CHAPTER V
CERTIFICATION PROCEDURES

SECTION 1 - ACTIONS RESULTING FROM ELIGIBILITY DETERMINATIONS

5100 ACTION ON ELIGIBLE HOUSEHOLDS

When a household has met both the nonfinancial and financial Food Distribution Program eligibility requirements, the ITO/State agency must issue the household its USDA foods within the appropriate processing time standard. The household's monthly level of USDA foods must be based on the household's size and must be adjusted at any time the size changes.

5101 Certification Pending Verification

If the ITO/State agency cannot determine a household's eligibility within 7 calendar days, excluding weekends and holidays, of the date the application was filed due to a lack of verification, the ITO/State agency must authorize the distribution of USDA foods to the household for one month pending verification (see paragraph 3320, above). Benefits can not be issued if the application is not acceptable (i.e., contains the information listed in paragraph 3120, above) **or** if it does not appear that the household will probably be eligible. No further distribution of USDA foods can be made without completing required verification.

5110 ESTABLISHING CERTIFICATION PERIODS

ITOs and State agencies must certify eligible households to receive USDA foods for a specific period of time (i.e., certification period). The household’s certification period must not exceed the period of time during which the household’s circumstances (e.g., income, household composition, and resources) are expected to remain stable. The household’s entitlement to USDA foods ends at the expiration of each certification period, and continued participation must be established through a recertification based upon a newly completed application, an interview, and verification required in paragraph 3508, above. However, whenever a certification period is terminated as a result of a notice of adverse action, the household may continue to receive USDA foods beyond the end of the certification period if it requests a fair hearing (see paragraph 5550, below).

5111 Conformance with Calendar Months

Certification periods must conform to calendar months. At initial application, the first month in the certification period is the month in which eligibility is determined. For example, if a household files an application late in January and the household is determined eligible on the fifth working day of February, a six-month certification would include February through July. Upon recertification the certification period will begin with the month following the last month of the previous certification period. For example, if the household cited above is recertified in July for a three month certification period, the new period of eligibility would include August through October.

5112 Length of Certification Periods

A. Elderly/Disabled Households. Households in which all adult members are elderly and/or disabled may be certified for up to 24 months. Households assigned certification periods that are longer than 12 months must be contacted by the State agency at least once every 12

months to determine if the household wishes to continue to participate in the program and whether there are any changes in household circumstances that would warrant a redetermination of eligibility or a change in benefit level. The State agency may use any method it chooses for this contact, including a face-to-face interview, telephone call or a home visit. Contact with the household's authorized representative would not satisfy this requirement; the State agency must contact a household member. The case file must document the contact with the household and include the date of contact, method of contact, name of person contacted, whether the household wishes to continue to participate, and whether changes in household circumstances would warrant a redetermination of eligibility or a change in benefit level.

B. All Other Households. For household that do not contain all elderly and/or disabled members, certification periods may vary depending on the household's stability of membership, income, and resources. ITOs/State agencies must use their best judgment in assigning certification periods; however, in no event may a certification period exceed 12 months. The certification period must be based on the period of time that a household's circumstances are expected to remain stable. For example:

1. A household with stable income and stable membership might be given a 12-month certification period if the household's circumstances are not expected to change;

2. A household that has frequent changes in membership or frequent changes in sources of income might be given a shorter certification period;

3. Households reporting zero income are generally given a one-month certification period. In rare instances, a household reporting zero income may be assigned a two-month certification period, if its circumstances are verified to be stable;

4. For self-employed households that receive their annual income in a short period of time, it is recommended that the ITO/State agency assign a certification period that will bring the household into the annual cycle. For example, the ITO/State agency may provide for a recertification at the time the household normally receives all or a majority of its annual income, or have the annual cycle coincide with the filing of the household's income tax return. If it is anticipated that the household's income will fluctuate significantly, a shorter certification period should be assigned.

5120 OBTAINING USDA FOODS

5121 Requirements for Identification

The ITO/State agency may distribute USDA foods to only those household members or authorized representatives presenting an Identification (ID) Card or appropriate identification so long as the ITO/State agency is satisfied with the identification of the member obtaining USDA foods.

ITOs/State agencies that choose to issue ID cards must limit the issuance of ID cards to the time of initial certification, with replacements made only in the instance of loss, mutilation, destruction, or changes in persons authorized to obtain USDA foods for the household.

5122 Improper Use of USDA Foods

USDA foods distributed under the Food Distribution Program can not be sold, exchanged, or otherwise disposed of without the approval of USDA. In addition, the ITO/State agency must encourage households to take only those USDA foods they will use each month.

5130 PROVIDING NOTICES OF ELIGIBILITY

The ITO/State agency must provide each applicant with a written notice of eligibility as soon as a determination is made, but no later than 7 calendar days, excluding weekends and holidays, after the date of the initial application.

5131 Notice of Eligibility

The notice of eligibility must explain in easily understandable language:

A. The level of benefits the household will receive;

B. The beginning and ending dates of the certification period;

C. The household's right to request a fair hearing;

D. The telephone number of the Food Distribution Program office, and the name and address of the person to contact for additional information; and

E. If there is an individual or organization available that provides free legal representation, the notice must also advise the household of the availability of the service.

F. A reminder of the household's obligation to report changes in circumstances, and of the need to reapply for continued participation at the end of the certification period.

5132 Notice of Eligibility for Expedited Cases

In cases where a household's application is approved on an expedited basis (see paragraph 3340, above), the notice of eligibility must also explain that the verification must be completed prior to any subsequent distribution of USDA foods.

5140 CHANGES DURING THE CERTIFICATION PERIOD

The ITO/State agency must take appropriate action when changes occur within the certification period that affect a household's eligibility or level of benefits.

5141 Reporting Requirements

Certified households are required to report the following changes within 10 days of the date the change becomes known to the household.

A. Changes in income that would affect program eligibility;

B. All changes in household composition, such as the addition or loss of a household member;

C. When nonexempt resources exceed the allowable limits identified in Exhibit M, attached.

The ITO/State agency must not impose any additional reporting requirements other than those stated above.

5142 Reporting Requirements for PA or GA Households

When the application for a PA or GA (if approved by FNS) are jointly processed with the Food Distribution Program application, PA or GA households have the same requirements to report changes as any other Food Distribution Program household. A Food Distribution Program change report form may be used for this purpose unless a similar PA or GA form is used. PA or GA households that report changes in circumstances to the PA or GA worker must be considered as having reported the changes for Food Distribution Program purposes.

5143 How Changes Are Reported

A. Report Form. The ITO/State agency may provide households with a form for reporting the changes covered in paragraph 5141, above. The form may be provided to households:

1. At the time of certification and recertification;

2. Whenever a change report form is submitted by the household;

3. At a household's request; or

4. On a more frequent basis at the ITO's/State agency's discretion.

B. Telephone, Email, Data Fax, or In Person. Changes reported over the telephone, by email, by data fax, or in person must be acted on in the same manner as those reported on the change report form.

5150 ITO/STATE ACTION ON HOUSEHOLD CHANGES

The ITO/State agency must take prompt action on all changes to determine if the change affects the household's eligibility and benefit level. Even if there is no change in eligibility, the ITO/State agency must document the reported change in circumstance in the case file. The household must be notified of the effect of any change on its benefits. The ITO/State agency must also document the date a change is reported, which is the date the ITO/State agency receives a report form, or is advised of the change over the telephone or by a personal visit.

5151 Increase in Benefits

For changes that result in an increase in a household's USDA foods, the ITO/State agency must make the change effective no later than the month following the date the change was reported. At its option, the ITO/State agency may make the change effective earlier.

5152 Decrease in Benefits or Ineligibility

If the change results in a decrease in the household's level of USDA foods or the ineligibility of the household, the ITO/State agency must issue a notice of adverse action within 10 days of the date the change was reported. The decrease in benefit level or termination for ineligibility must

be made effective no later than the month following the month in which the notice of adverse action period expires.

Example 1: If the notice of adverse action expires on March 3, and the household has not picked up its USDA foods for the month of March, the ITO/State agency would decrease the household's benefit level for the March issuance or terminate the household as of March 3 (i.e., the household would not be eligible to receive USDA foods for March), as appropriate.

Example 2: If the notice of adverse action expired on March 23, after the household picked up its USDA foods for March, the ITO/State agency would decrease the household's benefit level for the April issuance or terminate the household as of March 23 (i.e., the household would not be eligible to receive USDA foods for April), as appropriate.

If the household requests a continuation of its benefits pending the resolution of a fair hearing on the adverse action the ITO/State agency must not implement a decrease in benefit level or termination, unless the condition of paragraph 5552, below, are met. Also, see paragraphs 5161 and 5162, below, for additional information on time requirements for the notice of adverse action.

5153 Failure to Report Changes

If the ITO/State agency discovers that the household failed to report a change (as required in paragraph 5141, above) and, as a result, the household received USDA foods to which it was not entitled, the ITO/State agency must file an overissuance claim against the household (see Section 6 of this Chapter). If the discovery is made within the certification period, and the change will result in a decrease in the benefit level or a termination for ineligibility, the ITO/State agency must issue a notice of adverse action to the household. An overissuance claim can not be issued to a household for a change in circumstances that the household is not required to report.

5160 NOTICE OF ADVERSE ACTION

Prior to any action to decrease a household's benefit level or terminate its participation within the certification period, the ITO/State agency must provide the household timely and adequate advance notice before the adverse action is taken.

5161 Timing of Notice

The advance notice period is considered timely if the advance notice period includes at least 10 and no more than 20 days from the date the notice is mailed to the date upon which the action becomes effective. Also, if the adverse notice period ends on a weekend or holiday, and a request for a fair hearing and continuation of benefits is received the day after the weekend or holiday, the ITO or State agency will consider the request.

If an overissuance claim is warranted, the notice of adverse action and the initial demand letter must be provided to the household at the same time. The notice of adverse action may be combined with the initial demand letter.

5162 Timing of Notice for Joint PA or GA and Food Distribution Processing

The notice of adverse action is considered timely if the advance notice period conforms to that period of time defined by the ITO/State agency as an adequate notice period for its PA caseload, provided that the period includes at least 10 days from the date the notice is mailed to the date upon which the action takes effect. For example, if a notice is mailed October 10, the effective date would be October 20, at the earliest.

5163 Contents of the Notice of Adverse Action

The notice of adverse action is considered adequate if it explains in easily understandable language:

A. The reason for the adverse action and the date it will take effect;

B. The household's right to request a fair hearing, and to continue to receive USDA foods pending the outcome of the fair hearing (see paragraph 5550, below);

C. The timeframe in which the household must request the fair hearing, in order to continue to receive USDA foods at the current authorized level pending the outcome of the fair hearing;

D. That the household will be liable for any over issued benefits received while awaiting the outcome of the fair hearing, if the fair hearing official’s decision upholds the adverse action;

E. Contact information to obtain additional information; and

F. Contact information of an individual or organization, if available, that provides free legal representation.

SECTION 2 - ACTIONS RESULTING FROM DETERMINATIONS OF INELIGIBILITY

5200 ACTION ON INELIGIBLE HOUSEHOLDS

When the ITO/State agency makes a determination that a household is ineligible for Food Distribution Program benefits based on financial and/or nonfinancial criteria, a notice of denial must be sent to the household.

5210 NOTICE OF DENIAL

Each household denied eligibility must be provided a written notice of denial explaining:

A. The basis for the denial;

B. The household's right to request a fair hearing;

C. The telephone number of the Food Distribution Program office and the name and address of the person to contact for additional information; and

D. If there is an individual or organization available that provides free legal representation, the notice must also advise the household of the availability of the service.

5211 Time Limit for Providing Notice

Households that are found to be ineligible must be sent a notice of denial as soon as possible, but no later than 7 calendar days, excluding weekends and holidays, following the date the application was filed.

SECTION 3 - RECERTIFICATION

5300 GENERAL REQUIREMENTS

A. The ITO/State agency must develop a procedure for notifying a household that it must reapply to be recertified for participation near to the end of its certification period.

B. Households applying for recertification in the last month of the current certification period must be provided an opportunity to obtain USDA foods on an uninterrupted basis.

C. If a household that has been denied recertification requests a fair hearing, the ITO/State agency must, at the request of the household (see paragraph 5550, below) continue distribution of USDA foods to the household pending the resolution of the fair hearing.

D. The joint processing requirements for PA or GA households continue to apply for recertification procedures.

5310 NOTICE OF EXPIRATION OF CERTIFICATION

The ITO/State agency may provide each household with a notice of expiration of its certification in the last or next-to-last month of the certification period.

5311 Contents of Notice

Each ITO/State agency may use a notice of expiration. The notice of expiration should include:

A. The date the current certification period ends;

B. The date by which the household must file an application to continue to receive USDA foods on an uninterrupted basis;

C. The address of the office where the application must be filed;

D. The consequences of failure to comply with the notice of expiration (i.e., loss of right to uninterrupted benefits unless the household has good cause); and

E. The household's right to file the application in person, by mail, by data fax (as long as it is readable and the signature is clear), or through an authorized representative.

The ITO/State agency is encouraged to include an application form with a notice of expiration if one is used by the ITO/State agency.

5320 HOUSEHOLD FAILURE TO SUBMIT A TIMELY REAPPLICATION

A household that fails to submit a timely application for recertification loses its right to uninterrupted benefits. Any application not submitted in a timely manner must be treated as an application for initial certification, **except**, applications received within thirty days after the certification period expires need not be verified **if** the source of previously verified income has not changed, **and** the amount has not changed by more than $50 per month.

Households that refuse to cooperate in providing information must be denied benefits.

SECTION 4 - CHOICE OF PROGRAMS

5400 CHOICE OF PROGRAMS

Households eligible for either SNAP or Food Distribution Program, where both programs are available, may elect to participate in either program.

A pending disqualification hearing for a SNAP intentional program violation will not affect the individual's or household's right to be certified and participate in the Food Distribution Program. The individual or household may continue to participate in either program until they have been officially disqualified.

5410 DUAL PARTICIPATION

No household will be permitted to receive SNAP and Food Distribution Program benefits in the same month. A household certified to receive SNAP benefits must terminate its participation in SNAP before certification in the Food Distribution Program can be granted. However, please note the following exceptions:

A SNAP Disaster Benefits. A household that has received USDA foods under the Food Distribution Program may be eligible to receive SNAP disaster benefits in the same month, in accordance with 7 CFR Part 280.

B. SNAP Households Receiving Zero SNAP Benefits. A household certified under SNAP but receiving zero SNAP benefits may participate in the Food Distribution Program. Households that qualify for zero SNAP benefits in any month are not considered to be participating in the SNAP for that month. Those households can apply for, and receive, Food Distribution Program benefits for that month, if otherwise eligible. Prior to certifying the household for Food Distribution Program benefits, the ITO/State agency must verify with the local SNAP office that the household qualified for zero SNAP benefits. The ITO/State agency must assign these households a one-month certification period. The household must reapply for Food Distribution Program benefits for any subsequent month that it received zero SNAP benefits if it wishes to continue to receive USDA foods.

5420 ALLOWABLE TIMES FOR CHANGING PROGRAMS

Households may elect to switch from one program to another within their certification period. However, households switching from one program to another can not receive benefits from both programs in any month. Households certified in either SNAP or the Food Distribution Program on the first day of the month can only receive benefits in the program for which they are currently certified during that month.

5430 NOTIFICATION TO THE ITO/STATE AGENCY

A household participating under the Food Distribution Program that wants to switch to SNAP must contact the ITO/State agency to request a termination of its participation in the Food Distribution Program. The notification may be either verbally or in writing.

5440 ITO/STATE AGENCY ACTION AND BENEFIT ENTITLEMENT

Households that have notified the ITO/State agency of their intent to switch programs must have their eligibility terminated for the Food Distribution Program on the last day of the month in which they notified the ITO/State agency. However, the household's request for termination of Food Distribution Program benefits would not change the household's eligibility for USDA foods. For example, a household participating in the Food Distribution Program contacts the ITO/State agency on May 15 and requests termination of its eligibility so the household can apply for SNAP. The household continues to be eligible for USDA foods until May 31.

Entitlement for SNAP, if all eligibility criteria are met, would begin in the month following the month of termination from the Food Distribution Program. For example, a household participating in the Food Distribution Program contacts the ITO/State agency on January 15 and requests termination of its eligibility so the household can apply for SNAP. If otherwise eligible, the household would begin to receive SNAP benefits in February.

SECTION 5 - FAIR HEARINGS

5500 GENERAL

This section describes the fair hearing process for households that believe they have been aggrieved by the following adverse actions by the ITO/State agency:

A. A refusal to accept an application;

B. A denial of eligibility;

C. A disqualification;

D. A decrease in benefit level; or

E. A termination of eligibility.

This process requires the review of the adverse action by an impartial third party. Each ITO/State agency must provide a fair hearing to any household that timely requests a fair hearing because they believe that they have been aggrieved by an action of the ITO/State agency that affects the participation of the household in the program. Hearing procedures must be published by the ITO/State agency and made available to any interested party.

5510 NOTIFICATION OF RIGHT TO REQUEST A FAIR HEARING

A. At the time of application, each household must be informed in writing of the following:

1. The household's right to request a fair hearing in response to an adverse action;

2. The method by which a hearing may be requested;

3. That the household's case may be presented by a household member or representative, such as a legal counsel, a relative, a friend or other spokesperson; and

4. If available, the contact information for an individual or organization that provides free legal representation.

B. The ITO/State agency must also advise the household of its right to a fair hearing any time it takes an adverse action against the household (see paragraph 5163, above), or any time the household expresses to the ITO/State agency that it disagrees with an action by the ITO/State agency.

5520 REQUEST FOR FAIR HEARING

A request for a hearing is a clear expression, oral or written, by the household or its representative that it wishes to appeal a decision or present its case to a higher authority. If it is unclear from the household's request what action it wishes to appeal, the ITO/State agency may request the household to clarify its grievance. **The right to request a hearing must not be limited or interfered with in any way.**

5521 Fair Hearing Request Form

The ITO/State agency may provide households with a form to request a fair hearing and continuation of benefits. The form should contain space for the household to indicate whether or not continued benefits are requested. Also, the form should advise households that they will be liable for the value of benefits issued to them while awaiting the outcome of the fair hearing, if the hearing decision is not in their favor.

5522 Time Period for Requesting a Fair Hearing and Continuation of Benefits

A household may request a hearing on any action by the ITO/State agency that occurred in the past ninety days, or that affects current benefits. When a notice of adverse action is issued, the household must request a fair hearing within the time frame specified in the notice in order to continue to receive benefits at the prior authorized level.

5530 AGENCY CONFERENCES

An agency conference provides an immediate opportunity for a household to present its case for resolution by a higher authority, and may lead to an informal resolution of the dispute. ITOs/State agencies must provide households that are denied eligibility with an opportunity to request an agency conference. The ITO/State agency must advise households that use of an agency conference is optional and that it will in no way delay or replace the fair hearing process. At the ITO's/State agency's option, agency conferences may also be offered to households aggrieved by other adverse actions.

5531 Time Limit for Agency Conferences

If a household indicates it wishes to have an agency conference, the ITO/State agency must schedule it within 4 working days, unless the household requests that it be scheduled later.

5532 Conduct of Agency Conferences

The agency conference must be attended by an eligibility supervisor and/or the agency director, as well as the household and/or its representative. The eligibility worker responsible for the agency action may also attend the conference. ITOs/State agencies should document the household's case record with the date of the agency conference, and a brief statement regarding the issue and outcome.

5533 Agency Conference Outcomes

The agency conference does not delay or replace the fair hearing process. Therefore, if the agency conference resolves the dispute to the household's satisfaction, the household must submit a written withdrawal of its request for a fair hearing. If a written withdrawal is not submitted, the ITO/State agency must proceed with the fair hearing.

If the agency conference does not resolve the dispute, the ITO/State agency must proceed with the fair hearing.

5540 ITO/STATE AGENCY RESPONSIBILITIES ON FAIR HEARING REQUESTS

Within 60 days of receipt of a request for a fair hearing, the ITO/State agency must conduct the hearing, arrive at a decision, and notify the household (and local agency, as appropriate) of the decision.

5541 Household Request for Materials or Assistance in Preparing for the Fair Hearing

Upon request by the household, the ITO/State agency must 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. The ITO/State agency must also respond to a request from a household for help with its hearing request. The ITO/State agency must advise the household of any free legal service available that can provide representation at the hearing.

5542 Need for Bilingual Services

If the individual making the request speaks a language other than English and the ITO/State agency is required to provide bilingual staff or interpreters who speak the appropriate language, the ITO/State agency must ensure that the hearing procedures are verbally explained in that language.

5543 Household Requests for Postponement

The ITO/State agency must approve a household's request for a postponement of the hearing. The postponement can not exceed 30 days. The time limit for action on the decision must be extended for as many days as the hearing is postponed. For example, if a fair hearing is postponed by the household for 10 days, notification of the hearing decision will be required within 70 days from the date of the request for a hearing.

5544 Rules of Procedure

The ITO/State agency must publish clearly written uniform rules of procedure that conform to the regulations and must make the rules available to any interested party. At a minimum, the uniform rules of procedures must include all time limits for filing requests and appeals, advance notification requirements, hearing timeliness standards, and the rights and responsibilities of persons requesting a hearing.

5545 Denial or Dismissal of Request for Hearing

The ITO/State agency can not deny or dismiss a request for a hearing unless the:

A. Request is not received within the time period specified in paragraph 5522, above;

B. Request is withdrawn in writing by the household or its representatives; or

C. Household or its representative fails, without good cause, to appear at the scheduled hearing.

5546 Notification of the Hearing

The time, date, and place of the hearing must be arranged so the hearing is accessible to the household. At least 15 days prior to the hearing, advance written notice must be provided to all parties involved to permit adequate preparation of the case. However, the household may request less advance notice to expedite the scheduling of the hearing. The notice must contain the following:

A. Name of the Agency Contact Person. The notice must contain the name, address, and phone number of the person to notify in the event it is not possible for the household to attend the scheduled hearing.

B. Possibility of Dismissal for Failure to Appear. The notice must advise the household that the ITO/State agency will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause.

C. ITO/State Hearing Procedures. The notice must include the ITO/State agency hearing procedures and any other information that would provide the household with an understanding of the proceedings and would contribute to the effective presentation of the household's case.

D. Right to Examine the Case File. The notice must explain that the household or representative may examine the case file prior to the hearing.

5550 CONTINUATION OF BENEFITS

When a household requests a fair hearing, it also has the option to request the continuation of benefits at the same level it was authorized to receive immediately prior to the notice of adverse action. The ITO/State agency must assume that the continuation of benefits is desired and issue the benefits accordingly, unless it is clear that the household has waived continuation of benefits. If the ITO/State agency action is upheld by the hearing decision, a claim against the household must be established for USDA foods over issued to the household pending the outcome of the fair hearing (see paragraph 5610E, below).

5551 Denial of Request for Continuation of Benefits

If a hearing request is not made within the period provided by the notice of adverse action, benefits must be decreased or terminated as provided in the notice. However, if the household establishes that it has good cause for failure to make the request within the advance notice period, the ITO/State agency must continue to issue benefits at the prior authorized benefit level.

If benefits are to be decreased or terminated due to a mass change, the ITO/State agency must not continue benefits at the prior authorized level, unless the fair hearing request alleges that eligibility or the benefit level were improperly computed, or that Federal law or regulation is being misapplied or misinterpreted by the ITO/State agency.

The ITO/State agency must promptly inform the household in writing if its request for continuation of benefits pending a fair hearing is denied.

5552 Decrease in Benefit Level or Termination of Eligibility Pending Fair Hearing Outcome

Once benefits have been continued at the prior authorized benefit level, they can not be decreased or terminated prior to the outcome of the fair hearing, except as follows:

A. 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 ITO/State agency misapplied such law or regulation is invalid; or

B. A change affecting the household's eligibility or level of benefits occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of the adverse action.

5560 THE HEARING OFFICIAL

Hearings must be conducted by an impartial official(s) who:

A. Does not have any personal stake or involvement in the case;

B. Was not directly involved in the initial determination of the action that is being contested; and

C. Was not the immediate supervisor of the eligibility worker who took the action.

5561 Designation and Qualifications of the Hearing Official

The hearing official can be any of the following:

A. An employee of the ITO/State agency;

B. An individual under contract with the ITO/State agency;

C. An employee of another public agency designated by the ITO/State agency to conduct hearings;

D. A member or official of a statutory board or other legal entity designated by the ITO/State agency to conduct hearings; or

E. An executive officer of the ITO/State agency, a panel of officials of the ITO/State agency or a person or persons expressly appointed to conduct hearings or to review hearing decisions.

5562 Powers and Duties of the Hearing Official

The hearing official has the following powers and duties:

A. Administer Oaths. The hearing official administers oaths of affirmation if required by the ITO/State.

B. Ensure Consideration of Issues. The hearing official ensures that all relevant issues are considered.

C. Record Evidence. The hearing official requests, receives and makes part of the record all evidence determined necessary to decide the issues being raised.

D. Regulate the Conduct of the Hearing. The official regulates the conduct and course of the hearing consistent with due process.

E. Render a Hearing Decision. The hearing official provides a hearing record and recommendation for final decision by the hearing authority, or if the hearing official is the hearing authority, renders a decision in the name of the ITO/State agency, in accordance with paragraph 5580, below, which will resolve the dispute.

5563 Hearing Authority

The hearing authority must be the person designated to render the final administrative decision in a hearing. The same person may act as both the hearing official and the hearing authority. The hearing authority must be subject to the requirements specified in paragraph 5561, above.

5570 CONDUCT OF THE HEARING

The hearing must be attended by a representative of the ITO/State agency or local agency, if applicable, that initiated the adverse action being contested, and by the household or its representative or both. The hearing may also be attended by friends and relatives of the household if the household so chooses. The hearing official is authorized to limit the number of persons in attendance at the hearing, if space is limited.

5571 Household's Rights

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 way that makes the household feel most at ease. The household or its representatives have the following rights during the hearing process:

A. Examine Documents**.** The household or its representative must be given adequate opportunity 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 ITO/State agency or local agency to establish the household's ineligibility or eligibility and level of benefits must be made available. However, 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, must be protected from release. If requested by the household or its representative, the ITO/State agency must provide a free copy of the relevant portions of the case file. Confidential information that is protected from release and other documents or records that the household will not otherwise have the opportunity to contest or challenge must not be presented at the hearing or affect the hearing official's decision.

B. Present Case. The household may present the case itself or have it presented by a legal counsel or other person.

C. Bring Witnesses. The household or its representative may bring witnesses to support its case in the appeal.

D. Advance Arguments. The household or its representatives must be allowed to advance arguments without undue interference.

E. Question Evidence. The household or its representative may question or refute any testimony or evidence, and may confront and cross-examine adverse witnesses.

F. Submit Evidence. The household or its representative may submit evidence to establish all pertinent facts and circumstances in the case.

5580 THE HEARING DECISION

Decisions of the hearing authority must comply with Federal law or regulations and must 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, must constitute the exclusive record for a final decision by the hearing authority. This record must be retained in accordance with the regulations. This record must also be available, for copying and inspection, to the household or its representative at any reasonable time.

5581 Effect and Content of the Hearing Decision

A decision by the hearing authority is binding on the ITO/State agency and must summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent Federal regulations. The decision is a part of the official record.

5582 Notification of the Hearing Decision

Within 10 days of the date that the fair hearing decision is issued, the ITO/State agency must issue a notice to the household advising it of the decision.

If the decision upheld a disqualification or a termination, the notice must include:

A. The reason(s) for the decision;

B. The date the disqualification or termination will take effect; and

C. The household's right to pursue judicial review, in accordance with paragraph 5583, below.

In instances of upheld disqualifications, the notice must also advise the household of the duration of the disqualification (i.e., 12 months, 24 months, or permanent), and whether the disqualification of the household member will result in a change or termination of benefits for the remaining household members.

5583 Judicial Review

The household has the right to pursue judicial review of a fair hearing decision that upheld the ITO/State agency action.

5584 Public Access to ITO/State Agency Hearing Records

All ITO/State agency hearing records and decisions must be available for public inspection and copying, subject to the disclosure safeguards provided in paragraph 1330, above; however, the identifying names and addresses of household members and other individuals must be kept confidential.

5590 IMPLMENTATION OF HEARING DECISIONS

The ITO/State agency is responsible for ensuring that all final hearing decisions are reflected in the household's next scheduled distribution following receipt of the hearing decision.

Example: A fair hearing decision issued on May 15 upheld the disqualification of a member of a household that normally receives its USDA foods between the first day of the month and the tenth day of the month. The effective date of the disqualification will be the first day of June.

If the fair hearing decision upheld the action of the ITO/State agency to decrease the benefit level or terminate eligibility, and the household requested and received continued benefits, the ITO/State agency must issue a claim for the value of the USDA foods overissued to the household pending the outcome of the fair hearing (see paragraph 5610E, below).

5591 Retroactive Benefits

The Food Distribution Program does not provide retroactive benefits. Issuing retroactive benefits could lead to food waste or encourage the sale of USDA foods for cash.

SECTION 6 – ITO/STATE AGENCY CLAIMS PROCEDURES AGAINST HOUSEHOLDS

5600 CLAIMS AGAINST HOUSEHOLDS

The ITOs/State agencies must establish a claim against a household that has received an overissuance of more than $125 of USDA foods. Overissuance means the dollar value of USDA foods issued to a household that exceeds the dollar value of USDA foods it was eligible to receive. The ITO/State agency must fully document all actions taken in establishing and collecting a claim.

5601 Responsibility for Repayment

All adult household members are jointly and separately liable for the repayment of the claim. However, collection action will be initiated against the head of the household or against the individual who was the head of the household at the time of the overissuance (see paragraph 5651, below). Responsibility for repayment continues even in instances where the household becomes ineligible or is not participating in the program.

5602 Disposition of a Claim

A claim remains active until paid. Collection on a claim may be suspended if the claim is temporarily uncollectible for one of the reasons listed in paragraph 5660, below. If not suspended, the claim remains subject to payment. Households that fail to pay a claim will be disqualified in accordance with procedures in paragraph 5670, below, and Section 7, Disqualifications, of this Chapter.

5610 INSTANCES REQUIRING A CLAIM DETERMINATION

Instances that may result in a claim include, but are not limited to, the following:

A. The overissuance amount is over $125, and

B. The household provided incorrect or incomplete information on the application at the time of certification; or

C. The household failed to report subsequent income or resource changes, or changes in household composition, that affected eligibility or benefit levels (see paragraph 5153, above); or

D. The household participated simultaneously in both SNAP and the Food Distribution Program, or participated simultaneously in more than one Food Distribution Program. In instances of simultaneous participation, the last program to certify a household bears the responsibility for claims activity against the household, when it is determined the household was previously certified in another program; or

E. The household requested continuation of benefits pending a fair hearing decision, and the fair hearing official upheld the adverse action taken by the ITO/State agency; or

F. The ITO/State agency failed to take immediate action on changes reported by households, and the household received USDA foods to which it was not entitled; or

G. The ITO/State agency erroneously calculated the household's eligibility during certification, and the household received USDA foods to which it was not entitled; or

H. At the time of distribution, the ITO/State agency issued USDA foods to the household to which it was not entitled.

5620 INSTANCES WHEN A CLAIM WILL NOT BE ESTABLISHED

A claim will not be established if an overissuance occurred as a direct result of the following errors:

A. The household failed to sign the application form; or

B. The ITO/State agency continued to issue USDA foods to the household after its certification period had expired, without a recertification determination.

5630 TIME FRAME FOR CALCULATING A CLAIM

All overissuances occurring within the 12-month period before discovery of an error must be included in the claim determination. Any overissuance which occurred prior to 12 months before discovery of an error is excluded.

Example: During a recertification interview on June 25, 2010, an error is found in the eligibility determination of a household, which was not discovered during a previous recertification action. As a result of the error, the household received an overissuance of USDA foods from April 2009 to June 2010. The only period counted as part of the claim would be from July 2009 to June 2010.

5640 DETERMINING THE AMOUNT OF CLAIM

After excluding those months that are more than 12 months prior to the date the overissuance was discovered, the ITO/State agency must determine the correct amount of USDA foods the household should have received based on the number of months the household participated while receiving the overissuance. The methodologies for determining the amount of the claim are described in paragraphs 5641 and 5642 below. If the claim amount is $125 or less, no claim must be issued. However, the claim determination must be documented and placed in the appropriate household record.

5641 Automated Inventory System (AIS) Methodology

The AIS methodology involves the generation of reports from AIS. The Value of Commodities Issued Report identifies the value of USDA foods issued to the household in any given month.

5642 Manual Calculation Methodology

Use the methodology below to manually calculate the claim amount for each food distributed. Then add the individual claim amounts for all the USDA foods overissued to obtain the total value of the claim.

(5642)

To determine the value of each USDA food item issued in error, the certifier will need:

A. The Estimated Cost per Pound for each food item. The Estimated Cost per Pound can be found in the USDA Commodity File listing available in the USDA electronic ordering system or can be obtained from the FNS Regional Offices.

B. Since USDA foods vary in weight, a Pound Conversion Factor is needed to determine the estimated value of each food item. The Pound Conversion Factor can be determined by dividing the net case weight by the number of units per case for each food item. The net case weight and the number of units per case can be found in the Commodity File Listing available in the USDA electronic ordering system or can be obtained from the FNS Regional Offices.

See paragraph 5642, below, for an example of a claim calculation.

The formula for calculating the value of overissuance for each food item is as follows:

Units of Food Item Overissued (Column A) x Estimated Cost Per Pound (Column B) x Pound Conversion Factor (Column C) = Value of Overissuance (Column D)

5643 Example of Manual Claim Calculation

A household failed to report an increase in income that would have made the household ineligible. The household received an overissuance from March 2010 to August 2010. Below is a chart that shows how the claim would be calculated:

	A	**B**	**C**	**D**
USDA Food	**Units Overissued March 2010-August 2010**	**Estimated Cost Per Pound**	**Pound Conversion Factor**	**Value of Overissuance (A x B x C)**
Cereal, Corn Flakes	18	$1.2200	1.1250	$24.71
Rice	18	$0.3735	2.0000	$13.45
Spaghetti Sauce	18	$0.3435	0.9375	$5.80
Tomato Soup	18	$0.5298	0.6717	$6.41
Vegetable Soup	18	$0.6522	0.6717	$7.89
Frozen Ground Beef	36	$1.6543	2.1500	$128.04
Frozen Cut-up Chicken	18	$0.8994	4.0000	$64.76
Chunky Beef Stew	12	$0.7530	1.5000	$13.55
Egg Mix	18	$4.4248	0.3750	$29.87
Peanut Butter	18	$1.0485	1.1250	$21.23
Total				$315.71

A sample worksheet for manually calculating the value of the claim is attached as Exhibit K.

5650 COLLECTION ACTION

5651 Demand Letters

A. Content of Demand Letter. The ITO/State agency must initiate collection action by sending the household a written letter that informs the household of the following information. A sample demand letter is attached as Exhibit L.

1. The amount owed;

2. The reason for the claim;

3. Information about how to pay the claim (e.g., by making payments or lump sum); and

4. The right to request a fair hearing.

B. Coordination with Notice of Adverse Action. The initial demand letter for repayment must be provided to the household at the same time as the notice of adverse action is issued, if a notice of adverse action is warranted. The demand letter may be combined with a notice of adverse action.

C. Head of Household. The ITO/State agency must initiate collection against the head of the household or against the individual who was the head of the household at the time of the overissuance (see paragraph 5601, above). If the head of the household is no longer living or cannot be located, the ITO/State agency must pursue collection against the remaining household members. If the head of household moves to another Food Distribution Program household, the claim will follow the head of household.

D. Additional Demand Letters. The ITO/State agency must send the household a minimum of two additional demand letters in no more than 30-day intervals, unless suspension is warranted based on criteria listed in paragraph 5660, below. At the ITO's/State agency's option additional demand letters may be sent to the household after three letters have been issued. Households that are to be disqualified for failure to pay a claim must be sent at least two demand letters before action is taken to disqualify the household (see paragraph 5710, below).

5652 Revision of Claim Following a Fair Hearing When Continuation of Benefits Was Requested

Households may be liable for USDA foods they received while awaiting the outcome of a fair hearing. If the fair hearing official upholds the adverse action taken by the ITO/State agency, the household must pay back the value of the USDA foods it received during the appeal process (see paragraph 5550, above). In these instances, the ITO/State agency must adjust the original claim amount to include the value of USDA foods provided to the households during the appeal process, and issue a demand letter for the new claim amount.

5653 Method of Collection

Payments of claims must be made by check or money order payable to FNS. Monies received by the ITO/State agency must be forwarded to USDA-FNS-HQ, P.O. Box 953807, St. Louis, MO 63195-3807. Payments can not be made in returned USDA foods; nor can households be allowed to refuse their current monthly food allotment in payment of the claim amount.

5660 SUSPENSION OF COLLECTION ACTION

After one demand letter has been issued, ITO/State agency may suspend further demand letters **if** the household has not misrepresented its household status in order to receive benefits or increase benefits **and** any of the following conditions apply:

A. The household is unable to pay the claim or the entire amount of the claim because the household has little or no income or resources; or

B. The household cannot be located; or

C. Cost of additional collection procedures would likely exceed the amount to be recovered.

A claim may only remain in suspense as long as the conditions above apply. Therefore, the ITO/State agency must review the status of a suspended claim periodically to determine if suspension of collection action is still warranted.

5661 Terminating a Suspended Claim

A claim may be terminated if it remains in suspense for 3 years.

5670 DISQUALIFICATION FOR FAILURE TO PAY A CLAIM

All adult members of a household must be disqualified from participation, **if**:

A. The amount of the claim is greater than $125; **and**

B. The overissuance is not the result of an administrative error on the part of the ITO/State agency; **and**

C. The household has **refused** to pay the claim, or has agreed to pay according to a payment schedule, but has **failed** to pay the claim.

The period of disqualification must continue until the household pays the claim.

The ITO/State agency may waive the disqualification if in the opinion of the ITO/State agency the disqualification would cause undue hardship to the household. However, collection action on the claim must be pursued in accordance with paragraphs 5650, above, unless suspension is warranted (see paragraph 5660, above).

5680 FNS APPROVAL OF ALTERNATIVE CLAIMS PROCEDURES

Any alternative procedures developed by the ITO/State agency for establishing and resolving claims must be approved by FNS.

SECTION 7 - DISQUALIFICATIONS

5700 DISQUALIFICATIONS

The ITO/State agency must take action to disqualify an individual or households from participation for the program violations listed below. Any individual or household whose participation will be ended due to a disqualification must be given advance notice (see paragraph 5160, above) and may request a fair hearing.

5710 FAILURE TO PAY A CLAIM

All adult members of the household must be disqualified from participation for failure to pay an active claim. (See paragraph 5670, above).

5720 FOOD DISTRIBUTION PROGRAM INTENTIONAL PROGRAM VIOLATIONS

Any individual who is found to have committed a Food Distribution Program intentional program violation (IPV) must be disqualified from participation for a period of 12 months for the first violation, 24 months for the second violation, and permanently for the third violation (see definition of IPV in Section 8 of this Chapter).

5730 TRIBAL, STATE, OR LOCAL PROSECUTION FOR FRAUD

Any household or individual that has been convicted of committing fraud under the Food Distribution Program by a court must be disqualified for the length of time imposed by the court. If the court does not impose a disqualification period, the ITO/State agency must impose the penalty prescribed in paragraph 5720, above, for an IPV (i.e., 12 months for the first known fraud conviction; 24 months for the second known fraud conviction; and permanently for the third known fraud conviction). The ITO/State agency must not delay collection of a claim while an individual or household suspected of fraud is investigated or is undergoing court procedures. The ITO/State agency may, however, postpone collection of a claim if the prosecutors of the case request such a delay. Unless otherwise instructed by the court, the ITO/State agency must establish a claim for the overissued USDA foods whether or not the court fined or penalized the individual or household. If possible, repayment for USDA foods received fraudulently should be considered at the court hearings.

5740 SNAP INTENTIONAL PROGRAM VIOLATION

Any individual who has been disqualified for an IPV under SNAP is ineligible for Food Distribution Program benefits until the SNAP disqualification has expired. Please note that the SNAP regulations require disqualifications for several program violations other than IPVs. If the ITO/State agency determines that a Food Distribution Program applicant has been disqualified under SNAP, the ITO/State agency must determine the reason for the disqualification by contacting the SNAP office or reviewing the SNAP disqualification letter provided to the individual. If the SNAP disqualification was for a violation other than an IPV (e.g., failure to comply with a SNAP work requirement), the individual may participate in the Food Distribution Program, if otherwise eligible.

5800 INTENTIONAL PROGRAM VIOLATIONS

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

A. Makes a false or misleading statement, or misrepresents, conceals, or withholds facts in order to obtain Food Distribution Program benefits that the household is not entitled to receive; or

B. Commits any act that violates a Federal statute or regulation relating to the acquisition or use of Food Distribution Program foods.

Only the household member determined to have committed the IPV will be disqualified--not the entire household.

5810 PENALTIES

Household members determined by the ITO/State agency to have committed an IPV will be ineligible to participate in the program:

A. For a period of 12 months for the first violation;

B. For a period of 24 months for the second violation; and

C. Permanently for the third violation.

5820 ITO/STATE AGENCY RESPONSIBILITIES

A. Each ITO/State agency must implement administrative disqualification procedures for IPVs that conform to this section.

B. The ITO/State agency must inform households in writing of the disqualification penalties for IPVs each time they apply for benefits, including recertifications. This notice must also advise households that an IPV may be referred to authorities for prosecution.

C. The ITO/State agency must attempt to substantiate all suspected cases of IPV. An IPV is considered to be substantiated when the ITO/State agency has clear and convincing evidence demonstrating that a household member committed one or more acts of IPV, as defined in paragraph 5800, above.

D. Within 10 days of substantiating that a household member has committed an IPV, the ITO/State agency must provide the household member with a notice of disqualification. A notice must still be issued in instances where the household member is not currently eligible or participating in the program.

E. The ITO/State agency must advise any remaining household members if the household's benefits will change or if the household will no longer be eligible as a result of the disqualification.

F. The ITO/State agency must provide the household member to be disqualified with an opportunity to appeal the disqualification through a fair hearing (see Section 5 of this Chapter).

G. The ITO/State agency must refer all substantiated cases of IPV to Tribal, Federal, State, or local authorities for prosecution under applicable statutes. However, an ITO/State agency that has conferred with its legal counsel and prosecutors to determine the criteria for acceptance for possible prosecution is not required to refer cases that do not meet the prosecutors' criteria.

H. The ITO/State agency must establish claims and pursue collection, as appropriate, on overissuances related to suspected and substantiated cases of IPV (see Section 6 of this Chapter).

5830 NOTICE OF DISQUALIFICATION

Within 10 days of substantiating the IPV, the ITO/State agency must issue to the household member a notice of disqualification. The notice must allow an advance notice period of at least 10 days. The disqualification must begin with the next scheduled distribution of USDA foods that follows the expiration of the advance notice period, unless the household member requests a fair hearing. A notice must still be issued in instances where the household member is not currently eligible or participating in the program. The notice must conform to the requirements of paragraph 5163, above, for notices of adverse action.

5840 APPEAL PROCEDURES

A household member may appeal a disqualification by requesting a fair hearing (see paragraph 5500, above).

The ITO/State agency must provide the household member with a notification of the time and place of the fair hearing as described in paragraph 5546, above. The notice must also include a statement that the hearing does not prevent the Tribal, Federal, State, or local government from prosecuting the household member in a civil or criminal court action, or from collecting any overissuance(s).

5850 APPLICATION OF PENALTIES

A. If the household member did not request a fair hearing, the disqualification must begin with the next scheduled distribution of USDA foods that follows the expiration of the advance notice period of the notice of adverse action.

B. If the household member requested a fair hearing and the disqualification was upheld by the fair hearing official, the disqualification must begin with the next scheduled distribution of USDA foods that follows the date the hearing decision is issued.

   Example: A fair hearing decision issued on May 15 upheld the disqualification of a member of a household that normally receives its USDA foods between the first day of the month and the tenth day of the month. The effective date of the disqualification will be the first day of June.

C. The ITO/State agency must apply the disqualification period (i.e., 12 months, 24 months, or permanent) specified in the notice of disqualification.

D. No further administrative appeal procedure exists after an adverse ITO/State level fair hearing decision. The decision by an ITO/State level fair hearing official is binding on the ITO/State agency. The household member however, may seek relief in a court having appropriate jurisdiction.

E. The ITO/State agency must 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.

F. Once a disqualification has begun, it must continue uninterrupted for the duration of the penalty period (i.e., 12 months, 24 months, or permanent). Changes in the eligibility of the disqualified household member's household will not interrupt or shorten the disqualification period.

G. The same act of IPV continued over a period of time can not be separated so that more than one penalty can be imposed.

   Example: A household intentionally fails to report that a household member left the household, resulting in an overissuance of USDA foods for 5 months. Although the violation occurred over a period of 5 months, only one penalty will apply to this single act of IPV.

H. If the case was referred for Tribal, Federal, State, or local prosecution and the court of appropriate jurisdiction imposed a disqualification penalty, the ITO/State agency must follow the court order.