



Food and
Nutrition
Service

DATE: September 11, 2020

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VA 22314

SUBJECT: Questions and Answers Relating to the Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through December 2020

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Issuing Agency/Office:	FNS/Child Nutrition Programs
Title of Document:	Questions and Answers Relating to the Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through December 2020
Document ID:	
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Date of Issuance:	September 11, 2020
Replaces:	N/A
Summary:	(1) This memorandum provides clarification on questions related to operation of the National School Lunch Program, School Breakfast Program, National School Lunch Program Seamless Summer Option, Summer Food Service Program, and Child and Adult Care Food Program during the COVID-19 pandemic. (2) This memorandum applies to State agencies administering, and local organizations operating the National School Lunch Program, School Breakfast Program, National School Lunch Program Seamless Summer Option, Summer Food Service Program, and Child and Adult Care Food Program during the COVID-19 pandemic. (3) This document relates to 7 CFR Parts 210, 220, 225, and 226.
Disclaimer:	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.

This memorandum includes questions and answers intended to provide clarification to State agencies and Program operators as they operate the National School Lunch Program (NSLP), School Breakfast Program (SBP), NSLP Seamless Summer Option (SSO), Summer Food Service Program (SFSP), and Child and Adult Care Food Program (CACFP) in the coming months, during the COVID-19 pandemic.

Pursuant to the Families First Coronavirus Response Act of 2020 (P.L. 116-127), and based on the exceptional circumstances of this public health emergency, the Food and Nutrition Service (FNS) has issued several nationwide waivers and has exercised existing statutory and regulatory authorities to support access to nutritious meals while minimizing potential exposure to the novel coronavirus. Additional information on the FNS Response to COVID-19 is available at <https://www.fns.usda.gov/disaster/pandemic/covid-19>.

FNS appreciates the exceptional effort of State agencies and local Program operators working to meet the nutritional needs of child and adult participants during a 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 dark ink, appearing to read "Ang M Kline". The signature is fluid and cursive, with the first name "Ang" and the last name "Kline" being more distinct than the middle initial "M".

Angela M. Kline
Director
Policy and Program Development Division

Questions and Answers

1. Which Child Nutrition Programs may school food authorities (SFAs) and sponsors operate during the waiver period?

SFAs may operate the National School Lunch Program (NSLP) and the School Breakfast Program (SBP), the Seamless Summer Option (SSO), and/or the Summer Food Service Program (SFSP). SFAs also may operate the at-risk afterschool component of the Child and Adult Care Food Program (CACFP) concurrently with any of the Programs previously mentioned. Non-SFA sponsors may operate the SFSP. Sponsors also may operate the at-risk afterschool meals component of the CACFP concurrently with the SFSP.

Please note that all Program eligibility and operating requirements continue to apply unless specifically waived.

2. Can the at-risk afterschool meals component of the CACFP operate simultaneously with SFSP/SSO?

Yes. The at-risk afterschool meals component of the CACFP, which operates during the regular school year, may operate simultaneously with the SFSP/SSO during implementation of Waiver #56. As noted in *SP 13, CACFP 07, SFSP 06-2020, Child Nutrition Program Nationwide Waivers: Questions and Answers*, 2020, April 11, 2020, <https://www.fns.usda.gov/cn/covid-19/nationwide-waivers-qas>, Program operators may participate in multiple Programs. However, under no circumstance may children receive more than the number of reimbursable meals allowed in each Program for which they are eligible.

For more information on the operation of the at-risk afterschool meals component of the CACFP, see Question 15 in *SP 14, CACFP 08, SFSP 07-2020: Child Nutrition Program Meal Service during Novel Coronavirus Outbreaks: Questions and Answers* #3, issued April 11, 2020, <https://www.fns.usda.gov/cn/covid-19/meal-service-during-novel-coronavirus-outbreaks-qas>.

3. Which SFSP/SSO sponsor types should State agencies prioritize when approving new sponsors?

State agencies must avoid duplication of services in particular areas. Under section 13 of the Richard B. Russell National School Lunch Act at 42 U.S.C. 1761(a)(4)(A) and 7 CFR 225.6(b)(5), State agencies must use the following priority system in approving applicants that propose to serve the same area or the same children:

1. SFAs;
2. Public agencies and private nonprofit organizations that have participated in SFSP previously;

3. New public agencies; and
4. New private nonprofit organizations.

If two or more sponsors apply to serve the same area, 7 CFR 225.6(b)(v) requires State agencies to make a determination on a case-by-case basis and consider the resources and capabilities of each applicant. Additionally, when approving sites, 7 CFR 225.6(d)(ii) requires State agencies to ensure that sites are not duplicating services within the SFSP and SSO programs.

Therefore, if an SFA meeting program requirements seeks approval to provide meals through the SFSP or SSO, the State agency should only consider approval of other applicants if there is a clear gap in service that the non-SFA applicant proposes to cover, and that services will not be overlapping. As a result of these requirements, some sponsors, even those that were operating during summer 2020, may be required to discontinue operations. As State agencies move forward in the school year with SFSP and SSO operations, it is critical that the State agency recognize the importance of maintaining integrity in all of the Programs and target resources appropriately.

4. May SFSP sponsors amend their applications to reflect continuation of operations through December 31, 2020, or should they submit a new application to determine which sites can operate SFSP/SSO?

The State agency has discretion with regard to the process used to extend SFSP/SSO applications and FNS encourages use of streamlined application extension processes for sponsors that were previously approved for summer 2020. However, please note that this extension process must include updating the period of meal service operations and any other changes necessary to reflect school year operations, such as site locations.

However, State agencies are not required to approve all SFSP/SSO sponsors for extended operation. When reviewing applications, State agencies should consider the priorities for approving sponsors and sites that are addressed in Question 3.

5. Can State agencies approve new SFA applications using a streamlined SFSP/SSO application process?

Yes, for experienced sponsors and sites. The SFSP regulations at 7 CFR 225.6(c)(3) provide a streamlined application process for State approval of experienced sponsors in good standing, including SFAs that administer the NSLP or SBP. This process is further outlined in *SP 07, SFSP 04-2013 – REVISED: Summer Feeding Options for School Food Authorities*, issued November 23, 2012, <https://www.fns.usda.gov/cn/summer-feeding-options-school-food-authorities>.

6. If an SFA that opts to participate under Waiver #56 served meals through NSLP/SBP between the beginning of school year 2020–2021 and December 31, 2020, may they claim those meals under SFSP/SSO instead?

Yes. When submitting their claim for meals served between the beginning of school year 2020–2021 and December 31, 2020, SFAs which have been approved to participate in SSO/SFSP pursuant to Waiver #56 may claim meals served under SFSP or SSO rather than through NSLP/SBP. States may reimburse SFAs for these meals at the free rate through SFSP or SSO. However, any student who paid for their meals must receive a refund for their meal payments.

7. May State agencies reimburse SFSP sponsors for meals that were served before the sponsor was notified of written approval for participation in the Program?

Yes. Under *COVID-19: Child Nutrition Response #57: Nationwide Waiver to Allow Reimbursement for Meals Served Prior to Notification of Approval and Provide Flexibility for Pre-Approval Visits in the Summer Food Service Program*, September 11, 2020, State agencies may reimburse newly approved SFSP sponsors for meals served prior to written approval notification. This will enable newly approved sponsors to more quickly transition to SFSP.

Additionally, during the initial COVID-19 emergency response, FNS inadvertently neglected to allow State agencies to reimburse new SFSP sponsors for meals served prior to their written approval. Therefore, as part of the above referenced waiver, State agencies may reimburse approved SFSP sponsors for allowable meals served during the initial COVID-19 emergency response through August 30, 2020, but that were served prior to their written approval to operate SFSP.

8. May an SFA choose to participate under NSLP/SBP instead of SFSP/SSO?

Yes. SFAs may choose to operate NSLP/SBP. Waiver #56 does not require SFAs to transition to SFSP/SSO. SFAs that operate NSLP/SBP may choose to follow the regular Program requirements, or may participate under the COVID-19 waivers for School Year 2020-2021. The School Year 2020-2021 waivers may be found here: <https://www.fns.usda.gov/programs/fns-disaster-assistance/fns-responds-covid-19/child-nutrition-covid-19-waivers>.

9. May a State approve an SFA to operate SFSP/SSO at some schools and operate NSLP/SBP at other schools?

There is no Federal requirement that an SFA can be approved for only one Program to operate in all schools within the SFA. State agencies may approve SFAs to operate different Child Nutrition Programs based on the needs of each school. FNS strongly encourages State agencies and SFAs to provide the flexibility needed to meet varying school circumstances. State agencies may choose not to approve SFAs to operate

different Child Nutrition Programs at their individual schools if operational impediments exist that would prevent them from effectively managing such arrangements.

10. Can SFAs operating SFSP/SSO under Waiver #56 serve weekend meals, and serve all children through age 18, regardless of whether the children are enrolled in the SFA?

If the SFA's sites are approved as open sites, they must serve all children who request a meal from those sites. However, States, SFAs, and sponsors are encouraged to tailor their operations to the needs of the community, and State agencies should review sponsor plans with this in mind. SFAs also may elect to operate closed enrolled sites that serve only enrolled students. Additionally, meals may be offered on weekends and holidays, consistent with SFSP/SSO regulations. As a reminder, the continuation of Waiver #56 is contingent on the availability of funds.

11. If an SFA opts to participate under the non-congregate waivers for breakfast, is the SFA required to offer non-congregate meals for lunch?

No. However, if a State agency has elected to use the non-congregate waiver (*COVID-19: Child Nutrition Response #33: Nationwide Waiver to Allow Non-congregate Feeding in the Child Nutrition Programs – Extension #4*), schools that have elected to implement the waiver must offer the same meals to every enrolled student whether they attend virtually or in-person. This is consistent with the response to Question 1 of *SP 24-2020, CACFP 13-2020, SFSP 13-2020, Questions and Answers for the Child Nutrition Programs during School Year 2020-21 – #5*, issued August 21, 2020, <https://www.fns.usda.gov/disaster/pandemic/covid-19/questions-and-answers-child-nutrition-programs-during-sy-2020-21>.

FNS strongly encourages schools to make meals available to all enrolled students. However, a school may decide to offer non-congregate meals only at breakfast, but not at lunch. In that case, non-congregate meals must be made available to all enrolled students at breakfast, but can be limited to those students attending school in person at lunch.

Also, please note that if meals are offered through the SFSP or SSO and the school is operating an open site, as defined under 7 CFR 225.2, the school must make meals available to all children who attend the site.

12. Can States approve new sites in areas that were previously being served under the State's plan for implementation of their individual area eligibility waiver? If so, do the sites have to be operated by the same sponsor?

In moving forward with an extension of their area eligibility plan, States should prioritize ensuring that meal sites are targeting benefits to children in need. If

sponsors and/or sites that operated in the previously identified areas during the unanticipated school closures due to COVID-19 are unable to continue operating through December 31, 2020, yes, the State agencies may approve new sponsors and/or sites to serve children in need in those areas that are consistent with their plans.

13. Under the Nationwide Waiver to Extend Area Eligibility, may States expand into new areas that were not covered by their individual area eligibility waiver plan?

The nationwide waiver allows States to continue to allow SFSP and SSO sponsors in good standing to operate open sites in areas consistent with the State plan, but that are not necessarily located in “*Areas in which poor economic conditions exist.*” If State agencies determine that areas in their state that were not previously identified in their area eligibility plan are now in need, yes, the State can consider adding them to their plan. The State should prioritize meal sites in those areas targeting benefits to children in need, as required by the waiver.

14. What does “FNS reserves the right to withdraw this approval subject to the availability of funds” mean?

The Antideficiency Act (ADA) (Pub.L. 97–258, 96 Stat. 923) prevents Federal agencies from incurring obligations or making expenditures (outlays) in excess of amounts available in appropriations or funds. Thus, this language establishes a condition on the waivers approved by FNS, which likely will increase program costs, can be rescinded if the Agency anticipates that the total cost of Program operations will exceed the funds available to support it. FNS estimates that existing resources are likely sufficient to support the extension of the waiver expanding SFSP/SSO sites to areas not area-eligible through December 31, 2020, but impacts from waivers, flexibilities, and changes in program operations due to the COVID-19 public health emergency on Federal Child Nutrition Program costs are not yet known. Timely monitoring of program activity is essential to ensure both the continuity of program operations for our partners and the adequacy of funds. In the event FNS projects a shortage of funds prior to the expiration date of this waiver, FNS will notify all State agencies at that time that SFSP/SSO sites in non-area eligible areas will no longer be able to serve meals for Federal reimbursement. FNS will reimburse all claims for qualified meals served prior to the projected date of inadequate funds. FNS will provide advanced notice, to the extent possible, in order to minimize out-of-pocket expenses for program operators.