

U. S. Department of Agriculture (USDA)
Questions and Answers on Certification of Compliance with Meal Requirements for the National School Lunch Program under the Healthy, Hunger-Free Kids Act of 2010

March 11, 2014

Numbers in parentheses () indicate new or significantly revised Q and A

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 made permanent in the 6 cents final rule flexibilities regarding the weekly grains and meat/alternates maximums. For the purposes of certification for the additional 6 cents reimbursement and during administrative reviews, state agencies are to consider SFAs compliant with these component requirements even if they have exceeded the weekly maximums. New questions and answers related to these flexibilities and 6 cents certification are included below.

State agencies must continue to perform certifications for SFAs not yet certified. There are two ways state agencies may certify SFAs:

- Accepting and reviewing certification documentation submissions by the SFA; or
- Conducting an on-site certification during an administrative review.

Noncertified SFAs do not need to wait for an administrative review to be certified and the administrative review process must not be the sole avenue for SFAs to become certified. SFAs must be able to submit certification documentation to their state agency at any time. States should follow the same procedures used in SY13-14 to certify schools who submit certification documentation.

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 them 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 did the 6 cents per lunch reimbursement first become available?

Section 201 of the HHFKA made the additional reimbursement available for lunches meeting the updated meal pattern requirements beginning 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.

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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. 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 inflationary adjustment was made in July 2013 with the performance-based cash assistance rate remaining at 6 cents.

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. On May 3, 2013, FNS issued SP 39-2013 “*Extension of Administrative Funds for State Costs of Implementation of New Meal Patterns for the National School Lunch and School Breakfast Programs*” announcing that these funds would be available to states to obligate for an additional year.

State agencies should refer to SP 39-2013 and SP 13-2013 for more information on timelines and suggested uses of these funds. These can be found at:

<http://www.fns.usda.gov/cnd/governance/Policy-Memos/2013/SP39-2013os.pdf> and
<http://www.fns.usda.gov/cnd/governance/Policy-Memos/2013/SP13-2013v2os.pdf>.

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 (annually updated to reflect phased-in requirements) with a menu worksheet and a simplified nutrient assessment worksheet, in Excel format
- a list of approved alternatives to the FNS-developed certification tool;
- a prototype contract solicitation package to assist state agencies that wish to procure contract support for meal pattern certification activities.

The USDA certification tool can be found at:

<http://www.fns.usda.gov/cnd/Governance/Legislation/certificationofcompliance.htm>.

A list of approved alternatives to the FNS-developed certification tool can be found at:

<http://healthymeals.nal.usda.gov/menu-planning/nutrition-standards-school-meals/menu-planning-tools-approved-certification-six-cent>.

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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 Best Practices Sharing Center 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 Best Practices Sharing Center 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.

While certification is a one-time per SFA process, state agencies are expected to continue certifying SFAs until all SFAs in their state have been certified.

Q3. 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.

Q4. 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 (both lunch and breakfast) in effect at the time the SFA applies for certification. While most of the updated lunch requirements were effective in SY 2012-13, some lunch requirements are phased in later, as are most SBP requirements.

A timeline for implementation of the lunch and breakfast requirements can be found here:
http://www.fns.usda.gov/cnd/governance/legislation/implementation_timeline.pdf

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Q5. 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.

Q6. 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 submitted documentation on November 1, 2013, the state agency must make a certification determination by January 1, 2014.

State agencies that face extensive workloads or extenuating circumstances, such as SFA staff being out of the office during the summer months 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.

Q7. 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.

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Q8. 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.

Q9. 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.

Q10. 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.

Q11. 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. Because of this, state agencies should act quickly to provide technical assistance if there are issues with the certification documentation.

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.

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To select review sites, state agencies conducting certification during an on-site visit must:

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

If the steps above result in the selection of sites not covering each menu type in the SFA, the state agency must repeat the site selection process outlined above until all menu types are represented in the sites selected for review. When state agencies are required to repeat the site selection process, the minimum number of schools to review may be maintained by replacing a site with one that meets the site selection criteria while ensuring the menu types are represented correctly (i.e., the required selection criteria in 7 CFR §210.18(e)(2) and all menu types must be represented in the sites selected for 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.) Can SFAs apply for certification in SY 2014-15?

New SFAs must apply for certification when entering the Program. Other SFAs that have not yet applied for certification may continue to submit certification documentation. Generally, the certification process will work the same as it did in previous years. Those SFAs wishing to submit certification documentation should use either Option 1 or 2 for certification. FNS will update the FNS-developed 6 cents certification tools for lunch and breakfast to reflect any requirements being phased-in during the next school year, including an assessment of sodium.

State agencies must conduct an on-site certification of those SFAs that have not yet been certified via Options 1 or 2 when they are conducting administrative reviews. State agencies must follow the procedures outlined in the Administrative Review Guidance Manual when conducting administrative reviews of SFAs that have not been certified. This includes using an FNS-approved Menu Planning Tool for Certification for Six Cent Reimbursement to assess meal components. State agencies must conduct a nutrient analysis on each menu type to assess compliance with dietary specifications. See SP 51-2013 for additional information.

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Q5. 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.

Q6. 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.

Q7. 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 final 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

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however, if certification takes place during an administrative review, SFAs must submit the documentation required to simultaneously complete certification and an administrative review, including production records, recipes, and other menu documentation.

Q8. 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.

Q9. 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.

Q10. 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 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 offered. 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 offers similar vegetables on the line each day, the SFA would only need to submit one of these menus and the accompanying menu worksheet.

Q11. 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.

Q12. 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.

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Q13. 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, particularly new 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.

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?

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 when the administrative review will be conducted and to identify any documentation that would need to be completed in order to complete the certification process and who is responsible for completing the documentation.

States that 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. See SP 51-2013 for additional information.

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.

The USDA certification tool can be found at:

<http://www.fns.usda.gov/cnd/Governance/Legislation/certificationofcompliance.htm>.

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

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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.

A list of approved alternatives to the FNS-developed certification tool can be found at:
<http://healthymeals.nal.usda.gov/menu-planning/nutrition-standards-school-meals/menu-planning-tools-approved-certification-six-cent>

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.

Flexibilities for Grains and Meat Maximums

(Q1.) How do these flexibilities affect SFAs that have not yet applied for 6 cents certification?

SFAs that have not applied for certification may submit certification documentation with the grains and meat/meat alternates that exceed the weekly maximum requirements for these components and be certified to receive the 6 cents reimbursement. Additionally, SFAs should keep in mind that if they operate and implement the meal pattern requirements consistent with FNS guidance, they will not be considered out of compliance and state agencies will provide technical assistance in areas where the SFA may be struggling.

(Q2.) How do these flexibilities affect SFAs that were previously denied certification solely because they exceeded the weekly maximum requirements for grain and/or meat/meat alternates?

The flexibilities for grains and meat/meat alternates were first introduced in SY 2012-13. Therefore, SFAs that were struggling to meet the maximum requirements for these components should be certified by now.

SFAs that are still in this situation are encouraged to contact their state agencies as soon as possible to find out the procedure the state has put in place for re-evaluating these certifications. State agencies should work with these SFAs to get them certified as quickly as possible. State agencies may re-evaluate the menus and certification documentation that these SFAs originally submitted and retroactively make 6 cents reimbursements accordingly.

(Q3.) Do SFAs that have already been certified to receive the 6 cents reimbursement need to re-apply for certification?

SFAs that have already been certified to receive the 6 cents reimbursement do not need to re-apply for certification.

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Additionally, SFAs that have already submitted certification applications (but have not yet been certified) do not need to re-submit certification materials. State agencies should apply these flexibilities when making certification determinations for these applications.

(Q4.) Will the flexibilities have any effect on the USDA Certification Menu Worksheet or Simplified Nutrient Assessment?

The menu worksheet and the simplified nutrient assessment will not be changed. The instructions for the worksheet, however, have been updated to reflect these flexibilities for certification. The menu worksheet and simplified nutrient assessment reflect the requirements of the meal pattern, which remain in place. SFAs that elect to use the grains and meat/meat alternate flexibility will notice that the menu worksheet will show that weekly maximum limits are exceeded. The worksheet may still be submitted for certification and the state will not consider the weekly maximums when making a certification determination. As described in the worksheet instructions, it is highly recommended that SFAs make a note that they are using this flexibility in the “SFA Notes Section” when submitting for certification. All other requirements in the worksheet and the nutrient assessment *must* be met in order for an SFA to be certified.

(Q5.) How does this affect commercially-available nutrient analysis software approved as alternatives to the USDA worksheet for 6 cents certification?

Like the USDA worksheet, the software will not be changed as they are designed to reflect the required meal pattern. Therefore, SFAs that use the grains and meat/meat alternate flexibility will note that the approved software will show that weekly maximum limits are exceeded. Like the USDA worksheet, the software may still be submitted for certification and the state will not consider the weekly maximums when making a certification determination. All other requirements in the approved software *must* be met in order for an SFA to be certified. Additionally, while software companies are encouraged to edit their software instructions to reflect the SY 2012-13 flexibility (consistent with the USDA’s recent instruction edits), there is no requirement to do so.

(Q6.) If an SFA submitted paperwork for certification and the weekly maximums were compliant, can they go back and add additional grains or meat/meat alternates to the menu?

Menu planners that have already submitted compliant menus have the option to adjust menus to add more grains or meat/meat alternates without resubmitting documentation. However, it is important for menu planners to remember that adding additional foods to menus submitted for certification will increase calories and possibly saturated fat. Therefore, menu planners should be careful to ensure that any adjustments to menus continue to meet the weekly dietary specifications.

(Q7.) Does this flexibility also apply to the breakfast meal pattern?

Yes, the flexibility applies to the weekly grains maximums in the breakfast meal pattern as well.

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Administrative Reviews

(Q1.) Are state agencies required to conduct validation reviews?

No, state agencies were only required to conduct validation reviews in SY 2012-13. All ongoing reviews of compliance of certified SFAs will be conducted during the administrative review process.

Q2. Which SFAs are state agencies required to review in SY 2013-14?

In SY 2013-14, State agencies are required to 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 early in the review cycle any SFAs that had not applied for certification or whose certification request was denied during the certification process or “turned off” during a validation review for significant meal pattern violations.

Q3. How should State agencies prioritize SFAs that they are not able to review in SY 2013-14?

It may not be possible for the state agency to review all SFAs that meet the above criteria in SY 2013-14; therefore state agencies should prioritize SFAs in the following order:

1. SFAs whose review was postponed in SY 2012-13
2. SFAs without certification

State agencies are reminded that they are not required to review more than one-third of SFAs in any one school year.

(Q4.) How should state agencies handle SFAs that fail to apply for certification?

State agencies should work with and provide technical assistance to SFAs continuing to have trouble applying for certification. Through the administrative review process, state agencies and SFAs should develop a corrective action plan with specific steps and reasonable timelines for coming into compliance. The details of the corrective action plan will vary depending on the nature of the changes necessary.

Q5. 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.

Q6. 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, 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 systemic and egregious, 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.

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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.

Q7. 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.

Q8. 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.

Q9. 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.

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 of certified SFAs

FNS realizes that once all SFAs have been certified, the information on this quarterly report will become repetitive and will no longer be useful. Therefore, FNS included in the final rule that this quarterly report will no longer be required once all SFAs in a state have been certified.

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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 from 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.