

## **Final Rule: Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program**

The U.S. Department of Agriculture (USDA) Food and Nutrition Service issued [Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program \(SFSP\)](#) on September 19, 2022, a final rule that simplifies and clarifies SFSP program requirements while also removing administrative barriers. Several of the final changes formally codify many of the rescinded policies that were previously available through nationwide waivers, as well as several flexibilities that are currently available through policy guidance.

### **Streamlining Program Requirements**

- Codifies the flexibility that allows new SFSP sponsors that already operate school meals programs or the Child and Adult Care Food Program (CACFP) to follow the application requirements for experienced SFSP sponsors if they are in good standing.<sup>1</sup> State agencies will have the option to allow school food authorities (SFA) and CACFP institutions that are applying for SFSP for the first time to use this flexibility. The option to use the simplified application is only available to those sponsors that operate SFSP sites at the same locations where school meals or CACFP meals are being served. After a year of operating SFSP at their existing sites, an SFA or CACFP sponsor will be considered “experienced” and can apply using the experienced application procedures for all its sites.
- Codifies the flexibility that allows SFAs and CACFP sponsors in good standing to apply to participate in the SFSP without providing further evidence of financial and administrative capabilities. State agencies may request additional evidence if there is a reasonable belief that operating as an SFSP sponsor would pose significant challenges.
- Requires state agencies to develop a process for sharing information regarding the financial and administrative capability of sponsors across agencies if the agency that administers the SFSP is not the same one administering school meals or CACFP. USDA does not intend for this to require new IT systems; instead, the SFSP state agency may have an agreement with the school meals or CACFP state agency to share the outcome of reviews, corrective actions, or other monitoring activities upon request.
- Adds performance standards for evaluating an SFSP applicant’s financial and administrative capability, which aligns with current regulations, and clarifies that sponsors must demonstrate compliance with these performance standards as part of their management plan.

### **First-Week Site Visits**

- Requires sponsors to conduct a site visit in the first two weeks of operation for all new sites and those that experienced operational challenges the previous year. State agencies may require a site visit for any or all sites during the first two weeks of program operations at their discretion. The state agency must establish criteria for what constitutes operational problems.

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<sup>1</sup> **Determining good standing:** USDA suggests that an SFA or CACFP institution is in “good standing” if it has been reviewed by the state agency and had no major program violations or has completed and implemented all corrective actions from the last compliance review, including actions outlined in its serious deficiency corrective action plan, if applicable. USDA intends to address this issue through a separate rulemaking that will allow the public to comment specifically on proposals related to determining good standing for child nutrition program operators.

- Allows sponsors to combine the first site visit and food service review visit (which are required within the first four weeks). For sites that operate seven days or fewer, sponsors must visit during that timeframe.

### **Establishing Site Caps**

- Codifies guidance that allows sponsors of vended sites to request to adjust site caps (i.e., the approved level for the maximum number of children's meals that may be served at a site, which is typically based on facility capacity or historical participation levels) at any time prior to submitting a claim for reimbursement.
- Provides guidance to state agencies for determining initial site caps for sites without historical data (i.e., documentation of programming; number of children in the area). The final rule clarifies that states may consider other relevant information for determining site caps, taking into account the true capability and capacity of sites.

### **Authority to Waive Statute and Regulations**

- Codifies USDA's authority to issue waivers for the Child Nutrition Programs in accordance with section 12(l) of the Richard B. Russell National School Lunch Act (NSLA).
- Gives state agencies more authority in the waiver process. State agencies may deny a waiver submitted by an eligible service provider. State agencies must forward approved requests to the USDA regional office with a rationale supporting the request, at which point USDA will make the final determination on the request.
- When states provide written notice to an eligible service provider that a waiver is denied, they must include the reason for denying the request.
- States must forward a waiver request from an eligible service provider to USDA within 15 calendar days of receipt, or notify the requesting eligible service provider in writing within 30 calendar days of receipt of the request if the request is denied.

### **Monitoring Procedures, Site Selection, and Meal Claim Validation**

- Removes option that allowed state agencies to use statistical monitoring for site reviews in lieu of traditional site monitoring requirements (USDA states that no state agencies were using this option). States will be able to develop criteria for determining which sites are reviewed, with characteristics provided by USDA as a guide.
- Provides a new method for conducting meal claim validations as part of the sponsor review. Instead of conducting 100 percent meal claim validations for all of the sponsors' sites, state agencies may validate a small sample of claims and are only required to validate additional claims if errors are detected.

### **Meal Service Time Restrictions**

- Removes meal service time restrictions but requires at least one hour between the end of one meal service and the beginning of another.
- Requires serving breakfast (three-component meals) at or close to the start of the day.
- Allows state agencies to approve meals served outside of the approved meal service time if an unanticipated event that is outside of the sponsor's control occurs. USDA has clarified that these events include, but are not limited to: delayed meal deliveries, inclement weather that delays the start of the meal service, delayed public transportation utilized by participants, and other incidents as deemed appropriate by the state agency.

## **Off-Site Consumption of Food Items**

- Codifies existing policy guidance that allows children to take certain food items (i.e., fruit, vegetable, or grain item) off-site for later consumption. State agencies retain the discretion to prohibit sponsors from using this flexibility if the provision cannot be adequately monitored.

## **Offer Versus Serve**

- Limits the use of the meal service option Offer Versus Serve (OVS) to school food authorities. Previous nationwide program waivers had expanded this option to all sponsors.
- Allows SFAs that use OVS to follow the SFSP meal pattern during the summer months.

## **Closed Enrolled Sites and Area Eligibility**

- Reinstates the use of area eligibility data to qualify closed enrolled sites, in addition to the practice of collecting individual income forms. USDA also is requiring that state agencies establish criteria for approving closed enrolled sites to ensure operation of a site as closed enrolled does not limit program access to the community at large (i.e., this provision could increase incidence of sites that would otherwise have operated as an open site).

## **Field Trips**

- Requires sponsors to notify the state agency that meals are being served away from the approved site. While formal approval is not required under this rulemaking, the state agency has the discretion to require formal approval if deemed necessary.
- Provides state agencies the option to set time limits for how far in advance of the field trip sponsors must provide notification.
- Requires sponsors of open sites to continue operating at the approved open site location while the field trip occurs. If that is not feasible, sponsors must notify the community of the change and provide information about alternative open sites.

## **Timeline for Reimbursements**

- Clarifies current requirement that state agencies must disapprove a potentially unlawful claim within 30 calendar days, as well as provide an explanation to the sponsor.
- Exempts state agencies from the 45-calendar-day timeframe for final action if they suspect the sponsor has engaged in unlawful acts and more time is needed to examine a sponsor's claim. State agencies must notify their regional office that they will be utilizing the 45-calendar-day exemption.

## **Media Release Requirement**

- Codifies current guidance that allows state agencies to issue a media release for all sponsors.
- Allows sponsors of camps and other sites that are not operating in low-income areas to notify only participants or enrolled children instead of the community at large. Closed enrolled sites must also notify participants or enrolled children if a free meal application is needed so that the participants or their families know if they are expected to submit a free meal application.

## **Other Updates**

- Aligns the regulations with existing statute by amending the duration of eligibility for open sites and restricted open sites based on school and census data from three years to five years.

- Codifies current guidance that requires state agencies' review of a sponsor's tax-exempt status every year.
- Requires sponsors to describe how meals will be obtained (i.e., self-prep or vended) at each site in the application.
- Adds a definition of "site supervisor" to clarify this role and its relationship to program operations.
- Adds a definition of "unaffiliated sites" as those that are legally distinct from the sponsor. USDA clarifies that this is simply to provide a name for a type of business arrangement that currently exists in the SFSP, and that it does not change how unaffiliated sites may participate in the SFSP or how they are monitored.
- Allows state agencies to provide online program training.