Proposed Rules

Federal Register
Vol. 80, No. 90
Monday, May 11, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220 and 235

[FNS 2014–0011]

RIN 0584–AE30

Administrative Reviews in the School Nutrition Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: In accordance with provisions of the Healthy, Hunger-Free Kids Act of 2010, this proposed rule would revise the State agency's administrative review process to establish a unified accountability system designed to ensure that participating school food authorities comply with the National School Lunch Program and School Breakfast Program requirements. The proposed administrative review process would include new procedures, retain key existing requirements from the Coordinated Review Effort and the School Meals Initiative, provide new review flexibilities and efficiencies for State agencies, and simplify fiscal action procedures. In addition to the new administrative review process, this rule proposes to require State agencies to report and publicly post school food authorities' administrative review results. These proposed changes are expected to strengthen program integrity through a more robust, effective, and transparent process for monitoring school nutrition program operations.

DATES: To be assured of consideration, written comments on this proposed rule must be received by July 10, 2015.

ADDRESSES: The Food and Nutrition Service (FNS), USDA, invites interested persons to submit written comments on this proposed rule. Comments must be submitted through one of the following methods:

- *Preferred method:* Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Mailed comments on this proposed rule must be postmarked on or before July 10, 2015 to be assured of consideration. Send mailed comments to Julie Brewer, Child Nutrition Policy and Program Development Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 1212, Alexandria, Virginia 22302–1594.

Comments received by other methods will not be accepted. All comments received by the methods listed above will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lynn Rodgers-Kuperman, Child Nutrition Monitoring and Operations Support Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; telephone: (703) 605–3223.

SUPPLEMENTARY INFORMATION:

I. Background

Federally supported school nutrition programs are operated each school day in 54 States, by more than 100,000 schools and Residential Child Care Institutions. Ensuring that the programs are being carried out in the manner prescribed in statute and regulation is a key administrative responsibility at every level. Federal, State and local program staff share in the responsibility to ensure that all aspects of the programs are conducted with integrity and that taxpayer dollars are being used as intended.

Improving program integrity and reducing improper payments has been a long-standing priority for the Department of Agriculture (USDA). Periodic evaluations of program errors, including the Access, Participation, Eligibility and Certification (APEC) studies, show that improper payments result from errors made in the processes used to determine eligibility for free or reduced price meals, as well as from errors made during daily program operations and meal service. USDA and its State agency partners have invested significant effort in system improvements and process reforms over the last several years that are expected to improve integrity and deliver long-term reductions in error rates. These efforts include on-going technical assistance and implementation of reforms made by Public Law 111–296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). Along with provisions aimed at improving program access and healthier school nutrition environments, HHFKA reforms support program integrity through strengthening the use of direct certification, providing for community eligibility, establishing professional standards for school nutrition directors and staff, targeting a second review of applications in districts with high rates of application processing errors, and other provisions. USDA has already implemented the majority of these provisions through separate rulemaking. USDA has also established a new Office of Program Integrity for Child Nutrition Programs within the Food and Nutrition Service.

State agencies that administer the school meal programs play a primary role in ensuring School Food Authorities (SFAs) are properly operating the programs. In addition to training and technical assistance, State agencies are responsible for regularly monitoring SFA operations.

Nearly 25 years ago, in 1991 and 1992, USDA established regulations in 7 CFR 210.18 for an administrative review process to ensure SFAs complied with National School Lunch Program (NSLP) requirements. The process, the Coordinated Review Effort (CRE), required State agencies to conduct on-site administrative reviews of SFAs once every five years, and covered critical and general areas of review. The CRE review focused primarily on benefit eligibility, meal counting and claiming procedures, meal pattern and other general areas of compliance.

In 1995, State agencies began to evaluate the nutritional quality of school meals under USDA's School Meals Initiative (SMI). A key component of the SMI review was the State agency's nutrient analysis of the weekly school meals to determine compliance with Recommended Dietary Allowances for protein, calcium, iron and vitamins A and C; recommended minimum calorie levels; and the Dietary Guidelines for Americans.

More recently, section 207 of the HHFKA amended section 22 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1769c, to make five changes to the administrative review requirements. The first three were implemented through the final rule, *Nutrition Standards in the National School Lunch and School Breakfast Program* (77 FR 4088), which was issued January 26, 2012. Those changes involved: (1) Including both National School Lunch Program (NSLP) and School Breakfast Program (SBP) in the administrative review; (2) confirming that the weekly meals offered meet meal patterns and dietary specifications, which made the SMI obsolete; and (3) implementing a new 3-year review cycle. This rule does not propose changes to these three previously promulgated provisions, but instead updates the administrative review procedures to reflect these changes.

This rule proposes to revise the administrative review requirements in 7 CFR 210.18 to implement the remaining two statutory provisions from section 207 of HHFKA, requiring that:

1. The administrative review process be a unified accountability system in which schools within an SFA are selected for review based on criteria established by the Secretary; and

2. State agencies report the final results of reviews, and post them or otherwise make them available to the public.

This proposed rule largely reflects the updated administrative review process developed by the School Meals Administrative Review Reinvention Team (SMARRT), a 26-member team consisting of staff from Food and Nutrition Service (FNS) Headquarters and the seven Regional Offices, and State Agency staff from Kansas, Michigan, New York, North Carolina, Oregon, Pennsylvania and Texas (representing each of the FNS Regions). FNS assembled the team to carry out HHFKA's mandate for a unified accountability system. The group worked together for one year to develop a simplified, unified monitoring process that includes new, flexible procedures and combines key aspects of the CRE and SMI reviews. The team also sought to create a comprehensive monitoring process that includes all the school nutrition programs. Another priority was to simplify review procedures in response to State agencies' needs.

The proposed administrative review process would:

- Promote overall integrity in the school nutrition programs by incorporating key requirements of the CRE and SMI reviews.
- Enable the State agency to monitor essential requirements of the NSLP snack service and seamless summer option, the Special Milk Program, and the Fresh Fruit and Vegetable Program while conducting the administrative review.
- Include recommended off-site monitoring approaches to offer State agencies the ability to conduct reviews more efficiently by incorporating off-site State agency staff with the skills needed to address specific monitoring areas.
- Include risk-based approaches to enable the State agency to target error prone areas and focus its monitoring resources on SFAs and schools needing the most compliance assistance.
- Add Resource Management to the general areas of review to better assess the financial condition of the nonprofit food service.
- Promote consistency in the review process across all States.
- Include updated, user-friendly forms; new risk assessment tools; and statistical sampling for increased State agency efficiency. The forms and tools associated with the proposed administrative review process will be addressed separately in a 60-day notice to be published in the **Federal Register** to align with the implementing administrative review rulemaking.

The main focus of the proposed administrative review under 7 CFR 210.18 would continue to be the NSLP and SBP, and the State agency would continue to perform existing review procedures but in an updated and more flexible manner. In an effort to create a unified accountability system, the State agency would also be required to monitor the NSLP afterschool snack program and seamless summer option, the Fresh Fruit and Vegetable Program, and the Special Milk Program in a manner that is consistent with the review process established in 7 CFR 210.18, as applicable. Most of the regulatory changes needed to update the administrative review process would be in 7 CFR 210.18. However, this rule would make changes throughout 7 CFR parts 210, 215, and 220 to achieve a unified accountability system for the school nutrition programs. In addition, the rule would remove the definition of ''large school food authority'' from 7 CFR 210.18, where it would no longer be needed, and add it to 7 CFR 235.2, where it would continue to apply. Detailed procedures for the new review process for the NSLP, SBP and other school meal programs are provided in the FNS *Administrative Review Manual,* which is a guidance document for the State agencies.

This proposed rule would also make several changes to the SFA regulatory requirements to complement the proposed administrative review process. First, the SFA's existing responsibilities in 7 CFR 210.14 would be clarified with regard to indirect costs as they would be specifically monitored by the State agency under the new administrative review process. Second, the SFA annual on-site monitoring of schools, required in 7 CFR 210.8, would be strengthened by incorporating readily observable general areas of review, and by extending SFA on-site monitoring to the SBP. These proposed changes are addressed in more detail later in the preamble.

This proposed rule would also make a number of miscellaneous edits to remove obsolete provisions in 7 CFR part 210, and to update wording to reflect the diversity of certification mechanisms used in school meal programs beyond the traditional collection of household applications. In addition, this rule would update the designation of a form in 7 CFR 210.5(d)(3), 7 CFR 210.20(a)(2), and 7 CFR 220.13(b)(2) by changing the references to the SF–269, final Financial Status Report, to FNS–777, as approved by the Office of Management and Budget.

While this rulemaking action is underway, FNS has allowed the following temporary review options for State agencies. Prior to the finalization of this rulemaking, State agencies may either:

1. Seek a waiver of the existing regulatory review procedures pursuant to section 12(l) of the NSLA, 42 U.S.C. 1760(l), and conduct reviews in accordance with the proposed administrative review process and the corresponding *Administrative Review Manual*; or

2. Continue with existing review procedures under 7 CFR 210.18 and the corresponding *Coordinated Review Effort Procedures Manual,* with the understanding that the proposed rule, once finalized, would require implementation of a new administrative review process.

FNS provided this flexibility to State agencies beginning in School Year 2013–2014. Almost all State agencies have requested the waiver and have adopted the new administrative review process described in this proposed rule. The new process, conducted on a shorter, 3-year cycle, has begun to generate a large volume of high value information that will strengthen FNS and State agency integrity efforts over

the long term. The data collected through the new review process will enhance the Federal and State agencies' ability to monitor program performance. Just as importantly, the data will be a resource FNS can use in its efforts to develop timely and targeted, evidence-based solutions to the recurring problems that give rise to improper payments.

FNS also anticipates that the experience of State agencies using the updated review process will contribute to informed public comments that guide the development of the implementing rule. When the implementing rule establishing the new unified administrative review system is promulgated, all State agencies will be required to follow the finalized administrative review regulations.

Note: The words ''school'' and ''site'' are used interchangeably in this proposed rule, as applicable to each program, to refer to the location where meals are served. This proposed rule also uses the term SFA to generally refer to the governing body responsible for school food service operations. However, some of those responsibilities are fulfilled by the local educational agency (LEA or district), most notably the certification and benefit issuance process, indirect costs, competitive food sales, and local wellness policies. Use of the term SFA in this proposed rule is not intended to imply the responsibilities reserved for the LEA have shifted to the SFA.

II. Overview of the Existing CRE Administrative Review

Currently, State agencies that are not conducting administrative reviews under the new process perform the following administrative review activities under the existing CRE procedures as required in the regulations in 7 CFR 210.18. Under the existing CRE procedures:

- State agencies monitor lunches, and must review breakfasts at 50 percent of the schools selected for an NSLP administrative review.
- State agencies must review each SFA once during each 3-year review cycle, with no more than four years lapsing between reviews.
- When reviewing an SFA, State agencies conduct on-site reviews of about 10% of those schools participating in the NSLP.
- The scope of administrative review covers both critical and general areas. The critical areas, termed Performance Standards 1 and 2, assess whether lunches and breakfasts claimed for reimbursement are served to children eligible for free, reduced price, and paid meals; are counted, recorded, consolidated, and reported through a system that consistently yields correct claims; and meet meal requirements. The general areas assess whether the SFA meets other program requirements related to eligibility for free and reduced price benefits, civil rights, monitoring, reporting and recordkeeping, food safety, and resource management.
- State agencies conduct a nutrient analysis of school lunches and breakfasts to assess compliance with calorie requirements, saturated fat, and sodium.
- If an SFA has critical area violations in excess of specified review thresholds, a follow-up review is conducted in all large SFAs and in at least 25 percent of small SFAs.
- The follow-up review includes the certification, count and service procedures in the Special Milk Program and the afterschool snack program operated by the reviewed schools.
- Fiscal action is required for all violations of Performance Standard 1 and specific violations of Performance Standard 2.

Most of these procedures would continue, in some manner, under the proposed rule.

III. Overview of the Key Proposed Changes to the Administrative Review

The proposed administrative review under 7 CFR 210.18 would incorporate new and key existing procedures from the CRE and SMI reviews. It streamlines existing review procedures, gives State agencies new review flexibilities, simplifies fiscal action, and includes updated review forms and new tools. This proposed rule would replace the existing CRE and SMI monitoring processes, and is expected to improve program integrity by providing a single, comprehensive, effective, and efficient State agency monitoring process. Specific procedures for conducting the proposed review process are reflected in the FNS *Administrative Review Manual.*

The key procedures carrying forward from previous CRE and SMI reviews include timing of reviews, scheduling of SFAs, number of schools to review, exit conference and notification, corrective action, withholding payment, SFA appeal of State agency findings, and FNS review activity. These provisions are found in the amendatory language and may include minor non-substantive technical changes in 7 CFR 210.18, but are not discussed in this preamble. The preamble focuses on new key proposed changes, which are discussed next.

Procedures for Conducting a Review

Off-Site and On-Site Review Activities

Under existing 7 CFR 210.18, the administrative review process is a comprehensive on-site evaluation of SFAs participating in the school meal programs. The proposed rule envisions that some administrative review activities can be conducted off-site, rather than during the on-site portion of the review. Adding the off-site approach is expected to assist the State agency by reducing the State agency's travel time and expense, enabling the State agency to conduct the documentation review and other existing review requirements over a longer period of time than would be possible while on-site, and allowing the reviewer to seek input from specialized State staff for adequate review of complex documentation (*e.g.,* financial staff).

Off-site review activity is especially important for the Resource Management area of review which, as proposed at 7 CFR 210.18(h)(1), would require an off-site evaluation of information to determine if a comprehensive review is necessary. For other areas of review, the off-site review is strongly recommended but it is not required. Examples of possible off-site review activities include:

- Identifying the sites for review using the site selection procedures in the proposed 7 CFR 210.18(e).
- Reviewing documentation such as the SFA agreement, policy statement, renewal application, prior review findings and corrective action plans.
- Obtaining and reviewing the benefit issuance document.
- Selecting student certifications for review.
- Examining the SFA's verification procedures.
- Reviewing the SFA's counting and claiming procedures and documentation.
- Reviewing menus, production records, and related documents.
- Reviewing the Offer versus Serve policy.
- Identifying the school most at risk for nutrition related violations and conducting a targeted menu review in that school.
- Determining the targeted menu review approach.

In addition to the proposed off-site review activity, the on-site review activities will focus on validating the information obtained during the SFA off-site review and those aspects of program operations that can best be reviewed on-site. These types of on-site review activities are discussed in more

detail under the heading ''Areas of Review.''

Accordingly, the proposed rule adds off-site activity as a component of the administrative review in proposed 7 CFR 210.18(a) and 7 CFR 210.18(b)(1), and requires an off-site review component for the Resource Management area at proposed 7 CFR 210.18(h)(1).

Entrance and Exit Conferences

While some of the review activities can be conducted off-site, an observation of program operations while on-site at the SFA remains a critical component of program oversight. Prior to commencing on-site review activities, States are encouraged to convene an entrance conference with key SFA and, as applicable, LEA staff and administrators with responsibility for ensuring program requirements are followed. This initial conversation can help clarify expectations for the on-site review, raise preliminary issues identified during off-site review activities, and identify the additional information needed to complete the on-site portion of the review. While not required, this proposed rule supports, at 7 CFR 210.18(i)(1), the option for State agencies to begin the administrative review by conducting an entrance conference with the relevant SFA staff. This provision reflects existing practice. This rule would also retain the existing requirement for the State agency to conduct an exit conference. The proposed rule would codify the exit conference requirement at 7 CFR 210.18(i)(2).

Administrative Review Materials

This rulemaking would require, in proposed 7 CFR 210.18(f)(1), that State agencies use updated forms and tools to conduct the administrative review process. As stated earlier, FNS will issue the updated tools to coincide with the publication of the implementing rule. The new tools include: An Off-site Assessment Tool, an On-site Assessment Tool, a Meal Compliance Risk Assessment Tool, a Dietary Specifications Assessment Tool, and a Resource Management Risk Indicator Tool.

These tools and corresponding instructions are currently available to State agencies on the FNS PartnerWeb, which is a restricted access online portal for State agencies that administer the school meal programs. State agencies can find the tools in the Administrative Review Folder located in the Resources and Guidance document library of the CND Policy and Memoranda Community. When finalized, these tools will also available on the FNS Web site. With the exception of the Resource Management Risk Indicator Tool, which must be completed off-site, the required administrative review tools may be completed on-site.

Areas of Review

The proposed administrative review would continue to include critical and general areas which mirror the critical and general areas specified in existing 7 CFR 210.18(g) and (h), with the modifications discussed below.

Critical Areas of Review

Existing 7 CFR 210.18(b) defines, and existing 7 CFR 210.18(g) describes in detail, the critical areas, which are two performance standards that help evaluate compliance with program requirements. Performance Standard 1 (PS–1) focuses on certification for free and reduced price meals, benefit issuance, and meal counting and claiming. Performance Standard 2 (PS–2) focuses on meals meeting the meal pattern and dietary specification requirements. The proposed rule at 7 CFR 210.18(g)(1) and (2) would retain both performance standards but modify how they are monitored as described in the next two subsections of this preamble.

PS–1—Meal Access and Reimbursement

The proposed rule at 7 CFR 210.18(g) retains the existing PS–1, with only minor technical changes. Existing PS–1 refers to ''All, free, reduced price and paid *lunches* . . . served only to children eligible for free, reduced price and paid *lunches* . . .'' The proposed rule would replace the term ''lunches'' with the term ''meals'' to include an assessment of both the NSLP and the SBP as required by the amendments made to the NSLA in 207 of the HHFKA.

Existing 7 CFR 210.18(g)(1) has a three-pronged scope of review. The State agency must:

- Determine the number of children eligible for free, reduced price and paid meals, by type, in the reviewed schools (hereafter termed ''Certification'').
- Evaluate the system for issuing benefits and updating eligible status by validating the mechanisms the reviewed school uses to provide benefits to eligible children (hereafter termed ''Benefit Issuance'').
- Determine whether the meal counting system yields correct claims (hereafter termed ''Meal Counting and Claiming'').

The proposed rule would retain the above processes, but streamline and consolidate the Certification and Benefit Issuance review processes to improve program integrity and simplify the review process.

Under proposed 7 CFR 210.18(g)(1)(i), the State agency would be required to:

- Obtain the free and reduced price benefit issuance document for each school under the jurisdiction of the SFA for the day of review or a day in the review period.
- Review all, or a statistically valid sample of, free and reduced price certification documentation (*i.e.,* direct certifications, household applications) and other documentation relating to eligibility status (*e.g.,* verification, transfers).
- Validate that reviewed students' free and reduced price eligibility status was correctly determined and properly transferred to the benefit issuance document.

In addition, the proposed rule expands the scope of Certification and Benefit Issuance review from the reviewed sites to the SFA level in order to provide the State agency with a more accurate picture of the SFA's practices at all schools. The proposed rule requires the State agency to review the free and reduced price certification and benefit issuance documentation for students across the entire SFA. This proposed change reflects that most SFAs have a centralized recordkeeping system; generally certifications are made and benefit issuance is maintained at the SFA level. The advantage of this approach is that it allows certification and benefit issuance errors identified during a review to be corrected at the SFA level.

As permitted under existing 7 CFR 210.18(g)(1)(i)(A)(*2*), State agencies would continue to have the option of reviewing either all certifications on the benefit issuance documents or a statistically valid sample of certifications. State agencies using a statistically valid sample review fewer student documents and the review yields results representative of the certification and benefit issuance activity in the SFA. The statistically valid sample size may be determined manually, or by using the Statistical Sample Generator developed by FNS or other statistical sampling software. Both options are described in the FNS *Administrative Review Manual.* The proposed rule at 7 CFR 210.18(g)(1)(i) would retain the statistical sampling confidence level of 95 percent, set forth in existing 7 CFR 210.18(g)(1)(i)(A)(*2*), for electronic certification and benefit issuance systems. For manual benefit issuance systems, the proposed rule

would increase the sampling confidence level to 99 percent.

As under existing 7 CFR 210.18(g)(1)(i)(C), the Meal Counting and Claiming portion of the review would continue to ensure that all free, reduced price and paid meals are accurately counted, recorded, consolidated and reported through a system which consistently yields correct claims. Under proposed 7 CFR 210.18(g)(1)(ii), the State agency would continue to be required to monitor counting and claiming at both the SFA and reviewed school levels. The review strategies would remain unchanged. Under the proposed rule, the State agency would continue to determine whether:

- Daily lunch counts, by type, for the review period are more than the product of the number of children determined to be eligible, by type for the review period, adjusted for attendance at the reviewed schools;
- Each type of food service line provides accurate point of service lunch counts, by type, and those lunch counts are correctly counted and recorded at the reviewed schools; and
- All lunches at the reviewed schools are correctly counted, recorded, consolidated and reported for the day they are served.

In addition, State agencies would be required to determine whether lunch counts submitted by each school are correctly consolidated, recorded, and reported by the SFA on the Claim for Reimbursement.

Thus, the proposal combines the certification and benefit issuance process, and expands the scope of the certification and benefits issuance review to the SFA level, and establishes acceptable sample sizes and confidence levels for statistical sampling at proposed 7 CFR 210.18(g)(1)(i). The proposal retains existing meal counting and claiming review procedures at proposed 7 CFR 210.18(g)(1)(ii).

PS–2—Meal Pattern and Nutritional Quality

Under existing PS–2 found at 7 CFR 210.18(g)(2), the State agency monitors SFA compliance with the meal patterns and dietary specifications for lunches and breakfasts for each age/grade group. Currently, State agencies must review menu and production records for a minimum of five operating days to determine whether all food components and quantities have been offered. For the day of review, the State agency must also observe the serving line(s) to determine whether all food components and food quantities are offered, and observe a significant number of 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 required food components and quantities. In addition, the State agency must conduct a nutrient analysis of a school in the SFA to determine whether the meals offered meet the calorie, sodium and saturated fat requirements, and review nutrition labeling to assess compliance with the trans fat limit. The State agency must also assess whether performance-based cash assistance should continue to be provided for meals served.

The proposed rule at 7 CFR 210.18(g)(2) would largely retain the existing scope of review for PS–2 with the following modifications:

- Require the State agency to complete a USDA-approved *menu tool* for each school selected for review to establish the SFA's compliance with the required food components and quantities for each age/grade group being served. The menu tool can be completed off-site (preferably) or on-site using production records, menus, recipes, food receipts, and any other documentation that shows the meals offered during a week from the review period contained the required components/quantities.
- Require the State agencies to review menu and production records for a minimum of three to a maximum of seven operating days to determine whether all food components and quantities have been offered over the course of a typical school week.
- Require the State agency to confirm, through on-site observation of reviewed schools that *students select at least three food components at lunch and at least three food items at breakfast when Offer versus Serve is in place, and that these meals include at least ½ cup of fruits or vegetables.*
- Require the State agency to assess compliance with the dietary specifications (calories, sodium, saturated fat, and trans fat) using a risk-based approach and only require a weighted nutrient analysis for a school determined to be at high risk for violations (see discussion under the heading *Dietary Assessment*).

The State agency would continue to observe the meal service lines and review menu documentation on the day of review at review schools to determine whether all service lines offer all of the required food components and quantities. The State agency would also observe a significant number of 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 required food components and quantities.

Dietary Assessment

Existing 7 CFR 210.18(g)(2)(iv) requires a weighted nutrient analysis of the meals for students in age groups K and above to determine whether the meals offered meet the calorie, sodium, and saturated fat requirements set forth in 7 CFR 210.10 and 7 CFR 220.8. Under the proposed rule at 7 CFR 210.18(g)(2)(ii), the State agency would continue to assess whether the lunches and breakfasts offered to children are consistent with the calories, sodium, saturated fat, and trans fat restrictions. However, unlike the existing requirements, the proposed rule would require a risk-based approach to identify the reviewed school most at risk of nutrition-related violations and conduct a targeted menu review of that school.

Under the proposal, the State agency would complete the Meal Compliance Risk Assessment Tool off-site or on-site for each school selected for review to identify the school most at risk for nutrition-related violations. This risk-based approach is intended to lessen the review burden on State agencies and allow them to better use their resources. For the one school determined to be most at risk, the State agency would conduct an in-depth, targeted menu review using one of four FNS approved options. For the targeted menu review, the State agency would have the following options: conduct a nutrient analysis, validate an existing nutrient analysis performed by the SFA or a contractor, complete the Dietary Specifications Assessment Tool to further examine the food service practices, or follow an alternative FNS-approved process utilizing the Menu Planning Tools for Certification for Six Cent Reimbursement. This proposed rule revises the existing nutrient analysis provisions found in 7 CFR 210.10(h) and 7 CFR 210.10(i) to reflect this new streamlined and risk-based approach.

Performance-Based Cash Assistance

As required in existing 7 CFR 210.18(g)(2)(v), the proposed rule at 7 CFR 210.18(g)(2)(iii) continues to require the State agency to assess whether performance-based cash assistance should continue to be provided for the meals served.

Follow-up Reviews

Under existing 7 CFR 210.18(i), critical area violations in excess of specified thresholds trigger a follow-up review by the State agency. This proposed rule lessens the burden

associated with the administrative review by removing the existing requirement for follow-up reviews triggered by a specific threshold. The follow-up review requirement was implemented at a time when the review cycle was 5-years and there was concern about the long span between reviews. Because the 3-year review cycle now allows the State agency to have more frequent contact with the SFAs, the follow up requirement is unnecessary. Instead, the proposed review process emphasizes collaborative compliance. When errors are detected, the State agency would require corrective action, provide technical assistance to bring the SFA into compliance, and take fiscal action when appropriate. The State agency would have discretion to do a follow-up review based on criteria established by the State agency.

Accordingly, this proposed rule removes the definitions of ''follow-up reviews'' and ''review threshold'' in existing 7 CFR 210.18(b) and removes the follow-up review procedures in 7 CFR 210.18(i). Minor references to follow-up review and review threshold throughout 7 CFR part 210 are also removed. The definitions of ''large school food authority'' and ''small school food authority'' would be removed from 7 CFR 210.18(b), as these definitions were used in the determination of which SFAs received a follow-up review. The same definition of ''large school food authority'' would be added to 7 CFR part 235, State Administrative Expense Funds, where it remains relevant for the State Administrative Expense allocation process.

General Areas of Review

Under existing 7 CFR 210.18(h), State agencies are required to assess compliance with five general areas during the administrative review, *i.e.,* free and reduced price process, civil rights, monitoring responsibilities, reporting and recordkeeping and food safety. Under the proposal at 7 CFR 210.18(h), the proposed rule expands the general areas of review to include existing and new requirements grouped into two broad categories: Resource Management and General Program Compliance.

Resource Management, found at proposed 7 CFR 210.18(h)(1), would focus on compliance with existing requirements that safeguard the overall financial health of the nonprofit school food service:

- Maintenance of the Nonprofit School Food Service Account—7 CFR 210.14(a), (b) and (c);
- Paid Lunch Equity—7 CFR 210.14(e);
- Revenue from Nonprogram Foods—7 CFR 210.14(f); and
- Indirect Costs—2 CFR part 225, and 7 CFR 210.14(g) (as proposed).

Currently, SFAs are required to comply with these resource management requirements specified under existing 7 CFR 210.14; however, existing regulations do not require the State agencies to monitor compliance as part of the administrative review. Under this proposed rule at 7 CFR 210.18(h)(1), the State agency would monitor these five requirements using the *Resource Management Risk Indicator Tool* to identify SFAs at high risk for resource management problems, and would only conduct a comprehensive resource management review if, according to the tool, an SFA meets three or more of the following criteria:

- Size of the SFA (40,000 students or more),
- Financial findings on reviews or audits within the last three years,
- Inadequate practices related to maintenance of the nonprofit school food service account,
- Inadequate practices related to paid lunch equity,
- Inadequate practices related to revenue from nonprogram foods, and/or
- Inadequate practices related to indirect costs.

Adding Resource Management to the proposed administrative review would establish a framework for this review area, promote review consistency among all States, and promote proper stewardship of Federal funds. The required off-site review of Resource Management allows the reviewer to use the expertise of off-site State staff with specialized knowledge of resource management that may not typically be present during an on-site review. Under the proposal, State agencies continue to have flexibility to review Resource Management more frequently or more closely, provided the minimum areas of review are covered.

The Resource Management review area does not include procurement. Given the complexity of the procurement process, FNS will develop a separate review process for the State agencies to monitor compliance with procurement requirements. Excluding procurement from the proposed administrative review under 7 CFR 210.18 does not change the SFA's current responsibility to meet procurement standards applicable to those operating school meals programs. Pursuant to federal law and regulations at 2 CFR 200.318 through 2 CFR 200.326, SFAs continue to be required to fully comply with all attendant procurement standards and will be held accountable to those standards through regular State agency oversight.

It is also important to note that this proposed rule adds a new paragraph (g) to the Resource Management requirements in 7 CFR 210.14 to clarify the SFA's existing responsibilities with regard to indirect costs. This is discussed later in the preamble under the heading, ''IV. Proposed Changes to SFA Requirements.''

Proposed 7 CFR 210.18(h)(2), *General Program Compliance* would focus on the SFA compliance with the existing general areas found at 7 CFR 210.18(h)(1) through (h)(5): *Free and reduced price process, civil rights, SFA on-site monitoring, reporting and recordkeeping,* and *food safety.* In addition, the proposal expands the scope of review to include the requirements established by HHFKA for *competitive food standards, water, and outreach for the SBP and Summer Food Service Program (SFSP).* The proposed rule moves the existing oversight of outreach for SBP and SFSP from 7 CFR 210.19(g) to the new 210.18(h)(2)(viii) to reflect that this oversight activity is part of the general areas of review.

In total, the proposed general areas of review include, but are not limited to, the following areas:

- Free and Reduced Price Process—including verification, notification, and other procedures—7 CFR part 245.
- Civil Rights—7 CFR 210.23(b).
- SFA On-site Monitoring—7 CFR 210.8(a)(1) and proposed 220.11(d).
- Reporting and Recordkeeping—7 CFR parts 210, 220 and 245.
- Food Safety—7 CFR 210.13.
- Competitive Food Services—7 CFR 210.11 and 7 CFR 220.12.
- Water—7 CFR 210.10(a)(1)(i) and 7 CFR 220.8(a)(1).
- Professional Standards—7 CFR 210.30.
- SBP and SFSP Outreach—7 CFR 210.12(d).
- Local School Wellness Policies.

LEAs have been required to have local school wellness policies in place since 2006. Assessing compliance with this requirement has been a general area of review under the CRE, and is included in the *Administrative Review Manual.* The Department has issued a separate rulemaking to solicit public comment on the proposed implementation of HHFKA section 204, Local School Wellness Policy Implementation Under the Healthy, Hunger-Free Kids Act of 2010, 79 FR 10693 (2/26/14). A final rule is under development. Once a final rule is published, the administrative

review guidance will be updated to reflect the finalized requirements.

Finally, as noted later in the preamble, this proposed rule expands the existing requirement for SFAs to conduct on-site monitoring. This proposed change to 7 CFR 210.8 is discussed in more detail later under the heading ''IV. Proposed Changes to SFA Requirements.''

Other Federal Program Reviews

The review of *other Federal programs* is a new aspect of the proposed unified accountability system. It would ensure that State agencies monitor the NSLP's afterschool snack program and seamless summer option, the Special Milk Program, and the Fresh Fruit and Vegetable Program when these programs are administered by the SFA under review. Under the proposed rule at 7 CFR 210.18(g) and (h), the State agency would monitor the critical and/or general areas of review in the cited programs, as applicable.

In contrast, under existing 7 CFR 210.18(i)(4)(iv), a State agency is only required to monitor the certification, count and milk/meal service procedures for the Special Milk Program (7 CFR part 215) or the NSLP afterschool snack program (7 CFR part 210) during a follow-up review if the State agency has not evaluated these previously in the schools selected for an administrative review. However, including these programs in the regular, periodic review of SFA operations is critical to ensuring they are properly administered and is expected to improve program integrity overall.

Other Federal Program Reviews would help ensure that the SFA operates the other school meal programs in accordance with key regulatory requirements. The State agencies would be required to follow the proposed review approach (7 CFR 210.18), as applicable, to monitor the other school meal programs as prescribed in the FNS *Administrative Review Manual.* In most cases, under the proposed rule the review of other school meal programs would include the following:

NSLP afterschool snack program—The State agency would:

- Use the *Supplemental Afterschool Snack Program Administrative Review Form.*
- Review the school's eligibility for the afterschool snack program.
- Ensure the school complies with counting and claiming procedures.
- Confirm the school food authority conducts self-monitoring activities twice per year as required in 210.9(c)(7).
- Assess compliance with the snack meal pattern in 7 CFR 210.10(o).
- Monitor compliance with the reporting and recordkeeping, food safety and civil rights requirements in 7 CFR part 210.

NSLP seamless summer option—As proposed, the rule requires that the State agency, at a minimum:

- Use the *Supplemental Seamless Summer Option Administrative Review Form.*
- Verify the site eligibility for the seamless summer option.
- Ensure the school food authority monitors the site(s) at least once per year.
- Review meal counting and claiming procedures.
- Monitor compliance with the meal patterns for lunches and breakfasts in 7 CFR 210.10 and 7 CFR 220.8, respectively.
- Confirm the school food authority informs families of the availability of free meals.
- Monitor compliance with the reporting and recordkeeping, food safety and civil rights requirements in 7 CFR part 210.

Special Milk Program (in NSLP schools)—As proposed, the rule requires that the State agency, at a minimum:

- Use the *Supplemental Special Milk Program Administrative Review Form.*
- Review the milk pricing policy, counting and claiming, and milk service procedures.
- Observe the milk service at the reviewed site if there are issues with the meal counting and claiming procedures in the NSLP or SBP.
- Ensure accuracy in certification and benefit issuance, when observing milk service.
- Monitor compliance reporting and recordkeeping, food safety and civil rights requirements in 7 CFR part 215.

Fresh Fruit and Vegetable Program—As proposed, the rule requires that the State agency, at a minimum:

- Confirm availability of benefits to all enrolled children free of charge.
- Monitor allowable program costs, service time, outreach efforts, and types of fruits and vegetables offered.
- Monitor compliance with the reporting and recordkeeping, food safety and civil rights requirements in 7 CFR part 210.

The Department has issued separate rulemaking, Fresh Fruit and Vegetable Program, 77 FR 10981 (February 24, 2012) to solicit public comment on the proposed Fresh Fruit and Vegetable Program. Currently, the program is operated under guidance that follows general requirements for program operations under 7 CFR part 210. The implementing administrative review rule will incorporate any citation changes that may be necessary if the Fresh Fruit and Vegetable Program rule is finalized in the location proposed at 7 CFR part 211.

Fiscal Action

Existing regulations at 7 CFR 210.19(c) require the State agency to identify the SFA's correct entitlement and take fiscal action when any SFA claims or receives more Federal funds than earned. Under this proposed rule at 7 CFR 210.18(l), State agencies would continue to be required to take fiscal action for all PS–1 violations and for specific PS–2 violations, as discussed next. This proposed rule expands the scope of fiscal action for certification/benefit issuance PS–1 violations, revises the method to calculate fiscal action for applicable violations, and modifies the State agency's authority to limit fiscal action for specific critical area violations when corrective action is completed.

Details about the proposed revisions to fiscal action follow.

PS–1 Violations

Under existing 7 CFR 210.18(m)(1), State agencies are required to take fiscal action for all certification, benefit issuance, meal counting, and claiming violations of PS–1 and fiscal action is generally limited to the reviewed schools. If corrective action occurs, the State agency may limit fiscal action from the point corrective action occurs back through the beginning of the review period.

For the Certification and Benefit Issuance portion of the new administrative review, 7 CFR 210.18(g) of this proposed rule would require State agencies to review certifications/benefit issuance for all the schools under its jurisdiction, not just reviewed schools. This broader scope of review is expected to provide the State agency with a more accurate picture of the SFA's practices at all participating schools under the jurisdiction of the SFA and lead to improved program integrity.

Given the broader scope of review at the SFA level, rather than the reviewed school level, this rule proposes several changes to the fiscal action procedures. The proposed rule at 7 CFR 210.18(l)(l) would apply fiscal action for certification and benefit issuance errors to the entire SFA, including non-reviewed schools. Expanding fiscal action across the entire SFA differs from the existing CRE review, and from the interim administrative review approach used by a number of State agencies operating under a waiver from CRE beginning and using the updated

Administrative Review Guidance. Under CRE, fiscal action is generally limited to the reviewed schools because certification and benefit issuance monitoring is limited to the reviewed schools. Under the interim administrative review approach, State agencies monitor certification and benefit issuance for the entire SFA, but fiscal action is generally limited to the reviewed schools, consistent with the CRE regulatory requirements.

The proposed rule would revise fiscal action in the new administrative review process by basing fiscal action on a State-calculated certification and benefit issuance adjustment factor for free and for reduced price meals, respectively. The adjustment factor for free meals is the ratio of the State agency count of students certified as eligible for free meals divided by the SFA count of students certified as eligible for free meals. The resulting percentage represents the benefit issuance accuracy rate for free meals. A similar calculation is made to obtain the reduced price adjustment factor. Under the proposed rule, the total number of free and reduced price meals claimed is adjusted to reflect the State-calculated certification and benefit issuance adjustment factors. This proposed approach differs from the CRE approach, which based fiscal action on the number of incorrect certifications in reviewed schools and the corresponding number of serving days. The proposed approach streamlines the determination of fiscal action and ensures program integrity SFA-wide.

The proposed rule amends 7 CFR 210.19(c) to indicate fiscal action applies to ''meals'', (rather than just lunches) and the Special Milk Program at 7 CFR part 215.

PS–2 Violations—Missing Food Component and Production Records

Under existing 7 CFR 210.18(m)(2)(i), State agencies are required to take fiscal action for food component violations of PS–2. However, if corrective action occurs, the State agency may limit fiscal action from the point corrective action occurs back through the beginning of the review period. Given the existing scope of review for PS–2, fiscal action is generally limited to the reviewed schools.

Under the proposed rule at 7 CFR 210.18(l)(2)(i), State agencies continue to be required to take fiscal action for PS–2 missing food component violations. Although fiscal action would generally be applied to the reviewed school, if a centralized menu is in place, the State agency should evaluate the cause(s) of the violation to determine if it is appropriate to apply fiscal action SFA wide.

In addition, the proposed rule requires the State agency to assess fiscal action on meals claimed for reimbursement that are not supported by appropriate documentation. An SFA is required to document that it offers reimbursable meals and maintain documentation that demonstrates how meals offered to students meet meal pattern requirements. If production records are missing, or missing for a certain time period, the proposed rule would require the State agency to take fiscal action unless the SFA is able to demonstrate to the satisfaction of the State agency, that reimbursable meals were offered and served.

Duration of Fiscal Action for PS–1 Violations and PS–2 Violations Related to Missing Food Component and Production Records

Under existing 7 CFR 210.19(c)(ii), fiscal action must be extended to the beginning of the school year or to that point during the current school year when the infraction first occurred, except as specified under existing 7 CFR 210.18(m). Based on the severity and longevity of the problem, the State agency may extend fiscal action back to previous school years, as applicable. The proposed rule retains the general duration, but in 7 CFR 210.18(l)(3), provides some flexibility for State agencies to limit the duration of fiscal action when corrective action takes place for PS–1 and PS–2 violations related to food components/missing production records. The proposal is as follows:

As proposed in 7 CFR 210.18(l)(3)(i), for PS–1 certification and benefit issuance errors, fiscal action would be required for the review period and the month of the on-site review, at a minimum. For example, if the review period is January and the month of the on-site review is February, then at a minimum fiscal action would be applied to the months of January and February. In scenarios where a month falls in between, *i.e.,* January is the review period and March is when the on-site review occurs, then fiscal action is applied to all three months.

For all other PS–1 violations and PS–2 violations relating to missing food components and missing production record:

- If corrective action occurs during the on-site review month, the State agency must apply fiscal action from the point corrective action occurs back through the beginning of the on-site review month and for the review period. For example, if the review period is in January and the on-site review occurs in March and during the course of the review errors are identified and corrected on March 15th, then fiscal action would be applied from March 1st through March 14th and for the entire review period, *i.e.,* January. If corrective action occurs during the review period, the State agency applies fiscal action from the point corrective action occurs back through the beginning of the review period. For example, if the review period is January and the on-site review occurs in March and it is determined that the problem was corrected on January15th, then fiscal action would be applied from January 1st through January 14th.
- If corrective action occurs prior to the review period, no fiscal action is required under the proposal. In this scenario, any error identified and corrected prior to the review period, *i.e.,* before January, it is not subject to fiscal action.
- If corrective action occurs in a claim month(s) between the review period and the on-site review month, the State agency would apply fiscal action only to the review period. For example, if the review period is January and the on-site review occurs in March and the corrective action takes place in February, the state agency would be required to apply fiscal action only to the review period, *i.e.,* January.

Based on the severity and longevity of the problem, the State agency would be able to extend fiscal action back to the beginning of the year or back to previous school years.

For PS–2 Violations Related to Vegetable Subgroups. Milk Type, Food Quantities, Whole Grain-Rich Foods, and Dietary Specifications

Existing 7 CFR 210.18(m)(2)(ii) requires fiscal action for repeated PS–2 violations related to vegetable subgroups and milk type. For repeated PS–2 violations related to food quantities, whole grain-rich foods and the dietary specifications, existing 7 CFR 210.18(m)(2)(iii) states that fiscal action is discretionary. The proposed rule would clarify the scope and duration of fiscal action for these repeated PS–2 violations. These changes are found at 7 CFR 210.18(l)(2)(ii) through (v) of the proposed rule.

For purposes of administrative reviews, repeated violations are generally those identified during the administrative review of an SFA in one cycle and identified again in the administrative review of the same SFA in the next review cycle. For example, if the State agency finds a PS–2 violation (*e.g.,* unallowable milk type)

in an SFA in the first review cycle (SY 2013–2016), and finds the same problem during the second review cycle (SY 2016–2019), fiscal action would be required during the second review cycle.

It is important to note that while fiscal action is generally limited to the repeated violation found in a subsequent administrative review cycle, State agencies are required by existing 7 CFR 210.19(c) to take fiscal action for recurrent violations found in later visits to the SFA during the initial cycle (*e.g.,* technical assistance visits, follow-up reviews) if these violations reflect willful and/or egregious disregard of program requirements. This would not occur during SY 2013–2014 through SY 2015–2016, as FNS has indicated in guidance, including the memorandum, *Administrative Reviews and Certification for Performance-Based Reimbursement in School Year (SY) 2014–2015 (SP–54 2014),* and subsequent Question and Answer documents, that repeat findings will not result in fiscal action if they are repeated in the first 3-year review cycle. Beginning in SY 2016–2017, State agencies would be directed to contact FNS for guidance in these situations.

For repeated violations involving vegetable subgroups and/or milk requirements, existing regulations require the State agency to take fiscal action provided that technical assistance has been provided by the State agency, corrective action has been previously required and monitored by the State agency, and the SFA remains in non-compliance with PS–2. The proposed rule at 7 CFR 210.18(l)(2)(ii) would clarify the existing regulatory requirement to specify how a State must apply fiscal action. Under the proposal, any meals with an unallowable milk type or when there is no milk variety, would be required to be disallowed/reclaimed. If one vegetable subgroup is not offered over the course of the week reviewed, the State agency should evaluate the cause(s) of the error to determine the appropriate fiscal action required. When calculating the required fiscal action, the State agency would have discretion, as appropriate based on the cause and extent of the error, to disallow/reclaim all meals served in the deficient week.

For repeated violations of quantities and/or the whole grain-rich foods and dietary specifications, existing regulations allow State agency the discretion to apply fiscal action provided that technical assistance has been given by the State agency, corrective action has been previously required and monitored by the State agency, and the SFA remains in noncompliance with quantity, whole grain rich and dietary specifications. The proposal rule at 7 CFR 210.18(l)(2)(iii) clarifies the existing regulatory requirement and specifies how fiscal action must be applied.

For repeated violations involving food quantities and/or the whole grain-rich foods requirement, the State agency would continue to have discretion to apply fiscal action. When evaluating the cause(s) of the error to determine the extent of the discretionary fiscal action, the reviewer would consider the following:

- If meals contain insufficient quantities of required food components, the affected meals may be disallowed/reclaimed.
- If whole grain-rich foods are not offered over the course of the week reviewed, all meals served in the deficient week may be disallowed/reclaimed.
- If insufficient whole grain-rich foods are offered, meals for one day during the week under review may be disallowed/reclaimed. The State agency has discretion to select which day's meals may be disallowed/reclaimed. Additional meals may be disallowed/reclaimed at State agency's discretion.
- If a vegetable subgroup is offered in insufficient quantity to meet the minimum weekly requirement, meals may be disallowed/reclaimed for one day that week. The State agency has discretion to select which day's meals are disallowed/reclaimed. Additional meals may be disallowed/reclaimed at the State agency's discretion.
- If the amount of fruit juice offered exceeds 50 percent of the total amount of fruits offered, or the amount of vegetable juice exceeds 50 percent of the total amount of vegetables offered, meals for the entire week may be disallowed/reclaimed.

For repeated violations of dietary specifications, the proposed rule in 7 CFR 210.18(l)(2)(iv) specifies that the State agency has discretion to take fiscal action and disallow/reclaim all meals for the entire week, if applicable, provided that technical assistance has been given by the State agency, corrective action has been previously required and monitored by the State agency, and the SFA remains noncompliant with the dietary specifications. If fiscal action is applied, it would be limited to the school selected for the targeted menu review. A nutrient analysis using USDA-approved software would be required to justify any fiscal action for noncompliance with the dietary specifications requirements.

The intent of these proposed fiscal action modifications and clarifications is to promote program integrity. Clearly identifying the critical area violations that may result in fiscal action and the scope and duration of any fiscal action, will promote consistency in fiscal action procedures among State agencies.

The administrative review manual also includes automated forms and tools designed to simplify the fiscal action process for State agencies. Fiscal action, whether required or at the States discretion, would be applied in a consistent manner and would take significantly less time to complete.

FNS is especially interested in soliciting feedback from early adopters of the new administrative review process on the impact of the proposed fiscal action method. We acknowledge that expanding the scope of review to include the SBP and strengthening fiscal action for PS–1 and PS–2 violations may result in increased fiscal action against certain SFAs.

Transparency Requirement

Section 207 of the HHFKA amended section 22 of the NSLA (42 U.S.C. 1769c) to require State agencies to report the final results of the administrative review to the public in the State in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary.

This proposed rule at 7 CFR 210.18(m) requires the State agency to post a summary of the most recent final administrative review results for each SFA on the State agency's publicly available Web site. The review summary must cover eligibility and certification review results, an SFA's compliance with the meal patterns and the nutritional quality of school meals, the results of the review of the school nutrition environment (including food safety, local school wellness policy, and competitive foods), and compliance related to civil rights, and general program participation, in a format prescribed by FNS. At a minimum, this would include the written notification of review findings provided to the SFAs Superintendent as required at 7 CFR 210.18.(i)(3). FNS will provide additional guidance on the appropriate format, including templates and model summaries, after the implementing rule is published.

State agencies would be required to post this review summary no later than 30 days after the State agency provides the final results of the administrative review to the SFA. The State agency would also be required to make a copy of the final administrative review report

available to the public upon request. This requirement seeks to promote transparency and accountability in program operations as parents and stakeholders are increasingly aware of the potential benefits of the programs and seek more information about them.

Reporting and Recordkeeping

Current regulations in 7 CFR 210.18(n) and (o) address the State agency reporting requirements associated with the administrative review process. This proposed rule would retain the requirement to file the form FNS–640 at proposed 7 CFR 210.18(n), but would remove reference to follow-up reviews. The proposal retains the basic record keeping requirement at 210.18(o), but removes the reporting requirement associated with follow-up reviews found in existing 7 CFR 210.18(o) and 7 CFR 210.20(a)(5) due to the proposed elimination of the follow-up reviews. The recordkeeping associated with follow-up reviews in 7 CFR 210.18(p) and 7 CFR 210.20(b)(7) would also be eliminated.

The proposed removal of the follow-up review is expected to reduce the reporting and recordkeeping burden on State agencies. As discussed earlier, the information collection associated with the updated forms and new tools required for the administrative review process will be addressed separately in a 60-day notice, when the implementing rule is published.

IV. Proposed Changes to SFA Requirements

As stated earlier, this proposed rule would add a new paragraph (g) in 7 CFR 210.14, *Resource Management,* to clarify SFA responsibilities regarding indirect costs that will be monitored by the State agency during the administrative review. The additional regulatory language would not represent a new requirement for SFAs. The proposed paragraph (g) would reflect existing requirements in 2 CFR part 225 that are applicable to the operators of the school meal programs. The intent of the proposed paragraph (g) is to highlight an SFA responsibility that often goes unnoticed because it is not clearly stated in 7 CFR 210.14.

To improve overall monitoring of the school meal programs, this proposed rule would also expand the SFA on-site monitoring process. Under existing 7 CFR 210.8(a)(1), SFAs with more than one school are required to perform no less than one on-site review of the lunch counting and claiming system employed by each school under its jurisdiction. The SFA must conduct the required on-site review prior to February 1 of each school year. The proposed rule at 7 CFR 210.8(a)(1) would expand the scope of on-site monitoring to include the readily observable general areas of review cited under 7 CFR 210.18(h), as identified by FNS. Readily observable areas of review could include, but are not limited to, the availability of free potable water, proper food safety practices, and compliance with Civil Rights requirements.

In addition, the SFA monitoring activities would extend to the SBP. The SFA would be required to annually monitor the operation of the NSLP and SBP at each school under its jurisdiction. As is currently done with the NSLP, this monitoring of the SBP would include the counting and claiming system used by a school and the general areas of review that are readily observable. This expansion of the SFA monitoring activities is intended to ensure that SFAs self-monitor and are aware of operational issues, and that schools receive ongoing guidance and technical assistance to facilitate compliance with program requirements.

V. Comparison of Existing and Proposed Administrative Review Requirements

The following chart summarizes the key existing and proposed administrative review requirements and states the anticipated outcomes.

Existing requirement	Proposed rule	Effect of proposal
Review location—State agencies are required to conduct an on-site review of each SFA once every 3-years.	Review location—The proposal would allow portions of the review to be conducted off-site and on-site. No change to the 3-year cycle.	The proposal is expected to provide State agencies with review flexibility, lower travel costs, and increase their ability to use in-house/off-site staff expertise to review complex documentation.
Scope of review—The scope of review covers both critical and general areas for the NSLP and SBP. The critical areas, PS–1 and PS–2, assess whether meals claimed for reimbursement are served to children eligible for free, reduced price, and paid meals; are counted, recorded and consolidated, and reported through a system that consistently yields correct claims; and meet meal pattern requirements. The general areas assess whether the SFA met other program requirements related to free and reduced price process, civil rights, SFA monitoring, food safety, and reporting and recordkeeping.	Scope of review—The proposal retains the focus on critical and general areas of review, but would expand the general areas of review for a more robust monitoring process. New general areas would include: Resource Management, Competitive Food Services, Water and SBP and SFSP Outreach. In addition, the proposal would add Other Federal Program reviews and would introduce risk assessment protocols to target at risk schools/districts.	The proposal would establish the unified review system envisioned by the HHFKA. While the proposal would expand the scope of review by adding new general areas and Other Federal Program reviews, it would also provide efficiencies resulting from off-site monitoring, risk assessment protocols, and automated forms. Overall, the proposal is expected to reduce the review burden on State agencies and increase program integrity.
Eligibility certification—State agencies review the free and reduced price certifications for children in schools selected for review.	Eligibility certification—The proposal would require State agencies to review the free and reduced price certifications made by the local educational agency in all schools in the district or a statistically valid sample of those certifications.	The proposal is expected to improve program integrity across the SFA. No change in burden is expected since the State agency has the option to review a statistically valid sample of applications.

Existing requirement	Proposed rule	Effect of proposal
Fiscal action—Fiscal action for certification and benefit issuance violations is calculated based on errors in the reviewed schools.	Fiscal action—Fiscal action for certification and benefit issuance violations would apply to the entire SFA, including non-reviewed schools and would be determined in a manner prescribed by FNS. The proposal would also prescribe the extent of fiscal action for repeated PS–2 violations. If corrective action takes place, the duration of fiscal action for PS–1 and specific PS–2 violations could also be revised.	The proposal is expected to promote consistency and accuracy in fiscal action procedures used by State agencies nationwide.
Meal pattern and dietary specifications—State agencies must review the meal service for the day of review and menu and production records for a minimum period of 5 days. State agencies must conduct a weighted nutrient analysis for each reviewed school.	Meal pattern and dietary specifications—The State agencies would continue to review the meal service for the day of review, and menus and production records for 3–7 days. If the review reveals problems with components or quantities, the State agency would expand the review to, at a minimum, the entire review period. This proposed rule would require the State agencies to conduct a meal compliance risk assessment for all schools under review to identify the school at highest risk for nutrition-related violations, and to conduct a targeted menu review for that single school. If the targeted menu review confirms the school is at high risk for dietary specification violations, a weighted nutrient analysis for that school would be required.	Requiring a weighted nutrient analysis only for a school determined to be at highest risk for dietary specification violations makes the best use of limited State agency resources. This change is expected to improve program integrity by focusing time and effort on at risk schools.
Follow-up reviews—State agencies are required to determine whether an SFA has violations in excess of specified thresholds and, if so, conduct follow-up reviews within specified timeframes.	Follow-up reviews—The proposal would eliminate the required follow-up reviews and corresponding review thresholds. Follow-up reviews would be at the State agency's discretion.	The proposed rule recognizes that State agencies will be conducting reviews on a more frequent basis. It provides States with the flexibility to conduct follow-up review activity at their discretion.
Reporting and recordkeeping—State agencies are required to notify FNS of the names of large SFAs in need of a follow-up review. State agencies are required to maintain records regarding its criteria for selecting schools for follow-up reviews.	Reporting and recordkeeping—The proposal would eliminate the follow-up review reporting and recordkeeping requirements.	The proposal would reduce reporting burden for State agencies.
Posting of final review results—No existing requirements.	Posting of final review results—The proposal would require State agencies to make the final results of each SFA administrative review available to the public in an accessible, easily understood manner in accordance with guidelines established by the Secretary; such results must also be posted and otherwise made available to the public on request.	Posting this information online is expected to enhance awareness of school and SFA performance at meeting the requirements of the school meal programs and increase informed involvement of parents in the program. The increased reporting burden associated with the posting is expected to be minor.
Include other Federal school nutrition programs in a follow up review—If the State agency did not evaluate the certification, count and milk/meal service procedures for the SMP or afterschool care programs in the schools selected for an administrative review, it must do so during the follow-up review.	Include other Federal school nutrition programs in the administrative review—The proposal would require State agencies to review the NSLP afterschool snacks, the NSLP seamless summer option, the SMP, and the FFVP as part of the administrative review under 7 CFR 210.18.	The proposal would foster integrity of all school meal programs, and promote efficiency.

Comparison of Existing and Proposed SFA Requirements

The following chart summarizes SFA requirements associated with the administrative review process.

Existing requirement	Proposed rule	Effect of proposal
Resource Management—7 CFR 210.8 does not address indirect costs explicitly.	Resource Management—This proposal would add text in 7 CFR 210.14 to clarify the SFA's existing responsibilities with regard to indirect costs.	The proposal would increase understanding of indirect cost responsibilities that are monitored by the State agency under the proposed administrative review.

Existing requirement	Proposed rule	Effect of proposal
SFA monitoring—SFAs are required to monitor the lunch counting and claiming processes schools annually.	SFA monitoring—The proposal would require the SFA to also monitor the SBP and to expand the annual school review by including selected general areas of review that are readily observable.	The proposal would result in a more robust and effective SFA monitoring process, which would contribute to the integrity of the school meal programs.

VI. Miscellaneous Changes

As previously mentioned, this rule proposes a number of miscellaneous changes to conform with other changes in the programs. Accordingly, the proposal would:

- Delete obsolete provision at 7 CFR 210.7(d)(1)(vi) related to validation reviews of performance-based reimbursement;
- Revise 7 CFR 210.9(b)(18) through 210.9(b)(20) and 210.15(b)(4) to reflect the diversity of certification mechanisms beyond household applications;
- Revise 7 CFR 210.19(a)(1) to reflect the Paid Lunch Equity requirements;
- Revise 7 CFR 210.19(a)(5) to update the review frequency to 3 years conforming with the requirement at 210.18(c); and
- Delete obsolete provisions at 7 CFR 210.20(b)(7) and 210.23(d).

VII. Procedural Matters

A. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866 and has been determined to be Not Significant.

B. Regulatory Impact Analysis

This proposed rule has been designated by the Office of Management and Budget (OMB) to be Not Significant; therefore a Regulatory Impact Analysis is not required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review it has been certified that this proposed rule would not have a significant impact on a substantial number of small entities. This proposed rule would update the administrative review process that State agencies must follow to monitor compliance with school meal programs' requirements. The proposed administrative review process provides State agencies more flexibility, tools and streamlined procedures. FNS does not expect that the proposed rule will have a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) that would result in expenditures for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 12372

The nutrition assistance programs and areas affected by this proposed rule are listed in the Catalog of Federal Domestic Assistance as follows:

- National School Lunch Program, No. 10.555
- School Breakfast Program, No. 10.553
- Special Milk Program, No. 10.556
- State Administrative Expenses for Child Nutrition, No. 10.560
- Fresh Fruit and Vegetable Program, No. 10.582

For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related notice (48 FR 29115, June 24, 1983), the nutrition assistance programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. The Child Nutrition Programs are federally funded programs administered at the State level. FNS headquarters and regional office staff engage in ongoing formal and informal discussions with State and local officials regarding program operational issues. The structure of the Child Nutrition Programs allows State and local agencies to provide feedback that contributes to the development of meaningful and feasible program requirements. This proposed rule has taken into account the extensive experience of State agencies conducting the administrative reviews which would be updated by this rule.

F. Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

1. Prior Consultation With State Officials

FNS headquarters and regional offices have formal and informal discussions with State agency officials on an ongoing basis regarding the Child Nutrition Programs and policy issues. In addition, prior to drafting this proposed rule, FNS assembled a 26-member team consisting of staff from FNS Headquarters and the seven Regional Offices, and State Agency staff from Kansas, Michigan, New York, North Carolina, Oregon, Pennsylvania and Texas. The School Meal Administrative Review Reinvention Team (SMARRT) worked together for a year to address

issues and develop an updated review process that is responsive to the needs, wants, and challenges of the State agencies.

2. Nature of Concerns and the Need To Issue This Rule.

The Healthy, Hunger-Free Kids Act of 2010 (HHFKA) amended section 22 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1769c, to require that:

a. The administrative review process be a unified accountability system; and

b. State agencies report the final results of reviews, and post them or otherwise make them available to the public.

This proposed rule would update the administrative review process established in 7 CFR 210.18 to carry out these two statutory requirements. In addition, the proposed rule would also make a number of changes to address issues and concerns raised by State agencies. Issues identified by State agencies include simplifying the administrative review and fiscal action. State agencies also want the administrative reviews to be meaningful and contribute to better meal service. They also want a review process that would allow them to better utilize the limited resources they have.

3. Extent to Which the Department Meets Those Concerns

FNS has considered the concerns identified by SMARRT. The administrative review process proposed in this rule would streamline review procedures to allow more time for technical assistance, emphasize risk-assessment to enable the State agency to focus the administrative review on school food authorities at high risk for noncompliance, and provide State agencies flexibility to conduct portions of the review off-site to make better use of limited resources.

G. Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, appeal procedures in 7 CFR 210.18(q) and 7 CFR 235.11(f) of this chapter must be exhausted.

H. Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes. In spring 2011, FNS offered five opportunities for consultation with Tribal officials or their designees to discuss the impact of the Healthy, Hunger-Free Kids Act of 2010 on tribes or Indian Tribal governments. FNS followed up with conference calls on February 13, 2013; May 22, 2013; August 21, 2013 and November 6, 2013. These consultation sessions provide the opportunity to address Tribal concerns related to the School Meals Programs. To date, Indian Tribal governments have not expressed concerns about the required unified accountability system during these consultations.

USDA is unaware of any current Tribal laws that could be in conflict with the proposed rule. The Department will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule.

I. Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on children on the basis of age, race, color, national origin, sex, or disability. A careful review of the rule's intent and provisions revealed that this proposed rule is not intended to reduce a child's ability to participate in the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, or Special Milk Program.

J. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This is a revision of currently approved collection. The administrative reviews in School Nutrition Program provisions in this rule minimally increase burden hours for the National School Lunch Program (NSLP) information collection, OMB Control Number #0584–0006, expiration date 2/29/2016. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval. Additionally, the forms and tools associated with the proposed administrative review process will be addressed separately in a 60-day notice.

Written comments on the information collection in this proposed rule must be received by July 10, 2015.

Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Lynn Rodgers-Kuperman, Child Nutrition Monitoring and Operations Support Division, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection requirements, please contact Lynn Rodgers-Kuperman at the address indicated above. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: 7 CFR part 210, National School Lunch Program: Proposed Rule for Administrative Reviews in the School Nutrition Programs.

OMB Number: 0584–0006.

Expiration Date: 02/29/2016.

Type of Request: Revision of currently approved collection.

Abstract: This proposed rule would revise the NSLP administrative review requirements to establish a unified

accountability system designed to ensure that participating school food authorities (SFA) comply with the NSLP and School Breakfast Program requirements, as required by the Healthy, Hunger-Free Kids Act of 2010. In addition to the new administrative review process, this rule proposes to require State agencies to report and publicly post SFAs administrative review results. The proposed rule would eliminate the existing requirement for State agencies to report the names of those large SFAs subject to a follow-up reviews and hence reduces associated reporting burden. These proposed changes are expected to give State agencies more flexibility to conduct reviews, allow for the efficient use of limited time and staff, and result in a more robust and effective monitoring of the School Nutrition Programs.

This proposed rule slightly increased the number of burden hours for 0584–0006 collection. The current collection burden inventory for the NSLP is 10,223,035. This proposed rule will decrease reporting burden by 11.2 hours, increase public disclosure burden by 1,736 hours and increase recordkeeping burden by 14 hours for an overall increase of 1,739 hours as a result of program changes. The revised total burden inventory for the NSLP with this proposed rule is 10,224,774 hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow.

Respondents for this Proposed Rule: State Education Agencies: 56.

Estimated Number of Responses per Respondent for this Proposed Rule: 124.

Estimated Total Annual Responses: 6944.

Average hours per Response: 0.25.

Estimated Total Annual Burden on Respondents for this Proposed Rule: 1739.

ESTIMATED ANNUAL BURDEN FOR (0584–0006) ADMINISTRATIVE REVIEWS IN THE SCHOOL NUTRITION PROGRAMS PROPOSED RULE

	Section	Estimated number of respondents	Frequency of response	Total annual responses	Average burden per response	Annual burden hours
Reporting						
* SAs will report to FNS about names of large SFAs exceeding any one of the CRE critical area review thresholds	210.18(i), 210.18(d)(2), 210.18(o)(1)	56	1	56	0.20	(11.20)
Public Disclosure						
Establish a state agency requirement to post a summary of the most recent administrative review results of each SFA	210.18(m)(1)	56	124	6944	0.25	1736
Total Reporting for Proposed rule		56	125	7000	0.2464	1725
Total Existing Reporting Burden for 0584–0006, Part 210						1,003,770
Total Revised Reporting Burden for Part 210 with Administrative review proposed rule						1,005,495
Total Number Respondents		56				
Recordkeeping						
SAs must maintain a copy of the summary of the most recent administrative review results of each SFA	210.18(o)	56	1	56	0.25	14
Total Recordkeeping for Proposed rule		56	1	56	0.25	14

ESTIMATED ANNUAL BURDEN FOR (0584–0006) ADMINISTRATIVE REVIEWS IN THE SCHOOL NUTRITION PROGRAMS PROPOSED RULE—Continued

	Section	Estimated number of respondents	Frequency of response	Total annual responses	Average burden per response	Annual burden hours
Total Existing Recordkeeping Burden for 0584–0006, Part 210						9,219,264
Total Revised Recordkeeping Burden for Part 210 with Administrative review proposed rule						9,219,278
Average Number Responses per Respondent						124
Total Annual Responses						6,944
Average Hours per response						0.25
Total Burden Hours for Part 210 with Proposed Rule						10,224,774
Current OMB Inventory for Part 210						10,223,035
Difference (New Burden Requested With Proposed Rule)						1,739

*This proposed rule would eliminate the required follow-up reviews and corresponding review thresholds. Therefore, the burden assessment (11.20 hours) associated with 7 CFR 210.18(i) will be removed from the NSLP, OMB Control Number #0584–0006, expiration date 2/29/2016.

K. E-Government Act Compliance

FNS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

List of Subjects

7 CFR Part 210

Grant programs—education; Grant programs—health; Infants and children; Nutrition; Reporting and recordkeeping requirements; School breakfast and lunch programs; Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Grant programs—education; Grant programs—health; Infants and children; Nutrition; Reporting and recordkeeping requirements; School breakfast and lunch programs.

7 CFR Part 235

Administrative practice and procedure; Food assistance programs; Grant programs—education; Grant programs—health; Infants and children; Reporting and recordkeeping requirements; School breakfast and lunch programs.

Accordingly, 7 CFR parts 210, 215, 220 and 235 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In part 210, remove the word ''SF–269'' wherever it appears and add, in its place, the word ''FNS–777''.

§ 210.7 [Amended]

■ 3. In § 210.7, remove paragraph (d)(1)(vii) and redesignate paragraph (d)(1)(viii) as paragraph (d)(1)(vii).

§ 210.8 [Amended]

■ 4. In § 210.8:

■ a. In the first sentence of paragraph (a)(1), remove the word ''lunch''.

■ b. In the first sentence of paragraph (a)(1), remove the words ''employed by'' and add in their place the words ''and the readily observable general areas of review cited under § 210.18(h), as prescribed by FNS for''.

■ c. In the third sentence of paragraph (a)(1), add the words ''or general review areas'' after the word ''procedures''.

■ d. In the fourth sentence, remove the word ''lunches'' and add in its place the word ''meals''; and

■ e. In paragraph (a)(3)(ii), remove the word ''subsequent''.

■ 5. In § 210.9:

■ a. In paragraph (b)(18), remove the words ''applications which must be readily retrievable by school'' and add in their place the words ''certification documentation'';

■ b. Revise the introductory text of paragraph (b)(19); and

■ c. Revise paragraph (b)(20).

The revisions read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) * * *

(19) Maintain direct certification documentation obtained directly from the appropriate State or local agency, or

other appropriate individual, as specified by FNS, indicating that:

* * * * *

(20) Retain eligibility documentation submitted by families for a period of 3 years after the end of the fiscal year to which they pertain or as otherwise specified under paragraph (b)(17) of this section.

* * * * *

■ 6. In § 210.10:

■ a. In paragraph (h), revise the heading;

■ b. In paragraph (h)(1), revise the first sentence;

■ c. In paragraph (i), revise the heading and revise paragraph (i)(1);

■ d. Revise paragraph (i)(3)(i);

■ e. In paragraph (j), revise the paragraph heading; and

■ f. In paragraph (o), add paragraph (o)(5).

The revisions and additions read as follows:

§ 210.10 Meal requirements for lunches and requirements for afterschool snacks.

* * * * *

(h) *Monitoring dietary specifications.*

(1) * * * When required by the administrative review process set forth in § 210.18, the State agency must conduct a weighted nutrient analysis to evaluate the average levels of calories, saturated fat, and sodium of the lunches offered to students in grades K and above during one week of the review period. * * *

* * * * *

(i) *Nutrient analyses of school meals*—(1) *Conducting the nutrient analysis.* Any nutrient analysis, whether conducted by the State agency under § 210.18 or by the school food authority, must be performed in accordance with the procedures established in paragraph (i)(3) of this section. The purpose of the nutrient analysis is to determine the average levels of calories, saturated fat, and sodium in the meals offered to each age grade group over a school week. The weighted nutrient analysis must be performed as required by FNS guidance.

* * * * *

(3) * * *

(i) *Weighted averages.* The nutrient analysis must include all foods offered as part of the reimbursable meals during one week within the review period. Foods items are included based on the portion sizes and serving amounts. They are also weighted based on their proportionate contribution to the meals offered. This means that food items offered more frequently are weighted more heavily than those not offered as frequently. The weighted nutrient analysis must be performed as required by FNS guidance.

* * * * *

(j) *Responsibility for monitoring meal requirements.* * * *

* * * * *

(o) * * *

(5) *Monitoring afterschool snacks.* Compliance with the requirements of this paragraph is monitored by the State agency as part of the administrative review conducted under § 210.18. If the snacks offered do not meet the requirements of this paragraph, the State agency or school food authority must provide technical assistance and require corrective action. In addition, the State agency must take fiscal action, as authorized in §§ 210.18(l) and 210.19(c).

* * * * *

■ 7. In § 210.14:

■ a. Add a sentence at the end at the paragraph (d); and

■ b. Add paragraph (g).

The additions read as follows:

§ 210.14 Resource management.

* * * * *

(d) * * * The school food authority's policies, procedures, and records must account for the receipt, full value, proper storage and use of donated foods.

* * * * *

(g) *Indirect costs.* School food authorities must follow fair and consistent methodologies to identify and allocate allowable indirect costs to the school food service account, as required in 2 CFR part 225.

§ 210.15 [Amended]

■ 8. In § 210.15(b)(4), remove the words ''applications for'' and add in their place the words ''certification documentation for''.

■ 9. Revise § 210.18 to read as follows:

§ 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, afterschool snack program 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 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:

(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.

(2) *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 lunches, reduced price lunches, and paid lunches, 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 lunches is derived by subtracting the number of children approved for free and reduced price lunches 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 snack program 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. 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-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 and/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)(5), 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.* 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 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 lunch counts appear questionable (*e.g.,* identical or very similar claiming patterns, and/or large changes in free lunch counts).

(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 snack program.* If a school selected for an administrative review under this section operates the afterschool snack program, 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 snack program.

(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 and/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 (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/or general areas must be monitored when reviewing the National School Lunch Program's afterschool snack program 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 paragraph 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 snack program 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 snack program 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 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 noncompliance. 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 lunch 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 lunches for the review period times an attendance factor. If the lunch 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 lunch counts, by type, and those lunch 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 lunches, by type, and is correctly implemented as approved by the State agency.

(C) For each school selected for review, all lunches 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 lunches and breakfasts 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 and/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 snack program 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 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 at each serving line and review the corresponding documentation to determine whether all reimbursable meal service lines *offer* all of the required food components 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 documentation 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 noncompliance 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 breakfast and lunch, 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. 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 snack program 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.

(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 snack program 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 of 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, and 210.19(a).

(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 225 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 lunch count system does not overtly identify children eligible for free and reduced price lunches, 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 lunches, 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 (3), and 220.11(d) of this chapter.

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

(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. The notice must 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 State agency must notify the school food authority, in writing, of the appeal procedures as specified in § 210.18(q) for appeals of State agency findings, and for appeals of FNS findings, provide a copy of § 210.29(d)(3) of the regulations.

(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; and/or

(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; and/or

(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/or

(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 lunches 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 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.

(l) *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.

(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 (l)(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 reflect the State calculated free and reduced price certification and benefit issuance adjustment factors, respectively. The free adjustment factor is the ratio of the State agency count of students certified as eligible for free meals divided by the SFA count of students certified as eligible for free meals. The reduced price adjustment factor is the ratio of the State agency count of students certified as eligible for reduced price meals divided by the SFA count of students certified as eligible for reduced price meals.

(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 (l)(2)(iii) and (iv) of this section, a State agency is required to apply fiscal action for Performance Standard 2 violations as follows:

(i) For missing food components and/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 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 (l)(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 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 (l)(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 (l)(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 State agency must make the most recent final administrative review results available to the public in an easily accessible manner, as follows:

(1) Post a summary of the most recent final administrative review results for each school food authority on the State agency's publicly available Web site. 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, in a format prescribed by FNS. It must be posted no later than 30 days after the State agency provides the results of administrative review to the school food authority; and

(2) Make a copy of the final administrative review report upon request.

(n) *Reporting requirement.* Each State agency must report to FNS the results of 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)(A)(*1*) 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 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.

■ 10. In § 210.19:

■ a. In the seventh sentence in paragraph (a)(1), add the words ''in a manner that is consistent with the paid lunch equity provision in § 210.14(e) and corresponding FNS guidance,'' after the word ''lunches,'';

■ b. Revise paragraph (a)(2);

■ c. In the fifth sentence of paragraph (a)(5), remove the words ''an on-site'' and the number ''5'' and add in their place the word ''a'' and the number ''3'', respectively.

■ d. Remove the sixth sentence of paragraph (a)(5);

■ e. In the second sentence of paragraph (c), remove the words ''the meal'' and add the number '', 215'' after the number ''210'';

■ f. In the second sentence of paragraph (c)(1), add the number '', 215'' after the number ''210'';

■ g. In the second sentence of paragraph (c)(2)(i), remove the word ''lunches'' and add in its place the word ''meals'';

■ h. In the third sentence of paragraph (c)(2)(i), remove the word ''lunch'' and add in its place the word ''meal'';

■ i. Remove the fourth sentence of (c)(2)(i);

■ j. In the first sentence of paragraph (c)(2)(ii), remove the reference ''§ 210.18(m)'' and add in its place the reference ''§ 210.18(l)''.

■ k. In the last sentence of paragraph (c)(2)(ii), remove the word ''lunches'' and add in its place the word ''meals'';

■ l. In paragraph (c)(2)(iii), remove the words ''lunches'' and ''lunch'' and add in their place the words ''meals'' and ''meal'', respectively; and

■ m. Remove paragraph (g).

The revision reads as follows:

§ 210.19 Additional responsibilities.

(a) * * *

(2) *Improved management practices.* The State agency must work with the school food authority toward improving the school food authority's management practices where the State agency has found poor food service management practices leading to decreasing or low child participation, menu acceptance, or program efficiency. The State agency should provide training and technical assistance to the school food authority or direct the school food authority to the National Food Service Management Institute to obtain such resources.

* * * * *

§ 210.20 [Amended]

■ 11. In § 210.20:

■ a. Remove paragraph (a)(5) and redesignate paragraphs (a)(6) through (a)(10) as paragraphs (a)(5) through (a)(9); and

■ b. Remove paragraph (b)(7) and redesignate paragraphs (b)(8) through (b)(15), as added on March 2, 2015 (80 FR 11092, effective July 1, 2015, as paragraphs (b)(7) through (b)(14).

§ 210.23 [Amended]

■ 12. In § 210.23, remove paragraph (d), and redesignate paragraph (e) as paragraph (d).

§ 210.29 [Amended]

■ 13. In § 210.29:
■ a. In paragraph (b), remove the words ''or § 210.18a'' and ''reviews and'';
■ b. In paragraph (d)(1), remove the words ''and/or any follow up review'' from the first sentence; and
■ c. In paragraph (d)(2), remove the words ''or any follow up reviews'' from the first sentence.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 14. The authority citation for 7 CFR part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

■ 15. In § 215.11:
■ a. In the second sentence of paragraph (b)(2), remove the letter ''(i)'' from the reference ''§ 210.18(i)''; and
■ b. Revise the third sentence of paragraph (b)(2) to read as follows:

§ 215.11 Special responsibilities of State agencies.

* * * * *

(b) * * *

(2) * * * Compliance reviews of participating schools shall focus on the reviewed school's compliance with the required certification, counting, claiming, and milk service procedures.* * *

* * * * *

■ 16. Revise § 215.18 to read as follows:

§ 215.18 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control number
215.3(d) *Agreement*	0584–0067
215.5(a)	0584–0005
	0584–0002
215.5(c) *FNS–777*	0584–0067
215.7 (a), (c)	0584–0005
215.7 (b)(2)	0584–0026
215.7(d) *FNS–66*	0584–0006
	0584–0005
215.10 (a), (b), (d)	0584–0005
	0584–0284
215.11 (b), (c)(1), (e)	0584–0005
215.11(c)(2) *FNS–10*	0584–0002
215.12 (a), (d), (e), (g)	0584–0005
215.13(a)	0584–0005
215.13a(a)–(e)	0584–0026
215.14	0584–0005
215.14a(a)–(c)	0584–0005
215.15	0584–0005

PART 220—SCHOOL BREAKFAST PROGRAM

■ 17. The authority citation for 7 CFR part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 18. In § 220.8:
■ a. In paragraph (h), remove the phrase ''Effective July 1, 2013 (SY 2013–2014), as part of the administrative review authorized under § 210.18 of this chapter, State agencies must conduct a weighted nutrient analysis for the school(s) selected for review'' from the first sentence, and add in its place the phrase ''When required by the administrative review process set forth in § 210.18, the State agency must conduct a weighted nutrient analysis''; and
■ b. Revise paragraphs (i) and (j) to read as follows:

§ 220.8 Meal requirements for breakfasts.

* * * * *

(i) *Nutrient analyses of school meals.* Any nutrient analysis of school breakfasts conducted under the administrative review process set forth in § 210.18 of this chapter must be performed in accordance with the procedures established in § 210.10(i) of this chapter. The purpose of the nutrient analysis is to determine the average levels of calories, saturated fat, and sodium in the breakfasts offered to each age grade group over a school week.

(j) *Responsibility for monitoring meal requirements.* Compliance with the applicable breakfast requirements in paragraph (b) of this section, including the dietary specifications for calories, saturated fat, sodium and trans fat will be monitored by the State agency through administrative reviews authorized in § 210.18 of this chapter.

* * * * *

■ 19. In § 220.11, add paragraph (d) to read as follows:

§ 220.11 Reimbursement procedures.

* * * * *

(d) The school food authority shall establish internal controls which ensure the accuracy of breakfast counts prior to the submission of the monthly Claim for Reimbursement. At a minimum, these internal controls shall include: An on-site review of the breakfast counting and claiming system employed by each school within the jurisdiction of the school food authority; comparisons of daily free, reduced price and paid breakfast counts against data which will assist in the identification of breakfast counts in excess of the number of free, reduced price and paid breakfasts served each day to children eligible for such breakfasts; and a system for following up on those breakfast counts which suggest the likelihood of breakfast counting problems.

(1) *On-site reviews.* Every school year, each school food authority with more than one school shall perform no less than one on-site review of the breakfast counting and claiming system and the readily observable general areas of review identified under § 210.18(h) of this chapter, as specified by FNS, for each school under its jurisdiction. The on-site review shall take place prior to February 1 of each school year. Further, if the review discloses problems with a school's meal counting or claiming procedures or general review areas, the school food authority shall ensure that the school implements corrective action, and within 45 days of the review, conduct a follow-up on-site review to determine that the corrective action resolved the problems. Each on-site review shall ensure that the school's claim is based on the counting system and that the counting system, as implemented, yields the actual number of reimbursable free, reduced price and paid breakfasts, respectively, served for each day of operation.

(2) *School food authority claims review process.* Prior to the submission of a monthly Claim for Reimbursement, each school food authority shall review the breakfast count data for each school under its jurisdiction to ensure the accuracy of the monthly Claim for Reimbursement. The objective of this review is to ensure that monthly claims include only the number of free, reduced price and paid breakfasts served on any day of operation to children currently eligible for such breakfasts.

* * * * *

■ 20. In § 220.13:
■ a. In the sixth sentence of paragraph (b)(2), remove the word ''SF–269'' and add in its place the word ''FNS–777'';
■ b. Revise paragraphs (f)(2), (f)(3) and (f)(4);
■ c. Revise paragraph (g); and
■ d. Amend paragraph (j) by removing the words ''supervisory assistance'' and adding in their place the word ''administrative''.

The revisions read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(f) * * *

(2) State agencies must conduct administrative reviews of the school meal programs specified in § 210.18 of this chapter to ensure that schools participating in the designated programs comply with the provisions of this title. The reviews of selected schools must focus on compliance with the critical and/or general areas of review identified in § 210.18 of this chapter for each program, as applicable, and must be conducted as specified in the FNS *Administrative Review Manual* for each program. School food authorities may appeal a denial of all or a part of the Claim for Reimbursement or withholding of payment arising from review activity conducted by the State agency under § 210.18 of this chapter or by FNS under § 210.29(d)(2) of this chapter. Any such appeal shall be subject to the procedures set forth under § 210.18(p) of this chapter or § 210.29(d)(3) of this chapter, as appropriate.

(3) For the purposes of compliance with the meal requirements in §§ 220.8 and 220.23, the State agency must follow the provisions specified in § 210.18(g) of this chapter, as applicable.

(4) State agency assistance must include visits to participating schools selected for administrative reviews under § 210.18 of this chapter to ensure compliance with program regulations and with the Department's nondiscrimination regulations (part 15 of this title), issued under title VI, of the Civil Rights Act of 1964.

* * * * *

(g) State agencies shall adequately safeguard all assets and monitor resource management as required under § 210.18 of this chapter, and in conformance with the procedures specified in the FNS *Administrative Review Manual,* to assure that assets are used solely for authorized purposes.

* * * * *

§ 220.14 [Amended]

■ 21. In paragraph (h), add the words ''food authority'' after the word ''school'', and remove the words ''§ 220.8(g), § 220.8(i)(2) and (i)(3), whichever is applicable'' and add in their place the word ''§ 220.8''.

■ 22. Revise § 220.22 to read as follows:

§ 220.22 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control number
220.3(e)	0584–0067
220.5	0584–0012
220.7(a)–(e)	0584–0006
	0584–0012
	0584–0067
220.8(f)	0584–0012
220.9(a)	0584–0012
220.11 (a), (b), (e)	0584–0012
	0584–0002
	0584–0067
220.12(b)	0584–0012
220.13 (a–1)–(c), (f)	0584–0026
	0584–0002
	0584–0067
	0584–0012
220.14(d)	0584–0012
220.15	0584–0012

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

■ 23. The authority citation for 7 CFR part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

■ 24. In § 235.2, add a definition of ''Large school food authority'' in alphabetical order to read as follows:

§ 235.2 Definitions.

* * * * *

Large school food authority means, in any State:

(1) All school food authorities that participate in the National School Lunch Program (7 CFR part 210) and have enrollments of 40,000 children or more each; or

(2) If there are less than two school food authorities with enrollments of 40,000 or more, the two largest school food authorities that participate in the National School Lunch Program (7 CFR part 210) and have enrollments of 2,000 children or more each.

* * * * *

Date: May 1, 2015.

Yvette S. Jackson,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2015–10613 Filed 5–8–15; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–0841; Airspace Docket No. 15–ACE–3]

Proposed Amendment of Class E Airspace for the Following Nebraska Towns: Albion, NE; Bassett, NE; Lexington, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Albion Municipal Airport, Albion, NE; Rock County Airport, Bassett, NE; and Jim Kelly Field Airport, Lexington, NE. Decommissioning of the non-directional radio beacons (NDB) and/or cancellation of NDB approaches due to advances in Global Positioning System (GPS) capabilities has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above airports. Also, the geographic coordinates would be updated for Rock County Airport and Jim Kelly Field Airport.

DATES: 0901 UTC. Comments must be received on or before June 25, 2015.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2015–0841/Airspace Docket No. 15–ACE–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this proposed incorporation by reference material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Roger Waite, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest