

Administrative Reviews, (Appeals) and Fair Hearings
CHILD AND ADULT CARE FOOD PROGRAM, (CACFP)
Administrative Reviews for Institutions, Responsible Principals and/or Individuals

The administrative review procedures in the code of federal regulations 7 CFR 226.6 will be followed,
The following restate part of those requirements.

A. ACTIONS SUBJECT TO ADMINISTRATIVE REVIEW, (APPEAL): **Ref: 7 CFR 226.6(k)(2)**

Except as in 7 CFR 226.8(g), the State agency must offer an administrative review for the following actions:

1. Denial of a new, participating, or renewing institution's application for participation in the CACFP;
2. Denial of an application submitted by a sponsoring organization on behalf of a facility;
3. Notice of proposed termination of an institution's agreement;
4. Notice of proposed disqualification of a responsible principal or individual;
5. Suspension of an institution's participation for health or safety reasons or submission of a false or fraudulent claim;
6. Denial of an institution's application for start-up or expansion payments;
7. Denial of a request for an advance payment;
8. Recovery of all or part of an advance in excess of the claim for the applicable period;
9. Denial of all or a part of an institution's claim for reimbursement (except for a denial based on a late submission under 7 CFR 226.10(e)) [Ref: 7 CFR 226.10(f) and 226.14(a)];
10. Decision by the State agency not to forward to FNS an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim [Ref:7 CFR 226.10(e)];
11. Demand for the remittance of an overpayment [Ref: 7 CFR 226.14(a)];
12. Any other action of the State agency affecting an institution's participation or its claim for reimbursement.

B. PROCEDURES: **Ref: 7 CFR 226.6(k)(4)**

The State agency's administrative review procedures must be provided to an institution and in the case of a serious deficiency, to each responsible principal and individual when the State agency takes any action subject to an administrative review; and/or annually to all institutions, and any other time upon request.

C. TIMEFRAMES:

1. **Notice of Action (from the State CACFP)** **Ref: 7 CFR 226.6(k)(5)(i)**
The institution's executive director, chairman of the board of directors, responsible principals and individuals, must be given notice of the action being taken or proposed, the basis for the action, and the procedures to request an administrative review (appeal) of the action.
2. **Request for Administrative Review (Appeal)** **Ref: 7 CFR 226.6(k)(5)(ii)**
The request for administrative review must be submitted in writing not later than 15 calendar days after the date the Notice of Action is received by the institution, responsible principals or individuals; and, The state Office of Fair Hearings must acknowledge the receipt of the request for an administrative review within 10 calendar days of its' receipt of the request.
3. **Provide written documentation** **Ref: 7 CFR 226.6(k)(5)(v)**
The institution, responsible principals and individuals may refute the findings contained in the notice of action in person or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted to the administrative review official not later than 30 calendar days after receipt of the Notice of Action.

D. REPRESENTATION: **Ref: 7 CFR 226.6(k)(5)(iii)**

The State agency and the institution and its' responsible principals and individuals may retain legal counsel, or may be represented by another person.

E. REVIEW OF RECORD: **Ref: 7 CFR 226.6(k)(5)(iv)**

Any information on which the State agency's action was based must be available to the institution, responsible principals and individuals for inspection from the date of receipt of the request for an administrative review.

F. ADMINISTRATIVE REVIEW OFFICIAL: **Ref: 7 CFR 226.6(k)(5)(vii)**

The administrative review official must be independent and impartial.

G. FINAL DECISION: **Ref: 7 CFR 226.6(k)(5)(x)**

The determination made by the administrative review official is the final administrative determination to be afforded the institution and responsible principals and individuals.

H. REVIEW OF WRITTEN DOCUMENTATION:

A review of written documentation will take place if a hearing is not requested in the initial request for an administrative review. The administrative review official will consider only written documentation submitted by the institution, responsible principals or individuals (or their authorized representatives) and the State Agency. Institutions and the State Agency will not be contacted for additional information. If the information is insufficient, the decision will be based entirely upon the written documentation provided to the Office of Fair Hearings and on Federal and State laws, rules, regulations, policies, and procedures governing the Program.

I. HEARINGS:

Ref: 7 CFR 226.6(k)(5)(vi)

1. A hearing must be held by the administrative review official in addition to, or in lieu of, a review of written information **only if** the institution or the responsible principals and individuals request a hearing in the initial written request for an administrative review. The parties may, by mutual agreement, elect to conduct the hearing telephonically in lieu of an in-person hearing.
2. If the institution's representative or responsible principals or individuals or their representative fail to appear at a scheduled hearing, they waive the right to a personal appearance before the administrative review official, unless the administrative review official agrees to reschedule the hearing. A representative of the State agency must be allowed to attend the hearing to respond to the testimony of the institution, the responsible principals and individuals and to answer questions posed by the administrative review official.
3. If a hearing is requested, the institution, the responsible principals and individuals, and the State agency must be provided with at least 10 calendar days advance notice of the time and place of the hearing.

J. BASIS FOR DECISION:

Ref: 7 CFR 226.6(k)(5)(viii)

The administrative review official must make a determination based solely on the information provided by the State agency, the institution, the responsible principals and individuals, and based on Federal and State laws, regulations, policies, and procedures governing the Program.

K. TIME FOR ISSUING A DECISION:

Ref: 7 CFR 226.6(k)(5)(ix)

Within 60 calendar days of the State agency's receipt of the request for an administrative review, the administrative review official must inform the State agency, the institution's executive director, chairman of the board of directors, the responsible principals and individuals, of the administrative review's outcome. This timeframe is an administrative requirement for the State agency and may not be used as a basis for overturning the State agency's action if a decision is not made within the specified timeframe.

THE WRITTEN REQUEST FOR AN ADMINISTRATIVE REVIEW, (APPEAL) MUST BE ADDRESSED TO:

Office of Fair Hearings,
Department of Public Health and Human Services
PO Box 202953,
Helena, MT 59620-2953
Fax (406) 444-3980

ALL IN PERSON HEARINGS WILL TAKE PLACE IN THE CITY OF HELENA, LEWIS AND CLARK COUNTY, MONTANA.

Ref: 7 CFR 226.6(k)(8) The State agency must conduct the administrative review of responsible principals and individuals as part of the administrative review of the institution with which they are associated. At the administrative review official's discretion, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or individual demonstrates that their interests conflict.

Ref: 7 CFR 226.6(k)(9) Abbreviated administrative review. The State agency must limit the administrative review to a review of written submissions concerning the accuracy of the State agency's determination if the application was denied or the State agency proposes to terminate the institution's agreement because: (i) The information submitted on the application was false (see paragraphs (c)(1)(ii)(A), (c)(2)(ii)(A), and (c)(3)(ii)(A) of 7 CFR 226.6); (ii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list (see paragraph (b)(12) of 7 CFR 226.6); (iii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program (see paragraph (b)(13) and (c)(3)(ii)(S) of 7 CFR 226.6); or (iv) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity (see paragraphs (b)(14) and (c)(3)(ii)(T) of 7 CFR 226.6).

Ref: 7 CFR 226.6(k)(10) Effect of State agency action. The State agency's action must remain in effect during the administrative review. The effect of this requirement on particular State agency actions is as follows: (i) Overpayment demand. During the period of the administrative review, the State agency is prohibited from taking action to collect or offset the overpayment. However, the State agency must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the State agency's action. (ii) Recovery of advances. During the administrative review, the State agency must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments. (iii) Program payments. The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution are addressed in paragraphs (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively, of 7 CFR 226.6.