

Administrative Review of State Agency Actions

- I. Except as provided elsewhere in this section, the State agency must provide full administrative reviews to vendors that appeal the following adverse actions:
 - a. Denial of authorization based on the application of the vendor selection criteria for minimum variety and quantity of authorized supplemental foods (7 CFR 246.12(g)(3)(i)), or on a determination that the vendor is attempting to circumvent a sanction (7 CFR 246.12(g)(6));
 - b. Termination of an agreement for cause;
 - c. Disqualification; and
 - d. Imposition of a fine or civil money penalty in lieu of disqualification
- II. **Adverse actions subject to abbreviated administrative reviews.** The State agency must provide abbreviated administrative reviews to vendors that appeal the following adverse actions, unless the State agency decides to provide full administrative reviews for any of these types of adverse actions:
 - a. Denial of authorization based on the vendor selection criteria for business integrity or for a current Supplemental Nutrition Assistance Program/Food Stamp Program disqualification or civil money penalty for hardship (7 CFR 246.12(g)(3)(ii) and (g)(3)(iii));
 - b. Denial of authorization based on the application of the vendor selection criteria for competitive price (7 CFR 246.12(g)(4));
 - c. The application of the State agency's vendor peer group criteria and above-50-percent status determinations, are subject to administrative review, when the application for this criteria is the basis for adverse action (denial of authorization or termination of agreement for cause). However, the peer group and above-50-percent criteria are not subject to review, only the application of the criteria;
 - d. Denial of authorization because a vendor submitted its application outside the timeframes during which applications are being accepted and processed as established by the State agency under 7 CFR 246.12(g)(8);
 - e. Termination of an agreement because of a change of ownership or location or cessation of operations (7 CFR 246.12(h)(3)(xvii));
 - f. Disqualification based on a trafficking conviction (7 CFR 246.12(l)(l)(i));

- g. Disqualification based on the imposition of a Supplemental Nutrition Assistance Program/Food Stamp Program civil money penalty for hardship (7 CFR 246.12(l)(2)(ii));
 - h. Disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC State agency (7 CFR 246.12(l) (2) (iii)).
 - i. A civil money penalty imposed in lieu of disqualification based on a Supplemental Nutrition Assistance Program/Food Stamp Program disqualification under 7 CFR 246.12(l)(1)(vii).
 - j. Denial of an application based on a determination of whether an applicant vendor is currently authorized by the Supplemental Nutrition Assistance Program/Food Stamp Program.
 - k. Denial of authorization based on State agency's limiting criteria.
 - l. Denial of authorization based on State agency's established vendor selection criterion if the basis of denial is a WIC sanction or SNAP withdrawal of authorization or disqualification.
- III. **Actions not subject to administrative reviews.** The State agency may not provide administrative reviews pursuant to this section to vendors that appeal the following actions:
- a. The validity or appropriateness of the State agency's vendor limiting criteria (7 CFR 246.12(g)(2)) or vendor selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current Supplemental Nutrition Assistance Program disqualification or civil money penalty for hardship (7 CFR 246.12(g)(3));
 - b. The validity or appropriateness of the State agency's selection criteria for competitive price (7 CFR 246.12(g)(4)), including, but not limited to, vendor peer group criteria and the criteria used to identify vendors that are above-50- percent vendors or comparable to above- 50-percent vendors;
 - c. The validity or appropriateness of the State agency's participant access criteria and the State agency's participant access determinations (7 CFR 246.18(a)(1)(iii));
 - d. The State agency's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation (7 CFR 246.12(l)(1)(i)(B)).

- e. Denial of authorization if the State agency's vendor authorization is subject to the procurement procedures applicable to the State agency;
 - f. The expiration of a vendor's agreement;
 - g. Disputes regarding check payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR 246.12(k)(3));
 - h. Disqualification of a vendor as a result of disqualification from the Supplemental Nutrition Assistance Program/Food Stamp Program (7 CFR 246.12 (l)(1)(vii)) and
 - i. The State agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required pursuant to 7 CFR 246.12(g)(11);
 - j. The State agency's determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction, pursuant to 7 CFR 246.12(l)(3)
- IV. **Effective date of adverse actions against vendors.** The State agency must make denials of authorization and disqualifications imposed under 7 CFR 246.12(l) (1) (i) effective on the date of receipt of the notice of adverse action. The State agency must make all other adverse actions effective 30 days after the date of the notice of the adverse action or, in the case of an adverse action that is subject to administrative review, no later than the date the vendor receives the review decision.
- V. **Full administrative review procedures** The State agency must develop procedures for a full administrative review of the adverse actions listed in this section. At a minimum, these procedures must provide the vendor with the following:
- a. Written notification of the adverse action, the procedures to follow to obtain a full administrative review and the cause(s) for and the effective date of the action. When a vendor is disqualified due in whole or in part to violations in 7 CFR 246.12(l) (1), such notification must include the following statement: "This disqualification from may result in disqualification as a retailer in the Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program). Such disqualification is not subject to administrative or judicial review under the Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program)."

- b. The opportunity to appeal the adverse action within a time period specified by the State agency in its notification of adverse action.
- c. Adequate advance notice of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review.
- d. The opportunity to present its case and at least one opportunity to reschedule the administrative review date upon specific request. The State agency may set standards on how many review dates can be scheduled, provided that a minimum of two review dates is allowed.
- e. The opportunity to cross-examine adverse witnesses. When necessary to protect the identity of WIC Program investigators, such examination may be conducted behind a protective screen or other device (also referred to as an "in camera" examination).
- f. The opportunity to be represented by counsel.
- g. The opportunity to examine prior to the review the evidence upon which the State agency's action is based.
- h. An impartial decision-maker, whose determination is based solely on whether the State agency has correctly applied Federal and State statutes, regulations, policies, and procedures governing the Program, according to the evidence presented at the review. The State agency may appoint a reviewing official, such as a chief hearing officer or judicial officer, to review appeal decisions to ensure that they conform to approved policies and procedures.
- i. Written notification of the review decision, including the basis for the decision, within 90 days from the date of receipt of a vendor's request for an administrative review, and within 60 days from the date of receipt of a local agency's request for an administrative review. These timeframes are only administrative requirements for the State agency and do not provide a basis for overturning the State agency's adverse action if a decision is not made within the specified timeframe.

VI. **Abbreviated administrative review procedures.** Except when the State agency decides to provide full administrative reviews for the adverse actions listed in this section, the State agency must develop procedures for an abbreviated administrative review of the adverse actions listed in this section. At a minimum, these procedures must provide the vendor with the following

- a. Written notification of the adverse action, the procedures to follow to obtain an abbreviated administrative review, the cause(s) for and the

effective date of the action, and an opportunity to provide a written response; and

- b. A decision-maker who is someone other than the person who rendered the initial decision on the action and whose determination is based solely on whether the State agency has correctly applied Federal and State statutes, regulations, policies, and procedures governing the Program, according to the information provided to the vendor concerning the cause(s) for the adverse action and the vendor's response; and
- c. Written notification of the review decision, including the basis for the decision, within 90 days of the date of receipt of the request for an administrative review. This timeframe is only an administrative requirement for the State agency and does not provide a basis for overturning the State agency's adverse action if a decision is not made within the specified timeframe.

VII. ***Continuing responsibilities.*** Appealing an action does not relieve a local agency or a vendor that is permitted to continue program operations while its appeal is in process from the responsibility of continue compliance with the terms of any written agreement with the State agency.

VIII. ***Finality and effective date of decisions.*** The State agency procedures must provide that review decisions rendered under both the full and abbreviated review procedures are the final State agency action. If the adverse action under review has not already taken effect, the State agency must make the action effective on the date of receipt of the review decision by the vendor or the local agency.

XI. ***Judicial review.*** If the review decision upholds the adverse action against the vendor or local agency, the State agency must inform the vendor or local agency that it may be able to pursue judicial review of the decision.