

written notification to FNS, stating the reasons and effective date of the action. In accordance with § 247.4(b)(6), which relates to the termination of agreements, either party must provide 30 days' written notice.

(3) *Termination by mutual agreement.* The State agency's program may also be terminated, in whole or in part, if both parties agree the action would be in the best interest of the program. The two parties must agree upon the conditions of the termination, including the effective date.

(b) *When may a local agency's participation in CSFP be terminated?* While the following paragraphs describe the circumstances and basic procedures in termination of local agency programs, specific actions and procedures relating to program termination are more fully described in part 3016 of this title.

(1) *Termination by State agency.* The State agency may terminate a local agency's participation in CSFP, or may be required to terminate a local agency's participation, in whole or in part, if the local agency does not comply with the requirements of this part. The State agency must notify the local agency in writing of the termination, the reasons for the action, and the effective date, and must provide the local agency with an opportunity to appeal, in accordance with § 247.35.

(2) *Termination by local agency.* The local agency may terminate the program, in whole or in part, upon written notification to the State agency, stating the reasons and effective date of the action. In accordance with § 247.4(b)(6), which relates to the termination of agreements, either party must provide 30 days' written notice.

(3) *Termination by mutual agreement.* The local agency's program may also be terminated, in whole or in part, if both the State and local agency agree that the action would be in the best interest of the program. The two parties must agree upon the conditions of the termination, including the effective date.

#### **§ 247.33 Fair hearings.**

(a) *What is a fair hearing?* A fair hearing is a process that allows a CSFP applicant or participant to appeal an adverse action, which may include the denial or discontinuance of program benefits, disqualification from the program, or a claim to repay the value of commodities received as a result of fraud. State and local agencies must ensure that CSFP applicants and participants understand their right to appeal an adverse action through the fair hearing process, which includes providing written notification of the individual's right to a fair hearing along

with notification of the adverse action. Such notification is not required at the expiration of a certification period.

(b) *What are the basic requirements the State agency must follow in establishing procedures to be used in fair hearings?* The State agency must establish simple, clear, uniform rules of procedure to be used in fair hearings, including, at a minimum, the procedures outlined in this section. The State agency may use alternate procedures if approved by FNS. The rules of procedure must be available for public inspection and copying.

(c) *How may an individual request a fair hearing?* An individual, or an individual's parent or guardian, may request a fair hearing by making a clear expression, verbal or written, to a State or local agency official, that an appeal of the adverse action is desired.

(d) *How much time does an individual have to request a fair hearing?* The State or local agency must allow an individual at least 60 days from the date the agency mails or gives the individual the notification of adverse action to request a fair hearing.

(e) *When may a State or local agency deny a request for a fair hearing?* The State or local agency may deny a request for a fair hearing when:

(1) The request is not received within the time limit established in paragraph (d) of this section.

(2) The request is withdrawn in writing by the individual requesting the hearing or by an authorized representative of the individual.

(3) The individual fails to appear, without good cause, for the scheduled hearing.

(f) *Does the request for a fair hearing have any effect on the receipt of CSFP benefits?* Participants who appeal the discontinuance of program benefits within the 15-day advance notification period required under §§ 247.17 and 247.20 must be permitted to continue to receive benefits until a decision on the appeal is made by the hearing official, or until the end of the participant's certification period, whichever occurs first. However, if the hearing decision finds that a participant received program benefits fraudulently, the local agency must include the value of benefits received during the time that the hearing was pending, as well as for any previous period, in its initiation and 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.

(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.

(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