

## § 246.19

## 7 CFR Ch. II (1–1–01 Edition)

such examination may be conducted behind a protective screen or other device (also referred to as an “in camera” examination).

(6) The opportunity to be represented by counsel.

(7) The opportunity to examine prior to the review the evidence upon which the State agency’s action is based.

(8) An impartial decision-maker, whose determination is based solely on whether the State agency has correctly applied Federal and State statutes, regulations, policies, and procedures governing the Program, according to the evidence presented at the review. The State agency may appoint a reviewing official, such as a chief hearing officer or judicial officer, to review appeal decisions to ensure that they conform to approved policies and procedures.

(9) Written notification of the review decision, including the basis for the decision, within 90 days from the date of receipt of a vendor’s request for an administrative review, and within 60 days from the date of receipt of a local agency’s request for an administrative review. These timeframes are only administrative requirements for the State agency and do not provide a basis for overturning the State agency’s adverse action if a decision is not made within the specified timeframe.

(c) *Abbreviated administrative review procedures.* Except when the State agency decides to provide full administrative reviews for the adverse actions listed in paragraph (a)(1)(ii) of this section, the State agency must develop procedures for an abbreviated administrative review of the adverse actions listed in paragraph (a)(1)(ii) of this section. At a minimum, these procedures must provide the vendor with the following:

(1) Written notification of the adverse action, the procedures to follow to obtain an abbreviated administrative review, the cause(s) for and the effective date of the action, and an opportunity to provide a written response; and

(2) A decision-maker who is someone other than the person who rendered the initial decision on the action and whose determination is based solely on whether the State agency has correctly applied Federal and State statutes, regulations, policies, and procedures governing the Program, according to the information provided to the vendor concerning the cause(s) for the adverse action and the vendor’s response; and

(3) Written notification of the review decision, including the basis for the decision, within 90 days of the date of receipt of the request for an administrative review. This timeframe is only an administrative requirement for the State agency and does not provide a basis for overturning the State agency’s adverse action if a decision is not made within the specified timeframe.

(d) *Continuing responsibilities.* Appealing an action does not relieve a local agency or a vendor that is permitted to continue program operations while its appeal is in process from the responsibility of continued compliance with the terms of any written agreement with the State agency.

(e) *Finality and effective date of decisions.* The State agency procedures must provide that review decisions rendered under both the full and abbreviated review procedures are the final State agency action. If the adverse action under review has not already taken effect, the State agency must make the action effective on the date of receipt of the review decision by the vendor or the local agency.

(f) *Judicial review.* If the review decision upholds the adverse action against the vendor or local agency, the State agency must inform the vendor or local agency that it may be able to pursue judicial review of the decision.

### Subpart F—Monitoring and Review

#### § 246.19 Management evaluation and reviews.

(a) *Management evaluations and reviews.* (1) FNS and each State agency shall establish a management evaluation system in order to assess the accomplishment of Program objectives as provided under this part, FNS guidelines, instructions, and the Federal-State agreement with the Department. FNS will provide assistance to States in discharging this responsibility, establish standards and procedures to determine how well the objectives of this part are being accomplished, and implement sanction procedures as warranted by State Program performance.

(2) If FNS determines through a management evaluation or other means that the State agency has failed, without good cause, to demonstrate efficient and effective administration of its Program or has failed to comply with the requirements contained in this part or the State Plan, FNS may withhold an amount up to 100 percent of the State agency’s nutrition services and administration funds.

(3) Sanctions imposed upon a State agency by FNS in accordance with this section (but not claims for repayment assessed against a State agency) may be appealed in accordance with the procedures established in § 246.22. Before carrying out any sanction against a

## Food and Nutrition Service, USDA

## § 246.19

State agency, the following procedures will be followed:

(i) FNS will notify the Chief State Health Officer or equivalent in writing of the deficiencies found and of FNS' intention to withhold nutrition services and administration funds unless an acceptable corrective action plan is submitted by the State agency to FNS within 60 days after mailing of notification.

(ii) The State agency shall develop a corrective action plan with a schedule according to which the State agency shall accomplish various actions to correct the deficiencies and prevent their future recurrence.

(iii) If the corrective action plan is acceptable, FNS will notify the Chief State Health Officer or equivalent in writing within 30 days of receipt of the plan. The letter approving the corrective action plan will describe the technical assistance that is available to the State agency to correct the deficiencies. The letter will also advise the Chief State Health Officer or equivalent of the sanctions to be imposed if the corrective action plan is not implemented according to the schedule set forth in the approved plan.

(iv) Upon notification from the State agency that corrective action as been taken, FNS will assess such action, and, if necessary, will perform a follow-up review to determine if the noted deficiencies have been corrected. FNS will then advise the State agency of whether the actions taken are in compliance with the corrective action plan, and whether the deficiency is resolved or further corrective action is needed.

(v) If an acceptable corrective action plan is not submitted within 60 days, or if corrective action is not completed according to the schedule established in the corrective action plan, FNS may withhold nutrition services and administration funds through a reduction of the State agency Letter of Credit or by assessing a claim against the State agency. FNS will notify the Chief State Health Officer or equivalent of this action.

(vi) If compliance is achieved before the end of the fiscal year in which the nutrition services and administration funds are withheld, the funds withheld shall be restored to the State agency's

Letter of Credit. FNS is not required to restore funds withheld if compliance is not achieved until the subsequent fiscal year. If the 60-day warning period ends in the fourth quarter of a fiscal year, FNS may elect not to withhold funds until the next fiscal year.

(b) *State agency responsibilities.* (1) The State agency shall establish an ongoing management evaluation system which includes at least the monitoring of local agency operations, the review of local agency financial and participation reports, the development of corrective action plans to resolve Program deficiencies, the monitoring of the implementation of corrective action plans, and on-site visits. The results of such actions shall be documented.

(2) Monitoring of local agencies shall encompass, but not be limited to, evaluation of management, certification, nutrition education, civil rights compliance, accountability, financial management systems, and food delivery systems. In accordance with §246.12(i), the State agency shall ensure that State or local agency personnel conduct the necessary on-site monitoring of high risk and representative vendors. If the State agency delegates vendor monitoring to local agencies, it shall evaluate the effectiveness of these monitoring visits.

(3) The State agency shall conduct monitoring reviews of each local agency at least once every two years. Such reviews shall include on-site reviews of a minimum of 20 percent of the clinics in each local agency or one clinic, whichever is greater. The State agency may conduct such additional on-site reviews as the State agency determines to be necessary in the interest of the efficiency and effectiveness of the program.

(4) The State agency shall develop a corrective action process which includes: prompt notification of deficiencies to the local agency, timely development of corrective action plans, and monitoring of local agency implementation of such plans.

(5) When required by FNS, the State agency shall provide special reports on Program activities and act to correct deficiencies in Program operations.

§ 246.20

(6) The State agency shall require local agencies to establish management evaluation systems to review their operations and those of associated clinics or contractors.

[50 FR 6121, Feb. 13, 1985, as amended at 59 FR 11508, Mar. 11, 1994]

EFFECTIVE DATE NOTE: At 65 FR 83288, Dec. 29, 2000, §246.19 was amended by revising its title and paragraphs (a)(2), (b)(2), (4) and (5), effective February 27, 2001. For the convenience of the user, the revised text is set forth as follows:

§ 246.19 Management evaluation and monitoring reviews.

(a) \* \* \*

(2) The State agency must submit a corrective action plan, including implementation timeframes, within 60 days of receipt of an FNS management evaluation report containing a finding that the State agency did not comply with program requirements. If FNS determines through a management evaluation or other means that during a fiscal year the State agency has failed, without good cause, to demonstrate efficient and effective administration of its program, or has failed to comply with its corrective action plan, or any other requirements contained in this part or the State Plan, FNS may withhold an amount up to 100 percent of the State agency's nutrition services and administration funds for that year.

\* \* \* \* \*

(b) \* \* \*

(2) Monitoring of local agencies must encompass evaluation of management, certification, nutrition education, participant services, civil rights compliance, accountability, financial management systems, and food delivery systems. If the State agency delegates the signing of vendor agreements, vendor training, or vendor monitoring to a local agency, it must evaluate the local agency's effectiveness in carrying out these responsibilities.

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(4) The State agency must promptly notify a local agency of any finding in a monitoring review that the local agency did not comply with program requirements. The State agency must require the local agency to submit a corrective action plan, including implementation timeframes, within 60 days of receipt of a State agency report of a monitoring review containing a finding of program non-compliance. The State agency must monitor local agency implementation of corrective action plans.

(5) As part of the regular monitoring reviews, FNS may require the State agency to conduct in-depth reviews of specified areas of local agency operations, to implement a standard form or protocol for such reviews, and to report the results to FNS. No more than two such areas will be stipulated by FNS for any fiscal year and the areas will not be added or changed more often than once every two fiscal years. These areas will be announced by FNS at least six months before the beginning of the fiscal year.

§ 246.20 Audits.

(a) Federal audit responsibilities. (1) OIG reserves the right to perform audits of State and local agencies and other organizations involved in the Program as determined by OIG to be necessary. In performing such audits, OIG will rely to the extent feasible on audit work performed by other Federal and non-Federal auditors.

(2) The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FNS as to the action taken or a proposed corrective action plan regarding the findings. A proposed corrective action plan developed and submitted by the State agency shall include specific timeframes for its implementation and for completion of correction of deficiencies and their causes.

(3) FNS will determine whether Program deficiencies have been adequately corrected. If additional corrective action is necessary, FNS shall schedule a follow-up review, allowing a reasonable time for such corrective action to be taken.

(b) State audit responsibilities. (1) State agencies shall comply with the provisions of 7 CFR part 3016 regarding independent organization-wide audits of financial operations. In conformance with 7 CFR part 3016, State agencies shall arrange for independent audits of financial operations, including compliance with appropriate provisions of Federal laws and regulations, and shall ensure that audits are made on an organization-wide basis rather than on a program basis. When organization-wide audits are done the State agency shall cause procedures to be established which ensure that FNS programs are included in the universe of Federal awards from which a sample is drawn.