

Texas Department of Agriculture



Summer Food Service Program (SFSP) Supplemental Handbook

Texas Department of Agriculture, Food and Nutrition Division

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Log of Chapter Updates

This table will reflect updates to the handbook implemented during the current Program Year. All substantive updates made this Program Year will be highlighted in yellow within this section.

Date of Edit	Content/Purpose	Subsection(s)
04-30-2024	Imported content from USDA's Administrative Sponsors' Guide into Chapters 1, 2, and 7 (imported content not highlighted).	Chapters 1, 2, and 7
	Added guidance about TDA conducting pre-approval visits for all new sponsors, sponsors with previous operational issues, and select sites.	Chapter 1
	Added guidance about the simplified application process for experienced sponsors. Also added new requirements about a full management plan being required every three years for any CE that is required to submit a management plan.	
	Added additional clarification around criteria for operating a closed enrolled site in an income eligible area.	
	Added clarification that existing rural congregate sites approved to switch to a non-congregate model will be considered "new" and must have a pre-operational visit.	
	Updated criteria and resources for determining rurality of a site and added that rurality designation is valid for five years.	
	Added high level information about the availability of non-congregate service for rural sites that meet specific eligibility criteria.	
	Added a reference to the annual School Data for Area Eligibility report as well as how schools on the report are determined area eligible.	
	Added participant notification requirements for closed enrolled sites and camps.	Chapter 2
	Updated guidance on Extreme Heat/Air Quality Waivers and the discontinued Demonstration Project.	
	Updated Unanticipated School Closure guidance.	

Date of Edit	Content/Purpose	Subsection(s)
04-30-2024	Updated “Termination by Mutual Agreement” to “Termination for Convenience” to align with regulatory terminology.	Chapter 3
	Updated Offer versus Serve Guidance for clarity.	Chapter 4
	Added requirement that all CEs must attend TDA-provided training annually along with instructions on how to access information about the training.	Chapter 7
	Added that any rural sites approved to switch from a congregate service to a non-congregate service are considered “new” and must receive a first two weeks site visit.	Chapter 8
	Added a link to the online form for requesting removal from the TEXSL.	
	Added full Civil Rights assurance statements that must be included in every agreement.	
	Moved the SFSP Waiver guidance to its own new Chapter 10.	Chapter 10
04-05-2023	Added qualification criteria for closed enrolled sites operating in income-eligible areas.	Chapter 1
	Updated the threshold at which TDA must be notified about a bid as well as be present at bid opening - from \$150,000 to \$100,000 per regulation. Related regulatory citations updated.	Chapter 6
	Changed designation of Caldwell and Hood Counties from Rural to Urban	Reference Materials
11-28-2022	Non-substantive reorganization and repair of broken links/incorrect references. Added log of Chapter Updates.	N/A
	Removed citations referencing USDA memos in the case when the memos have been superseded by the September 2022 Final Rule.	
	Added Viability, Capability, and Accountability Performance Standards as defined in the 2022 Final Rule.	Chapter 1
	Defined application flexibilities for new SFSP CEs participating in NSLP, SBP, and/or CACFP.	
	Clarified requirements for using area eligibility to qualify closed enrolled SFSP sites.	
	Clarified that meals cannot be served at school sites during an unanticipated school closure unless approved via waiver.	Chapter 2

Date of Edit	Content/Purpose	Subsection(s)
	Clarified that the USDA Demonstration Project for Extreme Heat has not yet been continued for Summer 2023.	
	Added new guidance that a CE must have a Unique Entity Identifier number as opposed to a DUNS number, which has been discontinued.	Chapter 3
	Added policy around salary requirements, including for CE staff that operate both SFSP and CACFP.	
11-28-2022	Clarified that the FND-101 form has been retired, and CEs must now use the FND-135 form to request access to TX-UNPS.	Chapter 3
	Clarified guidance around budget adjustments.	
	Updated citations for the location of Texas Administrative Code appeal procedures (also Chapter 8 and Reference Materials).	Chapters 3, 8, and Reference Materials
	Clarified requirements around field trips.	Chapter 4
	Clarified updated OVS requirements for school food authorities per the 2022 Final Rule.	
	Clarified updated meal service time requirements per the 2022 Final Rule.	
	Updated links to the Emergency/Sole Source Procurement request form.	Chapter 6
	Added new guidance about two weeks site visits per the 2022 Final Rule.	Chapter 8
	Added comprehensive Civil Rights guidance, including best practices about how to collect racial/ethnic data.	
	Added policy about how unallowable costs should be recouped.	Chapter 9
	Clarified allowability of costs for hair covers, aprons, and knife or heat safe gloves.	
	Updated the Nondiscrimination Statement	Reference Materials
	Updated the Texas County Code list	

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INTRODUCTION

Administration of the SFSP

The Summer Food Service Program (SFSP) was established to ensure that low-income children continue to receive nutritious meals when school is not in session. Free meals that meet federal nutrition guidelines are provided to all children, at approved SFSP sites in areas with significant concentrations of low-income children.

The U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) administers the SFSP at the national level. The Texas Department of Agriculture (TDA) administers the SFSP in Texas. Organizations contracting directly with TDA to operate the SFSP are called Contracting Entities (CEs), also referred to as sponsors in the *Administrative Guidance for Sponsors* (AGS)¹. Each year, the USDA publishes the SFSP AGS which provides federal policy, program guidance, and information for all CEs that participate or plan to participate in SFSP.

About this Handbook

Within this supplemental handbook to the AGS, TDA provides additional guidance that clarifies and/or supplements policy provided by USDA in the AGS and policy memos. This AGS supplement handbook models the organizational structure of AGS, for the CE's ease of use.

CEs must operate the food service in accordance with the provisions of 7 Code of Federal Regulations (CFR) Part 225, 2 CFR Part 200, any instructions and handbooks issued by USDA, and any instructions and handbooks issued by TDA, including this handbook. It is the responsibility of the CE to make sure they know and understand all the SFSP rules and requirements. CEs are responsible for knowing and understanding all handbooks, manuals, notices, instructions, and guidance provided by USDA and TDA.

CEs operating the Seamless Summer Option (SSO) should reference the *Administrator's Reference Manual* (ARM) Section 12, Seamless Summer Option, for guidance.

Handbook Revisions

CEs are notified of revisions made to the supplemental handbook by the Education Service Center (ESC) staff via email and monthly newsletter. The *SFSP Supplemental Handbook* is available online at

<http://www.squaremeals.org/Programs/SummerFeedingPrograms/SummerFeedingPolicyandHandbooks.aspx>. Users may view and print the handbook.

Cooperation with Program Research and Evaluation of the SFSP

Section 305 of the Healthy, Hunger-Free Kids Act of 2010 clarifies that contracting entities (CEs) participating in the Summer Food Service Program (SFSP) are required to cooperate with the

¹ Also referred to by USDA as the *Administration Guide Summer Food Service Program*.

United States Department of Agriculture (USDA) officials and contractors conducting evaluations and research in the SFSP.

Definitions & Terms

Throughout this handbook, the following acronyms and terms will be used. Additional definitions and terms may be provided in some sections as well.

AGS - *Administrative Guide for Summer Food Service Program*

Applicant - An organization that has submitted an application to TDA but has not yet become a Contracting Entity (CE).

ARO - Administrative Review Official

ASCP - Afterschool Care Program

CACFP - Child and Adult Care Program

CE - Contracting Entity, also referred to as sponsor, is an organization that has been approved to operate the SFSP and has executed a Permanent Agreement with TDA to that effect.

CFR - Code of Federal Regulations

CNP - Child Nutrition Program includes the SFSP, CACFP, NSLP, SBP, and SMP.

DFPS - Texas Department of Family and Protective Services

ESC - Education Service Center

FNS - The Food and Nutrition Service of the U.S. Department of Agriculture

FNSRO - The Food and Nutrition Service Regional Office

FSMC - Food Service Management Company is any commercial enterprise or nonprofit organization with which a CE may contract for preparing unitized meals, with or without milk, for use in the Program, or for managing a CE's food service operations. Food Service Management Companies may be: (a) public agencies or entities; (b) private, nonprofit organizations; or (c) private, for-profit companies.

HHS - Texas Health and Human Services

HHSC - Texas Health and Human Services Commission

NDL - National Disqualified List

NSLA - National School Lunch Act

NSLP - National School Lunch Program

OMB - Office of Management and Budget

SBP - School Breakfast Program

SFA - School Food Authority

SFSP - Summer Food Service Program

SMP - Special Milk Program

Sponsor - Referred to as a Contracting Entity (CE) in this supplemental handbook.

SSO - Seamless Summer Option

Texas Admin. Code or **TAC** - Texas Administrative Code

TDA - Texas Department of Agriculture

TEXSL - Texas Excluded SFSP List

TX-UNPS - Texas Unified Nutrition Programs System

USDA - U.S. Department of Agriculture

CHAPTER 1—PROGRAM ELIGIBILITY

Contracting Entity Eligibility

Who may be a Contracting Entity (CE)?

A CE must be a public or private non-profit school food authority (SFA); a public or private non-profit college or university; a public or private non-profit residential summer camp; a unit of local, county, municipal, State, or Federal Government; or any other type of private non-profit organization. All CEs must also be tax exempt and must demonstrate the administrative and financial ability to manage a food service effectively. Most sponsors must provide a year-round public service to the area in which they intend to provide the SFSP.

CE responsibilities:

SFSP sponsors must be able to assume responsibility for the entire administration of the Program. As a sponsor, an organization at a minimum will:

- Attend annual TDA-provided training.
- Locate and recruit eligible sites.
- Hire, train, and supervise staff and volunteers.
- Competitively procure food to be prepared or a vendor for meals to be delivered.
- Monitor all sites.
- Prepare claims for reimbursement.
- Ensure that the sites are sustainable.
- Maintain all program documents for 3 years, plus the current year.

For organizations not yet ready to take on the responsibilities required of a CE, participation as a site under an existing CE is the best option. This is the most effective way to prepare an organization to become a CE in future years.

Specific Eligibility Requirements for CEs

To be deemed eligible for participation in SFSP, the CE must:

- Meet performance standards for viability, capability, and accountability (VCA).
- Not be seriously deficient.
- Serve low-income children.
- Conduct a non-profit food service account.
- Provide year-round service.

- Exercise administrative oversight at approved sites.
- Conduct pre-operational visits.
- Sign written agreements.

More information on each of the above items is listed below.

NOTE: TDA will conduct pre-approval visits for all new CEs (defined by not having operated in the prior year) and CEs that had operational issues in the prior year. Additionally, TDA will select certain sites for pre-approval each year based on high risk factors (such as a change in food distribution model). These visits allow TDA to identify potential compliance issues and provide collaborative technical assistance prior to Program operations.

Performance Standards for Viability, Capability, and Accountability (VCA)

The SFSP Code of Federal Regulations (7 CFR 225) includes the following Performance Standards that SFSP Contracting Entities (CEs) must meet in order to operate SFSP:

Performance standard 1. Financial Viability

CEs must expend and account for SFSP funds, consistent with 7 CFR 225; FNS Instruction 796-4, Financial Management in the Summer Food Service Program; 2 CFR part 200, subpart D; and USDA regulations 2 CFR parts 400 and 415. To demonstrate financial viability and financial management, the CE's management plan must:

- Describe the community's need for summer meals and the CE's recruitment strategy:
- Explain how the CE's participation will help ensure the delivery of SFSP benefits to otherwise unserved sites or children; and
- Describe how the CE will recruit sites, consistent with TDA requirements.
- Describe the CE's financial resources and financial history:
 - Show that the CE has adequate sources of funds available to operate the SFSP, pay employees and suppliers during periods of temporary interruptions in SFSP payments, and pay debts if fiscal claims are assessed against the CE; and
 - Provide audit documents, financial statements, and other documentation that demonstrate financial viability.
- Ensure that all costs in the CE's budget are necessary, reasonable, allowable, and appropriately documented.

Performance standard 2. Administrative Capability

Appropriate and effective management practices must be in effect to ensure that SFSP operations meet the requirements of this part. To demonstrate administrative capability, the CE must:

- Have an adequate number and type of qualified staff to ensure the operation of the SFSP; and
- Have written policies and procedures that assign SFSP responsibilities and duties and ensure compliance with civil rights requirements.

Performance standard 3. Fiscal Accountability

To demonstrate SFSP accountability, the CE must:

- Demonstrate that the CE has a financial system with management controls specified in written operational policies that will ensure that:
 - All funds and property received are handled with fiscal integrity and accountability;
 - All expenses are incurred with integrity and accountability;
 - Claims will be processed accurately, and in a timely manner;
 - Funds and property are properly safeguarded and used, and expenses incurred, for authorized SFSP purposes; and
 - A system of safeguards and controls is in place to prevent and detect improper financial activities by employees.
- Maintain appropriate records to document compliance with SFSP requirements, including budgets, approved budget amendments, accounting records, management plans, and site operations.

Serious Deficiency

To be approved, applicants must not have been declared seriously deficient or terminated from the SFSP or any other federal Child Nutrition Program in previous years. However, such an applicant may be approved if TDA determines that it has taken appropriate corrective actions to prevent recurrence of the deficiencies and has repaid any outstanding debts.

Serving Low Income Children

CEs must agree to provide regularly scheduled meal service for children in designated low-income areas (called “areas in which poor economic conditions exist” or “income eligible areas”), or they must agree to serve low-income children. Camps do not need to meet this criterion.

Non-Profit Food Service

CEs must conduct food services through SFSP that are not for profit. A CE is operating a non-profit food service if the food service operations are principally for the benefit of participating

children, and all Program reimbursement funds are used solely for the operation or improvement of such food service. This does not mean the Program must break even or operate at a loss, but that all income must be used for the sole purpose of operating a non-profit food service.

Year-Round Service

CEs must provide a year-round public service to the area in which they intend to provide the SFSP. TDA may grant exceptions to this year-round service requirement for sponsors of residential camps, migrant sites, and in certain other limited circumstances.

Administrative Oversight at Approved Meal Service Sites

New applicants and returning CEs must demonstrate in their applications that they will exercise management control and administrative oversight over the meal service at all their sites. Management control of the meal service means that the sponsor is responsible for maintaining contact with meal service staff, ensuring that there is adequately trained meal service staff on site, and monitoring site operations throughout the period of program participation. This management responsibility cannot be delegated below the sponsor level. The quality of the meal service, the conduct of site personnel, and the adequacy of recordkeeping reflect directly upon the CE's performance.

Many CEs deliver meals to sites that are not directly affiliated with or managed by the CE; thus, they do not have direct operational control of the sites (e.g., the authority to hire or terminate staff). Instead, these CEs have control over only the meal service provided at the site and related activities such as training of staff on meal counting and record keeping procedures. Therefore, CEs may be approved to operate the SFSP at sites where they have administrative oversight. Administrative oversight means that the CE is responsible for the following:

- Maintaining contact with meal service staff;
- Ensuring there is adequately trained meal service staff on site;
- Monitoring the meal service throughout the period of SFSP operations; and
- Terminating meal service at a site if staff fails to comply with SFSP regulations.

Pre-Operational Visits

Prior to approval, CEs must visit new sites and any sites that had operational problems in the previous year. When a CE applies for the SFSP, they must certify that the required pre-operational site visits have been conducted and that sites are capable of providing meal service for the number of children as planned.

NOTE: If an existing rural site serving standard congregate meals switches to a non-congregate distribution model, that site is considered “new” and must have a pre-operational visit conducted prior to operations.

Written Agreements

Approved CEs must sign a written permanent agreement with TDA.

Additional Eligibility Requirements and Flexibilities by CE Type

Application Flexibilities for New SFSP CEs Participating in NSLP, SBP, and/or CACFP

New CEs in good standing in the National School Lunch Program (NSLP), School Breakfast Program (SBP), and/or Child and Adult Care Food Program (CACFP) may be exempt from the lengthier SFSP application process that most new CEs must follow if they meet the following criteria:

- **The CE must be in good standing.** A CE is in good standing if it has been reviewed by TDA in the last 12 months and had no major findings or program violations, or completed and implemented all corrective actions from the last compliance review, including the payment of outstanding debts. In addition, a CE may be considered in good standing if it has not been found to be seriously deficient by TDA in the past two years and has never been terminated from another Child Nutrition Program.
- The new CE must be operating SFSP at existing sites where the CE has demonstrated that they have the resources and capability to provide a meal service. If the CE wishes to serve SFSP meals at additional sites where they have never served meals before, the CE must apply as a “new sponsor,” which includes submitting a full management plan and demonstrating VCA. Once the CE has operated a full year successfully, the CE may apply as an “experienced sponsor” the following year, even if establishing brand new sites.

Private Non-Profit Sponsors

Special rules apply to private non-profit organizations. Private non-profit sponsors must be tax exempt under section 501(c) of the Internal Revenue Code of 1986. Although churches must be tax-exempt, there is no Federal requirement that they provide documentation of their tax-exempt status. Therefore, churches are the only private non-profit organizations not required to obtain documentation of Federal tax exempt status; all other private non-profit organizations must provide documentation from the IRS of their tax-exempt status.

For purposes of Program participation, a church could be its integrated auxiliaries, or a convention or association of churches, synagogue, religious order, or religious organization that

is an integral part of a church, and that it is engaged in carrying out the functions of a church (IRS Publication 557, Tax-Exempt Status for Your Organization).

Experienced CEs

SFAs and CACFP institutions that have successfully participated in SFSP (in good standing) do not have to provide a management plan when renewing.

CEs and sites not participating in CACFP or a School Nutrition Program that have successfully participated in SFSP in the previous year (meaning those that have not been found to be seriously deficient in Program operation) may submit a simplified management plan in subsequent years. The simplified plan must include a certification that any information previously submitted to TDA as part of a CE's management plan is current, or that the CE has submitted any changes or updates to the State.

This certification must be submitted annually with the CE's application and must address all required elements of each performance standard. However, a full management plan must be submitted at least once every three years to ensure that TDA periodically conducts a full review and assessment of a CE's financial and administrative capability.

Site Eligibility

CEs may operate the SFSP at one or more sites, which are the actual locations where meals are served and children eat in a supervised setting. Eligible sites are those that serve children in low-income areas or those that serve specific groups of low-income children. CEs must provide documentation that proposed sites meet the income eligibility criteria required by law.

Open Sites

Most CEs establish site eligibility on "need and openness." If a site is located in a needy area where 50 percent or more of the children residing in the area are eligible for free or reduced-price school meals, and meals are made available to all children in the area on a first-come, first-serve basis, these sites are considered open. Sponsors of open sites must take the necessary steps to allow meal service access to all children requesting a meal at the site.

See "Documenting Area Eligibility" below for information on how to qualify an open SFSP site based on area eligibility.

Restricted Open Sites

On occasion, a CE that would normally operate an open site – meaning initially open to broad community participation – must restrict or limit the meal site's attendance for reasons of space, security, safety, or control. In recognition of these circumstances, these types of sites operate as restricted open sites. CEs must make known publicly that the site is open on a first-come, first-serve basis to all children of the community at large, but that the meal service will be limited as stated above.

Both open and restricted open sites must be located in a school attendance area where 50 percent or more of the children residing in the area are eligible for free or reduced-price school meals. This percentage must be documented by data provided by public and non-profit private school officials, census data, welfare or education agencies, zoning commissions, or other appropriate sources.

Closed Enrolled Sites

Closed enrolled sites are usually established where:

- An identified group of needy children live in a “pocket of poverty” within a non-eligible area
- Identified low-income children are transported to a congregate meal site located in an area with less than 50 percent eligible children.
- A program provides recreational, cultural, religious, or other types of organized activities for a specific group of children.

Closed enrolled sites are open only to enrolled children or to an identified group of children, as opposed to the community at large.

As part of the application process, sponsors of closed enrolled sites must provide TDA with:

- How they intend to document SFSP eligibility, using one of the methods described below.
- An estimate of the total number of children enrolled at the site; and
- An estimate of the number of children enrolled at the sites that are documented as eligible for free or reduced-price school meals, unless using area eligible data

Documenting Closed Enrolled Site Eligibility Based on Participant Data

To qualify as a closed enrolled site in an area that is not considered a low-income area, at least 50 percent of the enrolled children must be from households that meet the income eligibility guidelines. Sponsors can document an enrolled site’s eligibility by:

- Obtaining lists by name and eligibility status of enrolled children for free or reduced-price meals from schools operating the NSLP or SBP. Parental consent forms are not required in order for the local SFA to provide this information to SFSP sponsors.
- Asking the parent or guardian of each enrolled child to complete a household application (prototype Household Application is available on SquareMeals.org at: <https://squaremeals.org/Programs/Summer-Meal-Programs/Administration-Forms>)

Sponsors of closed enrolled sites that are not area eligible must have the following information on file for each site:

- Records of the total number of children enrolled at the site; and
- List(s) of income eligible children provided by the school system; or

- The actual eligibility forms for income eligible children

The site information sheet that CEs submit to TDA with an application to participate in the SFSP must include the projected number of children eligible for free or reduced-price school meals and the projected total enrollment for each site. If site eligibility is based on household applications, the CE must carefully monitor actual participation during its early program visits to ensure that the 50 percent level is actually reached.

NOTE: Accredited summer schools do not qualify as closed enrolled sites and should obtain reimbursement for meals under the NSLP, unless they are also open to the community for the meal service and are in an area where at least 50% or more of the children qualify for free or reduced-price meals. In addition, residential and non-residential camps may not use area eligibility to establish site eligibility.

Documenting Closed Enrolled Site Eligibility Based on Area Eligibility

Additionally, a site may document its status as a closed enrolled site by using area eligibility information. However, the CE must provide justification for why the site is operating as closed enrolled as opposed to being open to the community. In most cases, TDA will only approve a closed enrolled site to operate in an eligible area if the site meets both of the following criteria:

- All children enrolled reside in the area where the site is located.
- The site provides a specific enrichment program that requires enrollment. **NOTE:** Academic summer school is not an allowable enrichment program; a summer meals program cannot be limited only to participants in academic summer school.

Under very limited circumstances, and on a case-by-case basis, TDA may approve a closed enrolled site in light of evident safety concerns. CEs that believe a safety concern requires closed enrollment must provide justification in their site applications. Examples of justification include but are not limited to:

- Specific examples of recurring incidents at or near the site.
- Police mandate to limit participation to a defined enrollment group (ex. enrolled student population) **NOTE:** Under no circumstance can a closed enrolled site be established to feed academic summer school students only.

CEs citing safety concerns must also identify in the site application how enrollment will be established. Children cannot be denied enrollment because they are not known by site staff. Enrollment must be based on objective, pre-defined criteria (for example, student enrollment roster). Sites that are not approved to operate closed enrolled, but that lack the staffing or capacity to control a large number of participants, may be approved to operate an open restricted site, at which a limited number of participants are allowed to congregate at any given time.

For Profit Sites

TDA may approve meal service sites that are not identified as non-profit locations if the sites:

- Are operated under the sponsorship of an eligible public or private non-profit service institution.
- Operate as open sites or restricted open sites.
- Are located in an area in which at least 50 percent of the children are from households that are eligible for free or reduced-priced school meals.
- Make meals available to all children in the area and serve meals to children on a first-come, first-served basis.
- Serve all meals at no charge.

Enrolled for-profit sites and for-profit camps are not eligible to participate. If approved to operate the meal service at a for-profit site, a CE must maintain operational control over the meal service at the site and must ensure that no SFSP funds are provided to the site. The site operators may not prepare the meals, and funds may not be provided, given, or otherwise paid to the site to employ site staff. Only the CE's trained staff and volunteers and sponsor-trained site staff serving as volunteers are permitted to distribute the meals.

NSLP Operated Sites

SFAs applying to operate the SFSP at the same sites where they provide meal services through the NSLP may follow the application requirements for experienced SFSP sponsors and sites instead of the application requirements for new sponsors and sites.

SFAs applying to operate the SFSP must provide the following information:

- Whether the site is rural or non-rural.
- Whether the site's food service will be self-prepared or vended.
- If a migrant site, certification from a migrant organization that the site serves children of migrant worker families and that it primarily serves migrant children if it also serves non-migrant children.
- If a homeless site, information demonstrating the site is not a residential child care institution (RCCI), description of the method used to ensure that no cash payments or other in-kind services are used for meal service, and certification that the site only claims meals served to children.

Camps

Camps can be residential or nonresidential day camps which offer regularly scheduled food service as part of an organized program for enrolled children. In residential camps, participants spend the duration of the organized program in a 24-hour supervised care setting and receive a regularly scheduled food service.

Nonresidential day camps may participate only as sites under eligible sponsoring organizations. Sponsors of nonresidential camp sites must offer a continuous schedule of organized cultural or recreational programs for enrolled children between meal services. Unlike open, restricted open and closed enrolled sites, sponsors of both residential and nonresidential camps do not have to establish area eligibility. However, they must collect and maintain individual household applications. Camps are reimbursed only for those enrolled children who meet the free or reduced-price eligibility standards.

Enrolled for-profit sites or for-profit camps are not eligible for participation in SFSP.

Documenting Camp Site Eligibility

Unlike other types of sites, camps do not have to establish income eligibility at the 50 percent level. Instead, camps are reimbursed only for meals served to children who meet the income eligibility criteria for free or reduced-price school meals. In order to determine eligibility for children, camp sponsors may use the household application or rely on list(s) of income eligible children provided by the school system.

SFSP sponsors of camp sites must collect and report to TDA income eligibility information in order to determine the eligibility of individual participants for free meals under the SFSP. Such information must be updated annually and may not be more than 12 months old. Household applications should be considered current and valid until the last day of the month in which the form was dated one year earlier. The date to be used to make this determination is the date on which either the parent or guardian signs the form, or the CE official signs the application to certify eligibility of the participant.

Sponsors of camps are not required to submit the approved household applications or school lists of eligible children to TDA. However, they must maintain the lists or original approved forms for all eligible children in separate files for each camp session, and the documents must be available for review by TDA.

Child Care Licensing – Shared Space

Some CEs may operate a childcare center and sponsor the SFSP. These CEs must follow Texas state requirements, copied below, regarding the use of its indoor and outdoor activity spaces which are licensed for its childcare center, for the operation of its SFSP site. Specifically, the

Texas Health and Human Services (HHS)² requirements, “Minimum Standards for Child-Care Centers,” state the following:

May other programs use my indoor activity space at the same time I have children in care? (TAC §746.4215)

- a) You may share the indoor activity space that is not classroom space with other programs at the same time you have children in care, if you have a written plan specifying how caregivers will supervise and account for children in your care. The plan must address the following:
 - The ages of the children;
 - The proximity of restroom facilities and the operation entrances and exits to the children’s area; and
 - The nature of other activities and persons who may be sharing the space.
- b) You must follow your written plan and submit a copy to [HHSC] Licensing upon request.
 - The intent of the written plan regarding shared space is to protect and reduce risk to the children in care at your center.
 - Your plan will be unique and should take into consideration your program and other programs using the space. For this reason, no two written plans will look the same.
 - It is important to review and update your written plan anytime there are changes in what programs use the space, the nature of these programs or the needs of the children in your care.

May other programs use my outdoor activity space at the same time I have children in care? (TAC §746.4315)

- a) You may share the outdoor activity space with other programs at the same time you have children in care, if you have a written plan specifying how caregivers will supervise and account for children in your care. The plan must address the following:
 - The ages of the children;
 - The proximity of restroom facilities and the operation entrances and exits to the children’s area; and
 - The nature of other activities and persons who may be sharing the space.
- b) You must follow your written plan and submit a copy to [HHSC] Licensing upon request.

² HHS consists of two agencies: the Texas Health and Human Services Commission (HHSC) and the Texas Department of State Health Services. HHSC oversees the licensing of child care providers.

- The intent of the written plan regarding shared space is to protect and reduce risk to the children in care at your center.
- Your plan will be unique and should take into consideration your program and other programs using the space. For this reason no two written plans will look the same.
- It is important to review and update your written plan anytime there are changes in what programs use the space, the nature of these programs, or the needs of the children in your care.

If TDA becomes aware of a specific center violating these or any other licensing rules, TDA will report the center to HHSC and the CE will be notified.

Special Types of Sites

Rural Sites

"Rural" is defined in regulation as any area that meets any of the following criteria:

- Any area in a county which is not a part of a Metropolitan Statistical Area based on the Office of Management and Budget's Delineations of Metropolitan Statistical Areas;
- Any area in a county classified as a non-metropolitan area based on USDA Economic Research Service's Rural-Urban Continuum Codes and Urban Influence Codes;
- Any census tract classified as a non-metropolitan area based on USDA Economic Research Service's Rural-Urban Commuting Area codes;
- Any area of a Metropolitan Statistical Area which is not part of a Census Bureau-defined urban area;
- Any area of a State which is not part of an urban area as determined by the Secretary;
- Any subsequent substitution or update of the aforementioned classification schemes that Federal governing bodies create; or
- Any "pocket" within a Metropolitan Statistical Area which, at the option of the State agency and with USDA approval, is determined to be rural in character based on other data sources.

A *Metropolitan Statistical Area* is defined by OMB as a location where there is at least one urbanized area of 50,000 or more population, plus adjacent territory, which has a high degree of social and economic integration with the core as measured by commuting ties, based upon census data. By January 1 each year, or as soon as is practicable, FNS will issue any necessary updates to approved data sources listed above.

Determining rurality of a site is important because those sites qualify for higher reimbursement and may be eligible to offer a non-congregate service. Therefore, all sponsors should validate the rurality of the site by using either TDA's Non-Congregate Eligibility Map located at:

<https://squaremeals.org/Programs/Summer-Meal-Programs/Summer-Non-Congregate-Feeding-Program> or USDA's mapping tool located at: <https://www.fns.usda.gov/sfsp/rural-designation>. TDA will validate that the sponsor has accurately assigned a site as rural. Once validated, the rurality designation of a site is valid for five years.

Non-Congregate Sites

The Consolidated Appropriations Act of 2023 authorized a permanent, non-congregate meal service through SFSP and SSO for underserved rural areas.

CEs with sites in rural areas are encouraged to apply to provide non-congregate feeding services should they recognize an appropriate need and feel they can meet the requirements described within the FAQ documents located on the Summer Non-Congregate Feeding Program page on SquareMeals (<https://squaremeals.org/Programs/Summer-Meal-Programs/Summer-Non-Congregate-Feeding-Program>). The FAQs on this page represent TDA's primary source of guidance for sites approved to operate non-congregate feeding. They include specific requirements and application instructions. As the Program evolves, this guidance will be permanently added to this handbook.

Currently, participation in the Non-Congregate Program is available to both SFSP and SSO operators based on the following criteria:

- CEs must be in good standing, meaning they are not seriously deficient in any Child Nutrition Program, have no outstanding corrective action, and have no outstanding debts to TDA.
- All sites must be in a rural area to be approved for non-congregate service (refer above for more information on how rurality is established).
- Any non-congregate site must be over 2 miles away from another congregate or non-congregate site. TDA will validate that requesting sites meet this proximity requirement prior to approving non-congregate service.

Grab-and-go (meals distributed at a single location) and home delivery are both allowable distribution models when operating a non-congregate service. However, only one service model is allowed per site. If wanting to serve grab-and-go while also distributing meals via home delivery, two site applications are required. Both meal distribution methods allow for additional flexibilities, as follows:

- Meal bundling (10-day maximum for grab-and-go, 5-day maximum for home delivery).
NOTE: TDA recommends a 5-day maximum due to food quality and expiration dates for milk and juice.
- Bulk food component distribution (5-day maximum)
- Parent/guardian pick-up with no child present
- Hybrid congregate/non-congregate service

Note that each of the above flexibilities, if requested, has associated regulations and requirements, both at time of application and implementation, that must be followed.

Migrant Sites

Migrant site eligibility is based upon a determination that the site predominantly serves children of migrant workers. The sites operate like area-eligible open or restricted open sites and are reimbursed for meals served to all attending children. The determination of site eligibility based upon migrant status must be updated annually. To confirm migrant status, CEs must submit information obtained from a migrant organization that certifies that the site serves a majority of children of migrant workers. If the site also serves non-migrant children, the CE must also certify that the site predominantly serves migrant children. This status information must be updated annually.

Mobile Sites

Mobile meals may provide the flexibility CEs need to reach children who do not have access to such traditional sites. In rural areas, where children may live in isolated locations, access to meal service sites operated by schools, parks and recreation departments, and private non-profit organizations is often limited. In urban areas, violence and traffic safety concerns are examples of issues that may limit viable options for site locations.

With mobile meals, the CE delivers congregate meals to an area using a route with a series of stops at approved sites in the community. Each stop on the route will require its own site application, and the meal service must take place on approved days and during approved service times as documented on each site application.

CEs operating mobile meals are subject to the following requirements:

- Each location where a bus or other vehicle stops to serve meals must meet the site eligibility criteria and other requirements set forth in Program regulations. For example, the site must be area eligible, the meal service must be supervised, meals must be consumed on the bus or near the drop-off location, times of meal service must be established, and the CE must have the ability to adjust meal deliveries based on fluctuations in attendance.
- CEs of mobile sites must take extra precautions to ensure that food is safe for children to eat. State and local health and safety standards must be met at all times. At a minimum, food must be maintained at proper temperatures along the entire delivery route, and temperatures must be monitored with a food thermometer. Program staff serving meals must follow appropriate hand washing procedures, as required by local health and safety regulations.
- A site supervisor must be present at each meal service. Mobile sites may operate as a full-service route, where the site supervisor travels with the vehicle along the route and supervises the site at each stop or where meals are delivered to each stop with an on-site

supervisor waiting to receive the meals. Site supervisors must remain on site during the entire approved meal service time, regardless of site attendance.

- TDA and sponsor monitoring visits and reviews at mobile sites must adhere to the same requirements as traditional SFSP sites.

Documenting Area Eligibility

On December 1, 2016, USDA issued memorandum [SFSP 03-2017, Area Eligibility in Child Nutrition Programs](#)³ which provided revised guidance on the use of school and census data to establish area eligibility in the SFSP. The National School Lunch Act (NSLA) allows the use of school data to establish area eligibility in the SFSP. Area eligibility determinations made using either school or census data must be redetermined every five (5) years.

Area Eligibility Based on School Data

In order for a site to be determined area eligible, school data must indicate that the proposed meal site is located in the attendance area of a school where at least 50 percent of the children are eligible for free or reduced-price school meals.

Every February, TDA publishes the *School Data for Area Eligibility* report on SquareMeals.org (<https://squaremeals.org/Programs/Summer-Meal-Programs/Administration-Forms>). The report lists all area eligible schools in the state; any site at or in the attendance zone of a school on the list is considered eligible to operate an open SFSP site.

Area eligibility for most schools is based on 50% or greater free/reduced meal claiming percentages from October of the current school year and will be valid for five years. Area eligibility for Community Eligibility Provision schools that serve all children free is based on having an Identified Student Percentage (ISP) of 31.25 or greater. Determination based on this ISP data is valid for the standard five years.

Area Eligibility Based on Census Data

CEs may establish area eligibility of their open and restricted open sites on the basis of U.S. census data. CEs must use the most recent data available. The Census Bureau estimates household income annually using the American Community Survey (ACS). USDA releases the ACS census data every year. TDA considers the information submitted regarding area eligibility in its review of each applicable SFSP Site Application in TX-UNPS.

Sites may be determined to be “area eligible” using either Census Block Groups (CBGs) or Census Tracts. Census Tracts are geographical units that consist of one or more CBGs. Additionally, based on analysis of the proposed location, with TDA’s approval, up to three adjacent CBGs may be averaged, using a weighted average to determine eligibility. One of the CBGs used must be the CBG where site is location.

³ <https://www.fns.usda.gov/area-eligibility-child-nutrition-programs>

SFSP sites located in a CBG or Census Tract in which 50 percent or more of the children are eligible for free or reduced meals are considered area eligible for a period of five years.

Other USDA nutrition programs, like the Child and Adult Care Food Program (CACFP), also use census data to establish area eligibility. USDA allows CEs to establish eligibility for SFSP sites using either CACFP or SFSP census data. For example, if a CBG showed SFSP as 48.90 percent and CACFP as 51.25 percent, the SFSP site would be eligible, even though the SFSP percent of 48.90 is below 50 percent.

NOTE: Because area eligibility for CACFP at-risk afterschool meals must be based on school data, SFSP sites that established eligibility using census data must provide additional documentation indicating that they are area eligible based on school data to participate in CACFP at-risk afterschool meals.

Using the Data

Data retrieved directly from the Census Bureau's website may not be used to determine SFSP site eligibility because it does not provide tailored data of children ages one through eighteen. As mentioned above, CEs may use USDA census data that is updated annually. CEs may access [TDA's website](#) on how to determine site eligibility based on census data.⁴ In addition, the instructions for determining eligibility using census data are below.

Instructions for Determining Eligibility Based on Census Data

Step 1: Become familiar with the census data format

⁴ Located at: <https://squaremeals.org/FandNResources/CensusData.aspx>

About the 2010 Census Block Group (CBG)

Every 10 years, the Census updates the area-based measures such as census tracts, blocks and block groups. CACFP, SFSP, SSO, and ASCP can use both census tracts and block groups to determine area eligibility.

The ideal size of a CBG is around 1500 homes but vary by region and area characteristics. Contrary to the name, CBGs are not usually shaped like rectangles; rather they can take any shape. The graphic on the right shows the relationship of CBGs to other geographical areas and the components of the GEOID (geographic identifier).

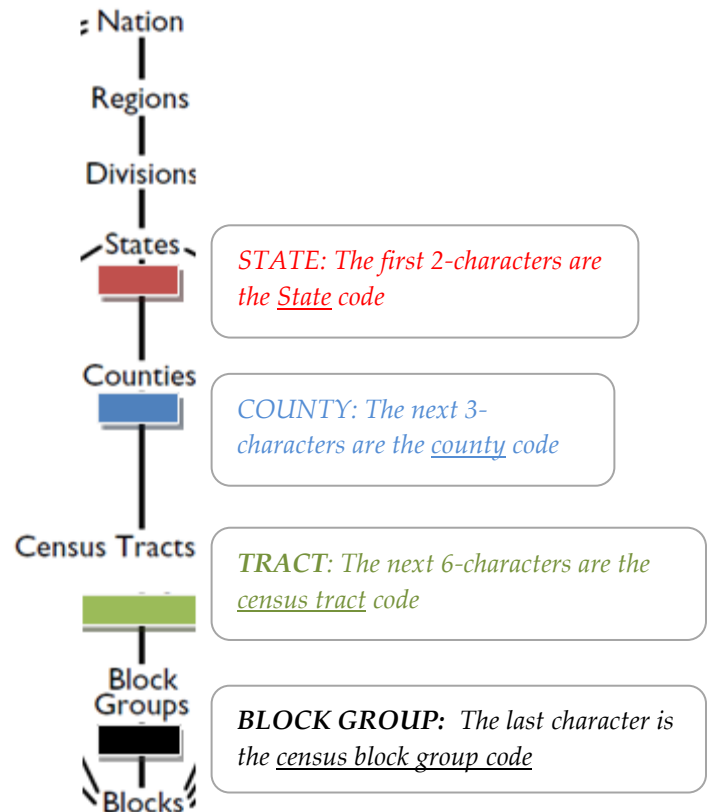
Every CBG in the country is enumerated, meaning it has a unique number assigned to it. This number is called the GEOID.

What information is in the GEOID?

The GEOID contains 12 digits. Each position in the GEOID signifies a different level of geographical area. Every digit is important, even the first zero. This is important to remember when importing these data, because some programs drop the first zero.

Here is an example of a GEOID from Autauga County, Alabama:

010010201001



Step 2: Determine eligibility

The following instructions provide three different options to determine eligibility: FNS Area Eligibility Mapper, Food Research and Action Center (FRAC) Food Mapper, and Combining CBGs. CEAs may use any of the following mapping tools.

Option 1: FNS Area Eligibility Mapper

This map includes an address search that will return eligibility information as well as other demographics. This map also includes zoom capabilities and map comparison for identifying areas of need.

1. Go to: <http://www.fns.usda.gov/areaeligibility>
2. To find by address, enter the address in the “Find address or place” box in the top right.

Averaging adjacent CBGs is meant to address pockets of poverty near census eligible CBGs. This method allows for the area around a site to be expanded in order to address nearby areas of high need.

In order to properly calculate the weighted average, it is important that:

- A maximum of three CBGs may be averaged, and one of these must include the CBG where the site is located.
- All CBGs included in the weighted average have 40 percent or more children eligible for free or reduced-price meals
- The CBGs are adjacent to or share a border with the CBG where the site is located.
- Either data for CACFP (0-12 year olds) or SFSP, SSO, and ASCP (0-18 year olds) is used to determine the weighted average. Either of these numerators and denominators may be used to determine eligibility using the weighted average but the same data set must be used across CBGs.

These fields represent the number of 0-18 year olds in the CBG.

Scroll down to see the number of 0-12 year olds.

Instructions for using the FNS Mapper:

1. Follow the instructions above to find the location of the site.
2. Click on the Legend box on the left side of the screen if it does not automatically display and use the information in the display to determine the eligibility of each CBG.
3. Use the + and – icons on the map to resize the map to see adjacent CBGs.
4. Click on the ineligible CBG to get the information needed to determine if at least 40 percent or more of the children in each of the CBGs to be combined are eligible for free and reduced- price meals by dividing either:
 - a. the Num18pov (Numerator) / Total18inBG (Denominator); or
 - b. the Num12pov (Numerator) / Total12inBG (Denominator)
5. If at least 40 percent or more of the children in each of the combined CBGs are eligible for free and reduced-price meals, then proceed with the weighted average by making the following calculations:
 - a. Add the numerators for the CBG where the site is located, and up to two additional adjacent CBG's with over 40 percent free or reduced-price eligibility. Determine if the adjacent CBGs have at least 40 percent eligibility by using the method in step 2 above.

FNS CACFP SFSP FY2016 Eligibility	
GEOID_1	480270221032
FY 2016 Area Eligible?	NO
CBG: Percentage of children (0-18) eligible for F/RP meals	42.70
CBG: Number of children (0-18) eligible for F/RP meals (Numerator)	480
CBG: Total children (0-18) (Denominator)	1,125
Percentage of children (0-12) eligible for F/RP	44.60
Zoom to	

- b. Add the denominators in the same way.
- c. Divide the sum of the numerators by the sum of the denominators and multiply by 100%. If that percentage is 50 percent or greater, the CBG can be considered area eligible with TDA approval.

Example:

Austin, Texas				
<i>CBG GEOID</i>	<i>Numerator (0-18)</i>	<i>Denominator (0-18)</i>	<i>Percentage (Numerator/Denominator) x100% *must be at least 40%</i>	
484530018562	515	1,170	x 100%	44.01%
484530018421	1,120	2,020	x 100%	55.44%
484530018561	455	820	x 100%	55.28%
<i>Total</i>	Sum of Numerators (515+1120+455)	Sum of Denominators (1170+2020+820)	Weighted average percent = (Sum of Numerators) / (Sum of Denominators) x 100%	
	2,090	4,010	x 100%	52.11%

Step 3: Combining CBGs – Approval Request to TDA:

To request approval, submit to TDA the following information:

- Site Name
- Site Address, including City, State, and Zip
- Site Census Block Group
- Identify if using CACFP Data or SFSP Data (same must be used for each adjacent CBGs)
- Site Data Numerator
- Site Data Denominator
- First Adjacent CBG Number
- First Adjacent CBG Data Numerator
- First Adjacent CBG Data Denominator
- Second Adjacent CBG Number
- Second Adjacent CBG Data Numerator
- Second Adjacent CBG Data Denominator
- Combined CBG Calculation

- Screen shots from FRAC Mapper and/or FNS Area Eligibility Mapper showing Site CBG location and adjacent CBG(s) location.

Requests for TDA’s review and approval should be submitted in writing via email to TDA at FNDPolicy@TexasAgriculture.gov. The email subject should include “Area Eligibility Based on Combined Census Block Groups” and the name of the CE. The CE’s name and ID should be on all documents submitted to TDA. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

Documenting Participant Eligibility

CEs may determine and document participant eligibility in the following ways.

Household Applications

The household application prototype on the Summer Meals Administration/Forms page of SquareMeals (<https://squaremeals.org/Programs/Summer-Meal-Programs/Administration-Forms>) can be used to determine the income eligibility of enrolled children for all camps (residential and non-residential) and closed enrolled sites. The information collected on the household application includes household size and income or the case number for benefits received under the Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp Program), Temporary Assistance to Needy Families (TANF), or the Food Distribution Program on Indian Reservations (FDPIR).

CEs may also use alternate forms as long as the forms request the same information as is found on the prototype household application. Forms developed by CEs must be approved by TDA before use. Eligibility based on household applications is valid for 12 months. Families must re-apply and sponsors must re-determine income eligibility annually.

Non-school CEs participating in the SFSP have two options in assigning the effective date of the income eligibility form.

- The signature date of the determining official which certifies eligibility.
- The signature date of the parent or guardian.

NOTE: If the date of the parent’s or guardian’s signature is not within the month of eligibility determination or the immediately preceding month, the effective date must be the signature date of the determining official.

Non-school CEs must decide which date they will use as the effective date and apply that date to all eligibility determinations made. This decision must be documented in the CE’s processes and procedures for determining participant’s eligibility.

NSLP/SBP CEs operating the SFSP have two options for establishing the effective date of the income eligibility form.

- The date of approval by the determining official which certifies eligibility.
- The date of receipt, or when the income eligibility form is received by the CE.

NSLP/SBP CEs must decide which date they will use as the effective date and apply that date to all eligibility determinations. CEs must have a method to document the date of eligibility, such as a date stamp procedure.

The date of the parent or guardian signature may not be used.

Head Start and Early Head Start Eligibility Forms

Children enrolled in Federal Head Start or Early Head Start Programs are categorically eligible for free meals in SFSP without further application. CEs may establish eligibility of all Head Start enrollees through documentation provided by the Head Start program. Forms of acceptable documentation include: an approved Head Start application, a statement of Head Start enrollment, or a list of participants from a Head Start official. Eligibility based on such documentation is valid for 12 months.

In addition, infants and toddlers, and, in some instances, pregnant women, who receive Early Head Start services are categorically eligible. Applicant families also may indicate a child's participation in Head Start on the household application.

Automatic (Categorical) Eligibility

Certain categories of children are automatically eligible for free meals and no income information is required. This is referred to as categorical eligibility. Children may be classified as categorically eligible for a period of 12 months through:

- Participation in another comparable Federal assistance program, including SNAP, FDPIR, or TANF
- Documentation that the child is homeless, runaway, or migrant, a foster child; or
- Enrollment in a federally funded Head Start Program.

NOTE: If one child in a household is receiving SNAP, FDPIR, or TANF benefits, all other children in the household are categorically eligible to participate in SFSP.

Foster Children

The Healthy, Hunger-Free Kids Act of 2010 expanded categorical eligibility for all child nutrition programs to children placed in foster care by a State child welfare agency or a court. Children placed in foster care are automatically eligible for free meals in SFSP.

Texas Department of Family and Protective Services (DFPS) standard form, [Form 2085FC Placement Authorization Foster Care/Residential Care](#)⁵ contains authorization establishing the categorical eligibility of children named on the form to participate in federally assisted meal

⁵ https://www.dfps.state.tx.us/site_map/forms.asp

programs, including SFSP. Those CE's operating a site or sites under SFSP needing to establish the eligibility of individual participants must accept DFPS *Form 2085FC* as proof of categorical eligibility for the child named on the form. No additional enrollment forms, income eligibility forms, or separate application as proof of eligibility to participate in SFSP are required.

Migrant, Runaway, and Homeless Children

In instances where a child or family may temporarily reside with another household, that child is still considered homeless. The SFSP CE can determine eligibility for homeless children through documentation provided by the homeless liaison or another source.

Other Program Participants

Information about the categorical eligibility of participants of other comparable Federal Assistance Programs, Head Start, and Early Head Start can be found in USDA's *Administrative Guidance for Sponsors*.

The *Administrative Guidance for Sponsors* also provides additional information on the eligibility of Upward Bound participants who meet the income eligibility requirements for SFSP.

Sharing Eligibility and Summary Information

On April 24, 2014, USDA released memorandum SFSP 17-2014, [Sharing Aggregate Data to Expand Program Access and Services in Child Nutrition Programs](https://www.fns.usda.gov/sharing-aggregate-data-expand-program-access-and-services-child-nutrition-programs)⁶ to remind CE's about the requirements for sharing data. This memo provides clarification of federal policy and additional guidance regarding the sharing of eligibility information between CE's operating federal Child Nutrition Programs and sharing aggregate or summary data information with the public.

Eligibility Information

When SFSP CE's have to obtain individual eligibility information they can obtain child-specific eligibility status from another CE, like a school or child care center, to expedite the certification process. A CE must protect the confidentiality of any information that has been provided by a household or received from another CE for determining eligibility for free, reduced-price, or paid meals. The CE may only use the information to determine eligibility and must not release any information that contains a SFSP participant's name or other individual information.

CE's operating the NSLP/SBP, SMP, CACFP, and SFSP may disclose children's names and all eligibility information, including eligibility status (whether they are eligible for free or reduced-price meals or free milk), **to persons directly connected** with the administration of

⁶ <https://www.fns.usda.gov/sharing-aggregate-data-expand-program-access-and-services-child-nutrition-programs>

other Federal Child Nutrition Programs authorized under the NSLA and the Child Nutrition Act of 1966 without parent/guardian consent.

Persons directly connected with the administration of the SFSP must legitimately need to know the eligibility information in order to carry out their SFSP responsibilities.

EXAMPLE: The individual responsible for documenting the eligibility of a site would have a clear need to access eligibility information, while an individual serving meals or conducting recreation programs would not.

NOTE: The disclosure of information shared by the CE is the CE's option and not required by regulations to be provided.

SFSP CEs may use the *Shared Eligibility Form*, which can be found on the squaremeals.org website under "Summer Feeding Administration & Forms," for obtaining eligibility information from another CE in order to make eligibility determinations for SFSP purposes.

The CE requesting the eligibility information may provide the *Shared Eligibility Form* to the CE providing the eligibility information to complete and return to the requesting CE. It is preferable that eligibility information received from a CE be documented in writing. However, the information can also be obtained verbally and documented on the form.

CEs requesting eligibility information from another CE need to provide/verify the following information:

- Document that the eligibility information applies to the specific child in question; and
- Verify the source/validity of the information.

NOTE: The elements required in order to verify eligibility information provided by another CE are listed below.

The following elements, which are also included in the *Shared Eligibility Form*, are required in order to verify eligibility information provided by another CE:

- Name of the CE providing the child eligibility information
- Telephone number of CE providing the child eligibility information
- Address of the CE providing the child eligibility information
- Date eligibility information was obtained from the CE
- Name of the CE representative providing the eligibility information
- Name of the child
- Child's date of birth, if applicable
- Child's eligibility category
- CE ID of the CE receiving the eligibility information, and
- Printed name, title, and signature of the SFSP CE representative receiving the eligibility information, and the date of the signature

Privacy and Confidentiality of Individual Information

Because CEs are not required to give prior notice or receive consent from the household before sharing eligibility information, the information obtained from the CE is subject to the same confidentiality and disclosure requirements as information obtained directly from a household. The privacy and confidentiality of personal data must be protected and CEs receiving eligibility information cannot share the information with any other entity. The CE must not release any information that contains a program participant's name or other individual information.

CEs must maintain control over the use of all eligibility information and guard against improper disclosure, no matter how the information was obtained. Also, CEs must ensure the information is securely stored and the number of individuals that have access to it is limited.

The CE receiving eligibility information and CE sharing (providing) the eligibility information should share the least amount of information needed to identify the child; however, it is understood that in some cases, it may be necessary to share more than the child's name to ensure that the eligibility determination applies to a specific child.

EXAMPLE: A CE attempting to document the eligibility of a child named "John Smith" may need to provide the child's date of birth to the CE providing the eligibility information so the requesting CE can verify that the information being provided applies to the "John Smith" in question.

Sharing Aggregate (Summary) Information

CEs may disclose aggregate or summary information about children eligible for free and reduced price benefits to any party without parental notification provided that an individual or group of children's eligibility cannot be identified through release of the aggregate data or by means of deduction.

USDA encourages CEs to share aggregate data with partnering organizations, such as anti-hunger advocacy organizations, in order to expand participation in the SFSP and target underserved areas.

For more information on eligibility, please refer to the most recent edition of the [Eligibility Manual for School Meals](#). The manual provides comprehensive information on the regulations, policies, and procedures for establishing eligibility in the federal CNPs. Specifically, the income eligibility, categorical eligibility, confidentiality, and disclosure sections of the manual are applicable to the SFSP.

The Eligibility Manual may be found at <https://www.fns.usda.gov/eligibility-manual-school-meals>.

NOTE: This manual is updated annually by USDA. CEs should check the USDA FNS website to confirm they are reviewing the most current edition.

CHAPTER 2—SPONSOR AND SITE IDENTIFICATION

TDA Priorities for Selecting a Sponsor

Confusion and waste result when two or more sponsors compete for the same sites or target children in the same geographical area. TDA will usually approve only one CE to serve an area.

When determining which of the competing sponsors will serve an area, TDA will give priority to:

- Local School Food Authority (SFA) CEs
- Government and private non-profit organization sponsors that have successfully operated the SFSP in a prior year
- New government CEs; and then
- New private non-profit organization CEs.

To support the greatest Program participation and access, it may be appropriate for TDA to allow sites in relatively close physical proximity to operate in the community, each serving its own participants. CEs should be able to explain why differences in the population of children they intend to serve require multiple sites in close proximity to each other. Sites may also be close in proximity but separated by a physical barrier that limits access, such as a busy highway.

Note: If CEs feel they have a unique situation where competition is posing a significant problem, they may contact TDA for assistance.

Operating Limitations

All sponsors may be approved for a maximum of 200 sites and a maximum total average daily attendance at all sites of 50,000 children. TDA may approve exceptions if the sponsor can demonstrate that it has the capabilities of managing a Program larger than these limits.

Sponsor Priorities for Selecting Sites

Finding Eligible Sites

It is important that a CE adequately evaluates the needs and resources of the area they hope to serve before making final plans for site operations. Mapping and other data tools can be used to locate high-need, eligible areas, and potential sites, such as libraries, schools, museums, and low-income housing units.

Once CEs have evaluated the needs of the area, they will have an easier time evaluating potential sites and determining the size of their operations. Because CEs must assume administrative and financial responsibility for total SFSP operations at all sites under their supervision, they must be certain that a site can offer a quality meal service. For returning sites,

where site supervisors have had a poor performance record in past summers or where supervisors were unable to institute timely corrective action, CEs should carefully consider taking them on. Depending on the nature of these problems, TDA may also choose not to approve such sites for the Program.

The following list outlines several major considerations for CEs evaluating potential sites.

Administrative Capability

In addition to selecting the sites at which meals will be served, CEs must decide how many sites to administer and how many children they will serve at each site. This decision will depend greatly on the need for a site in the area, the administrative capabilities of the CE, and the size of the site Programs. CEs must plan to operate Programs that are consistent with the size of their administrative staff and the extent of their expertise. A small CE with limited administrative experience should carefully place limits on the number of sites where it will offer meals.

Accessibility

If possible, CEs should attempt to establish sites that are:

- Accessible by foot, car, and/or public transit.
- Located in safe areas.
- Located in areas with no physical barriers to access, such as near busy streets without crosswalks.
- Accessible to children with and without disabilities.

Meal Friendliness

Ideal sites will have tables and chairs readily available, kitchens in which to prepare and clean up meals, large refrigerators to store leftovers, and restrooms for kids and staff to use. Special consideration will be needed for sites located outdoors.

Site Activities

Children are drawn to locations that offer educational, enrichment, and recreational activities. Selecting sites that can provide an activity along with the meal, such as an art project, game, school or community garden, or nutrition lesson, is a strategy sponsors can use to boost participation and overall enjoyment at their sites.

Volunteer Base

Hosting a site at a venue that already has a strong volunteer base, such as a soup kitchen or local faith-based organization, is a good way to ensure a site will be fully staffed and well-promoted in the community. More information about building partnerships with well-established community organizations is included in the Community Partnerships section below.

Community Partnerships

CEs may consider selecting site locations based on the potential for community partnerships. Partnering with community-based organizations can be helpful in building awareness of the

Program, finding additional financial support, coordinating site activities, and recruiting volunteers to serve meals to children. Sponsors may reach out to the following organizations when looking for community partners:

- Parks and recreation centers
- Youth organizations, such as YMCAs, Boys and Girls Clubs, 4-H programs, and Scout troops
- Social service organizations, such as food pantries, WIC clinics, and donation centers
- Minority referral services
- Food hubs, farmers markets, and local food and gardening organizations
- Cooperative Extension and SNAP-Ed
- Local parents' groups
- Faith-based organizations, such as churches, synagogues, or mosques
- National anti-hunger organizations, such as Share Our Strength and the Food Research and Action Center (FRAC) operating at the local level

In addition to offering support to existing sites, these and other partner organizations may have space available to host a site. CEs may consider reaching out to well-established community-based partners early on, as utilizing these partnerships may help to create a stronger, more impactful Program.

Selecting Food Service Staff

CEs that prepare meals on site or in a central kitchen are responsible for choosing staff, including a food service manager, food production staff, and general kitchen help. The number of food service employees will depend on the number and type of meals prepared.

Tips for Selecting Staff

1. Determine the number of staff you will need. The type of employee and the amount of experience needed will vary with the duties each will perform.
2. Use qualified volunteers, such as parents or supervisory adults, to help you operate the program. These individuals may offer help during food service and in supervising the children while they eat. Parental involvement should be encouraged. Parents often see their involvement as a benefit too!
3. All food service employees must meet the health standards set by local and State health authorities.
4. Develop a job description for each food service position that describes duties and responsibilities for the position.

For example: Food production employees will have food preparation duties and must be shown how to fill out the necessary records. They must know how to use recipes and meet the necessary meal pattern requirements. It is also important that staff be able to recognize complete meals and food safety guidelines.

Other personnel will have food service or cleanup duties and responsibilities. Write down the requirements of the job and go over the schedule of activities. For the position of food service manager, consider someone with a food production or nutrition background with food service experience.

Ensuring Site Access through Promotion

Public Notification of Open Sites

Once sites are identified, it is important that families are made aware of open site locations and the availability of meals. While TDA releases a federally mandated media release on behalf of all CEs operating open sites, CEs are encouraged to make use of FNS communication resources, which are available online. The following resources can be used to promote summer meals in any community:

- The Summer Meals Toolkit includes helpful strategies sponsors can use to build awareness of their Programs:
http://www.fns.usda.gov/sites/default/files/SFSP_toolkit.pdf
- The monthly Summer Meals Newsletters offer timely tips sponsors can use to improve Program outreach and expansion: <http://www.fns.usda.gov/sfsp/summer-meal-newsletters>
- The Summer Meals Best Practices Page shares proven success stories from Programs across the country: <http://www.fns.usda.gov/sfsp/best-practices>
- Additional FNS resources, including fliers, door hangers, public service radio announcements (PSAs), and training videos are available on the FNS website: <http://www.fns.usda.gov/sfsp/raise-awareness>

Additionally, CEs should consider the following methods and platforms for promoting the program:

- School Outreach - SFAs must cooperate with SFSP operators to inform eligible families of the availability and location of free meals for students when the regular school year ends.
- Local newspapers
- Local television

- Local radio
- Social media
- Elected officials - Local elected officials can issue press releases in support of the Program, and those with webpages and newsletters can use these platforms to encourage their constituents to participate or volunteer at sites.
- Community leaders

Participant Notification at Closed Enrolled Sites and Camps

CEs operating camps and all closed enrolled sites are required to notify participants or enrolled children of the availability of free meals and if a free meal application is needed (for example, at closed enrolled sites in non-eligible areas where 50% of the children enrolled must qualify for free or reduced-price meals).

If an application is required at a closed enrolled site or camp, income eligibility guidelines must be included with the notification. All notices to participants and enrollees must include the Civil Rights nondiscrimination statement.

TDA has developed and released three notification templates (for camps, closed enrolled sites in eligible areas, and closed enrolled sites in non-eligible areas). These notification templates are available on the SquareMeals Summer Meals Administration/Forms page: <https://squaremeals.org/Programs/Summer-Meal-Programs/Administration-Forms>.

Pre-Operational Requirements

Sponsor/Site Agreement

If a CE plans to administer SFSP at sites not legally affiliated with their organization (for example, at recreation programs or vacation Bible schools), the CE should enter into an agreement with the site supervisor or responsible site official. The agreement should list, in specific terms, the responsibilities of the site supervisor, which will make it easier for the site personnel to understand their duties.

However, the agreement does not relieve the CE of final administrative and financial responsibility for operating the SFSP at the site, including its responsibility to maintain contact with meal service staff, ensure that there is adequately trained meal service staff on site, and monitor site operations.

NOTE: All agreements between a CE sponsor and a site must contain the required Civil Rights Assurance Statements. Refer to the *Civil Rights Requirements* section of *Chapter 8 – Program Integrity* for more information.

Health and Sanitation

Prior to the operation of the SFSP, all CE's are required to notify their local health department of prospective food preparation facilities and summer feeding sites. As part of the application process, CE's must submit to TDA a copy of the notification to the local health department for each site. TDA provides a letter template, *Prototype Letter: Health Department Notification*, which can be found on the www.squaremeals.org website under "Summer Feeding Administration & Forms" that may be used by CE's when notifying health departments of SFSP sites.

Federal regulations require CE's conform to all applicable State and local laws and regulations in the storage, preparation, and service of food, and maintain proper sanitation and health standards.

As health department rules and regulations may vary, CE's should directly contact their local health department with any questions pertaining to health and sanitation standards.

A list of Texas local and regional public health organizations may be found at <http://www.dshs.texas.gov/regions/lhds.shtm>.

In addition to notifying the local health department, CE's must make arrangements for prompt and regular trash removal during the operation of the SFSP.

Health Department Locator Map

In Texas, local health, safety, and sanitation standards may vary depending on where a site is located and how the site is operating (Food Service Management Company, on-site food preparations, etc.). To assist CE's in identifying their local health department, an interactive map may be found on the www.squaremeals.org website under "Summer Feeding Program Food Safety." It is the responsibility of the CE's and sites to contact their local health department to ensure that the latest requirements and standards are implemented.

Planning for Extreme Weather/Air Quality Conditions and Disasters

Although all outdoor SFSP sites are not required to have an alternate temperature-controlled site, sponsors should have a contingency plan for dealing with extreme weather conditions, such as thunderstorms and excessive heat. Options include:

- Discontinuing the meal service, if safety is a concern.
- Using a tent to provide extra shade on extremely hot days.
- Partnering with a housing community to use an air-conditioned lobby or community room on extremely hot days.

Extreme Heat/Air Quality Waiver

Prior to Summer 2020, USDA had implemented a demonstration project allowing non-congregate meals at certain outdoor sites experiencing excessive heat. Under the demonstration project, SFSP CEs operating approved outdoor meal sites without temperature controlled alternative sites could operate as non-congregate sites on days when the area is experiencing excessive heat.

USDA has not re-implemented this demonstration project after non-congregate feeding was allowed universally during Summers 2020-2022 due to the COVID-19 pandemic. Instead, USDA is approving annual waivers that will allow for non-congregate feeding on days when the National Weather Service issues a Heat Warning or Heat Advisory, and on days when the EPA issues a “purple flag” Air Quality Index warning (as posted on <https://www.airnow.gov/air-quality-flag-program/>).

On these days, sites may serve non-congregate meals without pre-approval from TDA; however, the following parameters must be followed in order for those meals to be reimbursable:

- CEs using this waiver must check the National Weather Service website or the AirNow.gov site, as applicable, to ensure warnings have been issued for that day.
- As soon as possible after the day of service, the CE must submit the Extreme Heat/Air Quality Waiver Request Form located on the Summer Meals Administration/Forms page of SquareMeals (<https://squaremeals.org/Programs/Summer-Meal-Programs/Administration-Forms>)
- The CE must provide the number of meals claimed that day.
- TDA will verify that an extreme heat and/or air quality warning was in effect that day and notify the requestor that the request has either been approved or denied (if a warning cannot be verified). If denied, the meals served on those days must not be claimed for reimbursement.
- CEs must submit a form for each day that non-congregate meals were served.

NOTE: Sites in rural areas approved for non-congregate service are not required to submit a waiver request.

CEs are also encouraged to plan for emergency situations in advance to ensure a rapid disaster response. Organizations with current agreements to operate the SFSP may be approved to open emergency meal sites (SFSP Memorandum 18-2014: *Disaster Response*, May 19, 2014). Based on the significant needs of each community, FNS may waive the Program requirements for CEs to document that each site is serving an area in which poor economic conditions exist. These requirements may be waived for existing eligible sites located in areas damaged by a natural disaster that must relocate to areas that are not eligible based on school or census data.

Unanticipated School Closures

In any given school year, unanticipated weather events or other unexpected events may necessitate the closure of schools, preventing the offering of curriculum during the temporary closure. Per regulation and waiver, schools are permitted to serve children via SFSP or SSO during an unanticipated school closure.

If a School Food Authority (SFA) plans to operate SFSP during a closure, an SFSP application, with applicable site applications, must be submitted in TX-UNPS and approved prior to serving SFSP meals during unanticipated school closures. Additionally, the SFA must submit the Unanticipated School Notification Form, which is available on the NSLP Administration/Forms page of SquareMeals (<https://squaremeals.org/Programs/National-School-Lunch-Program/Administration-Forms>). While this form does not need to be submitted prior to serving meals, the meal service days should align with the TX-UNPS application.

Note that during the unanticipated school closure, per annually approved waiver, schools may serve meals from the closed school site and may distribute non-congregate meals. However, these flexibilities are only available for 10 calendar days at a time. If it appears the closure will last longer than 10 days, the SFA should notify TDA so that the agency can work with the district and USDA to ensure that meals can continue to be served under these flexibilities.

The SFA must return to serving breakfast and lunch under SBP/NSLP once the CE and/or site reopens.

NOTE: Area eligibility requirements still apply for service during unanticipated school closures, except in certain disaster situations. Detailed guidance regarding the operation of SFSP during emergency situations may be found in USDA memorandum, SFSP 18-2014, *Disaster Response*, May 19, 2014.

Pre-Operational Site Visits

CEs must visit new sites and any sites that had operational problems in the previous year. These visits are to determine that the sites have the facilities to provide meal service for the anticipated number of children in attendance and the capability to conduct the proposed meal service. CEs should record the date of the pre-operational visit to each site and the name of the person who visited each site.

When a CE applies for the SFSP, the CE must certify that all required pre-operational site visits have been conducted. These pre-operational visits must not be confused with required site visits during the first two weeks of Program operations (see “Chapter 8: Program Integrity” for a further discussion of these site visits).

NOTE: Existing rural sites that are approved to switch from standard congregate service to a non-congregate model are considered “new” and required to have a pre-operational visit.

For a prototype of the Pre-Operational Visit form, visit the Summer Meal Programs Administration/Forms page of [SquareMeals.org](https://squaremeals.org).

CHAPTER 3—SPONSOR APPLICATION

Sponsor Training

[Reserved for future use.]

Application Requirements

Unique Entity Identifier Number

As of April 4, 2022, the federal government stopped using the Dun & Bradstreet Data Universal Numbering System (DUNS) number as the identifier for entities doing business with the federal government. A Unique Entity Identifier (UEI) will replace the DUNS number for all CEs. This transition allows the government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the federal government.

All CEs must complete the following steps:

1. Register and obtain a UEI from SAM.gov
2. Once your organization has a UEI, please email the number to nsbp.sbp.bops@texasagriculture.gov

For more information, go to SAM.gov. Please note that TDA does not administer the SAM.gov website. All requests for technical help should be directed to SAM.gov.

Note also that the UEI number will not replace the Employer Identification Number (EIN).

Budget Submittal and Review

CEs must submit a complete budget each year when applying to participate in the SFSP. The submitted budget is reviewed and approved, modified, or denied as part of the TDA application review process. The CE submits its budget information via TX-UNPS, including its projected operating and administrative costs and any unused reimbursements from the previous program year. Also, CEs must submit any updates, amendments, or changes to its budget for TDA approval via TX-UNPS. When submitting budget information with an application to participate in the SFSP, CE's must apply the above cost principles. This budget information must be reviewed by TDA annually to ensure the costs funded from SFSP reimbursements are necessary, reasonable, and allowable. This budget review process provides the opportunity to identify potential unallowable costs and is a useful tool for maintaining program integrity.

Salary Review

With the application, CEs must submit a written compensation that meets the requirements outlined in FNS 796-4, Rev 4 and supports all labor costs that are attributed to the SFSP, including the following:

- Rate of pay, including salary ranges for each position
- Hours of work, including breaks and meal periods
- The institution's policy and payment schedule for regular compensation, overtime, compensatory time, holiday pay, benefits, awards, severance pay and payroll tax withholding
- The timing and frequency of the institution's payments to its employees.

Additionally, CEs will enter employee salaries in the SFSP Budget Detail in TX-UNPS and submit for review. Allowable salaries for SFSP staff are approved by TDA based on the reasonableness and necessity of the request. TDA documented its method for determining the reasonableness and necessity of compensation in its [CACFP Compensation Protocol](#),⁷ which also applies to SFSP salaries.

Approvable Budget Details must meet the following criteria:

- The total Base Salaries are within the salary range parameters established in the CACFP Compensation Protocol;
- Includes the cumulative total annual time worked in SFSP, or if operating multiple Child Nutrition Programs, the cumulative times for each Program. SFSP salaries should be reflective of only the total amount of time worked in the Program not to exceed an aggregate total of four months.
- The position is documented in the CE's organization chart and compensation policy.

Salary Increases

Salary increases should not exceed the position's range noted in the organization's compensation policy. TDA will consider the following salary increases using SFSP federal funding: 5% for routine annual or merit-based increases and 10% for promotional increases. Job description reviews may occur with promotional increases to ensure that the proposed change aligns with additional duties.

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https://squaremeals.org/Portals/8/files/cacfp/White_Paper_CACFP_Salary_and_Wage_Income_Protocol_V700_07072021%20003.pdf

If an employee's pay for either the categorical roles of Staff or General Office is below the minimum threshold as listed in the CACFP Compensation Protocol, the max allowed pay may be increased to the minimum protocol pay threshold plus 10%.

Promotional and annual merit-based increase percentages may not be combined to exceed the thresholds provided by category. Further, multiple promotional increases and raises may not be considered within a 12-month period. CEs may provide increases beyond the TDA allowable ranges but may not use SFSP funds to do so. Any such instances must use non-SFSP funds to cover the increases.

Salaries for Operators of SFSP and CACFP

Combined base salaries for CEs operating both SFSP and CACFP cannot exceed the maximum allowable base salaries as established in TDA's CACFP Compensation Protocol. CEs operating both programs must simultaneously complete and submit for review the SFSP & CACFP budget detail.

Cumulative total annual time worked in each Program must be documented in the Budget Detail. TDA will review to determine total annual salary per employee per Program as provided by the CE in the respective programs' application packets in TX-UNPS.

Determinations are conducted by:

- Identifying the cumulative annual pay for each program.
- Reconciling the pay worked in each program and ensuring the totals do not exceed the compensation parameters as noted in the CACFP Compensation Protocol.

If the Base Salary is not compliant with the TDA review parameters, the application packet will be returned for correction.

Amendments to the Summer Food Service Program (SFSP)

In TDA's Food and Nutrition Division Permanent Agreement (Permanent Agreement), CEs agree to perform according to the CE's application, any approved amendments to the application, and the terms and conditions of the Permanent Agreement. CEs also agree to comply with all laws and regulations applicable to the Program and USDA instructions, policy memoranda, guidance, and other written directives interpreting the statutes and regulations applicable to SFSP, and state rule, regulations, policies and procedures as issued and amended by TDA and other applicable laws as listed in the Permanent Agreement. Approved changes to a SFSP application and supporting documents do not require an amendment to a CE's Permanent Agreement.

A CE's SFSP application and Permanent Agreement may only be amended with TDA approval. The following guidance and information provides an overview of TDA policy on when amendments must be made to a CE's approved SFSP application and the type of amendments which are made to a CE's Permanent Agreement.

Amendments to the SFSP Application

Once a CE's application is approved, a CE may submit changes, or amendments, to the SFSP application. Amendments can be made online via the Texas Unified Nutrition Programs System (TX-UNPS). NOTE: 2 CFR 200.308 requires CEs to report changes in budget, personnel, and scope of the SFSP to TDA.

A CE must request an amendment to its approved application (packet) whenever the CE seeks to do any of the following:

- Adding or removing an approved site
- Adding, removing, or changing a field trip
- Changing an approved food production facility
- Adjusting the approved maximum meal level at a site, also known as the average daily participation (ADP)
- Address changes
- Name changes, including, but not limited to, the following:
 - Sites
 - Staff/personnel
- Changes to approved meal types
- Changes to approved meal times
- Changes to approved meal service start and/or end dates
- Changes of an authorized representative as indicated on the *User Access Manager Form* (FND-135)
- Significant changes to the approved budget, or if TDA determines a budget amendment is needed, including, but not limited to, the following:
 - A single line-item amount which increases or decreases by at least 20%
 - The addition of a new line item in the operation and/or administrative budget(s)
 - Any change to the overall budget which increases or decreases the overall budget amount by 20%
 - Moving more than 10% of the total budget from one line item to another line item amount, even if the overall total budget amount remains the same.
NOTE: If moving less than 10% to another line item, the CE must still notify TDA of the realignment.
- Any other changes affecting reimbursement, including, but not limited to, the following:
 - Changing from a self-prep to a vended site

- Changing from a vended to a self-prep site

CEs must report changes in the budget, personnel, and scope of the SFSP to TDA in accordance with 2 CFR § 200.308. This may be done online via TX-UNPS for review and approval by TDA.

A CE's claim for reimbursement may be delayed, reduced, denied, or otherwise negatively impacted if amendments are not properly requested in advance via TX-UNPS.

NOTE: TDA may require a CE to submit supporting documentation justifying the amendment request. TDA will notify the CE if additional documentation is required before TDA can approve an amendment request.

When to Submit SFSP Application Amendments

CEs must submit their completed and correct amendments, with all required supporting documentation, no later than 15 calendar days prior to the desired effective date. If an amendment is not submitted within the 15-calendar day timeframe, the requested amendment may not be approved by the desired start date.

NOTE: Amendments to the average daily participation (ADP) at a site must be submitted prior to the submission of a claim. See SFSP Site Caps in Chapter 4 - Meal Requirements for additional information regarding ADP and site caps in SFSP.

Amendments to the Food and Nutrition Division Permanent Agreement

There are two types of Permanent Agreement amendments:

- Universal amendments, and
- Contracting Entity-specific amendments.

Universal Amendments to Permanent Agreement

TDA initiates universal amendments. Universal amendments are modifications to the terms and conditions of the Permanent Agreement that apply to all CEs operating under the Permanent Agreement. Universal amendments include amendments that are specific to a particular program and are made by TDA to all Permanent Agreements, regardless of whether a particular CE has been approved to participate in that program.

Contracting Entity-Specific Amendments to Permanent Agreement

Contracting Entity-specific amendments may be initiated by either TDA or the CE. These amendments are limited to the following:

- Adding participation in a TDA-administered program;
- Deleting participation in a TDA-administered program;
- Changing the name of the CE in which the Employee Identification Number (EIN) remains the same under the existing Permanent Agreement; and
- Changing the name of the CE in which other documentation establishing its legal identity remains the same under the existing Permanent Agreement.

Whenever necessary, TDA will amend a CE's Permanent Agreement using the appropriate amendment form to indicate a CE's current participating status and/or organization name.

A CE may withdraw its request to amend its Permanent Agreement to add or remove a program if it decides (1) not to participate in the program being added or (2) continue participation in the program being removed. In the event that a CE decides to withdraw a Contracting Entity-specific amendment, the CE must notify TDA in writing. For additional information about Contracting Entity-specific amendments related to the SFSP, CEs may email TDA at SFSP.BOps@TexasAgriculture.gov.

If a CE fails to return a CE-specific amendment to TDA and/or does not notify TDA that the CE wishes to withdraw the action, the CE's Permanent Agreement may be terminated by TDA for cause.

NOTE: The forms *Permanent Agreement Contracting Entity Specific Amendment* and *Permanent Agreement Contracting Entity Specific Amendment – Name* can be found under “Summer Feeding Administration & Forms” at www.squaremeals.org.

Denials, Terminations, and Appeal Rights

Application Denial and/or Termination

TDA will deny a pending application and may terminate a CE's Permanent Agreement if TDA determines at any time that the CE:

- Is ineligible to participate in the SFSP;
- Is determined to be seriously deficient in the ability to comply with program requirements in any child nutrition program, including SFSP and the Child and Adult Care Food Program (CACFP);
- Fails to submit a complete and correct application by the applicable deadline;
- Fails to provide services specified in the Permanent Agreement;
- Submits falsified information, documents, or claims to TDA;
- Fails to return an advance payment that exceeds the amount earned for serving approved meals, or an unearned reimbursement;
- Owes a debt to TDA;
- Fails to meet basic eligibility requirements;
- Does not comply with meal service times;
- Fails to maintain required records;
- Fails to adjust meal orders to conform to variations in the number of participants;
- Claims reimbursement for meals that did not meet program meal pattern requirements;

- Claims reimbursement from multiple programs for the same meal served to the same child or claimed a child more than once per individual meal in the SFSP (concurrent participation);
- Claims reimbursement for meals that were not served to participating/eligible children;
- Allows the off-site consumption of SFSP meals on a regular basis;
- Continues to purchase meals from a food service management company (FSMC) that does not comply with state and local health codes;
- Fails to resolve Program noncompliance as detailed in a corrective action plan;
- Has an outstanding or unresolved single audit; or
- Fails to comply with procurement standards or contract requirements.

Terminations

The Permanent Agreement may be terminated in whole or in part. A termination in part applies when a CE participates in more than one program and withdraws from or is determined to be ineligible for at least one but not all the programs.

The CE's Permanent Agreement must be terminated in whole if a CE is determined to be ineligible to participate in a program as a result of serious deficiency in the CE's ability to comply with program requirements.

TDA must terminate a CE's Permanent Agreement if TDA determines that there is cause for termination as discussed above in "Application Denial and/or Termination" or if the CE mutually agrees to terminate its agreement.

Contracting Entity's Failure to Reapply

If a CE fails to reapply to participate in the SFSP, its Permanent Agreement will be amended or terminated, as appropriate, by TDA.

Termination for Convenience

TDA and the CE may terminate the CE's Permanent Agreement by mutual agreement of the parties at any time. Generally, **termination for convenience** occurs as a result of the CE's decision to withdraw from a program and can occur at any time during the program year, including at the time of reapplication.

NOTE: Termination of the Permanent Agreement by mutual agreement is not an adverse action. Therefore, termination by mutual agreement is not subject to appeal.

Termination for Cause

Before terminating an agreement for cause, TDA will consider the following:

- The severity of the non-compliance(s);
- The reason for the non-compliance(s);
- The CE's efforts to correct the non-compliance(s); and
- Whether providing or arranging additional training or technical assistance would help the CE to correct the non-compliance(s).

If the Permanent Agreement is terminated for cause, TDA will notify the CE in writing of the basis for the termination. TDA's termination for cause is subject to appeal.

Appeals

TDA notifies CEs in writing of any adverse action taken against their participation in the SFSP. This written notification will include the following information, as applicable:

- A description of the adverse action (or action which adversely affects a CE's participation in the program);
- The agency's basis for the action (for example, failure to comply with program requirements); and
- An explanation of appeal rights and appeal request procedures.

If the agency's adverse action includes the termination or amendment of a CE's Permanent Agreement, the notification will advise the CE whether they will be eligible for SFSP payments during the period of appeal.

CEs always have the right to review all information upon which the agency based the adverse action.

Actions Subject to Appeal

Each of the following TDA actions are subject to appeal:

- Denial of an application for participation;
- Termination from the program of a CE or a site;
- Denial of a request for an advance payment;
- Refusal by TDA to forward to USDA an exception request by the CE for payment of a late claim or a request for upward adjustment to a claim;
- Denial of a claim for reimbursement (except for late submission);
- Denial of a CE application for a specific site; and

- Claim against the CE for remittance or settlement of any overpayment.

Actions Not Subject to Appeal

Each of the following TDA actions are not subject to appeal:

- Termination by mutual agreement of the Permanent Agreement;
- Denial of the payment of a late claim or upward adjustment;
- Denial of a waiver request by TDA or USDA;
- Denial of an organization's request for removal from the TEXSL; and
- Denial of a CE's request to use Offer Versus Serve in the SFSP.⁸

Appeal Process

A timely request for appeal must be received by the TDA Docket Clerk no later than 5:00 P.M. on the tenth (10th) day after the receipt of the notification of an adverse action. The appeal must:

- Be in writing;
- Clearly identify the action being appealed; and
- Include a legible photocopy of the letter notifying the CE of the adverse action.

If a CE wishes to have an in-person hearing, it must request a hearing at the time it files a written appeal request. If a CE does not include a written hearing request in its appeal, the CE waives the right to a hearing, and the appeal will be decided upon review of the documents in the record, unless the Administrative Review Official (ARO) determines that the failure to make a timely request was due to circumstances beyond the control of the appellant.

An appeal must be mailed or faxed to the following address:	An appeal may be hand-delivered or submitted via overnight/special delivery to the following address:
Texas Department of Agriculture Legal Division ATTN: Docket Clerk PO BOX 12847 Austin, Texas 78711 FAX: (800) 909-8530	Texas Department of Agriculture Legal Division 1700 North Congress, 11th Floor Austin, Texas 78701

⁸ Per SFSP regulations, the OVS option is only available to school food authority (SFA)-sponsored sites.

The rules regarding the appeal procedures for SFSP are found in Title 4 of the Texas Administrative Code, Part 4, Chapter 26, Subchapter E.

NOTE: Documentation a CE wishes to have considered by the Administrative Review Official in consideration of its appeal must be submitted to the address above within seven (7) days after the CE submits the request for appeal. Documentation can be submitted with a request for appeal, or separately.

See Chapter 8 – *Program Integrity*, for additional information on appeals and the appeal process.

Background Checks and Government Issued Identification/Proof of Residential Address

During the application process, and at any time during the CE's participation in the SFSP, TDA may conduct background checks on each non-governmental CE's primary authorized representative, board chairman or principal to determine if that person has a criminal history that would make the organization ineligible to participate in the SFSP.

NOTE: The term "principal" means any individual who holds a management position within, or is an officer of, the CE, including all members of the CE's board of directors, or otherwise exercises control of, or determines the actions of, the CE.

Criminal history that would meet this criterion includes a criminal conviction in the seven years preceding the date of application (or date of background check) that indicates a lack of business integrity including, but not limited to, any one of the following:

- Fraud,
- Anti-trust violations,
- Embezzlement,
- Theft,
- Forgery,
- Bribery,
- Falsification or destruction of records,
- Making false statements,
- Receiving stolen property,
- Making false claims, or
- Obstructing justice.

TDA may collect government issued identification that contains a picture as well as proof of residential (home) address for each principal of non-governmental organizations applying to or participating in the SFSP. If TDA does elect to collect such information, a combination of documentation may be used to achieve this requirement.

Acceptable forms of documentation include any one of the following:

- Driver license or personal identification card issued by the Texas Department of Public Safety, or a similar document issued by an agency of another state, regardless of whether the card or license has expired,
- Military identification,
- Valid U.S. Passport,
- Current, valid Texas voter registration card,
- Official mail addressed to the person's current address, by name, from a utility provider or government agency or bank,
- A current lease executed by the individual, or
- Any other proof approved by TDA.

Review of Applications

[Reserved for future use.]

State-Sponsor Agreement

[Reserved for future use.]

Appeal Rights

See Application Requirements: *Denials, Terminations, and Appeal Rights* in this chapter.

CHAPTER 4—MEAL REQUIREMENTS

Number and Type of Meals

[Reserved for future use.]

Meal Pattern Requirements

CEs are encouraged to review the USDA's [Food Buying Guide for Child Nutrition Programs](https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs)⁹ (FBG) for assistance with determining portion sizes and what quantities to purchase. The FBG is also available as a web-based Interactive Food Buying Guide or for download as a mobile app at <https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs>.

The USDA also publishes the *Nutrition Guide for Sponsors* that, among other topics, provides guidance on understanding the SFSP meal pattern requirements and food safety. The *Nutrition Guide* is available on USDA's website at <https://www.fns.usda.gov/sfsp/handbooks>.

Accommodating Disabilities that Restrict Diet

On June 22, 2017, USDA issued memorandum [SFSP 10-2017, Modifications in the Child and Adult Care Food Program and Summer Food Service Program](#).^{10,11} The memo provides a detailed outline of the requirements for CEs to provide reasonable modifications to SFSP meals or meal service to accommodate children with disabilities that restrict a child's diet.

CEs are required to make substitutions to meals for participants with a disability that restricts their diet. This substitution is done on a case-by-case basis and when supported by a medical statement written by a licensed physician or State recognized medical authority. A State of Texas recognized medical authority is a State licensed health care professional who is authorized to write medical prescriptions under State law. Meals that do not meet the SFSP meal pattern requirements are not eligible for reimbursement unless supported by a medical statement.

A person with a disability is any person who has a physical or mental impairment which substantially limits one or more "major life activities," has a record of such impairment, or is regarded as having such impairment (7 CFR 15b.3). "Major life activities" are broadly defined and include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. "Major life activities" also include the operation of a major bodily function, including but not limited to, functions of the immune

⁹ <https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs>

¹⁰ <https://www.fns.usda.gov/modifications-accommodate-disabilities-cacfp-and-sfsp>

¹¹ The release of this memo rescinds FNS Instruction 783-2, Rev.2, Meal Substitutions for Medical or other Special Dietary Reasons.

system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

The medical statement should include the following information:

- A description of the physical or mental impairment so that the CE may understand how the disability restricts the participant's diet.
- An explanation of what must be done to accommodate the disability.
- In the case of food allergies, this means identifying the food or foods to omit and recommending alternatives.
- Some disabilities may require a modification to the service provided at the meal time. For example, children with diabetes may require help tracking what they eat at each meal.

NOTE: CEs should not engage in weighing medical evidence against the legal standard to determine whether a particular physical or mental impairment is severe enough to qualify as a disability. The central concern for CEs is ensuring equal opportunity to participate in or benefit from the SFSP.

CEs are not required to provide the exact substitution or other modification requested by the parent or guardian; however, the CE must work with the parent or guardian of the child to offer a reasonable modification that effectively accommodates the child's disability and provides an equal opportunity to participate in the SFSP. CEs are not required to make modifications that would require a *fundamental alteration* in the nature of the SFSP. Modifications that are so expensive or difficult that they would make the CE's continued operation of the SFSP unfeasible constitute a fundamental alteration in the nature of the SFSP and, as a result, are not required. CEs concerned that a requested modification would fundamentally alter the nature of their program should contact TDA for assistance at Community.Ops@TexasAgriculture.gov or 1-877-TEX-MEAL (839-6325).

CE's must provide notice of nondiscrimination and accessible services (7 CFR §15b.7). CEs are encouraged to develop procedures for parents or guardians to request modifications to meal service for children with disabilities and to resolve grievances. CE's should notify parents or guardians of the procedure for requesting meal modifications. A written final decision on each request should be part of a CE's procedures. Additionally, CEs should ensure that its summer site staff understands the procedures for handling requests for meal modifications.

CE's that employ 15 or more individuals must designate at least one person to coordinate compliance with disability requirements. This person is often referred to as the Section 504 Coordinator. Additionally, CE's with 15 or more employees must establish grievance procedures that incorporate due process standards and provide for the prompt and equitable resolution of complaints (7 CFR §15b.6).

Medical or Special Dietary Needs

Meal or food substitutions may be made at a CE's discretion for a child with a non-disability medical or other special dietary need. Such determinations must be made on a case-by-case basis. CEs should be aware that meal or food substitutions for non-disability medical or special dietary needs that are outside the meal pattern requirements are not reimbursable. While CEs are not required to accommodate dietary preferences, such as vegetarian diets, they are highly encouraged to do so within the existing meal patterns. The SFSP meal patterns allow for a variety of foods items within the required meal components and are flexible and adaptable enough to accommodate dietary preferences (7 CFR § 225.16(f)(4)).

Food Crediting in SFSP

CEs should refer to *The Food Buying Guide for Child Nutrition Programs* for determining the creditability of foods, which is available at <https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs>.

CEs must maintain accurate records to document SFSP meal pattern requirements were met for all meals claimed. This may include, but is not limited to, receipts and/or invoices, meal production records, and product documentation from a food manufacturer, if applicable.

Smoothies Offered in SFSP

On July 22, 2015, USDA issued memorandum [SFSP 10-2014 \(version 3\), Smoothies Offered in Child Nutrition Programs](#)¹² which replaced existing guidance on smoothies served in SFSP.

Smoothies prepared by CEs may count towards the required milk, meat/meat alternate, fruit, or vegetable components for a reimbursable breakfast, lunch, snack, or supper meal. Grains *cannot* be credited when served in a smoothie.

For example, this 1½ cup blueberry, yogurt, and milk smoothie could contribute the following to SFSP meal requirements:

Ingredient	Crediting
4 fluid ounces (oz) fat free milk	½ cup of milk
½ cup blueberry puree, frozen	½ cup of fruit juice
4 oz low fat yogurt	1 oz meat alternate

When smoothies are offered as part of a breakfast or lunch, additional milk, fruit, vegetable, and/or a meat/meat alternate *must be offered* if the amount served in the smoothie does not fulfill the minimum serving sizes needed to meet the SFSP meal pattern requirements.

¹² <https://www.fns.usda.gov/smoothies-offered-child-nutrition-programs>

Crediting of Milk:

Fluid milk used in smoothies made by CEs is a creditable food item towards meeting the fluid milk component. USDA recommends CEs serve other varieties of fluid milk and monitor milk consumption to ensure that the service of smoothies does not compromise the children's consumption of milk.

Crediting of Yogurt:

Dairy yogurt used in smoothies prepared by CEs is creditable towards the meat/meat alternate component for any meal and is the only creditable meat/meat alternate allowed in a smoothie.

Crediting of Fruit/Vegetables:

Pureed fruits and vegetables, when served in smoothies prepared by CEs, may be counted as fruit or vegetable juice and credited towards the fruit/vegetable component of meal pattern requirements in any SFSP meal, and as such are subject to the limitations regarding juice service. Pureed fruits or vegetables, when served in a smoothie, may not be counted as more than fifty percent of the fruit/vegetable component for lunch, but may be counted as the entire fruit/vegetable component for breakfast. Additionally, pureed fruits and vegetables in a smoothie may not be served when milk is the only other component for a snack. Vegetables which are fresh, frozen, canned, 100% vegetable juice, or 100% vegetable and fruit juice blends are creditable towards the vegetable component. Vegetables from the dry beans and peas subgroup may also credit towards the vegetable component as juice when served in a smoothie.

Crediting of pureed fruit/vegetables is determined on a volume as served basis. CEs should be aware that certain pureed fruits (e.g. figs, plums, and others) have specific yield information and should refer to *The Food Buying Guide for Child Nutrition Programs* to ensure the volume of the pureed fruit or vegetable is creditable, and is the amount needed to count toward serving minimum requirements.

Commercially Prepared Smoothies:

Commercially prepared smoothies may only credit towards the fruit/vegetable component.

Commercially prepared smoothies must have a Child Nutrition (CN) Label, product formulation statement, or other documentation from the manufacturer which verifies the creditability of a food. See Chapter 10 of this Handbook for more information on CN Label requirements.

Shelf-stable, Dried and Semi-dried Meat, Poultry, and Seafood Snacks

On December 4, 2018, USDA issued memorandum [SFSP 02-2019, Update of Food Crediting in the Child Nutrition Programs](https://www.fns.usda.gov/school-meals/update-food-crediting-child-nutrition-programs),¹³ which provided updated guidance for the crediting of

¹³ <https://www.fns.usda.gov/school-meals/update-food-crediting-child-nutrition-programs>

shelf-stable, dried and semi-dried meat, poultry, and seafood snacks. These items may be credited toward the meat component in a reimbursable meal or snack. On April 17, 2019, USDA issued memorandum [SFSP 07-2019, Crediting Shelf-stable, Dried and Semi-dried Meat, Poultry, and Seafood Products in the Child Nutrition Programs](#)¹⁴ which provides guidance on how these products credit toward specific food components of the SFSP meal pattern. USDA expects these products to be most useful in meals served off-site such as during pre-approved field trips. For specific crediting guidance, CEs should visit the *Manufacturer's Product Formulation Statement* section of the Child Nutrition (CN) Labeling Program website at <https://www.fns.usda.gov/cnlabeling/food-manufacturersindustry>.

NOTE: Dried meat, poultry, or seafood products are not included in the *Food Buying Guide for CNPs* because industry standards for these products vary widely. Product Formulation Statements (PFS) or products labeled under the CN Labeling Program are the two acceptable formats for documenting meal contributions from these products.

When a PFS is provided for a dried meat product, CEs must evaluate it to ensure the following crediting principles are followed:

- The creditable meat ingredient listed on the PFS must match or have a similar description as the ingredient listed on the product label (e.g., Ground Beef, Not More Than 30% Fat or Beef Round Roast);
- The creditable meat ingredient listed on the PFS must have a similar description to a food item in the *Food Buying Guide for CNPs*; and
- The creditable amount cannot exceed the finished weight of the product.

Coconut, Hominy, Corn Masa, Corn Flour, Cornmeal, Popcorn, Surimi Seafood, and Tempeh

In the December 4, 2018 memo, USDA also stated that SFSP operators are now allowed to credit to the SFSP meal pattern coconut, hominy, popcorn, surimi seafood, and tempeh. On April 17, 2019, USDA issued several additional memos outlining guidance describing how these products credit towards specific food components of the SFSP meal pattern. Detailed guidance on crediting these products may be found at:

- [SFSP 08-2019, Crediting Coconut, Hominy, Corn Masa, and Corn Flour in the Child Nutrition Programs](#)¹⁵
- [SFSP 09-2019, Crediting Popcorn in the Child Nutrition Programs](#)¹⁶

¹⁴ <https://www.fns.usda.gov/crediting-shelf-stable-dried-and-semi-dried-meat-poultry-and-seafood-products-child-nutrition>

¹⁵ <https://www.fns.usda.gov/school-meals/crediting-coconut-hominy-corn-masa-and-corn-flour-child-nutrition-programs>

¹⁶ <https://www.fns.usda.gov/school-meals/crediting-popcorn-child-nutrition-programs>

- [SFSP 10-2019, Crediting Surimi Seafood in the Child Nutrition Programs](#)¹⁷
- [SFSP 11-2019, Crediting Tempeh in the Child Nutrition Programs](#)¹⁸

Pasta Products Made of Vegetable or Legume Flour

USDA expanded flexibility for crediting vegetables and now allows pasta made of vegetable flour(s) to credit as a vegetable, even if the pasta is not served with another recognizable vegetable.

NOTE: This crediting does not apply to grain-based pasta products that contain a small amount of vegetable powder for color (e.g., spinach, sun-dried tomato).

The crediting changes regarding pasta made with 100 percent vegetable flour does not remove the visual recognition requirement for legume pasta crediting toward the meat/meat alternative component in the SFSP meal pattern. To credit as a meat/meat alternative, pasta made of legume flour(s) must be offered with an additional meat/meat alternative such as tofu, cheese, or meat.

Specific guidance on crediting these products may be found at

- [SFSP 12-2019, Crediting Pasta Products Made of Vegetable Flour in the Child Nutrition Programs](#)¹⁹

CEs choosing to use these pasta products must indicate, using signs or other nutrition education, that pasta made of vegetable flour is a “vegetable” and not a grain component of the meal. For example, CEs could label pasta made of chickpea flour as “Chickpea Pasta” with a symbol showing it to be part of the vegetable component of the SFSP meal pattern. In addition, CEs should make sure their staff is trained to recognize a reimbursable meal. Specifically, CE’s should inform staff when pasta made with vegetable flour is offered and ensure that they understand how the pasta contributes toward the reimbursable meal pattern.

NOTE: Whole vegetables cut into “noodles” or spirals, such as spiralized zucchini or sweet potatoes, continue to credit toward the vegetable and fruit component of the SFSP meal pattern.

¹⁷ <https://www.fns.usda.gov/school-meals/crediting-surimi-seafood-child-nutrition-programs>

¹⁸ <https://www.fns.usda.gov/school-meals/crediting-tempeh-child-nutrition-programs>

¹⁹ <https://www.fns.usda.gov/school-meals/crediting-pasta-products-made-vegetable-flour-child-nutrition-programs>

Meal Service Requirements

On December 5, 2016, USDA issued memorandum SFSP 06-2017, [*Meal Service Requirements in the Summer Meal Programs, with Questions and Answers – Revised*](#).²⁰ This memo provides guidance on meal service requirements for the SFSP and the NSLP SSO.

Prohibition of Separation by Sex

In general, CEs participating in the SFSP are not permitted to separate children on any protected basis during the service of SFSP meals or snacks consistent with Federal non-discrimination laws and policies.

The circumstances where sex-based separation may be permissible and for which a CE may submit a written request for an exemption are the following:

- Meal service at religious institutions operating under the dictates (laws or decrees) of the religion with which they are affiliated (i.e., religious doctrines that prohibit mixing or comingling of males and females).
- Meal service at juvenile correctional facilities where combining members of the opposite sex would present a potential safety risk (i.e., juvenile detention centers where males and females are separated for safety).²¹
- Meal service at facilities that fully separate males and females as part of their normal operations (i.e., sex-separated summer camps, programs, or conferences).

Requests for an exemption to the prohibition on sex-separated meal service should be made using TDA's *Male/Female Separation Exception Request* form located at www.squaremeals.org or on the TX-UNPS Application Module Download Forms screen, form ID SFSP-109. The completed form should be submitted to TDA for its review using one of the methods described in the form.

When requesting an exemption from TDA, the CE must specify which of the above listed circumstances apply and provide a brief statement explaining why separation by sex is necessary. The above listed exemptions are the only acceptable bases for sex separation during SFSP meal service. On a case-by-case basis, situations that do not clearly fit into one of the exemptions above may be considered by TDA in direct consultation with the FNS Regional Office, including the FNS Civil Rights Office and appropriate FNS National Office Child Nutrition Program staff.

²⁰ <https://www.fns.usda.gov/meal-service-requirements-summer-meal-programs-questions-and-answers-%E2%80%93-revised>

²¹ Sites that are juvenile correctional facilities (also known as residential child care institutions) are not eligible for the SFSP. The Male/Female Separation Exception Request form includes this circumstance because it applies to the other Child Nutrition Program operators that use the request form.

Meal Service Options

Field Trips during Meal Service Times

CEs must notify TDA via site application amendment of all field trips that affect the time or location of meal service, although formal approval of the alternative meal service is not required. If TDA is not notified prior to the SFSP field trip, meals served may be considered “consumed off-site” and TDA has the discretion to not reimburse those meals.

Additionally, regulations explicitly state that CEs sponsoring open sites must continue operating at the approved open site location while a field trip occurs. If this is not possible (for example, if there is limited staff coverage), TDA may approve the CE to close the open site. In this case, the CE must notify the community of the change in meal service and provide information about alternative open sites that are likely to be accessible to community children so that they have continued access to free summer meals.

Offer versus Serve (OVS)

Offer versus serve (OVS) is a concept that applies to menu planning and meal service which allows children to decline some of the food offered in a reimbursable breakfast, lunch, or supper, excluding snacks. The goals of OVS are to simplify program administration and reduce food waste and costs while maintaining the nutritional integrity of the SFSP meal that is served. For a meal to be eligible for reimbursement, all food components in the required minimum serving sizes must be offered.

Per regulation, the OVS option (not a requirement) is only available to school food authority (SFA)-sponsored sites. SFAs that opt into OVS service must use either the meal pattern requirements for NSLP/SBP, including portion sizes and all required components, or the SFSP meal pattern and SFSP OVS guidelines as follows:

Breakfast

- The following four food items must be offered:
- One serving of fruit/vegetable,
- One serving of bread/bread alternate,
- One serving of fluid milk, and
- One additional serving of fruit/vegetable, bread/bread alternate, or a serving of a meat/meat alternate.
- All the food items offered must be different from each other.
- A child must take at least three of any of the four food items offered for the breakfast to be reimbursable.

Lunch or Supper

- The following four food components must be offered through at least five different food items:
- One serving of meat/meat alternate,
- Two servings of fruit and/or vegetables (two different food items),
- One serving of bread/bread alternate, and
- One serving of fluid milk.
- Participants must take three *food components* offered from the five *food items* offered for the meal to be reimbursable.

Offering two servings of the same food item is not permissible under OVS in SFSP. All food items offered must be different from each other. For example, a breakfast menu that includes a serving of milk, a serving of fruit, and two servings of toast is not a reimbursable meal under OVS in SFSP because the toast is two of the same food item. Similarly, if the breakfast menu included two different kinds of cereal rather than toast, it would still not be a reimbursable meal because the cereals, although not identical, are the same food item. Additionally, a larger food item that is worth two servings in weight, such as a two-ounce muffin, counts as only one food item under OVS in SFSP, not two. Offering different food items supports and encourages the practice of offering a variety of food choices for children, which increases the likelihood that children will select foods they prefer and reduces waste.

Note that the Seamless Summer Option Age/Grade Group Meal Pattern Portion Sizes Exemption does not apply to SFSP.

SFAs operating open and restricted open sites that are having difficulty implementing the NSLP meal pattern for each age/grade group may be able to implement meal pattern flexibility for comingled age/grade groups. Specifically, USDA allows flexibility in the pre-K meal pattern for CEs that are serving meals to pre-K students in the same service area at the same time as older age/grade groups. With this flexibility, CEs may serve the pre-K students the same meal pattern as the kindergarten students at the meal service. This flexibility is based on the CE's ability to identify the age/grade groups of children and the amount of time to serve the meals. However, TDA encourages CEs to evaluate a variety of servicing strategies that will allow them to serve the pre-K meal pattern to pre-K children before utilizing this flexibility.

For additional information, please refer to Section 7, Breakfast Meals; Section 8, Lunch Meals; and Section 9, Pre-Kindergarten Meals of the [Administrator's Reference Manual](http://www.squaremeals.org/Programs/NationalSchoolLunchProgram/NSLPPolicy&ARM.aspx) located at <http://www.squaremeals.org/Programs/NationalSchoolLunchProgram/NSLPPolicy&ARM.aspx>.

Serving Local Foods

[Reserved for future use.]

Meal Time Requirements

CEs must establish meal times for each site and provide this information to TDA. Therefore, when applying to participate in the SFSP or providing annual updates on SFSP information, CEs must provide TDA with the meal service times for each site.

The following regulations apply to meal service times in the SFSP:

- All sites, except residential camps, must allow a minimum of at least one hour to elapse between the end of one meal and the beginning of another.
- Meals claimed as a breakfast must be served at or close to the beginning of a child's day and prohibit a three-component meal from being claimed for reimbursement as a breakfast if it is served after a lunch or supper is served.

Regulations also TDA to approve for reimbursement meals served outside of the approved meal service time if an unanticipated event occurs (for example, delayed meal deliveries, inclement weather that delays the start of the meal service, delayed public transportation utilized by participants).

Meal Count Forms

[Reserved for future use.]

Site Caps

Average Daily Participation (ADP) and Site Caps in SFSP

TDA has the discretion in approving a CE's request to increase an established site cap at a vended site. A CE's request to increase an established site cap must be made prior to the submission of a claim for reimbursement for meals served that month. This clarification of federal policy outlines how CEs may submit an adjustment (or amendment) to either a vended or self-prep site's average daily participation (ADP) prior to the submission of a claim for TDA review. ADP is the average number of meals that a CE serves at each site each day of operation during the claiming period. CEs may not claim more meals than the approved ADP for each site during the claiming period.

Factors Affecting a Site's ADP

CEs propose the ADP for each site during the SFSP application process. However, the ADP proposed by the CE may be adjusted by TDA during the application review process, a visit prior to approval, during an administrative review, or for other reasons. A CE may request an adjustment to the ADP throughout the duration of operations. (See *Amending ADP for TDA Approval* below for more information.)

TDA uses the following formula to determine the maximum amount CEs can claim per site in the claiming period:

$$\text{ADP} \times \frac{\text{Number of Serving Days per Claiming Period}}{\text{Maximum amount CE can claim at the site for the claiming period.}}$$

There are many factors which will determine a site's serving capacity and approvable ADP. These factors may include, but are not limited to, the following:

- Adequate facilities to prepare meals (for self-prep sites)
- Physical capacity of a site to serve children
- Site's administrative capabilities (e.g., Is the number of supervisory personnel adequate?)
- Historical record of attendance at the site
- The number of children living in the area of each site who are likely to participate

TDA will ensure that a site is approved to serve no more than the number of children for which its site facilities and food production facilities are adequate. Food production facilities include central kitchens, food service management company food production facilities, or any facility at which food is prepared.

How to Estimate ADP

Adequate program planning requires an accurate estimate of the number of children that will be served each day. All CEs are required to plan, prepare, and order meals with the objective of providing one meal per child at each meal service.

Here are some ways a CE may estimate an appropriate ADP at the start of operations and throughout the duration of operations:

- Communicate with the site regarding the number of children that attend the site's activities or live in the vicinity of the site to determine the number of meals that may be served at the site.
 - Note: Apartment complexes typically see only 15% of resident children participating, though there are exceptions.
- For new sites, contact local children's organizations, churches, etc., in the area to determine the number of needy children within walking distance of the site.
- Be aware of closures of local summer schools or other types of activities which may cause ADP to diminish or peak at certain times during the summer.

- Plan on reduced participation during holidays, such as Juneteenth and July 4th, as well as carnivals, county fairs, rodeos and other local events, as they may impact ADP.
- Monitor participation and adjust ADP throughout the duration of the summer.
- For returning CEs, use prior program year history when determining ADP for returning sites.

The table below provides information on how to use prior year data as a resource in estimating ADP.

How to Estimate ADP Based on Prior Year Data	
Note: 2018 will be the example for prior year data	
Example 1: June 4, 2018 through June 29, 2018	Example 2: July 2, 2018 through July 31, 2018.
Assume a CE operated a lunch service Monday through Friday. The CE's weekly service figures were as follows:	At the same site, assume the CE operated a lunch service Monday through Friday. The CE's weekly service figures were as follows:
Week 1 435 children served	Week 1 605 children served (closed 4 th of July)
Week 2 622 children served	Week 2 752 children served
Week 3 735 children served	Week 3 748 children served
Week 4 615 children served	Week 4 736 children served
	Week 5 291 children served
Weekly Total 2,407 children served	Weekly Total 3,132 children served
Operating Days 20 total operating days in June	Operating Days 22 total operating days in July
<i>To find your ADP, divide your grand total of 2,407 by the number of program operation days.</i>	<i>To find your ADP, divide your grand total of 3,132 by the number of program operation days. (4th of July not included)</i>
$\frac{2,407(\text{children})}{20 \text{ (days in operation)}} = \text{ADP of 120.3 children}$	$\frac{3,132 \text{ (children)}}{22 \text{ (days in operation)}} = \text{ADP of 142.4 children}$
NOTE: As fluctuation occurs, it is recommended that ADP be rounded up <u>no more than 10%.</u>	
ADP (with fluctuation): 130 children	ADP (with fluctuation): 155 children

Amending ADP for TDA Approval and Site Caps

CEs must be conscientious of the ADP of each site. If the CE believes they will exceed the maximum number of meals they can claim at the site for the claiming period, they must amend the ADP for each affected site. CEs may make amendments to the ADP in the TX-UNPS in the site application for both self-prep and vended sites prior to submitting a claim for the claiming period. TDA must approve the amendment to ADP before it is effective; therefore, a CE should submit a claim only after the ADP amendment has been approved, or denied, by TDA. Amendments to the ADP made after the submission of a claim will not be retroactive and the CE can claim only the maximum amount based on the approved ADP for that claiming period.

If TDA caps a site's meal serving capacity for reasons related to the capacity of the facilities to prepare and/or distribute meals, a CE may not increase the ADP at the site. TDA will deny any ADP amendment request which exceeds the site cap TDA has set. For example, if a site only has food service equipment adequate for preparing a lunch for 50 children, TDA will not approve a serving capacity greater than 50 lunches for that site.

TDA has the authority to conduct an announced or unannounced on-site review to ensure that the amendment to the ADP was necessary. Meals served in excess of established site caps are an indication of mismanagement of the SFSP and may necessitate the further investigation of meal claims and whether those meal claims should be disallowed.

NOTE: Amendments to a CE's application, other than ADP, must be submitted within 15 days prior to the desired start date; otherwise, TDA may not approve the requested changes by the desired effective start date.

ADP and Claims

Claims for reimbursement must reflect only meals that meet SFSP requirements and are actually served to eligible children during the claiming period. An increase to the ADP does not mean a CE will receive payment for the maximum number of meals that may be served, only those reimbursable meals that were actually served to eligible children during the claiming period will be reimbursed.

Once a claim has been submitted for a claim month, a CE may not amend the ADP for that claim.

CEs assume complete responsibility for all the information they submit on their claims. The submission of false information to TDA is a serious deficiency.

Leftover Meals or Components

CEs must provide meals that comply with the SFSP meal patterns. The *Record of Leftover/Recycled Food (H1568)* is provided for CEs to document food items leftover or recycled from a meal service that are stored and re-served in a subsequent reimbursable meal. CE's may develop their own record of leftover or recycled food form but must ensure it contains all of the required elements. A CE's failure to maintain such documentation may result in disallowance of meals. CEs must follow all applicable food safety requirements.

The Record of Leftover/Recycled Food (H1568) is located at <http://www.squaremeals.org/Programs/SummerFeedingPrograms/SummerFeedingAdministration&Forms.aspx>.

Share Tables

On June 22, 2016, the USDA issued memorandum, [*SFSP 15-2016, The Use of Share Tables in Child Nutrition Programs*](#)²² which provides a reminder to SFSP operators of the opportunity presented by share tables to reduce food waste and the food safety requirements that must be followed when using share tables during meal service. "Share tables" are tables or stations where children may return whole food or beverage items they choose not to eat. Before setting up a share table, CEs must ensure that share tables comply with local health and safety codes. Unopened, unused, whole food items left on the share table are then available to other children who may want additional servings.

Best Practices for Using Share Tables

1. CEs must follow Federal, State, and local health and food safety requirements (7 CFR § 225.16(a)).
2. CEs should establish clear guidelines for food components that may and may not be shared or reused as part of a later reimbursable meal:
 - a. Food components recommended for sharing:
 - i. Unopened pre-packaged items, such as a bag of baby carrots or sliced apples stored in a cooling bin.
 - ii. Whole pieces of fruit, such as apples or bananas.
 - iii. Unopened milk, if immediately stored in a cooling bin maintained at 41° F or below.
 - b. Food components NOT recommended for sharing:

²² <https://www.fns.usda.gov/use-share-tables-child-nutrition-programs>

- i. Unpackaged items, such as salad bowl without a lid.
 - ii. Packaged items that can be opened and resealed.
 - iii. Open items, such as an opened bag of baby carrots.
 - iv. Perishable foods, when temperature control mechanism is not in place.
- 3. If State and local laws permit sharing food items that require cooling, CEs should establish strict food safety guidelines to prevent the risk of foodborne illnesses:
 - a. Maintain proper temperature and temperature logs (41° F or below) by storing food components in a temperature-controlled storage bin, such as an ice tub or cooler.
 - b. Make note of expiration dates on packaged foods and do not intermix reused items with items that have not yet been prepared and served.
 - c. Decide how many times a food item can be reused.
- 4. CEs should supervise the share table at all times to ensure compliance with food safety requirements:
 - a. Ask site staff to make sure packaging of items placed on the share table is not open, punctured, or otherwise compromised.
 - b. If cooling bins are used, have site staff monitor the bin to ensure that time and temperature control requirements are met.
 - c. Invite children to participate as “share table helpers” or to assist site monitors to teach them about food safety and recycling.
- 5. CEs should promote the share table to children and families:
 - a. Provide children and families with information about share table guidelines.
 - b. Ask for input from parents and guardians, and make sure families are comfortable with their children participating in the share table option.
 - c. Explain the share table concept to children and emphasize the importance of healthy eating and trying new foods whenever possible.
 - d. Display signage outline share table “rules” and encouraging recycling.

Meals Served to Adults

[Reserved for future use.]

CHAPTER 5—VENDING OPTIONS

Sponsor Meal Preparation

[Reserved for future use.]

Purchasing Meals from Schools

[Reserved for future use.]

Purchasing Meals from an FSMC

A CE may contract with a Food Service Management Company (FSMC) to provide meals to be used in the food service. An FSMC is any commercial enterprise or non-profit organization with which a CE may contract for preparing 1) unitized meals, with or without milk or juice, for use in the SFSP, or 2) managing a CE's food service operations with limitations set forth in 7 CFR § 225.15. An FSMC may be a public agency or entity, private, non-profit organization, or private, for-profit company.

If a CE contracts with an FSMC to prepare SFSP meals either at a central kitchen, FSMC facility, or at the CE's meal site, that CE is a vended CE. CEs must provide to TDA information that a site's food service is vended by an FMSC in the TX-UNPS application packet and receive approval from TDA before operating the food service. TDA may conduct an on-site visit to determine if local, state and federal health requirements are being, or can be, met at the food production facility.

See Food Service Management Company Contracts in Chapter 6 – *Procurement and Bid Procedures* for guidance regarding contracting with an FSMC.

Unitized Meal Requirement

All meals prepared by an FSMC must be unitized²³, with or without milk or juice. However, per 7 CFR § 225.6(h)(3), CEs may send a request for an exception to the unitized requirement for certain components of a meal to the TDA Food and Nutrition Regional office.²⁴ These requests must be submitted to TDA in writing at least 30 calendar days prior to a CE's advertising for bids in a formal procurement process, or prior to awarding an FSMC contract in an informal procurement process (contracts not exceeding \$50,000).²⁵ TDA will notify the CE in writing of its determination of the request for an exemption to the unitized meal requirement in a timely manner.

²³ The unitized meal requirement specifies that the meal components (except milk or juice) must be packaged, delivered, and served as a unit. Milk or juice, which may be packaged and provided separately, must be served with the meal and only complete meals are reimbursable.

²⁴ See *Reference Materials – Technical Assistance for CEs* subchapter of this handbook for how to contact TDA.

²⁵ See Chapter 6, *Procurement and Bid Procedures*, for an overview of procurement methods.

A CE may not award a contract to an FSMC for non-unitized meals until it receives approval from TDA. The final FSMC contract must reflect that SFSP meals will not be unitized.

Requests for an exception to the unitized meal requirement may be submitted in writing to TDA via email at Community.Ops@TexasAgriculture.gov. The email subject should include “SFSP Bid Review Request” and the name of the CE. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

FSMC Registration

TDA has the discretion to require FSMCs to register with TDA; however, TDA does not currently require FSMCs that are contracting with a SFSP CE to provide SFSP meals to register with TDA (7 CFR § 225.6(g)).

USDA Foods

[Reserved for future use.]

Additional Foods

[Reserved for future use.]

CHAPTER 6—PROCUREMENT AND BID PROCEDURES

Financial Management

Financial Controls

A CE must comply with all applicable financial management requirements in 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 7 CFR Part 225, *Summer Food Service Program*, FNS Instruction 796-4 *Financial Management – Summer Food Service Program for Children*, TDA policies, and must provide for the following:

- Identification, in its accounts, of the Federal awards received and expended, and the Federal programs under which they were received. Federal program and Federal award identification must include (2 CFR §200.302(b)(1)):
 - The Catalog of Federal Domestic Assistance (CFDA) title and number, for example, Summer Food Service Program #10.559;
 - Federal award identification number (FAIN) and year;
 - Name of the Federal agency; and
 - Name of the pass-through entity, if any.
- Accurate, current, and complete disclosure of the financial result of each Federal award or program (2 CFR §200.302(b)(2)).
 - Up-to-date correct information supported by documentation
 - Accounts for all elements of the Program
 - Complies with generally accepted accounting principles (GAAP)
- Records that identify adequately the source and applications of funds for federally funded activities. The records must contain information pertaining to the Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation (2 CFR § 200.302(b)(3)).
 - Source documentation includes, but is not limited to, cancelled checks, paid bills, payroll, purchase orders, and contract and subcontract award documents.
- Effective control over, and accountability for, all funds, property, and other assets (2 CFR § 200.302(b)(4)). The CE must adequately safeguard all assets and assure that they are used solely for authorized purposes (2 CFR §§ 200.302(b)(4) and 303).
- Comparison of expenditures with budget amounts for each Federal award (2 CFR § 200.302(b)(5)).
- Written procedures to ensure that requests and use of advance payments are in accordance with 2 CFR §200.305 and 7 CFR § 225.9(c) (2 CFR §200.302 (b)(6)).
- Written procedures for determining if costs are allowable in accordance with 2 CFR §200.302, 2 CFR Part 200, Subpart E, and FNS Instruction 796-4, *Financial Management – Summer Food Service Program for Children* (2 CFR § 200.302(b)(7)).

- Internal controls that ensure the CE (2 CFR § 200.303):
 - Manages the SFSP in compliance with Federal statutes, Federal regulations, TDA rules, policies, and guidance.
 - Complies with Federal statutes, Federal regulations, TDA rules, policies, and guidance.
 - Evaluates and monitors its compliance with Federal statutes, Federal regulations, TDA rules, policies, and guidance.
 - Takes prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings.
 - Safeguards to protect personally identifiable information and other information.

These internal controls should be in compliance with guidance in “[Standards for Internal Control in the Federal Government](#)” (the “Green Book”) issued by the Comptroller General of the United States²⁶ or the “[Internal Control Integrated Framework](#)” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).²⁷

NOTE: The Viability, Capability and Accountability (VCA) checklist that is submitted during the application process must comply with the above and must be updated as changes occur. Specifically, any substantive changes that occur to the information submitted must be promptly reported to TDA for its review and approval.

Federal awards include, but are not limited to, reimbursement for participation in any of the child nutrition programs administered by TDA.

Conflicts of Interest and Ethical Standards in Financial Management

Organizations participating in the SFSP are required to disclose and identify any conflicts of interest and potential conflicts of interest including related party transactions, less-than-arms-length transactions, ownership interest in equipment, supplies, vehicles and facilities, or disclose any other information that inhibits TDA from making an informed assessment of whether a particular cost is allowable.

Related parties include, but are not limited to, the following relationships:

- Brothers/sisters
- Spouse
- Parents/grandparents
- Children/grandchildren
- Half-brothers/sisters
- Domestic partners and parents thereof

²⁶ <https://www.gao.gov/products/GAO-14-704G>

²⁷ <https://www.coso.org/sitepages/internal-control.aspx?web=1>

- Any individual related by blood or affinity whose close association is the equivalent of a family relationship
- Affiliates of the organization
- Principal owners of the organization and immediate members of their families
- Management of the organization and immediate members of their families

A less-than-arms-length transaction is one that is not between independent, unrelated, well-informed parties, acting independently in their own interests. In a related party transaction, one party to the transaction is able to control or substantially influence the actions of the other(s). Such transactions include, but are not limited to, those between divisions of an organization; organizations under common control through common officers, directors or members; and an organization and a director, trustee, officer, key employee of the organization or immediate family, either directly or through corporations, trusts or similar arrangements in which a controlling interest is held, or in which one party stands to benefit more than the other from the transaction. All related-party transactions are less-than-arms-length transactions.

A CE cannot allow a conflict of interest or potential conflicts of interest when procuring goods and services and must have written policies and procedures against conflicts of interest. No officer, agent, consultant, contractor, volunteer, or other employee of a CE may engage in any activity which causes or could cause or cause the appearance of a conflict of interest in the operation of the SFSP, including, but not limited to, to the following:

- Renting or leasing from a firm in which any officer, agent, consultant, or employee (or relative) has an interest and this related party transaction has not been fully disclosed.
- Soliciting or accepting gratuities, favors, or anything of monetary value from contractors, potential contractors, sites, or parties to subcontracts.
- Soliciting donations or fees from the CE's sites.
- Asking sites to engage in any kind of business on the CE's behalf.

CEs must disclose annually any conflicts of interest or potential conflicts of interest including related party transactions, less-than-arms-length transactions, and any ownership interest in equipment, supplies, vehicles and facilities when it submits its budget to TDA as part of its application packet for participation in the SFSP. At a minimum, the following information must be submitted to TDA:

- Budget item(s) impacted
- Amount of the contract or cost for the item(s)
- Relationship or ownership interest to the CE
- Any other information that inhibits TDA from making an informed assessment of whether a particular cost is allowable

NOTE: Rental costs under "less-than-arm's-length" leases must meet the requirements in 2 CFR §200.465. For TDA to determine the allowability of a less-than-arm's-length lease, expenses such

as depreciation, maintenance, taxes, and insurance may need to be included in the disclosure in order for TDA to make an informed assessment of whether the rental cost is allowable.

Information regarding conflicts of interest or potential conflicts of interest may be submitted in writing to TDA via email at SFSP.BOps@TexasAgriculture.gov. The email subject should include “SFSP Conflict of Interest Disclosure” and the name of the CE. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

This disclosure must be made in each program year’s budget or each time before the cost is incurred, even if it was previously disclosed to TDA and requires prior approval from TDA each year or before each occurrence. When the conflict of interest or potential conflict of interest is properly disclosed, approval of the budget by TDA meets the requirement for prior approval unless TDA specifically disallows the cost in writing.

Written Code of Standards – Ethical Conduct

In accordance with 2 CFR §§ 200.318 and 400.2, a CE must establish and maintain a written code of standards of conduct which govern the performance of its officers, employees, or agents who participate in the selection, award, and administration of contracts. The written code will prohibit conflicts of interest and potential conflicts of interest. This written code must:

- Prohibit owners, members, officers, or employees from soliciting gifts, travel packages, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
- Prohibit owners, members, officers, or employees from accepting gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
- Prohibit an owner, member, officer, or employee from participating in the selection, award, and administration of any contract in which the owner, member, officer, or employee is related to a party to the contract or has a financial interest in the entity which is a party to the contract.
- Set standards when financial interest is not substantial or the gift is an unsolicited item of nominal value, and therefore may be acceptable.
- Provide for the disclosure and prior written approval by TDA for all less-than-arms-length transactions.
- Provide for penalties, sanctions, or other disciplinary actions to be applied for violations of the standards.

For CEs having a parent, affiliate, or subsidiary organization that is not a state or local government, the CE must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of the relationships with a parent company, affiliate, or subsidiary organization, the CE is

unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

Procurement

Overview

Procurement is the orderly process of acquiring, by lease or purchase, goods and services such as food, meals, equipment, bookkeeping, and auditing. SFSP CEs must comply with state and federal procurement requirements. These requirements enable CEs to purchase goods and services at the best available price and avoid conflicts of interest when making purchases.

Procurements must be conducted in a manner that allows for full and open competition meaning that everyone is on a “*level playing field*” and has the same opportunity to compete.

Procurement ensures:

- Vendor participation
- Competitive cost of products and services will be lower in price
- Quality products and services

Improper procurements may lead to disallowed meals, withholding or recovery of reimbursements, corrective action, or termination and exclusion from future SFSP participation.

Additional Resources for Procurement Guidance

- FNS Instruction 796-4, Rev. 4, Financial Management – Summer Food Service Program for Children (<https://fns-prod.azureedge.us/sites/default/files/796-4.pdf>)
- USDA Memo SFSP 06-2019 Revised, *Federal Micro-Purchase and Simplified Acquisition Thresholds for Procurement, Applying the Simplified Acquisition Threshold in the National School Lunch Program, Child and Adult Care Food Program, and Summer Food Service Program Procurement Standards and School Food Authority Operations* (<https://www.fns.usda.gov/cn/federal-micro-purchase-and-simplified-acquisition-thresholds>)
- USDA Memo SFSP 13-2014, *Procurement Thresholds in the Summer Food Service Program* (<https://www.fns.usda.gov/sfsp/procurement-thresholds>)
- Administration Guide for Summer Food Service Program (https://fns-prod.azureedge.us/sites/default/files/sfsp/SFSP_Admin_Guide_Sept2016.pdf)
- 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (<https://www.ecfr.gov/cgi-bin/text-idx?SID=0279993c18ecde4ec85b58e7c2c93877&mc=true&node=pt2.1.200&rgn=div5>)

The Procurement Process: A Multi-step Approach

A CE must follow the procurement process to ensure that all procurement requirements are met. As the process may take many months to complete, advanced planning and execution are strongly recommended. CEs are required to develop written procurement procedures. A CE's written procurement procedures will address how the CE will accomplish each step of the procurement process.

An overview of the procurement process is as follows:

1. **Writing** procurement procedures
2. **Forecasting** quantities needed/**Scheduling** when quantities are needed
3. **Selecting** the proper procurement method
4. **Developing** a solicitation
5. **Advertising** the solicitation
6. **Evaluating** proposals and offers
7. **Awarding** the contract
8. **Managing** the contract

Procurement Procedures: Why a CE Must Have Them

- **Required by regulations (2 CFR § 200.319(c))**
- **Ensure full and open competition**
- **Help identify potential suppliers for products and/or services procured using the corresponding procurement method**
- **Help the CE determine which procurement methods will be used**
- **Identify parties that will address issues raised throughout the procurement process**
- **Prohibit conflicts of interest**
- **Ensure ethical standards with a written code of conduct**

Written Procurement Procedures

A CE must use its own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable federal law (2 CFR §§ 200.318 and 200.319(c)).

Maintaining and following written procurement procedures ensures that a CE will conduct all purchases

- Efficiently and effectively;
- In compliance with federal, state, and local regulations; and
- While preventing fraud, waste, and abuse.

Written procurement procedures must include the position(s) which are responsible for carrying out each step, as well as the timing the actions will take place. The procedures must provide that proposed procurement actions will be reviewed by the CE's officials to avoid the purchase of unnecessary or duplicative items, and where appropriate an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. (2 CFR § 200.318(d)). The procedures must encompass each procurement method discussed in this handbook. The level of detail should be reflective of the CE's operations.

Procurement Procedures: Who, What, When

Written procedures help CE's manage and oversee the administration of the contract award effectively.

Procedures must include who (the position which carries out each action or step), what (what the action is), and when (when the action takes place) during the procurement process.

At a minimum, a CE's written procedures must address the following elements of the procurement process:

- **Forecasting and Scheduling** — *How the CE will evaluate its current food service operation and plan procurements for the Program Year (PY).* A CE must plan and evaluate its food service operations and food service needs in order to plan and schedule procurements for the PY. This will reduce the likelihood that a material change in the contract will occur. A CE should assess the following items of its current food service to best determine its needs for the upcoming PY:
 - Current meal preparation approach: self-prep, central kitchen, is there a need for a FSMC?
 - Storage capacity
 - Food preparation equipment

- Resources, such as income/revenue, staff, and projected allocation for USDA Foods (if applicable)
- Other operational needs
- Current and projected child participation
- CE's ability to handle local, fresh products, if applicable
- **Selecting a Proper Procurement Method** — *How the CE will determine the procurement method to be used for each procurement action and the steps to be taken towards receiving responsive bids.* The aggregate amount of the goods or services will determine the procurement method to be used; however, a CE may consider other factors as well.²⁸ A CE should consider the following:
 - Any factors, other than the aggregate amount of the procured goods and services, which will determine the procurement method to be used
 - How to avoid the acquisition of unnecessary or duplicative items (2 CFR § 200.318(d))
 - How to obtain a more economical purchase, considering the consolidation or breaking out of procurements (2 CFR § 200.318(d))
 - **NOTE:** A CE may not break up a procurement that exceeds the small purchase threshold for the sole purpose of avoiding following formal procurement procedures. This would be a violation of federal requirements and may result in unallowable costs, findings, and/or a serious deficiency.
 - Cost Analysis/Equitable Distribution—How the CE will perform a cost analysis with every procurement action in excess of the small purchase threshold, including contract modifications. (2 CFR §200.323)
 - While a formal cost analysis is not required for micro-purchases, a CE must document how such purchases will be rotated **among qualified suppliers** and equitably distribute purchases.
 - Small purchase procedures also do not require a formal cost analysis; however, CEs must still obtain **at least three price quotes** from an adequate number of qualified sources.

²⁸ See *Procurement Methods* in this chapter for more information.

- **Solicitation Development** — *How solicitations for the proper procurement method will be developed to ensure full and open competition.* [NOTE: CEs are required to use the TDA SFSP Invitation for Bid and Contract for any FSMC bids which exceed \$50,000.²⁹]

When developing specifications, requirements, invitations for bids, or requests for proposals, CEs must consider the following:

- Type of contract
- Contract duration
- Goods and services specifications must correspond with items and/or services being procured; specifications may include product name, variety, grade, size, quantity, cleanliness, packaging, delivery, and other product/service requirements.
- Full and open competition is maintained when using all procurement methods.
- CEs may *not* create specifications which would eliminate or unduly restrict full and open competition, which would include, but are not limited to, the following situations (2 CFR § 200.319 (a)):
 - Specifying a brand name product instead of allowing an equal product to be offered limits full and open competition
 - Product specifications which are too detailed, restricting competition
 - Placing unreasonable requirements on bidders
 - Requiring unnecessary experience and/or excessive bonding
 - Noncompetitive pricing practices between firms or between affiliated companies
 - Noncompetitive contracts to consultants/contractors that are on retainer contracts with the CE already
 - Organizational conflicts of interest
 - Any arbitrary action in the procurement process
- Solicitations must be clearly stated so bidders can fully understand the need for product and services (2 CFR § 200.319(c)(1))

Brand Name Products

While specific brand names may not be used in procurement documents, a CE may indicate a “brand name or its equivalent” clause in the product specifications. A description of the features of the brand product that must be met by bidders must also be included.

²⁹ See *Food Service Management Company Contracts* later in this Chapter for more information.

- Solicitations must clearly outline requirements the bidder must fulfill in order to be responsive (2 CFR § 200.319(c)(2))
- Renewal options
- Modification and change procedures, considering:
 - Communication of changes to the contractor regarding initial estimated needs and actual needs
- Default and breach provisions, remedies, penalties
 - This includes how protests and disputes will be handled by the CE.
 - Supply copies of dispute resolution procedures to all potential bidders that includes the name and the address of person who will determine whether the protest should be sustained.
 - Disclose information regarding all protests to TDA.
- CEs must ensure contractors do not develop any specifications, requirements, statements of work, IFBs, RFPs, contract terms and conditions, or any other procurement documents. CEs must draft their own specifications and procurement documents. However, procurements for unitized meals from an FSMC must be done using TDA's Invitation for Bid and Contract for Purchased Meals.³⁰
 - If a CE does allow a contractor to create any procurement documents, a CE must indicate in its procedures how that contractor will not compete for the contract or award.
 - If a CE chooses to use a contractor's information or assistance in developing procurement documents and the contractor is then allowed to compete for the award, the CE must not use any SFSP funds for the resulting award.
- Local or geographic preference (if applicable and allowed)³¹
 - A CE must include a definition(s) of "local" in its written policies and procedures if applying a geographic preference. However, this definition of "local" may not be so limiting as to restrict full and open competition.
- Evaluation and scoring factors, with cost as the primary factor.

Warning!

CEs must draft their own specification and procurement documents. Any CE that copies a list of features or evaluation and ranking criteria drafted by a potential contractor and then permits that potential contractor to submit a bid has violated federal and state procurement regulations.

³⁰ See *Food Service Management Company Contracts* later in this Chapter for more information.

³¹ See *Local Procurement Strategies* later in this Chapter for more information.

- **Advertising/Publicizing the Bid** — *Which method of advertisement is to be used in order to allow for full and open competition for each method of procurement, when applicable.*

A CE must advertise competitive bids and must publicize competitive proposals (e.g., through advertisements). (2 CFR § 200.320) CEs should consider the following:

- Due dates — Time needed for pre-bid and award meetings, site visits, etc. and federal due dates for FSMC contracts
 - Federal due date of the advertisement for FSMC solicitations is at least 14 calendar days in advance of bid opening. USDA recommends using a time period of at least 4-6 weeks.
- Advertisements must provide sufficient information for potential bidders such as:³²
 - The nature of the goods or services to be procured
 - Method of procurement that will be used (sealed bid, competitive proposal)
 - How the bidder can obtain the solicitation or more information
 - The due date for solicitation response
- Methods of advertisement to allow for full and open competition. This will vary from city to city, and a CE must be able to document how the method of advertisement will ensure circulation of the bid/proposal to the general public for the type of goods/services which are being acquired, as well as ensure that the CE is receiving an adequate number of bidders
 - State, regional, or nation-wide newspapers
 - Trade periodicals
 - Designated internet sites
 - Direct mailing (for small purchase procurement method only)
 - Other print media that serves the business community and general public
- CEs must take all necessary affirmative steps to ensure that minority businesses, women's business enterprises, and labor surplus area firms are utilized when possible. (2 CFR § 200.321, 7 CFR § 225.17(d)).
 - Include qualified small and minority businesses and women's business enterprises on solicitation lists.
 - Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential resources.

³² See *Procurement Methods* in this chapter for more information on advertising and publicizing an IFB and RFP.

- When economically feasible, divide total requirements into smaller tasks or quantities to permit maximum small and minority business and women's business enterprises participation.
 - Where the requirement permits, establish delivery schedules which will encourage the participation of small and minority businesses and women's business enterprises.
 - Use the services of the Small Business Administration and the Minority Business Enterprise of the Department of Commerce.
 - If subcontracts are to be let, require the prime contractor to take the affirmative steps above.
- **Evaluating responses** — *How the CE will ensure the solicitation is awarded to a responsive and responsible vendor.* CEs must consider the following:
 - *Responsive* means the contractor's products or services meet all of the CE's specifications as outlined in the solicitation
 - *Responsible* means a contractor can and has the ability to successfully fulfill the terms and conditions of the proposed procurement (2 CFR § 200.318(h)). A CE should determine whether a contractor is responsible by investigating the contractor's:
 - Integrity
 - Compliance with public policy
 - Record of past performance
 - Financial and technical resources
 - Pre-qualified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources so as to ensure full and open competition (2 CFR § 200.319(d))
 - Potential responsive and responsible bidders not included in these pre-qualified lists cannot be excluded from bidding
 - *NOTE:* While pre-qualified lists may not be common for SFSP CEs to have and use, if an SFSP CE has a list of pre-qualified bidders, they must follow this requirement to allow for full and open competition. NSLP CEs must use FSMC vendors from TDA's approved-FSMC list.
 - Contractors that are determined not to be responsible are ineligible for contract award
 - The CE must document this decision and supporting reasons as to why the contractor(s) was not responsible
 - The cost must be used as the primary factor

- Bids must be evaluated without consideration of any included unallowable cost provisions
- Any and all bids may be rejected if there is a sound documented reason
- **Ethical Conduct** — A CE cannot allow a conflict of interest or potential conflicts of interest when procuring goods and services. See *Conflicts of Interest and Ethical Standards in Financial Management* in this Chapter for more information.

NOTE: In the absence of a written code of standards, or when TDA determines that a violation of the code has occurred, TDA will issue a finding and require corrective action.

- **Awarding and Managing the Contract** — *How the CE will award and effectively manage the contract (2 CFR § 200.318(h)).* A CE must consider the following:
 - Must be awarded to the lowest responsive and responsible bidder, or the responsible firm who proposal is most advantageous to the SFSP with price as the primary factor
 - The contract is a
 - a formal, legally enforceable agreement
 - record of the procurement transaction
 - a dispute resolution mechanism
 - The CE must first receive TDA approval of an award to a contractor that is not the lowest bidder prior to awarding the contract (for competitive sealed bids)
 - The CE must monitor the contractor performance to ensure the following:
 - Performs in accordance with the terms, conditions, and specifications of the contract
 - Receives quantity and quality of the good and services requested
 - Receives the goods and services on time
 - Is charged the correct prices as bid and within budget
 - The CE is responsible for settling any contractual and administrative issues which may arise after an award. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. (2 CFR § 200.318(k)).

Reminder

CEs are responsible for maintaining up-to-date procedures and training staff on these procedures prior to the start of SFSP operations, and as needed throughout the SFSP (e.g., when there is a change to a procedure). Procedures are subject to review by TDA. TDA may issue a finding(s) and/or require corrective action(s) if a CE's procedures do not comply with SFSP regulations and/or if a CE is not following its own procedures.

Procurement Methods

CEs must use the appropriate procurement method depending on the cost of the item(s) or service(s) they need to procure. The types of procurement methods a CE must use when procuring (e.g., purchasing) goods and services are discussed in detail below and include:

- Micro-purchase
- Small Purchase
- Competitive seal bids
- Competitive proposals

Whenever a CE is purchasing goods or services using federal funds in support of the SFSP program, the appropriate procurement method must be followed.

Simplified Acquisition Threshold

A CE is required to use one of the following procurement methods when acquiring goods and/or services (2 CFR § 200.320):

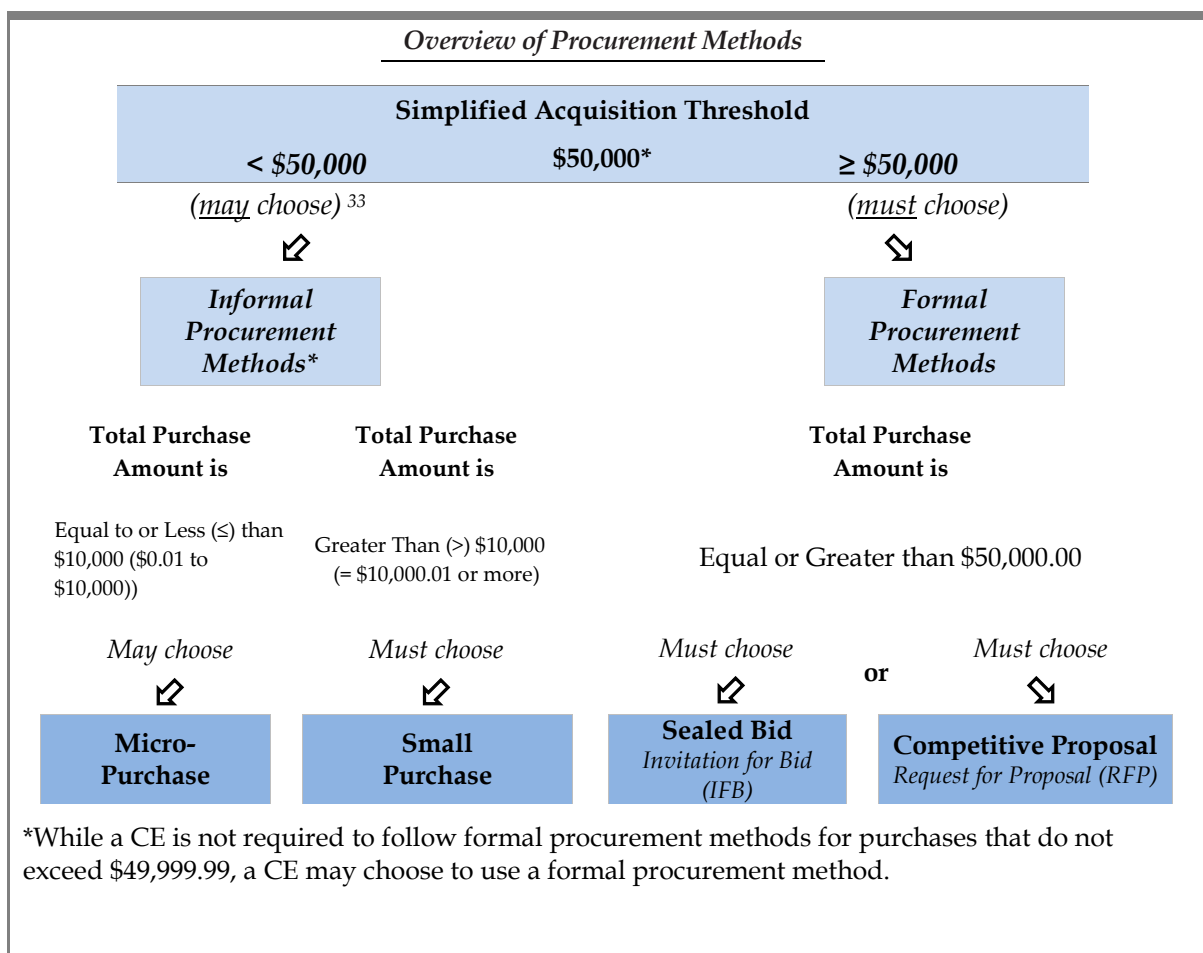
- Informal Procurement Methods
 - Micro-purchase
 - Small Purchase
- Formal Procurement Methods
 - Competitive sealed bids (Invitation for Bid (IFB))
 - Competitive proposals (Request for Proposal (RFP))

The aggregate amount of the goods/services will determine which procurement method will be used. While the federal simplified acquisition purchase threshold (also referred to as the small purchase threshold) is set at \$150,000, TDA has set a more restrictive threshold of \$50,000.

Procurement Methods

Procurement regulations allow certain methods to be used by CEs to procure goods and services. Those methods are determined by the aggregate amount of the contract award based on the value of the purchase, scope, and need of the goods and service. Procurement methods are divided into two categories; informal and formal. Informal procurement methods may be used when the total cost is equal to or less than the simplified acquisition threshold, or \$50,000. Formal methods must be used when the estimated cost of the goods and services exceeds the \$50,000 simplified acquisition threshold.

Except for the noncompetitive proposal, the chart below provides an overview of the types of procurement methods a CE must use when conducting the procurement of goods and services.



Informal Procurement Method: Micro-purchase

A micro-purchase is the acquisition or purchase of products and/or services that have an aggregate cost that does not exceed \$10,000. The \$10,000 total for a micro-purchase amount is the total cost for a single invoice for a single purchase or transaction. It is not an accumulation of weekly, monthly, or annual purchases. Rather, it is an individual purchase with an individual invoice.

The following are examples of situations when a micro-purchase method may be appropriate:

- The CE did not receive their complete food order delivery on Monday. The items that were not delivered are on the menu for the week. The CE may go to one of its other suppliers or retail stores and purchase the items as long as the CE does not spend more than \$10,000.

³³ CE may choose to use a formal procurement procedure for a total cost that is equal to or less than the simplified acquisition threshold in order to get a better price.

- The CE is in its second month of operating the SFSP and becomes aware of a new product or service that would be beneficial to the operation. If the item or service is an allowable cost and there is money in the budget, the CE may purchase through the micro-purchase method as long as the CE does not spend more than \$10,000.
- The CE is located in a remote area or is providing meals or snacks to a very small number of children and there are few, if any, vendors willing or available to submit a bid for the small quantity of product and/or service the CE needs to procure.

A formal cost analysis is not required when a CE uses the micro-purchase method. However, the CE must have a method to document that the cost of the good and/or service is reasonable.³⁴ Acceptable documentation includes, but is not limited to, the following:

- Newspaper advertisements from various suppliers/vendors
- Online advertisements from various suppliers/vendors
- Documentation of phone quotes from various suppliers to include the following:
 - Supplier/vendor name
 - Name of the person providing information
 - Date(s) of contact
 - Information provided, including product and pricing
- Other documentation that allows TDA to determine the cost was reasonable if the price was not the determining factor, such as:
 - Maps showing the distance between vendors when distance is the factor
 - Procedures that specify micro-purchase must be used because space is a factor, such as refrigeration/storage space

Purchases must be distributed equitably among all suppliers. The CE cannot make all of its micro-purchases from one supplier and must, when feasible, “share the wealth” among suppliers. However, CEs that are located in rural areas may be limited in their ability to distribute purchases equitably among a number of merchants or suppliers because it is not economically feasible to do so, i.e. cost and time of travel. In these cases, the CE must document the reasons it is not feasible for the CE to distribute purchases among a variety of suppliers.

Routine purchases must not be broken into smaller purchase amounts in order to qualify for micro-purchasing. If the CE is routinely using the micro-purchase method for the same items, the CE must maintain documentation that demonstrates why this is the most suitable

³⁴ 2 CFR § 200.404 states, “A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.”

method for purchasing these products and/or services and why the use of another procurement method is not possible or reasonable.

Warning

Any costs that the CE incurs as a result of intentionally breaking up larger purchases into smaller amounts in order to use the micro-purchase method are unallowable and may result in a serious deficiency and/or termination of the CE.

Informal Procurement Method: Small Purchase

If purchasing services, supplies or other property with an aggregate cost that is greater than \$10,000 and less than \$50,000 in a fiscal year, a CE may use small purchase procedures or a formal procurement method. The \$50,000 aggregate limit applies to the following:

- Single items (for example, rent), and
- Many items of the same general type (office supplies).

CEs cannot circumvent the procurement process by using small purchase procedures to award multiple contracts under \$50,000 to different vendors for a single item or many items of the same general type.

Small purchase procedures require CEs to obtain at least three price quotations from an adequate number of qualified sources. Price quotations must be documented; the CE must document the date, vendors consulted, and quotes received (including for verbal quotes). USDA also allows for store advertisements to be used as documentation when receiving quotes.

When receiving price quotations, the CE must provide the vendor with a full and accurate description of the type of goods/services needed, so potential vendors can properly respond with an accurate quote.

If a CE is unable to obtain at least three price quotations, the CE must evaluate whether it has limited competition in any way. If the CE is able to document that it was unable to receive at least three price quotations after attempts to receive more quotes from qualified vendors, then the CE must document this.

Formal Procurement Method: Competitive Sealed Bids (Invitation for Bid)

For purchases with an aggregate amount that exceeds the small purchase threshold, or equal or greater than \$50,000, CEs are required to follow formal procurement procedures (2 CFR § 200.320). One formal procurement method is competitive sealed bid procedures.

CEs following this procurement method must ensure the following conditions are met:

- Bids are publicly solicited, using an IFB and are formally advertised to the general public
 - For FSMC bids, CEs are required to use TDA's *Summer Food Service Program Invitation for Bid (IFB) and Contract*;
- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids (2 CFR §200.320(c)(2)(i));
- The IFB will include:
 - any specifications and pertinent attachments, and
 - must define the items or services in order for the contractor/bidder to properly respond;
 (2 CFR §200.320(c)(2)(ii))
- Bids will be opened publicly at the time and place prescribed in the invitation for bids (2 CFR §200.320(c)(2)(iii));
- A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of (2 CFR §200.320(c)(2)(iv)); and
- Any or all bids may be rejected if there is a sound documented reason (2 CFR §200.320(c)(2)(v)).

Formal Procurement Method: Competitive Proposals (Request for Proposal)

Competitive proposals are another type of formal procurement method used when a contract award is equal to or exceeds \$50,000. Competitive proposals are used when the conditions are not appropriate for the use of competitive sealed bid procedures. An RFP is used to solicit responses with this method.

CEs following this procurement method must ensure the following conditions are met:

- RFPs must
 - Be publicized
 - Identify all the evaluation factors and their relative importance
 - Be solicited from an adequate number of qualified sources (e.g., more than one vendor must submit an offer)
- The CE must have a written method for conducting technical evaluations of the proposals received and for selecting vendors

- RFPs are generally more qualitative in nature
 - In addition to price, the following factors may be considered: technical expertise, past experience, years in business, marketing capabilities, etc.
- The price must be the primary consideration when awarding a contract; however, a contract may be awarded to a proposal that is not the lowest in price
- A firm fixed-price contract or a cost-reimbursable contract will be awarded to the proposal that is most advantageous to the program, with price and other factors considered

Noncompetitive Procurement Methods

Procurement by a noncompetitive method is an appropriate method of procurement when one or more of the following circumstances apply:

- Inadequate Competition
- Sole Source
- Public Emergency or Unexpected Emergency Situation

Inadequate Competition

After the CE actively and appropriately attempted to solicit offers from several sources, competition is deemed inadequate – that is, the number of offers that met the solicitation specification and technical requirements (i.e., responsible and responsive offers) was less than expected. This would include when a CE receives only one responsible and responsive offer.

One example of when a noncompetitive proposal may be used is when a CE is so remotely located that there is a very limited number of qualified sources in the area. In this case, a CE may pursue a noncompetitive procurement if it has 1) ensured that the specifications in the original IFB or RFP are not too restrictive, thereby, limiting other potentially qualified bidders, and 2) the proposal has been publicized.

After engaging in competitive purchasing procedures, the CE does not need TDA approval to award a noncompetitive bid when there are a limited number of offers as long as documentation is retained by the CE demonstrating that the CE did not limit competition. Documentation would include, but is not limited to, the following:

- Proof of due diligence in ensuring that competition was not limited, which may include:
- Performing reviews of the solicitation and advertising process

- Surveying suppliers, distributors, or manufacturers to determine why a bid was not submitted
- Copies of the solicitation, advertising, mailing lists, communication documents, contact logs, and other relevant documentation to support their findings.

Sole Source

The product and/or service is available only from a single (sole) source distributor, supplier, or manufacturer. For the sole source method to be used, there must be only one possible source for the product and/or service. Sole source noncompetitive procurement requires TDA approval.

Before offering a sole source noncompetitive contract, a CE must verify that the product and/or service can only be procured from a single source. A procurement where there is only one offer is not necessarily a sole source. There may be other suppliers, distributors, or manufacturers that could have submitted an offer but chose not to.

FOR EXAMPLE: There are three companies that commonly provide the type of cooling equipment that a CE is attempting to procure. Company A chooses not to bid because it is unable to meet the delivery timeline. Company B no longer distributes the line of products that would have met the specifications and technical requirements. Therefore, Company C is the only offeror. In this situation, the single offer submitted is not a sole source. Rather, it is an inadequate competitive response to the solicitation and the CE must follow the guidance above for that inadequate competition.

For a sole source method to be used, there must be only one possible source for the product and/or service. A CE cannot accept a statement from the supplier, distributor, or manufacturer as verification that the product and/or service is only available from a single source. In order to determine if the product and/or service is sole source, a CE must do the following:

- Attempt to solicit offers from other suppliers, distributors, or manufacturers
- Retain records that demonstrate its efforts to solicit offers for the product and/or service from other suppliers, distributors, or manufacturers.

TDA must approve all sole source procurement transactions before the award of the contract. To request approval to use a sole source contract, the CE must submit a request via online form at: <https://app.smartsheet.com/b/form/c6689484ed8a4b45846e10ebcb24fd23>. In its request, the CE must include the following information:

- Description of the CE's actions to ensure that the supplier, distributor, or manufacturer is a sole source
 - CE's review may include questioning other vendors of similar products/services to determine if those vendors can meet the precise needs of the CE. If not, written justification should be

provided to TDA as to why a particular vendor would not qualify as a source.

- Copies of the CE's solicitation, advertising, and other relevant documentation that demonstrate that the supplier, distributor, or manufacturer is a sole source.

When there is a compelling need to purchase a specific brand product and/or service, such as compatibility with current equipment, the CE must have documentation that demonstrates other available brands are not compatible with the CE's:

- Current equipment,
- Replacement part inventory, and
- Maintenance staff's expertise.

However, even if the CE meets the brand name sole source purchase criteria listed above, the CE must still determine if there is more than one supplier for the brand of equipment or the services. If there are multiple suppliers, the CE must follow normal procurement processes in awarding a contract.

NOTE: In some cases, suppliers for specific brands may be affiliated or associated suppliers which may result in collaboration among the suppliers and may restrict competition. CEs will need to address this as appropriate to ensure full and open competition.

TDA will provide written notification of approval or disapproval.

Public Emergency or Unexpected Emergency Situation

A public emergency (exigency) or unexpected emergency situation³⁵ will not permit a delay resulting from the additional time required for a competitive solicitation for the product and/or service. Emergency noncompetitive procurement requires TDA approval.

To request approval to use a noncompetitive method during an emergency, the CE must submit a request to TDA via online form at:

<https://app.smartsheet.com/b/form/c6689484ed8a4b45846e10ebcb24fd23>. In cases of extreme emergency, a CE may call TDA directly to alert TDA about the situation. The request must still be submitted in writing, but a phone call will raise TDA's awareness of the need for an expedited response. In its written request, the CE must include the following information:

- Explanation of the circumstances that require an emergency purchase
- A detailed description of the products and/or services to be procured
- Supplier, distributor, or manufacturer from whom the product and/or services will be procured

³⁵ An unexpected emergency situation might include the failure of the refrigeration system causing products on hand to spoil or a supplier cancelling a contracted delivery without adequate notice or a presidentially declared disaster.

- Period of time the CE plans to use the noncompetitive method for the emergency TDA will provide written notification of approval or disapproval.

Records of Procurement Transactions

CEs must maintain records that sufficiently detail the procurement process for procurement transaction (2 CFR § 200.318(i)). These records should include, but are not limited to, the following:

- Rationale for the procurement method used
- Selection of the contract type
- Contractor selection or rejection
- The basis for the contract price
- Contract and terms.

CEs also must maintain accurate records of all costs and meals claimed (7 CFR § 225.15(c)). A failure to maintain such records may be grounds for disallowed meals, withholding or recovery of reimbursements, corrective action, or termination and exclusion from future SFSP participation.

Types of Contracts

Federal regulations allow CEs to award a fixed-price contract or cost-reimbursement type contract to a vendor. The solicitation or proposal must state what type of contract will be awarded.

A fixed price contract means an agreed upon amount is fixed at the inception of the contract. In some cases, a fixed price contract may contain an economic price adjustment tied to an appropriate index, such as milk. Indexes must be auditable and available to the public. The public solicitation is an IFB. A micro-purchase or small purchase that results in a contract must be a fixed-price contract.

A cost reimbursable contract reimburses the vendor for costs incurred under the contract but does not provide for any other payment to the contractor, with or without a fixed fee. The solicitation is an RFP, although a vendor may award a fixed priced contract with competitive proposal procedures as well.

Food Service Management Company Contracts

See Purchasing Meals from a FSMC in Chapter 5 – Vending Options for guidance regarding FSMCs.

Standard Contracts for FSMCs: TDA's *SFSP Invitation for Bid and Contract*³⁶

TDA has developed a standard *Summer Food Service Program Invitation for Bid (IFB) and Contract for Purchased Meals*, referred to as the *SFSP IFB and Contract* in this chapter. The *SFSP IFB and Contract* is one document; however, it serves two purposes depending on the procurement method required. For FSMC contracts that exceed \$50,000, the document is used as the IFB and then as the binding contract between the FSMC and CE once the contract is awarded following the formal procurement process. For FSMC contracts that do not exceed \$50,000, the CE must use the *SFSP IFB and Contract* to award the contract using informal procurement process – the document is used only as the contract because an IFB is not required under the informal procurement process. Note that TDA must review all IFBs prior to the CE going out for bid.

FSMC Contracts which do not exceed \$49,999.99³⁷

As noted above, CEs must, after following the informal procurement process, use the *SFSP IFB and Contract* to award a contract to an FSMC.³⁸

NOTE: CEs contracting with an FSMC for any award amount, including awards that do not exceed \$49,999.99, must follow the applicable procurement requirements (e.g., small purchase, sealed bid), in accordance with 2 CFR Part 200.

Competitive Sealed Bid Procedures for FSMC Contracts Equal to or Exceeding \$50,000

The competitive sealed bid procedures that CEs must follow when awarding an FSMC contract that is equal to or exceeds \$50,000 are outlined in 7 CFR § 225.15 (m) and 2 CFR § 200.320(c).³⁹ This includes, but is not limited to, the following steps:

- Publicly announcing not less than 14 calendar days before bids are opened, through formal advertising. Bids are generally advertised in newspapers, but a CE may advertise the IFB in any publication that circulates to the general population. Announcements should include the following items:
 - The CE's name, address, and contact information
 - Proposed operating dates of the meal service
 - Proposed number of sites and general location of sites

³⁶ For CEs operating both the CACFP At-Risk Afterschool Care Centers and SFSP, a single procurement for both programs may be done using the *Summer Food Service Program and Child and Adult Care Food Program At-Risk Afterschool Care Centers Invitation for Bid and Contract*. This document is available on www.squaremeals.org.

³⁷ TDA's simplified acquisition threshold is \$49,999.99, which is more restrictive than USDA's \$250,000 threshold.

³⁸ See *Reference Materials – Technical Assistance for CEs* subchapter of this handbook for how to contact TDA.

³⁹ See *Chapter 6, Procurement Methods* for more on competitive sealed bid requirements.

- Meal types and number of meals to be served
- Time, date, and place of the bid opening (required)
- Due date of the bid, if different from the bid opening (required)
- Statement on how the meals must adhere to USDA's SFSP meal pattern requirements
- Statement of the percentage of bid bond, if required
- Statement that a 10 percent performance bond may be required of the successful bidder
- Statement that contracts are subject to review by the TDA
- Nondiscrimination statement as found in the *Reference Materials* to this Supplement
- Notifying the TDA Food and Nutrition⁴⁰ of the time and place at least 14 calendar days before the bid opening.
 - When a CE is expected to receive over \$100,000 in SFSP reimbursements, a TDA representative must be present at the bid opening, either in person or through electronic communication (7 CFR § 225.6(l)(4)).
- Publicly opening all bids.
- Prior to the start of SFSP operations, submitting to TDA a copy of the *SFSP IFB and Contract awarded* to the FSMC that will be vending meals for the CE.
 - **NOTE:** When applying to participate in the SFSP, all CEs must submit to TDA a summary of how meals will be obtained in the application packet in TX-UNPS. If a CE is contracting for vended meals with an FSMC, it must submit to TDA a copy of the SFSP Invitation for Bid and Contract. CEs required to follow competitive sealed bid procedures must also submit a schedule for bid dates. CEs that have requested from the TDA Food and Nutrition Regional office to use an alternate vended meals contract must also submit that with the application in TX-UNPS.
- Submitting bid to TDA for approval prior to accepting any of the following types of bids below.
 - All bids in an amount that exceeds the lowest bid. CEs must include an explanation as to why the bid was chosen.
 - All bids that total \$100,000 or more.
 - A sole source FSMC contract.

⁴⁰ See *Reference Materials – Technical Assistance for CEs* subchapter of this handbook for how to contact TDA.

TDA must respond to the CE's request for approval of such bids within five working days of receipt (7 CFR § 225.6(l)(6)).

Bids requiring TDA approval prior to acceptance by the CE may be submitted in writing via email to TDA at Community.Ops@TexasAgriculture.gov. The email subject line should include "SFSP Bid Review Request" and the name of the CE. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

FSMC Contract Provisions

As indicated in 7 CFR § 225.6 (h), a contract with an FSMC (*SFSP IFB and Contract*), must provide that:

- All meals prepared by the FSMC will be unitized, with or without milk or juice, unless TDA has approved a request for exceptions to the unitizing requirement for certain components of a meal.
- Meals served under the contract will conform to the cycle menus and meal quality standards and food specifications identified in the contract.
- The CE will provide to the FSMC a list of TDA-approved feeding sites, along with the approved level for the number of meals which may be claimed for reimbursement for each site.
- The CE will notify the FSMC of all sites which have been approved, cancelled, or terminated subsequent to the submission of the initial approved site list and of any changes in the approved level of meal service for a site within the notice period identified in the contract.
- Increases and decreases in the number of meals ordered will be made by the CE, as needed, within the notice period mutually agreed upon in the contract.
- The FSMC will be paid by the CE for all meals delivered in accordance with the contract.
- Meals will be delivered in accordance with a delivery schedule outlined in the contract.
- All meals served under the SFSP will meet the meal service requirements (7 CFR § 225.16).
- The FSMC must not subcontract for the total meal, with or without milk, or for the assembly of the meal.
- The FSMC will maintain such records (e.g., invoices, receipts, or other evidence) as the CE will need to meet its responsibilities under the SFSP regulations and will submit all required reports to the CE promptly at the end of each month unless more frequent reports are required by the CE or contract.
- The FSMC must have State or local health certification for the facility in which it will prepare SFSP meals. The FSMC must ensure health and sanitation requirements are met at all times, and that meals are inspected periodically to determine bacteria levels

present in the meals and that the bacteria levels found to be present in the meals conform to the standards set by local health authorities. The FSMC will submit results of the inspections promptly to the CE and to TDA's Food and Nutrition Regional office.⁴¹

- The financial documents and records of the FSMC related to the CE's food service operation will be available for inspection and audit by representatives of TDA, USDA and the U.S. Government Accountability Office at any reasonable time and place for a period of three years from the date of receipt of final payment under the contract, except that, if audit or investigation findings have not been resolved, such records shall be retained until all issues raised by the audit or investigation have been resolved.
- Both the CE and the FSMC will operate in accordance with current SFSP regulations.
- In cases of nonperformance or noncompliance on the part of the FSMC, the company will pay the CE for any excess costs which the CE may incur by obtaining meals from another source.
- The FSMC will comply with the appropriate bond requirements in 7 CFR § 225.15(m)(5)-(7).
- The FSMC will submit records of all costs incurred in the CE's food service operation in sufficient time to allow the CE to prepare and submit the claim for reimbursement to meet the 60-day submission deadline.

NOTE: If a CE requires accommodations for special diets in its FSMC contract, the CE must specify so during the procurement process. If the contracting FSMC is unable to provide special diets, the CE must find an alternate source for those meals.

All FSMCs must also include a clause whereby either party may terminate for cause with a 60-day notification.

See *Contract Provisions*, later in this Chapter for additional information on provisions that must be included in all contracts.

Food Specifications in the Invitation for Bid and Contract

The *SFSP IFB and Contract* explains how CEs are to submit food specifications on the cycle menus attached to the *IFB*. With these cycle menus, CEs are able to specify the types of food products needed for the meal service. Within these menus, CEs can incorporate local foods and communicate to bidders a preference for products from locally grown or raised food products.⁴² However, a CE must ensure that the food specifications are not so unreasonable or restrictive that only one FSMC vendor can supply the product.

⁴¹ See *Reference Materials – Technical Assistance for CEs* subchapter of this handbook for how to contact TDA.

⁴² See 7 CFR § 225.17(e) and the *Administrative Guidance for Sponsors* for more information on geographic preference.

Below is an example of how a CE may incorporate locally-sourced food products in a cycle menu.⁴³

Example Lunch Cycle Menu with Local Food Products					
Day	Monday	Tuesday	Wednesday	Thursday	Friday
Week 1	Turkey and cheese sandwich	Ham and cheese on whole-wheat bun	Garden fresh chef salad with turkey and Swiss	Santa Fe chicken wrap	Cheese and pepperoni pizza
	Carrot sticks and dip	Veggie sticks and dip	Fruit selection	Bean and veggie salad	Local garden salad
	Local apples	Fruit selection	Whole-wheat roll	Fresh fruit salad	Watermelon
	Low-fat or fat-free milk	Low-fat or fat-free milk	Low-fat or fat-free milk	Low-fat or fat-free milk	Low-fat or fat-free milk

A CE may attach additional pages to the *SFSP IFB* with food specifications and cycle menus, as needed.

Bid Bond Requirements

The bond requirements for FSMC bids and contracts are outlined in 7 CFR § 225.15(m). Any FSMC which submits a bid over \$150,000 must obtain a bid bond in an amount between five and ten percent of the contract's value, as determined by the CE and indicated in the *SFSP Invitation for Bid and Contract*. A CE may not allow an FSMC to post any "alternative" forms of bid bonds, including, but not limited to, cash, certified checks, letters of credit, or escrow accounts.

Awarding the FSMC Contract

A CE must award the FSMC contract to the responsive and responsible bidder whose per-meal bid was lowest in price. If a CE wants to award a contract to a bid that is not the lowest in price, they must first receive approval from TDA to award the contract as discussed above.

Performance Bond

If the FSMC contract exceeds \$150,000, the FSMC must obtain a performance bond from a surety company listed in the current United States Department of Treasury Circular 570 for ten percent of the contract amount, as indicated in the *SFSP Invitation for Bid and Contract*. A

⁴³ See *The Nutrition Guidance for Sponsors* for more examples of cycle menus.

CE may not allow an FSMC to post any “alternative” forms of performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts.

Managing the FSMC Contract

A CE is required to monitor the performance of the FSMC to ensure all terms, conditions, and specifications of the contract are met. The following questions may help a CE evaluate whether an FSMC is performing according to the contract:

- Are meals delivered on time, as scheduled?
- Are delivered meals unitized?
- Are delivered meals spoiled or damaged?
- Are delivered meals missing any required food components?
- Do all components meet the minimum required serving size under SFSP regulations?
- Do the meals delivered meet the food specifications agreed upon in the contract?
 - If not, did the FSMC receive approval from the CE prior to either
 - Changing the menu or
 - Substituting a component or food item
- Does the FSMC maintain all records pertaining to the food service, such as receipts, invoices, delivery receipts?
 - If so, does the FSMC submit all records to the CE at the date and time agreed upon in the contract?
 - Does the FSMC make these records available to TDA, when requested?

As a reminder, the CE maintains all financial and administrative responsibility for the food service. A failure to monitor an FSMC’s performance may result in disallowed meals, withholding or recovery of reimbursements, corrective action, or termination and exclusion from future SFSP participation.

FSMC Contract Renewals

FSMC contracts, with TDA approval, may include an option for the yearly renewal of the contract between the FSMC and CE. CEs may renew an existing FSMC contract during each of the four consecutive years following the base year (procurement year) of the contract if the scope and purpose of the contract does not change. The contract can then be renewed each of the four consecutive years following the base year without going through the procurement process if the scope and purpose has not changed. After the base year and four renewal years have passed, the CE must go through the procurement process using the procurement method appropriate to their needs when obtaining a contract for purchased meals. See [SFSP 09-2007](#).

[Food Management Company Contracts](#), July 27, 2007.⁴⁴ The execution of a contract with an option for renewal does not compel either party to renew the agreement.

TDA has developed a standard *Summer Food Service Program Invitation for Bid and Contract for Purchased Meals Addendum – Option to Renew* for CEs to use when exercising the option to renew the SFSP IFB and Contract. The *Renewal Addendum* may be found at:

<http://www.squaremeals.org/Programs/SummerFeedingPrograms/SummerFeedingAdministration&Forms.aspx>.

A CE must maintain all procurement transaction records in compliance with SFSP record-keeping regulations.⁴⁵

When a contract is continued, renewed annually, or recorded at other intervals, the retention period for the records of the contract period starts on the date the final payment is recorded in connection with the final renewal of the contract and not the initial contract execution date. The three-year record retention period does not begin until the final contract renewal period has expired and/or the final payment is recorded, whichever occurs later. Unresolved audits, audit finding(s), or litigation may extend the three-year retention period.

School Food Authorities Contracting with a FSMC

For information on SFAs contracting with a FSMC, please refer to [Section 18, Food Service Contracts, of the Administrator’s Reference Manual\(ARM\)](#) located on <https://squaremeals.org/Programs/NationalSchoolLunchProgram/PolicyARM.aspx>.

Participation by High Education Institutions (HEIs), Hospitals, and other Non-Profit Organizations under Contract with a FSMC

On May 5, 2016, the USDA issued memorandum, [SFSP 12-2016, Summer Food Service Program Participation by Higher Education Institutions, Hospitals, and other Non-Profit Organizations under Contract with a Food Service Management Company](#).⁴⁶ This memo provides TDA flexibilities in approving non-profit organizations, such as HEIs and hospitals (collectively referred to as “organizations” in this subchapter) which are under contract by a FSMC to provide food service operations. These organizations offer a unique opportunity for SFSP participation as they already provide year round meal services to students, patients, and others. Recognizing that SFSP operates for a short duration, the reimbursable meals served would likely constitute a small proportion of the overall value of the year-round food service operations contract and it would be unlikely that an organization’s approval to participate in the SFSP would result in a material change to its FSMC contract.

⁴⁴ <https://www.fns.usda.gov/sfsp/food-service-management-company-contracts>

⁴⁵ See Chapter 10, *Records Retention in SFSP* for more on records retention guidance.

⁴⁶ <https://www.fns.usda.gov/sfsp/sfsp-participation-higher-education-institutions-hospitals-and-other-non-profit-organizations-under>

For organizations with an existing FSMC contract for service operation, TDA must:

- Confirm that the organization engaged in a competitive procurement process and is in compliance with Federal, State, and local procurement standards.
- Confirm that the organization entered into a fixed-price or cost-reimbursable contract with the FSMC.
- Determine the overall value of the FSMC contract for food service operations.
- Work with the organization to estimate the potential value of the SFSP meals to be served.
- Work with the organization to determine if the potential value of the SFSP meals to be served would result in a material change to the existing FSMC contract for food service operations.
 - If a material change is expected, TDA must:
 - Require the organization to initiate a new procurement for a FSMC to provide food service operations that:
 - Includes services of reimbursable meals under the SFSP, and
 - Complies with procurement standards and contains the standard contract provisions in 7 CFR §§ 225.6(h)(2) and 225.15(m)(5)-(7).

NOTE: This new procurement could be a separate FSMC contract solely for SFSP or a contract for all specifications under the existing contract plus SFSP.

- If no material change is expected to result, TDA must:
 - Obtain confirmation from the organization of an amendment to the existing FSMC contract for food service operations to include service of SFSP unitized meals per 7 CFR 22.6(h)(3), and
 - Consult with the USDA to determine when a new procurement process must occur, which must then include the required procurement and SFSP provisions. TDA will notify the organization of TDA's and USDA's determination.

A material change is a change made to a contract after the award is made that alters the terms and conditions of that contract substantially enough that, had other bidders known of these changes in advance, they could have bid differently and more competitively.

Contract Provisions

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

All contracts using federal funds must contain the contract provisions identified in 2 CFR Part 200, Appendix II, *Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*. While all provisions may not be applicable to all contracts, CEs must ensure the appropriate provisions are included in all contracts.

Debarment and Suspension Certification

A CE must submit a debarment certification, which ensures that the federal contract award will not be made to a contractor (vendor) listed on the government-wide exclusions in the System for Award Management (SAM). A CE may provide the debarment certification by having the contractor (vendor) do one of the following:

- Include the following debarment and suspension certification in the written agreement with the contractor:
 - (1) The prospective contractor certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
 - (2) Where the prospective contractor is unable to certify to any of the statements in this certification, such prospective contractor shall attach an explanation to this proposal.

- Require the contractor to sign and submit the TDA Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts (H2048)⁴⁷; or
- Print the page from the System for Award Management which indicates the contractor is not presently debarred or otherwise excluded from participation in the contract by any federal department or agency or by the State of Texas and maintains that document on file with the subcontract documents. The System for Award Management can be accessed at: <https://www.sam.gov>.

Lobbying Certification (Applicable to contracts over \$100,000)

Contractors that apply or bid for an award exceeding \$100,000 must provide the required certification form (Form H2049).⁴⁸

If applicable, a contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award; in this case, a contractor must complete and submit *Standard Form – LLL, Disclosure of Lobbying Activities*.⁴⁹

Civil Rights Statement

FNS Instruction 113-1, *Civil Rights Compliance and Enforcement – Nutrition Programs and Activities* requires all vendor agreements include an assurance of nondiscrimination.

Procurement Tips and Strategies

Cooperative Procurement

On October 19, 2016, USDA issued memorandum [SFSP 02-2017, Q&A: Purchasing Goods and Services Using Cooperative Agreements, Agents, and Third-Party Services](#).⁵⁰ This memo provides general guidance on several procurement groups and how to use each group in a way that complies with Federal procurement standards.

The various purchasing agreements that are typically used to facilitate procurement by CEs are:

⁴⁷ This may be viewed and downloaded at <http://www.squaremeals.org/Programs/SummerFeedingPrograms/SummerFeedingAdministration&Forms.aspx>

⁴⁸ This may be viewed and downloaded at <http://www.squaremeals.org/Programs/SummerFeedingPrograms/SummerFeedingAdministration&Forms.aspx>

⁴⁹ This may be viewed and downloaded at <http://www.squaremeals.org/Programs/SummerFeedingPrograms/SummerFeedingAdministration&Forms.aspx>

⁵⁰ <https://www.fns.usda.gov/qa-purchasing-goods-and-services-using-cooperative-agreements-agents-and-third-party-services>

- Child Nutrition Program (CNP) operator-only and/or CNP State agency cooperatives,
- Agents, and
- Third-party entities (e.g., state-run cooperative agreements, interagency agreements, non-Program operators such as public, private, and non-profit entities, group purchasing organizations, group buying organizations, third-party vendors).

Cooperatives, agents, and third-party entities can be beneficial in assisting CE's in obtaining better buying power and ensuring procurement compliance when the CE does not necessarily have the technical understanding of the process. CEs participating in these agreements must still conduct competitive procurement in accordance with 2 CFR §§ 200.318 through 200.326 and applicable SFSP requirements in 7 CFR Part 225 and guidance. CEs must ensure the following:

- Costs paid from the nonprofit food service account are necessary, reasonable, allocable, and otherwise allowable (2 CFR § 200.403) consistent with 2 CFR Part 200, subpart E and as discussed in Chapter 9 – Program Costs and Reimbursements of this Handbook.
- Procurements are conducted in a manner that maximizes full and open competition consistent with Federal procurement requirements (2 CFR §§ 200.318-326) and in the applicable SFSP regulations (7 CFR Part 225).

For CE's that participate in the NSLP, please refer to Section 17, Procurement of the *Administrator's Reference Manual*⁵¹ for additional information. SFSP CEs may find additional information on cooperative procurement in the Questions and Answers attached to [SFSP 02-2017](#).⁵²

Market Basket Analysis

On January 17, 2018, USDA issued memorandum SFSP 01-2018, [Market Basket Analysis when Procuring Program Goods and Modifying Contracted-For Product Lists](#)⁵³ that provided guidance on awarding contracts based on an evaluation of the lowest price a vendor can offer for a representative sample of goods the CE wishes to obtain. This “market basket” practice is used to evaluate bids or proposals to a solicitation for awarding a contract. There are two types of cost analysis and scoring for market basket method purchasing:

1. Total Price Cost Analysis and Scoring for All Products—This analysis and scoring evaluation looks at the prices of all goods and is based on the

⁵¹ <http://www.squaremeals.org/Programs/NationalSchoolLunchProgram/NSLPPolicy&ARM.aspx>

⁵² <https://www.fns.usda.gov/qa-purchasing-goods-and-services-using-cooperative-agreements-agents-and-third-party-services>

⁵³ <https://www.fns.usda.gov/market-basket-analysis-when-procuring-program-goods-and-modifying-contracted-product-lists>

aggregate total cost or by line item total (bottom line or total cost). This is the preferred method of awarding a contract.

2. Simplified Total Cost Analysis and Scoring for a Portion of All Products—

This “market basket” analysis and scoring evaluation is based on a representative sample of all goods. It allows the bottom line cost of a sample of goods to be totaled to determine the lowest priced supplier. The representative sample must include the following:

- An aggregate value of at least 75% of the total estimated value of the contract;
- The highest value goods from the list of goods to be procured;
- The prices of remaining listed goods (not used for evaluation) prior to the final award.

Awarding a Contract Using Market Basket Analysis

Market basket analysis scoring may be used as long as the published solicitation includes language indicating (1) that the CE will use a simplified total cost analysis and (2) how the CE will apply the simplified total cost analysis and scoring. This method of analysis is appropriate when purchasing a list of goods. It is not acceptable for awarding equipment or service contracts.

Each item on the list to be procured, including those goods not evaluated in the representative sample, must have clear and accurate specifications (descriptions) and estimated quantities. Even though the CE is basing the decision for the award on the cost analysis and scoring of the representative sample, the CE must obtain prices for all remaining goods to be purchased for the contract. The prices for the remaining goods must be reasonable and comparable to market prices for the same goods in the geographic area for the quantities purchased (2 CFR § 200.404).

Ensuring that the non-representative sample prices are comparable is central to awarding cost effective contracts. Verifying that the prices are reasonable and comparable to normal market prices will prevent a potential contractor from lowering the price of the representative sample of goods to win the contract and raising the prices for the non-representative sample of goods to make up the difference.

As with all procurements, CEs must comply with the SFSP procurement requirements in 7 CFR § 225.17 and all procurements must be consistent with State and local requirements. In addition, CEs must comply with the Federal procurement standards in 2 CFR Part 200 and in all cases, contracts (1) must be awarded to the responsive and responsible contractor(s), (2) prices must be the primary factor when evaluating bids and proposals, and (3) contracts must be awarded to the lowest bid or proposal most advantageous to the SFSP (2 CFR § 200.320).

Adding Goods to an Existing Market Basket Contract

When a CE plans to make purchases beyond the goods that are listed on a current market basket contract,⁵⁴ these purchases should be made using the appropriate procurement method: micro, small purchase, sealed bid, or competitive proposal.

However, if the CE determines that the goods are needed on an ongoing basis and that adding the purchase of a limited number of goods to a current market basket contract would be advantageous, the CE may do so if the following conditions are met:

- The option to add goods not included in the current market basket contract must be described in the original solicitation and contract as a specific percentage of the estimated value of the contract. The specified percentage must be no more than 10% of the estimated value of the contract.
- Adding new goods to the contract must not cause the contract to exceed the estimated total value of the contract at the beginning of the contract year.
- If the value for the purchase of the added goods exceeds the specified percentage (no more than 10%), a separate procurement for those goods must be conducted. The purchase of any additional goods on an existing market basket contract that exceeds the specified percentage (no more than 10%) is an unallowable cost.
- If the contract allows a renewal option, and the renewal is approved as described in the original contract, the additional goods purchased and amounts must be included in a contract renewal amendment.
- For each year of a renewed contract, a new basis for contract value, including the actual expenditures of the previous year, plus the value of the additional goods, must be established and included in the renewal contract.
- If the actual expenditures fall below the initial estimated value of the contract, the total contract amount will be adjust down in subsequent contract years.
- CEs must maintain records of all additional goods purchased to ensure that the value of additional goods purchased does not exceed the specified percentage and any renewal contracts are modified as appropriate.

Local Procurement Strategies

Geographic Preference

CEs may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products (7 CFR § 225.17(e)). When utilizing the geographic preference to procure such products, the CE making the purchase has the discretion to determine the local area to which the geographic preference option will be applied.

⁵⁴ The option to add goods to an awarded contract applies specifically to market basket contracts.

The definition for “local” must be defined in the CE’s procurement procedures. Examples of “local” may include:

- Within country/state, or
- Within a (insert number) mile distance.

A CE must ensure that the definition for “local” does not limit or restrict full and open competition.

A CE may only apply a geographic preference when procuring products which meet the following definition and conditions for unprocessed locally grown or locally raised agricultural products.

- Only those agricultural products that retain their inherent character.
- The effects of the following food handling and preservation techniques will not be considered as changing an agricultural product into a product of a different kind or character:
 - Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding;
 - Forming ground products into patties without any additives or fillers
 - Drying/dehydration;
 - Washing; packaging (such as placing eggs in cartons); vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package);
 - Addition of ascorbic acid or other preservatives to prevent oxidation of produce;
 - Butchering livestock and poultry;
 - Cleaning fish; and
 - Pasteurization of milk.

A geographic preference must be stated in a CE’s solicitation, proposal, specifications, requirements, statements of work, contract terms and conditions, or any other procurement documents.

Additional Resources on Local Food Procurement

- **Procuring Local Foods for Child Nutrition Programs available at:**
<https://www.fns.usda.gov/f2s/procuring-local-foods>
- **Geographic Preference Fact Sheet available at:**
<https://www.fns.usda.gov/f2s/geographic-preference>
- **SFSP 07-2016, *Local Foods and Related Activities in Summer Meal Programs, with Questions and Answers* (November 15, 2015) available at:**

<https://www.fns.usda.gov/local-foods-and-related-activities-summer-meal-programs-questions-and-answers>

CHAPTER 7—STAFF DUTIES AND TRAINING

Staff Duties

The size and type of a CE's operations will dictate many of the CE's staffing needs. Depending on a CE's program, many positions will require only part-time employment, particularly in the planning and close-out phases. Also, varied opening and closing dates of individual site operations affect staffing needs. In every case, however, the CE must provide adequate personnel for overall Program management and monitoring. The following are examples of duties and responsibilities by position. Small programs may not need a different person for the staff positions described.

Director Responsibilities:

- Annually attend TDA-provided training
- Provide overall management and supervise the SFSP
- Select sites
- Submit applications/agreements to TDA
- Correspond with TDA
- Conduct outreach efforts
- Hire, train, and supervise staff
- Arrange for food preparation or delivery
- Ensure that all monitoring requirements are met
- Adjust meal orders
- Submit reimbursement vouchers
- Ensure civil rights compliance
- Handle all negotiations with vendors for purchased meals
- Coordinate and delegate outreach responsibilities
- Ensure all program documents are maintained for 3 years plus the current year
- Ensure site information with TDA is current and reflects the operation of each site including change in meal service types, meal service times, and the average number of children served (for meal cap)
- Ensure site supervisors know how meals will be provided (vended or self-prep delivered) and the menu
- Ensure office and sites have "And Justice For All" poster

Assistant Director Responsibilities:

- Provide initial and ongoing training for sponsor and site personnel
- Design forms for recordkeeping purposes
- Maintain liaison with vendor to adjust meal delivery
- Check reimbursement vouchers
- Maintain time and attendance records of staff
- Maintain records on number of meals served
- Ensure area schools have access to outreach materials
- Schedule monitors' visits
- Check monitors' reports
- Prepare weekly summaries of monitoring efforts
- Provide ongoing training for monitors
- Visit sites with monitors
- Determine need for and following through on corrective action
- Review the meal counts submitted by sites for unusual meal count patterns, (e.g., first meals always or usually equals meals delivered)
- Oversee several monitors
- Report site problems to the Director or Assistant Director

Bookkeeper Responsibilities

The bookkeeper should maintain records on the following:

- Daily site reports, invoices, and bills
- Food costs
- Labor costs
- Administrative costs
- Other costs
- Program income
- Prepare reimbursement vouchers
- Prepare payroll
- Purchase office supplies

Monitor Responsibilities

Monitors are critical to the successful operation of SFSP sites. They are the “eyes and ears,” providing valuable feedback about how the sites are operating by visiting sites on a regular basis and observing meal services. To meet Program monitoring requirements, USDA recommends no less than one monitor for every 15 to 20 sites in urban areas. The number of monitors necessary for rural sites may increase depending upon the geographic area to be covered. Monitors should:

- Check on site operations to ensure that site personnel maintain records
- Ensure the Program operates in accordance with the requirements
- Conduct required site visits
- Review food service operations of all sites within the first four weeks of operation
- Prepare reports of visits and reviews
- Report unresolved or critical issues to the Director
- Revisit sites as necessary
- Suggest corrective actions for problems encountered
- Ensure that sites take corrective actions
- Conduct on-site training as necessary

Site Supervisor Responsibilities

- Attend sponsor training
- Ensure civil rights are properly implemented
- Stay at the site for the entire meal service
- Inform Director or Assistant Director of field trips
- Have communication with Director or Assistant Director for changes in meal service
- Serve meals and clean up after meals
- Ensure safe and sanitary conditions at the site
- Ensure the safety of food, and comply with local health and safety standards
- Receive and account for delivered meals
- Ensure that children eat all meals on site

- Plan and organize daily site activities, including nutrition education
- Implement alternate food service arrangements during inclement weather
- Take accurate meal counts at point of service

Training

Training is one of the major administrative responsibilities of a CE. A smoothly operated Program demands that CEs provide training throughout the duration of the Program.

After a comprehensive training effort on Program requirements is complete, a weekly or bi-weekly meeting will help ensure that monitoring, site, and administrative personnel are performing according to program regulations, that all meals will be eligible for reimbursement, and that accurate and adequate records are available to document the costs and meals claimed. Comprehensive training and coordination of efforts can also improve site quality and maximize the benefit received by participating children.

To enhance this training effort, good communications (both internal and external) should be established with TDA, the school vendor or FSMC, the in-office staff members, the monitors, the site staff and the health officials/ inspectors. For example, meetings and telephone contacts with site and monitoring staff will provide opportunities to ask questions, discuss site operations, and provide specific training on any problem area. In addition, discussions of job descriptions and explanations about the organizational structure enable staff members to understand their own responsibilities as well as those of their coworkers.

Sponsor Training Requirements

SFSP training is required for all CEs each year. TDA provides several options to receive training online and in person. Visit the SFSP Training Page (<https://squaremeals.org/FandN-Resources/Training/SFSP-Training>) on SquareMeals for more information and dates for in-person ESC-led training opportunities as well as a link to online training.

Renewing CEs must complete the SFSP training prior to the initial TX-UNPS renewal application submittal. If the training cannot be verified by TDA upon application submittal, the application will be returned and will not be reviewed until the SFSP Annual Training has been verified. SFSP Annual Training is required for everyone listed on the Contracting Entity Application that is noted as responsible for the food service.

Staff Training Requirements

CEs must train all administrative staff and site staff before they undertake their responsibilities.

Because these staffing groups have different program responsibilities, most CEs will want to offer two different training sessions to focus on each group's specific functions. All staff should receive a letter or flyer announcing the date, time, location, and importance of attending the training session that has been planned for their particular function. CEs should also remind staff

shortly before the date of the session. The date, names of attendees, and documentation of the topics covered must be recorded for each training session offered.

Topics for training should include, if applicable:

- General explanation of the Program:
 - Purpose of the Program
 - Site eligibility
 - Necessity for accurate records
 - Importance of organized activities at sites
- Description of how the site will operate:
 - Meal pattern requirements and the meal service offered
 - Meal adjustments (use production records)
 - Meal counting and claiming*
 - Meal preparation adjustments
 - If applicable, delivery schedules (exact times) and adjustments to delivery amounts
 - Facilities available for storing meals, if applicable
 - Who to contact about problems (provide CE contact name/phone number)
 - Approved level of meal service or “site cap”
 - Tracking inventory (use of inventory forms)
- Recordkeeping requirements:
 - Daily recordkeeping requirements
 - Delivery receipts (sample forms)
 - Seconds, leftovers, and spoiled meals
 - Daily labor (actual time spent on food service and time and attendance records)
 - Collection of daily record forms
 - Maintain copies of meal service forms
- Specific staff responsibilities (see below for more information):
 - Administrative staff
 - Monitor personnel
 - Site and food service staff
- Civil Rights requirements (refer to Section 8 – Program Integrity for more information)
- Other miscellaneous policy (use sponsor's policy), which may include:

- Problems of inclement weather and alternate service areas
- Problems with unauthorized adults eating Program meals
- Problems with discipline
- Review of equipment, facilities, and materials available for organized recreational activities
- Review of trash removal system
- Corrective action
- Nutrition education

* It is critical that site personnel and monitors understand the importance of accurate point-of-service meal counts. Only complete meals served to eligible children can be claimed for reimbursement. Therefore, meals must be counted at the actual point of service, i.e., meals are counted as they are served, to ensure that an accurate count of meals served is obtained and reported. Counting meals at the point of service also allows site personnel to ensure that only complete meals are served.

CE Training of Administrative Staff

The training session offered for administrative staff will explain the responsibilities and duties of all CE personnel helping to administer the SFSP at the sponsor level. These personnel include the office staff (assistants, clerks, bookkeepers, and secretaries), area supervisors, and most importantly, monitors. The specific training needs of sponsor administrative staff will vary. Specific areas of the training may require greater depth with different employees.

CE Training of Monitoring Personnel

Monitors should be present at both the site and administrative training to ensure a comprehensive understanding of program operations at both levels.

The CE must provide monitors with thorough training because only those monitors knowledgeable in program requirements and duties will be able to provide meaningful feedback to the CE. Since the monitoring function is so important to proper program operations and full reimbursement, CEs should conduct separate training sessions for monitors that highlight their specific functions. This training should outline the specific duties of monitors including:

- Sites for which they will be responsible
- Conducting site visits/reviews
- Monitoring schedules
- Reporting/recordkeeping procedures

- Follow-up procedures
- Office procedures
- Local sanitation and health laws
- Civil rights
- Reporting of racial/ethnic data
- Considerations for personal safety, if necessary

CE Training of Site Staff

SFSP regulations require that no food service site may operate until personnel at the site have attended at least one of the sponsor's training sessions. This is an annual requirement. CEs must document the attendance at site training sessions and schedule additional sessions for those staff that are absent. Regulations also require that at least one person who has been trained by the CE be present at each of the CE's sites during the time of the meal service.

This means that if a site supervisor who has attended the CE's training session resigns during the summer, the CE is responsible for ensuring that the new site supervisor receives all necessary training before taking charge of the site. A notice of the site training session should be sent to local health inspectors so that they have the opportunity to attend the training and become more familiar with the food service operations. If any site receives meals through an FSMC or SFA, the company or school representatives should be invited to attend the training and participate in the discussion of menus and delivery schedules.

CE Training of Food Service Staff

All food service staff must be trained on Program operations and must understand:

- The goals of SFSP
- The meal pattern requirements
- The importance of preparing nutritious meals that meet the Dietary Guidelines for Americans
- The food safety rules and sanitation guidelines
- Operation of food service equipment
- Development of and following standardized recipes

It is important for CEs to have regular meetings with food service staff to get input from them on an on-going basis. During these meetings, encourage new ideas on how to improve the current menu, food production, and food service areas. Make sure to ask employees what they would like to see to make their jobs better.

Volunteer Opportunities

Volunteers provide a great support system for the Program. There are several services volunteers can assist with, including:

Outreach

Volunteers can help with promotion by posting fliers in their neighborhood, writing letters to their local newspaper in support of the Program, and serving as “Summer Meal Spokespeople” throughout their community.

Site Supervision

Trained volunteers can serve as site supervisors. See “Site Supervisor Responsibilities” (above) for more information about this role.

Meal Preparation

CEs preparing their own meals can utilize volunteers for meal preparation activities. Volunteer groups can also provide free meals to the parents and guardians, who under Program regulations are not eligible to receive meals.

Site Activities

Volunteers can bring their unique expertise and interests to the Program by providing site activities. Volunteers can coordinate an art project, give a musical performance, provide a nutrition lesson, read a story, or host an athletic competition for the children. Site activities can be regular (for example, every Friday could be “Music Day”) or a onetime affair, depending on the volunteer’s preference.

CHAPTER 8—PROGRAM INTEGRITY

Monitoring Sites

First Two Weeks Site Visits

All CEs are required to visit any **new** site or a site with previous operational issues in the prior year within the **first two weeks** of operation. CEs are still required to conduct a full review of food service operations at each site within the first four weeks of operation, and thereafter, maintain a reasonable level of site monitoring. The food service review can occur at the same time as the site visit during the first two weeks of operation. **Note that rural sites that switch from standard congregate service to non-congregate service are considered “new” and must be visited within the first two weeks of operation.**

Sample First Two Week Site Visit and Site Review Forms are available on SquareMeals at: <https://squaremeals.org/Programs/Summer-Meal-Programs/Administration-Forms>

Audits

Annual Audit - Introduction

This section provides an overview of the Federal Audit⁵⁵ requirements as found in 2 CFR Part 200, subpart F. It is not meant to be a comprehensive treatment of the Federal Audit requirements. For more specific guidance in this area, please see 2 CFR Part 200 and the latest Compliance Supplement for OMB Circular A-133, Audits of States, Local Government and Non-Profit Organizations. The Compliance Supplement may be found at: <https://www.whitehouse.gov/omb/information-for-agencies/circulars#numerical>

The audit covers the entire scope of the CE’s operations and is conducted to determine whether:

- Financial operations are conducted properly;
- Expenditures of program funds comply with applicable laws and regulations;
- Internal procedures meet the objectives of federally assisted programs;
- Financial statements are correct; and
- Financial reports contain accurate information.

⁵⁵ Also referred to as a “Single Audit.”

Audit Requirements

Non-Federal CEs that expend \$750,000 or more during their fiscal year in Federal awards⁵⁶ must have a single or program-specific audit conducted for that year (2 CFR § 200.501(a)). CEs will identify their fiscal year and the source and amount of Federal funds they expect to expend that fiscal year on the Annual Audit screen in TX-UNPS during the initial application and each year thereafter. All audits must be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS).

CEs subject to audit requirements in 2 CFR Part 200, subpart F must be audited on a single (organization-wide) audit basis by independent auditors. If a CE expends Federal awards under only one Federal program (such as SFSP) it may elect to have a program-specific audit if certain requirements are met (2 CFR § 200.501(c)).

In procuring audit services, the CE must follow the procurement standards in 2 CFR Part 200 (2 CFR §§ 200.509 and 200.317 through 200.326). The objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope must be made clear and the CE must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS.

Factors CEs should consider in evaluating each proposal for audit services include:

- Responsiveness to the request for proposal;
- Relevant experience;
- Availability of staff with professional qualifications and technical abilities;
- Results of peer and external quality control reviews; and
- Price

Whenever possible, the CE must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used (2 CFR § 200.321). See *The Procurement Process: A Multi-step Approach* in Chapter 6 – Procurement and Bid Procedures for additional information.

Scope of Audit

CE Responsibilities

The CE must provide auditors with access to:

- Personnel
- Accounts

⁵⁶ As used in this subchapter, "Federal Award: means federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities (CEs) receive directly from Federal agencies or indirectly from pass-through entities. TDA is a pass-through entity for the SFSP.

- Books
- Records
- Supporting documentation
- Other information as needed to perform the audit

(2 CFR § 200.508(d))

The CE must prepare:

- Financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited (2 CFR § 200.510(a)).
- Schedule of Expenditures of Federal Awards (SEFA) for the period covered by the CE's financial statements which must include the total Federal awards expended (2 CFR § 200.510(b)). At a minimum, the schedule must:
 - List individual Federal programs by Federal agency;
 - Name of the pass-through entity (TDA) and identifying number assigned by TDA;
 - Total Federal awards expended for each individual Federal program and the Catalog of Federal Domestic Assistance (CFDA) number or other identifying number when the CFDA information is not available;
 - Total amount provided to subrecipients from each Federal program; and
 - Notes that describe the significant accounting policies used in preparing the schedule and whether the CE elected to use the 10% de minimis cost rate
- Summary schedule of prior audit findings must report the state of all audit findings included in the prior audit's schedule of findings and questioned costs (2 CFR § 200.511(a) and (b)).
- Corrective action plan⁵⁷ to address each audit finding included in the current year auditor's report (2 CFR § 200.511(c)). The corrective action plan must provide:
 - Name(s) of the contact person(s) responsible for corrective action;
 - Corrective action planned; and
 - Anticipated completion date.

⁵⁷ The corrective action plan, as described in 2 CFR Part 200, subpart F, is used to address each audit finding. This corrective action plan should not be confused with a corrective action required by TDA. For example, as discussed later in this chapter, a corrective action document must be submitted to TDA that documents the corrective actions taken, or to be taken, to fully and permanently correct serious deficiency(ies) identified by TDA.

NOTE: If the CE does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons (2 CFR § 200.511(c)).

Overview of CE's Responsibilities (2 CFR § 200.508)
<ul style="list-style-type: none">• Arrange for Audit (2 CFR § 200.509)• Prepare Financial Statements• Prepare SEFA• Provide Auditor with Access• Take Corrective Actions on Findings• Prepare Summary of the Prior Audit Findings• Prepare Corrective Action Plan

The CE must establish and maintain effective internal control over the Federal award that provides reasonable assurance that the CE is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award (2 CFR § 200.303).

Auditor Responsibilities

The auditor must report the following as audit findings (2 CFR § 200.516):

- Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs.
- Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program.
- Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program.
- Known questioned costs that are greater than \$25,000 for a Federal program which is not audited as a major program.
- The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.
- Known or likely fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards.
- Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding.

The auditor's report must include (2 CFR § 200.515):

- An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditure of federal awards is fairly stated in all material respects in relation to the financial statements as a whole.
- A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements.
- A report on compliance for each major program and a report on internal control over compliance.
- A schedule of findings and questioned costs.

Overview of Auditor's Responsibilities (2 CFR § 200.514)

- Determine if financial statements are fairly presented
- Report on SEFA
- Understand and test internal control over compliance
- Determine whether CE complied
- Follow up on prior audit findings
- Report findings
- Complete and sign Data Collection Form

The audit must be completed and submitted by the CE to the Federal Audit Clearinghouse (FAC) either 30 days after receiving the auditor's report, or nine months after the end of the CE's fiscal year, whichever comes earlier.

The CE must submit to the FAC the data collection form (Form SF-SAC) which is found on the FAC website and a reporting package. The reporting package must include the following:

- (1) Financial statements and schedule of expenditures of Federal awards;
- (2) Summary of schedule of prior audit findings;
- (3) Auditor's report(s); and
- (4) Corrective action plan.

(2 CFR § 200.11(b) and (c)). The CE must retain one copy each of the data collection form and reporting package on file for three years from the date of submission to the FAC (2 CFR § 200.511(f)).

The FAC website provides detailed information on how to upload a single audit at: <https://harvester.census.gov/facweb/>. The audit also must be submitted to TDA and copies of

the audit report must be made available to the public. CEs and auditors must ensure that protected personally identifiable information is not made public (2 CFR § 200.512).

Audits must be submitted to the Federal Audit Clearinghouse at <https://harvester.census.gov/facweb/>. A copy must be submitted in writing to TDA via email at SFSP.BOps@TexasAgriculture.gov. The email subject should include “Audit Report,” the name of the CE and CE ID. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

The proportional share of costs of required audits in accordance with 2 CFR Part 200, subpart F are allowable (2 CFR § 200.425). Projected costs of required audits must be included in the approved SFSP budget to be allowable.

Noncompliance with Single Audit Requirements

Consistent with 7 CFR § 225.11, TDA may find a CE seriously deficient for any serious management or integrity problems. For more information on the topic of Serious Deficiency, please refer to the section on *Administrative Reviews of Sponsors by TDA* later in this chapter. With regard to the audit requirement, TDA will place a CE in the serious deficiency process for failure to perform financial and administrative responsibilities. Examples of a CE’s failure to perform financial and administrative responsibilities include, but are not limited to:

- Failure to submit an audit to the Federal Audit Clearinghouse by the specified due date;
- Failure to submit an audit to TDA by the due date;
- Submittal of an audit that does not meet the regulatory requirements.

If TDA determines that extenuating circumstances resulted in the CE’s inability to submit an acceptable audit, TDA may conduct an audit, either directly or through contract with a third party. The CE must pay all costs associated with such an audit.

Value of USDA Donated Food for Audit

On December 2, 2016, USDA issued Memorandum [FD-104, Value of USDA Donated Foods for Audits \(Revised\)](#)⁵⁸ to clarify the options in assigning value to USDA donated food for audit purposes. In determining whether \$750,000 in Federal awards was expended, the value of USDA donated foods must be considered. The following two steps should be used in:

Step 1: Determining the quantity of each USDA donated food “expended”

- The CE must consider as expended all USDA foods donated in accordance with 7 CFR § 250.67 as received in a fiscal year.

Step 2: Assigning value to the quantity of each USDA food “expended”

⁵⁸ <https://www.fns.usda.gov/value-usda-donated-foods-audits>

- USDA donated foods must be valued at either fair market value at the time of receipt or at the value determined by the USDA (2 CFR § 200.502(g)). Accordingly, for audit purposes, the SFSP CE receiving USDA donated food may use one of the following options:
 - The fair market value of USDA donated foods at the time of their receipt. The fair market value must exclude non-food items.
 - One of the following donated food valuation methods included in 7 CFR § 250.58(e):
 - The cost-per-pound of USDA donated food prices posted annually by USDA; or
 - The most recently published cost-per-pound price in the USDA donated foods catalog, found in the USDA donated foods ordering system, Web-Based Supply Chain Management (WBSCM) at: <https://www.usda.gov/topics/food-and-nutrition/web-based-supply-chain-management>; or
 - The rolling average of the USDA prices based on each State distributing agency's USDA donated foods sales orders in WBSCM. To calculate the rolling average, all prices that a particular material has been sold at for the current fiscal year are averaged together to get an average cost per pound price for the material.

For additional assistance, contact TDA at CommodityOperations@TexasAgriculture.gov or 1-877-TEX-MEAL (839-6325).

Administrative Reviews of Sponsors by TDA

Serious Deficiency

If, during a CE's (organization's) application for or participation in the SFSP, TDA determines that a serious noncompliance occurred, TDA may place the CE, responsible principal(s), and responsible individual(s) in the serious deficiency process.

The steps in the serious deficiency process are as follows:

The SFSP Serious Deficiency Process Overview	
Step 1	Serious Deficiency Determination by TDA.
Step 2	<i>Notice of Serious Deficiency</i> (with Corrective Action(s) Required).
Step 3	Opportunity for Corrective Action (with TDA Review)
	(If applicable: <i>Notice of Temporarily Deferred Serious Deficiency</i>)
Step 4	<i>Notice of Application Denial</i> , and/or <i>Notice of Termination of the Food and Nutrition Division Permanent Agreement (Permanent Agreement) and Exclusion from Program Participation.</i>

Definitions and Acronyms

For this subchapter, the following definitions will be useful.

Administrative Review Official (ARO) - The independent and impartial official who conducts the appeal. The ARO shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal. Although the ARO may be an employee of TDA, he/she shall not have been involved in the action that is the subject of the appeal, or have a direct personal or financial interest in the outcome of the appeal.

Advance payments - Financial assistance made available to a CE for its operating costs and/or administrative costs prior to the end of the month in which such costs will be incurred.

Appeal - A fair review or hearing provided upon request to an organization, responsible principal or responsible individual who has been given notice by TDA of an adverse action(s) that will affect their participation in or reimbursement under the Program.

NOTE: A serious deficiency determination is not an adverse action subject to appeal.

Applicant - An organization that has submitted an application to TDA but has not yet become a Contracting Entity (CE).

Contracting Entity (CE) - An organization that has been approved to operate the Program and has executed a Permanent Agreement with TDA to that effect. In this subchapter, the term “organization” is also used to refer to a contracting entity; however, an organization which does not have an executed Permanent Agreement with TDA is not considered a contracting entity. However, an organization may be placed in the serious deficiency process, even without an executed Permanent Agreement.

Corrective Action Document (CAD) - A plan submitted by the organization, responsible principal(s), and/or responsible individual(s) documenting the actions taken, or to be taken, to fully and permanently correct serious deficiency(ies) identified by TDA.

Excluded - The status of an organization, responsible principal, or responsible individual that has been declared seriously deficient and subsequently placed on the Texas Excluded SFSP List (TEXSL).

Fair Review - See *Appeal*.

Follow-up review - Examination conducted by TDA or USDA of CEs and sites to determine compliance with a CAD and Program requirements. Results are provided in writing to the CE.

National Disqualified List (NDL) - List, maintained by USDA, of organizations, responsible principals, responsible individuals, and day care homes disqualified from participation in the CACFP. Organizations, responsible principals, and responsible individuals on the NDL may not participate in any CNP administered by TDA.

Notice - A letter sent by certified mail and first class mail , that describes an action taken by TDA or USDA with regard to an organization’s/individual’s Program reimbursement or participation. The notice shall specify the action being taken and the basis for the action, and is considered to be received by the organization/individual when it is delivered. If the notice is undeliverable, it is considered to be received by the organization/individual five (5) calendar days after being sent to the addressee’s last known mailing address.

Organization - As used in this subchapter, may be an applicant and/or CE, depending on their status in the SFSP.

Principal - Any individual who holds a management position within, or is an officer of, the organization, including all members of the contracting entity’s board of directors, or otherwise exercises control of, or determines the actions of, the contracting entity.

Program - Summer Food Service Program.

Responsible Principal - A principal, whether compensated or uncompensated, who TDA or USDA determines to be responsible for an organization’s serious deficiency.

Responsible Individual - Any other individual employed by, or under contract with, an organization who TDA or USDA determines to be responsible for the serious deficiency; or a uncompensated individual, such as volunteer, who TDA or USDA determines to be responsible for an organization's serious deficiency.

Review - Examination conducted by TDA or USDA of CEs and sites to determine compliance with SFSP requirements. Results are provided in writing to the CE.

Temporarily Defer (a Serious Deficiency) - Action taken by TDA to postpone the serious deficiency process until or unless it is determined that the serious deficiency or serious deficiencies were not fully and permanently corrected.

Texas Excluded SFSP List (TEXSL) - List maintained by TDA that identifies organizations, responsible principals, and responsible individuals who are excluded from participating in the SFSP and other CNPs. Organizations, responsible principals, and responsible individuals remain on the list for seven years and, if debt is involved, until the debt is paid. An organization, responsible principal, or responsible individual will go through the serious deficiency process before being placed on the list.

Step 1: Serious Deficiency Determination by TDA

As authorized in 7 CFR § 225.11, TDA may declare an organization, responsible principal, and/or responsible individual seriously deficient for any serious management or integrity problems. TDA has the authority to determine when a violation rises to the level of a serious deficiency.

TDA will use discretion in making these serious deficiency determinations by considering, but not limiting itself, to the following factors:

- Severity of the problem: Is the noncompliance on a minor or substantial scale? Are the violations indicative of a systemic problem at the organization, or is the problem truly an isolated event? Even minor problems may be serious if systemic. Some problems are serious even though they have occurred only once.
- The degree of responsibility attributable to the organization: To the extent that evidence is available, can TDA assess whether the violations were inadvertent errors of an otherwise responsible organization? Is there evidence of negligence or a conscious indifference to regulatory requirements? Is there evidence of deception?
- The organization's history of participation in the SFSP: Is this the first time the organization is having problems or has noncompliance occurred frequently at the same organization?
- The nature of the requirements that relate to the problem. Are the organization's actions a clear violation of SFSP requirements?

- The degree to which the problem impacts SFSP integrity. Does the error undermine the intent and integrity of the SFSP such as misuse of funds for non-Program purposes, or is it simply an administrative error?

The list of serious deficiencies in the SFSP, as authorized in 7 CFR § 225.11 includes, but is not limited to, the following:

- Submission of false documentation or information to TDA at any time during the organization's participation in the SFSP, including during the initial and renewal application process;
 - This includes, but is not limited to, a determination by TDA that the organization has concealed a conviction for any activity that occurred during the seven years preceding the organization's applications and that indicates a lack of business integrity. A lack of business integrity includes, but is not limited to, fraud, antitrust violations, embezzlement, theft, forgery, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity.
 - Submission of false or fraudulent claims, documentation or information will result in a determination that the organization is seriously deficient, regardless of the frequency or occurrence or impact on an organization's claim.
- Noncompliance with bid procedures and contract requirements applicable to federal procurement regulations;
- Failure to return to TDA any advance payments which exceed the amount earned for serving eligible meals;
- Failure to submit all claims for reimbursement in any prior year, except claims that are currently pending appeal;
- Permitting an individual who is on the NDL or TEXSL to perform SFSP duties for the organization;
- Organization applying for or participating in the SFSP while on the NDL, TEXSL, or SFSP exclusion list maintained by the responsible State agency in another state;
- Failure of a private nonprofit organization to maintain tax-exempt status;
- Failure to perform financial and administrative responsibilities;
- Imminent threat to the health or safety of participating children;
 - Imminent threat to the health and safety of participating children at any site will result in the immediate termination of that site and placement of the CE, responsible principal(s) and responsible individual(s) in the serious deficiency process.
 - If the CE is using a food service management company (FSMC), TDA will notify the FSMC of the site's termination within 48 hours.

- Failure to maintain site and/or sponsor records, or to timely produce records to TDA or USDA as required by Program regulations;
- Failure to adjust meal orders to conform to changes in site attendance, or ADP;
- Failure to have a trained site supervisor at each site during the meal service;
- Any other action affecting the organization's ability to administer the SFSP in accordance with Program requirements;
- Program violations, at a significant proportion of the CE's sites which include, but are not limited to, the following:
 - Continued use of a FSMC that is in violation of health codes;
 - Noncompliance with the meal service time restrictions;
 - Failure to maintain adequate records;
 - Failure to adjust meal orders to conform to variations in the number of participating children;
 - Simultaneous service of more than one meal to any child;
 - Claiming of Program payments for meals not served to participating children;
 - Serving a significant number of meals which did not contain all meal components in the required amounts;
 - Excessive instance of off-site meal consumption; or
 - Any other actions affecting the site's ability to operate the SFSP in accordance with Program requirements.

NOTE: This list of serious deficiencies is not all-inclusive. TDA has the authority to determine whether a serious deficiency that is not listed in 7 CFR § 225.11(c) has occurred. A CE may not appeal a serious deficiency determination, as determined by 7 CFR § 225.13(a). When TDA determines that a serious deficiency has occurred, TDA will also determine who, as a principal and/or individual, is responsible for the serious deficiency, to the extent possible.

The Executive Director (or equivalent) is responsible for the organization's day-to-day operations. The Board Chairman, or equivalent, is responsible for the organization's overall operation. They may not always be directly responsible for a specific serious deficiency; however, by virtue of their positions, they have overall responsibility and accountability for the organization.

Only the CE and those principals and individuals cited as responsible for the serious deficiency(ies) will be named in the notices and potentially excluded from participation from any CNP administered by TDA.

Step 2: Notice of Serious Deficiency

After TDA has determined a serious deficiency has occurred, TDA will notify the CE of this determination in a *Notice of Serious Deficiency*.⁵⁹ The *Notice of Serious Deficiency*

- Includes and identifies the names of responsible principal(s) and/or responsible individual(s);
- Is addressed and sent to the:
 - Contracting entity (organization);
 - Responsible principal(s) and responsible individual(s); and
 - Contracting entity's (organization's) Executive Director and Board Chairman, or equivalent positions.
- Specifies the serious deficiency(ies) with references to the documents that discuss the serious deficiency(ies), such as an administrative review findings letter, information or documentation in TX-UNPS, or audit;
- Specifies the corrective action required to fully and permanently correct the serious deficiency(ies), and the deadline by which corrective action must be taken;
- Informs the organization that the serious deficiency determination is **not** subject to appeal;
- States that failure to fully and permanently correct the serious deficiency(ies) by the deadline provided in the notice will result in:
 - Denial of the organization's application, if applicable.
 - Termination of the CE's Permanent Agreement, if applicable.
 - Exclusion of the organization, responsible principal(s), and responsible individual(s) from participation in any CNP administered by TDA for as long as they remain on the TEXSL;
- Informs the organization whether or not they will be eligible for SFSP reimbursement during the period of corrective action;
- States that if the CE voluntarily terminates its Permanent Agreement after receiving the *Notice of Serious Deficiency*, TDA will still proceed with exclusions and denial of the application, if applicable; and
- States that a determination of serious deficiency in one CNP administered by TDA will be considered in its evaluation of financial viability and administrative capability of an application for any other CNP administered by TDA.

⁵⁹ See definition for *Notice* on how TDA notifies CEs of a serious deficiency determination.

Step 3: Opportunity for Corrective Action (with Review by TDA)

TDA must afford a CE reasonable opportunity to correct problems before terminating the CE from the SFSP for being seriously deficient. (7 CFR § 225.11(c))

The *Notice of Serious Deficiency* provides the opportunity for the CE (organization) to fully and permanently correct the serious deficiency(ies) by creating and implementing a plan outlined in the CAD.

The organization will be allowed a specified amount of time to fully and permanently correct the serious deficiency(ies) before TDA:

- Denies the application, if applicable;
- Terminates the organization's Permanent Agreement in whole, if applicable; and/or
- Excludes the organization, responsible principals, and/or responsible individuals from participating in the SFSP and other CNPs.

The amount of time allowed to correct a serious deficiency will be determined by TDA and may, in part, be based on the CE's number of operating days left in the SFSP year and the type of serious deficiency. Some deficiencies, such as submission of false information to TDA, have a shorter period of time for correction.

TDA will not grant any requests for extension of the time allotted to an organization, responsible principal, and/or responsible individual to submit a CAD.

Once a *Notice of Serious Deficiency* is issued, it can result in two possible outcomes:

- The serious deficiency(ies) **are** fully and permanently corrected to TDA's satisfaction within the time allotted for corrective action. The serious deficiency process stops and the serious deficiency is temporarily deferred.
- The serious deficiency(ies) **are not** fully and permanently corrected to TDA's satisfaction within the time allotted for corrective action. The serious deficiency process continues to Step 4.

If Serious Deficiencies are Fully and Permanently Corrected

TDA will determine if the serious deficiency(ies) have been "fully and permanently" corrected by:

- Reviewing the documentation submitted showing the corrective action taken; and/or
- Conducting an onsite review to verify that corrective action was taken.

If TDA determines that the serious deficiency has been fully and permanently corrected within the time allotted, as indicated in the *Notice of Serious Deficiency*, all parties, including the CE (organization), responsible principal(s), responsible individual(s), Board Chairman, and Executive Director, will receive written notification that the serious deficiency has been temporarily deferred. TDA will not proceed with Step 4 in the process.

However, if at any time, it is discovered that the serious deficiency(ies) have not been fully and permanently corrected, TDA may proceed immediately to Step 4 without further opportunity for corrective action. In short, once a CAD has been approved, an organization is responsible for maintaining the operations and procedures contained therein; a lapse in compliance observed by TDA may trigger the serious deficiency process to resume and allow TDA to proceed to Step 4 in this process.

If Serious Deficiencies are Not Fully and Permanently Corrected

If the serious deficiency(ies) **are not** fully and permanently corrected to TDA's satisfaction within the time allotted, either because the organization, responsible principal(s), and/or responsible individual(s) do not respond to the *Notice of Serious Deficiency* or the response is inadequate, TDA will proceed with the following steps, and Step 4 of the serious deficiency process:

- Denial of application, if applicable;
- Termination of the CE's Permanent Agreement, if applicable; and
- Placement of the organization, responsible principal(s), and responsible individual(s) on the TEXSL, if applicable.

NOTE: If the responsible principal(s) and/or responsible individual(s) have not corrected their contribution to the serious deficiency, TDA will continue its actions to exclude those persons.

Step 4: Notice of Application Denial and/or Notice of Termination of Permanent Agreement and Exclusion

TDA must terminate an organization's Permanent Agreement if it is seriously deficient and does not correct those deficiencies. (7 CFR § 225.11)

If the serious deficiency(ies) have not been fully and permanently corrected within the time allotted by TDA, TDA will issue a written *Notice of Application Denial and/or Notice of Termination of Permanent Agreement and Exclusion* from the SFSP.

This notice is customized, based on whether the organization has a pending application and/or Permanent Agreement, and:

- States that TDA is denying the organization's application (if applicable);
- States that TDA is terminating the organization's Permanent Agreement (if applicable);
- States that TDA is excluding the organization, responsible principal(s), and/or responsible individual(s) by placing them on the TEXSL;
- States that the excluded organization, responsible principal(s), and/or responsible individual(s) placed on the TEXSL will be ineligible from participating in other CNPs administered by TDA;

- Specifies the basis for the actions;
- Specifies the effective date for the actions;
- Outlines the procedures for appealing the actions;
- Informs the organization as to whether they will be eligible for SFSP payments during the period of appeal; and
- States that the CE must notify feeding sites that TDA has terminated the CE's Permanent Agreement and the effective date of that termination.

The organization, responsible principal(s), and responsible individual(s) may appeal any of the following adverse actions in the *Notice of Application Denial* and/or *Notice of Termination of Permanent Agreement and Exclusion*:

- Denial of an application to participate;
- Termination from participating in the SFSP
 - If the CE is using a FSMC, TDA will also notify the FSMC of the CE's termination from the SFSP within 48 hours; and
- Exclusion of a responsible principal(s) and/or responsible individual(s) from participation in the SFSP with placement on the TEXSL.

REMINDER: A serious deficiency determination is **not** appealable.

Each person wishing to appeal their placement on the TEXSL must submit a request either collectively, naming each person, or separately. Only a principal may appeal the application denial, termination and placement of the organization on the TEXSL.

One hearing will be conducted combining all requests received, absent a showing of good cause to the ARO that separate proceedings are required.

Appeal Procedures

The rules regarding the appeal procedures for SFSP are found in 4 TAC, Part 1, Chapter 26, Subchapter E.

To be considered timely, a written appeal request must be received by the TDA Docket Clerk, Legal Division not later than 5:00 P.M. on the tenth (10th) calendar day after receipt of the *Notice of Application Denial* and/or *Notice of Termination of Permanent Agreement and Exclusion*. Information on appeal rights pertaining to adverse actions is included with the notice of adverse action(s).

An appeal may either be:

- In-person, conducted by an ARO at TDA headquarters in Austin, if the appellant specifies this request in the letter appealing the adverse action(s), or

- By a review of written information submitted by the appellant (i.e., the CE or organization).

The appellant may retain legal counsel or be represented by another person (such as an accountant) at the hearing. Failure of the appellants' representative (or the appellant if they are not represented by legal counsel) to appear at the scheduled hearing will constitute the appellant's waiver of the right to a personal appearance before the ARO; the ARO has the authority to either reschedule the hearing or to make a final determination without a hearing.

A TDA representative will attend the hearing, respond to examination by TDA counsel, respond to cross examination, respond to the appellant's testimony and written information, and answer any questions from the ARO.

The ARO will make a determination based on the information and testimony provided by the appellant and TDA. The ARO's determination is the final administrative determination and is not subject to further administrative appeal.

An appeal must be mailed or faxed to the following address:	An appeal may be hand-delivered or submitted via overnight/special delivery to the following address:
Texas Department of Agriculture Legal Division ATTN: Docket Clerk PO BOX 12847 Austin, Texas 78711 FAX: (800) 909-8530	Texas Department of Agriculture Legal Division 1700 North Congress, 11 th Floor Austin, Texas 78701

Appellants may confirm receipt of their appeal request by contacting the TDA Docket Clerk at (512) 463-4075.

Removal from the Texas Excluded SFSP List (TEXSL)

Once included on the TEXSL, an organization, responsible principal(s), and responsible individual(s) will remain on the list for a minimum of seven years from the date of exclusion from participation unless a debt is owed under the SFSP, in which case they will remain on the list until the debt has been repaid.

A request to be removed from the TEXSL before the seven years has elapsed may be submitted; however, it must be noted that:

- Submission of a request does not guarantee it will be approved, and a denial is not subject to appeal;
- Approval of a request for removal does not equal approval to participate in the SFSP; and

- Due to the egregious nature of submission of false claims or documentation, and submission of false information on the application, TDA will not consider a request for removal from an organization and/or individual that was excluded for those reasons.

To be considered for early removal from the TEXSL, an organization, responsible principal, or responsible individual must submit a request via one of the following options:

- Online request via the [Removal Request Form - National Disqualified List or Texas Excluded Summer Food Service Program List](https://squaremeals.org/FandN-Resources/National-Disqualified-List) located on SquareMeals on the National Disqualified List / Texas Excluded Summer Food Service page (<https://squaremeals.org/FandN-Resources/National-Disqualified-List>)

- Standard mail:

Texas Department of Agriculture
Food and Nutrition
Attn: Community Operations
P.O. Box 12847
Austin, Texas 78711

- Or via overnight delivery to:

Texas Department of Agriculture
Food and Nutrition
Attn: Community Operations, 10th Floor
1700 N Congress Avenue
Austin, Texas 78701

All requests must include the following information:

- Documentation that provides evidence that the serious deficiencies have been fully corrected, which may include:
 - **An approvable CAD:** The organization, responsible principal(s), or responsible individual(s) must submit an approvable CAD outlining the actions that will be taken, or have been taken, to correct the serious deficiency(ies) that resulted in the placement on the TEXSL. This must contain new information that has not been previously submitted to TDA and rejected. If TDA rejects the CAD, this action cannot be appealed.
 - **Any outstanding audits:** If the serious deficiency includes failure to submit an acceptable audit, the organization must submit an audit that complies with the Single Audit (as set forth in 2 CFR Part 200) requirements that were in effect at the time the audit was originally due. Corrective action must also include a plan to address any deficiencies identified in the audit.⁶⁰

⁶⁰ For more information about the audit requirement, see Monitoring Sites in this chapter.

- **All outstanding funds owed:** If the organization has an outstanding debt due to a previous SFSP claim, adjusted claim, advance overpayment, audit finding, or any other action resulting in a debt, the debt must be repaid, including interest. This includes debts that may not be part of the original serious deficiency.
- **One of the following:**
 - An explanation, setting forth detailed, objective, verifiable facts, indicating why the principal(s) or individual(s) identified as being responsible for the serious deficiency(ies) should now be eligible to participate in the SFSP, if the person or persons are requesting removal from the TEXSL.
 - A statement that the principal(s) identified as being responsible for the serious deficiency(ies) are no longer principals in the organization, if they are not included in the request for removal from the TEXSL.
 - A statement that the individual(s) identified as being responsible for the serious deficiency(ies) do not perform any task related to the SFSP, or are no longer employed by the organization, if they are not included in the request for removal from the TEXSL.

If TDA, in its sole discretion, determines that the organization, responsible principal(s), or responsible individual(s) have taken acceptable corrective action, and have presented a clear and convincing explanation, supported by verifiable facts and documentation, of why the organization, principal(s), or individual(s) identified as being responsible for the serious deficiency(ies) should now be eligible to participate in the SFSP, TDA will remove the organization, responsible principal(s), or responsible individual(s) from the TEXSL. TDA will notify the organization, principal(s), or individual(s) of the decision.

If TDA denies the organization's, responsible principal(s), or responsible individual(s) request for early removal from the TEXSL, TDA will notify the organization, principal(s) or individual(s) of the decision. The decision denying an organization's request for removal from the TEXSL may not be appealed.

Revocation of Tax-Exempt-Status – Private Nonprofit Contracting Entities

On December 1, 2016, USDA issued memorandum SFSP 04-2017, [Automatic Revocation of Tax-Exempt Status – Revised](https://www.fns.usda.gov/sfsp/automatic-revocation-tax-exempt-status%E2%80%93revised)⁶¹ which clarified guidance regarding the nonprofit status of CEs participating in the SFSP. SFSP requires private nonprofit organizations to be tax-exempt in order to be eligible to sponsor the SFSP. To ensure that all SFSP CEs meet the tax-exempt requirements, TDA reviews annually the IRS Automatic Revocation of Exemption List to

⁶¹ <https://www.fns.usda.gov/sfsp/automatic-revocation-tax-exempt-status%E2%80%93revised>

determine whether any SFSP CEs in Texas are listed. The list, which is organized by State, may be found at: <https://www.irs.gov/charities-non-profits/exempt-organizations-select-check>.

SFSP regulations require TDA to terminate the SFSP agreement with any organization determined to be seriously deficient. Because a private nonprofit CE must be tax-exempt by the IRS in order to be eligible to participate in the SFSP, the revocation of a CE's tax-exempt status is a failure by the CE to meet a basic SFSP eligibility requirement and constitutes a serious deficiency. In these instances, TDA is required to terminate its agreement with the CE.

If TDA determines that an approved SFSP CE has had its tax-exempt status revoked by the IRS, TDA must inform the CE that it is seriously deficient and its participation in the SFSP will be terminated in accordance with 7 CFR § 225.11(c). If a CE has its tax-exempt status revoked but was then reinstated, the CE has met the requirement for SFSP eligibility and its participation in the SFSP will not be terminated by TDA.

Termination of a CE's participation in the SFSP based on the automatic revocation of its tax-exempt status is subject to appeal under the procedures described in 7 CFR § 225.13 and this Handbook. If a CE appeals its termination, the CE may continue to operate the SFSP pending the outcome of the appeal process.

Civil Rights Requirements

A CE is responsible for ensuring that all eligible participants have equal access to the Program. The CE and sponsored sites cannot discriminate in employment or program participation based on:

- Race;
- Color;
- National Origin;
- Sex;
- Age; or
- Disability.

A CE must strictly adhere to and enforce the provisions of the Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA).

Title VI of the Civil Rights Act of 1964

Limited English Proficiency

CEs and sites that fail to provide services to Limited English Proficiency (LEP) potentially eligible persons, applicants, and participants, or deny them access to the Program and

activities, may be discriminating on the basis of national origin. Title VI of the Civil Rights Act requires CEs and sites to take reasonable steps to assure “meaningful” access to the information and services they provide.

Reasonable steps to ensure meaningful access is contingent on a number of factors, including but not limited to:

- The number or proportion of LEP persons eligible to be served or likely to be encountered by the CE or site;
- The frequency with which LEP individuals come into contact with the Program;
- The resources available to the CE or site and costs.

Non-discrimination Statement

CEs and sponsored sites must provide the non-discrimination statement (NDS) and complaint-filing procedures in all applications and Program-related information intended for the parents of current and potential participants.

The NDS must be printed in its entirety on all Program-related documents that are produced for public information, public education, or public distribution.

Program-related written materials must be provided to all current and potential program participants with the non-discrimination statement and complaint-filing procedures included.

EXCEPTIONS:

- When material is too small to permit the full NDS, the material must include, in font size no smaller than the other text, the following statement: “This institution is an equal opportunity provider.”
- The NDS is not required to be printed on items such as cups, buttons, magnets, and pens that identify the Program when the size or configuration make it impractical.
- When advertising the Program through radio or television announcements, the entire NDS does not have to be read; rather, a statement such as “The (name of the CE or site) is an equal opportunity provider” is sufficient.
- The entire NDS does not have to be included on every page of a CE’s Program information website; at minimum, the non-discrimination statement or a link to the statement must be included on the CE’s home page.

See the *Reference Materials* section at the end of this handbooks for the complete English and Spanish versions of the NDS.

NOTE: When human likenesses are used in program materials, reasonable efforts must be made to depict an ethnic balance.

Civil Rights Assurance Statements

All agreements signed by a CE and any other party for the purposes of operating the SFSP must contain the following Civil Rights assurance statements:

"The [signing Party] hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), DOJ (28) CFR Parts 42 and 50) and FNS directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the [signing Party] received Federal financial assistance from USDA; and hereby gives assurance that it will immediately take any measures necessary to fulfill this agreement."

"This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the [signing Party] by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance."

"By accepting this assurance, the [signing Party] agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the [signing Party], its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the [signing Party]."

Data Collection and Maintenance

A CE and sponsored sites must determine the number of actual and potentially eligible beneficiaries by both racial and ethnic category currently participating in the program, annually.

To determine the number of potentially eligible beneficiaries, CEs and sponsored sites can obtain information from many different resources such as comparative enrollment in other sites, schools, census data, local Chamber of Commerce, and local minority and grass roots organizations.

To determine number of actual beneficiaries, the preferred method for obtaining this information is participant self-identification or self-reporting. As of May 17, 2021, federal policy prohibits visual observation as an allowable practice for gathering this data.

While requesting data verbally is allowable, TDA understands that requesting information verbally may be uncomfortable for staff and for participants. Respect for individual dignity should guide the processes and methods of collecting data on race and ethnicity.

Additionally, TDA discourages asking a child to self-identify their race and ethnicity, as this practice may confuse young children. Obtaining data from parents or guardians is the preferred method of data collection, as parents or guardians can provide accurate information. If a parent or guardian is not present at the time of meal pick-up, or if the parent chooses not to identify, their response may be marked “unknown.” For that reason, TDA does not expect that the number of respondents will equal the number of children at a meal service site. However, TDA expects CEs to continue to capture the data.

The *Collection of Child Nutrition Program Participant Racial/Ethnic Data Prototypes* form, located on the SquareMeals.org Summer Meals Program Administration/Forms⁶² page, can assist program operators in capturing racial and ethnic data to the best extent possible.

Parents and guardians may be asked to identify the racial or ethnic group of the participating child/student only after the following has been explained:

- Providing the information is to ensure compliance with USDA nondiscrimination requirements only
- Failure to report the information will not affect the participant’s eligibility for meals.

After collecting this data, a CE and sponsored sites must:

- Maintain the original data by individual site with documentation of the sources and methods by which it was obtained; and
- Maintain the data and relevant documentation according to SFSP record keeping requirements; and
- Establish safeguards to protect the confidentiality of the data.

Administrative and Site Reviews

Reviews help to ensure that civil rights requirements are fulfilled at each level of Program administration, including the application approval process and the federal and state monitoring efforts.

TDA will determine whether a CE and its sites comply with civil rights requirements before approving an application to participate. Compliance is determined by examining the *Pre-*

⁶² <https://squaremeals.org/Programs/SummerMealPrograms/AdministrationForms.aspx>

Award Civil Rights Compliance Review form submitted with the initial application, as well as by observation during required site reviews.

CEs must also determine its sites' compliance with civil rights during each of its required reviews of its sites.

Training

A CE must complete Civil Rights training prior to Program participation and annually thereafter. In addition, CEs must ensure that all staff that perform key SFSP activities are trained in civil rights requirements prior to Program participation and annually thereafter.

Civil rights training for CACFP CEs is accessed through the Institute for Child Nutrition (ICN). Links to the training are available on SquareMeals.org at:

<https://squaremeals.org/FandNResources/Training/CivilRights.aspx>

Complaints

CEs must have procedures for processing complaints. Staff at all locations must be able to provide documentation of the procedures and an explanation of the complaint process.

Any person or representative alleging discrimination based on a prohibited basis has the right to file a complaint within 180 days of the alleged discriminatory action. Complaints can be written or verbal. If the complainant makes a verbal complaint, the person to whom the allegation is made must write up the elements of the complaint and should make every effort to obtain the following information:

- Name, address, and telephone number or other means of contacting the complainant;
- The specific location and name of the organization participating in SFSP;
- The nature of the incident or action that led to the complaint of discrimination;
- The basis on which the complainant believes discrimination exists (race, color, national origin, age, disability or sex);
- The names, telephone numbers, titles, and business or personal address of persons that may have knowledge of the alleged discriminatory action; and
- The date(s) during which the alleged discriminatory action(s) occurred or, if continuing, the duration of such action(s).

If a civil rights complaint is filed, the CE must forward it to USDA immediately.

The complaints should be sent to:

USDA Food and Nutrition Service
Attn: Regional Civil Rights Director
1100 Commerce St.
Dallas, Texas 75242

A courtesy copy should be sent to Community.Ops@TexasAgriculture.gov.

Section 504 of the Rehabilitation Act of 1973

Program Accessibility

The Program, when viewed in its entirety, must be accessible to and usable by disabled persons, including persons with impaired vision or hearing. A CE is not required to make every part of existing facilities physically accessible to disabled persons but must ensure that the Program(s) are accessible.

CEs must offer the most integrated setting possible to enable persons with disabilities to fully benefit from the Program.

Public Notification

CEs and sponsored sites must:

- Display the official USDA non-discrimination poster ("...And Justice For All") in a prominent place;
- Make Program information available to the public upon request;
- Provide information materials related to the Program in languages other than English, if the need exists; and
- Provide the non-discrimination statement and complaint-filing procedures in all applications and Program-related information intended for the parents of current and potential participants.

Employment

CEs and sponsored sites are prohibited from discriminating against any qualified person based on a disability. Reasonable accommodations must be made for the known physical or mental limitations of an otherwise qualified applicant or employee with disabilities. A CE or sponsored site is not expected to make accommodations that impose an undue hardship on the operation of the Program.

Food Services

See Meal Service Requirements in Chapter 4 – *Meal Service* for guidance regarding accommodating disabilities that restrict a child's diet and the prohibition on separation of male and female participants during SFSP meal service.

Designation of Section 504 Coordinator

CEs and sponsored sites that employ 15 or more people must designate one or more persons to coordinate compliance with Section 504 regulations. An existing employee may be designated to perform this function.

Complaint/Grievance Procedures

CEs and sponsored sites that employ 15 or more people must maintain procedures to process complaints and grievances. Procedures that are required by a program other than the SFSP may satisfy this requirement if they comply with due process standards and provide for prompt and equitable resolution of complaints and grievances.

Americans with Disabilities Act

The Americans With Disabilities Act (ADA) became effective January 26, 1992. This act and Section 504 of The Rehabilitation Act of 1973 combine to prevent a wide range of discriminatory actions against disabled persons. The ADA, however, does not replace Section 504. The ADA applies to all persons and is not limited solely to persons who receive federal financial participation.

The ADA comprises the following subjects:

- Non-discriminatory practices
- Reasonable accommodation

The ADA applies to the following areas:

- Services; and
- Employment

Services

When evaluating the services offered, the CE should consider the following questions:

- Can the person with disabilities get to the facility with reasonable ease?
- If the person can reach the location, can they enter the facility and access the specific location where services are provided?
- If they can access the location where services are provided, is there an accessible bathroom?
- If they can access the location where services are provided, are necessary accommodations made for their particular disability?

Employment

In accordance with the ADA, CEs and sponsored sites:

- Cannot discriminate against a person with a disability when hiring or promoting staff if the person is otherwise qualified for the job.
- Can inquire about a person's ability to perform a job but cannot ask whether a person has a disability or subject a person to tests that screen out people with disabilities.
- Must provide "reasonable accommodation" to persons with disabilities (for example, job restructuring and modification of equipment).

NOTE: A CE or sponsored site is not required to provide accommodations that impose an undue hardship on their business.

CHAPTER 9—PROGRAM COSTS AND REIMBURSEMENTS

Advance Payments

Advance payments are financial assistance made available to a CE for its operating costs and/or administrative costs prior to the month in which such costs will be incurred (7 CFR §225.2). CEs may request advance payments and are based on information provided by the CE in its SFSP application. TDA will deduct the amount of the advance payment from future payments to the CE for its operating and/or administrative costs. The CE, along with its responsible principals, must pay back TDA for any advances that are not offset by SFSP reimbursements.⁶³ 7 CFR § 225.9(c)(5).

Advance SFSP Program Payments

CEs that have an approved SFSP Application Packet and executed a TDA Food and Nutrition Division Permanent Agreement to operate the SFSP may request advance SFSP program payments to assist in meeting program-related costs (7 CFR §225.9(c)).

In addition to the method of determining advance payments described in 7 CFR § 225.9(c) and the AGS, TDA uses the following factors to determine CE eligibility for advances and to calculate the amount of payments issued:

Timing:

- Advance payments must be made by June 1, July 15, and August 15 for CEs whose requests for advance payments are made at least 30 days prior to those dates. Requests received less than 30 days prior to those dates must be acted upon by TDA within 30 days of receipt. 7 CFR § 225.9(c).

EXAMPLE: Requests for a June 1 advance may be submitted by a CE 60 days in advance of that date. However, if a request is made less than 30 days from June 1, the request must be acted upon by TDA within 30 days of the request receipt. Depending on when the request is made, the CE may receive the advance by the June 1 date or a denial of the request will be issued within 30 days of the request.

Eligibility:

- CEs must submit an application to participate in the SFSP no later than March 15 of the calendar year.
- A CE must be in good standing and must have successfully operated the SFSP and any other CNP it operates. TDA will consider a returning CE to have operated successfully during the previous summer (or other most recent period of operation) if it does not owe a debt to TDA, none of its funds are on hold, and/or it is not in serious deficiency. TDA

⁶³ Excess funds, as defined in 7 CFR 225.2, means the difference between any advance funding and reimbursement funding, when advance funds received by a sponsor [CE] are greater than the reimbursement amount earned by the sponsor [CE].

will also consider any administrative review findings from the previous year of operation (or other most recent period of operation) not rising to the level of a serious deficiency. TDA makes its determination based on the particular circumstances of the CE.

For example, CEs in serious deficiency may not be eligible for advances or may only be eligible for a reduced advance payment.

- CEs that receive a June advance payment must submit a June claim for reimbursement before TDA will issue an advance payment for the month of August.
- Except for school food authorities, CEs must conduct training sessions covering SFSP duties and responsibilities for the CE's staff and for site personnel before receiving a second advance payment.
- To be eligible for the second and third advance payments, the CE must certify that it is operating the number of sites for which its budget was approved and that its projected costs do not differ significantly from the approved budget.

NOTE: CEs have an ongoing responsibility to keep their SFSP application up-to-date and must timely submit any updates, amendments, or changes via TX-UNPS.

- CEs are not eligible for advance payments for any month in which it will participate in SFSP for less than 10 days.

NOTE: A CE that operates for less than 10 days in June but for at least 10 days in August may be eligible for a second advance payment by August 15.

Calculation of amount:

- Advance payments for **new** SFSP CEs will be limited to a maximum of \$40,000 per program month.

Example: A first-time SFSP CE which intends to operate ten sites and anticipates high numbers of turnout. Advance payments awarded to the CE by TDA will be capped at \$40,000 per program month because it is the CE's first year operating the program.

- Advance payments for all **renewing** SFSP CEs will be limited to the amount of monthly SFSP reimbursement (not advances) successfully managed in the previous program year.

Example: A returning SFSP CE received an advance payment of \$25,000 for June 2018 and successfully operated the program to yield a total of \$50,000 in reimbursement for that month. Therefore, the CE is eligible to receive up to \$50,000 in advance payments for June 2019.

- Any unused reimbursements available to the CE from the prior program years.

Example: A returning SFSP CE has unused reimbursement from previous participation in the amount of \$25,000. The CE successfully operated the program to yield a total of \$50,000 in reimbursement for the month of June 2018. Therefore, the CE is eligible to receive up to \$50,000 in advance payments for June 2019. Because the CE already has \$25,000 in unused reimbursement, the CE is eligible to receive up to \$25,000 in advance payments for June 2019.

Advance payments are calculated by TDA by taking into consideration the above factors and using the site data in TX-UNPS for approved sites that will be operated in the current program year by the CE.

Program Reimbursement (7 CFR § 225.9(d))

Reimbursement Rates for Sites

The SFSP has two different levels of administrative reimbursement rates:

- Rural and/or Self-prep Sites
- Vended, Urban Sites

The higher administrative reimbursement rate is for CEs of sites located in rural areas and/or for CEs of sites that prepare or assemble their own meals. The lower rate is for all other CEs, or those that have vended, urban sites.

The current SFSP reimbursement rates can be located on the “Summer Feeding Reimbursement Rates” at

<http://www.squaremeals.org/Programs/SummerFeedingPrograms/SummerFeedingReimbursementRates.aspx>.

Unused Reimbursements

Unused reimbursements are the difference between the amount claimed for reimbursement and actual costs, should reimbursement exceed costs. 7 CFR § 225.2 For example, if a CE received \$1000 in reimbursement but only spent \$900 on actual costs to operate the SFSP, the CE would have \$100 in unused reimbursement.

USDA and TDA expect CEs to adequately manage resources so that a well-run, quality summer meal service does not result in a significant amount of unused reimbursement. It is important that CEs monitor its SFSP operations throughout the summer and make adjustments to ensure that quality meals are being served. However, if a CE has unspent reimbursement, this remaining amount must be kept in a nonprofit food service account, as required of all CNPs. These funds must benefit the operation of another CNP operated by the CE or the SFSP during the following program year. Should a CE have unused reimbursement, it must be used to

improve the SFSP or for allowable costs in other CNPs operated by that CE. 7 CFR § 225.9(g). CEs must document how any unused reimbursement was spent.

Net Cash Resources

CEs net cash resources must not exceed one month's average expenditures for CEs operating only during the summer months and three months' average expenditure for CEs operating another CNP throughout the year. 7 CFR § 225.7(f). TDA's approval is required for net cash resources in excess of these requirements.

NOTE: One month's average expenses can be determined by dividing the total prior year's expenses by the number of months in operation that year.

In accordance with 7 CFR § 225.7(d)(2)(iii)(C), TDA will review a CE's operation of the SFSP to determine whether reimbursements have resulted in the accumulation of net cash resources. TDA may provide technical assistance or require certain corrective actions by a CE to improve meal service quality. TDA may also take other appropriate action designed to improve the nonprofit meal service quality under the following conditions, including, but not limited to:

- The CEs net cash resources exceed established limits for the nonprofit food service or such other amount as may be approved by TDA;

- The ratio of administrative to operating costs is high.

- A significant portion of the food served is privately donated or purchased at a very low price.

These conditions are indicators of potential mismanagement.

Claims for Reimbursement

A CE's claim for reimbursement is its actual participation report submitted for the purpose of receiving reimbursement for costs associated with the SFSP food service. TDA reimburses claims depending on the availability of funds from USDA.

CEs submit claims electronically through TX-UNPS. Each meal and snack must be reported by type (Breakfast, AM Snack, Lunch, PM Snack, Supper) by site for the claim month.

In submitting a claim for reimbursement, the CE must certify that all reimbursement claims (i.e., original and adjusted claims) are correct and that records are available to support all claims. Failure to maintain such records may be grounds for denial of reimbursement for the claimed meals and snacks served during the period covered by the records in questions. The CE is never permitted to submit estimated claim data. (7 CFR §225.9(d)(5))

See below for additional information on claim data documentation and record retention.

Filing Claims and Submittal Deadline

A final claim for reimbursement must be postmarked and/or submitted to TDA **not later than 60 days following the last day of the full month covered by the claim.** (7 CFR §225.9(d)(6))

However, CEs must submit a monthly claim **within 60 days of the last day of operation.** For example, if the CE's last day of operation was August 5, the claim must be submitted to TDA by October 4 (60 calendar days from August 5). (7 CFR §225.9(d)(3))

Claims are considered submitted once it is entered and submitted into TX-UNPS. When the 60th day falls on a Saturday, Sunday, or Federal holiday, the claim is due on the next business day.

CEs may submit adjustments to a claim for reimbursement prior to the applicable 60-day deadline. However, after the 60-day claim deadline, the data submitted for the claim month is considered final and may only be revised according to the circumstances that are detailed below.

Once the CE's claim has been successfully submitted, a confirmation number will appear, and the claim status will be "accepted." CEs may print the screen which contains a confirmation number. When calling to confirm the receipt or make inquiries about their claim, CEs must have the confirmation number available. TDA office hours are 8:00 a.m. to 5:00 p.m., Central Time (CT).

If TX-UNPS is unavailable on the last day of the filing deadline ("the system is down"), CEs may submit a paper claim via fax, mail, or by personal delivery to the TDA office in the Stephen F. Austin Building in Austin. However, the claim must be postmarked or received by TDA before close of business on the 60th day or it will be received as a late claim. CEs must attach a cover letter explaining why they could not submit their claim electronically via TX-UNPS.

If a CE waits until the 60th day to submit a claim electronically and then is unable to access TX-UNPS due to any problem other than TX-UNPS being down, the CE must:

- Find an alternate site to access TX-UNPS and submit their claim before the deadline, or
- Submit their claim after the 60th day as a late claim. See *Late Claims* below for information on the processing of late claims.

TDA recommends that CEs always have a back-up person designated to submit claims. This may decrease the chance of submitting a late claim. If a CE receives advance payments, it should submit the claim as early as possible after the end of the claim month, as a delay in submitting the claim could affect receipt of future advance payments.

It may take up to 45 days to process valid claims.

Documentation of Submitted Claims and Record Retention

CEs must maintain sufficient detailed documentation to support all actual claim data reported to TDA. In addition, details and reasons for all adjustments made to claims must also be maintained. TDA will review the CE's documentation during administrative reviews and other oversight activities to monitor and enforce compliance. A CE's failure to maintain such documentation may result in disallowance of meals and reimbursements already paid may be recovered by TDA.

Records supporting claims must be retained by the CE and be available for review for at least three years plus the current fiscal year; except, if audit findings have not been resolved, the records must be retained as long as required for resolution of the issues raised by an audit.

More information on this topic may be found in Chapter 10 - *Recordkeeping*.

Late Claims

CEs must submit final reimbursement claims within the applicable 60-day deadline. CEs that fail to meet this deadline are out of compliance with regulatory requirements, except for those situations explained below. When the CE is out of compliance, a corrective action plan (CAP) is required by TDA. In addition, TDA may withhold payments to the CE, including for other child nutrition programs (CNPs) the CE operates, until procedures have been implemented by the CE to produce an actual final claim each month. (2 CFR §200.339) TDA may withhold payments until the CE demonstrates that it has procedures in place to produce a timely final claim each month.

Corrective Action Plan (CAP)

The submission of a late claim is a SFSP noncompliance; therefore, CEs must submit an approvable CAP to correct the conditions that led to the missing the applicable 60-day deadline. The CE must submit a CAP that includes:

- The reason for submitting a late claim;
- The actions to be taken to avoid future late claim submissions from the same or other causes;
- A statement that the CE understands the one-time exception is only available once in a 36-month period for each CNP⁶⁴ for circumstances within its control; and

⁶⁴ An exception may be granted separately for School Meals (National School Lunch Program, School Breakfast Program, Afterschool Care Program, and Seamless Summer Option), Child and Adult Care Food Program, and SFSP.

- The signature of an Authorized Representative designated to act on the organization's behalf as indicated in TX-UNPS.

The CAP must provide sufficient detail to demonstrate that completion of the actions to be taken by the CE will ensure its future compliance with the requirements. Once a CE has submitted an approvable CAP, TDA will determine if it is eligible for the one-time exception payment provision as discussed below.

One-Time Exception

CEs may request approval for a one-time exception every 36 months for one monthly original or adjusted claim submitted after the applicable 60-day deadline that results in increased reimbursement when the lateness is due to reasons within the control of the CE. The CE may request a revision for only one monthly claim. If the request covers multiple months, only one month can be paid and TDA must deny payment for claims for the other months.

In addition to the CAP described above, the CE must submit to TDA a written explanation describing the events and circumstances that prevented compliance with claim submission requirements. For an adjusted claim, the explanation must include each reason for an upward adjustment causing an amount due to the CE (such as increasing the number of lunches on a monthly claim for a site whose documentation was misplaced and subsequently found).

If the CE submits an approved CAP, the one-time exception may be granted by TDA for one monthly claim only if the CE has not been granted an exception for that program during the previous 36-month period. The one-time exception may be granted for each separate CNP in which the CE participates. Therefore, an exception may be granted separately for School Meals⁶⁵, CACFP, and SFSP.

Adjusted Claims

There are several circumstances in which the CE may request or be requested to submit or revise a claim after the 60-day deadline. This may occur in circumstances when the CE is in compliance or out of compliance with the claim submission requirements.

An adjustment is an increase or decrease in the number of meals the CE has previously reported served in a given month. An upward adjustment results from revisions to final claims that cause an increase in the number of dollars to which the CE is paid. A downward adjustment always reduces the CE's SFSP reimbursement. Downward adjustments in claimed meals or

⁶⁵ An exception for School Meals includes National School Lunch Program (NSLP), School Breakfast Program (SBP), Afterschool Care Program (ASCP) and Seamless Summer Option (SSO) so that an exception for any of these programs would count as the CE's one-time exception for School Meals.

snack must always be made, regardless of when it is determined that such adjustments are necessary. (7 CFR §225.9(d)(6)) For example, a CE discovers in December 2019 that 150 lunches should have been disallowed from the claim submitted for June 2019. The CE **must** submit an adjusted June 2019 claim removing the 150 lunches even though it is after the 60-day claim submittal deadline.

Disregards

TDA may disregard an overpayment which does not exceed \$100.00. (7 CFR §225.10(c)) TDA may also disregard an underpayment of \$100.00 or less. However, CEs may request the upward adjustment consistent with the guidance in this section.

Circumstances Beyond CE's Control

CEs may request an exception for failing to submit or failing to adjust a claim(s) within the applicable 60-day deadline when the reason for the request resulted from circumstances beyond the CE's control. Such situations may include, but are not limited to:

- Fire, flood, or natural disaster,
- Vandalism of records, or
- Serious illness or injury of the person responsible for submitting the claim.

Such situations do not **automatically** entitle a CE to be granted an exception. If the CE feels the circumstances were beyond its control, it must submit to TDA a written explanation describing the events and circumstances that prevented compliance with the claim submission requirements. The request must be in sufficient detail to enable TDA and USDA to make a fair exception decision. TDA is required to evaluate the validity of the circumstance.

If TDA determines that the CE's request warrants consideration, TDA will submit an exception request to the USDA Regional Office. The CE must maintain documentation to support the request. CEs may request as many exceptions, as needed, if the situation was beyond their control.

If USDA determines that a CE's request for a good cause exception does not demonstrate that the noncompliance occurred due to circumstances beyond the CE's control, payment of the late claim will be denied.

CEs may appeal TDA's decision not to forward a late claim or adjusted late claim to USDA for an exception consideration. (7 CFR §225.13(a)) However, CEs may not appeal USDA's decision to deny the use of an exception.

Examples of reasons that would **not** be considered good cause beyond a CE's control include, but are not limited to:

- Absence of personnel on the 60th day, for reasons other than a life-threatening injury or illness;

- TX-UNPS is down or inaccessible for electronic filing; or
- A malfunction of power or equipment at the CE's facility

Adjustments from Independent Audits or TDA Reviews

CEs may request an adjustment to a claim(s) that was submitted on time when an independent audit or a TDA review discloses over claims or under claims based on an evaluation of the circumstances by TDA. CEs may request an adjustment for one or more monthly claims.

TDA has the authority to make this adjustment if the claim falls within three years of the current fiscal year. Any independent audit/TDA review adjustments beyond this three year time frame require submission of an exception request to USDA. Any upward adjustments resulting from this provision will be authorized subject to the availability of funds from USDA.

Adjustments Initiated by TDA

TDA may direct a CE to adjust a claim if TDA discovers an error or omission during its claim review process. An upward adjustment may only occur if the CE submitted the claim within the applicable 60-day deadline. (7 CFR §225.9(d)(6))

For example, while reviewing June claims, TDA noticed a 15% variation in June meal counts from the previous year. Upon further review, TDA determined that the CE forgot to include one site in its claim. TDA may direct the CE to revise its June claim.

Downward adjustments must be made regardless of when it is determined that such adjustments are necessary.

Downward Adjustments

CEs must submit to TDA an adjusted claim when it wishes to make overall downward adjustments to its claim. Downward adjustments may be made at any time. (7 CFR §225.9(d)(6)) CEs must submit a written explanation describing the events and circumstances that prevented compliance with claim submission requirements. The explanation must include each reason for a downward adjustment causing a return of funds (such as reducing the number of meals for which reimbursement was claimed).

If a CE repeatedly adjusts its claims downward after the applicable 60-day deadline, TDA may require the CE to submit a CAP. If required, a CAP must be submitted in sufficient detail to demonstrate that completion of the actions to be taken by the CE will ensure its future compliance with the requirements. In addition, TDA may withhold payments to the CE, including for other CNPs that the CE operates, until procedures have been implemented by the CE to produce an actual final claim each month. (2 CFR §200.338) TDA will withhold

payments until the CE demonstrates that it has procedures in place to produce a timely final claim each month.

No Change in Reimbursement

CEs must submit to TDA an adjusted claim if TDA determines that meals were improperly categorized, or other non-meal data was in error when changes to meal categories or data do not result in a change in the dollar value of the claim. (7 CFR §225.9(d)(5))

Other Sources of Program Income

Donations

CEs that receive donations for use in the SFSP must retain documentation of such donations. Documentation of donations, at a minimum, must include the following:

- Date of the donation
- Value of the donation
- Description of the item(s) donated (e.g., fat-free milk)
- Amount of the donation (e.g., gallons, pints)
- Quantity of the donation (e.g., 10, 20)
- Other information or stipulations, if applicable (e.g., can only be used for SFSP, must be used by a certain date)

Documentation could include individual receipts, a donation log, or any other method that captures, at a minimum, the above listed information to justify all costs and meals claimed. A CE's failure to maintain such documentation may result in disallowance of meals.

NOTE: Cash donations or contributions for the SFSP should be accompanied by a letter from the donator and documentation that shows the contribution was deposited into the non-profit food service account.

Allowable and Unallowable Costs

Cost Principles

This section provides an overview of the Federal cost principle requirements as found in 2 CFR part 200, subpart E, which establishes the principles for determining the allowable costs incurred by CEs as part of the SFSP program. For additional guidance in this area, please see 2 CFR part 200 and FNS Instruction 796-4, Revision 4.

This section addresses the general principles underlying the allowability of costs, differentiates direct costs from indirect costs, and highlights a number of specific costs and categories of cost.

CEs may use their own accounting systems, policies, and procedures to implement the cost principle requirements as long as they meet the standards prescribed in 2 CFR part 200, 7 CFR part 225, and other applicable Federal and State rules, regulations and guidance for financial management systems including the CE's Permanent Agreement with TDA.

Determining Allowable Costs

Allowable costs must be:

- Reasonable and Necessary
- Allocable
- Consistent

Costs that do not conform to the cost principles summarized in this section are unallowable. Reimbursement must be used only for those costs that are reasonable and necessary for accomplishing the objectives of the SFSP program. All costs must be budgeted in the approved SFSP application. All costs must be allowable expenditures under the SFSP program and any other applicable Federal, State, or local law and regulations or guidance. This is discussed in more detail below in subchapter "SFSP Application – Budget Submittal and Review."

A CE's costs must meet the following general criteria in order to be allowable under SFSP (2 CFR §200.403):

- Necessary and reasonable for proper and efficient performance and administration of the SFSP program.
- Be allocable to the SFSP program under the Federal cost principles in 2 CFR part 200.
- Be authorized or not prohibited under Texas State or local laws and regulations.
- Conform to any SFSP-specific limitations or exclusions as well as any limitations or exclusion in 2 CFR Part 200.
- Be consistent with the policies and procedures that apply uniformly to all activities of the CE.
- Be accorded consistent treatment. A cost may not be assigned to the SFSP as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the SFSP as an indirect cost.
- Be determined in accordance with generally accepted accounting principles (GAAP).
- Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or prior period. (2 CFR §200.306)
 - For example, SFSP funds cannot be used as a match for another federal program that has a match requirement such as AmeriCorps.

- Be net of all applicable credits (purchase discounts, rebates, allowances, etc.) (2 CFR §200.406).
- Be adequately documented.

A cost is considered **reasonable** if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing when the decision was made to incur the cost. In determining reasonableness of a given cost, CE's must give consideration to the following (2 CFR §200.404):

- **Necessary** – Whether the cost is of a type generally recognized as ordinary and necessary for the CE's operations or the proper and efficient performance of the SFSP.
- **Sound Business Practices and Regulations** – The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining or transaction; Federal, state, local, tribal or other laws and regulations; and terms and conditions the CE's Permanent Agreement with TDA.
- **Prudent** – Have the individuals involved with incurring the cost acted with prudence in the circumstances considering their responsibilities to the CE?
- **Established Prices** – Market prices for comparable goods or services for the geographic area.

A cost is **allocable** to SFSP if the goods or services involved are chargeable or assignable to SFSP in accordance with the relative benefits received. This standard is met if the cost meets (2 CFR §200.405):

- **Purpose** – The cost is incurred specifically for fulfilling the purposes of the SFSP.
- **Shared Benefits** – If the cost benefits both the SFSP and other non-SFSP work of the CE, the cost must be distributed in proportions to all programs that benefit from the cost using reasonable methods.
- **Necessary and Allowable** – The cost is necessary to the overall operation of the CE and is assignable, at least in part, to the SFSP in accordance with the cost principles in subpart E to 2 CFR Part 200.

A cost must be **consistent** with the policies and procedures that apply uniformly to both federally financed and other activities of the CE.

- **Ordinary and Common** – The item or service is generally considered an ordinary and common expense for the SFSP program.
- **Consistent Treatment** – Costs incurred for the same purpose in like circumstances must be treated consistently as either a direct or indirect cost.

Direct and Indirect Costs

All costs are categorized as either direct or indirect.

Direct costs are those costs that can be identified specifically with a particular final cost objective (SFSP program) or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Direct costs typically include employee salaries and related fringe benefits, food, and supplies acquired, consumed, or expended specifically for the SFSP program. (2 CFR §200.413)

Indirect costs are those costs incurred for a common or joint purpose benefitting multiple programs or functions of the CE but cannot be directly attributable to the SFSP program. (2 CFR §§200.56 and 414) It is not possible to specify the types of costs which may be classified as indirect costs in all situations. Identification with the SFSP program rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs. (2 CFR §200.414(b))

To help determine whether a cost should be categorized as direct or indirect, CEs should ask the following questions:

- Does the cost benefit multiple programs or other cost objectives? Or is it solely for the SFSP program?
 - Costs that are common to more than one program are typically allocated as indirect costs. Costs that are unique to a specific program are typically allocated as direct costs.
- Does the cost have a direct relationship to the operation of the SFSP program?
 - Costs that are unique to the SFSP are typically direct costs.
- How are similar costs treated in other cost objectives?
 - CEs must apply direct and indirect costs consistently across all programs.
- How has this cost been treated in the past – as a direct or indirect cost?
 - CE's must consistently treat costs as direct or indirect.

Allowable Costs

Program operating costs incurred by the CE for preparing, transporting, and serving meals to eligible children are allowable and may include the following:

- Food costs
- Non-food supplies costs (e.g., napkins, trays, utensils)
- Storage, processing, and transportation of food and associated supplies
- Food service labor costs

- Facilities and utility costs
- Transport of children to the meal site (e.g., mileage reimbursement)

Program administrative costs incurred by the CE for planning, organizing, and administering the SFSP are allowable and may include the following:

- Administrative labor costs
- Printing costs
- Mileage costs (such as for site visits and monitoring reviews)

CEs are responsible for accurately accounting for costs and for maintaining records to demonstrate that the costs claimed have been paid, are allowable to the SFSP, and comply with the financial management requirements of the SFSP and 2 CFR part 200.

For budgeting purposes, the cost of an expense may be estimated; however, the CE's supporting documentation must show only actual costs.

Unallowable Costs

Federal regulations identify specific costs or categories of costs that cannot be charged, directly or indirectly, to any federally funded program. These costs are never allowed. Unallowable costs are generally defined in 2 CFR part 200, subpart E under "General Provisions for Selected Items of Cost" (2 CFR §§200.420-475). Section X.D of FNS Instruction 796-4, Revision 4 provides SFSP-program specific guidance on allowability of selected costs.

CEs are responsible for understanding the principles to be applied in establishing the allowability of certain items involved in determining the cost. Failure to list a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost and based on the principles described above and in 2 CFR §§200.402 – 411 (2 CFR §200.420).

The following is a list of costs for which SFSP funds may not be used. These include, but are not limited to, the following:

- Bad debts (losses arising from non-collectible accounts and other claims and related costs)
- Payment of over claims, fines, and/or penalties resulting from SFSP program violations
- Entertainment costs (e.g., social activities, amusements)
- Fundraising costs (i.e., expenses incurred to obtain contributions)
- Gifts
- Drug screening or testing

- Capital expenditures (e.g., acquisition of land and buildings, the alteration of existing facilities, or nonexpendable equipment of any kind; repairs that increase the value or use life of buildings, facilities, or non-expendable equipment; and other capital assets, including vehicles). For more information, see discussion of *Capital Expenditure in SFSP* below.
- Cost of meals served to administrative adult personnel, or any other adults that are not in the operation of the food service
- Cost of meals served to ineligible children
- Cost of meals served in violation of SFSP program requirements (i.e., served outside the approved time; missing/inadequate components; over approved site cap; consumed off-site; non-unitized; served to adults but included in count of reimbursable meals, etc.)
- Cost to purchase food (including coffee, etc.) for use outside SFSP
- Cost of vended meals served in excess of the approved site capacity, are spoiled or unwholesome, or that do not meet the meal pattern requirements

If TDA identifies unallowable costs during an Administrative Review, the CE will be assessed fiscal action as follows:

- For findings that do not result in a serious deficiency:
 - Money owed must be returned to the CE's non-profit food service account using non-federal funds.
 - TDA will disregard any overpayments under \$100.
- For serious deficiencies associated with unallowable costs, the CE shall repay monies owed directly to TDA from a non-federal source.

Monitoring

All SFSP reimbursement funds must be used solely for the conduct of the food service operation. As part of the administrative review, TDA determines if CE's expenditures are allowable and consistent with FNS Instructions and guidance and all funds accruing to the nonprofit food service account are properly identified and recorded as food service revenue. As part of this review, TDA determines whether the CE's expenditures are consistent with budgeted costs and the previous year's expenditures taking into consideration any changes in circumstances. 7 CFR § 225.7(d)(2)

Selected Items of Cost

Background Checks and Drug Screening or Testing

Conducting background checks and/or drug screening or testing for illegal drug use of job applicants and employees is not a requirement for SFSP participation or operation;

therefore, it is not an allowable use of SFSP funds. Nothing precludes a CE from implementing background checks or a drug screening or testing program; however, the CE would need to pay for its program from non-SFSP funds.

Communication and Technology

- Communication and technology costs include the costs of supplies, services, and equipment such as landline telephones, cellular (mobile) telephones, automatic data processing (ADP) equipment and supplies, ADP software, fax, internet and connectivity services, postage and messenger services. The costs of supplies, services, and equipment used for SFSP operations that are purchased or leased by the CE may be allowable. Cost for supplies and services must be allocated between Program and non-Program use.
- Cellular (mobile) telephones and plans must be purchased by the SFSP CE and used for SFSP operations in order to be allowable. The costs for cellular (mobile) telephones and plans purchased by an individual who works for the CE are unallowable.
- Supplies, services, and equipment that are transferred to or owned by officers, trustees, directors, consultants or employees and supplies and services used for non-SFSP purposes regardless of ownership are unallowable.
- Allowable communication and technology related costs should typically be categorized as administrative costs.

Computer and Internet Service

The purchase of a computer and internet service provided support (ISP) is considered an allowable cost. However, if the CE uses the computer and ISP for any activity, personal or business, other than for the administration and operation of the SFSP, the CE must properly allocate the cost. The only allowable cost is the portion used in support of the SFSP.

Entertainment

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable. For example, face painting and toys at an SFSP kick-off event are unallowable costs. However, the costs for food to be consumed by children at the event are allowable if the SFSP meal pattern requirements are met.

Labor

Labor costs include operational and administrative labor. Only the costs for employees may be included under Operational Personnel and Administrative Personnel cost categories in the SFSP budget. If a CE uses an independent contractor, those costs must be categorized as “Other” and fully explained in the SFSP budget. It is important that CE’s understand the distinction between employees and independent contractors and categorize the costs accordingly. If the cost for an independent contractor is categorized incorrectly as a personnel cost, it will be unallowable. The Internal Revenue Service provides guidance to help determine whether a person is an employee or an independent contractor on it its

website at: <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee? ga=1.74484946.1747892112.1462550897>.

NOTE: Services performed by an independent contractor must be properly procured.

Employee or Independent Contractor?

An **employee** is anyone who performs services where an employer controls what work will be done and how it will be done. The employee will have specific job functions or a job description with set work hours and duties to perform during those work hours. An employer has the right to control the details of how the services are performed. The CE's compensation policy should outline the number of staff needed for specific job duties and how those employees will be compensated for their work.

An **independent contractor (contract employee)** is someone who the CE contracts with for services. The independent contractor controls the work that will be done, and how it will be done based on the contract. A CE will have procured the services of an independent contractor. Procurement of services requires the CE to develop specifications for the scope of work (job) to be completed and the independent contractor will submit bids or quotes for how they intend to meet the specifications. An independent contractor does not work regular hours doing specific job duties but works under the terms of the contract with the CE.

Marketing

Marketing is not an allowable use of SFSP funds. However, outreach and promotion may be allowable if it is used to inform the public about the availability and location of free meals. Additional information as well as free resources for outreach and promotion are located at:

- TDA's SquareMeals Website
 - <http://www.squaremeals.org/>
 - Outreach tools
 - <https://squaremeals.org/Programs/SummerMealPrograms/Resources.aspx>
- USDA Summer Meals Tool Kit
 - <https://www.fns.usda.gov/sfsp/summer-meals-toolkit>

See "Media Costs" below for additional information.

Materials and Supplies

- The cost of durable supplies (silverware, etc.) and expendable materials and supplies (paper napkins, straws, ink cartridge, paper, etc.) which do not meet the definition of equipment are allowable.
- The cost of nonfood supplies is determined by the dollar value of a beginning inventory, plus the dollar value of the supplies purchased during the period of SFSP operations, less the dollar value of the ending inventory. CEs must conduct an inventory of nonfood supplies at the beginning and ending of SFSP operations. CEs may claim the actual costs of supplies purchased during a claim month, with the amount claimed during the final month of operation adjusted for the costs of any unused supplies for the entire period of SFSP operations.
- The cost to purchase items for gardens such as seeds, fertilizer, watering cans, rakes, etc. to grow food that will be used in the food service is allowable. The produce grown in the garden must be used in the context of the SFSP as part of the reimbursable meals and/or for educational activities. For purposes of accounting for food grown, CE's that use garden produce in reimbursable meals should document the weight or volume of the produce.
- Allowable materials and supplies related costs may be categorized as operational or administrative costs. For example, silverware and paper napkins would be categorized as non-food supplies under operational costs. Office supplies such as ink cartridges would be categorized as an office expense under administrative costs.

Media Costs

- Advertising and public relations costs –
- The cost of advertising media to solicit bids for (1) the procurement of goods and services for the SFSP; (2) recruitment of personnel for the SFSP; (3) disposal of scrap or surplus materials acquired in the performance of the SFSP; and (4) with prior written approval, the advertising and public relations costs for pamphlets, news releases, and other information services to (a) inform individuals, groups or the general public about the availability and location of free meals; or (b) increase participation in the SFSP may be allowable.
- Advertising and public relations costs to advertise or solicit non-SFSP related business is unallowable.
- Publication, printing and reproduction –
- The cost for in-house and outside publication and printing not included in other cost categories, such as publication, printing and reproduction of materials related solely to the SFSP, or the allocable share of direct costs when both SFSP and non-SFSP purposes are benefited may be allowable.
- Publication, printing, and reproduction costs included in other cost categories and costs for non-SFSP related purposes are unallowable.

Mileage versus Actual Costs for Operating a Vehicle

When an SFSP CE owns or leases vehicles or the CE's employees, officers, or directors use personally owned or personally leased vehicles for SFSP purposes, the CE may use actual cost or a mileage allowance to account for allowable costs.

Mileage rate (or allowance) is a set rate that includes the full amount allowed for operating the vehicle. **Actual costs** includes the allowable costs of operating the vehicle that are attributable to SFSP including gas, oil, routine maintenance, insurance, and, as applicable, use allowance or leasing fee. Costs must be correctly allocated to SFSP if the vehicle is used for other non-SFSP purposes.

The mileage rate is an unallowable cost when actual operating cost (fuel, insurance, maintenance, etc.), use allowance, or a lease fee is charged for the same vehicle.

Tolls that occur as part of SFSP-related transportation are allowable under either accounting method.

With regard to leased vehicles, if normal repairs and maintenance are included in the lease agreement then only allowable actual costs of operating the vehicle may be claimed. In this circumstance, the CE cannot use the mileage rate because that rate includes in the calculation routine repairs and maintenance on the vehicle. If the CE is responsible for wear and tear and routine repairs and maintenance on a leased vehicle, the CE may use either actual cost or the mileage rate.

Mobile Feeding

Transporting meals to children rather than requiring children to travel to a meal service site is known as the "mobile feeding" model. This model provides flexibility so CEs can serve children who may not have access to a traditional site. Expenses associated with vehicles used as part of an SFSP operation may be an allowable cost; however, the cost must be supported by adequate documentation and must be properly procured and allocated. Additionally, the cost of retrofitting a vehicle to allow more efficient transportation of meals may be allowable. When evaluating these costs, the CE should consider the following guidelines:

- What are the other available alternative options?
- Are the other alternatives feasible?
- What are the costs of the alternative options?

NOTE: The purchase of a vehicle is not an allowable use of SFSP funds.

SFSP funds may be used to support the following expenses if the cost is reasonable and necessary for the operation of the program:

- Transporting food items from one location to another

- Portable equipment to hold food at the correct food safe temperature
- Serving equipment or supplies
- Retrofitting a vehicle for food transportation or meal service with prior written approval from TDA.

CEs should consult with TDA to ensure specific costs associated with operating mobile sites are allowable. If a CE receives donated money for the cost of operating a vehicle, the donated funds must be tracked and reported separately from USDA Program funds.

For more information on mobile feeding and funding opportunities, see USDA memorandum SFSP 02-2014, [Mobile Feeding Options in Summer Feeding Programs](#) (November 8, 2013).⁶⁶

Uniforms

Uniforms are unallowable costs in the SFSP. Uniforms are not necessary and reasonable for the proper and efficient administration of the SFSP. Specifically, a person does not need to wear a certain outfit to be able to operate and administer the SFSP. If CEs want to have a uniform, tee shirts or other types of identifying clothing, the CE must fund these items from non-SFSP funds.

NOTE: Items such as hair covers, aprons, and knife or heat safe gloves may be allowable. If the CE uses SFSP funds for this purpose, the CE must establish a standard that limits use to tasks related to SFSP operations.

Capital Expenditures in SFSP

For SFSP, USDA determined that capital expenditures⁶⁷ are unallowable as direct costs for:

1. Acquisition of land or any interest in land;
2. Acquisition or construction of buildings or facilities, or the alteration of existing buildings or facilities;
3. Nonexpendable equipment⁶⁸ of any kind;
4. Repairs which materially increase the value or useful life of buildings, facilities, or nonexpendable equipment; and;
5. Other capital assets including motor vehicles.

⁶⁶ <https://www.fns.usda.gov/mobile-feeding-options-summer-feeding-programs-0>

⁶⁷ Helpful definitions from 2 CFR Part 200 related to capital expenditures are found below.

⁶⁸ Nonexpendable equipment has a useful life of more than one year and a per-unit acquisition cost of \$5,000.

While capital expenditures are unallowable as direct costs, the loss in value of a CE's capital assets allocable to SFSP may be capitalized and the depreciation claimed as an allowable cost in SFSP. However, like other costs, this must be submitted to TDA for review and approval as part of the CE's budget. Additionally, if the capital expenditure benefits other programs, the depreciation for the capitalized costs must be expensed proportionately across all programs that benefit from the capital asset.

NOTE: Tangible capital costs must be depreciated to comply with the cost principles described in above in this Chapter. Reimbursements for capital expenditures must be used only for those tangible capital costs that are allocable, reasonable, and necessary for accomplishing the objectives of the SFSP.

Depreciation allocates the tangible costs of a CE's fixed assets to periods of SFSP operations benefiting from the use of the assets. This means the CE's costs are recognized over a period of time that represents the useful life of the capital assets via depreciation. This matches the cost of an item (capital asset) to the entire period it is used, which may not represent when the cost was incurred by the CE. A CE may claim the loss in value of its capital assets (buildings, capital improvements, equipment, motor vehicles, etc.) allocable to SFSP as an allowable cost by depreciating the value of the capital asset as follows:

1. Depreciation of capital assets must be in accordance with generally accepted accounting principles (GAAP). The method of computing depreciation must be consistently applied for all like assets for all affected federally sponsored programs. The depreciation method must result in equitable charges considering the use of assets and the benefits to the SFSP.
2. The computation of depreciation must be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. For the purpose of computing depreciation, the acquisition costs exclude:
 - a. The cost of land;
 - b. Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where the title was originally vested or where it is presently located;
 - c. Any portion of the cost of buildings and equipment contributed by or for the CE where law or agreement prohibits recovery; and
 - d. Any asset acquired solely for the performance of a non-Federal award
 - e. Any portion of the asset allocable to other program funds.
3. The period of useful life must take into consideration such factors as the type of construction, nature of the equipment, technological developments in certain areas, historical data, and renewal and replacement policies followed for the individual assets.

4. Depreciation is not allowed on any assets considered fully depreciated.
5. Donated equipment may not be included (per FNS Instruction 796-4).
6. All depreciation claimed by the CE must be documented. Physical inventories must be taken at least once every two years to ensure the assets exist and are usable, used, and needed in the operation of the SFSP. Records in memorandum form are acceptable to document depreciation. Depreciation records showing the amount of depreciation taken each period must be maintained. All records for the full depreciation period must be retained during the life of the asset and for 3 years after the end of the Federal fiscal year during which an asset item is fully depreciated. Records must be retained beyond this period if audit findings have not been resolved.

(2 CFR § 200.436)

For additional guidance in this area, see 2 CFR part 200 and FNS Instruction 796-4, Revision 4, *Financial Management – Summer Food Service Program for Children*.

Helpful Definitions from 2 CFR Part 200 related to Capital Expenditures

Capital assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

1. Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and
2. Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance). (2 CFR § 200.12)

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life. (2 CFR § 200.13)

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. (2 CFR § 200.33)

General purpose equipment means equipment which is not limited to research, medical, scientific, or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. (2 CFR § 200.48)

Supplies means all tangible personal property other than “equipment” as described above. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. (2 CFR § 200.94)

Non Reimbursable Meals

[Reserved for future use.]

Non-Contractible Management Responsibilities

[Reserved for future use.]

CHAPTER 10 – WAIVER REQUESTS

In certain circumstances, the Richard B. Russell National School Lunch Act (NSLA) grants USDA the authority to waive Child Nutrition Program requirements. All requests for a waiver of SFSP requirements must meet the following conditions:

- The waiver must support the purpose and intent of the SFSP;
- The request must indicate that the CE provided notice and information to the public regarding the proposed waiver; and
- The request must demonstrate that the waiver will not increase the overall costs of the SFSP to the Federal Government, and if it does increase the cost, the cost will be paid from non-Federal funds.

In accordance with the NSLA, TDA and USDA *will not* grant SFSP waiver requests related to any of the following topics:

- The nutritional content of meals served
- Federal reimbursement rates
- Provision of free and reduced price meals
- Distribution of funds to TDA and CEs
- Disclosure of individual income eligibility information
- Prohibition of the operation of a profit producing program
- The commodity distribution program (USDA Foods)
- The special supplemental nutrition program authorized under Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786)
- Enforcement of any constitutional or statutory right of an individual

Process for Requesting a Waiver of SFSP Requirements

All requests submitted for USDA consideration and approval must include, at a minimum, the following information, which is included in the *Child Nutrition Waiver Request Form*:

- Challenge(s) the CE is seeking to solve, goal(s) of the waiver to improve services, and the expected outcomes:
 - Describe the problem that the CE is seeking to solve including a description of any impediments to the efficient operation and administration of the SFSP.
 - Describe what has been done to solve this problem within the scope of the regulatory requirements and what in the regulations or statute prevents this problem from being solved.
 - Describe the goal of the waiver to improve services under the SFSP and the expected outcomes if the waiver is granted.

- Describe how the waiver would improve services under the SFSP
- Regulatory citation(s) and requirement(s) to be waived.
- Description of alternative procedures and anticipated impact of implementation:
 - Provide a description of the alternative procedures that could be used to solve the problem while maintaining the intent and purpose of the SFSP if the waiver is granted.
 - Describe the anticipated impact on applicable SFSP operations, including technology, State systems, and monitoring.
- Description of any anticipated challenges the CE may face with implementation of the waiver, if granted.
- Anticipated implementation date and time period for which waiver is needed.

NOTE: USDA provides approval of waivers for a limited time period. After the initial waiver period has expired, the CE may request renewal of a waiver.
- Describe the overall cost to the SFSP.
 - Describe how the waiver will not increase the overall costs of the SFSP and, if it does, how any additional costs will be paid from non-Federal funds.
 - Address whether the waiver would increase participation and claims for reimbursement.
- Proposed monitoring and review procedures
 - Describe how the CE will monitor and review operation of the waiver to ensure proper oversight and integrity of the SFSP.
 - If applicable, include monitoring details to ensure increased costs will not be paid from Federal funds.
- Proposed reporting requirements
 - Describe how the CE will report to TDA the outcome of the waiver implementation. Include details on how the implementation of the waiver and its effect on the efficient operation and administration of the SFSP will be evaluated.
 - Due date for the report – this date must be no later than 60 days from the end of the waiver period.

NOTE: USDA requires that each request to waive SFSP requirements include proposed data reporting that will enable USDA to assess the effect of the waiver on SFSP administration and monitor its impact.
- Notification to the public

- Describe how the CE provided notice and information to the public regarding the proposed waiver prior to submitting the waiver request to TDA.

NOTE: Acceptable methods of public notification include, but are not limited to, the following:

- Posting notice on the CE's website;
- Providing public notice through a printed announcement in the local/state newspaper

Requests for an SFSP waiver should be made using the TDA *Child Nutrition Program Waiver Request Form* located at www.squaremeals.org under "Summer Feeding Administration & Forms." Detailed instructions for requesting a waiver are included with the form. The completed form should be submitted to TDA for its review at least 90 days prior to the desired implementation date of a waiver of SFSP requirement(s). This allows for an adequate amount of time for TDA and USDA to review the CE's waiver request. CEs should submit the completed form via email to TDA at SNPWaivers@TexasAgriculture.gov. The email subject should include "SFSP Waiver Request" and the name of the CE. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

CEs are encouraged to contact TDA when developing waiver requests to ensure that a well-reasoned, thorough request is submitted that clearly provides the reason and need for the waiver.

Waiver Request Approval/Denial

TDA or the USDA may determine that more information is required before a request to waive SFSP requirements can be processed. If more information is required, TDA will request the information from the CE and once the CE has provided the requested information to TDA, the information submitted will be considered. TDA will notify the CE of approval or denial of an SFSP waiver request. Denial of a waiver request by TDA or USDA is not an appealable action.

If TDA and USDA approve the waiver of SFSP requirements, the CE will be expected to report to TDA on the outcome of the waiver implementation at the close of the SFSP year. TDA will notify the CE when the report should be submitted to TDA.

NOTE: Any SFSP waiver requests approved by USDA will be applicable only for the current SFSP year. A CE that wishes to continue a waiver into the next SFSP year must submit another waiver request.

NOTE: CEs may not implement a waiver of SFSP requirements prior to receiving TDA and USDA approval. A failure to meet SFSP requirements may result in the disallowance of meals and/or may lead to a serious deficiency determination of the CE's operation of the SFSP.

CHAPTER 11—RECORDKEEPING

Administrative Records

[Reserved for future use.]

Operating Cost Records

[Reserved for future use.]

Meal Service Records

Child Nutrition Labels and Manufacturer's Documentation in SFSP

On November 26, 2014, USDA released [TA 07-2010 \(v.3\), Guidance for Accepting Processed Product Documentation for Meal Pattern Requirements](#)⁶⁹, which offered clarification and guidance on processed product documentation. On March 11, 2015, USDA released memos [SFSP 13-2015, CN Labels Copied with a Watermark Acceptable Documentation](#)⁷⁰, and [SFSP12-2015, Administrative Review Process Regarding the Child Nutrition \(CN\) Label, Watermarked CN Label and Manufacturer's Product Formulation Statement](#)⁷¹, which clarified the usage of a Child Nutrition (CN) Label with a watermark as acceptable documentation in an administrative review.

CEs are responsible for providing meals that meet the SFSP meal pattern requirements and must maintain records of supporting documentation for TDA review. Types of food product labels and documentation needed in order to identify a food product's ingredients and contribution toward meeting the SFSP meal pattern requirements include the following:

- A CN Label
- A product formulation statement (product analysis sheet) from the food manufacturer
- An ingredients listing/nutrition facts label

In addition to the documentation listed above, a CE also may provide the following during an administrative review.

- A watermarked CN Label and the bill of lading (invoice) containing the product name and CN number which matches the watermarked CN Label

REMINDER: Using yields from *The Food Buying Guide for Child Nutrition Programs* will help ensure CEs are meeting the SFSP meal pattern requirements. *The Food Buying Guide for Child Nutrition Programs* is located at: <https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs>

⁶⁹ <https://fns-prod.azureedge.us/sites/default/files/cn/TA07-2010v3os.pdf>

⁷⁰ <https://www.fns.usda.gov/cn-labels-copied-watermark-acceptable-documentation>

⁷¹ <https://www.fns.usda.gov/administrative-review-process-regarding-child-nutrition-cn-label-watermarked-cn-label-and>

NOTE: A watermarked CN Label is an acceptable form of documentation during an administrative review only when the original CN Label from the product carton or a valid photograph or photocopy of the original CN Label is not available. CEs should be aware that the product information on a CN Label with a watermark may not reflect the actual crediting information of the purchased food product. TDA may verify the crediting information during a review.

NOTE: Food products such as pizzas, pot pies, and raviolis vary greatly as to how they may be credited toward meeting the SFSP meal pattern requirements. Because of the uncertainty of the actual amount of the meat/meat alternate contained in these types of products, they should not be used unless they have a CN Label, product formulation statement, or are prepared using a standardized recipe. For food products in which a CN Label or product formulation statement cannot be obtained, it is recommended that additional food items are served that meet the SFSP meal pattern requirements to reduce the risk that the meal will be disallowed.

An Overview of CN Labels

Main dish products that contribute at least ½ ounce to the meat/meat alternate component of the meal pattern (for example cheese or meat pizzas, meat or cheese burritos, breaded fish, chicken nuggets) and juice and juice products containing at least 50% full-strength juice by volume (for example frozen juice bars and sherbet) are the only products eligible for Federal CN labeling. 100% juice products are not eligible for a CN Label.

Eligible products which carry a CN Label must:

- Be produced under federal inspection by USDA or United States Department of Commerce (USDC),
- Have the contribution toward the SFSP meal pattern requirements determined using yields in *The Food Buying Guide for Child Nutrition Programs*, and
- Be produced under inspection.

While CEs are not required to offer food products with CN Labels, CN Labels provide a warranty against audit claims if used according to the manufacturer's directions. CEs may find more information on CN labeling on the FNS website at:

<https://www.fns.usda.gov/cnlabeling/child-nutrition-cn-labeling-program>.

The CN Labeling Program

The USDA FNS CN Labeling Program works directly with commercial food processing firms and in cooperation with the following agencies in USDA or USDC to approve and manage CN Labels:

- Food Safety Inspection Service (FSIS)
- Agricultural Marketing Service (AMS)
- National Marine Fisheries Service (NMFS)

This voluntary program requires an evaluation of a product's formulation by FNS to determine its contribution toward the meal pattern requirements. Once approved, it allows manufacturers to state this contribution on their labels.

Authorized Manufacturers of CN Labeled Products

Manufacturers are only authorized to use and distribute the CN Label on actual product manufactured following a Federally-Approved Quality Control Program.

Manufacturers may not:

- Use the CN Label statement to promote a product's nutritional value or acceptability; or
- Place the CN Label logo and contribution statement on fact sheets or any other product information.

The AMS has published a list of manufacturers that have met the FNS's Quality Control Program requirements for the CN Labeling Program, as well as a list of authorized CN Labels issued to these manufacturers. The list of authorized CN Labels includes the CN Label expiration date. CEs and sites should frequently check this list, available at <http://www.fns.usda.gov/cnlabeling/authorized-manufacturers-and-labels>, to ensure the CN labeled products being used are still authorized and creditable.

NOTE: CN Labels are generally approved for a period of five years; however, some approvals are for a shorter period of time such as one year.

Identifying a CN Label

A CN Label must have the following information printed on the principal display panel of the label:

- A product name
- Ingredient listing in descending order by weight
- Inspection shield or mark for the appropriate inspection program
- Establishment number (for meat, poultry and seafood items only)

- Manufacturer's or distributor's name and address
- CN Label statement, which contains the following information:
 - The CN logo, which is a distinct border around the CN statement
 - The statement of the product's contribution toward the SFSP meal pattern requirements. This identifies the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, grains/breads and/or vegetable/fruit component of the meal pattern requirements. It also identifies the contribution that juice drinks and juice drink products make toward the vegetable/fruit component of the SFSP meal pattern requirements.

NOTE: The statement *does not* assure that the product meets SFSP meal pattern requirements, but only states the crediting contribution of a specific portion.

- A unique six-digit product identification number assigned by the AMS – CN Labeling Program, which will appear in the upper right-hand corner of the CN label statement
- The statement specifying the use of the logo and CN label statement is authorized by Food and Nutrition Service (FNS)
- The month and year the label was given final approved by FNS

An example of a CN Label can be found below in section *Examples of Processed Product Documentation*.

An Overview of Product Formulation Statements

When purchasing a processed product or commercially prepared product without a CN Label, a CE may request a product formulation statement that demonstrates how the product contributes to the meal pattern requirements.

NOTE: Product formulation statements are sometimes referred to by other names such as product analysis, specifications, or recipe analysis.

A product formulation statement must be on a manufacturer's letterhead and must contain:

- A detailed explanation of what the product actually contains;
- The amount of each ingredient in the product by weight or measure, as appropriate;
- A certifying statement as to the contribution of the product to the meal pattern; and
- The signature of a high-ranking official of the manufacturer.

The CE is responsible for:

- Reviewing the manufacturer's product formulation sheet before purchase to determine the reasonableness of information provided by the manufacturer;

- Ensuring that proper documentation is maintained on each commercially prepared product used to contribute toward the SFSP meal pattern requirements;
- Ensuring the product received meets specifications and has the correct code number; and
- Providing site managers with serving sizes and crediting information.

An example of a sample product formulation statement for the meat/meat alternate product can be found below in the section *Examples of Processed Product Documentation*. Additional examples of product formulation statements, including one for documenting grains, can be found at: <http://www.fns.usda.gov/cnlabeling/food-manufacturersindustry>.

An Overview of CN Labels and Product Formulation Statements during an Administrative Review

CEs must maintain all the documentation that supports the claim that meals served meet SFSP meal requirements. These documents must be made available, upon request, to TDA for its review. The information below outlines the CN label and product formulation statement documentation a CE may be required to provide for an administrative review.

REMINDER: CEs, not manufacturers, are responsible for providing meals that meet the SFSP meal pattern requirements and must maintain records of supporting documentation. **A failure to maintain such documentation, such as CN labels, nutrition facts labels, and/or product formulation statements, may result in the disallowance of meals.**

A failure to maintain documentation, such as CN Labels, nutrition facts labels, and/or product formulation statements, may result in the disallowance of meals.

CN Label Documentation

Acceptable and valid documentation for the CN Label includes:

- The original CN Label from the product carton;
- A photocopy of the CN Label shown attached to the original product carton; or
- A photograph of the CN Label shown attached to the original product carton.

NOTE: Photographs and photocopies of CN Labels must be visible and legible.

Watermarked CN Labels Documentation

If the original CN Label from the product carton or an acceptable photograph or photocopy of the original CN Label is not available, CEs may provide the bill of lading (or invoice) containing the product name and one of the following:

- A hard copy of the CN Label copied with a watermark displaying the product name and CN number provided by the vendor; or
- An electronic copy of the CN Label with a watermark displaying the product name and CN number provided by the vendor.

Manufacturers may provide the CE with a watermarked CN Label during the bidding process.

NOTE: CN Labels with a watermark without the additional required documentation are not an acceptable form of documentation for a review.

Product Formulation Statement Documentation

TDA may request from the CE a product formulation statement when a valid CN Label or watermarked CN Label with a bill of lading is not provided.

CN Label Verification Report

USDA FNS recently developed the CN Label Verification Reporting System to assist State Agencies and SFSP CEs to verify the status of a CN Label and the validity of a CN Label copied with a watermark. This system produces two monthly reports:

- CN Label Verification Report located at https://www.fns.usda.gov/sites/default/files/cn/cnl_verificationreport.pdf
 - This report includes all information pertaining to the valid CN Label, which includes crediting information (meal pattern contribution statement); label expiration date; and the manufacturer's establishment number.
- CN Label Manufacturers' Report located at https://www.fns.usda.gov/sites/default/files/cn/cnl_manufacturers.pdf
 - This report includes contact information for all manufacturers that are authorized to produce CN labeled products.

Examples of Processed Product Documentation

Example of a CN Label

NOTE: All CN Labels must include the information listed above in “Identifying a CN Label.”

Chicken Stir-Fry Bowl	
Ingredient Statement: Chicken, brown rice, broccoli, red peppers, carrots, onions, water, olive oil, soy sauce, spices.	
CN 099135	
CN	Each 4.5 oz. Chicken Stir-Fry Bowl provides 1.5 oz. equivalent meat, 1.0 oz eq Grains, ¼ cup dark green vegetable, ¼ cup red/orange vegetable, and ⅛ cup other vegetable for Child Nutrition Meal Pattern Requirements. (Use of this logo and statement authorized by the Food and Nutrition Service, USDA 09/14).
CN	
Net Wt.: 18 pounds	
Chicken Wok Company 1234 Kluck Street Poultry, PA 12345	



Example of a Product Formulation Statement

Sample Product Formulation Statement (Product Analysis) for Meat/Meat Alternate (M/MA) Products

Child Nutrition Program operators should include a copy of the label from the purchased product carton in addition to the following information on letterhead signed by an official company representative.

Product Name: _____ Code No.: _____

Manufacturer: _____ Case/Pack/Count/Portion/Size: _____

I. Meat/Meat Alternate

Please fill out the chart below to determine the creditable amount of Meat/Meat Alternate

Description of Creditable Ingredients per Food Buying Guide (FBG)	Ounces per Raw Portion of Creditable Ingredient	Multiply	FBG Yield/ Servings Per Unit	Creditable Amount *
		X		
		X		
		X		
A. Total Creditable M/MA Amount¹				

*Creditable Amount - Multiply ounces per raw portion of creditable ingredient by the FBG Yield Information.

II. Alternate Protein Product (APP)

If the product contains APP, please fill out the chart below to determine the creditable amount of APP. If APP is used, you must provide documentation as described in Attachment A for each APP used.

Description of APP, manufacture's name, and code number	Ounces Dry APP Per Portion	Multiply	% of Protein As-Is*	Divide by 18**	Creditable Amount APP***
		X		÷ by 18	
		X		÷ by 18	
		X		÷ by 18	
B. Total Creditable APP Amount¹					
C. TOTAL CREDITABLE AMOUNT (A + B rounded down to nearest ¼ oz)					

*Percent of Protein As-Is is provided on the attached APP documentation.

**18 is the percent of protein when fully hydrated.

***Creditable amount of APP equals ounces of Dry APP multiplied by the percent of protein as-is divided by 18.

¹Total Creditable Amount must be rounded **down** to the nearest 0.25oz (1.49 would round down to 1.25 oz meat equivalent). Do **not** round up. If you are crediting M/MA and APP, you do not need to round down in box A (Total Creditable M/MA Amount) until after you have added the Total Creditable APP Amount from box B to box C.

Total weight (per portion) of product as purchased _____

Total creditable amount of product (per portion) _____
(Reminder: Total creditable amount cannot count for more than the total weight of product.)

I certify that the above information is true and correct and that a _____ ounce serving of the above product (ready for serving) contains _____ ounces of equivalent meat/meat alternate when prepared according to directions.

I further certify that any APP used in the product conforms to the Food and Nutrition Service Regulations (7 CFR Parts 210, 220, 225, 226, Appendix A) as demonstrated by the attached supplier documentation.

Signature

Title

Printed Name

Date

Phone Number

Soy Company X

Soy Protein Concentrate

Product Y

Documentation for Company X Product(s) Used as Alternate Protein Products (APP) for Child Nutrition Programs

- a) Company X certifies that Product Y meets all requirements for APP intended for use in foods manufactured for Child Nutrition Programs as described in Appendix A of 7 CFR 210, 220, 225, and 226.
- b) Company X certifies that Product Y has been processed so that some portion of the non-protein constituents have been removed by fractionating. This product is produced from soybeans by removing the majority of the soybean oil and some of the other non protein constituents.
- c) The Protein Digestibility Corrected Amino Acid Score (PDCAAS) for Product Y is 0.99. It was calculated by multiplying the lowest uncorrected amino acid score by true protein digestibility as described in the Protein Quality Evaluation Report from the Joint Expert Consultation of the Food and Agriculture Organization/World Health Organization of the United Nations, presented December 4-8, 1989, in Rome, Italy. The PDCAAS is required to be greater than 0.8 (80% of casein).
- d) The protein level of Product Y is at least 18% by weight when fully hydrated at a ratio of 2.43 parts water to one part product.
- e) The protein level of Product Y is certified to be at least 61.8% on an “as-is” basis for the as-purchased product. (*Note: Protein is often provided on a moisture free basis (mfb) which is not the information FNS requires.*)

All of the above information is required for APP and must be presented for approval.

Note: It is also helpful to have the ingredient statement for product Y. For example, if the product is uncolored and unflavored the ingredient statement might be “soy protein concentrate” or if the product is colored and textured the ingredient statement might be “textured vegetable protein (soy flour, caramel color)”

Food Production Records

SFSP regulations require CEs to “plan for and prepare or order meals on the basis of participation trends with the objective of providing only one meal per child at each meal service. Records of participation and of preparation or ordering of meals shall be maintained to demonstrate positive action toward meeting this objective.” (7 CFR § 225.15(b)(4))

To comply with the above regulation, TDA **requires** CEs to maintain daily food production records for each meal prepared or ordered. Daily food production records must show that the quantity of each prepared component was adequate for each meal served (including any second meals) and contained the minimum of each required component.

A sample food production record titled *Daily Menu Production Worksheet* may be found on the “Summer Feeding Administration and Forms” at <http://www.squaremeals.org/Programs/SummerFeedingPrograms/SummerFeedingAdministration&Forms.aspx>.

Maintaining Records of Costs and Tracking Funds

Records Retention in SFSP

Federal regulations require CEs to maintain and retain all records pertaining to the SFSP for a minimum period of three years after the end of the fiscal year for which they pertain, or longer if there is an unresolved audit, audit finding(s), or litigation. If there is an unresolved audit, audit finding(s), or litigation, a CE must retain records until all issues are resolved. Records must be made available at a reasonable time and place upon request by TDA, or other State, Federal, or other authorized officials, for administrative review.

Records Retention Policies for Other Administering Agencies

While all CEs must adhere to SFSP record-keeping requirements, CEs should follow the records retention policies of their administering agency, if they are *more restrictive* than the SFSP.

Independent School Districts and Charter Schools should, for example, follow the record retention policies outlined by the Texas Education Agency (TEA). Schools administered by TEA are required to retain records for a period longer than three years. Other agencies, such as the Department of Defense and some Indian Tribal Organizations may have more restrictive recordkeeping requirements than the SFSP as well.

REFERENCE MATERIALS

CEs must operate the food service in accordance with the following provisions of 7 CFR Part 225, 2 CFR Part 200, any instructions and handbooks issued by the USDA, and any instructions and handbooks issued by TDA.

Additional SFSP Guidance

Below is a reference guide for CEs, which lists federal and state instruction, policy, and regulations for the SFSP.

NOTE: This is not an all-inclusive list, and federal and/or state regulations are subject to change.

Reference	Description	Available at
General SFSP Guidance		
7 CFR Part 225	Code of Federal Regulations for the SFSP	http://www.ecfr.gov/cgi-bin/text-idx?SID=4afb9f592f6259453276c37150807352&n ode=pt7.4.225&rgn=div5
<i>Administrative Guidance for Sponsors (AGS)</i>	USDA handbook for guidance on SFSP regulations	http://www.fns.usda.gov/sfsp/handbooks
<i>SFSP Policy Memos</i>	USDA-released policy memos for the SFSP	http://www.fns.usda.gov/sfsp/policy
<i>Sponsor Monitor's Guide</i>	USDA Handbook that outlines responsibilities of a monitor.	http://www.fns.usda.gov/sfsp/handbooks
<i>Site Supervisor's Guide (English and Spanish)</i>	USDA handbook that outlines the responsibilities of a site supervisor.	http://www.fns.usda.gov/sfsp/handbooks
<i>SFSP 05-2017, Summer Food Service Questions and Answers</i>	USDA issued Questions and Answers that clarify SFSP requirements as found in 7 CFR Part 225, FNS Instruction 796-4, and other official USDA Program guidance	https://www.fns.usda.gov/sfsp/summer-food-service-program-questions-and-answers-0
Texas Policy		
TDA Policy	TDA policy and guidance for the SFSP	http://www.squaremeals.org/Programs/SummerFeedingPrograms/SummerFeedingPolicy.aspx

Texas Administrative Code	Title 4, Part 1, Chapter 25, Subchapter B, Summer Food Service Program	http://texreg.sos.state.tx.us/public/readtac\$ext.ViewTAC?tac_view=5&ti=4&pt=1&ch=25&sch=B
Texas Administrative Code	Title 4, Part 1, Chapter 26, Subchapter E, Appeal Procedures for Food and Nutrition Programs	https://texreg.sos.state.tx.us/public/readtac\$ext.ViewTAC?tac_view=5&ti=4&pt=1&ch=26&sch=E&rl=Y
<i>Financial Management and Procurement Guidelines</i>		
2 CFR Part 200	Code of Federal Regulations – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards	https://www.ecfr.gov/cgi-bin/text-idx?SID=10d21fa0d00d76dbb59fc3d8f0c11afc&mc=true&node=pt2.1.200&rgn=div5
FNS Instruction 796-4, Rev. 4, <i>Financial Management – Summer Food Service Program for Children</i>	Provides guidance on the standards, principles, and guidelines for SFSP CEs in the development and maintenance of financial management systems	http://www.squaremeals.org/Portals/8/files/SFSP/FNS%20Instruction%20796-4_%20Financial%20Management%20-%20SFSP%20for%20Children.pdf
<i>Nutrition and Meal Requirements</i>		
<i>Nutrition Guidance for Sponsors</i>	USDA Handbook released for information on Federal nutrition guidelines and food service requirements	http://www.fns.usda.gov/sfsp/handbooks
<i>Promoting Nutrition in Summer Meal Programs with Best Practices</i>	Highlights resources and strategies to improve the nutritional quality and appeal of the meals served to children in SFSP and SSO. Provides tips on how to implement the best practices.	https://www.fns.usda.gov/promoting-nutrition-summer-meal-programs-best-practices
<i>The Food Buying Guide for Child Nutrition Programs</i>	Guide released by USDA to assist CEs with purchasing the right amount of food and determining the specific contributions each food makes toward the SFSP meal pattern requirement.	http://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs

USDA Nondiscrimination Statement

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) mail:

U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or

(2) fax:

(833) 256-1665 or (202) 690-7442; or

(3) email:

program.intake@usda.gov

This institution is an equal opportunity provider.

Spanish version of the Nondiscrimination Statement:

De acuerdo con la ley federal de derechos civiles y las normas y políticas de derechos civiles del Departamento de Agricultura de los Estados Unidos (USDA), esta entidad está prohibida de discriminar por motivos de raza, color, origen nacional, sexo, discapacidad, edad, o represalia o retorsión por actividades previas de derechos civiles.

La información sobre el programa puede estar disponible en otros idiomas que no sean el inglés. Las personas con discapacidades que requieren medios alternos de comunicación para obtener la información del programa (por ejemplo, Braille, letra grande, cinta de audio, lenguaje de señas americano (ASL), etc.) deben comunicarse con la agencia local o estatal responsable de administrar el programa o con el Centro TARGET del USDA al (202) 720-2600 (voz y TTY) o comuníquese con el USDA a través del Servicio Federal de Retransmisión al (800) 877-8339.

Para presentar una queja por discriminación en el programa, el reclamante debe llenar un formulario AD-3027, formulario de queja por discriminación en el programa del USDA, el cual puede obtenerse en línea en: <https://www.usda.gov/sites/default/files/documents/ad-3027s.pdf>, de cualquier oficina de USDA, llamando al (866) 632-9992, o escribiendo una carta dirigida a USDA. La carta debe contener el nombre del demandante, la dirección, el número de teléfono y una descripción escrita de la acción discriminatoria alegada con suficiente detalle para informar al Subsecretario de Derechos Civiles (ASCR) sobre la naturaleza y fecha de una presunta violación de derechos civiles. El formulario AD-3027 completado o la carta debe presentarse a USDA por:

- (1) correo: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; 0
- (2) fax: (833) 256-1665 o (202) 690-7442; o
- (3) correo electrónico: program.intake@usda.gov.

Esta institución es un proveedor que ofrece igualdad de oportunidades.

Product Use of Sell by Dates

Manufacturers are not required to place “best if used by,” “use by,” or “date of pack” dates on food products with the exception of infant formula. However, manufacturers commonly include these statements to assist consumers and retailers in determining when food is of the best quality.⁷²

Best if Used by Before or Use by	Indicates when a product will have the best flavor or quality. It is not a purchase or safety date.
Sell by	Assist retail stores with knowing when the product will have the best flavor or quality and assists with managing product inventory.
Date of Pack, Pack Codes, or Manufacturing Dates	Indicates when the product was packaged, processed, or manufactured. These dates do not communicate information related to quality or safety.

Technical Assistance for CEs

TDA and ESC Contact Information

Education Service Center (ESC) and TDA staff are available to provide technical assistance to help a CE complete the SFSP application and operate the SFSP. If a CE has a question that is not answered in this handbook or the AGS, or if clarification of information is needed, the CE should call its ESC or TDA to request assistance.

Contact information for Food and Nutrition Regional offices and ESC offices is located on <http://www.squaremeals.org/>.

Food and Nutrition Regional Offices

CEs may locate this contact information under, “I Need to...” and then clicking on “Contact Food and Nutrition” for contact information of TDA’s regional offices.

ESCs

CEs may locate this contact information under, “F&N Resources.” Click on “Texas ESCs.”

⁷² USDA provides additional information on these labels at:

<https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/food-labeling/food-product-dating/food-product-dating>.

TDA Contact Page

Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition	
When contacting TDA by phone, Contracting Entities (CEs) need to have their CE Identification Number (CE ID) (and site ID, if applicable). CEs should include their name and CE ID (and site name and ID if applicable) in all communication or documentation.	
General Contact Information	
<i>Physical Address:</i>	1700 N. Congress, 11th Floor, Austin, TX 78701
<i>Mailing Address:</i>	PO Box 12847, Austin, TX 78711-2847
<i>Phone:</i>	877-TEXMEAL, (877) 839 -6985
<i>Fax:</i>	(888) 203-6593
<i>Email Contact:</i>	squaremeals@TexasAgriculture.gov
<i>Website:</i>	www.squaremeals.org
Email Contact for Issues Related to Applications	
<i>Child and Adult Care Food Program:</i>	CACFP.BOps@TexasAgriculture.gov
<i>Fresh Fruit and Vegetable Program:</i>	FFVP.Bops@TexasAgriculture.gov
<i>National School Lunch Program, School Breakfast Program, & Special Milk Program:</i>	NSLP-SBP.BOps@TexasAgriculture.gov
<i>Seamless Summer Option:</i>	SSO.BOps@TexasAgriculture.gov
<i>Summer Food Service Program:</i>	SFSP.BOps@TexasAgriculture.gov
Email Contact for Issues Related to Program Operation:	
<i>Commodity Operations:</i>	CommodityOperations@TexasAgriculture.gov
<i>Community Operations (Child and Adult Care Food Program and Summer Food Service Program):</i>	Commuinty.Ops@TexasAgriculture.gov
<i>Local Products:</i>	LocalProducts.SquareMeals@TexasAgriculture.gov
<i>Procurement, Including Sole Source:</i>	CE.ProcurementReviews.BOps@TexasAgriculture.gov
<i>School Operations (National School Lunch Program, School Breakfast Program, and Special Milk Program):</i>	School.Operations@TexasAgriculture.gov
Email Contact for CE Flexibility Options	
<i>Male/Female Separation Exception:</i>	SNPWaivers@TexasAgriculture.gov
<i>Milk Substitute Notification:</i>	Nutrition@TexasAgriculture.gov
<i>Summer Mandate:</i>	SNPWaivers@TexasAgriculture.gov