

Title of Proposed Rule: Required Federal Updates

CDHS Tracking #: 17-03-06-01

Office, Division, & Program:
OES, FEAD

Rule Author:
Karen Dyke

Phone: (303) 866-2538
E-Mail: karen.dyke@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.

Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.

The Food Assistance Program is proposing the following amendments to existing Volume IV rules to incorporate updated federal guidance and mitigate potential audit findings, provide enhanced policy clarification to assist county staff in making eligibility decisions, and to promote cross-program consistency by aligning income conversion calculations with other program areas:

- 1) 4.402(A)(2) Weekly and bi-weekly income conversion frequencies need to be amended to align with Medicaid and cash programs so that all household income is equitably converted.
- 2.) 4.070, 4.070.2, and 4.070.22 reference incorrect rule citations for discrimination complaint procedures. These citations must be updated to refer to the correct locations in Volume IV.
- 3.) 4.903.31 refers to the Management Evaluation review process for small, medium, and large counties; however this process has recently changed and received federal approval to refer to “project areas,” which may encompass multiple counties.
- 4.) 4.802.1(A)(1) does not address the 90-day timeframe by which appellants must request a local or state-level hearing to appeal Food Assistance eligibility decisions. This update will align with 4.802.1(A)(2) and remove ambiguity for Administrative Law Judges.
- 5.) 4.405(F) stipulates that state or county Colorado Works diversions intended to cover a period exceeding 120 days shall be counted as income available to the household. Federal guidance states this should be a 90-day timeframe.
- 6.) 4.304(B-D) lacks clarity regarding the definition of “fleeing felon” and expectations for how the local office must make this assessment. Language will be added here and in 4.050 and 4.054.6 to define these terms per recent federal clarification.
- 7.) 4.504.6(2) refers to death information obtained through SDX and BENDEX interfaces as being verified upon receipt. This is erroneous and only death information substantiated by the Burial Assistance Program meets VUR criteria.

Document 7

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State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
7 U.S.C. §§ 2011-2036	Legal authority for states to administer the Supplemental Nutrition Assistance Program
7 CFR 273.10(c)(2)	Federal regulation establishing the process to convert household income when prospectively averaging anticipated earnings over the certification period. This provision allows state agencies to define their own conversion standards.
7 CFR 272.6	Federal regulation prohibiting discrimination and outlining the procedure for filing civil rights complaints
7 CFR 271.2, 275.5, and 7 CFR 275.6	Federal regulations governing Management Evaluations which specify size, frequency, scope, and assessment requirements of project areas to be reviewed
7 CFR 273.15(g)	Federal regulation governing the administration of fair hearings which specify the time period allowed for requesting a hearing
7 CFR 273.9(c)(8)	Federal regulation governing which types of income are excluded for purposes of determining a household's income eligibility. Federal policy memo clarification was utilized to supplement the understanding of this regulation.
7 CFR 273.11(n)	Federal regulation concerning fleeing felons and probation or parole violators. Final rule publication in federal register is located at 80 FR 54410.
7 CFR 272.1(c)	Federal regulation outlining parties to whom Food Assistance applicant or participant information can be disclosed
7 CFR 272.14	Federal regulation requiring states to monitor the SSA Death Master File and independently verify SNAP participant matches

Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

The proposed rule updates are unlikely to directly impact Food Assistance applicants or recipients with the exception of the amendment to change income conversion frequencies. This rule change may positively impact all Food Assistance households with income received weekly or bi-weekly by reducing the multiplication factor.

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

Dependent upon the date of application or reapplication for benefits, all Food Assistance households in which a household member has an income source paid weekly or bi-weekly may see an increase in their benefit allotments due to the reduced multiplication factor used to convert income for these frequencies.

3. Fiscal Impact

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just "no impact" answer should include "no impact because...."***

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

Enhancements to the Colorado Benefits Management System (CBMS) were implemented previously to resolve system contributions to audit findings. No other system enhancements are anticipated as a result of the proposed rule revisions. There is no anticipated fiscal impact to state operations as the proposed rule modifications are clarifications of existing policies rather than novel regulations.

County Fiscal Impact

There are no anticipated county fiscal impacts as the proposed rule updates are not expected to directly affect current business practices or increase county workload. Instead, the Food Assistance Program anticipates that enhanced clarification in state regulations may actually improve county staff's ability to make timely and accurate eligibility decisions reducing the burden of attempting to decipher previously unclear program policies.

Federal Fiscal Impact

There are no anticipated federal fiscal impacts associated with the proposed rule updates because they have all been previously incorporated into federal regulation, communicated through official federal guidance, or left to states to determine and implement individual state options.

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Other Fiscal Impact (such as providers, local governments, etc.)

There are no anticipated fiscal impacts to community based organizations, local governments, sub-recipients, or other Food Assistance Program partners because the proposed rule updates pertain to clarifying existing regulations rather than developing new policies which may affect external stakeholders.

4. Data Description

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

Data was not a factor in the development of the proposed rule updates.

5. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”

There are no available alternatives to reliably ensure state-wide alignment and compliance with federal regulation. Because the Food Assistance Program is state run and county administered, state-level regulations must be promulgated to guarantee consistency and equitable treatment of all Program applicants and participants.

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OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
4.402(A)(2)	Outdated weekly and bi-weekly conversions	Weekly Conversion- Multiply Weekly Average by 4.333333 Bi-Weekly (Every Two Weeks) Conversion- Multiply Bi-Weekly Average by 2.166666	Weekly Conversion- Multiply Weekly Average by 4.3 Bi-Weekly (Every Two Weeks) Conversion- Multiply Bi-Weekly Average by 2.15	The updated conversions align with Medicaid, Colorado Works, and Adult Financial income calculations	
4.070	Incorrect references to rule citations	For complaints of discrimination, refer to 4.060.2 through 4.060.22.	For complaints of discrimination, refer to 4.070.2 through 4.070.22.	Correct discrimination complaint procedures are located in 4.070-4.070.22	
4.070.2	Incorrect reference to rule citation	... as outlined in 4.060.21 "Discrimination Complaint Procedure,"	... as outlined in 4.070.21 "Discrimination Complaint Procedure,"	Correct discrimination complaint procedures are located in 4.070-4.070.22	
4.070.22	Incorrect reference to rule citation	...information specified in 4.060.21 "Discrimination Complaint Procedure,"	...information specified in 4.070.21 "Discrimination Complaint Procedure,"	Correct discrimination complaint procedures are located in 4.070-4.070.22	
4.903.31	Outdated thresholds for small, medium, and large review areas, outdated language for review area	A. At least once annually on each large county containing more than seven thousand (7,000) participating households; B. At least once every two (2) years on each medium county containing two hundred and fifty (250) to seven thousand (7,000) participating households; and, C. At least once every three (3) years on each small county containing less than two hundred and fifty (250) participating households. [...] The county shall be responsible for submitting any factual corrections to the management evaluation review within fifteen (15) calendar days, and shall submit a final plan to correct all other cited deficiencies within thirty (30) calendar days of receiving the review. The response shall include specific actions, persons responsible for implementation, and date for completion. When the	A. At least once annually on each large project area containing twenty-five thousand and one (25,001) participating households; B. At least once every two (2) years on each medium project area containing five thousand (5,00) to twenty-five thousand (25,000) participating households; and, C. At least once every three (3) years on each small project area containing four thousand nine hundred and ninety-nine (4,999) or fewer participating households. [...] The county shall be responsible for submitting any factual corrections to the management evaluation review within twenty (20) state working days, and shall submit a final plan to correct all other cited deficiencies within twenty (20) state working days of receiving the review. The response shall include specific actions, persons responsible for implementation, and date for completion. When the review identifies ongoing problems in critical areas, the county response shall	Update federal guidance has redefined the size of small, medium, and large project areas which may include more than one county. The timeframe to rebut audit findings and to respond with a proposed corrective action plan should each be 20 state working days.	

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		review identifies ongoing problems in critical areas, the county response shall also include a method for monitoring implementation of the plan and reporting progress to the State Office on at least a quarterly basis.	also include a method for monitoring implementation of the plan and reporting progress to the State Office on at least a quarterly basis.		
4.802.1(A)(1)	Missing timeframe for appeal request	A. A household shall be allowed to request a local level dispute resolution conference or state-level fair hearing on the following: 1. Any action by the local office.	A. A household shall be allowed to request a local-level dispute resolution conference or state-level fair hearing on the following: 1. Any action by the local office that occurred in the previous ninety (90) calendar days.	Clarification is being added that any action appealed must be appealed within 90 calendar days.	
4.405(F)	Incorrect threshold for length of time diversion payment is meant to cover	State and county diversion payments under Colorado Works shall be excluded as a non-recurring lump sum payment if the payment does not cover more than one hundred twenty (120) days of expenses and is not expected to occur again in a twelve (12) month period.	State and county diversion payments under Colorado Works shall be excluded as a non-recurring lump sum payment if the payment does not cover more than ninety (90) days of expenses and is not expected to occur again in a twelve (12) month period.	Federal guidance has clarified this should be 90 days instead of 120	
4.304.4(B-D)	Unclear language regarding which individuals fall under the umbrella of "fleeing" or actively avoiding prosecution	B. Individuals who are fleeing to avoid prosecution for a felony under a state or federal law are ineligible to participate in the Food Assistance Program. C. Individuals convicted of a crime that is classified as a felony under state or federal law and who are fleeing to avoid custody or confinement for the felony are also ineligible to participate in the Food Assistance Program. D. Individuals who are currently violating a condition of probation or parole imposed under a federal or state law are ineligible to participate in the Food Assistance Program.	B. Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony shall not be considered eligible household members. If an individual is suspected of being a fleeing felon, either by their own admission or based on a report from law enforcement, the fleeing status must be verified in order to determine if the client is eligible for Food Assistance benefits. The following four part test must be used to determine if the individual would be considered a fleeing felon for Food Assistance purposes: 1. There is an outstanding felony warrant for the individual by a Federal, State, or local law enforcement agency and the underlying cause for the warrant is for committing, or attempting to commit, a crime that is a felony under the law of the place from which the individual is fleeing or is a high misdemeanor under the law of New Jersey; 2. The individual is aware of, or should reasonably have been able to expect that, the felony warrant has already	Federal guidance provides options to state/county agencies in determining fleeing felon/probation or parole violator status. Colorado has elected to allow local county offices to employ the four part test to make this determination.	

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			<p>or would have been issued;</p> <p>3. The individual has taken some action to avoid being arrested or jailed; and</p> <p>4. The Federal, State, or local law enforcement agency is actively seeking the individual as provided in 4.304.4(C)(1).</p> <p>C. Individuals who are determined to be a parole or probation violator shall not be considered to be an eligible household member. To be considered a probation or parole violator, an impartial party, as designated by the agency, must determine that the individual violated a condition of his or her probation or parole imposed under Federal or State law, and that Federal, State, or local law enforcement authorities are actively seeking the individual to enforce the conditions of the probation or parole as outlined below.</p> <p>1. For the purposes of this provision, actively seeking is defined as follows:</p> <p>a. A Federal, State, or local law enforcement agency informs the local Food Assistance office that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within twenty (20) days of submitting a request for information about the individual to the local office;</p> <p>b. A Federal, State, or local law enforcement agency presents a felony arrest warrant as provided in 4.304.4(B)(1); or</p> <p>c. A Federal, State, or local law enforcement agency states that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within thirty (30) days of the date of a request from a local Food Assistance office about a specific outstanding felony warrant or probation or parole violation.</p>		

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4.050(C)(1)	Non-disclosure regulations are missing details necessary to align with Federal regulations	1. Persons directly connected with the administration or enforcement of the regulations or provisions of the Food and Nutrition Act of 2008, Public Law No. 110-246, as amended, (codified at 7 USC 2012), other federal assistance programs, or federally-assisted state programs which provide assistance on a means-tested basis to low income individuals. The rules contained in this manual do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours or by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203.	1. Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other federal assistance programs, federally-assisted state programs providing assistance on a means-tested basis to low income individuals, or general assistance programs which are subject to the joint processing requirements in 4.202.1. The rules contained in this manual do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours or by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203.	Language is being updated to mirror federal regulation regarding requests from law enforcement and other parties to which information may be disclosed.	
4.050(C)(3)	Non-disclosure regulations are missing details necessary to align with Federal regulations	3. Except for IRS information, local, state or federal law enforcement officials for the purpose of investigating an alleged violation of the regulations of Public Law No. 110- 246, as amended, (codified at 7 USC 2012). The request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person about whom the information is requested; The agency will provide the address, Social Security Number, and, if available, photographs of any member of a household on request by a federal, state or local law enforcement officer. The officer must furnish the name and notify the agency that the individual is fleeing to avoid prosecution, custody, or confinement after a conviction for a crime or attempt to commit a crime, and that under the law, the crime is a felony (or high misdemeanor in New Jersey). The information will also be provided if the individual has violated a condition of probation or parole imposed under federal or state law. Information will also be provided if the member of the household has information necessary for the	3. Local, State or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulation. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person about whom the information is requested; Local, State, or Federal law enforcement officers acting in their official capacity, upon written request by such law enforcement officers that includes the name of the household member being sought, for the purpose of obtaining the address, social security number, and, if available, photograph of the household member, if the member is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or a high misdemeanor in New Jersey), or is violating a condition of probation or parole imposed under a Federal or State law. The agency shall provide information regarding a household member, upon written request of a law enforcement officer acting in his or her official capacity that includes	Language is being updated to mirror federal regulation regarding requests from law enforcement and other parties to which information may be disclosed.	

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		officer to conduct an official duty related to a fleeing felon or parole violation;	<p>the name of the person being sought, if the other household member has information necessary for the apprehension or investigation of the other household member who is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole imposed under Federal or State law.</p> <p>The agency must accept any document that reasonably establishes the identity of the household member being sought by law enforcement authorities. If a law enforcement officer provides documentation indicating that a household member is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole, the agency shall follow the procedures in 4.304.4 to determine whether the member's eligibility in the Food Assistance Program should be terminated. A determination and request for information that does not comply with the terms and procedures in 4.304.4 is not sufficient to terminate the member's participation. The agency shall disclose only such information as is necessary to comply with a specific written request of a law enforcement agency authorized by this paragraph.</p>		
4.050(C)(5)	Non-disclosure regulations are missing details necessary to align with Federal regulations	5. Persons directly connected with the administration of the Child Support Program, the Social Security Administration, or agencies in other states in order to assist in the administration of their program, and to the extent IEVS information is necessary for determining eligibility or benefit amounts. IRS information will not be shared;	5. Persons directly connected with the administration of the Child Support Program under part D, title IV of the Social Security Act in order to assist in the administration of that program, and employees of the Secretary of Health and Human Services as necessary to assist in establishing or verifying eligibility or benefits under titles II and XVI of the Social Security Act;	Language is being updated to mirror federal regulation regarding requests from law enforcement and other parties to which information may be disclosed.	
4.504.6(2)	The list of information considered verified upon receipt inaccurately refers to death information obtained through the SSA interface	<p>2. Death information received from SDX, BENDEX, or the Burial Assistance program.</p> <p>Death information received from SDX, BENDEX, and the Burial Assistance program is considered reported and verified on the day the information is first known to the agency, either through an IEVS notification or an automated interface of information, whichever is sooner.</p>	<p>2. Death information received from the Burial Assistance program.</p> <p>Death information received from the Burial Assistance program is considered reported and verified on the day the information is first known to the agency.</p>	Death information interfacing from SSA must be independently verified and cannot be considered verified upon receipt.	

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4.504.6(12)	The list of information considered verified upon receipt is missing a provision regarding fleeing felons	(Current VUR list ends with item #11. #12 will include fleeing felon information.)	12. The disqualification of a household member determined to be a fleeing felon or probation or parole violator in accordance with section 4.304.4.	The fleeing felon/probation or parole violator information will be verified by the primary source when considered "reported" to the agency so this information may be considered verified upon receipt and acted upon accordingly.	
4.504.61(B)(1)	Incorrect reference to SDX/BENDEX death information being verified upon receipt	B. The following sources of information shall not be considered as verified upon receipt: 1. Death information received from a source other than SDX, BENDEX, or the Burial Assistance program.	B. The following sources of information shall not be considered as verified upon receipt: 1. Death information received from a source other than the Burial Assistance program.	Death information which interfaces from SDX/BENDEX requires independent verification before that information can be acted upon.	

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STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

Office of Economic Security (OES) sub-PAC
Colorado Department of Human Services (CDHS) Employment and Benefits Division
CDHS Office of Performance and Strategic Outcomes
CDHS Office of Appeals

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

Office of Economic Security (OES) sub-PAC
Colorado Department of Human Services (CDHS) Employment and Benefits Division
CDHS Office of Performance and Strategic Outcomes
CDHS Office of Appeals
Colorado Center on Law and Policy
Colorado Legal Services
Colorado Cross-Disability Coalition
Colorado Coalition for the Homeless
Hunger Free Colorado
Care and Share Food Bank for Southern Colorado
Benefit Data Trust
Weld Food Bank
Servicios de La Raza

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes No

If yes, who was contacted and what was their input?

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

Yes No

Name of Sub-PAC	Economic Security Sub-PAC		
Date presented	April 6, 2017		
What issues were raised?	Concerns regarding the income conversion multiplier		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	Unanimous	0	0
If not presented, explain why.			

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PAC

Have these rules been approved by PAC?

Yes No

Date presented			
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

Yes No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

Prior to the SubPAC meeting held on April 6, 2017, feedback was received from Summit County regarding the proposed amendment to income conversion factors outlined in 4.402(A)(2) stating:

The proposed rule change of 4.402(A)(2) is awful. The statement of basis and purpose is that it needs to align with Medicaid and cash programs so that all household income is equitably converted. The problem is (see below for my explanation) that these programs are not equitably calculating this income.

Bi-weekly income (calculated times 2.15) is based off something that is truly not an individuals monthly income. However, those individuals who are paid bi-monthly or monthly have their income calculated on a true monthly amount. This seems inconsistent (and not fair and equitable) that individuals may have a determination based solely on how often they are paid, as opposed to what they earn in a month.

The problem with the multiplier is that calculates to an average of 30.1 days a month, which then calculates out to 361 in a given year. Someone reporting monthly or bi-monthly income are calculated out to 365 days in a year. Two people with the same annual income will receive two different monthly income outcomes based on whether they report they are paid bi-weekly or bi-monthly/monthly, due to the 2.15 calculation. So, potentially it does affect ones eligibility based solely on how often they are paid.

During the SubPAC meeting, these concerns were addressed by reiterating the intent to align with Federal regulations and Public Assistance programs. Federal regulation 7 CFR 273.10(c)(2) requires state agencies to convert income received on a weekly or biweekly basis to a monthly figure for the purpose of determining eligibility. Regulation allows states to use a multiplication factor of 4.3 for weekly income and 2.15 for biweekly income, adopt the same conversion standard used by the state agency's public assistance program, or use the exact monthly figure if it can be reasonably anticipated for each month of the certification.

Medical Assistance programs presently utilize a conversion factor of 4.3 and 2.15, and as of July 1, 2017, TANF and Adult Financial programs will adopt the same multipliers. The proposed change to the multipliers currently used by the Food Assistance Program will provide consistency between CDHS and HCPF programs, satisfy the requirements in 7 CFR 273.10(c)(2), and mirror income policies already enacted by 37 out of 53 U.S. states and territories.

(10 CCR 2506-1)

4.042 HOUSEHOLD INCOME ELIGIBILITY

A. Determining Income

1. Income eligibility shall be determined prospectively based on the eligibility worker's anticipation of income at the time of application and when changes are made known to the local office. See Section 4.603.1 for rules concerning anticipating income. Income shall be determined as it is anticipated to be received unless the income is averaged over the certification period in accordance with Section 4.402.2.
2. When determining if a household is eligible under gross and/or net income limits, households shall have income converted to a monthly amount by using a conversion as specified below. When a full month's income is anticipated any cents in the gross weekly or biweekly earnings shall be used in converting income to a monthly amount.

Monthly income amounts shall be rounded to the nearest dollar amounts. Each monthly income figure that ends in 1 through 49 cents is rounded down, and each monthly income figure that ends in 50 through 99 cents is rounded to the next dollar.

Pay Frequency	Conversion
Weekly	Multiply Weekly Average by 4.333333 4.3
Bi-Weekly (Every Two Weeks)	Multiply Bi-Weekly Average by 2.166666 2.15.
Semi-Monthly (Twice a Month)	Multiply Semi-Monthly Average by 2.
Every Other Month	Multiply Average by 0.5.
Quarterly	Multiply Average by 0.333333.
Twice a Year	Multiply Average by 0.166666.
Annual	Multiply Average by .083.□

4.070 Complaint Requirements

The local office shall, as part of its overall outreach responsibility, publicize the state's complaint system. In addition, the local office shall advise any household wishing to file a complaint of the complaint procedure and offer assistance in filing a complaint, if appropriate.

The State Department shall ensure that information is made available to potential participants, applicants, participants, or other interested persons concerning the complaint system, and the procedure for filing a complaint at the state or county level. Such information shall be made available to potential participants, applicants, and other interested parties through written materials and posters which shall be prominently displayed in all certification and issuance offices.

For complaints of discrimination, refer to ~~4.060.2~~ 4.070.2 through ~~4.060.22~~ 4.070.22.

The local office shall make every effort to resolve all complaints, excluding complaints of discrimination, brought to their attention at the local level. However, all complainants shall be informed they have the right to contact the State Department if they are not satisfied with the action taken at the local level.

4.070.2 Non-Discrimination Complaint Requirements

Food Assistance benefits shall be extended to all eligible households without regard to age, race, color, sex, disability, religious creed, national origin or political beliefs. Local offices shall ensure that the nondiscrimination poster provided by FNS is prominently displayed. Posters may be obtained through the State Department.

The local office shall explain the complaint procedures, as outlined in ~~4.060.24~~ 4.070.21 "Discrimination Complaint Procedure," to each person expressing an interest in filing a discrimination complaint and shall advise the individual of the right to file a complaint under this procedure. Such information shall be made available within ten (10) calendar days from the date of request.

4.070.22 Disposition of Discrimination Complaints

When the local office receives a complaint of alleged discrimination and obtains the information specified in ~~4.060.24~~ 4.070.21 "Discrimination Complaint Procedure," it shall transmit a copy of the complaint to the FNS national office and/or the State Department within five (5) working days. The State Department shall file the complaint with the FNS national office on behalf of the complainant if the local office does not file the complaint with the FNS national office.

4.903.31 Frequency of Reviews

The State Office shall conduct an ME review of all Food Assistance Program operations:

- A. At least once annually on each large ~~county~~ PROJECT AREA containing more than TWENTY-FIVE THOUSAND AND ONE (25,001) ~~seven thousand (7,000)~~ participating households;
- B. At least once every two (2) years on each medium ~~county~~ PROJECT AREA containing FIVE THOUSAND (5,000) ~~two hundred and fifty (250)~~ to TWENTY-FIVE THOUSAND (25,000) ~~seven thousand (7,000)~~ participating households; and,
- C. At least once every three (3) years on each small ~~county~~ PROJECT AREA containing FOUR THOUSAND NINE HUNDRED AND NINETY-NINE (4,999) OR FEWER ~~less than two hundred and fifty (250)~~ participating households.

The State Office may conduct Management Evaluation reviews on an alternative schedule with the written approval of the USDA, FNS. The State Office may also perform reviews of specific county offices or program elements. The USDA, FNS or the State Office, may identify the need of a special review, or the county department may request a special review.

Reviews will generally include all aspects of program administration in the large counties. The reviews may be more limited in scope in the medium and small counties. The USDA, FNS, generally identifies target program areas that it requires for review each fiscal year.

The State Office will complete the Management Evaluation report for all counties that are reviewed. The Colorado Department of Human Services, Food Assistance Program, will be responsible for monitoring the county responses to any finding.

The county shall be responsible for submitting any factual corrections to the management evaluation review within TWENTY (20) STATE WORKING ~~fifteen (15) calendar~~ days, and shall submit a final plan to correct all other cited deficiencies within TWENTY (20) STATE WORKING ~~thirty (30) calendar~~ days of receiving the review. The response shall include specific actions, persons responsible for implementation, and date for completion. When the review identifies ongoing problems in critical areas, the county response shall also include a method for monitoring implementation of the plan and reporting progress to the State Office on at least a quarterly basis.

4.802.1 Time Period for Requesting an Appeal

- A. A household shall be allowed to request a local-level dispute resolution conference or state-level fair hearing on the following:
 - 1. Any action by the local office THAT OCCURRED IN THE PREVIOUS NINETY (90) CALENDAR DAYS.
 - 2. A loss of benefits that occurred in the previous ninety (90) calendar days. Such Food Assistance action shall include a denial of a request for restoration of benefits lost more than ninety (90) calendar days but less than a year prior to the request.
 - 3. At any time during a certification period a household may request a fair hearing to dispute its current level of benefits.

F. Non-recurring Lump Sum Payments

Money received in the form of non-recurring lump sum payments, includes, but is not limited to, income tax refunds, rebates, or credits; retroactive lump-sum Social Security, SSI, public assistance, railroad retirement benefits or other payments; or retroactive lump-sum insurance settlements; or any money an inmate receives upon release from prison, including earnings from work performed while incarcerated and accumulated over the length of the incarceration.

State and county diversion payments under Colorado Works shall be excluded as a non-recurring lump sum payment if the payment does not cover more than ~~one hundred twenty (120)~~ NINETY (90) days of expenses and is not expected to occur again in a twelve (12) month period.

Non-recurring lump sum payments shall be counted as resources in the month received, unless specifically excluded from consideration as a resource by other federal laws. Any funds remaining in subsequent months shall be considered a resource.

Beginning December 17, 2010, Federal income tax refunds must be disregarded as a resource for twelve (12) months from the date of receipt by the client. These refunds are also excluded as income in the month received.

4.304.4 Persons Disqualified or Ineligible to Participate in the Food Assistance Program

- A. Disqualified individuals shall not be allowed to participate in the Program as separate households. "Disqualified individuals" are individuals disqualified for:
 - 1. Intentional Program violation/fraud;
 - 2. Failure to either provide or obtain a Social Security Number;
 - 3. Being an ineligible non-citizen as defined in Section 4.305.12;
 - 4. Failure to comply with work requirements; or,
 - 5. Being an able-bodied adult without dependents (ABAWD) who has been disqualified after receiving three (3) months of Food Assistance benefits within a period of thirty-six (36) months.

- B. ~~Individuals who are fleeing to avoid prosecution for a felony under a state or federal law are ineligible to participate in the Food Assistance Program.~~ OR CUSTODY FOR A CRIME, OR AN ATTEMPT TO COMMIT A CRIME, THAT WOULD BE CLASSIFIED AS A FELONY SHALL NOT BE CONSIDERED ELIGIBLE HOUSEHOLD MEMBERS. IF AN INDIVIDUAL IS SUSPECTED OF BEING A FLEEING FELON, EITHER BY THEIR OWN ADMISSION OR BASED ON A REPORT FROM LAW ENFORCEMENT, THE FLEEING STATUS MUST BE VERIFIED IN ORDER TO DETERMINE IF THE CLIENT IS ELIGIBLE FOR FOOD ASSISTANCE BENEFITS.

THE FOLLOWING FOUR PART TEST MUST BE USED TO DETERMINE IF THE INDIVIDUAL WOULD BE CONSIDERED A FLEEING FELON FOR FOOD ASSISTANCE PURPOSES:

1. THERE IS AN OUTSTANDING FELONY WARRANT FOR THE INDIVIDUAL BY A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT AGENCY AND THE UNDERLYING CAUSE FOR THE WARRANT IS FOR COMMITTING, OR ATTEMPTING TO COMMIT, A CRIME THAT IS A FELONY UNDER THE LAW OF THE PLACE FROM WHICH THE INDIVIDUAL IS FLEEING OR IS A HIGH MISDEMEANOR UNDER THE LAW OF NEW JERSEY;
2. THE INDIVIDUAL IS AWARE OF, OR SHOULD REASONABLY HAVE BEEN ABLE TO EXPECT THAT, THE FELONY WARRANT HAS ALREADY OR WOULD HAVE BEEN ISSUED;
3. THE INDIVIDUAL HAS TAKEN SOME ACTION TO AVOID BEING ARRESTED OR JAILED; AND
4. THE FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT AGENCY IS ACTIVELY SEEKING THE INDIVIDUAL AS PROVIDED IN 4.304.4(C)(1).

- ~~C. Individuals convicted of a crime that is classified as a felony under state or federal law and who are fleeing to avoid custody or confinement for the felony are also ineligible to participate in the Food Assistance Program.~~

- ~~D. Individuals who are currently violating a condition of probation or parole imposed under a federal or state law are ineligible to participate in the Food Assistance Program.~~

- C. INDIVIDUALS WHO ARE DETERMINED TO BE A PAROLE OR PROBATION VIOLATOR SHALL NOT BE CONSIDERED TO BE AN ELIGIBLE HOUSEHOLD MEMBER. TO BE CONSIDERED A PROBATION OR PAROLE VIOLATOR, AN IMPARTIAL PARTY, AS DESIGNATED BY THE AGENCY, MUST DETERMINE THAT THE INDIVIDUAL VIOLATED A CONDITION OF HIS OR HER PROBATION OR PAROLE IMPOSED UNDER FEDERAL OR STATE LAW, AND THAT FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT AUTHORITIES ARE ACTIVELY SEEKING THE INDIVIDUAL TO ENFORCE THE CONDITIONS OF THE PROBATION OR PAROLE AS OUTLINED BELOW.

1. FOR THE PURPOSES OF THIS PROVISION, ACTIVELY SEEKING IS DEFINED AS FOLLOWS:
 - A. A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT AGENCY INFORMS THE LOCAL FOOD ASSISTANCE OFFICE THAT IT INTENDS TO ENFORCE AN OUTSTANDING FELONY WARRANT OR TO ARREST AN INDIVIDUAL FOR A PROBATION OR PAROLE VIOLATION WITHIN TWENTY (20) DAYS OF SUBMITTING A REQUEST FOR INFORMATION ABOUT THE INDIVIDUAL TO THE LOCAL OFFICE;
 - B. A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT AGENCY PRESENTS A FELONY ARREST WARRANT AS PROVIDED IN 4.304.4(B)(1); OR

- C. A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT AGENCY STATES THAT IT INTENDS TO ENFORCE AN OUTSTANDING FELONY WARRANT OR TO ARREST AN INDIVIDUAL FOR A PROBATION OR PAROLE VIOLATION WITHIN THIRTY (30) DAYS OF THE DATE OF A REQUEST FROM A LOCAL FOOD ASSISTANCE OFFICE ABOUT A SPECIFIC OUTSTANDING FELONY WARRANT OR PROBATION OR PAROLE VIOLATION.

4.050 CONFIDENTIALITY

- A. If there is a written request by a responsible member of the household, or ~~it's~~ ITS currently authorized representative, or a person acting on behalf of the household to review materials contained in the case record, the material and information contained in the case record shall be made available for inspection during normal business hours.
- B. The local office shall withhold confidential information, such as the names of persons who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal investigations or prosecutions.
- C. Use or disclosure of information obtained from a Food Assistance applicant or household or from any state or federal agency included in the Income and Eligibility Verification System (IEVS), including the Internal Revenue Service (IRS), Social Security Administration (SSA) and Colorado Department of Labor and Employment (DOLE) exclusively for the Food Assistance Program, shall be restricted to the following persons:
 1. Persons directly connected with the administration or enforcement of the ~~regulations or provisions of the Food STAMP ACT OR REGULATIONS and Nutrition Act of 2008, Public Law No. 110-246, as amended, (codified at 7 USC 2012),~~ other federal assistance programs, ~~or federally-assisted state-programs which provide~~ PROVIDING assistance on a means-tested basis to low income individuals, ~~OR GENERAL ASSISTANCE PROGRAMS WHICH ARE SUBJECT TO THE JOINT PROCESSING REQUIREMENTS IN 4.202.1.~~ The rules contained in this manual do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours or by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203.
 2. Employees of the Comptroller General's office of the United States for audit examination authorized by any other provision of law;
 3. ~~Except for IRS information,~~ Local, state or federal law enforcement officials, UPON THEIR WRITTEN REQUEST, for the purpose of investigating an alleged violation of the ~~regulations of Public Law No. 110-246, as amended, (codified at 7 USC 2012)~~ **FOOD STAMP ACT OR REGULATIONS.** The WRITTEN request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person about whom the information is requested;

~~The agency will provide the address, Social Security Number, and, if available, photographs of any member of a household on request by a federal, state or local law enforcement officer. The officer must furnish the name and notify the agency that the individual is fleeing to avoid prosecution, custody, or confinement after a conviction for a crime or attempt to commit a crime, and that under the law, the crime is a felony (or high misdemeanor in New Jersey). The information will also be provided if the individual has violated a condition of probation or parole imposed under federal or state law. Information will also be provided if the member of the household has information necessary for the officer to conduct an official duty related to a fleeing felon or parole violation;~~

LOCAL, STATE, OR FEDERAL LAW ENFORCEMENT OFFICERS ACTING IN THEIR OFFICIAL CAPACITY, UPON WRITTEN REQUEST BY SUCH LAW ENFORCEMENT OFFICERS THAT INCLUDES THE NAME OF THE HOUSEHOLD MEMBER BEING SOUGHT, FOR THE PURPOSE OF OBTAINING THE ADDRESS, SOCIAL SECURITY NUMBER, AND, IF AVAILABLE, PHOTOGRAPH OF THE HOUSEHOLD MEMBER, IF THE MEMBER IS FLEEING TO AVOID PROSECUTION OR CUSTODY FOR A CRIME, OR AN ATTEMPT TO COMMIT A CRIME, THAT WOULD BE CLASSIFIED AS A FELONY (OR A HIGH MISDEMEANOR IN NEW JERSEY), OR IS VIOLATING A CONDITION OF PROBATION OR PAROLE IMPOSED UNDER A FEDERAL OR STATE LAW. THE AGENCY SHALL PROVIDE INFORMATION REGARDING A HOUSEHOLD MEMBER, UPON WRITTEN REQUEST OF A LAW ENFORCEMENT OFFICER ACTING IN HIS OR HER OFFICIAL CAPACITY THAT INCLUDES THE NAME OF THE PERSON BEING SOUGHT, IF THE OTHER HOUSEHOLD MEMBER HAS INFORMATION NECESSARY FOR THE APPREHENSION OR INVESTIGATION OF THE OTHER HOUSEHOLD MEMBER WHO IS FLEEING TO AVOID PROSECUTION OR CUSTODY FOR A FELONY, OR HAS VIOLATED A CONDITION OF PROBATION OR PAROLE IMPOSED UNDER FEDERAL OR STATE LAW.

THE AGENCY MUST ACCEPT ANY DOCUMENT THAT REASONABLY ESTABLISHES THE IDENTITY OF THE HOUSEHOLD MEMBER BEING SOUGHT BY LAW ENFORCEMENT AUTHORITIES. IF A LAW ENFORCEMENT OFFICER PROVIDES DOCUMENTATION INDICATING THAT A HOUSEHOLD MEMBER IS FLEEING TO AVOID PROSECUTION OR CUSTODY FOR A FELONY, OR HAS VIOLATED A CONDITION OF PROBATION OR PAROLE, THE STATE AGENCY SHALL FOLLOW THE PROCEDURES IN 4.304.4 TO DETERMINE WHETHER THE MEMBER'S ELIGIBILITY IN THE FOOD ASSISTANCE PROGRAM SHOULD BE TERMINATED. A DETERMINATION AND REQUEST FOR INFORMATION THAT DOES NOT COMPLY WITH THE TERMS AND PROCEDURES IN 4.304.4 IS NOT SUFFICIENT TO TERMINATE THE MEMBER'S PARTICIPATION. THE AGENCY SHALL DISCLOSE ONLY SUCH INFORMATION AS IS NECESSARY TO COMPLY WITH A SPECIFIC WRITTEN REQUEST OF A LAW ENFORCEMENT AGENCY AUTHORIZED BY THIS PARAGRAPH.

4. Persons Connected with the Parent Locator Service

Information made available to the Parent Locator Service must be restricted to the recipient or applicant's most recent address and place of employment;

5. Persons directly connected with the administration of the Child Support Program UNDER PART D, TITLE IV OF the Social Security Administration ACT, ~~or agencies in other states~~ in order to assist in the administration of their program, AND EMPLOYEES OF THE SECRETARY OF HEALTH AND HUMAN SERVICES AS NECESSARY TO ASSIST IN ESTABLISHING OR VERIFYING ELIGIBILITY OR BENEFITS UNDER TITLES II AND ~~XVI~~ VI OF THE SOCIAL SECURITY ACT ~~and to the extent IEVS information is necessary for determining eligibility or benefit amounts. IRS information will not be shared;~~

6. Persons directly connected with the verification of immigration status of non-citizen Food Assistance applicants through the Systematic Alien Verification for Entitlements (SAVE) system, to the extent the information is necessary to identify the individual for verification purposes;

7. School authorities for the purpose of determining which children are from families who participate in the Program. This information is used to determine eligibility for meals under the National School Lunch or Breakfast Program; and,

8. Persons directly connected with the administration or enforcement of programs included in the Income and Eligibility Verification System (IEVS). Information obtained through the IEVS will be stored and processed so that no unauthorized personnel may acquire or retrieve the information for unauthorized purposes. All persons with access to information obtained pursuant to the IEVS requirements will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.

4.504.6 Information Considered Verified Upon Receipt

- A. Verified upon receipt is a term given to a state-prescribed list of specific information that comes directly from the primary source of the information and is free from question.
- B. Information that is considered verified upon receipt shall be acted upon for both simplified reporting households and non-simplified reporting households. Information considered verified upon receipt shall be acted on at the time of application, recertification, periodic report, and during a household's certification period if the information causes a change in the Food Assistance benefit amount. A household shall not be convicted of fraud for not reporting a change in information it is not required to report in accordance with Section 4.603.
- C. Information considered verified upon receipt shall be considered verified unless the office has reason to believe that the information may be inaccurate. Advance notice of adverse action shall be given when acting on information that is considered verified upon receipt, except as noted in Section 4.608.1.
- D. Administrative Error Claims may be established as a result of information considered verified upon receipt.
- E. The local office shall consider only the following information as verified upon receipt:
 1. Social Security and SSI benefit amounts obtained from SSA.

SSI and benefit amounts obtained from the SSA are considered reported and verified on the day the information is first known to the agency, either through the IEVS, SDX, BENDEX or another automated interface of information, whichever is sooner.
 2. Death information received from ~~SDX, BENDEX, or~~ the Burial Assistance program.

Death information received from ~~SDX, BENDEX, and~~ the Burial Assistance program is considered reported and verified on the day the information is first known to the agency, ~~either through an IEVS notification or an automated interface of information, whichever is sooner.~~
 3. Unemployment insurance benefits that are reported through the IEVS and obtained through the Department of Labor and Employment (DOLE).

The unemployment insurance benefit (UIB) information shall be considered reported and verified on the date of the IEVS notification. Advance notice of adverse action shall be given when acting on the change in information.
 4. Public Assistance (PA) benefit amounts (Colorado Works, Aid to the Needy Disabled (AND), Old Age Pension (OAP), Aid to the Blind (AB), and Colorado Supplement to SSI) obtained from the State Department.

Such information shall be considered reported and verified on the day the public assistance benefit amount is authorized.

5. Information that is reported and verified to a public assistance program which results in a change to the PA benefit amount and that meets the Food Assistance regulations for verification as specified in Section 4.500.

Such information shall be considered reported and verified on the day the public assistance program processes the change and authorizes the new PA benefit amount.

6. Child support income and expense amounts obtained through the Automated Child Support Enforcement System (ACSES).

Such information is considered reported and verified on the day the information is reported through an automated interface with ACSES.

7. Non-compliance information obtained from Employment First (EF) agencies for failure to participate in a mandated work program.

8. Colorado intentional Program violations (IPV).

9. Information obtained from the Systematic Alien Verification for Entitlements (SAVE) system regarding non-citizen status.

10. Changes in household composition that are reported and verified and result in one or more members being removed from one Food Assistance household and added to a new or existing Food Assistance household. See Section 4.304.2 for situations that involve two households requesting assistance for the same child. Adults may be removed from the household based on self-declaration, per Section 4.604, D.

Duplicate benefits shall not be issued for a particular individual when removing that individual from one Food Assistance household and adding him/her to a new Food Assistance household.

11. Changes in household composition that are reported and verified by child welfare agencies and result in a child being removed from one Food Assistance household and added to a new or existing Food Assistance household.

12. THE DISQUALIFICATION OF A HOUSEHOLD MEMBER DETERMINED TO BE A FLEEING FELON OR PROBATION OR PAROLE VIOLATOR IN ACCORDANCE WITH SECTION 4.304.4.

4.504.61 Information Not Considered Verified Upon Receipt

- A. Some information received from sources other than the household are not considered verified. Such information shall be subject to independent verification prior to taking adverse action to reduce, suspend, terminate, or deny a household's Food Assistance benefits during the certification period. Such information, once independently verified, shall be acted upon in accordance with Section 4.604.

- B. The following sources of information shall not be considered as verified upon receipt:

1. Death information received from a source other than ~~SDX, BENDEX,~~ or the Burial Assistance program.