

## Food and Nutrition Service, USDA

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540 regarding the Grand River Band of Ottawa Indians.

(f) *Income deductions.* (1) Households with earned income, as defined in paragraph (e)(2)(i) of this section, shall be allowed a deduction of twenty percent of their earned income. Earned income excluded under paragraph (e)(3) of this section shall not be considered earned income for the purpose of computing this deduction.

(2) Households shall also receive a deduction for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment or attend training or pursue education which is preparatory to employment. This deduction shall not exceed the maximum allowable deduction for dependent care costs allowable under the Food Stamp Program in the 48 States and the District of Columbia.

(3) Households will receive a deduction for legally required child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The State agency must allow a deduction for amounts paid towards overdue child support (arrearages). Alimony payments made to or for a nonhousehold member cannot be included in the child support deduction.

(4) Households will receive a deduction for the full amount of the Medicare Part B medical insurance premium that is withheld from the Federal retirement or disability payment of a household member or is paid by a household member directly to Medicare. This income deduction is not allowed in situations where the premium is paid by the State on behalf of the Medicare beneficiary or where household members are not Medicare beneficiaries because they receive their health care through the Indian Health Service.

[44 FR 35928, June 19, 1979. Redesignated by Amdt. 1, 47 FR 14137, Apr. 2, 1982, and amended at 59 FR 1449, Jan. 11, 1994; 64 FR 73383, Dec. 30, 1999; 65 FR 47833, Aug. 4, 2000]

### § 253.7 Certification of households.

(a) *Application processing*—(1) *General purpose.* The application process in-

cludes filing and completing an application form, being interviewed, and having certain information verified. The State agency shall act promptly on all applications. Expedited service shall be available to household in immediate need. When the State agency is other than the ITO, the ITO, when appropriate, may receive copies of certification and/or termination notices to the extent requested or agreed upon by the household. State agencies and ITOs may develop formalized mechanisms to ensure ITO receipt of notices.

(2) *Food Distribution Program application form.* The State agency shall use an application form acceptable to FNS. The State agency shall consult with the ITO in developing the application form. The State agency shall make application forms readily accessible to potentially eligible households and those groups or organizations involved in outreach efforts. The State agency shall also provide an application form to anyone who requests the form. State agencies which elect joint PA or GA/Food Distribution Program procedures shall follow the requirements of paragraph (g) of this section for the application form. State agencies may also use an abbreviated recertification form.

(3) *Filing an application.* Households must file an application for the Food Distribution Program by submitting the form to a certification office in person, through an authorized representative or by mail. The State agency shall document the date the application was received. Each household has the right to file an application form the same day it contacts the certification office during office hours on the reservation where the household resides. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the application contains the applicant's name and address and is signed by a responsible member of the household or the household's authorized representative.

(4) *Household cooperation.* To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain

information on the application must be verified. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied upon a determination of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed and not merely fail to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied solely for this reason. The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates.

(5) *Interviews.* All applicant households, including those submitting applications by mail, shall have an interview with a qualified eligibility worker prior to initial certification and all recertifications. At State agency discretion, applicants may be interviewed by telephone or in the home. No household shall be interviewed by telephone for any two consecutive certifications without a face-to-face interview. State agencies must attempt to schedule home visits in advance. Home visits cannot extend required processing standards set forth in paragraphs (a)(7) and (a)(9) of this section. The individual interviewed may be the head of household, spouse, any other responsible member of the household or an authorized representative. The household, if it wishes, may be accompanied to the interview by anyone of its choice. The interviewer shall not only review the information that appears on the application, but shall explore and resolve with the household unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview. The interview shall be conducted as an official and confidential discussion of household circumstances. The applicant's right to privacy shall be pro-

tected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview.

(6) *Verification.* Verification is the use of third party information or documentation to establish the accuracy of statements on the application in order to determine eligibility or ineligibility of the household.

(i) *Mandatory verification.*

(A) *Gross non-exempt income.* The State agency must obtain verification of each household's gross non-exempt income prior to certification. Households certified under the expedited service processing standards at paragraph (a)(9) of this section are not subject to this requirement. Income does not need to be verified to the exact dollar amount unless the household's eligibility would be affected, since Food Distribution Program benefits are not reduced as income rises. If the eligibility worker is unable to verify the household's income, the worker must determine an amount to be used for certification purposes based on the best available information. Reasons for inability to verify income include failure of the person or organization providing the income to cooperate with the household and the State agency, or lack of other sources of verification.

(B) *Legal obligation and actual child support payments.* The State agency must obtain verification of the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. Documentation that verifies the household's legal obligation to pay child support, such as a court order, cannot be used to verify the household's actual monthly child support payments.

(C) *Medicare Part B medical insurance premium.* The State agency must obtain verification of the household's payment of the Medicare Part B medical insurance premium. Documentation of this expense could include:

(1) A copy of the current year Social Security benefit statement (SSA-4926-SM), or a similar statement provided to Railroad Retirement Board and Civil Service Retirement beneficiaries, which identifies the amount of the

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Medicare Part B premium withheld each month; or

(2) A receipt for Medicare Part B premium payments paid directly to Medicare by the household.

(ii) *Verification of questionable information.* Eligibility criteria other than income, including residency on or near the reservation, shall be verified prior to certification only if they are questionable. To be considered questionable, the information on the application must be inconsistent with statements by the applicant, inconsistent with other information on the application or previous applications, or inconsistent with other information received by the State agency. However, due to the difficulty in verifying whether a group of individuals is a household, State agencies shall generally accept the household's statement regarding food preparation and consumption.

(iii) *Responsibility for obtaining verification.* The household has primary responsibility for providing documentary evidence or an acceptable collateral contact to support its income statements and to resolve any questionable information. However, the State agency shall assist the household in obtaining the needed verification. The State agency shall accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application. The State agency shall also accept verification from collateral contacts so long as the collateral contacts can provide accurate third party verification. The State agency shall rely on the household to provide the name of the collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide accurate third party verification. If the collateral contact designated by the household is unacceptable to the State agency, the State agency shall ask the household to designate another collateral contact, and the State agency shall document the casefile as to the reason the collateral contact was rejected and an alternate was requested. The State agency shall use collateral contacts, rather than documentary evi-

dence, for verification if such verification is acceptable, and would result in better service to the household. For example, the household may be able to obtain a wage stub from the employer, but the State agency could call the employer the same day to provide the verification of income. Home visits shall be used as verification only if documentary evidence and collateral contacts cannot be obtained, and the State agency attempts to schedule the visit in advance with the household.

(iv) *Documentation.* Casefiles must be documented to support a determination of eligibility or denial. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

(v) *Verification for recertification.* At recertification, the State agency shall verify a change in income if the source has changed or the amount has changed by more than \$50 per month since the last time the income was verified. State agencies may verify income which is unchanged or has changed by \$50 per month or less, provided verification is, at a minimum, required when information is questionable as defined in paragraph (a)(6)(ii) of this section. All other changes reported at the time of recertification shall be subject to the same verification procedures as apply at initial certification. Unchanged information, other than income, shall not be verified at recertification unless the information is questionable as defined in paragraph (a)(6)(ii) of this section.

(7) *Processing standards.* The State agency shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but not later than seven calendar days excluding weekends and holidays after the application was filed. An application is filed the day the State agency receives an application containing the applicant's name and address and which is signed by either a responsible member of the household or the household's authorized representative.

(8) *Delays in processing.* If the State agency cannot determine a household's eligibility within seven calendar days excluding weekends and holidays of the

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date the application was filed due to lack of verification as required in paragraph (a)(6) of this section, the State agency shall authorize the distribution of commodities to the household for one month pending verification. In order to certify the household pending verification, the information on the application form must be complete and indicate that the household will likely be eligible. No further distribution of commodities shall be made without completing the eligibility determination.

(9) *Expedited service.* The State agency shall provide an opportunity to obtain commodities within one calendar day excluding weekends and holidays after the date the application was filed for those households with no income in the current month and also for those households which, in the judgment of the certifying agency, would likely be eligible and would otherwise suffer a hardship. The basis for this determination shall be recorded in the casefile. State agencies shall provide same day service, if possible, to households eligible for expedited service which would likely suffer a hardship if required to return to the office the next day. Warehouses or other distribution points need not be open during all certification hours to meet this need. However, accessibility to federally donated commodities by appropriate certification or other personnel should be established for households in immediate need. When State agencies can demonstrate a need, FNS may approve other expedited timeframes based on circumstances such as distance to warehouses or other distribution points. To expedite the certification of households in immediate need the State agency shall postpone the verification required under paragraph (a)(6) of this section. However, the State agency shall verify the household's identity and address through a collateral contact or readily available documentary evidence. If possible, the household's income statements should be verified at the same time. The State agency shall complete the verification for households certified on an expedited basis prior to the distribution of commodities to the household for any subsequent month.

(10) *Authorized representatives.* The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in one or all of the following capacities:

(i) *Making application for commodities.* When the head of the household or the spouse cannot make application, another household member may apply or an adult nonhousehold member may be designated in writing as the authorized representative for that purpose. The head of the household or the spouse should prepare or review the application whenever possible, even though another household member or the authorized representative will actually be interviewed. Adults who are nonhousehold members may be designated as authorized representatives for certification purposes only if they are sufficiently aware of relevant household circumstances.

(ii) *Obtaining commodities.* An authorized representative of the household may be designated to obtain commodities. Designation shall be made at the time the application is completed except that the household may be permitted to designate an emergency authorized representative in the event that illness or other unforeseen circumstances prevent the household from otherwise obtaining commodities. Designation of an emergency authorized representative must be made in writing by a responsible member of the household. State agencies may distribute commodities to household members or authorized representatives presenting an identification card or other appropriate identification that satisfactorily identifies the member obtaining commodities.

(b) *Eligibility determinations—(1) Determining income.* (i) The State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that is anticipated is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency.

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For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These monies shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, and the household's income is close to the income eligibility limit the State agency may elect to average income provided that such averaging does not disadvantage the household. Such averaging shall be based on income that is anticipated to be available to the household during the certification period. The State agency shall use income received in the past 30 days as an indicator of future income during the certification period unless changes in income have occurred or can be anticipated.

(ii) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged.

(iii)(A) Self-employment income which represents a household's annual support including the net profit from the sale of any capital goods or equipment related to the business shall be annualized over a 12-month period, even if the income is received in only a short period of time. For example, self-employment income received by farmers shall be averaged over a 12-month period if the income represents the farmer's annual support.

(B) Self-employment income which represents only a part of a household's annual support, including the net profit from the sale of any capital goods or equipment related to the business, shall be averaged over the period of time the income is intended to cover. For example, self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year

shall have their self-employment income averaged over the summer months rather than a 12-month period.

(C) For the period of time over which self-employment income is determined, the State agency shall add all gross self-employment income, exclude the cost of producing the self-employment income and divide the net self-employment income by the number of months over which the income will be averaged. The allowable costs of producing self-employment income include but are not limited to, the identifiable costs of labor, stock, raw materials, seed and fertilizer, interest paid to purchase income producing property, insurance premiums, and taxes paid on income producing property.

(D) In determining net self-employment income, payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods, net losses from previous periods, Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work) will not be allowable costs of doing business.

(iv) The monthly net self-employment income shall be added to any other earned income received by the household. The total monthly earned income, less the 20 percent earned income deduction, shall then be added to all monthly unearned income received by the household.

(v) Allowable costs for dependent care shall be subtracted from the household's total monthly income to determine net monthly income.

(vi) The total net monthly income shall be compared to the income eligibility standard for the appropriate household size to determine the household's eligibility.

(2) *Certification periods.* (i) The State agency shall establish definite periods of time within which households shall be eligible to receive benefits. Further eligibility shall be established upon a recertification based upon a newly completed application, an interview, and such verification as required by paragraph (a)(6)(v) of this section.

(ii) Certification periods shall conform to calendar months. The first

month in the certification period of initial applicants shall be the month in which eligibility is determined. For example, if a household submits an application in late January and the household is determined eligible on the fifth working day which falls in February, a six-month certification period would include February through July. Upon recertification, the certification period will begin with the month following the last month of the previous certification period.

(iii) A household shall be assigned a certification period for as long a period as the household's circumstances are expected to remain sufficiently stable such that the household is expected to continue to meet the program's eligibility standards. In no event shall a certification period exceed one year.

(3) *Certification notices*—(i) *Notice of eligibility*. If an application is approved, the State agency shall provide the household a written notice of eligibility and the beginning and ending dates of the certification period. Households certified on an expedited basis shall be advised that the subsequent month's eligibility will depend upon completion of the postponed verification.

(ii) *Notice of denial*. If the application is denied, the State agency shall provide the household written notice explaining the basis for the denial, the household's right to request a fair hearing, and the telephone number and address of the person to contact for additional information. If there is an individual or organization available which provides free legal representation, the notice shall also advise the household of the availability of the service.

(iii) *Notice of adverse action*. (A) Prior to any action to reduce or terminate a household's benefits within the certification period, except for households voluntarily switching program participation from the Food Distribution Program to the Food Stamp Program, State agencies shall provide the household timely and adequate advance notice before the adverse action is taken. The notice must be issued within 10 days of determining that an adverse action is warranted. The adverse action must take effect with the next sched-

uled distribution of commodities that follows the expiration of the advance notice period, unless the household requests a fair hearing.

(B) In State agencies that have elected joint public assistance or general assistance and Food Distribution processing, the notice of adverse action shall be considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice period for its public or general assistance caseload, provided that the period includes at least 10 days from the date the notice is mailed to the date upon which the action becomes effective. In circumstances other than joint processing, the advance notice shall be considered timely if the advance notice period includes at least 10 days from the date the notice is issued to the date upon which the action becomes effective.

(C) The notice of adverse action must include the following in easily understandable language:

- (1) The reason for the adverse action;
- (2) The date the adverse action will take effect;
- (3) The household's right to request a fair hearing and continue to receive benefits pending the outcome of the fair hearing;
- (4) The date by which the household must request the fair hearing;
- (5) The liability of the household for any overissuances received while awaiting the outcome of the fair hearing, if the fair hearing official's decision is adverse to the household;
- (6) The telephone number and address of someone to contact for additional information; and
- (7) The telephone number and address of an individual or organization that provides free legal representation, if available.

(D) The State agency shall continue distribution of commodities to the household after the end of the adverse notice period if the household requests a fair hearing during the advance notice period.

(E) If the State agency determines that a household received more USDA commodities than it was entitled to receive, it must establish a claim against the household in accordance with

§ 253.9. The initial demand letter for repayment must be provided to the household at the same time the notice of adverse action is issued. It may be combined with the notice of adverse action. (c) *Reporting changes.* (1) Certified households are required to report changes in household composition and income which would necessitate a change in the determination of eligibility. To facilitate reporting changes in income each certified household shall be advised at the time of certification what the maximum monthly income limit, as defined in § 253.6(e)(1), is for its size household, and shall be required to report any change in income that goes above that limit to the certification office within ten days after the change becomes known to the household. Households must also report within ten days when cash on hand, money in checking or savings accounts, savings certificates, stocks, or bonds, or other readily negotiable instruments exceeds \$1,750. The State agency shall develop the procedures for when and how changes in household circumstances are reported. Changes reported over the telephone or in person shall be acted on in the same manner as those reported in writing.

(2) If the State agency determines that the household is no longer eligible or reduces the amount of commodities due the household because the household has lost a member or members, the State agency shall provide the household with a notice of adverse action not later than ten days after the change is reported. If the reported change increases the amount of commodities due the household, the household shall be notified that the increase shall be effective not later than the month following the date the change was reported.

(d) *Recertification.* (1) The State agency shall develop a procedure for notifying the household prior to or shortly after the end of its certification period that the household must reapply and be recertified for continued participation. Households shall also be notified of the date upon which termination from participation will be effective should the household fail to reapply before the expiration of the certification period.

(2) The State agency shall approve or deny a household's application for recertification and notify the household of that determination prior to the expiration of the household's current certification period. Households applying for recertification in the last month of the current certification period must be provided an opportunity to obtain commodity distribution on an uninterrupted basis.

(3) The State agency shall continue distribution of commodities to the household denied at the point of recertification if the household timely requests a fair hearing.

(e) *Controls for dual participation—(1) Prohibition on dual participation.* No household shall be allowed to participate simultaneously in the Food Stamp Program and Food Distribution Program. The State agency shall inform each applicant household of this prohibition and shall develop a method to detect dual participation. The method developed by the State agency shall, at a minimum, employ lists of currently certified households provided by and provided to the appropriate food stamp agency on a monthly basis. The State agency may also employ computer checks, address checks and telephone calls to prevent dual participation. The State agency shall coordinate with the appropriate food stamp agency or agencies in developing controls for dual participation.

(2) *Choice of programs.* Households eligible for either the Food Stamp Program or Food Distribution Program on reservations on which both programs are available may elect to participate in either program. Such households may elect to participate in one program, and subsequently elect the other at the end of the certification period. Households may also elect to switch from one program to the other program within a certification period only by terminating their participation, and notifying the State agency of their intention to switch programs. Households certified in either the Food Distribution or Food Stamp Program on the first day of the month can only receive benefits in the program for which they are currently certified during that month. At the point the household

elects to change programs the household should notify the State agency of its intent to switch programs, and should file an application for the program in which it wishes to participate. Households voluntarily withdrawing from one program with the intent of switching to the other shall have their eligibility terminated for the program in which they are currently certified on the last day of the month in which the household notifies the State agency of its intent to change programs. Entitlement in the program for which a household is now filing an application, if all eligibility criteria are met, would begin in the month following the month of termination in the previous program.

(f) *Treatment of disqualified household members.* (1) The following are not eligible to participate in the Food Distribution Program:

(i) Household members disqualified from the Food Distribution Program for an intentional program violation under § 253.8. These household members may participate, if otherwise eligible, in the Food Distribution Program once the period of disqualification has ended.

(ii) Household members disqualified from the Food Stamp Program for an intentional program violation under § 273.16 of this chapter. These household members may participate, if otherwise eligible, in the Food Distribution Program once the period of disqualification under the Food Stamp Program has ended. The State agency must, in cooperation with the appropriate food stamp agency, develop a procedure that ensures that these household members are identified.

(iii) Households disqualified from the Food Distribution Program for failure to pay an overissuance claim. The circumstances under which a disqualification is allowed for such failure are specified in FNS Handbook 501.

(2) During the time a household member is disqualified, the eligibility and food distribution benefits of any remaining household members will be determined as follows:

(i) *Resources.* The resources of the disqualified member will continue to count in their entirety to the remaining household members.

(ii) *Income.* A pro rata share of the income of the disqualified member will be counted as income to the remaining members. This pro rata share is calculated by dividing the disqualified member's earned (less the 20 percent earned income deduction) and unearned income evenly among all household members, including the disqualified member. All but the disqualified member's share is counted as income to the remaining household members.

(iii) *Eligibility and benefits.* The disqualified member will not be included when determining the household's size for purposes of assigning food distribution benefits to the household or for purposes of comparing the household's net monthly income with the income eligibility standards.

(g) *Joint processing PA/GA.* (1) State agencies which are responsible for and administer both the Food Distribution and public assistance (PA) or general assistance (GA) programs on Indian reservations may allow a household to apply for the Food Distribution Program at the same time the household applies for PA or GA benefits. However, while PA households are categorically eligible, GA households except for those households in GA programs which have been determined by FNS to have criteria of need the same as, or similar to those under federally aided public assistance programs as provided for in § 253.6(c)(2) shall have their eligibility for commodities based solely on Food Distribution eligibility criteria. All criteria provided in this paragraph (f), are applicable to State agencies which administer both the Food Distribution and assistance programs and which elect joint processing. Under joint processing, the State agency shall use joint application forms that contain all the information needed to determine eligibility for commodities or shall attach a form for the other needed information.

(2) The State agency shall process all applications for PA or GA as applications for the Food Distribution Program as well, unless the household clearly indicates on a space on the application that the household does not want commodities. The State agency shall conduct a single interview for PA or GA and Food Distribution Program

eligibility, unless the State agency is unable to do so within the Food Distribution Program processing standards specified in paragraphs (a)(7) and (a)(9) of this section. In such cases the State agency shall provide separate certification for PA or GA and Food Distribution Program eligibility.

(3) The State agency may verify those factors of eligibility which must be verified for PA or GA, under PA or GA rules, but must follow the Food Distribution Program rules for all other factors.

(4) PA households have the same reporting requirements as any other food distribution household. PA households which report a change in circumstances to the PA worker shall be considered to have reported the change for food distribution purposes. All of the requirements pertaining to reporting changes for PA households shall be applied to GA households in project areas where GA and food distribution cases are processed jointly.

(5) The State agency must follow all Food Distribution Program timeliness rules for certification of households for the Food Distribution Program.

(h) *Fair hearing*—(1) *Availability of hearings*. The State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Food Distribution Program.

(2) *Timely action on hearings*—(i) *Time frames for the State agency*. The State agency must conduct the hearing, arrive at a decision, and notify the household of the decision within 60 days of receipt of a request for a fair hearing. The fair hearing decision may result in a change in the household's eligibility or the amount of commodities issued to the household based on household size. The State agency must implement these changes to be effective for the next scheduled distribution of commodities following the date of the fair hearing decision. If the commodities are normally made available to the household within a specific period of time (for example, from the first day of the month through the tenth day of the month), the effective date of the disqualification will be the first day of that period.

(ii) *Household requests for postponement*. The household may request and is entitled to receive, a postponement of the scheduled hearing. The postponement shall 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.

(3) *Notification of right to request hearing*. At the time of application, each household shall be informed of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or a representative, such as a legal counsel, a relative, a friend or other spokesperson. If there is an individual or organization available which provides free legal representation, the household shall also be informed of the availability of that service. Hearing procedures shall be published by the State agency and made available to any interested party.

(4) *Time period for requesting hearing*. A household shall be allowed to request a hearing on any action by the State agency which occurred in the prior 90 days or which affects current benefits.

(5) *Request for hearing*. A request for a hearing is any clear expression, oral or written, by the household or its representative to the State agency that it wishes to present its case to a higher authority. The freedom to make such a request shall not be limited or interfered with in any way. Upon request, the State agency shall 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.

(6) *Denial or dismissal of request for hearing*. The State agency shall not deny or dismiss a request for a hearing unless:

(i) The request is not received within the time period specified in paragraph (g)(4) of this section;

(ii) The request is withdrawn in writing by the household or its representative; or

(iii) The household or its representative fails, without good cause, to appear at the scheduled hearing.

(7) *Notification of time and place of hearing*. The time, date and place of the hearing shall be convenient to the

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household. At least 15 days prior to the hearing, advance written notice shall be provided to all parties involved to permit adequate preparation of the case. The notice shall:

(i) Advise the household or its representative of the name, address, and the phone number of the person to notify in the event it is not possible for the household to attend the scheduled hearing.

(ii) Specify that the State agency will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause.

(iii) Include the State agency 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.

(iv) Explain that the household or representative may examine the casefile prior to the hearing.

(8) *Hearing official.* Hearings shall be conducted by an impartial official(s), designated by the State agency, who does not have any personal interest or involvement in the case and who was not directly involved in the initial determination of the action which is being contested. The hearing official shall:

(i) Administer oaths or affirmations if required by the State;

(ii) Ensure that all relevant issues are considered;

(iii) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(iv) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing; and

(v) Render a hearing decision in the name of the State agency, in accordance with paragraph (g)(11) of this section, which will resolve the dispute.

(9) *Attendance at hearing.* The hearing shall be attended by a representative of the State agency which initiated the action being contested and by the household and/or its representative. The hearing may also be attended by friends or relatives of the household upon household consent.

(10) *Conduct of hearing.* The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a manner that makes the household feel most at ease. The household or its representative must be given adequate opportunity to:

(i) 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 casefile, including the application forms and documents of verification used by the State agency shall be made available, provided the confidential information is protected from release. The State agency shall provide a free copy of the relevant portions of the casefile if requested by the household or its representative. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

(ii) Present the case or have it presented by a legal counsel or other person.

(iii) Bring witnesses.

(iv) Advance arguments without undue interference.

(v) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

(vi) Submit evidence to establish all pertinent facts and circumstances in the case.

(11) *Hearing decisions.* (i) Decisions of the hearing officials shall comply with Federal law or regulations and shall be based on the hearing record. The verbatim transcript or recording of testimony and exhibits or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for a final decision by the hearing official.

(ii) A decision by the hearing official shall be binding on the State agency and shall summarize the facts of the

case, specify the reasons for the decision and identify the supporting evidence and the pertinent FNS regulations. The decision shall become a part of the record.

(iii) Within 10 days of the date the fair hearing decision is issued, the State agency must issue a notice to the household advising it of the decision.

(A) If the decision upheld the adverse action by the State agency, the notice must advise the household of the right to pursue judicial review.

(B) If the decision upheld a disqualification, the notice must also include the reason for the decision, the date the disqualification will take effect, and the duration of the disqualification (that is, 12 months; 24 months; or permanent). The State agency must also advise any remaining household members if the household's benefits will change, or if the household is no longer eligible as a result of the disqualification.

(iv) The State agency must revise the demand letter for repayment issued previously to the household to include the value of all overissued commodities provided to the household during the appeal process, unless the fair hearing decision specifically requires the cancellation of the claim. The State agency must also advise the household that collection action on the claim will continue, in accordance with FNS Handbook 501, unless suspension is warranted.

(12) *Agency conferences.* (i) The State agency shall offer agency conferences to households which request an immediate resolution by a higher authority of a denial of eligibility for food distribution benefits. The State agency may also offer agency conferences to households adversely affected by any agency action. The State agency shall advise households that use of an agency conference is optional and that such use shall in no way delay or replace the fair hearing process. The agency conferences may be attended by the eligibility worker responsible for the agency action, and shall be attended by an eligibility supervisor and/or the agency director, as well as the household and/or its representative. An agency conference may lead to an informal resolution of the dispute. However, a fair

hearing must still be held if requested by the household.

(ii) An agency conference for households requesting an immediate resolution by a higher authority of an eligibility issue shall be scheduled within four working days of the request unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

(Approved by the Office of Management and Budget under control number 0584-0071)

(44 U.S.C. 3506)

[44 FR 35928, June 19, 1979, as amended at 47 FR 746, Jan. 7, 1982. Redesignated and amended by Amdt. 1, 47 FR 14137, Apr. 2, 1982; 64 FR 73383, Dec. 30, 1999; 65 FR 47833, Aug. 4, 2000]

**§ 253.8 Administrative disqualification procedures for intentional program violation.**

(a) *What is an intentional program violation?* An intentional program violation is considered to have occurred when a household member knowingly, willingly, and with deceitful intent:

(1) Makes a false or misleading statement, or misrepresents, conceals, or withholds facts in order to obtain Food Distribution Program benefits which the household is not entitled to receive; or

(2) Commits any act that violates a Federal statute or regulation relating to the acquisition or use of Food Distribution Program commodities.

(b) *What are the disqualification penalties for an intentional program violation?* Household members determined by the State agency to have committed an intentional program violation will be ineligible to participate in the program:

(1) For a period of 12 months for the first violation;

(2) For a period of 24 months for the second violation; and

(3) Permanently for the third violation.

(c) *Who can be disqualified?* Only the household member determined to have committed the intentional program violation can be disqualified. However, the disqualification may affect the eligibility of the household as a whole, as addressed under paragraphs (e)(5) and (h) of this section.

(d) *Can the disqualification be appealed?* Household members determined