

TITLE 181 - NEBRASKA ADMINISTRATIVE CODE

CHAPTER 3

NEBRASKA DEPARTMENT OF HEALTH

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

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WOMEN, INFANTS AND CHILDREN (WIC PROGRAM) IN THE STATE OF NEBRASKA.

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001 DEFINITIONS

001.01 As used in these administrative appeal procedures, unless the context otherwise requires:

001.01A Adverse Action shall mean denial of application, sanctions, disqualification, penalties and termination of agreement or contracts.

001.01B Agency shall mean a local agency or the State Agency that administers the Special Supplemental Food Program for Women, Infants and Children (WIC Program) and the Commodity Supplemental Food Program (CSFP) in the State of Nebraska.

001.01C Applicant shall mean a person or entity making application to the Department to participate in WIC or CSF programs or both, as an approved food vendor or local agency.

001.01D CST program shall mean the Commodity Supplemental Food Program administered by the United States Department of Agriculture or its successor.

001.01E Department shall mean the Department of Health.

021.01F Food instrument shall mean a voucher, check, coupon, or other document used to obtain supplemental foods.

001.01G Local Agency shall mean a public or private nonprofit health or human service agency that:

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001.01G1 Provides health services either directly or through contract; and

001.01G2 By written agreement with the department, provides WIC program services, CSF program services, or both, either directly or through subagreements entered into in accordance with section 71-2205 to 71-2230 and the rules and regulations adopted and promulgated by the Department.

001.01H Person shall mean bodies politic and corporate, societies, communities, individuals, partnerships, joint stock companies, and associations.

001.01I State Agency shall mean the Department of Health of the State of Nebraska.

001.01J Supplemental foods shall mean (a) foods containing nutrients determined to be beneficial for infants, children, and pregnant, breast feeding, or post-partum women as prescribed by the United States Department Agriculture for use in the WIC program, and (b) foods donated by the United States Department of Agriculture for use in the CSF program.

001.01K Vendor shall mean an applicant approved by the State Agency to participate in the WIC program as a food seller.

001.01L WIC Program shall mean the Special Supplemental Food Program for Women, Infants, and Children as administered by the United States Department of Agriculture or its successor.

002 RIGHT OF APPEAL

002.01 Appeal Basis. The right of appeal shall be granted whenever mud adverse action is taken against an applicant, a local agency, or a vendor. Expiration of a contract or agreement with a vendor or local agency shall not be subject to appeal.

003 NOTIFICATION OF ADVERSE ACTION

003.01 WRITTEN NOTICE - INITIAL APPLICATION /DENIAL. Whenever an application to be a vendor or local agency is denied, such applicant shall be provided with written notice of the denial, the cause or causes for such action the effective date of the action and the time period in which appeal may be brought. Such notification shall be provided by the Department to an applicant to participate in the

Program as a local agency or vendor, by certified, or registered mail.

003.02 Written Notice - Adverse Action. Whenever adverse action is taken against a participating vendor or local agency, such vendor or local agency shall be provided with written notice of the adverse action, the cause or causes for such action, the effective date of the action and the time period in which appeal may be brought. The Department shall notify a participating vendor not less than fifteen (15) days in advance of the effective date of the action by either certified or registered mail. In the case of disqualification of a participating local agency the Department shall provide not less than sixty (60) days advance notice of the disqualification.

003.03 Adverse Action - Finality

003.03A Initial Application Denied. The decision to deny an initial application by an applicant to participate in the Program shall become final fifteen (15) days after the receipt of the notice required by 003.01 unless the applicant, within this 15 day period, shall give notice to the Department of a desire for a hearing.

003.03B Participating Vendor or Agency. The decision to take adverse action against a participating vendor shall become final at the expiration of the fifteen (15) day period described in 003.02 and the decision to take adverse action against a local agency shall become final at the expiration of the sixty (60) day period described in 003.02 unless the vendor or local agency, within the applicable period, shall give written notice to the Department of a desire for a hearing. If a participating vendor or agency shall appeal the adverse action shall be postponed until the hearing decision is reached.

004 NOTICE OF HEARING

004.01 CONTENTS. When a vendor or local agency requests a hearing under 003.03 the Department shall prepare a notice of hearing which shall contain:

004.01A The reason(s) for the adverse action against the local agency or vendor;

004.01B The time, date, and place of hearing;

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004.01C A statement advising the vendor or local agency that the hearing shall be conducted in accordance with 184 NAC 1, sections 009 and 010.

004.02 Setting Hearings. The Department shall set the time and place of hearing within thirty (30) day after receiving a request for a hearing. The bearing shall be held no later than sixty (60) days after request for a hearing.

004.03 Service. The notice of hearing shall be mailed to the local agency or vendor by certified or registered mail at least thirty (30) days prior to the date set for the hearing.

004.04 Continuances. A vendor or a local agency shall have the opportunity to request one continuance under the provisions of 184 NAC 1-009.06.

005 HEARING PROCEDURE

005.01 Conduct. All hearings shall be conducted in accordance with the Rules of Practice and Procedure of the Department of Health, 184 NAC 1, sections 009 and 010, except as these regulations otherwise provide. A copy of 184 NAC 1 is attached as Attachment 1 and incorporated in these regulations by reference.

005.02 Decision. On the basis of the evidence at the bearing, 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 60 days from the date the Department receives the request for a hearing. 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, '' 84-901 to 84-920.

006 CONTINUING RESPONSIBILITIES

006.01 Appealing an adverse action does not relieve a local agency or a vendor permitted to continue in the WIC Program 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 State Agency.