



Food and  
Nutrition  
Service

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DATE: April 19, 2021

MEMO CODE: CACFP 09-2021, SP 10-2021, SFSP 05-2021

SUBJECT: Questions and Answers Regarding Child Nutrition Program Oversight, Administration, and Reporting During COVID-19<sup>1</sup>

TO: Regional Directors  
Special Nutrition Programs  
All Regions

State Directors  
Child Nutrition Programs  
All States

<b>Issuing Agency/Office:</b>	Food and Nutrition Service/Child Nutrition Programs
<b>Title of Document:</b>	Questions and Answers Regarding Child Nutrition Program Oversight, Administration, and Reporting During COVID-19
<b>Document ID:</b>	
<b>Z-RIN:</b>	
<b>Date of Issuance:</b>	April 19, 2021
<b>Replaces:</b>	Not Applicable
<b>Summary:</b>	(1) This memorandum provides clarification on questions related to Child Nutrition Program oversight, monitoring, and administration. (2) This memorandum applies to State agencies administrating and local organizations operating the Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), the School Breakfast Program (SBP), and the National School Lunch Program (NSLP), including the Seamless Summer Option (SSO).
<b>Disclaimer:</b>	<b>The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.</b>

Pursuant to the Families First Coronavirus Response Act (P.L. 116-127), and based on the exceptional circumstances of this current public health emergency, the Food and Nutrition Service (FNS) has issued nationwide waivers and has exercised existing

<sup>1</sup> Pursuant to the Congressional Review Act (5 U.S.C. §801 et seq.), the Office of Information and Regulatory Affairs designated this memo as *not major*, as defined by 5 U.S.C. § 804(2).

statutory and regulatory authorities to support access to nutritious meals while minimizing potential exposure to the novel coronavirus (COVID-19).

Under Program statute and regulations, State agencies and local operators are required to conduct monitoring of the Child Nutrition Programs. FNS has issued [nationwide waivers regarding on-site monitoring](#) to help minimize potential exposure to COVID-19.

In addition, FNS released [COVID-19 Child Nutrition Response #59: Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through School Year 2020-2021 – EXTENSION](#) in order to provide flexibility to local Program operators as they serve meals safely to children and manage the impacts of COVID-19.

Given that Program operators may be operating different Programs at different times of the year than traditional operations, this memorandum includes questions and answers that are intended to provide clarifications to State agencies and Program operators regarding the oversight and administration of the Child Nutrition Programs.

FNS appreciates the exceptional efforts of State agencies and local Program operators working to meet the nutritional needs of child and adult participants during this challenging time. State agencies are reminded to distribute this memorandum to Program operators immediately. Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Saracino", is written over a horizontal line.

Jessica Saracino  
Acting Director  
Program Monitoring and Operational Support Division

## Questions and Answers

### **1. What Child Nutrition Programs do State agencies and local Program operators need to review?**

State agencies and local Program operators are required to conduct monitoring of all Child Nutrition Programs, in line with Program statute and regulations, unless an alternative approach has been approved through an individual State agency or local Program operator waiver. The Food and Nutrition Service (FNS) issued several nationwide waivers to suspend on-site monitoring procedures and allow State agencies and Program operators to monitor Child Nutrition Program operations off-site in order to support social distancing and health recommendations. All other statutory and regulatory oversight requirements remain in effect.

State agencies must review whatever Child Nutrition Program the local Program operator is currently operating. Frequency and timing of reviews is pursuant to Program statute and regulations. Continued monitoring of Program operations is important to ensure that the nutritional needs of our nation's children continue to be met during this public health emergency.

### **2. What if the State agency or local Program operator encounters challenges meeting oversight and monitoring requirements during COVID-19?**

If State agencies or local Program operators anticipate challenges in meeting any of the required review elements within the required review time frames, a waiver of statute or Program regulations can be requested in order to ensure compliance with oversight responsibilities. If submitting a waiver, the process described in the SP 15-2018, CACFP 12-2018, SFSP 05-2018, [Child Nutrition Program Waiver Request Guidance and Protocol- Revised \(SP 15-2018, CACFP 12-2018, SFSP 05-2018\)](#) must be used. State agencies are strongly encouraged to use the template provided with the waiver guidance when requesting a waiver. Requests should describe what oversight and monitoring measures will be implemented in order to ensure Program integrity and identify any misuse of Federal funds or fraudulent activities.

### **3. Can State agencies request statewide waivers on behalf of local program operators?**

Yes. FNS encourages State agencies to proactively consider if local Program operators will have challenges efficiently meeting monitoring requirements during the current public health emergency. If so, the State agency should include in their waiver request a waiver of any local level review requirements and a plan for how local operators will conduct oversight. States should consider how waivers can best be used to meet the needs of the both the State agency and Program operators

in the most efficient and effective manner possible. If a State agency does not include flexibilities for local monitoring in their waiver, local Program operators would need to request, through both their State agency and FNS, a waiver for flexibilities that they would like to implement.

### **Summer Food Service Program**

- 4. If a school food authority (SFA) normally operates the School Breakfast and National School Lunch Programs, but is operating the Summer Food Service Program this school year, what Program is the SFA reviewed under?**

Program operators are reviewed under the Program they are operating unless a waiver has been approved. However, Summer Food Service Program (SFSP) regulations at 7 CFR 225.7(d)(2)(i) include a provision that a State agency is not required to conduct a review of the SFSP in the same year in which the National School Lunch Program (NSLP) operations have been reviewed and determined to be satisfactory. Therefore, if an SFA received a School Meals Administrative Review in the last school year, the SFA does not need to receive additional review under the SFSP.

- 5. My State agency has previously monitored SFSP on a Federal fiscal year. Can we continue to do this in Federal fiscal year 2021?**

For SFSP monitoring purposes, a State agency should use the definition of “year” they have used in the past. If a State wants to change the way they define “year,” a waiver is not required; however, they should communicate this change to local Program operators and in any applicable waiver requests. State agencies should also include whether they plan to change this definition again after Federal fiscal Year 2021.

- 6. What is the expectation for the SFSP sponsor review of sites within the first four weeks of operation?**

Sponsors must review food service operations at each SFSP site at least once during the first four weeks of Program operations as required in regulations at 7 CFR 225.15(d)(3). If the sponsor reviewed the site within the first 4 weeks of operations and the site has continued to operate, as currently allowed through [COVID-19 Child Nutrition Response #59: Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through School Year 2020-2021 – EXTENSION](#), the review is considered completed.

**7. May State agencies make advance payments to SFSP sponsors prior to June 1?**

Yes. Section 13(e)(1) of the Richard B. Russell National School Lunch Act (NSLA) states that advance payments to SFSP sponsors should be provided “not later than June 1, July 15, and August 15 of each year,” and the regulations found at 7 CFR 225.9(c) state that “State agencies shall make advance payments by June 1, July 15, and August 15.” Therefore, there is no prohibition against making advance payments prior to June 1, when appropriate. However, it is important to note that while some advance payments may be made significantly earlier in the year than would typically be the case, all statutory and regulatory requirements continue to apply as they would under normal program operations and/or standard timelines. In particular, States must ensure that no advance Program payments are made for any month in which a service institution will operate under the Program for less than ten days. Furthermore, the method for determining the advance payment amount remains that which is stipulated at NSLA Sec. 13(e)(2) and 7 CFR 225.9(c)(1)(ii).

**School Meal Programs**

**8. If a State agency is unable to meet the Administrative Review requirements because SFAs within their State are operating SSO or SFSP, can a State agency extend its School Meal Programs Administrative Review cycle?**

Yes. A State agency has the ability to request an extension to its Administrative Review cycle found at 7 CFR 210.18(c) through the waiver process.

**9. Can a State agency review modules of the School Meal Programs Administrative Review this school year and use this information in order to complete portions of an Administrative Review that is scheduled for next school year?**

If State agencies would like to review SFAs using some modules of the Administrative Review this year, the state would need to have an approved waiver to do this. The waiver request would need to include a request to waive any applicable regulations such as the review period requirements found at 7 CFR 210.18(b)(ii) and timeframes covered by the review found at 7 CFR 210.18(f)(2).

**10. If SFAs operated NSLP for an abbreviated amount of time before switching to SSO/SFSP, can State agencies conduct a full School Meal Programs Administrative Review?**

State agencies have discretion as to whether to move forward with these reviews, but if enough NSLP data is not available because SFAs are not operating the Program, the State would need to request a waiver for any part of the Administrative Review they are not able to complete. State agencies may not use information from another Child Nutrition Program to satisfy monitoring requirements for NSLP. Depending on timing, a State agency may need to request to waive any applicable review period and time frame requirements.

**11. What should State agencies do about reviews that are incomplete or open from School Year 2019-2020?**

State agencies should attempt to complete any pending reviews that are open from School Year 2019-2020. However, if the State agency is unable to complete the review, the review can be postponed or a waiver can be submitted addressing how the review will be completed. If postponing, State agencies may need a waiver of time frame and cycle requirements found at 7 CFR 210.18(c).

**12. Do SFAs need to complete local level review requirements by February 1?**

If the SFA is operating NSLP or the School Breakfast Program (SBP), including the SSO under NSLP, the SFA must meet NSLP and SBP requirements including local level reviews found at 210.8(a)(1) and 220.11(d)(1). SFAs may conduct these reviews off-site. All requirements other than those included in the existing nationwide waivers (or approved through individual waiver requests) are still in effect.

**13. Should the local educational agency (LEA) conduct independent reviews of applications this year?**

Only LEAs that are operating the SBP and NSLP, and are taking applications, need to conduct any required second review of applications. LEAs are required to continue to conduct the second review of applications annually until the State agency determines that the LEA has demonstrated that no more than 5 percent of reviewed applications required a change in eligibility determination. Therefore, even if an LEA is not taking applications this year or is only operating SSO, the LEA may be required to continue to conduct a second review of applications in future school years. State agencies can use the state discretion in 7 CFR 245.11 to identify any new LEAs that needs to conduct a second review of applications if no school meal Administrative Reviews are conducted.

**14. How may States whose LEAs normally operate NSLP and have transitioned to serving SFSP meals under [nationwide waiver #59](#) meet the revenue matching requirement outlined at 7 CFR 210.17?**

Section 7(b) of the NSLA states that funds must be distributed equitably among local program operators to the extent the State deems practicable. As such, States have the discretion to provide matching funds as described in 7 CFR 210.17 to school-based SFSP operators providing meals under nationwide waiver #59, with the strict caveat that such payments are limited to LEAs with a previously approved State agency agreement on file to operate the NSLP (per 7 CFR 210.9(b)), and which would otherwise be operating NSLP in SY 2020-2021.

This guidance is consistent with past circumstances in which SFSP was temporarily operated during an unanticipated school closure due to a hurricane, natural disaster, or wildfire. Similar to those situations, school program operators who may be currently operating SFSP in connection with the COVID-19 pandemic are doing so in line with temporary flexibilities offered by FNS.

In addition, States are reminded that LEAs electing to operate the SSO are similarly eligible to receive matching funds, as these operations are encompassed under the NSLP.

**15. Are State agencies required to submit an FNS-742 for school year 2020-2021?**

Yes. Per the requirements of 7 CFR 245.6a, each local educational agency must report information related to its annual statutorily required verification activity in accordance with guidelines provided by FNS.

**16. How should States and SFAs report on the FNS-742 for school year 2020-2021?**

On their FNS-742 submission for school year SY 2020-2021, SFAs, including those operating SSO or SFSP in place of NSLP/SBP under a nationwide waiver, should continue to report enrollment and program participation (sections 1 & 2 on the form) as reflected on their permanent agreement with the State agency as described at 7 CFR 210.9. In practice, this means that an SFA temporarily operating summer programming during SY 2020-2021 would continue to report on the FNS-742 as if they were operating NSLP/SBP.

In sections 3, 4, and 5 of the form, SFAs should report only school lunch application and certification data based upon activities occurring in School Year 2020-2021. For section 3, reported figures should reflect all applicable direct certification matches made as of the last operating day of October, regardless of whether such matches were/are used as the basis for meal claims. When

determining reportable application and certification activities in section 5, States and SFAs are directed to refer to prior guidance outlined in question 6 from policy memo [SP 05-2021, CACFP 04-2021, SFSP 04-2021, Questions and Answers Relating to the Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations during School Year 2020-2021 – Q&As #4](#), which states that verification activities must be based on the number of approved applications on file as of October 1, 2020. SFAs are not required to verify any approved meal applications collected after October 1, and are similarly not required to report those applications on the FNS-742. In the case that an SFA did not collect meal applications in SY 2020-2021, verification activities are not required. These SFAs will check the box in field 5-1 and leave the remainder of section 5 blank.

Please note that SFAs should not report data in any section/field based upon carry-over status from SY 2019-2020, nor should they report children receiving free meals through SSO/SFSP expressly based on participation under a nationwide waiver. FNS is aware that the data submitted on the SY 2020-2021 FNS-742 may not be representative of normally reported annual activities and data.

**17. What is the timeframe for submitting the FNS-742 report for school year 2020-2021?**

As a reminder, FNS extended the verification deadline to February 28, 2021 under the authority permitted in Section 9(b)(3)(I)(ii) of the NSLA and 7 CFR 245.6a(b)(2)(ii) (see question #7 of [SP 04-2021, CACFP 03-2021, SFSP 03-2021, Questions and Answers Relating to the Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations during School Year 2020-2021 – Q&As #3](#)). FNS further recognizes that State and local agencies may encounter challenges submitting the information required on the FNS-742 given this extended timeline. As such, FNS-742 submissions will be accepted by FNS without corrective action through June 30, 2021. Once submitted to FNS, States may further amend their FNS-742 report as needed up until this date.

**Child and Adult Care Food Program**

**18. Are any other CACFP monitoring requirements waived outside of what is provided in [COVID-19: Child Nutrition Response #40: Nationwide Waiver of Onsite Monitoring Requirements For State Agencies in the Child and Adult Care Food Program](#) and [COVID-19: Child Nutrition response #39: Nationwide Waiver of Onsite Monitoring Requirements for Sponsors in the Child and Adult Food Care Program](#)?**

No. When conducting announced or unannounced off-site reviews, State agencies and sponsoring organizations are required to review all elements of Program operations that they would normally review on-site. The required review elements can be completed off-site by reviewing documents, electronic systems, or by using other means of technology. In situations where direct observation normally occurs, State agencies and sponsoring organizations should review and verify records by observing photos and/or live or recorded videos. However, if a sponsor is not able to complete all of the review requirements off-site, a waiver of these requirements can be included in either a State agency or sponsor-level waiver request in order to ensure compliance with the regulations.

### **Procurement**

**19. What is the expectation for the State agency in 7 CFR 225.6(h)(4) to have a representative present at all Food Service Management Companies (FSMC) bid openings when sponsors are expected to receive more than \$100,000 in Program payments?**

For Program integrity purposes and given the technology for virtual meetings, State agencies and sponsors are encouraged to use this technology to attend bid openings in lieu of attending in person. Otherwise, a waiver of 7 CFR 225.6(h)(4) can be requested in order to ensure compliance with oversight responsibilities.

**20. How should the bonding requirement for FSMCs in the SFSP be handled, when a SFA amends their existing FSMC contract to add SFSP?**

Program regulations at 7 CFR 225.15(m)(5) requires each FSMC that submits a bid for SFSP exceeding the simplified acquisition threshold (currently \$250,000) to obtain a bid bond in an amount between 5 and 10 percent, as determined by the sponsor, of the value of the contract for which the bid is made. Additionally, 7 CFR 225.15(m)(6) requires every FSMC that enters into a food service contract for SFSP exceeding the small purchase threshold to obtain a performance bond between 10 and 25 percent of the value of the contract, as determined by the State agency.

Similar requirements for bid and performance bonding do not exist for NSLP. If an SFA adds SFSP to their FSMC contract a performance bond is required. The SFA should use the value of the contract that applies to SFSP to determine if it exceeds the small purchase threshold and the bond percentage (between 10% to 25%) should apply to the SFSP portion. If the FSMC enters into more than one contract with any one sponsor, the FSMC is required to obtain a performance bond covering the SFSP portion of all contracts if the aggregate amount of the SFSP portion of those contracts exceed the simplified acquisition threshold.

Contract modifications are subject to a cost or price analysis found in 2 CFR 200.323(a). The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. Once the cost or price analysis is obtained, the SFA or State agency legal counsel may determine if the change is material. State agency review and approval of such amendments is required prior to execution.

**21. What are the procurement standards that apply when the non-competitive proposal method in 2 CFR 200.320(f) is used?**

A non-competitive proposal follows the same requirements as a competitive proposal, except a non-competitive proposal can be obtained from one source. The requirements include all procurement standards in 2 CFR 200.317-326 and all Program requirements in 7 CFR 210, 225, and 226 applicable to the goods and services being procured.

Work performed under a noncompetitively procured contract is specifically related to the exigent or emergency circumstance in effect at the time of procurement. This is because the exception to competitive procurements is available only while the exigent or emergency circumstances exist. If Program operators award a noncompetitive contract, as soon as the exigent or emergency circumstances cease to exist they must immediately begin the process of competitively procuring similar goods and services in order to transition to a competitively procured contract.

Please note that each noncompetitive procurement method used requires a separate justification to address threats to life, improved property, and public health and safety.