SNAP benefits are suspended or cancelled, the ~~[\$10.00]~~ minimum benefit provision for one- and two-person households is disregarded and all households will have their benefits suspended or cancelled.

(2) **Resumption of benefits:** Upon notification by FNS that a benefit suspension has ended, HSD shall act immediately to resume benefit issuance to certified households.

C. Notices: ~~Food stamp~~ SNAP benefit reductions, suspensions, and cancellations are considered a federal adjustment to ~~food stamp~~ SNAP benefits. HSD shall notify all households of benefit reductions, suspensions, or cancellations in accordance with adequate notice provisions in ~~Subsection C of 8.139.120.10 NMAC~~ Subsection A of 8.139.120.13 NMAC. HSD shall not provide an adverse action notice to a household

affected by a benefit reduction, suspension, or cancellation.

D. Effect of reduction on certification:

(1) **Normal processing:** Eligibility determination for applicant households under normal (non-expedited) processing will not be affected by a benefit reduction, suspension, or cancellation. HSD shall accept and process applications during a month(s) in which a reduction, suspension, or cancellation is in effect in accordance with 8.139.110.12 NMAC, application processing. The determination of eligibility will also be made according to these provisions. If an applicant household is determined eligible for ~~[food-stamp]~~ SNAP benefits and a reduction is in effect, the benefit amount is calculated by reducing the ~~[MFSA]~~ maximum SNAP allotments amount by the appropriate percentage for the applicant's household size and then deducting thirty percent of the household's net ~~[food-stamp]~~ SNAP income from the reduced ~~[MFSA]~~ maximum SNAP allotments amount. If an applicant household is determined eligible for ~~[food-stamp]~~ SNAP benefits while a suspension or cancellation is in effect, no benefits will be issued to the household until issuance is again authorized by FNS.

(2) **Expedited service:** Expedited processing continues during the months in which reductions, suspensions or cancellations are in effect.

(a) **Reductions:** Households receiving expedited service in months in which reductions are in effect and that are determined eligible will be issued reduced benefits. The reduced ~~[food-stamp]~~ SNAP benefit amount will be made available within the time frame specified for expedited issuance.

(b) **Suspension:** Households receiving expedited service in months in which a suspension is in effect and that are determined eligible will have a benefit determination made within the time frames for expedited issuance. If a suspension remains in effect at the time issuance is authorized, the issuance will be suspended until FNS lifts the suspension.

(c) **Cancellations:** Households eligible for expedited processing which apply for ~~[food-stamp]~~ SNAP benefits during months in which cancellations are in effect will receive expedited service. The deadline for completing the processing is five calendar days or the end of the month of application, whichever date is later. All other rules for providing expedited service are applicable.

(3) **Certification periods:** The reduction, suspension, or cancellation of ~~[food-stamp]~~ SNAP benefits in a given month will have no effect on the certification period assigned to a household. Those households with certification period expiring during a month in which ~~[food-stamp]~~ SNAP benefits have been reduced, suspended or cancelled will be recertified and have a new certification period assigned.

E. Fair hearings: Any household that has its ~~[food-stamp]~~ SNAP benefit amount reduced, suspended or cancelled as a result of an order issued by FNS may request a fair hearing if the household disagrees with the action. The fair hearing process is subject to the following conditions:

(1) **Basis for fair hearings:** HSD is not required to hold fair hearings unless the request is based on a household's belief that the ~~[food-stamp]~~ SNAP benefit amount was computed incorrectly under suspension, reduction, or cancellation rules or that such rules were applied or interpreted incorrectly. HSD shall deny a fair hearing to a household that is merely disputing the fact that a reduction, suspension, or cancellation was ordered.

(2) **Continuation of benefits pending fair hearing:** Since the reduction, suspension, or cancellation is necessary to avoid an expenditure of funds beyond those appropriated by congress, households do not have a right to continuation of ~~[food-stamp]~~ SNAP benefits pending a fair hearing.

(3) **Retroactive benefits:** A household will receive retroactive ~~[food-stamp]~~ SNAP benefits in an appropriate amount if it is found that its ~~[food-stamp]~~ SNAP benefits were reduced by more than the amount by which HSD was directed to reduce ~~[food-stamp]~~ SNAP benefits.

F. Restoration of benefits:

(1) HSD shall have issuance services available to serve households receiving restored or retroactive ~~[food-stamp]~~ SNAP benefits for a previous, unaffected month if benefit reduction, suspension or cancellation has been ordered.

(2) Households whose ~~[food-stamp]~~ SNAP benefits are reduced, suspended or cancelled as a result of these procedures will not be entitled to restoration of lost benefits at a future date. However, if there is a surplus of funds as a result of the reduction or cancellation, FNS will direct HSD to restore benefits to affected households, unless the secretary of agriculture determines that the amount of surplus funds is too small for this to be practical.

(3) HSD shall design procedures to implement the restoration of ~~[food-stamp]~~ SNAP benefits promptly if FNS directs the restoration of benefits.

[02/01/95; 8.139.610.15 NMAC - Rn, 8 NMAC 3.FSP.635, 05/15/2001; A, 02/28/2007; A, 07/24/2018]