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NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

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TITLE 475 SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

CHAPTER 1 GENERAL PROVISIONS

001. GENERAL POLICIES. The Supplemental Nutrition Assistance Program is a federal low income nutrition program established by Title 7 of the United States Code (U.S.C.) Chapter 51. The program is managed by the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) which has promulgated federal regulations found at 7 CFR §§271-285 governing the administration of the Program. Nebraska participates in the Supplemental Nutrition Assistance Program as authorized by Nebraska Revised Statute (Neb. Rev. Stat.) §§68-1017-1017.02.

001.01 PURPOSE. The purpose of the Supplemental Nutrition Assistance Program is to:

- (A) Safeguard the health of the nation's low income families through better nutrition;
- (B) Increase the food purchasing power of low income families; and
- (C) Increase the flow of foods from the nation's farms through the normal trade channels.

001.02 RIGHT TO APPLY. Every person has the right to apply for Supplemental Nutrition Assistance Program benefits. Application forms will be readily accessible to any groups, organizations, or private citizens who request the forms.

001.03 PROGRAM INFORMATION. Persons or agencies desiring information concerning any part of the program may contact any of the following:

- (A) The Nebraska Department of Health and Human Services, Division of Children and Family Services, Economic and Family Support, Supplemental Nutrition Assistance Program, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509;
- (B) Mountain Plains Regional Office, United States Department of Agriculture, Food and Nutrition Service, 1244 Speer Blvd., Suite 903, Denver, Colorado 80204; or
- (C) The Administrator, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302.

001.04 COMPLAINTS. Complaints regarding program policy or civil rights may be filed by participants, potential participants, or other concerned individuals or groups. Individuals may contact the Department for information about filing a complaint or the procedure for filing a complaint. Complaints may be filed by telephone, by letter, or in person. Collect calls will be accepted by all offices. Civil Rights complaints or program policy complaints may be filed verbally or in writing according to the following. Applicants and participants may file complaints regarding any aspect of program administration including:

- (1) Household certification;
- (2) Supplemental Nutrition Assistance Program benefit issuance;
- (3) Fair hearing conduct; or
- (4) Any other program service management.

001.04(A) PROGRAM POLICY COMPLAINTS. Each local office has information available to the public regarding the procedures to follow in filing a program complaint and lists the name and telephone number of the contact person for that office. If an individual wants to file a complaint, the individual may do so with either:

- (1) A contact person designated by the Service Area Administrator to accept service complaints in each local office; or
- (2) The Central Office of the Nebraska Department of Health and Human Services, Office of Economic and Family Support, Food Program Unit, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, NE 68509.

001.04(A)(i) DOCUMENTING COMPLAINTS. In situations where complaints are resolved at the worker level, the complaint will not be documented. The Department documents all other complaints. All documented complaints are forwarded to Food Programs, Central Office, within 30 days of the receipt of the complaint.

001.04(A)(i)(1) DEPARTMENT ACTIONS ON COMPLAINTS. The Department takes the following actions in regard to the complaint:

- (a) Investigate the complaint;
- (b) Take corrective action where warranted; and
- (c) Respond to the complainant on the disposition of the complaint.

001.04(B) CIVIL RIGHTS COMPLAINTS. Discrimination based on age, race, color, sex, disability, religion, national origin, or political belief is prohibited. The Department will not discriminate against any applicant or participant in any aspect of program administration including:

- (1) Household certification;
- (2) Supplemental Nutrition Assistance Program benefit issuance;
- (3) Fair hearing conduct;
- (4) Any other program service management; or
- (5) Reprisal or retaliation for prior civil rights activity.

001.04(B)(i) FILING OF CIVIL RIGHTS COMPLAINTS. Persons or agencies desiring to file a complaint alleging discrimination on the basis of age, race, color, sex, disability, religion, national origin, or political belief may contact any of the following:

- (a) United States Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov;
- (b) Mountain Plains Regional Office, United States Department of Agriculture, Food and Nutrition Service, 1224 Speer Blvd., Suite 903, Denver, Colorado 80204; or
- (c) Nebraska Health and Human Services, Economic and Family Support, Food Program Unit, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, NE 68509.

001.04(B)(i)(1) COMPLAINT REPORTING FOR THOSE REQUIRING ASSISTANCE. Individuals with disabilities who require alternative means for communication of program information, such as Braille, large print, or audiotape, should contact United States Department of Agriculture's Technology and Accessible Resources Give Employment Today Center at (202) 720-2600, which is voice and Telecommunications Device for the Deaf.

001.04(B)(i)(2) TIMELY COMPLAINT REPORTING. The civil rights complaint must be filed no later than 180 days from the date of the alleged incident of discrimination if the person requests action on the complaint.

001.04(B)(ii) DISCRIMINATION COMPLAINT REQUIREMENTS. Discrimination complaints must contain the following information:

- (1) The name, address, and phone number of the person alleging discrimination or other means of contacting this person;
- (2) The location and name of the office which is accused of discriminatory action;
- (3) The nature of the incident, action, or program administration that led to the complaint;
- (4) The basis for the alleged discrimination such as age, race, color, sex, disability, religion, national origin, or political belief;
- (5) The names and titles, if known, and addresses of persons who may have knowledge of the alleged discriminatory act; and
- (6) Each date on which the action occurred.

001.04(B)(iii) VERBAL COMPLAINTS. If the complainant makes accusations verbally to a Department worker and is unable or reluctant to put the allegations in writing, the Department asks the individual to contact Food and Nutrition Service directly. If the complainant is unwilling to do so, the Department will document the complaint and forward it to the Director, Office of Adjudication.

001.05 AVAILABILITY OF PUBLIC INFORMATION. Federal regulations, state plans of operation, federal procedures, the Nebraska Supplemental Nutrition Assistance regulations, Guidance Documents and supplemental instructions issued for use in certifying households are maintained at the Central Office for examination by the general public on regular work days during office hours.

001.06 PRUDENT PERSON PRINCIPLE. The Department assesses all circumstances regarding case eligibility and uses appropriate judgment in requiring further verification or information before determining eligibility and benefit level.

001.07 PROGRAM INFORMATIONAL ACTIVITIES. Program informational activities convey information about the Supplemental Nutrition Assistance Program, including household rights and responsibilities, to applicant and recipient households through means such as publications, telephone hot lines, films, media, and face-to-face contacts.

001.07(A) INFORMATION AVAILABLE IN LOCAL OFFICES. The local office provides the public information on civil rights, claims, overpayments, and Supplemental Nutrition Assistance Program benefit reduction. All program informational material is available in

languages other than English and includes a statement that the program is available to all persons without regard to age, race, color, sex, disability, religion, national origin, or political beliefs.

002. PROGRAM DEFINITIONS. The following definitions apply to Supplemental Nutrition Assistance Program:

002.01 ABLE BODIED ADULT WITHOUT DEPENDENTS. An individual age 18 through 49 who lives in a Supplemental Nutrition Assistance Program household which includes no children age 17 or younger and is able to work.

002.02 ACCOUNTS RECEIVABLE. Overpayment(s) for the same time frame and reason, which the Department groups together into one account.

002.03 ADEQUATE NOTICE. A written notice which contains the following:

- (A) The action the Department has taken or intends to take;
- (B) The reason for the intended action;
- (C) The household's right to request a fair hearing;
- (D) The name of a person to contact for additional information;
- (E) The availability of continued benefits; and
- (F) The household's liability for over-issuances received while awaiting a fair hearing decision which is adverse to the household.

002.04 AGGREGATE BENEFIT. The second month of a combined allotment. All of the following conditions must be met to be an aggregate benefit:

- (A) The application month must be expedited;
- (B) The application received date must be the 16th of the month or later; and
- (C) The household must be eligible for benefits for both the application month and the following month.

002.05 ALLOTMENT. The total value of benefits a household is authorized to receive during each month of the certification period.

002.06 APPLICATION. The action by which the individual indicates the desire to receive assistance by submission of an application.

002.07 AVAILABLE DOCUMENTARY EVIDENCE. Evidence available through computer match systems.

002.08 BOARDER. An individual who either lives in a commercial boardinghouse or lives with a household and pays reasonable compensation in cash for meals and lodging. A boarder is not considered a member of a participating household and the individual's income and resources are not considered available to the household.

002.09 BONA FIDE JOB OFFER. A job offer that is considered suitable employment, as defined in this section, except for the exceptions to voluntary quit and bona fide job offers detailed in chapter three of this title.

002.10 CATEGORICALLY ELIGIBLE. Households in which:

- (A) All members receive or are authorized to receive Aid to Dependent Children Program, Assistance to the Aged, Blind, or Disabled Program, State Disability Program or Supplemental Security Income payments; or
- (B) At least one member is authorized to or receives either Aid to Dependent Children Emergency Assistance or Employment First supportive services.

002.11 CHEMICAL DEPENDENCY TREATMENT AND REHABILITATION PROGRAM. Any chemical dependency treatment and rehabilitation program which is a private, nonprofit organization or facility or a publicly operated community health center. Private, nonprofit treatment programs do not need to be funded under Title XIX, but must qualify for the same essential conditions as those publicly operated programs under Title XIX funding. The program must be certified to provide treatment that can lead to rehabilitation in accordance with the agency responsible for the administration of drug or alcoholic treatment and rehabilitation programs.

002.12 CITIZENSHIP AND IMMIGRATION SERVICES. United States Citizenship and Immigration Services is the federal agency that oversees lawful immigration to the United States. Citizenship and Immigration Services is a component of the Department of Homeland Security.

002.13 COMBINED ALLOTMENT. The prorated first month's expedited benefit and the second full month's aggregate benefit issued together as one allotment. Combined allotments are only issued to households entitled to expedited service which apply on or after the 16th of the month.

002.14 COMPLETE APPLICATION. An application that has a valid name, address and signature and contains the minimum information necessary to determine eligibility: identity, household composition, disqualification information, income, resources, student status and citizenship.

002.15 DATE OF DISCOVERY. The date the Department confirms an overpayment occurred.

002.16 DEPARTMENT. The Nebraska Department of Health and Human Services.

002.17 DISABLED. A household member who is:

- (1) Receiving Supplemental Security Income under Title XVI of the Social Security Act or disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act;
- (2) Receiving Assistance to the Aged, Blind, or Disabled Program or State Disability Program benefits;
- (3) Receiving disability retirement benefits from a government agency because of a disability considered permanent under Section 221(i) of the Social Security Act;
- (4) A veteran with a disability rated or paid as total under Title 38 of the United States Code or is considered in need of regular aid and attendance or permanently housebound under Title 38 of the Code;
- (5) A surviving spouse of a veteran and considered in need of aid and attendance or permanently housebound and incapable of self-support under Title 38 of the Code;

- (6) A surviving child of a veteran and considered to be permanently incapable of self-support under Title 38 of the United States Code;
- (7) A surviving spouse or child of a veteran receiving or approved for compensation for a service-connected death or pension benefits for a non-service connected death under Title 38 of the Code and has a disability considered permanent under Section 221(i) of the Social Security Act; or
- (8) Receiving an annuity payment under:
 - (i) Section 2(a)(1)(iv) of the Railroad Retirement Act and eligible to receive Medicare as determined by the Railroad Retirement Board; or
 - (ii) Section 2(a)(i)(v) of the Railroad Retirement Act and disabled based on criteria used under Title XVI of the Social Security Act.

002.17(A) CONTINUED ELIGIBILITY FOR CONSIDERATION AS DISABLED. A person meets the definition of disabled if the individual has been determined disabled by the agencies or laws listed above. The individual does not have to be receiving a payment from the agency which determined the disability. For example, if a person is certified to receive Supplemental Security Income but is in a suspended status, the individual would be considered disabled for Supplemental Nutrition Assistance Program purposes.

002.18 DISQUALIFIED HOUSEHOLD MEMBER. A financially responsible individual who purchases and prepares meals with a Supplemental Nutrition Assistance Program household but is disqualified from participation.

002.19 ELDERLY. A household member who is age 60 or older. This includes people who are age 59 when they apply but who will turn 60 by the last day of the month of application.

002.20 ELECTRONIC BENEFITS TRANSFER. A system that uses electronic funds transfer and point-of-sale technology for the delivery and control of Supplemental Nutrition Assistance Program benefits.

002.21 ELECTRONIC BENEFITS TRANSFER CARD. A plastic card, similar to a debit card, which holds the Supplemental Nutrition Assistance Program benefit information. The Nebraska Electronic Benefits Transfer card can be used at point-of-sale machines to buy eligible foods at stores taking part in the Electronic Benefits Transfer program.

002.22 ELIGIBLE FOODS. Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods or hot food products prepared for immediate consumption. Eligible foods include:

- (A) Seeds and plants to grow foods for personal consumption by eligible households;
- (B) Meals prepared and served by an authorized chemical dependency treatment center to eligible households, including the meals of children living with their parents in the treatment center;
- (C) Meals prepared and delivered by an authorized meal delivery service to eligible households; or meals served by a communal dining facility for elderly persons, for Supplemental Security Income households, or both, who are eligible to use Supplemental Nutrition Assistance Program benefits for communal dining;
- (D) Meals prepared and served by a licensed or certified group living arrangement to residents who are disabled;

- (E) Meals prepared by and served by a shelter for battered persons to its eligible residents;
- (F) Meals prepared and served by an approved and authorized public or private non-profit establishment that serves homeless persons; and
- (G) In the case of homeless Supplemental Nutrition Assistance Program households, meals prepared by a restaurant that contracts with the Department to serve meals to homeless persons at low or reduced prices.

002.23 EXPANDED RESOURCE PROGRAM. The Expanded Resource Program provides individuals with information and referrals about various programs and services that could be of benefit to the household. Programs and services about which information and referral is provided include: ACCESSNebraska web services, Child Care Subsidy, Medicaid, Aid to Dependent Children Program, Refugee Resettlement, Energy Assistance, and Developmental Disabilities.

002.24 EXPUNGEMENT. The process of removing Electronic Benefits Transfer benefits from a Supplemental Nutrition Assistance Program recipient's account when there has not been a debit from the account within the last 365 days.

002.25 FAIR HEARING. A hearing conducted by a Department hearing officer at a date and time set by the Department.

002.26 FOOD AND NUTRITION SERVICE. The Food and Nutrition Service is an agency of the United States Department of Agriculture's Food, Nutrition, and Consumer Services. The Food and Nutrition Service addresses hunger and obesity issues through the administration of federal nutrition assistance programs one of which is the Supplemental Nutrition Assistance Program.

002.27 GENERAL ASSISTANCE. Cash or another form of assistance, excluding in-kind assistance, financed by state or local funds as part of a program which provides assistance to cover living expenses or other basic needs intended to promote the health or well-being of recipients.

002.28 GOOD CAUSE. Circumstances in situations which are beyond the control of the applicant or participant. Good cause as a condition of failure to comply is covered in the specific sections of this title, where applicable.

002.29 GROUP LIVING ARRANGEMENT. A public or private non-profit residential setting that serves 16 or fewer residents and is licensed or certified by the appropriate state agency. To be eligible for Supplemental Nutrition Assistance Program benefits, a resident must be blind or disabled.

002.30 HEARING OFFICER. The hearing officer is an employee of the Department of Health and Human Services or an individual under contract with the Department who is designated to conduct hearings.

002.31 HOMELESS INDIVIDUAL. A person who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:

- (A) A supervised shelter designed to provide temporary lodging;
- (B) A halfway house or similar facility that provides temporary residence for individuals intended to be institutionalized;
- (C) Temporary lodging in the home of another individual for no more than 90 days; or
- (D) A place not designed for, or ordinarily used as, a regular sleeping accommodation for humans.

002.32 HOMELESS MEAL PROVIDER. A Department approved public or private non-profit establishment, such as a soup kitchen or temporary shelter, which feeds homeless persons or a restaurant that contracts with the Department to offer meals at low or reduced prices to homeless persons.

002.33 INELIGIBLE HOUSEHOLD MEMBER. A financially responsible individual who purchases and prepares meals with a Supplemental Nutrition Assistance Program household but is not eligible to participate.

002.34 INITIAL MONTH. The first month the household is certified to participate, or the first month the household is certified after not participating for more than one month.

002.35 INTENTIONAL PROGRAM VIOLATION. A person that intentionally:

- (A) Made a false statement or misrepresented, concealed, or withheld facts for the purpose of receiving or attempting to receive Supplemental Nutrition Assistance Program benefits to which the person or the person's household was not entitled; or
- (B) Committed an act that constitutes a violation of the Food Stamp Act, federal or state Supplemental Nutrition Assistance Program regulations, or any state law for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking Supplemental Nutrition Assistance Program benefits.

002.36 INTERFACES. Automated data exchanges that provide financial and nonfinancial information.

002.37 ISSUANCE. The amount of benefits placed in recipient Electronic Benefits Transfer accounts.

002.38 ISSUANCE AND COLLECTIONS CENTER. The Department staff designated to issue all Electronic Benefits Transfer cards and to perform collection activities for Supplemental Nutrition Assistance Program. Issuance and Collections Center also coordinates and tracks all transactions with the Treasury Offset Program.

002.39 LOCAL OFFICE. The geographic area office designated by the Department as the administrative unit for local program operations.

002.40 MEDICAID. Medical assistance received under Title XIX of the Social Security Act.

002.41 MIGRANT FARM WORKER. A person who travels away from the place the individual calls home on an overnight basis in order to seek or perform agricultural work at one or more locations.

002.42 NON-PUBLIC ASSISTANCE HOUSEHOLD. A household that does not meet the definition of a public assistance household.

002.43 NON-HOUSEHOLD MEMBER. An individual who lives with the Supplemental Nutrition Assistance Program household but does not receive benefits because:

- (A) The individual does not purchase and prepare meals with the Supplemental Nutrition Assistance Program household; or
- (B) The individual purchases and prepares meals with the Supplemental Nutrition Assistance Program household but is denied eligibility by program guidelines.

002.44 OVERPAYMENT. Payment(s) of more than the amount of benefits a household was eligible to receive.

002.45 PROGRAM. Supplemental Nutrition Assistance Program as conducted under the Food Stamp Act, and federal and state Supplemental Nutrition Assistance Program Regulations.

002.46 PROJECT AREA. The administrative unit for operation of the Supplemental Nutrition Assistance Program. In Nebraska, the state has been designated as one project area.

002.47 PROSPECTIVE BUDGETING. The computation of a household's Supplemental Nutrition Assistance Program benefit for an issuance month based on the Department's and household's best estimate of income and circumstances which will exist in that month.

002.48 PUBLIC ASSISTANCE HOUSEHOLD. A household in which all members in the Supplemental Nutrition Assistance Program unit are eligible for Supplemental Security Income, Assistance to the Aged, Blind, or Disabled Program, State Disability Program, or Aid to Dependent Children Program benefits even if the benefit amount is zero, or at least one member is authorized to receive Aid to Dependent Children Emergency Assistance or Employment First supportive services. The classification of Public Assistance household is not affected by the presence of a legally assigned foster child.

002.49 QUALIFIED WORK QUARTER. A qualified work quarter includes earnings covered under Title II of the Social Security Act and earnings not covered by the Social Security Act. Quarters worked in another country can be counted as qualified quarters when social security taxes were required to be paid to the United States. Countable qualified work quarters for a non-citizen qualifying through 40 quarters are based on the sum of:

- (A) Quarters the non-citizen worked;
- (B) Quarters credited from the work of a parent of the non-citizen before the non-citizen became 18 including quarters worked before the non-citizen was born or adopted;
- (C) Quarters credited from the work of a spouse of the non-citizen during their marriage if they are still married or the spouse is deceased.

002.50 QUALITY CONTROL REVIEW. A review of a statistically valid sample of Supplemental Nutrition Assistance Program cases to determine whether households are receiving the allotment they are entitled to and to ensure cases are not incorrectly denied or terminated. Program Evaluation and Review is another name for Quality Control Review.

002.51 REINSTATEMENT MONTH. A month during the certification period when a household's eligibility is re-established. The household had a change in circumstances which determined the household ineligible for a period of 30 days or less. The household receives a prorated amount of benefits during the reinstatement month.

002.52 REPORTING CATEGORIES. There are two separate reporting categories for Supplemental Nutrition Assistance Program households. The reporting categories are:

- (A) Simplified Reporting; and
- (B) Transitional Benefit Reporting.

002.53 RESIDENT OF AN INSTITUTION. An Individual who is provided with over 50% of the individual's meals as part of the normal services for the institution in which the individual resides is considered to be a resident of an institution. A resident of an institution is not eligible to participate in the Supplemental Nutrition Assistance Program, unless the individual resides in one of the facilities listed below:

- (A) Federally subsidized housing for the elderly under Section 202 of the Housing Act of 1959 or Section 236 of the National Housing Act;
- (B) Chemical dependency treatment and rehabilitation programs;
- (C) Group homes for disabled individuals;
- (D) Shelters for battered persons, who are considered as individual household units for the purpose of applying for and participating in Supplemental Nutrition Assistance Program; and
- (E) Shelters for homeless persons.

002.54 RESTORATION. Benefits issued to a household due to an underpayment in a prior month.

002.55 RETAIL FOOD STORE. Any of the following:

- (A) An establishment or a house-to-house trade route whose eligible food sales volume is more than 50% staple food items for home preparation and consumption;
- (B) Public or private communal dining facilities and meal delivery services, chemical dependency treatment and rehabilitation programs, public or private non-profit group homes, or public or private non-profit shelters for battered women and children;
- (C) Any private non-profit cooperative food purchasing venture, including those whose members pay for food before receipt of the food;
- (D) Public or private non-profit establishments that feed homeless persons; or
- (E) A farmer's market.

002.56 SEASONAL FARM WORKER. A person who works on a farm or ranch on a seasonal basis when the work is generally within commuting distance of the individual's home. A person who works on the individual's own or leased or rented farmland on a year-round or seasonal basis is neither a seasonal farm worker nor a migrant farm worker.

002.57 SHELTER FOR BATTERED PERSONS AND CHILDREN. A public or private non-profit residential facility that serves battered persons and their children. If this facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

002.58 SPONSOR. An individual who has executed an affidavit of support on behalf of an alien as one of the conditions required for the alien's entry into the United States.

002.59 SPOUSE. Two individuals who would be defined as married to each other under applicable state laws.

002.60 STAGGERED ISSUANCE. An issuance cycle which ensures households will receive their benefits on the same day of each month.

002.61 SUITABLE EMPLOYMENT. All work is considered suitable unless one of the following situations exists:

- (A) The wage offered is less than the highest of either the applicable federal minimum wage, the applicable state minimum wage, or 80% of the federal minimum wage if neither the federal or state minimum wage is applicable. The training wage may be substituted for the federal or state minimum wage in situations that warrant the payment of a training wage. The training wage of at least 85% of the federal or state minimum wage may be paid to employees under age 20 for up to 90 days under certain conditions;
- (B) The employment offered is on a piece-rate basis and the hourly yield is likely to be less than the applicable wages above;
- (C) The individual, as a condition of employment, is required to join, resign from, or refrain from joining any legitimate labor organization;
- (D) The work offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under the Taft-Hartley Act or unless an injunction has been issued under Section 10 of the Railway Labor Act;
- (E) The individual can demonstrate or the Department becomes aware that:
 - (i) The degree of risk to health and safety is unreasonable;
 - (ii) The individual is physically or mentally unfit to perform the work as documented by medical or other evidence;
 - (iii) Employment offered within the first 30 days is not in the individual's major field of experience;
 - (iv) The nature or hours of the work interfere with the individual's religious observances, convictions, or beliefs; or
 - (v) The distance of the employment from the individual's home is unreasonable, considering the wages and the time and cost of commuting. Daily commuting time must not exceed two hours per day, not including time required to transport a child to and from a child care facility. The employment is not considered suitable if the distance prohibits walking and public or private transportation is unavailable.

002.62 SUPPLEMENT. Additional benefits issued to a household within the current month. Supplemental issuances cannot be used to offset overpayments.

002.63 SUPPLEMENTAL SECURITY INCOME. Monthly cash payments made under the authority of:

- (A) Title XVI of the Social Security Act, as amended, to the aged, blind, and disabled;
- (B) Section 1616(a) of the Social Security Act; or
- (C) Section 212(a) of Public Law 93-66.

002.64 TIMELY NOTICE. A written notice which contains all the elements of adequate notice and also is mailed at least ten calendar days before the action takes place. The mailing date of the notice is day one of the ten-calendar-day period. A timely notice may also be called a notice of adverse action.

002.65 TRAFFICKING. Trafficking of Supplemental Nutrition Assistance Program benefits includes:

- (A) The buying, selling, stealing, or otherwise effecting an exchange of Supplemental Nutrition Assistance Program benefits issued and accessed via Electronic Benefit Transfer cards, card numbers and personal identification numbers , or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- (B) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for Supplemental Nutrition Assistance Program benefits;
- (C) Purchasing a product with Supplemental Nutrition Assistance Program benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;
- (D) Purchasing a product with Supplemental Nutrition Assistance Program benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with Supplemental Nutrition Assistance Program benefits in exchange for cash or consideration other than eligible food;
- (E) Intentionally purchasing products originally purchased with Supplemental Nutrition Assistance Program benefits in exchange for cash or consideration other than eligible food; or
- (F) Attempting to buy, sell, steal, or otherwise affect an exchange of Supplemental Nutrition Assistance Program benefits issued and accessed via Electronic Benefit Transfer cards, card numbers and personal identification numbers, or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

002.66 VERIFICATION. Information obtained to establish the accuracy of information provided by the household. The use of third-party information or documentation to establish the accuracy of statements made by the household or provided on the application.

002.67 VOLUNTARY QUIT. Voluntary termination of employment of 30 or more hours per week or the equivalent of 30 hours per week times minimum wage. An individual who terminates a self-employment enterprise or resigns from a job at the employer's demand is not considered to have voluntarily quit.

003. HOUSEHOLD RESPONSIBILITIES. The household is informed both verbally and in writing, of its responsibilities. All households must:

- (A) Provide accurate and complete information;
- (B) Obtain needed verification materials;
- (C) Cooperate with state and federal quality control and audit processes;

- (D) Provide the Department with the Social Security numbers of household members;
- (E) Follow the reporting requirements for the category the household is assigned to:
 - (i) Simplified Reporting; or
 - (ii) Transitional Benefit Reporting; and
- (F) Contact the agency for an interview within 30 days of the date of application if notified that an interview is required.

004. BILINGUAL REQUIREMENTS. Based on the estimated total number of low income households in the state which speak the same non-English language, the Department provides bilingual program information, certification materials, and staff or interpreters for the timely processing of non-English-speaking applicants. The Department provides the following:

- (A) Bilingual materials used for program informational activities for the project area with:
 - (i) Fewer than 2,000 low-income households if approximately 100 or more of those households are single-language minority households; and
 - (ii) 2,000 or more low-income households if approximately five percent or more of those households are single-language households; and
- (B) Both bilingual materials and interpreters or staff when:
 - (i) Each certification office provides service to approximately 100 single-language minority households;
 - (ii) A majority of those households consists of a single-language minority in the project area with less than 100 low-income households; and
 - (iii) A seasonal influx of non-English speaking households moving into the area meets or exceeds any of the above limits.

005. RECORDS. The following applies to the disclosure and retention of records.

005.01 SAFEGUARDING RECORDS. Records pertaining to applicants and recipients are safeguarded in accordance with 7 CFR §272.1 and Nebraska Revised Statute (Neb. Rev. Stat.) §68-313.

005.01(A) DISCLOSURE TO HOUSEHOLD. If there is a written request by a responsible member of the household, its currently authorized representative, or any person authorized in writing to act in its behalf to review materials contained in the case file, the material and information contained in the case file is available for inspection during normal business hours. However, the Department may withhold confidential information, such as, but not limited to, the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

005.01(B) ELECTRONIC BENEFIT TRANSFER CARD AND ISSUANCE DOCUMENT ACCESS. Access to Electronic Benefits Transfer cards and issuance documents is limited to employees of:

- (i) The Department;
- (ii) The Issuance and Collection Center; or
- (iii) The federal government agency which oversees administration of Supplemental Nutrition Assistance Program.

005.02 RETENTION. Records will be retained in compliance with 7 CFR §272.

005.02(A) DESTRUCTION OF CASE FILE MATERIAL. Destruction of outdated case record material will be done in compliance with procedures outlined by the Nebraska Records Management Division.

006. FAIR HEARINGS. The Department provides a fair hearing to a household that wishes to appeal a Department action or inaction that affects the household's participation, unless the action is not appealable. Actions that are not appealable include actions that reduce, suspend, or cancel benefits program-wide, mass changes that affect the Supplemental Nutrition Assistance Program benefit level, or allotment reductions for failure to pay an outstanding accounts receivable.

006.01 NOTIFICATION OF RIGHT TO APPEAL. The following applies to notifying households of their right to appeal.

006.01(A) AT TIME OF APPLICATION. At the time of application, the household is informed in writing of the following:

- (i) The right to request a fair hearing;
- (ii) The method of requesting a fair hearing; and
- (iii) That the household may have its case presented at a fair hearing by:
 - (1) A household member; or
 - (2) Any representative chosen by the household.

006.01(B) OTHER CIRCUMSTANCES. When a household disagrees with the Department regarding action affecting the household's eligibility, the Department:

- (i) Informs the household of its right to request a fair hearing;
- (ii) Refers the household to any free legal representation or a legal referral service; and
- (iii) Offers the household an agency conference.

006.02 REQUESTS FOR HEARING. Any request for a hearing must be made verbally or in writing by the household or its representative on any appealable action which occurred within the past 90 days. A request for a hearing is defined as a clear expression, oral or written, by the household or its representative that it wishes to appeal a decision. The Department does not limit or interfere in any way with the household's freedom to request a hearing.

006.02(A) VERBAL REQUESTS. If a verbal request is received, the Department will request that the household submit a written request and help the household with the written request if the household requires assistance. If a household makes an oral request and does not submit a written request for a hearing, the Department will complete the procedures necessary to start the hearing process.

006.02(B) APPEALABLE ACTION. Appealable action by the Department includes a denial of a request for restoration of benefits lost more than 90 days but less than a year before the request for restoration. A household may request a fair hearing at any time within its certification period to dispute its current level of benefits.

006.02(C) REQUEST FOR EXPEDITED HEARING. Expedited hearing requests will be granted to households, such as migrant farm workers, which plan to move from the

jurisdiction of the Department before the hearing decision would normally be reached. Hearing requests from these households will be given priority in processing.

006.02(D) VOLUNTARY WITHDRAWAL REQUEST FOR A FAIR HEARING. The household may withdraw a fair hearing request, orally or in writing, any time before a determination of the fair hearing is made.

006.02(D)(i) VERBAL WITHDRAWAL. If the withdrawal request is made verbally, the Central Office will provide written notice to the household within ten days of the household's request to withdraw, confirming the withdrawal request and providing the household an opportunity to request another hearing if desired. A household is allowed one reinstated fair hearing per appeal.

006.02(D)(ii) COERCION. Coercion or actions which would influence the household or its representative to withdraw the household's fair hearing request are prohibited.

006.02(D)(iii) HOUSEHOLD'S PARTY TO ANOTHER ACTION. A household's request for a fair hearing will not be denied even if the household is a party to another action that differs from the reinstated action.

006.02(E) REQUEST FOR POSTPONEMENT. A household may request a postponement of the scheduled hearing. This postponement will not exceed 30 days; and the time limit for action on the decision may be extended for as many days as the hearing is postponed. The individual is entitled to one postponement of the individual's fair hearing upon a showing of good cause. The individual is entitled to a second postponement of individual's fair hearing only upon a showing of exceptional good cause. Fair hearing may be postponed only at the request of, or with the consent of, the individual.

006.02(F) DENIAL OR DISMISSAL OF REQUEST. The Department will not deny or dismiss a request for a hearing unless:

- (i) The request is not received within the specified time limit;
- (ii) The request is withdrawn, in writing or orally, by the household or its representative;
- (iii) The household or its representative fails, without good cause, to appear at the scheduled hearing; or
- (iv) The action the household requests to appeal is non-appealable.

006.02(G) CONTINUATION OF BENEFITS. If a hearing request is made within the notice of adverse action period and the household's certification period has not expired, participation will be continued at the same level of benefits, unless the household waives continuation of benefits. If the household does not waive its right to continuation of benefits in writing, the Department will assume the household wishes benefits to continue and will issue the benefits accordingly.

006.02(G)(i) CLAIMS AFTER CONTINUANCE. If the Department action is upheld by the hearing decision, the Department will initiate a claim against the household for all overpayments.

006.02(G)(ii) REQUESTS NOT MADE WITHIN TEN DAYS. If a hearing request is not made within ten days from the date the notice was mailed, the Department will reduce or terminate benefits as provided in the notice. If the Department determines that the household has good cause for failure to make the request within the required time limits, the Department will reinstate the benefits at the level previous to the notice of adverse action being sent.

006.02(G)(iii) REDUCTION DUE TO MASS CHANGES. When benefits are reduced or terminated due to a mass change, the Department will reinstate the household's benefits to the previous level only if the household contests the computation of the Supplemental Nutrition Assistance Program eligibility or benefit level, or the application or interpretation of the federal law or regulation.

006.02(G)(iv) REDUCTION AND TERMINATION AFTER CONTINUANCE. Once benefits are continued or reinstated, the Department will not reduce or terminate benefits before the hearing decision unless one of the following conditions occurs:

- (a) The certification period expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount determined by the Department;
- (b) The household or its representative orally withdraws its request for a fair hearing and does not advise the agency of its desire to reinstate the fair hearing request within the required time frame;
- (c) The hearing official makes a preliminary determination, in writing and at the hearing, that the sole issue is one of federal law or regulation and that the household's claim that the Department improperly computed the benefits or misinterpreted or misapplied such law or regulation is invalid;
- (d) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of adverse action; or
- (e) A mass change affecting the eligibility or basis of issuance occurs.

006.02(G)(iv)(1) NOTIFICATION OF REDUCTION OR TERMINATION. The Department will promptly notify the household in writing if benefits are reduced or terminated pending the fair hearing decision.

006.03 HEARING PROCESS. Within 60 days of the Department's receipt of a fair hearing request:

- (1) The hearing will be conducted;
- (2) A decision will be reached; and
- (3) The household and Department must be notified of the hearing decision by an order.

006.03(A) WRITTEN NOTICE. The Department will provide all persons involved with a written notice at least ten days before the Fair Hearing. The notice will:

- (i) Advise the household or its representative of the name, address, and phone number of a contact person;
- (ii) Specify that the Hearing Office will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause;

- (iii) Include the Hearing Office's hearing procedures and any other information that would provide the household with an understanding of the proceedings and that would contribute to the effective presentation of the household's case; and
- (iv) Explain that the household or representative may examine the case file before the hearing.

006.03(B) INFORMATION FROM THE DEPARTMENT. Upon request, the Department will make available, without charge, the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing. If the individual making the hearing request does not speak English and the Department employs bilingual staff or interpreters, the hearing procedures will be verbally explained in that language. The Department will advise households of any legal services available that may provide representation at the hearing. The Department will make available clearly written rules of procedure to any interested person. The rules of procedure include:

- (i) Time limits for a hearing request;
- (ii) Advance notification requirements;
- (iii) Timeliness standards; and
- (iv) Rights and responsibilities of persons requesting a hearing.

006.03(C) HEARING OFFICER. The hearing officer will make recommendations for final administrative decisions.

006.03(D) HOUSEHOLD HEARING ATTENDANCE. A fair hearing must be attended by a representative of the Department and the household, its representative, or both.

006.03(D)(i) FRIENDS AND RELATIVES. Friends and relatives of the household may attend the hearing, if the household so chooses. The hearing officer has the authority to limit the number of persons in attendance at the hearing if space is limited.

006.03(D)(ii) INDIVIDUALS APPEARING ON BEHALF OF THE HOUSEHOLD. Any person appearing on the household's behalf may appear by telephone, in person at the location of the hearing officer, or by telephone or video conference from a local office that is more accessible to the person.

006.03(D)(iii) PERSON'S ACCUSED OF INTENTIONAL PROGRAM VIOLATIONS. A person accused of an intentional program violation is not required to attend the individual's administrative disqualification hearing or to send a representative.

006.03(E) HOUSEHOLD RIGHTS. The household or its representative will be given the opportunity to take any or all of the following actions:

- (i) The household or its representative is entitled to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file, including the application form and documents of verification, used by the Department to establish the household's ineligibility or eligibility and allotment level will be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the

nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the Department will provide one free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household would not otherwise have an opportunity to contest or challenge will not be introduced at the hearing or affect the Department's decision;

- (ii) The household or its representative may present the case or have it presented by legal counsel or another person;
- (iii) The household or its representative is entitled to call or offer witnesses;
- (iv) The household or its representative may advance arguments without undue interference;
- (v) The household or its representative is entitled to question any testimony or evidence. This includes having an opportunity to cross-examine adverse witnesses; and
- (vi) The household or its representative is entitled to submit evidence to establish all pertinent facts and circumstances in the case.

006.03(F) HEARING DECISIONS. The decision will:

- (1) Comply with federal laws and regulations;
- (2) Be based on the hearing record;
- (3) Be made available to the household;
- (4) Summarize the facts of the case;
- (5) Specify reasons for the decision;
- (6) Identify supporting evidence and pertinent federal regulations; and
- (7) Become a part of the hearing and case records.

006.03(F)(i) NOTIFICATION OF HEARING DECISIONS. The Hearing Office informs the household and the Department in writing of:

- (a) The hearing decision and the reasons for the decision;
- (b) The available appeal rights; and
- (c) Benefits being issued or terminated within the appropriate time limits.

007.03(F)(i)(1) PUBLIC INSPECTION. All hearing records and decisions will be available for public inspection and copying, subject to disclosure safeguards provided that identifying names and addresses of household and other members of the household are kept confidential.

006.04 SPECIAL ARRANGEMENTS. The following special arrangements are taken into consideration for fair hearings.

006.04(A) AGENCY CONFERENCES. The Department will offer agency conferences to households that wish to contest a denial of expedited service or to households affected by an agency action. Use of an agency conference is optional to the household and will in no way delay or replace the fair hearing process. The conference may be attended by the Department, and will be attended by the supervisor or local administrator, and the household, its representative, or both. The conference may lead to an informal resolution of the dispute. However, a fair hearing will still be held unless the household makes a

written withdrawal of its request. Agency conferences for households contesting a denial of expedited service will be scheduled within two working days, unless the household requests otherwise.

006.04(B) CONSOLIDATED HEARINGS. A single group hearing may be conducted for a series of individual requests where the sole issues being raised are those of state law, federal law, regulation or policy. Each individual household will be permitted to present its own case or have its case presented by a representative.

006.05 ACTION ON FAIR HEARINGS. The following applies to actions taken after a fair hearing decision.

006.05(A) DECISIONS RESULTING IN BENEFIT INCREASE. Fair hearing decisions which result in an increase in benefits will be reflected in the allotment issued within ten days after the receipt of the hearing decision, even if the Department will provide the household with an opportunity to obtain the allotment outside of the normal issuance cycle.

006.05(B) DECISIONS RESULTING IN BENEFIT DECREASE. Fair hearing decisions which result in a decrease in benefits will be reflected in the household's next scheduled issuance following the Department's receipt of the hearing decision. If the individual has received benefits to which the individual was not entitled to pending the fair hearing decision, a claim will be filed. In the case of a disqualification such as a work requirement, the Department will disqualify the household or the household member beginning with the month after the receipt of the fair hearing decision.

007. DISQUALIFICATION HEARINGS. The Special Investigations Unit Central Office initiates a disqualification hearing whenever sufficient documentary evidence is established to substantiate that a household member has committed an Intentional Program Violation. The Department informs the household in writing of the disqualification penalties for committing an Intentional Program Violation each time the household applies for benefits. The penalties are listed in clear, prominent, and bold face lettering on the application form or attachment.

007.01 INITIATING DISQUALIFICATION PROCEEDINGS. Upon receiving information that a household may have committed an Intentional Program Violation, the Department takes steps to investigate the report and determine if disqualification may be warranted.

007.01(A) REPORTING REQUIREMENTS. The Department reports cases of suspected Intentional Program Violation to the Special Investigations Unit, Central Office.

007.01(B) SPECIAL INVESTIGATIONS UNIT GUIDELINES. The Special Investigations Unit considers the following in determining whether to proceed with a disqualification hearing or refer the matter for prosecution:

- (i) A disqualification hearing may be initiated regardless of the current eligibility status of the individual;
- (ii) The burden of proving Intentional Program Violation by clear and convincing evidence is on the Department;
- (iii) The Department will not initiate a disqualification hearing against an individual whose case is currently being referred for prosecution or after any action taken

- against the accused individual by a court, if the factual issues of the case arise out of the same, or related, circumstances; and
- (iv) The Department will refer for criminal prosecution those individuals suspected of committing Intentional Program Violation in cases which meet evidentiary standards of state or federal criminal statutes.

007.02 DISQUALIFICATION HEARING PROCEDURES. The Department designates either an employee or an individual under contract to the Department to conduct disqualification hearings.

007.02(A) TIMELINESS STANDARDS. The following timeliness standards are followed in the disqualification hearing process:

- (1) The household member suspected of intentional program violation is given at least 30 days written advance notice of the hearing unless the household requests a waiver of the advance notice in situations when the disqualification and fair hearings are combined;
- (2) The Department has 90 days from the date the accused household member is notified of the hearing to:
 - (a) Conduct the hearing;
 - (b) Arrive at a decision; and
 - (c) Initiate administrative action to make the decision effective; and
- (3) If the hearing is postponed, the time limits are extended for as many days as the hearing is postponed.

007.02(A)(i) SCHEDULING HEARINGS. A Department hearing officer conducts the Disqualification Hearing in Lincoln, Nebraska at a date and time set by the Department, according to the following guidelines:

- (a) The household member or representative is entitled to one postponement of a maximum of 30 days of the scheduled hearing if the request for postponement is made at least ten days before the scheduled hearing;
- (b) If the household member or the individual's representative cannot be located or fails to appear at a hearing without good cause, the hearing will be conducted without representation for the household member. Even though the household member is not represented, the hearing officer or Director will carefully consider the evidence and determine if Intentional Program Violation was committed based on clear and convincing evidence;
- (c) If a household member is found to have committed an intentional program violation, but it is later determined by the Department hearing officer or Director that the household had good cause for not appearing, the previous decision is no longer valid and the Department will conduct a new hearing;
- (d) The household member has ten days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. The Department hearing officer or Director will enter the good cause decision into the record; and
- (e) The household member and any person appearing on the household member's behalf may appear by telephone, in person at the location of the hearing officer, or by telephone or video conference from a local office that is more accessible to the person.

007.02(A)(i)(1) CONSOLIDATED HEARINGS. A disqualification hearing may be combined with a fair hearing when:

- (i) The factual issues of both hearings arise out of the same or related circumstances; and
- (ii) The household is notified in advance that the hearings will be combined in a single hearing.

007.02(A)(i)(1)(a) TIMELINESS. If a disqualification hearing and a fair hearing are combined, the Hearing Office will follow the timeliness standards for disqualification hearings.

007.02(A)(i)(1)(b) CONSOLIDATED HEARINGS REGARDING CLAIM AMOUNTS AND INTENTIONAL PROGRAM VIOLATIONS. If the hearings are combined for the purpose of settling the claim amount and determining if intentional program violation has occurred, the household loses its right to a later fair hearing on the claim amount. Upon the household's request, the Department will allow the household to waive the 30-day advance period when the disqualification hearing and fair hearing are combined.

007.02(A)(ii) ADVANCE NOTICE OF HEARING. The Special Investigations Unit of the Department will send an Advance Notice of Disqualification Hearing, to the individual suspected of the intentional program violation at least 30 days before the date of the disqualification hearing. The Advance Notice of Disqualification Hearing is mailed first class mail or certified mail, return receipt requested.

007.02(A)(iii) WAIVED HEARING. The Advance Notice of Disqualification Hearing contains information advising the household of its right to waive the disqualification hearing. If the household wishes to waive a disqualification hearing, the Special Investigations Unit will send a waiver of hearing consent form to the household.

007.02(A)(iv) PARTICIPATION WHILE AWAITING A HEARING. A pending disqualification hearing does not affect the right of the individual or the household to be certified and participate in the program. The Department shall determine the eligibility and benefit level in the same manner it would be determined for any other household, until there is a determination that the individual has committed intentional program violation. If the pending disqualification action does not affect the household's current circumstances, the household would continue to receive its allotment based on the latest certification action or be recertified based on a new application and its current circumstances. If the certification period has expired and the household does not reapply after receiving its notice of expiration, benefits will be terminated. The Department will also reduce or terminate the household's benefits if there is documentation which substantiates ineligibility or eligibility for fewer benefits and the household fails to request a fair hearing and continuation of benefits pending the hearing. These actions occur even if the documented facts led to the suspicion of intentional program violation and the resulting disqualification hearing. The Department may have facts which substantiate that a household failed to report a change in its circumstances even though the state has not yet demonstrated that the

failure to report involved an act of intentional program violation. In these cases, the Department will reduce or terminate benefits.

007.02(B) THE HEARING OFFICER. The information below applies to the hearing officers.

007.02(B)(i) DUTIES OF THE HEARING OFFICER. The hearing officer shall ensure that:

- (1) All relevant issues are considered;
- (2) All persons who testify at the hearing present their evidence as completely and accurately as possible; and
- (3) The hearing record contains enough evidence to enable the hearing officer or the Director to make a decision.

007.02(B)(ii) POWERS OF HEARING OFFICER. The hearing officer has the power to:

- (1) Administer oaths;
- (2) Ask for additional witnesses and question witnesses;
- (3) Ask that additional documents be brought in;
- (4) Dismiss witnesses from the room for good and sufficient reason;
- (5) Recess, continue, or close the hearing at any time if there is good and sufficient reason for so doing; and
- (6) Regulate the conduct and course of the hearing in accordance with due process and keep the hearing orderly and to the point by excluding and discouraging evidence which is not relevant.

007.02(B)(iii) HEARING DECISION AUTHORITY. The power to make the final disqualification hearing decision is vested in the hearing officer or the Director.

007.02(C) CONDUCT OF THE HEARING. Disqualification hearings will be conducted by the hearing officer as informal hearings, but witnesses will be placed under oath.

007.02(C)(i) ATTENDANCE AT THE HEARING. The hearing will be attended by a representative of the Department. The suspected household member and the member's representative, if applicable, are encouraged to attend, but their presence is not required. The hearing is not open to the public, but friends or relatives of the household may attend if the household so chooses. However, the hearing officer has the authority to limit the number of persons in attendance at the hearing if space is limited or if persons in attendance must be limited to ensure an orderly hearing.

007.02(C)(ii) RECORDING THE HEARING. Disqualification hearings are recorded by either mechanical equipment, a stenographer, or both.

007.02(C)(iii) ORDER OF THE HEARING. The hearing will begin with introductions by the hearing officer. At this time the hearing officer will advise the suspected household member or the representative that the individual may refuse to answer questions during the hearing. The Department's representative will present the state's

case first. The household member or the representative will then present the individual's case.

007.02(D) RECESSING THE HEARING. The hearing officer may order a recess if the individual considers it necessary to request, receive, or obtain additional testimony or evidence in order for the hearing officer or Director to decide the issues being raised. The hearing officer will advise the household member or the individual's representative of the reason for the recess and the nature of the additional information that is required. The hearing will be reconvened when the witness, document, or other evidence is available so that the household member will have an opportunity to question or refute any testimony or other evidence received. When reconvened, the hearing is conducted as any other disqualification hearing.

007.02(E) ADMISSION OF EVIDENCE AFTER HEARING IS CLOSED. Evidence may be submitted after a hearing is closed. However, copies of any new evidence will be sent to interested parties, together with an explanation of the right to explain or refute new evidence.

007.03 HEARING DECISION. The following applies to the hearing decision.

007.03(A) CRITERIA FOR DETERMINING INTENTIONAL PROGRAM VIOLATION. The Department of Health and Human Services hearing officer or Director will base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member knowingly, willfully and with deceitful intent committed an intentional program violation.

007.03(B) DECISION FORMAT. On the basis of the evidence presented, the hearing officer or Director will enter a final decision which:

- (i) Specifies the reasons for the decision;
- (ii) Identifies the supporting evidence;
- (iii) Identifies the pertinent Food and Nutrition Service regulation; and
- (iv) Responds to reasonable arguments made by the household member or representative.

007.04 APPEAL RIGHTS OF THE HOUSEHOLD. No further administrative appeal procedure exists after a hearing decision is made which is adverse to the household member. A determination of intentional program violation cannot be reversed by a subsequent fair hearing decision on the same level. However, the household member is entitled to seek relief in a court having appropriate jurisdiction under Nebraska Revised Statute Section 84-917. The period of disqualification may be subject to stay or other injunctive remedy.

007.05 COURT-IMPOSED PENALTIES. A court of appropriate jurisdiction of either the State, a political subdivision of the State, or the United States, may find an individual guilty of civil or criminal fraud. Court decisions will not address disqualification periods. Court orders regarding penalties for intentional program violation which are received by the Department will be referred to Food Programs and Office of the General Counsel at the Department. Court ordered penalties may be imposed separate and apart from any action taken by the

Department to disqualify the individual through a disqualification hearing unless it is contrary to the court order.

007.05(A) NOTICE OF COURT DECISION. If the court finds that the household member committed an intentional program violation, the Department contacts the Special Investigations Unit for further instructions. After receiving instructions from the Special Investigations Unit, the Department mails a written notice to the household member before the disqualification whenever possible. The notice will inform the household member of the decision and the reason for the decision. The Department will send the remaining household members a notice of the hearing decision and the allotment amount for the next month, if appropriate.

007.05(B) REVERSED INTENTIONAL PROGRAM VIOLATION DISQUALIFICATIONS. In cases where the determination of intentional program violation is reversed by a court of appropriate jurisdiction, the individual will be reinstated in the program if the household is eligible. The Department will restore any benefits that were lost as a result of the disqualification.

008. PROGRAM DISQUALIFICATIONS. The following section details criteria that disqualify individuals or households from participating.

008.01 DISQUALIFICATION PENALTIES FOR INTENTIONAL PROGRAM VIOLATION. An individual found to have committed an intentional program violation, either through an administrative disqualification hearing or by a federal, state, or local court, or who has signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, will be disqualified from the Supplemental Nutrition Assistance Program as follows, except as otherwise provided:

- (1) Twelve months for the first Intentional Program Violation;
- (2) Twenty-four months for the second Intentional Program Violation; and
- (3) Permanently for the third Intentional Program Violation.

008.01(A) ADDITIONAL INTENTIONAL PROGRAM VIOLATION REGULATIONS. Only the individual convicted of or found to have committed Intentional Program Violation is disqualified, not the participating household. The first month of the disqualification will begin no later than the second month which follows the date the individual receives notice of the disqualification within 45 days of the receipt of the notice informing the household of the disqualified individual. The period of disqualification begins regardless of whether or not the individual is a member of a participating household. The disqualified individual is a financially responsible household member.

008.02 DISQUALIFICATION PENALTIES FOR USE OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM BENEFITS IN THE SALE OF A CONTROLLED SUBSTANCE. An individual found guilty by a federal, state, or local court of having used or received Supplemental Nutrition Assistance Program benefits in a transaction involving the sale of a controlled substance is disqualified from participation in the Supplemental Nutrition Assistance Program. The disqualification periods for this violation are:

- (A) Twenty-four months for the first violation; and
- (B) Permanently for the second violation.

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008.03 DISQUALIFICATION FOR TRAFFICKING OF SNAP SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM BENEFITS. An individual convicted by a federal, state, or local court of having trafficked Supplemental Nutrition Assistance Program benefits for an aggregate amount of \$500 or more is permanently disqualified from the program. Only the individual convicted of the violation is disqualified, not the entire household.
008.04 DISQUALIFICATION OF AN INDIVIDUAL WITH DRUG-RELATED CONVICTIONS. Individuals convicted of drug felonies are disqualified pursuant to Nebraska Revised Statute §68-1017.02.

008.05 DISQUALIFICATION OF FLEEING FELONS AND PROBATION OR PAROLE VIOLATORS. An individual is disqualified from participation if the individual is:

- (A) Fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime that would be classified as a felony; or
- (B) Violating a condition of probation or parole under a federal or state law.

008.06 DISQUALIFICATION FOR FRAUDULENT INFORMATION. An individual found guilty by a federal, state, or local court or by a state agency of having made a fraudulent statement or false representation with respect to the individual's identity or place of residence in order to receive multiple Supplemental Nutrition Assistance Program benefits simultaneously is disqualified from participation in the Supplemental Nutrition Assistance Program for a period of ten years.

008.07 DISQUALIFICATION FOR USE OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM BENEFITS TO PURCHASE FIREARMS, AMMUNITION, AND EXPLOSIVES. An individual found guilty by a federal, state, or local court of having used or received Supplemental Nutrition Assistance Program benefits in a transaction involving the sale of firearms, ammunition, or explosives is permanently disqualified from participation in the Supplemental Nutrition Assistance Program. Only the individual is disqualified, not the entire household.

008.08 DISQUALIFICATION OF INDIVIDUALS WITH CERTAIN FELONIES. Individuals are disqualified if they are convicted of certain felonies described in Chapter three of this title.

008.09 DISQUALIFICATION OF HOUSEHOLDS WITH SUBSTANTIAL LOTTERY OR GAMBLING Winnings. Households are disqualified from participating in the Supplemental Nutrition Assistance Program if they include a participant with substantial lottery or gambling winnings described in Chapter 3 of this title.