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7 CFR Ch. II (1-1-11 Edition)

pursuit of a claim against the participant.

(g) *What notification must the State or local agency provide an individual in scheduling the hearing?* The State or local agency must provide an individual with at least 10 days' advance written notice of the time and place of the hearing, and must include the rules of procedure for the hearing.

(h) *What are the individual's rights in the actual conduct of the hearing?* The individual must have the opportunity to:

(1) Examine documents supporting the State or local agency's decision before and during the hearing;

(2) Be assisted or represented by an attorney or other persons;

(3) Bring witnesses;

(4) Present arguments;

(5) Question or refute testimony or evidence, including an opportunity to confront and cross-examine others at the hearing; and,

(6) Submit evidence to help establish facts and circumstances.

(i) *Who is responsible for conducting the fair hearing, and what are the specific responsibilities of that person?* The fair hearing must be conducted by an impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial adverse action that resulted in the hearing. The hearing official is responsible for:

(1) Administering oaths or affirmations, as required by the State;

(2) Ensuring that all relevant issues are considered;

(3) Ensuring that all evidence necessary for a decision to be made is presented at the hearing, and included in the record of the hearing;

(4) Ensuring that the hearing is conducted in an orderly manner, in accordance with due process; and

(5) Making a hearing decision.

(j) *How is a hearing decision made?* The hearing official must make a decision that complies with Federal laws and regulations, and is based on the facts in the hearing record. In making the decision, the hearing official must summarize the facts of the case, specify the reasons for the decision, and identify the evidence supporting the decision and the laws or regulations

that the decision upholds. The decision made by the hearing official is binding on the State or local agency.

(k) *What is the time limit for making a hearing decision and notifying the individual of the decision?* A hearing decision must be made, and the individual notified of the decision, in writing, within 45 days of the request for the hearing. The notification must include the reasons for the decision.

(l) *How does the hearing decision affect the individual's receipt of CSFP benefits?* If a hearing decision is in favor of an applicant who was denied CSFP benefits, the receipt of benefits must begin within 45 days from the date that the hearing was requested, if the applicant is still eligible for the program. If the hearing decision is against a participant, the State or local agency must discontinue benefits as soon as possible, or at a date determined by the hearing official.

(m) *What must be included in the hearing record?* In addition to the hearing decision, the hearing record must include a transcript or recording of testimony, or an official report of all that transpired at the hearing, along with all exhibits, papers, and requests made. The record must be maintained in accordance with § 247.29(a). The record of the hearing must be available for public inspection and copying, in accordance with the confidentiality requirements under § 247.36(b).

(n) *What further steps may an individual take if a hearing decision is not in his or her favor?* If a hearing decision upholds the State or local agency's action, and a State-level review or rehearing process is available, the State or local agency must describe to the individual any State-level review or rehearing process. The State or local agency must also inform the individual of the right of the individual to pursue judicial review of the decision.

§ 247.34 Management reviews.

(a) *What must the State agency do to ensure that local agencies meet program requirements and objectives?* The State agency must establish a management review system to ensure that local agencies, subdistributing agencies, and other agencies conducting program activities meet program requirements

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and objectives. As part of the system, the State agency must perform an on-site review of all local agencies, and of all storage facilities utilized by local agencies, at least once every two years. As part of the on-site review, the State agency must evaluate all aspects of program administration, including certification procedures, nutrition education, civil rights compliance, food storage practices, inventory controls, and financial management systems. In addition to conducting on-site reviews, the State agency must evaluate program administration on an ongoing basis by reviewing financial reports, audit reports, food orders, inventory reports, and other relevant information.

(b) *What must the State agency do if it finds that a local agency is deficient in a particular area of program administration?* The State agency must record all deficiencies identified during the review and institute follow-up procedures to ensure that local agencies and sub-distributing agencies correct all deficiencies within a reasonable period of time. To ensure improved program performance in the future, the State agency may require that local agencies adopt specific review procedures for use in reviewing their own operations and those of subsidiaries or contractors. The State agency must provide copies of review reports to FNS upon request.

(Approved by the Office of Management and Budget under control number 0584-0293)

§ 247.35 Local agency appeals of State agency actions.

(a) *What recourse must the State agency provide local agencies to appeal a decision that adversely affects their participation in CSFP?* The State agency must establish a hearing procedure to allow local agencies to appeal a decision that adversely affects their participation in CSFP—e.g., the termination of a local agency's participation in the program. The adverse action must be postponed until a decision on the appeal is made.

(b) *What must the State agency include in the hearing procedure to ensure that the local agency has a fair chance to present its case?* The hearing procedure must provide the local agency:

(1) Adequate advance notice of the time and place of the hearing;

(2) An opportunity to review the record before the hearing, and to present evidence at the hearing;

(3) An opportunity to confront and cross-examine witnesses; and

(4) An opportunity to be represented by counsel, if desired.

(c) *Who conducts the hearing and how is a decision on the appeal made?* The hearing must be conducted by an impartial person who must make a decision on the appeal that is based solely on the evidence presented at the hearing, and on program legislation and regulations. A decision must be made within 60 days from the date of the request for a hearing, and must be provided in writing to the local agency.

§ 247.36 Confidentiality of applicants or participants.

(a) *Can the State or local agency disclose information obtained from applicants or participants to other agencies or individuals?* State and local agencies must restrict the use or disclosure of information obtained from CSFP applicants or participants to persons directly connected with the administration or enforcement of the program, including persons investigating or prosecuting program violations. The State or local agency may exchange participant information with other health or welfare programs for the purpose of preventing dual participation. In addition, with the consent of the participant, as indicated on the application form, the State or local agency may share information obtained with other health or welfare programs for use in determining eligibility for those programs, or for program outreach. However, the State agency must sign an agreement with the administering agencies for these programs to ensure that the information will be used only for the specified purposes, and that agencies receiving such information will not further share it.

(b) *Can the State or local agency disclose the identity of persons making a complaint or allegation against another individual participating in or administering the program?* The State or local agency must protect the confidentiality, and other rights, of any person