

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 139 FOOD STAMP PROGRAM**  
**PART 400 RECIPIENT POLICY - WHO CAN BE A RECIPIENT**

**8.139.400.1 ISSUING AGENCY:** New Mexico Human Services Department  
[02/01/95; 8.139.400.1 NMAC - Rn, 8 NMAC 3.FSP.000.1, 05/15/2001]

**8.139.400.2 SCOPE:** General public  
[02/01/95; 8.139.400.2 NMAC - Rn, 8 NMAC 3.FSP.000.2, 05/15/2001]

**8.139.400.3 STATUTORY AUTHORITY:** The food stamp program 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 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; 8.139.400.3 NMAC - Rn, 8 NMAC 3.FSP.000.3, 05/15/2001]

**8.139.400.4 DURATION:** Permanent  
[02/01/95; 8.139.400.4 NMAC - Rn, 8 NMAC 3.FSP.000.4, 05/15/2001]

**8.139.400.5 EFFECTIVE DATE:** February 1, 1995, unless a later date is cited at the end of a section.  
[02/01/95; 8.139.400.5 NMAC - Rn, 8 NMAC 3.FSP.000.5, 05/15/2001; A, 09/01/2017]

**8.139.400.6 OBJECTIVE:** Issuance of the revised food stamp program policy manual is intended to be used in administration of the food stamp program in New Mexico. This revision incorporated the latest federal policy changes in the food stamp program 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; 8.139.400.6 NMAC - Rn, 8 NMAC 3.FSP.000.6, 05/15/2001]

**8.139.400.7 DEFINITIONS:** [RESERVED]

**8.139.400.8 BASIS FOR DEFINING GROUP (HOUSEHOLD COMPOSITION):**

**A. Households:** The basic assistance unit of the food stamp program is the household. A household is composed of an individual or a group of individuals who customarily purchase and prepare meals together for home consumption. There can be more than one household living in one place.

**B. Verification of information**

**(1) Identity:** It is mandatory that the applicant's identity be verified. Identity may be established through readily available documentary evidence, or, if this is not possible, through a collateral contact or home visit. Acceptable documentary evidence includes, but is not limited to, driver's license; work or school ID; school records; ID for health benefits or for another assistance or social services program; voter registration card; wage stubs or marriage certificate. Any document that reasonably establishes the applicant's identity must be accepted. No requirement for a specific type of document, such as a birth certificate, may be imposed.

**(2) Household composition:** Information regarding household composition must be verified before certification, recertification, or when a change is reported. If household size and/or composition becomes questionable, the income support specialist (ISS) must request verification. Findings must be documented in the case file.

**C. Household composition:** A food stamp household may be composed of any of the following:

- (1)** an individual living alone;
- (2)** an individual living with others who customarily purchases food and prepares meals for home consumption separate and apart from the others;
- (3)** a group of individuals who live together and who customarily purchase food and prepare meals together for home consumption;
- (4)** an individual 60 years of age or older (and the spouse of such individual) who lives with

others and cannot purchase and prepare food because he/she suffers from a disability considered permanent under the Social Security Act or suffers from a nondisease-related, severe, permanent disability; the income of the others with whom such an individual resides (excluding the income of the individual and spouse) cannot exceed one hundred sixty-five percent of the poverty line (Subsection E of 8.139.500.8 NMAC);

(5) separate status may be granted on a case-by-case basis to other individuals or groups of individuals who have customarily purchased and prepared food apart from the individual(s) with whom they are now living.

[02/01/95; 8.139.400.8 NMAC - Rn, 8 NMAC 3.FSP.400, 05/15/2001]

#### **8.139.400.9 MANDATORY MEMBERS:**

**A. Separate household status:** For purposes of participation in the food stamp program, there can be more than one household living in a single dwelling. To be considered separate, an individual or group of individuals must purchase food and prepare meals separately from the other individual(s) living in the dwelling. It is not necessary to store food separately or use a different stove or refrigerator. Individuals who wish to be certified separately from those with whom they live are responsible for verifying their separate status.

**B.** Spouses and able-bodied parents under age 60 who are away from home all or most of the time with traveling jobs, such as truckers or salespersons, will be considered members of the household, provided they have not established residence away from home.

**C.** Spouses and parents who are employed away from home, such as construction workers, do not lose or relinquish residence with the household even though a majority of their meals are eaten away from home, provided that they will be in the home at least part of every month. Dual participation will not be permitted.

**D. Elderly/disabled:** Individuals who are elderly and disabled, and unable to prepare their own meals, but who wish to be considered separate from the others with whom they live, are responsible for obtaining the cooperation of the others in providing necessary income information, and for providing the ISS verification that such individuals meet the Social Security Administration's permanent disability standards. Any household member claiming a permanent disability under the definition of elderly/disabled, who has a disability that is questionable or not apparent to the ISS must provide a statement from a physician, or licensed or certified psychologist, to help the ISS make a disability determination.

**E. Ineligible for separate status:** The following individuals living with others or groups of individuals living together will be considered as customarily purchasing food and preparing meals together even if they do not do so:

(1) **Spouse:** Spouses who live together, as defined in Section 8.139.650 NMAC, definitions.

(2) **Children:** Children (excluding foster children) under 18 years of age who live with and are under the parental control of a household member other than their parent. Children are considered to be under parental control if the children are financially or otherwise dependent on a member of the household.

(3) **Parents and children living together:** Parents living with their natural, adopted, or stepchildren 21 years of age or younger, or such children living with such parents.

[02/01/95, 01/01/97, 06/01/99; 8.139.400.9 NMAC - Rn, 8 NMAC 3.FSP.401, 05/15/2001]

#### **8.139.400.10 NONHOUSEHOLD MEMBERS - INDIVIDUALS RESIDING WITH THE HOUSEHOLD:**

Individuals, described below, residing with a household will not be considered members for the purpose of determining household size, eligibility, or food stamp benefit amount:

**A. Roomers:** Individuals to whom a household furnishes lodging, but not meals, for compensation.

**B. Boarders:** Individuals who are furnished lodging and meals for compensation (see Paragraph 1 of Subsection C of 8.139.400.11 NMAC).

**C. Live-in attendants:** Individuals who live with a household to provide medical care, housekeeping, child care, or similar personal services.

**D. Foster care children:** Children in foster care will be included as household members only if the household chooses to include them. Income received for care of foster children is counted only if the household chooses to include the foster child.

**E. Extended absence:** Household members who do not return home at least part of the month, for example, children who attend school away from home and return only for vacation, and spouses who have established residence elsewhere, such as military personnel assigned overseas, are nonmembers.

**F. Others:** Unrelated individuals who share living quarters with the household and customarily purchase food or prepare meals separately from the household are not household members.

[02/01/95, 8.139.400.10 NMAC - Rn, 8 NMAC 3.FSP.402, 05/15/2001]

**8.139.400.11 SPECIAL MEMBERS:**

**A. Students:**

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

(2) **Enrollment:**

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

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

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

(ii) English as a second language;

(iii) adult basic education;

(iv) literacy; or

(v) community education courses

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

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

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

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

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

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

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

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

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

- (i) a program under the Job Training Partnership Act of 1974 (JTPA);
- (ii) an employment and training program under 7 CFR 273.7;
- (iii) a program under Section 236 of the Trade Act of 1974 [19 U.S.C.

2296]; or

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

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

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

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

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

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

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

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

(i) is under age 6; or

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

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

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

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

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

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

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

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

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

(a) any employee affected by a lockout;

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

(c) employees whose workplace is closed by an employer in order to resist demands of employees (i.e., a lockout);  
(d) employees unable to work as a result of other striking employees (e.g., truck drivers who are not working because striking newspaper pressmen prevent newspapers from being printed);  
(e) employees who are not part of the bargaining unit on strike but who do not want to cross a picket line for fear of personal injury or death;  
(f) employees who are fired or laid off, or who are permanently replaced or officially resign; and  
(g) employees who will not be permitted to return to their old jobs but are offered different ones.

(2) **Striker eligibility:**

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

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

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

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

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

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

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

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

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

(3) **Excluded boarders:** The income and resources of boarders who are not included as household members will not be considered available to the household.

[02/01/95, 10/01/95, 02/15/96, 05/15/97, 07/01/97/ 06/01/99; 8.139.400.11 NMAC - Rn, 8 NMAC 3.FSP.403, 05/15/2001; A, 07/15/2013; A, 09/01/2017; A, 06/01/2018; A, 09/01/2021]

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

**A. Excluded household members:**

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

Subsection C of 8.139.520.10 NMAC.

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

**B. Disqualified household members:**

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

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

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

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

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

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

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

**D. Disqualification for certain convicted felon:** The disqualification contained in Subsection D of 8.139.400 NMAC shall not apply to a conviction if the conviction is for conduct occurring on or before February 7, 2014. An individual shall not be eligible for SNAP benefits if the individual is convicted as an adult of:

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

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

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

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

(5) an offense under state law determined by the attorney general to be substantially similar to an offense described in Paragraph (1), (2), or (3) of Subsection D of 8.139.400.12 NMAC; and

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

[02/01/1995, 10/01/1995, 05/15/1997; 8.139.400.12 NMAC - Rn, 8 NMAC 3.FSP.404, 05/15/2001; A, 02/14/2002; A, 5/15/2002; A, 09/01/2021]

**8.139.400.13 SPECIAL HOUSEHOLDS:**

**A. Institutions:** An individual shall be considered a resident of an institution if the institution provides two or more meals daily, and the institution has not been authorized to accept food stamp benefits.

**B. Eligibility:** Residents of institutions shall not be eligible to participate in the food stamp program, with the following exceptions:

(1) **Federally subsidized housing:** Residents of federally subsidized housing for the elderly, built under Section 202 of the Housing Act of 1959 (even if residents are not elderly), provided that they otherwise qualify for participation.

(2) **Drug/alcoholic treatment centers:** Drug addicts or alcoholics who, for the purpose of regular participation in a drug or alcohol treatment and rehabilitation program, live in a public or private nonprofit facility or treatment center.

(3) **Disabled/blind group living arrangement:** Disabled or blind individuals as defined in (i) through (x) of Subparagraph b of Paragraph 23 of Subsection A of 8.139.100.7 NMAC who are residents in a group living arrangement.

(4) **Battered women/children:** Women, or women with their children, temporarily residing in a shelter for battered women and children. Such persons temporarily residing in shelters for battered women and children shall be considered individual households for the purposes of applying for and participating in the food stamp program.

(5) **Homeless:** Residents of public or private nonprofit shelters for the homeless.

**C. Residents of drug/alcohol treatment centers:** A drug addict or alcoholic who regularly participates in a drug or alcoholic treatment or rehabilitation program as a resident of the center may voluntarily apply for food stamp benefits. Children living with their eligible parent(s) in a drug or alcohol treatment center shall be considered household members when determining eligibility and benefit amount. A caseworker shall certify residents of addict/alcoholic treatment centers, and their children, by using the same provisions applied to all other applicant households, except that certification must be accomplished through an authorized representative employed by the institution. (For further information, Subsection D of 8.139.110.9 NMAC)

**(1) Processing:**

**(a) Expedited services:** Residents of treatment centers or rehabilitation centers for drug addiction or alcohol treatment, and their children, may qualify for expedited service in the same way as any other household. Food stamp benefits shall be received no later than the seventh calendar day following the date of application, and verification may be postponed. Verification requirements shall be completed before the second month's benefits are issued. (See 8.139.110.16 NMAC for more information on expedited service and continuation of benefits).

**(b) Normal processing:** If normal processing standards apply, the caseworker shall complete the verification and documentation requirements before making an eligibility determination for the initial application (see 8.139.110.12 NMAC and 8.139.110.13 NMAC).

**(c) Changes and recertifications:** Changes and recertifications shall be processed for resident households using the same standards outlined at 8.139.120.10 NMAC. Households shall be extended the same rights to notices of adverse actions, to fair hearings, and to entitlement to lost benefits as are all other food stamp households (see 8.139.120.8 NMAC and 8.139.120.10 NMAC).

**(2) Treatment centers eligibility status:**

**(a) Food and nutrition service authorization:** Before certifying any resident for food stamp benefits, a caseworker shall verify that the treatment center is authorized by FNS as a retailer if the center wishes to accept food stamp benefits. If the center is not authorized by FNS, the treatment center's status under Part B of Title XIX of the Public Health Service Act (42 USC, 300 et seq.) shall be verified.

**(b) List of residents:** Each treatment and rehabilitation center must provide the appropriate county office a list of currently participating residents. The list must include a statement signed by a responsible center official attesting to the list's validity. The list is required on a monthly basis.

**(c) On-site visits:** The county director or designee shall conduct periodic, random, on-site visits to the center to ensure the accuracy of the list and that the appropriate county office records are consistent and up-to-date.

**(d) Change notification:** The treatment center must notify the caseworker of changes in a household's income or other circumstances and when an addict or alcoholic leaves the treatment center. The treatment center must return the household's food stamp benefits to the county office if the household has left the center without its share.

**(3) When household leaves center:** When a household leaves the center, the center must give the resident household its ID card and any unused food stamp benefits. The household, not the center, shall be allowed to participate during any months remaining in the certification period.

**(a)** A household shall receive the full food stamp benefit amount if no benefits were spent on its behalf. This is applicable at any time during the month.

**(b)** If food stamp benefits have already been issued and any amount has been spent on behalf of a household, and the household leaves the program before the 16th day of the month, the treatment center must return to the household one-half of the monthly food stamp benefit amount. If a household leaves after the 16th of the month, and the food stamp benefits have already been issued and used, no food stamp benefits shall be returned to the household.

**(c)** The treatment center must, if possible, give the household a change report form to report the household's new address and other circumstances after leaving the center, and must advise the household to return the form to the appropriate county office within ten days.

**(d)** When the household leaves the treatment center, the center is no longer allowed to act as the household's authorized representative.

**(4) Organization/institution responsibilities:**

**(a)** The organization or institution is responsible for:

**(i) Program rules:** An organization or institution is legally responsible for any misrepresentation or intentional program violation which it knowingly commits in the certification of center residents.

**(ii) Awareness of household circumstances:** As an authorized representative, the organization or institution must be aware of the household's circumstances and should carefully review those circumstances with any resident before applying on their own behalf.

**(iii) Proper use of food stamp benefits:** The organization or institution shall be strictly liable for any loss or misuse of food stamp benefits held on behalf of resident households, and for all overissuances that occur while the households are residents of the treatment center. The organization or institution may be penalized or disqualified if it is determined administratively or judicially that food stamp benefits were misappropriated or used for purchases that did not contribute to a certified household's meals.

**(b)** The county office shall notify the food assistance bureau when it has reason to believe that an organization or institution is misusing food stamp benefits in its possession. The food assistance bureau shall notify FNS. HSD shall take no action before FNS action against the organization or institution.

**(c)** HSD shall establish a claim for overissuance of food stamp benefits held on behalf of resident clients if any overissuance is discovered during an investigation or hearing procedure for redemption violations.

**(d)** If FNS disqualifies an organization or institution for any period of time, HSD shall suspend its authorized representative status for the same period.

**D. Residents in group living arrangements:** A disabled or blind resident of a public or private non-profit group living arrangement may choose to apply for food stamp benefits on his own, or through an authorized representative of the resident's own choosing, or through the facility's authorized representative. The group living arrangement facility must determine if the resident may apply on the resident's own behalf based on the resident's physical and mental ability to handle his own affairs. If a resident applies through the facility's authorized representative, eligibility shall be determined as a one-person household. If a household applies on its own behalf, the household size shall be determined according to the rules at Subsection C of 8.139.400.8 NMAC. Such residents shall be certified using the same provisions applied to all other households. HSD shall determine that the group living arrangement facility is a non-profit organization as established by its articles of incorporation with the New Mexico public regulation commission, and the group living arrangement facility must provide verification that it is authorized by FNS or certified by the New Mexico department of health as a group living arrangement, before any of the residents are certified for food stamps.

**(1) Resident's rights/responsibilities:**

**(a)** The rights and responsibilities listed in Paragraph 1 of Subsection C of 8.139.400.13 NMAC, for residents of treatment centers also apply to blind or disabled residents of group living arrangements when the facility acts as the resident's authorized representative.

**(b)** If a household has made application on its own behalf, the household is responsible for reporting changes to the county office within 10 days of the date the change becomes known to the household.

**(c)** If a resident, or a group of residents, receives food stamp benefits on the resident's or group's own behalf and retain use of the resident's or group's food stamp benefits, the resident or group is entitled to keep the food stamp benefits when the resident or group leaves. If a group of residents has received food stamp benefits as one household, a pro rata share of the remaining food stamp benefits shall be provided to any departing member.

**(d)** Residents of group living arrangements receiving food stamp benefits on their own behalf are responsible for overissuances, as would any other household (see (d) of Paragraph 2 of Subsection C of 8.139.400.13 NMAC).

**(2) Group home responsibilities:**

**(a)** The same responsibilities apply to authorized representatives of a group living arrangement as to treatment centers (Paragraph 4 of Subsection C of 8.139.400.13 NMAC). These provisions are not applicable if a resident has applied on the resident's own behalf. (For further information see Subsection B of 8.139.110.9 NMAC, authorized representatives).

**(b)** A group living facility shall give the appropriate county office a list of currently participating residents. This list shall include a statement by a responsible center official attesting to the validity of the list. The list is required on a monthly basis.

**(c)** The county director or designee shall conduct periodic, random on-site visits to ensure the accuracy of the list and make sure that the appropriate county office records are consistent and up-to-date.

**(d)** If a group living facility acts in the capacity of authorized representative, it must notify the caseworker of changes in a household's income or other household circumstances, and when an individual leaves the group living arrangement.



(e) When a household leaves a group living facility, the facility, if it either acted as authorized representative or retained use of food stamp benefits on behalf of residents, gives the departing household its ID card and any unused benefits. The household, not the group living facility, shall be allowed to sign for and receive any remaining food stamp benefits.

(f) A departing household must receive the full food stamp benefit amount, if issued, and if no food stamp benefits have been spent on behalf of that household. These procedures are applicable at any time during the month.

(g) If the food stamp benefits have been issued and any portion spent on behalf of the household, and the household leaves the group living arrangement before the 16th day of the month, the group living facility must return the ID card and one-half of the monthly food stamp benefit amount to the departing household. If the household leaves on or after the 16th of the month and the food stamp benefits have already been issued and used, the household shall not receive any food stamp benefits.

(h) If a group of residents is certified as one household and gives the food stamp benefits to the group living facility to use, departing residents must be given a pro rata share of one-half of the household's monthly food stamp benefit amount if the group leaves prior to the 16th day of the month. When a household leaves, the group living facility may no longer act as the household's authorized representative.

(i) The group living facility shall, if possible, give the household a change report form to report the household's new address and other circumstances after leaving the facility, and shall instruct the household to return the form to the appropriate county office within ten days.

**(3) Use of benefits:**

(a) A group living facility may purchase and prepare food for eligible residents on a group basis if residents normally get their meals at a central location as part of the group living arrangement services, or if meals are prepared at a central location for delivery to the individual residents.

(b) If residents purchase and/or prepare food for home consumption, as opposed to communal dining, the group living facility must make sure that each resident's food stamps are used for meals intended for that resident.

(c) If residents retain use of their own food stamp benefits, they may either use the food stamp benefits to purchase meals prepared for them by the facility or to purchase food to prepare meals for their own consumption.

**E. Battered women's shelters:**

(1) Before certifying residents of a battered women's shelter, a caseworker shall make sure that the shelter is a public or private nonprofit residential facility serving battered women and their children.

(2) If a facility serves other individuals as well as battered women and their children, a caseworker shall make sure that a part of the facility is set aside on a long term basis to serve only battered women and their children.

(3) Shelters with FNS authorization to redeem food stamps at wholesalers shall be considered to be meeting the definition and the caseworker is not required to make any further determination. The caseworker shall document the basis of this determination.

(4) Local ISD offices are required to maintain and update a current list of shelters meeting the battered women's shelter definition to facilitate prompt certification of eligible residents.

**(5) Special certification procedures:**

(a) Many shelter residents have recently left a household containing the person who abused them. The former household may be certified for participation in the food stamp program, and its certification may be based on a household size that includes the woman and children who have just left. Shelter residents included in such a certified household may nevertheless apply for and (if otherwise eligible) participate in the program as a separate household, and concurrently, if the household that included them is the household containing the person who abused them. Shelter residents included in such a household may receive additional food stamp benefits as a separate household only once in a month.

(b) Shelter residents who apply as separate households shall be certified solely on the basis of their own income and resources and the expenses for which they are responsible. They shall be certified without regard to the income, resources, and expenses of their former household. Jointly held resources shall be considered inaccessible.

(c) Room payments from the residents to the shelter shall be counted as shelter expenses. Any shelter residents eligible for expedited service shall be handled in accordance with the provisions in 8.139.110.16 NMAC.

**(6) Handling the former household:** The caseworker shall take prompt action to make sure

that the former household's eligibility or food stamp benefit amount reflects the change in household size and composition.  
[02/01/95, 07/01/98; 8.139.400.13 NMAC -Rn, 8 NMAC 3.FSP.406, 05/15/2001; A, 02/14/2002]

**8.139.400.14 MIGRANT AND SEASONAL FARMWORKER HOUSEHOLDS:**

**A.** Migrant or seasonal farmworker households are entitled to special handling of their application as described below. Only migrant or seasonal farmworker households will be classified as destitute and receive the special income considerations outlined in this section. For migrant or seasonal farmworker households only, the initial month is defined as the first month for which the household will be certified for participation in the food stamp program following any period of more than 30 days during which the household was not certified for participation. More than 30 days must pass before the application month is considered an initial month and benefits are prorated from the date of application. If 30 days have not passed, the household is entitled to a full month's benefits.

**B. Destitute households:** Migrant or seasonal farmworker households may have little or no income at the time of application and may be in need of immediate food assistance, even though a household may have received income at some time during the month of application. The following procedures will be used to determine whether migrant or seasonal farmworker households may be considered destitute and therefore entitled to expedited service and special income calculation procedures, except that migrant or seasonal farmworker households with resources of \$100.00 or more will not be entitled to expedited service.

**(1) Terminated income source:**

**(a) Expedited service:** Migrant or seasonal farmworkers whose only income for the month of application was received before the date of application, and was from a terminated source, will be considered destitute and entitled to expedited service.

**(b) Monthly or more frequent income:** If income is received on a monthly or more frequent basis, it will be considered as coming from a terminated source if it will not be received again from the same source during the balance of the month of application or during the following month.

**(c) Less often than monthly income:** If income is normally received less often than monthly, the nonreceipt of income from the same source in the balance of the month of application or in the following month is inappropriate to determine whether or not the income is terminated. Therefore, for households normally receiving income less often than monthly, the income will be considered as coming from a terminated source if it will not be received in the month in which the next payment would normally be received.

**(2) New income source:**

**(a)** Households whose only income for the month of application is from a new source will be considered destitute and entitled to expedited service if income of more than \$25 from the new source will not be received by the 10th calendar day after the date of application.

**(b)** Income normally received on a monthly or more frequent basis will be considered to be from a new source if income of more than \$25 has not been received from that source within 30 days before the date the application was filed.

**(c)** If income is normally received less often than monthly, it will be considered to be from a new source if income of more than \$25 was not received within the last normal interval between payments.

**(3) Income from terminated and new source:**

**(a)** Households may receive income from both a terminated source before the date of application and from a new source after the date of application, and still be considered destitute if they receive no other income in the month of application and if income of more than \$25 from the new source will not be received by the 10th day after the date of application.

**(b)** A household member who changes jobs but continues to work for the same employer will be considered as still receiving income from the same source. A migrant farmworker's source of income is considered to be the grower/employer for whom the migrant is working at a particular point in time, and not the crew chief. A migrant who travels with the same crew chief but moves from one grower/employer to another will be considered to have moved from a terminated income source to a new source.

**(4) Travel advances:** Some employers provide travel advances to cover the costs of new employees who must travel to the location of their new employment. To the extent that these payments are excluded as a reimbursement, receipt of travel advances will not affect the determination of when a household is destitute. If a travel advance is, by written contract, an advance of wages to be subtracted from wages later earned by the employee rather than a reimbursement, the wage advance will be counted as income. Receipt of a wage advance for

travel costs of a new employee will not affect the determination of whether subsequent payments from the employer are from a new source of income, or whether a household will be considered destitute.

**C. Special income calculation:** The eligibility and food stamp benefit amount of destitute households will be calculated for the month of application by considering only income which is received between the first of the month and the date of application. Any income from a new source that the household anticipates receiving after the date of application will be disregarded. Destitute household eligibility will be determined using the special income calculations in Subsection B of 8.139.400.14 NMAC, and by comparing as appropriate the household's gross and/or net income to the income eligibility standards in Subsection E of 8.139.500.8 NMAC. The procedures described in Subsection B of 8.139.400.14 NMAC above apply at initial application and at recertification, but only for the first month of each certification period. At recertification, income from a new source will be disregarded in the first month of the new certification period if income of more than \$25 will not be received from the new source by the 10th calendar day after the date of the household's normal issuance cycle.

**D. Prospective budgeting:** Migrant or seasonal households will be entitled to a prospective determination of eligibility and food stamp benefit amount during the time they are in the migrant stream.

**(1) Anticipating income:**

**(a)** Income received during the past 30 days will be used as an indicator of the income that is and will be available to the household during the certification period.

**(b)** An ISS will not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated.

**(c)** If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the ISS and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income.

**(2) Handling anticipated income:**

**(a)** Income anticipated during the certification period will be counted as income only in the month it is expected to be received, unless the household chooses to have its income averaged.

**(b)** At recertification, income from a new source will be disregarded in the first month of the new certification period, if more than \$25 income will not be received from this new source by the 10th calendar day after the date of the household's normal issuance cycle.

**(3) Continuous employment:**

**(a)** In cases where the head of a migrant or seasonal household is steadily employed, income from the previous month is usually a good indicator of the amount of income that can be anticipated in the month of application and following months.

**(b)** If the information supplied by a household or a collateral contact (8.139.650.7 NMAC) indicates that future income will differ from the previous month's income, the ISS will use such information to make a reasonable estimate of anticipated income.

**(c)** The method used to determine income must be fully documented in the case record.

**(4) Hourly and piecework wages:**

**(a)** When income is received on an hourly or piecework basis, it may fluctuate if a wage earner works less than eight hours some days or is required to work overtime on others. The ISS will discuss with the household to determine the "normal" amount of the income to be expected as a result of one week's work and whether the income can be reasonably expected to be available during the certification period. The amount which is reasonably expected will be used to determine monthly income.

**(b)** The option of averaging income should be discussed with the household.

**(5) Withheld wages:**

**(a)** Wages held at the request of an employee will be counted as income to the household in the month the wages would otherwise have been paid by the employer.

**(b)** Wages held by the employer as a regular practice, even if in violation of law, will not be counted as income, unless the household anticipated asking for and receiving an advance, or receiving income from wages that were previously held by the employer as a regular practice, and that were, therefore, not previously counted as income.

**(c)** Wage advances will count as income in the month received only if reasonably anticipated.

**(6) Varied eligibility:** Because of anticipated changes, a household may be eligible for the

month of application but ineligible in a later month. The household will be entitled to food stamp benefits for the month of application even if the processing of its application results in the food stamp benefits being issued in a subsequent month. Similarly, a household may be ineligible for the month of application, but eligible in the subsequent month because of anticipated changes in circumstances. Even though benefits are denied for the month of application, the household does not need to reapply in the following month. The same application will be used for the denial of the month of application and the determination of eligibility for subsequent months.

(7) **Varied benefit amount:** As a result of anticipating changes, a migrant or seasonal household's food stamp benefit amount for the month of application may differ from its food stamp benefit amount for subsequent months. The ISS must establish a certification period for the longest possible period over which changes in circumstances can be reasonably anticipated. The food stamp benefit amount will vary from month to month within the certification period, unless the household chooses to have its income averaged.

**E. Income averaging:** Destitute migrant or seasonal farmworker households may choose to have income averaged. Income will not be averaged for destitute households, unless the household so chooses, because averaging would result in assigning to the month of application income from future periods which is not available to the destitute household for its current needs. If the income averaging option is chosen, it cannot be changed during the certification period.

**F. Deductible expenses:** For migrant or seasonal households in the job stream, deductible expenses are determined prospectively in accordance with the following procedures (see 8.139.500.11 NMAC for more information).

(1) **Anticipating expenses:** A household's expenses will be calculated based on the expenses for which the household expects to be billed during the certification period. Anticipation of these expenses will be based on the most recent month's bills, unless it is reasonably certain a change will occur. The ISS will not average past expenses, such as utility bills, for the last several months, as a method of anticipating utility costs for the certification period. When the household's actual costs for utilities, including a heating or cooling cost, are anticipated to be less than the state's standard utility allowance (SUA), the SUA is applied. Similarly, when more than one household shares utility expenses, and a household's share of the billing for heating or cooling costs is less than its prorated share of the SUA, the household will be given its prorated share of the SUA.

(2) **Averaging expenses:** Migrant households may choose to average anticipated expenses as follows.

(a) Households may choose to have fluctuating expenses averaged.

(b) Households may choose to have one-time only expenses averaged over the certification period in which they are billed.

(c) Households may choose to have expenses that are billed less often than monthly averaged forward over the interval between scheduled billings, or, if there is no scheduled interval, averaged forward over the period the expense is intended to cover.

**G. Certification periods:**

(1) A household will be assigned the longest certification period possible based on the predictability of the household's circumstances. Because of the uncertainty of income and the likelihood of frequent and significant change in income or household circumstances, migrant or seasonal households usually are certified for one month. A two- or three- month certification period may be assigned if income and circumstances are stable and the household chooses to average income and expenses.

(2) **Expedited migrant households:** A migrant or seasonal household eligible for expedited service and assigned a certification period of longer than one month, will receive the first month's benefits. If verification is postponed, the household will be notified in writing that postponed verification from sources within and out-of-state must be provided before food stamp benefits for the second month are issued. Migrants will be entitled to postpone out-of-state verification only once each season. If a migrant or seasonal household requesting expedited service has already received this consideration during the current season, the ISS will grant a postponement of out-of-state verification only for the initial month's issuance and not for the second month's issuance. The notice to the household will state that if the verification results in a change in the household's eligibility or food stamp benefit amount, the ISS will act on the change without advance notice of adverse action. [02/01/95, 07/01/98; 8.139.400.14 NMAC - Rn, 8 NMAC 3.FSP.407, 05/15/2001]

**8.139.400.15 DISASTER VICTIMS:**

**A. Authority:**

(1) Section 409 of the Disaster Relief Act of 1974 authorizes the president to distribute emergency food stamp benefits through USDA to low-income households which are unable to purchase adequate

amounts of nutritious food as a result of a major disaster.

(2) The Food Stamp Act of 1977 also provides for development of disaster relief provisions. During a major disaster declared by the president or by USDA/FNS, disaster relief provisions will be implemented in those areas declared in need of disaster relief.

**B. Determination of need:**

(1) FNS will establish temporary eligibility standards for the duration of an emergency for households that are disaster victims as defined in this section. In addition, FNS will provide for emergency food stamp benefits to eligible households to replace food destroyed in a disaster. The emergency food stamp benefits will be equal to the value of the food destroyed, but not greater than the applicable maximum food stamp benefit amount for the household size.

(2) HSD is authorized to distribute emergency food stamp benefits to households residing in those areas determined to be adversely affected by a major disaster, but only upon the determination by USDA/FNS that such households have food assistance needs that cannot be met by the existing program in the project area(s), and only to those households that meet the eligibility criteria.

(3) The HSD food assistance bureau, after contact with USDA/FNS, will provide direction for implementation of disaster provisions.

(4) Under no circumstances may an ISD county office implement the emergency disaster provisions without specific direction and approval from the income support division, food assistance bureau.

**C. Eligibility criteria-conditions:** To be eligible for emergency food stamp benefits during a disaster, a household must meet all the following standards:

(1) At the time the disaster struck, the household must have been residing within the geographical area which is considered a disaster area. Such a household may be certified for disaster food stamp benefits even though the household at present is occupying temporary accommodations outside the disaster area. (A household representative must go to the certification site to be certified for disaster food stamp benefits).

(2) The household will purchase food and prepare meals during the disaster benefit period. A household residing in a temporary shelter that is providing all the household's meals is not eligible.

(3) The household must have experienced at least one of the following adverse effects of the disaster:

(a) The household's income becomes inaccessible or there is a termination of income or a significant delay in receipt of income, for example, if a disaster has caused a place of employment to close or reduce its work days, or if paychecks or other payments are lost or destroyed, or if there is a significant delay issuing paychecks or other payments. The household's income can become inaccessible if the work location is inaccessible because of the disaster.

(b) The household's liquid resources become inaccessible. Inaccessibility of liquid resources includes situations in which the financial institution(s) holding the household's resources is expected to be closed because of the disaster for most of the disaster benefit period, or if the household is otherwise unable, and is not expected to be able, to reach its cash resources for most of the disaster benefit period.

**(4) Expenses paid during the disaster period:**

(a) A household must have paid, or expect to pay for, expenses during the disaster benefit period to be eligible for a shelter expense deduction. The expense is not deductible if the household will not pay for it until after the disaster benefit period is over.

(b) If a household has received, or is reasonably certain to receive, a reimbursement for all or part of the expense during the disaster benefit period, only the net expense after reimbursement is allowed as a shelter expense deduction. If a reimbursement is expected, but it is not reasonably certain that it will be provided during the disaster benefit period, the full amount of the expense is deductible. The following household expenses are deductible:

(i) repairing damage to home or property essential to the employment or self-employment of a household member;

(ii) temporary shelter if a home is uninhabitable or the household cannot reach its home;

(iii) moving out of an area evacuated because of a disaster;

(iv) protecting property from disaster damage;

(v) medical expenses for disaster-related injury to a person who was a household member at the time of the disaster (including funeral and burial expenses in the event of death).

(vi) any other expenses may not be considered.

**(5) Disaster income calculation:** Disaster income is calculated by adding the household's

take-home pay to the household's available cash resources and then deducting the household's disaster-related expenses. The result must be less than or equal to the food stamp maximum disaster income limit for the household size.

**(6) Maximum disaster income limit:** The maximum disaster income limit is calculated by adding the food stamp net income limit for the appropriate household size, the standard deduction, and the maximum shelter deduction. Medical deductions for the elderly and disabled, the earned income deduction, the uncapped shelter deduction for the elderly and disabled and the dependent care deduction will not be used to calculate the maximum disaster income limit.

**(7) Countable income:** Income counted to determine eligibility includes:

**(a)** wages a household actually receives after taxes and other payroll deductions are taken out;

**(b)** assistance payments or other unearned income a household receives; and

**(c)** net self-employment income earned after personal income and social security taxes as well as expenses of producing the self-employment income are subtracted;

**(d)** income is only counted if it has already been received in the benefit period or if the household is reasonably certain the income will be received during the disaster benefit period;

**(e)** all cash resources (cash on hand and all funds in savings and checking accounts) will be counted as income unless the ISS determines that such funds will be inaccessible for most of the disaster benefit period; the resource standards do not apply under disaster certification rules.

**(8) Certification periods:** Certification periods must coincide with the disaster benefit period.

**(a)** If the disaster benefit period is for one month, income over this full month period will be counted; disaster-related expenses paid or expected to be paid over the full month period will be deducted to determine the net income.

**(b)** If the disaster benefit period will be for one-half month, estimated income over the half-month period will be counted, disaster-related expenses paid or expected to be paid over this period will be deducted, and the income limit will be only one-half of the monthly food stamp maximum disaster income limit.

**(9) Household estimates:** Applicant households must provide estimates of total take-home pay, cash resources, and allowable disaster-related expenses. Verification is not required, nor is an ISS required to request itemization of individual expenses or of different sources of income or resources.

**(10) Variable criteria:** FNS may, in certain disaster situations where circumstances warrant, establish eligibility standards that differ from those set forth above.

#### **D. FSP operations:**

**(1) Regular FS program:** The regular food stamp program will continue to operate and to process applications and make eligibility determinations in its normal manner during a disaster benefit period. If an applicant household does not meet the eligibility requirements for the disaster program, the household will be informed of the potential availability of food stamp benefits under the regular program, including provisions to consider costs of home repair caused by a natural disaster as an allowable shelter expense.

**(2) Personnel:** HSD may use volunteers and other agency personnel to help the certification staff make eligibility determinations during a disaster. A disaster relief agency designated by HSD and approved by FNS may also determine the eligibility of applicant households. HSD may set up alternate certification and issuing points that are accessible to the affected population.

**(3) General standards:** To apply for food stamp benefits under the disaster assistance program, a household must complete and submit a short form application, be interviewed, and provide limited verification, as specified below. HSD may use group sessions to screen applicants, explain rights and responsibilities, and explain how to complete an application.

**(4) Verification:** Except for identity and residence, all other verification requirements are waived for disaster emergency assistance. Since verification documents may have been lost or destroyed in the disaster, interviewers may use collateral sources to provide verification and to expedite certification. The household will not be denied for lack of verification of residence in unusual situations, such as if a household has recently moved to the area, has no documentary evidence of residence, and is not known to others in the disaster area.

**(5) Period for processing:** No emergency food stamp benefits will be authorized after the end of the disaster period. If the period is extended by FNS, HSD may be authorized to permit households already certified for emergency food stamp benefits to apply for recertification, if the households continue to meet the disaster eligibility requirements. A household applying for recertification must submit a new application and be interviewed. Identity and residence need not be reverified unless they are questionable. If an extension is granted,

HSD will issue a press release notifying those concerned that the disaster authorization period has been extended, and where and when they may reapply for extended food stamp benefits.

(6) **Benefit calculation:** Households meeting the eligibility requirements will receive the maximum food stamp benefit amount for their household size as listed in Subsection E of 8.139.500.8 NMAC, if the disaster benefit period is a full month. If the disaster benefit period is for a half month, the household will receive half the maximum food stamp benefit amount.

(7) **Certification notices:** In certifying disaster benefit applicants, written notification requirements will be waived. The notification that interviewers are required to give applicants may be given orally.

(8) **ID cards:** Participants in a disaster emergency program will be issued an identification card (ID) marked with the word "disaster" or some similar designation for disaster food stamp issuance. The ID card will serve to identify the household at an issuing point or in retail food stores as a legitimate food stamp participant.

(9) **Transition to FSP:** Households issued emergency food stamp benefits which are later determined eligible to participate in the ongoing food stamp program will have their emergency food stamp benefits deducted from their regular program food stamp benefits if the disaster certification period and the ongoing certification period overlap. The ISS will calculate food stamp benefits to be issued under the regular program as follows:

(a) the number of days overlapping the disaster certification period and the certification period for ongoing food stamp benefits will be determined;

(b) disaster food stamp benefits will be prorated over the number of days in the disaster period to determine the disaster food stamp benefit amount issued on a daily basis; and

(c) the food stamp benefit amount to be issued under the regular program will be offset against the amount of overlapping disaster benefits determined in Subparagraph (b) of Paragraph 9 of Subsection D of 8.139.400.15 NMAC above.

(d) Interviewers must act promptly on all applications. HSD will give eligible households an opportunity to get disaster food stamp benefits the day of application, unless restrictions such as curfews make it impossible to meet this standard; in such a situation, a household must be given an opportunity to get benefits no later than the day following the date the application is filed.

(10) **Controls:** HSD will establish a system to detect duplicate applications for disaster food stamp benefits. The system will include an exchange of case index cards or lists of certified disaster households between the appropriate certification and issuance sites used in the disaster operation. HSD will also use computer checks, address checks, and telephone calls to keep households from receiving duplicate disaster benefits.

**E. Application process:**

(1) **Forms:**

(a) The short application form for temporary emergency assistance (ISD459) will be used to gather the minimum amount of information needed to establish eligibility and the food stamp benefit amount. It also serves as an issuance document.

(b) To determine eligibility, an application must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified.

(c) The short disaster application form will provide warnings of the civil and criminal provisions and penalties for violations of the Food Stamp Act, and of the fact that the household may be subject to a post-disaster review.

(2) **Filing:** To file an application for emergency food stamp assistance, a household must submit a completed form, in person or through an authorized representative, at a certification site. To be processed under disaster procedures, the application must be filed during the disaster period. Households applying outside this period will be processed according to regular food stamp program procedures.

(3) **Household cooperation:** If a household refuses to cooperate with an interviewer in completing the application process, the application will be denied at the time of refusal.

(4) **Interviews:** All applicants for emergency disaster assistance must be interviewed. HSD will screen applicants before the interview to identify those who do not meet eligibility requirements.

(a) The interview will be conducted as an official discussion of household circumstances. It is designed to process the application quickly and not hinder disaster operations.

(b) Interviews will be conducted by ISSs as well as by volunteers and other non-HSD personnel, such as representatives of an authorized disaster relief agency designated by HSD.

(c) The interviewer will review the information that appears on an application and

resolve unclear or incomplete information.

(d) At the interview, a household will be advised orally of the disposition of its application, its rights and responsibilities, when its certification period for emergency assistance ends, and of the ongoing food stamp program.

(e) If a household wishes to file an application for the ongoing program, the interviewer will advise the household of the address and telephone number of the appropriate office.

(f) The interviewer will inform each certified household of the proper use of food stamp benefits.

**F. Treatment of current FSP household:**

(1) **Eligibility:** Households currently certified for the ongoing food stamp program may also be eligible for temporary emergency food stamp assistance during disasters. Such households will be allowed to apply for disaster food stamp assistance, and their eligibility will be determined in the same manner as for any other disaster victim. The ISS must, however, reduce the disaster food stamp benefit amount by the amount of regular food stamp benefits issued to the household under the ongoing program for any part of the disaster benefit period. If the household's food has been damaged by the disaster, and it must replace the food, the disaster food stamp benefit amount will not be reduced by the amount of food stamp benefits issued under the ongoing program. If it is not practical to determine, verify, or otherwise take into account ongoing program benefits, HSD will issue full disaster food stamp benefits to those households, with FNS approval.

(2) **Replacements:** A household requesting a replacement of food stamp benefits it had received under the ongoing program that were destroyed in the disaster, or of food destroyed in a disaster that was purchased with food stamp benefits issued under the ongoing program, will be handled by the ongoing program. A household will not be given a replacement if it has received, or will receive, disaster food stamp assistance for the same period.

(3) **Reporting changes:** Households certified under the ongoing program who report required changes during the application process for emergency assistance, will be referred to the ongoing program. The household is responsible for reporting the required information directly to the office that handles its regular case.

**G. Issuance of emergency food stamps:** Emergency food stamp benefits will be issued by normal procedures in effect in a project area if the opportunity to participate standards can be met. Such issuance arrangements may not be practical because of the effects of the disaster. HSD, with FNS approval, will make temporary arrangements during an emergency period to facilitate the issuance of benefits to disaster victims.

**H. Fair hearings:** Households denied disaster food stamp benefits may request a fair hearing. Households requesting a fair hearing must be offered an immediate supervisory review of their circumstances because of the time that is likely to pass before a fair hearing decision can be made. The supervisory review is not a replacement for a fair hearing, but may be held in addition to the fair hearing.

[02/01/95; 8.139.400.15 NMAC - Rn, 8 NMAC 3.FSP.408, 05/15/2001]

**HISTORY OF 8.139.400 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives:

ISD 430.0000, Certification of Eligible Households, 8-8-80.

ISD 460.0000, Action on Households with Special Circumstances, 8-15-80.

ISD-Rule 421.0000, Food Assistance - Eligibility Standards, 11-5-82.

ISD-Rule 420.0000, Eligibility Standards, 2-21-83.

ISD-Rule 427.0000, Food Assistance - Students, 11-4-82.

ISD-Rule 427.0000, Students, 2-9-83.

ISD-Rule 427.0000, Students, 5-3-84.

ISD-Rule 451.0000, Food Assistance - Action on Households with Special Circumstances, 11-5-82.

ISD-Rule 450.0000, Action on Households with Special Circumstances, 10-13-83.

ISD-Rule 450.0000, Food Assistance - Action on Households with Special Circumstances, 4-24-84.

ISD-Rule 457.0000, Food Assistance - Residents of Drug/Alcoholic Treatment and Rehabilitation Programs, 11-5-82.

ISD-Rule 458.0000, Food Assistance - Other Households with Special Circumstances, 11-5-82.

ISD-Rule 458.0000, Food Assistance - Other Households with Special Circumstances, 2-23-83.

ISD-Rule 458.0000, Food Assistance - Other Households with Special Circumstances, 10-13-83.

ISD FS 230, Food Stamp Households, 2-29-88.



ISD FS 240, Special Food Stamp Households, 2-29-88.

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