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CACFP Appeal Procedure

Purpose and Scope

1. The purpose of this policy is to describe the Agency's responsibilities regarding administrative reviews.
2. Included are procedures and deadlines followed by the Vermont Agency of Education Child Nutrition Programs regarding the circumstances under which administrative reviews are allowed and when they are not allowed. Also included are how institutions, responsible principals and responsible individuals will be informed of the availability of administrative reviews and procedures to be followed during the administrative review.

Legal Requirements

Laws and regulations that serve as the basis for this policy include:

- [7CFR 226.6\(k\)](#)
- [7CFR 226.6\(c\)\(1\)\(iii\)\(D\), \(c\)\(2\)\(iii\)\(D\), \(c\)\(3\)\(iii\)\(D\), \(c\)\(5\)\(i\)\(D\), and \(c\)\(5\)\(ii\)\(E\)](#)

Actions Subject to Administrative Review

The Agency offers administrative reviews for the following actions:

1. Denial of a new or renewing institution's application for participation;
2. Denial of an application submitted by a sponsoring organization on behalf of a facility;
3. Proposed termination of an institution's agreement;
4. Proposed disqualification of a responsible principal or responsible individual;
5. Suspension of an institution's participation;
6. Denial of an institution's application for start-up or expansion payments;
7. Denial of all or a part of an institution's claim for reimbursement (except for a denial based on a late submission under 7CFR 226.10(e));
8. Decision by the Agency not to forward to USDA's Food & Nutrition Service (FNS) an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim;
9. Demand for the remittance of an overpayment; and,
10. Any other action of the Agency affecting an institution's participation or its claim for reimbursement.

Actions Not Subject to Administrative Review

The Agency will not offer administrative reviews of the following actions:

1. A decision by FNS to deny an exception request by an institution for payment of a late claim, or for an upward adjustment to a claim;
2. A determination that an institution is seriously deficient;

3. Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the Agency's Seriously Deficient List and the National disqualified list; or,
4. Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by another State agency or FNS.

Provision of Administrative Review Procedures

The Agency's administrative review procedures are provided:

1. Annually to all institutions via email during renewal season;
2. To an institution and to each responsible principal and responsible individual when the State agency takes any action subject to an administrative review; and,
3. Any other time upon request.

Administrative Review Procedures

The Agency will follow the procedures described here when an institution or a responsible principal or responsible individual appeals any action subject to administrative review as described in 7CFR 226(k)(2) and in Section 3 of this procedure.

1. **Notice of action:** The institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, will be given notice of the action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an administrative review of the action.
2. **Return receipt mail:** The notice of action will be sent by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax or email.
3. **Time to request administrative review:** Written request for review shall be filed with the hearing official named in the notice no later than fifteen (15) calendar days from the date the appellant received notice of action.
4. **Representation:** The institution and the responsible principals and responsible individuals may retain legal counsel or may be represented by another person.
5. **Review of record:** Any information on which the Agency's action was based will be available to the institution and the responsible principals and responsible individuals for inspection from the date of receipt of the request for an administrative review.
6. **Opposition:** The institution and the responsible principals and responsible 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 days after receipt of the notice of action.
7. **Hearing:** A hearing shall be held by the hearing authority in addition to or in lieu of review of written documentation submitted by the appellant only if the appellant so specifies in the letter of request for review. The appellant may retain legal counsel or

may be represented by another person. If a hearing is requested, the appellant shall be provided with at least ten (10) calendar days notice of the time and place by certified mail, return receipt requested. In the event a hearing is scheduled, it shall be the responsibility of the hearing authority to notify the parties of their hearing rights.

8. **Availability of information:** Any information on which the Department's action was based shall be available to the appellant for inspection as of the date of receipt of the request for review.
9. **Administrative review official:** The administrative review official must be independent and impartial. This means that, although the administrative review official may be an employee of the Agency, he/she must not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The institution and the responsible principals and responsible individuals must be permitted to contact the administrative review official directly if they so desire.
10. **Basis for decision:** The administrative review official must make a determination based solely on the information provided by the Agency, the institution, and the responsible principals and responsible individuals, and based on Federal and State laws, regulations, policies, and procedures governing the Program.
11. **Time for issuing a decision:** Within 60 days of the Agency's receipt of the request for an administrative review, the administrative review official must inform the Agency, the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the administrative review's outcome. This timeframe is an administrative requirement for the Agency and may not be used as a basis for overturning the Agency's action if a decision is not made within the specified timeframe.
12. **Final decision:** The determination made by the administrative review official is the final administrative determination to be afforded the institution and the responsible principals and responsible individuals.

Record Result of Administrative Review

The Agency will maintain searchable records of all administrative reviews and their disposition.

Combined Administrative Review

The Agency will conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, 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 responsible individual demonstrates that their interests' conflict.

Abbreviated Administrative Review

The Agency will limit the administrative review to a review of written submissions concerning the accuracy of the Agency's determination if the application was denied or the Department proposes to terminate the institution's agreement because:

1. The information submitted on the application was false;
2. The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list;
3. 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; or
4. 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.

Effect of Agency Action

- a. The Agency's action will remain in effect during the administrative review. However, participating institutions and facilities may continue to operate under the program during an appeal process of termination unless the action is based on imminent dangers to health and welfare of children. The effect of this requirement on particular Agency actions is as follows.
- b. Overpayment demand. During the period of the administrative review, the Agency will not take action to collect or offset the overpayment. However, the Agency will 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 Agency's action.
 - i. **Program payments:** The availability of Program payments during an administrative review is dependent on the circumstances of the institution. Each circumstance is described below.
 - ii. **New institutions:** No claims for reimbursement from a *new institution* for eligible meals served or allowable administrative expenses incurred will be paid until the Agency has approved the institution's application and the institution and Agency have signed a Program agreement.
 - iii. **Serious deficiency:** Valid claims for reimbursement for eligible meals served and allowable expenses will continue to be paid until the conclusion of any administrative review.
 - iv. **Proposed suspension and termination:** Unless participation has been suspended, the Agency will pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred until the serious deficiency (ies) is corrected or the institution's agreement is terminated, including the period of the administrative review.

- v. **Suspension:** The Agency will not pay any claims for reimbursement from a suspended institution. However, if the suspended institution prevails in the administrative review of the proposed termination, the Agency will pay any claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.
- vi. **False or fraudulent claims:** The Agency will not pay any claims for reimbursement submitted by a suspended institution. However, if the institution suspended for the submission of false or fraudulent claims is a sponsoring organization, the Agency will ensure that sponsored facilities continue to receive reimbursement for eligible meals served during the suspension period. If the suspended institution prevails in the administrative review of the proposed termination, the Agency will pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

Transfer of Sites or Day Care Homes

When an institution or sponsor with sites or family day care homes has requested an appeal of a termination, the Agency will act as the sponsor of the sites or home.