

Participant, Vendor, and Local Agency Appeals and Fair Hearings Policy

USDA Federal Regulations:

7 CFR Part 246.9 Fair hearing procedures for participants.

- (a) **Availability of hearings.** The State agency shall provide a hearing procedure through which any individual may appeal a State or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the Program.
- (b) **Hearing system.** The State agency shall provide for either a hearing at the State level or a hearing at the local level which permits the individual to appeal a local agency decision to the State agency. The State agency may adopt local level hearings in some areas, such as those with large caseloads, and maintain only State level hearings in other areas.
- (c) **Notification of appeal rights.** At the time of a claim against an individual for improperly issued benefits or at the time of participation denial or of disqualification from the Program, the State or local agency shall inform each individual in writing of the right to a fair hearing, of the method by which a hearing may be requested, and that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Such notification is not required at the expiration of a certification period.
- (d) **Request for hearing.** A request for a hearing is defined as any clear expression by the individual, the individual's parent, caretaker, or other representative, that he or she desires an opportunity to present his or her case to a higher authority. The State or local agency shall not limit or interfere with the individual's freedom to request a hearing.
- (e) **Time limit for request.** The State or local agency shall provide individuals a reasonable period of time to request fair hearings; provided that, such time limit is not less than 60 days from the date the agency mails or gives the applicant or participant the notice of adverse action.
- (f) **Denial or dismissal of request.** The State and local agencies shall not deny or dismiss the request for a hearing unless
 - (1) The request is not received within the time limit set by the State agency in accordance with paragraph (e) of this section;
 - (2) The request is withdrawn in writing by the appellant or a representative of the appellant;
 - (3) The appellant or representative fails, without good cause, to appear at the scheduled hearing or;
 - (4) The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to Program eligibility have changed in such a way as to justify a hearing.

- (g) ***Continuation of benefits.*** Participants who appeal the termination of benefits within the 15 days advance adverse action notice period provided by [§ 246.7\(j\)\(6\)](#) must continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to applicants denied benefits at initial certification, participants whose certification periods have expired, or participants who become categorically ineligible for benefits. Applicants who are denied benefits at initial certification, participants whose certification periods have expired, or participants who become categorically ineligible during a certification period may appeal the denial or termination within the timeframes set by the State agency in accordance with [paragraph \(e\)](#) of this section, but must not receive benefits while awaiting the hearing or its results.
- (h) ***Rules of procedure.*** State and local agencies shall process each request for a hearing under uniform rules of procedure and shall make these rules of procedure available for public inspection and copying. At a minimum, such rules shall include: The time limits for requesting and conducting a hearing; all advance notice requirements; the rules of conduct at the hearing; and the rights and responsibilities of the appellant. The procedures shall not be unduly complex or legalistic.
- (i) ***Hearing official.*** Hearings shall 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 determination of the action being contested. The hearing official shall—
- (1) Administer oaths or affirmations if required by the State;
 - (2) Ensure that all relevant issues are considered;
 - (3) Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised;
 - (4) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;
 - (5) Order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the State agency; and
 - (6) Render a hearing decision which will resolve the dispute.
- (j) ***Conduct of the hearing.*** The State or local agency shall ensure that the hearing is accessible to the appellant and is held within three weeks from the date the State or local agency received the request for a hearing. The State or local agency shall provide the appellant with a minimum of 10 days advance written notice of the time and place of the hearing and shall enclose an explanation of the hearing procedure with the notice. The State or local agency shall also provide the appellant or representative an opportunity to—
- (1) Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;
 - (2) Be assisted or represented by an attorney or other persons;
 - (3) Bring witnesses;
 - (4) Advance arguments without undue interference;
 - (5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and
 - (6) Submit evidence to establish all pertinent facts and circumstances in the case.

(k) Fair hearing decisions.

- (1) Decisions of the hearing official shall be based upon the application of appropriate Federal law, regulations and policy as related to the facts of the case as established in 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, constitute the exclusive record for a final decision by hearing official. The State or local agency shall retain the hearing record in accordance with §246.25 and make these records available, for copying and inspection, to the appellant or representative at any reasonable time.
- (2) The decision by the hearing official shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision shall become a part of the record.
- (3) Within 45 days of the receipt of the request for the hearing, the State or local agency shall notify the appellant or representative in writing of the decision and the reasons for the decision in accordance with [paragraph \(k\)\(2\)](#) of this section. If the decision is in favor of the appellant and benefits were denied or discontinued, benefits shall begin immediately. If the decision concerns disqualification and is in favor of the agency, as soon as administratively feasible, the local agency shall terminate any continued benefits, as decided by the hearing official. If the decision regarding repayment of benefits by the appellant is in favor of the agency, the State or local agency shall resume its efforts to collect the claim, even during pendency of an appeal of a local-level fair hearing decision to the State agency. The appellant may appeal a local hearing decision to the State agency, provided that the request for appeal is made within 15 days of the mailing date of the hearing decision notice. If the decision being appealed concerns disqualification from the Program, the appellant shall not continue to receive benefits while an appeal to the State agency of a decision rendered on appeal at the local level is pending. The decision of a hearing official at the local level is binding on the local agency and the State agency unless it is appealed to the State level and overturned by the State hearing official.
- (4) The State and local agency shall make all hearing records and decisions available for public inspection and copying; however, the names and addresses of participants and other members of the public shall be kept confidential.
- (1) **Judicial review.** If a State level decision upholds the agency action and the appellant expresses an interest in pursuing a higher review of the decision, the State agency shall explain any further State level review of the decision and any State level rehearing process. If these are either unavailable or have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

USDA Federal Regulations:**7 CFR Part 246.18 Administrative review of State agency actions****(a) Adverse actions subject to administrative reviews-****(1) Vendor appeals –**

(i) Adverse actions subject to full administrative reviews. Except as provided elsewhere in [paragraph \(a\)\(1\)](#) of 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 ([§ 246.12\(g\)\(3\)\(i\)](#)), or on a determination that the vendor is attempting to circumvent a sanction ([§ 246.12\(g\)\(6\)](#));
- (B) Termination of an agreement for cause;
- (C) Disqualification; and
- (D) Imposition of a fine or a 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 SNAP disqualification or civil money penalty for hardship ([§ 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 ([§ 246.12\(g\)\(4\)](#));
- (C) The application of the State agency's vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors;
- (D) Denial of authorization based on a State agency-established vendor selection criterion if the basis of the denial is a WIC vendor sanction or a SNAP withdrawal of authorization or disqualification;
- (E) Denial of authorization based on the State agency's vendor limiting criteria ([§ 246.12\(g\)\(2\)](#));
- (F) 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 [§ 246.12\(g\)\(8\)](#);
- (G) Termination of an agreement because of a change in ownership or location or cessation of operations ([§ 246.12\(h\)\(3\)\(xvii\)](#));
- (H) Disqualification based on a trafficking conviction ([§ 246.12\(l\)\(1\)\(i\)](#));
- (I) Disqualification based on the imposition of a SNAP civil money penalty for hardship ([§ 246.12\(l\)\(2\)\(ii\)](#)); and
- (J) Disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC State agency ([§ 246.12\(l\)\(2\)\(iii\)](#)).
- (K) A civil money penalty imposed in lieu of disqualification based on a SNAP disqualification under [§ 246.12\(l\)\(1\)\(vii\)](#) and,
- (L) Denial of an application based on a determination of whether an applicant vendor is currently authorized by SNAP.

(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 ([§ 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 ([§ 246.12\(g\)\(3\)](#));
- (B) The validity or appropriateness of the State agency's selection criteria for competitive price ([§ 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;
 - (D) The State agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required pursuant to [§ 246.12\(g\)\(11\)](#);
 - (E) The validity or appropriateness of the State agency's prohibition of incentive items and the State agency's denial of an above-50-percent vendor's request to provide an incentive item to customers pursuant to [§ 246.12\(h\)\(8\)](#);
 - (F) 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 [§ 246.12\(l\)\(3\)](#);
 - (G) 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 ([§ 246.12\(l\)\(1\)\(i\)\(B\)](#));
 - (H) Denial of authorization if the State agency's vendor authorization is subject to the procurement procedures applicable to the State agency;
 - (I) The expiration of a vendor's agreement;
 - (J) Disputes regarding food instrument or cash-value voucher payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error, as permitted by [§ 246.12\(k\)\(3\)](#); and
 - (K) Disqualification of a vendor as a result of disqualification from SNAP ([§ 246.12\(l\)\(1\)\(vii\)](#)).
- (2) **Effective date of adverse actions against vendors.** The State agency must make denials of authorization and disqualifications imposed under [§ 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 no earlier than 15 days after the date of the notice of the adverse action and no later than 90 days after the date of the notice of 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.
- (3) **Local agency appeals –**
- (i) **Adverse actions subject to full administrative reviews.** Except as provided in [paragraph \(a\)\(3\)\(ii\)](#) of this section, the State agency must provide full administrative reviews to local agencies that appeal the following adverse actions:
 - (A) Denial of a local agency's application;

- (B) Disqualification of a local agency; and
 - (C) Any other adverse action that affects a local agency's participation.
- (ii) **Actions not subject to administrative reviews.** The State agency may not provide administrative reviews pursuant to this section to local agencies that appeal the following actions:
 - (A) Expiration of the local agency's agreement; and
 - (B) Denial of a local agency's application if the State agency's local agency selection is subject to the procurement procedures applicable to the State agency;
- (iii) **Effective date of adverse actions against local agencies.** The State agency must make denials of local agency applications effective immediately. The State agency must make all other adverse actions effective no earlier than 60 days after the date of the notice of the adverse action and no later than 90 days after the date of the notice of adverse action or, in the case of an adverse action that is subject to administrative review, no later than the date the local agency receives the review decision.
- (b) **Full administrative review procedures.** The State agency must develop procedures for a full administrative review of the adverse actions listed in [paragraphs \(a\)\(1\)\(i\), \(a\)\(3\) and \(a\)\(4\)](#) of this section. At a minimum, these procedures must provide the vendor, farmer or farmers' market or local agency with the following:
 - (1) 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 [§ 246.12\(1\)\(1\)](#), such notification must include the following statement: "This disqualification from WIC may result in disqualification as a retailer in SNAP. Such disqualification is not subject to administrative or judicial review under SNAP.
 - (2) The opportunity to appeal the adverse action within a time period specified by the State agency in its notification of adverse action.
 - (3) Adequate advance notice of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review.
 - (4) 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.
 - (5) 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).
 - (6) The opportunity to be represented by counsel.
 - (7) The opportunity to examine prior to the review the evidence upon which the State agency's action is based.
 - (8) 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.

- (9) Written notification of the review decision, including the basis for the decision, within 90 days from the date of receipt of the request for an administrative review from a vendor, farmer, or farmer's market, 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.
- (c) **Abbreviated administrative review procedures.** Except when the State agency decides to provide full administrative reviews for the adverse actions listed in [paragraph \(a\)\(1\)\(ii\)](#) of this section, the State agency must develop procedures for an abbreviated administrative review of the adverse actions listed in [paragraph \(a\)\(1\)\(ii\)](#) of this section. At a minimum, these procedures must provide the vendor, farmer, or farmers' market with the following:
- (1) 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
 - (2) 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, farmer, or farmers' market concerning the cause(s) for the adverse action and the response from the vendor, farmer, or farmers' market.
 - (3) 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.
- (d) **Continuing responsibilities.** Appealing an action does not relieve a local agency, farmer or farmers' market or vendor that is permitted to continue program operations while its appeal is in process from the responsibility of continued compliance with the terms of any written agreement with the State agency.
- (e) **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, farmer or farmers' market or local agency.
- (f) **Judicial review.** If the review decision upholds the adverse action against the vendor, farmer or farmers' market or local agency, the State agency must inform the vendor, farmer or farmers' market or local agency that it may be able to pursue judicial review of the decision.

7 CFR Part 246.24 Procurement and property management

(a) **Requirements.** State and local agencies shall ensure that subgrantees comply with on Government-wide Debarment and Suspension, [2 CFR part 200, subpart E](#) and [USDA](#) and allowability of food in bulk lots, supplies, equipment and other services with Program funds. These requirements are adopted to ensure that such materials and services are obtained for the Program in an effective manner and in compliance with the provisions of applicable law and executive orders.

(b) **Contractual responsibilities.** The standards contained in A-130 and [2 CFR part 200, subpart D](#) and Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and USDA implementing regulations [2 CFR part 400](#) and [part 415](#) do not relieve the State or local agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) **State regulations.** The State or local agency may use its own procurement regulations which reflect applicable State and local regulations, provided that procurements made with Program funds adhere to the standards set forth in A-130 and [2 CFR part 200, subpart D](#) and Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and USDA implementing regulations [2 CFR part 400](#) and [part 415](#).

(d) **Property acquired with Program funds.** State and local agencies shall observe the standards prescribed in [2 CFR part 200, subpart D](#) and [USDA](#) implementing regulations [2 CFR part 400](#) and [part 415](#) in their utilization and disposition of real property and equipment, including automated data processing equipment, acquired in whole or in part with Program funds

Authority

USDA Federal Regulations: 7 CFR Part 246.9 Fair hearing procedures for participants

USDA Federal Regulations: 7 CFR Part 246.18 (a)(1) – (3)

USDA Federal Regulations: 7 CFR Part 246.18 (b) – (f)

USDA Federal Regulations: 7 CFR Part 246.24

Procedures

Appeals and Fair Hearing Procedures for Participants

Fair hearings and appeals for participants are provided pursuant to 441-Chapter 7 and 7 CFR 246.9.

Notification

Written notice of the right to appeal and the process to appeal must be given to:

- Applicants found ineligible during a certification appointment,
- Applicants when eligibility is denied, including those placed on a waiting list,
- Participants at termination
- Participants/families when they are disqualified, and
- Participants receiving notice of a claim being established for repayment of improperly issued benefits

The appeals process must be printed on the Notice of Termination, the Notice of Disqualification, Notice of Ineligibility, and Notice of Waiting List.

Filing an Appeal and Time Frames

A request for hearing by an individual or the individual's parent, guardian, or other representative must be made in writing or verbally. This person is referred to as the appellant. The request for hearing shall be made within 90 days or less from the date the individual receives notice of the decision or action that is the subject of appeal.

In computing the 90 days, the period:

- Excludes the day of the event that triggers the period;
- Includes every day of the time period (including Saturdays, Sundays, and holidays on which the Department of Health and Human Services is closed); and
- Includes the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday

Therefore, the first day of the period within which an appeal must be filed is the day after the date of the official notice issued. When the last day of the period falls on a holiday or weekend, the time is extended to the next working day.

The time limit for submitting an appeal is not extended while attempts at an informal settlement are in progress.

Appeals can be filed the following ways:

- Online at <https://hhs.iowa.gov/programs/appeals>
- Mail a letter or fill out the Appeal and Request for Hearing form and mail to:
Department of Health and Human Services
Appeals Bureau

Iowa Department of Health & Human Services/WIC

321 E. 12th Street, 4th Floor
Des Moines, IA 50319

- Fax a letter or appeal form to (515) 564-4044
- Call the Appeals Bureau at 1-888-723-9637 to appeal by phone
- Appeal in person at any HHS Department office
- WIC staff shall assist appellant in filing an appeal if requested online at <https://hhs.iowa.gov/programs/appeals>

Stopping an Appeal

The appellant, their representative, or an attorney can ask to withdraw their appeal. Appeals can be withdrawn the following ways:

- Online at <https://hhs.iowa.gov/programs/appeals>
- Mail a letter or fill out the withdraw form and mail to:
Department of Health and Human Services
Appeals Bureau
321 E. 12th Street, 4th Flor
Des Moines, IA 50319
- Fax a letter or withdraw form to (515) 564-4044
- Call the Appeals Bureau at 1-888-723-9637 (if the program allows verbal withdraws)
- Request to withdraw in person at any Department office

Conducting the fair hearings and appeals for participants

The Department of Inspections, Appeals and Licensing (DIAL) schedules the appeal hearing and the Administrative Law Judge conducts the hearing and issues a proposed decision. Any party may request a Director's review if they disagree with the proposed decision.

If no Director's review is requested, a Final Decision is issued 15 calendar days after the date of the Proposed Decision by the HHS Appeals Bureau.

If the appellant or their representative requested a review and they still disagree with the Final Decision, the appellant or their representative may file a Petition for Judicial Review in District Court.

Restitution

If a participant appeals a claim for restitution, collection efforts are suspended pending the outcome of the appeal. If repayment of benefits is upheld, efforts to collect the claim are resumed during the process of appealing the local decision to the state WIC office. See Policy "Participant Violations and Sanctions" for more information on restitution.

Appeals and Fair Hearing Procedures for Vendors

Fair hearings and appeals are provided pursuant to 441-Chapter 7, 7 CFR §246.12, and 7 CFR 246.18.

WIC Vendors are provided information about appeals through the Iowa WIC Program Vendor Agreement and Handbook.

Filing an Appeal and Time Frames

A request for hearing by a vendor representative must be made in writing or verbally. This person is referred to as the appellant. The request for hearing shall be made within 10 days or less from the date the vendor representative receives notice of the decision or action that is the subject of appeal.

In computing the 10 days, the period:

- Excludes the day of the event that triggers the period;
- Includes everyday of the time period (including Saturdays, Sundays, and holidays on which the Department of Health and Human Services is closed); and
- Includes the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday

Therefore, the first day of the period within which an appeal must be filed is the day after the date of the official notice issued. When the last day of the period falls on a holiday or weekend, the time is extended to the next working day.

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Des Moines, IA 50319
- Fax a letter or appeal form to (515) 564-4044
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- Appeal in person at any HHS Department office

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The appellant, their representative, or an attorney can ask to withdraw their appeal. Appeals can be withdrawn the following ways:

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- Mail a letter or fill out the withdraw form and mail to:
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Appeals Bureau
321 E. 12th Street, 4th Floor
Des Moines, IA 50319

- Fax a letter or withdraw form to (515) 564-4044
- Call the Appeals Bureau at 1-888-723-9637 (if the program allows verbal withdraws)
- Request to withdraw in person at any Department office

Conducting the fair hearings and appeals for vendors

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If no Director's review is requested, a Final Decision is issued 15 calendar days after the date of the Proposed Decision by the HHS Appeals Bureau.

If the appellant or their representative requested a review and they still disagree with the Final Decision, the appellant or their representative may file a Petition for Judicial Review in District Court.

Appeals and Fair Hearing Procedures for Local Agencies

Regarding a denial of an application and/or disqualification, local agencies will reference 441 – Chapter 7, 7 CFR §246.18, and 7 CFR §246.24.