



United States
Department of
Agriculture

Food and
Nutrition
Service

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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 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 Questions and Answers provide additional information on these requirements.

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

A handwritten signature in blue ink that reads "Cindy Long".

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

Yes, the Food and Nutrition Service (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.

Q4. 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.

Q5. 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 will provide:

- 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.

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

Q6. 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.

Q7. 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.

Q8. 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 School Year (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.

Q9. 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.

Q10. 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 all of the SY 2012-2013 requirements in order to be certified. An SFA applying for certification in SY 2013-2014 would need to demonstrate compliance with all of the SY 2012-2013 requirements and all requirements phased in for SY 2013-2014.

Q11. 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.

Q12. 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.

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 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.

Certification Documentation

Q14. 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. 5 for information on prototype certification tools that will be provided by FNS.

Q15. What documentation is required in order to be certified?

As described in Q14, 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.

Q16. 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.

Q17. 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 Q8, 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.

Q18. 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 2012-13 must submit each distinct breakfast menu along with a nutrient analysis 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.

Q19. 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 Q14, 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 Q14.

Q20. 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.

Q21. 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.

SY 2012-2013 Validation Reviews

Q22. What is the requirement for State agency conducted validation reviews? Does it apply beyond SY 2012-2013?

For SY 2012-2013, 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.

Q23. 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 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.

Q24. 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.

Q25. 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.

Q26. 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.

Q27. 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 2012-2013. 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.

Q28. 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. 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.

Q29. 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.

Q30. 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 tota

number of certified SFAs selected for a validation review in SY 2012-2013 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.

Q31. 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.

Administrative Reviews

Q32. Are State agencies required to conduct administrative reviews in SY 2012-2013?

Generally no, 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. 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 2012-2013 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.

Q33. 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 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.

Q34. How should State agencies handle SFAs that fail to apply for certification?

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.

Q35. 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.

Q36. 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.

Q37. 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.

Q38. 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.

Q39. 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.

Q40. 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

Q41. 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.

Q42. 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 2014-2015, 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

Q43. 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.

Q44. 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. Standard appeal procedures must be followed.