



**United States
Department of
Agriculture**

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
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DATE: July 11, 2014

MEMO CODE: SP 55-2014

SUBJECT: State Agency 3-year Administrative Review Cycle Requirement -
Waivers for Exceptional Circumstances

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Program integrity in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) is vital, with the State Agencies' administrative reviews of school food authorities (SFAs) being the major component of oversight activities. Section 207 of 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 make several changes to the administrative review requirements. One key change, designed to enhance the integrity of the review process, requires that administrative reviews, formerly conducted on a 5-year review cycle, must now be conducted at least once during a 3-year review cycle. The Food and Nutrition Service (FNS) implemented this change at 7 CFR 210.18 through the final rule, Nutrition Standards in the National School Lunch and School Breakfast Programs (77 FR 4088) published January 26, 2012. This memorandum provides guidance to State agencies requesting a waiver of the 3-year administrative review requirement for the current review cycle due to exceptional circumstances, in accordance with Section 12(l) of the NSLA, 42 U.S.C. 1760(l).

FNS appreciates that progression to a 3-year review cycle represents a significant transition for State agencies and SFAs. Likewise, FNS understands that some State agencies may be challenged with this transition while adapting to a new administrative review process and continuing to certify some SFAs for performance-based reimbursement. State agencies with exceptional circumstances may request a waiver of the current 3-year review cycle requirement, by clearly demonstrating a negative impact to their administrative and oversight responsibilities. State agencies must submit any requests for waivers no later than June 30, 2016 (the end of the current 3-year cycle). Waiver requests may not exceed more than two additional years, ending no later than June 30, 2018.

Waiver Considerations

A State agency requesting a waiver of the 3-year review cycle requirement must submit documentation of exceptional circumstances clearly demonstrating a negative impact to the State agency's administrative and oversight responsibilities. FNS will evaluate each waiver request to determine whether the documented circumstances would have a negative impact. As part of the evaluation, FNS will consider the Federal resources available to, and used by, the requesting State agency. Specifically, FNS will consider the availability and use of State Administrative Expense (SAE) funds and funds provided to State agencies under Section 201 of the HHFKA. Also, FNS will review compliance with the amendments made by Section 12 of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760, Full Use of Federal Funds.

It is critical that Federal resources provided for administration of the FNS Programs are utilized effectively to meet NSLP and SBP requirements. FNS is prepared to provide technical assistance and other support to State agencies facing challenges in effectively using NSLP and SBP administrative resources. FNS Regional Offices will work with State agencies to provide technical assistance based on the challenges identified. During the first 3-year review cycle, National and Regional Office staff will continue to actively collaborate with State agencies to successfully implement the 3-year review cycle requirement. State agencies that receive a waiver to the required 3-year review cycle will be considered compliant with the administrative review requirements during a Management Evaluation of State Agency Operations.

Procedures for State Agencies Requesting a Waiver

State agencies requesting a waiver of the 3-year review cycle requirement must do so in writing to the FNS Regional Office. The following information must be provided:

- A clear and concise statement explaining the exceptional circumstances clearly demonstrating a negative impact to the State agency's administrative and oversight responsibilities which would result from implementing the 3-year review cycle requirement. Also included should be documentation of any barriers to the State agency's completion of administrative reviews of SFAs in the required 3-year review cycle. Finally, this statement must describe specific actions the State agency has taken to resolve the barriers.
- Documentation of schedules demonstrating a comparison of how reviews would be accomplished over a 3-year review cycle versus the State agency's proposed review cycle.
- Alternative methods of NSLP and SBP oversight the State agency would provide during the proposed review cycle, if approved (e.g., training and technical assistance sessions - on-site or off-site). If alternate methods would be utilized, attach a schedule of these activities.

- Statements specifying that the State agency agrees to:
 - comply with all of the procedures outlined in the *Administrative Review Guidance Manual* or the *Coordinated Review Effort Procedures Manual* and associated tools, workbooks, forms, and any updates to such materials issued by FNS (State agencies may continue to use the review process outlined in the *Coordinated Review Effort Procedures Manual* until such time as a final administrative review regulation is promulgated or as otherwise determined by FNS);
 - report operational issues, problems, and suggested improvements to the administrative review process to the FNS Regional Office;
 - cooperate with the FNS Regional Office in resolving reported operational issues and problems, implementation of improvements, and provision of other technical assistance;
 - report administrative review data through the FNS-640 or as otherwise directed by FNS; and
 - notify the FNS Regional Office in advance if the State agency determines the waiver is no longer necessary and seeks to revert back to the required 3-year review cycle or to a review cycle that is different from the one originally approved.

State agencies requesting a waiver of the 3-year review cycle requirement may use the prototype request form attached to this memorandum (see Attachment). FNS looks forward to continued collaboration with State agencies for successful implementation of the 3-year administrative review cycle requirement. State agencies may direct any questions concerning this guidance to the appropriate FNS Regional Office.

Original Signed

Cynthia Long
Deputy Administrator
Child Nutrition Programs

Attachment

Date: (insert)
Subject: **Request for Waiver: 3-year Administrative Review Cycle Requirement**
To: FNS Regional Office
From: (insert)

(insert name of State agency) requests approval of a waiver allowing the conduct of administrative reviews of the School Nutrition Programs on a (insert number -year cycle) while using the review process set forth in the (insert review process to be used - *Administrative Review Manual or the Coordinated Review Effort Procedures Manual*). This request includes the attached documents to identify the exceptional circumstances clearly demonstrating a negative impact to the State agency's administrative and oversight responsibilities which would result from implementing the 3-year review cycle requirement, as well as the barriers the State agency has and/or will experience and actions the State agency has taken/will take to resolve the barriers to implementation of the 3-year review requirement as required in SP 55-2014, *State Agency 3-year Administrative Review Cycle Requirement - Waivers for Exceptional Circumstances*, dated July 11, 2014; a schedule(s) demonstrating a comparison for how reviews would be accomplished over a 3-year review cycle versus the proposed review cycle; and a description and schedule of what alternative methods of NSLP and SBP oversight the State agency will provide if the proposed review cycle is approved, if applicable. The State agency understands that if the request for a waiver is approved by FNS, this waiver cannot exceed June 30, 2018.

If approved, the State agency agrees to:

- comply with all of the procedures outlined in the *Administrative Review Guidance Manual* or the *Coordinated Review Effort Procedures Manual* and associated tools, workbooks, forms, and any updates to such materials issued by FNS (State agencies may continue to use the review process outlined in the *Coordinated Review Effort Procedures Manual* until such time as a final administrative review regulation is promulgated or as otherwise determined by FNS);
- report operational issues, problems, and suggested improvements to the administrative review process to the FNS Regional Office;
- cooperate with the FNS Regional Office in resolving reported operational issues and problems, implementation of improvements, and provision of other technical assistance;
- report administrative review data through the FNS-640 or as otherwise directed by FNS; and
- notify the FNS Regional Office in advance if the State agency determines the waiver is no longer necessary and seeks to revert back to the required 3-year review cycle or to a review cycle that is different from the one originally approved.

The State agency understands that, if the waiver for the requested review cycle is approved, FNS will provide oversight of the State agency's administrative review activity through management evaluations, data collection, audits, and other technical assistance.

Your approval is requested.