

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



October 6, 2004

Regulation Packages #0203-05

CDSS MANUAL LETTER NO. FS-03-03A

TO: HOLDERS OF THE FOOD STAMP MANUAL, DIVISION 63

This manual letter has been posted on the Office of Regulations Development website at http://www.dss.cahwnet.gov/ord/FoodStamps_618.htm.

Regulation Package # 0203-05**Effective 10/1/03****Sections 63-405 and 63-503**

On May 13, 2002, Public Law (P.L.) 107-171, also known as the Farm Security and Rural Investment Act of 2002, was signed into law. This Act contains the Food Stamp Reauthorization Act of 2002 which legislates mandatory changes to the Food Stamp Program. Most of these provisions were implemented on October 1, 2002.

Upon implementation of these regulations, federal eligibility for the Food Stamp Program will be restored for legal non-citizens under the age of 18 regardless of the date of entry into the United States.

These regulations were considered at the Department's public hearing held on June 11, 2003.

FILING INSTRUCTIONS

All new revisions are indicated by a vertical line in the left margin. Revisions shown in graphic screen will continue to be shown in that manner until new revisions are done to those pages. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Food Stamp Manual changes was FS-03-03.

<u>Page(s)</u>	<u>Replace(s)</u>
172 and 173	Pages 172 and 173
175 and 176	Pages 175 and 176
312 and 313	Pages 312 and 313

Attachments

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63-405 CITIZENSHIP OR ELIGIBLE NONCITIZEN STATUS 63-405

CWDs shall limit participation in the Food Stamp Program to individuals who are either United States (U.S.) citizens or eligible noncitizens.

For the purpose of qualifying as a U.S. citizen, the U.S. shall be defined as the 50 states and the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. Additionally, citizens of American Samoa, Swain's Island and the Northern Mariana Islands who reside in the U.S. shall be considered to have met the citizenship eligibility requirements.

- .1 A noncitizen who is a lawful resident of the U.S. and meets any of the following requirements is eligible for participation in the federal Food Stamp Program (FSP):

Section 63-405.11 qualified noncitizen and Section 63-405.12 Indefinite Eligibility

or

Section 63-405.2 Indefinite Eligibility

.11 A QUALIFIED NONCITIZEN IS:

- .111 A person who is lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act (INA).
- .112 A refugee under Section 207 of the INA.
- .113 An asylee under Section 208 of the INA.
- .114 A noncitizen who had deportation withheld under Section 243(h) of the INA (before April 1, 1997, or under Section 241(b)(3) of the INA on or after April 1, 1997).
- .115 A Cuban or Haitian entrant as defined in 501(e) of the Refugee Education Assistance Act of 1980.
- .116 A conditional entrant under Section 203(a)(7) of the INA as in effect prior to April 1, 1980.
- .117 A parolee under Section 212(d)(5) of the INA for at least one year.
- .118 An abused/battered spouse and/or unmarried dependent child and/or child of an abused/battered parent and/or parent of an abused/battered child as specified in Section 63-405.5.

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- .12 INDEFINITE FOOD STAMP ELIGIBILITY CRITERIA. The following noncitizens are eligible indefinitely, provided they are one of the qualified noncitizens specified in Section 63-405.11:
 - .121 Who is lawfully admitted to the U.S. for permanent residence and can be credited with 40 qualifying quarters of coverage as specified in Section 63-405.4
 - .122 An active member of the U.S. armed forces or an honorably discharged veteran of the U.S. armed forces, including their spouse or unmarried dependent child, or un-remarried surviving spouse of a deceased veteran, as specified in Section 63-405.3.
 - .123 Is under 18 years of age regardless of the date of entry into the U.S.
 - .124 Who is disabled or blind as specified in Section 63-102(e)(1)(B) through (K), regardless of date of entry. Must show verification of disability benefits.
 - .125 Was lawfully in the U.S. and 65 years or older on August 22, 1996.
 - .126 He lawfully resided in the U.S. for five years beginning on the date of entry.

HANDBOOK BEGINS HERE

- (a) The five-year period begins on the date the immigrant obtains status as a qualified non-citizen through the INS. In cases where the INS grants qualified status retroactively, the CWD shall use the date that INS grants qualified status. For example, a non-citizen enters the country on January 1, 1996, but INS does not complete paperwork until January 1, 1997, and subsequently grants qualified status effective January 1, 1996. The CWD shall begin counting the five-year qualifying period on January 1, 1996.

HANDBOOK ENDS HERE

- .2 The following noncitizens are eligible for food stamp benefits for an indefinite period of time, even if they are not qualified noncitizens as specified in Section 63-405.11.
 - .21 An individual who:

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.74 Reporting the required information about the sponsor and sponsor's spouse should the noncitizen obtain a different sponsor during the certification period and for reporting a change in income should the sponsor or the sponsor's spouse change or lose employment or die during the certification period. Such changes shall be handles in accordance with the timeliness standards and procedures described in Sections 63-505.3 and .5 as appropriate.

.8 Reporting of Illegal Noncitizens

The CWD shall immediately inform the local INS office whenever personnel responsible for the certification or recertification of households discovers that an applicant or a household member is under an order of deportation. For purposes of this section, the term household member shall mean a person whose name appears on the application or other documents and who would have been a food stamp household member except for his/her noncitizen status. When any household member indicates inability or unwillingness to provide documentation of noncitizen status for any household member, that member shall be classified as an ineligible noncitizen. In such cases the CWD shall not continue efforts to obtain such documentation. The ineligible noncitizen's income and resources shall be available to the household as specified in Section 63-503.44. CWD disclosure to INS shall be deemed to be within the administration of the FSP as described in Section 63-201.3.

.81 For reporting purposes, reliable sources of information regarding orders of deportation shall be limited to:

.811 The noncitizen's or other household member's admission.

.812 Food stamp documents, as used in the application or reporting process; or,

.813 Presentation of INS documents showing that the noncitizen is under an order of deportation.

NOTE: Authority cited: Sections 10553, 10554, and 18904, Welfare and Institutions Code. Reference: Sections 10554 and 18904, Welfare and Institutions Code; 7 Code of Federal Regulations (CFR) 273.2(f)(1)(ii)(B)(2), (j)(3) and (4); 7 CFR 273.4(a)(2), (a)(4)(ii) and (iii), (a)(5)(ii)(2)(B) and (2)(G)(1), (C), (E), (F) and (G)(1), (a)(8), and (c)(2)(i); 7 CFR 273.10(b); 7 CFR 273.6; 7 CFR 273.11; U.S.D.A. Food and Nutrition Service Administrative Notice (AN) 92-30; Federal Register, Vol. 56, No. 233, page 63594; Federal Register, Vol. 62, No. 202, dated October 20, 1997; Public Law (P.L.) 100-202 and 100-461, P.L. 104-193, Section 402 (Personal Responsibility and Work Opportunity Reconciliation Act of 1996); P.L. 105-185, Title V, Sections 503 through 510; P.L. 107-171, Title IV, Section 4401; AN 96-47; AN 96-48 (Part A, page 6); AN 96-55; AN 97-02; AN 97-13; AN 97-44; AN 97-82; AN 97-103; AN 97-107; AN 98-13; AN 98-21; AN 98-28; AN 98-30; AN 98-79; AN 98-93; AN 99-01; AN 99-24, AN 02-39, AN 03-04, and AN 03-17; and Section 4401, Food Stamp Reauthorization Act of 2002, P.L. 170-171 [8 USC 1612(a) and 8 USC 1613(c)].

63-406	STUDENTS	63-406
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.1 Applicability.

.11 Any person who is age 18 through 49; physically and mentally fit for employment; and enrolled at least half-time, as defined by the institution, in an institution of higher education (as defined in Section 63-406.111(a)), shall be ineligible to participate in the Food Stamp Program unless that person complies with the eligibility requirements as specified in Section 63-406.2.

.111 To be considered a student at an institution of higher education, a person specified in Section 63-406.111(a)(1) needs only to be enrolled at least half-time; whereas a person specified in Section 63-406.111(a)(2) needs to be both enrolled at least half-time and enrolled in a regular curriculum. A regular curriculum at an institution of higher education means the standard requirements for graduation or certification/qualification in a particular field of study.

(a) An “institution of higher education” refers to:

(1) A business, trade, technical or vocational school at the post-high school level that normally requires a high school diploma or equivalency certificate for enrollment; or

(2) A junior, community, two-year or four-year college or university, or graduate school, regardless of whether a high school diploma or equivalency certificate is required.

(A) If a college normally requires a high school diploma or equivalency certificate, but does not require either of these for a particular program or course, enrollment in such a program or course does not constitute enrollment in an institution of higher education.

.12 Student eligibility requirements shall not apply to persons age 17 or under, persons age 50 or over, persons physically or mentally unfit for employment, persons attending high school, persons participating strictly in the job training portion of on-the-job-training programs as opposed to the class attendance portion, persons enrolled in an institution of higher education as specified in Section 63-406.111(a)(1) less than half-time, persons enrolled in a regular curriculum in an institution of higher education as specified in Sections 63-406.111 and 63-406.111(a)(2) less than half-time, or to persons enrolled full-time in schools and training programs which are not institutions of higher education.

63-503 DETERMINING HOUSEHOLD ELIGIBILITY AND BENEFIT LEVELS 63-503
(Continued)

- (D) The CWD must inform the sponsored noncitizen either orally or in writing, of the requirement to notify the Attorney General of the indigent determination. The sponsor shall also be notified if administratively possible.
- (e) A battered noncitizen as specified in Section 63-405.5.
 - (1) The battered noncitizen is exempt from sponsorship requirements for 12 months after the CWD has determined there is a substantial connection between the abuse/battery and the need for benefits as specified in Section 63-405.55 and the battered individual does not live with the batterer.
 - (2) After 12 months, the batterer's income and resources will not be deemed if the battery is recognized by a court or the INS and has a substantial connection to the need for benefits and the noncitizen does not live with the batterer.
- (f) Noncitizen children as specified in Section 63-405.133.

.493 Eligibility and Benefit Level

- (a) Income
 - (1) Income deemed available to the noncitizen is determined as follows:
 - (A) Take the total monthly earned and unearned income of the sponsor and the sponsor's spouse if the spouse has also executed an I-864 or I-864A at the time the household containing the sponsored noncitizen applies or is recertified.
 - (i) For the portion of income determined to be earned income of the sponsor and the sponsor's spouse, deduct 20 percent and
 - (ii) Deduct the food stamp monthly gross income eligibility limit for a household equal in size to the sponsor's household, i.e. the sponsor, the sponsor's spouse and any other person who is claimed or could be claimed by the sponsor, or the sponsor's spouse as a dependent for federal income tax purposes.

63-503 DETERMINING HOUSEHOLD ELIGIBILITY AND BENEFIT LEVELS 63-503
(Continued)

- (B) If the noncitizen has already reported gross income information on his/her sponsor, due to Temporary Assistance to Needy Families (TANF) sponsored noncitizen rules, that income amount may be used for Food Stamp Program deeming purposes. However, allowable deductions to be applied to the total gross income of the sponsor and the sponsor's spouse, prior to attributing an income deduction to the noncitizen, shall be limited to the earned income amount and the Food Stamp Program gross monthly income amount stated above.
- (2) Direct cash payment to the noncitizen by the sponsor or the sponsor's spouse shall not be considered as income to the noncitizen unless the amount paid exceeds the amount of the sponsor's income deemed available to the noncitizen. Only the portion of the amount paid that actually exceeds the deemed amount would be considered income to the noncitizen in addition to the deemed income amount.
- (b) Resources
- (1) Resources of the sponsor and sponsor's spouse as determined by Section 63-501 deemed to be that of the noncitizen shall be the total amount of their resources reduced by \$1,500.
- (c) Treatment of Income and Resources of More Than One Sponsored Noncitizen
- If a sponsored noncitizen can demonstrate to the CWD that his/her sponsor sponsors other noncitizens, then the income and resources deemed under this section shall be divided by the number of such noncitizens that apply for, or are participating in the Food Stamp Program.
- If such information about other aliens for whom the sponsor is responsible is not provided to the CWD, the deemed income and resource amounts calculated shall be attributed to the applicant alien in their entirety until such time as the information is provided.
- (d) Changing Sponsors
- If the noncitizen changes sponsors during the certification period, then deemed income/resources shall be recalculated based on the required information of the new sponsor. See Section 63-403.33. The reported change would be handled in accordance with the time frames and procedures in Sections 63-504.3 and .4 as appropriate.
- (e) Repealed by CDSS Manual Letter No. FS-01-02, effective 6/1/01.