

SHD Paraphrased Regulations - Food Stamps

240 Household-Composition

240-1

A "homeless individual" is an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is a supervised shelter designed to provide temporary accommodations, a halfway house, a temporary accommodation in the residence of another individual for no more than 90 days, or a place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. (§63-102(h)(2))

240-1A REVISED 3/07

An individual is considered "homeless" when he/she lacks a fixed and regular nighttime residence and resides in a temporary accommodation in the household of another individual for no more than 90 days. (§63-102h.(2), as amended November 12, 1996) The State policies in regard to the 90-day rule are as follows:

1. If an individual is at a constant address of another person or persons for a 90-day period, the individual is no longer considered homeless for FS purposes.
2. There is no limit on the number of times an individual can be considered homeless, so the 90-day limit applies to each incident.
3. When a homeless individual moves from one person's home to another person's home, a new 90-day period begins.
4. The 90-day time period starts when the homeless individual begins residing in the residence of another person on a temporary basis.

(All-County Information Notice No. I-62-96, December 9, 1996)

240-2

No individual may participate as a member of more than one household or in more than one county in any month except for eligible residents of shelters for battered women and children (see §63-503.46) who were FS Program participants in the dwelling of the abuser. (§63-401.2)

240-2A REVISED 11/05

In addition to making mid-quarter adjustments to benefits as a result of mandatory and voluntary recipient reports mid-quarter, action shall also be taken on certain changes in eligibility status at the end of the month in which timely and adequate notice can be provided to the household.

The changes that are considered county-initiated and can occur any time during the quarter are:

Sanctions or financial penalties;

Failure of the household to comply with a Quality Control Review;

Benefits are applied for and approved for a household member in another household or for the household;

Discontinuances due to the termination of a CalWORKs inter-county transfer;

Status changes in CFAP;

COLAs in food stamps, CalWORKs or Social Security;

Adjustments due to recipient error on the QR 7 or mid-quarter reports of information or lack of action by the county on the QR 7 or mid-quarter report;

Three-month ABAWD time limit ends or ABAWD regains eligibility and subsequently stops meeting work requirements;

Discontinuance due to ineligibility determination when recertification falls outside the Submit Month.

(§63-509(h))

240-2B ADDED 9/08

Where a child who receives food stamps is placed in foster care, the effective date of the child's FS discontinuance would be the end of the quarter, unless the child is approved for food stamp

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benefits in the foster care household (per MPP section 63-509(h)(1)(C)) in which case the county would discontinue the child mid-quarter. This regulation citation would prevail over ACL 03-18 instructions that directed removal of the foster care child from the FS household be a mid-quarter county initiated action.

(ACIN I-58-08, August 13, 2008)

240-3

In general, state regulations define a household for FS purposes as a group of individuals who live together and customarily purchase food and/or [emphasis added] prepare meals together for home consumption. (§63-402.13) State regulations define "customarily purchasing and preparing meals together" as an FS household which is doing so usually, or as a matter of course. (§63-402.131)

240-3A

Federal regulations define an FS household as a group of individuals who live together and customarily purchase food and [emphasis added] prepare meals together for home consumption. (7 Code of Federal Regulations (CFR) §§273.1(a)(3))

240-4 ADDED 4/04

Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals as part of the institution's normal services. As a general rule residents of institutions are not eligible for participation in the Food Stamp Program. (§63-402.4)

240-4A

The following individuals shall not be considered as residents of institutions:

- .41 Residents of federally subsidized housing for the elderly.
- .42 Narcotic addicts or alcoholics who reside at a treatment center for the propose of regular participation in a treatment and rehabilitation program.
- .43 Disabled or blind individuals who are residents of a group living arrangement and who receive benefits under Title II of the Social Security Act.
- .44 A woman or women with children temporarily residing in a shelter for battered women and children.
- .45 Residents of foster family settings, who shall be considered as members of the household providing FC.
- .46 Residents of public or private nonprofit shelters for homeless persons.

(§63-402.4)

240-5

For FS Program purposes, foster care and (effective January 1, 2000) Kin-GAP children are to be considered "boarders" within the meaning of §63-402.3 Sections 63-402.3(a) and (b) (currently 63-402.31) which require that a boarder pay reasonable compensation to the household for lodging and meals and §63-402.33(a) which prohibits granting boarder status to children under 18 under the parental control of an adult household member, do not apply with regard to foster care or Kin-GAP children. In addition, the foster care and Kin-GAP payments must be excluded from consideration as income to the FS household providing the foster or Kin-CAP care. The option remains for the household to have the foster or Kin-GAP children treated as members of the household. In this case, the entire foster or Kin-GAP care payment would then count as income. (All-County Letter (ACL) No. 89-08, January 20, 1989; ACLs No. 99-92, October 25, 1999 and No. 99-97, November 4, 1999, implementing Senate Bill No. 1901, effective January 1, 2000)

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240-6

Separate household status shall not be granted to an individual living with the household who is a spouse (as defined in §63-102s.) of another household member. (§63-402.143)

240-6A ADDED 3/07

QUESTION:

Can two people in a common-law marriage or in a relationship holding themselves out to be married be in separate households?

ANSWER:

No. According to MPP 63-402.14 and 63-402.143 which state "separate household status shall not be granted to: An individual living with the household who is a spouse of a member of the household" Per MPP 63-102(s)(9), a spouse is defined as either of two individuals who would be defined as married to each other under applicable state law or who are cohabitating and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople. Since the couple is holding themselves out to be married, and therefore considered spouses, they cannot claim separate household status.

(All County Information Notice I-58-06, page 2, August 23, 2006)

240-6B ADDED 3/07

SCENARIO:

A food stamp household consists of a 20 year-old mother with one eligible child. The mother and child share their household with the mother's former stepfather. The former stepfather has confirmed that he was married to the client's mother, but they have been divorced for at least five years. The SAWS 2 and all applicable paperwork claim that the mother and her child purchase and prepare separately from the former, now divorced, stepfather.

QUESTION:

Does the divorce eliminate the requirement that this household be considered one household?

ANSWER:

Yes, they can be considered separate households based on the following reasoning. In the above situation, they are not eating, purchasing, and preparing together. According to 63-402.12, "An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others except as otherwise specified in MPP 63-402.14" may be considered a separate household.

Per MPP 63-402.142, "parents living with their natural, adopted or stepchildren, or children living with their natural, adopted, or stepparents" shall not be separate households "(a) unless a child is: (1) 22 years of age or older and purchases food and prepares meals for home consumption separately from his/her parents; or (2) participating in the other parent's food stamp household". However, since the former stepparent is no longer married to the 20 year-old's parent, the former stepparent is not responsible for the support of the child. Since the former stepparent is under no obligation to support the former stepchild, MPP 63-402.142 does not apply in this case. Unless there is information to the contrary showing a legal obligation to support the former stepparent, two separate households are allowable.

(All County Information Notice I-58-06, page 3, August 23, 2006)

240-7

Individuals who are excluded as FS household members are to be included as members of an FS household for purposes of defining a household under §63-402.1. (§63-402.22)

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240-8 REVISED 2/05

Separate household status shall not be granted to a child under 18 years of age, living with and under the parental control, as defined in Section 63- 102(p), of a household member who is not his or her parent. (63-402.141)

A minor child is not considered to be under the parental control of an individual with whom he/she resides if the minor has entered into a valid marriage, is on active duty in any branch of the United States armed forces or has been emancipated by court order.

If none of the above conditions apply, the eligibility worker should evaluate the following criteria on a case by case basis to determine if a minor child is to be considered under parental control of an adult: 1) the degree to which the minor child is economically self-supporting and managing his/her own affairs; 2) the proximity of the minor to the age of 18 and 3) whether the minor is absent from the adult for significant periods of time and comes and goes without the adult's approval. (§63-102(p)(1))

240-9 ADDED 2/05

A household is required to demonstrate that it is eligible only once each quarter based on information reported on the QR 7.

When the household reports the addition of a new household member during the quarter, all resources and income of that person must be considered in the county determination whether to increase benefits. The county may only take action to increase not decrease or discontinue benefits based on the household's voluntary mid-quarter report of household composition changes. (§§63-508.67 and .671)

241-3

The FS policy interpretation as to the determination whether a parent and child live together states that the focus should be on the degree of dependency between them. Factors which would suggest a dependent living situation include:

- (a) Parent and child live on the same parcel of land.
- (b) Parent and child live in the same single-family dwelling.
- (c) Parent and child use the same kitchen for a majority of the time that they use a kitchen.
- (d) Parent and child use the same bathroom and/or sleeping quarters for a majority of the time that they use a bathroom or sleeping quarters.
- (e) Parent and child have access to and use some of the same rooms other than the facilities listed in (c) and (d) above (e.g., living room, family room, dining room).

Factors which suggest independence in the living situation include:

- (a) Parent and child have separate entrances to their respective living quarters.
- (b) Parent and child have separate mailing addresses.
- (c) Parent and child are billed separately by a majority of the utilities that service them.
- (d) Parent and child have a tenant/landlord relationship in that one pays rent to the other for his/her separate living quarters as indicated in a signed lease.

Each parent/child household should be evaluated individually. No one factor in and of itself is conclusive.

(FS Question and Answer Distribution System (FSQUAD) Number 402.1-1)

241-4

There are parents who share joint physical custody of their child(ren) on a 50-50 basis. If the children are FS eligible, they may participate with the custodial parent providing the majority of meals in a given month. When children eat the same number of meals with each parent, the first

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custodial parent to apply receives FS for the children, unless the parents mutually agree otherwise, in which case it does not matter with whom the children eat the majority of meals. The county shall insure that the children do not receive FS benefits in more than one household in a given month. (§63-402.15)

241-5

The United States Supreme Court held that Congress had a rational basis both for treating parents, children and siblings, who live together as a "household", and for applying a different standard for determining whether these groups constituted a "household" than the standard used in determining household status in other situations. This FS distinction did not violate equal protection. These groups of relatives could therefore be included in a single household, even when they did not purchase and prepare meals together. (*Lyng v. Castillo* (1986) 477 U.S. 635, 106 S.Ct. 2727)

241-6

Separate household status shall not be granted to an individual living with the household who is a spouse (as defined in §63-102s.) of another household member. (§63-402.143)

241-7

State regulations provide that separate FS household status shall not be granted to parents living with their children (including adopted and stepchildren) or children living with their parents (including adoptive or stepparents) unless a child is:

1. 22 years of age or older and purchases food and prepares meals for home consumption separately from his/her parents; or
 2. Participating in the other parent's FS household.
- (§63-402.142)

241-9

If an FS household consists of a 25-year-old husband, a 20-year-old wife, and their child, they cannot be considered a separate household if they reside with the wife's parents. If they reside with the husband's parents, separate household status can be established. (All-County Information Notice No. I-62-96, December 9, 1996, interpreting §63-402.142)

243-1

Supplemental Security Income/State Supplemental Program (SSI/SSP) recipients are ineligible to receive FS benefits. (§63-402.226) This is because federal regulations state that the Secretary of Health and Human Services has determined that California's SSI payment includes the value of the FS allotment. (7 Code of Federal Regulations §273.20(a))

243-1A

A person who actually receives SSI/SSP benefits is ineligible for FS benefits. Once receiving SSI/SSP benefits, the person remains ineligible for FS benefits until actually terminated from the SSI/SSP program, even during those months when SSI/SSP benefits are interrupted or suspended. (§63-402.226)

243-1B

It is the position of the Food Stamp Program Bureau that when an individual whose disability benefits from SSI/SSP based on drug addiction and alcoholism, are suspended, and the individual receives AFDC, that notwithstanding §63-301.7, the individual is not eligible for FS benefits. The individual is included in the household for the purpose of defining a household per

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§63-402.22, but is to be treated as a non-household member for the purpose of determining household size, eligibility and benefit level, per §63-503.443. (All-County Information Notice I-39-96, July 19, 1996)

243-2

Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals as part of the institution's normal services and the institution has not been authorized to accept coupons. Residents of institutions are not eligible for participation in the FS Program. (§63-402.4)

243-3 REVISED 9/08

Certain legal noncitizens of the United States (U.S.) shall be eligible for CFAP if they are not eligible for federal Food Stamp (FS) benefits, based solely on their immigration status under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 as amended by the Food Stamp Reauthorization Act of 2002. Legal presence can be verified through USCIS at application [i.e. Systematic Alien Verification for Entitlements (SAVE) System]. Legal noncitizens whose time limit has expired for the federal program but would otherwise remain eligible for federal benefits are eligible for CFAP.

Welfare and Institutions Code Section 18945 established CFAP eligibility for victims of trafficking, domestic violence or other serious crimes.
(§63-403.1 and .11)

243-4

Individuals who do not meet the citizenship or eligible alien or eligible sponsored alien status requirements are to be excluded from the food stamp household. (§63-402.221)

243-5

Households with striking members shall be ineligible to participate in the FS Program unless the household was eligible one day prior to involvement in the strike action and on the date of application. (§63-402.82)

243-6 REVISED 11/05

A convicted drug felon is an individual who has been convicted in a state or federal court of a felony that has, as an element the distribution of a controlled substance or other disqualifying conviction consisting of any elements listed in subsections 63-402.229(a) and (b) including unlawfully transporting, importing, into this state, the possession for sale, purchasing for purposes of sale, and various other elements. Controlled substance is defined in 21 United States Code §802(6). The conviction must be for conduct occurring after August 22, 1996. Such a disqualified drug felon is treated as an excluded FS household member. (§63-402.229, as revised July 1, 2005)

243-6A

A convicted drug felon may only be excluded from the FS household when the conviction is for conduct occurring after August 22, 1996.

Households whose FS benefits were reduced, denied or terminated because a household member was disqualified because of a felony drug conviction which occurred after August 22, 1996, but was based on conduct which occurred prior to that date, shall be entitled to have their benefits restored.

(All-County Letter No. 98-16, March 9, 1998, referencing Public Law 105-33, and §63-402.229)

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243-6B ADDED 2/05

State law provides that:

- (a) Subject to the limitations of subdivision (b), a convicted drug felon shall be eligible for food stamps under this section.
- (b) Subdivision (a) does not apply to a person who has been convicted of unlawfully transporting, importing into this state, selling, furnishing, administering, giving away, possessing for sale, purchasing for purpose of sale, manufacturing a controlled substance, possessing precursors with the intent to manufacture a controlled substance, or cultivating, harvesting or processing marijuana or any part thereof pursuant to Section 11358 of the Health and Safety Code.
- (c) Subdivision (a) does not apply to a person who has been convicted of unlawfully soliciting, inducing, encouraging, or intimidating a minor to participate in any activity in subdivision (b).
- (d) As a condition of eligibility to receive food stamps pursuant to subdivision (a), an applicant convicted of a felony drug offense that is not excluded under subdivision (b) or (c) shall be required to provide proof of one of the following subsequent to the most recently related drug conviction:
 - (1) Completion of a government-recognized drug treatment program.
 - (2) Participation in a government-recognized drug treatment program.
 - (3) Enrollment in a government-recognized drug treatment program.
 - (4) Placement on a waiting list for a government-recognized drug treatment program.
 - (5) Other evidence that the illegal use of controlled substances has ceased, as established by the State Department of Social Services.

(Welfare and Institutions Code (W&IC) §18901.3)

243-7

Individuals who are fleeing felons as specified in §63-102f.(4) [actually §63-102(f)(4)] and/or persons in violation of their probation or parole, as set forth in §63-102p.(2) [actually §63-102(p)(2)], are excluded from the FS household. (§63-402.224, as revised effective July 1, 2000)

243-7A

A "fleeing felon" is an individual who is 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. Effective July 1, 2000, the existence of a warrant for arrest shall be presumed to be evidence of fleeing, which can be rebutted if it is established that the individual had no knowledge of being sought by law enforcement. (§63-102(f)(4))

243-7B ADDED 9/08

Per 63-102(f)(4), a person is a fleeing felon and thus ineligible for food stamps even if he is aware of an active felony warrant from another state and is not extraditable to that state. (ACIN I-58-08, August 13, 2008)

243-7C

A "Person in Violation of Probation or Parole" is a person who has violated such a condition under federal or state law. The initial offense for which probation or parole was ordered need not have been a felony. (§63-102(p)(2), effective July 1, 2000)

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243-8

The following individuals are excluded household members: Ineligible aliens (.221); those persons disqualified because they failed without good cause to provide or obtain a Social Security number (.222); those persons who have been disqualified for committing an Intentional Program Violation (.223); fleeing felons and probation/parole violators (.224); workfare sanctioned individuals (.225); SSI/SSP recipients (.226); ineligible students (.227); those persons disqualified for noncompliance with work requirements (.228); and those persons convicted of any federal or state felony drug offense (.229). (§63-402.22)

243-9 ADDED 11/05

If a new household member is reported on the QR 7 and the household is determined ineligible based on Data Month information, the county shall discontinue benefits after providing timely (10 day) notice.

If the household was initially determined eligible based on Data Month information, and prior to authorization of benefits the county learns in the Submit Month that the new member is ineligible, that information is considered a mid-quarter voluntary report. However, the new member is considered an excluded household member and income and resources are treated under §63-503.442 (resources are counted in their entirety and a pro rata share of income counted as income to other household members).

The individual is treated as an excluded household member until the next QR 7. (§63-508.654(c)(1))

244-3

Any person 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 §63-406.111(a)) is ineligible to participate in the FS program unless that person meets the requirements of §63-406.2. (§63-406.1)

These student eligibility requirements do not apply to persons: Aged 17 or under, or aged 50 or over; physically or mentally unfit for employment; attending high school; participating strictly in the job-training portion of OJT programs as opposed to the class attendance portion; enrolled less than half time in an institution of higher education, as defined in §63-406.111(a)(1); enrolled less than half time in a regular curriculum in an institution of higher education as defined in §§63-406.111 and .111(a)(2); or enrolled full time in school and training programs which are not institutions of higher education. (§63-406.12)

244-4

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- or four-year college or university, or graduate school, but not if the college normally requires a high school diploma or equivalency certificate but does not require either for the particular program or course. (§63-406.111(a))

244-5

A "student" as defined in §63-406.1 must meet one of the following criteria on the date of the interview in order to participate in the FS program:

1. Be a paid employee for at least 20 hours per week, or be self-employed for at least 20 hours per week and earning at least the federal minimum wage multiplied by 20 hours.
2. Be approved for state or federally financed work study for the current school term and anticipate working during the term. This exemption begins the later of the month work study is approved, or the term starts, and continues through the end of the month the

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school term ends or the student refuses a work assignment. The exemption does not continue through term breaks of a full month or longer unless the student participates in work study during the break.

3. Be exerting parental control over a dependent household member under the age of six.
4. Be exerting parental control over a dependent household member aged 6 to 12 when adequate child care services are not available for the individual to attend class and work 20 hours per week or participate in a state or federally financed work study program.
5. Be a recipient of AFDC (now CalWORKs).
6. Be assigned to or placed in an institution of higher education through or in compliance with the requirements of subsections (a) through (e). These include self-initiated placements, and voluntary participation, in certain situations, through JTPA, the FSE&T program, the JOBS Program, any program under §236 of the Trade Act of 1974, or a state or local program for low-income individuals, determined by the county to be providing at least one of the components specified in §63-407.841.
7. Be enrolled full time in an institution of higher education, and is a "single" parent with responsibility for the care of a dependent child under age 12. A "single" parent can be married, or have been married, as long as no other natural, adoptive, or stepparent lives in the household; or the single parent may be a full-time student who exercises parental control over the child when there is no natural, adoptive, or stepparent in the household.

(§63-406.21)

245-1

Effective June 1, 2001 the following regulation provided a definition of Public Assistance: "...a program funded under Title IV-A of the Social Security Act of 1935, as amended, or matching state funds for public assistance programs. Programs must be means-tested, and all household members must be receiving or authorized to receive benefits from a Temporary Assistance to Needy Families (TANF) or state-funded program. (§63-102(p)(12))

245-2

Any household in which all FS eligible members receive or are authorized to receive Public Assistance (PA) benefits, shall be considered eligible for FS benefits because of their status as PA recipients. These households are categorically eligible (CE) households. The eligibility factors which shall be accepted for FS eligibility without verification are resource, gross and net income limits, Social Security number information, sponsored alien information, and residency. (§63-301.7)

An inadvertent household or administrative error overissuance can be established against a CE household only when the amount of the overissuance can be calculated on the basis of a change in net income and/or household size. (All-County Letter No. 90-71, August 1, 1990; 7 Code of Federal Regulations §§273.18(a)(1)(iii), (a)(2))

245-2B

A claim shall be handled as an administrative error claim if the overissuance was caused by the action or inaction of any county welfare department (CWD). These claims only apply to categorically eligible households when the calculation of the claim is based on incorrect net income or household size. (§63-801.221)

245-3

Federal rules provide that categorical eligibility cannot be rescinded retroactively. A claim cannot be established if the reason the household was subsequently declared ineligible for PA is due to excess household resources. (54 Federal Register p. 108 (June 7, 1989) page 24513)

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245-4 REVISED 2/05

Prior to June 1, 2001, state FS regulations provided that the following households shall not be considered categorically eligible if any of the following situations exist: a household member is disqualified for an IPV as specified in §63-805; the household fails to comply with the QR requirements specified in §§63-504.32, 63-505.2, .3 and .4; the entire household is disqualified because the principal work registrant failed to comply with the work requirements in §63-407.4 or voluntary quit requirements in §§63-408.1 and .2; or the entire household is disqualified because one or more of its members failed to comply with the requirements of the optional FS Workfare Program in §63-407.91. (§63-301.73) As of June 1, 2001, the regulation was renumbered, and the last two provisions (regarding work requirements and the optional FS Workfare Program) were deleted. (§63-301.74, effective June 1, 2001)

245-4A

The following persons do not affect whether an FS household is treated as "categorically eligible".

- .751 Ineligible non-citizens (§63-403.1)
 - .752 Ineligible students (§63-406)
 - .753 SSI recipients (§63-102(s))
 - .754 SSN-disqualified persons (§63-102(s))
 - .755 Persons institutionalized in an unauthorized facility (§63-402.4)
 - .756 Household members disqualified for failure to comply with work requirements (§63-407.4)
 - .757 GA recipients receiving benefits from a GA program appropriate for categorical eligibility (see, e.g., §63-301.82)
- (§63-301.75, as renumbered effective June 1, 2001)

245-4B

For work registration purposes, the exemptions set forth in §63-407.2 apply to persons in PA categorically eligible (CE) households. A person in a CE household not exempt from work registration is subject to the work requirements set forth in §63-407. (§63-301.76, as renumbered effective June 1, 2001)

245-5

Certain GA households are "categorically eligible" for FS benefits. These categorically eligible GA households are considered eligible for FS because of their status as GA recipients when: (a) The GA Program has criteria equal to, or more restrictive than, the FS gross income test; and (b) The GA Program provides benefits as defined in §63-102g.(1)(A) (which includes those authorized to receive GA benefits, even if not in receipt of such benefits because of suspension, recoupment, or eligible for a grant less than the minimum payable) and must not provide only one-time, emergency payments; and (c) A signed certification that the GA Program is appropriate for categorical eligibility is on file with CDSS; or (d) The GA Program has been certified by FNS as an appropriate program. (§§63-301.81 and .82)

245-6

For categorically eligible GA households, eligibility factors which shall be accepted for FS eligibility without verification are resources (except resource transfers); gross and net income limits; sponsored noncitizen information; and residency. (§63-301.822)

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245-7

Excluded household members who are fleeing felons and probation/parole violators, or drug felons, or sanctioned for Intentional Program Violations, shall have their income and resources counted in their entirety for purposes of determining household eligibility and coupon allotment. In addition, such excluded household members render the household ineligible for categorical aid status.

(All-County Letter No. 98-19, March 17, 1998, referencing §§63-402.22, 63-503.44, and 63-801.7)

245-7A ADDED 2/05

Any excluded drug felon who becomes an eligible food stamp household member as a result of Welfare and Institutions Code (W&IC) 18901.3 will become an included household member, which may result in additional food stamps for the household. (All County Letter 04-59, December 29, 2004)

245-8

When an FS household member is sanctioned for both CalWORKs and FS, the categorically eligible (CE) household does not lose its CE status. However, when the CalWORKs sanction does not result in an FS sanction, the household does lose its CE status. (All-County Information Notice I-34-99, p.2, May 11, 1999, referencing §§63-301.92, 63-301.746)

245-9

The CDSS written policy is that a household (HH) is a categorically eligible (CE) household only if:

1. All members of the federally eligible FS HH are receiving or are authorized to receive benefits from the temporary Assistance to Needy Families (TANF) program; and
2. Those benefits are mean tested; and
3. Those benefits are over 50% TANF funded or, effective October 1, 1999;
4. Those benefits are over 50% TANF maintenance-of-effort (MOE) expenditures.

The CDSS has identified CalWORKs assistance units under the separate state programs for two-parent families as the only eligible TANF MOE eligible recipients.

It is noted that while the All-County Letter (ACL) states that only TANF or TANF MOE HHs qualify as CE, state regulations still provide for categorical eligibility for certain qualified general assistance HHs, under §§63-301.81 and .82.

(All-County Letter No. 99-81, October 5, 1999)

246-2

An "elderly or disabled member" means a member of an FS household who:

- (A) Is 60 years of age or older.
- (B) Receives disability or blindness payments under Title II or Title XVI of the Social Security Act.
- (C) Receives disability retirement benefits from a governmental agency because of a disability considered permanent under §221(i) of the Social Security Act.
- (D) Receives interim assistance benefits pending receipt of Supplemental Security Income (SSI), as long as disability or blindness criteria are evaluated as stringently as under Title XVI of the Social Security Act.
- (E) Receives disability-related medical assistance under Title XIX (Medi-Cal) of the Social Security Act.
- (F) Receives disability-related GA benefits, as long as disability or blindness criteria are at least as stringent as under Title XVI of the Social Security Act.

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(G-K) Meets certain criteria pertaining to veteran's benefits or Railroad Retirement benefits. (§63-102(e)(1))

246-3

The following are considered disabled household members:

- (1) Veterans with a service-connected or nonservice-connected disability rated by the Veteran's Administration as total or paid as total by the Veteran's Administration under Title 38 of the United States Code.
- (2) Veterans considered by the Veteran's Administration to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code.
- (3) Surviving spouses of veterans who are considered by the Veteran's Administration to be in need of regular aid and attendance or permanently housebound or surviving children of veterans considered by the Veteran's Administration to be permanently incapable of self-support under Title 38 of the United States Code.
- (4) Surviving spouses or surviving children of veterans who are considered by the Veteran's Administration to be entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death under Title 38 of the United States Code and who have a disability considered permanent under §221(i) of the Social Security Act.
- (5) Persons who receive an annuity payment under §2(a)(1)(iv) of the Railroad Retirement Act of 1974 and are determined to be eligible to receive Medicare by the Railroad Retirement Board; or §2(a)(1)(v) of the Railroad Retirement Act of 1974 and are determined to be disabled based upon the criteria used under Title XVI of the Social Security Act.

(§63-102(e)(1)(G-K))

246-4

Households in which all adult members are disabled or elderly (see §63-102(e)) and which have no earnings, are not subject to retrospective budgeting or monthly reporting. (§63-505.213)

247-1

Migrant farmworker (per §63-102(m)) and seasonal farmworker (per §63-102(s)) households are excluded from MR/RB and QR/PB where applicable. (§63-505.211, .212)

248-1

Individuals who are fleeing felons as specified in §63-102f.(4) [actually §63-102(f)(4)] and/or persons in violation of their probation or parole, as set forth in §63-102p.(2) [actually §63-102(p)(2)], are excluded from the FS household. (§63-402.224, as revised effective July 1, 2000)

248-2

A "fleeing felon" is an individual who is 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. Effective July 1, 2000, the existence of a warrant for arrest shall be presumed to be evidence of fleeing, which can be rebutted if it is established that the individual had no knowledge of being sought by law enforcement. (§63-102(f)(4))

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248-3

A "Person in Violation of Probation or Parole" is a person who has violated such a condition under federal or state law. The offense for which probation or parole was ordered need not have been a felony. (§63-102(p)(2), effective July 1, 2000)

248-5 REVISED 11/05

A convicted drug felon is an individual who has been convicted in a state or federal court of a felony that has, as an element the distribution of a controlled substance or other disqualifying conviction consisting of any elements listed in subsections 63-402.229(a) and (b) including unlawfully transporting, importing, into this state, the possession for sale, purchasing for purposes of sale, and various other elements. Controlled substance is defined in 21 United States Code §802(6). The conviction must be for conduct occurring after August 22, 1996. Such a disqualified drug felon is treated as an excluded FS household member. (§63-402.229, as revised July 1, 2005)

248-5A

A convicted drug felon may only be excluded from the FS household when the conviction is for conduct occurring after August 22, 1996.

Households whose FS benefits were reduced, denied or terminated because a household member was disqualified because of a felony drug conviction which occurred after August 22, 1996, but was based on conduct which occurred prior to that date, shall be entitled to have their benefits restored.

(All-County Letter No. 98-16, March 9, 1998, referencing Public Law 105-33, and §63-402.229)

248-6 REVISED 11/05

Under QR/PB, when the food stamp household also receives CalWORKs, the household must also report mid-quarter changes in fleeing felon/disqualifying drug felon/parole or probation status, and income in excess of the IRT. (§63-509(b)(1)(B))

The county must delete the individual from the PAFS household when that person's fleeing felon/disqualifying drug felon/parole or probation violation was reported at the end of the month after 10-day notice can be provided. (§63-509(c)(1))

248-7

It is the position of the FS Program Bureau that when an individual whose disability benefits from SSI/SSP based on drug addiction and alcoholism, are suspended, and the individual receives AFDC, that notwithstanding §63-301.7, the individual is not eligible for FS benefits. The individual is included in the household for the purpose of defining a household per §63-402.22, but is to be treated as a non-household member for the purpose of determining household size, eligibility and benefit level, per §63-503.443. (All-County Information Notice I-39-96, July 19, 1996)

248-8

It is the position of the CDSS that a person who pleads guilty to a drug felony, and then is permitted to enter a drug court/diversion program prior to entry of judgment, is not considered a drug felon for either CalWORKs or FS. However, if the individual fails to meet all program requirements, and judgment is entered, the date the judge enters the judgment (even if the judgment is retroactive to the date of the plea) is the date the person is considered a drug felon. (All-County Information Notice No. I-71-99, September 23, 1999)

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248-9

It is the position of the CDSS that when a felony drug judgment has been entered against a person, and the conviction is reduced to a misdemeanor or the record is expunged, that the person is no longer ineligible for CalWORKs or FS. However, if the person has previously been excluded from those programs, there is no retroactive eligibility. (All-County Information Notice No. I-71-99; September 23, 1999)

248-10

A minor who is convicted of a drug offense in a criminal court proceeding must have been convicted as an "adult" in order for the exclusion penalties to be applied. This applies to both CalWORKs and FS. (All-County Information Notice No. I-71-99, September 23, 1999)

248-11 ADDED 2/05

State law provides that:

- (a) Subject to the limitations of subdivision (b), a convicted drug felon shall be eligible for food stamps under this section.
- (b) Subdivision (a) does not apply to a person who has been convicted of unlawfully transporting, importing into this state, selling, furnishing, administering, giving away, possessing for sale, purchasing for purpose of sale, manufacturing a controlled substance, possessing precursors with the intent to manufacture a controlled substance, or cultivating, harvesting or processing marijuana or any part thereof pursuant to Section 11358 of the Health and Safety Code.
- (c) Subdivision (a) does not apply to a person who has been convicted of unlawfully soliciting, inducing, encouraging, or intimidating a minor to participate in any activity in subdivision (b).
- (d) As a condition of eligibility to receive food stamps pursuant to subdivision (a), an applicant convicted of a felony drug offense that is not excluded under subdivision (b) or (c) shall be required to provide proof of one of the following subsequent to the most recently related drug conviction:
 - (1) Completion of a government-recognized drug treatment program.
 - (2) Participation in a government-recognized drug treatment program.
 - (3) Enrollment in a government-recognized drug treatment program.
 - (4) Placement on a waiting list for a government-recognized drug treatment program.
 - (5) Other evidence that the illegal use of controlled substances has ceased, as established by the State Department of Social Services.

(Welfare and Institutions Code (W&IC) §18901.3)

248-11A ADDED 2/05

Assembly Bill 1796 adds Welfare and Institutions Code (W&IC) 18901.3 and provides that individuals convicted of felony use or possession for personal use of a controlled substance, or an offense not listed under "Disqualifying Drug Felonies", shall be potentially eligible for food stamps. Individuals with felony convictions involving the selling, manufacturing, or distributing of controlled substances shall continue to be ineligible for food stamps. (All County Letter 04-59, December 29, 2004)

248-11B REVISED 11/05

Individuals who have been convicted in a state or federal court of a qualifying felony drug offense (not a disqualifying felony specified in §63-402.229) shall, as a condition of eligibility provide proof of one of the following subsequent to the most recently related drug conviction:

- (1) Completion of a government-recognized drug treatment program.

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- (2) Participation in a government-recognized drug treatment program.
- (3) Enrollment in a government-recognized drug treatment program.
- (4) Placement on a waiting list for a government-recognized drug treatment program.
- (5) Other evidence that the illegal use of controlled substances has ceased.

A government-recognized drug treatment program is a program licensed, certified, or funded by a government entity, or a program in which a government or court entity has directed the applicant to participate. Sober Living Environment (SLE) group living facilities emphasizing "Clean and Sober" living shall also be considered government recognized programs or proof that drug use has ceased. Applicants shall be asked to provide proof that they meet the conditions in 1-4 above. When such proof is not available, the county shall accept self-certification under penalty of perjury as proof.

When condition 5 is used, the applicant must certify under penalty of perjury that the illegal use of controlled substances has ceased. If proof of the "other evidence" is unavailable, the county shall accept self-certification under penalty of perjury as proof.

(All County Letter 04-59, December 29, 2004; §63-300(e)(11) and (12))

248-11C ADDED 2/05

In addition to identifying potentially eligible drug felons from reports on the QR 7 and at recertification, counties may or may not send fliers or utilize automated systems to identify drug felons potentially eligible for food stamps. (All County Information Notice I-03-05, January 21, 2005 question and answer #2)