



United States
Department of
Agriculture

Food and
Nutrition
Service

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DATE: July 11, 2014

MEMO CODE: SP 54-2014

SUBJECT: Administrative Reviews and Certification for Performance-Based Reimbursement in School Year (SY) 2014-2015

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Program integrity is an essential aspect of administering the National School Lunch Program (NSLP) and the School Breakfast Program (SBP). State agencies contribute to Program integrity by conducting administrative reviews of school food authorities (SFA) in accordance with regulations at 7 CFR 210.18, to ensure NSLP and SBP requirements are met.

This memorandum provides guidance to State agencies on conducting administrative reviews in SY 2014-2015.

Technical Assistance, Corrective Action and Fiscal Action

FNS recognizes that the progression to the new meal pattern represents a significant transition for many Program operators. While a large majority of SFAs are already certified compliant, as new requirements go into effect in SY 2014-2015, FNS expects State agencies to continue to work closely with SFAs and provide technical assistance to support their efforts to comply with Program requirements.

Consistent with longstanding Program regulations, when the State agency conducts review activities and finds that the SFA is not fully in compliance with all meal pattern requirements, the State agency must, in conjunction with the SFA, develop a corrective action plan with specific steps, which may include required training and/or technical assistance, and reasonable timeframes for the SFA to come into compliance with identified program requirements. The timeframes and other details of the corrective action plan will vary, depending on the nature of the noncompliance identified. The State agency must also document review findings, and any resulting technical assistance and corrective action, on the Administrative Review On-site and/or Off-site Assessment Tools, or Coordinated Review Effort (CRE) forms, as applicable.

Additionally, Program regulations continue to require a State agency to initiate fiscal action when it finds an SFA's meals are completely missing a meal component per 7 CFR §210.18(m)(2)(i).

For other violations, the regulations require corrective action prior to initiating fiscal action and provide a level of discretion to the State agency in assessing fiscal action. Program regulations at 7 CFR §210.18(m)(2)(ii)(A-C),(iii)(A-C) provide that a State agency must initiate fiscal action associated with the regular reimbursement for "repeated violations" related to vegetable subgroups and milk types, and give State agency discretion for "repeated violations" related to food quantities, whole grain-rich foods, and dietary specifications.

Based on our experience to date with implementation of the new meal patterns, FNS expects that during this ongoing transition period, most noncompliance related to repeated violations will result from SFA efforts to fully understand and implement the new meal patterns. Accordingly, the most appropriate remedy will continue to be technical assistance and training as part of a corrective action plan. Therefore, for purposes of fiscal action associated with administrative reviews, State agencies should generally consider "repeated violations" to be only those that are repeated from one administrative review to the next. Findings associated with an SFA's challenges in implementing the new meal patterns and observed by the State agency prior to SY 2013-2014, including validation reviews, on-site certifications, and other technical assistance visits, should not be considered "repeated violations" resulting in fiscal action.

FNS recognizes that a State agency may find an SFA involved in repeated willful and egregious violations appropriate for fiscal action prior to the SFA's next regular administrative review. In these cases, State agencies should contact their FNS regional office prior to initiating fiscal action for repeated violations as defined in 7 CFR §210.18(m)(2)(ii)(A-C),(iii)(A-C). In considering whether this action is warranted, State agencies should consider the longevity and severity of the problem(s) found, the extent and nature of technical assistance provided, and evaluate the SFA's good faith efforts to come into compliance.

FNS has provided flexibility for whole grain-rich pasta as outlined in SP 47-2014: *Flexibility for Whole Grain-Rich Pasta in School Years 2014-2015 and 2015-2016*, dated May 20, 2014. SFAs approved to offer non-whole grain-rich pastas should be considered compliant with the whole grain-rich requirements during an Administrative Review or a performance-based certification review. FNS expects State agencies to continue to work closely with SFAs and provide technical assistance to help SFAs identify acceptable whole grain-rich pasta to incorporate into school menus.

Additional guidance on the review activities required for Smart Snacks will be provided under a separate cover in the near future.

Waivers to Conduct the Updated Administrative Review Process in SY 2014-2015

In SY 2014-2015, State agencies have the option to continue conducting administrative reviews of SFAs in accordance with the review process set forth in 7 CFR 210.18, and the corresponding *Coordinated Review Effort Procedures Manual*, or to seek a waiver of the regulatory review procedures pursuant to section 12(l) of the NSLA, 42 USC 1760(l), and conduct administrative reviews in accordance with the new administrative review process. States that received a waiver

for SY 2013-2014 that wish to continue using the new administrative review process in SY 2014-2015 must notify their regional office. These States would operate under the same terms and conditions as in SY 2013-2014, and may continue using the process outlined in the Administrative Review Manual until such time as a final administrative review regulation is promulgated or as otherwise determined by FNS. These States will not be required to submit a new waiver request. States that did not request a waiver in SY 2013-2014 and wish to do so in SY 2014-2015, should follow the procedures below. All requirements that would be waived are identified in Attachment 1.

FNS intends to issue a proposed administrative review regulation. The proposed rule would solicit comments on proposed changes to the pertinent sections of 7 CFR Parts 210 and 220. The operational experience obtained from State agencies will be useful as State agencies comment on the proposed administrative review regulation. Subsequently, a final rule establishing one unified review system will be promulgated, after which, all State agencies would be required to follow the finalized provisions.

Procedures for Seeking a Waiver

In accordance with the Secretary's waiver authority in section 12(l) of the NSLA, 42 USC 1760(l), State agencies seeking a waiver of Program regulations in order to use the updated administrative review process must submit a request for waiver in writing to the FNS Regional Office. FNS Regional Offices will forward all such waiver requests to FNS Headquarters for review and approval. Each waiver request must include statements specifying that the State agency would:

- Comply with all of the procedures outlined in the *Administrative Review Guidance Manual* and associated tools, workbooks, forms, and any updates to the manual and associated forms, workbooks, checklists, etc. issued by FNS;
- Communicate operational issues, problems, and suggested improvements to the updated administrative review process to the FNS Regional Office;
- Report administrative review data through the FNS-640 or as otherwise directed by FNS;
- Notify the FNS Regional Office in advance if the State agency seeks to revert to the administrative review process under the Coordinated Review Effort for subsequent administrative reviews; and
- Provide training and technical assistance to SFAs on the new administrative review process prior to conducting administrative reviews. It is important that SFAs have an understanding of the performance standards and measures the State agency will use to evaluate SFA performance.

State agencies seeking a waiver may use the prototype waiver request in Attachment 2.

Duration of the Waiver

FNS will review State agency requests for a waiver taking into consideration past performance. If approved, FNS will provide oversight of the State agency's administrative review activity through management evaluations, data collection, audits and through other means.

State agencies may continue using the process outlined in the *Administrative Review Manual* until such time as a final administrative review regulation is promulgated or as otherwise determined by FNS.

Consistency

State agencies must follow either all of the administrative review process currently found at 7 CFR 210.18 (CRE) or all of the process set forth in the updated *Administrative Review Manual* as authorized under an approved waiver. The administrative review processes identified under Coordinated Review Effort and under the updated Administrative Review are not interchangeable.

Certification for Performance-Based Reimbursement

State agencies must continue to perform certifications in SY 2014-2015 for SFAs not yet certified. There are two ways State agencies may certify SFAs:

- Accepting and reviewing certification documentation submissions by the SFA; or
- Conducting an on-site certification during an administrative review.

Noncertified SFAs do not need to wait for an administrative review to be certified and the administrative review process must not be the sole avenue for SFAs to become certified. SFAs must be able to submit certification documentation to their State agency at any time. States should follow the same procedures used in SYs 2012-2013 and 2013-2014 to certify schools who submit certification documentation.

Certification Procedures during an Administrative Review

When certifying SFAs during either administrative review option, State agencies must select schools for review that represent all the menu types served in the SFA, use a Department of Agriculture (USDA)-approved *Menu Planning Tool for Certification for Six Cent Reimbursement* to assess meal components, and complete a weighted nutrient analysis of calories and saturated fat using USDA-approved nutrient analysis software. The simplified nutrient assessment may not be used when conducting a certification on-site.

To select review schools, State agencies conducting certification during a CRE or the new administrative review must:

1. Determine and select the minimum number of schools in the SFA based on the school selection procedures under 7 CFR §210.18(e)(1) and (2);
2. Identify the different menu types offered in the schools selected for review;
3. Categorize the schools by menu type; and
4. Ensure the selected schools for review cover each menu type in the SFA.

If the steps above result in the selection of schools not offering each of the menu types offered by the SFA, the State agency must repeat the school selection process outlined above until all menu types are represented in the schools selected for review. When State agencies are required to repeat the school selection process, the minimum number of schools to review may be maintained by replacing a school with one that meets the school selection criteria while ensuring the menu types are represented correctly (i.e., the required selection criteria in 7 CFR §210.18(e)(2) and all menu types must be represented in the schools selected for review).

For more information on on-site certification for the performance-based reimbursement, State agencies should refer to SP 31-2012 (3rd Revision), dated January 22, 2013, and SP 55-2013, dated August 21, 2013.

Additional Resources

- Administrative Review Manual, Forms and Tools:
<http://www.fns.usda.gov/cnd/guidance/adminreview.htm>
- CRE Procedures Manual, Section VII: Fiscal Action Contents
- SP 31-2012 (3rd Revision): <http://www.fns.usda.gov/sites/default/files/SP31-2012osr3.pdf>
- SP 55-2013: <http://www.fns.usda.gov/sites/default/files/SP55-2013os.pdf>

Summary

FNS looks forward to continued collaboration with State agencies. We expect the operational experience gained under the administrative review waiver will inform the regulatory process and result in a unified review system that ensures school nutrition program integrity in the most efficient and effective manner possible.

State agencies are reminded to distribute this memo to Program operators immediately. SFAs should contact their State agencies for additional information. State agencies may direct any questions concerning this guidance to the appropriate FNS Regional Office.

A handwritten signature in blue ink that reads "Cynthia Long". The signature is written in a cursive, flowing style.

Cynthia Long
Deputy Administrator
Child Nutrition Programs

Attachment 1

**Waiver for State Agencies approved
to follow the *Administrative Review Manual***

| 7 CFR | Current Requirement | New Procedures |
|------------------------------|---|---|
| §210.10(h) | State agencies are required to conduct a weighted nutrient analysis of the meals offered to each age grade group in one school selected for review. | At a minimum, State agencies are required to conduct a weighted nutrient analysis of the meals offered to each age grade group in a school selected for review that is determined to be at high risk of dietary specification violations. |
| §210.18(c)(3), (d)(2) | State agencies are required to conduct follow-up reviews within specified timeframes and must notify FNS of the names of large SFAs in need of a follow up review. | State agencies are not required to conduct follow-up reviews, thus making the reporting requirement unnecessary. |
| §210.18(g)(1)(i) (A) and (B) | <i>For each reviewed school</i> , State agencies are required to determine the number of children eligible for free, reduced price and paid lunches for the review period and evaluate the system for issuing benefits. | <i>For the local educational agency</i> , State agencies are required to determine the number of children eligible for free, reduced price, and paid lunches for the review period and evaluate the system for issuing benefits. |
| §210.18(g)(2)(iii) | State agencies must review menu and production records for a minimum of five days. | State agencies must review menus and production records for a school week, if the review reveals problems with components or quantities, the State agency must expand the review to, at a minimum, the entire review period. |
| §210.18(g)(2)(iv) | State agencies are required to conduct a weighted nutrient analysis of the meals offered to each age grade group in one school selected for review. | At a minimum, State agencies are required to conduct a weighted nutrient analysis of the meals offered to each age grade group in a school selected for review that is determined to be at high risk of dietary specification violations. |
| §210.18(i) | State agencies must conduct follow-up reviews of all SFAs found to have critical area violations in excess of any one of the review thresholds. | Follow-up reviews are not required. Review thresholds are not established. |
| §210.18(l) | State agencies are required to withhold program payments for SFAs with uncorrected critical area violations in excess of review thresholds. | While §210.18(l) is waived, §210.24 continues to require State agencies to withhold program payments to any SFA which has failed to comply with program requirements. |
| §210.18(o); §210.20(a)(5) | State agencies are required to report to FNS the names of those large SFAs exceeding a critical area review threshold. | No comparable provision. |
| §210.18(p) §210.20(b)(7) | State agencies are required to maintain records regarding its criteria for selecting schools for follow-up reviews. | No comparable provision. |
| §220.8(h) | State agencies are required to conduct a weighted nutrient analysis of the meals offered to each age grade group in one school selected for review. | At a minimum, State agencies are required to conduct a weighted nutrient analysis of the meals offered to each age grade group in a school selected for review that is determined to be at high risk of dietary specification violations. |

Attachment 2

Date: (insert)
Subject: Administrative Review Waiver Request
To: FNS Regional Office
From: (insert)

In School Year 2014-2015, insert name of State agency would like to conduct administrative reviews of the School Nutrition Programs in accordance with the process set forth in the *Administrative Review Manual*, available at: <http://www.fns.usda.gov/school-meals/administrative-review-manual>. We are requesting a waiver of the administrative review requirements outlined in FNS memorandum SP 54-2014, *Administrative Reviews and Certification for Performance-Based Reimbursement in School Year (SY) 2014-2015*, issued July 11, 2014.

The *Administrative Review Manual* and the corresponding waiver are expected to provide a more comprehensive evaluation of School Nutrition Programs using an updated process to affect the State's oversight and monitoring responsibilities. The efficiencies in the review process are expected to offset any costs associated with modifications to the scope of review, as such, the waiver is not expected to increase the overall cost to the Federal government.

If approved, the State agency agrees to:

- Comply with all of the procedures outlined in the *Administrative Review Manual* and associated tools, workbooks, forms (available at: <http://www.fns.usda.gov/school-meals/administrative-review-manual>, and any updates to the manual and associated forms, workbooks, checklists, etc. issued by FNS.
- Communicate operational issues, problems, and suggested improvements to the updated administrative review process to the FNS Regional Office.
- Report administrative review data through the FNS-640 or as otherwise directed by FNS.
- Notify the FNS Regional Office in advance if the State agency seeks to revert to the administrative review process under the Coordinated Review Effort for subsequent administrative reviews.
- Provide training and technical assistance to SFAs on the new administrative review procedures prior to conducting administrative reviews. It is important that SFAs have an understanding of the performance standards and measures the State agency will use to evaluate performance.

We understand that, if approved, FNS will provide oversight of the State agency's administrative review activity through management evaluations, data collection, audits, and through other means. Further, we understand that we may continue using the process outlined in the *Administrative Review Manual* until such time as a final administrative review regulation is promulgated or as otherwise determined by FNS.

Your approval is requested.