



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

DATE: June 11, 2012

MEMO CODE: SP 31-2012 – Revised

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. New questions are in *red 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.

Original Signed

Cynthia Long
Director
Child Nutrition Division

Attachment

Background

The Healthy, Hunger-Free Kids Act of 2010 (HHFKA) requires the additional 6 cents per lunch reimbursement be provided to school food authorities (SFAs) certified by a State agency to be in compliance with the new meal pattern requirements. The HHFKA explicitly states that SFAs found out of compliance will not receive the additional reimbursement.

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) 2012-13
- 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 provided to SFAs certified to be in compliance with the new meal patterns is intended to assist SFAs in meeting 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 will the 6 cents per lunch reimbursement be available?

Section 201 of the HHFKA makes the additional reimbursement available for lunches meeting the updated meal pattern requirements on October 1, 2012, and no earlier. 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?

No, the new meal pattern requirements effective July 1, 2012, are not optional. The 6 cents reimbursement is meant to encourage SFAs to implement the updated requirements as quickly as possible. While there is no deadline for submitting certification documentation, all SFAs are required to meet 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. 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*. The first adjustment to the 6 cents will occur in July 2013.

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 this coming Summer and Fall, 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.

Q6. What materials will FNS provide to State agencies and SFAs to support certification?

In addition to Powerpoint presentations, Questions and Answers, and other ongoing guidance and technical assistance on the certification process, FNS has provided:

- 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 are also exploring the possibility of providing cycle menus that meet the new requirements, and encourage State agencies and SFAs to use the School Meal Pattern Clearinghouse for sharing information. The clearinghouse is located at <http://healthymeals.nal.usda.gov/bestpractices>.

Certification Process

Q7. What is the certification process?

On October 1, 2012, an additional 6 cents per lunch reimbursement becomes available to school food authorities certified by the State agency to be in compliance with the updated meal pattern requirements. State agencies are required to establish certification procedures which allow 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 procedures will require SFAs to submit documentation demonstrating compliance with the updated meal patterns consistent with the final meal pattern regulation, the interim rule on certification of compliance with the 6 cents requirements, and subsequent guidance provided by FNS, including these questions and answers.

Q8. 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. *The only exception to this one-time certification is if the State agency is unable to*

confirm SFA compliance during an on-site validation review. In that case, the SFA must re-apply for certification.

Q9. 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 is July 1, 2012, the beginning of SY 2012-13. 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.

Q10. Must SFAs be in compliance with both breakfast and lunch requirements to be certified for the 6 cents per lunch reimbursement?

Yes, because the HHFKA 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.

Q11. 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 2012-13, some lunch requirements are phased in later as are most SBP requirements. Thus, an SFA applying in SY 2012-13 would need to demonstrate compliance with all of the SY 2012-13 requirements in order to be certified. An SFA applying for certification in SY 2013-14 would need to demonstrate compliance with all of the SY 2012-13 requirements and all requirements phased in for SY 2013-14.

Q12. Most of the new breakfast requirements do not become effective until SY 2013-14. 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 2012-13, they need to demonstrate compliance with the breakfast requirements in effect for SY 2012-13. If an SFA applies for certification in SY 2013-14, they would need to demonstrate compliance with the breakfast requirements in effect at that time.

Q13. What about SFAs that wish to adopt the new breakfast requirements in SY 2012-13?

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 2013-14 or SY 2014-15, State agencies should consult with the regional office for technical assistance in certifying these SFAs on a case-by-case basis.

Q14. 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.

Q15. 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 request 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.

Q16. When does the 60-day timeframe begin if an SFA submits an incomplete application for certification?

The 60-day timeframe begins when the SFA first submits a complete package of certification documentation. If an application received by the State is incomplete, the State agency must notify the SFA of the additional documentation they must submit and that their application will not be considered until complete documentation is provided. State agencies should assist SFAs that are having difficulty in providing necessary documentation.

Q17. When must the State agency notify the SFA that they have submitted an incomplete application?

While there is no deadline for States to notify SFAs that their certification materials are incomplete, it would be to the State agency's advantage to notify the SFA as soon as possible so they can complete the certification process quickly and since the SFA is anticipating a decision within 60 days.

Q18. 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 lunches are served but not earlier than October 1, 2012. For example, if certification documentation is submitted for October 15-19 and the SFA is certified by the State agency in December, 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.

Q19. Are SFAs new to the program required to be certified to receive the 6 cents reimbursement?

As is currently required, all new SFAs must meet the meal patterns in effect at the time the SFA enters the program. The State agency should require new SFAs to submit certification documentation prior to their participation.

Certification Documentation

Q20. 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.

State agencies must allow SFAs the option to choose either option 1 or 2 for certification. However, it is left to State discretion whether to make option 3 available to SFAs.

See Q. 6 for information on prototype certification tools that will be provided by FNS.

Q21. What is required of State agencies during an on-site certification (Option 3)?

State agencies must visit one school representing each menu type. For each school, the State agency must complete a menu worksheet for one week of menus and a nutrient analysis to assess calories and saturated fat. SFAs should have information ready for the State agency to complete the certification documentation materials. [Please note: State agencies are not permitted to use the simplified nutrient assessment when using Option 3 for certification. The simplified nutrient assessment is intended as a proxy for the full nutrient analysis, and is being allowed for SFAs in recognition of the fact that not all SFAs have nutrient analysis software.]

State agencies must also observe a meal service for each type of menu and review the 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.

Q22. 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 State agency has 60 days from the time of submission by the SFA to complete the on-site certification.

Q23. What documentation is required in order to be certified?

As described in Q20, the following documentation is required:

- ***Menus and menu worksheets*** – One week of each menu offered, by age grade group, and a detailed menu worksheet 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.

FNS will be providing a prototype menu worksheet and nutrient assessment in May.

Q24. Are SFAs that serve pre-K meals required to submit documentation for pre-K meals?

No, SFAs that serve pre-K meals are not required to submit documentation for pre-K meals, but they must attest in the required attestation that the pre-K meals they serve are compliant with the current meal patterns for the age/grade groups being served. Pre-K meals currently must follow the CACFP meal patterns, which are in the process of being updated.

Q25. 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 meals program. The person(s) to whom this authority has been granted by the LEA is authorized to sign the attestation.

Q26. 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 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.

As noted above, 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 entrees 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 entrees 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. In such situations, the SFA must ensure that any menu variations not submitted for certification are consistent with the meal pattern and nutrient requirements.

For the purposes of this rule, a week means a normal school week, not including holidays.

Q27. Are there any exceptions to the updated meal pattern requirements or the 6 cents certification process for RCCIs?

While there are no exemptions or waivers for RCCIs, FNS recognizes that the new meal pattern and 6 cents certification process may be challenging for some institutions. State agencies should provide technical assistance to RCCI to help them meet the new pattern and receive certification to receive the 6 cents reimbursement.

Q28. 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?

While SFAs would be required to submit the same certification documentation required of all SFAs, including the signed attestation that the SFA is meeting all of the meal pattern requirements, in this scenario the State agency could complete the documentation materials for the SFA (using the compliant cycle menu) and ask the SFA to identify any modifications based on what they offer.

State agencies are still be required to conduct validation reviews for SFAs that use State agency developed cycle menus to ensure that ongoing meal service within the SFA is meeting the updated meal pattern requirements.

Q29. Must the documentation reflect any specific timeframes?

Yes, all documentation must reflect current SFA practices, i.e., 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.

As indicated in Q9, SFAs may submit planned menus prior to October 1, 2012; however menus submitted prior to October 1 must reflect meals planned for October or November 2012.

SFAs should be reminded that the materials provided are a snapshot of meal service activity and are considered representative of the on-going meal service.

Q30. SFAs currently using Nutrient Standard Menu Planning may continue with this menu planning option for breakfasts in SY 2012-13. What must these SFAs submit for certification for breakfast?

Any SFA that uses Nutrient Standard Menu Planning for breakfasts in SY 2012-13 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 2012-13, 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 2012-13 must submit each distinct breakfast menu as well as the menu worksheet. A nutrient assessment is not required.

Q31. 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 Q20, at State agency discretion, the State agency may certify an SFA 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 during an administrative review should ask for the same documentation as required in Option 3 in Q20.

Q32. When will the menu worksheet and simplified nutrient assessment tools be available to State agencies?

FNS expects to provide these tools to State agencies in May 2012. The tools will also be 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.

Q33. 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.

Q34. 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.

Q35. Can State agencies create deadlines for certification?

No, 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 2012-13 Validation Reviews

Q36. What is the requirement for State agency conducted validation reviews? Does it apply beyond SY 2012-13?

For SY 2012-13, State agencies must conduct on-site validation reviews of 25 percent of certified SFAs. There is no validation review requirement beyond SY 2012-13 because the new three-year administrative review cycle begins on July 1, 2013.

Q37. What is the purpose of the SY 2012-13 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 from the beginning of the certification and to ensure that the meal service at the time of the validation review is consistent with the certification documentation submitted by the SFA.

Q38. 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 grouping) 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 documentation submitted for certification to ensure that ongoing meal service operations are consistent with certification documentation.

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

Q39. What are State agencies to validate for breakfast during a validation review?

While SFAs that use Nutrient Standard Menu Planning for breakfast in SY 2012-13 are not required to submit a menu worksheet for certification (refer to Q30), for validation reviews State agencies must still observe a meal service for each district breakfast menu submitted and review production records for observed meals to ensure the meal service meets the breakfast requirements in SY 2012-13 and is consistent with the documentation on which certification was based. In addition, State agencies must review documentation submitted for certification (in this case, menus and the nutrient analysis) to ensure that ongoing meal service operations are consistent with certification documentation.

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

Q40. What action(s) must the State agency take if it is unable to validate the certification documentation?

If the State agency is unable to validate the certification documentation, the State agency must assess:

- Whether corrective action can occur immediately; and
- The longevity and severity of the problems.

If corrective action occurs immediately, the SFA may continue to earn the 6 cents. However, the State agency must recover any improperly paid 6 cents funds. The period of recovery depends on the longevity and severity of the problems discovered.

SFAs whose 6 cents is turned off as a result of the validation review must re-apply for certification and if they are not re-certified, will be subject to an administrative review early in the SY 2013-2014 administrative review cycle.

All the same certification process requirements apply when an SFA re-applies for certification.

Q41. When must the State agency conduct a validation review?

State agencies have discretion in scheduling validation reviews for the sample of certified SFAs. However, since an erroneous certification could lead to the recovery of improperly paid funds, State agencies 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 could conduct the validation review prior to notifying the SFA of certification, as long as it is completed within the 60-day timeframe for certification. This approach assures proper stewardship of Federal funds.

Q42. Are SFAs that are certified through a State agency-conducted on-site review subject to a validation review?

No. SFAs that are certified by the State agency during an on-site review are exempt from a validation review in SY 2012-13. Since the State agency-conducted review provides an independent validation of the menus and includes a nutrient analysis, there is no further need for a validation review.

Q43. 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 2012-13 for validation reviews, except that all large SFAs must be included in the selected sample. Note, since State agency conducted on-site reviews are not subject to validation reviews, they may not be included as part of the validation review sample.

Q44. State agencies must include all certified large SFAs in their SY 2012-13 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 2 SFAs with 40,000 or more children, the 2 largest SFAs with at least 2,000 children.

Q45. 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 during the periods October-December, January-March, and April-June. The total number of certified SFAs selected for a validation review in SY 2012-13 must be at least 25 percent. All validation reviews must be completed by June 30, 2013.

Any SFA not selected for a validation review during one period is automatically in the "pool" for possible selection during the next time period. Validation reviews must occur during periods

when meal service is in operation so State agencies can confirm the documentation submitted reflects actual program operation.

Q46. 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.

Q47. Must validation review be announced?

State agencies are not required to announce when they plan to conduct a validation review, though they may choose to do so.

Administrative Reviews

Q48. Are State agencies required to conduct administrative reviews in SY 2012-13?

Generally, no. State agency administrative reviews scheduled for SY 2012-13 may be postponed until SY 2013-14, the first year of the new three-year administrative review cycle. Postponing administrative reviews is expected to allow State agencies to focus on the implementation of the updated meal patterns and certification activities. However, State agencies must continue to conduct Additional Administrative Reviews (AARs) in SY 2012-13 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.

Q49. If a State agency has an AAR planned in SY 2012-13, can they do a validation review during this time as well?

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

Q50. How are State agencies to handle monitoring the Seamless Summer Option (SSO) for SFAs that are scheduled for an administrative review in SY 2012-13?

For SY 2012-2013, any time the State agency is on-site at an SFA that operates the SSO, the State agency should select a school within the SFA to review for SSO. Other SFAs scheduled for an administrative review in SY 2012-13 will be reviewed during SY 2013-14. Reviews of SSO schools will occur at that time.

Q51. Which SFAs must the State agency review in SY 2013-14, the first year of the new three-year administrative review cycle?

The first year of the new review cycle (SY 2013-14) must include any SFA scheduled for review in SY 2012-13 whose review was postponed. In addition, State agencies are required to conduct an administrative review of non-compliant SFAs early in the review cycle, i.e., any SFA whose certification request was denied during the certification process or upon a validation review for significant meal pattern violations or any SFA that has not applied for certification.

Q52. 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 2012-13. 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 process. 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 fiscal action requirements apply. In addition, these SFAs remain ineligible for the 6 cents per lunch reimbursement.

Q53. How should State agencies handle SFAs who apply for certification but repeatedly fail to meet the new meal pattern requirements?

The State agency should assess the reasons for non-compliance on a case by case basis. State agencies have a number of tools to deal with non-compliance ranging from technical assistance, corrective action, follow up reviews, and fiscal action resulting from administrative review activity, to withholding reimbursement and ultimately termination.

Q54. 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”?

If the SFA does not meet the lunch requirements, the 6 cents per lunch will be terminated 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.

Q55. When is the 6 cents per lunch reimbursement for lunch turned off?

If the State agency finds during an administrative review that the certified SFA has violated any requirement of Performance Standard 2 for lunch, the State agency must assess:

- Whether corrective action can occur immediately; and
- The longevity and severity of the problems.

If corrective action occurs immediately, the SFA may continue to earn the 6 cents. However, the State agency must recover any improperly paid funds. The period of recovery depends on the longevity and severity of the problems discovered.

Q56. If the State agency determines during an administrative review 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?

In this situation the State agency must “turn off” the 6 cents for the entire SFA. 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.

Q57. If during an administrative review the State agency finds a problem that is able to be corrected immediately, must the 6 cents be turned off?

No, if the SFA is able to correct the identified problem by the end of the week in which the review is conducted, the State agency need not turn off the 6 cents reimbursement. For example, if the school is missing a vegetable subgroup during the review week and is able to change its food order to include the missing vegetable subgroup so the component is included on menus for that week or the next week, then the SFA would not lose the 6 cents reimbursement in the following month.

Q58. 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.

Q59. 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.

Reporting

Q60. 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.

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.

FNS is currently updating the FNS-10 and 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.

Q61. Are there any other reporting requirements?

SFAs certified to receive the 6 cents per lunch reimbursement are required to annually attest to compliance with the meal pattern requirements, as new requirements are phased in each year after their certification. Subsequent to the initial attestation at the time of certification, an annual attestation is required for subsequent years ending after SY 2014-15, to acknowledge compliance with new phased in meal pattern requirements. The attestation must be provided to the State agency as an addendum to the written agreement.

Appeals

Q62. Can an SFA appeal a State agency denial of certification?

No, 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 the SFA to assist them getting certified.

Q63. Can an SFA appeal a State agency turn off of the 6 cents reimbursement as a result of an administrative review?

Yes, an SFA can appeal the State agency turn off of the 6 cents reimbursement. In this scenario the State agency has made payments to the SFA and therefore the SFA can appeal the decision.