



**United States
Department of
Agriculture**

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

DATE: August 7, 2013

MEMO CODE: SP 51-2013

SUBJECT: Certification and Administrative Reviews in School Year
2013-2014

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

This memorandum provides general guidance to State agencies on conducting certification for performance-based reimbursement, including certifications which may occur during the administrative review process. It also includes the Food and Nutrition (FNS) expectations for technical assistance, corrective action, and fiscal action. This guidance pertains to school year (SY) 2013-2014; additional guidance will be issued for future school years.

The amendments to Section 22 of the Richard B. Russell National School Lunch Act, 42 U.S.C 1769c by Section 207 of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) require the FNS to develop a new State administrative review process that combines elements of the Coordinated Review Effort (CRE) and School Meals Initiative review (SMI), accounts for the transition to a three-year review cycle, and incorporates the School Breakfast Program (SBP) review and other new requirements. State agencies have two options for administrative reviews in SY 2013-2014:

1. Adopt the new administrative review process in its entirety; or
2. Continue with the existing CRE process in its entirety, plus a weighted nutrient analysis.

When conducting either administrative review process during SY 2013-2014, it is critical that State reviewers are fully trained to conduct the reviews, and understand how to conduct certification for performance-based reimbursement during these reviews, as appropriate.

SY 2013-2014 Certification Procedures

State agencies must continue to perform certifications in SY 2013-2014 for School Food Authorities (SFAs) not yet certified. There are two ways State agencies may certify SFAs:

- Accepting and reviewing certification documentation submissions by the SFA; or

- Conducting an on-site certification during an administrative review.

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

Certification Procedures during an Administrative Review

When certifying SFAs during either administrative review option, the on-site certification procedures used in SY 2012-2013 must be followed. As part of the certification process, State agencies must select schools for review that represent all the menu types served in the SFA, use a Department of Agriculture (USDA)-approved *Menu Planning Tool for Certification for Six Cent Reimbursement* to assess meal components, and complete a weighted nutrient analysis of calories and saturated fat using USDA-approved nutrient analysis software. The simplified nutrient assessment may not be used when conducting a certification on-site.

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

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

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

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

Technical Assistance, Corrective Action, and Fiscal Action

FNS recognizes that implementation of the new meal pattern represents a significant transition for many program operators. FNS expects State agencies to continue to work closely with SFAs

and provide technical assistance to support their efforts to achieve and maintain full compliance with the new meal patterns on an ongoing basis.

Consistent with longstanding Program regulations, when the State agency performs certification activities during an administrative review and finds that the SFA is not fully in compliance with all meal pattern requirements, the State agency, in conjunction with the SFA, will develop a corrective action plan with specific steps, which may include required training and/or technical assistance, and reasonable timeframes for the SFA to come into compliance with identified program requirements. The timeframes and other details of the corrective action plan will vary, depending on the nature of the steps necessary.

Additionally, Program regulations continue to require a State agency to initiate fiscal action when it finds a SFA's meals are completely missing a meal component per 7 CFR §210.18(m)(2)(i). As appropriate, State agencies will continue to be required to initiate fiscal action as part of the administrative review process. For example, Program regulations now provide at 7 CFR §210.18(m)(2)(ii)(A-C),(iii)(A-C) that a State agency must initiate fiscal action associated with the regular reimbursement for "repeated violations" involving vegetable subgroups and milk types and gives State agency discretion for "repeated violations" involving food quantities, whole grain-rich foods, and dietary specifications.

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

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

Additional Resources:

SP 31-2012 (3rd Revision), dated January 22, 2013, *Section VIII: Fiscal Action* in the *Administrative Review Guidance Manual*, and *Section VII: Fiscal Action Contents* in the *CRE*

Regional Directors

State Directors

Page 4

Procedures Manual provide further guidance. As noted above, the guidance in this memo is for SY 2013-2014, additional guidance will be issued for future years.

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

Original Signed

Cynthia Long

Director

Child Nutrition Division