

§210.18

7 CFR Ch. II (1–1–23 Edition)

matching requirements so computed shall be decreased by the percentage by which the State per capita income is below the per capita income of the United States.

(b) *Private school exemption.* No State in which the State agency is prohibited by law from disbursing State appropriated funds to nonpublic schools shall be required to match general cash assistance funds expended for meals served in such schools, or to disburse to such schools any of the State revenues required to meet the requirements of paragraph (a) of this section. Furthermore, the requirements of this section do not apply to schools in which the Program is administered by a FNSRO.

(c) *Territorial waiver.* American Samoa and the Commonwealth of the Northern Mariana Islands shall be exempted from the matching requirements of paragraph (a) of this section if their respective matching requirements are under \$100,000.

(d) *Applicable revenues.* The following State revenues, appropriated or used specifically for program purposes which are expended for any school year shall be eligible for meeting the applicable percentage of the matching requirements prescribed in paragraph (a) of this section for that school year:

(1) State revenues disbursed by the State agency to school food authorities for program purposes, including revenue disbursed to nonprofit private schools where the State administers the program in such schools;

(2) State revenues made available to school food authorities and transferred by the school food authorities to the nonprofit school food service accounts or otherwise expended by the school food authorities in connection with the nonprofit school food service program; and

(3) State revenues used to finance the costs (other than State salaries or other State level administrative costs) of the nonprofit school food service program, i.e.:

- (i) Local program supervision;
- (ii) Operating the program in participating schools; and
- (iii) The intrastate distribution of foods donated under part 250 of this

chapter to schools participating in the program.

(e) *Distribution of matching revenues.* All State revenues made available under paragraph (a) of this section are to be disbursed to school food authorities participating in the Program, *except as provided for under paragraph (b) of this section.* Distribution of matching revenues may be made with respect to a class of school food authorities as well as with respect to individual school food authorities.

(f) *Failure to match.* If, in any school year, a State fails to meet the State revenue matching requirement, as prescribed in paragraph (a) of this section, the general cash assistance funds utilized by the State during that school year shall be subject to recall by and repayment to FNS.

(g) *Reports.* Within 120 days after the end of each school year, each State agency shall submit an Annual Report of Revenues (FNS-13) to FNS. This report identifies the State revenues to be counted toward the State revenue matching requirements specified in paragraph (a) of this section.

(h) *Accounting system.* The State agency shall establish or cause to be established a system whereby all expended State revenues counted in meeting the matching requirements prescribed in paragraph (a) of this section are properly documented and accounted for.

§210.18 Administrative reviews.

(a) *Programs covered and methodology.* Each State agency must follow the requirements of this section to conduct administrative reviews of school food authorities participating in the National School Lunch Program and the School Breakfast Program (part 220 of this chapter). These procedures must also be followed, as applicable, to conduct administrative reviews of the National School Lunch Program's After-school Snacks and Seamless Summer Option, the Special Milk Program (part 215 of this chapter), and the Fresh Fruit and Vegetable Program. To conduct a program review, the State agency must gather and assess information off-site and/or on-site, observe the school food service operation, and use a

Food and Nutrition Service, USDA

§210.18

risk-based approach to evaluate compliance with specific program requirements.

(b) *Definitions.* The following definitions are provided in alphabetical order in order to clarify State agency administrative review requirements:

Administrative reviews means the comprehensive off-site and/or on-site evaluation of all school food authorities participating in the programs specified in paragraph (a) of this section. The term “administrative review” is used to reflect a review of both critical and general areas in accordance with paragraphs (g) and (h) of this section, as applicable for each reviewed program, and includes other areas of program operations determined by the State agency to be important to program performance.

Critical areas means the following two performance standards described in detail in paragraph (g) of this section:

(i) *Performance Standard 1*—All free, reduced price and paid school meals claimed for reimbursement are served only to children eligible for free, reduced price and paid school meals, respectively; and are counted, recorded, consolidated and reported through a system which consistently yields correct claims.

(ii) *Performance Standard 2*—Reimbursable lunches meet the meal requirements in §210.10, as applicable to the age/grade group reviewed. Reimbursable breakfasts meet the meal requirements in §220.8 of this chapter, as applicable to the age/grade group reviewed.

Day of Review means the day(s) on which the on-site review of the individual sites selected for review occurs.

Documented corrective action means written notification required of the school food authority to certify that the corrective action required for each violation has been completed and to notify the State agency of the dates of completion. Documented corrective action may be provided at the time of the review or may be submitted to the State agency within specified timeframes.

General areas means the areas of review specified in paragraph (h) of this section. These areas include free and reduced price process, civil rights,

school food authority on-site monitoring, reporting and recordkeeping, food safety, competitive food services, water, program outreach, resource management, and other areas identified by FNS.

Participation factor means the percentages of children approved by the school for free meals, reduced price meals, and paid meals, respectively, who are participating in the Program. The free participation factor is derived by dividing the number of free lunches claimed for any given period by the product of the number of children approved for free lunches for the same period times the operating days in that period. A similar computation is used to determine the reduced price and paid participation factors. The number of children approved for paid meals is derived by subtracting the number of children approved for free and reduced price meals for any given period from the total number of children enrolled in the reviewed school for the same period of time, if available. If such enrollment figures are not available, the most recent total number of children enrolled must be used. If school food authority participation factors are unavailable or unreliable, State-wide data must be employed.

Review period means the most recent month for which a Claim for Reimbursement was submitted, provided that it covers at least ten (10) operating days.

(c) *Timing of reviews.* State agencies must conduct administrative reviews of all school food authorities participating in the National School Lunch Program (including the Afterschool Snacks and the Seamless Summer Option) and School Breakfast Program at least once during a 3-year review cycle, provided that each school food authority is reviewed at least once every 4 years. For each State agency, the first 3-year review cycle started the school year that began on July 1, 2013, and ended on June 30, 2014. At a minimum, the on-site portion of the administrative review must be completed during the school year in which the review was begun.

(1) *Review cycle exceptions.* FNS may, on an individual school food authority basis, approve written requests for 1-

§210.18

year extensions to the 3-year review cycle specified in paragraph (c) of this section if FNS determines this 3-year cycle requirement conflicts with efficient State agency management of the programs.

(2) *Follow-up reviews.* The State agency may conduct follow-up reviews in school food authorities where significant or repeated critical or general violations exist. The State agency may conduct follow-up reviews in the same school year as the administrative review.

(d) *Scheduling school food authorities.* The State agency must use its own criteria to schedule school food authorities for administrative reviews; provided that the requirements of paragraph (c) of this section are met. State agencies may take into consideration the findings of the claims review process required under §210.8(b)(2) in the selection of school food authorities.

(1) *Schedule of reviews.* To ensure no unintended overlap occurs, the State agency must inform FNS of the anticipated schedule of school food authority reviews upon request.

(2) *Exceptions.* In any school year in which FNS or the Office of the Inspector General (OIG) conducts a review or investigation of a school food authority in accordance with §210.19(a)(4), the State agency must, unless otherwise authorized by FNS, delay conduct of a scheduled administrative review until the following school year. The State agency must document any exception authorized under this paragraph.

(e) *Number of schools to review.* At a minimum, the State agency must review the number of schools specified in paragraph (e)(1) of this section and must select the schools to be reviewed on the basis of the school selection criteria specified in paragraph (e)(2) of this section. The State agency may review all schools meeting the school selection criteria specified in paragraph (e)(2) of this section.

(1) *Minimum number of schools.* State agencies must review at least one school from each local education agency. Except for residential child care institutions, the State agency must review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent

7 CFR Ch. II (1–1–23 Edition)

or more. In no event must the State agency review less than the minimum number of schools illustrated in Table A for the National School Lunch Program.

TABLE A

Number of schools in the school food authority	Minimum number of schools to review
1 to 5	1
6 to 10	2
11 to 20	3
21 to 40	4
41 to 60	6
61 to 80	8
81 to 100	10
101 or more	*12

*Twelve plus 5 percent of the number of schools over 100. Fractions must be rounded up (>0.5) or down (<0.5) to the nearest whole number.

(2) *School selection criteria.* (i) Selection of additional schools to meet the minimum number of schools required under paragraph (e)(1) of this section, must be based on the following criteria:

(A) Elementary schools with a free average daily participation of 100 or more and a free participation factor of 97 percent or more;

(B) Secondary schools with a free average daily participation of 100 or more and a free participation factor of 77 percent or more; and

(C) Combination schools with a free average daily participation of 100 or more and a free participation factor of 87 percent or more. A combination school means a school with a mixture of elementary and secondary grades.

(ii) When the number of schools selected on the basis of the criteria established in paragraph (e)(2)(i) of this section is not sufficient to meet the minimum number of schools required under paragraph (e)(1) of this section, the additional schools selected for review must be identified using State agency criteria which may include low participation schools; recommendations from a food service director based on findings from the on-site visits or the claims review process required under §210.8(a); or any school in which the daily meal counts appear questionable (*e.g.*, identical or very similar claiming patterns, or large changes in free meal counts).

Food and Nutrition Service, USDA

§210.18

(iii) In selecting schools for an administrative review of the School Breakfast Program, State agencies must follow the selection criteria set forth in this paragraph and FNS' *Administrative Review Manual*. At a minimum:

(A) In school food authorities operating only the breakfast program, State agencies must review the number of schools set forth in Table A in paragraph (e)(1) of this section.

(B) In school food authorities operating both the lunch and breakfast programs, State agencies must review the breakfast program in 50 percent of the schools selected for an administrative review under paragraph (e)(1) of this section that operate the breakfast program.

(C) If none of the schools selected for an administrative review under paragraph (e)(1) of this section operates the breakfast program, but the school food authority operates the program elsewhere, the State agency must follow procedures in the FNS *Administrative Review Manual* to select at least one other site for a school breakfast review.

(3) *Site selection for other federal program reviews*—(i) *National School Lunch Program's Afterschool Snacks*. If a school selected for an administrative review under this section operates Afterschool Snacks, the State agency must review snack documentation for compliance with program requirements, according to the FNS *Administrative Review Manual*. Otherwise, the State agency is not required to review the Afterschool Snacks.

(ii) *National School Lunch Program's Seamless Summer Option*. The State agency must review Seamless Summer Option at a minimum of one site if the school food authority selected for review under this section operates the Seamless Summer Option. This review can take place at any site within the reviewed school food authority the summer before or after the school year in which the administrative review is scheduled. The State agency must review the Seamless Summer Option for compliance with program requirements, according to the FNS *Administrative Review Manual*.

(iii) *Fresh Fruit and Vegetable Program*. The State agency must review the Fresh Fruit and Vegetable Program at one or more of the schools selected for an administrative review, as specified in Table B. If none of the schools selected for the administrative review operates the Fresh Fruit and Vegetable Program but the school food authority operates the Program elsewhere, the State agency must follow procedures in the FNS *Administrative Review Manual* to select one or more sites for the program review.

TABLE B

Number of schools selected for an NSLP administrative review that operate the FFVP	Minimum number of FFVP schools to be reviewed
0 to 5	1
6 to 10	2
11 to 20	3
21 to 40	4
41 to 60	6
61 to 80	8
81 to 100	10
101 or more	12*

*Twelve plus 5 percent of the number of schools over 100. Fractions must be rounded up (>0.5) or down (<0.5) to the nearest whole number.

(iv) *Special Milk Program*. If a school selected for review under this section operates the Special Milk Program, the State agency must review the school's program documentation off-site or on-site, as prescribed in the FNS *Administrative Review Manual*. On-site review is only required if the State agency has identified documentation problems or if the State agency has identified meal counting or claiming errors in the reviews conducted under the National School Lunch Program or School Breakfast Program.

(4) *Pervasive problems*. If the State agency review finds pervasive problems in a school food authority, FNS may authorize the State agency to cease review activities prior to reviewing the required number of schools under paragraphs (e)(1) and (e)(3) of this section. Where FNS authorizes the State agency to cease review activity, FNS may either conduct the review activity itself or refer the school food authority to OIG.

(5) *Noncompliance with meal pattern requirements.* If the State agency determines there is significant noncompliance with the meal pattern and nutrition requirements set forth in § 210.10 and § 220.8 of this chapter, as applicable, the State agency must select the school food authority for administrative review earlier in the review cycle.

(f) *Scope of review.* During the course of an administrative review for the National School Lunch Program and the School Breakfast Program, the State agency must monitor compliance with the critical and general areas in paragraphs (g) and (h) of this section, respectively. State agencies may add additional review areas with FNS approval. Selected critical and general areas must be monitored when reviewing the National School Lunch Program's Afterschool Snacks and the Seamless Summer Option, the Special Milk Program, and the Fresh Fruit and Vegetable Program, as applicable and as specified in the *FNS Administrative Review Manual*.

(1) *Review forms.* State agencies must use the administrative review forms, tools and workbooks prescribed by FNS.

(2) *Timeframes covered by the review.*

(i) The timeframes covered by the administrative review includes the review period and the day of review, as defined in paragraph (b) of this section.

(ii) Subject to FNS approval, the State agency may conduct a review early in the school year, prior to the submission of a Claim for Reimbursement. In such cases, the review period must be the prior month of operation in the current school year, provided that such month includes at least 10 operating days.

(3) *Audit findings.* To prevent duplication of effort, the State agency may use any recent and currently applicable findings from Federally-required audit activity or from any State-imposed audit requirements. Such findings may be used only insofar as they pertain to the reviewed school(s) or the overall operation of the school food authority and they are relevant to the review period. The State agency must document the source and the date of the audit.

(g) *Critical areas of review.* The performance standards listed in this para-

graph are directly linked to meal access and reimbursement, and to the meal pattern and nutritional quality of the reimbursable meals offered. These critical areas must be monitored by the State agency when conducting administrative reviews of the National School Lunch Program and the School Breakfast Program. Selected aspects of these critical areas must also be monitored, as applicable, when conducting administrative reviews of the National School Lunch Program's Afterschool Snacks and the Seamless Summer Option, and of the Special Milk Program.

(1) *Performance Standard 1 (All free, reduced price and paid school meals claimed for reimbursement are served only to children eligible for free, reduced price and paid school meals, respectively; and are counted, recorded, consolidated and reported through a system which consistently yields correct claims.)* The State agency must follow review procedures stated in this section and as specified in the *FNS Administrative Review Manual* to ensure that the school food authority's certification and benefit issuance processes for school meals offered under the National School Lunch Program, and School Breakfast Program are conducted as required in part 245 of this chapter, as applicable. In addition, the State agency must ensure that benefit counting, consolidation, recording and claiming are conducted as required in this part and part 220 of this chapter for the National School Lunch Program and the School Breakfast Program, respectively. The State agency must also follow procedures consistent with this section, and as specified in the *FNS Administrative Review Manual*, to review applicable areas of Performance Standard 1 in the National School Lunch Program's Afterschool Snacks and Seamless Summer Option, and in the Special Milk Program.

(i) *Certification and benefit issuance.* The State agency must gather information and monitor the school food authority's compliance with program requirements regarding benefit application, direct certification, and categorical eligibility, as well as the transfer of benefits to the point-of-service benefit issuance document. To review this area, the State agency

Food and Nutrition Service, USDA

§210.18

must obtain the benefit issuance document for each participating school under the jurisdiction of the school food authority for the day of review or a day in the review period, review all or a statistically valid sample of student certifications, and validate that the eligibility certification for free and reduced price meals was properly transferred to the benefit issuance document and reflects changes due to verification findings, transfers, or a household's decision to decline benefits. If the State agency chooses to review a statistically valid sample of student certifications, the State agency must use a sample size with a 99 percent confidence level of accuracy. However, a sample size with a 95 percent confidence level of accuracy may be used if a school food authority uses an electronic benefit issuance and certification system with no manual data entry and the State agency has not identified any potential systemic non-compliance. Any sample size must be large enough so that there is a 99 or 95 percent, as applicable, chance that the actual accuracy rate for all certifications is not less than 2 percentage points less than the accuracy rate found in the sample (*i.e.*, the lower bound of the one-sided 99/95 percent confidence interval is no more than 2 percentage points less than the point estimate).

(ii) *Meal counting and claiming.* The State agency must gather information and conduct an on-site visit to ensure that the processes used by the school food authority and reviewed school(s) to count, record, consolidate, and report the number of reimbursable meals/snacks served to eligible students by category (*i.e.*, free, reduced price or paid meal) are in compliance with program requirements and yield correct claims. The State agency must determine whether:

(A) The daily meal counts, by type, for the review period are more than the product of the number of children determined by the school/school food authority to be eligible for free, reduced price, and paid meals for the review period times an attendance factor. If the meal count, for any type, appears questionable or significantly exceeds the product of the number of eligibles, for

that type, times an attendance factor, documentation showing good cause must be available for review by the State agency.

(B) For each school selected for review, each type of food service line provides accurate point of service meal counts, by type, and those meal counts are correctly counted and recorded. If an alternative counting system is employed (in accordance with §210.7(c)(2)), the State agency shall ensure that it provides accurate counts of reimbursable meals, by type, and is correctly implemented as approved by the State agency.

(C) For each school selected for review, all meals are correctly counted, recorded, consolidated and reported for the day they are served.

(2) *Performance Standard 2 (Lunches claimed for reimbursement by the school food authority meet the meal requirements in §210.10, as applicable to the age/grade group reviewed. Breakfasts claimed for reimbursement by the school food authority meet the meal requirements in §220.8 of this chapter, as applicable to the age/grade group reviewed.)* The State agency must follow review procedures, as stated in this section and detailed in the *FNS Administrative Review Manual*, to ensure that meals offered by the school food authority meet the food component and quantity requirements and the dietary specifications for each program, as applicable. Review of these critical areas may occur off-site or on-site. The State agency must also follow procedures consistent with this section, as specified in the *FNS Administrative Review Manual*, to review applicable areas of Performance Standard 2 in the National School Lunch Program's Afterschool Snacks and Seamless Summer Option, and in the Special Milk Program.

(i) *Food components and quantities.* For each school selected for review, the State agency must complete a USDA-approved menu tool, review documentation, and observe the meal service to ensure that meals offered by the reviewed schools meet the meal patterns for each program. To review this area, the State agency must:

(A) Review menu and production records for the reviewed schools for a minimum of one school week (*i.e.*, a

§210.18

7 CFR Ch. II (1–1–23 Edition)

minimum number of three consecutive school days and a maximum of seven consecutive school days) from the review period. Documentation, including food crediting documentation, such as food labels, product formulation statements, CN labels and bid documentation, must be reviewed to ensure compliance with the lunch and breakfast meal patterns. If the documentation review reveals problems with food components or quantities, the State agency must expand the review to, at a minimum, the entire review period. The State agency should consider a school food authority compliant with the school meal pattern if:

(1) When evaluating the daily and weekly range requirements for grains and meat/meat alternates, the documentation shows compliance with the daily and weekly minimums for these components, regardless of whether the school food authority has exceeded the recommended weekly maximums for the same components.

(2) When evaluating the service of frozen fruit, the State agency determines that the school food authority serves frozen fruit with or without added sugar.

(B) On the day of review, the State agency must:

(1) Observe a significant number of program meals, as described in the *FNS Administrative Review Manual*, at each serving line and review the corresponding documentation to determine whether all reimbursable meal service lines *offer* all of the required food components/items and quantities for the age/grade groups being served, as required under §210.10, as applicable, and §220.8 of this chapter, as applicable. Observe meals at the beginning, middle and end of the meal service line, and confirm that signage or other methods are used to assist students in identifying the reimbursable meal. If the State agency identifies missing components or inadequate quantities prior to the beginning of the meal service, it must inform the school food authority and provide an opportunity to make corrections. Additionally, if visual observation suggests that quantities offered are insufficient or excessive, the State agency must require the reviewed schools to provide docu-

mentation demonstrating that the required amounts of each component were available for service for each day of the review period.

(2) Observe a significant number of the program meals counted at the point of service for each type of serving line to determine whether the meals *selected* by the students contain the food components and food quantities required for a reimbursable meal under §210.10, as applicable, and §220.8 of this chapter, as applicable.

(3) If Offer versus Serve is in place, observe whether students select at least three food components at lunch and at least three food items at breakfasts, and that the lunches and breakfasts include at least ½ cup of fruits or vegetables.

(ii) *Dietary specifications.* The State agency must conduct a meal compliance risk assessment for each school selected for review to determine which school is at highest risk for nutrition-related violations. The State agency must conduct a targeted menu review for the school at highest risk for non-compliance using one of the options specified in the *FNS Administrative Review Manual*. Under the targeted menu review options, the State agency may conduct or validate an SFA-conducted nutrient analysis for both lunch and breakfast, or further evaluate risk for noncompliance and, at a minimum, conduct a nutrient analysis if further examination shows the school is at high risk for noncompliance with the dietary specifications in §210.10 and §220.8 of this chapter. The State agency is not required to assess compliance with the dietary specifications when reviewing meals for preschoolers, and the National School Lunch Program's Afterschool Snacks and the Seamless Summer Option.

(iii) *Performance-based cash assistance.* If the school food authority is receiving performance-based cash assistance under §210.7(d), the State agency must assess the school food authority's meal service and documentation of lunches served and determine its continued eligibility for the performance-based cash assistance.

Food and Nutrition Service, USDA

§210.18

(h) *General areas of review.* The general areas listed in this paragraph reflect requirements that must be monitored by the State agency when conducting administrative reviews of the National School Lunch Program and the School Breakfast Program. Selected aspects of these general areas must also be monitored, as applicable and as specified in the *FNS Administrative Review Manual*, when conducting administrative reviews of the National School Lunch Program's Afterschool Snacks and Seamless Summer Option, the Fresh Fruit and Vegetable Program, and the Special Milk Program. The general areas of review must include, but are not limited to, the following:

(1) *Resource management.* The State agency must conduct an off-site assessment of the school food authority's nonprofit school food service to evaluate the risk of noncompliance with resource management requirements. If risk indicators show that the school food authority is at high risk for noncompliance with resource management requirements, the State agency must conduct a comprehensive review including, but not limited to, the following areas using procedures specified in the *FNS Administrative Review Manual*.

(i) *Maintenance of the nonprofit school food service account.* The State agency must confirm the school food authority's resource management is consistent with the maintenance of the nonprofit school food service account requirements in §§210.2, 210.14, 210.19(a), and 210.21.

(ii) *Paid lunch equity.* The State agency must review compliance with the requirements for pricing paid lunches in §210.14(e).

(iii) *Revenue from nonprogram foods.* The State agency must ensure that all non-reimbursable foods sold by the school food service, including, but not limited to, a la carte food items, adult meals, and vended meals, generate at least the same proportion of school food authority revenues as they contribute to school food authority food costs, as required in §210.14(f).

(iv) *Indirect costs.* The State agency must ensure that the school food authority follows fair and consistent

methodologies to identify and allocate allowable indirect costs to school food service accounts, as required in 2 CFR part 200 and §210.14(g).

(2) *General Program Compliance—(i) Free and reduced price process.* In the course of the review of each school food authority, the State agency must:

(A) Confirm the free and reduced price policy statement, as required in §245.10 of this chapter, is implemented as approved.

(B) Ensure that the process used to verify children's eligibility for free and reduced price meals in a sample of household applications is consistent with the verification requirements, procedures, and deadlines established in §245.6a of this chapter.

(C) Determine that, for each reviewed school, the meal count system does not overtly identify children eligible for free and reduced price meals, as required under §245.8 of this chapter.

(D) Review at least 10 denied applications to evaluate whether the determining official correctly denied applicants for free and reduced price meals, and whether denied households were provided notification in accordance with §245.6(c)(7) of this chapter.

(E) Confirm that a second review of applications has been conducted and that information has been correctly reported to the State agency as required in §245.11, if applicable.

(ii) *Civil rights.* The State agency must examine the school food authority's compliance with the civil rights provisions specified in §210.23(b) to ensure that no child is denied benefits or otherwise discriminated against in any of the programs reviewed under this section because of race, color, national origin, age, sex, or disability.

(iii) *School food authority on-site monitoring.* The State agency must ensure that the school food authority conducts on-site reviews of each school under its jurisdiction, as required by §§210.8(a)(1) and 220.11(d) of this chapter, and monitors claims and readily observable general areas of review in accordance with §§210.8(a)(2) and (a)(3), and 220.11(d) of this chapter.

(iv) *Competitive food standards.* The State agency must ensure that the local educational agency and school

§210.18

7 CFR Ch. II (1–1–23 Edition)

food authority comply with the nutrition standards for competitive foods in §§210.11 and 220.12 of this chapter, and retain documentation demonstrating compliance with the competitive food service and standards.

(v) *Water.* The State agency must ensure that water is available and accessible to children at no charge as specified in §§210.10(a)(1)(i) and 220.8(a)(1) of this chapter.

(vi) *Food safety.* The State agency must examine records to confirm that each school food authority under its jurisdiction meets the food safety requirements of §210.13.

(vii) *Reporting and recordkeeping.* The State agency must determine that the school food authority submits reports and maintains records in accordance with program requirements in this part, and parts 220 and 245 of this chapter, and as specified in the *FNS Administrative Review Manual*.

(viii) *Program outreach.* The State agency must ensure the school food authority is conducting outreach activities to increase participation in the School Breakfast Program and the Summer Food Service Program, as required in §210.12(d). If the State agency administering the Summer Food Service Program is not the same State agency that administers the National School Lunch Program, then the two State agencies must work together to implement outreach measures.

(ix) *Professional standards.* The State agency shall ensure the local educational agency and school food authority complies with the professional standards for school nutrition program directors, managers, and personnel established in §210.30.

(x) *Local school wellness.* The State agency shall ensure the local educational agency complies with the local school wellness requirements set forth in §210.30.

(i) *Entrance and exit conferences and notification—*(1) *Entrance conference.* The State agency may hold an entrance conference with the appropriate school food authority staff at the beginning of the on-site administrative review to discuss the results of any off-site assessments, the scope of the on-site review, and the number of schools to be reviewed.

(2) *Exit conference.* The State agency must hold an exit conference at the close of the administrative review and of any subsequent follow-up review to discuss the violations observed, the extent of the violations and a preliminary assessment of the actions needed to correct the violations. The State agency must discuss an appropriate deadline(s) for completion of corrective action, provided that the deadline(s) results in the completion of corrective action on a timely basis.

(3) *Notification.* The State agency must provide written notification of the review findings to the school food authority's Superintendent (or equivalent in a non-public school food authority) or authorized representative, preferably no later than 30 days after the exit conference for each review. The written notification must include the date(s) of review, date of the exit conference, review findings, the needed corrective actions, the deadlines for completion of the corrective action, and the potential fiscal action. As a part of the denial of all or a part of a Claim for Reimbursement or withholding payment in accordance with the provisions of this section, the State agency must provide the school food authority a written notice which details the grounds on which the denial of all or a part of the Claim for Reimbursement or withholding payment is based. This notice, must be provided by certified mail, or its equivalent, or sent electronically by email or facsimile. This notice shall also include a statement indicating that the school food authority may appeal the denial of all or a part of a Claim for Reimbursement or withholding payment and the entity (*i.e.*, FNS or State agency) to which the appeal should be directed. The notice is considered to be received by the school food authority when it is delivered by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email. If the notice is undeliverable, it is considered to be received by the school food authority five days after being sent to the addressee's last known mailing address, facsimile number, or email address. The State agency shall notify the school food authority, in writing, of the appeal procedures as

Food and Nutrition Service, USDA

§210.18

specified in paragraph (p) of this section for appeals of State agency findings, and for appeals of FNS findings, provide a copy of §210.29(d)(3).

(j) *Corrective action.* Corrective action is required for any violation under either the critical or general areas of the review. Corrective action must be applied to all schools in the school food authority, as appropriate, to ensure that deficient practices and procedures are revised system-wide. Corrective actions may include training, technical assistance, recalculation of data to ensure the accuracy of any claim that the school food authority is preparing at the time of the review, or other actions. Fiscal action must be taken in accordance with paragraph (l) of this section.

(1) *Extensions of the timeframes.* If the State agency determines that extraordinary circumstances make a school food authority unable to complete the required corrective action within the timeframes specified by the State agency, the State agency may extend the timeframes upon written request of the school food authority.

(2) *Documented corrective action.* Documented corrective action is required for any degree of violation of general or critical areas identified in an administrative review. Documented corrective action may be provided at the time of the review; however, it must be postmarked or submitted to the State agency electronically by email or facsimile, no later than 30 days from the deadline for completion of each required corrective action, as specified under paragraph (i)(2) of this section or as otherwise extended by the State agency under paragraph (j)(1) of this section. The State agency must maintain any documented corrective action on file for review by FNS.

(k) *Withholding payment.* At a minimum, the State agency must withhold all program payments to a school food authority as follows:

(1) *Cause for withholding.* (i) The State agency must withhold all Program payments to a school food authority if documented corrective action for critical area violations is not provided with the deadlines specified in paragraph (j)(2) of this section;

(ii) The State agency must withhold all Program payments to a school food authority if the State agency finds that corrective action for critical area violation was not completed;

(iii) The State agency may withhold Program payments to a school food authority at its discretion, if the State agency found a critical area violation on a previous review and the school food authority continues to have the same error for the same cause; and

(iv) For general area violations, the State agency may withhold Program payments to a school food authority at its discretion, if the State agency finds that documented corrective action is not provided within the deadlines specified in paragraph (j)(2) of this section, corrective action is not complete, or corrective action was not taken as specified in the documented corrective action.

(2) *Duration of withholding.* In all cases, Program payments must be withheld until such time as corrective action is completed, documented corrective action is received and deemed acceptable by the State agency, or the State agency completes a follow-up review and confirms that the problem has been corrected. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for all meals served in accordance with the provisions of this part during the period the payments were withheld. In very serious cases, the State agency will evaluate whether the degree of non-compliance warrants termination in accordance with §210.25.

(3) *Exceptions.* The State agency may, at its discretion, reduce the amount required to be withheld from a school food authority pursuant to paragraph (k)(1)(i) through (iii) of this section by as much as 60 percent of the total Program payments when it is determined to be in the best interest of the Program. FNS may authorize a State agency to limit withholding of funds to an amount less than 40 percent of the total Program payments, if FNS determines such action to be in the best interest of the Program.

(4) *Failure to withhold payments.* FNS may suspend or withhold Program payments, in whole or in part, to those

§210.18

7 CFR Ch. II (1–1–23 Edition)

State agencies failing to withhold Program payments in accordance with paragraph (k)(1) of this section and may withhold administrative funds in accordance with §235.11(b) of this chapter. The withholding of Program payments will remain in effect until such time as the State agency documents compliance with paragraph (k)(1) of this section to FNS. Subsequent to the documentation of compliance, any withheld administrative funds will be released and payment will be released for any meals served in accordance with the provisions of this part during the period the payments were withheld.

(1) *Fiscal action.* The State agency must take fiscal action for all Performance Standard 1 violations and specific Performance Standard 2 violations identified during an administrative review as specified in this section. Fiscal action must be taken in accordance with the principles in §210.19(c) and the procedures established in the FNS *Administrative Review Manual*. The State agency must follow the fiscal action formula prescribed by FNS to calculate the correct entitlement for a school food authority or a school. While there is no fiscal action required for general area violations, the State agency has the ability to withhold funds for repeat or egregious violations occurring in the majority of the general areas as described in paragraph (k)(1)(iv).

(1) *Performance Standard 1 violations.* A State agency is required to take fiscal action for Performance Standard 1 violations, in accordance with this paragraph and paragraph (1)(3).

(i) For certification and benefit issuance errors cited under paragraph (g)(1)(i) of this section, the total number of free and reduced price meals claimed must be adjusted to according to procedures established by FNS.

(ii) For meal counting and claiming errors cited under paragraph (g)(1)(ii) of this section, the State agency must apply fiscal action to the incorrect meal counts at the school food authority level, or only to the reviewed schools where violations were identified, as applicable.

(2) *Performance Standard 2 violations.* Except as noted in paragraphs (1)(2)(iii) and (1)(2)(iv) of this section, a State agency is required to apply fiscal ac-

tion for Performance Standard 2 violations as follows:

(i) For missing food components or missing production records cited under paragraph (g)(2) of this section, the State agency must apply fiscal action.

(ii) For repeated violations involving milk type and vegetable subgroups cited under paragraph (g)(2) of this section, the State agency must apply fiscal action as follows:

(A) If an unallowable milk type is offered or there is no milk variety, any meals selected with the unallowable milk type or when there is no milk variety must also be disallowed/reclaimed; and

(B) If one vegetable subgroup is not offered over the course of the week reviewed, the reviewer should evaluate the cause(s) of the error to determine the appropriate fiscal action. All meals served in the deficient week may be disallowed/reclaimed.

(iii) For repeated violations involving food quantities and whole grain-rich foods cited under paragraph (g)(2) of this section, the State agency has discretion to apply fiscal action as follows:

(A) If the meals contain insufficient quantities of the required food components, the affected meals may be disallowed/reclaimed;

(B) If no whole grain-rich foods are offered during the week of review, meals for the entire week of review may be disallowed and/or reclaimed;

(C) If insufficient whole grain-rich foods are offered during the week of review, meals for one or more days during the week of review may be disallowed/reclaimed.

(D) If a weekly vegetable subgroup is offered in insufficient quantity to meet the weekly vegetable subgroup requirement, meals for one day of the week of review may be disallowed/reclaimed; and

(E) If the amount of juice offered exceeds the weekly limitation, meals for the entire week of review may be disallowed/reclaimed.

(iv) For repeated violations of calorie, saturated fat, sodium, and trans fat dietary specifications cited under paragraph (g)(2)(ii) of this section, the State agency has discretion to apply

Food and Nutrition Service, USDA

§210.18

fiscal action to the reviewed school as follows:

(A) If the average meal offered over the course of the week of review does not meet one of the dietary specifications, meals for the entire week of review may be disallowed/reclaimed; and

(B) Fiscal action is limited to the school selected for the targeted menu review and must be supported by a nutrient analysis of the meals at issue using USDA-approved software.

(v) The following conditions must be met prior to applying fiscal action as described in paragraphs (1)(2)(ii) through (iv) of this section:

(A) Technical assistance has been given by the State agency;

(B) Corrective action has been previously required and monitored by the State agency; and

(C) The school food authority remains noncompliant with the meal requirements established in part 210 and part 220 of this chapter.

(3) *Duration of fiscal action.* Fiscal action must be extended back to the beginning of the school year or that point in time during the current school year when the infraction first occurred for all violations of Performance Standard 1 and specific violations of Performance Standard 2. Based on the severity and longevity of the problem, the State agency may extend fiscal action back to previous school years. If corrective action occurs, the State agency may limit the duration of fiscal action for Performance Standard 1 and Performance Standard 2 violations as follows:

(i) *Performance Standard 1 certification and benefit issuance violations.* The total number of free and reduced price meals claimed for the review period and the month of the on-site review must be adjusted to reflect the State calculated certification and benefit issuance adjustment factors.

(ii) *Other Performance Standard 1 and Performance Standard 2 violations.* With the exception of violations described in paragraph (1)(3)(i) of this section, a State agency may limit fiscal action from the point corrective action occurs back through the beginning of the review period for errors.

(A) If corrective action occurs during the on-site review month or after, the State agency would be required to

apply fiscal action from the point corrective action occurs back through the beginning of the on-site review month, *and* for the review period;

(B) If corrective action occurs during the review period, the State agency would be required to apply fiscal action from the point corrective action occurs back through the beginning of the review period;

(C) If corrective action occurs prior to the review period, no fiscal action would be required; and

(D) If corrective action occurs in a claim month between the review period and the on-site review month, the State agency would apply fiscal action only to the review period.

(4) *Performance-based cash assistance.* In addition to fiscal action described in paragraphs (1)(2)(i) through (v) of this section, school food authorities found to be out of compliance with the meal patterns or nutrition standards set forth in §210.10 may not earn performance-based cash assistance authorized under §210.4(b)(1) unless immediate corrective action occurs. School food authorities will not be eligible for the performance-based reimbursement beginning the month immediately following the administrative review and, at State discretion, for the month of review. Performance-based cash assistance may resume beginning in the first full month the school food authority demonstrates to the satisfaction of the State agency that corrective action has taken place.

(m) *Transparency requirement.* The most recent administrative review final results must be easily available to the public.

(1) The State agency must post a summary of the most recent results for each school food authority on the State agency's public Web site, and make a copy of the final administrative review report available to the public upon request. A State agency may also strongly encourage each school food authority to post a summary of the most recent results on its public Web site, and make a copy of the final administrative review report available to the public upon request.

(2) The summary must cover meal access and reimbursement, meal patterns and nutritional quality of school

meals, school nutrition environment (including food safety, local school wellness policy, and competitive foods), civil rights, and program participation.

(3) The summary must be posted no later than 30 days after the State agency provides the results of administrative review to the school food authority.

(n) *Reporting requirement.* Each State agency must report to FNS the results of the administrative reviews by March 1 of each school year on a form designated by FNS. In such annual reports, the State agency must include the results of all administrative reviews conducted in the preceding school year.

(o) *Recordkeeping.* Each State agency must keep records which document the details of all reviews and demonstrate the degree of compliance with the critical and general areas of review. Records must be retained as specified in §210.23(c) and include documented corrective action, and documentation of withholding of payments and fiscal action, including recoveries made. Additionally, the State agency must have on file:

(1) Criteria for selecting schools for administrative reviews in accordance with paragraphs (e)(2)(ii) and (i)(2)(ii) of this section.

(2) Documentation demonstrating compliance with the statistical sampling requirements in accordance with paragraph (g)(1)(i) of this section, if applicable.

(p) *School food authority appeal of State agency findings.* Except for FNS-conducted reviews authorized under §210.29(d)(2), each State agency shall establish an appeal procedure to be followed by a school food authority requesting a review of a denial of all or a part of the Claim for Reimbursement or withholding payment arising from administrative review activity conducted by the State agency under §210.18. State agencies may use their own appeal procedures provided the same procedures are applied to all appellants in the State and the procedures meet the following requirements: Appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the time, date, place and procedures of the hearing. If the State agency has not established its own appeal procedures or the procedures do not meet the above listed criteria, the State agency shall observe the following procedures at a minimum:

(1) The written request for a review shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement or withholding of payment, and the State agency shall acknowledge the receipt of the request for appeal within 10 calendar days;

(2) The appellant may refute the action specified in the notice in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(3) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, or its equivalent, or sent electronically by

Food and Nutrition Service, USDA

§210.19

email or facsimile, of the time, date and place of the hearing;

(4) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(5) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(6) The review official shall make a determination based on information provided by the State agency and the appellant, and on program regulations;

(7) Within 60 calendar days of the State agency's receipt of the request for review, by written notice, sent by certified mail, or its equivalent, or electronically by email or facsimile, the review official shall inform the State agency and the appellant of the determination of the review official. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(8) The State agency's action shall remain in effect during the appeal process; and

(9) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(q) *FNS review activity.* The term "State agency" and all the provisions specified in paragraphs (a) through (h) of this section refer to FNS when FNS conducts administrative reviews in accordance with §210.29(d)(2). FNS will notify the State agency of the review findings and the need for corrective action and fiscal action. The State agency shall pursue any needed follow-up activity.

[81 FR 50185, July 29, 2016, as amended at 83 FR 25357, June 1, 2018]

§210.19 Additional responsibilities.

(a) *General Program management.* Each State agency shall provide an adequate number of consultative, technical and managerial personnel to administer programs and monitor performance in complying with all Program requirements.

(1) *Assurance of compliance for finances.* Each State agency shall ensure that school food authorities comply with the requirements to account for all revenues and expenditures of their nonprofit school food service. School food authorities shall meet the requirements for the allowability of nonprofit school food service expenditures in accordance with this part and, 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, as applicable. All costs resulting from contracts that do not meet the requirements of this part are unallowable nonprofit school food service account expenses. When the school food authority fails to incorporate State agency required changes to solicitation or contract documents, all costs resulting from the subsequent contract award are unallowable charges to the nonprofit school food service account. The State agency shall ensure compliance with the requirements to limit net cash resources and shall provide for approval of net cash resources in excess of three months' average expenditures. Each State agency shall monitor, through review or audit or by other means, the net cash resources of the nonprofit school food service in each school food authority participating in the Program. In the event that net cash resources exceed 3 months' average expenditures for the school food authority's nonprofit school food service or such other amount as may be approved in accordance with this paragraph, the State agency may require the school food authority to reduce the price children are charged for lunches, in a manner that is consistent with the paid lunch equity provision in §210.14(e) and corresponding FNS guidance, improve food quality or take other action designed to improve the nonprofit school food service. In the absence of any such action, the State agency shall make adjustments in the rate of reimbursement under the Program. Each State agency shall ensure that school food authorities comply with the requirements for pricing paid lunches and nonprogram foods as required in §210.14(e) and §210.14(f).

(2) *Improved management practices.* The State agency must work with the