



United States
Department of
Agriculture

Food and
Nutrition
Service

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DATE: January 22, 2013

MEMO CODE: SP-31-2012 (3rd Revision)

SUBJECT: Child Nutrition Reauthorization 2010: Questions and Answers Related to the Certification of Compliance with Meal Requirements for the National School Lunch Program

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Attached are Revised Questions and Answers related to the interim rule entitled, *Certification of Compliance with Meal Requirements for the National School Lunch Program under the Healthy, Hunger-Free Kids Act of 2010*. Under section 201 of the Healthy, Hunger-Free Kids Act of 2010, an additional reimbursement of 6 cents per lunch is available for school food authorities certified to be in compliance with the new school meal patterns. The interim rule establishes the requirements related to certification and this new performance-based reimbursement. The attached Revised Questions and Answers reflect questions we have received and provide additional information on these requirements.

FNS has received many comments and questions on the certification process. In addition, we engaged in extensive discussions with State agencies in December 2012 on expectations for State agency management of the certification process during the transition to the new school meal patterns. As a result, we have revised many of the existing questions, and added new questions to reflect this input and discussion. Therefore readers should review this new version very carefully. New questions and updated information are identified by *italics*.

Any questions concerning this guidance should be addressed to the appropriate FNS Regional Office. Regional Offices with questions should contact the Child Nutrition Division.

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Background

The Healthy, Hunger-Free Kids Act of 2010 (HHFKA) provides the additional 6 cents per lunch reimbursement to school food authorities (SFAs) certified by a State agency to be in compliance with the new meal pattern requirements.

In implementing the new meal requirements, many SFAs have found it challenging to meet the weekly maximum limits for grains and meat/meat alternates. To help SFAs make the transition to the new requirements, USDA issued SP 11-2013, FNS Guidance to School Food Authorities: Flexibility in the Meat/Meat Alternate and Grain Maximums for School Year 2012-2013, providing flexibility to SFAs regarding the weekly grains and meat/alternates maximums for School Year (SY) 2012-13. For the purposes of certification for the additional 6 cents reimbursement, State agencies are to consider SFAs compliant with these component requirements even if they have exceeded the weekly maximums.

In general, the certification process for the 6 cents performance-based reimbursement works as follows:

- SFA submits certification documentation to State agency
- State agency makes a certification determination within 60 days
- State agencies conduct validation reviews of 25 percent of certified SFAs in School Year (SY) 2012-2013
- Certified SFAs must annually attest to ongoing compliance with the meal patterns through SY 2014-2015
- Ongoing compliance with the meal pattern requirements is monitored during administrative reviews (currently known as coordinated review effort (CRE))

General

Q1. What is the purpose of the 6 cents per lunch reimbursement?

The additional 6 cents per lunch reimbursement is provided to certified SFAs to assist SFAs in providing meals that meet the new meal patterns. Since it is a performance-based reimbursement it is expected to encourage SFAs to implement the updated requirements as quickly as possible.

Q2. When is the 6 cents per lunch reimbursement available?

Section 201 of the HHFKA makes the additional reimbursement available for lunches meeting the updated meal pattern requirements on October 1, 2012. In order to be eligible to receive this new performance-based reimbursement, the State agency must certify that the SFA is in compliance with the requirements of the final meal pattern rule published in the *Federal Register* on January 26, 2012.

Q3. Can an SFA opt out of receiving the 6 cents reimbursement?

The new meal pattern requirements effective July 1, 2012, are not optional. While there is no deadline for submitting certification documentation, the additional 6 cents reimbursement is

meant to encourage SFAs to implement the updated requirements and seek certification as quickly as possible. FNS understands that some SFAs will be able to implement the new requirements more quickly than others, but ultimately all SFAs will be required to demonstrate compliance with the new meal patterns and be certified for the 6 cents reimbursement.

Q4. Does the 6 cents per lunch reimbursement increase take into account annual inflation?

Yes. Beginning July 2013, FNS will prescribe annual adjustments to the performance-based cash assistance rate (6 cents) at the same time adjustments are made to the national average payment rates. These adjustments, which reflect changes in the food away from home series of the Consumer Price Index for all Urban Consumers, are annually announced by Notice in July of each year in the *Federal Register*.

Q5. What assistance will be provided to State agencies for certification activities?

The HHFKA provided \$47 million in each of Fiscal Years 2012 and 2013 to assist State agencies with State-level costs associated with training, technical assistance, certification and oversight activities associated with implementing the updated meal patterns, certifying SFAs, and providing the 6 cents per lunch reimbursement to certified SFAs. Given that the heaviest workload for certification is expected to occur in SY 2012-2013, State agencies may determine that contractor support is the most practical approach in the early implementation phases, which would be an allowable use of these funds or of State administrative expense funds. For example, State agencies may obtain a contractor to conduct certification or validation activities. State agencies should also consider using these funds for technology and other infrastructure investments that will support the meal patterns into the future.

Q6. What materials has FNS provided to State agencies and SFAs to support certification?

In addition to in-person and online training presentations, webinars, Questions and Answers, and other ongoing guidance and technical assistance on the certification process, FNS has provided:

- a certification tool with a menu worksheet and a simplified nutrient assessment worksheet, in Excel format;
- a prototype contract solicitation package to assist State agencies that wish to procure contract support for meal pattern certification activities.

The prototype contract solicitation package can be found at:

<http://www.fns.usda.gov/cnd/Governance/Legislation/6centsmaterials.pdf>.

We recognize that many excellent materials are being developed by our State and local partners and encourage State agencies and SFAs to use the School Meal Pattern Clearinghouse to share information and materials they have developed and to seek materials that others have developed that may be helpful to them in implementation. The clearinghouse is located at

<http://healthymeals.nal.usda.gov/bestpractices>.

Certification Process

Q1. What is the certification process?

State agencies are required to establish a process which allows SFAs to submit documentation demonstrating compliance with the updated meal pattern requirements for State agency review and approval. While each State agency's certification procedures will be customized, generally the process will require SFAs to submit documentation demonstrating compliance with the updated meal patterns using the FNS certification tool or USDA approved certification tool. *State agencies will review the documentation, provide any necessary technical assistance related to the information contained in the documentation, and determine if the documentation demonstrates that the SFA has planned menus that meet the meal pattern requirements.* Note: All certifications are done at the SFA level, not at the school level.

Q2. How frequently must State agencies conduct certification?

State agencies must only certify an SFA once. Once an SFA has been granted certification, ongoing compliance with meal pattern requirements will be monitored through administrative reviews.

Q3. When may a State agency begin approving applications from SFAs to receive the extra 6 cents per lunch reimbursement?

The earliest a State agency may certify SFAs for the 6 cents per lunch reimbursement was July 1, 2012, the beginning of SY 2012-2013. This date reflects the compliance date for the updated meal pattern requirements. State agencies and SFAs are reminded that while certification may occur prior to October 1, 2012, certified SFA's will earn the additional 6 cents for only those meals served starting October 1, 2012, or later.

Q4 Must SFAs be in compliance with both breakfast and lunch requirements to be certified for the 6 cents per lunch reimbursement?

Yes, because the HRFKA provides the 6 cents per lunch reimbursement for compliance with the updated meal patterns, SFAs must be certified by the State agency to be in compliance with the updated lunch and breakfast meal patterns (if the SFA participates in the School Breakfast Program (SBP)) in effect at the time of certification.

Q5. The meal pattern requirements are phased-in over a period of several years. How does this affect the certification process?

SFAs must demonstrate compliance with those meal pattern requirements in effect at the time the SFA applies for certification. While most of the updated lunch requirements are effective in SY 2012-2013, some lunch requirements are phased in later as are most SBP requirements. Thus, an SFA applying in SY 2012-2013 would need to demonstrate compliance with only the SY 2012-2013 requirements in order to be certified.

Q6. Most of the new breakfast requirements do not become effective until SY 2013-2014. How does this affect 6 cents certification?

SFAs must submit certification documentation reflective of the meal pattern requirements in effect at the time they apply for certification. Therefore, if an SFA applies for certification in SY 2012-2013, they need to demonstrate compliance with the breakfast requirements in effect for SY 2012-2013. If an SFA applies for certification in SY 2013-2014, they would need to demonstrate compliance with the breakfast requirements in effect at that time.

Q7. What about SFAs that wish to adopt the new breakfast requirements in SY 2012-2013?

SFAs that have been approved by the State to adopt the breakfast requirements early must demonstrate compliance with the breakfast requirements they have been approved to adopt. Since the FNS-provided certification tool does not currently include the breakfast requirements for SY 2013-2014 or SY 2014-2015, State agencies should consult with the appropriate FNS regional office for technical assistance in certifying these SFAs on a case-by-case basis.

Q8. How many schools within the SFA must be in compliance to be certified to receive the 6 cents per lunch reimbursement?

All schools within the SFA must be in compliance with the meal pattern requirements for the SFA to be certified for the 6 cents per lunch reimbursement. If the SFA participates in the SBP, the schools must also be in compliance with the updated breakfast requirements in effect at the time of certification.

Q9. How long after documentation has been submitted by an SFA does the State agency have to make a certification determination?

Beginning October 1, 2012, State agencies must review certification materials and make certification determinations within 60 days of receipt of the certification request from the SFA. For example, if an SFA submits documentation on November 1, 2012, the State agency must make a certification determination by January 1, 2013.

Recognizing a large number of SFAs may have requested certification prior to October 1, 2012, an exception to the 60 day requirement is provided for any certification documentation request submitted prior to September 30, 2012. For certification requests submitted prior to October 1, 2012, the State agency has 60 days from October 1, 2012, to review certification materials and make certification determinations.

Additionally, State agencies that face extensive workloads making the 60 day limit not achievable may request an extension from FNS. State agencies should contact their Regional Office to make this request and be prepared to explain why they think an extension is needed. State agencies that are granted an extension should keep in mind that SFAs should be retroactively reimbursed the 6 cents back to the beginning of the month in which the compliant meals are served.

Q10. When does the 60-day timeframe begin if an SFA submits an incomplete application for certification?

In general, the 60-day timeframe begins when the State agency first receives a complete package of certification documentation from the SFA. However, if the application is missing information that does not affect the State agency's ability to determine if the menu is compliant, the State agency should begin evaluating the application and contact the SFA to obtain the missing information. In this case, the 60-day timeframe would begin when the application is initially received.

If the application demonstrates that the menus the SFA submitted are not compliant, the State agency should work with the SFA to make the needed adjustments and still attempt to make a certification determination within the 60 day timeframe.

If the application demonstrates a fundamental misunderstanding of the requirements and the SFA is not able to make the adjustments needed to make the menus compliant within the 60 day timeframe, the State should deny the request for certification. At this point, the State would continue to provide the SFA technical assistance to bring their menus into compliance with the meal pattern requirements. The 60-day timeframe would begin again when the SFA submits the completed application.

If a State agency is having a particular problem with making determinations within the 60 days timeframe, they should contact their Regional Office.

Q11. When must the State agency notify the SFA that they have submitted an incomplete application?

States are encouraged to develop a process that allows them to determine, upon receipt, if an application contains the documentation necessary to proceed with the certification. While there is no specific deadline for States to notify SFAs that their certification materials are incomplete, State agencies should notify the SFA as soon as possible to avoid any unnecessary delay in making the certification determination and providing the additional reimbursement to the SFA.

Q12. If an SFA submits an incomplete application but is able make adjustments to show their menus are compliant, when does the 6 cents reimbursement begin?

If SFAs are able to make adjustments and serve menus that are compliant, then they can be reimbursed in the month they begin serving compliant menus. States should work with SFAs that have submitted incomplete or incorrect applications for certification to make the necessary adjustments as quickly as possible to avoid a delay in certification and reimbursement of the additional 6 cents per lunch.

Q13. Once granted certification, how do State agencies reimburse certified SFAs?

Upon certification, the State agency must reimburse the certified SFA with the additional performance-based reimbursement for each lunch served beginning the start of the month in which the certified week of lunches is served, but not earlier than October 1, 2012. For example, if certification documentation is submitted for the week of October 15-19 and the State agency certifies the menu, the State agency must provide the additional performance-based reimbursement for all lunches served in that SFA on or after October 1.

State agencies will follow standard reimbursement procedures for these claims.

Q14. Are SFAs new to the program required to be certified to receive the 6 cents reimbursement?

The existing requirement that all new SFAs must meet the meal patterns in effect at the time the SFA enters the program has not changed. The SFA should submit certification documentation along with their application to participate in the program.

While new SFAs must apply for certification prior to entering the program, they are not required to wait until they are certified by the State (which could take up to 60 days) before starting to serve meals. While they are awaiting certification, as long as the SFA has executed an agreement with the State agency, they may serve meals that meet program requirements and claim reimbursement.

Certification Documentation

Q1. How does an SFA pursue certification?

There are three options for certification. These options were designed to use, to the maximum extent practicable, existing processes and information.

- Option 1 allows SFAs to submit one week of menus, detailed menu worksheets showing food components and quantities for reimbursable meals for these menus, and a nutrient analysis of calories and saturated fats. This option acknowledges that a large number of SFAs already use nutrient analysis software to monitor the nutrient levels in their meals.
- Option 2 allows SFAs to submit one week of menus, detailed menu worksheets showing food components and quantities for reimbursable meals for these menus, and a simplified nutrient assessment of calories and saturated fats. This option acknowledges that not all SFAs use nutrient analysis software. A simplified nutrient assessment is intended to be a proxy for the nutrient analysis.
- Option 3 allows State agencies to certify an SFA during a review. If the State agency offers this option, the SFA would need to have one week of menus, detailed menu worksheets for these menus, and all information needed for the State agency to conduct a nutrient analysis. While the State is responsible for completing the nutrient analysis aspect of the certification, who completes the certification menu worksheets during an onsite certification is left to the discretion of the State agency. States and SFAs should communicate before the onsite certification to determine who is responsible for filling out the worksheets.

State agencies must allow SFAs the option to choose either option 1 or 2 for certification and allow SFAs to choose which FNS-approved menu certification tool (worksheet) they wish to use for certification. However, it is left to State discretion whether to make option 3 available to SFAs. State agencies that select option 3 may use any FNS-approved menu certification tool.

See Q6 of the **General** section for information on the prototype certification tools that were provided by FNS. Additionally, FNS issued Q&As related to the certification tools. These can be found at: <http://www.fns.usda.gov/cnd/Governance/Legislation/certificationofcompliance.htm>

Q2. What is required of State agencies during an on-site certification (Option 3)?

During an on-site certification, State agencies review documentation and observe a meal service in order to make a certification determination. State agencies will review a menu certification worksheet (completed by the SFA or the State agency) for one week of menus and conduct a nutrient analysis to assess calories and saturated fat for each menu type offered by the SFA. To

facilitate the process, State agencies should ask SFAs to have information ready to complete the certification documentation materials.

In addition, as part of the onsite certification, State agencies must visit one school representing each menu type being certified. In each of the visited schools, the State agency will observe a meal service and review production records for the observed meals to ensure they are consistent with the menus on which the certification was based and that observed meals meet the updated meal pattern requirements. Because of this on-site review, these SFAs are not subject to a separate validation review.

[Please note: State agencies conducting on-site certification must complete a nutrient analysis using FNS approved nutrient analysis software and may not use the simplified nutrient assessment. The simplified nutrient assessment is an SFA option in recognition of the fact that not all SFAs have or are able to use nutrient analysis software.]

Q3. Can a State agency notify an SFA that they wish to certify them via Option 3 after the SFA has already submitted certification documentation via either Options 1 or 2?

Yes, the State agency has discretion to choose Option 3 for certification. However, if the SFA has already submitted certification documentation, the 60 day timeframe still applies. The State agency must complete the on-site certification within this timeframe.

Q4. What documentation is required in order to be certified?

As described in Q1 of this section, the following documentation is required:

- ***Menus and menu worksheets*** – One week of each menu offered, by age grade group, and a detailed menu worksheet, using an FNS-approved worksheet or tool, for each menu showing food components and quantities by *reimbursable meal*. For example, if the SFA serves an elementary, middle, and high school menu, the SFA must submit three menus and three menu worksheets. If an SFA has two distinct menus for its high schools, and one each for middle and elementary schools, it must submit four menus and four menu worksheets.
- ***Nutrient analysis or a simplified nutrient assessment*** – A nutrient analysis, using FNS-approved software, or a simplified nutrient assessment, following standards set by FNS, for each menu. The simplified nutrient assessment is considered a proxy for a complete nutrient analysis.
- ***Attestation*** – SFAs must attest in writing that the documentation submitted for certification is representative of the ongoing meal service within the SFA, and that the minimum required food quantities for all meal components are available to students in every serving line.

Because certification is determined on an SFA basis, the above documentation must be submitted for the entire SFA. An application is considered incomplete until all menu types within the SFA have been submitted.

FNS issued a prototype tool with a menu worksheet and simplified nutrient assessment in May 2012. Additional resources, including 4-day and 7-day versions of the tool are also available. All worksheets can be found at:

Q5. What is considered a menu?

For purposes of 6 cents certification, a menu is a descriptive list of all of the reimbursable meals offered each school week by age/grade group. A menu may include multiple offerings and may represent more than one serving line in a particular facility. Therefore, schools serving only one age/grade group are expected, for the purposes of certification, to have only one menu within each school, regardless of how many serving lines are available in the cafeteria. Additionally, an SFA with a centralized meal service may have a single menu for all schools in a particular age/grade group.

For example, for an SFA that has five schools for grades 9-12, each with multiple serving lines or serving configurations, but the same reimbursable meals offered within each school (centralized menu), the SFA would have one menu for that grade group. The SFA would fill out one corresponding menu worksheet for lunch and one for breakfast; resulting in two total worksheets. Alternatively, if an SFA has five schools for grades 9-12 and each school offers different meals than their counterparts, this SFA has five different menus at lunch and breakfast. The SFA would submit five menus for lunch and five for breakfast, and fill out a total of ten worksheets for grades 9-12.

Q6. Can State agencies require SFAs to submit more documentation for certification than is required by FNS? For example, can a State agency require SFAs to submit production records as part of the certification process?

The certification process as presented in the interim rule and FNS guidance is intended to provide the basic information necessary to make a determination while limiting burden on SFAs and State agencies. Therefore, States cannot require SFAs to submit documentation such as production records or product labels as part of the certification application. Additionally, the State may not require the SFA to submit a different menu worksheet for every serving line in every school.

Q7. Are SFAs that serve pre-K meals required to submit documentation for pre-K meals?

The meal pattern requirements for pre-K meals will be updated under a separate rulemaking. Therefore, SFAs that serve pre-K meals are not required to submit documentation for pre-K meals, but they must attest that the pre-K meals they serve are compliant with the current meal patterns in effect for the age/grade groups being served.

Q8. Who is authorized to sign the attestation?

The signatory must be an individual who has the authority to represent the LEA on matters pertaining to the school meal program. The person(s) to whom this authority has been granted by the LEA is authorized to sign the attestation.

Q9. What menus must SFAs submit for certification?

At a minimum, SFAs must submit one week of each menu offered, by age grade group, within the SFA for both lunch and, if offered, breakfast. This means SFAs that serve students in grades K-12 must submit a breakfast and lunch menu for grades K-5, a breakfast and lunch menu for

grades 6-8 and a breakfast and lunch menu for grades 9-12. For the purposes of this rule, a week means a normal school week, not including holidays.

As noted in Q5 of this section, if the SFA serves multiple, *distinct* menus within one age grade group, the SFA must submit all menus served. For example, if the SFA has two high schools that offer lunch menus with different main dishes in their reimbursable meals, both lunch menus (and accompanying menu worksheets) must be submitted. If the SFA has two high schools that offer lunch menus with the same main dishes, but one has a salad bar and the other serves similar vegetables on the line each day, the SFA would only need to submit one of these menus and the accompanying menu worksheet.

Q10. Are there any exceptions to the 6 cents certification process for RCCIs?

RCCIs are certified in the same manner as other SFAs. While the process is the same for all participating, SFAs FNS recognizes that the 6 cents certification process may be challenging for some institutions such as RCCIs. RCCIs are encouraged to seek technical assistance from the State agency if they are experiencing difficulty with the certification process or tools, or with menu planning in general. State agencies that are aware of SFAs that may need additional assistance should provide that assistance as early as possible in the certification process, and contact FNS for assistance, as needed.

Q11. If a State agency develops cycle menus that are in compliance with the new meal pattern requirements, and an SFA decides to adopt those menus, what must the SFA submit for the certification process?

State agencies that develop compliant cycle menus for SFA use may also provide pre-completed documentation materials using an FNS approved certification tool in order to further simplify the certification process for SFAs that choose to adopt the cycle menus. SFAs would then submit a complete certification application, including any modifications they make to the cycle menu, and the signed attestation that the SFA is meeting all of the meal pattern requirements.

SFAs certified using State agency developed cycle menus would be included in the validation review “pool”. If an SFA using a State agency developed cycle menu is selected for validation, as with other SFAs selected for validation, the State agency would review the ongoing meal service within the SFA to validate that it is meeting the updated meal pattern requirements.

Q12. Must the documentation reflect any specific timeframes?

Yes, all documentation must reflect current SFA practices, i.e., one regular week of meal service in the calendar month the certification materials are submitted, or in the month preceding the calendar month of submission.

For example, in December an SFA can submit a request for certification with documentation of December or November meal service. Documentation for October meal service would not be considered current in this case.

Documentation may also reflect planned meal service for the calendar month following the calendar month of submission. For example, in December an SFA can submit a request for certification with documentation of January meal service. Allowing SFAs to submit menus for the

month following the calendar month of submission provides an opportunity for SFAs to work through any issues with their State agency prior to serving the menu.

Q13. SFAs currently using Nutrient Standard Menu Planning may continue with this menu planning option for breakfasts in SY 2012-2013. What must these SFAs submit for certification for breakfast?

Any SFA that uses Nutrient Standard Menu Planning for breakfasts in SY 2012-2013 must submit each distinct breakfast menu along with a nutrient analysis of saturated fat and calories using FNS approved software. No menu worksheet would be required in this case. This applies only to SFAs seeking certification in SY 2012-2013, as that is the last year that Nutrient Standard Menu Planning is allowed for breakfast.

SFAs that use food-based menu planning for breakfast in SY 2012-2013 must submit each distinct breakfast menu as well as the menu worksheet. A nutrient assessment is not required.

Q14. Are Seamless Summer Option (SSO) lunches eligible for the 6 cents reimbursement?

Yes, once the SFA is certified, it may receive the additional 6 cents per lunch reimbursement for SSO lunches. When SFAs submit documentation for certification they are attesting that what they are submitting is representative of ongoing NSLP and SBP meal service, which would include meals served under the seamless summer option.

Q15. Must an SFA submit certification documentation if the State agency is conducting an administrative review of the SFA after July 1, 2012?

As mentioned in Q1 of the **Certification Documentation** section, at State agency discretion, the State agency may certify an SFA on-site during the course of the administrative review. Affected SFAs should work with the State agency to determine if this option is available and to identify any documentation that would need to be available to the State agency in order to complete the certification process.

States that chose to certify an SFA on-site during an administrative review should ask for the same documentation as required in Option 3 in Q1 of the **Certification Documentation** section.

Q16. When will the menu worksheet and simplified nutrient assessment tools be available to State agencies?

FNS released these tools beginning on May 31, 2012. The tools are available on the FNS website. Although these tools are prototypes and are not required to be used by State agencies for certification, any State-developed tools used for the certification process must be pre-approved by FNS to ensure that all required elements are captured and compliance requirements are measured consistently with the FNS prototype.

State agencies wishing to create their own tools should contact their regional offices.

Q17. May SFAs use certification tools created by software companies?

Yes, SFAs may use certification tools created by software companies as long as the tool has been approved by FNS.

Q18. How must certification documentation be submitted to the State agency?

State agencies may ask SFAs to submit certification documentation in various forms including electronically or paper-based formats.

Q19. Can State agencies create deadlines for certification?

SFAs can submit certification documentation at any time and State agencies cannot create deadlines for SFA certification. State agencies should work with SFAs that are struggling to apply for certification and provide technical assistance as needed.

SY 2012-2013 Validation Reviews

Q1. What is the requirement for State agency conducted validation reviews? Does it apply beyond SY 2012-2013?

For SY 2012-2013 only, State agencies must conduct on-site validation reviews of 25 percent of certified SFAs. There is no validation review requirement beyond SY 2012-2013 because the new three-year administrative review cycle begins on July 1, 2013.

Q2. What is the purpose of the SY 2012-2013 validation reviews?

The purpose of the validation review is to affirm that a certified SFA has been and continues to meet the updated meal patterns.

Q3. What is required of a State agency during a validation review?

State agencies must observe a meal service for each type of certified menu (i.e., each distinct menu by age grade group) and review the production records for observed meals to ensure the meal service meets the updated meal pattern requirements and is consistent with the menus/documentation on which certification was based. In addition, State agencies must review supporting documentation (e.g., production records, etc.) for the menus submitted for certification to ensure that the meals actually served were consistent with the submission.

State agencies are not required to conduct a nutrient analysis during a validation review.

FNS has provided a prototype validation checklist that States can use as they conduct validation reviews.

Q4. What are State agencies to validate for breakfast during a validation review?

While SFAs that use Nutrient Standard Menu Planning for breakfast in SY 2012-2013 are not required to submit a menu worksheet for certification (refer to Q13 in the **Certification Documentation** section), for validation reviews State agencies must still observe a meal service for each breakfast menu submitted and review production records for observed meals to ensure the meal service meets the breakfast requirements in SY 2012-2013 and is consistent with the documentation on which certification was based. In addition, State agencies must review supporting documentation for the menus submitted for certification to ensure that the meals actually served were consistent with the submission.

For SFAs that use food-based menu planning for breakfast, State agencies would do all of the above in addition to reviewing menu worksheets to determine they reflect the current meal service in the SFA.

Q5. When must the State agency conduct a validation review?

State agencies have discretion in scheduling validation reviews for the sample of certified SFAs selected for validation, but are strongly encouraged to conduct validation reviews prior to the SFA's submission of first Claim for Reimbursement including the 6 cents, if possible. State agencies may conduct the validation review prior to notifying the SFA of certification, as long as the review is completed within the 60-day timeframe for certification. State agencies should conduct validation reviews during weeks in which school is in session the full week, in order to properly assess compliance with the meal patterns.

Q6. What should a State agency do if they receive several certification requests in April or May 2013? Can the validation reviews be conducted into the next school year?

Validation reviews will not be conducted after June 30, 2013. Because validation reviews must occur while meal service is occurring (i.e., school is in session), an influx of certification applications at or near the end of the school year may make it challenging for State agencies to meet the 25 percent requirement. *For work planning purposes, it is recommended that State agencies contact SFAs that have not applied for certification by the first quarter of calendar year 2013 to get an estimate of which remaining SFAs are intending to apply for certification prior to the end of the school year.*

After SY 2012-2013 (June 30, 2013), review of meal service compliance will take place during regular administrative reviews. If the SFA does not submit the request for certification with enough time for validation in SY 2012-13, the SFA would be included among those SFAs scheduled for a review in the beginning of the administrative review cycle the following (SY 2013-2014) year.

Q7. Are SFAs that are certified through a State agency-conducted on-site review subject to a validation review?

SFAs that are certified by the State agency during an on-site review are exempt from a validation review in SY 2012-2013. Since the on-site review provides an independent validation of the menus and includes a nutrient analysis, there is no further need for a validation review.

Q8. How many SFAs must a State agency select for a validation review?

State agencies must randomly select at least 25 percent of all SFAs certified in SY 2012-2013 for validation reviews, except that all large SFAs must be included in the selected sample. *Please note that the State agency may count any on-site certifications performed under Option 3 toward meeting its 25 percent validation requirement. This is a change from previous guidance in recognition that State agencies are observing meals during on-site certifications.*

Q9. State agencies must include all certified large SFAs in their SY 2012-2013 validation reviews. What is considered a large SFA?

A large SFA, as currently defined in §210.18 for purposes of the administrative review, includes:

- All SFAs with 40,000 or more children

- If there are less than two SFAs with 40,000 or more children, the two largest SFAs with at least 2,000 children.

If no large SFAs within a State apply for certification, the State agency cannot include them in their sample for validation reviews but should continue to work to meet the 25 percent requirement.

Q10. If a State agency conducts a validation review during an administrative review, an additional administrative review, or a follow-up review, does it count toward the 25% review requirement?

Yes, this could count toward the 25% validation review requirement as long as all of the requirements for a validation review are met.

Q11. At what point in the school year should State agencies select the random 25 percent of total certified SFAs that they will visit for a validation review?

State agencies should select certified SFAs for validation reviews throughout the school year because certification is a rolling process. We strongly encourage State agencies to select certified SFAs throughout the school year, perhaps making selections among currently certified SFAs during the periods October-December, January-March, and April-June. Any certified SFA not selected for a validation review during one period is automatically in the “pool” for possible selection during the next time period.

The total number of certified SFAs selected for a validation review in SY 2012-2013 must be at least 25 percent. *Since State agencies will not necessarily know exactly what their 25 percent required sample will be, States should work with their SFAs to make their best estimates of how many SFAs will be certified in their States.*

All validation reviews must be completed when meal service can be observed but not later than June 30, 2013.

Q12. How many individual schools within an SFA must be visited during a validation review?

One school representing each type of certified menu submitted by the SFA should be randomly selected for a validation review by the State agency. Therefore, if an SFA has three menus—one for each age grade group—the State agency would randomly select three schools to visit during the validation review, one from each age grade group. If the SFA serves breakfast, this must be observed as well.

Q13. Must a validation review be announced?

State agencies may notify SFAs in advance of a validation review, though they are not required to do so.

Q14. How long must a State agency be onsite at a school during a validation review? Does the State agency have to be onsite from the beginning until the end of all meal periods?

The amount of time that a State agency needs to remain on-site during a validation review will vary based on the circumstances of the review. States must observe a meal service for each menu

type to determine that the meals offered are compliant. State agencies are not required to observe every meal served, or every meal period at the selected schools. Additionally, while State agencies must review production records for the observed meals and the other meals served during the course of the review week to ensure they are consistent with the daily and weekly meal pattern requirements as well as the menus on which certification was based, there is no requirement that they remain on-site for the entire week. State agencies should also use the on-site validation review as an opportunity to provide any needed technical assistance.

Q15. What action(s) must the State agency take if it is unable to validate the certification?

If the State agency is unable to validate the certification, the State agency should use their best judgment to assess:

- *Whether corrective action can occur immediately (to determine whether the SFA may continue to earn 6 cents); and*
- *The longevity and severity of the problems (to determine if any recovery of funds is appropriate).*

If corrective action occurs immediately, while the State agency is onsite, the SFA may continue to earn the 6 cents. The SFA may also continue to earn the 6 cents if the State agency and SFA identify and agree on corrective action, during the validation review, that will resolve any observed problems, even if those corrective actions cannot be implemented during the review week.

If the validation review finds that significant noncompliance exists that require the SFA to develop and implement a corrective action plan over an extended period of time (i.e., problems that cannot be fixed immediately), a State agency would turn the 6 cents off. It would be turned back on once corrective action had been completed. The State agency may also need to transition the validation review into a focused administrative review (see Q17 of this section).

State agencies are never required to recover previously paid 6 cents reimbursements. Our expectation is that this course of action would be appropriate only in circumstances of clearly egregious or willful noncompliance by an SFA.

Q16. If a State agency turns off the 6 cents as a result of a validation review, must the SFA reapply for certification?

An SFA does not need to reapply for certification if the 6 cents is turned off. Rather, the SFA must demonstrate through appropriate corrective action documentation that it has fixed the problems identified during the validation review. When such documentation is approved by the State agency, the SFA can begin earning the 6 cents again.

Q17. What should a State agency do if it finds significant noncompliance during a validation review?

The State agency should transition the validation review into a “focused” administrative review (refer to Q10 in the Administrative Review section for more information on focused administrative reviews) if the State agency identifies a missing component or a repeated violation of the milk type requirement (these problems would result in a Performance Standard 2 violation). The purpose of transitioning to a focused administrative review is to use the long-

established procedures for more in-depth review and determination of fiscal action, if necessary. Under a focused administrative review, the State agency only reviews that portion of the SFA's operations that the validation review indicates require additional attention.

Q18. Can a State agency recover the regular reimbursement during a validation review?

The purpose of the validation review is to validate certification for 6 cent reimbursement. Recovery of the regular reimbursement would only occur in those reviews where the State agency identifies violations that cause the State agency to transition the validation review into a focused administrative review. In that case, the usual requirements for required technical assistance and fiscal action apply.

Q19. Can a State agency apply the \$600 disregard to fiscal action that occurs during a validation review?

Yes, any 6 cents reimbursement recovered during a validation review would be included in the \$600 disregard. This also applies to any "focused" administrative review activity. State agencies are reminded that the \$600 disregard includes all review activity conducted in a participating entity in a fiscal year.

Q20. If during a validation review the State agency determines that recovery of the 6 cents is necessary, must the State recover the 6 cents from all schools within the SFA or just the school where the violation was observed?

Recovery of the 6 cents is at the discretion of the State agency and may be applied only to the school(s) in which the meal pattern violations are observed, or to all schools in the SFA depending on the nature of the violation and the documentation available to the State agency.

Administrative Reviews

Q1. Are State agencies required to conduct administrative reviews in SY 2012-2013?

To help State agencies focus on assisting SFAs with the implementation of the new meal patterns and to help manage the workload associated with performance-based reimbursement certification, State agency administrative reviews scheduled for SY 2012-2013 may be postponed until SY 2013-2014, the first year of the new three-year administrative review cycle. However, State agencies must continue to conduct Additional Administrative Reviews (AARs) in SY 2012-2013 since these SFAs are high risk. In addition, State agencies must conduct administrative reviews for other SFAs that are considered at-risk for improper payments, as determined by the State agency.

Q2. If a State agency has an AAR planned in SY 2012-2013, can they do a validation review during this time as well?

Yes, a State agency can conduct an AAR and a 6 cent validation review in the same on-site visit.

Q3. How are State agencies to handle monitoring the Seamless Summer Option (SSO) for SFAs that are scheduled for an administrative review in SY 2012-2013?

For SY 2012-2013, any time the State agency is conducting an administrative review at an SFA that operates the SSO, the State agency should select a school within the SFA to review for SSO.

SFAs scheduled for an administrative review in SY 2012-2013 but are postponed, will be reviewed during SY 2013-2014. Reviews of SSO in those SFAs will occur at that time.

Q4. Which SFAs must the State agency review in SY 2013-2014, the first year of the new three-year administrative review cycle?

The first year of the new review cycle (SY 2013-2014) must include any SFA scheduled for review in SY 2012-2013 whose review was postponed. In addition, State agencies are required to conduct an administrative review early in the review cycle for any SFAs that has not applied for certified or whose certification request was denied during the certification process or “turned off” during a validation review for significant meal pattern violations. *It may not be possible for the State agency to review all SFAs that meet these criteria in SY 2013-14; therefore the first priority is any SFA whose review was postponed, then as many of those without certification as possible in the first year of the cycle, then completing those uncertified SFAs early in the second year of the cycle.*

Q5. How should State agencies handle SFAs that fail to apply for certification?

State agencies should work with and provide technical assistance to SFAs that are having trouble applying for certification in SY 2012-2013. SFAs that do not apply for certification will not be eligible to receive the 6 cents and must be reviewed early in the new three-year administrative review cycle. If the SFA is not in compliance with the updated meal patterns for breakfasts and lunches at that time, all standard corrective action, follow-up review and other review requirements apply. In addition, these SFAs remain ineligible for the 6 cents per lunch reimbursement until they are certified by the State agency.

Q6. How should State agencies handle SFAs who apply for certification but repeatedly fail to meet the new meal pattern requirements?

It is anticipated that most issues can be resolved through technical assistance and training provided by the State agency, though it is understood that some SFAs will require more direct assistance to successfully make the transition than others. The State agency should assess the reasons for failure to meet the requirements on a case by case basis and determine the best course of action to help an SFA achieve compliance.

Q7. If during an administrative review a certified SFA is found to be out of compliance with either lunch or breakfast requirements, will the 6 cents per lunch be “turned off”?

For lunch, like a validation review, if the SFA is able to correct the problem immediately or agrees to take the appropriate corrective action, the 6 cents reimbursement would not need to be turned off. In situations where the problem is severe or intentional, the 6 cents per lunch reimbursement will be turned off and the State agency would pursue corrective action, follow up review activity and fiscal action as required under 7 CFR 210.18.

If an SFA is found out of compliance with only the breakfast requirements during an administrative review, the State agency would pursue corrective action, follow-up review activity, and fiscal action as required under 7 CFR 210.18; however, in this case the SFA remains eligible for the 6 cents per lunch reimbursement.

The usual administrative review requirements and procedures apply for determining any fiscal action associated with the regular reimbursement during an administrative review.

Q8. When is the 6 cents per lunch reimbursement “turned back on”?

The State agency may re-start the 6 cents per lunch reimbursement beginning with the first full month the SFA demonstrates to the satisfaction of the State agency that it has corrected the violation identified during the administrative review.

Q9. Will the “turn on” of 6 cents after non-compliance has been corrected require a State agency on-site review?

No, an onsite review is not required, as long as the State agency has sufficient documentation that the SFA is compliant with the new meal pattern requirements. As always, State agencies have discretion to do onsite reviews if they wish.

Q10. If a SY 2012-13 validation review is transitioned into a focused administrative review, what is required of the State agency?

Depending on whether the State is reviewing a potential PS1 or PS2 violation, the State agency would follow all normal procedures and complete the forms for the appropriate administrative review.

State agencies should refer to memo SP 12-2013 School Year 2012-2013 Administrative Review Procedures and New Three Year Administrative Review Cycle Beginning in School Year 2013-14 for more information on how to conduct a PS1 and PS2 focused administrative review in SY 2012-13.

Q11. After the SFA has been given technical assistance, what happens if during subsequent reviews a State agency observes repeated violations of the meal pattern requirements?

If after giving technical assistance to an SFA during a prior review a State agency observes repeated violations of the milk type or vegetable subgroup requirements during a subsequent review, fiscal action associated with the entire reimbursement must occur.

At State discretion, repeated violations of the whole grain rich, food quantities and dietary specification requirements may result in fiscal action associated with the entire reimbursement.

State agencies should use their best judgment when making decisions about fiscal action.

Reporting

Q1. What are the reporting requirements associated with the 6 cents per lunch reimbursement?

State agencies must include the meal counts earning performance-based reimbursement on the FNS-10 and the funds on the FNS-777 quarterly report.

Previously we stated that State agencies must also submit an additional quarterly report detailing the disbursement of 6 cents per lunch reimbursement, including:

- Total number of SFAs in the State;
- Names and locations of certified SFAs; and
- For each SFA, the total number of lunches earning the 6 cents per lunch reimbursement for each month.

In an effort to reduce burden, we are now only asking that State agencies submit a quarterly report including:

- *Total number of SFAs in the State*
- *Names of certified SFAs*

State agencies will have the opportunity to upload the SFA Certification data in FPRS for FY12 Q4 within two weeks after the required reporting date of January. Therefore, we are extending the submission date to March 1, 2013.

FNS has updated the FNS-10 and is creating a prototype quarterly report for State agencies. State agencies should keep in mind that because funds are not available until October 1, 2012, the first reporting on the FNS-10 will occur in November 2012. The first required quarterly report would not be due until January 2013.

Q2. Are there any specific reporting requirements for certified SFAs?

SFAs certified to receive the 6 cents per lunch reimbursement are required to annually attest to compliance with the meal pattern requirements, including new requirements as they are phased in each year after the initial certification through SY 2014-15. *This attestation should simply be a statement saying the SFA continues to follow the meal pattern (and any new phased-in requirements). SFAs are not required to submit certification documentation again.*

The attestation must be provided to the State agency as an addendum to the written agreement.

Q3. How will the States receive the performance-based reimbursement? Is it a separate allocation for the regular reimbursement? How is the performance-based reimbursement reported on the FNS-777?

Funding for the performance-based reimbursement is included in the total reimbursement funding provided to State agencies and should be reported on the FNS-777 in the NSLP column with all other NSLP funding.

Q4. Given the 60 day requirement for State agencies to certify SFAs for the performance-based reimbursement, are State agencies held to the 90 day FNS-10 reporting requirement? When reporting the number of meals certified for the performance-based reimbursement, State agencies are permitted to make revisions to their 90-day FNS-10 whenever the revision is necessary. This flexibility is offered in recognition that certification and validation activities will occur over timeframes that exceed the 90 day standard. However, it is suggested that State agencies take into consideration the additional administrative burden frequent resubmissions may cause and try to finalize data in as few submissions as is practical.

Please note that the reporting flexibility described above only applies to reporting the number of meals certified for the performance-based reimbursement. Unless an audit or review changes the

total number of meals served, FNS's permission for the State to adjust its FNS-10 past the 90-day window does not apply to any revision of the total number of meals served.

Appeals

Q1. Can an SFA appeal a State agency denial of certification?

An SFA cannot appeal a State agency denial of certification since the SFA has not been deemed eligible to receive the additional reimbursement. While the SFA does not have appeal rights in this situation, the State agency should provide technical assistance to assist the SFA in getting certified.

Q2. Can an SFA appeal a State agency turn off or recovery of the 6 cents reimbursement as a result of a validation or an administrative review?

Yes, an SFA can appeal the State agency turn off or recovery of the 6 cents reimbursement. Because the State agency has made payments to the SFA, the SFA can appeal the decision. Standard appeal procedures must be followed.

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