

TITLE 181 SPECIAL HEALTH PROGRAMS

CHAPTER 3 ADMINISTRATIVE APPEAL PROCEDURES FOR APPLICANTS, FOOD VENDORS AND LOCAL AGENCIES PARTICIPATING IN SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC PROGRAM) AND THE COMMODITY SUPPLEMENTAL NUTRITION PROGRAM (CSFP) IN THE STATE OF NEBRASKA

001. SCOPE AND AUTHORITY. These regulations implement Nebraska Revised Statutes (Neb. Rev. Stat.) §§ 71-2225 to 71-2230.

002. DEFINITIONS. Definitions in 7 Code of Federal Regulations Part 246 and the following definitions apply to this chapter.

002.01 APPLICANT. A person or entity making application to the Department to participate in the Special Supplemental Food Program for Women, Infants and Children (WIC Program), the Commodity Supplemental Food Program (CSFP) or both, as an approved food vendor or local agency.

003. HEARING. An applicant whose application is denied based on vendor selection criteria for minimum variety and quantity of authorized supplemental foods, a vendor whose authorization is denied based on a determination that the vendor is attempting to circumvent a sanction or whose contract is terminated for cause, or a vendor that is disqualified or has a fine or civil money penalty imposed in lieu of disqualification may request a hearing before the Department.

003.01 ACTIONS NOT SUBJECT TO HEARING. The actions listed in 7 CFR 246.18(a)(iii) are not subject to being reviewed in a hearing. An applicant may request an abbreviated administrative review for those actions listed 7 CFR § 246.18 except as otherwise provided.

004. NOTIFICATION OF ADVERSE ACTION. Notification of Adverse Action shall include the following information:

004.01 WRITTEN NOTICE - INITIAL APPLICATION DENIAL. Whenever an application to be a vendor or local agency is denied, the Department shall provide the applicant with a written notice of the denial or adverse action that meets the requirements of 7 CFR 246.18 as of the effective date of this chapter.

004.02 WRITTEN NOTICE – ADVERSE ACTION. Whenever adverse action is taken against a participating vendor or local agency, the Department shall provide the vendor or local agency with a written notice of the adverse action that meets the requirements of 7 CFR 246.18 as of the effective date of this chapter.

004.03 ADVERSE ACTION - FINALITY. The decision to take adverse action is final according to the following.

004.03(A) INITIAL APPLICATION DENIED. The decision to deny an initial application by an applicant to participate in the Program is effective for a vendor on the date of

receipt of the notice. A denial of a local agency application is effective immediately. An applicant may request a hearing on the denial within 15 days of the date of the notice.

004.03(B) PARTICIPATING VENDOR OR AGENCY. The decision to take adverse action against a participating vendor shall become final 15 days after the date of the notice and the decision to take adverse action against a local agency shall become final sixty (60 day) days after the date of the notice unless the vendor or local agency, within the applicable period, files a request for hearing with the Department.

005. HEARING PROCEDURE. The procedure for hearings is described below:

005.01 CONDUCT. All hearings shall be conducted in accordance with the 184 Nebraska Administrative Code (NAC) 1.

005.02 DECISION. On the basis of the evidence at the hearing, the determination to take adverse action shall be affirmed, modified, or set aside. A copy of the decision setting forth the bases of the decision, shall be sent by either registered or certified mail to the vendor or local agency within 90 days from the date the Department receives the request for a hearing from a vendor and within 60 days from the date the Department receives the request for a hearing from a local agency. The decision shall become final thirty (30) days after a copy thereof is mailed unless the vendor, or local agency seeks judicial review within such thirty day period in accordance with the Administrative Procedure Act, Neb. Rev. Stat. §§ 84-901 to 84-920.

006. CONTINUING RESPONSIBILITIES. Appealing an adverse action does not relieve a local agency or a vendor permitted to continue in the Special Supplemental Food Program for Women, Infants and Children (WIC Program) or the Commodity Supplemental Food Program (CSFP) while its appeal is in process, from the responsibility of continued compliance with the terms of any written agreement or contract with the local agency or the Department.