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NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

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TITLE 181 SPECIAL HEALTH PROGRAMS

CHAPTER 4 SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS
AND CHILDREN (WIC PROGRAM) AND THE COMMODITY SUPPLEMENTAL
FOOD PROGRAM (CSFP) FAIR HEARING PROCEDURES

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

002. DEFINITIONS. Definitions in 7 Code of Federal Regulations (CFR) Part 246 and Part 247 and the following definitions apply to this chapter.

002.01 ADVERSE ACTION. Any action by the local agency or the Department which results in a) a claim against the participant for repayments of the cash value of improperly issued benefits, b) the denial of participation in the program to an applicant, or c) the participant's disqualification from the program.

002.02 PROGRAM. The Special Supplemental Nutrition Program for Women, Infants and Children or the Commodity Supplemental Food Program.

002.03 REQUEST FOR HEARING. Any clear expression, either verbal or written, by the applicant or participant, the applicant or participant's parent, caretaker, or other representative that he or she desires an opportunity to present his or her case to the Department or other higher authority.

003. RIGHT OF FAIR HEARING. The Department shall grant the right of fair hearing whenever an applicant or a participant is the subject of an adverse action by a local agency.

003.01 NOTICE OF APPEAL RIGHTS. The local agency taking the adverse action shall inform each applicant or participant in writing of the adverse action and include the information required by 7 CFR 246.9 or 247.33 as applicable. In the event a participant is disqualified or a claim is made for cash repayment, notification of such action shall be given at least (15) days before the effective date of the adverse action. In the event of dual participation in more than one program, the adverse action is effective immediately.

003.02 REQUEST FOR HEARING. The local agency shall not limit or interfere with the applicant or participant's freedom to request a hearing.

003.02(A) REQUEST SUBMISSION. The request for a fair hearing shall be submitted to the local agency and then transmitted to the Department or may be submitted directly to

the Department. The Local Program Director is responsible for sending the request to the Department.

003.02(B) REQUEST FORMAT. The request for hearing shall be signed by the applicant, the participant, or the applicant or participant's parent, caretaker, or other representative, and shall contain sufficient information to identify the applicant or participant and the adverse action regarding for which the request is being made. No particular written form shall be required. The local agency or the Department shall put the request for a hearing in writing, if necessary.

004. NOTIFICATION OF ADVERSE ACTION. The local agency taking the adverse action shall inform each applicant or participant in writing of the adverse action and include the information required by 7 CFR Part 246.9 or 247.33 as applicable.

004.01 INITIAL APPLICATION OR DENIAL. The written notice of adverse action shall include the cause or causes for such action, the effective date of the action, and applicant's appeal rights as set forth in this chapter. Such notification shall be provided by the agency taking the adverse action.

004.02 ADVERSE ACTION. Whenever adverse action is taken against a participant disqualifying him or her from the program, such participant shall be provided with 15 days advance written notice of the adverse action, the cause or causes for such action, the effective date of the action, and the participant's right to request a hearing as described in this chapter. If a claim is pursued against a participant seeking repayment of the cash value of improperly issued benefits, such participant shall be provided with the information stated above and, in addition, the reason(s) for the claim, and the value of the improperly issued benefits which must be paid. Such notification shall be provided by the agency taking the adverse action.

005. TIME LIMIT FOR REQUEST. Adverse actions shall follow appropriate timelines as described below.

005.01 PERIOD FOR REQUESTING A HEARING. An applicant or participant who has been notified of adverse action may request a fair hearing before the Department as provided in 7 CFR Part 246.9 or 247.33 as applicable.

005.02 DENIAL OR DISMISSAL OF REQUEST. The Department shall not deny or dismiss a request for a fair hearing except as provided in 7 CFR Part 246.9 or 247.33 as applicable.

005.03 CONTINUATION OF BENEFITS. A participant who appeals a disqualification notice before the disqualification takes effect shall continue to receive program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. A participant whose certification period has expired or who becomes categorically ineligible may not receive benefits after the certification period has ended. An applicant either at initial certification or whose certification has expired or has become categorically ineligible during the certification period may not receive benefits during the hearing process.

005.04 TIMING OF NOTICE AND HEARING. The Department shall set the date, time, and place of the hearing within seven (7) calendar days after it receives a request for a fair hearing.

005.04(A) NOTICE. The Department shall send the notice of hearing to the applicant or participant to ensure receipt no later than ten (10) calendar days before the hearing, using certified or registered mail.

005.04(B) HEARING. A hearing shall be held within twenty-one (21) calendar days of receipt of the request for a fair hearing, unless the appellant requests a continuance or the hearing officer orders a continuance, as provided in this chapter.

006. RESCHEDULING OPPORTUNITY. An applicant or participant shall be provided with one opportunity to reschedule the hearing date upon specific written request submitted to the Department. The hearing date may also be rescheduled at the order of the hearing official or officer. Any continued hearing shall be held within thirty-one (31) calendar days of the request for hearing, unless good cause is demonstrated for not holding the hearing within such period of time.

007. RIGHTS OF APPLICANT OR PARTICIPANT. The Department shall specifically provide the appellant or representative an opportunity to examine the documents and record appeal, prior to and during the hearing. Appellants or representatives shall also have the opportunity to be represented or assisted by a person other than the participant or applicant as follows:

- (A) Be represented by legal counsel, which means any person licensed to practice law in Nebraska;
- (B) Be assisted by other persons, such as a relative or friend, except that such other person may not provide legal advice, serve as an advocate or spokesperson, question witnesses or otherwise assume duties customarily performed by persons engaged in the practice of law;
- (C) Bring witnesses;
- (D) Advance arguments without undue interference;
- (E) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and
- (F) Submit evidence to establish all pertinent facts and circumstances in the case.

008. HEARING DECISIONS. On the basis of the evidence presented at the hearing, the determination to take adverse action shall be affirmed, modified, or set aside. A copy of the decision setting forth the findings of fact and reasons upon which the decision is based shall be sent by either registered or certified mail to the applicant or participant at his or her last address of record within forty-five (45) days of the receipt of the request for a hearing. This decision shall become final thirty (30) days after the copy is mailed unless the applicant or participant appeals within such thirty day period in accordance with the Administrative Procedure Act, Neb. Rev. Stat. §§ 84-901 to 84-920.

009. POST DECISION BENEFITS. Benefits to the applicant or participant shall be handled as follows:

009.01 DECISIONS FOR APPLICANT OR PARTICIPANT. If the decision is in favor of the applicant or participant and benefits were denied or discontinued, benefits shall begin immediately.

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009.02 DISQUALIFICATION. If the decision concerns disqualification and is in favor of the agency, the local agency shall terminate continued benefits, as indicated in the decision, as soon as administratively feasible.

009.03 REPAYMENT OF BENEFITS. If the decision regarding repayment of benefits by the participant is in favor of the agency, the local agency or the Department shall resume efforts to collect the claim, even during the pendency of judicial review.