

SUBCHAPTER 71U – FOOD ASSISTANCE

SECTION .0100 – IDENTIFYING INFORMATION

10A NCAC 71U .0101 ADMINISTRATION AND SUPERVISION

History Note: Authority G.S. 143B-137.1; 143B-138.1(a)(5); 108A-51; 7 U.S.C. 2011 to 2026;
Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Repealed Eff. October 1, 2021.

SECTION .0200 - MANUAL

10A NCAC 71U .0201 INTENTIONAL PROGRAM VIOLATION DISQUALIFICATION

(a) An administrative disqualification hearing (ADH) or referral for prosecution shall be initiated by the public agency whenever there is clear and convincing evidence to substantiate that a currently participating household member has committed one or more acts of an intentional program violation as set forth in 7 CFR 273.16(c), which is hereby incorporated by reference, not including subsequent amendments and editions, and may be accessed at www.congress.gov at no charge. If a referral for prosecution is made, an ADH shall not be initiated unless the referral is declined or 180 days have passed and the public agency withdraws the referral.

(b) The Hearing Officer for public ADH hearings is the public Agency Director. The Director may delegate this function to a designated impartial employee of the public agency. An impartial employee is one who is not a fraud Investigator, is not connected with the case, does not supervise an employee connected with the case, and has not discussed the facts of the case with any public agency staff outside of the hearing.

(c) The public agency must provide the Food and Nutrition Services (FNS) unit with an Advance Notice of Your Disqualification Hearing Form DSS-8556 at least 30 days prior to the hearing date. The public agency must also provide the FNS unit with a notice of their right to waive the ADH. The public agency shall ensure that all letters and notices are in the primary language of the individual charged with an intentional program violation (IPV), and ensure that a qualified translator is present for an ADH when requested by an individual with limited English proficiency as defined in 7 CFR 273.16(c).

(d) The public hearing officer shall render a decision within five business days of the hearing.

(e) The FNS unit may appeal the public hearing officer's decision within 15 calendar days to a State Disqualification Hearing. The hearing shall be held before a state hearing officer on behalf of the Director of the Division of Social Services. The state hearing officer shall provide notice to the FNS unit and the public agency at least 10 calendar days before the hearing. The state hearing officer shall render a decision within 60 days of the State Disqualification Hearing.

History Note: Authority G.S. 108A-25; 108A-51; 108A-53; 143B-153; 7 CFR 273.16;
Eff. March 1, 1979;
Amended Eff. February 1, 1986;
Readopted Eff. October 1, 2021.

10A NCAC 71U .0202 COUPON ISSUANCE

History Note: Authority G.S. 108A-51; 143B-153; P.L. 104-193; 7 C.F.R. 274.2; 7 C.F.R. 274.3; U.S.C. 2011-2027;
Eff. March 1, 1979;
Amended Eff. February 1, 1986;
Temporary Amendment Eff. January 1, 1998;
Amended Eff. April 1, 1999;
Repealed Eff. July 1, 2012.

10A NCAC 71U .0203 FAIR HEARINGS

History Note: Authority G.S. 108A-51; 143B-153; 7 CFR 273.15; 7 U.S.C. 2011-2027;
Eff. March 1, 1979;

Repealed Eff. October 1, 2021.

10A NCAC 71U .0204 DENIAL OF ZERO BENEFIT HOUSEHOLDS

Households of three or more persons that do not have a member age 60 or over or disabled, thus subject to the 130 percent of poverty as an eligibility level, shall have their applications denied if the household's net FNS income results in a zero benefit level.

*History Note: Authority G.S. 108A-25; 108A-51; 143B-153; 7 C.F.R. 273.10(e)(2)(iii);
Eff. October 1, 1981;
Readopted Eff. October 1, 2021.*

10A NCAC 71U .0205 IMMEDIATE TERMINATION OR REDUCTION OF ASSISTANCE

(a) Pursuant to 7 CFR 273.13(a), households subject to immediate termination or reduction of benefits shall be notified in accordance with the timelines set forth in 7 CFR 273.13(4)(e)(1), which is incorporated by reference, including subsequent amendments and editions, and may be accessed at www.congress.gov at no charge.

(b) For mass changes, such notice shall be provided a minimum of 10 working days in advance when federal implementing time standards permit.

(c) If a hearing is requested, benefits shall be continued at the present level pending the hearing decision only if the termination or reduction is due to a mass change and the issue being contested is that FNS eligibility or benefits were improperly computed or that federal law is being misapplied or misinterpreted, as set forth in 7 CFR 273.15(k)(l), which is incorporated by reference, not including any subsequent amendments and editions, and may be assessed at www.congress.gov at no charge.

*History Note: Authority G.S. 108A-25; 108A-51; 108A-79; 143B-153; 7 C.F.R. 273.13(a); 7 C.F.R. 273.15(k);
Eff. March 1, 1982;
Readopted Eff. October 1, 2021.*

10A NCAC 71U .0206 STANDARD UTILITY ALLOWANCES

(a) The State Division of Social Services shall establish standard utility allowances for use in calculating shelter costs of those households which incur utility costs separate and apart from their rent or mortgage payments. The standard utility allowances shall be developed in conjunction with data gathered through quality control sampling and surveys of utility company rates. Once the Division gathers the sampling information and the average costs information from utilities companies, the Division shall calculate the average amounts to determine a statewide average for each type of utility cost for standard, basic, and telephone utility allowances. The standard and basic utility allowances are increased by household size. The amount of increase or decrease is calculated from the average statewide increase in utility costs per household size from the previous year.

(b) Types of utility allowances:

(1) Standard utility allowance includes the cost of heating and cooling (air conditioning), cooking fuel, electricity, and the basic service fee for one telephone, water, sewerage, and garbage collection.

(2) Basic utility allowance includes at least two non-heating or non-cooling utility expenses, such as cooking fuel, electricity, and the basic service fee for one telephone, water, sewerage, and garbage collection.

(3) Telephone utility allowance includes the basic telephone services, fees, and applicable taxes.

(c) Standard utility allowances are binding upon the household for a period of 12 months following certification (initial or recertification). If the household moves before the expiration of the 12 month period and becomes ineligible for the standard, basic, or telephone allowance, the agency shall make the appropriate change.

(d) The Division shall review the standard utility allowances annually and adjust the allowance as necessary to reflect changes in the cost of the utilities. The annual update shall be effective on October 1 of each calendar year to coincide with annual, federal adjustments of the combined dependent care and shelter deduction. The annual update shall be based on information published by the North Carolina Department of Administration, Office of State Energy. The amount of the utility allowances shall not vary seasonally.

(e) The Division shall vary its standard and basic utility allowances by household size.

(f) The basic utility allowance shall be used by a household living in a public housing unit that charges the household only for excess utility costs provided the household is responsible for at least two non-heating or non-cooling utility expenses.

(g) The standard utility allowance shall be used when a household is billed for a heating or cooling component not totally paid by a vendor payment.

(h) Multiple households living in the same residence and sharing utility costs are allowed the standard or basic utility allowance for their household size.

History Note: Authority G.S. 108A-25; 108A-51; 143B-153; 7 C.F.R. 273.9(d)(6); 7 USC Section 2014(e)(6)(C); P.L. 107-171;
Eff. April 1, 1982;
Amended Eff. March 1, 1990; July 1, 1984;
Temporary Amendment Eff. February 1, 2003;
Amended Eff. August 1, 2004;
Readopted Eff. October 1, 2021.

10A NCAC 71U .0207 UNITED STATES CITIZENSHIP

As a condition of eligibility, United States citizenship for FNS shall be governed by the procedures set forth in 10A NCAC 71W .0403.

History Note: Authority G.S. 108A-25; 108A-51; 143B-153; 7 C.F.R. 273.6; 45 C.F.R. 233.50;
Eff. July 1, 1982;
Amended Eff. April 1, 1984; October 1, 1983;
Readopted Eff. October 1, 2021.

10A NCAC 71U .0208 ADDITIONAL MANDATORY VERIFICATIONS

History Note: Authority G.S. 108A-51; 143B-153; 7 C.F.R. 273.2(f) (3) (iii), (v), (vi); 7 U.S.C. 2011-2029;
Eff. July 1, 1982;
Amended Eff. January 1, 1989; December 1, 1986;
Repealed Eff. September 1, 2005.

10A NCAC 71U .0209 SECOND PARTY REVIEW

A second party desk review shall be conducted to review actions taken on all households with five or more members applying for initial certification or recertification for the FNS Program. Actions taken on households with four or fewer members shall be subject to second party review as determined by the division director, based on future error prone profiles.

History Note: Authority G.S. 108A-25; 108A-51; 143B-153;
Eff. July 1, 1982;
Readopted Eff. October 1, 2021.

10A NCAC 71U .0210 INCOME EXCLUSIONS

Income exclusions set forth in 7 CFR 273.9(c) are hereby incorporated by reference, not including subsequent amendments and editions, and may be accessed at www.gpo.gov at no charge. In addition to the income exclusions set forth in 7 CFR 273.9(c), earned income for census employment or educational assistance, except scholarships offered by civic groups or institutions, or athletic scholarships shall be excluded from determining eligibility.

History Note: Authority G.S. 108A-25; 108A-51; 108A-53; 143B-153; 7 C.F.R. 273.9(c); 7 U.S.C. 2014;
Temporary Rule Eff. March 28, 1990, for a Period of 180 Days to Expire on August 31, 1990;
Eff. September 1, 1990;
Temporary Amendment Eff. March 1, 2003;
Amended Eff. August 1, 2004;
Readopted Eff. October 1, 2021.

10A NCAC 71U .0211 VEHICLE DETERMINATIONS

History Note: Authority G.S. 108A-51; 143B-153; H.R.4461; CFR 273.8;
Temporary Adoption Eff. July 1, 2001;

Eff. July 18, 2002;
Repealed Eff. October 1, 2021.

10A NCAC 71U .0212 TRANSITIONAL FNS BENEFITS

Households shall receive transitional FNS benefits for a period of five months when they lose their Work First benefits. FNS benefits shall be no less than the amount received by the household prior to the termination of Work First benefits. The only adjustments to income shall be the deletion of the Work First benefits. Other sources of income shall not be re-calculated. A household is not eligible for transitional FNS benefits if it loses Work First benefits for any of the following reasons:

- (1) Work First case closes due to a sanction in accordance with 10A NCAC 71W .0606;
- (2) Household member is disqualified from Food and Nutrition Services in accordance with 10A NCAC 71U .0201;
- (3) Household moves out of North Carolina; or
- (4) Household received more than one Work First payment and a Work First payment is still being received.

A household may reapply for FNS benefits during the transitional period with benefits determined according to current circumstances.

History Note: Authority G.S. 108A-25; 108A-51; 143B-153;
Temporary Adoption Eff. February 1, 2003;
Eff. August 1, 2004;
Readopted Eff. October 1, 2021.

10A NCAC 71U .0213 SIMPLIFIED REPORTING

(a) The simplified reporting category shall apply to all FNS units except the following:

- (1) A Simplified Nutrition Assistance Program (SNAP) unit; or
- (2) A Transitional FNS Unit.

(b) Certification periods are determined based upon the following household situations:

- (1) FNS units that contain only specified individuals who are without earned income are certified for a period of 12 months. A specified individual is an individual 60 years of age or older, or one of the following:
 - (A) A person who receives supplemental security income benefits under Title XVI of the Social Security Act or disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act;
 - (B) A person who receives federally or State administered supplemental benefits under Section 1616(a) of the Social Security Act provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under Title XVI of the Social Security Act;
 - (C) Receives disability benefits from a governmental agency based on permanent Social Security disability requirements.
 - (D) Is a Veteran who receives 100 percent Veterans Administration (VA) disability payments (service or non-service connected) or is rated as 100 percent disabled but receives less than 100 percent disability payment;
 - (E) Is a Veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the U. S. Code;
 - (F) Is a disabled surviving spouse or disabled surviving child of a veteran and in need of regular aid and attendance or permanently housebound or considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death under Title 38 of the U. S. Code;
 - (G) Receiving Railroad Retirement and determined to be eligible for Medicare;
 - (H) Receiving Interim Assistance Payments (DSS General Assistance to applicants for SSI that is repaid by SSA upon approval of the SSI application);
 - (I) Receiving Medicaid based on disability; and
 - (J) Benefits under the Federal Employees Compensation Act (FECA) based on Social Security disability requirements.

- (2) FNS units that contain an Able-Bodied Adult Without Dependents (ABAWD) are certified for a period of six months. These FNS units will be issued a Notice of Adverse Action DSS-8553 during the second month of the certification period notifying the FNS unit that the local agency will terminate benefits after the third month unless the ABAWD satisfies the work requirements or meets an exception as set forth in 7 C.F.R. 274.24. The certification may be for a period of 6 months if the county is currently under an ABAWD waiver.
 - (3) All other units are certified for a period up to six months.
- (c) FNS units subject to Simplified Reporting are required to report to the public agency any of the following changes that occur during the certification period:
- (1) FNS units that include an ABAWD shall report when the ABAWD stops working an average of 80 hours per month;
 - (2) FNS units whose income is at or below the 130 percent maximum allowable gross income limit are required to report an increase in unit income that causes it to exceed the 130 percent maximum allowable gross income limit for its unit size at certification. Ineligible or disqualified persons are not considered in determining the FNS unit size; and
 - (3) If any member of the FNS unit receives substantial lottery and gambling winnings as defined in 7 CFR 212.17 and 7 CFR 273.8(b), the receipt of lottery and gambling winnings shall result in loss of eligibility for the entire FNS unit. The unit remains ineligible until they reapply for benefits and meet all non-categorical eligibility financial resource and income eligibility requirements.
- (d) FNS units are required to report changes by the 10th of the month following the month in which the change occurs. FNS units completing an application or recertification that experience changes prior to disposition of the application or recertification are required to report such changes by the 10th of the month following the month in which the Notice of Eligibility is received.
- (e) Changes are considered reported at the earliest of the following times:
- (1) The date the Change Report is received;
 - (2) The date the change is reported by the FNS unit by telephone, email or fax. If received during non-business hours the date reported will be the next business day;
 - (3) The date the FNS unit made an in-person office visit to report the change;
 - (4) The date the change is reported to Work First;
 - (5) The date the changed information is entered into NC FAST; or
 - (6) The date the change is reported by a third party.
- (f) A public agency shall evaluate, verify, and act upon a change within 10 calendar days, except for the following changes:
- (1) Changes in medical expenses of units eligible for the medical deduction when the source of the change in information is from a third party and requires household contact for verification;
 - (2) A decrease in the unit's gross monthly income of less than fifty dollars (\$50.00); or
 - (3) A change in income that is not expected to continue for longer than one month beyond the month in which the change is reported.
- (g) If a change is reported and the public agency fails to act on the change within the 10 calendar days, the public agency shall determine if an over issuance has occurred. If it is determined that an over issuance occurred, the public agency shall establish an Administrative Error (AE) claim.
- (h) If a reported change terminates eligibility or decreases a unit's benefit amount, a Notice of Adverse Action shall be issued to the FNS unit within 10 calendar days.
- (i) If a reported change does not affect eligibility or benefit amount, an Effect of Change Notice shall be issued to the FNS unit.
- (j) If a reported change will increase benefit amount, the public agency shall verify the reported change.
- (k) If an FNS unit fails to report a required change, the public agency shall establish a claim against the FNS unit and issue a Notice of Adverse Action if the change would result in a reduction or termination of benefits.

*History Note: Authority G.S. 108A-25; 108A-51; 143B-153; P.L. 107-171;
 Temporary Adoption Eff. February 1, 2003;
 Eff. August 1, 2004;
 Readopted Eff. October 1, 2021.*

10A NCAC 71U .0214 DEDUCTIONS

History Note: Authority G.S. 108A-51; 143B-153; P.L. 107-171;
Temporary Adoption Eff. February 1, 2003;
Eff. August 1, 2004;
Repealed Eff. October 1, 2021.

10A NCAC 71U .0215 RESOURCE EXCLUSIONS

Resource exclusions as set forth in 7 CFR 273.8(e), which is incorporated by reference, not including subsequent amendments and editions, and may be accessed at www.congress.gov at no charge. In addition to the resource exclusions found in federal regulations, the following resources shall be excluded in determining eligibility and benefit level:

- (1) funds from property conveyed to an individual at death of the property owner, also referred to as heir property;
- (2) burial plots;
- (3) lifetime interest in real or personal property limited to an individual's lifetime but the individual does not actually own the property;
- (4) remainder interest in property when one individual owns property and another individual has the lifetime right; and
- (5) land or buildings not excluded as a homesite, income producing property, or for the sale by good faith effort.

History Note: Authority G.S. 108A-25; 108A-51; 143B-153; 7 CFR 273.8(e);
Temporary Adoption Eff. March 1, 2003;
Eff. August 1, 2004;
Readopted Eff. October 1, 2021.

10A NCAC 71U .0216 MEDICAL DEDUCTIONS FOR MEDICARE PRESCRIPTION DRUG CARD BENEFITS

History Note: Authority 143B-153; P.L. 108-173;
Eff. April 1, 2005;
Repealed Eff. October 1, 2021.

SECTION .0300 - FORMS

10A NCAC 71U .0301 FARMER OR DAY LABORER INCOME VERIFICATION

History Note: Authority G.S. 143B-138(b)(5); 7 U.S.C. 2011 to 2026;
Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Repealed Eff. July 1, 2012.

10A NCAC 71U .0302 HOUSEHOLD APPLICATION

An application form shall be completed for each household. The application form is available at the public agencies or an application may be made on the ePass Public Portal of NC FAST. The application shall include the required information needed to determine eligibility as set forth in 7 CFR 273.26, which is incorporated by reference, not including subsequent amendments and editions, and may be accessed at www.congress.gov at no charge. The application shall also include the applicant's commitment to provide information necessary to verify statements given on the form, to cooperate in state and federal quality control checks, and to notify the FNS office of changes of status. Until this application is completed and submitted, the applicant shall not participate in Food and Nutrition Services.

History Note: Authority G.S. 108A-25; 108A-51; 108A-52; 143B-153; 7 U.S.C. 2020; 7 CFR 273.26;
Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Amended Eff. February 1, 1986;
Readopted Eff. October 1, 2021.

10A NCAC 71U .0303 AUTHORIZED REPRESENTATIVE

(a) The head of household, spouse, or any other member of the household may designate an authorized representative to act on behalf of the household in applying for FNS. The representative shall be ineligible to represent the household until the authorized representative form is completed with the following information:

- (1) Authorized representative's name;
- (2) Address;
- (3) Social security number;
- (4) Date of birth; and
- (5) Signature.

(b) Individuals who participate in a drug or alcoholic treatment program on a resident basis may elect to participate in FNS. The treatment center must be a private, nonprofit organization, or institution or a publicly operated community mental health center, under Section 300x-21 et. seq. of U.S. Code Title 42, Part VII.C.2.

- (1) Residents shall apply through an authorized representative who shall be an employee of and designated by the treatment center.
- (2) Residents may assist in completing the application and may sign the application along with the authorized representative, prior to certification.

(c) Residents of public or private nonprofit settings for blind or disabled individuals may elect to participate in FNS.

- (1) A public agency of the state or locality shall certify group living arrangements under Section 1616(e) of the Social Security Act.
- (2) Residents of group living arrangements may apply and be certified as follows:
 - (A) Through the use of an authorized representative employed and designated by the facility;
 - (B) Through the use of an authorized representative selected by the resident; or
 - (C) On their own behalf.

History Note: Authority G.S. 108A-25; 108A-51; 7 CFR 273.2(n); 7 CFR 273.11(e);
Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Readopted Eff. October 1, 2021.

10A NCAC 71U .0304 TRANSMITTAL OF ATP CARDS

History Note: Authority G.S. 143B-138, -153; 7 U.S.C. 2011 to 2026;
Eff. February 18, 1977;
Readopted Eff. October 31, 1977;
Repealed Eff. July 1, 2012.

SECTION .0400 – ELECTRONIC BENEFIT TRANSFER (EBT) CARD

10A NCAC 71U .0401 ISSUANCE OF FUNDS

(a) The State Division of Social Services shall issue FNS payments through Electronic Funds Transfer (EBT).

(b) The applicant or recipient shall be informed of the payment option in this Rule at application and reapplication and provided the following information:

- (1) A household that elects to receive FNS payments through an EBT card shall receive an initial EBT card at no cost.
- (2) A household that requests a replacement EBT card shall be assessed a two dollar fifty cent (\$2.50) fee unless the household can establish that their original EBT card:
 - (A) was lost in the mail or damaged by the card vendor prior to receipt by the FNS household;
 - (B) is being replaced due to a name change on card;
 - (C) was lost due to a natural disaster such as a fire, flood, tornado, earthquake, or hurricane; or
 - (D) was damaged by a retailer or vendor.
- (3) The fee shall be deducted from the account of the FNS unit.

(c) Recipients of FNS shall be informed at application and reapplication they may not access or use EBT cards in the following establishments: liquor stores; casinos or gaming establishments; or any establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state.

- (1) These restrictions apply to all FNS households.
- (2) Applicants and recipients shall be advised of the restrictions at initial application, reapplication, and redetermination of eligibility.
- (3) Recipients who use or access FNS in an EBT transaction in any liquor store; any casino or gaming establishment; or any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state may be subject to penalties as defined by the State Division of Social Services.

History Note: Authority G.S. 108A-25; 108A-51; 143B-153; 7 CFR 274.6(b);
Temporary Adoption Eff. August 1, 2000;
Eff. April 1, 2001;
Readopted Eff. October 1, 2021.

10A NCAC 71U .0402 FAIR HEARINGS

History Note: Authority G.S. 108A-25; 143B-153; 7 U.S.C. 2016 (i)(8); 7 C.F.R. 274.12 (f)(5)(v);
Temporary Adoption Eff. August 1, 2000;
Eff. April 1, 2001;
Repealed Eff. October 1, 2021.