Administrator's Reference Manual (ARM)

November 28, 2022

ARCHIVE

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TEXAS DEPARTMENT OF AGRICULTURE
COMMISSIONER SID MILLER

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Administrator's Reference Manual (ARM) Section Description Chart

Section		Contents for Section
Program Application		
1	**Program Overview**	▪ General information on the Child Nutrition Programs (CNPs)
2	**Program Application & Agreement**	▪ School Nutrition Program (SNP) application and application forms ▪ Program agreement ▪ Amendments to the program agreement
2a	**Meal Pattern Certification**	▪ Process for certification of the meal pattern
Certification and Benefit Issuance		
3	**Civil Rights & Confidentiality**	▪ Participant civil rights and related forms ▪ Requirements for sharing program eligibility information ▪ Civil rights training ▪ Collection of racial and ethnic data ▪ Use of nondiscrimination statement ▪ Use of nondiscrimination poster ▪ Complaint process
4	**Eligibility Determination**	▪ Eligible participants ▪ Household applications ▪ Categorical eligibility ▪ Direct Certification ▪ Carryover eligibility ▪ Household notifications ▪ Eligibility forms and letters
5	**Special Provision Options**	▪ Community Eligibility Provision (CEP) ▪ Provision 2 (P2) ▪ Carryover for special provisions programs ▪ Notification ▪ Reporting
6	**Verification of Eligibility**	▪ Verification process ▪ Confirmation reviews ▪ Direct Verification (DV) ▪ Household notifications ▪ Verification reporting ▪ Verification for cause ▪ Reporting
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7	**Breakfast Meals**	▪ Breakfast meal pattern—components and dietary specifications ▪ Menu planning ▪ Identification of a reimbursable meal ▪ Water ▪ Meal pattern resources
8	**Lunch Meals**	▪ Lunch meal pattern—components and dietary specifications ▪ Menu planning ▪ Identification of a reimbursable meal ▪ Water ▪ Meal pattern resources

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Section		Contents for Section
9	**Pre-Kindergarten Meals**	▪ Pre-kindergarten meal pattern—components ▪ Menu planning ▪ Identification of a reimbursable meal ▪ Water ▪ Pre-kindergarten (pre-K) meal pattern for SNPs ▪ Commingle meals ▪ Meal pattern resources
10	**Afterschool Snacks & Meals**	▪ Program participants ▪ Enrichment activities ▪ Extended/Expanded school day ▪ Meal patterns ▪ Program operation ▪ Site eligibility ▪ Water
11	**Summer Meals**	▪ Program participants ▪ Summer mandate ▪ Meal patterns ▪ Program operation ▪ Site eligibility
12	**Fresh Fruit & Vegetable Program**	▪ Site eligibility ▪ Program operation ▪ Financial management, including allowable costs ▪ Allowable food items
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14	**USDA Foods**	▪ Roles and responsibilities for USDA Foods ▪ Allocation of USDA Foods ▪ Use of USDA Foods ▪ Loss of USDA Foods ▪ Food recalls, substitutions ▪ USDA Foods values
14a	**USDA Foods Processing**	▪ Roles and responsibilities for USDA Foods ▪ Processor agreements and contracts ▪ Distributors ▪ Labeling ▪ Buy America ▪ USDA Foods values ▪ Inventory and storage
Financial and Contract Management		
15	**Program Integrity**	▪ Establishing sound financial management practices ▪ Conflict of interest ▪ Preventing inappropriate use of program funds ▪ Lobbing ▪ Debarment and suspension ▪ Staff taking food ▪ Program integrity procedures

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16a	**Contract Management**	▪ Program integrity and internal controls ▪ Effective management of contracts ▪ Credits, rebates, discounts, and USDA Foods values ▪ Buy American ▪ Contract disputes ▪ Contract modifications, renewals
17	**Procurement**	▪ Program integrity and internal controls ▪ Fully and open competition ▪ Procurement methods ▪ Solicitation ▪ Buy American and other regulatory requirements ▪ Advertising ▪ Contract awards ▪ Contract management ▪ Locally grown products ▪ Material change ▪ Credits, rebates, discounts, and USDA Foods values
17a	**Procurement Procedures**	▪ Program integrity and internal controls ▪ Procurement procedures and policies ▪ Credits, rebates, discounts, and USDA Foods values
17b	**Buy American**	▪ Program integrity and internal controls ▪ Buy American requirements ▪ Third-party contracts
17c	**Cooperative Purchasing**	▪ Program integrity and internal controls ▪ Cooperative agreements ▪ Types of cooperatives ▪ Allowed practices ▪ Credits, rebates, discounts, and USDA Foods values
18	**Food Service Contracts**	▪ Program integrity and internal controls ▪ Consultant contracts ▪ Food service management company (FSMC) contracts ▪ Vended meal contracts ▪ Material change ▪ Duplicative costs ▪ Credits, rebates, discounts, and USDA Foods values

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Operational Practices		
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22	**Competitive Foods**	▪ Identifying competitive foods ▪ Competitive food standards ▪ Exceptions to competitive foods ▪ Fundraisers
23	**Food Product Documentation**	▪ Food product labels ▪ Child Nutrition (CN) Labels ▪ USDA Foods Fact Sheets ▪ Nutrition fact labels ▪ Product formulation statements
24	**Disaster Situations**	▪ Types of disasters ▪ Flexibility allowed during a disaster
25	**Meal Accommodations**	▪ Meal pattern accommodations for students with and without a medical statement
26	**Food Safety**	▪ Food safety inspections ▪ Hazard Analysis Critical Control Point (HAACP) ▪ Safe Food handling ▪ Home-canned products
27	**Professional Standards**	▪ Child nutrition director hiring standards ▪ Hiring exemption ▪ Required staff training
28	**Residential Child Care Centers**	▪ Operational practices specific to residential child care institutions (RCCIs) ▪ Flexibilities for RCCIs ▪ Counting reimbursable meals
29	**Local Wellness Policy, Stakeholder Engagement**	▪ Local wellness policy requirements ▪ Stakeholder engagement ▪ Complaints
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Section 1

Program Overview

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Section 1, Program Overview

Update Guide	
January 4, 2022	Updated *Section 1, Program Overview* to correct minor typos.
August 12, 2020	Updated *Administrator's Reference Manual (ARM), Section 1, Program Overview* to update *Administrator's Reference Manual (ARM)* section references.
March 8, 2018	Updated *Section 1, Overview of School Nutrition Programs* to update the section titles in *Information Box 1*.

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

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SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

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USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Program Overview

The Texas Department of Agriculture (TDA) administers the following United States Department of Education (USDA) nutrition programs:

- Child and Adult Care Food Program (CACFP)
- Commodity Supplemental Food Program (CSFP)
- Farmers' Market Nutrition Program (FMNP)
- Food Distribution Program (FDP)
- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Seamless Summer Option (SSO)
  - Fresh Fruit and Vegetable Program (FFVP)
- School Breakfast Program (SBP)
- Senior Farmers' Market Nutrition Program (SFMNP)
- Special Milk Program (SMP)
- Summer Food Service Program (SFSP)
- The Emergency Food Assistance Program (TEFAP), also known as the Texas Commodity Assistance Program (TEXCAP)

The Child Nutrition Programs (CNP) addressed in this manual are the Afterschool Care Program (ASCP), Fresh Fruit and Vegetable Program (FFVP),[1] National School Lunch Program (NSLP), School Breakfast Program (SBP), Seamless Summer Option (SSO), and the Special Milk Program (SMP). Funds allocated for these programs must be used only for those programs and cannot be used for any other nutrition programs.[2]

For information about the any of these programs, use the Contact Information for the Texas Department of Agriculture (TDA) page that follows the Table of Contents.

These programs are also referred to as the School Nutrition Programs (SNP). The purpose of the SNP is to safeguard the health and wellbeing of the nation's children by providing nutritional meals and snacks as well as milk each school day. This ensures that participating children gain a full understanding of the relationship between proper eating and good health as well as participating in learning experiences that will improve their eating habits. Each program has its own criteria for program participation.

There are multiple definitions for *child* in the nutrition programs. CEs should look at the regulations and guidance for the program(s) they administer to ensure that they are adhering to the definition for *child* for those programs.

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[1] See USDA's Fresh Fruit and Vegetable Program at *www.fns.usda.gov/cnd/FFVP/default.htm* for additional information on this program as well as the *Fresh Fruit and Vegetable Program Handbook* located at *www.SquareMeals.org*.

[2] More information on these programs is available at *www.SquareMeals.org*.

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For information on program participation, detailed explanation of program components, and regulatory guidance, see the appropriate section listed in *Information Box 1, Administrator's Reference Manual (ARM)*.

Administrator's Reference Manual (ARM) Sections

For detailed information and requirements on the topics presented in the overview, see the following sections of the *Administrator's Reference Manual (ARM)*.

Program Application

- Section 1, Program Overview
- Section 2, Program Application & Agreement
- Section 2a, Meal Pattern Certification

Eligibility and Verification

- Section 3, Civil Rights & Confidentiality
- Section 4, Eligibility Determination
- Section 5, Special Provision Options
- Section 6, Verification of Eligibility

Nutrition Programs and Verification

- Section 7, Breakfast Meals
- Section 8, Lunch Meals
- Section 9, Pre-Kindergarten Meals
- Section 10, Afterschool Meals
- Section 11, Summer Meals
- Section 12, Fresh Fruit & Vegetable Program
- Section 13, Special Milk Program
- Section 14, USDA Foods
- Section 14a USDA Foods Processing

Financial Management

- Section 15, Program Integrity
- Section 16, Financial System
- Section 16a, Contract Management
- Section 17, Procurement
- Section 17a, Procurement Procedures
- Section 17b, Buy American
- Section 17c, Cooperative Purchasing
- Section 18, Food Service Contracts
- Section 19, Meal Pricing
- Section 20, Counting & Claiming

Operational Practices

- Section 21, Meal Service
- Section 22, Competitive Foods

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- Section 23, Food Product Documentation
- Section 24, Disaster Situations
- Section 25, Meal Accommodations
- Section 26, Food Safety
- Section 27, Professional Standards
- Section 28, Residential Child Care Institutions
- Section 29, Local Wellness Policy & Stakeholder Engagement
- Section 30, Records Retention
- Section 31, Administrative & Other Compliance Reviews

All sections are available at *www.SquareMeals.org*.

National School Lunch Program (NSLP)

The National School Lunch Program (NSLP)[3] is a federal entitlement program operating in public and private nonprofit schools and residential child care institutions (RCCIs). It provides nutritionally balanced, low-cost or free lunches to children each school day. In 1998, Congress expanded the NSLP to include reimbursement for snacks served to children in after school educational and enrichment programs to include children through 18 years of age.

The Food and Nutrition Service (FNS), under the United States Department of Agriculture (USDA), administers the program at the federal level. At the state level, the NSLP is administered in public schools, private schools, and RCCIs by TDA, which operates the program through agreements with contracting entities (CEs).

CEs that choose to take part in the NSLP receive cash subsidies and USDA-donated foods (USDA Foods) for each lunch they serve. In return, they must serve lunches that meet federal requirements, and they must offer free or reduced-price lunches to eligible participants.

CEs receive different amounts of reimbursement based on the number of lunches served in each of the benefit categories: free, reduced-price, and paid.

Extended School Year Operation

Schools currently operating the NSLP during the school term may continue operation during the summer for students in academic summer school programs.

Nutritional Requirements for the NSLP

Decisions about the specific foods to serve and how food items are prepared are made by the CE. However, lunches must meet federal nutrition standards for calories, sodium, and saturated and trans fat established by USDA. These standards are based on the *2010 Dietary Guidelines for Americans*.

School Breakfast Program (SBP)

The School Breakfast Program (SBP)[4] is a federal entitlement program operating in public and private nonprofit schools and RCCIs. Beginning as a pilot project in 1966, the SBP was made permanent in 1975 and is administered at the federal level by the FNS. TDA administers the

[3] More information on these programs is available at *www.SquareMeals.org*.
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program at the state level and local CEs administer the program at the local level in public schools, private schools, and RCCIs. Participating schools receive cash assistance from USDA for each breakfast served that meets program requirements. Like NSLP, CEs receive different amounts of reimbursement based on the number of breakfasts served in each of the benefit categories: free, reduced-price, and paid.

Nutritional Requirements for School Breakfast

Decisions about the specific foods to serve and how food items are prepared are made by the CE. However, breakfasts must meet federal nutrition standards for calories, sodium, and saturated and trans fat established by USDA. These standards are based on the *2010 Dietary Guidelines for Americans*.

Afterschool Care Program (ASCP)

To qualify for Afterschool Care Program (ASCP),[5] a CE must (1) be approved to operate the NSLP and (2) provide participants education or enrichment activities in an organized, structured, and supervised environment that is *open to all*.

Seamless Summer Option (SSO)

TDA administers the Seamless Summer Option (SSO)[6] for CEs that participate in the NSLP and SBP. The purpose of operating an SSO is to feed children in low-income areas during the summer months with reduced paperwork and to limit the administrative burden that is normally associated with operating different programs.

Feeding sites for this program may include one or more open site(s) within the attendance zone of a qualifying school as determined by the school officials. Qualifying sites must be located in an attendance area with 50 percent or higher free and reduced-price eligible children.

Special Milk Program (SMP)

TDA administers the Special Milk Program (SMP)[7] in nonprofit child care institutions, summer camps, or nonprofit schools that do not participate in the NSLP, SBP, SFSP, or the Child and Adult Care Food Program (CACFP).

Exception

A nonprofit child care institution or nonprofit school in which children do not have access to meal service through the NSLP, such as split-session kindergarten, is eligible to apply to participate in the SMP.

The SMP provides cash assistance to contracting entities to

- encourage the consumption of fluid milk by children and
- help defray the cost of providing milk to children.

Cash assistance includes general cash payments for milk served to children enrolled in the site.

[5] More information on these programs is available at *www.SquareMeals.org*.
[6] More information on these programs is available at *www.SquareMeals.org*.
[7] More information on these programs is available at *www.SquareMeals.org*.

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To ensure the nutritional adequacy of milk served, the milk must meet the guidelines set by the USDA FNS.

Contracting Entities (CEs)

Contracting Entities (CEs) are agencies or organizations that provide the services through the programs that TDA administers.

NSLP, SBP, ASCP, and SSO

Any public school, public charter school, private nonprofit school or RCCI of high school grade or under, is eligible to participate in the NSLP, SBP, ASCP, and the SSO. Although charter schools are exempt from many state laws and regulations, they are not exempt from federal regulations regarding these SNPs. If the charter school decides to participate in the NSLP, SBP, ASCP, and SSO, all program regulations pertaining to the respective programs must be followed.

SMP

Any public school, public charter school, private nonprofit school or RCCI of high school grade or under and any child care institution or summer camp that is not participating in the NSLP, SBP, SFSP, and CACFP is eligible to participate in the SMP.

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Section 2

Program Application & Agreement

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Section 2, Program Application & Agreement

Update Guide

DATE	Updated *Section 2, Program Application & Agreement* to correct minor typos. Clarified information on: - *Security Authority for Users Access Manager Form (FND-135)*
January 4, 2022	Updated *Section 2, Program Application & Agreement* to correct minor typos and section references.
August 12, 2020	Updated Administrator's Reference Manual (ARM), *Section 2, Program Application & Agreement* to update *Administrator's Reference Manual (ARM)* section references. Added guidance on the Attachment B upload requirement and the Security Authority for User Access Manager Form (FND-135).
January 15, 2019	Updated *Section 2, Program Application and Agreement* to incorporate the following United States Department of Agriculture (USDA) guidance: – *USDA Memo SP 15-2018, Child Nutrition Program Waiver Request Guidance and Protocol Revised* (May 24, 2018) Clarified information on the following topics: – Compliance – Education service provider (ESP) – Local wellness policy – Policy statement – Program requirement waiver – Record retention – Renewal of application – Supporting documentation – USDA Foods Agreement
December 4, 2014	Updated *Section 2, Program Application and Agreement* to provide clarification on the following issues – Employer Identification Number (EIN) – Local wellness policy – Meal pattern certification – Permanent agreement – Policy statement – Program application – Racial and ethnic data – Record retention – TDA contact information – Termination
July 22, 2013	Updated *Section 2, Application and Agreement* to reflect the renumbering of *Section 9C to Section 2C, Certification for Performance-Based Reimbursement* in order to relocate the information on certification adjacent to *Section 2, Application and Agreement* since certification is now part of the application process. Deleted all references to *Section 8N* since that section has been removed from the *Administrator's Reference Manual (ARM)*. CEs must follow the guidance provided in *Section 8, Breakfast since Section 8N* applied to School Year (SY) 2012–2013 only.

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April 29, 2013	Updated *Section 2, Application and Agreement* to align the content with changes to the Texas Unified Nutrition Programs System (TX-UNPS) and incorporate new USDA guidance and requirements related to the new meal pattern.

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General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

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- Paid Lunch Equity (not currently available)
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Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

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BCT.BOps@TexasAgriculture.gov

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CE.ProcurementReviews.BOps@TexasAgriculture.gov

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Questions about USDA Foods

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CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

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Program Application & Agreement

The program application and the *Food and Nutrition Agreement (Permanent Agreement)* create a legal contract between the Texas Department of Agriculture (TDA) and a contracting entity (CE) to provide meals to children through a school nutrition program (SNP). Public and charter schools, private schools, and residential child care institutions (RCCIs) may participate in SNPs. This section describes the policy for an SNP application and the agreement for the following programs:[1]

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Fresh Fruit and Vegetable Program (FFVP)
  - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

[NOTE: There are notations where the information provided applies differently to FFVP or SMP.]

The application and agreement processes include the following components:[2]

1. Program Application—A new applicant must complete an application, and a CE currently operating an SNP must renew its application each year. For current CEs, because applications can be submitted through the Texas Unified Nutrition Programs System (TX-UNPS), many fields in the application will prepopulate for the next year's application or when the CE applies for additional programs.
2. Additional Supporting Documentation for the Application—A CE must submit the required application supporting documentation as specified by the program application.
3. Permanent Agreement—All of the programs addressed in this section use the same *Permanent Agreement*, i.e., a CE has only one approved and signed *Permanent Agreement* even if the CE participates in more than one program and even if the CE administers a program over multiple years.

Definitions

For this section, the following terms will be used:

Amendment to the Permanent Agreement	An amendment to the *Permanent Agreement*
Authorized Representative	Person who is authorized to make decisions and sign legally binding documentation.
Award or Grant Award	Term used when a CE is approved to receive funds to implement an SNP
Certificate of Authority (COA)	Process for assigning a person to be an authorized representative for a contracting entity (CE).

[1] In some areas, FFVP and SMP have different requirements. See the FFVP guidance provided at *www.SquareMeals.org* and the *Administrator's Reference Manual, Section 13, Special Milk Program* for additional information.

[2] All forms referenced in this section are available at *www.SquareMeals.org*.

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Contracting Entity (CE)	Entity that has a formal agreement with TDA to administer an SNP.
Food and Nutrition Agreement (Permanent Agreement)	Commonly called the *Permanent Agreement*, a document signed by the CE and TDA that outlines the roles and responsibilities for the program(s).
Policy Statement	Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures or Policy Statement for Free Milk, Attachment B: Milk Count/Collection Procedures, commonly called Attachment B, part of the application documentation that provides detailed information on the CEs procedures for implementing the program requirements.
Program Application	The collection of documents required for the CE to begin or continue participation in a nutrition program.
School Food Authority (SFA)	United States Department of Agriculture (USDA) term used for NSLP and SBP operators. This term is used in TX-UNPS and other documentation. In Texas, an SFA is called a CE which is an acronym for contracting entity.
Termination of the Permanent Agreement	Action to end the CE's *Permanent Agreement* with TDA—permanent withdrawal of previously-awarded grant funds before the grant funds would otherwise expire.

Program Year

For the programs addressed in this section, the program application, renewal of the program application, and *Permanent Agreement,* the program year follows the school year (SY) for deadlines and timelines—July 1 to June 30.

Educational Service Provider (ESP)

If a CE (school district, charter school, private school, or RCCI) has assigned administrative responsibility to an education service provider (ESP)[3] for the operation of all functions, the ESP may also be given operational authority for eligibility determination and verification; however, the CE must retain responsibility to ensure that all program requirements are met.

Program Application

Any entity desiring to participate in a nutrition program must complete an application and renew its application each year after.

Application Submission

There are two ways a CE can complete an application:

1. Electronically through TX-UNPS[4]—TDA strongly encourages CEs submit their program applications through TX-UNPS. An electronic submission results in the following benefits:
    - Allows TDA to process the application more quickly
    - Saves the CE time and effort when resubmitting an application in subsequent years or applying for additional programs

[3] Authority for ESPs to manage education and other operations for a school district or charter school is given by the Texas Education Agency; authority for an RCCI by the agency with regulatory authority for the RCCI; and authority for private schools by the governing board.

[4] Website accessed at *www.SquareMeals.org*.

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- Reduces paperwork as many of the required application forms are integrated into the online application

  [NOTE: Any forms that are not integrated into TX-UNPS are easily downloadable through the TX-UNPS system. The system is designed to direct a CE to complete only the forms that are necessary for that CE. In most cases, when a CE submits one of the supporting documents in one program application, the CE will not be required to resubmit the same form in another program application.]

CEs will also find the TX-UNPS Online Help tool useful as they complete an online application.

2. On Paper—An applicant may contact TDA to obtain a copy of application by mail.[5]

Signature on Program Application, Renewal Application, or Permanent Agreement

The program application and supporting forms must be signed by an authorized representative.[6]

CE Responsibilities Defined by the Program Application

In completing an application, the CE assumes responsibility for the following:[7]

Program Benefits and Services

- Provide free or reduced-price meals or free milk to the following:
  - Students from families whose income is at or below the current eligibility income scale
  - Students who are eligible based on categorical status
  - Students from families experiencing strikes, layoffs, or unemployment that causes the family income to fall below the eligibility income scale

Privacy, Equal Treatment

- Ensure that the following does not occur:
  - Overt identification of any student receiving these benefits
  - Discrimination in providing meals or milk because of race, color, national origin, sex, age, or disability[8]

Appeals

- Establish a fair hearing procedure for households to appeal decisions related to eligibility.[9]

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[5] See the *Contact Information for the Texas Department of Agriculture* page following the table of contents in this section for telephone or email information.

[6] See the *and Security Authority for Users Access Form (FND-135)* subsection in this section for additional information on this topic. If the program application is submitted through TX-UNPS, an electronic signature will be used.

[7] See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination; Section 6, Verification of Eligibility; Section 7, Breakfast Program; Section 8, Lunch Program; Section 10, Afterschool Snacks & Meals; Section 11, Summer Meals; Section 13, Special Milk Program; Section 20, Counting & Claiming;* and *Section 28, Residential Child Care Institutions* for additional information on these requirements.

[8] See *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality* for additional information on civil rights.

[9] See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on eligibility determinations.

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- Designate a (1) determining or reviewing official to certify participant eligibility and (2) hearing official to process eligibility determination appeals—cannot be the same individual.

Public Information

- Share information about SNP with the following:
  - Media
  - Local employment offices
  - Major employers contemplating large layoffs
- Issue a public media release containing information about eligibility criteria and the household application form that is used by parents to assist their children in taking advantage of free or reduced-price meals or free milk.

Supporting Documentation

The CE will complete and submit the application supporting documentation to TDA which includes, but is not limited to,[10] the following:

Program Operation

Security Authority for Users Access Manager Form (FND-135)

TDA requires that CEs use the *User Access Manager Form (FND-135)* to submit the name of the CE representative responsible for security management of users within the CE.

> The FND 135 Form is available in TX-UNPS | Security | CE Systems Logins. Detailed instructions on the use of this form are available at *https://squaremeals.org/FandNResources/TXUNPSProgramResources/TXUNPSUserAccessManager.aspx.*

This form designates the User Access Manager (UAM), an authorized representative that can make decisions and sign legally binding documentation. CEs are expected to resubmit the form in a timely manner when staff changes are made. This includes changing a name and deleting or adding an authorized representative.

An authorized representative must be an employee of the CE. Consultants and contractors are not considered authorized representatives. *Administrator's Reference Manual (ARM), Section 18, Food Service Contracts* provides additional guidance on Food Service Management Company (FSMC) employee access to TX-UNPS. The authorized representative is responsible for the following:

- Ensuring that the CE's program(s) are operated in accordance with federal and state regulations
- Maintaining the proper records and reporting requirements to support the monthly reimbursement claim
- Updating application information in a timely manner

[10] When an individual CE chooses to implement specific flexibilities additional forms or documentation may be required.

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- Preparing and submitting reports
- Providing certification of compliance

The *FND-135* also allows different staff members to have different access rights within TX-UNPS. This allows the CE to control which staff members are allowed or have access to specified functions in TX-UNPS, such as counting and claiming or the Texas Eligibility List Management System (Texas-ELMS).[11]

Special Guidance, FND-135

- Required Roles. At a minimum, a CE must have an authorized representative to fulfill the following roles:
  - Edit or update the application packet as needed
  - Submit or edit claims for reimbursement

  [NOTE: These roles may be fulfilled by one staff member or multiple staff members.]
- Required Signature. The *FND-135* must be signed by either the CE's superintendent or the president of the board of trustees.
- Security Levels. The *FND-135* provides a process for the CE to designate varied security levels for an authorized representative. CEs should contact TDA if they have questions about the appropriate security level for an authorized representative.

Submission Requirement:
New Applicants: Complete and submit to TDA.
Current CEs: Update and submit as needed to TDA.

USDA Foods Agreement Between Contracting Entity and Texas Department of Agriculture

This agreement[12] outlines each party's rights and responsibilities and the terms and conditions for obtaining USDA Foods.

Submission Requirement:
New Applicant: Submit the agreement to TDA.[13]
Current CE: Submit an updated agreement as requested by TDA.

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[11] For additional information on these roles see *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination and Section 20, Counting & Claiming*.
[12] Form located at *www.SquareMeals.org*.
[13] CEs are not required to participate in the USDA Foods program, but they are required to submit this form.

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Hazard Analysis Critical Control Points (HACCP) Checklist (FND-104)

The CE uses this form to describe its plan to address food sanitation, temperature control, and standard operating procedures related to handling and serving food.

> **Submission Requirement:**
> New Applicant: Complete and submit to regional education service center (ESC). The ESC will work with the CE to finalize the HACCP plan. The CE will retain onsite.[14]
>
> Current CE: Review each year and retain updated procedures with other school nutrition program documentation onsite.

Local Wellness Policy (LWP)

Each CE must have a local wellness policy. CEs may use any format for their local wellness policy (LWP), but it must incorporate all of the elements described in the *Administrator's Reference Manual (ARM), Section 29, Local Wellness Policy & Stakeholder Engagement*. The CE may also use the *Local Wellness Policy (LWP) Checklist*, which is available at *www.SquareMeals.org*, to assist in creating a LWP.

> **Submission Requirement:**
> New Applicants: Create a LWP and retain the document onsite. The ESC will work with the CE to finalize the LWP. The CE will retain onsite.[15]
>
> Current CEs: Review local wellness policy each year and, as appropriate, consult with the regional ESC nutrition specialist when modifications are made to existing policy. Retain updated policy and any documentation of action taken at local school board meetings related to the policy with school nutrition program records.

Meal Pattern Certification

CEs applying for NSLP or SBP for the first time must submit the documentation described in *Administrator's Reference Manual, Section 2a, Meal Pattern Certification*.

> **Submission Requirement:**
> New Applicants: Complete and submit forms to TDA through the TX-UNPS Meal Pattern dashboard.

[NOTE: After a CE has been certified to receive performance-based reimbursement, the CE does not need to update any fields in the Meal Compliance Module in TX-UNPS, including the Attestation form. If a CE enters the Meal Compliance Module and takes any action that changes one of the fields in the Meal Compliance Module, the CE's performance-based reimbursement may be suspended. TDA does not receive a notification when this happens, so it will not be automatically corrected. CEs must not take any action in the Meal Compliance Module unless a TDA staff member specifically directs the CE to do so.]

[14] The ESC will provide necessary documentation and notification to TDA.
[15] The ESC will provide necessary documentation and notification to TDA.

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Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures (Attachment B) or Policy Statement for Free Milk, Attachment B: Milk Count/Collections Procedures (Attachment B)

CEs are required to use this form to indicate operational practices for eligibility determination, counting and claiming, and charge policy.

For NSLP, SBP, ASCP—Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures(s) (Attachment B), web-based form submitted in TX-UNPS	***For SMP—****Policy Statement for Special Milk Program, Attachment B: Milk Count/Collection Procedure(s) (Attachment B)*, available at *www.SquareMeals.org* and submitted in TX-UNPS

Submission Requirement:

New Applicants: Complete and submit to TDA in TX-UNPS. Print and retain a copy onsite.

USDA requires that TDA review each contracting entity's (CE's) template household application(s), directions, and notification letters to ensure that the CE is meeting the requirements for these documents. Starting School Year (SY) 2020-2021 and each SY forward, each CE must upload certification and benefit issuance templates by October 31, 2020 in TX-UNPS | Application | Attachment B: Upload Attachments. The link will open August 1, 2020.

Current CEs: (1) Review the current *Attachment B* routinely to ensure that the information reported in the approved *Attachment B* reflects the CE's current operational practices and (2) resubmit to TDA through TX-UNPS if modifications are made. Retain a copy onsite.

USDA requires that TDA review each contracting entity's (CE's) template household application(s), directions, and notification letters to ensure that the CE is meeting the requirements for these documents. Starting School Year (SY) 2020-2021 and each SY forward, each CE must upload certification and benefit issuance templates by October 31, 2020 in TX-UNPS | Application | Attachment B: Upload Attachments. The link will open August 1, 2020.

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Pre-Award Civil Rights Compliance Review Form

This form[16] collects information on the race and ethnicity of program participants and procedures related to civil rights.[17]

Submission Requirement:
New Applicant: Complete and submit to TDA.

Current CEs: Maintain yearly information on race and ethnicity of program participants through the Public Education Information Management System (PEIMS) administered by the Texas Education Agency (TEA) or collect race and ethnic data using this form or another tool which collects the same information. This information is retained onsite.[18]

Financial

Application for Texas Identification Number (AP-152)

The CE uses this form to request a Texas Identification Number (TIN)[19] from the Texas Comptroller of Public Accounts. A TIN is required for a CE to receive payment for reimbursement claims.

[NOTE: If providing an Employer Identification Number (EIN) or the AP-152, the CE will need to also provide documentation from the Internal Revenue Service (IRS) that establishes the EIN. A copy of the letter from the IRS or a payment coupon with the EIN on it is acceptable.]

Submission Requirement:
New Applicants: Complete and submit to TDA.

Proof of IRS 501(c)(3) Tax Exemption

The CE must submit proof of its 501(c)(3) tax exemption status if it is a private nonprofit organization.[20]

Submission Requirement:
New Applicants: Submit the appropriate IRS documentation to TDA.

Vendor Direct Deposit/Advance Payment Notification Authorization (74-176)

The CE uses this form[21] to request direct deposit of claim reimbursements.

Submission Requirement:
New Applicants and Current CEs: Complete and submit this form to TDA.
Current CEs: Complete and submit to TDA if changes are made to direct deposit information.

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[16] Form located on the TX-UNPS Application Module Download Forms screen, reference number SNP-003.
[17] USDA provides detailed guidance on civil rights compliance in the following guidance document: *FNS-113-1, Civil Rights and Enforcement—Nutrition Programs and Activities*, which is available at *www.fns.usda.gov*.
[18] See *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality* for additional information on this topic.
[19] Form located on the TX-UNPS Application Module Download Forms screen, reference number SNP-002.
[20] More information on 501(c)(3) status is available at *www.irs.gov*.
[21] Form located at *www.SquareMeals.org*.

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Permanent Agreement

The CE must also complete the *Permanent Agreement*.[22] Under the terms of the *Permanent Agreement*, each CE agrees to meet the following program requirements:

Related to Meals

- Serve a lunch, breakfast, and/or snack that meets meal pattern and nutritional requirements or milk specifications as required by the program.[23]
- Provide free and reduced-price meals to eligible children or free milk as required by the program.
- Price meal served as a unit or milk served as unit.
- Provide meals or milk to all children without regard to race, color, national origin, sex, age, disability, or eligibility status.
- Prevent overt identification of children receiving free or reduced-price meals or free milk.
- Complete the USDA Foods or commodities form (not applicable to SMP).

Related to Program Participants

- Provide information as required by TDA on the number of children served free, reduced-price, and paid meals or free milk.
- Maintain files of approved and denied household applications for free and reduced-price meals or free milk.
- Maintain master or roster list of all eligible program participants including documentation of any changes to the list.
- Maintain free and reduced-price meals or free milk application documentation related to income eligibility, direct certification, or other source categorical eligibility.[24]

Related to Operational Issues

- Meet proper sanitation and health standards for the service of meals as required by local and state agencies.
- Comply with recordkeeping and retention requirements and provide records for review as required.

Related to Fiscal Issues

- Maintain a nonprofit food service, observing the limitations on the use of revenues including, but not limited to, competitive food services.
- Limit net cash resources to an amount that does not exceed three (3) months of average expenditures for its nonprofit school food service.

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[22] The CE is required to retain a completed *Permanent Agreement* as long as the CE maintains operation of a child nutrition program administered by TDA no matter how many programs the CE administers. However, *Permanent Agreements* may be amended as appropriate.

[23] See *Administrator's Reference Manual, Section 7, Breakfast Program; Section 8, Lunch Program; Section 9, Pre-Kindergarten Meals; Section 10, Afterschool Meal Programs; Section 11, Summer Meal Programs; or Section 13, Special Milk Program* for additional information on requirements related to meal, snack, or milk service.

[24] See *Administrator's Reference Manual, Section 4, Eligibility Determination* for additional information on this topic.

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- Maintain a financial management system that meets requirements for the program.
- Submit claim reimbursements through TX-UNPS for the reimbursable free, reduced-price, and paid meals or free milk served to eligible children in accordance with regulations.

Waiver of Program Requirements

A CE may submit a written request to waive certain program requirements for NSLP, SBP, SFSP, SMP, and FFVP. Before submitting a request to waive a program requirement, the CE must evaluate its intent for requesting the waiver and if a program waiver is required. An approved waiver must support the purpose and intent of the program.

Waiver Limitations

TDA and USDA will not consider waiver requests related to any of the following topics:

- Nutritional content of meals served
- Federal reimbursement rates
- Provision of free and reduced-price meals
- Limits on the price charged for a reduced-price meal
- Maintenance of effort (not decrease or affect the expenditure of funds from state and local sources for the maintenance of the Child Nutrition Program)
- Equitable participation of children in private schools
- Distribution of funds to State agencies and sponsors
- Disclosure of individual income eligibility information
- Prohibition of the operation of a profit producing program
- Sale of competitive foods
- USDA Foods
- Enforcement of any constitutional or statutory right of an individual

Requirements for Which TDA Has Regulatory Discretion

It is not necessary for CEs to submit a waiver for any operational practice that TDA has the authority to grant a regulatory exemption, including, but not limited to, the following areas.

- RCCI age/grade group meal pattern
  (As described in *Administrator's Reference Manual (ARM), Section 27, Residential Child Care Institutions*)
- Gender separation
  (As described in *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality)*
- Paid Lunch Equity (PLE)
  (As described in *Administrator's Reference Manual (ARM), Section 19, Meal Pricing*)

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- Child Nutrition Program Director (CND) Professional Standards for CEs with 500 students or fewer
  (As described in *Administrator's Reference Manual (ARM), Section 26, Professional Standards*)
- Summer mandate
  (As described in *Administrator's Reference Manual (ARM), Section 11, Summer Meal Programs*)
- Summer age/grade group meal pattern
  (As described in *Administrator's Reference Manual (ARM), Section 11, Summer Meal Programs*)
- Breakfast mandate
  (As described in *Administrator's Reference Manual (ARM), Section 7, Breakfast Program*)
- Meal service time
  (As described in *Administrator's Reference Manual (ARM), Section 21 Meal Service*)
- Electronic confirmation systems
  (As described in *Administrator's Reference Manual (ARM), Section 6, Verification of Eligibility)*
- Vending machines
  (As described in *Administrator's Reference Manual (ARM), Section 21, Meal Service*)

Requests for exemptions are submitted as described in the referenced *Administrator's Reference Manual (ARM)* section.

Waiver Duration

A waiver is only valid during one program year (PY). For NSLP/SBP operators the program year is July 1 to June 30. A CE that wishes to continue a waiver into the next PY must submit another request.

Waiver Contents

The written request must include the following information:

1. **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. Include a description of any impediments to the efficient operation and administration of the program(s).
   - 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 applicable program(s) and the expected outcomes if the waiver is granted.
   - Describe how the waiver would improve services under the applicable program(s).

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2. **Regulatory Citation(s) and Requirement(s)**
    - Identify the specific statutory or regulatory requirements[25] requested to be waived for the applicable program(s).
3. **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 applicable program(s) if the waiver is granted.
    - Describe the anticipated impact on applicable program operations, including technology, State systems, and monitoring.
4. **Anticipated Implementation Challenges**
    - Describe any anticipated challenges the CE may face with implementation of the waiver, if granted.
5. **Anticipated Implementation Date and Time Period for Which Waiver Is Needed**
    - Provide the beginning and ending date for the requested waiver.

      [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.]
6. **Overall Cost to the Applicable Program(s)**
    - Describe how the waiver will not increase the overall costs of the applicable program and, if it does, how any additional costs will be paid from non-Federal funds.

      For Example: Provide an explanation of what the anticipated cost will be, if any.
    - Address whether the waiver will increase program participation and claims for reimbursement.
7. **Proposed Monitoring and Review Procedures**
    - Describe how the CE will monitor and review operations of the waiver to ensure the proper oversight and integrity of the applicable program(s). If applicable, include monitoring details to ensure increased costs of the applicable program will not be paid from Federal funds.
8. **Proposed Reporting Requirements**
    - Describe how the CE will report to TDA on the outcome of the waiver implementation, if it is approved, including details on how the implementation of the waiver and its effect on the efficient operation and administration of the applicable program will be evaluated. For example, what data points would be useful to determine if the waiver was successfully implemented? The CE must report this information to TDA within 60 days of the end of the waiver period.
9. **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. A link or copy of the public notice about the proposed waiver must be included with submission of this form to TDA.

      [NOTE: Acceptable methods of public notification include, but are not limited to, the following:

[25] Sources for statutory or regulatory requirements include the Code of Federal Regulations, USDA policy memos, and/or USDA guidance manuals.

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- posting notice on the CE's website and
- providing public notice through a printed announcement in the local/state newspaper.]

Submitting Waiver Request

CEs must use the *Child Nutrition Programs Waiver Request Form* located at *www.SquareMeals.org* for this purpose. The completed request is submitted to TDA as described in the form directions at least 90 days prior to the desired implementation to allow adequate time for review.[26] Upon receipt, TDA will evaluate the request and approve or deny the request. Before a waiver approved by TDA can be implemented, TDA will forward the request to USDA for final approval. Denial of a request, either by TDA or USDA, is not an appealable action.

Renewal of Application

The application is in effect for one school year (SY)—July 1 to June 30. To continue to participate in ASCP, FFVP, NSLP, SSO, SBP, or SMP, and prior to submitting reimbursement claims for the upcoming SY, a CE must complete a renewal through the Application Packet screen in TX-UNPS by July 1 of each year.

In the renewal application, the CE must take the following actions:

- Review, update, and complete each section of the Application Packet in TX-UNPS and submit to TDA.
- Enter the total participant enrollment for the program(s) and total eligible participants for the program(s) from the previous October in the Site Application, Participation Information Section in TX-UNPS.

  [NOTE: CEs must submit accurate enrollment information. See ***Administrator's Reference Manual (ARM), Section 4, Eligibility Determination*** for additional information on this topic related to enrollment. Accurate enrollment information is also important in order to correctly determine eligibility for SFSP and CACFP.]

The CE must also review all other information that was automatically populated in the program application in TX-UNPS from the previous year to ensure accuracy. For additional information regarding renewing participation, contact TDA, Business Operations section.[27]

Amendment to the *Permanent Agreement*

Once TDA has approved the application and entered into the *Permanent Agreement* with the CE, the *Permanent Agreement* can be amended only with the consent of TDA. An amendment must be made using the *Amendment to the Food and Nutrition Division Contracting Entity Specific Amendment* form.[28]

A CE's failure to return a CE specific amendment, or to notify TDA that that the CE wishes to withdraw the action, could result in termination of the CE's *Permanent Agreement* for cause.

There are two types of amendments to the *Permanent Agreement*:

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[26] Email, fax, and mail address information is located on the TDA contact page which is located after the table of contents in this section.
[27] See the *Contact Information for the Texas Department of Agriculture* page following the table of contents in this section for telephone or email information.
[28] Blank in the title is filled in with the number of the amendment.

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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*, including amendments that are specific to a particular program, regardless of whether a particular CE has been approved to participate in that program. Universal amendments are initiated by TDA.

Contracting Entity Specific Amendments

A contracting entity specific amendment can be initiated by either TDA or the CE. Contracting entity specific amendments are limited to the following:

- Add participation in a Food and Nutrition (F&N) administered program.
- Delete participation in an F&N-administered program.
- Record a change in name of the organization in the *Permanent Agreement*.

  [NOTE: The Employer Identification Number (EIN) must remain the same under an existing ***Permanent Agreement***. If the CE changes its EIN, it must terminate its existing agreement, complete a new application, and establish a new ***Permanent Agreement*** under the new EIN.]

For Example: The following examples demonstrate the processes required for contracting entity specific amendments to the ***Permanent Agreement***:

Adding a Program—Initiated by the CE

A CE is approved to participate in the Child and Adult Care Food Program (CACFP) and is later approved to participate in the NSLP.

- TDA will complete the _____ ***Food and Nutrition Agreement, Amendment to the Food and Nutrition Agreement, Contracting Entity Specific Amendment***[29] and send it to the CE for review and signature.
- The CE's authorized representative will sign the form and return it to TDA.
- Upon receipt of the signed amendment form, the form will be approved and signed by TDA, and a copy will be returned to the CE for its files.

Deleting a Program—Initiated by the CE

The CE is approved to participate in both the CACFP and the NSLP but decides to terminate participation in the CACFP.

- The CE must notify the TDA that it would like to terminate participation in a program.
- TDA will complete the _____ ***Food and Nutrition Agreement, Amendment to the Food and Nutrition Agreement, Contracting Entity Specific Amendment***[30] and send it to the CE for review and signature.
- The CE's authorized representative will sign the form and return it to TDA.
- Upon receipt of the signed amendment form, the form will be signed by TDA, and a copy will be returned to the CE for its files.

Changing the CE Name—Initiated by either the CE or TDA

A CE notifies TDA that the name of its contracting organization has changed, but the EIN has not.

[29] Blank in the title is filled in with the number of the amendment.
[30] Blank in the title is filled in with the number of the amendment.

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- The CE completes the _____ *Contracting Entity Specific Amendment* form, recording the new name of the CE and sends it to TDA for review and signature.
- TDA returns the approved and signed form to the CE for its files.

Termination of the *Permanent Agreement*

An action to end the CE's *Permanent Agreement* with TDA—a termination of the *Permanent Agreement* is a permanent withdrawal of a previously-awarded approval. The *Permanent Agreement* between TDA and a CE may be terminated under two conditions: (1) consent and (2) noncompliance.

Consent Termination

Both TDA and the CE agree to terminate the *Permanent Agreement* for all programs the CE administers or part of those programs. When the *Permanent Agreement* is terminated by consent, TDA will provide written notification to the CE verifying that the *Permanent Agreement* has been terminated.

Noncompliance Termination

TDA may terminate the CE's *Permanent Agreement* if the CE materially fails to comply with any terms of the award[31]—whether these terms are stated in federal statute or regulations, an assurance, a state plan or application, a notice of award, or elsewhere.

For Example: Areas of noncompliance may include, but are not limited to, improper claims submission, financial impropriety, or repeated findings from administrative reviews or audits.

If TDA terminates the CE's *Permanent Agreement* for noncompliance, TDA will provide written notification to the CE that explains the reason(s) for the termination.

Records Retention

Public and charter schools must maintain records for a period of five years. Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) must maintain records for three years.

Information Box 1
Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

CEs are required to retain all documentation related to its program application(s), program application renewals, *Permanent Agreement,* and all documentation related to the operation of program(s) as required by state or federal regulation and the Texas State Board of Education policies. For additional information on records retention for this documentation, see the *Administrator's Reference Manual (ARM), Section 29, Records Retention*.

[31] *Award* is used to describe the formal agreement for TDA to provide funds to the CE to implement the nutrition program.

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Compliance

During an administrative review (AR), procurement review (PR), financial review, or at other times as appropriate, TDA will assess compliance with information and supporting documentation submitted in program application or program application renewal. If a CE submits fraudulent information and/or supporting documentation for a program application or program application renewal, TDA may require approvable corrective action. TDA may also require appropriate fiscal action related to claims, reimbursement to the nonprofit school food service account for unallowable costs, placement of the CE's funds on hold until the CE has achieved compliance, or termination of the *Permanent Agreement*.

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Section 2a

Meal Pattern Certification

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Section 2a, Meal Pattern Certification

Update Guide	
November 28, 2022	Updated Texas Administrative Code (TAC) appeals citation.
January 4, 2022	Updated *Section 2a, Meal Pattern Certification* to correct minor typos.
August 12, 2020	Updated *Administrator's Reference Manual (ARM), Section 2c, Meal Pattern Certification* to update *Administrator's Reference Manual (ARM)* section references.
October 3, 2014	Updated *Section 2C, Certification for Performance-Based Reimbursement* to incorporate the USDA guidance provided in the following documents: – *Certification of Compliance with Meal Requirements for the National School Lunch Program Under the Healthy, Hunger-Free Kids Act of 2010, Federal Register, Volume 79, Number 2, Final Rule,* (January 3, 2014) *USDA Memo, 26-2014, New Questions and Answers Related to the Certification of Compliance with Meal Requirements for the National School Lunch Program* (March 11, 2014) Provided clarification on the following topics: – Contact information for TDA – Timeline for certification
July 22, 2013	Updated *Section 9C, Certification for Performance-Based Reimbursement* to incorporate the USDA guidance provided in the following USDA policy memo: – *USDA Memo, SP 31 2012 (3rd Revision), Questions & Answers Related to Certification of Compliance with Meal Pattern Requirements for National School Lunch Program* (January 22, 2013) Provided clarification on the following topics: – Adjusted timeline for submitting menus for certification – Explanation of the different certification requirements for new contracting entities (CEs) and existing CEs – Inclusion of information on performance-based reimbursement for Seamless Summer Option (SSO) claims – Information on expectations for record retention related to certification. – Removal of information on attestation documentation as this requirement is now part of the application/application renewal process – Removal of references to validation as monitoring of the new meal pattern implementation is incorporated into the administrative review – Renumbered the Certification for Performance-Based Reimbursement section from *Section 9C* to *Section 2C* in order to relocate the information on certification adjacent to S*ection 2, Application and Agreement* since certification is now part of the application process – Deleted all references to Section 8N since that section has been removed from the *Administrator's Reference Manual (ARM)*. CEs must follow the guidance provided in *Section 8, Breakfast since Section 8N* applied to SY 2012–2013 only

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

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SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
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- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

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USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Meal Pattern Certification

This section is a supplement to *Administrator's Reference Manual (ARM), Section 2, Program Application & Agreement*. Developed by the United States Department of Agriculture (USDA), the meal pattern requirement certification specifications, are intended to accomplish two purposes:

1. Certify that CEs are demonstrating compliance with the National School Lunch Program (NSLP) and School Breakfast Program (SBP) meal pattern.
2. Provide a process for those CEs that demonstrate compliance with the new meal pattern to receive an additional performance-based reimbursement for lunch meals served.

All contracting entities (CEs) must be certified. New CEs will submit documentation when they apply to operate NSLP or SBP. TDA will monitor compliance with the NSLP and SBP meal pattern during the administrative review (AR) process.

Definitions for This Section

For this section, the following terms will be used:

Age/Grade Groups for Breakfast Service	One of the four age/grade spans approved by USDA for breakfast service: K–5, 6–8, 9–12, or K–12.
Age/Grade Groups for Lunch Service	One of the four age/grade spans approved by USDA for lunch service: K–5, 6–8, K–8, or 9–12.
Menu	Descriptive list of all reimbursable meals offered each week, including all serving lines that provide reimbursable meals for each age/grade group and menu type.
Menu Type	Lunch or breakfast.

Preparing for Certification Submission

The following guidance will assist CEs in preparing to submit documentation to become certified.

Texas Unified Nutrition Programs System (TX-UNPS)

All documentation for certification must be submitted to TDA through TX-UNPS using the Meal Pattern Compliance Dashboard. CEs are strongly encouraged to make all necessary updates to their Application Packet before submitting for certification.

TX-UNPS Information Used in Approving Certification

TDA will use the CE-provided information in TX-UNPS Meal Pattern Compliance Dashboard when reviewing the documentation submitted for certification including the following:

- Contact information, including but not limited to the name of the current superintendent, child nutrition director, and other authorized representative(s)
- Names and addresses for all schools operating under the CE

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- Correct grades for each school
- Breakfast and lunch mealtimes
- Menu planning method for breakfast
- Availability of offer versus serve (OVS)

Any application-related correction that needs to be made after certification documentation has been submitted may be delayed until the certification review is completed.

Documentation Needed to Prepare for Certification Submission

CEs will find the following documents helpful in preparing documentation for certification submission:

- One week of menus for each menu type by age/grade group
- Production records, which include the portion sizes for each menu item for each menu type for each age/grade group[1]
- Standardized recipes for all applicable menu items
- Nutrition Fact Labels and ingredients for all food items
- Child Nutrition (CN) Labels for menu or food items, as applicable
- Whole Grain Statements/Labels for each whole grain menu or food item, as applicable
- Product Analysis Sheet/Manufacturer's Statement to Provide for a Grains Product, as applicable
- Product Analysis Sheet/Manufacturer's Specification for Meat/Meat Alternate (M/MA) Products, as applicable
- *USDA Foods Fact Sheets* for all USDA Foods received
- *USDA Food Buying Guide for Child Nutrition Programs*

Documentation Required for Certification

To receive certification, a CE must submit three types of documents to TDA through the TX-UNPS Meal Pattern Compliance Dashboard. Review of documentation will not begin until TDA has received a complete set of required documents.

Recommendation: Prepare each document and create an electronic file for each one before attempting to upload documentation into TX-UNPS Meal Pattern Compliance Dashboard. When all required documents are ready, upload the entire set into the TX-UNPS Meal Pattern Compliance Dashboard.

1. **One Week of Menus (CE Form)**—CEs must submit one week of menus for each age/grade group and menu type for specific dates of meal service.

   Submitted menu must be for served or planned to be served the month before submission, the month of submission, or the month after submission.

[1] Sample food production records can be accessed at *www.SquareMeals.org*.

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For new CEs, the date of submission of menus and the serving week may be extended beyond one month if the CE submits its program application documentation more than 30 days before beginning to serve meals.

For Example: If a new CE submits its application and certification materials in June of 2014, the menus submitted for certification may be the menus that will be served during September of 2014.

A menu will include the names of the entrees served as well as other menu items served with the entree.

To submit menus,

- Prepare a copy of the week's menus for each age/grade group and menu type for specific dates of meal service using the format that is typically used by the CE.
- Save or scan the file into a word document (.doc file) or .pdf file format.
- Upload the file to the TX-UNPS Meal Pattern Compliance Dashboard. (See *Recommendation under Documentation Required for Certification* subsection in this section.)

2. **Certification Menu Worksheet *Spreadsheet (USDA* Approved Form or Software)—** CEs must use the Excel *Certification Menu Worksheet (Worksheet)* developed by USDA or another USDA approved software tool[2]—to provide detailed information on the meals to be served under the new meal pattern This *Worksheet* has been designed to allow users to enter menus by day of the week and by the five required food components.

   CEs will need the information contained in the documents collected in preparation for the certification process to complete the *Worksheet* or any of the tools using approved software.

   Worksheet Navigation. The sheet tabs at the bottom of the *Worksheet* screen allow the user to access the following sheets:

   - Instructions—Brief directions for completing the *Worksheet*
     [NOTE: A more detailed set of directions for completing the Worksheet can be found at *www.SquareMeals.org*.]
   - Week's Menu—A series of text boxes and dropdown items that allow the CE to enter a descriptive list of all meals offered for that week
   - Daily Menu—A series of text boxes and dropdown items that allow the CE to designate the menu items to be served day by day
   - Option Veg Bar—A series of text boxes and dropdown items that allow the CE to designate menu items to be served on the vegetable bar by the week and day
   - Notes Page—A text box that allows the CE to provide additional information required by TDA as well as other information the CE deems applicable to TDA's approval of the *Worksheet*.

[2] The worksheets used for certification are located at *www.SquareMeals.org*. Approved USDA software forms can be found at *http://healthymeals.nal.usda.gov/menu-planning/nutrition-standards-school-meals/menu-planning-tools-approved-certification-six-cent.*

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- Weekly Report—A tool within the Worksheet that allows the CE to view a report based on the menu items entered in comparison to the required components
- Simplified Nutrient Assessment—A tool to create a nutrient assessment for those CEs not using a nutrient analysis software

To submit the *Certification Menu Worksheet* spreadsheet,

- Download the *Worksheet* and directions from *www.SquareMeals.org*.
- Enter the food items and their portion sizes for one week of menus for each menu offered by age/grade group for both lunch and breakfast reimbursable meals, if applicable, into the worksheet.

  For Example: A CE creates four (4) Worksheet files:

  - A total of three (3) lunch Worksheets files, one for each of the different age/grade groups: K–5, 6–8, and 9–12
  - One (1) breakfast Worksheet file for age/grade group K–12

  If a CE has multiple sites with the same age/grade group (i.e., three different high schools) and each site serves a different menu, the CE will need to create a separate Worksheet file for each of these sites.
- Save the document as an Excel file (*.xls file*).
- Upload the file to the TX-UNPS Meal Pattern Compliance Dashboard. (See *Recommendation under Documentation Required for Certification* Step 3 below.)

  [NOTE: If a CE is using the Simplified Nutrition Assessment incorporated into the *Worksheet*, the CE will wait to upload the *Worksheet* until after completing the Simplified Nutrient Assessment described in the Step 3 on this section.]

3. **Nutrient Analysis[3] or Simplified Nutrient Assessment[4]**—CEs must provide nutrient information through one of two options: (1) the simplified nutrient assessment tool incorporated in the *Worksheet* or (2) a nutrient analysis (using a USDA approved software) for all planned meals:

   To submit the menu nutrient information,

   - Use the nutrition facts, product labels, and product manufacturing documents to provide nutrient information about the food items served on each menu.
   - Choose one of the following options to provide nutrient information:

     Option 1: Simplified Nutrient Assessment

     CEs that choose to use this tool will not need to prepare a nutrient analysis. The *Simplified Nutrient Assessment* tool is incorporated within the *Worksheet* spreadsheet. Some of the food items, portions/serving amounts will prepopulate the *Simplified Nutrient*

[3] Approved list of software available at *http://healthymeals.nal.usda.gov/menu-planning/nutrition-standards-school-meals*.
[4] The Simplified Nutrient Assessment is considered a proxy for a complete nutrient analysis.

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Assessment tool after completing menu entry. However, there are still questions that the CE must answer about each of the prepopulated entries. If CEs use Option 1, they will complete all sheets (tabs at the bottom of the page) in the worksheet.

- Use the *Simplified Nutrient Assessment* sheet tab at the bottom of Worksheet entry section to provide nutrient information.
- Answer all questions and provide additional information as required.
- Save the Worksheet as an *.xls file*. This single file will contain both the *Certification Menu Worksheet* and the *Simplified Nutrient Assessment* information.
- Upload the file to the TX-UNPS Meal Pattern Compliance Dashboard. (See *Recommendation under Documentation Required for Certification* subsection in this section.)

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Option 2: Nutrient Analysis

CEs that choose to use a USDA approved software to determine the nutrient content for their menus should use this option. However, CEs are not required to purchase nutrient analysis software. Any CE that does not have USDA approved software[4] should use Option 1. CEs that choose Option 2 will not complete the *Simplified Nutrient Assessment* incorporated into the *Worksheet* (sheet tab at the bottom of the page).

- Submit a nutrient analysis of calories and saturated fat for each menu type by age/grade group for each day as well as the week using software approved by USDA for this purpose.
- Save (or scan) the nutrient analysis as a .doc file or .pdf file.
- Upload the file to the TX-UNPS Meal Pattern Compliance Dashboard. (See *Recommendation under Documentation Required for Certification* subsection in this section.)

Other Tools to Help with Certification

TDA has developed additional tools to assist CEs in preparing for certification. The following documents are located in the School Nutrition Programs Forms table at *www.SquareMeals.org*:

- *CE Resource Checklist: Preparing for Certification for Performance-Based Reimbursement*—A resource to assist the CEs applying for certification
- *Certification for Performance-Based Reimbursement Checklist Card*—An abbreviated checklist of documents and actions to take in getting ready for certification

Decision Timeline

TDA will respond within 60 days from the date of receipt of all required documentation to approve or deny certification.

Seamless Summer Option

CEs that are certified are eligible for performance-based reimbursement for meals served during their Seamless Summer Option beginning in the summer after their certification.

For Example: A CE that is certified during SY 2013–2014 will be eligible for performance-based reimbursement for meal served during its Seamless Summer Option program during the summer of 2014.

Compliance

The administrative review (AR) process includes monitoring of the implementation of the updated meal patterns and certification activities. If a CE is found to be out of compliance with the meal pattern during an AR, TDA may stop the CE's performance-based reimbursement off and/or recover previous payments made for performance-based reimbursement.

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Appeal Rights

CEs may not appeal a decision to deny certification for performance-based reimbursement. However, a CE may appeal TDA's decision to stop a CE's performance-based reimbursement or to recover previous payment made for performance-based reimbursement.[5]

Records Retention

CEs must retain documentation related to certification. All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, nonprofit organizations, and residential child care institutions after the end of the fiscal year to which they pertain. If audit findings have not been resolved, the records must be maintained as long as required for the resolution of the issues raised by the audit. For more information on records retention, see the *Administrator's Reference Manual (ARM), Section 30, Records Retention*.

Information Box 1
Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

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[5] Appeal procedures are set out in 7 CFR 210.18(q) and Title 4, Part 1, Chapter 26, Subchapter E of the Texas Administrative Code.

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Section 3

Civil Rights & Confidentiality

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Section 3, Civil Rights & Confidentiality

Update Guide

July 28, 2022	Clarified guidance on the following topics: - Civil rights - Nondiscrimination statement
January 4, 2022	Updated *Section 3, Civil Rights & Confidentiality* to correct minor typos. Clarified information on the following topic: - Nondiscrimination statement links
August 12, 2020	Created a new *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality* which incorporates guidance from the previous *Section 4A, Protecting Confidential Information* and the civil rights guidance previously located in *Section 19, Other Operational Issues*. Updated all *Administrator's Reference Manual (ARM)* section references. Clarified information on the following topics: – Contracting entity (CE) complaint form and procedure – Gender separation – Records retention

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Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

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Seamless Summer Option
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- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
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- Vending Machine to Dispense Reimbursable Meals

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CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

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Civil Rights & Confidentiality

School Nutrition Programs (SNPs) are designed and funded to provide nutritional meals to students. Contracting entities (CEs) and CE staff are expected to operate these programs in a manner that protects the civil rights and confidential information of program participants and staff.

Guidance in this section applies to the following programs:

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Seamless Summer Operation (SSO)
  - Fresh Fruit and Vegetable Program (FFVP)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

Guidance in the following *Administrator's Reference Manual (ARM)* sections will also assist the CE in protecting confidential information:

- *Section 2, Program Application & Agreement*
- *Section 4, Eligibility Determination*
- *Section 5, Special Provision Options*
- *Section 6, Verification of Eligibility*

Definitions for This Section

For this section, the following definitions provide information that may assist CEs:

Confidential Information	Information that contains personal information on program participants and the families of program participants, including, but not limited to, eligibility status, financial information, and personal identification numbers such as social security numbers.
Ethics	Principles of conduct governing and guiding an individual or a group.
Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions staff are to take related to specific events or financial transactions. For this section, the word procedure is used to refer to all of these types of documents.

Civil Rights

Under USDA regulations, contracting entities (CEs) must assure that school nutrition program (SNP) benefits are made available and provided to all eligible individuals without discrimination on the basis of

1. Age
2. Color
3. Disability
4. National origin
5. Race
6. Sex (including gender identity and sexual orientation)

Therefore, CEs must not separate or segregate students or provide different meal

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services based on age, color, disability, national origin, race, and gender.

Gender Separation Exception

In specific circumstances, CEs may request an exception to the gender segregation prohibition. CEs may apply for an exception if the following circumstances exist:

1. Meal service occurs at religious institutions operating under the (a) dictates (laws or decrees) of the religion with which they are affiliated and (b) religious doctrines prohibit mixing or co-mingling different genders.
2. Meal service occurs at juvenile correctional facilities where combining the members of opposite gender would present a potential safety risk (i.e., juvenile detention centers where genders are separated for safety).
3. Meal service occurs at facilities that fully separate by gender as part of their normal operations (summer camps or conferences where gender separation is essential to the program's design, i.e., gender-based conferences or summer programs).

To be approved for this exception, a CE must submit the *Gender Separation Exception Request* form which is located in Texas Unified Nutrition Programs System (TX-UNPS) on the Application, Download Forms page, *SNP-000 Request for Exemptions/Waivers for Program Operation*. The form is submitted electronically as described on the form.

Communication about Program Availability

The CE must ensure that participants are provided information about school meal program benefits and services, nondiscrimination policy, and all significant changes in existing requirements that pertain to program eligibility and benefits. This may be done through a news or media release, student/parent handbook, and letters to parents. However, CEs must also send a household meal application to the parents or guardians of each student enrolled who is not predetermined to be eligible. CE's may also involve local minority and grassroots organizations in sharing this information.

Right to Not Participate

Just as the civil rights requirements protect all students participating in SNPs from discrimination, it also protects the rights of any student who chooses not to participate. Students cannot be required to participate in the SNP. Households cannot be required to complete a household meal application.

Nondiscrimination Statement

CEs must include the nondiscrimination statement on all forms of communication and printed program information that are sent to or shared with students and student households. This includes, but is not limited to, menus, notifications, letters, and household meal applications. If a CE uses a vendor or food service management company (FSMC), the CE needs to ensure that the vendor or FSMC includes the required nondiscrimination statement on meal and menu signage and informational documents.

Signage in the Meal Service Area

CEs use a variety of signage strategies to communicate information about reimbursable meals in and around the meal service area.

Signage Not Related to the SNP

Inspirational or message posters that do not provide information related to the SNP, the meal service, or menu choices are not required to include the nondiscrimination statement.

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The following guidance will assist CEs in knowing how to place the nondiscrimination statement on signage that communicates information about a reimbursable meal:

- If the CE uses one main sign to communicate the options for a reimbursable meal, that sign must have the nondiscrimination statement.
- If the CE uses a main sign at the beginning of the line and multiple smaller signs placed strategically in targeted service areas, the main sign must have the nondiscrimination statement. The other signs may have the nondiscrimination statement.
- CEs that use an electronic message board to display the menu must also ensure that the nondiscrimination statement is posted. However, the location of the message board may make placement of the nondiscrimination statement difficult or may not be readable because the placement is too far above the floor. In these cases, the CE must ensure that the nondiscrimination statement is placed in a location near the service line where all students are able to see it.

If CEs have additional questions about whether signage needs the nondiscrimination statement, they should contact their education service center (ESC).

The nondiscrimination statement is issued by the United States Department of Agriculture (USDA), and CEs must include the statement in its entirety. USDA provides this statement in English and Spanish.

English:
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 (including gender identity and sexual orientation), 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/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.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.

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Spanish:
For all other FNS nutrition assistance programs, State or local agencies, and their subrecipients, must post the following Nondiscrimination Statement:

Los demás programas de asistencia nutricional del FNS, las agencias estatales y locales, y sus beneficiarios secundarios, deben publicar el siguiente Aviso de No Discriminación:

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 (incluyendo identidad de género y orientación sexual), 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.fns.usda.gov/sites/default/files/resource-files/usdaprogram-discrimination-complaint-form-spanish.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;

(2) fax: (833) 256-1665 o(202) 690-7442; o

(3) correo electrónico: ***program.intake@usda.gov***.

Esta entidad es un proveedor que brinda igualdad de oportunidades.

In limited circumstances, CEs may use the abbreviated nondiscrimination statement on documents (print or electronic) that have limited space such as brochures or menus. The abbreviated nondiscrimination statement cannot be used on letters. Before using the abbreviated statement, CEs must ensure that the document cannot be formatted or laid out to include the full nondiscrimination statement.

Abbreviated Nondiscrimination Statement:	This institution is an equal opportunity provider.

Nondiscrimination Poster

CEs must display the USDA nondiscrimination *…And Justice for All* poster prominently at each feeding location. Posters are not required in the office of personnel who distribute and/or process applications.

USDA-approved posters are available from the CE's regional education service center (ESC).

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Program Participant Racial and Ethnic Data

CEs must complete the *Food and Nutrition Pre-Award Civil Rights Compliance Review* form with their initial SNP application and agreement and must maintain racial and ethnic data each year after. There are two methods for maintaining this data:

For CEs Submitting Data to the Public Education Information Management System (PEIMS)

In Texas, public and charter schools are required to maintain this data through the state's Public Education Information Management System (PEIMS) which is administered by the Texas Education Agency (TEA). CEs that use the PEIMS system are not required to retain racial and ethnic data in another format after the first year of participation in the SNP.

For CEs Not Submitting Data to the Public Education Information Management System (PEIMS)

Any CE that does not report PEIMS data to TEA must collect racial and ethnic data on potentially eligible participants, applicants, and participants each year. CEs may use *Food and Nutrition Pre-Award Civil Rights Compliance Review* form to retain racial and ethnic data or a form created by the CE as long as the form provides the same information. CEs are not required to submit this information to TDA annually after the initial application. Instead, the documentation must be retained onsite.

Equal Access to Meals for All Students

When a serving site offers a selection of more than one type of meal, more than one item, or different types of milk that are part of the reimbursable meal, the school must offer all students the same choices no matter the eligibility of the student—free, reduced-price, or paid. If all types of meals or selected items, including those receiving free or reduced-price meals or free milk, are not made available to all students, those meals or items must not be claimed as a reimbursable meal or milk. This requirement also applies when a CE chooses to provide a lower cost alternate meal for students with unpaid meal charges.[1]

Civil Rights Training

Civil rights training is an annual requirement for all school nutrition programs. This training requirement applies to any CE staff member who takes a role in processing the eligibility for household meal applications, who interacts with participants about program eligibility, or who provides services related to the operation or management of the program. This includes any staff member who collects payments, provides eligibility information, processes applications, handles appeals, or any other activity where there is a possibility of discrimination occurring.

The civil rights training requirement is not limited to SNP staff.

The CE is not required to provide Civil Rights training to volunteers, but it is recommended. Training is also not required for individuals who provide information about a student's participation for a categorical program to SNP staff when the person is not responsible for certifying the eligibility of students for the SNP. This would include, but is not limited to, the homeless liaison, foster liaison, migrant director, or early childhood director who provides a list of students identified as categorical program participants to the SNP. However, if any of these individuals also have a role in managing and/or operating the SNP, the individuals must have civil rights training.

Teachers, administrators, or other CE staff who help to monitor activities in the cafeteria (on

[1] See the *Administrator's Reference Manual (ARM), Section19, Meal Pricing* for additional information on this topic.

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assigned duty) are not required to take the civil rights training. This includes teachers who sit with students to monitor table activities during meals.

To assist CEs with meeting this requirement, civil rights training is available at *www.SquareMeals.org*. The required civil rights training may also be counted toward meeting the continuing education/training professional standards.[2]

CE's Complaint Procedure and Form

CE's must have a written complaint procedure[3] that ensures the following occurs:

1. Parents or guardians of students, potential participants, and the public are informed on how to submit a complaint
2. Staff know how to process a complaint when one is received.

Information about complaint procedures should be provided in English or the appropriate language to those who have Limited English Proficiency (LEP).[4] Sharing information and providing notification about the CE's complaint procedure may be communicated through news releases, letters to parents, and household meal application forms.

- Communications about the complaint form and how to submit a complaint must include the following information:
  - Statement about where complaints may be filed, including an explanation that the person may also file complaints directly to TDA or USDA[5] and with information about how to file directly to TDA or USDA.
  - Identity of any agency to which complaints are forwarded or shared (i.e., TDA, USDA, or another governing agency).
- Procedures for handling complaints must include the following:
  - Method to indicate how the complaint was made: verbally, in writing, or in person.
  - Method to indicate the name of the person receiving the complaint and if the person receiving the complaint transcribed the complaint.
  - Adequate documentation to demonstrate that the CE did not attempt to resolve the complaint without forwarding the complaint to TDA.

    The CE may initiate resolution of the complaint while waiting for a response from TDA. If the CE does begin to address the complaint, the CE must maintain documentation of what was done to resolve the complaint.

All SNP complaints alleging discrimination based on race, color, national origin, sex, age, or disability in verbal statements, written statements, or stated in person must be accepted by SNP personnel and must be forwarded to TDA.[6]

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2 See the *Administrator's Reference Manual, Section 27, Professional Standards* for additional information on this topic.

3 When a complaint is submitted directly to CE, the CE will use the CE's complaint form. TDA provides a prototype for a *www.SquareMeals.org* to assist the CE in developing a form.

4 Designation for those who have a limited ability to speak, read, write, or understand in English, including low literacy and those whose native language is not English.

5 See the Contact Information for the Texas Department of Agriculture (TDA) Food and Nutrition page located after the Table of Contents in this section. See the *Nondiscrimination Statement* subsection under the *Civil Rights* topic for detailed contact information for filing a complaint directly to USDA.

6 See the Contact Information for the Texas Department of Agriculture (TDA) Food and Nutrition page located at the beginning of this section.

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CE Sample Complaint Form

A sample complaint form that CEs can use to assist them in developing a local form is provided at *www.SquareMeals.org* on the Administrations and Forms page.

TDA Complaint Form

TDA provides the TDA complaint form at *www.SquareMeals.org* that anyone may use to submit a complaint directly to TDA.

Confidential Information

The issues of confidentiality and privacy of personal data are complicated and sensitive. Before developing local disclosure policies, CEs should discuss the issue with their attorney. Local policy may include requirements for a Memorandum of Agreement when data is shared with agencies that do not include federal, state, or local agencies evaluating or reviewing Child Nutrition Program operations or the Comptroller General.

All CE staff must carefully protect confidential information for all program participants and their families. CEs should have written processes or procedures for protecting private information provided by households.

Guidelines for Disclosure to Specific Agencies

CEs may use the *Disclosure Chart* to help determine what type of information can be released to a specific type of agency. If the CE plans to release more than the allowed types of information, the CE must obtain written consent prior to disclosure.

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Disclosure Chart	
CE may disclose eligibility status information without parental consent.	
All Eligibility Information	Eligibility Status Only
• Other USDA Child Nutrition Programs (CNPs)[7] • Comptroller General of the United States for purposes of audit and examination • Federal Communications Commission (FCC) auditors conducting E-audit • Federal, state, or local law enforcement officials investigating alleged violations of any of the CNPs or investigating violations of any of the programs that are authorized to have access to names and eligibility status	• State health program other than Medicaid/SCHIP, administered by a state agency or local education agency • Federal education programs • Federal, state, or local means-tested nutrition programs[8] with comparable eligibility standard • State education programs administered by the state agency or local education agencies
CE may disclose eligibility information with prior parent notice with the parent given the opportunity to	

[7] USDA Nutrition Programs include the following: Child Nutrition Programs—National School Lunch Program (NSLP), School Breakfast Program (SBP); Child and Adult Care Food Program (CACFP); Summer Food Service Program (SFSP), and Fresh Fruit and Vegetable Program; Special Supplemental Nutrition Program for Women, Infants, and Children, commonly known as WIC; WIC Farmers Market Nutrition Program (FMNP); and Senior Farmers Market Nutrition Program (SFMNP)

[8] Federal means-tested nutrition programs with comparable eligibility standards include the following: Supplemental Nutrition Assistance Program (SNAP), which includes the Temporary Assistance for Needy Families (TANF) and Pandemic SNAP (P-SNAP), and the Food Distribution Programs (FDP) which includes USDA Foods in School, The Emergency Food Assistance Programs (TEFAP), Food Distribution Program on Indian Reservations (FDPIR), Commodity Supplemental Food Program (CSFP), and USDA Foods Disaster Assistance.

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decline the release of information.
All Eligibility Information
• Medicaid or the State Children's Health Insurance Program (SCHIP), administered by a state or local agency authorized under Titles XIX or XXI of the Social Security Act to identify and enroll eligible students
CE may disclose eligibility information with parent consent.
Only Eligibility Status Information
• Federal health programs other than Medicaid/SCHIP • Local education programs • Local health program

CEs should provide information to following agencies that commonly request disclosure according to the guidelines described:

Aggregate Data

The school nutrition department may disclose aggregate data to any program or individual when students cannot be identified through the release of the aggregate data or by means of deduction. An example of aggregate data is the number of students eligible for free or reduced-price meals in a school district when the school district is large enough to prevent identification through deduction. As aggregate data, this information does not identify individual students; therefore, parental notification and parental consent are not needed.

Family Educational Rights and Privacy Act (FERPA)

The U.S. Department of Education has established that educational records must be guided by the Family Educational Rights and Privacy (FERPA). SNPs are not governed by FERPA. However, any information that the CE provides to educational officials is regulated by FERPA and USDA confidentiality regulations.

For Example: A school nutrition department provides eligibility status information to the local school district so that the district can take advantage of a special program for students from low-income households. The information the school district receives must follow FERPA guidelines even though the school nutrition department is not governed by FERPA requirements. However, the CE that receives the information from the SNP must also follow USDA regulations with the use and disclosure of this information.

Federal Communications Commission (FCC) E-Rate Audits

The FCC, through the Universal Service Administrative Company (USAC), administers the E-Rate program. The USAC provides discounts to schools to obtain affordable telecommunication and Internet access. The discount rates are based on the percentage of students who are approved for free and reduced-price school meals. The USAC has contracted with private firms to conduct audits of the discount rates given to schools. These auditors are bound by disclosure of confidentiality requirements; they cannot share or otherwise release individual information. The release of information regarding students eligible for free and reduced-price meals and household school meal applications to auditors is permitted.

USDA has worked with the FCC to ensure that its audit protocols comply with the requirements of the NSLA. CEs may share individual students' information with authorized FCC auditors as long as the following audit procedures are used for the following purposes:

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- Compare aggregate enrollment data with aggregate free and reduced-price eligibility data.
- For a small sample of eligible students, request their household school meal applications, which may include direct certification records.
- Confirm that a household school meal application or other documentation exists for each selected student.
- Prohibit auditors from retaining personal student identification.

FCC auditors cannot verify the accuracy of the CE's determinations, conduct verification of household school meal applications, and cannot contact the household or other sources (such as assistance agencies or employers) to confirm the information on the household school meal application. CEs may redact (remove or black-out) all information from the household school meal application that does not show that the student has an approved household school meal application or other documentation on file.

For Example: If the student is identified by her or his student number, the CE could redact the student's name, address, etc. as long as the student number and approved eligibility status were visible.

Auditors may perform the following tasks:

- Ensure the information on the household school meal application was accurately processed, that the income and the number of persons in the household were totaled correctly, and the appropriate IEGs were used.
- Confirm that the students listed on rosters as eligible for free or reduced-price meals have approved household school meal applications on file or have been determined to be categorically eligible.
- Confirm that the number of students used for statistical purposes is based on approved household school meal applications.

Any discrepancies in the above areas must be brought to the attention of the CE.

Federal Education Programs

CE officials may disclose a student's eligibility status to individuals who are directly connected with and who have a need to know in order to administer and enforce federal education program requirements. However, other information obtained from the free and reduced-price household school meal application or through direct certification cannot be disclosed. CEs must establish procedures that limit access to a student's eligibility status to as few individuals as possible—i.e., only those who need to know.

National Assessment of Educational Progress (NAEP)

CEs may disclose, without parent or guardian consent, students' names and eligibility status to persons who are directly connected to the administration or enforcement of NAEP because NAEP is a federal education program. The term *persons directly connected* for the purpose of disclosure to NAEP includes federal, state, and local program operators responsible for NAEP program administration or program compliance and their contractors.

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This does not imply that these individuals have routine access to participants' eligibility status. There must be a *need to know* related to the administration or enforcement of a federal education program or for legitimate NAEP purposes. However, even though CEs may disclose information to NAEP programs without parent or guardian consent, CEs are encouraged to inform households when they plan to disclose or use eligibility information outside the originating program and to have a written agreement with NAEP officials.[9]

NAEP State Assessment Programs

Additionally, CEs may disclose students' names and eligibility status to persons directly connected with the administration or enforcement of state educational assessment programs to the extent that the state assessment is part of the NAEP or the assessment program is established at the state, not the local, level.

Need to Know

CEs may disclose students' eligibility status only to persons determined to be *directly connected* with the administration or enforcement of a federal education program, state education program, state health program, or a means-tested nutrition program, as well as to persons directly connected with the Comptroller General Office or law enforcement for an authorized activity.

Although a program or person may be authorized under the NSLA to receive free and reduced-price eligibility information, there must be a legitimate *need to know* to provide a service or carry out an authorized activity.

For Example: Medicaid and CHIP agencies and health insurance program operators receiving students' free and reduced-price meal eligibility information must use that information only to enroll eligible students in Medicaid or CHIP.

State agencies, local education agencies (LEAs), and schools must ensure that data systems, records, and other means of accessing a student's eligibility status are limited to officials directly connected with administration or enforcement of a federal or state program activity. This includes federal, state, or local program operations responsible for the ongoing operation of the program or activity, or responsible for program compliance. Eligibility information cannot be made available to all school officials as a general practice.

For Example: A teacher who is directly responsible for the administration of a federal education program (e.g., providing tutorial or other assistance under NCLB for students with high economic need) is given limited access to information necessary to provide services. Other staff who are not providing such assistance under appropriate statutory or regulatory requirement cannot have access. Web-based data systems must have masking or de-identification capability to prevent unauthorized access to free or reduced-price eligibility status.

Other Child Nutrition Programs

The CE may disclose all eligibility information from a household's free and reduced-price meal application or information obtained through direct certification to persons directly connected with the administration or enforcement of the programs authorized under the Child Nutrition Programs. This includes NSLP, SBP, School Milk Program (SMP), Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), and Women, Infants, and Children (WIC) Food and Nutrition Service.

This means that program eligibility information collected for any one of the CNPs may be shared with another CNP, even if the programs are sponsored by different entities. For example, a public school may disclose information from children's free and reduced-price school meal applications, without household consent, to an SFSP administered by a

[9] See the *Memorandum of Agreement Regarding Disclosure* subsection in this section for more information on a written agreement.

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park and recreation agency.

Other Federal or State Means-Tested Programs

Without household consent, a CE may only disclose a child's name and eligibility status to a person directly connected to other Federal or State means-tested programs. Disclosure of other information, such as a parent or guardian's name and address, requires household notification and consent.

The CE may include a disclosure statement to inform the household about information to be disclosed in the letter sent to households at the beginning of the year, the household school meal application, or other notification documentation.

In all cases, the receiving entity that is given disclosed information must be informed in writing of the following:

- Eligibility information may only be used for the purpose for which the disclosure was made.
- Further use or disclosure to other parties is prohibited.
- A violation of federal law or USDA regulations restricting disclosure may result in a fine of not more than $1,000 or imprisonment of not more than 1 year, or both.

Other State Education Programs

Other state education programs also are eligible to have access to participants' names and eligibility status, without parent or guardian consent, but the program must be established at the state, not the local, level.

Memorandum of Agreement Regarding Disclosure

Prior to disclosing information on the eligibility of individual students, CE officials should enter into a memorandum of agreement (or memorandum of understanding).

Education Agencies

For disclosure for education purposes, the CE and the receiving agency must have an agreement that includes the following:

1. Specify the names of the individuals who would have access to the information
2. Provide an explanation of how the information would be used in implementing the No Child Left Behind (NCLB), Elementary and Secondary Education Act (ESEA)
3. Provide an explanation of how the information will be protected from unauthorized uses and third-party disclosures
4. Provide a statement of the penalties for misuse of the information[10]

Medicaid/SCHIP Agencies

For any disclosures to Medicaid or CHIP, the CE and receiving agency must have an agreement that includes the following information:

1. Health insurance program or health agency receiving student's eligibility information
2. Description of the information that will be disclosed, specifying that the information must only be used to seek to enroll students in Medicaid or CHIP

[10] In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than $1,000 or imprisoned for up to 1 year, or both.

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3. The way the information will be used and how it will be protected from unauthorized uses and disclosures
4. Penalties for unauthorized disclosure
5. Signature of a CE official (also called *determining agency*) and the Medicaid/CHIP program or agency receiving the students' eligibility information

Other Entities

For any disclosures to other entities, including NAEP, the CE and receiving agency must have an agreement that includes the following:

- Signatures of authorized representatives for the CE and receiving entity
- Identification of the entity receiving the information
- Description of the information to be disclosed and how it will be used
- Description of how the information will be protected from unauthorized use and disclosure
- Description the penalties for unauthorized disclosure

Notice of Disclosure

The notice of either potential or specific disclosure must be given to parents or guardians prior to disclosure and with a reasonable time limit for parents or guardians to elect not to have their students' information disclosed. CEs may incorporate potential disclosures or specific disclosure descriptions into documents that regularly go out to households.

For Example: The notice of potential disclosure or specific disclosure may be provided as follows:

- In the letter to households that accompanies the free and reduced-price household school meal application
- In the letter informing parents/guardians of their students' eligibility for free meals through direct certification
- In the multi-student/multi-use household school meal application

The notification of potential disclosure or specific disclosure to parents or guardians must include the following:

- An explanation that information will be used by other federal, state, or local agencies as authorized by the National School Lunch Act (A list of specific programs is not necessary.)
- A list of the information that may be disclosed, including students' names, eligibility status, or other information obtained through the household school meal application or direct certification
- A statement about their right to refuse consent to the disclosure
- An explanation that the information will be used to facilitate the enrollment of eligible students in a health insurance program or other programs
- A statement that their decision will not affect their students' eligibility for free and reduced-price meals

Consent Statement Requirements

If the disclosure of data requires parental or guardian consent, the consent statement must be in writing. It may be obtained at the time the household submits a household meal application or at a later time. Parental consent to release information must be obtained each school year; consent forms cannot be extended from one school year to the next.

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The consent statement must describe the following actions:

- Identify the information that will be shared and how the information will be used
- Be dated and signed by the parent or guardian of the applicant household, even though the household school meal application for free and reduced-price meals may be signed by any adult household member
- State that failing to sign the consent statement will not affect eligibility for or participation in the program and that the information will not be shared by the receiving program with any other entity or program
- Enable the parent/guardian/adult to limit consent to only those programs with which he or she wishes to share information

  For Example: The consent statement could use a check-off system under which the applicant would check or initial a box to indicate that he or she wants to have information disclosed to determine eligibility for program benefits from a specific program.

Parent Not Living in the Student's Household and Noncustodial Parents

Periodically, schools will be asked to release eligibility information to a non-custodial parent or to a parent who has split or joint custody.

For Example: A father shares joint custody with the children's mother but believes that the mother has misrepresented household circumstances and that the children are not eligible for reduced price meals. The father asks to see the application submitted by the mother, so he can see if the form contains accurate information.

CEs are not permitted to release eligibility information contained on a household application to a parent who does not live in the student's household without written permission from the person who signed the application. If there is any question about releasing eligibility information for custody or divorce actions, local officials should consult their legal counsel before releasing eligibility information. The sole exception would be a request made under a court order or subpoena. An attorney's request would not be a sufficient justification for the release of the application data. CEs should consult with their local counsel to determine if the disclosure is required.

TDA Forms

TDA provides the following forms on the SquareMeals website[11] to assist CEs in implementing the guidance presented in this section:

- *Pre-Award Civil Rights Compliance Review Form*
- *Texas Department of Agriculture Food & Nutrition Complaint Form*

[11] Available at *www.squaremeals.org*.

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Records Retention

TDA will check documentation related to civil rights training during an administrative review and may request documentation of training at any time.[12] CEs have the option to maintain records on paper or electronically.

These records must be accessible to appropriate CE staff members and federal or state reviewers. TDA may request documentation related to confidentiality during both offsite and onsite administrative review processes as well as reviews specific to procurement.

Information Box 1

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Nonprofit private schools, other organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, other nonprofit organizations, and residential child care institutions (RCCIs) after the end of the fiscal year to which they pertain.

Retained records include, but are not limited to, the following types of documentation:

Eligibility

- CEs must retain documentation of circumstances when student eligibility status is shared.
- CEs must retain agreements stipulating how and when student eligibility status is shared.
- CEs must retain notifications and responses when CEs ask households for permission to share student eligibility status.

Civil Rights

- Nondiscrimination Statement. CEs must retain documentation that demonstrates their use of the nondiscrimination statement on communications with households and other documents as appropriate.

  [NOTE: When a document is printed or released using the most current nondiscrimination statement when the document was printed or released, the CE is not required to retroactively update the document with a nondiscrimination statement that is issued after the print or release date. If the document is reprinted or released again, the nondiscrimination statement must be updated to reflect the most current statement. However, the CE should maintain records that indicate when documents were printed or released in order to demonstrate that the correct nondiscrimination statement was used.]

- Training. CEs must document that civil rights training was conducted. Documentation must include the following information: date, topic, and participants names, and indication of attendance.

Complaints

CEs must retain documentation of all complaints submitted, documentation submitted to TDA, and documentation related to the resolution of any complaint.

[12] See the *Records Retention* subsection in this section for additional information on this topic.

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Compliance

TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance. CEs must make available, upon request of the awarding agency (state or federal), any or all of the documentation described in the *Records Retention* subsection in this section.

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Section 4

Eligibility Determination

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Section 4, Eligibility Determination

Update Guide

September 29, 2022	Clarified guidance on the following topics: - Carryover eligibility - Other source categorical eligible program determination
July 28, 2022	Updated *Section 4, Eligibility Determination* to remove the Nondiscrimination Statement. This statement is found in *Section 3, Civil Rights*. Clarified information on the following topics: - Extended or Extension of Categorical Eligibility definition - Indian Tribal Organization definition - Local Educational Agency (LEA) for School Nutrition Programs definition - Removed FSMC role in determining eligibility guidance - *Security Authority for Users Access Manager Form* (FND-135)
May 27, 2021	Updated *Section 4, Eligibility Determination* to correct minor typos. Clarified information on the following topics: - Nondiscrimination statement links - Pre-kindergarten eligibility
August 12, 2020	Updated *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* to apply a new title and updated *Administrator's Reference Manual (ARM)* section references. Incorporated the following United States Department of Agriculture (USDA) guidance: – *USDA Memo SP 05-2018, Providing Child Nutrition Programs Benefits to Disaster Survivor Evacuees* (January 19, 2018) – *USDA Memo SP 46-2014, Disaster Responses* (May 19, 2014) Clarified information on the following topics: – Application submitted on behalf of a student – Carryover eligibility – Homeless eligibility during a disaster – Media release – Pre-kindergarten eligibility
April 3, 2018	Clarified information on the following topics: – Definition for state-funded early childhood program categorical eligibility – Multi-use application and sharing eligibility information – Information to include with the household application – Checklist for complete household application – Eligibility Group Determination number
September 29, 2017	Updated *Section 4, Determining Eligibility* to incorporate the following United States Department of Agriculture (USDA) guidance: – *USDA Memo SP 36-2017, Eligibility Manual for School Meals Determining and Verifying Eligibility* (July 18, 2017) – *Guide to USDA's Web-Based Prototype Application (v1.0)* (December 13, 2016) Clarified information on the following topics: – Application processing – Complete application – Confirmation review – Definitions for adult, Indian Tribal Organizations (ITO), signature, and without further application – Direct Certification – Direct Certification for Medicaid

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- Distribution of household applications
- Effectiveness date
- Electronic or web-based applications
- Extended eligibility
- Household option to decrease benefits when there is a change in circumstances
- Independent or second review of applications
- Indian Tribal Organization (ITO) pre-kindergarten program eligibility
- Managing eligibility status information
- Master list
- No income
- Notification
- Official roles and responsibilities
- Parent requested a change in eligibility
- Point of service (POS) system requirements
- Presidentially Declared Disaster
- Record retention
- Special situations, eligibility
- Student option to participate in a program
- Timeline for eligibility determination
- Timeline for the eligibility determination process
- Transferred eligibility information
- Types of household applications
- USDA Web-based prototype household application
- Use of household application; use of eligibility information

Removed disclosure and confidential guidance and relocated to *Administrator's Reference Manual (ARM), Section 4A, Protecting Confidential Information*

November 28, 2016 Updated *Section 4, Determining Eligibility* to incorporate the following United States Department of Agriculture guidance:

- *USDA Memo SP 54-2016, Community Eligibility Provision: Guidance and Updated Q&As* (September 9, 2016)
- *USDA Memo SP 52-2016, Early Implementation of Eligibility Carryover Period for Students Transitioning from Provision Schools: Sate Agency Extension Option (*August 5, 2016)
- *USDA Memo SP 51-2016, Ensuring Year-long Eligibility in the School Lunch and School Breakfast Programs (*August 5, 2016)
- *National School Lunch Program and School Breakfast Program: Eliminating Applications Through Community Eligibility as Required by the Healthy, Hunger-free Kids Action of 2010, Final Rule for 7 CFR Part 245, Federal Register, Vol 81, No. 146* (July 29, 2016)
- *USDA Memo SP 50-2016, 2016 Edition of Eligibility Manual for School Meals (*July 29, 2016)
- *USDA Memo SP 43-2016, Ensuring Access to Free and Reduced Price School Meals for Low-Income Students* (June 30, 2016)
- *USDA Memo SP 37-2016, Meaningful Access for Persons with Limited English Proficiency (LEP) in the School Meal Programs: Guidance and Q&As (*May 25, 2016)
- *USDA Memo SP 22-2016, Community Eligibility Provision: Planning and Implementation Guidance (*January 7, 2016)
- *USDA Memo SP 19-2016, Community Eligibility Provision: Guidance and Updated Q&As (*December 14, 2015)

Clarified information on the following topics:

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- Carryover, special provision schools
- Categorical eligibility
- CE operating day
- Confirmation review
- Current income
- Disaster Supplemental Nutrition Assistance Program (D-SNAP)
- Education service provider
- Enrolled student
- Foster eligibility
- Gross income
- Households that fail to apply
- Income
- Information letter requirements and options
- Limited English proficient households
- Prepopulating household applications
- Reported income
- Training
- Transfer eligibility sharing
- Use of TX-UNPS Direct Certification Direct Verification System data
- Use of household application

December 16, 2015 Updated *Section 4, Determining Eligibility* to incorporate the following United States Department of Agriculture guidance:

- *USDA Memo SP 40-2015, 2015 Edition of Eligibility Manual for School Meals (*July 7, 2015)

Clarified information on the following topics:

- Adverse action notification
- Automated data matching
- Carryover
- Confirming the format of Eligibility Determination Group Number (EDG#)
- Consent statement requirements
- Disclosure of confidential information to noncustodial parents
- Documentation
- Eligibility Determination Group Number (EDG#)
- Faxed, scanned, and web-based household applications
- Foster child
- Hearings
- Second (or Independent) review of applications
- Information shared with households
- Last four digits of the Social Security number
- Limited English Proficient
- Local education agency
- Need to Know
- No income/zero income
- Reporting in whole dollars
- State-funded early childhood program eligibility
- Telemarketing
- Transfers

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April 28, 2015

Updated *Section 4, Determining Eligibility* to incorporate the following United States Department of Agriculture guidance:

- *USDA Memo SP 62-2014, Release of the New Local Educational Agency Second Review of Applications Report* (September 9, 2014)
- *USDA Memo SP 58-2014, 2014 Edition of Eligibility Manual for School Meals (*August 8, 2014)
- *USDA Memo SP 51-2014, Eligibility Effective Date for Directly Certified Students*
  (June 19, 2014)
- *USDA Memo SP 44-2014, Questions and Answers Related to the Independent Review of Applications* (April 30, 2014)
- *7 CFR Parts 210 and 245, National School Lunch Program: Independent Review of Applications Required by the Healthy, Hunger-Free Kids Act of 2010, Federal Register,*
  Vol. 79, No 25 (February 6, 2014)
- *USDA Memo SP 11-2014, Effective Date of Free or Reduced-Price Meal Eligibility*
  (December 3, 2013)
- *USDA Memo SP 31-2010, Disclosure Requirements for Child Nutrition Programs*
  (August 23, 2010)

Clarified information on the following topics:

- Change in circumstance applications
- Direct certification
- Direct certification for Categorical Assistance Eligible Program
- Direct certification for Other Source Categorical Eligible Program
- Effective date of household applications and categorical eligibility
- Eligibility determination without household application
- Extended eligibility
- Independent or second review of household applications
- Information required for the *School Food Authority (SFA) Verification Collection*
  Report (742)
- Notification related to scanned and electronic household applications
- Records retention
- Scanned and electronic household applications
- Validation of categorical eligibility for students participating in Categorical Assistance Eligible programs and Other Source Categorical Eligible programs

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February 28, 2014	Updated *Section 4, Determining Eligibility* to incorporate the following United States Department of Agriculture guidance: – *USDA Memo SP 11-2014, Effective Date of Free or Reduced-Price Meal Eligibility* (December 3, 2013) – *USDA Eligibility Manual* (August 2013), information related to Community Eligibility Provision (CEP) Clarified information on the following topics: – Carryover related to transfers from schools operating Community Eligibility Provisions (CEP) or Provision 2 (P2) – Categorical eligibility for state-funded early childhood programs categorical eligibility – Contact information for the Texas Department of Agriculture – Effective date for household application determination – Last four numbers of Social Security number when an Eligibility Group Number (EDG) is submitted. – List of new forms related to eligibility determination – Local officials completing household applications in special circumstances – Requirement to verify categorical eligibility indicated on the household application – Requirements related to Social Security numbers – Social Security gross income when taxes are withheld – Use of Direct Certification List
October 28, 2013	Updated *Section 4, Determining Eligibility* to incorporate the following United States Department of Agriculture (USDA) guidance: – *USDA Eligibility Manual* (August 2013) – *USDA Memo SP 40-2013, Questions and Answers Regarding the Participation of Head Start Program sin Child Nutrition Programs* (May 17, 2013) – *USDA Memo SP 17-2011, Child Nutrition Reauthorization 2010: Categorical Eligibility for Children in Foster Care* (April 16, 2013) Clarified information on the following topics: – Carryover eligibility – Carryover period – Direct Certification – Disclosure of eligibility information – Factors impacting the determination of eligibility – Food Service Management System (FSMC) roles in determining eligibility – Income eligibility – Notification – Other Source Categorical Eligible Programs – Records retention – Supplemental Nutrition Assistance Program (SNAP) eligibility – TDA Resources
August 9, 2013	Updated *Section 4, Determining Eligibility* to reflect current guidance on food management service company (FMSC) training.
July 22, 2013	Updated *Section 4, Determining Eligibility* to incorporate the following guidance: – Current nondiscrimination statement provided by USDA. – Clarification on web-based household application processes. – Updated all references to the certification section to replace *Section 9C* with *Section 2C*.

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	Deleted all references to *Section 8N* since that section has been removed from the *Administrator's Reference Manual (ARM)*. CEs must follow the guidance provided in *Section 8, Breakfast* since *Section 8N* applied to SY 2012–2013 only.
February 20, 2013	Updated *Section 4, Determining Eligibility* to incorporate new USDA guidance on direct certification, eligibility determination, Limited English Proficiency, meal pattern requirements, and overt identification.

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Eligibility Determination

This section provides detailed information on certification and benefit issuance: distributing and processing household applications, direct certification, second (or independent) review of applications, notification of eligibility, and the appeals process.

[NOTE: The *Administrator's Reference Manual (ARM), Section 5, Special Provision Options; Section 6, Verification; Section 16, Program Integrity and Confidentiality;* and *Section 27, Special Milk Program* provide additional guidance on topics related to this section. The ARM is available at *www.squaremeals.org*.]

The guidance in this section applies to the following programs unless specified as applying to a specific program:

- National School Lunch Program (NSLP)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)
- Seamless Summer Program if student participation is based on student eligibility[1]

The term *household application* will be used throughout this section to refer to the household meal application for NSLP and SBP and the household free milk application for SMP.

Determining the eligibility of participants has three components:

1. **Household Application**—distribution and collection of household applications
2. **Eligibility Determination and Eligibility Categories**—defined eligibility criteria based on the following categories:
    - Income: Comparison of current Income Eligibility Guidelines (IEGs)[2] to the income information provided on the household's school meal application
    - Categorical Eligibility:
        - Direct Certification for Categorical Assistance Eligible Programs: Household participation in one of the following programs:
            - Supplemental Nutritional Assistance Program (SNAP)
            - Temporary Assistance for Needy Families (TANF)
            - Food Distribution Program on Indian Reservations (FDPIR)

              [NOTE: In Texas, there is a small population of students who may qualify under FDPIR. To directly certify an FDPIR eligible student, the CE must reach out to the tribal governing organization or appropriate tribal official to get a list of eligible students.]
            - Medicaid Free (matched in Texas-ELMS)
            - Medicaid Reduced (matched in Texas-ELMS)
        - Other Source Categorical Eligible Programs: Participation in the following programs:

[1] See *Administrator's Reference Manual (ARM), Section 12, Seamless Summer Option* for additional information on sites that base participation on student eligibility instead of site area eligibility.

[2] At the beginning of each school year (July 1), USDA updates the IEGs. TDA publishes those updates at *www.squaremeals.org*.

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- Foster[3]
- Head Start and Early Head Start pre-kindergarten programs
- Homeless, including runaways and individuals displaced by declared disasters
- Migrant
- SNAP, TANF, or FDPIR eligible students who are not directly certified

3. **Verification**—a systematic process for ensuring that participants are eligible for the free or reduced-price meals provided. Verification is not the focus of this section. For more verification information, see the *Administrator's Reference Manual (ARM), Section 6, Verification*.

Definitions for This Section

For this section, the following definitions provide information that may assist contracting entities (CEs) in determining eligibility:

Adopted Child	Adopted child who is considered to be a member of a household when the household has accepted legal responsibility for the child. The household's size and total income are considered in the eligibility determination. Adoption subsidies must be included as income. An adopted child who was previously a foster child is not categorically eligible for free meals unless the child is eligible based on income or participation in another categorically eligible program.
Adult (Specific to Household Applications)	Any individual age 18 and older. Therefore, an individual younger than 18 years of age cannot complete and/or sign her or his household application unless (1) the signer is an emancipated minor child or (2) the parent of the student is under 18. The signature of a parent, who is under the age of 18, is considered to be an adult signature in this case.
Advance Notice Period	Notice given to households when there is a decrease in benefits. Households have 10 calendar days to request an appeal of the decision. The 10 calendar days begin the day the household is sent the notification of decreased benefits.
Annualized Income	Process for calculating household income when income comes into the household at different frequencies—weekly, bi-monthly, or monthly. A conversion factor is used for this process.
Automated Data Matching Technique (NSLP/SBP Only)	Process that allows CEs to match student enrollment records and appropriate state or local agency program benefit recipient records for categorical programs through automated data matching. There are two common automated data matching processes: – CE-Level—The CE works with the state agency (or regional office if appropriate) to obtain the necessary data to match the student enrollment records with the program's benefit recipient records. For Example: The child nutrition director arranges for the Head Start director to provide a list of participants the first week in August of each year and to provide an updated list when new students are added. – State-Level—The state establishes a method for CEs to match a student enrollment list to benefit recipient records. For Example: The CE uses the Direct Certification component of the Texas Unified Nutrition Programs System (TX-UNPS)—Texas Eligibility List Management System (Texas-ELMS)—to identify SNAP, TANF, Medicaid Free, and Medicaid Reduced eligible participation.
Boarding School Students	Student in boarding school is considered a member of the household in which he or she normally resides. Therefore, household size and total household income are considered in the eligibility determination.

[3] Where the state retains legal custody of the child; see the definition for *Categorical Eligibility Determination* subsection in this section for additional information on this topic.

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Categorical Assistance Eligible Program	Program used to determine a student's eligibility based on the student's participation in a specific program, or any household member for some programs, that conveys categorical or direct certification of eligibility for free or reduced-price school meals. The following programs are classified as Categorical Assistance Eligible programs: – Supplemental Nutritional Assistance Program (SNAP)—free meals – Temporary Assistance for Needy Families (TANF) —free meals – Food Distribution Program on Indian Reservations (FDPIR) —free meals [NOTE: In Texas, there is a small population of students who may qualify under FDPIR. To directly certify an FDPIR eligible student, the CE must reach out to the tribal governing organization or appropriate tribal official to get a list of eligible students.] – Medicaid Free—free meals – Medicaid Reduced—reduced-price meals
Categorical Eligibility	Eligibility status is determined by a student, or any household member for some programs, receiving free meals under specific Categorical Assistance Eligible programs[4] or Other Source Categorical Eligible programs. Categorically eligible students receive free meals.
CE Operating Days	Days when the school nutrition program staff are preparing for or serving reimbursable meals and other days when conducting official operational tasks.
Certification of Benefit Issuance (Determining Eligibility)	Designation of eligibility for free or reduced-price meals. CEs in Texas commonly refer to this as determining eligibility.
Conversion Factor	Calculation used when income comes into the household at different frequencies—weekly, bi-monthly, or monthly, a conversion factor is applied to convert household income into annualized or annual income.
Current Income	Gross income received by a household, before deductions, for the current month, or the amount projected for the first month for which the application is filled out, or for the month prior to application. If this income is higher or lower than usual and does not fairly or accurately represent the household's actual circumstances, the household may, in conjunction with determining officials, project its annual rate of income based on the circumstance of the situation. These circumstances are described in the special situation guidance located throughout this section.
DC List, Texas Eligibility List management System (Texas-ELMS) (NSLP/SBP Only)	List of students that have been directly certified[5] using the Texas Eligibility List Management System (Texas-ELMS) in TX-UNPS for NSLP or SBP. Texas CEs match the names of enrolled students' households that qualify for SNAP, TANF, Medicaid Free, and Medicaid Reduced eligibility. [NOTE: Disaster SNAP (D-SNAP) data is included in the SNAP data provided in Texas-ELMS.] CEs must securely maintain this list onsite with their eligibility determination documentation. See the ***Records Retention*** subsection in this section for additional information on retention of eligibility documentation. CEs will also use this information on the ***School Food Authority (SFA) Verification Collection Report (FNS-742)***[6] which is submitted in TX-UNPS each year.

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4 SNAP, TANF, and FDPIR

5 CEs may also directly certify students for Other Source Categorical Eligible Programs.

6 Applies only to NSLP and SBP

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Direct Certification (NSLP/SBP Only)	Determination of eligibility for free or reduced-price meals based on documentation obtained directly from a state or local agency or authorized program representative. When a student is directly certified, the household does not need to submit a school meal application. **Direct Certification for Categorical Assistance Eligible Programs** – SNAP/TANF (Free Meals)—CEs match the names of enrolled students whose households qualify for SNAP or TANF in the TX-UNPS, Texas Eligibility List Management System (Texas-ELMS). – FDPIR (Free Meals)—In Texas, Direct Certification for FDPIR is accomplished when the CE reaches out to the local tribal organization or appropriate tribal official to get a list of eligible students. – Medicaid Free (Free Meals)—Direct Certification for Medicaid Free must be based on a match in Texas-ELMS. – Medicaid Reduced (Reduced-Price Meals)—Direct Certification for Medicaid Reduced must be based on a match in the Texas ELMS.[7] **Direct Certification for Other Source Categorical Eligible Programs** – Head Start and Early Head Start pre-kindergarten programs; homeless, including runaways and individuals displaced by declared disasters; migrant; and SNAP, TANF, or FDPIR eligible students who are not directly certified—The CE works with an authorized program representative to obtain information so the CE can match student enrollment list to a program participant list. Students who are directly certified for Other Source Categorical Programs receive free or reduced-price school meals. CEs must maintain a direct certification list that indicates the program which initiates direct certification—Categorical Assistance Eligible program and/or Other Source Categorical Eligible programs. CEs will use this information on the ***School Food Authority (SFA) Verification Collection Report (FNS-742)***[8] which is submitted in TX-UNPS each year.

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7 CEs must only use the Direct Certification component of Texas-ELMS when directly certifying households. The Direct Verification component must only be used when conducting Direct Verification of a household selected for verification.

8 Applies only to NSLP and SBP.

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Direct Certification List, CE Maintained	Direct certification list with the names of all enrolled students who are directly certified. This list, which is commonly maintained in a CE's point of service (POS) system, must delineate by type of direct certification: **Categorical Assistance Eligible Program:** – SNAP – TANF – FDPIR – Medicaid Free – Medicaid Reduced **Other Source Categorical Eligible Program:** – Head Start and Early Head Start pre-kindergarten programs – Foster[9] – Homeless, including runaways and individuals displaced by declared disasters – Migrant – SNAP, TANF, or FDPIR eligible students who are not directly certified All CEs must maintain this list with appropriate documentation onsite. All NSLP/SBP CEs must use this information on the ***School Food Authority (SFA) Verification Collection Report (FNS-742)***[10] which is submitted in TX-UNPS each year. [NOTE: The ***School Food Authority (SFA) Verification Collection Report (FNS-742)***[11] requires that CEs report direct certification for SNAP, TANF, and Other Source Categorical Eligible programs in different answer fields. CEs will need to be diligent to ensure that the correct numbers are recorded in each answer field. CEs will also report Medicaid Free and Medicaid Reduced.] All NSLP/SBP CEs must also report their direct certification numbers for Categorical Assistance Eligible programs and Other Source Categorical Eligible programs in the Community Eligibility Provision (CEP) report each year. [NOTE: The CEP report requires that CEs report a combined total for all programs.]
Early Head Start Categorical Eligibility	Early childhood program designed to provide support to children's development from birth to three years of age. Pregnant participants in Early Head Start are also eligible to receive free meals.
Economic Unit	Group of related or unrelated people who share housing and/or all significant income and expenses of its members to make up an economic unit. Generally, individuals residing in the same house are an economic unit. However, more than one economic unit may reside in the same house. – Separate economic units in the same house are characterized by prorated expenses and economic independence from one another. – If more than one economic unit resides in the same household, each unit is considered individually when determining a student's eligibility for free or reduced-price meals.
Electronic Signature	Sound, symbol, or process attached to or associated with a record that, when executed or adopted, is an intentional act to provide a signature for the record. There are different types of electronic signatures including, but not limited to, digitized signatures, passwords, personal identification numbers, and *I Agree* buttons in combination with other methods.
Emancipated Minor Child	Minor child living alone or as a separate economic unit is considered to be a household of one. Age is not a factor in defining an emancipated minor child. A student living at home who contributes toward room and board is not considered to be an emancipated minor.

9 Where the state retains legal custody of the child; see the definition for *Other Source Categorical Eligible Program Determination* in the list of definitions in this section for additional information on this topic.

10 Applies only to NSLP and SBP.

11 Applies only to NSLP and SBP.

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Enrolled Student (As defined for this section)	Student enrolled in a participating NSLP and/or SBP school. A student's eligibility to participate in NSLP and SBP is based on a student's enrollment status as defined in Texas Education Code (TEC), Title 2, Subtitle E, Chapter 25, Subchapter A, Section 25.001. See the ***Eligible Participants*** for additional information on enrolled students. [NOTE: This includes half-day students who have access to either breakfast and/or lunch.]
Extended or Extension of Categorical Eligibility	Student who is categorically eligible because the student lives in a household where a household member participates in a program that extends eligibility to other household members. All students in the household are categorically eligible for free or reduced-price meals if any member of the household, including adults, receives SNAP, TANF, Medicaid Free, or Medicaid Reduced program benefits is a member of that household. Adults in the household include parents, adult siblings, aunts, uncles, cousins, or adults that are not relatives who are part of the household.
Family Members Living Apart	Members of a household who are temporarily not living with the household are still considered to be members for eligibility purposes. Their income must be included with any other household income when making an eligibility determination. Members of the household who are not living with the household for an extended period are not included as members of the household for eligibility purposes.[12] Only that portion of income made available by them, or on their behalf, should be counted as income for eligibility determination purposes.
Foreign Exchange Students	Foreign exchange students residing in households. Foreign exchange students are considered members of the households in which they reside. Therefore, the household size and total household income are considered in the eligibility determination.
Foster Child Categorical Eligibility	Child who lives with a household but remains the legal responsibility of the Texas Department of Family and Protective Services (DFPS) or a court. In these cases, a child is placed with a foster family or relatives through a formal arrangement by a court or the state, and the state retains legal custody of the child. The key factor in determining whether a child has been adopted or placed in foster care is the identification of who has legal responsibility for the child. If DFPS or the court continues to have legal responsibility for the child, the student is a foster child who is categorically eligible for free meals, regardless of the financial circumstances of the family with whom he/she has been placed. Local education agencies (LEAs) in Texas are required to have a foster coordinator. The foster coordinator can assist SNP staff in ensuring that students who are also foster children are certified as eligible.[13]
Foster Family	Households with foster and non-foster children in the same household. Foster families may choose to include a foster child as a household member. If the household does include a foster child on its school meal application, the household must include personal income earned by the foster child on the school meal application. Foster payments received by the family from the placing agency are not considered income and do not need to be reported as household income.[14]
Gross Income	All money earned before such deductions as income taxes, employee's Social Security taxes, insurance premiums, and bonds.

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12 Members of the military who are deployed to combat areas are counted as members of the household.

13 For additional information on requirements related to foster liaisons, contact the Texas Education Agency. Numerous resources are also available at *www.tea.texas.gov/FosterCareStudentSuccess/*. The following definitions also provide additional guidance on foster child categorical eligibility: foster child categorical eligibility; foster family; kinship care; kinship care, foster child categorical eligibility; kinship care, private; kinship care, voluntary; and permanent managing conservatorship. Public and charter schools in the state of Texas are required to have a foster liaison to ensure that foster children receive all benefits available to them. The CE's foster liaison will have the necessary documentation to directly certify a foster child. By directly certifying the foster child, the student's household application is not subject to verification unless non-foster students are listed on the household application.

14 The following definitions also provide additional guidance on foster child categorical eligibility: foster child categorical eligibility; kinship care; kinship care, foster child categorical eligibility; kinship care, private; kinship care, voluntary; and permanent managing conservatorship.

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Head Start Categorical Eligibility	Students who participate in a federally funded Head Start Program are categorically eligible for free meals.
Homeless Categorical Eligibility	Student who is identified as lacking a fixed, regular, and adequate nighttime residence by the CE homeless liaison, by the director of a homeless shelter, or other appropriate official is categorically eligible.
Homeless, Displaced Because of a Declared Disaster Categorical Eligibility	Homeless student is considered displaced when the student is under 21 years of age and (1) has been displaced from her or his habitual residence as a result of a declared event or (2) her or his pre-disaster primary residence is rendered uninhabitable or inaccessible as a result of damage caused by a major disaster. These students are categorically eligible for free meals.
Household Composition	Number of individuals who make up the household's economic unit is the household composition for NSLP or SBP purposes.
Household	A group of related or unrelated individuals who are not residents of an institution or boarding house and are living as one economic unit is considered a household. Typically, the term family is used for household.
Household Unit	Group of related or unrelated individuals who live as a unit sharing housing, income, and expenses are considered a household unit. There may be more than one household unit in a residence.
Income (As defined for this section)	Any money received on a recurring basis, including earnings, pensions, and child or spousal support, unless an income source is specifically excluded by law for the Child Nutrition Programs. This definition only applies to eligibility determination as used in this section.
Income Eligibility Guidelines (IEGS)	Household size and income levels for determining eligibility for free and reduced-price meals—IEGs—published annually by the United States Department of Agriculture (USDA).
Indian Tribal Organization (ITO)	The recognized governing body of (1) *any Indian tribe, Band, Nation, or other organized Indian group on a reservation*[15] *that is recognized as eligible for federal programs and services provided to Indians because of their status as Indians;* or (2) a*ny Indian tribe or Band on a reservation holding a treaty with a State government as defined in Title 7, Code of Federal Regulations 271.2.*
Institutionalized Student	Students who reside in a residential-type facility that the state has determined is not a boarding school. A student residing in this type of facility is considered a household of one.
Institutionalized Prisoner	Household members who are institutionalized prisoners. Prisoners are not household members and may not be counted on the household application as household members.
Joint Custody	Situation where equal/joint custody has been awarded to both parents by the court and the student is considered to be a household member of both households. The student should use the eligibility status that provides the highest meal benefits to the student regardless of which parent has the custody at the time.
Kinship Care	Kinship care arrangements for a student fall into three categories: *Private*, *Voluntary*, and *Foster*. When a child is placed in kinship care where the state retains legal custody of the child, the foster child is categorically eligible for free meals.[16]

[15] Recognized ITO is defined as (1) Any Indian tribe, Band, Nation, or other organized Indian group on a reservation for example, a Rancheria, Pueblo or Colony, and including any Alaska Native Village or regional or village corporation (established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), that is on a reservation and is recognized as eligible for Federal programs and services provided to Indians because of their status as Indians; or (2) any Indian tribe or Band on a reservation holding a treaty with a State government.

[16] The following definitions also provide additional guidance on foster child categorical eligibility: foster child categorical eligibility; foster family; kinship care, foster child categorical eligibility; kinship care, private; kinship care, voluntary; and permanent managing conservatorship.

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Kinship Care, Foster Categorical Eligibility (Formal Kinship Care or Public Kinship Care)	Circumstance where the Texas Department of Family and Protective Services (DFPS) places the child with relatives. In these situations, DFPS, acting on behalf of the state, has legal custody and must answer to the court, but the relatives have physical custody. DFPS is responsible for ensuring that the child receives medical care and attends school. *Foster Kinship Care* refers to cases in which a child is placed in the custody of the state by a judge. In kinship foster care; the child's relative caregivers have rights and responsibilities similar to those of nonrelative foster parents. In these cases, the student is categorically eligible for free meals. The CE should follow the eligibility process for foster children.[17]
Kinship Care, Private (Informal Kinship Care)	Arrangement made by the parents and other family members without any involvement from either the child welfare system or the court system. These students are included as part of the household in which they reside if the household submitted a school meal application. These students are not categorically eligible for free meals.[18]
Kinship Care, Voluntary	Children who live with relatives where DFPS is involved, but DFPS does not take legal custody of the children. In voluntary kinship care, the children are in the physical custody of the relatives. The children may remain in legal custody of the parents, or the parents may sign over temporary legal custody to the kin. These students would be included as part of the household in which they reside if the household submitted a school meal application. These students are not categorically eligible for free meals.[19] The following definitions also provide guidance on foster child categorical eligibility: – Foster Child Categorical Eligibility – Foster Family – Kinship Care – Kinship Care, Foster Child Categorical Eligibility – Kinship Care, Private – Permanent Managing Conservatorship
Limited English Proficient (LEP)	Designation used for those who have a limited ability to speak, read, write, or understand English—includes low literacy and those whose native language is not English.
Local Educational Agency (LEA) for School Nutrition Programs	One of the following types of entities: – A public board of education or other public or private nonprofit authority legally constituted within a state for either administrative control of public or private nonprofit schools in a political subdivision of a state; – An administrative agency or combination of school districts or counties recognized by the state; – Any other public or private nonprofit institution or agency having administrative control and direction of public or private nonprofit schools or residential child care institutions; or – State educational agency that, in any State or territory, serves as the sole educational agency for all public or private nonprofit schools.
Medicaid Free	Eligibility determination made in Texas ELMS whose households match as Medicaid Free are eligible for free meals. [Note: Each state uses different criteria to establish eligibility for the Medicaid programs offered in the state. If a household receives Medicaid and does not match for Medicaid Free or Medicaid Reduced in the Texas-ELMS, the specific Medicaid program does not meet income-derived eligibility criteria as specified by USDA for NSLP and SBP.]

17 The following definitions also provide additional guidance on foster child categorical eligibility: foster child categorical eligibility; foster family; kinship care; kinship care, private; kinship care, voluntary; and permanent managing conservatorship.

18 The following definitions also provide additional guidance on foster child categorical eligibility: foster child categorical eligibility; foster family; kinship care; kinship care, foster child categorical eligibility; kinship care, voluntary; and permanent managing conservatorship.

19 The following definitions also provide additional guidance on foster child categorical eligibility: foster child categorical eligibility; foster family; kinship care; kinship care, foster child categorical eligibility; kinship care, private; and permanent managing conservatorship.

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Medicaid Reduced	Eligibility determination made in Texas-ELMS. Students whose households match Medicaid Reduced are eligible for reduced-price meals. [Note: Each state uses different criteria to establish eligibility for the Medicaid programs offered in the state. If a household receives Medicaid and does not match for Medicaid Free or Medicaid Reduced in Texas-ELMS, the specific Medicaid program does not meet income-derived eligibility criteria as specified by USDA for NSLP and SBP.]
Migrant Categorical Eligibility	Migrant student enrolled in the Migrant Education Program (MEP) as determined by the state or local MEP coordinator. These students are categorically eligible for free meals.
Military Families	Members of the armed services who are activated, deployed or ordered to support military operation(s) are counted as household members. Only the portion of the service member's income made available by them, or on their behalf, to the household should be counted as household income for eligibility purposes.
Military Income or Benefits	Military benefits received in cash, such as housing allowances for military households living off base and food allowances, must be considered as income. However, the value of in-kind benefits other than cash, such as on-base housing, is not considered as income. The housing allowance for military personnel living in privatized housing will not be counted as income. Only the portion of the deployed service member's income made available by the service member, or on their behalf, to the household where the students are living should be counted as income.
Mixed Households	Households that include students designated as Other Source Categorical Eligible program participants (Head Start and Early Head Start pre-kindergarten programs; foster;[20] homeless, including runaways and individuals displaced by declared disasters; migrant; and SNAP, TANF, or FDPIR eligible students who are not directly certified). If a student qualifies for free meals through more than one source of categorical eligibility, the student should be counted only one time on the master list of participating students.
Other Source Categorical Eligible Programs	Individual student's eligibility under any of the Other Source Categorical Eligible programs does not convey to other students in the household. The following programs are classified as Other Source Categorical Eligible programs: – Head Start and Early Head Start pre-kindergarten programs, and Indian Tribal Organization (ITO) pre-K programs – Foster[21] – Homeless, including runaways and individuals displaced by declared disasters – Migrant – SNAP, TANF, or FDPIR eligible students who are not directly certified
Overt Identification	Any action that may result in a student being recognized as potentially eligible to receive or certified for free or reduced-price school meals is overt identification.
Permanent Managing Conservatorship	Children placed with families permanently. In these cases, DFPS administers this program, and the court maintains overall responsibility for the child's welfare. If this is the case, these children are categorically eligible to receive free meals.[22]
Runaway Categorical Eligibility	Student identified and receiving assistance from a program under the Runaway and Homeless Youth Act who are categorically eligible for free meals. The LEA's homeless coordinator or other appropriate official certifies eligibility for these students.

20 Where the state retains legal custody of the child; see *Foster Child Categorical Eligibility* in the list of definitions in this section for additional information on this topic.

21 Where the state retains legal custody of the child; see *Foster Child Categorical Eligibility* in the list of definitions in this section for additional information on this topic.

22 The following definitions in the list of definitions in this section also provide additional guidance on foster child categorical eligibility: foster child categorical eligibility; foster family; kinship care; kinship care, foster child categorical eligibility; kinship care, private; and kinship care, voluntary.

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Signature	Any printed name, cursive, or electronic signature provided as requested in the household application. – For printed applications, the printed or cursive signature is recorded in the space following the certification statement. A recorded X is considered to be a signature. – For electronically submitted applications, the signature may be digital or digitized. A digital signature may be recorded or accomplished through a variety of methods, including, but not limited to, personal identification numbers (PINs) and passwords. A digitized signature is a representation of an actual signature that can be physically compared to an original signature to determine authenticity.
SNAP Household Categorical Eligibility	Any student in a household where an individual or group of individuals currently certified to receive program benefits under the Supplemental Nutrition Assistance Program (SNAP) is categorically eligible for free meals.
Student Attending an Institution	Student who attends but does not reside in an institution is considered a member of the household in which he or she resides.
Student Away at School	Students who are temporarily away at school are counted as members of the household.
Student Living with One Parent, Relatives, or Friends (though not a homeless student)	Situation where no specific welfare agency or court is legally responsible for the student or where the student is living with one parent, other relatives, or friends of the family. The student is considered to be a member of the household with whom he or she resides. The size and total income of that household is used to determine the student's eligibility. Students of divorced or separated parents are generally considered part of the household that has custody.
TANF Categorical Eligibility	Any student in a household where an individual or group of individuals currently certified to receive assistance under the Temporary Assistance for Needy Families (TANF) Program is categorically eligible for free meals.
Total Enrollment Number for Schools Operating NSLP or SBP	Total number of students that accurately reflects the total number of students that are currently attending and enrolled[23] in a school operating NSLP or SBP and who have access to at least one NSLP or SBP meal service during the operational day.
Texas Eligibility List Management System (TX-ELMS in TX-UNPS (NSLP/SBP Only)	Method TDA provides for CEs to directly certify households with participants that are SNAP, TANF, Medicaid Free, and Medicaid Reduced eligible. The Texas-ELMS in TX-UNPS is also used to directly verify households for the verification process. Guidance on Direct Verification is provided in ***Administrator's Reference Manual (ARM), Section 6, Verification of Eligibility***.
Validation of Program Participation	Process to validate (or confirm) that a student participates in a Categorical Assistance Eligible[24] program or one of the Other Source Categorical Eligible programs[25] when a household application designates that a student participates in one of these programs. The requirement to validate participation does not apply to a household application that designates that the student is a foster child where the state retains legal custody of the child. A designation of foster on an application is accepted at face value and does not require validation. If all of the students listed on the household application are validated, the household application is not included in the verification pool.

23 Texas Education Code (TEC), Title 2, Subtitle E, Chapter 25, Subchapter A, Section 25.001 provides additional information related to enrollment.

24 SNAP, TANF, and FDPIR

25 Head Start and Early Head Start pre-kindergarten programs; foster; homeless, including runaways and individuals displaced by declared disasters; migrant; and SNAP, TANF, or FDPIR eligible students who are not directly certified.

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Verification Sample	Applications selected to be verified, not including applications selected *For Cause* or applications for directly certified students. [NOTE: In cases where households include students designated as Other Source Categorical Eligible program participants and students who are not participants in an Other Source Categorical Eligible program, only those students who are not directly certified as Other Source Categorical Eligible program participants are included in the verification process if the household application is selected for verification.]
Without Further Application (NSLP/SBP Only)	Eligibility determination that is directly certified to receive meal benefits with no further action required by the student's household.

Eligible Participants

Students enrolled in an elementary, middle, or high school are eligible for Child Nutrition Program (CNP) participation up to age 18 unless one of the following circumstances exists:

1. The student continues to be enrolled at the school and
   - is past the age of 18 but is under the age of 21

     or
   - is at least 21 years of age and under 26 years of age and is enrolled in a school to complete the requirements for a high school diploma.[26]

   If either of these circumstances exists, a student's continued enrollment in school extends the student's eligibility to participate in CNPs past the age of 18.
2. The student continues to be enrolled in school and is identified as mentally or physically disabled through a special education program or the 29 U.S.C § 70, Section 504, Rehabilitation Act of 1973. If this is the case, the student is eligible through age 21.[27]

Students enrolled in a residential child care institution (RCCI) are eligible up to the age of 21.

Eligibility Determination

The determination of eligibility is based on (1) household income or (2) household or student participation in one of the categorical programs. These topics are explained in detail later in the section.

Required Program Participation

CEs cannot require that students participate in a CNP. A student may bring a meal from home instead of participating in NSLP or SBP.

Duration of Eligibility

Eligibility determinations are valid for the entire year.[28]

Household Application

Parents and/or guardians must complete the necessary household application to apply for free or reduced-price meals unless a person in the household meets the criteria for categorical eligibility.[29]

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26 Texas Education Code (TEC), Title 2, Subtitle E, Chapter 25, Subchapter A, Section 25.001 provides additional information related to enrollment.

27 For additional information on special education and 504 designations, the CE should contact the Texas Education Agency (TEA).

28 See the *Carryover Eligibility* subsection in this section for additional information on eligibility during the first 30 operational days of the following year.

29 If a student is directly certified for SNAP or TANF and that information is reported in the Public Education Information Management System (PEIMS), the CE may apply that information to a sibling.

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When a household submits a household application, all the students in the household are included in that household application—CEs cannot require that parents or guardians complete a household application or a separate household application for each student or by eligibility category.

Duplicate Household Applications

If the CE receives more than one household application from the same household, the most recently dated household application takes precedence. The CE should retain all household application documents and clearly mark the household application that is currently in use for eligibility determination.

Use of Household Applications and Eligibility Data for Nonprogram Purposes

Information collected on NSLP/SBP or SMP household applications or obtained from other sources created or intended to assist CEs in determining eligibility for NSLP/SBP or SMP cannot be used for any purpose other than eligibility for NSLP/SBP or SMP unless those uses are allowed by regulation.[30]

Other sources include, but are not limited to, the Texas Unified Nutrition Programs System (TX-UNPS), Texas Eligibility List Management System (Texas-ELMS).

CEs must apply the following guidance related to using the household application or other eligibility information obtained for program eligibility purposes:

1. Must not use data from Texas-ELMS in TX-UNPS to obtain Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), Medicaid, or Children's Health Insurance Program (CHIP) participation information for students enrolled on any campus that is not operating a CNP.

   If a CE has some sites that operate a CNP and some sites that do not, the CE must not use its access to direct certification data provided for the operation of school nutrition programs to obtain information on students that do not attend a school participating in a CNP. This means the CE cannot use the resources available to the school nutrition program to look up a student not attending a school operating a CNP in Texas-ELMS.

   However, if the CE has identified a student attending a school operating a CNP as residing in a SNAP, TANF, or Medicaid household and that information is recorded in the CE's Public Education Information Management System (PEIMS) system,[31] the CE can apply that identification to all siblings and students living in that household, including students attending other CE schools that are not operating a CNP.

   In no circumstance, can the CE share eligibility data with another school district or educational entity that does not operate a CNP.

[30] For additional information on the disclosure of NSLP/SBP eligibility information, see *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality*.

[31] In April 2017, TEA began implementation of the Texas Student Data System (TSDS). TSDS PEIMS is a new software application that public schools and charter schools will use to submit their PEIMS data to TEA. This change should not have an impact on the SNP program, but since some point of service (POS) systems do interface with PEIMS data, CEs should review processes and procedures related to their POS systems to ensure that there are no problems.

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2. Must not use information from the Texas ELMS to identify students of economic need for a local meal program that is not a federal CNP.[32]
3. Must not use household applications to collect socioeconomic data or for any other purpose when the school is operating the Community Eligibility Provision (CEP) or a Provision 2 school in a non-base year.
4. Must not use household applications as the application to determine eligibility for the Head Start program, any other early childhood program, or purpose not related to eligibility for a CNP.

Collecting Socioeconomic Data

If a CE needs to collect socioeconomic data when not allowed to use the household application, the Texas Education Agency (TEA) has developed a template that a CE may use or may adapt as appropriate, *Socioeconomic Information Form*. This form is available at *http://tea.texas.gov/Workarea/DownloadAsset.aspx?id=25769816295*.

Overt Identification

CEs must assure that a student's eligibility status is not disclosed at any point in the process of providing free or reduced-price meals, including notification of free or reduced-price meal availability; certification and eligibility notification; meal service; the point of service; providing additional services, such as education services to low income students; and through the method of payment.

Submission of Attachment B Eligibility Documents

USDA requires that TDA review each contracting entity's (CE's) template household application(s), directions, and notification letters to ensure that the CE is meeting the requirements for these documents.

Starting School Year (SY) 2020-2021 and each SY forward, each CE must upload certification and benefit issuance templates by October 31 annually in TX-UNPS | Application | Attachment B: Upload Attachments. The link will open on August 1 annually.

Types of Household Applications

TDA provides two versions of household application—multi-child free and reduced-price household application with instructions and multi-use free and reduced-price household application with instructions—and an information letter template in both English and Spanish. CEs may download these forms at *www.SquareMeals.org*. While CEs are not required to use the TDA forms, TDA strongly encourages CEs to use the forms developed by TDA.

If CEs choose to use a household application form that is not developed by TDA, they are responsible to ensure that the form contains correct and accurate information as well as all the content provided in the TDA household meal information letter, instructions, and application.[33]

[32] For additional information on the disclosure of NSLP/SBP eligibility information, see *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality*.

[33] CEs that use an electronic household application will find additional requirements for this type of household application in the Electronic Household Application System subsection in this section.

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TDA Prototypes

Multi-Child Household Applications

The multi-child household application for free and reduced-price meals permits a household to establish eligibility for all school age students in the home. Advantages of using this household application include the following:

1. More students are identified for eligibility.
2. Burdensome paperwork is eliminated.
3. The number of household applications required to be verified is reduced.

Multi-Use Household Applications

The multi-use household application for free and reduced-price meals enables parents or guardians to grant the CE permission to share the eligibility determinations for students receiving free and reduced-price meals for purposes other than School Nutrition Program (SNP) services. This version allows the CE to help families to access additional support services such as glasses provided by the Lions Club or lower cost insurance for CE provided electronic devices.

Multi-Use Household Application Disclosure

CEs that anticipate disclosure to or sharing information with other programs, including Medicaid or the state Children's Health Insurance Program (CHIP), must notify households of this potential disclosure and allow the households to decline the disclosure by offering the adult completing the household application the option to not submit any additional information that can be used for other agencies or services.[34]

United States Department of Agriculture (USDA) Prototypes

USDA provides two types of applications:

English and Other Languages

USDA provides prototypes of family friendly household applications at *www.fnsusda.gov/cnd/Application/familyfriendlyapps.html* in a wide range of languages. If a household submits a USDA version of the household application, the CE must accept and process the application.

USDA Web-Based Prototype

USDA has also released a web-based prototype version. The web-based prototype includes the code that allows CEs to create a web-based application on their own. Detailed information and helpful tools on the use of this application are available at *https://www.fns.usda.gov/school-meals/applying-free-and-reduced-price-school-meals*.

[34] For more detailed information on disclosure and parental consent, see *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality* for additional information on acceptable disclosure practices.

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Electronic Household Application System

CEs have the option to use an electronic (faxed, scanned, or web-based) household application processes.[35] If a CE uses an electronic household application process, the CE is responsible for ensuring that processes and procedures meet all regulatory requirements and policies. TDA no longer approves electronic household application processes.

The CE must have a system in place which allows staff to validate information about eligibility for each student based on participation in one of the Categorical Assistance Eligible programs or one of the Other Source Categorical Eligible programs[36] whether the system is electronic or another method.[37] A student designated as a foster child does not have to be validated.[38] This information will be used on the CE's *School Food Authority (SFA) Verification Collection Report (FNS-742)*[39] as well as during an administrative review.

The CE cannot create a system where the only way the household can get the information is for the household to go to an online source.

Requirements for an Electronic School Meal Application System

If the CE uses a household application system that distributes applications through the Internet, phone, or software applications (apps),[40] the CE must ensure that the electronic system has the following capabilities or information as described below.

Unless a specific type of electronic form is indicated, each guidance topic applies to all types of electronic applications.

Confidentiality of Information

A CE using electronic household application processes must have certifications or procedures in place to ensure confidentiality.

Confirmation of Receipt

A CE must provide an acknowledgment or receipt of the faxed or web-based household application from a household—electronically or another method—when the faxed or web-based household application submission is successful.

Categorical Assistance Program or Other Source Categorical Program Eligibility

If the CE uses a computer or web-based system (or software) to process applications, the system must include a question or data field to indicate a student's categorical eligibility.[41]

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35 USDA and TDA do not evaluate, recommend, approve, or endorse any software used for eligibility determinations. There are no federal or state specifications for software vendors. If software is used to perform all or part of the eligibility determination process, the CE must ensure that the software is performing correctly and meets all requirements.

36 See the *Categorical Eligibility Determination* subsection of this section for additional information on categorical programs.

37 See the *Sources for Validating Other Source Categorical Eligibility Participation* subsection in this section for additional information on validation.

38 Public and charter schools in the state of Texas are required to have a foster liaison to ensure that foster children receive all benefits available to them. The CE's foster liaison will have the necessary documentation to directly certify a foster child. By directly certifying the foster child, the student's household application is not subject to verification unless non-foster students are listed on the household application.

39 Applies only to NSLP and SBP.

40 CEs that use an electronic application will find additional requirements for this type of application in the *Electronic Household Application System* subsection in this section.

41 See the *Categorical Eligibility Determination* subsection in this section for more information on this topic.

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Documentation

A CE is required to retain all documentation demonstrating that its household application process meets regulatory requirements and policies.[42] Retained information must include, but is not limited to, the following:

- Original date of receipt and approval
- Basis for the determination (i.e., what household size and income was used)
- Updated household application status to account for transfers, withdrawals, and other changes

[NOTE: The determining or reviewing official must sign and date approved and denied household applications to confirm the determining or reviewing official's eligibility determination. For scanned and web-based household applications, the determining or reviewing official may accomplish this by signing or initialing and dating a sheet of paper that is attached to a batch of household applications or making a note to the electronic file.]

Income

CEs must ensure that whatever system they use, including scanned or web-based software, can recognize and accept whole dollar amounts.

If a CE uses an electronic application process that gives prompts for possible errors and one of those errors is blank income, the error notice is acceptable.

Identity and Electronic Location of Person Completing the Household Application

The household application system must have a method to record the name of the person completing the household application and an electronic location for the person completing the household application.

[NOTE: An electronic location means a method to identify the source of the transmission (e.g., mail server identification, email account name, phone number for a fax machine, or time-stamped Internet Protocol [IP] address).]

Information/Notification Letter

If the CE uses an electronic household application system that distributes applications through the Internet, phone, or software applications (apps),[43] the CE is not required to distribute a household application, letter to the household, and instructions in the same manner[44] as required for a paper application. Instead, the CE may use a flyer, brochure, or card. However, the CE is responsible for distributing a letter/notification that includes the following information:

- Instructions on where and how to access and submit a household application, including the web address.
- Instructions for completing the form—the same information contained in the instructions for the paper household application and any additional instructions specific to electronic submission.

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42 See the *Records Retention* subsection in this section for more information on this requirement.

43 CEs that use an electronic application will find additional requirements for this type of application in the *Electronic Household Application System* subsection in this section.

44 See the *Providing Information about Household Applications* subsection in this section for more information on requirements for sharing information about household applications with student households.

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- Instructions on how to submit a paper household application in case the household does not want to submit an electronic household application.
- Contact information (telephone and other methods) to ask questions, solve problems, and request a paper application be sent to the household.

In all cases, a CE cannot refuse to accept a paper household application if a household chooses not to submit an electronic household application.

Integrity of Household Application

CEs must ensure that the information submitted electronically is not altered after it is submitted. The determining or reviewing official may contact the household for clarification and additional information about an electronic household application. However, CEs must have a method for determining or reviewing official to record notes about obtained information that keeps the original household application intact while also providing a method to record relevant notes.

Method of Distribution

Electronic household applications may be sent to households by email, made available for download from the Internet, or another appropriate method.

Notification

Households whose household applications are denied must be provided notification of denial by mail or email and cannot receive notification of their eligibility status solely through a web-based or automated household application system or phone. Approved household application notification may be provided by mail, email, or verbally.

Optional Information

If the CE uses a computer or web-based system (or software) as one of their application processes, the system may ask for a student identification number or child's birth date to help expedite processing. However, the household must be informed that the data fields are not required for approval of a household application for NSLP, SBP, or SMP.

Purpose and Use

CEs must provide households with a description of the purpose and the use of the information the household submits on an electronic school meal application.[45] This information may be included in notifications or announcements, student handbooks, directions for completing web-based forms, CE websites, or another appropriate method.

[45] This use statement is not the same as the required Richard B. Russell Use of Information statement discussed later in this section. Instead, it is a statement of how the CE will use information that is electronically collected by the district.

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Signature

Electronic household applications do not require an original signature, but electronic submission processes must have the capability to allow a household to provide a legally binding digital or digitized signature.

> A digital signature may be recorded or accomplished through a variety of methods, including, but not limited to, personal identification numbers (PINs) and passwords.
>
> A digitized signature is a representation of an actual signature that can be physically compared to an original signature to determine authenticity.

This signature must include the date and time of the transaction and the identity and electronic location of the person who transmitted the information. An electronically signed—digital or digitized—household application is legally binding.

Submission

The household application may be completed and submitted (1) electronically or (2) printed, completed, and returned in person or by regular mail. CEs must also provide a paper household application to any household that does not wish to use or is unable to use an electronic household application system.

Submission Without Additional (Optional) Information

If a CE requests optional information from the household, the CE must ensure that the scanned or web-based household application system does not delay or cause a denial of any household application that contains all required information but is missing additional (optional) information. The determining or reviewing official must be able to approve or deny a household application whether the additional information has been provided or not.[46]

Total Number in Household

An electronic household application may include a feature that requires the household to confirm the total number of household members based on the information recorded by the household as a method for the household to report the total number of household members.

True and Correct Information

CEs must communicate to the person completing the web-based form that the applicant must provide true and correct information. When the adult in the household signs the household application, he or she is attesting that the information contained in the household application is true and correct.

If the CE is using software that was not updated before the *USDA 2015 Eligibility Manual* was released (July 9, 2015), the CE may continue to use software that reports income in dollars and cents. However, if the software has been updated since that release, the software must be modified to accept whole dollar amounts only. All CEs using software provided by a vendor should contact their vendors and ensure that this requirement has been met.

[46] See the *Requests for Additional (Optional) Information on Household Applications* subsection in this section for additional information on this topic.

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Providing Information about Household Applications

A CE must take the following actions to provide information to parents or guardians and to determine eligibility:

1. Send a letter to households before or during the first week of school that describes the following:
   - Free and reduced-price meal program
   - Reduced-price income eligibility guidelines
   - Information on how to apply
   - Local contact information including mailing addresses

     [NOTE: The local contact information provided by the CE must be for an individual who can answer questions from households. Moreover, if the household asks for assistance, the CE must follow up.]
2. Provide a household application before or during the first week of school.
3. Distribute information through a communitywide media release with the household meal application attached and with the following information:
   - Description of the free and reduced-price school nutrition programs that the CE operates
   - Description of the eligibility criteria including income eligibility guidelines for both free and reduced-price eligibility
   - Instructions on how to apply
   - Explanation that if the CE knows the eligibility of a child based on participation in a Categorical Assistance Eligible[47] program or one of the Other Source Categorical Eligible programs[48] (1) that the CE will notify the household and/or (2) that household should contact the CE if all of the children in the household are not listed on the notice

   [NOTE: The CE is responsible to send the media release to appropriate news outlets. The CE is not responsible for ensuring that the release is used by media outlets and is not required to pay a media outlet to publish a release.]
4. Develop a system of communication that prevents overt identification of participants receiving free or reduced-price meals.

CEs are encouraged to use the best contact information available for distributing the information letter. The information letter may be sent to households by mail, email, or in information packets.

Providing Information about Household Applications, Residential Child Care Institutions (RCCIs)

Residential Child Care Institutions (RCCIs) with non-residential students (commonly called *day students*) must distribute the information as described in this subsection to the households of the non-residential students.

[NOTE: An RCCI may choose to offer universal free meals to day students. However, the RCCI must claim reimbursable meals for day students by the correct eligibility status—free, reduced-price, or paid. The RCCI cannot claim all day students as paid to avoid processing applications and making eligibility determinations for these students.]

47 SNAP, TANF, and FDPIR

48 Head Start and Early Head Start pre-kindergarten programs; foster; homeless, including runaways and individuals displaced by declared disasters; migrant; and SNAP, TANF, or FDPIR eligible students who are not directly certified.

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Providing Information about Household Applications, After the Start of School

For students who enroll after the beginning of the school year, the CE must still provide (1) the letter that describes the benefits provided through the program, eligibility guidelines, information on how to apply, and local contact information for the CE; (2) the household application (may include access information for a web-based application); and (3) directions for completing the application.

Information Letter and Household Application Contents

CEs must include the following statements in the household application:

Attesting Statement

The attesting statement must be located above the signature block for the signing adult. This statement ensures that the signer knows he or she is certifying the following:

- The person signing is furnishing true information and to advise that person that the application is being made in connection with the receipt of federal funds.
- School officials may verify the information on the application.
- Deliberate misrepresentation of the information may subject the applicant to prosecution under state and federal statutes.

Nondiscrimination Statement

The nondiscrimination statement is provided by USDA. The most current nondiscrimination statement must be included in the application packet as written. Refer to *Section 3, Civil Rights* for a current version of the statement.

Statement Concerning Inclusion of Social Security Number

The application, instructions, or letter must include the following explanation:

> While disclosure of the last 4 digits of a Social Security number is voluntary the National School Lunch Act requires the last 4 digits of a Social Security number[49] or an indication of "none" for approval of the application.

Use of Information Statement

The Use of Information Statement must be included exactly as written.

> The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced-price meals. You must include the last four digits of the Social Security number of the adult household member who signs the application.[50] The Social Security number is not required when you apply on behalf of a foster child or you list a Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number[51] or other FDPIR identifier for your child or when you indicate that the adult household member signing the application does not have a Social Security number. We will use your information to determine if your child is eligible for free or reduced-price meals, and administration and enforcement of the lunch and breakfast programs.
>
> We MAY share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine program benefits or services for their programs,

[49] It may also be the last four digits of the Social Security number of another adult member in the household.

[50] It may also be the last four digits of the Social Security number of another adult member in the household.

[51] In Texas, the number demonstrating SNAP or TANF eligibility is the Eligibility Determination Group Number (EDG#).

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auditors for program reviews, and law enforcement officials to help them look into violations of program rules.

[NOTE: There is a different Use of Information Statement that is required for verification. See ***Administrator's Reference Manual (ARM), Section 6, Verification*** more information on this statement.]

Information Letter Included with the Household Application

The information letter must be sent to the households of all students before or during the first week of school, so eligibility determinations can be made, and free and reduced-price benefits provided as soon as possible. TDA's prototype application materials[52] contain all of the required information. CEs that choose to create their own household application or use an electronic application must ensure that the household application contains all of the required information. See *Information Box 1* for detailed guidance on this topic.

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[52] See the *TDA Eligibility Determination Forms* subsection in this section for more information on prototypes, forms, and template. TDA provides alternate template letters for schools that administer one of the special provision programs.

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Information Box 1

Required Information in Notification Letter, Household Application, and Directions

Explanations on the Methods for Establish Free and Reduced-Price Meal Eligibility

- Ability of households to apply for NSLP/SBP at any time during the year if the household experiences a change in circumstances, including if parents or guardians become unemployed
- Categorical eligibility for foster children
- Free eligibility for all students in the household who are directly certified for SNAP, TANF, or FDPIR
- Current year's IEGs for reduced-price eligibility
- Process for Other Source Categorical Eligible program participants to indicate participation
- Required information to determine eligibility
- Special Supplemental Nutrition Program for Women and Children (WIC) participants may be eligible for free or reduced-priced meals

Information about Submitting a Free and Reduced-price Household Application

- Directions for submitting a household application for free or reduced-price meals
- Carryover period
- No household application necessary for households who are notified about directly certified students
- Only one household application required for all children in the household
- Option for the household to include a foster child as a family member when applying other students in the household
- Possibility of selection for verification
- Prominently displayed contact information— mailing address(es) and phone number(s)—for households to submit questions about the application process
- Requirement for an adult in the household to provide the last four digits of her or his Social Security number or indicate that no adult household member has a Social Security number; not required if the household qualifies under SNAP, TANF, or FDPIR
- Requirement for an adult in the household to sign the household application

Explanation about Parent or Guardian Rights

- Option to appeal decisions related to eligibility and the right to ask for a hearing procedure

Requests for Additional (Optional) Information on Household Applications

The purpose of the free and reduced-price household application is to determine if a student's household is eligible for free or reduced-price meals based on income or categorical eligibility. However, CEs may request additional (optional) information[53] for other purposes if the information is intended to help CEs do the following:

- Share information with households about the availability of other meal or non-meal-related program benefits.
- Reduce the paperwork burden on households.
- Provide additional services or support to address student needs.

For Example: A CE may request a student's birth date to help in the verification process because this additional data does not create a barrier to SNP participation. It may even minimize the burden on the household to complete additional forms.

A CE may use information from the household application to determine which students are eligible to receive free schoolbooks or tutoring services.

[53] This might include grade of student or name of school.

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Citizenship Information

U.S. citizenship is not a factor in the determination of eligibility. The CE must not request or require households to provide documentation related to citizenship.

Guidelines, Additional (Optional) Information

A CE may not require that households provide additional information as criteria for eligibility, though it may request additional (optional) information from households as described in the following guidance:

- Disclosure Related to Additional (Optional) Information: The CE must disclose to parents or guardians what information (1) is required on the household application and (2) is optional.[54]
- Prepare Staff: The CE should ensure that staff member understands (1) what information is required and (2) what information is additional (optional), so they can assist parents or guardians in knowing what information is required.
- Denial of a Household Application Lacking Additional (Optional) Information: The CE must not take the following actions based on a lack of non-required information:
  - Delay the approval of a household application if the household fails to provide additional (optional) information that is not required for the household application.
  - Deny a household application if additional (optional) information is not provided.

[NOTE: If a CE has an electronic system that requires additional (optional) information before a household application can be submitted, the CE must ensure that the system does not delay or cause a denial of a household application that contains the required household application information but lacks the additional information.

For Example: A web-based household application asks for a child's birthdate, which is optional information. If the household fails to include student birth dates, processing of the household application cannot be delayed.]

Prepopulating Household Applications

CEs may prepopulate household applications with basic information. Basic information includes student names and grades. A CE cannot prepopulate income or categorical information. CEs should be mindful about prepopulating a household application with student identification numbers as these numbers may link to students' personal data.

Distribution of Household Application

Household applications must be provided to every student except those students who are directly certified as participants in one of the Categorical Assistance Eligible programs[55] or one of the Other Source Categorical Eligible programs.[56] However, the CE must make sure that sending different notification letters does not create a situation where directly certified students are overtly identified because households are sent different types of notifications.

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54 See *Administrator's Reference Manual (ARM), Section 3, Civil Rights and Confidentiality* for additional information on this topic.

55 SNAP, TANF, and FDPIR

56 Head Start and Early Head Start pre-kindergarten programs; foster; homeless, including runaways and individuals displaced by declared disasters; migrant; and SNAP, TANF, or FDPIR eligible students who are not directly certified

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CEs are encouraged to use the most effective method for distributing the household application. Therefore, household applications may be distributed by mail, email, or sent home with students.

The CE may request that households apply but must not require that a household submit a household application for free or reduced-price meal meals.

Each CE must provide households with the following:

1. An information letter that provides descriptions of the household application process and eligibility criteria for reduced-price meals
2. Instructions on how to apply for free and reduced-price meals or free milk which includes prominently displayed local contacts with addresses
3. A household application to apply for NSLP/SBP[57]

If the CE does not use TDA's prototype forms, the CE must ensure that information provided to households includes all information included in TDA prototype forms.

Direct Certification Households

CEs do not have to send a household application to households with directly certified students. This includes direct certification for Categorical Assistance Eligible programs[58] as well as direct certification for Other Source Categorical Eligible programs.[59] However, these households must be sent a notice of eligibility.[60] The following information must be shared:

- That the named students are eligible for free meals for the entire year
- That the household does not need to provide further documentation, including a household application
- That the household should notify the CE if the adults in the household would like to decline the free or reduced-priced meals

Notification may be done through regular mail or email.

Overt Identification

When a CE chooses not to send an information letter and household application to a household with a directly certified student or students, the CE must ensure that the process used for notification does not identify which students are categorically eligible and which students are not by overtly identifying which households receive a letter and which ones do not.

Distribution Centers

Designated locations to provide households an opportunity to apply for free or reduced-price meals may be operated by the CE before school opening and during the school year. However, parents or guardians cannot be required to go to only one particular place to apply for free or reduced-price meals. CEs are encouraged to have interpreters available to provide help for families completing a household application at a distribution center. Distributions centers are commonly located in the school nutrition program office, front office of each school, or the administration building/office.

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57 This letter is sent with the household application.

58 SNAP, TANF, FDPIR, Medicaid Free, and Medicaid Reduced

59 Head Start and Early Head Start pre-kindergarten programs; foster; homeless, including runaways and individuals displaced by declared disasters; migrant; and SNAP, TANF, or FDPIR eligible students who are not directly certified.

60 See the *Categorical Eligibility Determination* subsection in this section for additional information.

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Distribution at Year-Round Schools

Household applications may be distributed on or about July 1 or soon thereafter so that households can provide current income.[61] See the *Carryover Eligibility* subsection in this section for specific information on applying the 30 operational day carryover period to year-round schools.

Limited English Proficient (LEP) Households

CEs must take reasonable steps to ensure meaningful access to school meals for eligible students from households comprised of limited English proficient (LEP) individuals. Regulations require that any communication with households for eligibility determination purposes must be in an understandable and uniform format and to the maximum extent practicable that the CE must take reasonable steps to ensure meaningful access.[62] The household application materials and other communications with households concerning eligibility determination must be presented in a manner or language that parents or guardians can understand.

Oral Interpretations

While providing written translations is required, CEs also must take reasonable actions to ensure that all households can ask questions and get answers when they have limited English proficiency.

Process for Determining English Proficiency Needs

CEs should have a process for determining whether they have Limited English Proficient (LEP) parents or guardians and the language needs of those households. Limited English Proficient includes those with limited proficiency in reading, speaking, writing, or understanding English as well as those who speak another language. For this reason, the USDA's prototype materials are designed to be comprehensible to someone with low literacy. CEs are expected to assist so that parents or guardians can understand the household application and certification of eligibility.

When a CE determines the need for and extent of LEP communications, the CE should consider the following issues:

- Overall number of students from households comprised of LEP individuals. It is more effective to proactively determine language needs before applications are sent out.
- Proportion of students from households comprised of LEP individuals as compared with the overall student population
- Frequency of communications with LEP individuals
- Means through which communications are sent (e.g., mail, telephone, websites, etc.)

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61 USDA typically updates income eligibility criteria in the late spring. Those updates are posted on *www.SquareMeals.org*.

62 According to *Merriam-Webster's, Eleventh Edition*, practicable means capable of being put into practice or of being done or accomplished. It is common to apply the definition for possible which means being something that may or may not occur to the term practicable. While similar words, they are not the same in legal terms. The practicable requirement holds that the expectation will be accomplished, not possibly accomplished.

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- Resources already available to the CE and the resources that will need to be supplied including, but not limited to, translated materials, translators, and community support organizations.
- Qualifications of those who can provide translation services.

Increasing Participation

CEs are expected to take the following actions to ensure that every household has the needed information to participate in the program:

1. Provide Written Translations: CEs must ensure that language and communication are not barriers to SNP participation. CEs may choose to develop written translations of their own materials, including web-based household applications, in the most common languages. However, offering a translation in the most common alternative language as the only LEP strategy is not sufficient.

   If CEs do not have their own translated household application materials, they must at a minimum use the USDA prototype translations. TDA makes household applications and letters available in both English and Spanish for CEs to use. USDA also provides household applications and letters in the following languages at *www.fns.usda.gov/school-meals/translated-applications*.

Albanian	Croatian	Italian	Nepali	Tagalog
Amharic	Farsi	Iu Mein	Polish	Thai
Arabic	French	Jamaican Creole	Portuguese	Tigrinya
Armenian	French Creole	Japanese	Punjabi	Ukrainian
Bengali	Greek	Karen	Romanian	Urdu
Bosnian	Gujarati	Khmer	Russian	Vietnamese
Burmese	Haitian-Creole	Korean	Samoan	Yiddish
Chinese, Simplified	Hindi	Kurdish	Serbian	Yoruba
Chinese, Traditional	Hmong	Laotian	Somali	
	Igbo	Mien	Spanish	
	Ilokano		Sudanese	

2. Provide Oral Interpretation Services: For households that speak less prevalent languages or have limited literacy, CEs should
   - identify oral interpretation services available in their communities and
   - partner with other local resources, such as migrant or refugee assistance agencies

   that can foster increased communication about free and reduced-price meals. Parents and guardians should not have to rely on family or other household members, especially students or friends. Informal translators may not provide quality and accurate interpretations.

3. Include the Required Non-discrimination Statement: Households need to understand that they will be treated fairly if they apply for free or reduced-price meals. The information letter sent with the household application or the school meal application itself must include USDA's current nondiscrimination statement.[63]

[63] See the *Information Letter and Household Application Contents* subsection in this section for additional information.

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Additional Resources for LEP Students

Three resources may be useful to CEs in addressing language-related issues:

- The federal guidelines for plain writing are available at *www.plainlanguage.gov*.
- Numerous translations are available on the USDA School Meals Applications website at *www.fns.usda.gov/school-meals/translated-applications.*
- USDA's *I Speak* worksheet can be used to identify the appropriate language for communicating with parents or guardians. The worksheet is available at *www.fns.usda.gov/school-meals/translated-applications*.

Unacceptable Distribution Practices

The following household application distribution practices are unacceptable:

- Public announcement or notification that household applications are available and interested parties may pick up one in a specified location as the sole method of distribution
- Public announcement or notification that household applications are only available on request
- Public announcement or notification that household applications are only available to those who received free or reduced-price meals during the prior school year
- Distribution of the household applications in the lunch line only
- Distribution at the end of the school year to apply for the following school year

Telemarketing Outreach for Completion of Household Applications

While it is appropriate for CEs to conduct outreach to encourage households to complete meal applications, a CE cannot use an outside telemarketing group to contact households to obtain the information needed to complete a household application on behalf of the household. See *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality* for additional information on the disclosure of confidential information.

Managing Eligibility Determinations

CEs must establish a system for maintaining and managing eligibility determinations. CEs commonly use their point of service (POS) systems for this purpose, but CEs may use other methods. CEs may have a manual or electronic system. Anytime there is a change in eligibility for a student or household the CE must have a method or process for tracking the change made which includes, but is not limited to, the date of the change, the reason for the change, and authorization for change. This process may be electronic, paper, or a combination of the two. If the system writes over a previous eligibility when a new determination is made, the CE must have a method to indicate when and what changes to eligibility are made—not just the latest. This system may be manual or electronic.

In all cases, the CE must ensure that the following eligibility information is retained:

- Eligibility status—free or reduced
- Type of eligibility—income or categorical
- Date of receipt of an application or categorical list, eligibility determination, changes to an application, changes to eligibility, and other actions related to

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eligibility

- Information specific to notifications
- Notes concerning all changes to the application, categorical participation, or other actions related to eligibility with the initials of the person making the change
- Specific program designation for all categorical determinations

Eligibility Duplication

A student may qualify for participation through more than one category of eligibility. The CE should have a system in place to prevent duplication on eligibility lists. Each individual participant should be counted one time when determining the number or percentage of eligible participants for the CE and the site.

For Example: A student qualifies for free meals because she (1) lives in a household that receives SNAP benefits, (2) is a foster child, and (3) meets IEGs requirements. The CE uses a system that records all three qualification factors but ensures that the student has only one eligibility determination. Direct certification for one of the Categorical Assistance Eligible programs[64] or one of the Other Source Categorical Eligible programs determinations take precedence over all other determinations.

In instances where the household provides income information on a household application that demonstrates eligibility and marks that a student participates in one of the Categorical Assistance Programs or an Other Source Categorially Eligible Program, the CE must process the income information if there will be a delay in confirming the program participation, so the student has access to meal benefits more quickly.

However, as soon as the CE determines eligibility based on categorical program participation, the CE must disregard the income information on the household application and update its eligibility determination records to indicate the categorical eligibility status.

Effectiveness Date of Eligibility

CEs must provide free or reduced-priced meals to students within 3 operational days of the approval of a student's eligibility determination. However, CEs have options in identifying effectiveness dates: two options for application-based determinations and two options for categorical determinations based on information from the agency administering the categorical program. Benefit issuance agencies include, but are not limited to, the following: Texas Health and Human Services Commission, homeless liaison, migrant liaison, Head Start director, foster liaison, or other appropriate agency personnel.

Consistency

In all cases, CEs must apply the same effectiveness date option consistently across all sites and Child Nutrition Programs.

1. For application-based determinations, the CE must use the same method of effectiveness date for all household application determinations.
2. For categorical determinations based on information from the agency administering the categorical program, the CE must use the same method of effectiveness date for all categorical determinations.

64 SNAP, TANF, FDPIR, Medicaid Free, and Medicaid Reduced

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Date of Effectiveness Options

The *Date of Effectiveness Chart* describes the options and requirements for each option.

Date of Effectiveness Chart	
Household Applications	
Option 1 **Date Application Is Approved**	**Option 2** **Date Application Is Received**
Assign the effective date for eligibility as the day the completed household application is approved by the determining or reviewing official. **Requirements:** – Have a method to document the date (such as date stamp procedure) that the completed household application is approved by the CE. – Notify TDA that the CE is adopting this option on the appropriate question in the *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedure(s)*.[65]	Assign the effective date for eligibility as the day the completed household application is received by the CE. **Requirements:** – Have a method to document the date (such as a date stamp procedure) that the completed household application is received by the CE. – Have a procedure to clear any debt accrued by the student for reimbursable meals between the date of receipt and the date of approval. – Have a procedure in place to reimburse students for reimbursable meal payments made between the date of receipt and the date of approval. – Adjust claims as appropriate through TX-UNPS.[66] The CE may only claim meals or milk at the free reimbursement rate if the student is given a refund or the debt is discharged. – Notify TDA that the CE is adopting this option on the appropriate question in the *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedure(s)*.[67]

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65 The CE is required to submit an updated *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedure(s)* noting this choice. Form available in TX-UNPS | Application. CEs must also submit their eligibility documents in the *Attachment B: Upload Attachments* in TX-UNPS | Application.

66 See Administrator's Reference Manual (ARM), *Section 20, Counting & Claiming* for additional information on this topic. Adjusted claims must be submitted in accordance with all applicable requirements.

67 The CE is required to submit an updated *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedure(s)* noting this choice. Form available in TX-UNPS Application screen. CEs must also submit their eligibility documents in the *Attachment B: Upload Attachments* in TX-UNPS | Application.

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Date of Effectiveness Chart	
Categorical List from Agency Administering the Categorical Program	
Option 1 **Date Application Is Approved**	**Option 2** **Date of Effective Eligibility Indicated by Program Agency[68]**
Assign the effective date for eligibility as the date the categorical participation list is reviewed and approved by the determining or reviewing official. **Requirements:** – Have a method to document the date (date stamp procedure) that the categorical eligibility is reviewed and approved by the CE. – Notify TDA that the CE is adopting this option on the appropriate question in the *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedure(s)*.[69]	Assign the effective date for categorical eligibility as the date the benefit issuance agency indicates participation was in effect.[70] **Requirements:** – Have a procedure to document the effectiveness date the benefit issuance agency indicates the date participation was in effect. – Have a procedure in place to clear any debt accrued by the student for reimbursable meals between the date of effectiveness and the date of approval. – Have a procedure in place to reimburse students for reimbursable meal payments made between the date of effectiveness and the date of approval. – Adjust claims as appropriate through TX-UNPS.[71] The CE may only claim meals or milk at the free reimbursement rate if the student is given a refund or the debt is discharged. – Notify TDA that the CE is adopting this option on the appropriate question in the *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedure(s)*.[72]

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68 Methods of determining categorical eligibility without household application include automated data matching, the letter method, and lists or others forms of documentation provided by the appropriate state or local agency.

69 The CE is required to submit an updated *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedure(s)* noting this choice. Form available from TX-UNPS Application screen. CEs must also submit their eligibility documents in the *Attachment B: Upload Attachments* in TX-UNPS | Application.

70 See the *Official Roles Related to Eligibility and Verification* subsection in this section for additional information on a complete household application.

71 See the *Administrator's Reference Manual, Section 20, Counting & Claiming* for additional information on this topic. Adjusted claims must be submitted in accordance with all applicable requirements.

72 The CE is required to submit an updated *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedure(s)* noting this choice. Form available from TX-UNPS Application screen. CEs must also submit their eligibility documents in the *Attachment B: Upload Attachments* in TX-UNPS | Application.

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Carryover Eligibility

Carryover applies to all the eligibility determinations from the previous school year. Before processing household applications for the current school year, students from households with eligibility determinations from the preceding year may be served reimbursable free and reduced-price meals during the carryover period of eligibility.

The carryover period extends to students who were enrolled in the previous school year and are enrolled and attending in the current school year[73]

1. for the first 30 operating days[74] of the current school year

   or

2. until a new eligibility determination is made

whichever comes first.

The carryover period is not intended to cause a delay in the processing of household applications or determining eligibility. CEs must still promptly process household applications or apply direct certification eligibility status based on information from Categorical Assistance Eligible programs or Other Source Categorical Eligible programs within ten operating days of receipt of a household application, list, or other documentation and notify households of the determination in a timely manner.

Information Box 2

Carryover Eligibility Criteria Based on Previous Year's Eligibility Determination

Carryover Eligibility applies to children who meet the eligibility criteria for each of the eligibility categories:

1. Income Eligible
2. Categorical Assistance Eligible Program—Direct Certification
   - SNAP
   - TANF
   - FDPIR
   - Medicaid Free
   - Medicaid Reduced
3. Categorical—Other Source Categorical Eligible Programs
   - Foster
   - Homeless, including runaway and displaced by a declared disaster
   - Migrant
   - Early Head Start or Head Start pre-kindergarten program enrollment
   - Any SNAP, TANF, or FDPIR eligible child who is not directly certified

Carryover, Special Provision Schools

CEs must provide carryover eligibility (free status) to students transferring from a special provision school to a non-special provision school both during and between school years. The carryover period is 30 operating days or until there is a new eligibility determination, whichever comes first.

For those students who transfer from a special provision school to a non-special provision school within the same district, identifying a student who is now eligible for carryover will be handled school to school.

To facilitate the identification of students who transfer from CE to CE and who are now eligible for carryover, TDA provides a list of all schools operating a special provision program by school year at *www.SquareMeals.org,* National School Lunch Program/Special Provisions page.

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73 See the definition for total enrollment in the *Definitions* subsection for additional guidance on this topic.

74 USDA guidance defines a school's working days as the days when the school is open and teachers or school administrators are onsite, but the reimbursable meal service is not in operation. The carryover period is linked to meal program operation, so the first day of operation as it applies to carryover refers to the first day the meal program begins operation.

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If CEs need additional assistance, they should contact their ESC child nutrition specialist.

Carryover for Special Provision Schools Returning to Standard Counting and Claiming

When a school returns to standard counting and claiming after operating a special provision program in the previous school year, the school will provide carryover eligibility (free status) for the first 30 days or until a new eligibility determination is made, whichever comes first.

Household Lack of Response

At the end of the carryover period, free or reduced-priced eligibility for students whose households have not submitted new household applications must be terminated.

The CE is not required to send the household a denial letter or notice of adverse action for eligibility changes from the previous school year for students whose eligibility has been extended under the 30 operational day carryover period.

Household Application Resubmitted After Failure to Respond to Carryover Information Request

If the household submits a household application after the free or reduced-price benefits are terminated for lack of response at the end of the carryover period, the household is not required to submit income documentation with the household application. However, if the household application is denied or if it is chosen for verification and household benefits were decreased as a result of the verification process, income documentation must be requested when the household reapplies.[75]

New Eligibility Determination

A new eligibility determination supersedes carryover eligibility.

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[75] See the *Administrator's Reference Manual (ARM), Section 6, Verification of Eligibility* for additional information.

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Temporary Closure or Delay in Opening of School

If the school is temporarily closed or has a delayed opening at the beginning of the school year, the CE determines the 30 operational day carryover period using the number of days of actual meal program operation. This includes disaster situations.

Transfer to Another School in the CE

If a student transfers from one school to another school within the same CE, the carryover requirements apply.

Year-Round Sites

The prior year's household applications may be carried over for 30 operating days following the first operating day for a given track.

For Example: A year-round school's first day of operation is July 1. The 30 operational day carryover period extends for 30 operating days starting on July 1.

Information Box 3

Eligibility Timeline Requirements

Predetermined Eligibility Made at the First of the School Year
Make the change prior to or during first week of school year.

Information—New or Late Enrollees
At enrollment

Review of Application and Implementation of Benefits
Make the determination within 10 operating days of receiving application; however, CEs are encouraged to review applications as quickly as possible.

Implementation of Eligibility Determination
Implement benefits within 3 operating days of the eligibility determination.

Notice of an Increase in Benefits
Make the change within 3 operating days of new eligibility determination.

Adverse Action—Decrease in Benefits
Make the change within 10 operating days after the end of the advance notice period (10 calendar days during which the household may appeal the determination).

New Applicant Denial
Make the change within 10 operating days after the end of the advance notice period (10 calendar days during which the household may appeal the determination).

Advanced Notice Period
Provide the household 10 calendar days in which to appeal a denial before implementing the new eligibility status.

Second (or Independent Review) of Applications, If Applicable Based on Administrative Review Corrective Action
Conduct the second review of the application within 10 operating days of receiving application.

Processing Household Applications

Household applications may be submitted in person, by mail, by fax, by email, or online submission. For additional information on electronic signatures, see the definition subsection in this section in the *Definitions* and the *Electronic Household Application System* subsections in this section for more information on these methods.

CEs must adhere to the timelines established for the household application and award of free or reduced-price meals as follows:

Household Application Review

Household applications must be reviewed, and an eligibility determination made within ten (10) operating days of receipt of the household application. For new participants who do not have previously approved household applications on file from the previous year, household applications should be processed immediately whenever possible.

Applications Submitted When School Is Not in Session

During breaks when schools are not in session, any household application received by the school may be held until the school's administrative staff resume their duties. This includes the period after July 1 (start of the new program year) until SNP staff resume program operation in August.

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Duration of Eligibility, Change of Circumstance

During the school year, a household may submit an application when there is a change in circumstance based on income or categorical program participation. When the CE receives the application, the CE must process the application using its normal process.

If a household experiences a change in circumstances that makes a student or students in the home ineligible for free or reduced-priced meals, an adult in the household may inform the CE. However, notification of this change is not a requirement since eligibility stays in effect the entire school year. If an adult in the house does notify the CE, the CE must inform the adult that the student receiving free or reduced-priced meals may continue to receive them for the remainder of the school year and the first 30 operating days of the following school year.

If the household decides to change the student's eligibility to decrease benefits—the change will only go into effect if the household requests the change in writing. This includes submitting a new household application but may be other written formats such as a handwritten note or email.

Duration of Eligibility, Verification

Eligibility determinations are valid for the entire year.[76] However, households that have been selected for verification may have their free or reduced-price meal benefits changed during the verification process.[77]

New Residence

When a student takes up new residence in a household with an approved household application after the household application has been approved, the new student's eligibility is not retroactive. Eligibility for the added student applies from the date the student is added to the household application.

Notes about Contacts

The determining or reviewing official should record notes on efforts to address problematic issues. The notes should be made directly on the household application and initialed and dated by the determining or reviewing official.[78]

Official Roles Related to Eligibility and Verification

Each CE must designate a specific person—Determining or Reviewing Official, Verification Official, and Hearing Official—in the Contracting Entity Application in the Texas Unified Nutrition Programs System (TX-UNPS) Application Packet screen.[79]

The CE must ensure that staff performing these roles have the necessary training or preparation to perform these roles effectively and accurately.

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[76] See the *Carryover Eligibility* subsection in this section for additional information on eligibility during the first 30 operational days of the following year.

[77] See the *Administrator's Reference Manual (ARM), Section 6, Verification of Eligibility* for additional information on this topic.

[78] See the *Records Retention* subsection in this section for additional information on documenting additional information or clarified information that came from a contact with the household.

[79] See the *Administrator's Reference Manual (ARM), Section 2, Program Application & Agreement* for additional information on submitting the determining or reviewing official role in TX-UNPS. See the *Administrator's Reference Manual (ARM), Section 30, Records Retention* for more information on the CE application. See the *Income Eligibility Determination* and *Categorical Eligibility* subsections in this section for more detailed explanations of requirements related to household applications.

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Determining or Reviewing Official (Required)

Person who reviews all applications, direct certification lists, and other documentation for categorical eligibility to make decisions related to eligibility.

Cannot be the same person as the confirming or hearing official

Eligibility/Verification Official Role Chart

If a No is recorded at the intersection of the column and row, the individual **cannot** perform the required actions for both official roles.

If a Yes is recorded at the intersection of the column and row, the individual **can** perform the required actions for both official roles.

	Determining /Reviewing[R]	Hearing[R]	Verification[R]	Confirming[O]	Follow-Up[O]
Determining /Reviewing[R]	--	No	Yes	No	Yes
Hearing[R]	No	--	No	No	No
Verification[R]	Yes	No	--	Yes	Yes
Confirming[O]	No	No	Yes	--	Yes
Follow-Up[O]	Yes	No	Yes	Yes	--

Key for Abbreviations

[R] = Required—CE **is required** to assign an individual(s) to perform the actions associated with this role.

[O] = Optional— CE **is not required** to assign an individual(s) to perform the actions associated with this role, but the actions associated with this role **are required**.

Hearing Official (Required)

Person who ensures that all required provisions are followed correctly and decides any time there is an appeal of decisions related to eligibility determinations.

Cannot be the same person as the determining or reviewing official, confirming, or verifying official

Verifying Official (Required for Verification)

Person who verifies the eligibility of applicant households.

Cannot be the same person as hearing official

May be the same person as determining or reviewing or confirming or follow-up official

Confirming Official (Optional Designation, Required Action)

Person who confirms that the initial determination made by the determining or reviewing official was accurate; cannot be the same person as the determining or reviewing or hearing officials.

May be the same person as the Follow-up or Verification Officials

Follow-Up Official (Optional Designation, Required Action)

Person who conducts follow-up with any household or agency that has not submitted requested or adequate information.

May be the same person as the Confirming or Verification Official

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Special Situations, Official Roles

Educational Service Provider (ESP)

If a CE (school district, charter school, private school, or RCCI) has assigned administrative responsibility to an education service provider (ESP)[80] for the operation of all SNP functions, the ESP may also be given operational authority for eligibility determination and verification. However, the CE must retain responsibility for ensuring that all program requirements are met.

Complete Application

Before processing an application to determine eligibility, the determining or reviewing official is responsible for ensuring that the application is complete.

Complete Household Application:	If the household application is complete—contains the required information to determine eligibility, the official will review and determine the correct eligibility for the household.
Incomplete Household Application:	If there are any unresolved inconsistencies or questions based on the required eligibility information the household provided or did not provide, the determining or reviewing official must deny the household application. However, the official must contact the household before denial, to attempt to resolve the issue within the 10 operating days allowed to process a household application. This may involve asking an adult in the household to complete sections of the household application that were left blank or were inaccurate. Every reasonable effort should be made to obtain missing information from the household before denying a household application.

The *Checklist for Complete Household Application Chart* will assist CEs in determining if a complete application has been received.

[80] Authority for ESPs to manage educational and other operations for a school district or charter school is given by the Texas Education Agency (TEA); authority for an RCCI is given by the agency with regulatory authority for the RCCI; and authority for private schools is given by its governing board.

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Checklist for Complete Household Application Chart	
Based on Income	**Based on Categorical Participation[81]**
○ **Names of All Household Members** *Does the application list all household members?* – The number of names recorded on the application must match the total number of household members recorded. ○ **Last 4 Digits of the Social Security Number** *Does the application include the last four digits of an adult household member's social number or is the box for no Social Security number checked?* – Household applications must include the last four digits of an adult[82] household member's Social Security number or an indication of no Social Security number. ○ **Amount, Frequency, and Source of Current Income for All Household Members** *Does the application report the income or no income for all household members and an indication of income frequency?* – For Adults: Names for all adults in the household must be recorded in the *Adult Income* section with the frequency of payment. – For Students: All income for students in the household is reported as one amount in the *Combined Income for Children* section with an indication of frequency. [NOTE: The directions for the household application state that an income field left blank will be considered as no income; therefore, the CE accepts a blank income field as no income.] ○ **Signature[83] of Adult Attesting to the Accuracy** *Does an adult in the household sign the application?* – The adult signing the household application must be listed on the application.	○ **Names of All Household Members** *Does the application list all household members?* – For All Other Categorical Programs: The number of names recorded on the application must match the total number of household members recorded. – For SNAP/TANF Applications: Not required. ○ **Last 4 Digits of the Social Security Number** *Does the application include the last four digits of an adult household member's social number or is the box for no Social Security number checked?* – For All Other Categorical Programs: Household applications must include the last four digits of an adult household member's Social Security number or an indication of no Social Security number. – For SNAP/TANF: Not required. ○ **Indication of Categorical Eligibility** *Does the application indicate categorical program participation?* – If the categorical program is SNAP/TANF, the eligibility applies to all students in the household. – If the categorical program is not SNAP/TANF, the eligibility applies to only the student who participates in the program marked. ○ **Signature of Adult Attesting to the Accuracy** *Does an adult in the household sign the application?* – For All Other Categorical Programs: The adult signing the household application must be listed on the application. – For SNAP/TANF: An adult living in the household must sign the application.

After the determining or reviewing official determines that an application is complete, the official processes the application to determine eligibility.

Household Provides Additional Documentation

If a household submits an incomplete application and voluntarily provides pay stubs but did not record the income information on the household application, the

[81] Medicaid Free and Medicaid Reduced eligibility cannot be determined using an application

[82] An adult is defined as any individual age 18 and older. Therefore, an individual younger than 18 years of age cannot complete and/or sign her or his own household application unless (1) the signer is an emancipated minor child or (2) the parent of the student is under 18. The signature of a parent, who is under the age of 18, is considered to be an adult signature in this case.

[83] Any printed name or cursive signature appearing in the space following the certification statement is an acceptable signature. Legal signatures do not have to be cursive. An *X* may be considered a signature.

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determining or reviewing official should contact the household and ensure that the stubs reflect the total household income before processing the application.

Information Box 4

Income Eligibility

Household Composition (Economic Unit) & Total Household Income	Compared to	Income Eligibility Guidelines (IEGs)*

* IEGs available at *www.squaremeals.org*

Voluntary Submission of Conflicting Information

If a household provides additional information, and this additional information conflicts with the information recorded on the household application, the household application must be approved based only on the information recorded on the household application. The additional information cannot be considered in the initial approval.

However, in cases where there is conflicting information, the CE determining or reviewing official must also take one of the following actions:

Action 1	OR	Action 2
Send the household a notice of approval and a notice of adverse action at the same time. This provides the household opportunity to resolve the discrepancy during the 10 calendar days advance notice period.		Send the household a notice of approval and a verification letter (based on verification *For Cause*) at the same time.[84]

The CE determining or reviewing official is in the best position to determine the appropriate action to be taken. The inconsistency in information must be resolved quickly.

Households That Do Not Submit a Household Application, Submitting on Behalf of the Student

Local officials may complete a household application on behalf of a student known to be eligible if the household does not submit a household application, including disaster or emergencies. In these cases, the local official is expected to use the best available information in this process. This option is intended for limited use in individual situations and must not be used to make eligibility determinations for categories or groups of students.

Who Completes the Application

When exercising this option, the official must complete a household application on behalf of the student based on the best available household size and income information. The source of the information must be noted on the household application.

Required Information

Names of all household members, the last four digits of the social security number of the person completing the form. The signature of an adult household member is not required in this situation. However, any additional information the local official provides will be helpful to the determining or reviewing official.

[84] See the *Administrator's Reference Manual (ARM), Section 6, Verification of Eligibility* for additional information on verification for cause.

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Household Notification

The household must be notified that the student has been certified to receive free or reduced-price benefits.

Verification Pool

These household applications are excluded from verification.

Presidentially Declared Disaster

When locations are designated as Presidentially Declared Disasters, school officials often take a greater role in identifying homeless or displaced students while the homeless coordinator finalizes documentation. This effort ensures that students can receive meals while the paperwork is completed.

Information Box 5

Household Composition

Household Composition

- The number of members within an economic unit represent the composition of the household.

Economic Unit

- A group of related or unrelated individuals living as one economic unit—share housing and/or significant income and expenses among members—are one economic unit.
- Generally, individuals residing in the same house are an economic unit.
- This term does not apply to residents of an institution or boarding house.

Multiple Units in One Household

- More than one economic unit may reside together in the same house.
- When there are separate economic units in the same house, the units commonly prorate expenses and maintain economic independence from one another.

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Income Eligibility Determination

To determine if a household meets income eligibility requirements for free or reduced-priced meals, CE officials must compare the most current Income Eligibility Guidelines (IEGs) to the household composition and the current total household income. Household composition is the number of individuals living in the household.

[NOTE: If the household does not provide enough information to determine the number of individuals living the household, the CE must contact the household and request information on household composition.]

Determining Household Composition

The determining or reviewing official must determine the number of household members—*household composition*—in order to compare the household composition and the total household income to the IEGs. While the term *household* is commonly used to mean a *family unit*, for SNPs the number of members in the household is determined by *economic unit—a group of related or unrelated individuals who live as a unit sharing housing, income, and expenses*.

Although individuals residing in the same house are generally a single economic unit, more than one economic unit may reside in the same house. Separate economic units in the same house are characterized by prorating expenses and economic independence from one another. If there are multiple units in one household, the determining or reviewing official will need to ensure that each household prorates expenses by unit and maintains economic independence from one another.

Information Box 6

No Income Reported

The directions for the household application must request that the person completing the application indicate zero income for any household member that does not have an income. However, the household application directions must also state that if an income field for any household member is left blank, the household member signing the application is stating that there is no income to report for that individual.

In cases where no income is indicated on the household application, the determining or reviewing official will process the application as complete as long as the rest of the application is complete.

If the determining or reviewing official has available or known information that the household has intentionally misreported its income, the application must be verified for cause. However, a CE must not intentionally select every household application that is submitted with no income for verification for cause.

Income Guidelines for Free and Reduced-Price Meals[85]

The household size and income levels prescribed annually by the U.S. Secretary of Agriculture are used for determining eligibility for free and reduced-price meals.

- Free—At or below 130 percent of the federal poverty guidelines
- Reduced-price—Between 131 and at or below 185 percent of the federal poverty guidelines

Current Income

The current income of the household is based on total income brought into the

[85] See the *Income Exclusions Chart*, *Federal Payment Exclusions Chart,* and *Special Situations in Determining Household Income* subsection in this section for additional information on income eligibility guidelines.

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home by all members of the household.[86] This includes those who work full or part-time and those who receive income from nonwork-related sources. Income is the total gross income received by a household before deductions (income taxes, employee's Social Security taxes, insurance premiums, and bonds) except for self-employment income.

Current income is the gross income received by a household, before deductions, for

- the current month,
- the amount projected for the first month for which the application is filled out, or
- the month prior to application.

If this income is higher or lower than usual and does not fairly or accurately represent the household's actual circumstances, the household may, in conjunction with determining officials, project its annual rate of income based on the circumstance of the situation. These circumstances are described in the special situation guidance located throughout this subsection.

Garnished Wages and Bankruptcy

Court ordered payments, garnished wages, and bankruptcy payments are not excluded from total gross income. This includes, but is not limited to, alimony or child support.

When No Income Is Recorded

If there is no income recorded on the household application, the household application is considered complete. However, the CE must state that a blank income field indicates no income in the instructions for completing the household application.

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[86] See the *Determining Household Composition* subsection in this section for an explanation of households with multiple economic units. If there are multiple units, each unit's total income is considered separately from other economic units in the same household.

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Although the determining or reviewing official may need to use her or his own discretion in some instances, *Income Frequency and Determination Chart* illustrates how the determining or reviewing official calculates total income:

Income Frequency and Determination Chart

Income Frequency	Determination of Current Income[87]	Eligibility Consideration
Monthly Current Income	When households report most current income for the household, • the amount may be for the current month or • the amount projected for the month for which the household application is completed or • the month prior to filling out the household application.	If all sources of income are received in the same frequency, no further actions are needed before determining eligibility. If the sources of income are received at different frequencies, the determining or reviewing official must apply a Conversion Factor (below) to determine annual income before determining eligibility.
Annual Current Income	If a household provides annual income only, the CE may contact the household to ensure that the household has provided current income. However, the household cannot be required to provide documentation of income during the household application process.	After ensuring that the reported annual income is accurate, no further steps are needed before determining eligibility.
Conversion Factor	If there are household income sources with varied frequencies,[88] the determining or reviewing official must apply the appropriate conversion factor to each income source as reflected in the following chart: **Frequency Number Conversion Factor** Weekly x 52 Bi-Weekly (every two weeks) x 26 Semi-Monthly (twice a month) x 24 Monthly x 12	After converting each income source, add the amounts of all incomes together to get the annual income—annualized income, use the IEG chart to determine income eligibility. *For Example:* **Multiply Income Received by Frequency and Add All for Household Yearly Total** $98 Weekly x 52 = $5,096 $476 Bi-Weekly x 26 = $12,376 $1,076 Monthly x 12 = $12,912 **Household Yearly Total = $30,384**
	[NOTE: CEs cannot use conversion factors such as 4.33 to convert weekly income or 2.15 to convert bi-weekly income to monthly amounts. If a CE uses software for the household application process or certification purposes, the software cannot use conversation factors such as 4.33 to convert weekly income or 2.15 to convert bi-weekly income to monthly amounts and cannot automatically convert income unless there are different frequencies.]	

The *Income Exclusions Chart* and *Federal Payment Exclusions Chart* provide a partial list of income sources that should be included or excluded when determining household income. The Supplemental Security Income Program maintains an extensive list at *www.socialsecurity.gov/OP_Home/cfr20/416/416-app-k.htm*. The household always has the right to provide documentation or to request a determination about a source of income that may be excluded from the school nutrition programs.

87 See the *Special Situations in Determining Household Income* subsection in this section for additional information on income that may not be reflected in explanation.

88 For example, one person in the house receives a weekly income; another monthly income.

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Income Exclusions Chart

The following income sources are excluded when determining income eligibility for meal programs:

Non-Military

By Statute

- Any cash income or value of benefits excluded by statute, common exclusions include benefits under the SNAP or FDPIR and some federal educational benefits
- Payments received from a foster care agency or court for the care of children
- Agent Orange Compensation Exclusion Act (Public Law 101-201)

In Kind

- In-kind compensation, such as housing for clergy and similar non-cash benefits

Educational Assistance

- Student financial assistance provided for the costs of attending an educational institution, such as grants and scholarships awarded to meet educational expenses and not available to pay for meals

Temporary Income

- Loans, such as bank loans, since these funds are only temporarily available and must be repaid
- Occasional earnings received on an irregular basis (not recurring, such as payment for occasional baby-sitting or mowing lawns)

Lump Sum Payments

- Lump sum payments or large cash settlements are not counted as income since they are not received regularly. This includes, but is not limited to, insurance compensation for a loss.

Military Benefits

In-Kind

In-kind benefits such as non-privatized on-base housing, where no cash is provided to the household

Family Subsistence Supplemental Allowance (FSSA)

Military household income classified as FSSA

Privatized Housing Allowances[89]

A housing allowance appearing on the leave and earnings statement of service members living in privatized housing, applying only to service members living in housing covered under the Military Housing Privatization Initiative

(Not included in this exclusion—housing allowances for households living off-base in the general commercial or private real estate market)

Combat Pay

- Received in addition to the service member's basic pay
- Received as a result of the service member's deployment to or service in an area that has been designated as a combat zone
- Not received by the service member prior to her or his deployment to or service in a designated combat zone

Deployment Extension Incentive Pay

Extended to Deployment Extension Incentive Pay (DEIP) given to active-duty service members who agree to extend their military service by completing deployment with their units without re-enlisting

(Not included in this exclusion—service members who have returned to their home station or are not considered deployed)

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89 Additional information about Department of Defense Military Housing Privatization Initiative, including a list of affected installations, may be found at *www.acq.osd.mil/housing*.

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Federal Payment Exclusions Chart

The following income payment, reimbursements, or value of assistant sources excluded when determining income eligibility for meal programs.

American Indian

- Indian tribal land held in trust from certain sub-marginal land of the U.S.
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

Child Care Related

- At-risk block grant childcare under Section 5081 of Public Law 101-508, which amended Section 402(i) of the Social Security Act
- Child Care under section 402(g)(1)(E) of the Social Security Act
- Child Care and Development Block Grant (Public Law 102-508), (15) under AmeriCorps to the extent excluded by the National and Community Service Act of 1990
- Child Care and Development Block Grant Act, as amended (Public Law 102-586, Sec. 8(b))

Disability

- Agent Orange Compensation Exclusion Act (Public Law 101-201)

Disaster

- Disaster Relief Act of 1974, as amended by the Disaster Relief and Emergency Assistance Amendments of 1989 (Public Law 100-707)
- National Flood Insurance Program (NFIP)

Utility Assistance

- Payments under the Low-income Home Energy Assistance Act, PL.99-125

Education

- Carl D. Perkins Vocational Education Act, as amended by the Carl D. Perkins Vocational and Applied Technology Act Amendments of 1990 (Public Law 101-392)
- Title IV of the Higher Education Act of 1965 (Pell Grant, Supplemental Education Opportunity Grant, State Student Incentive Grants, National Direct Student Loan, PLUS, College Work Study, and Byrd Honor Scholarship Programs) to the extent excluded by that Act

Low Income

- Community Development Act of 1987
- Cranston-Gonzales National Affordable Housing Act (Public Law 101-625)
- Housing and Community Development Act of 1987
- Low-income Home Energy Assistance Act (Public Law 99-125)
- Old Age Assistance Claims Settlement Act, except for per capita shares in excess of $2,000
- Richard B. Russell National School Lunch Act, the Child Nutrition Act of 1966, and the Food and Nutrition Act of 2008—

Volunteer Service

- Small Business Act (SCORE and ACE), Section 8(b)(1)(B)
- Social Security Act, Section 402(g)(1)(E)
- Title I (VISTA and others) and Title II (RSVP) of the Domestic Volunteer Service Act of 1973 to the extent excluded by that Act

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Reported Income

On an income-based application, the household reports gross earned income, i.e., any money received on a recurring basis. This includes all money earned before deductions are made for income taxes, employee's Social Security taxes, insurance premiums, and bonds.

Reported income includes the following sources:

Annuities

- Annuities and income from estates and trusts

Earnings from Work

- Wages, salaries, tips, and commissions
- Net income from self-owned businesses and farms
- Strike benefits, unemployment compensation, and worker's compensation
- Military basic pay and cash bonus and allowances for off-based housing, food, and clothing

Farm Income

- Net income for self-employed farmers is figured by subtracting the farmer's operating expenses from the gross receipts.
  - Operating Expenses: A farmer's operating expenses including the cost of the following:
    - Feed, fertilizers, seed, and other farming supplies
    - Cash wages paid to farmhands
    - Depreciation charges, including cash rent, interest on farm mortgages, farm building repairs
    - Farm taxes—but not state and federal income taxes
  - Gross Receipts: Gross receipts include the value of the following:
    - All products sold
    - Money received from the rental of farmland, buildings, or equipment
    - Incidental receipts from the sale of items such as wood, sand, and gravel

Earned Interest, Dividend Income, Royalties, and Investment Income

- Earned interest, and dividend income, net royalties, and/or investment income

Lump Sum Payment

- Regular withdrawals from a saving account where lump sum payments or large cash settlements are deposited

Other Income

- Any other money that may be available to pay for student's meals
- Cash withdrawal from savings
- Regular contributions from persons not living in the household

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Rental Income

- Net rental income

  If a household owns a housing unit and rents living space to another household, the income from renting of a room/s, an apartment, or other space must be included as income. The treatment of rental income is similar to self-employment income.

  [NOTE: If two separate households rent living space and one household gives its portion of the rent to the other household which, in turn, pays the full rent to the landlord, the household paying the rent does not count the rent payment as income. The household is performing a simple financial transaction that does not provide the household with additional income.]

Seasonal Workers and Others with Fluctuating Income

Annual rate of income for these types of income

Special Guidance for Seasonal Workers and Others with Fluctuating Income:

Seasonal workers include those with annual employment contracts but who may choose to have salaries paid over a shorter period. This includes school employees.

Seasonal workers and others whose income fluctuates usually earn more money in some months than in other months. Consequently, the previous month's income that is reported on the free and reduced-price meal household application may distort the household's actual circumstances.

The determining or reviewing official must determine the period for which earnings are received as well as the full amount of income available to such workers on an annual basis and, then, convert all income sources to an annual amount. This process treats these employees in the same manner as employees who choose to have their salaries paid over the full year.

In these situations, a household may project an annual rate of income and report this amount as current income. If the prior year's income provides an accurate reflection of the household's current annual rate of income, the prior year may be used as a basis for the projected annual rate of income.

Social Security with Election to Have Taxes Withheld

Gross income from monthly Social Security payments

Special Guidance for Social Security Payments

Social Security recipients may choose to have taxes withheld from their monthly checks. Therefore, the amount of the Social Security check does not represent the gross monthly payment for the household. In these cases, the CE will need to ask for additional information that shows gross monthly income for the Social Security payment.

Self-Employment Income

Current year's net income or current monthly income is a more accurate measure

Special Guidance for Self-Employment Income:

Self-employed individuals may use the previous year's income as a basis to project their current year's net income, unless their current monthly income provides a more accurate measure. These individuals are credited with net income rather than gross income.

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Net income for self-employment is figured by subtracting business expenses from gross receipts. The following explanations help to define terms related to self-employment income:

- Gross receipts include the total income from goods sold or services rendered by the business.
- Deductible business expenses include the cost of goods purchased, rent, utilities, depreciation charges, wages and salaries paid, and business taxes—but not personal, federal, state, or local income taxes.
- Non-deductible business expenses include the value of salable merchandise used by the proprietors of retail businesses.
- Net income for self-employed farmers is figured by subtracting the farmer's operating expenses from the gross receipts.
- Gross receipts include the value of all products sold; money received from the rental of farmland, buildings, or equipment to others; and incidental receipts from the sale of items such as wood, sand, or gravel.
- Operating expenses include the cost of feed, fertilizer, seed, and other farming supplies; cash wages paid to farmhands; depreciation charges; cash rent; interest on farm mortgages; farm building repairs; and farm taxes—but not local, state, and federal income taxes.

For a household with income from both wages and self-employment, each amount must be listed separately. When there is a business loss, income from wages may not be reduced by the amount of the business loss. If income from self-employment is negative, it should be listed as zero income.

State or Local Government Assistance

- Regular cash assistance from state or local government, including, but not limited to, adoption assistance payments

Retirement or Disability Benefits

- Pensions, retirement income, and veteran's benefits
- Social Security
- Supplemental Security Income (SSI)
- Disability benefits, including but not limited to Retirement, Survivors, Disability Insurance (RSDI)

Welfare, Child Support, Alimony

- Public assistance payment or welfare benefits (e.g., TANF, General Assistance, General Relief)
- Alimony or child support payments received

Enrollment Changes

CEs should have a process in place to expedite household applications when enrollment changes occur.

Prospective Students Not Currently Enrolled

A CE may allow parents to complete a household application for students not currently enrolled. In these cases, CEs should provide the most

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current household application for free and reduced-price meals. This proactive strategy helps to accomplish the following:

- raise awareness of the program,
- expedite identification of eligible participants for the upcoming school year, and
- provide free or reduced-priced meals to students during the 30 operational day carryover period[90] for the following school year—free or reduced-priced meals that would not have been awarded until after a household application was approved.

Eligibility status for these students applies only to the carryover period,[91] the first 30 operating days of the new school year. The parent must fill out a new household application for the current school year for the CE to determine eligibility for the remainder of the year.

For Example: A CE conducts kindergarten round up at the end of SY 2016—2017. During the round up, households can submit free or reduced-price household applications.

An eligibility determination based on an SY 2016-2017 household application may be used for carryover eligibility during the first 30 operating days of SY 2017-2018.

The SY 2016-2017 household application eligibility determination does not extend beyond the carryover period.

Siblings from Previously Eligible Households

At the start of a new school year, if a sibling was not listed on previous year's household application but lives in a household that was eligible for free or reduced-price meals during the previous year, the CE must extend the eligibility to the sibling for the 30-operational day carryover period. This would include a sibling who is no longer enrolled.

A new household application is required after the first 30 operating days of school so that the CE can determine eligibility for the current school year. If the household is directly certified for participation in a Categorical Assistance Eligible program,[92] a new household application is not required.

Reapplying for Free or Reduced-Price Meals in the Same Year After Termination

Households that reapply after the termination of free or reduced-priced meals as a result of verification must submit income documentation with their updated household application.[93]

Transfer—Return to Original CE

If a student transfers to a new CE and then returns to the first CE, the student's eligibility stays in effect.

90 See the *Carryover Eligibility* subsection in this section for additional information.

91 See the *Carryover Eligibility* subsection in this section for additional information.

92 SNAP, TANF, and FDPIR

93 A CE cannot require income documentation for a household application submitted after the initial distribution and collection of applications at the first of the year.

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Transfer—Within the Same CE (Non-CEP Schools)

If a student transfers to another school in the same CE in the same school year, her or his eligibility must be transferred.

Transfer—Within the Same CE for Community Eligibility Provision (CEP) or Provision 2 (P2) School

If a transfer from a special provision school to a non-special provision school within the same CE is done in a non-base year, a new household application or determination of eligibility for participation in a Categorical Assistance Eligible program[94] or Other Categorical Eligible Program is required unless there is an approved household application for another student in the household on file. The new school must process a household application within 10 days and provide free meals to the student until an eligibility determination is made.

Texas Records Exchange System

In Texas, school districts use the web-based Texas Records Exchange (TREx) system software application to exchange electronic student records. Using the TREx application, school districts can electronically request and receive records for students who have attended or will be attending Texas public schools. Information related to NSLP/SBP eligibility may be exchanged through this system. For more information on how to use this system for this purpose, CEs should contact the Texas Education Agency.

Special Situations in Determining Household Income

Because the composition of households can be complex, determining or reviewing officials may need to use their own discretion in special situations. However, the following guidance can help in deciding in special situations.

Court-Ordered Household

Adopted Child

A student for whom a household has accepted legal responsibility is considered to be a member of that household. If the adoption is a subsidized adoption, which may include children with special needs, the subsidy is included in the total household income. Adopted children that receive payment under Title IV-E of the Social Security Act who are zero benefit recipients of TANF must include the amount of assistance as household income on the household application.

Emancipated Minor Child

An emancipated minor child living alone or as a separate economic unit is considered to be a household of one. Age is not a factor in defining an emancipated minor child. An emancipated minor child signs her or his own household application and is not required to provide a Social Security number or the last four digits of his or her Social Security number. A student who lives with her or his parents and is required to pay for room and board is not considered a separate economic unit. Most students paying room and board are usually paying a token amount and are not economically independent of their parents and therefore, not considered to be emancipated.

94 SNAP, TANF, and FDPIR

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Foster Child

A foster child is a child whose care and placement are the responsibility of the state or a child who is placed by a court with a caretaker household. Such a child is considered a member of the foster parent/s' household. A child placed with relatives through a formal arrangement by the courts or the state is also considered a foster child. In these cases, the foster parents will have court documentation that indicates their role.

Additional Non-Foster Children a Household

It is optional for the household to list foster children residing in the home on a free and reduced-price meal household application for non-foster children. However, if the household lists a foster child on its household application for non-foster children, then the foster child's personal income—part-time job or funds provided to the child for her or his personal use—must be reported and included in the eligibility determination. Income the household received for the care of the foster child must be included in household income.

Adopted Foster Child

Because of the yearlong eligibility, the free eligibility status of a foster child does not change within the year even if the child is adopted during the year the eligibility determination was made. This eligibility extends into the first 30 operating days of the subsequent school year—the carryover period.

However, for the subsequent school years, an adopted child's eligibility must be based on the economic unit of the household and all income available to that household. Reported income includes any adoption assistance.

State-Assigned Permanent Managing Conservatorship

A child whose care is controlled by a state-assigned Permanent Managing Conservatorship will follow the same requirements as a foster child.

Informal Placement

A child is not considered a foster child if placed informally with relatives but not through court or state intervention. However, the guidance in the subsection for a *Not Living in a Traditional Home* may apply to this student.

While a foster child is eligible for free meals, the eligibility of the foster child does not apply to other students in the household. The household may include the foster child as a member of the household or may submit an application that does not include the foster child as a household member.

Joint Custody

When joint custody has been awarded by the court and the child physically changes residence for prescribed periods, the child is considered part of the household where he or she resides during that

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period. In these situations, if both parents apply for free or reduced-price meals in the same CE for the student and different eligibility status results, the greatest benefit level is used.

For Example: If the father's situation results in eligibility for free meals while the mother's household application is denied, the student would receive free meals regardless of which parent was housing the student.

One Parent Refuses Free or Reduced-Price Meals

However, if one of the parents chooses to refuse services, on the days the child is with that parent and the parent pays for the student's meals, the student's meals cannot be counted in the day's free or reduced-price meals served totals. This does not affect the free and reduced-price meals for the student when residing with the other parent.

Other Students in the Household

If one parent applies for free or reduced-priced meals for other students in the household, the student for which the parent has joint custody may be counted as a member of the household.

Hardship Situations

Households that are not categorically eligible or income-eligible cannot be approved for free or reduced-priced meals. USDA has no provisions for making exceptions based on unusual household circumstances, such as high medical expenditures. The only exception to this requirement is students who have been made homeless or displaced by a declared disaster.

Homeless or Displaced Family in a Declared Disaster

When a household has undergone a disaster and moved in with another household, the host family's household composition and income should not be reported on the homeless or displaced family's household application.

When a host family for a homeless student or family applies to receive free and reduced-price meals for their own students, the host family may include the homeless student or family as household members in their household composition if the host family provided financial support to the homeless family, such as shelter, utilities, clothing, or food. In this case, the host family must also include any income received by the homeless family as household income in a household application.

Being listed on the host family's household application does not affect the homeless student's eligibility for free meals.

Military

Deployed Service Personnel

Family members not living with the household for an extended period are not usually considered household members. However, any member of the armed services who is activated or deployed in support of any military combat operation is counted as a household member.[95]

[95] See the *Income Inclusions Chart* and *Federal Payment Exclusions Chart* in this section for additional information on this topic.

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Any money made available by them or on their behalf for the household is included as income to the household except for combat pay as described in the *Income Exclusion Chart and Federal Payment Exclusions Chart* in this section. Determining or reviewing officials will find additional information in the *Eligibility Manual* available at *www.SquareMeals.org*.

Military Benefits

Benefits paid directly to the service person such as housing allowances and food or clothing allowances are considered income. See the *Income Exclusions Chart* and *the Federal Income Exclusions Chart* in this section for additional information on income excluded for those in the military, including privatized housing.

Not Living in a Traditional Home

Student Attending an Institution

A student who attends but does not reside in an institution is considered a member of the household in which he or she resides.

Student Away at School

A student who is temporarily away at school (e.g., attending boarding school or college) is not considered to be a household of one. Instead, the student's eligibility is based on her or his family's household composition and income. If a student is attending an SNP participating boarding school and wishes to apply for free or reduced-price meals, he or she is not considered a household of one. This also applies to foreign students attending boarding schools.

Student Living with One Parent, Relative, or Friends

In cases where no specific welfare agency or court is legally responsible for the student or where the student is living with one parent, other relatives, or friends of the family, the student is considered to be a member of the household with whom he or she resides.

Children of Divorced Parents

Children of divorced or separated parents are generally part of the household that has custody.

Student Residing in an Institution or RCCI

A student residing in a non-participating institution but who attends an SNP participating school during the week or a student residing in a participating RCCI is considered a household of one. See the *Administrator's Reference Manual, Section 26, Residential Child Care Institutions* for more information on this topic.

Family Members Living Apart

Family members living apart temporarily are considered household members. Family members not living with the household for an extended period are not considered members of the household for purposes of determining the number of members in the household, but any money made available by them or on their behalf for the household is included as income to the household.[96]

[96] See the *Military* subsection in this section for additional requirements related to military deployment.

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Foreign Exchange Student

A foreign exchange student is considered to be a member of the household in which he or she resides—the household hosting the student.

Residential Child Care Institutions (RCCI)—Students Attending a School That Administers a School Nutrition Program (SNP)

Each student residing in an RCCI is considered to be a household of one. Unless the RCCI submits a master list to the CE's determining or reviewing official where the student attends school, the RCCI should submit a separate household application for each student.

RCCI Master List

If the RCCI submits an eligibility documentation sheet to a CE—Master List— to establish eligibility for students residing in the RCCI that attend one of the CE's schools, the documentation sheet must include the following information:

- Student's name
- Student's date of birth
- Personal income received by the student, including frequency of income
- Date of admission to the RCCI
- Date a student is no longer resides or enrolled at the RCCI
- Signature,[97] title, and contact information of the official authorized to provide the information

To simplify the development of a master list, a CE may record a note on the master list indicating that all students have zero income as long as the note states that the zero income applies to all students and is signed and dated by a staff member who can certify the accuracy of the information. The date of admission and date of exit/discharge should be recorded for each student since the dates are not likely to be exactly the same.

RCCI Residential Students

For students that are residents of the RCCI, each student on the master list is considered to be a household of one. The CE will use the information on the master list to determine the eligibility of each student.

RCCI Non-Residential or Day Students

The eligibility for non-residential or day students is based on household income or categorical eligibility. The RCCI is responsible for distributing and collecting household applications from non-residential students.

The eligibility of non-residential students cannot be determined without an application unless the student is directly certified as categorically eligible.

If an RCCI chooses to provide meals to all day students at no cost, the RCCI must still determine the eligibility of each day student

[97] See the *Definitions for This Section* in this section for additional information on actual signatures and electronic signatures.

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and claim reimbursable meals for these students by eligibility status—free, reduced-price, or paid.

Categorical Eligibility Determination

The SNP uses categorical eligibility to provide free meals to students of high need. There are two types of categorical eligibility:

- Categorical Assistance Eligible Programs:
  - SNAP (includes D-SNAP)
  - TANF
  - FDPIR
  - Medicaid Free
  - Medicaid Reduced

Participation in one of these programs makes all students in the household eligible for free meals. When a CE makes a direct certification determination of eligibility based on SNAP/TANF/Medicaid[98] data, this eligibility takes priority over all other determinations.

Use of the Texas Eligibility List Management System (Texas-ELMS)

TDA, in cooperation with Texas Health and Human Services (HHS) and TEA, has developed Texas-ELMS, a database that allows CEs to match the names of enrolled students whose households qualify for SNAP, TANF, Medicaid Free, or Medicaid Reduced. CEs use this system for two purposes: Direct Certification and Direct Verification. When CEs use this system, CEs must adhere to the following guidance:

- Use of and access to Texas-ELMS is limited to those who are authorized users per the *Security Authority for User Access Manager Form (FND-135)* form on file. CEs must limit staff access to those who need to use the information in the system. However, CEs are also encouraged to have at least one back-up person who can use the system.
- CE must ensure that the information obtained from the system is protected.
- Information obtained from the system must be used as described in the guidance provided in *Administrator's Reference Manual (ARM), Section 3, Civil Rights and Confidentiality*.

Information Box 7

Categorical Program List

- Supplemental Nutrition Assistance Program (SNAP); Temporary Assistance for Needy Families (TANF); or Food Distribution Program on Indian Reservations (FDPIR)
- Homeless, including runaways and individuals displaced by declared disasters
- Foster
- Migrant
- Head Start and Early Head Start pre-kindergarten programs.
- Medicaid Free if directly certified in Texas-ELMS
- Medicaid Reduced if directly certified in Texas-ELMS

[98] Medicaid Free and Medicaid Reduced eligibility must be determined using information from Texas-ELMS.

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- The Direct Certification component of Texas-ELMS is used to directly certify households for a School Nutrition Program. The system may not be used for any other purpose unless allowed by regulation.[99]
- The Direct Verification component of Texas-ELMS is used to directly verify a household that has been chosen for verification. When a household is directly verified for participation in SNAP, TANF, Medicaid Free, or Medicaid Reduced, the CE must then add the students in the household to the Direct Certification List.
- When a CE matches a student in Texas-ELMS, the CE must ensure that the match is for the student enrolled at the school. By confirming that the student or sibling has a shared address, birthdate, or another indicator, the CE can ensure that the match is accurate.

- Other Source Categorical Eligible Programs:
  - Homeless, including runaways and individuals displaced by declared disasters
  - Foster[100]
  - Migrant
  - Head Start and Early Head Start pre-kindergarten programs

  Participation in one of these programs makes only the student participating in the program eligible for free meals. Direct certification for one of the Other Source Categorical Eligible programs takes priority over income determinations.

A CE's eligibility system or point of service (POS) must be able to identify the specific categorical program eligibility for each categorically eligible student. In addition, CEs must retain documentation that demonstrates that their direct certification eligibility determinations are accurate.[101]

Categorical Assistance Eligible Program Determination Guidelines

If any person in the household is a participant in a Categorical Assistance Eligible Program, all students in the household are eligible for free meals.

Extension of Benefits

If any person, including adults,[102] in a household is receiving program benefits from SNAP, TANF, and FDPIR, all students in the household are eligible for free meals.

Medicaid Free and Reduced

- If any person, including adults, in a household is identified as Medicaid Free in Texas-ELMS, all students in the household are eligible for free meals.[103]

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99 See *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality* and the *Use of Household Applications* and *Eligibility Data for Nonprogram Purposes* subsection in this section for additional information on the use of eligibility information.

100 Where the state retains legal custody of the child; see the definition for *Foster Child Categorical Eligibility* in the list of definitions in this section for additional information on this topic

101 See the *Records Retention* subsection in this section for additional information on this topic.

102 See the *Definitions in This Section* subsection in this section for additional information on this topic.

103 Medicaid Free meal benefits can only be applied if a match is made in Texas-ELMS.

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- If any person, including adults, in a household is identified as Medicaid Reduced in Texas-ELMS, all students in the household are eligible for reduced-price meals.[104]

This is called *extended benefits* or an *extension of benefits*.

Methods for Determining Categorical Assistance Eligible Program Participants

CEs have two methods of determining the eligibility of Categorical Assistance Eligible Program participants:

1. Application-Based—Household indicates participation in a Categorical Assistance Eligible Program on the household application.

   Medicaid Free and Medicaid Reduced information reported on an application or using an award letter from the Texas Department of Health and Human Services Commission cannot be used to determine eligibility. Medicaid Free and Medicaid Reduced eligibility can only be determined based on a match made in Texas-ELMS.

2. Direct Certification—Direct Certification is the identification of categorically eligible students through means other than getting information from the household application. For Categorical Assistance Eligible Program participants, this is done through Texas-ELMS in an automated data matching technique.
   - Students originally approved for free and reduced-price meals via applications using an Eligibility Determination Group Number (EDG#) may be directly certified if the CE can match the EDG# number in Texas-ELMS.
     [NOTE: If the household submitted EDG# has 8 digits, the 0 has been automatically dropped. The 0 must be added back before a match can be made in Texas-ELMS.]

In all cases, students who are eligible based on participation in a Categorical Assistance Eligible Program should be identified using direct certification whenever possible. CEs must retain documentation that demonstrates that their direct certification eligibility determinations are accurate.[105]

Application-Based Eligibility Determinations for Categorical Assistance Eligible Programs

If the determining or reviewing official is unable to directly certify the household for SNAP, TANF, or FDPIR and household reports categorical program participation on the household application, the CE must validate the household's program participation as follows:

Verification Pool

All application-based determinations that cannot be directly certified are included in the verification pool, including foster children. [106]

SNAP or TANF Participation Marked on an Application

When the determining or reviewing official is unable to match the student's SNAP or TANF eligibility in Texas-ELMS, a member of the household may share the EDG# to demonstrate participation in SNAP or TANF. *Information Box 8* provides detailed information on the format of

[104] Medicaid Reduced meal benefits can only be applied if a match is made in Texas-ELMS.

[105] See the *Records Retention* subsection in this section for additional information on this topic.

[106] See *Administrator's Reference Manual (ARM), Section 6, Verification of Eligibility* for more information on this topic.

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valid SNAP or TANF eligibility numbers and common SNAP or TANF documentation. The determining or reviewing official must ensure that the format for the EDG# provided by the household is the appropriate format for SNAP and TANF.

If the number format is incorrect, the CE should contact the household or the appropriate assistance program office to confirm the household's eligibility or verify the application for cause.

Disaster Supplemental Nutritional Assistance Program (D-SNAP)

For Child Nutrition Programs (CNPs), a Disaster Supplemental Nutritional Assistance Program (D-SNAP) eligibility determination is handled in the same manner as traditional SNAP. The household receives an award letter with a 9-digit Eligibility Determination Group Number (EDG#) that has the same formatting as a traditional SNAP EDG#. The household may also access eligibility information on the SNAP website.

The household may submit an application and record the D-SNAP EDG# where the SNAP EDG # would be recorded. On receipt, the CE processes the D-SNAP household application in the same way the CE processes an application with a traditional SNAP EDG#.

FDPIR Participation Marked on an Application

When a household marks participation in an FDPIR, the determining or reviewing official must validate the household's participation. The CE may validate the household's participation using documentation provided by the household or by a tribal governing agency or official which includes the following:

- List of participants provided by the tribal governing agency or appropriate tribal official
- Award letter or form stating award of program benefits

Information Box 8

How to Recognize a Valid SNAP/TANF Eligibility Determination Group Number (EDG#s)—Students Not Directly Certified

Currently, those who apply for SNAP and TANF receive two types of documents related to eligibility:

1. Notice that an application is being processed. This notice is **not adequate** documentation to certify a child for free meals. This letter will contain a case number, a ten-digit number at the top of the letter. This number **does not indicate** the award of benefits.
2. Notice that benefits have been awarded or denied. This notice (Form TF1001) does provide adequate documentation. This letter will contain an **Eligibility Determination Group Number (EDG#)** located halfway down the letter on the right side. This number does indicate the award of benefits. This number will have one of two formats:
   - Nine-digit number that begins with any number 0-9
   - Eight-digit number starting with a 1-9, but not a zero.
     [NOTE: The eight-digit number is created when a nine-digit number begins with a 0, and the 0 is dropped. When the EDG is used to directly certify a household in Texas-ELMS, a dropped 0 must be added in front of the 8-digit number.]

   This notice will also designate household members that have been determined to be eligible. If any person in the household qualifies for SNAP, TANF, FDPIR, or Medicaid Free benefits, all students in the household quality for free meals. If any person in the household qualifies for Medicaid Reduced, all students in the household qualify for reduced-price meals.

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- Identifier number verified as current by the tribal governing agency or appropriate tribal official

If the CE can validate that the student is an FDPIR participant using the information provided by the tribal governing agency or appropriate tribal official, the eligibility is now directly certified, that is, determined to be eligible without application.

Direct certification replaces information recorded on the household application. A note about the student's eligibility determination without application is recorded, initialed, and dated on the household application.

When the CE can directly certify participation, the household application is not included in the pool of household applications subject to verification.

If the CE is unable to validate or directly certify participation in FDPIR, the household must submit a new household application based on income or another categorical program if appropriate.

Direct Certification for SNAP TANF, Medicaid Free, and Medicaid Reduced Eligibility

All CEs regardless of their size are required to use the direct certification component[107] in Texas-ELMS. In essence, direct certification is the identification of categorically eligible students through means other than getting information from the household.

When CEs use Texas-ELMS they must retain the results of those efforts to demonstrate the accuracy of eligibility determinations. These records may be printed copies of the matched list or electronic files.[108]

The Direct Certification component of Texas-ELMS provides (1) a state-level automated data matching list by CE and (2) a method for CEs to match student records that are not pre-matched.[109] CEs are expected to conduct DC matching

1. before school begins to identify households with students that are eligible for free meals without an application,
2. once a month when school is in session, and
3. with new student enrollment when appropriate.

For this process, CEs may conduct their matches using their total student enrollment or may match the names of students who have not been previously matched.

Student Personal Information

When conducting a DC match for students not previously matched, CEs upload student information that matches data provided by the system. The results of this process are presented in a report that CEs may save as an Excel file.

107 CEs must only use the Direct Verification component of Texas-ELMS when directly verifying information reported on an application for a household chosen for verification. The Direct Verification component of Texas-ELMS cannot be used for Direct Certification.

108 See *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality* for information about requirements to protect student and household information.

109 The *TX-UNPS User's Guide* in TX-UNPS has information on how to access this list.

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Using Texas ELMS to Perform Direct Certification

Students will be matched using one of four codes:

- SNAP (includes D-SNAP)
- TANF
- Medicaid Free
- Medicaid Reduced

The Direct Certification component of Texas-ELMS has the following features:

- CEs may use the Direct Certification component of Texas-ELMS to make matches for their entire enrollment, a portion of their enrollment, or individual students.
- When a CE reviews its report, student matches will be indicated as claimed.

  [NOTE: If the Direct Certification component of Texas-ELMS matches a student who is not enrolled, the CE should perform an individual match and unclaim the student in Texas-ELMS.]
- When a CE has matched a student, the student will not appear as a new match on future reports.
- CEs should *unmatch*/*unclaim* students who are no longer enrolled at one of the CE's schools.
- If a student moves before the Texas-ELMS's monthly enrollment update, a new CE will be able to match that student at a new campus.
- In Texas-ELMS, a SNAP match will automatically take priority over TANF, Medicaid Free, and Medicaid Reduced. A TANF match will automatically take priority over Medicaid Free and Medicaid Reduced.

CEs may also be able to extend eligibility to other students in the household by finding shared addresses, contact numbers, or names of adult contact in school electronic records or by using information from personal contacts with adults in the household.

Verification Pool

Households that are directly certified for SNAP, TANF, Medicaid Free, and Medicaid Reduced eligibility are not included in the verification pool.[110]

Direct Certification for Categorical Assistance Eligible Programs

Participants in the following programs can be directly certified for Categorical Assistance Eligible programs.[111]

- Direct Certification for SNAP and TANF: Eligibility determinations must be conducted using an automated data match technique. By regulation, CEs are required to conduct Direct Certification by

[110] See *Administrator's Reference Manual, Section 6, Verification of Eligibility* for more information on this topic.

[111] SNAP, TANF, and FDPIR

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matching student enrollment to SNAP and TANF data provided in the Direct Certification component of Texas-ELMS.

If the CE is unable to determine eligibility for SNAP or TANF through a match made in the Texas-ELMS database or through direct contact with the appropriate agency,[112] the SNAP or TANF eligibility determination is not direct certification. It is a determination based on a household application and is subject to verification.

- Direct Certification for Medicaid Free and Medicaid Reduced: Eligibility determinations must be conducted using the Direct Certification component of Texas-ELMS. Medicaid Free and Medicaid Reduced eligibility cannot be determined by an award letter or other documentation that may be supplied by the household.[113]
  - If a student match indicates Medicaid Free, all students in the household are eligible for free meals.
  - If a student match indicates Medicaid Reduced, all students in the household are eligible for reduced-priced meals.
  - If a student qualifies for free meals through another eligibility determination method, a Medicaid Reduced match cannot be used to decrease benefits.

Medicaid Reduced Conflicts with Income-Based-Household Applications

When a household submits an income-based household meal application that conflicts with a direct certification Medicaid Reduced match, contracting entities (CEs) will apply the highest benefit for the household.

Circumstance for Conflict	Eligibility Determination in This Circumstance	Verification Actions When This Conflict Occurs
Processed income-based household application indicates free; **then,** direct certification indicates Medicaid Reduced.	The CE will apply the higher eligibility—free. – If the CE has already notified the household that all students are eligible for free meals, no additional notification is required. – If the CE has not notified the household that all students are eligible for free meals based on income reported in a household application, the CE must notify the household that all students are eligible for free meals based on the income provided in the household application.	The income-based household application is included in the verification pool. If chosen for verification, the CE will apply the normal verification process and request income documentation from the household.
Direct certification indicates Medicaid Reduced; **then,**	The CE will apply the higher eligibility—free. – If the CE has already notified the household that all students are eligible for reduced-price meals, the CE must now notify the household that all students are eligible for	The income-based household application is included in the verification pool. If chosen for

[112] CEs must coordinate with the local tribal governing agency or appropriate tribal official to obtain the names of students who qualify under FDPIR either in list form or through matching.

[113] Each state uses different criteria to establish eligibility for the Medicaid programs offered in the state. If a household receives Medicaid and does not match for Medicaid Free or Medicaid Reduced in Texas-ELMS, the specific Medicaid program does not meet income-derived eligibility criteria as specified by USDA for NSLP and SBP.

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Circumstance for Conflict	Eligibility Determination in This Circumstance	Verification Actions When This Conflict Occurs
a submitted income-based household application indicates free.	free meals based on the income reported on the household application. – If the CE has not notified the household of the reduced-price eligibility, the CE must notify the household that all students are eligible for free meals based on the income reported on the household application.	verification, the CE will apply the normal verification process and request income documentation from the household.

Direct Certification Matches for Categorical Assistance Eligible Programs Before School Starts

When a CE conducts matching in the Direct Certification component of Texas-ELMS before school begins,[114] eligibility determinations based on these matches (SNAP, TANF, Medicaid Free, and Medicaid Reduced eligible) are effective the first day of school, including eligibility for students who would normally have been granted the 30 operational day carryover period.[115]

At the beginning of school, when a student who was a participant in a Categorical Assistance Program in the previous year does not match in the Direct Certification component of Texas-ELMS, there is a possibility that the household is still eligible under SNAP or TANF. CEs should attempt to determine SNAP, TANF, Medicaid Free, or Medicaid Reduced participation by direct contact with the household or governing agency before changing the student's previous eligibility status from free to paid.

For Example:

- Eligible But Unable to Match in System—Early in August, the CE conducts a DC match for SNAP and TANF in the Direct Certification component of Texas-ELMS for Categorical Assistance Eligible programs to send notices to households about categorical eligibility before school starts. A household that was eligible through SNAP or TANF participation in the previous year is not matched. The CE contacts the household and asks them if the household is still eligible through SNAP or TANF. An adult in the household replies yes and provides the Eligibility Determination Group Number (EDG#). The CE validates the number.[116]

- No Longer Eligible—Early in August or before school starts, the CE conducts a DC match for Categorical Assistance Eligible programs (SNAP or TANF) to send notices to households about Categorical Assistance Eligible program eligibility. A household that was eligible through SNAP or TANF participation in the previous year is not matched. The CE contacts the household and asks them if the household is still eligible through SNAP or TANF. The response is no. The CE requests the household to complete a household application to help determine if the student is eligible based on income or another categorical area.

[114] After July 1 for the upcoming school year.

[115] See the *Carryover Eligibility* subsection in this section or additional information on apply carryover.

[116] See the *Validating Categorical Eligibility Participation* subsection in this section for additional information on validation.

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SNAP or TANF Identifiers from States Other Than Texas

Because each state may use different income criteria for SNAP or TANF, Texas does not grant direct certification to students from households that have been awarded SNAP or TANF benefits in another state. If a household submits an identifying number from another state, the CE must contact the household to request a Texas identifier number or additional income information before determining eligibility.

Direct Certification Household Change—SNAP, TANF, Medicaid Free, and Medicaid Reduced Eligible

In situations where a student is directly certified because another person in the household was awarded SNAP, TANF, Medicaid Free, and Medicaid Reduced for NLSP and SBP eligibility and

1. the student moves to another household
   and
2. the person awarded SNAP, TANF, Medicaid Free, or Medicaid Reduced benefits does not move with the student,

all students in the original household, including the one who moved, remain eligible for the entire school year. However, other students in the new household are not automatically eligible for free meals unless they qualify through another method.

Direct Certification for Disaster Supplemental Nutritional Assistance Program (D-SNAP)

A Disaster Supplemental Nutritional Assistance Program (D-SNAP) eligibility determination is handled in the same manner as traditional SNAP. The household receives an award letter with a 9-digit Eligibility Determination Group Number (EDG#) t that has the same formatting as a traditional SNAP EDG#. The household may also access eligibility information on the SNAP website.

Because D-SNAP eligibility applies for the entire school year, D-SNAP participants are also included in the data for Texas-ELMS. In Texas-ELMS, there is no difference in designation between traditional SNAP and D-SNAP.

Verification Pool

Households that are directly certified for D-SNAP are not included in the verification pool. [117]

[117] See *Administrator's Reference Manual (ARM), Section 6, Verification of Eligibility* for more information on this topic.

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Direct Certification for FDPIR

For FDPIR CEs must use program award information provided by the tribal governing agency or tribal officials. A determining or reviewing official can directly certify participants in the FDPIR assistance program with a list of participants obtained from the governing federal agency or appropriate tribal official or an official letter stating the student's household currently receives FDPIR benefits. Certification is the identification of categorically eligible students through means other than getting information from the household.

Verification Pool

Households that are directly certified for FDPIR are not included in the verification pool. [118]

For FDPIR direct certification, the CE must ensure that the student lives in a household that receives FDPIR, current information about receiving the benefits, and an actual or electronic/digitized signature of an appropriate tribal governing agency or tribal official.

[NOTE: There are no standardized forms available for this purpose. The determining or reviewing official may want to contact the tribal governing agency or appropriate tribal officials to determine the best method of identifying students for direct certification.]

The following documentation provided by a tribal governing agency or tribal official may be used to directly certify an FDPIR participant:

- A list of participants provided by the governing agency or appropriate tribal official
- An identifier number verified as current by the governing tribal agency or appropriate tribal official

The use of household provided documentation to determine FDPIR eligibility does not fulfill the FDPIR Direct Certification requirement.

Household Applications for Directly Certified Students

When students are identified through the direct certification process, CEs cannot require households to provide additional documentation. If a household application is submitted for a household that has been directly certified for SNAP, TANF, Medicaid Free, and Medicaid Reduced eligibility, the direct certification takes priority over the application. However, if the application identifies students in the household who were not previously linked to the household, the CE may use that information to identify the other students in the household as SNAP, TANF, Medicaid Free, and Medicaid Reduced eligible, i.e., extend eligibility to other students in the household.

For Example: The Direct Certification component in Texas-ELMS[119] matched two students in a household. A student from a previous marriage has changed permanent residence to the household. The household has reported this additional student by household application, but the student is not named in Texas-ELMS. In this case, the information on the household application identifies

[118] See *Administrator's Reference Manual (ARM), Section 6, Verification of Eligibility* for more information on this topic.

[119] See the *Categorical Eligibility* subsection in this section for additional information on direct certification for Categorical Assistance Eligible programs.

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the student as a new member of a household in which all students are directly certified as an assistance program participant and, therefore, eligible to receive free meals.

In all cases, SNAP direct certification takes priority over all other forms of eligibility determination.

Other Source Categorical Eligible Program Determination

Other Source Categorical Eligible program determination applies only to the student participating in the program and must meet the following guidelines:

Head Start and Early Head Start Pre-Kindergarten (Pre-K) Programs

Must be enrolled in a federally funded Head Start or Early Head pre-K program as determined by a list, letter, or form signed by the local program official.

Extension of Benefits

If a sibling of a pre-K student has an eligibility determination that applies to the entire household, the SNP may share the eligibility status with the pre-K program. A student's eligibility for free meals based on enrollment in Head Start or Early Head Start does not extend to any other student in the household.

Foster Child

Must be a child whose care and placement are the responsibility of the Texas Department of Family and Protective Services (DFPS) or who is placed by a state welfare agency or a court with a caretaker household. A foster child who is placed through an informal arrangement or permanent guardianship placement that exists outside of the state or court-based systems cannot be certified as Other Source Categorical Eligible.

Court or State Placement with a Relative

A child placed with relatives through a formal arrangement by a court or the state is considered to be a foster child. In these cases, court documentation will indicate that the state retains legal custody of the child.[120]

Foster Placement for a Child from Another State

In cases where another state's foster agency or court supervises the care and placement of a child who resides in Texas, the child is categorically eligible. In cases where another state's foster agency or court coordinates with DFPS and DFPS supervises the care and placement of a child who resides in Texas, the child is categorically eligible.

Interstate Compact on the Placement of Children (ICPS)

Texas DFPS participates in the Interstate Compact on the Placement of Children (ICPS). This compact is an agreement between states that places a foster child in another state when it is in the best interest of the child. If the foster child is placed under this compact, the foster agency in Texas

[120] Public and charter schools in the state of Texas are required to have a foster liaison to ensure that foster children receive all benefits available to them. The CE's foster liaison will have the necessary documentation to directly certify a foster child. By directly certifying the foster child, the student's household application is not subject to verification unless non-foster students are listed on the household application.

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will supervise the placement. In cases where a foster child is placed in a Texas household under this compact, the child's care and placement are the responsibility of the DFPS and the child is categorically eligible.

Homeless Student

Must be identified as lacking a fixed, regular, and adequate nighttime residence. Homeless students are eligible for free meals. The homeless student may be living in the following circumstances:

- Reside in an emergency, transition, family violence, or DFPS shelter.
- Live in another family or friend's house because of a loss of housing, economic hardship, or similar reason.
- Live in a motel, hotel, structure, or vehicle that is not a permanent nighttime residence.
- Reside temporarily with an adult other than her or his parent or guardian.

When there is a major disaster, emergency declaration, or situation of distress, homeless eligibility may be established by the following methods:

- Designation by a homeless liaison.
- Identification by an organization that is assisting evacuees, including a homeless shelter representative.
- Identification by a school official how is familiar with the situation.

[NOTE: A school official may complete a household meal application for a household when circumstances warrant. See the Households That Fail to Apply or Do Not Apply subsection in this section for additional guidance on this process.]

Declared Disaster

Must be under 21 years of age and

- has been displaced from her or his habitual residence as a result of a declared event
  or
- has been displaced from her or his pre-disaster primary residence or whose pre-disaster primary residence is rendered uninhabitable or rendered inaccessible as a result of damage caused by a major disaster.

Students displaced by a declared disaster are also considered homeless.[121]

Runaway

Must be a student who has become homeless or leaves and remains away from home without parental permission. These students have been designated as *runaways* by the public school district's homeless liaison, private school official, or the director of a homeless shelter.

Migrant

Must be a student that has moved across school district lines within the last three years to accompany or join a parent or guardian who has moved to seek or obtain temporary or seasonal work in agriculture or fishing.

[NOTE: Minors who move with a spouse, or by themselves, to perform this work may also qualify.]

[121] See *Special Situations in Determining Household Income* subsection in this section for additional information on homeless and host family eligibility.

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Methods for Determining Eligibility for Other Source Categorical Eligible Program Participants

CEs have two methods of determining the eligibility of Categorical Assistance Eligible Program participants:

1. Application-Based—Household indicates participation in an Other Source Categorical Eligible program on the household application.
2. Direct Certification—Direct Certification is the identification of categorically eligible students through means other than getting information from the household.[122] For Other Source Categorical Eligible program participants, eligibility determination is established through a variety of techniques.

In all cases, students who are eligible based on participation in a Categorical Assistance Eligible program should be identified using direct certification whenever possible.

Application-Based Determinations for Other Source Categorical Eligible Programs

If the determining or reviewing official is unable to directly certify the student for an Other Source Categorical Eligible program, the CE must validate the student's program participation before determining eligibility except for a foster child. When a household indicates that a child participates in a foster program, the CE takes that indication at face value and does need to validate participation.

Verification Pool

All application-based determinations that cannot be directly certified are included in the verification pool, including foster children.

Validation of Eligibility for Other Source Categorical Eligible Program Participation Indicated on the Application

Except for a foster child,[123] a CE must validate a student's participation in an Other Source Categorical Eligible program as part of the eligibility determination process. The CE validates program participation through two types of actions:

1. Strategies to reach out to the appropriate program official to validate participation in the Other Source Categorical Eligible program when a household indicates student participation on an application. The documentation to validate Other Source Categorically Eligibility may come from a governing agency or program administrator.
2. Development of a system for program officials to provide routine updates about students participating in the Other Source Categorically Eligible programs.

When the CE has validated that the student is a participant in the program indicated on the household application with lists or statements from the governing agency or program administrator, the eligibility is now directly certified, that is, determined to be eligible without application.

[122] See the *Categorical Eligibility Determination* subsection in this section for more information on direct certification.

[123] If a household indicates that a child is foster, foster program participation does not need to be validated.

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Direct certification replaces information recorded on the household application about the student. A note about the student's eligibility determination without application is recorded, initialed, and dated on the household application. The household application is retained, but not used.

- If there are other students on the household application who are not participants in one of the Other Source Categorical Eligible programs, the household application is active for those students only.
- If the only student(s) listed on the household application is directly certified without application, the CE retains the household application but disregards information on the household application.

  When the CE can directly certify participation, the household application is not included in the pool of household applications subject to verification.

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Documentation for Validating Other Source Categorical Eligibility

The following list provides examples of appropriate documentation of awarded program benefits.

Appropriate Documentation for Other Source Categorical Eligible Program Chart	
Early Head Start or Head Start	– List, letter, or form created and signed by a local program official
Homeless, Declared Disaster	– A free or reduced-price household application completed by the adult with whom a student resides – A list provided by a disaster official – A list provided an emergency shelter official – Designation by the district/school homeless liaison or other appropriate official
Homeless, Including Runaway Students	– A list of eligible students provided by and signed by the CE's homeless liaison or other appropriate official – Free and reduced-price meal household application submitted by the director of a homeless shelter or school official – Determining or reviewing official's knowledge that the student's address is a homeless shelter or knowledge that the student has no address
Migrant	– A completed Migrant Education Program (MEP) Certificate of Eligibility (COE) Form signed by a state, regional, or local MEP director or coordinator. – A dated list with the names of each student participating in the program provided by the appropriate official – A letter from a migrant education director, coordinator, or liaison provided by a household

Direct Certification for Other Source Categorical Eligible Program Participants

Other Source Categorical Eligible program participants receive free meals but are not directly certified through Texas-ELMS. They are directly certified using the information provided by the agency administering the program. The CE must decide the most expeditious manner in which to directly certify Other Source Categorical Eligible program participants. When CEs directly certify students for Other Source Categorical Eligible Programs, they must retain documentation that demonstrates the accuracy of those efforts.[124]

Verification Pool

When Other Source Categorical Eligible program participants are directly certified, the students are not included in the verification pool. [125]

[124] See the *Records Retention* subsection in this section for additional information on this topic.

[125] See *Administrator's Reference Manual (ARM), Section 6, Verification of Eligibility* for more information on this topic.

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Direct Certification Documentation for Other Source Categorical Eligible Program Participation

Other Source Categorically Eligible program[126] participation documentation requires the following information from the agency official or household who has provided eligibility documentation:

From Agency or Official Letter, Form, or List/Master List
– Name of the student
– Effective date of program eligibility or participation
– Identifying number if provided by governing agency
– Residence if known
– Signature of official[127] and date of signing

Household Provides Agency Created Documentation

If the household voluntarily provides appropriate documentation of participation from an Other Source Categorical Eligible program[128] governing agency, the CE can certify eligibility. In these cases, the household does not have to complete a household application.

Proactive Identification: Direct Knowledge of Eligibility

If a CE or site official has direct knowledge that a student is participating in one of the Other Source Categorical Eligible programs,[129] the determining or reviewing official may expedite providing free meals to the student by completing a household application for that student or compiling a list of eligible students. The eligibility determination must be documented by the appropriate agency as soon as possible.

Applying on the student's behalf ensures that a student will receive meal benefits more quickly when there may be a delay in documenting status. However, if the student's status cannot be confirmed, the benefits must be terminated unless income information provided through the household application establishes eligibility.

Foster Child Documentation

TDA strongly encourages CEs to certify the eligibility of foster children without application whenever possible since foster children certified without an application do not have to be included in the verification pool.[130] The following documents are acceptable to directly certify a student as a foster child:

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126 Head Start and Early Head Start pre-kindergarten programs; foster; homeless, including runaways and individuals displaced by declared disasters; migrant; and SNAP, TANF, or FDPIR eligible students who are not directly certified

127 For electronic matches which may not include the official's original signature, sufficient documentation must include correspondence or a written agreement between the Assistance Program office and the CE that sets out or confirms the manner in which the CE officials will provide the eligibility status.

128 Head Start and Early Head Start pre-kindergarten programs; foster; homeless, including runaways and individuals displaced by declared disasters; migrant; and SNAP, TANF, or FDPIR eligible students who are not directly certified.

129 Head Start and Early Head Start pre-kindergarten programs; foster; homeless, including runaways and individuals displaced by declared disasters; migrant; and SNAP, TANF, or FDPIR eligible students who are not directly certified

130 See *Administrator's Reference Manual (ARM), Section 6, Verification of Eligibility* for more information on this topic.

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- List of names from a local education agency (LEA) foster liaison[131]
- Texas Department of Family and Protective Services (DFPS) Placement Authorization Form 2085[132] describes the responsibilities that have been assigned to the caregiver family.
- Court order[133] naming DFPS as the Temporary Managing Caregiver (TMC) or Permanent Managing Conservator (PMC) of the child confirming that DFPS or an appointed caregiver has authority to make decisions for the student.

Foster Child Emergency Placement

If a student has been placed in a home for a few days as an emergency placement, the foster family may apply for free meals immediately.

More Than One Student Listed on the Free and Reduced-Price Household Application and Other Source Categorical Eligible Program Participation Is Marked

If more than one student is listed on the household application and the household has marked one or more of the other source eligibility categories, the determining or reviewing official must determine which student or students meet the Other Source Categorical Eligible program criteria.

For Example: There are three students listed on the household application, and the household has checked runaway. The determining or reviewing official must determine which student/students meet the requirements for the homeless by contacting the household and asking for clarification or the local homeless coordinator if appropriate.

Homeless Students, Change of Residence or Secures Permanent Housing

If a homeless student secures permanent housing but now attends a school in a different school district, the new CE may accept the eligibility determination for the student provided by the former CE.

If the CE does not elect to accept the eligibility determination from the prior CE, the household is required to reapply for free or reduced-priced meals with the new CE.

However, if the local homeless coordinator at the new school decides that the student is *homeless*, the homeless student remains eligible for free meals for the current school year plus up to 30 operating days in the following school year, even if the student is later considered to have a permanent residence.

Student Transfer, Shared Eligibility Determination

When a student, who has attended a non-special provision site, transfers from one CE (sending CE) to another CE (receiving CE), the receiving CE is allowed to accept the eligibility determination from the sending CE without liability. Accepting the eligibility determination from the sending CE eases the student's transition and ensures that there is no break in the student's access to meals.

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131 Each public school and charter school is required to have a foster liaison. The Texas Education Agency website provides detailed information on this requirement.

132 There may be a letter following number 2085 to designate a particular type of foster program. These forms are also acceptable to validate program participation.

133 Court orders often have confidential and private information that may be redacted before copies are given to schools. If confidential and private information is not redacted, the school and CE must ensure confidentiality of this information.

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Methods of Sharing Eligibility Determinations

CEs commonly provide eligibility information using one of the following methods:

1. **Eligibility Documentation—Household Meal Application or Categorical Participation Document**

   Original documents are not required. A signature or digitized signature[134] indicating the accuracy of the information is required and a date of determination or certification.

   The sending CE may provide the following types of documentation:

   - Scanned or faxed household application which includes a signature or digitized signature[135] of an adult in the household certifying the accuracy of the information and date of determination or certification.
   - Individual household eligibility report from a web-based household application system which includes the date of eligibility determination or certification; signature or digitized signature[136] of official certifying the accuracy of the information; and date of determination or certification.
   - Copied, scanned, or faxed list that contains categorical participation information for a student or household which includes the date of eligibility determination or certification; signature or digitized signature[137] of official certifying the accuracy of the information; and date of determination or certification.

or

2. **Statement Certifying Eligibility—Email or Fax**

   An emailed or faxed statement certifying the eligibility status of the student or household that includes contact information for the sender; signature or digitized signature[138] for the person certifying the eligibility, and date of eligibility effectiveness.

   For Example: The CE sent an email that said, Jane Smith was certified as eligible for reduced-price meals at Red Mountain Elementary School based on an income application on August 30, 2017. Please contact Mina Jones, Cafeteria Manager, Red Mountain Elementary School, Green Independent School District, Blueville, TX 78723, (555) 555-5555, *MJ@Bluevilleisd.org* if you have questions. The documentation ends with a typed signature.

   The CE sent a fax that said, George Lapper was certified as eligible for free meals at Little Middle School based on SNAP direct certification on September 5, 2017. Please contact Hector Tas, Child Nutrition Director, Spice Independent School District,

134 See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for more information on digitized signatures.

135 See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for more information on digitized signatures.

136 See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for more information on digitized signatures.

137 See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for more information on digitized signatures.

138 See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for more information on digitized signatures.

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Alder, TX 78723, (555) 555-5555, *htas@Spice.TX.org* if you have questions. The documentation ends with a signature.

Copies of a household application or eligibility list are not required.

A CE must choose another application for verification if a selected household's eligibility determination is based on an email or faxed statement from a sending CE.

Protecting Personally Identifiable Information

CEs should make every effort to protect personally identifiable information when sharing eligibility information with other CEs or sites.

- If sending copies of documentation by email, CEs should use security measures to protect all files.
- If sharing documentation related to categorical program participation, information about other students should be blacked out or removed.
- If using email or FAX, CEs should use strategies that ensure that these communications do not end up in unintended hands.

TDA recommends that CEs establish a written process or procedure for sending and receiving this type of documentation.

Second (or Independent) Review of Household Applications

A second (or independent) review of household applications is required when a CE has demonstrated a high rate of eligibility error during an Administrative Review, Second Administrative Review, or Follow-Up Administrative Review. If the CE is found to have a nine percent or higher error rate in eligibility determinations, TDA will notify the CE that it must arrange for a second (or independent) review of household applications. The second (or independent) review must commence at the start of the school year immediately following the date of the administrative review and must continue until the CE has demonstrated significant improvement. When significant improvement occurs, TDA will notify the CE.

Change from Standard Counting and Claiming to a Special Provision Option

If a CE halted its required second (or independent) review of applications because it began implementing CEP or a non-base year of Provision 2 (P2), the CE must conduct a second (or independent) review of applications as described in this subsection if it stops the implementation of CEP/P2 operation midyear.

Required Actions for a Second (or Independent) Review of Household Applications

TDA will notify CEs if they are required to conduct a second (or independent) review. CEs that are required to conduct a second (or independent) review of <u>all</u>—approved and denied—household applications must ensure that the review meets the following minimum requirements:

Reviewer

Designation of a second (or independent) reviewer to review the initial eligibility determination for <u>all</u> household applications received <u>throughout the school year</u>.

- The second (or independent) review must be conducted by an individual or entity that did not make the initial[139] eligibility determination. The individual or entity may be an employee of the CE or not an employee.

[139] Eligibility determination made by the determining or reviewing official.

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- The second (or independent) reviewer must be trained on how to make eligibility determinations.

Reevaluation of Eligibility Determination

Reevaluation of the eligibility determination for all household applications—income and categorical—as household applications are received throughout the school year.

- The second (or independent) reviewer must conduct a reevaluation of the eligibility determination of each household application that is separate from the CE's initial eligibility determination conducted by the determining or reviewing official. The second (or independent) reviewer must determine the following:
  - That the household application is complete, based on the presence of the following information and elements:
    1. Income amount, source, and frequency of income for each household member or a designation that the person has no income, as well as the accuracy of income calculations and use of correct income eligibility guidelines

       or

       Designation of appropriate eligibility including validation,[140] as appropriate, of the household's or student's participation in a Categorical Assistance Eligible program[141] or one of the Other Source Categorical Eligible programs[142]
    2. Last four digits of the Social Security number of the person signing the form or another adult member in the household or an indication that the adult household member does not have a Social Security number—unless the household provides a SNAP or TANF eligibility number or FDPIR identifier.
    3. Necessary signature
  - Accuracy of the student's eligibility as recorded on the CE's master list or roster

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140 See the *Validating of Eligibility for Other Source Categorical Eligible Program Determination* subsection in this section for additional information on validation.

141 SNAP, TANF, FDPIR, Medicaid Free, and Medicaid Reduced

142 Head Start and Early Head Start pre-kindergarten programs; foster; homeless, including runaways and individuals displaced by declared disasters; migrant; and SNAP, TANF, or FDPIR eligible students who are not directly certified.

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Ten (10) Operating Days

Both the CE's initial eligibility determination and the determination by the second (or independent) reviewer must be completed within 10 operating days of receiving the household application.

However, while the CE has 10 days, the CE should process the application as quickly as possible.

Report—SFA Second Review of Applications

The CE must submit the *SFA Second Review of Applications*[143] through TX-UNPS (Applications screen) with the results of the second (or independent) review by January 15 of each school year.

Only those CEs that have been notified by TDA that they are required to conduct a second (or independent) reviewer must complete this form.

This form requires that the CE submit the following information:

1. General information about person completing the form
2. General information about the CE
3. Total number of household applications reviewed under initial eligibility determination practices
4. Total number of household applications reviewed under the required second (or independent) review process by free, reduced-price, and paid categories
5. Total number of eligibility determinations (certification/benefit issuance) in error found by the second (or independent) reviewer to be free, reduced-price, and paid
6. Total number of errors found in the following categories: incomplete application, categorical eligibility, gross income calculation, and any other reason
7. Strategies the CE used to alleviate the number of household applications approved or disapproved in error

Circumstance That Ends the Requirement for a Second (or Independent) Review of Household Applications

The CE may cease the second (or independent) review process at the end of the school year when the following condition is met:

When the CE submits a report based on its second (or independent) review of household applications that demonstrates that the CE has a 5 percent or less error rate in its eligibility determinations (certification/benefit issuances) based on most recent October 31st data which is reported to TDA on January 15. Once the CE meets this requirement, it must continue the second (or independent) review of household applications for the remainder of the school year.

[143] The *SFA Second Review of Applications* in TX-UNPS is an electronic version of the *USDA Local Education Agency Second Review of Applications (FNS-874)*. CEs must complete this report in TX-UNPS.

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Confirmation of Eligibility Determinations

While the confirmation of applications selected for verification is required, CEs may also choose to confirm the accuracy of all eligibility determinations. The following guidance applies to the use of a confirming official for this purpose.

- When a CE chooses to conduct a confirmation review of all eligibility determinations, the confirmation review must be conducted by an official who was not the determining or reviewing official or hearing official.
- The confirming official reviews the documentation used by the determining or reviewing official and ensures that the eligibility determination is correct.
- If a CE confirms the accuracy of all eligibility determinations as part of the initial eligibility determination process, the CE is not required to perform a second (or independent) confirmation of eligibility during verification.

Notification of Eligibility Determination Status

TDA recommends that all households be notified in writing of any eligibility status. CEs may provide notification of approved eligibility by phone or other means. However, CEs must provide written notice in cases of denial of a household application or adverse action.

The following guidelines apply to notification for the specific situation described:

Household Application Not Submitted After 30 Operational Day Carryover Period

After the 30 operational day carryover period,[144] the CE must terminate the benefits of any student whose household fails to submit a new free and reduced-price meal household application or is not directly certified for the current school year. The CE is not required to send a notice of termination.

New Household Application—Denial

When a CE denies a new household application, CEs must use the following timeline for notifying the household and completing the application process:

- Notice—Provide notice to the household of the eligibility determination within 10 operating days of the eligibility determination and include the following information:
  - Reason for the denial of free or reduced-price meals
  - Right to appeal
  - Instructions on filing an appeal
  - Statement that households may reapply for free and reduced-price meals at any time during the school year
- Time to Appeal—Allow the household 10 calendar days to appeal the determination; the 10 calendar days start the day the notification was sent to the household.
- Implement Change—Make the change in eligibility effective within 10 operating days after the end of the advance notice period (10 calendar days during which the household may appeal the determination).

144 See the *Carryover Eligibility* subsection in this section for additional information on this topic.

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New or Late Enrollees—Letter and Household Application

A CE must provide a letter and household application form to the household of a newly enrolled student or students when the students enroll. The CE is encouraged to expedite eligibility determinations for all new enrollees. The CE must provide free or reduced-priced meals to students within 3 operating days of approval of a household application; however, CEs are encouraged to provide free or reduced-price meals to eligible students as quickly as possible.

Previously Approved Household Application—Increase to Free or Reduced-Price Meal Benefits

A CE must send notice to households with a student or students who have been previously approved for reduced-priced meals if there is an increase in meal benefits—paid to free or reduced-price or reduced-price to free—within 3 operating days of the eligibility determination. The CE must provide free or reduced-priced meals to students within 3 operating days of approval of a household application; however, CEs are encouraged to provide free or reduced-price meals to eligible students as quickly as possible.

Previously Approved Household Application—Reduced or Terminated Free or Reduced-Priced Meal Benefits

If an eligibility determination is an adverse action (free or reduced-priced meal benefits have been reduced or terminated), a CE is required to provide notice within 10 operating days but may send the notice before the end of the 10 operating days period. The CE must use the following timeline in these situations:

- Notice—Provide notice to the household of the eligibility determination within 10 operating days of the eligibility determination and include the following information:
  - Reason for the denial of free or reduced-price meals
  - Right to appeal
  - Instructions on filing an appeal
  - Statement that households may reapply for free and reduced-price meals at any time during the school year
- Time to Appeal—Allow the household 10 calendar days to appeal the determination; the 10 calendar days start the day the notification is sent to the household.
- Implement Change—Make the change in eligibility effective within 10 operating days after the end of the advance notice period (10 calendar days during which the household may appeal the determination).

Appeal Process

The CE's process for the appeal of a household application decision must be written. A household may appeal the denial of its household application or the level of approved free or reduced-priced meal benefits.

Notification

Households where students' free or reduced-priced meal benefits are denied or decreased must be given written notice within 10 operational days of the denial. The notice must inform the household that it has 10 calendar days to appeal the denial or reduction in benefits. The advance notice 10

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calendar days starts the day the notice is sent to the household. The notice may be sent via mail or email. If the CE uses an automated phone system, the CE must also provide notification in writing. For households who are applying for the first time, the notice must be provided as quickly as possible.

The notice must provide the following information:

- Description of any change in free or reduced-priced meal benefits
- Reason for the denial or change of free or reduced-priced meal benefits
- Instructions on how to appeal the decision
- Explanation that an appeal must be filed within the 10 calendar days advance notice period to ensure continued free or reduced-priced meal benefits while awaiting a hearing and decision
- Explanation that households may reapply for free and reduced-price benefits at any time during the school year

The following guidance describes how the hearing must be conducted for both the household and the CE:

- A simple, publicly announced method to make an oral or written request for a hearing.
- An opportunity to be assisted or represented by an attorney or other person.
- An opportunity to examine, before and during the hearing, any documents, and records presented to support the decision under appeal.
- That the hearing shall be held with reasonable promptness and convenience, and that adequate notice shall be given as to the time and place of the hearing.
- An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference.
- An opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses.
- That the hearing shall be conducted, and the decision made by a hearing official who did not participate in making the decision under appeal or in any previously held conference (related to the appeal).

  [NOTE: The household may request a school conference before a formal hearing. However, the conference must not prejudice a later appeal.]
- That the decision of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record.
- That the parties concerned and any designated representative shall be notified in writing of the decision of the hearing official.
- That a written record shall be prepared for each hearing, which shall include the challenge or the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons, therefore, and a copy of the notification to the parties concerned of the decision of the hearing official.

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- That the written record of each hearing shall be retained for the entity's required period of retention and must be available for examination by the parties concerned or their representatives at any reasonable time and place during that period.[145]

TDA Eligibility Determination Forms

TDA provides forms and document prototypes at *www.squaremeals.org* for CEs to use. While CEs are not required to use the TDA forms and letters, TDA strongly encourages CEs to use the forms developed by TDA. If CEs choose to use an eligibility form or letter that is not developed by TDA, they are responsible to ensure that the form or letter contains correct and accurate information. The following forms will be helpful to CEs in determining eligibility:

- *Income Eligibility Guidelines (IEG) for Determining Free and Reduced-Price Benefits*
- *Income Eligibility Guidelines (IEG) for Determining Free Milk Benefits*
- *Letter of Predetermined Eligibility—Direct Certification (English and Spanish)*
- *Letter of Predetermined Eligibility—Head Start or Early Head Start* (English and Spanish)
- *Letter of Predetermined Eligibility—Foster* (English and Spanish)
- *Letter of Predetermined Eligibility—Migrant* (English and Spanish)
- *Letter to Household for Free and Reduced-Price School Meals)* (English and Spanish)
- *Letter to Household for Free Milk*
- *Letter to Household of Approval/Denial of Benefits (NSLP, SBP)* (English and Spanish)
- *Letter to Household of Approval/Denial of Free Milk (SMP)* (English and Spanish)
- *Media Release for Free and Reduced-Price Meals Sample Form—Community Eligibility Provision (CEP) Schools*
- *Media Release for Free Milk Sample*
- *Media Release for Free and Reduced-Price Meals Sample Form—Special Assistance Provision 2 (P2) Schools*
- *Media Release for Free and Reduced-Price Meals Sample*
- *Multi-Child or Multi-Use Application for Free Milk (SMP)*
- *Multi-Child or Multi-Use Free and Reduced-Price School Meals* (English and Spanish)[146]
- *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedure(s)* (Completed in TX-UNPS)

  Attachment B: Attachment Upload (Completed in TX-UNPS)
- *Policy Statement for Special Milk Program, Attachment B: Milk Count/Collection Procedure(s)*
- *Scanned and Web-based Application Checklist, National School Lunch Program (NSLP), School Breakfast Program (SBP), and Special Milk Program (SMP)*

[145] See the *Records Retention* subsection in this section for additional information on this topic.

[146] USDA also provides prototypes of family friendly household application that CEs may use at *www.funsusda.gov/cnd/Application/familyfriendlyapps.html* in a wide range of languages.

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Texas Education Agency (TEA) Resources

The Texas Education Agency provides numerous resources that may assist CEs in eligibility related matters.

- Foster Care, including *Foster Care & Student Success* and a searchable database of foster care liaisons/coordinators, available at *www.tea.texas.gov/FosterCareStudentSuccess/*
- Texas Records Exchange (TREx) available at *www.tea.texas.gov/Reports_and_Data/Data_Submission/Texas_Records_Exchange_(TREx)/Texas_Records_Exchange_(TREx)/*
- Public Education Information Management System (PEIMS), available at *www.tea.texas.gov/Reports_and_Data/Data_Submission/PEIMS/Public_Education_Information_Management_System/*

Records Retention

The CE must maintain records related to eligibility determinations for a minimum of five (5) years for public and charter schools and three (3) years for private schools and RCCIs after the final claim is submitted for the fiscal year to which they pertain. These records must be available and ready for review by TDA or USDA.

Information Box 9

Records Retention

State Board of Education policies require public and charter schools to maintain records for a period of 5 years.

Private schools, other nonprofit organizations, and RCCIs maintain records for 3 years.

A CE may use a contact log to retain information about interactions that cannot be documented through the use of a form or written communication. In these cases, the contact log needs to capture who made contact, with whom, date and time, a brief description of the conversation and/or issue, and outcome. These records are also a great place to retain contact information, such as phone numbers, for follow up.

If the CE uses an electronic system to retain eligibility information about students, the CE must have a system in place which allows staff to retrieve information about the eligibility determination for each student, including an indication of income-based and categorical program participation determinations. If a student's eligibility is changed one or more times during the school year, the CE must have a system, manual or electronic, that allows the CE to track the changes in the student's eligibility throughout the year.

Retained records include, but are not limited to, the following types of documentation:

Access

Notes and comments about the method/s used to provide information to households about access to household applications, completing household applications, and eligibility

Appeals

Copies of notifications, contact notes, and other documents related to household appeals of an eligibility determination

Eligibility Determinations

Notes which reflect the following:

- Date applications are received
- Date of eligibility determination

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- Date of and note about changes to the application
- Date of and note about changes to eligibility.
- Date of and note about other actions related to eligibility

The staff member recording notes and changes should also initial the recorded information when the changes occur. This may be done manually or electronically.

Household Applications

All free and reduced-price household applications, including household applications from households, denied free or reduced-price meals and inactive household applications

CEs should record notes about household contacts and eligibility determination directly on household applications. For those CEs that use electronic household applications, CEs must maintain a system of recording notes on household contacts and eligibility determination that is easily retrievable.[147] TDA strongly recommends that the determining or reviewing official use a different colored pen from the one used on the household application so the notes can be easily differentiated from information provided by the household.

Denied Household Applications

All denied household applications including the household application as well as recorded notes.

Direct Certification

Records with notes on household and agency contacts and copies of documentation that assisted the CE in making an eligibility determination including documentation provided by other organizations and agencies.

If the CE uses an electronic system to retain eligibility information about students, the CE must have a system in place which allows staff to retrieve information about eligibility for each student based on participation in a Categorical Assistance Eligible program.[148]

Other Source Categorical Eligible Program

Notes on household and agency contacts and copies of documentation that assisted the CE in making an eligibility determination

If the CE uses an electronic system to retain eligibility information about students, the CE must have a system in place which allows staff to retrieve information about eligibility for each student based on participation in an Other Source Categorical Eligible program.

Payment

Records related to the amount received in payment for meals.

Scanned or Web-based Household Application Systems

Rosters, eligibility information gathered by the scanning or web-based system, and notes or comments related to eligibility determinations.

The information fields in scanned or web-based household applications must be

147 USDA and TDA may review paper copies of household applications during an Administrative Review (AR). Paper applications can be printouts of the household applications that were completed on the internet.

148 SNAP, TANF, FDPIR, Medicaid Free, and Medicaid Reduced

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in the same order as the roster. If a CE used scanned or web-based household applications, it must retain all documentation that demonstrates the household application process meets the requirements for scanned or web-based household applications.

Special Provision Programs

Special provision CEs/schools must retain base year direct certification, categorical eligibility documentation, household applications, and other eligibility related documents for five years after a new base year is established if a public or charter school and three years if non-profit private school or residential child care institution.

For Example:

P2—If a CE establishes a base year for Provision 2 (P2) in 2001 and renews its operation of P2 for subsequent cycles using the initial base year data until 2014. In 2014, the CE established a new base year. The CE must retain all documentation related to the 2001 base year and all additional documentation from 2002-2014

- for an additional five years if a public or charter school and
- for three more years if a nonprofit private school or residential child care institution

after the new base is established.

In this case, a public or charter school, the CE would retain the P2 records from 2001 to 2014 until 2019. If a nonprofit private school or residential child care institution, the CE would retain the P2 records from 2001 to 2014 until 2017.

CEP—Because Community Eligibility Provision schools must reestablish a base year every four years,

- A public or charter school, the CE would retain its CEP records nine years (base year + three years remaining in cycle + 5 years).
- A nonprofit private school or residential child care institution, would retain its records for seven years (base year + three years remaining in cycle + 3 years).

Student Transfer, Shared Eligibility Information

The receiving CE must retain documentation that demonstrates how it determined the eligibility of the student, including any documentation provided by a sending CE.

Compliance

TDA will assess compliance with eligibility determination requirements during an administrative review (AR) or at other times as appropriate.

CEs with findings will be required to submit an approvable Corrective Action Document (CAD). TDA will take fiscal action, as appropriate, for benefit issuance (eligibility determinations) violations.

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Section 5

Special Provision Options

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Section 5, Special Provision Options

Update Guide

September 29, 2022	Clarified guidance on: - Carryover - Verification Report
July 28, 2022	Clarified information on the following topics: – CEP Guidance – New Sites – Extended or Extension of Categorical Eligibility definition – Indian Tribal Organization definition
September 17, 2021	Updated *Section 5, Special Provision Options* to correct minor typos. Clarified information on the following topics: – Provision 2 records – Pre-kindergarten categorical eligibility
August 12, 2020	Updated *Administrator's Reference Manual (ARM), Section 5, Special Provision Options* to update A*dministrator's Reference Manual (ARM)* section titles. Clarified information on the following topics: – Carryover – Pre-kindergarten eligibility toward CEP
October 1, 2019	Clarified information on the following topics: – Deadline to indicate participation in CEP – Grace year – Increase identified student percentage (ISP) mid-cycle – Records retention – Returning to standards counting and claiming – Validation of identified student percentage (ISP)
September 29, 2017	Updated *Section 5, Special Provision Options* to incorporate the following United States Department of Agriculture guidance: – *USDA Memo SP 36-2017, Eligibility Manual for School Meals Determining and Verifying Eligibility (July 18, 2017)* Clarified information on the following topics: – Calculating CEP – CEP reporting – CEP schools, changes in population – Definitions for terms related to verification: direct certification, Indian Tribal Organization (ITO), Medicaid Free, Medicaid Reduced, and without further application – Direct certification matching requirements – Indian Tribal Organization (ITO) – Medicaid Free and Medicaid Reduced – P2 schools, changes in population – Paid lunch equity – Timeline – Visiting students
November 29, 2016	Updated *Section 5, Special Provision Options* to incorporate guidance from the following United States Department of Agriculture (USDA) sources: – *USDA Memo SP 54-2016, Community Eligibility Provision: Guidance and Updated Q&As* (September 9, 2016) – *USDA Memo SP 52-2016, Early Implementation of Eligibility Carryover*

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	Period for Students Transitioning from Provision Schools: Sate Agency Extension Option (August 5, 2016) – *USDA Memo SP 51-2016, Ensuring Year-long Eligibility in the School Lunch and School Breakfast Programs* (August 5, 2016) – *National School Lunch Program and School Breakfast Program: Eliminating Applications Through Community Eligibility as Required by the Healthy, Hunger-free Kids Action of 2010, Final Rule for 7 CFR Part 245, Federal Register, Vol 81, No. 146* (July 29, 2016) – *USDA Memo SP 50-2016, 2016 Edition of Eligibility Manual for School Meals (*July 29, 2016) – USDA *Memo SP 43-2016, Ensuring Access to Free and Reduced Price School Meals for Low-Income Students* (June 30, 2016) – *USDA Memo SP 37-2016, Meaningful Access for Persons with Limited English Proficiency (LEP) in the School Meal Programs: Guidance and Q&As* (May 25, 2016) – *USDA Memo SP 22-2016, Community Eligibility Provision: Planning and Implementation Guidance* (January 7, 2016) – *USDA Memo SP 19-2016, Community Eligibility Provision: Guidance and Updated Q&As* (December 14, 2015) Provided clarification on the following topics: – Breakfast service – Carryover – Multiplier Factor – Timeline
December 16, 2015	Updated *Section 5, Special Provision Options* to incorporate guidance from the following United States Department of Agriculture (USDA) sources: – USDA *Memo SP 45-2015, Community Eligibility Provision: Guidance and Updated Q&As (September 14, 2015)* – *USDA Memo SP 40-2015, 2015 Edition of Eligibility Manual for School Meals* (July 7, 2015) – *USDA Memo SP 38-2015, Mid-Year Elections under the Community Eligibility Provision in School Year 2015-16* (June 5, 2015) – *USDA Memo SP 16-2015, Community Eligibility Provision: Guidance and Q&As* (January 14, 2015) Provided clarification on the following topics: – Carryover, Community Eligibility Provision – Counting and claiming, Community Eligibility Provision – Dual enrollment, Community Eligibility Provision – Records retention, Community Eligibility Provision and Provision 2 – Vending contracts, Community Eligibility Provision
May 4, 2015	Updated *Section 5, Special Provision Options* to incorporate guidance from the following United States Department of Agriculture (USDA) sources: – *USDA Memo SP 16-2015, Community Eligibility Provision: Guidance and Q&As* (January 14, 2015) – *USDA Memo SP 08-2015, Updated E-Rate Guidance for Schools Electing Community Eligibility* (November 21, 2014) – *USDA Memo SP 21-2014(v.2), Community Eligibility Provision: Guidance and Q&As-Revised* (July 25, 2014) Provided clarification on the following topics: – Adding new schools – Additional reimbursement – Carryover

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- CE-wide options
- Community Eligibility Provision (CEP) Report
- Compliance
- Definition for school
- Direct Certification
- Event timeline
- Other nutrition programs
- Records retention
- Removing or reconfiguring schools
- Returning to standard counting and claiming
- Special situations, circumstances
- TDA forms
- Vended meals
- Verification report

December 18, 2014 — Updated *Section 5, Special Provision Options* to clarify guidance on the following topics:

- Distribution and Collection of Household Applications for Purposes Other Than Benefit Issuance for NSLP or SBP

March 3, 2014 — Updated the title of Section 5 from *Special Assistance Provision 2* to *Special Provision Options* to indicate that this section now contains information on both Special Provision 2 and Community Eligibility Program

Updated *Section 5, Special Provision Options* to incorporate guidance from the following United States Department of Agriculture (USDA) sources:

- *USDA Memo SP 21-2014, Community Eligibility Provision: Guidance and Q&As* (February 25, 2014)
- *USDA Memo SP 59-2013, Review of Provision 2/3 Base Year* (September 26, 2013)
- *USDA Memo SP 54-2013, Transmittal of the Questions and Answers on the Computation of Direct Certification Performance Rate with the Supplemental Nutrition Assistance Program (SNAP); NSLP/SNAP: Questions and Answers on the Computation of Direct Certification Performance Rate with SNAP, v.2* (August 21, 2013)
- *USDA Memo SP 15-2013, Community Eligibility Option: guidance and Procedures for Selection of States for School Year 2013-2014* (December 7, 2012)
- *USDA Memo SP 24-2012, Interim Review Guidance for States with Local Educational Agencies Electing the Community Eligibility Option* (April 10, 2012)
- *USDA Memo SP 23-2011, Community Eligibility Option: Guidance and Process for Selection of States for School Year 2011-2012* (March 15, 2011)
- *Healthy, Hunger Free Kids Act of 2010, Section 2014(a), Eliminating Individual Applications Through Community Eligibility*
- *USDA Memo, Nutrition Requirements: Special Assistance: Amendment Expanding Provisions 2 & 3 District-wide* (August 6, 2004)
- *Provision 2 Guidance, National School Lunch and School Breakfast Programs* (Summer, 2002)

Provided clarification on the following topics:

- Base year calculations
- Compliance
- Community Eligibility Provision (CEP)
- Contact information for the Texas Department of Agriculture (TDA)
- Counting and claiming

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- CE-wide/districtwide application of P2
- Onsite monitoring or review
- Paid lunch equity (PLE)
- Records retention
- Requirements for continuing beyond the four-year cycle.
- Special situations guidance for Provision 2 (P2)
- TDA forms
- Use of household applications
- Verification

July 10, 2013 — Updated *Section 5, Special Assistance Provision 2* to include the current nondiscrimination statement as provided in *USDA Memo, USDA Nondiscrimination Statement Update* (May 24, 2013).

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Special Provision Options

Community Eligibility Provision (CEP) and Special Assistance Provision 2 (P2)

The special provision options—Community Eligibility Provision (CEP) and Special Assistance Provision 2 (P2)—provide contracting entities (CEs) with two alternatives to the standard requirements for determining eligibility and claiming reimbursement for the National School Lunch Program (NLSP) and School Breakfast Program (SBP).

[NOTE: These options do not apply to the Special Milk Program.]

Both options reduce requirements related to

- accepting household applications,
- verifying household applications,
- providing notification to the public, and
- submitting meal counts for reimbursement.

If a CE chooses to participate in one of the special provision options, all students that receive a reimbursable meal are served meals at no charge.

To participate in one of the special provision options, the CE must have a record of compliance with NSLP and SBP requirements.

While there are similarities between the two options, there are also differences. CEs may find the following forms helpful in determining if or which special provision option is feasible for the CE:[1]

- *Community Eligibility Provision (CEP) Federal Reimbursement Estimator Worksheet* (developed by the United States Department of Agriculture [USDA])
- *Provision 2 (P2) Feasibility Worksheet*

In addition to the information provided by completing the feasibility worksheets, the CE may also want to consider if there will be a cost savings in labor for tasks or actions that will no longer be required. If CEs have additional questions, they should contact their education service center (ESC) child nutrition specialist.

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[1] Worksheets available at *www.SquareMeals.org*.

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Definitions for This Section

For this section, the following definitions provide information that may assist CEs in operating a special provision option:

Blended Reimbursement Rate	Free, reduced-price, and/or paid reimbursement rates applied according to a predetermined percentage.
CE Operating Days	Days when the school nutrition program staff are preparing for or serving reimbursable meals and other days when conducting official operational tasks.
CEP Claiming Percentage	The percentage of student meals that are claimed at the free rate. This percentage is calculated by dividing the number of directly certified students by the total enrollment and multiplying the result by the Multiplier Factor. This rate is capped at 100%.
DC List, TX-UNPS Direct Certification Direct Verification System (NSLP/SBP Only)	List of students that have been directly certified[2] using the TX-UNPS Direct Certification Direct Verification System for NSLP or SBP. Texas CEs match the names of enrolled students' households that qualify for SNAP and TANF eligibility and, starting October of 2017 for NSLP and SBP, Medicaid Free and Medicaid Reduced eligibility. [NOTE: Disaster SNAP (D-SNAP) data is included in the SNAP data provided in the TX-UNPS Direct Certification Direct Verification System.] CEs must securely maintain this list onsite with their eligibility determination documentation. See the *Records Retention* subsection in this section for additional information on retention of eligibility documentation. CEs will also use this information on the ***School Food Authority (SFA) Verification Collection Report (FNS-742)***[3] which is submitted in TX-UNPS each year.

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2 CEs may also directly certify students for Other Source Categorical Eligible Programs.
3 Applies only to NSLP and SBP

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Direct Certification (NSLP/SBP Only)	Determination of eligibility for free or reduced-price meals based on documentation obtained directly from a state or local agency or authorized program representative. When a student is directly certified, the household does not need to submit a school meal application. **Direct Certification for Categorical Assistance Eligible Programs** – SNAP/TANF (Free Meals)—TDA, in cooperation with HHSC and TEA, has developed a Direct Certification System, a database located in TX-UNPS that allows CEs to match the names of enrolled students whose households qualify for SNAP or TANF. – FDPIR (Free Meals)—In Texas, Direct Certification for FDPIR is accomplished when the CE reaches out to the local tribal organization or appropriate tribal official to get a list of eligible students. **Starting October 15, 2017 for NSLP and SBP** – Medicaid Free (Free Meals)—Direct Certification for Medicaid Free must be based on a match in the Direct Certification System. – Medicaid Reduced (Reduced-Price Meals)—Direct Certification for Medicaid Reduced must be based on a match in the Direct Certification System.[4] **Direct Certification for Other Source Categorical Eligible Programs** – Head Start and Early Head Start pre-kindergarten programs; homeless, including runaways and individuals displaced by declared disasters; migrant; and SNAP, TANF, or FDPIR eligible students who are not directly certified—The CE works with an authorized program representative to obtain information so the CE can match student enrollment list to a program participant list. Students who are directly certified for Other Source Categorical Programs receive free or reduced-price school meals. CEs must maintain a direct certification list which indicates the program which initiates direct certification—Categorical Assistance Eligible program and/or Other Source Categorical Eligible programs. CEs will use this information on the ***School Food Authority (SFA) Verification Collection Report (FNS-742)*** [5] which is submitted in TX-UNPS each year.
Enrolled Students (As defined for this section)	Student enrolled in a participating NSLB and/or SBP school. A student's eligibility to participate in NSLP and SBP is based on a student's enrollment status as defined in Texas Education Code (TEC), Title 2, Subtitle E, Chapter 25, Subchapter A, Section 25.001. [NOTE: This includes half-day students who have access to either breakfast and/or lunch.]

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4 CEs must only use the Direct Certification component of the TX-UNPS Direct Certification Direct Verification System when directly certifying households. The Direct Verification component must only be used when conducting Direct Verification of a household selected for verification.

5 Applies only to NSLP and SBP

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Enrollment That Is Certified for CEP	Enrollment that is certified <u>without a household application</u> as of April 1 of the prior school year for students 1. who participate in a categorically eligible program or 2. who live in a household where a household member participates in a program that extends eligibility to other household members (extended eligibility) The following categorical programs can be certified without a household application for CEP: – Federal Assistance Programs— Supplemental Nutritional Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF); and Food Distribution Program for Indian Reservations (FDPIR)[6] – Head Start and Early Head Start pre-kindergarten programs – Foster – Homeless, including runaways and individuals displaced by declared disasters – Migrant
Extended Eligibility	Student who is categorically eligible because the student lives in a household where a household member participates in a program that extends eligibility to other household members. All students in the household are categorically eligible for free or reduced-price meals if any member of the household, including adults, receives SNAP and TANF and, starting October of 2017 for NSLP and SBP, Medicaid Free and Medicaid Reduced program benefits is a member of that household. Adults in the household include parents, adult siblings, aunts, uncles, cousins, or adults that are not relatives who are part of the household.
Household Application	Household application used by households to apply for free or reduced-price meals through NSLP or SBP
Identified Student	Identified students are approved as eligible for free meals and are not subject to verification. Any student who has access to NSLP or SBP may be an Identified Student as long as the student is certified as eligible without an application.
Identified Student Percentage (ISP)	Percentage used for CEP that is determined by dividing the number of <u>identified students</u> by the number of <u>enrolled students</u>. (Number of Identified Students) ÷ (Number of Enrolled Students) = ISP
Indian Tribal Organization (ITO)	Recognized governing body of (1) *any* Indian tribe, Band, Nation, or other organized Indian group on a reservation[7] *that is recognized as eligible for federal programs and services provided to Indians because of their status as Indians;* or (2) any Indian tribe or Band on a reservation holding a treaty with a State government *as defined in Title 7, Code of Federal Regulations 271.2*
LEA	Local education agency
Medicaid Free	Eligibility determination made in Direct Certification System. Students whose households match as Medicaid Free are eligible for free meals.
Medicaid Reduced	Eligibility determination made in Direct Certification System. Students whose households match as Medicaid Reduced are eligible for reduced-price meals.
Multiplier Factor	The number that is multiplied by the ISP to calculate the CE's reimbursement rate. This factor adjusts the ISP for reduced-price meals that are not included in the ISP. (ISP) x (Multiplier Factor) = Percentage of Meals Served Reimbursed at the Free Rate

6 In Texas, there is a small population of children who may qualify under FDPIR. To directly certify a FDPIR eligible child, the CE must reach out to the tribal governing organization or appropriate tribal official to get a list of eligible students.

7 Recognized ITO is defined as (1) Any Indian tribe, Band, Nation, or other organized Indian group on a reservation for example, a Rancheria, Pueblo or Colony, and including any Alaska Native Village or regional or village corporation (established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), that is on a reservation and is recognized as eligible for Federal programs and services provided to Indians because of their status as Indians; or (2) any Indian tribe or Band on a reservation holding a treaty with a State government.

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Other Source Categorical Eligible Programs	Individual student's eligibility under any of the Other Source Categorical Eligible programs does not convey to other students in the household. The following programs are classified as Other Source Categorical Eligible programs: – Head Start and Early Head Start pre-kindergarten programs – Foster[8] – Homeless, including runaways and individuals displaced by declared disasters – Migrant – SNAP, TANF, or FDPIR eligible students who are not directly certified
Point of Service	Point in the food service operation where a determination can accurately be made that a reimbursable free, reduced-price, or paid meal has been served to an eligible student. This determination is made by the cashier or appropriate serving staff.
School	Educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; or any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools.
Standard Counting and Claiming Procedures	Procedures for NSLP and SBP (1) benefit issuance determination by household application, direct certification, and categorical participation lists and (2) monthly claiming based on reporting the number of students served a reimbursable meal in each eligibility category—free, reduced-price, and paid.
Total Enrollment Number for Schools Operating NSLP or SBP	Total number of students that accurately reflects the total number of students that are currently attending and enrolled[9] in a school operating NSLP or SBP and who have access to at least one NSLP or SBP meal service daily.
Visiting Student	A student who is eligible to participate in the meal program and is visiting the school on an infrequent basis. [NOTE: Younger, non-school age siblings are not considered visiting students.]
Without Further Application	Eligibility determination that is directly certified to receive meals benefits with no further action required by the student's household.

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8 Where the state retains legal custody of the child; see *Foster Child Categorical Eligibility* in this list of definitions for additional information on this topic.

9 As defined by Texas Education Code (TEC), Title 2, Subtitle E, Chapter 25, Subchapter A, Section 25.001 provides additional information related to enrollment.

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Special Provision Option Timeline

The following timeline applies to the operation of CEP and P2. More detailed guidance on each of these is provided later in the section.

School Year Prior to the First Year of Operation	
October 1-March 30:	**CEP and P2** CEs determine if operating a special provision option is feasible.
March 1-March 20:	**CEP Only** CEs must submit the Community Eligibility Provision Data Report (CEP Report) in the Texas Unified Nutrition Programs System (TX-UNPS). The report contains information about eligibility and enrollment, including all information related to the number of students directly certified under CEP. This applies to all CEs not just those who apply for CEP.
April 15-May 31:	**P2 Only** CEs submit their P2 application or renewal in TX-UNPS.
April 15-June 30:	**CEP Only** CEs must submit their CEP application or renewal in TX-UNPS. CEs must complete the *Community Eligibility Provision Worksheet* working with their ESC child nutrition specialist. The ESC child nutrition specialist submits the form to TDA.
November 23	**CEP and P2** Verification Report
Prior to the Operation of a Special Provision Option:	**CEP and P2** CEs must update its *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures*[10] for those schools operating the special provision option.
During the Base Year:	**P2 Only** TDA reviews of the CE's operations of the Special Provision 2 (P2) option.
School years two, three, and four of operation,	
June 30:	**CEP and P2** CEs may opt out of participation for the following school year. CEs must notify TDA that they will continue to operate CEP and about any changes in school structure that will impact the special provision option operation.

[10] Beginning April 15, 2015 for the School Year 2015-2016, the questions for the *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Counting/Collection Procedures* will be completed within the Texas Unified Nutrition Programs System (TX-UNPS) Application Packet.

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Carryover, Special Provision Schools

Carryover is not applicable while a CE is operating CEP or P2 during a non-base year. For information on carryover when a student transfers from a special provision school to a non-special provision school, or when a special provision school transitions to standard counting and claiming, see the Carryover Eligibility subsection of the *Administrator's Reference Manual (ARM), Section 4, Eligibility*.

Direct Certification Matching Requirement

All CEs are required to conduct Direct Certification matching each month. This includes Direct Certification matching for CEP and P2 schools. This information will assist the CE in preparing for the *Annual Verification Report, FNS-742 (USDA's School Food Authority [SFA] Verification Collection Report, FNS-742)* and the CEP yearly report.

Distribution and Collection of Household Applications for Purposes Other Than Benefit Issuance for NSLP or SBP

If a school is operating under a special provision option, the CE (or the school) must not collect or distribute free or reduced-price meal household applications or other types of household applications designed to collect student demographic or socioeconomic data unless the action is a requirement of the special option provision. For the two special provision options described in this section, the distribution and collection of free and reduced-price meal household applications is permissible only in the base year of P2.

If the CE needs current information that would normally be collected on the free and reduced-price household application, all of costs for distribution, collection, and review for such efforts must be paid by non-school nutrition program (SNP) funds. This includes data used for PEIMS or other federal, state, or local programs.[11] The Texas Education Agency (TEA) provides a sample form to assist CEs in collecting socioeconomic data at *www.tea.texas.gov/Workarea/DownloadAsset.aspx?id=25769816295*.

If a CE uses another form to collect student household socioeconomic data, that form cannot be substituted for a free and reduced-price household meal application when a student transfers to a non-special provision school to establish eligibility. Eligibility must be established by use of a free and reduced-price household meal application or a categorical eligibility determination method.

When planning to operate CEP, CEs are encouraged to consider the following best practices in transitioning to a new socioeconomic data collection system:

1. Engage all stakeholder groups who have used NSLP/SBP eligibility data in the past in planning for the transition to a new socioeconomic data collection form.
2. Provide the form in the languages that are common to the households in the community.
3. Use school events to reach out to households to share information about the new form and the importance of completing the form.
4. Designate a staff member who households can contact if there are questions about completing the form.
5. Reach out to community organizations who engage with parents to share information about the new form and the importance of completing the form.

[11] E-Rate uses the CEP sites ISP for funding allocation purposes. Texas compensatory education funding is based on site claiming data for October.

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Negative School Nutrition Service Account Balance, Special Provision Options

Under the special provision options, the CE is reimbursed according to the percentages that are recorded in TX-UNPS. Any shortfall in the nonprofit school food service account caused by operating under a special provision option must be subsidized and brought to a zero balance from non-federal funds on an annual basis.[12] Therefore, if the reimbursement received for the school year is not sufficient to cover the total nonprofit school food service program costs, the CE must use non-federal funds to pay the difference.

Paid Lunch Equity (PLE) for Special Provision Options

Non-pricing schools are exempt from the paid lunch equity (PLE) requirement because they do not charge for meals. CEs should report non-pricing schools as "$0" in meal pricing reports in TX-UNPS.[13]

If a CE has both special provision sites and non-special provision sites, the CE should only include the prices for meals claimed in non-special provision sites in the average price calculation for the paid lunch equity requirement and in reporting meal prices in TX-UNPS.[14]

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12 See the *Administrator's Reference Manual (ARM), Section 19, Meal Pricing* for more information on non-federal funds.

13 See the *Administrator's Reference Manual (ARM), Section 19, Meal Pricing* for additional information on the paid lunch equity (PLE) requirement.

14 See the *Administrator's Reference Manual (ARM), Section 19, Meal Pricing* for additional information on meal pricing requirements and reporting meal pricing in TX-UNPS.

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Adult Meal Pricing at Special Provision Sites

CEs must use *Method 2, Using Free Reimbursement Rate for Lunch, Breakfast, or Snack* for establishing the adult meal price of meals. The *Method 2, Using Free Reimbursement Rate for Lunch, Breakfast, or Snack* calculation is described in *Administrator's Reference Manual (ARM), Section 19, Meal Pricing*.

Community Eligibility Provision (CEP)

Any CE that administers NSLP or SBP is eligible to participate in the Community Eligibility Provision (CEP) if 40 percent of the students are categorically eligible when eligibility is determined solely by categorical eligibility and not determined by a free and reduced-price meal application (household application) and the CE has a record of administering the nutrition programs in accordance with regulations. The CEP is an alternative to the collection of individual household applications.[15]

If a CE chooses to participate in CEP, the CE must not distribute, collect, or use the free and reduced-price household meal application on any of the sites operating CEP.[16]

Under CEP, CEs must offer both breakfast and lunch at no charge.[17] A CE may apply for CEP if the CE offers only breakfast or lunch in the year prior to operation, but the CE must offer both breakfast and lunch at no charge while operating CEP.

Information Box 1

Benefits of Community Eligibility Provision (CEP)

Adopting the CEP is expected to result in the following benefits:

- Ease the stress for parents or guardians to complete household applications
- Eliminate overt identification issues since all meals are served at no charge
- Increase participation in breakfast and lunch
- Reduce labor and material costs associated with printing and distributing paper household applications
- Reduce cost for distributing information about electronic household applications
- Reduce paperwork at the CE level
- Reduce the labor costs for processing payment for meals or charging meals
- Simplify meal counting and claiming

Residential Child Care Institutions (RCCIs)

RCCIs are not eligible to participate in the CEP.

CE-wide/Districtwide or Schoolwide

CEs may apply to operate CEP CE-wide/ districtwide, for a select group of schools, or for individual schools as long as the student population for the CE, the select group of schools, or the individual schools have at least 40% of total enrollment that is certified for free meals without using individual household applications.

Breakfast and Lunch Requirement Exception

If a school operates a half day program, the school is not required to offer both breakfast and lunch to students who are not on the school campus at the time of meal service.

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15 The Community Eligibility Provision (CEP) was established in the *Healthy, Hunger-Free Kids Act of 2010, Section 104*.

16 See the *Distribution and Collection of Household Applications for Purposes Other Than Benefit Issuance for NSLP or SBP* subsection in this section for additional information on this topic.

17 Because the CE will be providing reimbursable meals at no charge at all CEP sites, the CE may find the *Community Eligibility Provision (CEP) Feasibility Worksheet* helpful in determining if CEP is financially feasible for the CE.

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The percentage of students qualifying for free meals without using household applications is called the Identified Student Percentage (ISP).

Community Eligibility Four-Year Cycle

The CEP option starts at the beginning of the school year. CEs must indicate their intention to operate CEP for the upcoming school year by June 30 of each year. A CE may choose to participate in CEP for a period of up to four successive school years but may also opt out before the end of the four-year cycle.

Information Box 2

Meal Service Requirements, Community Eligibility Provision

CEs choosing to operate CEP must offer both breakfast and lunch meals at no charge.

- If a CE (or a school) chooses to opt out of the CEP at the end of or before the end of the school year, it must be prepared to return to standard counting and claiming procedures in the next school year (i.e., issue, review, and approve household applications).

  If all sites in the CE have been non-pricing under CEP, the CE must establish meal prices that reflect the current year's paid lunch equity weighted average meal price

  [NOTE: If the CE is able to access meal pricing data from previous years, the CE can calculate what the current meal price would be if the site had operated as a pricing program during the period of non-pricing. In this case, the CE will complete the PLE Calculation Tool for each school year when the PLE calculation was not completed.]

  If some sites are pricing and some are non-pricing under CEP, the CE may establish meal prices that reflect the current year's paid lunch equity weighted average meal price or use the same pricing structuring as the existing pricing sites.

- If a CE (or school) chooses to opt out of CEP before the end of the school year, it must be prepared to

  1. return to standard counting and claiming procedures at the time it chooses to opt out of CEP (i.e., issue, review, and approve household applications, including independent review of applications,[18] if applicable) and
  2. complete verification and verification report activities.

  If all sites in the CE have been non-pricing under CEP, the CE must establish meal prices that reflect the current year's paid lunch equity weighted average meal price. If some sites are pricing and some are non-pricing under CEP, the CE may establish meal prices that reflect the current year's paid lunch equity weighted average meal price or use the same pricing structuring as the existing pricing sites.

  [NOTE: If the CE is able to access meal pricing data from previous years, the CE can calculate what the current meal price would be if the site had operated as a pricing program during the period of non-pricing. In this case, the CE will complete the PLE Calculation Tool for each school year when the PLE calculation was not completed.]

Automatic Four-Year Cycle Adjustment

TX-UNPS may automatically update a CE's ISP to a higher ISP mid-cycle and restart the CE's four-year cycle. If the increase in ISP is significant, the increase may require a validation of the CE's increased ISP. If a validation of data is required, TDA will notify the CE and ask the CE's ESC to assist them in required actions.

[18] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for more information on the requirements related to independent review of applications, and see the *Carryover, Special Provision Schools* subsection in this section for additional eligibility information.

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Mid-Year Change to CEP

CE must indicate participation in CEP by June 30 to operate CEP in the following school year; a CE cannot switch from standard counting and claiming procedures to CEP midyear.

Continuing CEP After the End of the Four-Year Cycle

If the CE chooses to continue to participate in CEP at the end of the four-year cycle, the CE must establish a new identified student percentage (ISP)[19] of at least 40% of total enrollment that is certified for free meals without using individual household applications.

Grace Year

The CE may opt for an additional grace year over the four-year cycle if the following conditions is met:

> The CEP CE, group of schools, or individual school has a percentage of enrolled students—who are categorically eligible without taking household applications—that meets or exceeds an identified student percentage (ISP) of more than 30 percent but less than 40 percent as of April 1 in Year 4 of the current CEP four-year cycle.

For grace year claiming, the free claiming percentage is based on the ISP established as of April 1 for Year 4 of the CEP four-year cycle.

Public Notification

To ensure that households and the public understand that meals will be served at no charge to all students, the CE should provide notifications to households and release public announcements about CEP including a notice that household applications will not be required prior to or during the first week of school.

TDA has developed the *Media Release for Free and Reduced-Price Meals Sample Form, Community Eligibility Provision (CEP)* to assist CEs in public notification. This form is available at *www.SquareMeals.org*.

Calculating the Community Eligibility Provision (CEP) Base Year Identified Student Percentage (ISP)

To calculate the ISP, CEs must determine the percentage of total student enrollment that is certified without a household application for the CE, group of schools, or individual school that is operating CEP. For CEs that are new to CEP, adding a new site, or renewing CEP, CEs must work with their education service child (ESC) nutrition specialist to complete the *Community Eligibility Provision Worksheet*. Working together, the CE and the ESC child nutrition specialist will ensure that the CE's calculations for identified student percentages are correct. To obtain a copy of this worksheet and make arrangements for a work session, CEs must contact their ESC. The ESC will submit the worksheet to TDA when it is completed.

Students that are certified as eligible without application are referred to as Identified Students. Identified Students are approved as eligible for free meals and are not subject to verification. Any student who has access to NSLP or SBP may be an Identified Student as long as the student is certified as eligible without application.

[19] See the *Identified Student Percentage (ISP)* subsection in this section for additional information on ISP.

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Students who are categorically eligible based solely on information provided on an application cannot be included as an Identified Student.

For Example: A SNAP Eligibility Determination Group Number (EDG#) submitted on a household application that is not directly certified through another source.

However, if a student is first certified as eligible through a household application, and, then, is later certified based on a non-application source, that student may be counted as an Identified Student.

Enrollment That Is Certified Without Application

Enrollment that is certified without household application includes students who participate in or are extended eligible[20] as of April 1 of the prior school year in the following categorical programs:[21]

1. Federal assistance programs
   - Supplemental Nutritional Assistance Program (SNAP)
   - Temporary Assistance for Needy Families (TANF)
   - Food Distribution Program for Indian Reservations (FDPIR)[22]
   - Medicaid Free,[23] starting October of 2017 if identification is made through TX-UNPS Direct Certification Direct Verification System
2. Head Start and Early Head Start pre-kindergarten programs
3. Foster
4. Homeless, including runaways and individuals displaced by declared disasters
5. Migrant

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[20] A student who is categorically eligible because the student lives in a household where a household member participates in a program that extends eligibility to other household members—extended eligibility.

[21] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on eligibility.

[22] In Texas, there is a small population of children who may qualify under FDPIR. To directly certify a FDPIR eligible child, the CE must reach out to the tribal governing organization or appropriate tribal official to get a list of eligible children.

[23] Students identified as Medicaid Reduced cannot be included in the ISP.

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Calculating the Identified Student Percentage (ISP)

Using student eligibility information from the prior year, the CE will calculate the percentage for the CE, a group of schools, or an individual school operating CEP. An ISP of 62.5% will result in 100% reimbursement at the free reimbursement rate. A CE must carry its ISP a minimum of 2 decimal places (i.e., 72.13).

If Operating CE-wide

When a CE is operating CEP CE-wide/districtwide—the ISP must be 40% or more of the total CE/district enrollment.

Total Number of Students Certified as Eligible for Free Meals Without a Household Application	÷	Total Enrollment of the CE/District	=	ISP
8,962	÷	13,000	=	68.93%

If Operating at a Group of Schools

When a group of schools as a collective unit is operating CEP, the ISP must be 40% or more of total enrollment for all the schools in the group.

Total Number of Students Certified as Eligible for Free Meals Without a Household Application	÷	Total Enrollment of All the Schools in the Group	=	ISP
741 80 (School A) + 50 (School B) + 611 (School C) = 741	÷	1,358 376 (School A) + 218 (School B) + 764 (School C) = 1,358	=	54.56%

If Operating at an Individual School

When an individual school is operating CEP, the ISP must be 40% or more of total school enrollment.

Total Number of Students Certified as Eligible for Free Meals Without a Household Application	÷	Total Enrollment of the Individual School	=	ISP
865	÷	1,334	=	64.84%

Duration of CEP ISP

Even though the ISP established in the base year is guaranteed for the duration of the four years, CEs should continue to directly certify students for the categorical programs annually during the second, third, and fourth years of participation in the CEP because the CE has the option to adjust its ISP as described in the *Adjustment of ISP* subsection in this section.

Rounding

When determining the ISP for a site or group of sites, CEs must not round up. The percentage must be at least 40% for the CE, group of schools, or individual school to be eligible. A percentage of 39.98 does not meet the threshold.

[NOTE: Once a site or group of sites qualifies for CEP, the site or group of sites will use standard rounding for monthly claims.][24]

[24] See the *Administrator's Reference Manual (ARM), Section 20, Counting and Claiming* for additional information on this topic.

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CEP Guidance, Special Situations, Identified Student Percentage (ISP)

CEs will find the following guidance useful in addressing special situations under CEP. However, CEs may also contact their ESC for additional technical assistance on these issues.

New Sites

New sites will not have direct certification data from April 1 of the prior year and instead may use direct certification data from a later month to establish CEP eligibility. If the number of identified students and total enrollment are available before the counting and claiming of meals begins and the new site meets the eligibility requirements (either individually or as part of a group), then the CE may elect CEP. New sites can elect CEP only if the number of identified students and enrollment are available because the ISP is the basis for claims for reimbursement.

Adjustment of ISP

A CE may choose to adjust its ISP during the second, third, or fourth years of the cycle based on the enrollment information as of April 1 of a prior school year.

For Example: A CE established an ISP of 52.00% in April of SY 2013–2014 to be applied in SY 2014–2015.

In March 2015, the CE determines that its ISP has increased to 66.21%. The CE may apply the 66.21% in SY 2015–2016. This 14.21% increase shifts the percentage of meals paid at the free rate from 83.20% to 100% when the Multiplier Factor for both years is 1.6.

If the CE does adjust its ISP, it must do so in the *TX-UNPS Application Packet, CEP Site List* screen. However, a CE is not required to decrease or increase its ISP in the second, third, or fourth year of the cycle if the ISP changes—higher or lower.[25]

Cooperative or Special Needs Schools

If a student or group of students from a non-CEP school attend classes all day and eat lunch and/or breakfast at a CEP school, the students may be included in the CEP school's ISP.

Dual Attendance Students

Students who attend two separate CEP schools located in different local education agencies and who have access to one meal at one school during the time they attend that campus and to a different meal during the time they attend the other campus may be included in the ISP for both schools as long as the student is legally enrolled at the school, has access to a least one meal at the school, and the student's meals are claimed at the serving school.

Incorrect ISP Discovered by the CE

When a CE discovers that it has miscalculated or misreported its ISP outside of the administrative review process, the CE must notify TDA. TDA will work with the CE to take all necessary actions to establish the correct ISP. CEs may also find their ESC child nutrition specialist can provide assistance in this area.

Switching from Provision 2 (P2) to CEP

If a CE decides to switch from P2 during a non-base year, the CE is required to obtain an ISP reflective of April 1 of the year prior to the year the school will operate CEP.

[25] See the *Community Eligibility Provision Reimbursement* subsection in this section or *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on this topic.

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Vending Contract or Similar Agreement

If a CEP CE provides vended meals to schools, private schools, or charter schools that are not included in the CEP CE's agreement with TDA,[26] the students receiving the vended meals are not included in the CEP CE's ISP unless the schools are listed as serving sites on the CEP CE's agreement.

If the vending agreement allows for the district to file claims for meals vended to the outside schools, the district must count and claim these meals separately from the district's CEP schools.

Special Guidance, Changes to Student Population

When there is change in student population for a CEP CE, CEP group of schools, or CEP school, the CE must determine if the change impacts the ISP. The following guidance provides information on when the ISP must be recalculated for the remaining years in the cycle.

Closing a School Mid-CEP Cycle

If the CE has an indication that a school may be closing mid-CEP cycle, it is recommended that the closing school be excluded from the group of schools operating CEP. If the closing school stays in a group, the identified student percentage will no longer be accurate, and a new ISP will need to be calculated.

Students Move to a New School

If the total student enrollment of a CEP school moves to a new school and no additional students are assigned to the new school, there is no change in ISP.

Students Move Within the Same Group of CEP Schools

If the total student enrollment of a CEP school moves to a school within the same group of CEP schools, there is no change in ISP.

Students Move to Another School or Other Schools

If the total student enrollment of a CEP school,

- moves to another school with an existing student population or is distributed across multiple schools and the CE operates CEP CE-wide, there is no change in ISP.
- is distributed to some schools that operate CEP and other schools that do not, all affected CEP schools with significant change in enrollment must recalculate their ISP.
- is distributed to multiple schools that have individual site CEP ISPs, all CEP schools with significant changes in enrollment must recalculate their ISP.
- is distributed to multiple groups of CEP schools, all CEP schools with significant changes in enrollment with added enrollment must recalculate their ISP.
- is added to a single group of schools operating CEP, the group of CEP schools with significant changes in enrollment must recalculate its ISP.

[26] Designated as serving sites for the CE in TX-UNPS.

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Community Eligibility Provision Data Report (CEP Report) in TX-UNPS

Each year between March 1 and March 20, CEs[27] must report eligibility and enrollment information that reflects the students at each school as of April 1. This includes CEs that are not planning to operate CEP in the upcoming year. This information[28] (1) is preliminary data that helps CEs and TDA to identify schools that are potentially eligible to operate CEP[29] and (2) will automatically populate the ISP fields in the CEP application screen[30] in TX-UNPS.

For the *Community Eligibility Provision (CEP) Site List* screen in the TX-UNPS Application Packet, CEs must report the following information between March 1 and March 20:

- Number of current students certified as categorically eligible[31] without household application —Identified Students—for each school the CE operates under NSLP or SBP in based on two eligibility types:
    1. Directly Certified SNAP students
    2. Directly Certified students for the following programs:
        - Temporary Assistance for Needy Families (TANF)
        - Food Distribution Program for Indian Reservations (FDPIR)[32]
        - Medicaid Free,[33] starting October of 2017 if identification is made through TX-UNPS[34]
        - Head Start and Early Head Start pre-kindergarten programs
        - Foster
        - Homeless, including runaways and individuals displaced by declared disasters
        - Migrant
- Total current student enrollment[35] for each school the CE operates under NSLP or SBP

When the CE records the identified eligible students for each eligibility type and total student enrollment information, TX-UNPS automatically calculates the ISP for each school—alerting the CE about schools that are potentially eligible for CEP. While the ISP for a group of schools is based on total eligible students and total student enrollment for a group of schools, these percentages can assist program administrators in identifying advantageous school groupings.[36]

For this report, *reflective of April 1* means information about student eligibility or enrollment that exists before April 1 of the reporting year.

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27 Residential Child Care Institutions (RCCI) are exempt from this requirement since RCCIs cannot participate in CEP.

28 Information prepared for the *Annual Verification Report, FNS-742* (USDA's *School Food Authority [SFA] Verification Collection Report, FNS-742) will help the CE to prepare the required information.*

29 TDA will post a list of potentially eligible schools at *www.SquareMeals.org.*

30 If the information recorded in this form is incorrect, TX-UNPS will not calculate the ISP for schools or group(s) of schools correctly.

31 See *Administrator's Reference Manual (ARM), Section 4 Eligibility Determination* for more information on eligibility determination.

32 In Texas, there is a small population of children who may qualify under FDPIR. To directly certify a FDPIR eligible child, the CE must reach out to the tribal governing organization or appropriate tribal official to get a list of eligible children.

33 Students identified as Medicaid Reduced cannot be included in the ISP.

34 Direct certification of Medicaid Free can only be accomplished through the TX-UNPS Direct Certification System.

35 *Total Enrollment* for the school operating NSLP or SBP means the total number of students enrolled at the site who have access to at least one meal service daily.

36 See the *Calculating Identified Student Percentage (ISP)* subsection of this section for additional information on this topic.

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For Example: The reporting year for April 1, 2014 is 2014.

Data Reflective of April 1 That Is Unavailable Until After April 1

There may be circumstances where information that is reflective of April 1 is not available to the CE until after April 1 and, therefore, was not reported in the *Community Eligibility Provisions (CEP) Site List* screen by March 20. In these cases, CEs must contact TDA immediately to determine if it is possible to update the *Community Eligibility Provisions (CEP) Site List* screen.

For Example:

Reflective of April 1. On March 28, there is a natural disaster that increases number of homeless students. Data on the impacted students is collected prior to April 1 but is not released until April 6. This new information may be critical to accurately calculating the ISP for the school or a group of schools that is reflective of the students on April 1.[37]

Not Reflective of April 1. If 15 new students enroll on April 2 and are categorically eligible as migrant students, the children's eligibility and enrollment information is not reflective of April 1. This new information is not applicable to the calculation of the ISP for the school or a group of schools since it is not reflective of the students as of April 1.

Community Eligibility Provision Reimbursement

One of the benefits of CEP is the predetermined blended reimbursement rate—predetermined percentages of meals to be reimbursed at free and paid rates.[38] Each month the CE submits the total number of reimbursable meals served for lunch and breakfast counted at the point of service, and TX-UNPS automatically assigns a percentage of the meals as free and the remaining percentage as paid.

CEs may find the *Community Eligibility Provision (CEP) Feasibility Worksheet*[39] helpful in determining if CEP is financially feasible for the CE.

To calculate the reimbursement percentages, the CE applies the multiplier factor to the ISP.

Multiplier Factor

The multiplier factor is applied to the ISP to adjust the percentage for the reduced-price meals that are not included in the ISP. Once the Multiplier Factor is applied, the resulting percentage is the percentage of meals served that are reimbursed at the free rate, not to exceed 100%. Any remaining percentage is reimbursed at the paid rate.

This combination of free and paid rates is called a blended rate. The same CEP reimbursement percentage will be used for both breakfast and lunch—even though the counts for breakfast and lunch are conducted separately.

The United States Department of Agriculture (USDA) has assigned 1.6 as the Multiplier Factor.

Calculating the Percentage of Reimbursable Meals Reimbursed at the Free Rate

Using the ISP that the CE submitted in its CEP application, TX-UNPS will automatically apply the multiplier factor to determine the percentage of reimbursable meals that will be paid at the free rate.[40] CEs must carry its

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37 The ISP, along with the Multiplier Factor, determines the percentage of the served reimbursable meals that are reimbursed at the free rate. For this reason, updating this information may have a significant impact on total reimbursement each month.

38 See the *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on this topic.

39 Available at *www.SquareMeals.org*.

40 See the *Enrollment That Is Certified* subsection in this section for additional information on this topic.

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claiming percentage a minimum of 2 decimal places (i.e., 81.42%)

When the multiplier factor is calculated, the reimbursement percentage cannot exceed 100 percent.

For Example:

If the CE has an ISP of 57.32%,

ISP		Multiplier		CEP Free Category Reimbursement Percentage
57.32%	x	1.6	=	91.71% (In this case, 91.71% of the total number of reimbursable meals served will be reimbursed at the free rate.)

If the CE has an ISP of 69%,

ISP		Multiplier		CEP Free Category Reimbursement Percentage
69.00%	x	1.6	=	100% (110.40%) (In this case, 100% of the total number of reimbursable meals served will be reimbursed at the free rate. The percentage of meals reimbursed at the free rate cannot exceed 100%.)

Calculating the Paid Rate for Reimbursement

To calculate the percentage of reimbursable meals that will be claimed at the paid rate, subtract the percentage for the free rate from 100 percent.

For Example:

If the CE calculates its percentage of meals reimbursed at the free rate as 91.71% (57.32% x 1.6), the percentage reimbursed at the paid rate will be 8.29%.

		Percentage Free Rate		Percentage Paid Rate
100%	–	91.71%	=	8.29%

Verification Report

During the four-year CEP cycle, CEP sites are not required to conduct verification. However, the CE will use direct certification and categorical eligibility information collected each year to complete the *Verification Report* in TX-UNPS.[41]

Use of the CEP Free Rate Percentage for Other Programs

CEs choosing the CEP option will keep the percentage for the free rate of reimbursement, unless updated during the second, third, or fourth year, for an entire four-year cycle for NSLP and SBP. The free reimbursement rate percentage for each site will also determine area eligibility for the Afterschool Care Program (ASCP), Fresh Fruit and Vegetable Program (FFVP), Seamless Summer Option (SSO), Summer Food Service Program (SFSP), and Child and Adult Care Food Program At Risk component (CACFP At Risk).

Claiming Percentage

ISP	x	Multiplier Factor	=	Claiming Percentage

Special Guidance, Use of Claiming Percentage for ASCP

CEP schools must use the site CEP claiming percentage to establish area eligibility (unless using non-school data to determine area eligibility). If the LEA participates in

[41] See the *Administrator's Reference Manual (ARM), Section 6, Verification of Eligibility* for additional information on the verification report and the verification process.

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CEP districtwide or with grouped schools, each school's area eligibility must be based on the individual site's claiming percentage using the individual school's ISP, not the districtwide or group ISP.

For Example: The following table illustrates how the ISP is calculated for a group of schools.

DC Students		Total Student Enrollment		ISP	Claiming Percentage
80 (School A) + 50 (School B) + 611 (School C) = 741	÷	376 (School A) + 218 (School B) + 764 (School C) = 1,358	=	**54.56%**	87.296% (54.56% x 1.6)

If School C plans to operate ASCP, only the student enrollment numbers from School C are used to determine if the 50 percent of the students are eligible based on its CEP claiming percentage.

DC Students		Total Student Enrollment		ISP	Claiming Percentage
611 (School C)	÷	764 (School C)	=	**79.97%**	100% (79.97% x 1.6 = 127.952%)

[NOTE: A CEP school is area eligible if (1) at least 50 percent of students are free or reduced-price eligible (school's individual ISP is at least 32.50%), or (2) the school is located in the attendance area of another school that is area eligible.]

Special Guidance, Use of Claiming Percentage for SSO and FFVP

If the CE participates in CEP districtwide or schools are grouped, each school's area eligibility must be based on the individual's site's claiming percentage using the individual school's ISP, not the CE-wide or group ISP.

A site's CEP claiming percentage may also be used for other programs that base eligibility or funding on NSLP participation.

Compensatory Education Funds

The Texas Education Agency uses site level claiming percentages for this calculation. This includes the site CEP claiming percentage for individual or grouped sites. More information on calculations related to compensatory education funds[42] is available at *www.tea.texas.gov/Texas_Schools/Support_for_At-Risk_Schools_and_Students/State_Compensatory_Education/*

E-Rate

CEs may also use their free rate claiming percentage for E-Rate. More information on E-rate funds is available at *http://tea.texas.gov/Curriculum_and_Instructional_Programs/Learning_Support_and_Programs/Technology_Planning/E-Rate/*

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[42] House Bill 3 which was signed into law in 2019 may impact this guidance. The Texas Education Agency provides updated guidance specific to House Bill 3 changes at *https://tea.texas.gov/About_TEA/Government_Relations_and_Legal/Government_Relations/House_Bill_3.*

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Special Provision 2 (P2) Option

The Special Provision 2 (P2) Option is designed to decrease the burden of paperwork on parents and CEs by reducing the requirements related to taking household applications, verifying household applications, notifying the public, and submitting reimbursement claims by meal eligibility category.

There is not a required percentage or ratio of free, reduced-price, or paid meal participants for P2.

Information Box 3

Benefits of Special Provision 2 (P2) Option

Adopting the P2 is expected to result in the following benefits:

- Ease the stress for parents or guardians to complete applications
- Eliminates overt identification issues in the second, third, and fourth years as all students are served at no charge.
- Increase participation at breakfast and lunch
- Reduce labor and material costs associated with printing and distributing paper applications or information about electronic applications
- Reduce paperwork at the CE level
- Reduce the labor costs for processing payment for meals or charging meals
- Simplify meal counting and claiming

CE-Wide/School

P2 may be applied at the CE/district level even if not all schools in the district operate P2.

Under P2, CEs offer universal meal service or meals at no charge to all participants receiving a reimbursable meal beginning in the base year and continuing as long as the school participates in P2.[43] A school site may choose to apply P2 for lunch, breakfast, or both.

Base Year

During the base year, eligibility is determined by the normal processes as described in the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination*.

During the base year, the P2 school

- distributes household applications,[44]
- collects household applications,
- determines eligibility,
- conducts direct certification,
- determines categorical eligibility,
- provides notification to households about eligibility status, and
- conducts the verification process.[45]

[NOTE: CEs are expected to retain the household applications used to establish the base year percentages as long as the percentages from that base year are used to operate P2. If these records are lost or destroyed, the CE must reestablish its base year.]

Prior Year Household Applications

During the base year, household applications from the prior year cannot be carried over to determine base year eligibility percentages beyond the first 30 operating days of the school year. During the second, third, and fourth years of the cycle, the CE and its P2 schools do not need to distribute or collect household applications, so the CE does not perform eligibility determination at P2 sites during the second, third, and four years of

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43 Because the CE will be providing meals at no charge at all P2 sites, the CE may find the *Provision 2 (P2) Feasibility Worksheet*[43] helpful in determining if P2 is financially feasible for the CE.

44 CEs are expected to retain the household applications from the base year as long as the base year data is used to operate P2. If these records are lost or destroyed, the CE must reestablish its base year. CEs may retain these records electronically.

45 See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* and *Section 6, Verification of Eligibility* for additional information on the standard procedures for determining eligibility and conducting verification.

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the cycle.

Remaining Years of the Four-Year Cycle

During the second, third, and fourth years, the CE uses the base year eligibility determinations for counting and claiming and does not use the normal free and reduced-price meal application process.

P2 Schools Not Operating P2 for Both Breakfast and Lunch

If the school operates P2 for lunch but not for breakfast, or vice versa, household applications must be collected and retained each year for each meal service not operating under the P2 special provision.

P2 records must be retained according to special provision records retention guidelines while non-special provision records must be retained according to normal records retention guidelines.[46]

Special Provision 2 Four-Year Cycle

P2 has a four-year cycle. P2 must start at the beginning of the school year except as described in the *Delayed Operation* subsection in this section.

Adding P2 Schools

A CE may also add new P2 schools after the initial approval. Unless the CE designates that a newly added school will align its four-year cycle with the previously approved schools, new P2 schools will follow a four-year cycle based on the year of entry to the special provision option.

If the CE wants all P2 schools to be on the same four-year cycle, the CE must designate the end of the cycle for added schools in the TX-UNPS Application Packet screen.

Delayed Operation

TDA may allow a school to delay operating Provision 2 for a period not to exceed the first claiming period during the base year. This exception is permitted to assist schools in securing completed free and reduced-price household applications from households which might not submit an application when there is no charge for meals.

Delayed operation permits Provision 2 schools to charge participating students for reduced price and paid meals during the first claiming period of the base year.

Carryover During Delayed Operation

During delayed operation, carrying over the previous year's eligibility for the first 30 operating days would undermine the ability to obtain free and reduced-price household applications for the base year. If the CE chooses to carry over the prior year's eligibility status during a delayed operation, the CE should consider using it for a shorter timeframe (e.g., one week rather than the first 30 operating days).

Public Notification During Delayed Operation

During delayed operation, the CE must follow the notification requirements for

Information Box 4

Meal Service Requirements, Special Provision 2

CEs choosing to operate P2 have three options in serving meals at no charge:

- Breakfast and lunch at no charge
  or
- Lunch at no charge
  or
- Breakfast at no charge

If the school offers both NSLP and SBP, the school is not required to operate P2 for both lunch and breakfast.

[46] See the *Records Retention* subsection in this section for additional information on this topic.

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the time the school is operating under delayed operation. The CE can send the standard media release and letter to households with a free and reduced-price application which includes the Income Eligibility Guidelines.

Escape Clause

A CE operating under Provision 2 may return to standard application and eligibility determination procedures at any time if standard procedures better suit the CE's program needs. However, the CE must notify TDA in writing about the change. Moreover, the CE must notify the parents of program participants of the decision and the reason for distribution of free and reduced-price household applications at the time the change is made and at the beginning of each subsequent school year. It is recommended that termination of Provision 2 only occur after the end of a school year and before the beginning of the next school year.

If all sites in the CE have been non-pricing under P2, the CE must establish meal prices that reflect the current year's paid lunch equity weighted average meal price.

[NOTE: If the CE is able to access meal pricing data from previous years, the CE can calculate what the current meal price would be if the site had operated as a pricing program during the period of non-pricing. In this case, the CE will complete the PLE Calculation Tool for each school year.]

If some sites are pricing and some are non-pricing under P2, the CE may establish meal prices that reflect the current year's paid lunch equity weighted average meal price or use the same pricing structuring as the existing pricing sites.

Renewal for an Additional Four-Year Cycle

CEs that choose to continue P2 after the end of the four-year cycle must elect to renew for an additional four-year cycle in the TX-UNPS Application Packet screen in TX-UNPS. Depending on the socioeconomic status of the students at the P2 school, the CE will either renew its application by establishing new base year data or without establishing new base year data.

Establishing New Base Year Data—If the socioeconomic status of students has not remained stable, the students demonstrate an improved socioeconomic status of more than 5 percent.

In this case, the CE must reestablish baseline data for the school by determining the percentage of students in the free, reduced-price, and paid categories using the free and reduced-price application process.

or

Without Establishing New Base Year Data—If the socioeconomic status of the students has remained stable, the students' socioeconomic status remains the same, demonstrates a decrease, or a negligible improvement of 5 percent or less.

In this case, the CE does not need to reestablish baseline data for the school.

Data Sources for Assessing Socioeconomic Status Stability

The CE must identify its available and approved socioeconomic data source on its *Provision 2 (P2) Application Form* [47] during the base year.

Approved data sources must meet the following criteria:

1. Be reflective of the school's population.
2. Be equivalent data for both the base year and last year of the cycle.
3. Effectively measure whether the income level of the school's population

[47] This web-based form is available from the Download Forms screen in the TX-UNPS Application Packet.

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(adjusted for inflation) has remained stable, declined, or had only negligible improvement.

Pre-approved data sources include the following types of data:

- CE's direct certification data including SNAP and TANF data, provided the eligibility standard was the same or more restrictive in the base year as the current year with allowance for inflation.
- Free and reduced-price meal application data collected during the fourth year.
  [NOTE: If a CE chooses to use free and reduced-price meal household applications to determine if there has been a change in socioeconomic status during the fourth year, the eligibility determinations from the redistributed household applications will not apply to student eligibility during the fourth year of the cycle. The CE will continue to use the eligibility determinations established in the base year for counting and claiming. These household applications can only be used as a data source related to the current socioeconomic status of the students at the P2 school.]
- Information collected by the city or county zoning and economic planning office.
- Local SNAP data including direct certification.
- Recent census track data compiled for the local area.
- Statistical sampling of school-population using the application or equivalent income measurement process.
- Unemployment data.

Any other source of data must be approved.

Calculating an Improvement or Lack of Improvement in Socioeconomic Status

Step 1:
Compare the base year socioeconomic status data to the current year's socioeconomic status data using the data from the source that is described in *Provision 2 (P2) Application Form*.[48] The data sources and types of data must be the same type to be comparable.[49]
Possible Result 1 from Step 1 Data Comparison

If the data comparison indicates no change or a decrease, no further action is needed for this calculation. The P2 schools do not need to reestablish base year free and reduced-price meal application data.

Possible Result 2 from Step 1 Data Comparison

If the data comparison indicates an improvement in student socioeconomic status, the CE must perform the calculations described in Step 2 to assess the amount of improved student socioeconomic status in the P2 schools.

Step 2:
When the socioeconomic data indicates an improved socioeconomic status for the P2 school population, (1) calculate the change in percentage by subtracting the base year percentage from the current year percentage and (2) calculate the percentage of socioeconomic improvement by dividing the improvement percentage by the base year percentage.

[48] These web-based forms are available from the *Download* screen in the TX-UNPS Application Packet.
[49] See the *Data Sources for Assessing Socioeconomic Status* subsection of this section for additional information on data sources.

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Calculation 1—Calculating the Percentage of Change

Current Year Socioeconomic Percentage	-	Base Year Socioeconomic Percentage	=	Change in Percentage

Calculation 2—Calculating the Percentage of Improvement

Change in Percentage	÷	Base Year Socioeconomic Percentage	=	Percentage of Socioeconomic Improvement

Possible Result 1 from Calculation 2, Calculating the Percentage of Improvement

If the *Percentage of Socioeconomic Improvement* is 5 percent or less, the P2 school student population is considered to have negligible improvement. The P2 school does not need to reestablish base year free and reduced-price meal application data.

Possible Result 2 from Calculation 2, Calculating the Percentage of Improvement

If the *Percentage of Socioeconomic Improvement* is 5 percent or more, the P2 school student population is considered to have a significant improvement. The P2 school must reestablish base year free and reduced-price meal application data.

For Example: A P2 school uses the number of students that are directly certified for SNAP and TANF households as its data source to determine if there is a significant socioeconomic change of the student population. In the base year, a P2 school has an enrollment of 350 students; 250 of the 350 students are directly certified as living in SNAP and TANF households.

Step 1: Compare the base year data to the current year data.

Base Year Percentage Calculation for Step 1

Number of Students Directly Certified		Number Total Student Enrollment		Percentage of Total Student Enrollment Directly Certified
250	÷	350	=	71.4285

In the 4th year of the cycle, the school's enrollment increased to 425 students; 289 of the 425 students are directly certified as SNAP/TANF households.

Current Year Percentage Calculation for Step 1

Number Students Directly Certified		Number Total Student Enrollment		Percentage of Total Student Enrollment Directly Certified
289	÷	425	=	68.00%

Explanation for Results for Step 1

A lower percentage of students (68%) is directly certified as living in SNAP/ TANF households compared to the base year percentage (71.40%). Based on this comparison, the CE needs to complete Step 2 to determine if there is a significant student socioeconomic improvement.

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Step 2: Determine the percentage of socioeconomic improvement by divide the percentage of difference in the improvement by percentage for the base year direct certification data.

Calculation 1, Using Direct Certification Data for Step 2

Current Year Socioeconomic Percentage		Base Year Socioeconomic Percentage		Change in Percentage
68.00%	-	71.40%	=	-3.40%[50]

Calculation 2, Using Direct Certification Data for Step 2

Change in Percentage		Base Year Socioeconomic Percentage		Percentage of Socioeconomic Improvement
3.40%	÷	71.40%	=	4.76%

Explanation of Results for Step 2

Since the improvement of 4.76% is less than 5%, the student population has shown negligible improvement in socioeconomic status. The P2 school is eligible to renew its special provision status without reestablishing a base year.

Public Notification

P2 Base Year

Before the beginning of the school year, the CE must notify the media and distribute a letter to households about the availability of meals at no charge to all students regardless of economic status under the NSLP and the SBP, if applicable. TDA recommends that CEs include this notification with the free and reduced-price meal household applications that must also be distributed prior to the beginning of the school year.

TDA has developed a sample of a base year announcement: *Media Release for Free and Reduced-Price Meals Sample Form, Special Assistance Provisions 2—Base Year*. This form is available at *www.SquareMeals.org*.

Public Notification, P2 Years 2, 3, and 4

Before the beginning of each school year, the CE must distribute the P2 public media announcement which informs households about the availability of meals at no charge to all students regardless of economic status under NSLP and the SBP, if applicable, and that households do not need to submit an application.

TDA has developed a sample announcement for P2 Years, 2, 3, and 4: Media Release for Free and Reduced-Price Meals Sample, Special Assistance Provision 2—Year 2 and Successive Years. This form is available at *www.SquareMeals.org*.

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[50] For this formula, the negative integer is not relevant—only the difference between the two percentages.

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P2 Verification Report

In the base year, the verification report—*Mandatory Annual Verification Report, FNS-742* (USDA's *School Food Authority [SFA] Verification Collection Report, FNS-742)*[51]—must be completed through TX-UNPS. During the second, third, and fourth year of the P2 cycle, CEs are no longer required to conduct verification. However, the CE will use direct certification and categorical eligibility information collected each year[52] for the *Mandatory Annual Verification Report, FNS-742* (USDA's *School Food Authority [SFA] Verification Collection Report, FNS-742)* which is reported in TX-UNPS.

CEs may find that downloading a paper version of the *Mandatory Annual Verification Report, FNS-742* helpful in preparing to report information. A copy of this form may be downloaded through TX-UNPS or at *www.SquareMeals.org*.

Special Guidance, Changes to Student Population

CEs will find the following guidance useful in addressing special situations under P2. This guidance applies even if the change is made midyear.

Students Move to a New School

If the total student enrollment of a P2 school moves to a new school and no additional students are assigned to the new school, there is no change to the eligibility percentages used for claiming.

Students Move to Another School or Other Schools

If the total student enrollment of a P2 school,

- is distributed to some schools that operate P2 and other schools that do not, the CE must reestablish base year data for all schools that plan to operate P2.
- is distributed to multiple schools that operate P2, all P2 schools with added enrollment must reestablish base year data for all schools that plan to operate P2.

If a CE changes the grade structure of an existing school,

- and the attendance area remains the same, the school may continue to use its existing percentages. It does not need to reestablish a base year,
- and the attendance area is changed, the school must reestablish base year data in order to become a Provision 2 school.

CE-Wide Student Enrollment to Re-Align Socioeconomic Distribution

If a CE/district realigns its student population in order to equalize the enrollment of all school, each P2 school must establish a new base year for its population.

Merged Schools Are in Different Positions in the P2 Cycle

If two P2 schools with the same attendance area merge with different positions in the four-year cycle, the merged school may combine the base year meal count data from the two original P2 schools and convert the combined data into new percentage ratios for free, reduced-price, and paid categories.

If the schools were at different points in their P2 cycles, the merged school adopts the cycle year of school that is in the highest position in the current four-year cycle.

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51 See the *Administrator's Reference Manual (ARM), Section 6, Verification of Eligibility* for additional information on this report and the verification process.

52 See the *Administrator's Reference Manual (ARM), Section 6, Verification of Eligibility* for additional information on this report and the verification process.

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Special Provision 2, Reimbursement

One of the benefits of P2 in the non-base years is the predetermined blended reimbursement rate—predetermined percentage of meals to be reimbursed at the free, reduced-price, and paid rates. [53] In non-base years, each month the CE submits the total number of reimbursable meals served for lunch and/or breakfast counted at the point of service, and TX-UNPS automatically assigns a percentage of the meals as free, reduced-price. For P2, reimbursable meal counts for lunch must be taken and claimed separately from reimbursable meals claimed for breakfast by month according to base-year data.[54]

CEs may find the *Provision 2 (P2) Feasibility Worksheet*[55] helpful in determining if P2 is financially feasible for the CE.

Non-School Age Children Visiting a P2 School

Younger children who are not school age and who visit the school are not considered to be eligible and cannot be served a meal at no charge unless the meal is paid from non-program funds. Meals served to non-school age children also cannot be claimed by the CE.

TDA Forms

CEs may find the following forms useful in their operation of the special provision options. These forms are available at *www.SquareMeals.org*.

Texas Department of Agriculture (TDA) Forms

Application

- *Application Form for Provision 2*
- *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures*

Daily Record/Accuclaim

- *Daily Record/Accuclaim Form | Community Eligibility Provision (CEP)*
- *Daily Record/Accuclaim Form | Provision 2 (P2)*

Feasibility of Operating a Special Provision Option

- *Community Eligibility Provision (CEP) Feasibility Worksheet*
- *Provision 2 (P2) Feasibility Worksheet*

Letters

- *Letter to Household, Discontinuation of Community Eligibility Provision (CEP)*

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53 See the *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on this topic.

54 See the *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on counting and claiming under P2.

55 Available at *www.SquareMeals.org*.

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Media Release

- *Media Release for Free and Reduced-Price Meals Sample Form, Community Eligibility Provision (CEP)*
- *Media Release for Free and Reduced-Price Meals Sample Form, Special Assistance Provision 2—Base Year*
- *Media Release for Free and Reduced-Price Meals Sample Form, Special Assistance Provision 2—Year 2 and Successive Years*

Onsite Monitoring or Review

- *Onsite Monitoring Form | Community Eligibility Provision (CEP)*
- *Onsite Monitoring Form | National School Lunch Program (NSLP)*
- *Onsite Monitoring Form | Provision 2 (P2), Year 2 and Following Years*

CEs will also use the following United Stated Department of Agriculture (USDA) forms which is available in TX-UNPS.

- *Mandatory Annual Verification Report, FNS-742 (USDA's School Food Authority [SFA] Verification Collection Report, FNS-742) which is reported in TX-UNPS*

Daily Record/Accuclaim (Edit Check) Form, Special Provision Options

Although the counting and claiming process for both special provision options is streamlined,[56] the CE must continue to complete the daily record/accuclaim (edit check) form on a daily basis for these sites. TDA has created sample forms for the daily record/Accuclaim (edit check) process that will assist the CE in performing this function. These forms allow the CE to make the following checks:

CEP	P2
• Compare the number of meals served to identify any instances of overly large or overly small meal counts by day and month by site. <u>If the total daily meal count exceeds the attendance/adjust enrollment</u>, the CE needs to determine why the number exceeds the attendance/adjusted enrollment before submitting its claim for reimbursement.	• Compare the number of meals served to identify any instances of overly large or overly small meal counts by day and month by site. • Compare the number of meals served by category—free, reduced-price, and paid— to determine if the percentage of meals served is in line with the percentage of students in each category <u>If the total daily meal count exceeds the attendance/adjust enrollment</u>, the CE needs to determine why the number exceeds the attendance/adjusted enrollment before submitting its claim for reimbursement.

[56] See the *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on this topic.

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TDA has developed the following forms for CEs to use for their Accuclaim (edit checks).

- *Daily Record/Accuclaim Form | Community Eligibility Provision (CEP)*
- *Daily Record/Accuclaim Form | Provision 2 (P2)*

These forms are available at *www.SquareMeals.org*.

Onsite Monitoring Form, Special Provision Options

The Accuclaim regulations require that each CE with more than one feeding site perform an onsite review of the meal counting and recording procedures in each site serving lunch prior to February 1 of each school year. TDA has developed a prototype monitoring form for both special provision options to be completed by the CE for each site.

- *Onsite Monitoring Form | Community Eligibility Provision (CEP)*: This form is to be completed by the CE annually by February 1st of each year for each CEP school operating NSLP and at least 50 percent of the sites operating SBP. CEs must review the breakfast operation at every site at least once every two years.
- *Onsite Monitoring Form | Provision 2 (P2), Year 2 and Following Years*: This form is to be completed by the CE for sites in the second, third, and fourth year of P2 operation annually by February 1st of each year for each P2 school operating NSLP and at least 50 percent of the sites operating SBP. CEs must review the breakfast operation at every site at least once every two years for sites operating SBP in the second, third, and fourth year of P2 operation.

A CE is expected to fully complete the onsite monitoring form and take action to improve its program based on the information reported on the self-monitoring form.

These forms are available at *www.SquareMeals.org*.

Records Retention

CEs must retain documentation about its operation of the special provision option. CEs have the option to maintain records on paper or electronically. All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, nonprofit organizations, and residential child care institutions after the end of the fiscal year to which they pertain.

If eligibility documentation is not retained for CEP, the CE must reestablish its ISP and restart the CEP four-year cycle or return to standard counting and claiming. The CE may also establish eligibility for P2.

Information Box 5

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

If eligibility documentation is not retained for P2, the CE must reestablish its base year and restart the four-year cycle or return to standard counting and claiming. The CE may also establish eligibility for CEP.

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CEP and P2 Length of Records Retention

Records used to establish CEP or P2 claiming percentages must be retained as described in the following guidance.

- For CEP sites (or grouped sites) records must be retained for the first year of CEP cycle plus years in the cycle plus the required years of retention.

  For this purpose, the end of the cycle occurs when the final claim is paid.*

Public and Charter Schools				
1st Year	+	Years in the Cycle	+	5 Years After the Final Claim for the Cycle Has Been Paid*
Private Schools, Other Nonprofit Organizations, and RCCIs				
1st year	+	Years in the Cycle	+	3 Years After the Final Claim for the Cycle Has Been Paid*

* In cases where there are audit and/or administrative review findings, records must be retained until all issues are resolved plus the required years of retention.

- For P2, records must be retained as long as CE uses the base year data to establish claiming percentages plus the required years of retention.

  For this purpose, the end of the cycle occurs when the final claim is paid.*

Public and Charter Schools				
Base Year	+	Years Base Year Data Is Used	+	5 Years After the Final Claim for the Cycle Has Been Paid*
Private Schools, Other Nonprofit Organizations, and RCCIs				
Base year	+	Years Base Year Data is Used	+	3 Years After the Final Claim for the Cycle Has Been Paid*

* In cases where there are audit and/or administrative review findings, records must be retained until all issues are resolved plus the required years of retention.

TDA may request documentation for both offsite and onsite administrative review processes. CEs are encouraged to develop a system of document retention that allows them to readily retrieve documentation.

The CE must retain the following types of documentation in its records retention system related to the special provision options:[57]

- Attendance area for each special provision school
- Copy/copies of *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures* form(s) which contain information related to CEP, P2, or universal free
- Direct Certification documentation and categorical eligibility lists for all categorical programs
- Documentation of original calculations of claiming percentages
- Onsite monitoring forms
- Records supporting counting and claiming for reimbursement[58] which includes daily meal counts, accuclaim/edit checks, and other accounting documentation related to meal service by special provision school and cumulative at the CE level

[57] See the *Administrator's Reference Manual, (ARM) Section 30, Records Retention* for additional information on this topic.

[58] See the *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on point of service systems that promote accurate counting and claiming when a CE operates one of the special provision options.

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In addition, CEs operating P2 are expected to retain:

- Records supporting eligibility determinations made in the base year or first year of operation
- Household applications from the P2 base year as long as the base year data is used to operate P2. If these records are lost or destroyed, the CE must reestablish its base year.

Compliance

During the base year of operating under P2, TDA will conduct a review of the foodservice operation to document and ensure compliance with the CE's methodology for determining meal eligibility categories and counting and claiming procedures. This review may be a desk audit, a comprehensive administrative review (AR), or an additional review.

TDA must validate a CE's ISP during the first year of each four-year cycle. If the CE's four-year cycle restarts because of an increase in ISP and TX-UNPS automatically restarts a new cycle, TDA will notify the CE if validation of the increased ISP is required.

During a review of a site operating one of the special provision options, if TDA discovers that the percentages used by the CE for a special provision school are miscalculated in the base year, the CE must recalculate all effected NSLP and SBP claims to adjust any claims submitted with an incorrect percentage. If the threshold percentage required for participation is not met for CEP, the school must be removed from CEP and returned to standard application and meal counting and claiming procedures.

TDA may take fiscal action for miscalculations in claiming percentages and for lack of records that demonstrate the CE's special provision claiming percentages.

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Section 6

Verification of Eligibility

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Section 6, Verification of Eligibility

Update Guide	
September 29, 2022	Clarified information on the following topics: - Income Documentation - *Verification Report* - Removed FSMC role in verification guidance - Extended or Extension of Categorical Eligibility definition
September 17, 2021	Clarified information on the following topics: - Pre-kindergarten categorical eligibility
August 12, 2020	Updated *Section 6, Verification of Eligibility* to update the *Administrator's Reference Manual (ARM)* section references. Clarified information on the following topics: – Confirmation review – Direct Verification process – Medicaid direct verification – Point of service (POS) documentation – Required actions – Residential child care institutions (RCCIs) – Sample size – Records Retention – Rounding – Verification pool
April 11, 2019	Clarified information on the following topics: – Appeals – Confirmation reviews – Income – Medicaid direct verification – Records retention – Required Use of Information statement – Resources – Sample size – Texas Eligibility List Management System (Texas ELMS) – Timeline – Use of Texas Eligibility List Management System (Texas ELMS) – Verification for residential child care centers (RCCIs) and non-charging programs including special provision options
September 29, 2017	Updated *Section 6, Verification* to incorporate the following United States Department of Agriculture guidance: – *USDA Memo SP 36-2017, Eligibility Manual for School Meals Determining and Verifying Eligibility* (July 18, 2017) Clarified information on the following topics: – Appeal process – Complete verification process – Compliance – Definitions to include the information related to Medicaid and Indian Tribal Organizations (ITO) – Direct Certification is completed before the verification process is completed – Household notification

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- Non-response rate
- Official roles related to eligibility and verification
- Third party verification tasks

November 29, 2016

Updated *Section 6, Verification* to incorporate the following USDA memos and guidance:

- *USDA Memo SP 51-2016, Ensuring Year-long Eligibility in the School Lunch and School Breakfast Programs (*August 5, 2016)
- *USDA Memo SP 50-2016, 2016 Edition of Eligibility Manual for School Meals (*July 29, 2016)
- *USDA Memo SP 43-2016, Ensuring Access to Free and Reduced Price School Meals for Low-Income Students (*June 30, 2016)
- *USDA Memo SP 37-2016, Meaningful Access for Persons with Limited English Proficiency (LEP) in the School Meal Programs: Guidance and Q&As (*May 25, 2016)

Provided clarification on the following topics in addition to incorporating guidance from USDA:

- Confirming official, confirmation review
- Direct verification
- Records retention
- TDA Forms
- Training
- Use of Information statement
- Verification for cause

December 16, 2015

Updated *Section 6, Verification* to incorporate the following USDA memos and guidance:

- *USDA Memo SP 40-2015, 2015 Edition of Eligibility Manual for School Meals (*July 7, 2015)

Provided clarification on the following topics in addition to incorporating guidance from USDA:

- Community Eligibility Provision and Special Provision 2
- Household reapply for the program
- Program integrity
- Timeline
- Verification for cause
- Verification pool
- Verification reporting

May 18, 2015

Updated *Section 6, Verification* to clarify use of calendar and operating days.

March 27, 2015

Updated *Section 6, Verification* to incorporate the following USDA memos and guidance:

- USDA Guidance, *Eligibility Manual for School Meals Determining and Verifying Eligibility* (August 8, 2014)

Provided clarification on the following topics in addition to incorporating guidance from USDA:

- Compliance
- Direct certification and direct verification
- Official roles related to eligibility and verification
- Questionable household applications, verification for cause
- Record retention
- *School Food Authority (SFA) Verification Collection Report, FNS-742*
- Validation of program participation

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- Verification pool
- Verification reporting

December 2, 2013

Updated *Section 6, Verification* to incorporate the following USDA memos and guidance:

- USDA Guidance, *Eligibility Manual for School Meals Determining and Verifying Eligibility* (August 29, 2013)
- *USDA Memo SP 42-2012, Application and Other Household Materials for Limited English Proficient Households* (August 16, 2012)
- *USDA Memo SP 40-2013, Questions and Answers Regarding the Participation of Head Start Programs in Child Nutrition Programs* (May 17, 2013)
- *USDA Memo SP 02-2012, Verification and Reporting of Foster Children* (October 24, 2011)

Provided clarification on the following topics in addition to incorporating guidance from USDA:

- Contact information for the Texas Department of Agriculture (TDA)
- Definitions for terms used during the verification process
- Documentation related to verification
- Specific actions CEs take during the verification process
- Standard and alternative sample size methods
- Timeline for adverse action
- Toll free phone numbers

August 15, 2013

Updated *Section 6, Verification* references to required verification forms.

July 10, 2013

Updated *Section 6, Verification* to include the current nondiscrimination statement as provided in USDA Memo, USDA Nondiscrimination Statement Update (May 24, 2013)

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Verification of Eligibility

Verification is the process for reviewing the eligibility determination for a free or reduced-priced household application submitted for the National School Lunch Program (NSLP) and School Breakfast Program (SBP). Verification of a household's application must include one of the following:

1. Confirmation of income eligibility
2. Confirmation that the student or any member of the household is a participant in a Categorical Assistance Program
    - Supplemental Nutrition Assistance Program (SNAP)
    - Temporary Assistance for needy Families (TANF)
    - Food Distribution Program on Indian Reservations (FDPIR)
    - Medicaid Free (Identified through a direct verification match in the Texas Eligibility List Management System [Texas ELMS])
    - Medicaid Reduced (Identified through a direct verification match in Texas ELMS

    or a participant in one of the Other Source Categorical Eligible programs
    - Head Start and Early Head Start pre-kindergarten programs
    - Foster[1]
    - Homeless, including runaways and individuals displaced by declared disasters

Information Box 1

Categorical Programs Qualifying Students for NSLP and SBP Free Benefits

Categorical Assistance Programs

- Supplemental Nutritional Assistance Program (SNAP)
- Temporary Assistance for Needy Families (TANF)
- Food Distribution Program on Indian Reservations (FDPIR)

Identified through a direct certification match in the Texas Eligibility List Management System (Texas ELMS)

- Medicaid Free
- Medicaid Reduced

Other Source Categorical Eligible Programs

- Head Start and Early Head Start pre-kindergarten programs
- Foster
- Homeless, including runaways and individuals displaced by declared disasters
- Migrant
- SNAP, TANF, or FDPIR eligible students who are not directly certified

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[1] Where the state retains legal custody of the child. See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on this topic.

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- Migrant
- SNAP, TANF, or FDPIR eligible students who are not directly certified

The verification process helps to maintain program integrity.

As part of the process to determine eligibility, CEs are required to validate[2] that a student is a participant in a categorical program, with the exception of a foster child, when a household application designates participation in one of the categorical programs. If a student's participation in Head Start or Early Head Start pre-kindergarten programs; homeless status, including runaways and individuals displaced by declared disasters; or migrant status is validated,[3] the student is directly certified and is not subject to verification or direct verification and is not included in the verification pool.

The *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* provides detailed information on processes that are related to eligibility determination.

Information Box 2

Strategies to Prevent Overlooking Verification Deadlines

CEs may find the following strategies helpful in meeting the verification timeline.

Calendar

Mark the date verification is to begin and the deadline for its completion on the school calendar of events or a calendar noting other important dates and deadlines.

Staff Backup

Ensure that more than one person is aware of the deadline and of the verification requirements.

Assign an alternate Verification Official. This will help if an assigned Verification Official is suddenly unable to conduct verifications.

Plan of Action

Develop a written verification plan that includes the methods to be used and the time frames by which each step must be accomplished. The plan should be revised and updated each year as needed.

Time Management

Allow sufficient time for agencies (e.g., SNAP or TANF office) to confirm household eligibility. Thirty days is the minimum time an CE should allow for agencies to confirm household eligibility when using agency records in this process.

Point of Service (POS) System

Reach out the CE's POS system provider early in the year to get information on system functions that support the verification process.

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[2] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on this topic.

[3] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on validation.

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This section provides detailed information on the following topics:

- Process for verifying household applications
- Selection of the verification sample from the total pool of household applications
- Confirmation of the initial eligibility determination for household applications selected for verification
- Notification—selection for verification and verification results
- Requirements for applying verification results
- Appeal of verification decisions
- Reporting
- Records retention

Definitions for This Section

For this section, the following terms will be used:

Categorical Assistance Eligible Program	Program benefits for a student are based on the student or any household member's participation in SNAP, TANF, FDPIR, or, if directly certified in the Texas ELMS, Medicaid Free and Medicaid Reduced that conveys categorical or direct certification of eligibility for free or reduced-price school meals.
CE Operating Day	Days when the school nutrition program staff are preparing for or serving reimbursable meals and other days when conducting official operational tasks
Confirmation Review	Process used to ensure that the initial eligibility determination was accurate for all household applications selected for verification.
Current Income[4]	Gross income received by a household, before deductions, for the current month, or the amount projected for the first month for which the household application is filled out, or for the month prior to household application. If this income is higher or lower than usual and does not fairly or accurately represent the household's actual circumstances, the household may, in conjunction with determining officials, project its annual rate of income based on the circumstance of the situation. These circumstances are described in the special situation guidance located throughout this section.

[4] See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional income information.

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DC List, Texas ELMS (NSLP/SBP Only)	List of students that have been directly certified[5] using the Texas ELMS for NSLP or SBP. Texas CEs match the names of enrolled students' households that qualify for SNAP and TANF eligibility and, starting October of 2017 for NSLP and SBP, Medicaid Free and Medicaid Reduced eligibility. [NOTE: Disaster SNAP (D-SNAP) data is included in the SNAP data provided in Texas ELMS.] CEs must securely maintain this list onsite with their eligibility determination documentation. See the *Records Retention* subsection in this section for additional information on retention of eligibility documentation. CEs will also use this information on the ***Verification Report***[6] which is submitted in TX-UNPS each year.
Direct Certification (NSLP/SBP Only)	Determination of eligibility for free or reduced-price meals based on documentation obtained directly from a state or local agency or authorized program representative. When a student is directly certified, the household does not need to submit a school meal application. **Direct Certification for Categorical Assistance Eligible Programs** – SNAP/TANF (Free Meals)—CEs match the names of enrolled students whose households qualify for SNAP or TANF in Texas ELMS. – FDPIR (Free Meals)—In Texas, Direct Certification for FDPIR is accomplished when the CE reaches out to the local tribal organization or appropriate tribal official to get a list of eligible students. **If a Directly Certified in Texas ELMS** – Medicaid Free (Free Meals)—Direct Certification for Medicaid Free must be based on a match in Texas ELMS. – Medicaid Reduced (Reduced-Price Meals)—Direct Certification for Medicaid Reduced must be based on a match in Texas ELMS.[7] **Direct Certification for Other Source Categorical Eligible Programs** – Head Start and Early Head Start; homeless, including runaways and individuals displaced by declared disasters; migrant; and SNAP, TANF, or FDPIR eligible students who are not directly certified—The CE works with an authorized program representative to obtain information, so the CE can match a student enrollment list to a program participant list. Students who are directly certified for Other Source Categorical Programs receive free or reduced-price school meals.

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5 CEs may also directly certify students for Other Source Categorical Eligible Programs.
6 Applies only to NSLP and SBP
7 CEs must only use the Direct Certification component of the Texas ELMS when directly certifying households. The Direct Verification component must only be used when conducting Direct Verification of a household selected for verification.

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Direct Certification List, CE Maintained	The direct certification list with the names of all enrolled students who are directly certified. This list which is commonly maintained in a CE's point of service (POS) system must delineate by type of direct certification: **Categorical Assistance Eligible Program** – SNAP – TANF – FDPIR **If Directly Certified in Texas ELMS** – Medicaid Free – Medicaid Reduced **Other Source Categorical Eligible Program** – Head Start and Early Head Start pre-kindergarten programs – Foster[8] – Homeless, including runaways and individuals displaced by declared disasters – Migrant – SNAP, TANF, or FDPIR eligible students who are not directly certified All CEs must maintain this list with appropriate documentation onsite. All CEs must use this information on the ***Verification Report*** which is submitted in TX-UNPS each year. [NOTE: The Verification Report[9] requires that CEs report direct certification for SNAP, TANF, and Other Source Categorical Eligible programs in different answer fields. CEs will need to be diligent to ensure that the correct numbers are recorded in each answer field. However, when reporting information. CEs will report Medicaid Free and Medicaid Reduced after October of 2017 for NSLP and SBP.] All CEs must also report their direct certification numbers for Categorical Assistance Eligible programs and Other Source Categorical Eligible programs in the Community Eligibility Provision (CEP) report each year. [NOTE: The CEP report requires that CEs report a combined total for all programs.]
Eligibility Determination Group Number (EDG#)	Identification number provided by Texas Health and Human Services for households receiving Supplemental Nutrition Assistance Program (SNAP which includes Disaster SNAP or D-SNAP) or Temporary Assistance for Needy Families (TANF) benefits.
Enrolled Student (As defined for this section)	Student enrolled in a participating NSLP and/or SBP school. A student's eligibility to participate in NSLP and SBP is based on a student's enrollment status as defined in *Texas Education Code (TEC), Title 2, Subtitle E, Chapter 25, Subchapter A, Section 25.001*. [NOTE: This includes half-day students who have access to either breakfast and/or lunch.]
Error Prone Household Application	Household application that includes an income amount that is within $100 per month ($1200 per year) of the applicable Income Eligibility Guidelines (IEG).[10] Error prone replaces the term focused sample in the verification process. Error prone household applications do not include SNAP, TANF, or FDPIR household applications that are directly certified.

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8 Where the state retains legal custody of the child. See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on this topic.

9 Applies only to NSLP and SBP

10 USDA typically updates the income eligibility criteria in the late spring. As soon as those updates are publicized, changes are posted at *www.SquareMeals.org*. For SY 2012–2013, free guidelines are at or below 130 percent of the Federal poverty guidelines. The reduced-price guidelines are between 130 and at or below 185 percent of the Federal poverty guidelines. See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for more information on income eligibility, including how to convert household income with varied frequency to total yearly income.

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Extended Eligibility of Categorical Eligibility	Student who is categorically eligible because the student lives in a household where a household member participates in a program that extends eligibility to other household members. All students in the household are categorically eligible for free or reduced-price meals if any member of the household, including adults, receives SNAP and TANF and, starting October of 2017 for NSLP and SBP, Medicaid Free or Medicaid Reduced program benefits is a member of that household. Adults in the household include parents, adult siblings, aunts, uncles, cousins, or adults that are not relatives who are part of the household.
Fragile Household	Household that would be unable to satisfactorily respond to a verification request.
Gross Income	All money earned before such deductions as income taxes, employee's Social Security taxes, insurance premiums, and bonds.
Household Application	Household application used by households to apply for free or reduced-price meals through NSLP or SBP.
Income (As defined for this section)	Any money received on a recurring basis, including earnings, pensions, and child or spousal support, unless an income source is specifically excluded by law for the Child Nutrition Programs. This definition only applies to eligibility determination as used in this section.
Income Eligibility Guidelines (IEGs)	The household size and income levels for determining eligibility for free and reduced-price meals—IEGs—are published annually by the U.S. Department of Agriculture (USDA).
Indian Tribal Organization (ITO)	Recognized governing body of (1) *any Indian tribe, Band, Nation, or other organized Indian group on a reservation*[11] *that is recognized as eligible for federal programs and services provided to Indians because of their status as Indians; or (2) any Indian tribe or Band on a reservation holding a treaty with a State government* as defined in Title 7, Code of Federal Regulations 271.2.
Interval Number	Number used to randomly select household applications for verification. To get the interval number, divide the total number of household applications by the sample size.
Medicaid Free	Eligibility determination made in Texas ELMS. Students whose households match as Medicaid Free are eligible for free meals.
Medicaid Reduced	Eligibility determination made in Texas ELMS. Students whose households match as Medicaid Reduced are eligible for reduced-price meals.
Non-Responsive (Non-Response)	Lack of or incomplete response by the household after the initial request for verification information.
Non-Response Rate	Percentage of households that do not respond to a request for verification information. This includes households that do not respond as well as incomplete or ambiguous responses.
Other Source Categorical Eligible Programs	An individual student's eligibility under any of the Other Source Categorical Eligible programs does not convey to other students in the household. The following programs are classified as Other Source Categorical Eligible programs: – Head Start and Early Head Start pre-kindergarten programs – Foster[12] – Homeless, including runaways and individuals displaced by declared disasters – Migrant – SNAP, TANF, or FDPIR eligible students who are not directly certified
Random Sampling or Selection	Process for giving each household application an equal chance of being selected for verification. A statistically valid sample is not required.

[11] Recognized ITO is defined as (1) Any Indian tribe, Band, Nation, or other organized Indian group on a reservation for example, a Rancheria, Pueblo or Colony, and including any Alaska Native Village or regional or village corporation (established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), that is on a reservation and is recognized as eligible for Federal programs and services provided to Indians because of their status as Indians; or (2) any Indian tribe or Band on a reservation holding a treaty with a State government.

[12] Where the state retains legal custody of the child. See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on this topic.

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Random Selection Method	Use of the interval number to choose household applications for the verification process.
Sample Size	Number of household applications to be verified.
SNAP Household Categorical Eligibility	Any student in a household where an individual or group of individuals currently certified to receive program benefits under the Supplemental Nutrition Assistance Program (SNAP) is categorically eligible for free meals.
TANF Categorical Eligibility	Any student in a household where an individual or group of individuals currently certified to receive assistance under the Temporary Assistance for Needy Families (TANF) Program is categorically eligible for free meals.
Total Enrollment Number for Schools Operating NSLP or SBP	Total number of students that accurately reflects the total number of students that are currently attending and enrolled[13] in a school operating NSLP or SBP and who have access to at least one NSLP or SBP meal service during the operational day.
Validation of Program Participation[14]	A process to validate that a student participates in a Categorical Assistance Eligible[15] program or one of the Other Source Categorical Eligible programs[16] when a household school meal application designates that a student participates in one of these programs. The requirement to validate participation does not apply to a household application that designates that the student is a foster child. A designation of foster on a household application is accepted at face value and does not require validation. If all of the students listed on the household application are validated, the household application is not included in the verification pool.
Verification for Cause	A process to verify any questionable household application on a case-by-case basis.
Verification Sample	Household applications selected to be verified, not including household applications selected *for cause* or household applications for students who are directly certified. [NOTE: In cases where households include students designated as Other Source Categorical Eligible program participants and students who are not participants in an Other Source Categorical Eligible program, only those students who are not directly certified as Other Source Categorical Eligible program participants are included in the verification process if the household application is selected for verification.]
Verification Sample Pool	Total number of approved household applications as of October 1 of the current school year (SY). These household applications must be included in the pool of household applications from which household applications are chosen for verification.

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13 As defined by Texas Education Code (TEC), Title 2, Subtitle E, Chapter 25, Subchapter A, Section 25.001 provides additional information related to enrollment.

14 See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for addition information on validation.

15 SNAP, TANF, and FDPIR

16 Head Start or Early Head Start pre-kindergarten programs; foster; homeless, including runaways and individuals displaced by declared disasters; migrant; and SNAP, TANF, or FDPIR eligible students who are not directly certified.

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Official Roles Related to Eligibility and Verification

Each CE must designate a specific person—Determining or Reviewing Official, Verification Official, and Hearing Official—in the Contracting Entity Application in the Texas Unified Nutrition Programs System (TX-UNPS) Application Packet screen.

The CE must ensure that staff performing these roles have the necessary training or preparation to perform these roles effectively and accurately.

Eligibility/Verification Official Role Chart

If a No is recorded at the intersection of the column and row, the individual **cannot** perform the required actions for both official roles.

If a Yes is recorded at the intersection of the column and row, the individual **can** perform the required actions for both official roles.

	Determining /Reviewing[R]	Hearing[R]	Verification[R]	Confirming[O]	Follow-Up[O]
Determining /Reviewing[R]	--	No	Yes	No	Yes
Hearing[R]	No	--	No	No	No
Verification[R]	Yes	No	--	Yes	Yes
Confirming[O]	No	No	Yes	--	Yes
Follow-Up[O]	Yes	No	Yes	Yes	--

Key for Abbreviations

[R] = Required—CE **is required** to assign an individual(s) to perform the actions associated with this role.

[O] = Optional— CE **is not required** to assign an individual(s) to perform the actions associated with this role, but the actions associated with this role **are required**.

Determining or Reviewing Official (Required)

Person who reviews all household applications, direct certification lists, and other documentation for categorical eligibility in order to make decisions related to eligibility.

Cannot be the same person as the confirming or hearing official

Hearing Official (Required)

Person who ensures that all required provisions are followed correctly and makes a determination any time there is an appeal of decisions related to eligibility determinations.

Cannot be the same person as the determining or reviewing official, confirming, or verifying official

Verifying Official (Required for Verification)

Person who verifies the eligibility of applicant households.

Cannot be the same person as hearing official

May be the same person as determining or reviewing or confirming or follow-up official

Confirming Official (Optional Designation, Required Action)

Person who confirms that the initial determination made by the determining or reviewing official was accurate; cannot be the same person as the determining or reviewing or hearing officials.

May be the Follow-up or Verification Officials

Follow-Up Official (Optional Designation, Required Action)

Person who conducts follow-up with any household or agency that has not submitted requested or adequate information.

May be the Confirming or Verification Official

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Special Situations, Official Roles

Third Party

If a CE contracts with a third party to assist with the required follow-up activities, the third party is subject to the confidentiality requirements outlined in program regulations.

Verification Process

The following chart summarizes the verification process:

Verification Process Chart
Identify Sample Size ➡ Determine sample size.
Direct Verification (DV) ➡ Conduct DV[17] for all of the household applications selected for verification. ➡ Remove household applications that are directly verified from sample.
Confirmation ➡ Ensure that the eligibility determination is correct.
Notification ➡ Send a letter to the household of remaining applications asking the households to submit verification documentation.
Verification Process ➡ Follows-up with all households that have not submitted verification documentation as requested. ➡ Review all documentation submitted to verify eligibility. ➡ Completes the verification process based on the results.
No Eligibility Change ➡ Verification is complete. ***or*** **Change in Eligibility** **Benefit Increase** ➡ Implement the benefit increase within 3 operating days. **Benefit Decrease** ➡ Notify household within 10 operating days of new eligibility determination. ➡ Include notice that household has 10 calendar days (advance period) to appeal the determination. The advance period starts the day the notice was sent. ➡ Implement the new eligibility determination within 10 operational days of the last day in the 10 calendar days advance period if there is no appeal.

[17] Direct Verification is not required. However, conducting Direct Verification often reduces the number of households that must be contacted for the verification process.

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Residential Child Care Institutions (RCCIs)

RCCIs Verification Reporting

All RCCIs must complete and submit the *Verification Report*[18] in TX-UNPS each year. If the RCCI has only residential students, the RCCI must only answer the questions required for RCCIs.

RCCI with Day Students

RCCIs with day students must complete the verification process for the day students. This requirement applies even if the RCCI does not charge day students for their meals. The RCCI must answer all questions.

Timeline Requirements

The following timeline is used each year for the verification process:

- Beginning of School Year Until October 1— The Verification Official can verify a household application as soon as it is approved even if this is before the official October 1 start date for verification. CEs are encouraged to begin the verification process as early as possible, especially if the CE has had difficulty collecting verification documentation in the past. If starting early, the CE should use a preliminary sample size based on the previous year's sample number.
- October 1—CE must determine the total number of approved household applications and use this number to calculate the sample size.
- October 1—CEs must determine the number of household applications to be verified for the school year (also called the sample size) and begin the verification process. If October 1 falls on a weekend, CEs may use the next operating day after October 1 as the day to establish the sample size. However, any new household applications or direct certification determinations that are made after October 1 (or Monday following if it falls on a weekend) must be included in the October 31st counts, not the October 1 counts.
- October 31—CEs determine the total number of students enrolled and sites for the current SY as of this date.[19]
- November 15—CEs complete verification activities. The November 15 date is same whether the date falls on a weekend or holiday.
- November 23—CEs must submit the *Verification Report* to TDA, accessed in Texas Unified Nutrition Programs System (TX-UNPS) | Applications | Download Forms. Follow the form directions for submission.

Verification for Cause

A CE must verify any questionable household application that provides conflicting information on a case-by-case basis. Verification for cause may be conducted at any time during the school year. However, the CE should seek clarification from the household about any discrepancies found during the certification process before verifying a household application for cause.

Any household applications that have been verified for cause are not counted in calculating the verification sample size.

[18] Applies only to NSLP and SBP
[19] CEs may open sites after this date, but any site opened after October 31st is not reported on the CE's *Verification Report*.

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Reasons for Selection of Household Application for Verification for Cause

Verification for cause is not an automatic process. Any household application that is selected to be verified for cause is chosen because it is considered to be a *questionable household application*:

- Known or available information is conflicting
- Known or available information indicates a mistake or misrepresentation on the household application form.

For Example: A household records a total income on the household application and voluntarily submits paystubs indicating that the recorded total income is incorrect. The CE must approve the household application based on the information on the household application. A household application cannot be denied because of additional information voluntarily submitted—even if that information contradicts what is recorded on the household application. However, the determining or reviewing official must identify this household application to be verified *for cause*. Households can be sent the award notification and verification notification *for cause* at the same time.

A household completed a multi-use application allowing the CE to share income information for the household application with another program. When the other program processes the household's application for that program, they determine that the household income is above applicable Income Eligibility Guidelines (IEGs). The other program notifies the CE about the basis for the denial. This household application is questionable and, therefore, it is appropriate to conduct verification for cause. TDA provides sample forms and letters to assist CEs in collecting additional information to verify the household's income or participation in one of the categorical assistance or other source categorical programs at *www.SquareMeals.org*.

TDA provides sample forms and letters to assist CEs in collecting additional information to verify household's income[20] or participation in one of the categorical assistance or other source categorical programs at *www.SquareMeals.org*.

Verification for Cause, No Income Reported

CEs cannot automatically select all free and reduced-price household applications submitted with no income reported for verification *for cause*. If a household application with no income reported is selected to be verified for cause, there must be an additional reason for this course of action.

Verification for Cause, CE Employees

CEs cannot automatically select all free and reduced-price household applications submitted by staff for verification *for cause*. CEs are encouraged to consult with legal counsel to establish parameters of verification *for cause* for staff submitted household applications.

Household Applications Excluded from the Verification Sample Pool

A CE must not verify the household applications of students if the determination of eligibility was made in one of the following ways:

- Household applications for students attending a school that participates in the Special Milk Program only.
- Household applications for students attending a school where there is no separate charge for food service and no special cash assistance claimed (i.e., non-pricing programs claiming only the paid rate of reimbursement for meals served).

[20] See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional income information.

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- Household applications for students living in residential child care institutions (RCCIs).[21]

  [NOTE: Although RCCI schools are not required to conduct verification, participation data from these schools must still be reported in the ***Verification Report***.*]*

- Applications for students whose applications have been validated.

  [NOTE: CEs are required to validate that a student is categorically eligible (with the exception of foster) as part of the process to determine eligibility. When a student's participation in Head Start or Early Head Start; homeless status, including runaways and individuals displaced by declared disasters; or migrant status is validated, the student is directly certified and is not subject to verification, direct verification or included in the verification pool.][22]

- Household applications for students whose household applications have been verified for cause.
- Household applications listing students that are directly certified using records from public agencies (Texas ELMS in TX-UNPS, dated and signed lists from appropriate agencies, or other acceptable documentation methods for Categorical Assistance Programs or Other Source Categorical Eligible programs).[23]

  [NOTE: If some of the students in the household are directly certified and others are not, the students in the household who have not been directly certified must be added to verification pool.]

- Household applications that have been denied.

Verification Sample Pool—Household Applications to Include

Before any household application can be verified, the household application must be approved. Denied household applications are not verified. A CE must use the following guidance in creating its verification sample pool:

- Household applications submitted for income.
- Household applications submitted for Other Source Categorical Eligible program participants that are not able to be directly certified.

  [NOTE: CEs are required to validate[24] categorical program participation for Other Source Categorical Eligible program participants (with the exception of foster) when making an eligibility determination based on a household application. When a student's participation in Head Start or Early Head Start; homeless status, including runaways and individuals displaced by declared disasters; or migrant status is validated, the student is directly certified and is not included in the verification pool.][25]

  When a foster child is not directly certified, and the household submits a separate household application for the foster child and a separate household application for the other students in the household, both household applications are included in the verification sample pool. If the household submits one household application for all students in the household, including the foster child, only one household application is included in the verification sample pool.

- If some of the students in the household are directly certified for Other Source Categorical Programs[26] and others are not, the household application for the students in the household who have not been directly certified must be added to verification pool.

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[21] See the *Administrator's Reference Manual (ARM), Section 28, Residential Child Care Institutions (RCCIs)* for additional information regarding verification and RCCIs. If an RCCI has enrolled day students, verification is required.

[22] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for addition information on validation.

[23] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on this topic.

[24] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on validation.

[25] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for more information on this topic.

[26] Head Start or Early Head Start pre-kindergarten programs; foster; homeless, including runaways and individuals displaced by declared disasters; migrant.

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Applications Not Included in the Verification Pool

CEs must not include the following eligibility determinations in the verification pool:

- Direct certification with SNAP, TANF, FDPIR, or Medicaid, included extended eligibility determinations for these programs.
- Household eligibility for students who have transferred to the districts whose eligibility is based on a written, emailed, or faxed statement from a sending CE.[27]

Verification Pool Chart			
Included in the Verification Pool		**Not Included in Verification Pool**	
Eligibility Based on	**Eligibility Determination**	**Eligibility Based on**	**Eligibility Determination**
Household Application Income Information	Household Free or Reduced-Price	Direct Certification in Texas ELMS as SNAP or TANF	Household Free
Household Application with an EDG Number[28] Provided	Household Free	Direct Certification in Texas ELMS as Medicaid Free or Medicaid Reduced,	Household Free or Reduced-Price
Household Application with Individual Student Foster Identification	Individual Student Free	Direct Certification through a List Provided by Designated Official/Liaison – Foster, – Migrant, Homeless, Runaway, Displaced – Head Start or Early Head Start Pre-Kindergarten Program	Individual Student Free
		Direct Certification through a List of Residential Students with Zero Income Provided by an RCCI	Individual Students Free
		Verification for Cause Conducted by School Nutrition Program	Free or Reduced-Price

In the verification process, CEs must not take the following two actions:

1. Verify 100% of all household applications
2. Request that any household submit verification documents at the same time the household application is submitted

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[27] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for more information on this topic.
[28] See *Administrator's Reference Manual (ARM), Section 4 Eligibility Determination* for more information on this topic.

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Total Number of Household Applications to Be Verified

The total number of household applications to be verified is determined by adding the number of household application verified *for cause* plus the sample size number based on the total number of household applications approved by the CE on October 1.

Verification Sample Size (total number of household applications selected for verification)	+	**Additional Household Applications Verified for Cause*** (household applications selected because of inconsistent or misrepresented documentation)	=	**Total Number of Household Applications Verified**

* Additional household applications verified for cause must not be included in the verification sample.

The verification sample size does not include any household applications selected to be verified for cause. However, the number of applications verified for cause is reported in the *Verification Report*.

Determining Sample Size

CEs are required to determine the verification sample size based on total number of household applications approved by the CE as of October 1 of each year. The sample size is the total number of household applications that must be selected for verification in addition to the for cause household applications selected for verification. CEs must use the following guidance in determining the sample size:

Begin Verification Early

If the CE has chosen to start verification early, the Verification Official will determine if the estimated number of household applications chosen to fulfill the preliminary verification sample size matches the final sample size number determined on October 1. If necessary, additional household applications must be selected when the CE determines the total number of household applications for the current year.

Minimum Sample

At least one household application must always be verified.

Maximum Sample Size

CEs must only verify the total number of household applications to be included in the sample based on the calculation formulas below.

[NOTE: Household applications verified for cause are not included in the verification sample.]

Nondiscrimination

Regulations require that any method used for selecting household applications for verification must be nondiscriminatory.

Rounding

When determining the required verification sample size of household applications to be verified, round the final fraction/decimal in the calculation upward.

Rounding must only be applied at the final step of calculation. If double rounding is used, the final answer may result in an inaccurate total.

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Methods for Determining Sample Size

CEs determine their verification sample size in one of two ways as described below:

Standard Sample Size	OR	Alternate Sample Size
Any CE that does not qualify for an alternative sample size method Using error prone approved household applications first and then non-error prone if there are not enough error prone household applications		Any CE that does qualify to use one of the two methods for determining an alternative sample size Using all approved household applications

Standard Sample Size

Those CEs that do not qualify for an alternate sample size will use the Standard Sample Size method. For this method, error-prone household applications are verified first, non-error prone household applications are used to complete the sample size if there are not enough error-prone household applications.

An error prone household application includes an income amount that is within $100 per month ($1200 per year) of the applicable Income Eligibility Guideline (IEG).[29] Error prone household applications do not include SNAP, TANF, or FDPIR household applications that are directly certified.

Standard Sample Size Method

CEs must take the following steps to use the Standard Sample Size Method.

Step 1: Standard Sample Size Calculation Process. Determine which amount is smaller—3,000 error prone household applications or 3 percent of the total number of household applications.

Determine which is smaller—Number A or Number B. Use that number for the required sample size.

Number A	or	Number B	=	Sample Size
3,000 error prone household applications		3 percent of total number of household applications		

Step 2: Interval Number. Determine the interval for selecting household applications for verification by dividing the total number of household applications by the sample size.[30]

Total Number of Household Applications in the Verification Pool	÷	Sample Size Determined in Step 1	=	Interval Number

Step 3: Random Selection of Household Applications. Count through the error prone household applications selecting each household application that corresponds to the interval number. To reach the sample size, the Verification Official may need to count through the household applications more than one time. If there are not enough error prone household applications, the CE must use randomly selected non-error prone household applications.

For Example: If the interval number is 76, the Verification Official selects every 76th error prone household application for verification until the sample size is reached.

[29] USDA typically updates the income eligibility criteria in the late spring. As soon as those updates are publicized, changes are posted at *www.SquareMeals.org*. Free eligible households are at or below 130 percent of the Federal poverty guidelines. The reduced-price eligible households are between 130 and at or below 185 percent of the Federal poverty guidelines. See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for more information on income eligibility, including how to convert household income with varied frequency to total yearly income.

[30] See the *Random Selection Method* subsection in this section for more detailed information on this topic.

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Alternate Sample Sizes

The ability to use an alternate sample method must be determined annually. Those CEs that qualify for an alternate sample size must meet one of the following conditions:

- **Lowered Non-Response Rate.** CEs that have less than a twenty percent non-response rate for verification requests for the preceding school year.

  For Example: In SY 2015–2016, the CE had a non-response rate of 18 percent. Because this percentage is less than 20 percent, the CE qualifies to use an alternate method for determining its sample size in SY 2016–2017.

- **Improved Non-Response Rate.** CEs that
  1. have more than 20,000 students approved by household application as eligible for free or reduced-price meals as of October 1
     and
  2. have at least a 10 percent decrease in the non-response percentage between Year 1 and Year 2 qualify to use an alternate sample size method in Year 3.

  For Example: In SY 2014–2015—Year 1, the CE had 21,000 students approved for free and reduced-price meal benefits and a total of 6,000 approved household applications.[31] Therefore, 180 household applications have to be verified.

  Forty-five (45) households out of 180 fail to respond to verification requests, creating a non-response rate of 25 percent.

  Non-Response Rate:
  45 ÷ 180 = 25%

  To meet the criteria for an improved non-response rate, the CE needs to improve its response rate by 10 percent the following year—they will need to have a non-response rate of less than 22.5 percent in the next SY.

  Needed Improvement:
  25% x 10% = 2.5%
  25% – 2.5% = 22.5%

  In SY 2015–2016—Year 2, the CE again has 6,000 approved household applications and a required sample size of 180.

  At the end of verification Year 2, the CE reduces its non-response rate to 19.7 percent.

  Improved Non-Response Rate:
  19.7% < 22.5%

  The CE is eligible for an alternate sample size method in the SY 2016–2017—Year 3 since its non-response rate the second year is less than 22.5 percent.

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[31] See the *Standard Sample Size Calculation Process* description in the *Standard Sample Size Method* subsection in this section for more information on this determination.

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Alternate Sample Size Methods

CEs qualifying for alternative sample size methods will use one of the following alternative sample size methods:

Alternate 1 Sample Size Method

This sample is drawn from the total pool of all household applications—not just the error prone household applications.

Step 1: Alternate 1 Sample Size Calculation Process. Determine which amount is smaller—3,000 household applications or 3 percent of the total number of household applications.

Determine which is smaller—#A or #B. Use that number for the required sample size.

#A		#B		
3,000 household applications	or	3 percent of total number of household applications	=	**Sample Size**

Step 2: Interval Number. Determine the interval for selecting household applications for verification by dividing the total number of household applications by the sample size.[32]

Total Number of Household Applications in the Verification Pool	÷	Sample Size Determined in Step 1	=	**Interval Number**

Step 3: Random Selection of Household Applications. Count through the *household applications* selecting each household application that corresponds to the interval number. To reach the sample size, the Verification Official may need to count through the household applications more than one time.

For Example: If the interval number is 76, the Verification Official selects every 76th error prone household application for verification until the sample size is reached.

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[32] See the *Random Selection Method* subsection in this section for more detailed information on random selection and the use of an interval number.

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Alternate 2 Sample Size Method

This sample is drawn from all approved error prone household applications and from SNAP or TANF household applications.

Step 1: Alternate 2 Sample Size Calculation Process. Determine which amount is smaller—1,000 household applications or 1 percent of the total number of household applications.

Determine which is smaller—#A or #B; use that number. Determine which is smaller—#C or #D; use that number. Add the smaller numbers from #A/#B and #C/#D and use that number for the sample size.

#A 1,000 household applications		**#C** 500 household applications that provide a case number (EDG#)[33] instead of income information			
or	+	or	=	**Sample Size**	
#B 1 percent of total number of household applications		**#D** ½ of 1 percent[34] of the total household applications that provide a case number (EDG#) instead of income information			

Step 2: Interval Number. Determine the interval for selecting household applications for verification by dividing the total number of household applications by the sample size.[35]

Total Number of Household Applications in the Verification Pool	÷	Sample Size Determined in Step 1	=	**Interval Number**

Step 3: Random Selection of Household Applications. Count through the household applications selecting each household application that corresponds to the interval number. To reach the sample size, the Verification Official may need to count through the household applications more than one time.

For Example: If the interval number is 76, the Verification Official selects every 76th error prone household application for verification until the sample size is reached.

Random Selection Method

No matter which sample size method is used—standard or alternative—CEs must use an interval number to randomly select household applications. Directions for using an interval number are located in Step 2 in the directions for each method.

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[33] Eligibility Determination Group Number
[34] .005 when converted to a decimal.
[35] See the *Random Selection Method* subsection in this section for more detailed information on random selection and the use of an interval number.

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Direct Verification

Direct Verification is the use of public records[36] to verify a student's eligibility for free or reduced-price meals when verification of a student's eligibility is required.

[NOTE: Direct Verification and Direct Certification are two separate processes, but the processes are linked. The purpose of Direct Verification is to verify a student or household's eligibility. However, once the Direct Verification process is completed, the CE is allowed to use Direct Verification information to assign a student's eligibility as directly certified for free or reduced-price meals.]

When a CE is able to directly verify eligibility, the CE is not required to notify the household of its selection for verification.

Direct Verification cannot be used to determine eligibility. It can only be used verify eligibility. CEs must not attempt to directly verify their total student enrollment. In direct verification, CEs must only attempt to directly verify the households/students selected for verification.

[NOTE: Once direct verification is complete, CEs will use that information to directly certify eligible households.]

If a CE conducts Direct Verification, Direct Verification must be completed before asking a household to provide documentation. If Direct Verification indicates a change in eligibility benefit level,[37] the CE must not request additional documentation from the household with the exception of a Medicaid match that results in decreased benefits.

Medicaid Match Reduces Benefits

If the CE discovers that an income-based household application is in conflict with a Direct Verification match that would cause a household's benefits to decrease when applied, the CE will apply the normal verification process and request documentation to verify the higher benefits.

A CE that conducts Direct Verification must also follow all local and state regulations in obtaining and using information for this process.

CEs are not required to conduct direct verification, but the CE will find that there are benefits from doing this process.

Benefits to the CE Using Direct Verification

Direct Verification streamlines the verification of household applications—saving the CE time and effort. By increasing Direct Verification, the number of household applications that the CE must verify by contacting the household is decreased. If any student in the household is identified using the Texas ELMS in TX-UNPS or records provided by another governmental agency, all students in the household are directly verified, and there is no need to request additional documentation from the household.

Submitting Children's Names for Direct Verification in TX-UNPS

Texas ELMS allows Texas CEs to match enrolled students based on the nine-digit EDG#, student name, Texas Education Agency unique student identification number, social security number, and birthdate. Direct Verification will allow CEs to match SNAP, TANF, Medicaid Free, Medicaid Reduced, or the Children's Health Insurance Program (CHIP).

For children who qualify for Medicaid or the Children's Health Insurance Program (CHIP), the database will report whether the student is eligible for free or reduced-price meals. Verification of benefits for Medicaid and CHIP can only be conducted in Texas ELMS—no other method is allowed.

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[36] See the *Collateral Contacts* subsection in this section for additional information on sources to assist in direct verification. See the *Records Retention* subsection in this section for additional information on the records retention requirements for direct verification.

[37] Free, reduced-price, or paid

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TDA has created the *School Nutrition Programs Direct Certification and Direct Verification (DCDV) Supplemental Manual* to assist CEs in uploading the necessary data and using the database. This manual is located in the Application Packet, Form Download screen in TX-UNPS.

Extended Eligibility

If a CE determines through Direct Verification that a student is categorically eligible for SNAP, TANF, Medicaid Free, or Medicaid Reduced, all students in the household are extended eligibility.

Notification

If Direct Verification results verify the student's eligibility, the CE will not notify the household as the verification process is complete when the CE verifies the eligibility determination.

If Direct Verification results in a decrease in eligibility based on a Medicaid Reduced or CHIP reduced match, the CE must notify the household as described in the *Notification of Adverse Action* subsection in this section.

Point of Service System (POS) Update

When a CE is able to directly verify the eligibility for a household, the CE must update its POS to indicate that the household/student(s) have been directly verified. The system must be able to track the changes to each student's eligibility throughout the school year and the reason for the change.

Direct Verification Shifts to Direct Certification

Direct Verification and Direct Certification are two distinct processes. However, if Direct Verification results in a new eligibility determination, the CE will then use the Direct Verification information to directly certify the eligibility for the household. This process includes household's that are directly verified for CHIP.

Confirmation Review

After selecting the household applications to be verified, the verification sample, the CE must perform a confirmation review before sending notification to the household or Direct Verification.

The confirmation review is a process where the Confirmation Official[38] reviews all the selected household applications for the verification sample and the household applications selected *for cause* to ensure that the initial eligibility determination was accurate.

The following guidance applies to the confirmation review.

- A confirmation review must be conducted by an official who was not the determining or reviewing official or hearing official.
- The confirming official reviews the documentation used by the determining or reviewing official and ensures that the eligibility determination is correct.
- If a CE confirms the accuracy of all eligibility determinations as part of the initial eligibility determination process, the CE is not required to perform a second confirmation of eligibility during verification.

[38] See the *Official Roles Related to Eligibility and Verification* subsection of this document for additional information.

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Technology-Based Verification System

The requirement for a confirmation review may be waived if the CE has a technology-based system that demonstrates a high-degree of accuracy. Any CE that has an automated system for processing household applications must request approval for this flexibility.[39]

Outcome of Confirmation Review Process

One of the following actions must be taken after the confirmation review determination:

- *No Change in Benefits:* If the confirming review shows the initial eligibility was correct for the household application, the CE must complete the verification process for the household application.
- *Increased Benefits:* If the confirmation review indicates an increase in benefits for the household based on the confirmation review of the household application, the CE must take the following actions:
  - Make the increased benefits available immediately.
  - Notify the household of the increased benefits.
  - Complete verification process for the household application.
- *Decreased Benefits from Free to Reduced Price:* If the confirmation review indicates a decrease in benefits from free to reduced price, the CE must take the following actions:
  - Leave the household's eligibility status at its initial determination.
  - Complete the verification process for the household application.
- *Decreased Benefits from Free or Reduced Price to Paid:* If the confirmation review indicates a decrease in benefits from free or reduced price to paid, the CE must take the following actions:
  - Notify the household of adverse action immediately.
  - Remove the household application from verification sample pool.
  - Select a similar household application to replace it in the verification sample pool.[40]
  - Complete the verification process for the newly selected household application.

Replacing Household Applications

After completing the confirmation reviews, the CE may, on a case-by-case basis, replace up to five (5) percent of selected household applications in the following conditions:

Inability of Household to Respond to the Request

The CE believes the household is unable to satisfactorily respond to the verification request. Households in this circumstance are commonly called *fragile households*.

For Example: There is a death in the household, or the household is adversely affected by a disaster.

Household Moves

A household moves before the verification process can be completed.

[39] See the Contact Information for the Texas Department of Agriculture (TDA) page that follows the Table of Contents for this section.

[40] See the *Replacing Household Applications* subsection in this section for additional information on replacing an application.

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Household Becomes Directly Certified

When a household selected for verification is found to be directly certified before the household can provide documentation of eligibility, the CE does not have to replace the household application in the verification sample pool. This situation should be reported in the remarks section of the *Verification Report* (through TX-UNPS).

When a household application is replaced, the CE must adhere to the following guidelines:

- When calculating the five (5) percent of the selected household applications that may be replaced, CEs should round up to the next whole number. If five (5) percent of the total household applications selected for verification is less than one, one household application may still be replaced.
- Any household application removed must be replaced with another approved household application selected on the same basis—i.e., an error-prone household application must be replaced by an error-prone household application.
- The newly selected household application must have a confirmation review before the verification process begins.

Household Notification about Selection for Verification

Household notification[41] takes place after the confirmation review determines that a household application must be verified.[42] Household notification may be done by email or regular mail. Households should be given no less than 2 weeks to respond.

However, if the CE is able to directly verify the eligibility of the household through the Texas ELMS or through other agency documentation, the CE does not have to notify the household of its selection for verification.

Once households have received notification of selection for verification, they are required to send in documentation that verifies eligibility. The household notice or letter must include the following information:[43]

General Information

1. Explanation that the household has been selected for verification
2. USDA *Use of Information Statement*

   CEs must use this statement in its entirety.

   The Richard B. Russell National School Lunch Act requires the information requested in order to verify your children's eligibility for free or reduced-price meals. If you do not provide the information or provide incomplete information, your children may no longer receive free or reduced-price meals.

   USDA allows a shorter and more targeted Richard B. Russell statement for verification purposes only.
3. Explanation of the due date for the household to provide the requested documentation.
4. Explanation that failure to provide the requested documentation will result in termination of benefits

[41] TDA has developed a sample household notification letter that CEs may use to notify households. This sample form is available at *www.SquareMeals.org*.
[42] See the *Outcome of Confirmation Review* subsection in this section more additional information on this topic.
[43] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on this topic.

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5. Contact information including the name and telephone number of a staff member who can answer questions and provide assistance to the household about verification at no cost to the household

   [NOTE: For verification inquiries, the CE must establish a toll-free number or allow the household to reverse the charges if any households are located outside of the local calling area. Even if every household in the CE is located within a local calling area, the CE must provide an opportunity for a household member to call collect if the person is unable to call the CE from within the CE's local calling area. This includes accepting call charges from parents who work outside of the calling area and who are calling from work.

   The CE may provide different telephone numbers for each local calling area within the CE.]

Information on Acceptable Documentation

6. Description of the types of acceptable information[44] that households may provide to confirm current income[45]

   [NOTE: This includes, but is not limited to, pay stubs, award letters from assistance agencies such as Social Security, and support payment decrees from courts.]
7. Explanation the household may submit documentation of income received for a full month for any time between the month prior to the household application through the time period the household is required to provide the documentation
8. Explanation that the household may provide proof that any household member is receiving benefits under a Categorical Assistance Program[46] instead of providing income information
9. Explanation that the household may provide proof that a student is other source categorically eligible[47] instead of providing income information

Household with Limited English Proficiency (LEP)

CEs must ensure that limited English proficient (LEP) households are provided adequate language assistance so that the household understands the need for a response to the verification request and the timeline for responding to the request.

Notification Exception

When using agency records exclusively to verify household eligibility, a selection notice is not required because the household will not have to provide documentation.

Acceptable Documentation

There are three methods of documenting household eligibility:[48]

Documentation Provided by the Household

1. Written income evidence
2. Appropriate letters of award sent to the household by a governing agency

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[44] See the *Acceptable Documentation* subsection in this section for additional information on documentation.
[45] See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional income information.
[46] Assistance programs include Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), or Food Distribution Program on Indian Reservations (FDPIR).
[47] Other Source Categorically Eligible programs includes foster, homeless, migrant, runaway, and Head Start or Early Head Start pre-kindergarten programs.
[48] See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information and detailed guidance on documentation.

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Documentation Obtained from Sources Other Than the Household

3. Agency records
4. Collateral contacts

Income Documentation

Household income documentation should reflect any gross income received on a recurring basis for each individual in the household receiving income. *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* also has detailed information on this topic.

Required household documentation in response to a verification request for each individual in the household earning income:	Information Verification Official looks for while examining documentation for each individual in the household earning income:
1. Dated paycheck stub 2. Dated pay envelope 3. Letter from employer stating gross wages paid and how often they are paid [49]	1. Name of individual receiving income 2. Amount of income 3. Date(s) income received 4. Frequency of income

Gross Income

Gross income for earnings—wages, salary, tips, and commissions—includes the following:

- Income that is automatically deducted from a person's paycheck to pay any type of withholding tax, employee insurance costs, or charitable contributions
- Income from bonds
- Cash amounts received or withdrawn from any source, including savings, investments, trust accounts, and other resources which would be available to pay the price of a student's meal

In general, anything considered as income for the initial household application process is also considered as income for verification purposes.[50]

One-Month Period

Households must provide income information for a period of one month. The one-month period may come from any point in time between the month prior to application and the time the household is required to provide income documentation.

Income Exclusions

Income does not include any income or benefits received under any federal programs that are excluded from consideration as income by any legislative prohibition.[51]

Overtime Income

If overtime income is reported, the Verification Official must work with the household to determine whether the overtime for the month being verified is representative of overtime received in other months. If the overtime is a one-time or occasional source of income, income should be calculated based on the regular monthly income without overtime.

Military Income Exclusions

When determining eligibility for military service members, refer to the member's Leave and Earnings Statement (LES). Reviewers must not count any amounts listed as Combat Pay toward

[49] TDA provides a form for employers to use to submit income information at *www.SquareMeals.org*.
[50] See the *Acceptable Documentation* subsection in this section for detailed information on acceptable income documentation.
[51] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on income exclusions.

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household income. Combat pay is also referred to by the U.S. Department of Defense as Hostile Fire Pay/Imminent Danger Pay (HFP/IDP). The entry on the military *LES* is HFP/IDP and may not include the words Combat Pay. However, the descriptors must be treated equally.[52]

No Income

If a household application for a household selected for regular verification or verification for cause indicates zero income, the Verification Official

- must request an explanation of how living expenses are met and
- may request additional written documentation or for the household to name collateral contacts that can provide the additional information.

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[52] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination*, for a list of income exclusions for military personnel.

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Income Documentation for Verification Chart	
Type of Income[53]	**Acceptable Documentation Suggestions**
Cash Income—Wages received from an employer who does not want to be responsible for withholdings. This includes domestic workers, casual laborers, or employees of an individual or small business. Wages may be paid in cash.	• Letter from employer or form completed by employer stating wages paid and frequency
Child Support or Alimony—Payment by a separated or divorced spouse for support of children or a spouse. Although the court orders a monthly amount, payments may be infrequent or irregular. Only actual payments, not the amount awarded, must be reported.	• Copies of checks or other payment proof received, including bank statements • Court decree or formal written agreement
Earnings of Self-Employed Business Person or Farmer— Net income from self-employed business owner or farmer. Although individuals may hold considerable property and equipment, households must report only actual cash income, not assets.	• Business or farming document, such as ledger books or self-issued paycheck stub • Previous year's tax return
Military Housing Allowance—Payment received if an adult member of the household is a member of the military, and the household is located off base.	• Leave and earnings statement • Letter from base commander stating amount and frequency of allowance
Retirement or Pension—Retirement or pension income that is non-Social Security retirement. This includes private and state pensions, veteran benefits, and military retirement.	• Official statement of benefits received or award notice
R. R. Benefit or Railroad Retirement—Special government retirement fund for former employees of the railroads. Payments can be made to survivors, spouses, and children.	• Official statement of benefits received or award letter
Social Security Retirement—Traditional retirement benefits; payments to survivors, spouses and children; and disability payments—more correctly named Old Age and Survivors Disability Insurance. This income applies to younger persons, pre-retirement individuals, and dependents.	• Official statement or benefit letter • Copy of monthly check
Supplemental Security Income (SSI)—Special funding program to assist households with aged, blind, or other disabled members, including learning disabled. Sometimes called *disability payments*.	• SSI eligibility letter or statement of benefits • SSI check or bank statement indicating check deposit
Unemployment Compensation or Disability or Workers' Compensation—Income provided through federal or state unemployment or work-related injury compensation.	• Notice of eligibility; copy of the disability award letter, or unemployment compensation award letter • Check stub

[53] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for addition information on income and eligibility.

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Unacceptable Income Documentation

The following types of documentation are <u>not</u> acceptable to verify monthly income: [54]

- **Tax Returns:** Tax returns are not considered acceptable proof of income except for households with irregular income (seasonal workers, self-employed persons, etc.). In these cases, tax returns may be used to project the amount of income the household expects to receive for the current year.
- **Non-Representative Weekly Pay Stub:** A pay stub that is not representative of what the household receives each week cannot be used to determine monthly income. However, if one weekly pay stub is representative of what the household receives each week, one pay stub is sufficient to calculate a full month's income.

Records Containing Household Confidential Information

TDA strongly recommends that CEs do not keep confidential information beyond the period of time needed to verify a child's eligibility. TDA has developed the *Verification Individual Household Report Form* that allows CEs to summarize information obtained about each household's eligibility, so CEs do not have to retain confidential information. CEs must use this form or a CE-developed form that contains the same information fields.

When fully completed, this form serves as documentation for the verification of household eligibility or non-eligibility. Therefore, documentation containing confidential information can be destroyed or returned by a method that ensures household confidentiality.

Return of Documentation to the Household

If a household requests that documentation be returned, the Verification Official should comply with the request.

Agency Records

A household's eligibility may be verified through the use of information maintained by other government agencies to which <u>the CE has legal access</u>. This information includes proof that a household or individual participates in a categorically eligible program.[55] Proof of program participation may be in the form of a letter, list, other benefit issuance form, or proper format for a SNAP or TANF Eligibility Determination Group Number (EDG#).[56]

[Note: When a student's participation in Head Start or Early Head Start; homeless status, including runaways and individuals displaced by declared disasters; or migrant status is validated, the student is directly certified and not included in the verification pool.[57])

SNAP, TANF, or FDPIR

Documentation for SNAP, TANF, or FDPIR households that does not specify the certification period is not adequate proof of participation.

For Example: The SNAP identification card is not acceptable because it does not have an expiration date. The Lone Star Card is not proof of eligibility for SNAP benefits as the card has no set expiration date.

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54 See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional income information.
55 See the *Information Box 1, Assistance Programs Qualifying Children for NSLP and SBP Free Benefits* for additional information on categorical eligibility. See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for more detailed information on documentation related to categorical eligibility.
56 See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for addition information on validation.
57 See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for more information on this topic.

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Best Practice in Using Agency Records

When verifying eligibility for categorical programs through other agencies begin as early as possible to allow sufficient time, at least 30 days, for that office to respond to the request.

Notifying Households about Use of Agency Records

Although USDA regulations do not require that households be notified of selection when verification is made through agency records, such agencies may have their own notification requirements. The CE should work with the agency to collaboratively ensure that the regulations applying to the agency or funding source are followed.

Collateral Contacts

A collateral contact is a person outside of the household who is knowledgeable about the household's circumstances and can give confirmation of

- a household's income for the current month or the previous month and
- participation in a Categorical Assistance Program or one of the Other Source Categorical Eligible programs.[58]

Collateral contracts include employers, social service agencies, migrant workers' agencies, and religious or civic organizations.[59]

Collateral Contact Requirements

CEs must adhere to the following guidance in using collateral contacts:

- When to Use—The Verification Official should request a collateral contact only in cases when the household has not been able to provide adequate written evidence.
- Household Designation of Collateral Contact—The CE must give the household the opportunity to designate the collateral contact.
- CE Designation of Collateral Contact—If the household fails to designate a collateral or designates one who is unacceptable to the Verification Official, the Verification Official may select the collateral contact.
- Household Notification—No contact may be made to a collateral contact without first notifying the household and obtaining permission to make the contact.
- Inadequate or Inability of Collateral Contact—If the collateral contact is unwilling or unable to provide the requested information, the household is considered to be non-responsive.[60]

Collateral Contact Documentation

CEs must document written or oral information provided by a collateral contact. Documentation must include the date of communication or interactions and initials of person initiating the communication or interaction and receiving the information. Collateral contacts typically provide two types of records:[61]

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58 See the *Information Box 1, Assistance Programs Qualifying Children for NSLP and SBP Free Benefits* of this document for additional information on sources of categorical eligibility.

59 TDA provides forms and sample letters for obtaining collateral information at *www.SquareMeals.org*.

60 See the *Non-Responsive or Inadequate Response* subsection in this section for additional information.

61 In some cases, collateral contacts may fall into the category of Direct Verification. See the *Direct Verification* subsection in this section for additional information on this topic.

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- Individual benefit award notification forms or letters
- Lists of eligible household members

Using Collateral Contact Information

The Verification Official will examine any written information provided by the collateral contact and/or evaluate any oral information before making a verification determination.

Non-Responsive or Inadequate Response

CEs must use the following guidance to address non-responsive contacts to verification requests:

Follow-Up

Follow-up contacts are required in the following situations:

1. No or Inadequate Response from the Household. If the household does not respond to the request for verification or submits insufficient or obsolete written evidence, the Follow-up Official must make at least one additional contact with the household.
2. No or Inadequate Response from Collateral Contacts. If the collateral contact does not respond or does not respond adequately, the CE must make at least one follow-up contact with the collateral contact or follow-up with the household if the collateral contact cannot provide adequate information.

Limited English Proficiency (LEP) and the Follow-Up Response

CEs must ensure the limited English proficient (LEP) households are provided adequate language assistance and understand the need to respond to a follow-up request.

Adequate Time for Follow-Up Response

The Verification Official must allow sufficient time for the household to respond before the deadline. Allowing extra time does not mean the CE has to wait indefinitely since verification must be completed by November 15, annually, but it does mean that the CE has to allow a reasonable amount of time for the household to provide the needed information. CEs should build an allowance for a reasonable amount of time in their planning for the verification process and assigning deadlines.

Appropriate Methods for Follow-Up Notification

The follow-up contact may be made by mail, telephone, email, or personal contact.

Adverse Action for Non-Response to a Follow-Up Request

Any household that (1) does not contact the CE when the initial or follow-up request for verification information is made or (2) provides incomplete information or documentation is considered *non-responsive*.

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In cases where the CE terminates the household application for failure of the household to respond, verification is considered complete when the advance notice of adverse action is sent to the household.[62]

[Note: For adverse action, the CE must send notice to the household by mail or email.]

Verification for Cause, Due Process

CEs must follow the confidentiality, notice, and appeal procedures when conducting any type of verification including verification for cause.

Required Actions, Verification Results

CEs must provide adequate notification to households for changes in benefits. USDA required the following notification timeline:

Timeline for Change in Benefits Chart

	Notification to Household	Notification Method	Make the Change Within
No Change in Benefits	as soon as possible	Phone Email Letter	n/a
Increase in Benefits	as soon as possible	Phone Email Letter	3 days [also ensure the eligibility change is noted in the point of service (POS) system]
Decrease in Benefits	Within 10 days of determination of decreased benefits	In writing by letter sent by regular postal mail or email Notice must give household 10 calendar days—advance notice—to appeal	10 operating days after the 10 calendar days advance notice period ends [also ensure the eligibility change is noted in the point of service (POS) system]

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[62] See the *Non-Responsive or Inadequate Response* subsection of this document for additional information on this topic.

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Verification of a household's income eligibility for free or reduced-price meals must result in one of the following actions:

No Change in Benefit Level. Household's current documentation supports approved benefit level.	– No change is made to household eligibility.
Benefit Reduction Based on Documentation Submitted by the Household. Household submitted documentation reports income that is too high for the approved benefit level: household eligibility must be changed from free to reduced-price—free to paid—reduced-price to paid.	– Change must be extended to all students in the household with exception of a foster child residing in the household. – Household must be notified of this change. – Notification of change in benefits must be sent to the household within 10 operating days from the date when a new eligibility determination was made. – Household must be given an advance notice period of 10 calendar days, starting on the day the notification was sent, to appeal the decision. – Unless the household appeals the decision, a decrease in benefits must occur within10 operating days of the final day of the 10-calendar day advance notice.[63] – Change must be noted in the point of service (POS) system.
Benefit Reduction Based on Direct Verification for Medicaid Reduced or CHIP Reduced. Household submitted documentation report income that conflicts with Direct Verification data: household eligibility must be changed from free to reduced-price—free to paid—reduced-price to paid.	– Change must be extended to all students in the household with exception of a foster child residing in the household. – Household must be notified of this change. – Notification of change in benefits must be sent to the household within 10 operating days from the date when a new eligibility determination was made. – Household must be given an advance notice period of 10 calendar days, starting on the day the notification was sent, to appeal the decision. – Unless the household appeals the decision, a decrease in benefits must occur within10 operating days of the final day of the 10-calendar day advance notice.[64] – Change must be noted in the point of service (POS) system.
Benefit Increase. Household submitted documentation qualifies household for free meals rather than reduced-price meals—household's eligibility must be changed from reduced-price to free meals.	– Change must be extended to all students in the household with the exception of a foster child residing in the household. – Households must be notified of this change. – Changes in eligibility resulting in increased benefit levels are effective immediately and must be made in 3 operating days. – Change must be noted in the point of service (POS) system.

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[63] See the *Notification of Adverse Action; Required Actions, Verification Results;* and *Required Action, Appeal and Hearing Procedures* subsections in this section for additional information on these topics.

[64] See the *Notification of Adverse Action; Required Actions, Verification Results;* and *Required Actions, Appeal and Hearing Procedures* subsections in this section for additional information on these topics.

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Benefit Termination. For households that do not respond to verification efforts or whose current documentation does not support eligibility for either free or reduced-price meals, the household's eligibility must be terminated.	– Change must be extended to all students in the household with the exception of a foster child residing in the household. – Households must be notified of this change. – Notification of benefit termination must be sent to the household within 10 operating days from the date when a new eligibility determination was made. – Household has advance notice period of 10 calendar days, starting on the day the notification was sent, to appeal the decision. – Unless the household appeals the decision, a decrease in benefits must occur within 10 operating days of the final day of the 10-calendar day advance notice.[65] – Change must be noted in the point of service (POS) system.

Complete Verification

A household's verification is complete when the following conditions are met:

Adequate Documentation	
Household submits either adequate written evidence of income or categorical eligibility.	**Verification process is considered complete for this household.**
Collateral contact or agency provides corroboration of income or categorical eligibility.	
Documentation, Increase or Decrease Eligibility Status	
Household submits either adequate written evidence of income or categorical eligibility which indicates an increased or decreased level of benefits.	**Verification process is considered complete for this household when the household is notified that its benefits will be increased or decreased.***
Collateral contact or agency provides corroboration of income or categorical eligibility which indicates an increased or decreased level of benefits.	
Documentation, Lack of Program Participation	
Household application provides case numbers (EDG#), and it is determined that no household member is receiving benefits from an assistance program.	**Verification process is considered complete when the notice of adverse action (termination of benefits) is sent to the household.**
Refusal of Services	
Adult in the household indicates, verbally or in writing, that she or he no longer wishes for the students in the household to receive free or reduced-price benefits.	**Verification process is considered complete when the notice of adverse action (termination of benefits) is sent to the household.**

* Notification of a decrease must follow the guidance provided in the *Notification of Adverse Action* subsection in this section.

Allowable Actions After Verification Completion Date

The following actions may occur after the official date to complete the verification process (November 15):

- Review any additional income or other documentation households provided after the November 15 verification completion date.

[65] See the *Notification of Adverse Action; Required Actions, Verification Results;* and *Required Actions, Appeal and Hearing Procedures* subsections in this section for additional information on these topics.

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- Terminate or reduce the meal benefits of affected households within 10 operating days after the last day of 10 calendar days advance notice of the termination/reduction notice.
- Increase meal benefits of households as appropriate.

For Example: Timeline for Reduction or Termination of Benefits

Within 10 days after the new eligibility determination has been made the timeline must be followed:

10 Calendar Days of Advance Notice Period	Decrease or Termination of Benefits Must Take Place by	10 Operating Days After 10 Calendar Days of Advance Notice Period Ends
November 1–11, 2012		November 21, 2012

Notification of Adverse Action

When verification results in a reduction or termination of benefits, households must be sent a written notice (advanced notice) prior to the changes in benefits. Within in 10 days of the new eligibility determination, the CE must send an advanced notice that gives households 10 calendar days of notice before benefits are stopped. This 10-calendar day period is called the advance notice period. The first day of the 10 calendar days of the advance notice period is the day the notice is sent the household.[66]

The notice of adverse action may be sent by postal service or email—the CE cannot notify the household of adverse action by telephone.

The notice must advise the household of the following information:

1. Description of a change in benefits
2. Explanation of the reason for the change
3. Instructions on how to appeal the decision
4. Notification that an appeal must be filed within the 10 calendar days of advance notice period to ensure continued benefits while awaiting a hearing and decision
5. Explanation that the household may reapply for benefits at any time during the school year but will be subject to verification at the time of the second household application, if terminated because of verification
6. Explanation that SNAP, TANF, or FDPIR households may submit a household application containing household names and income information and provide written evidence of current household income

Information Box 3

Change in Eligibility Timeline Requirements

Adverse Action—Decrease in Benefits
Make the change within 10 operating days after the last day of the advance notice period (10 calendar days during which the household may appeal the determination) unless the household appeals.

Notice of an Increase in Benefits
Make the change within 3 operating days of new eligibility determination.

Required Actions, Appeal and Hearing Procedures

A household has the option to appeal a reduction or termination of benefits within the 10 calendar days of the advance notice period. The CE must adhere to the following guidelines in implementing the appeal and hearing procedures:

- The CE must follow the appeal and hearing procedures as described in this section[67]

[66] TDA provides sample and template forms for this purpose at *www.SquareMeals.org*.
[67] See the *Administrator's Reference Manual (ARM), Section 2, Program Application & Agreement* for additional information on this topic.

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- The Hearing Official must be an individual who is not involved with the household application approval or verification process. The Hearing Official cannot be a food service management company employee.
- The household may request a conference prior to a formal hearing. However, this conference must not prejudice the later hearing.

Benefits During Appeal of Verification Results

When a household appeals a reduction or termination of benefits within the 10 calendar days of the advance notice period, the CE must continue to provide the benefits for which the household was originally approved until a final determination is made.

Benefits During the Advance Notice Period

During the 10 calendar days advance notice of adverse action, the students in the household must continue to receive free or reduced-price meal benefits. When a household does not appeal a reduction or termination of benefits within the 10 calendar days of advance notice period, the actual reduction or termination of benefits must take place no later than 10 operating days after the end of the 10 calendar days of advance notice period.[68]

CE's Reimbursement Claims During 10 Calendar Day Advance Notification Period

The CE must continue to claim reimbursement for free or reduced-price meals served to the student during the advance notification period.

Timeline for Reduction or Termination of Benefits Not Appealed or Reduction or Termination of Benefits After Appeal or Hearing Decision

When a household does not appeal a change or termination of benefits during the 10-calendar-day advance notice period or when the Hearing Official rules that benefits must be reduced, the actual reduction or termination of benefits must take place no later than 10 operating days after the 10 calendar days advance notice period.

Household Reapplying for Program Benefits

Households affected by a reduction or termination of benefits may reapply for benefits at any time during the school year. These household applications are not considered new household applications. If a household reapplies for eligibility after termination as a result of verification efforts (including verification for cause) during the same school year, the household must submit income documentation or proof of participation in an assistance program that provides categorical eligibility at the time of reapplication.[69]

Verification Reporting

The CE must annually report information about the household verification selection and results through the Verification Report located in the *Texas Unified Nutrition Programs System (TX-UNPS)*. CEs may also obtain USDA's version of the report, *School Food Authority (SFA) Verification Collection Report FNS-742,* at *www.SquareMeals.org* to use in preparation for entering information into the Verification Report in TX-UNPS.

[NOTE: CEs are required to maintain records that accurately identify student eligibility based on income, Categorical Assistance Program participation by program, and Other Source Categorical Eligible program participation by program. This information will help CEs in completing the verification form and the CEP report each year.]

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[68] See the *Notification of Adverse Action* and *Required Actions, Appeal and Hearing Procedure* subsection in this section for additional information on the reduction or termination of benefits timeline as a result of appeal or hearing decision.

[69] See *Information Box 1, Assistance Programs Qualifying Children for NSLP and SBP Free Benefits* of this document for all sources of categorical eligibility.

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All CEs must submit a verification report in TX-UNPS; however, schools operating one of the special assistance provision programs will complete a limited number of fields. If a CE stops operating a special provision program—CEP or Provision 2—and returns to collecting household applications to determine eligibility for school meals, the CE must complete the verification and verification reporting processes when it adopts standard counting and claiming. If this is the case, the CE will work with TDA to establish a timeline for completing the verification process.

The CE must provide the following information in the *Verification Report* (through TX-UNPS) based on the total number of program participants on October 1 of each year:

- Total number of sites as of October 1 of each year.
- Total number of enrolled NSLP or SBP participants, differentiated by regular and special provision sites as of October 31st of each year.
- Total number of SNAP participants directly certified as of October 31st of each year.
- Total number of SNAP/TANF participants not directly certified as of October 31st of each year.
  [Note: The form requires that CEs submit the total number of students who were certified using the SNAP letter method even though the SNAP letter method is no longer an acceptable method of directly certifying SNAP participants.]
- Total number of NSLP/SBP participants directly certified as TANF or FDPIR and total number of NSLP/SBP participants directly certified eligible based on NSLP/SBP participation in Other Source Categorical Eligibility[70] programs as of October 31st of each year.
- Total number of NSLP/SBP participants verified as eligible for free benefits based on participation in any of the Categorical Assistance Programs or Other Source Categorical Eligible[71] program participation as well as income eligibility as of October 31st of each year.
  [Note: CEs are required to validate[72] participation in all of the categorical programs, with the exception of foster, as part of eligibility determination. When a student's participation in Head Start or Early Head Start pre-kindergarten programs; homeless status, including runaways and individuals displaced by declared disasters; or migrant status is validated, the student is directly certified and not included in the verification pool.[73]]
- Total number of NSLP/SBP participants verified as eligible for reduced price benefits based on income as of October 31st of each year.
- Number of households directly certified before the household submitted verification documentation.
- Number of students directly certified as Medicaid Free
- Results of verification process.
- Timeline for completing the verification process.

[70] See the *Information Box 1, Assistance Programs Qualifying Children for NSLP and SBP Free Benefits* for additional information on qualifying program.
[71] Other Source Categorical Eligible programs includes foster, homeless, migrant, runaway, and state- or federally funded early literacy programs including Head Start, Early Head Start, and Even Head Start. See *Administrator's Reference Manual, Section 4, Eligibility Determination* for more information on this topic.
[72] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for addition information on validation.
[73] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for more information on this topic.

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- Type of verification process used, including the sample method.

Second Review (Independent Review) of Household Applications

The information reported in the Second Review of Applications, which is also located in TX-UNPS, is related to eligibility determinations. This form has a USDA number of 742A. It is not the verification report (742).

Resources

TDA provides forms and document prototypes for CEs to use. While CEs are not required to use all the resources TDA provides, TDA strongly encourages CEs to use them. If CEs choose to use a verification form or letter that is not developed by TDA, they are responsible to ensure that the form or letter contains correct and accurate information.

Required Reports

CEs **must** use the following forms:

- *Verification Individual Household Report Form* or CE-developed form that captures the same data
  - Completed as verification is conducted
  - Located at *www.SquareMeals.gov*
  - Retained onsite
- *Verification Report*
  - Open November 1, Due November 23
  - Located in TX-UNPS, Download Forms page
  - Submitted as directed on the form

TDA Templates and Sample Forms

The following template and sample forms are also provided by TDA. These forms are located at *www.SquareMeals.gov*.

Collecting Information

- *Verification Information Request: SNAP/TANF Multiple Applicant Form*
- *Verification Information Request: Statement of Earnings Form*
- *Verification Information Request: Statement of Social Security Income Form*
- *Verification Summary Form*

Conducting Verification

- *Verification Sample Size Calculator*

Household Notification, Selection for Verification

- *Letter to Households Selected for Verification of Eligibility (also available in Spanish)*
- *Verification Information for Free and Reduced-Price Meals Sheet (also available in Spanish)*

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Household Notification, Results

- *Notification Verification Continuation of Benefits Letter (also available in Spanish)*
- *Notification Verification Results/Adverse Action Letter—Income (also available in Spanish)*
- *Notification Verification Results/Adverse Action Letter—SNAP/TANF (also available in Spanish)*

USDA Resource

USDA has developed a *Verification Toolkit* to assist CEs in the verification process. The toolkit is available at *https://www.fns.usda.gov/school-meals/verification-toolkit.*

Records Retention

CEs are required to maintain records that accurately identify student eligibility based on income, Categorical Assistance Program participation by program, and Other Source Categorical Eligible program participation by program. CEs must maintain a direct certification list which indicates the program which initiates direct certification—Categorical Assistance Eligible program and/or Other Source Categorical Eligible programs. CEs will use this information on the *Verification Report* [74] submitted in TX-UNPS each year.

CEs may retain documentation electronically or in paper and must retain records for the period time required as described in *Information Box 4*.

Information Box 4

Records Retention

State Board of Education policies require public and charter schools to maintain records for a period of 5 years.

Private schools, other nonprofit organizations, and RCCIs maintain records for 3 years.

Changes in Eligibility

The CE must retain documentation that tracks any changes to a student's eligibility throughout the school year. This requirement also applies if the CE uses a point of service (POS) system. The system must have a method for tracking changes in each student's eligibility throughout the school year.

Verification Report

USDA requires that CEs retain a copy of their *Verification Report*. However, because CEs submit this form through TX-UNPS in Texas, CEs are not required to keep a paper or electronic copy of the actual form.

Verification Individual Household Report Form

USDA also requires CEs to retain notes and comments about all verification contacts with the household as well as documentation that prove eligibility and have these records ready for review by TDA or USDA.[75] In Texas, CEs must complete the *Verification Individual Household Report Form* for each household selected for verification or may use a CE-developed form that captures the same data.

A complete and accurate *Verification Individual Household Report Form*, an accurate point of service system, and direct verification documentation provide the required information for records retention. Correct use of this report form allows CEs to destroy[76] or return confidential

[74] Applies only to NSLP and SBP

[75] If the CE uses a technology-based verification system, the CE must have a process in place for the Verification Reviewer to retain comments or notes for each verified application so that comments or notes are clearly associated with the correct application. In Texas, this includes use of the *Verification Individual Household Report Form*.

[76] These records contain confidential information and should be disposed of safely and securely.

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information gathered from the household rather than maintain a long-term method for securing confidential personal household information. This form is available at *www.SquareMeals.org*.

CEs must also retain records as described in the following list:

Eligibility Information

- Documentation indicating categorical eligibility based on direct verification

  [NOTE: Direct Verification and Direct Certification are two separate processes, but the processes are linked. The purpose of Direct Verification is to verify a student or household's eligibility. However, once the Direct Verification process is completed, the CE is allowed to use Direct Verification information to assign a student's eligibility as directly certified for free or reduced-price meals.]

Verification Process

- Description of the CE's method for conducting verification
- All forms and documentation demonstrating the CEs process for creating the verification sample pool and the verification sample
- Copies of template verification letters as well as any individualized documentation sent to households or other sources
- Copies of any forms used to obtain information for agencies or other sources that provided verification information
- *Verification Individual Household Report Form* for each verification

Promoting Access to NSLP/SBP

- Evidence, including descriptions of process, about the method used to provide a no-cost telephone number for households to use to get assistance during the verification process
- Evidence, including descriptions of process, of the efforts the CE has made to ensure that adequate language assistance is provided to households when requesting information from households

Reports

- Evidence, including descriptions of process, about the method used to provide a no-cost telephone number for households to use to get assistance during the verification process
- Evidence, including descriptions of process, of the efforts the CE has made to ensure that adequate language assistance is provided to households when requesting information from households

Appeals and Hearings

- Description of the CE's method for conducing appeals and hearings
- Copies of notification templates, response templates, and individualized communication if used
- Notes and comments concerning any appeals or hearings including the following:
  - Notification, response
  - Direct contact
  - Decisions

Compliance

TDA will review documentation submitted through TX-UNPS and during administrative reviews to determine if the CE is compliant with the regulations related to verification. TDA may require a corrective action plan if the CE does not comply with the verification requirements, including, but not limited to, submitting all required forms by due dates and complete and approvable implementation of verification processes. Noncompliance in these areas may require fiscal action.

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Section 7

Breakfast Meals

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Section 7, Breakfast Meals

Update Guide

July 28, 2022	Updated *Section 7, Breakfast Meals* to clarify guidance on: - Food production records - Grains component of the reimbursable breakfast - Meal pattern - Milk component of the reimbursable breakfast - Nutrient standards - Offer versus serve Incorporated the following United States Department of Agriculture (USDA) memos and guidance: - *USDA Memo SP 04-2022, Questions and Answer Guidance on the Final Rule titled Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium Effective July 1, 2022* (March 2, 2022) - *USDA Memo SP 05-2022, Meal Requirements Under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators Updated to Support the Transitional Standards for Milk, Whole Grains, and Sodium Effective July 1, 2022* (March 2, 2022) - *USDA Memo SP 08-2022, Consolidated Appropriations Act, 2022: Effect on Child Nutrition Programs* (April 6, 2022)
January 4, 2022	Updated *Section 7, Breakfast Meals t*o correct minor typos and incorporate the following United States Department of Agriculture (USDA) memos and guidance: - *USDA Memo SP 11-2021, Consolidated Appropriations Act, 2021: Effect on Child Nutrition Programs - REVISED* (May 14, 2021) Clarified information on the following topic: - Crediting juice
August 12, 2020	Updated *Administrator's Reference Manual (ARM), Section 7* to apply a new title and updated *Administrator's Reference Manual (ARM)* section references. Removed meal flexibilities no longer available. Updated the milk substitute weight amounts for Vitamin A and Vitamin D to meet the nutritional profile of fortified cow's milk as required by the Food and Drug Administration (FDA). Updated *Section 7, Breakfast Meals* to incorporate the following United States Department of Agriculture (USDA) memos and guidance as well as incorporate Texas law: – *USDA Memo SP 06, 2020, School Breakfast Program: Continuation of the Substitution of Vegetables for Fruit Flexibility* (January 22, 2020) Provided clarification or information on the following issues: – Food product records – Meal pattern chart – Traditional foods
December 13, 2019	Updated *Section 8, Breakfast* to address typos in the meal pattern chart.
October 4, 2019	Updated *Section 8, Breakfast* to incorporate the following United States Department of Agriculture (USDA) memos and guidance as well as incorporate Texas law: – *USDA Memo SP 40, 2019, Smoothies Offered in the Child Nutrition Program* (September 23, 2019) – *USDA Memo SP 39, 2019, Clarifications on the Milk and Water Requirements in the School Meals Programs* (September 23, 2019) – *USDA Memo SP 38, 2019, Meal Requirements under the National School*

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Lunch Program and School Breakfast Program: Questions and Answers for Program Operators (September 23, 2019)

- *USDA Memo SP 37, 2019, Questions and Answers on the Final Rule Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (September 23, 2019)
- *USDA Memo SP 34-2019, Crediting Coconut, Hominy, Corn Masa, and Mas Harina in the Child Nutrition Programs* (August 22, 2019)
- *USDA Memo SP 26-2019, Crediting Pasta Products Made of Vegetable Flour in the Child Nutrition Programs* (April 17, 2019)
- *USDA Memo SP 25-2019, Crediting Tempeh in the Child Nutrition Programs* (April 17, 2019)
- *USDA Memo SP 24-2019, Crediting Surimi Seafood in the Child Nutrition Programs* (April 17, 2019)
- *USDA Memo SP 23-2019, Crediting Popcorn in the Child Nutrition Programs* (April 17, 2019)
- *USDA Memo SP 22-2019, Crediting Coconut, Hominy, Corn Masa, and Corn Flour in the Child Nutrition Programs* (April 17, 2019)
- *USDA Memo SP 21-2019, Crediting Shelf Shelf-Stable, Dried and Semi-Dried Meat, Poultry, and Products in the Child Nutrition Programs* (April 17, 2019)
- *Child and Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium, Final Rule, Federal Register, Volume 83, Number 238, page 63775* (December 12, 2018)
- *USDA Memo SP 19, 2018, Clarifications on the Milk and Water Requirements in the School Meal Programs* (August 6, 2018)

Provided clarification or information on the following issues:

- Fruit/Vegetable component
- Grains component
- Meat/Meat alternate substitution
- Milk component
- New creditable food items: grains, vegetables, meat/meat alternates
- Resources
- Signage
- Sodium requirement
- Water

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June 28, 2017

Updated *Section 8, Breakfast* to incorporate the following United States Department of Agriculture (USDA) memos and guidance as well as incorporate Texas law:

- *USDA Memo SP 32-2017, School Meal Flexibility for School Year 2017-2018* (May 22, 2017)
- *USDA Memo SP 15-2017, Flexibility for the Target 2 Sodium Requirements for School Year 2017-2018* (January 6, 2017)
- *USDA Memo SP 59-2016, Policy Memorandum on Modifications to Accommodate Disabilities in the School Meal Program (September 27, 2016)*
- *USDA Memo SP 32-2015, Statements Supporting Accommodations for Children with Disabilities in the Child Nutrition Programs* (March 30, 2015)

Provided clarification or information on the following issues

- Milk substitutes
- Non-creditable juice products labeled *juiced*
- Pre-kindergarten meal pattern
- Sodium targets

August 29, 2016

Updated *Section 8, Breakfast* to incorporate the following United States Department of Agriculture (USDA) memos and guidance as well as incorporate Texas law:

- *USDA Memo SP 10-2012 (v.9), Questions & Answers on the Final Rule, "Nutrition Standards in the National School Lunch and School Breakfast Programs"* (August 3, 2015)
- *USDA Memo SP 10-2014 (v.3), Smoothies Offered in Child Nutrition Programs-Revised* (July 22, 2015)
- *USDA Memo SP 41-2015, Updated Offer versus Serve Guidance for the National School Lunch Program and School Breakfast Program Effective Beginning School Year 2015-2016* (July 21, 2015)
- *Texas Education Code, Section 33.901* as amended by *House Bill 1305*, 84rd Texas Legislature (June 20, 2015)

Provided clarification or information on the following issues

- Definitions
- Extra items offered beyond the point of service
- Menuing grain items
- Requirements related to grains and milk
- Resources
- Smoothies
- Updated Child and Adult Care Food Program meal pattern
- Water

Removed guidance on the following topic that has been relocated to *Section 7, Counting and Claiming*

- Severe Need Breakfast

Removed guidance on the following topic that has been relocated to *Section 7, Counting and Claiming* and *Section 14, Financial Information Concerning School Nutrition Funds*

- Universal free feeding sites

Removed guidance on following topics that have been relocated to *Section 19, Other Operational Issues*

- Breakfast in the classroom
- Point of service (POS)
- Meal service methods

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- Sulfiting agents
- Home-canned foods
- A la carte
- In school suspension
- Meal pricing
- Start date for new Child and Adult Care Food Program meal pattern

May 18, 2015 Updated *Section 8, Breakfast* to correct a typo related to calculating weekly grains.

April 28, 2015 Updated *Section 8, Breakfast* to incorporate the following United States Department of Agriculture (USDA) memos and guidance:

- *USDA Memo SP 47-2014 (v.2) Flexibility for Whole-Grain Rich Pasta in School Years 2014-2014 and 2015-2016, Questions and Answers Revised* (September 30, 2014)
- *USDA Memo SP 10-2012 (v.8) Questions & Answers on the Final Rule, "Nutrition Standards in the National School Lunch and School Breakfast Programs"* (August 4, 2014)
- *USDA Memo SP 43-2014, Questions & Answers on the School Breakfast Program Meal Pattern in School Year 2014-2015* (April 28, 2014)
- *USDA Memo SP 57-2014, Updated Offer versus Serve Guidance for the National School Lunch Program and School Breakfast Program in School year 2014-2015* (August 1, 2014)

Provided clarification on the following issues

- Additional or extra beverages
- Combination food items
- Communicating with students about the contents of a reimbursable meal
- Condiments or accompaniments
- Crediting
- Dietary specifications
- Fruit (vegetables substituting for fruit, grits, and starchy vegetables)
- Grains (breading, meat/meat alternates, and whole-grain rich)
- Home-canned products
- Juice
- Maximum serving recommendation for grains and meat/meat alternates
- Minimizing plate waste
- Milk (choice and smoothies)
- Nutrient analysis
- Planned, offered, and selected/served
- Potable water
- Reimbursable meal
- Meal service (double servings, family style meals, large food items, leftovers, offer versus serve, point of service, refused item, seconds or additional servings, and vending machines
- Universal breakfast requirement

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March 5, 2014	Updated *Section 8, Breakfast* to provide additional information on participation in Universal Breakfast under *Texas Education Code, Section 33.901* as amended by *Senate Bill 376*, 83rd Texas Legislature, including submitting a waiver. Added clarification to explain the difference between the state requirements for Universal Breakfast (UB) under *Texas Education Code, Section 33.901* as amended by *Senate Bill 376,* 83rd Texas Legislature and the use of the Universal Free Breakfast Program (UFBP).
December 9, 2013	Updated *Section 8, Breakfast* to clarify which sites are required to participate in Universal Breakfast under *Texas Education Code, Section 33.901* as amended by *Senate Bill 376*, 83rd Texas Legislature.
December 2, 2013	Updated *Section 8, Breakfast* to provide more clarity on the following issues: – Breakfast mealtime – Calorie ranges – CN labeling and manufacturer product formulation statements – Compliance – Contact information for the Texas Department of Agriculture (TDA) – Dietary specification – Fruit component for SY 2013–2014 and SY 2014–2015 – Grains component, including minimum and maximums – Implementation timeline for sodium – Meal service options – Milk component, including milk substitutes and smoothies – OVS and Residential Child Care Institutions (RCCIs) – OVS and the reimbursable meal – Point of service (POS) – Pre-K menu pattern – Records retention – Weighted averaging
October 28, 2013	Updated *Section 8, Breakfast* to incorporate new guidance on Universal Breakfast based on *Texas Senate Bill 376*. Added contact information page after the table of contents. Updated typo related to weekly grain range.
July 22, 2013	Updated *Section 8, Breakfast* to reflect the renumbering of *Section 9C to Section 2C, Certification for Performance-Based Reimbursement* in order to relocate the information on certification adjacent to *Section 2, Application and Agreement* since certification is now part of the application process. Deleted all references to *Section 8N* since that section has been removed from the *Administrator's Reference Manual (ARM)*. CEs must follow the guidance provided in *Section 8, Breakfast* since *Section 8N* applied to SY 2012–2013 only.

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June 23, 2013 Updated *Section 8, Breakfast* to incorporate the following USDA guidance

- USDA Memo 10-2012, Questions & Answers on the Final Rule, "Nutrition Standards in the National School Lunch and School Breakfast Programs" (January 25, 2013)
- *USDA Memo 26-2013, Extending Flexibility in the Meat/Meat Alternate and Grains Maximum for School Year 2013-2014* (February 25, 2013)
- *USDA Memo 28-2013, Questions & Answers on School Breakfast Program Meal Pattern in School Year 2013-2014* (June 13, 2013)
- *USDA Memo 31-2013, Salad Bars in the National School Lunch Program* (March 27, 2013)
- *USDA Memo 45-2013, Updated Offer versus Serve Guidance for the National School Lunch Program and School Breakfast Program in School Year 2013-2014* (June 13, 2013)

and needed clarification on the following topics:

- Crediting: crediting salsa, meal pattern identification, pre-packaged and pre portioned breakfast delivery systems, use of *Food Buying Guide for Child Nutrition Programs*
- Meal Pattern:
- Fruit: fruit serving requirement timeline
- Grains: counting grain food items, flexibility on grains maximums for school year 2013–2014, whole-grain rich requirements for school year 2013–2014, weekly average grains, and ready to eat (RTE) cereal ingredients
- Pre-kindergarten children: meal pattern
- Meats/Meat Alternates: meats/meat alternates as a substitute for grains and as an additional food item
- Fluid Milk: options for fluid milk
- Substitutions: emergencies
- Serving Methods: offer versus serve requirements for breakfast, and breakfast in the classroom (BIC)
- Record Retention: record retention explanation

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Breakfast Meals

The School Breakfast Program (SBP) is a federally assisted meal program administered by the Texas Department of Agriculture (TDA) and operated by public schools, nonprofit private schools, and residential child care institutions (RCCIs). The SBP provides nutritionally balanced, economically priced, or free breakfasts to all students each day. Contracting entities (CEs) that choose to participate in the SBP receive reimbursement from the United States Department of Agriculture (USDA) for each breakfast they serve. In return, CEs must serve breakfasts that meet the meal pattern requirements and must offer free or reduced-priced meals to eligible students.

The guidance from the following *Administrator's Reference Manual (ARM)* sections will also be helpful in implementing the breakfast meal program:

- *Section 8, Lunch Meals*
- *Section 9, Pre-Kindergarten Meals*
- *Section 14, USDA Foods*
- *Section 21, Meal Service*
- *Section 22, Competitive Foods*
- *Section 23, Food Product Labeling*
- *Section 25, Meal Accommodations*
- *Section 26, Food Safety*
- *Section 30, Record Retention*

Texas Education Code Requirements Related to Breakfast

Texas Education Code, Section 33.901[1] mandates that public and charter schools provide breakfast meal service in the following circumstances.

At least 10 percent or more of the students are eligible for free and reduced-price meals

If the public or charter school operates SBP,[2] the school must make a reimbursable breakfast available for all students. The amount a student is charged for a reimbursable meal is based on the student's eligibility category. Reimbursable meals are counted and claimed according to each student's eligibility category.

At least 80 percent or more of the students are eligible for free and reduced-price meals

If the public or charter school operates a breakfast program,[3] the school must offer universal breakfast (UB)[4] at no charge for all students. Reimbursable meals are counted and claimed according to each student's eligibility category even though no child is charged for breakfast.[5]

Universal Breakfast (UB) Waiver

TDA and Texas Education Agency (TEA) have developed a coordinated waiver process to facilitate submission and approval of waivers. A CE may request a waiver from the UB requirement if the following guidelines are met:

1 Section 33.901 was amended by Senate Bill 376, 83rd Texas Legislature and House Bill 1305, 84th Texas Legislature.
2 A CE that is mandated to offer breakfast may choose to operate a locally funded breakfast program.
3 A CE that is mandated to offer breakfast may choose to operate a locally funded breakfast program.
4 Texas CEs have long had the option to operate the Universal Free Breakfast Program (UFBP) which provides breakfast to all students at no charge. The UB requirement described in this subsection is not part of UFBP. It is a new requirement established by Senate Bill 376, 83rd Texas Legislature.
5 See the *Administrator's Reference Manual (ARM), Section 16, Financial System* and *Section 19, Meal Pricing* for additional information on the use of program funds and pricing meals.

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Timeline for Universal Breakfast Waiver Submission

CEs must apply for a waiver after March 15, but before July 1 of the year preceding the SY for which the waiver applies.

For Example: A CE applies on April 3, 2019, for a waiver that will apply to SY 2019-2020.

- A waiver is in effect for only one school year. A CE must submit a new waiver for each year the CE chooses not to offer UB.
- If a CE does not apply for a waiver during this period, the CE must implement the UB requirements as mandated by the Texas Education Code in Senate Bill 376.

Required Actions Related to the Decision to Submit a Waiver

Any CE that chooses to submit a waiver from the requirement must take the following actions and retain documentation that demonstrates that the required actions were taken as part of its process to apply for a waiver from the UB requirements:

- The decision to apply for a waiver must be approved (1) at a regular school board meeting or (2) by the CE's governing body during an annual budget approval meeting.
- The decision to apply for a waiver must be a separate item on the agenda for the meeting described above.
- The school board or governing body must provide an opportunity for public comment before the decision is made at the school board meeting or governing body annual budget approval meeting.

Waiver Submission Process

To submit the *Universal Breakfast (UB) Waiver* form, the CE must take the following actions:

- Access the web-based form through the Texas Unified Nutrition Programs System (TX-UNPS).
- Complete and submit the web-based form demonstrating that the CE has submitted the waiver according to the timeline as well as taken the required actions and maintained documentation of those actions.

The CE will be notified about the waiver approval or disapproval.

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Outreach to Households on the Availability of the School Breakfast Program (SBP)

In an effort to help more students benefit from the nutritious meals served in the SBP, CEs must inform households of the availability of breakfast.

Notification

A notification about the availability of breakfast must be provided to households just prior to or at the beginning of the SY. The CE should include this notification in the informational packets that are sent to each household with the free and reduced-price meal applications. In addition, CEs must send reminders regarding the availability of the SBP multiple times throughout the SY.

CEs can provide reminders to students through public address systems or through means normally used to communicate with the households of the enrolled students. Other acceptable outreach activities may include developing or disseminating printed or electronic material to households and students.[6]

TDA encourages CEs to use the information in USDA's SBP toolkit, *Discover School Breakfast Toolkit*, a resource for outreach and expansion activities which is located at *https://www.fns.usda.gov/sbp/discover-school-breakfast-resource-materials*.

Definitions for This Section

For this subsection, the following definitions will be useful:

Bran	Seed husk or outer coating of cereal grains such as wheat, rye, and oats.
Breakfast Cereal	Any cereal grain served in a cold and dry form. Breakfast cereals are traditionally served as a breakfast menu item but may be served in meals other than breakfast.
Cereal Grain	Edible part of a whole grain that has been processed for consumption.
Corn	Product labeled as whole corn (or other whole corn designations, such as whole-grain corn, whole ground corn, whole cornmeal, whole corn flour, etc.) or enriched corn (or other enriched corn designations, such as enriched yellow cornmeal, enriched corn flour, enriched corn grits, etc.).
Dietary Specifications	Specifications for calories, sodium, and saturated and trans fat for each age/grade group
Enriched	Product conforms to the Food and Drug Administration's Standard of Identity for levels of iron, thiamin, riboflavin, and niacin. The terms enriched means nutrients that were lost during food processing have been added back into the product, such as adding back certain vitamins lost in processing wheat to make white flour.
Extra Item	Beverage or food item offered to a student in the one or more of the following circumstances: – Beverage or food item that is not menued as part of the reimbursable meal and is located before or after the point of service (POS) that a student may take, such as salad dressing or condiments – Additional serving of a food or beverage item that is menued as part of a reimbursable meal that a student may take such as crackers or chips Extra items must be included in the weekly dietary specifications.
Flour	Product derived by finely grinding and bolting (sifting) wheat or other grains. Flour includes all grains (wheat, rye, corn, etc.).

[6] CEs must retain documentation about these efforts. See the *Records Retention* subsection of the section for additional information on this topic.

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Food Component (Breakfast)	One of the three food groups—fruit (or vegetable), grain, and fluid milk—that make up a reimbursable breakfast meal.
Food Component (Lunch)	One of the five food groups—fruit, vegetable, grain, meat/meat alternate, and milk—that make up a reimbursable lunch meal.
Food Items (Breakfast)	Specific food items offered for a breakfast meal that contain one or more of the three food components. For breakfast, the CE must offer 4 food items.
Food Items (Lunch)	Specific food items offered for a lunch meal that contain one or more of the five food components.
Fortified Grain	Grain that has been processed to add certain vitamins and minerals to the food product to increase nutritional quality.
Juice	Undiluted product obtained by extraction from sound fruit.[7] It may be fresh, canned, frozen, or reconstituted from concentrate and may be served in either liquid or frozen state. Diluted juice is no longer allowed.
Meal in Grain Products	The product derived by coarsely grinding corn, oats, wheat, etc.
Meat By-Products	Pork stomachs or snouts; beef, veal, lamb or goat tripe; beef, veal, lamb, goat or pork hearts, tongues, fat, lips, weasands, and spleen; and partially defatted beef fatty tissue or partially defatted pork fatty tissue.
Menu Items (Breakfast)	Actual food listed on the menu to be served such as tacos, fruit salad, or muffins. Menu items may contain one or more components or food items.
Offered Menu	Food items that are actually prepared and set out on the serving lines for students to take. This information is recorded on the CE's food production records.
Partially Defatted Beef (Pork) Fatty Tissue	By-product produced from fatty trimmings of less than 12 percent lean meat (contains 88 percent or more fat).
Partially Defatted Chopped Beef (Pork)	Prepared from fatty trimmings that contain at least 12 percent lean meat (may contain up to 88 percent fat).
Planned Menu	Food items the menu planner intends to offer to students. This information is recorded on the CE's food production records. It represents the CE's calculation of the items that will need to be prepared for a school's usual average daily participation (ADP).
Selected/Served Menu	Food items that are actually served to, or selected by, students. Menu planners should use selected/served food item data to inform future menu planning and reduce food waste, so the school does not offer items that students do not select. Production records should be updated to indicate actual selected/service food items after the meal service so that production records reflect serving trends.
Sound Fruit	Product made from 100% fruit.
Tofu	Soybean-derived food that is made by a process in which soybeans are soaked, ground, mixed with water, heated, filtered, coagulated, and formed into cakes. Basic ingredients are whole soybeans, one or more food-grade coagulants (typically a salt or an acid), and water.

[7] In this definition, s*ound fruit* means a product made from 100% fruit.

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Variety Meats	Meat by-products (above) except that the term variety meats is used specifically in reference to frankfurters, hotdogs, bologna, and similar cooked sausages. A label that states Frankfurter with Variety Meats indicates the use of meat by-products. Yields in the Food Buying Guide for Child Nutrition Programs[8] for frankfurters, bologna, knockwurst, and Vienna sausage are based on products that contain no meat or poultry by-products, cereals, or extenders. Therefore, these products, if containing variety meats, may not be CN labeled.
Whole Grain	Edible part of wheat, corn, rice, oats, rye, barley, etc. Parts of the grains such as the germ or the bran are not considered whole grain. Whole-grain flour or meal is the product derived by grinding the entire grain minus the husk/hull. If a flour or meal does not contain all edible parts of the grain, it is not whole grain.
Whole-Grain Rich	Grain products containing at least 50 percent whole grains. The remaining amount of grains in the product are enriched grains.

Meal Pattern

Under SBP, breakfasts must meet regulations. The meal pattern outlined in the rule is food-based and divided by age/grade groups. The meal pattern also focuses on specific nutrient standards: calories, sodium, and saturated and trans fat.

Adopting the meal pattern results in the following changes:

- Three-component meal pattern: fruit (or vegetable), grains, and milk.
- A required daily serving of fruit.
- Increased quantity of fruits.
- Weekly grain ranges plus minimum daily requirements. At least 80% of grains offered during the serving week must be whole-grain rich.
- Fat-free and 1 percent low-fat milk only. Either may be flavored or unflavored.
- Meat/meat alternates may be offered after a minimum grains requirement per day is met.
- Under Offer versus Serve (OVS), the student must select at least ½ cup of the fruit (or vegetable) component for the meal to be considered a reimbursable breakfast.
- Calorie minimum and maximum levels based on age/grade groups.
- Sodium limits.
- Limit on saturated fat; the elimination of trans fat.

Breakfast Meal Pattern

The meal requirements are food-based and specify kinds and amounts of food for the three required breakfast food components. The *Nutrition Standards in School Breakfast Program (SBP)—Meal Pattern Chart* provides detailed information on the minimum meal pattern requirements for meals to be served for each age/grade group. Components must meet requirements for both daily and weekly servings. The nutrient specifications must be met weekly. This chart includes the requirements for pre-kindergarten students. See *Administrator's Reference Manual (ARM), Section 9, Pre-Kindergarten Meals* for detailed guidance on implementing the pre-K meal pattern.

[8] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

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The meal pattern is food-based and consists of three components:

- Fruit (or Vegetable)
- Grains
- Milk

The meal pattern is divided into four age/grade groups:

- Pre-Kindergarten students[9]
- Grades K–5 (ages 5–10)
- Grades 6–8 (ages 11–13)
- Grades 9–12 (ages 14–18)

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[9] CEs providing meals to pre-kindergarten students must use the updated pre-K meal pattern starting October 1, 2017.

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Nutrition Standards in the School Breakfast Program (SBP)—Meal Pattern Chart

Minimum Amount of Each Food Component Per Week (Minimum Offering Per Day)

Pre-Kindergarten (Pre-K) Daily

Meal Pattern Components	Age 1-2	Age 3-5
Milk, Unflavored Age 1-2, whole milk Age 3-5, 1 percent low fat or fat free	(½) cup	(¾) cup
Fruits (and Vegetables)[2]	(¼) cup	(½) cup
Grains,[4] Whole Grain-Rich or Enriched		
Bread Product (i.e., biscuit, roll, muffin)	(0.5) oz eq	
Cooked: Cereal, Cereal Grain, Pasta	(0.5) oz eq	
Ready-To-Eat Breakfast Cereal, Dry or Cold:[5]		
Flakes or Rounds	(0.5) oz eq	
Puffed Cereal	(0.7) oz eq	
Granola	(0.2) oz eq	

School Age Daily and Weekly

Meal Pattern Components	Grades K–5	Grades 6–8	Grades 9–12	Grades K-12
Milk, Unflavored or flavored fat free or 1 percent low fat[1]	5 (1) cups	5 (1) cups	5 (1) cups	5 (1) cups
Fruit (and Vegetables)[3]	5 (1) cups	5 (1) cups	5 (1) cups	5 (1) cups
Grains, 80% Whole Grain-Rich	7.0-10 .0 (1.0) oz eq	8.0-10.0 (1.0) oz eq	9.0-10 .0 (1.0) oz eq	9.0-10 .0 (1.0) oz eq
Nutrient Specifications: Daily Amount Based on Average 5-Day Week				
Min-Max Calories (kcal)	350-500	400-550	450-600	450-500
Saturated Fat % of total calories	< 10	< 10	< 10	< 10
Sodium Target (mg)	T1 ≤ 540 mg	T1 ≤ 600 mg	T1 ≤ 640 mg	T1 ≤ 540 mg
Trans Fat	Product nutrition label/manufacturer specification must indicate 0 grams of trans fat per serving.			

1 For K-12, one choice of milk must be unflavored at each meal service.

2 Juice must be full strength (100 percent juice) and may be used to meet the vegetable or fruit requirement at one meal per day, including snack.

3 Through June 30, 2023, CEs may substitute any vegetable from any subgroup in place of a fruit.

4 For pre-K, at least one serving per day, across all meals served must be whole grain-rich unless a meat/meat alternate is being served in place of grain that day. Remaining servings for the day must be enriched. Meat/Meat alternates may be substituted for the entire grain requirement a maximum of three times a week. See the ***Meat/Meat Alternates*** subsection in ***Administrator's Reference Manual (ARM), Section 9, Pre-Kindergarten (Pre-K) Meals*** for more information on this topic. Grain-based desserts (i.e., cereal bars, breakfast bars, granola bars, sweet rolls, sweet pie crusts, doughnuts, toaster pastries, cake, brownies, etc.) are not creditable toward meeting the grains requirement.

5 Breakfast cereals must be whole grain-rich, enriched, or fortified and contain no more than 6 grams of sugar per dry ounce (21.2 grams sucrose and other sugars per 100 grams of dry cereal).

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The following chart may assist CEs as they determine the appropriate serving sizes based on different methods of measurement.

Measurement Conversion Chart
(Converting Common Serving Portion Sizes into Applicable Measurement Methods)[10]

Component			Other	Volume		Weight		Scoop Size (Scoop serving per quart)
				Level Measure (cup, Tbsp)	Fluid Ounce (fl oz)	Ounce (oz)	Ounce Equivalent (oz eq)	
Milk			--	½ cup	4	--	--	--
			--	¾ cup	6	--	--	--
Fruits/Vegetables			--	¼ cup	--	--	--	16
			--	½ cup	--	--	--	8
Grains	Bread Product: (biscuit, roll, muffin)		½ serving	--	--	0.5 oz	0.5 oz eq	--
	Cooked: Cereal, Cereal Grain, Pasta		--	¼ cup	--	0.5 oz	0.5 oz eq	16
	Ready-To-Eat Breakfast Cereal (Dry /Cold)	Flakes/Rounds	--	½ cup	--	0.5 oz	0.5 oz eq	8
		Puffed	--	¾ cup	--	1.0 oz	1.0 oz eq	4
		Granola	--	⅛ cup	--	0.5 oz	0.5 oz eq	30
Meat/ Meat Alternates	Lean meat, poultry, or fish		--	--	--	1.0 oz	1.0 oz eq	--
			--	--	--	1.5 oz	1.5 oz eq	--
	Tofu, soy product, or alternate protein products		--	⅛ cup	--	1.1 oz	0.25 oz eq	30
			--	⅓ cup	--	1.5 oz	0.33 oz eq	12
	Cheese		--	¼ cup	--	1.0 oz	1.0 oz eq	16
			--	⅓ cup	--	1.5 oz	1.5 oz eq	12
	Large egg		½ serving	⅛ cup	--	--	1.0 oz eq	30
			¾ serving	⅓ cup	--	--	1.5 oz eq	12
	Cooked dry beans or peas		--	¼ cup	--	0.5 oz	1.0 oz eq	16
			--	⅜ cup	--	1.5 oz	1.5 oz eq	10
	Peanut butter, soy nut butter, or other nut or seed butter		--	2 Tbsp	--	1.1 oz	1.0 oz eq	30
			--	3 Tbsp	--	1.7 oz	1.5 oz eq	20
	Yogurt, plain, or flavored unsweetened or sweetened		--	¼ cup	--	2.0 oz	0.5 oz eq	16
			--	½ cup	--	4.0 oz	1.0 oz eq	8
			--	¾ cup	--	6.0 oz	1.5 oz eq	4
	Peanuts, soy nuts, tree nuts, or seeds		--	--	--	0.5 oz	1.0 oz eq	--
			--	--	--	0.75 oz	1.5 oz eq	--

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[10] The *Child Nutrition Food Buying Guide* available at *http://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs* provides additional information on converting amounts.

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Breakfast Menu Planning

To meet the requirements of the meal pattern, a reimbursable breakfast must contain a specified quantity of each of the food components. The quantities for the food components vary by age/grade group. Refer to the *Nutrition Standards in School Breakfast Program (SBP)—Meal Pattern Chart* for information regarding specific quantities per age/grade group. Understanding the difference between components, food items, and menu items is essential when planning menus that meet requirements. The *Breakfast Menu Planning Example Chart* provides examples of components, food items, and menu items.

Breakfast Menu Planning Example Chart		
Components	**Food Items**	**Menu Items**
1. Fruit	1. Peaches	1. Fresh Fruit of the Day
2. Grains	2. Whole Grain Muffin	2. Muffin Surprise
3. Milk	3. Fat-Free Milk	3. Unflavored Milk or Chocolate Milk

Food Component

A food component[11] means one of the three food groups—fruit (or vegetable), grain, and fluid milk—that make up a reimbursable breakfast meal. Each of the three food components must be offered prior to the point of service (POS)[12] for the meal to be reimbursable.

At breakfast, vegetables may be substituted for fruit. See the *Fruit (or Vegetables) Component of the Reimbursable Breakfast* subsection in this section for additional information on substituting vegetables for fruit servings.

Food Items

Food items mean a specific food offered that contains one or more of the three food components.

Menu Items

Menu items are the actual foods served such as breakfast tacos, fruit salad, or muffins. Menu items may contain one or more components or food items.[13] The Breakfast Menu Planning Example Chart provides examples of components, food items, and menu items.

Whether a menu item consists of one or more components, all three required food components must be offered in the required amount for the meal to be reimbursable. All menu items should be offered prior to the POS.[14]

Crediting Foods

Crediting is determined by rounding the food component down to the nearest

- 0.25 ounce equivalent (oz eq) for grain and meat/meat alternate components

or

- ⅛ cup for fruit, vegetable, and milk components

[11] For breakfast there are three food components.
[12] See *Administrator's Reference Manual (ARM), Section 21, Meal Service* for additional information on this topic.
[13] See the *Reimbursable Breakfast Requirements* subsection in this section for additional information on combined food items.
[14] See the *Administrator's Reference Manual (ARM), Section 21, Meal Service* for additional information on this topic.

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Age/Grade Groups

The meal pattern is divided into three age/grade groups:

- Grades K–5 (ages 5–10)
- Grades 6–8 (ages 11–13)
- Grades 9–12 (ages 14–18)

CEs must use the meal pattern age/grade groups to plan the menus. Because of the three distinct age/grade groups, CEs cannot offer the same meal portions to all grade levels. CE may use the age/grade group K–12 for breakfast. However, in menu planning, the menued items must fall into the overlap for the number of servings, portion size, and calories across all age/grade groups and meet the sodium standard for the lowest age/grade group.

Menu planners must (1) meet requirements both daily and weekly and (2) meet the nutrient specifications weekly.

Residential Child Care Institutions

Residential child care institutions (RCCIs) are not waived from the meal pattern requirements, including the nutrient standards.[15] To meet the caloric needs of students in RCCIs, the menu planner may increase the calories provided through other meal services such as snacks and the supper meal. If it is not possible to use the established grade groups, RCCI CEs do have some flexibility. See the *Administrator's Reference Manual (ARM), Section 28, Residential Child Care Institutions*, for additional information on this topic.

Menu Planning for Pre-Kindergarten (Pre-K) Students

CEs must implement the updated Child and Adult Care Food Program (CACFP) pre-kindergarten (pre-K) meal pattern which is described on the *Nutrition Standards in the School Breakfast Program (SBP)—Meal Pattern Chart*.

However, while CEs are required to implement the pre-K meal pattern for SBP pre-K students, other CACFP requirements do not apply unless a site is also operating CACFP At-Risk or a CACFP Center).

See the *Administrator's Reference Manual (ARM), Section 9, Pre-Kindergarten Meals* or the *Child and Adult Care Food Program—Child Care Centers Handbook* for detailed information on the pre-K meal pattern.[16]

Weekly Menu Planning

The reimbursable breakfast requires that students be served specific portion sizes by age/grade group for each of the three breakfast components per day and per week:[17]

Component	Age/ Grade	Minimum Amount Offered Each Day/Week

[15] See to *Administrator's Reference Manual (ARM), Section 28, Residential Child Care Institutions* for additional information on this topic.
[16] Available at *www.SquareMeals.org*
[17] See the *Nutrition Standards in the School Breakfast Program (SBP)—Meal Pattern Chart* for requirements for preschool children.

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Fruit (Vegetables)[18]	K-12	→ 1 cup serving per day → 5 cups per week
Grains	K–5	→ 1.0 oz eq serving per day → 7.0-10.0 oz eq per week
	6–8	→ 1.0 oz eq serving per day → 8.0-10.0 oz eq per week
	9–12	→ 1.0 oz eq serving per day → 9.0-10.0 oz eq per week
Milk	K-12	→ 1 cup serving per day → 5 cups per week

The following requirements apply to serving meat/meat alternates and vegetables at breakfast:

- Full-strength Fruit/Vegetable Juice—May not be used to meet more than one-half of the weekly total fruit requirement.
- Meat/Meat Alternates—May be counted toward meeting the total grains requirement or may be served as an Extra food item. If the meat/meat alternate is counted as an Extra food item, it must be included in the weekly nutrient analysis.
- Meat/meat Alternates—May be offered as long as the minimum grains requirement for the day is also met.
- Vegetables Served in Place of Fruits—May be from any subgroup.
- Starchy Vegetables[19]—May be served if two cups of non-Starchy vegetables are menued over the course of the week before the Starchy vegetables are added to the menu. However, the non-Starchy or Starchy vegetables may be offered in any order over the course of the week.

In individual cases where a CE has an unusual age/grade configuration that prevents the use of the required age/grade groups, the CE may serve the same breakfast to all students in grades K–12 as long as serving sizes, weekly ranges of minimum amounts, and calories fall into the overlap of requirements for all age/grade groups served and meet the sodium standard for the lowest age/grade group.

> [NOTE: The calorie range that fits all age/grade groups is quite narrow—450–500 calories. The weekly range of grains for age/grade group K–12 must be age/grade group 9–10 as this range is the overlap for the number grain servings for all three age/grade groups. However, the sodium standards must be the lowest age-grade group—K-5.]

CEs should also plan their menus so that the sum of the daily recommended maximum offerings[20] for grains and meat/meat alternates is equal to or less than the weekly recommended maximum offering limit in order to meet the weekly dietary specifications. Therefore, the sum of minimum daily amounts must meet the weekly minimum requirement, and the sum of the daily recommended maximum offerings should not exceed the weekly recommended maximum offerings.

Fruit (or Vegetable) Serving Portion

Larger servings of fruit (or vegetables) may be served at meals to improve student acceptability, to satisfy students' appetites, to provide additional energy, and, if carefully chosen, to increase the nutritional quality of the breakfast.

[18] See the *Fruit (or Vegetable) Component of the Reimbursable Breakfast/Grains Component of the Reimbursable Breakfast, Fluid Milk Component of the Reimbursable Breakfast* subsections in this section for more information on serving size portions.

[19] See the *Nutrition Standards in the School Breakfast Program (SBP)—Meal Pattern Chart* for additional information on possible flexibilities.

[20] USDA has waived the maximum serving amounts for grains and meat/meat alternates.

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CEs with Shorter and Longer Weeks

CEs that regularly and consistently serve breakfast more than five days per week must increase the weekly component quantities by 20 percent (⅕) for each additional day.

Similarly, CEs that regularly and consistently serve breakfast less than five days per week must decrease the weekly component quantities by 20 percent (⅕) for each day less than five. The *Short and Long Week Adjustments for Breakfast Chart* provides detailed information for planning menus for shorter and longer weeks.

For CEs with occasional decreases in the week length because of holidays, snow days, etc., the menus do not have to be adjusted. However, menu planners must plan their menus in a way that is consistent with the intent of the meal patterns. CEs should make sure they do not consistently fail to offer grains in portions that would exceed the weekly recommended ranges.

Short and Long Week Adjustments* for Breakfast Chart			
	Age/Grades K–5 Weekly (Daily)	**Age/Grade 6–8 Weekly (Daily)**	**Age/Grade 9–12 Weekly (Daily)**
Three-Day Week			
Fruits (cups)	3 (1)	3 (1)	3 (1)
Grains (oz eq)	4.0–6.0 (1.0)	5.0–6.0 (1.0)	5.5–6.0 (1.0)
Milk, Fluid (cups)	3 (1)	3 (1)	3 (1)
Four-Day Week			
Fruits (cups)	4 (1)	4 (1)	4 (1)
Grains (oz eq)	5.5–8.0 (1.0)	6.5–8.0 (1.0)	7.0–8.0 (1.0)
Milk, Fluid (cups)	4 (1)	4 (1)	4 (1)
Six-Day Week			
Fruits (cups)	6 (1)	6 (1)	6 (1)
Grains (oz eq)	8.5–12.0 (1.0)	9.5–12.0 (1.0)	11.0–12.0 (1.0)
Milk, Fluid (cups)	6 (1)	6 (1)	6 (1)
Seven-Day Week			
Fruits (cups)	7 (1)	7 (1)	7 (1)
Grains (oz eq)	10.0–14.0 (1.0)	10.0–14.0 (1.0)	12.5–14.0 (1.0)
Milk, Fluid (cups)	7 (1)	7 (1)	7 (1)
These calculations are rounded to the nearest 0.5 oz eq or ¼ cup.			

[NOTE: Since the dietary specifications are based on average daily amounts, they are unaffected by varied week lengths. They represent an average over the length of the week, whether consisting of three or seven days.]

CEs with Multiple Age/Grade Groups

Some CEs include pre-kindergarten (pre-K) students as well as children in other age/grade groups in their breakfast meal service. CEs that operate half-day pre-K programs may choose to serve pre-K students both breakfast and lunch or only one of these meals.

See *Administrator's Reference Manual (ARM), Section 9, Pre-Kindergarten Meals* or the *Child and Adult Care Food Program—Child Care Centers Handbook* for additional information on the pre-K meal pattern.[21]

See the *Residential Child Care Institutions* subsection in this section for additional information on age/grade requirements specific to RCCIs as well as the *Administrator's Reference Manual*

[21] Available at *www.SquareMeals.org*

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(ARM), Section 28, Residential Child Care Institutions (RCCIs).

Fruit (or Vegetable) Component of the Reimbursable Breakfast

CEs must offer the fruit component every day; however, vegetables may be substituted for fruit as described in this subsection. CEs must offer a 1 cup serving of fruit (or vegetable) to each student for breakfast. A student must take at least ½ cup for a reimbursable meal.

Crediting Fruits and Vegetables

The minimum creditable amount of a fruit (and/or vegetable) that may be credited toward the meal pattern is ⅛ cup. Under OVS, ½ cup is the minimum amount of fruits and/or vegetables per day that a student must be served for a reimbursable meal.

[NOTE: A student who is served a plated meal must be served the required minimum offering for each component but may request and be given a smaller portion size of any item. If the student takes a smaller portion size of any item, the remaining amount must meet the requirements described in the ***Reimbursable Breakfast Requirements*** subsection in this section.]

Crediting Fruits and Vegetables for a Reimbursable Meal Chart	
Minimum Creditable Amount of Fruit (or Vegetables) Taken by a Student	**Minimum Portion Size or Amount of Fruits (or Vegetables) Taken by a Student**
⅛ Cup	**½ Cup**
How Creditable Amount Is Used…	**How Minimum Portion Size or Amount Is Used…**
A creditable amount contributes toward meeting the minimum serving portion size or amount.	A minimum serving portion size or amount counts toward meeting the minimum food component requirements for a reimbursable meal.

The creditable amount may be reached by combining different fruits and vegetables to reach a ½ cup serving amount.[22]

For Example: In an OVS service, the student takes a fruit/vegetable mix that contains ⅛ cup apples, ⅛ cup oranges, ⅛ cup grapes, and ⅛ cup avocado. The total fruit/vegetable mix is ½ cup.

There are no maximum limits (daily or weekly) on the amount of fruit or vegetable subgroups offered at breakfast.[23]

Non-Creditable Amount of Fruit or Vegetable

Small amounts (less than ⅛ cup) of fruits or vegetables used for flavoring or as an optional ingredient for a garnish must not be counted toward the fruit component requirement.

Order of Serving Vegetables During the Week

Through June 30, 2023, CEs may substitute any vegetable in place of a fruit without including vegetables from other subgroups in the weekly menus. The vegetable may be from any subgroup.

[22] See the *Reimbursable Breakfast Requirements* subsection in this section for additional information.
[23] See the *Reimbursable Breakfast Requirements* subsection in this section for additional information on this topic.

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CEs will find that the updated *Food Buying Guide for Child Nutrition Programs*[24] will provide detailed information on the amount of fruit and/or vegetables needed for a creditable amount.

Offer Versus Serve (OVS) and the Fruit Component

Under OVS, CEs must offer enough food items for each student to take the full minimum daily requirement for each component.[25] A student must be offered at least 1 cup of either a fruit or vegetable or a combination of fruit and vegetables and must take ½ cup of fruit or vegetables for a reimbursable meal. For a reimbursable meal, a student may take smaller portions of the fruit (and/or vegetable if offered) component. For additional information regarding OVS and fruits and vegetables, see the *Reimbursable Breakfast Requirements* subsection in this section.

Information Box 1
Vegetable Subgroups

The following vegetable subgroups may be used:

- **Dark Green,** such as bok choy, broccoli, collard greens, Dark Green leafy lettuce, kale, mesclun, mustard greens, romaine lettuce, spinach, turnip greens and watercress
- **Red/Orange,** such as acorn squash, butternut squash, carrots, pumpkin, tomatoes, tomato juice and sweet potatoes
- **Dry Beans/Peas (Legumes),** such as black beans, garbanzo beans, lentils, kidney beans, mature lima beans, navy beans, pinto beans and split peas
- Starchy, such as corn, cassava, green bananas, green peas, green lima beans, plantains, taro, water chestnuts, and white potatoes
- **Other Vegetable,** which includes all other fresh, frozen and canned vegetables, such as artichokes, asparagus, avocado, bean sprouts, beets, Brussels sprouts, cabbage, cauliflower, celery, cucumbers, eggplant, green beans, green peppers, iceberg lettuce, mushrooms, okra, onions, parsnips, turnips, wax beans and zucchini

The category for any unusual vegetables may be found at the following websites:

- *http://choosemyplate.gov/*
- *https://fns-prod.azureedge.net/sites/default/files/usda_food_patterns/ItemClustersAndRepFoods.pdf*

Fruits

CEs may offer the following types of fruit:

- Fresh
- Frozen, based on volume prior to freezing
- Canned in light syrup, water, or fruit juice
- Dried
- One hundred percent fruit juice, frozen or liquid

These types of fruits may be used interchangeably. To aid in the absorption of iron from bread and cereal products, it is recommended that a fruit high in Vitamin C be offered daily.

Coconut

Fresh, frozen, and 100% coconut juice are creditable by volume. Dried coconut is credited toward the fruit component at twice the volume served. When served as a food component, the minimum creditable amount to be served is ⅛ cup.

Coconut Water labeled as 100% coconut use is creditable by volume.

Coconut flour and coconut oil are not creditable.

Dried Fruit

Whole dried fruit and whole dried fruit pieces credit at twice the volume served.

For Example: A ¼ cup of raisins contributes ½ cup fruit toward the fruit requirement.

[24] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*
[25] See the *Crediting Fruit and Vegetable for Reimbursable Meal Chart* in this section for daily requirements by age/grade group.

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Dried fruit processed with sugar to keep the fruit pieces separated may credit toward a reimbursable meal.

Frozen Fruit with Added Sugar

CEs may continue to serve frozen fruit with added sugar. However, frozen fruits with added sugar should be used in moderation to keep the average school meal within the weekly calorie ranges.

Vegetables Substituting for Fruits

100% Vegetable Flour

Pasta made with 100% vegetable flour is creditable as a vegetable component by volume even if the pasta is not served with another recognizable vegetable. However, small amounts of vegetable powder included in grain-based products to add color (spinach, sun-dried tomato) are not creditable toward the vegetable component.

- When served as the vegetable component, pasta made with 100 percent vegetable flour is credited by volume and must be included in the weekly dietary specifications.
  - ½ cup of pasta made with 100% vegetable flour credits as ½ cup of vegetables.
- When the vegetable flour from one vegetable subgroup is used to make the pasta, the pasta credits toward the appropriate vegetable subgroup.
- When the vegetable flour from more than one vegetable subgroup is used to make the pasta, the pasta credits in one of two ways:
  1. When a product formulation statement details the actual volume of each vegetable (subgroup) per serving, the pasta product may credit toward the vegetable subgroups as long as the minimum creditable amount for each subgroup is served.
  2. When the vegetable subgroup contributions are not known, the product may credit toward the additional vegetable subgroup.
- When a food item is made from vegetable flour and other non-vegetable ingredients, the pasta made from vegetable flour may be credited toward the appropriate vegetable subgroup if a product formulation statement provides the contribution information for the actual volume of vegetable flour per serving.

Dry Peas and Beans

Dry or mature beans and peas may be offered as a meat alternate, crediting as a substitute for the grains component, or as a vegetable at the discretion of the menu planner.[26] One serving may not count toward two different food components in the same meal. However, two different servings of dry peas and beans may count as two separate components.

For Example: One serving of refried beans can be offered as a vegetable crediting for the fruit component, but this same serving cannot count toward the grains weekly requirement as a meat/meat alternate substitution for the grains component.

[26] For breakfast, CEs may credit meat/meat alternates toward the grains component or as an Extra. See *Meat/Meat Alternate Component Substituting for the Grains Component of the Reimbursable Breakfast* subsection in the section for additional information on this substitution.

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Two servings of refried beans can be credited as one serving of a vegetable counting toward the fruit component and the second serving counting as a meat/meat alternate substitution for the grains component.

For additional guidance on beans and peas, see: *www.choosemyplate.gov/*.

Extruded Vegetable Products

Meal pattern contributions of extruded vegetable products can be found in the *Food Buying Guide for Child Nutrition Programs*.[27] For any food item not listed in the guide, a manufacturer's product formulation statement should be used to determine the contribution extruded products make toward the meal pattern requirement.[28]

Herbs as Vegetables

A one-fourth (¼) cup garnish of herbs that are classified as Dark Green vegetables, such as parsley and cilantro credit as ⅛ cup of Dark Green vegetables. A one-fourth (¼) cup garnish of herbs that are classified as Other vegetables, such as chives and garlic, credit as ⅛ cup of Other vegetables. Herbs that are used in amounts smaller than ⅛ cup per serving portion as a garnish or seasoning do not credit toward the vegetable component.

Hominy, Vegetable Form

When served as a vegetable component, the food item is credited as a starchy vegetable subgroup by volume and must be included in the weekly dietary specifications.

- ¼ cup canned, drained hominy, or cooked credits by volume as ¼ cup for starchy vegetable subgroup

Leafy Salad Greens

Raw and cooked greens credit differently toward the meal pattern requirements. Raw, leafy salad greens credit at half the volume served

For Example: A ½ cup serving of romaine lettuce contributes ¼ cup toward the Dark Green vegetable subgroup.

Cooked leafy greens, such as sautéed spinach, are credited by volume served. A ½ cup of cooked spinach credits ½ cup toward the Dark Green vegetable subgroup.

Iceberg lettuce is not considered a Dark Green vegetable, but a salad that consists of a variety of dark leafy greens (such as spinach or romaine lettuce) does count toward the Dark Green subgroup.

If the mixed salad contains different vegetable subgroups and the quantities of each subgroup are known, they can be credited toward each subgroup if the amount served is at least ⅛ cup.

If the quantities are not known, a mixed salad may count toward the Additional vegetable requirement.

Roasted Legumes

Roasted legumes such as chickpeas and edamame (immature soybeans) may be used for school meals. They are often served the same way nuts and seeds are used as a meat/meat alternate or a legume vegetable.

[NOTE: Peanuts may be used only as a meat/meat alternate component.]

[27] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*
[28] For additional information, see *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* located at *www.SquareMeals.org*.

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Starchy Vegetables as an Extra Food Item—Not Served As a Substitute for the Fruit Component

CEs may offer a Starchy vegetable as an Extra food item for a breakfast meal that is not a substitute for the breakfast fruit component under the following conditions:

- The Starchy vegetable Extra food item does not cause the weekly menu to exceed the weekly dietary specifications—calories, sodium, and saturated and trans fat.
- The Starchy vegetable Extra food item is not counted as a substitute for the fruit component serving for a reimbursable meal.
- For a reimbursable meal, the student must be offered 1 cup and must take at least ½ cup of a different fruit (or vegetable) that is menued to meet the fruit component requirement in addition to the Starchy vegetable Extra food item.
- Since the Starchy vegetable Extra item is not offered as a vegetable substitute for the fruit component, the CE is not required to offer non-Starchy vegetables first as described in the *Vegetable Substituting for Fruits* subsection in this section.

Fruit or Vegetable Juice

Juice is defined as follows:

> One hundred percent full-strength fruit (or vegetable juice) is an undiluted product obtained by extraction from sound[29] fruit. It may be fresh, canned, frozen, or reconstituted from concentrate and may be served in either liquid or frozen state. Diluted juice is no longer allowed.

Fruit and vegetable juice is creditable per meal over the course of the week. No more than one half (50%) of the weekly offering for the fruit component may be served as juice each week. This maximum includes 100% juice offered as an extra item beyond the point of service even if extra items offered beyond the point of service are *free*.

Liquid or frozen 100% juice is credited as the volume served.

For Example: One-half cup of apple juice will credit as ½ cup of juice.

Calculating the Weekly Juice Limit When Multiple Fruit/Vegetable Juices Are Offered

In most cases, the menu planner can total the amount of juice offered each day over a week and determine if the menu limits the amount of juice offered to ½ of the weekly fruit offered. However, if there are multiple breakfast options during the week that offer different amounts of juice, the CE should total the amount of juice available at all meals

[29] In this section, s*ound fruit* means a product made from 100% fruit.

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over the course of the week and then divide the total by total fruit (vegetable) offerings for the week.

Calculation of Weekly Juice Amount Chart

Total Fruit/Vegetable Juice Offerings* for the Week in Cups		Total Fruit/Vegetable Offerings* for the Week in Cups (Juice + Non-Juice)		Percentage Fruit/Vegetable Juice Offerings for the Week
7 cups (Fruit/Vegetable Juice)	÷	15 cups (7 Fruit/Vegetable Juice + 8 Non-Juice Fruit/Vegetables)	=	.46 x 100 = 46 %

* Based on fruit/vegetable juices that are creditable toward a reimbursable meal.

Creditable Juice

For juice to be creditable toward the fruit component, a minimum of ⅛ cup of juice must be taken. However, juice and fruit juice concentrate cannot be credited when used as an ingredient in another food or beverage product.

For Example: One-quarter (¼) cup of gelatin made with 1 tablespoon of juice concentrate and water does not contribute as ¼ cup of juice since the fruit juice is no longer in the form of liquid or frozen juice.

There are four ways juice can credit toward the fruit requirement:

Not from Concentrate

- 100 percent liquid juice not from concentrate
- 100 percent frozen juice not from concentrate

From Concentrate

- 100 percent juice reconstituted from concentrate
- 100 percent frozen juice reconstituted from concentrate

When a juice concentrate is used in its reconstituted form, it is considered a full-strength juice, as appropriate, and is credited accordingly.

Juice Concentrate

A juice concentrate may be used toward meeting the fruit component of the lunch. When a juice concentrate or a juice drink concentrate is used in its reconstituted form, it is considered a full-strength juice or a juice drink, as appropriate, and is credited accordingly.

Creditable Juice Blends

If the first ingredient in the 100 percent juice blend is fruit or fruit and vegetable blend is fruit or vegetable juice, then, the 100 percent juice blend may contribute to the fruit requirement.

100 Percent Vegetable Juice and Serving Starchy Vegetables

If the first ingredient is a vegetable juice, then the 100% blend may contribute as a vegetable substituting for the fruit component.

- Vegetable juice blends containing juice from any vegetable subgroup[30]—Dark Green, Red/Orange, Beans/Peas, or Other—credit as that vegetable subgroup.
- Vegetable juice blends containing vegetables from more than one

[30] See the *Weekly Menu Planning* subsection in this section for more information on serving Starchy vegetables.

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subgroup credit as the Additional vegetable subgroup.

For Example: A full-strength carrot/tomato vegetable juice blend may credit toward the Red/Orange vegetable subgroup.

A full-strength vegetable juice blend containing carrots, spinach, tomato, and watercress may only credit toward the Additional vegetable subgroup.

Creditable Blended Dish Items with Pureed Fruit or Vegetables

Fruit and vegetable puree crediting is based on the actual volume served. For many fruits and vegetables, the pureed form has a smaller volume than the whole fruit or vegetable pieces. There are two sources that provide information to assist CEs in determining the volume amount served for pureed items:

- *Food Buying Guide for Child Nutrition Programs*,[31] including the introduction that contains information about how to obtain in-house yield data.
- Manufacturer's product formulation statement

Creditable amounts of pureed fruit or vegetable food components in a blended dish item may contribute toward the meal pattern requirements as long as a creditable amount (⅛ cup) of a recognizable food component is in the dish. If the dish does not contain at least ⅛ cup of a recognizable food component, then, the blended food item does not contribute to the meal pattern requirements.

For Example: When a dish contains ⅛ cup of recognizable chopped blueberries and ⅛ cup of unrecognizable pureed apples, both the blueberries and apples may be credited toward the fruit component since there is at least ⅛ cup of a recognizable fruit component in the dish.

Non-Creditable Juice

The following uses of juice and juice concentrate cannot credit toward the fruit component:

- An ingredient in another food or beverage product
- Small amounts (less than ⅛ cup) of fruits or vegetables used for flavoring or as an optional ingredient for a garnish
- An ingredient added to a gelatin item
- A juice product with a label that says 100% juiced

Mixed Fruit and Vegetable Dishes

Menu items containing a mixture of fruit or vegetables are considered to be one serving of fruit or vegetables.

For Example: Fruit cocktail or mixed vegetables

However, vegetable combinations from the same subgroup (e.g., carrots and sweet potatoes are Red/Orange vegetables) may count toward that single vegetable subgroup. Vegetable combinations that contain at least ⅛ cup of each of different vegetable subgroups (e.g., carrots and corn) may credit each one toward the appropriate subgroup.

[31] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

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Salsas or Picante Sauce

Served in amounts ⅛ cup or greater, ingredients in salsas or picante sauces may be credited as a fruit and/or vegetable component as long as the product contains all fruit and/or vegetable ingredients plus minor amounts of spices or flavorings. For products that contain non-fruit or non-vegetable components, like gums, starches, or stabilizers, only that portion of the product that is a fruit and/or vegetable ingredient may be counted towards the ⅛ cup volume requirement. A manufacturer product formulation statement[32] should be used to determine the contribution of the fruit and/or vegetables toward the meal pattern requirement.

Snack Type Products

Reimbursable meals must not credit snack-type fruit products. Snack-type fruit products that are not creditable include the following:

- 100% fruit strips
- Fruit drops
- Other snack-type fruit or vegetable products

Common Problems: Fruits and Vegetables

Menu planners should be aware of the following problems commonly found in serving fruit and vegetables.

1. Food items that do not count toward contributing to the fruit component are mistakenly used and counted. This includes (1) pasta and rice, which actually contribute to the grains component, and (2) jam and gravy, which are considered Other foods and do not contribute to the breakfast meal pattern.

   Solution: When in doubt about what contribution a particular food item makes to the breakfast meal pattern, always consult the Food Buying Guide for Child Nutrition Programs.[33]

2. Juice drinks are mistakenly credited as full-strength fruit juice.

   Solution: Read the labels of all juice products used in the CE and determine the appropriate portion size and contribution to the breakfast meal pattern accordingly.

   [NOTE: Some frozen sweetened juice concentrates yield full-strength juice when diluted one to one. Read the label for directions. Juice drinks are not creditable; only 100% fruit juice is creditable under the breakfast meal pattern.]

3. Breaded or extruded fruit (or vegetable) items are served and credited before a determination of the contribution of the product to the breakfast meal pattern has been made, including breaded okra, onion rings, and squash. Extruded items include a variety of vegetables or fruits combined with other ingredients and are often breaded.

   Solution: Take the following actions:

   - Determine the contribution of breaded products by removing the breading of the cooked product and measuring the volume of fruit; document findings.
   - Determine the contribution of extruded products by obtaining a company product formulation statement before serving.

[32] For additional information, see *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* located at *www.SquareMeals.org*.

[33] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

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Grains Component of the Reimbursable Breakfast

Grains are a daily requirement in the SBP. At least 80% of grain offerings in SBP must be whole-grain rich products.

- To qualify as whole-grain rich, products must contain at least 50 percent whole grains and the remaining grain, if any, must be enriched.
- To qualify as an enriched grain, products must have been fortified with additional nutrients to replace the vitamins lost during the refining process or may be a fortified cereal.

CEs are encouraged to use a variety of products—hot and cold.

Minimum Grains Requirement

Under the meal pattern requirements, the CE must offer the minimum daily requirement for grains—1.0 oz eq each day of whole-grain rich—for a reimbursable breakfast for all age/grade groups (K to 12). However, to meet the weekly breakfast requirement for grains for all age/grade groups, the CE will need to offer more than the minimum daily on some days of the week.

The menu planner has the discretion to decide the amount of grains to offer each day as long as the minimum grain serving size requirement is met each day.

	Amount of Grains Per Week (Minimum Per Day)		
	Age/Grades K–5	**Age/Grades 6–8**	**Age/Grades 9–12**
Grains (oz eq) *	7.0–10.0 (1)	8.0–10.0 (1)	9.0–10.0 (1)
* All grains must be whole-grain rich.			

Recommended Maximum Grain Offerings

Currently, there is no maximum amount of grains to be served daily or weekly as long as the dietary specifications for calories, sodium, and saturated and trans fats are met for the week. The maximum is a recommended range to aid menu planners in staying within the dietary specifications for each age/grade group.

Whole-Grain Rich Foods

Quantities of grains in the meal patterns for the SBP is based on oz eq.

Whole-grain rich foods must meet (1) the serving size requirements for grains and (2) meet at least one of the following:

- Whole grains per serving must be ≥ 8 grams.
- The product must include the United States Food and Drug Administration's (FDA's) whole-grain health claim on its packaging.
- The product ingredient documentation lists *whole grain* first.
- If water is the first ingredient, a whole grain must be the second ingredient.

Whole grains consist of the entire cereal grain seed or kernel. The kernel has three parts:

1. Bran
2. Germ
3. Endosperm

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If the finished product retains the same relative proportions of bran, germ, and endosperm as the original grain, it is considered a whole grain.

Criteria for Whole-Grain Rich Foods for Breakfast

Foods that qualify as whole-grain rich products for the SBP are foods that contain 100 percent whole grain or contain a blend of whole-grain meal and/or flour and enriched meal and/or flour, of which at least 50 percent is whole grain and the remaining grain, if any, must be enriched.

Fifty Percent Guideline

The 50 percent guideline for whole-grain rich requires that if the food item is a grain-based product (bread, cereal, etc.), it must contain 50 percent or more whole grains by weight or have a whole grain listed as the first ingredient on the ingredient label.

If water is the first ingredient on the label, a whole grain must be the second ingredient. If the food item is a mixed dish product (e.g., lasagna, stir fry, etc.), a whole grain must be the primary grain ingredient by weight.

Adding Whole Grains to Menus

Menu planners should be creative when adding whole-grain foods to menus. The following items are examples of whole-grain rich products that can be incorporated into menus:

- Whole-grain rich bagels, breads, rolls, buns, or muffins
- Whole-grain rich ready-to-eat or cooked breakfast cereals
- Whole-grain rich cornbread
- Whole-grain rich pita pockets
- Whole-grain rich tortillas, or taco shells
- Whole-grain rich crackers
- Whole-grain rich pancakes or waffles
- Whole-grain rich granola or granola bars

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Determining Whole-Grain Rich Products

CEs can use the following elements as a simple checklist to determine if a grain product meets the whole-grain rich criteria:

Element 1	Element 2
The food item must meet the portion size requirements for grain component as defined in FNS guidance. See the ***Breakfast Meal Pattern Chart*** for detailed specifications on the requirements by age/grade group.	The food must meet at least one of the following criteria: a. The whole grains per serving must be ≥ 8 grams.[34] b. The products include the following Food and Drug Administration (FDA)-approved whole-grain health claim on its packaging: Diets rich in whole-grain foods and other plant foods and low in total fat, saturated fat, and cholesterol may reduce the risk of heart disease and some cancers. **or** Diets rich in whole-grain foods and other plant foods, and low in saturated fats and cholesterol, may help reduce the risk of heart disease. c. The product ingredient statement lists whole grains first, specifically as follows:[35] 1) Non-mixed dishes (e.g., breads, cereals): whole grains must be the primary ingredient by weight (a whole grain is the first ingredient in the list with the exception of water as the first ingredient for fully cooked grain and pasta items). 2) Mixed dishes (e.g., pizza, corn dogs): Whole grains must be the primary grain ingredient by weight (whole grain is the first grain ingredient in the list). Flour blends are listed in the ingredient list and grouped together with parentheses as in the following example. For Example: Flour blend (whole wheat flour, enriched flour), sugar, cinnamon, etc.

The menu planner will need to know whether the whole grain content is at least 8.0 grams per oz eq or that the weight of the whole grain is greater than the first ingredient listed after the flour blend, such as the sugar in Element 2.

[NOTE: While the Whole Grain Stamp that is applied to some products provides useful information, it does not indicate that the product meets the whole-grain rich requirement for the grains component.]

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[34] This may be determined from information provided on the product packaging or by the manufacturer, if available. Also, manufacturers may apply for a CN Label for qualifying products to indicate the numbers of grains serving that are whole-grain rich. For more information on CN Labeling, see *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* or the CN Labeling Program website at *www.fns.usda.gov/cnlabeling/child-nutrition-cn-labeling-program* for details regarding qualifying products.

[35] The product ingredient declaration is a practical way for CEs to identify whole-grain rich products because manufacturers are not required to provide information about the grams of whole grains in their products, and the FDA whole grain health claim is not mandatory. Detailed instructions for this method appear in the *Whole Grain Resource for the National School Lunch and School Breakfast Program*, which is available online at *www.fns.usda.gov/tn/whole-grain-resource.*

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Crediting Grains

The following whole grains are allowed:

Barley
- Whole barley
- Whole-grain barley
- Whole-barley flakes
- Whole-barley flour
- Whole-grain barley flour

Corn
- Whole corn
- Whole-corn flour
- Whole-corn masa
- Whole-grain corn flour
- Whole-grain corn harina
- Whole-grain corn masa
- Whole-grain cornmeal
- Whole cornmeal

Oats
- Whole oats
- Oat groats
- Oatmeal or rolled oats
- Whole-oat flour

Rice
- Brown rice
- Brown rice flour

Rye
- Whole rye
- Rye berries
- Whole-rye flour
- Whole-rye flakes

Wheat
- Wheat berries
- Whole-grain wheat
- Cracked wheat
- Whole-wheat flour
- Graham flour
- Whole durum flour
- Sprouted wheat
- Bulgur
- White whole-wheat flour

Wild Rice
- Wild rice
- Wild rice flour

Cereal Grains

Grain products, such as enriched corn grits and enriched rice, that do not include whole grains are not creditable as a single ingredient.

Grain products that are at least 50% whole grain blended with not more than 50% enriched or fortified grain will continue to be creditable.

For Example: A quarter (¼) cup cooked brown rice blended with ¼ cup cooked enriched rice is 1.0 oz eq grain that meets the whole grain-rich criteria for Grades K-8.

If a 100% whole grain cereal is offered, it does not have to be fortified.

Corn Masa, Corn Flour, and Cornmeal Products

When served as a grain component, corn masa, corn flour, corn harina, and cornmeal products labeled as whole grains are credited by weight for these products as described in *Exhibit A: Grain Requirement for Child Nutrition Programs*.[36]

Corn Flour or Corn Meal—Nixtamalized or Treated with Lime

Corn flour or corn meal that has been nixtamalized or treated with lime may be credited toward the grain component by weight as described in *Exhibit A: Grain Requirement for Child Nutrition Programs*[37] or by grams of creditable grain per portion. The following statement on the packaging of nixtamalized corn products or corn treated with lime indicates that the product is a least 50% whole grain:

- Diets rich in whole-grain foods and other plant foods and low in total fat,

[36] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*
[37] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

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saturated fat and cholesterol may reduce the risk of heart disease and some cancers.

or

– Diets rich in whole-grain foods and other plant foods, and low in saturated fat and cholesterol may help reduce the risk of heart disease.

In any corn-flour or corn-meal product that has been nixtamalized or treated with lime that is labeled as enriched or includes nutrients sub-listed after the corn ingredient in the ingredient statement, the corn ingredient can only contribute as an enriched grain. If used, these products must be used in a grain product where at least 50% of the grain product is whole-grain rich.

For Example: The ingredient statement says yellow corn flour (folic acid, riboflavin, niacin, and thiamine). The nutrients sub-listed after yellow corn flour indicate that this grain product is enriched, not whole grain.

Formulated Grain-Fruit Product

A formulated grain-fruit product may be credited toward the grains component for SBP. However, the menu planner will need to make sure that the product does not cause the week's menu to exceed the weekly calorie total and that these products have a statement on the label saying they meet a grain and fruit serving. These products cannot credit toward the fruit component.

Grains and Combination Food Items

Every reimbursable meal offered must meet the minimum daily requirement for all components, including combination food items. If a combination food is offered and the menu planner intends for the combination item to count toward the grain component, the CE must ensure that the grain food item contains enough grains to meet the minimum daily requirement.

For Example: A breakfast taco that contains adequate grains (including meat/meat alternates credited toward the grains component) to meet the minimum daily requirement as well as ⅛ serving of tomatoes.

Hominy, Corn Masa, Masa Harina, Corn Flour, Nixtamalized Corn Flour or Nixtamalized Corn Meal—Non-Whole Grain or Non-Enriched Grain

Hominy, corn masa, masa harina, corn flour, nixtamalized corn flour, or nixtamalized corn meal that is not labeled as a whole grain product is not creditable toward the grains component.

Hominy, Corn Masa, or Masa Harina—Enriched

Hominy, corn masa, or masa harina products labeled as enriched grains are only creditable toward the grain component as enriched grains. If used, these products must be used in a grain product where at least 50% of the grain product is whole-grain rich.

Hominy, Dried or Milled—Whole Grain

When hominy is offered in a dried, milled form, such as grits, the food item credits by weight toward the grain component as whole-grain rich food.

– ½ cup of cooked or 1 ounce (28 grams) dry hominy grits credits by weight as 1 ounce equivalent grains (oz eq)

Grits

Products labeled as grits which do not indicate that the product is made of whole grain hominy or corn are not creditable toward the grains component.

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Less Than Two Percent of Product, Non-Creditable Grain Ingredients

Non-creditable grain ingredients in products, at very low levels, used as processing aids are allowable at levels of less than two percent but do not credit toward a reimbursable meal.

Non-Credited Extra Grain Food Items

Any whole-grain, enriched grain, or fortified cereal served as an extra food item for a reimbursable meal in amounts greater than 0.25 oz eq must be counted toward the total amount of grains served based on the grain type.

For Example: If an extra food item is served that is 1.0 oz eq of enriched grain, the 1.0 oz eq must be counted in the weekly total of enriched grains offered.

Non-Creditable Grains Products

Snack-type foods, such as non-whole-grain rich/non-enriched chips or potato chips, do not qualify as grains and may not be credited toward meeting the grains requirement in meals served in the SBP. The following grains products are also not creditable:

- Products made from processed grains that are not whole-grain rich or enriched or fortified cereal

Popcorn

Popcorn (popped popcorn) is creditable as a food component by weight or may be served as competitive food as long as the CE has adequate documentation to demonstrate compliance with applicable requirements. USDA has updated the FBG to include popcorn.

[NOTE: Because of the choking hazard, popcorn is not recommended for young children.]

When served as a food component, the food item must be included in the weekly dietary specifications.

- 0.25 ounces (¾ cup or 7 grams) of popcorn credits as 0.25 oz eq of whole grains.
- 0.5 ounces (1½ cups or 14 grams) of popcorn credits as 0.5 oz eq of whole grains.
- 1.0 ounces (3 cups or 28 grams) of popcorn credits as 1.0 oz eq of whole grains.

Ready to Eat Breakfast Cereal

A ready-to-eat (RTE) breakfast cereal must list a *whole grain* as the primary ingredient. If the grain product includes enriched ingredients, or the product itself is enriched, the ingredients or the grain product must meet the FDA's standard of identity for enrichment.[38] One hundred percent whole grain cereals do not need to be fortified. Bran and germ are not creditable as an enriched ingredient in NSLP. Non-creditable grain ingredients in products at very low levels used as processing aids are allowable at levels less than two percent.

Serving Non-Whole-Grain Rich and Non-Enriched Grains

If a CE offers grains that do not meet the whole-grain rich or enriched specifications, the CE may count the grains as an Extra food item. Extra food items must be counted toward the weekly dietary specifications but are not creditable toward the grains component for a reimbursable meal.

[38] See 21 CFR 137 for additional information on this topic.

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Stone-Ground Corn or Degermed Corn

Products labeled as stone-ground corn or degermed corn are not creditable toward the grains component.

Woman, Infant, and Children (WIC)-Approved Whole Grain List

Items designated as WIC-approved credit toward whole-grain rich even if the product has non-creditable grain ingredients anywhere in the ingredient statement.

Determining Daily Grain Contribution

To determine the daily and weekly required minimum and the recommended maximum grain offerings for a planned menu, the menu planner must identify the menu item(s) with the smallest grain contribution for the day and the menu item(s) with the largest grain contribution for the day. Then, do the following:

1. Minimum Offering—Sum the smallest daily contributions for the week
   (Multiply the smallest daily amount times the number of days in that week)
2. Maximum Recommended Offering—Sum the largest daily contributions for the week
   (Multiply the largest weekly amount times the number of days in that week)

The daily and weekly minimums must be within the age/grade group guidelines for which the specific menu was planned. The daily and weekly maximums will help the CE to serve healthy meals and meet the weekly dietary specifications.

Food Buying Guide for Child Nutrition Programs

CEs should refer to the *Food Buying Guide for Child Nutrition Programs, Appendix E, Exhibit A*[39] for an updated list of whole-grain rich equivalent requirements for school nutrition programs. When any cereal grain is used as an ingredient in a grain product, use the serving size given for the appropriate grain group.

For Example: A serving of oatmeal cereal should weigh 29 grams (*Food Buying Guide for Child Nutrition Programs, Appendix E, Exhibit A: Grain Requirements for Child Nutrition Programs*[40]).

Criteria for Determining Ounce Equivalent Serving Sizes

All grains offered in amounts of 0.25 oz eq—the minimum creditable amount—or greater must be included in the calculation of daily and weekly grain offerings, as well as in the dietary specifications (calories, sodium, and saturated and trans fat).

The criteria to credit various grain products on the oz eq standards are as follows:

- Baked goods, such as bread, biscuits, bagels, etc., require 16 grams of creditable grain ingredients in order to provide 1.0 oz eq credit.
- For cereal grains, such as oatmeal, pasta, and brown rice, a 1.0 oz eq is 28 grams (approximately 1.0 oz by weight) of dry product. Since these grains are served cooked and water is added in preparation, the cooked volume equivalent is ½ cup cooked cereal, pasta or rice.

[39] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*
[40] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

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- For ready-to-eat (RTE) breakfast cereal, 28 grams or 1.0 oz of product is considered an oz eq. The oz eq volumes are 1 cup flakes or rounds, 1¼ cups puffed cereal, and ¼ cup granola.

Weekly Grains Minimum Requirement and Maximum Recommendation

All grains offered in the amount of 0.25 oz eq or more must be counted toward meeting these minimum requirements and maximum recommendations using the oz eq. The meal pattern provides the minimum required and maximum recommended number of oz eq for total weekly grains servings by age/grade group.

Breaded Products

All grains offered that are part of battered and/or breaded products in the amount of 0.25 or more must be counted towards the weekly grains requirement. All grains incorporated into battered and breaded products that are less than 0.25 oz eq are considered extra food and do not count toward meeting the grains requirement even if whole-grain rich. All breaded products must be included in the weekly dietary specifications.

Fully Cooked Grains, Water As First Ingredient

Fully cooked grain items with nutrition labels that have *water* as the first ingredient, followed by a whole grain are considered whole-grain rich.

Documentation for Crediting Grains

CEs have the flexibility to use a wide range of products in planning meals that meet the breakfast meal pattern and nutrition specifications. CEs are strongly encouraged to offer food items that are low in added sugars, sodium, and saturated fat in order to meet the meal pattern requirements and nutrition specifications and to provide foods that are consistent with the *Dietary Guidelines for Americans*.

CEs should use updated *Food Buying Guide for Child Nutrition Programs (FBG)*[41] to assist them in determining the grain contribution in a recipe. If this information is not listed, the *FBG* also provides a formula for making this calculation. CEs may also use a product formulation statement to help with this determination.

A measurement of 0.25 oz eq is the smallest amount allowable to be credited toward the quantity of grains. The minimum daily requirement for grains can be met by offering multiple food items.

For Example: A combination of 0.5 oz eq of one grain item and 0.5 oz eq of another grain item

Grains products that have ingredient labels with the words *whole wheat* or *entire wheat* before the product type (i.e., whole-wheat bread) are 100 percent whole-grain products that are creditable. The oz eq for grains may be determined by using either the weights or volumes listed in the *Food Buying Guide for Child Nutrition Programs*.[42] Or, the CE may request documentation from a manufacturer certifying the grams of creditable grains per portion for determining the oz eq from a given product.

The crediting of a food item as oz eq grains is determined by

Total Grams of Creditable Grains in the Food Product	÷	16.0	=	Number of Ounce Equivalents in Food Product

If calculating the total grams of creditable grains for a product or recipe and the total grams of creditable grains is not reported by serving portion size, divide by the total number of serving

[37] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*
[42] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

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portions in the product or recipe.

Reminders Regarding Grains

1. Do not include grain food items offered at lunch as contributing to the required number of servings of grains per week required by the breakfast meal patterns.
2. The grain requirement is determined on a weekly basis. At least 50 percent of the grains offered for the week must be whole-grain rich. Any grain offered that is not whole-grain rich or enriched is not creditable. If offered, the non-whole-grain rich or non-enriched grain product must be counted as an Extra item and must be included in the weekly dietary specifications.
3. When a choice of two different menu items is offered, CEs should credit for the smaller-sized grain offering for the day when determining the minimum amount of grain offered each day and for the weekly total.

   For Example: In the following example, the menu planner should count the day's minimum grain offering as 1 grain and the maximum offering as 2 grains.

Pancake Bar	Sausage on English Muffin
2 pancakes = 1 grain	1 muffin = 2 grains

Grains Product Labeling

Manufacturers producing qualifying products (meat/meat alternate entrées containing grains) may apply for a Child Nutrition (CN) Label[43] to indicate the number of oz eq grains that meet the whole-grain rich criteria. The term *oz eq grains* on the CN Label indicates that the product meets the whole-grain rich criteria.[44]

For Example: The label may say that the grain provides X.X servings of whole grain-rich (or WGR) grains for Child Nutrition Programs.

Common Problems: Grains

1. Purchased-prepared (or partially prepared) grain items are served and credited as contributing to the breakfast meal pattern before it has been determined whether the items are whole-grain rich. Examples of purchased-prepared grain items include frozen pancakes and waffles, refrigerated rolls, tortillas and tortilla pieces, dry biscuit, and muffin mixes.

   Solution: Secure an ingredient statement from the individual product wrapper, bulk packing container, or manufacturer demonstrating that a serving contains at least 50 percent whole grain.

2. A smaller-sized portion of the menu item being credited daily as a grain is served in the lower grades thus reducing the serving size to less than one full serving, including oatmeal, wheat cereal, and toaster pastries, pizza, and granola chips.

   Solution: When reducing the portion size of a grain menu item to less than a full-sized serving for students in the lower grades, be certain that the item is not the sole source of grains in the daily menu. Less than a full-sized serving of grains may be counted toward the weekly grains requirement, but the minimum daily requirement for K-8 is one full serving of grains.

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[43] If a manufacturer does not have a CN Label for a product, a CE may request a product formulation statement. See *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* for additional information on product formulation statements.

[44] See the *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* for additional information or the CN Labeling Program website at *www.fns.usda.gov/cns/cnlabeling* for details regarding qualifying products.

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Meat/Meat Alternate Component Substituting for the Grains Component of the Reimbursable Breakfast

Offering meat/meat alternates (M/MA) as part of the breakfast menu is optional. If M/MAs are offered, CEs should use a variety of meat/meat alternates, such as eggs, ground beef, turkey, ham, cheese, nuts and seeds or nut and seed butters, yogurt, dried peas and beans, fish or poultry, or alternate egg dishes with other main dishes.

For Example: The following suggestions illustrate ways to offer a variety of meat/meat alternate food items:

- Use low-fat ingredients to prepare combination dishes, such as an egg-cheese casserole, breakfast burritos, breakfast sandwiches, and breakfast pizza.
- Mix nuts and seeds with dried fruits to serve as is or as a topping for hot cereal.
- Blend nuts and seeds into pancake and waffle batters.

For additional information on the range of possible meat/meat alternates, see the *Meat/Meat Alternates Component of the Reimbursable Meal* in *Administrator's Reference Manual (ARM), Section 8, Lunch Program*.

Under the meal pattern requirements, after CEs first meet the minimum daily grains requirement of a 1.0 oz eq serving, CEs may offer a meat/meat alternate as a substitution for the grains component at breakfast. If offered in this circumstance, the meat/meat alternates will count toward the weekly grains minimum as grains.

[NOTE: When a menu planner counts meat/meat alternates as a substitute for grains, the menu planner must not count the ounces of meat/meat alternates when determining if all of the grains served are whole-grain rich.

For Example: The menu planner offers 6.0 oz eq grains and 3.0 oz eq meat/meat alternates to meet the minimum requirement of 9.0 oz eq grains for grades 9-12. In this case, the menu planner must make sure that 3.0 oz eq of the 6.0 oz eq grains are whole-grain rich.]

A meat/meat alternate serving may also be counted as an additional food that does not count toward any component. If a meat/meat alternate is offered at breakfast as an additional food, the food item must fit within the weekly dietary specifications (calories, saturated and trans fats, and sodium).

Whenever possible, CEs should use items that have lower fat content.

For Example: The following suggestions illustrate ways to offer food items that have lower fat content:

- Serve lower fat meat/meat alternates, such as fresh or frozen lean meat, poultry, yogurt, or cooked dry beans, tofu[45] and soy yogurt instead of processed meats.
- Use cheese made from skim milk.
- Mix low-fat cottage cheese with dried fruits to use as a spread for bread in place of cream cheese or butter.

Purchased Prepared Menu Items

Purchased prepared menu items are used to contribute to the meat/meat alternate component of the breakfast and should be supported by a child nutrition (CN) label, product analysis sheet, or company product formulation statement.

[45] To be credited, tofu must contain at least 18 percent protein by weight when fully hydrated or formulated. For example, 2.2 oz (¼ cup) of commercially-prepared tofu, containing at least five grams of protein, is creditable as 1.0 oz eq meat/meat alternate.

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Steps before Purchasing Any Meat, Poultry, Fish, or Tofu Product

CEs should follow the steps below before purchasing any meat, poultry, fish, or tofu product:

- Request a sample of the product and the product label and be certain that the product purchased with the same label is received.
- Check to see if the label has percentage ingredient listing and request percent labeling on products purchased to know the product's ingredients that contribute to the meal pattern if necessary.
- Check to see if the fat content, both total fat and saturated fat, of the item is listed on the label.
- Check to see if the amount of trans fat is listed on the label.
- Check to see if the sodium content is listed on the label.
- Weigh the actual product to see if the net weight is correct.
- Check to see if the USDA statement verifying the use of the alternate protein product) in the SBP is printed on the label (if the product contains alternate protein product). This statement is not required to appear on meat, poultry, or fish labels but often does.

Information Box 2

Additional Information on Meat Products

Meat and Poultry Inspection in Texas

The Texas Department of State Health Services (DSHS), Division for Regulatory Services, Meat Safety Assurance Unit, is responsible for administering the meat and poultry inspection program in Texas. All State of Texas meat and poultry plant labels are reviewed by the Labels and Standards Program to assure they are truthful and accurate at the time of approval. For additional information, contact DSHS.

Meat Safety Assurance Unit, MC 1872
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

Telephone: (512) 834-6760
TDD: 1-800-735-2989
Fax: (512) 834-6763

Standards for Meat and Poultry Products

USDA standards for meat and poultry products set legal requirements for content, preparation, and labeling before being manufactured and sold in commerce. Standards of identity set specific (and optional) ingredients a food must contain—such as the kind and amount of meat, percent of fat or moisture and additives, if any—when a product is to be labeled or identified by a common product name. See USDA FNS website (*www.fns.usda.gov/fdd/specifications-us-grade-standards*) for more information on the standards for meat and poultry products.

Common Problems:
Meat/Meat Alternates Served as a Substitute for the Grains Component

1. Meat products with an unknown meat and fat content are being purchased and served as a reimbursable component of breakfast.

   Solution:

   - Secure a CN label or manufacturer product formulation statement before purchasing the menu item.
   - Monitor deliveries to ensure that the products used are those ordered and documented.
   - Use the USDA Standards for Meat and Poultry Products to determine the content

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of certain products.[46]

2. The recipe does not include a sufficient amount of meat/meat alternates to yield the predicted number of servings.

   Solution: Check all CE recipes against the *Food Buying Guide for Child Nutrition Programs*.

3. The menu item is served with the wrong-sized utensils, thus changing the contribution of the menu item to the meat/meat alternate component.

   Solution: (1) List serving size or proper utensil to be used on production record as well as recipe card. (2) Monitor meal service and production records for unexpected leftovers or shortages.

4. Cooked dry beans or peas (legumes) are used as meat alternate and a vegetable in the same meal.

   Solution: When using cooked dry beans or peas (legumes) as the meat/meat alternate in a menu item, such as chalupas, remember to plan Other vegetables in sufficient amounts.

Milk Component of the Reimbursable Breakfast

Unflavored or flavored fat-free and low-fat (1%) milk may be offered as part of the reimbursable meal for children in grades K to 12. If a site serves a flavored milk choice, the site must also serve an unflavored milk choice at the meal service.

All milk served must be fluid types of milk that are pasteurized and meet state and local standards for milk. The milk shall contain vitamins A and D at levels specified by the FDA and consistent with state and local standards. To meet the nutrition standards, it is recommended that fluid milk with the lowest fat and sugar content be offered.

No matter the type of meal service used,[47] every reimbursable meal must include a choice of milk.

Lactose-Free Milk

CEs may serve lactose free milk as long as it meets the following criteria:

1. Is unflavored or flavored one percent low fat or fat-free milk
2. Meets the nutritional requirements.

Organic

CEs may offer all students milk labeled as organic milk or offer milk produced from cows not treated with hormones. However, CEs are not required to honor a request to substitute a type of milk or offer organic milk or offer milk with a label indicating it was produced from cows not treated with hormones.

Requirement to Take Milk

If the site does not use OVS, a reimbursable meal must include milk or an acceptable milk substitute, except for a child with a disability.[48] Under OVS, a meal without fluid milk is reimbursable.

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[46] See the USDA Agricultural and Marketing Services website (*www.fns.usda.gov/fdd/specifications-us-grade-standards)* as well as information on select Grading, Certification, and Verification for additional information on this topic.

[47] See *Administrator's Reference Manual (ARM), Section 21, Meal Service* for more information on types of meal service.

[48] See the *Milk and Children with Disabilities or Other Dietary Issues* subsection in this section for additional information.

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CEs must not promote other beverages, including water, as an alternative to fluid milk in the service line. Water should be offered after the student has the option to select milk, and signage should be clear that water is not a meal component.

Guidance for Offering Milk and Other Beverages

The CE must adhere to the following guidance in offering milk and other beverages:

- The CE may not

  offer juice for free to students who refuse milk while charging an a la carte price for juice to other students who select milk as part of a reimbursable meal.

- The CE may

  offer milk as a component of the reimbursable meal and charge all students selecting juice an a la carte price for their juice.

  or

  provide all students with milk and a second beverage at no extra charge.

If CEs choose to offer one of these two options, CEs must make sure that students understand these options by publicizing information about the option/s.

- The CE may not offer students a choice among milk, tea (high school only),[49] and a fruit-flavored drink for a reimbursable meal.
- Any fluid milk and/or beverage that is served as part of the reimbursable meal must be included in the nutrient assessment for the meal—calories, sodium, and saturated and trans fat.
- Additional or extra beverages—100 percent juice, water, iced tea, etc.—may be offered after the POS, but these beverages must be included in the dietary specifications for the week. Any 100 percent juice offered after the POS must count toward the weekly juice limit.
- Additional or extra beverages, including water, must be placed in such a way that they do not discourage students from taking milk.

Fluid Milk Substitutes

A CE has the option to offer a nondairy milk substitute of its choice to a student with a non-medical or a special dietary need that is not a disability. [50] If a CE chooses to offer a nondairy milk substitute for students who do not have a medical disability, it must make that substitute available to all students.

Non-dairy beverages (milk substitutes) must be nutritionally equal to milk and meet the nutritional standards for fortification of calcium, protein, Vitamin A, Vitamin D, and other nutrients to levels found in cow's milk, as outlined Food and Drug Administration (FDA)

[49] See the *Administrator's Reference Manual (ARM), Section 22, Competitive Foods* for additional information on this topic.

[50] See *Administrator's Reference Manual (ARM), Section 25, Meal Accommodations* for more information on parent requests for milk substitutes.

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regulations. If CEs offer a milk substitute, they must notify TDA about the milk substitute product.[51]

Milk Substitute Specifications

If CEs choose to offer a milk substitute, they are not required to offer a choice of acceptable milk substitutes. However, any nondairy beverage offered as a milk substitute must be nutritionally equivalent to fluid milk. See the *Milk Substitute Nutritional Profile Chart* for specific nutritional information for milk substitutes.

Milk Substitute Nutritional Profile Chart
(mg=milligram; g=gram; mcg=micrograms)

Nutrient	Minimum Amount Per 1 Cup Serving as Reported on Product Documentation
Calcium	≥ 276 mg
Protein	≥ 8 g
Vitamin A	≥ 150 mcg
Vitamin D	≥ 2.5 mcg
Magnesium	≥ 24 mg
Phosphorus	≥ 222 mg
Potassium	≥ 349 mg
Riboflavin	≥ 0.44 mg
Vitamin B-12	≥ 1.1 mcg

The fat content of fluid milk substitutions, such as soy milk are not subject to the regulations regarding fat content that apply to regular fluid milk. Therefore, fluid milk substitutions can have a higher fat content than fat-free or 1% milk.

A manufacturer's signed statement may be used to provide nutrient information for milk substitutes.

TDA has developed the *Fluid Milk Substitute Worksheet*[52] for CEs to use to notify TDA that the CE is using a milk substitute that contains the required nutritional values. However, if the CE offers lactose-free milk as a creditable component of a reimbursable meal, the CE is not required to submit notification to TDA.

Special Guidance, Milk Substitutes

CEs must use the following guidance when using a milk substitute.

Lactose-Reduced Milk

If a student requires lactose-reduced milk, the SNP may provide lactose-reduced/lactose-free milk as a creditable part of a reimbursable meal without additional documentation.

Milk and Children with Disabilities or Other Dietary Issues

For a child with a recognized disability, the meal may consist of fewer than 5 components. The child may be served as an alternate beverage if so prescribed by a licensed physician.[53] If the CE does not offer an acceptable milk substitute for children without disabilities, the child has to take the fluid milk for the meal to be reimbursable if the CE does not use OVS.

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[51] See the Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition box located after the table of contents for this section.
[52] Available at *www.SquareMeals.org*.
[53] See *Administrator's Reference Manual (ARM), Section 25, Meal Accommodations*, located at *www.SquareMeals.org* for additional information regarding disabilities and milk substitutions for other reasons.

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Nutrient Analysis of Milk Substitutes

Milk substitutes offered as part of the reimbursable meal must be included in the weighted nutrient analysis and, therefore, are subject to the overall weekly average fat limit and calorie ranges of the meal pattern.

Recombined/Reconstituted Milk Dispensed from a Machine

CEs may serve recombined/reconstituted milk dispensed from a machine to meet the milk component requirement for lunch as long as the following criteria are met. The recombined or reconstituted milk (1) is combined with water so that it meets the requirements to be a *recombined milk* or *reconstituted milk*, (2) meets the nutritional requirements for fluid milk, and (3) meets the local and state standards for pasteurized fluid milk.

Water

Water is not an acceptable substitute for fluid milk. Only a nondairy beverage meeting the nutrient standards can be substituted for fluid milk.[54]

Smoothies

At breakfast, the following ingredients may count toward meeting the food component requirements:

Crediting Smoothie Ingredients Chart		
Ingredient	**Minimum Crediting Amount**	**Component**
Pureed Fruit or 100% Fruit Juice (and/or Pureed Vegetables or 100% Vegetable Juice)	⅛ cup	Fruit Component, counted as juice
One Percent Unflavored or Fat-Free Flavored or Unflavored Fluid Milk	¼ cup	Milk Component
Dairy or Soy Yogurt	1 oz as .25 oz eq (about ¼ cup)	Grains Component (Meat/Meat Alternate Contributing to Grains Component)
All smoothie ingredients count toward the weekly dietary specifications.		

CEs must identify the components the smoothie contains on the serving line.

USDA recommends that CEs serve smoothies for only one meal per day. Menu planners also need to remember that smoothies count toward weekly juice, calorie, sodium, and fat totals. TDA encourages program operators to offer additional food components on the serving line when smoothies are offered.

The requirements for smoothies prepared by program operators and those prepared by commercial companies are the same.

Components Allowed in Smoothies

Smoothies made by program operators or commercially prepared smoothies may count toward the required fruit/vegetable, grains (meat/meat alternate credited as grains), or milk components. All ingredients in a program operator prepared smoothie count toward the weekly limits on juice calories, fat, and sodium. These smoothies may be prepared ahead of time or at the time of service.

[54] See *Administrator's Reference Manual (ARM), Section 25, Meal Accommodations* for additional information on this topic.

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Fruit and vegetables included in a smoothie may be fresh, frozen, canned, pureed, or juice.

- **Fruit and/or Vegetable Component.** To credit toward the fruit and/or vegetable component, the smoothie must contain the minimum creditable amount of ⅛ cup of (1) fresh, frozen, or canned fruits or vegetables from any subgroup or (2) be 100% fruit or vegetable juice, and/or a 100% juice blend of the fruit or vegetables;
  - Credited amounts of fruit/vegetable in a smoothie count as a juice serving. Juice offerings in smoothies are added to the weekly total of juice offered.
  - Pureed fruit/vegetables are measured by volume served amount.[55]
  - Blended vegetable puree or 100% juice made of vegetables from a single subgroup count toward the weekly offerings of that subgroup.
  - Blended vegetable puree or 100% juice made of vegetables from more than one subgroup count toward the weekly offering of the Additional vegetable subgroup.
  - Blended vegetable and fruit puree or 100% juice count as a fruit if fruit is the most predominant ingredient; as vegetables if vegetables are the most predominant ingredient. In this case, the vegetable juice may be counted toward the weekly offering of the Additional vegetable subgroup.
  - Dried beans or peas may credit as a fruit/vegetable juice in smoothies.
- **Milk Component.** To credit as a milk component, the smoothie must be made of 1 percent unflavored (not powdered) milk or fat-free unflavored or flavored fluid (not powered) milk.
  - Smoothies do not have to contain the full 1 cup serving (8.0 fl oz) of milk. The minimum creditable amount of milk is ¼ cup.
  - Even if the smoothie contains 1 cup serving (8.0 fl oz) of milk, the CE must still offer a full serving (1 cup) of two allowable types of milk on the serving line.
- **Meat/Meat Alternate Serving Counted as the Grains Component.** To credit yogurt as a meat/meat alternate serving contributing to the grains component, the smoothie must contain the minimum creditable amount of yogurt—1 oz of yogurt credits as .25 oz eq of meat/meat alternate.
  - Soy or dairy yogurt may be credited.

Guidance about Smoothie Content and Crediting

All smoothies must be served under the following guidance:

[55] There are two sources that provide information to assist CEs in determining the volume amount served for pureed items: *Food Buying Guide for School Nutrition Programs*, including the introduction that contains information about how to obtain in-house yield data, and a manufacturer's product formulation statement.

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- **Amount of Pureed Fruit or Vegetable.** Crediting pureed fruit or vegetables in a smoothie is determined by volume. Volume for pureed fruit or vegetables in a smoothie is based on the pureed amount of the ingredient. If the pureed ingredient is not listed in the *Food Buying Guide for Child Nutrition Programs*,[56] the program operator should determine the crediting amount based on the volume after pureeing the fruit or vegetable.

- **Concentrated Fruit Puree.** Smoothies with concentrated fruit puree can only be used in meeting the meal pattern requirements when they are reconstituted to the full-strength fruit puree. Without being reconstituted to the original strength, concentrated fruit puree is considered to be added sugar and cannot be credited toward the fruit/vegetable component.

- **Dietary and Herbal Supplements.** Smoothies with dietary and herbal supplements are not credible. However, smoothies made with juice that has been fortified with vitamins and minerals such as orange juice with calcium and Vitamin D added may credit.

- **Juice in Smoothies.** Juice in smoothies may be fortified with vitamins and minerals.

  For Example: Orange juice fortified with calcium and Vitamin D.

  Because smoothies contain juice as well as other ingredients, smoothies with less than 100 percent juice content are the only example of when less than 100% juice may be offered and credited as a fruit or vegetable component.

  For Example: An 8.0 oz smoothie beverage made from peach puree with the juice content labeled as "contains 50% juice" would credit as 4 fl oz or ½ cup of juice as long as the 4.0 fl oz or ½ cup of juice is 100% juice.

- **Offering Fluid Milk.** The milk in a smoothie must not be offered in place of a serving of fluid milk. Even if the smoothie contains a full cup of milk, the CE must still offer the milk component as a separate item on the serving line.

- **Other Items in Smoothies.** Grain items such as oatmeal or meat/meat alternates such as peanut butter do not contribute to the meal pattern requirements. However, all ingredients in smoothies must be counted toward the weekly limits on juice, calories, fat, and sodium.

Common Problems: Milk

1. Milk is placed on the tray of students in lower grades, thus not allowing them to make a choice.

   Solution: Allow each student to select his/her own milk.

2. Milk is offered as a choice against another beverage.

   Solution: There is no substitute for milk; therefore, it can never be offered as a choice against another food or beverage.[57]

[56] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

[57] See *Administrator's Reference Manual (ARM), Section 25, Meal Accommodations*, located at *www.SquareMeals.org* for additional information regarding disabilities and milk substitute.

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3. The CE is temporarily unable to obtain a supply of milk.

   Solution: If emergency conditions temporarily prevent a CE from having milk available, TDA may approve the service of breakfasts during the emergency period without milk. Contact TDA as soon as possible prior to the meal service.

Traditional Foods

CEs that primarily serve Indian populations are allowed to accept the donation of traditional foods and serve traditional foods[58] as part of the school nutrition program. Traditional foods are defined as food that has traditionally been prepared and consumed by an Indian tribe which includes the following types of food:

- Wild game meat
- Fish
- Seafood
- Marine mammals
- Plants
- Berries

To make use of these products, the CE must make sure the following requirements are met:

- Ensure that the food received is whole, gutted, gilled, as quarters, or as a roast, without further processing.
- Make a reasonable determination that
  - the animal was not diseased;
  - the food was appropriately butchered, dressed, transported, and stored to prevent contamination, undesirable microbial growth, or deterioration; and
  - the food will not cause a significant health hazard or potential for human illness.
- Carry out any further preparation or processing of the food at a different time or in a different space from the preparation or processing of other food for the applicable program to prevent cross-contamination.
- Clean and sanitize food-contact surfaces of equipment and utensils after processing the traditional food.
- Label donated traditional food with the name of the food item.
- Store the traditional food separately from other food for the program, including through storage in a separate freezer or refrigerator or in a separate compartment or shelf in the freezer or refrigerator.
- Follow Federal, State, local, county, Tribal, or other non-Federal law regarding the safe preparation and service of food in public or nonprofit facilities.
- Follow other such criteria as established by the Secretary of Agriculture and Commissioner of the U.S. Food and Drug Administration.

[58] The *Food Buying Guide for School Nutrition Programs* will be updated to allow the use of donated traditional foods in school nutrition programs that primarily serve Indian populations.

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Menu Substitutions

A substitution is made or required whenever a planned food item is not available to be served for any reason. When a substitution must be made, the new food item must (1) be within the same food component group and vegetable subgroup, if applicable, as the original item and (2) match the daily and weekly contribution of the item that is replaced. CEs are required to document menu substitutions.[59]

For the purposes of meeting the meal pattern requirements, a similar food item will mean that at the site level, the substitution is from the same food component group and provides the same component contribution for the subgroup requirement and/or provides an equivalent meal contribution.

For Example: Menu Substitution Examples

Example 1: The September 14 menu calls for orange wedges. The supplier informs the CE that they have no oranges to ship to the CE. The menu planner decides to substitute apple wedges for that day's menu.

Is this an appropriate substitution?—Yes, since both apples and oranges can be menued to meet the fruit component requirement.

Example 2: The October 16 menu calls for orange wedges. The supplier informs the CE that they have no oranges to ship to the CE. The menu planner decides to substitute an additional pancake in order to offer four items—milk, toast, sausage, and pancakes.

Is this an appropriate substitution?—No, since the pancakes cannot be substituted to meet the fruit component requirement, and there is no other fruit component on the menu if a fruit item is not offered.

Substitution, Emergency Situation

When food substitutions are made because of an emergency situation (i.e., food shortage), it is important that the meal pattern component requirements are maintained. A menu substitution should be the same component category and same subgroup if a vegetable.

Reimbursable Breakfast Requirements

A student's reimbursable meal is determined by how each item is menued. When not using OVS, for a reimbursable breakfast, the CE must serve four food items which contain the following three food components:

- Grains
- Fruit (or Vegetable)
- Milk

Special Guidance for Reimbursable Meals

Combination Foods Containing More Than One Component

A food item may contain one or more food components. The menu planner may include menu items that are combination foods that consist of more than one component.

[59] See *Administrator's Reference Manual (ARM), Section 30, Records Retention* for more detailed information on this topic.

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- A menued combination item may contain the full minimum serving of more than one food component—In this case, each component included in the combination item will credit toward a reimbursable meal.
  For Example: An egg sandwich contains 1.0 oz eq serving of grain and 1.0 oz eq serving of meat/meat alternate. In this case, the egg sandwich counts as 2.0 oz eq servings of grain.
- Several menued combination items may be added together to contain the full minimum servings of more than one food component—In this case, full minimum servings of the included components are split across several combination foods, so the student must take the corresponding combination foods for a reimbursable meal.

Double Servings

Double servings of components or food items are allowed for fruit or vegetable and grain components in order to meet the minimum portion size requirement as long as the menu planner has noted this option on the menu.

For Example: A student is offered 1 cup of milk, 1 cup of fruit, 1.0 oz eq cereal, and 1.0 oz eq toast. The student may take ½ cup of fruit and two 1.0 oz eq servings of toast for a reimbursable meal. In this case, the student had a choice of combinations offered for the meal.

Field Trips

Field trip meals will be viewed as part of the overall week's requirements just as if they were meals served at a CE site.[60]

Free or Extra Food Offered After the Point of Service (POS)

Any additional food offered at no charge to students who have a reimbursable meal must count toward the weekly dietary specifications. This includes a serving of juice provided at no charge. Juice provided to students at no charge also counts toward the weekly limitation.

Large Food Items

The menu planner may menu a large food item as two items as long as each part meets the minimum requirement for that food component.

For Example: The menu planner designates that a 2.0 oz eq muffin may be counted as one food item or as two food items. The menu planner designates a large apple to credit as two ½ cup servings of fruit with each of the ½ cup servings counted as an individual food item.

Leftovers

Occasional, small quantities of leftover food served on another day will not be counted toward the meal pattern requirements, including the vegetable subgroups. However, if this practice occurs commonly and the quantities are not reasonable based on the number of students to be served, the leftovers must be included in the weekly dietary specifications.

Refusing an Item

Even if a CE is not using OVS, a student may refuse to take all food items. When a student declines a full portion of a food component, a smaller portion may be offered. However, the student must take three food items, and one of the three food items must be a minimum of a ½ cup serving of fruit and/or vegetables for the student's meal to be reimbursable.

[NOTE: When a student refuses a food item, the student may be refusing a single component or may be refusing more than one component. As the student moves through the service line, he or she needs to know what components are in each menued item in order to choose a reimbursable meal. The cashier also needs to know what components are contained in each menued item in order to identify

[60] See *Administrator's Reference Manual (ARM), Section 21, Meal Service* for additional information on this topic.

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a reimbursable meal.[61]]

The CE does have additional discretion in how to handle a situation when a student refuses an item. The following guidance describes a CE's options:

- CEs are not required to offer another food item should a student refuse one of the food items in the meal.
- CEs may offer a student the option to purchase food items a la carte when food items taken do not make a reimbursable meal. Any student who has the money either in hand or in his/her account may purchase food a la carte. However, in these cases, serving staff must prevent the overt identification of the eligibility status of the students.
- CEs may allow the student to take the food for free and not claim the meal for reimbursement.

If the student refuses to take the required food item/s for a reimbursable meal, the meal is not reimbursable. To address this situation, the CE must have a policy in place regarding a student's selection of incomplete meals. If the school's policy is not to serve non-reimbursable meals and not to offer other food options, this policy must be communicated to students and parents in advance.

Seconds or Additional Servings

When a student is served a reimbursable meal, and the student asks for seconds or additional servings, the CE has two options in addressing this situation:

1. The student may be given the seconds or additional servings. Seconds and additional servings must count toward the weekly requirements, including dietary specifications.
2. The student may be asked to pay for the additional servings a la carte. If the student is provided seconds or additional servings and pays for the extra serving as an a la carte purchase, the additional servings do not count toward the weekly dietary specifications for reimbursable meals.

[NOTE: Additional or extra food offered to students at no charge who have a reimbursable meal does count toward the dietary specifications—calories, sodium, and saturated and trans fat. If the items are creditable toward a food component, the additional food counts toward the weekly requirements.]

Student Identification of a Reimbursable Meal

For the purpose of identifying a reimbursable meal at the POS, the menu planner must provide students and cashiers with details about the various combinations of menu items (including various entrees) that may constitute a reimbursable meal to ensure the accuracy of meal counts.

A CE may use a variety of methods to assist students in identifying what food items are required for a reimbursable meal. At a minimum, the CE must clearly communicate this information in an area located near or at the beginning of the serving line. The following strategies are commonly used for this purpose:

- **Signage**
  Signage, including menu boards, that communicates what food items must be taken for a reimbursable meal.

[61] See the *Breakfast Menu Planning* subsection in this section for additional information on food items, food components, and menu items.

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- **Labels, Pictures, or Symbols**
  Label, pictures, or symbols that indicate which items are required for a reimbursable meal posted in the serving area (such as on sneeze guard).[62]

- **Other Communications**
  Information about the requirements for a reimbursable meal (and specifically OVS) published in menus, newsletters, communications with parents, or updates posted on websites.

- **Field Trips**
  Signage is not required for field trips. However, if choices are offered in these situations, CEs need to implement a method to inform students that OVS is being used and what to select for a reimbursable meal.[63]

- **Other Service Options**
  When a CE uses other service options,[64] such as breakfast in the classroom (BIC), the CE needs to ensure that students are provided information about what items are required for a reimbursable meal. If choices are offered in these situations, CEs need to implement a method to inform students that OVS is being used and what to select for a reimbursable meal.

This includes information that allows students to select the correct quantities, including at least ½ cup of fruit or vegetables or a ½ cup combination of fruit and vegetables.

Fruit(s) and Vegetable(s) Servings for a Reimbursable Meal

For a meal to be reimbursable, a minimum reimbursable serving of fruit or vegetable must be portioned as follows:

½ cup fruit(s)*	or	½ cup vegetable(s)*	or	½ cup combination* of ¼ cup fruit(s) and ¼ cup vegetable(s)

* The minimum credible size portion—when combining different types of fruits or vegetables to achieve a minimum serving portion size—is ⅛ cup of each fruit (or vegetable).

(NOTE: A minimum credible portion size is not the same as a minimum serving portion size for a reimbursable meal. A credible portion size counts toward meeting the minimum serving portion size.

For Example: A student is served a minimum credible size portion of apples—⅛ cup. Unless the student takes an additional portion(s) of another fruit (or vegetable) so that a combined portion size of at least ½ cup is taken, the ⅛ cup of apples does not provide the minimum fruit (or vegetable) component for a reimbursable meal.)

[62] USDA provides examples of strategies to promote student identification of reimbursable meals at *www.choosemyplate.gov*.
[63] See *Administrator's Reference Manual (ARM), Section 21, Meal Service* for additional information on this topic.
[64] See *Administrator's Reference Manual (ARM), Section 21, Meal Service* for additional information on service options.

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Offering more than one type of fruit (or vegetable) food item in different serving sizes will help students make selections and ensure that the CE meets the meal pattern requirement.

Options for Meeting the Breakfast Requirement for a Half (½) Cup of Fruit (or Vegetable) Component Chart[65]			
Option 1	½ cup fruit		
Option 2	½ cup vegetable		
Option 3	¼ cup one fruit	+	¼ cup, another fruit
Option 4	¼ cup one fruit	+	¼ cup, one vegetable
Option 5	¼ cup one vegetable	+	¼ cup, another vegetable
* ⅛ cup is the minimum creditable amount for the fruit or vegetable component. Menu planners may also combine multiple ⅛ cup portions of different fruits or vegetables to reach the ½ cup serving—⅛ cup pears and ⅜ cup carrots equal ½ cup.			

The *Options for Meeting the Breakfast Requirement for a Half (½) Cup of Fruit Component Chart* provides an illustration of the options a CE has in providing the fruit component by serving or offering a single fruit (or vegetable) or mixed fruits and vegetables.

Grains Serving for a Reimbursable Meal

To meet the grains requirement for a reimbursable meal, the full minimum daily portion (1.0 oz eq) of grain must be taken.

Age/Grades	Minimum Per Day Grains (oz eq) *
K-5	1
6-8	1
9-12	1
K-12	1

However, CEs may serve grains in a variety of ways to provide the daily and weekly grain portion requirements as well as to offer the number of items needed for a reimbursable breakfast:

Counting Grains Based on How They Are Menued Chart		
Menu Item(s)	**Counts the Item(s) As**	**Oz Eq in Menued Item(s)**
Muffin Special	1 Food Item	1.0 oz eq
Super Muffin	1 Food Item	2.0 oz eq
Super Muffin (1/2 or whole)	2 Food Items	2.0 oz eq
Breakfast Sandwich	1 Food Item	1.0 oz eq grain and 1.0 oz eq meat/meat alternate
Breakfast Sandwich	2 Food Items	1.0 oz eq grain and 1.0 oz eq meat/meat alternate

[65] At lunch for high school students and at breakfast for all students, a student must take the full serving of either fruit or vegetable if the reimbursable meal is a fruit, a vegetable, and one other component.

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Cereal with Toast	1 Food Item	.5 oz eq + .5 oz eq = 1.0 oz eq

These options give menu planners a variety of ways to offer grains to achieve the minimum and recommended maximum amounts[66] of grains for the week.

Milk Serving for a Reimbursable Meal

In order to count milk as one food component, 1 cup of fluid milk must be taken. CEs that do not offer an approved fluid milk substitute can offer both fluid milk and water; however, water does not substitute for fluid milk in determining a reimbursable meal.[67] A meal without fluid milk is reimbursable under OVS.

Smoothies with 1 cup of milk and with at least ½ cup of fruit/juice may count as 2 food items under OVS.

Offer versus Serve (OVS)

Under OVS, a student's meal to be reimbursable, the student must be offered four food items that contain the three food components; the student must take at least three food items, including a minimum ½ cup serving of the fruit component (or vegetable).

For a reimbursable meal	
Student must be offered	Student must choose
4 Food Items which contain 3 food components	3 food items including ½ cup of fruit or vegetable

OVS, Extra Food Items

A school may offer Extra food items, such as jelly or syrup, which are not creditable. These foods may complement a reimbursable meal or entice students to purchase a meal. The Extra food items do not credit toward the minimum number of food components/food items a school is required to offer under OVS. However, Extra food items must be included in a nutrient analysis to assess compliance with the weekly dietary specifications (calories, saturated fat, and sodium).

Reimbursable Meal Determination

While a student may choose to take a smaller portion of any component, the smaller portion does not count toward a reimbursable meal with the exception of a minimum serving of fruit and/or vegetable.[68]

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[66] See the *Grains Component of the Reimbursable Breakfast* subsection of this section for more information on flexibility in grain maximums for SY 2013–2014.

[67] See *Administrator's Reference Manual (ARM), Section 25, Meal Accommodations* for additional information on this topic.

[68] See the *Fruit (or Vegetable) Component of the Reimbursable Breakfast* subsection in this section for additional information.

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The *How to Recognize a Reimbursable Meal Chart—OVS Breakfast* provides a snapshot of the choices students have in selecting the three components.

How to Recognize a Reimbursable Meal Chart—OVS Breakfast					
Sample Meal Choices	**Three Components—Fruit, Grains, and Milk—in Four Food Items***				**Is the Meal Reimbursable?**
	Item 1	**Item 2**	**Item 3**	**Item 4**	Student must choose a total of 3 food items.
Choice 1	☑ **Fruit**	_____	_____	_____	**NO^**
Choice 2	☑ **Grain**	☑ **Grain**	☑ **Fruit**		**YES**
Choice 3	☑ **Fruit**	_____	☑ **Grain**	☑ **Milk**	**YES**
Choice 4	☑ **Vegetable**	☑ **Grain**	_____	☑ **Grain**	**YES**
Choice 5	_____	☑ **Fruit**	☑ **Milk**	_____	**NO+**
Choice 6	_____	☑ **Fruit~**	☑ **Vegetable~**	☑ **Grain**	**Yes~**

* Students must be offered the full portion but may take a minimum of a ½ cup of fruit or vegetables on a combination of fruit and vegetables for a reimbursable meal.

^ The student took only one food item, so the meal is not reimbursable.

\+ The student did not take three items, so the meal is not reimbursable.

~ At lunch for high school students and at breakfast for all students, a student must take the full serving of either fruit or vegetable if the reimbursable meal is a fruit, a vegetable, and one other component.

Nutrient Standards

Menus must meet the dietary specifications for calories, sodium, and saturated and trans fat for each age/grade group. The *Breakfast Nutrient Standard Chart* provides a range for the average amount for each of the nutrient standards for the week. CEs are expected to determine if they are meeting the dietary specifications by averaging the number of calories; sodium and saturated fat over the serving week.

Breakfast Nutrient Standard Chart				
	Age/Grades K-5	**Age/Grades 6-8**	**Age/Grades 9-12**	**Age/Grades K-12**
Min-Max Calories (kcal)[h, i]	350-500	400-550	450-600	450-500
Saturated Fat (% of total calories)[i]	< 10	< 10	< 10	< 10
Sodium Target 1 (mg)[i]	≤540	≤ 600	≤ 640	≤ 540
Trans Fat	Nutrition label or manufacturer specification must indicate zero grams of trans fat per serving.			

[h] The average daily amount of calories for a 5-day serving week must be within the range (at least the minimum and no more than the maximum values).

[i] Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, trans fat, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent milk fat are not allowed.

Calculating Dietary Specifications for the Week

CEs calculate the dietary specifications by averaging the daily calories, sodium, and saturated fat. The weekly average must fit within the specifications for calories, sodium,

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and saturated fat. CEs must use Child Nutrition (CN) Labels, Nutrition Fact Labels, and/or product formulation statements for each food item to perform these calculations.[69]

If the CE Serves All Students the Same Meal,

the CE adds the total calories, sodium, and saturated fat for each day of the week to get the weekly total and then divides by the number of days to get the average daily amount for the week.

If the CE Gives Students a Choice of Multiple Entrees and Side Items or Lines,

the CE averages of the calories, sodium, and saturated fats across the items for each day; adds the average calories, sodium, and saturated fat for each day to get the weekly total; and divides by the number of days in the week to get the average daily amount for the week.

If the CE includes non-credible items in its menu, these items must be included in the dietary specification calculations.

To Determine Dietary Specifications,

Step 1:

Divide the weekly total for the dietary specification—calories, sodium, and saturated fat—by the number of serving days for the week

Weekly Total for the Dietary Specification	÷	Number of Serving Days for the Week	=	Average Daily Amount for the Nutrient Standard

Step 2:

Repeat this calculation for each dietary specification.

Step 3:

Compare the average daily amount for each dietary specification to the required range for each dietary specification in the Nutrient Standard Chart.

If the average daily amount for the nutrient standard falls within the range for the dietary specification, the CE has met the requirements for that dietary specification.

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[69] See the *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* for detailed information on this topic.

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Calculating Dietary Specifications for a Single Condiment or Accompaniment for a Designated Menu Item

If condiments or accompaniments are not pre-proportioned or pre-packaged for a designated menu item, the CE must include the dietary specifications for the average serving—that is dividing the total amount served by the number of servings taken.[70]

Calculation Condiment or Accompaniment Amount Chart				
Average Portion Size				
Total Amount for All Portions Served		Number of Servings		Average Accompaniment Portion Size
48 oz	÷	55	=	.818

After calculating the average portion size, the CE will determine the dietary specifications for the portion size and add this amount to the weekly dietary specification totals.[71]

Choice Among Various Condiments or Accompaniments for a Designated Menu Item

If condiments or accompaniments are not pre-proportioned or pre-packaged for a designated menu item and the student is allowed to select from among various condiments or accompaniments, the CE must take the following actions to calculate the dietary specifications:

1. Calculate the average portion size for each condiment or accompaniment that is provided.
2. Determine the dietary specifications for each condiment or accompaniment.
3. Average the dietary specifications for all condiments or accompaniments.
4. Add the average to the weekly dietary specifications total. [72]

Extra Items Served after the Point of Service

The CE may offer extra items beyond the point of service. This may include, but is not limited to, condiments, 100% juice, or tea. However, these items must be included in the calculation for the weekly dietary specifications even if these items are *free*. If the extra item is intended to be consumed with the reimbursable meal, it is part of the reimbursable meal.

If 100% juice is offered as an extra item, the 100% juice counts toward the maximum weekly amount of juice for the week.

Calories

Breakfasts offered to each age/grade group must average over the serving week to a range between the minimum and maximum calorie levels specified in *Breakfast Nutrient Standard Chart*.

[70] See the *Administrator's Reference Manual (ARM), Section 22, Competitive Foods* for additional information related to accompaniments or condiments intended to be used with a beverage or food item that is sold.
[71] CEs must retain calculations records that demonstrate established averages with meal production records.
[72] CEs must retain calculations records that demonstrate established averages with meal production records.

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Saturated Fat
Breakfasts offered to all age/grade groups must average over the serving week to provide less than 10 percent of total calories from saturated fat.

Sodium
Breakfasts offered to each age/grade group must average over the serving week to reflect lower levels of sodium specified in the *Breakfast Nutrient Standard Chart*.

Trans Fat
Nutrition label or manufacturer specification must indicate that each menu item contains zero grams of trans fat per serving. Nutrition labels indicating less than 0.5 grams per serving are acceptable. Naturally occurring trans fat found in products such as beef, lamb, and dairy products made with whole milk is excluded from the trans fat requirement.

Commercially Prepared Products
For commercially prepared products, CEs must refer to the nutrition facts label or a manufacturer's specifications to determine that there are zero grams of trans fat per serving. For mixed dishes that may contain both naturally occurring trans fat (e.g., beef) and added or synthetic trans fats (partially hydrogenated oil), the serving must determine if the product is in compliance by requesting information from suppliers on how much of the trans fat is naturally occurring versus if any of the ingredients contain added (synthetic) trans fat.

Nutrition Labels and Manufacturer Specifications
CEs must rely on nutrition facts labels and manufacturer product formulation statements to determine the specifications for the amount of trans fat in a food. Nutrition facts labels and/or manufacturing specifications must be available during an administrative review to verify food items served are trans fat free.

Nutrition Software
Software may be used for the analysis of trans fat for information purposes only; however, current nutrition databases do not have complete data for trans fat. Therefore, trans fat is not required in the nutrient analysis for the one-week of menus when using an approved software program. As more trans fat information becomes available, it will be included in the Child Nutrition Database, required by all USDA-approved software.

Nutrition Goals
Menu planning is designed to meet specified nutrient levels for the various age/grade groups. The food-based menu planning system sets minimum daily and weekly amounts, and in some cases recommended for maximums, for each of the three food components. Calorie ranges and limits on sodium and saturated and trans fats are established for each of the age/grade groups. The menu planner establishes what the entrees are and the serving sizes of the menu items.

Nutrient Analysis of Meals
CEs are not required to conduct a nutrient analysis to ensure that they are meeting the nutrient standards. However, the CE may choose to do so. CEs that choose to conduct a nutrient analysis must adhere to the following guidance:

- The nutrient analysis must be conducted for all food items that are offered on each serving line.

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- CEs may use any software program to conduct a nutrient analysis. However, if the CE uses SNP program funds to purchase nutrient analysis software, CEs must purchase USDA-approved nutrient analysis software. A list of USDA-approved nutrient analysis software is available at *www.fns.usda.gov/tn/usda-approved-nutrient-analysis-software.*[73]

- CEs may use the worksheets available for submitting menus to achieve certification of meal pattern compliance to do a simplified nutrient assessment of menus.[74]

CEs may also request technical assistance from their education service center (ESC).

State agencies may also conduct a nutrient analysis as part of the administrative review.

[NOTE: Planned meals represent the CE's calculation of the items that will be prepared for a site's usual average daily participation (ADP). Ideally, the planned and the offered meals are the same, except for substitutions because of a product shortage, delivery failure, etc. TDA will review (or conduct) the nutrient analysis based on what is planned to correctly assess the calorie, saturated fat, and sodium levels in the meals.]

The nutrient analysis must include the following information:

- Calories
- Saturated fat (both in grams and percent of calories)
- Sodium

These are the nutrients that are monitored by TDA. These nutrients will be compared to the required dietary specifications for calories (minimum and maximum levels), sodium, and saturated fat. Trans fat is not included in the nutrient analysis since trans fat is not allowed. If it is included, the trans fat value will not be used to determine if the menus meet the dietary specifications for trans fat. Product nutrient labels or manufacturer specifications will be used to determine that the menued item contains no trans fat.

The Child Nutrition (CN) Database currently includes calories, sodium, and saturated and trans fat. Meal pattern information is not and will not be included in the CN Database.

Weighted Average Serving

Planned menus must be analyzed and compared to the appropriate nutrient standard using weighted averages based on the planned servings of each menu item and condiment. Weighted averages must be used. Simple averaging is not allowed. A weighted nutrient analysis gives more weight to nutrients in popular foods that are more frequently selected by students. Weighted analyses allow for a greater contribution of nutrients to come from menu items that are selected more often and less nutrient contribution from those menu items selected less often.

CEs that conduct nutrient analyses of centralized menus will need to consolidate or aggregate production records for all menu items served in reimbursable meals in all of their sites in order to weigh the analysis. In weighted averaging, the total number of planned reimbursable meals with the planned number of servings for each menu item, excluding food items sold as adult meals and a la carte, is required for each menu.

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[73] Software developers of the currently approved programs must show USDA that they have made all the required changes before being moved to the list of Nutrient Analysis Software Approved by USDA for Administrative Reviews. New software developers must be evaluated by USDA and approved before being added to this list.

[74] Forms available at *www.SquareMeals.org*.

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Determining Planned Servings for Weighted Averages

The nutrient analysis software system should perform the following tasks:

1. Calculate nutrients and provide a production record based on planned servings.
2. Estimate the number of projected servings based on past production records and meal counts.

The *Sample Estimate of Number of Servings Need Chart* illustrates one method for determining the number of servings needed.

Sample Estimate of Number Servings Needed Chart (Based on Previous Serving Records)		
Meal Choice	**Menu**	**Previous Number of Portions Served**
Select One	Pancakes	600
	Toast	100
	Muffin	200
Select One	Apples	875
	Oranges	325
	Carrots	350
Select One	Applesauce	350
	Pears	250
	Orange Juice	150
Select One	Nonfat Unflavored Milk	150
	1% Unflavored Milk	700
	Nonfat Chocolate Milk	50

The CE should conduct weighted averaging at the CE level if a centralized system of menus is used. A system to aggregate the data on the amounts that will be prepared for reimbursable meals from the individual sites is needed. If meal planning is done at the individual site level, weighting would be based on the amounts prepared for reimbursable meals at that site.

Processed Foods

When processed foods are used in menu planning, the nutrient analysis of these products either must be in the National Nutrient Database for Child Nutrition Programs or entered into the CE's local database. The nutrient analysis of the actual product must be used. CEs may obtain this information from the USDA's Child Nutrition (CN) label (CN Label) or manufacturer's product analysis sheet or a product formulation statement. For more information on project labeling and manufacturer-created nutritional information sources, see the *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling*.

Standardized Recipes and Preparation Techniques

All CEs must develop and follow standardized recipes. Standardized recipes and preparation techniques must be used when planning and serving reimbursable meals. In order to qualify as a standardized recipe, a recipe must have an established and specified yield, portion size, and quantity. In addition, the ingredients must be constant in measurement and preparation.

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Standardized recipes developed by USDA are in the Child Nutrition Database. Examples of standardized recipes are included in the *USDA Quantity Recipes for Schools and the New School Lunch and Breakfast Recipes…A Tool Kit for Healthy School Meals*.[75] The ESC Child Nutrition staff has copies of these resources. CEs may also use local or state standardized recipes. If a CE uses its own recipes, the recipes must be added to its local database of recipes.

Recipes for Salad or Theme Bars

Menu planners must make a recipe for each salad or theme bar listed on the menu. The salad or theme bar recipes are treated as another menu choice and averaged into the weekly nutrient analysis based on projected servings and portion sizes. If a student is able to select a reimbursable meal from the salad or theme bar, then, the menu planner must assure that the salad or theme bar menu meets all the components and nutrient requirements of the meal pattern.

While there is no exact method for pre-planning portion sizes, menu planners are expected to use reasonable judgment in determining expected portion sizes.

For Example: A cup of lettuce would be a reasonable expectation for a portion size; a cup of radishes would not be a reasonable expectation.

The weekly recipe and nutrient analysis of the salad bar or theme bar is based on historical usage of the salad or theme bar items. The recipe should be constructed based on a typical day. The menu planner should take the following steps to determine the serving size and food ingredients for a salad or theme bar:

1. Determine the serving size.
2. Determine the number of servings the recipe produces.
3. Determine the amount of each food ingredient in the recipe.
   - Measure the amount of each ingredient placed on the salad or theme bar on a typical day.
   - Measure the amount of each ingredient leftover on the salad or theme bar at the end of the meal service.
   - Subtract the amount leftover from the amount placed on the salad or theme bar for each ingredient to determine the amount of each ingredient to enter for the recipe.

   or

   - Measure the amount of each ingredient placed on the salad or theme bar over the course of a week.
   - Measure the amount of each ingredient leftover on the salad or theme bar at the end of each day and add all the amounts for a total for the week.
   - Subtract the amount leftover from the amount placed on the salad or theme bar for each ingredient to determine the amount of each ingredient needed for the week.
   - Divide the remaining amount by the number of days in the serving week and use that average amount to determine a daily recipe.

[75] This resource and other recipe resources are available at *www.nutrition.gov/topics/shopping-cooking-and-food-safety/recipe-collection*.

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Minimize Plate Waste

CEs may use a variety of strategies to minimize plate waste, including OVS, taste tests, creative marketing, presentation of foods, and self-service bars. The following sources provide additional tips on minimizing plate waste:

TDA

SquareMeals Website, Boost Meal Appeal—www.SquareMeals.org

USDA

Fruits and Vegetables Galore: Helping Kids Eat More—https://www.fns.usda.gov/tn/fruits-vegetables-galore-helping-kids-eat-more

Kid-Friendly Veggies and Fruits—www.choosemyplate.gov/ten-tips-kid-friendly-veggies-and-fruits

Smarter Lunchrooms—https://theicn.org/cnss/state-sharing-center/smarter-lunchrooms/

Water Availability During Meal Service

CEs participating in SBP are required to make potable water available to students at no charge in the place where breakfast meals are served during the meal service if breakfast is served in a cafeteria or centralized location. It is recommended, but not required, when breakfast is served in the classroom or other non-cafeteria location. There are a variety of ways that sites can implement this requirement.

For Example: The CE can provide water through the following methods.

- Offer water pitchers and cups on breakfast tables
- Allow students to use a nearby water fountain
- Allow students to fill personal water bottles or cups with drinking water
- Provide prefilled glasses of water offered on each line

Whatever solution is chosen, the water must be available to all students where meals are served.

While potable water is required to be made available to students, it is not considered part of the reimbursable meal. Students are not required to take water. If a CE sells bottled water, the CE must let students know that they may obtain water without a cost.[76]

Water may be served chilled or at room temperature; however, students may find the water more palatable if it is served chilled. The water must be served plain; therefore, adding flavoring, including fruit and vegetables, is not allowed.

Location of and Access to Water

Potable water must be provided during meal service where reimbursable meals are served (including cafeterias, courtyards, auditoriums, etc.). The location of the potable water must be in the meal service area or immediately adjacent to the meal service area. The water should be located so that it is offered after the student has the option to select milk. Signage should be clear that water is not a meal component.

For Example: A water fountain that is immediately outside the door of the meal service area (and is accessible to all students during the breakfast period) would meet this requirement.

Water Fountain

The water fountain must be operational and able to provide potable water to students in

[76] See the *Milk Component* and *Fruit Component* subsections in this section for additional information on beverages served.

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a reasonable time during their meal period. The CE must ensure that students have enough time to use the water fountain during their meal period. Students should not have to wait in long lines.

If a CE uses a water fountain to provide the students with potable water, it is allowed to require students to raise their hands to get up and go to the fountain. This method is not ideal. However, it may be used as long as it is used to provide order, and a student is not denied the opportunity to obtain water. All students should be able to use the water fountain in a timeframe that still allows enough time for consumption of the meal.

Cups for Water

The CE must provide cups for students to get the water at no cost if the water is provided in a bulk container (i.e., a five-gallon dispenser).

- Students cannot be required to bring their own cups for water provided in a bulk container.
- Students may, at the decision of the CE, provide their own cups, bottles, or drinking vessels to fill with water. However, this must not be a requirement.
- CEs must not charge students for cups in order to access water as this would be considered restricting access to potable water.

This is not required if the site is using a water fountain to provide the water to the students.

Reasonable Costs of Providing Water

Providing water would be an allowable cost to the nonprofit food service account. However, the cost must be reasonable. The cost must be a result of sound business practice and competitive prices. The cost must be reasonable, necessary, and allocable to the SNP to be an allowable cost. In determining whether a cost is a reasonable and necessary cost associated with providing water, a CE should ask the following questions:

- Would a prudent person find the cost to be reasonable?
- Is this cost at a fair rate or do alternatives exist that may be more cost effective?
- Is the cost a significant deviation from the established practices of the CE, which may unjustifiably increase costs borne by the nonprofit food service account?
- Could the CE defend this purchase to TDA?

For Example: The cost of providing pitchers or cups that would be filled with potable water from the faucet or providing them to students to fill with potable water from a faucet is a reasonable cost.

Some sites may want to provide water bottles to students or other alternatives. However, the CE would need to determine whether such an option would meet the requirements for an allowable cost (i.e., necessary, reasonable, and allocable) and meet the specific needs of the CE.

The cost of a five-gallon dispenser could be an allowable cost, as long as the CE has determined that providing water in a five-gallon dispenser would be cost efficient and practical.

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Additionally, a cost is generally not reasonable if it adds materially to the value of the CE building and related facilities or appreciably prolongs its intended life, as those types of costs are capital expenditures and should be borne by the CE's general fund. While the cost associated with major plumbing would likely add to the permanent value of the building and is typically a cost that should be borne by the CE's general fund, the addition of a water fountain to allow for compliance with the statutory potable water requirement makes the cost acceptable. Moreover, equipment to filter water (e.g., a reverse osmosis filter system) could be reasonable depending on the cost, the need for such equipment and if the CE

1. has sufficient funds,
2. is lacking in capital improvement funding, and
3. is spending the funds necessary to carry out the mission of the program.

It is difficult to assess reasonableness without knowledge of the specific cost and an understanding of that cost. Many costs have to be analyzed on a case-by-case basis in order to determine if the cost is truly reasonable; in such cases, the CE should contact TDA for guidance.

Providing Potable Water in Other School Nutrition Programs

Seamless Summer Option (SSO)

CEs must make potable water available to students at SSO sites if the site is located at a school. Non-school sites are encouraged, but not required, to provide potable water.

Afterschool Care Snack Program (ASCP)

Potable water is recommended during meal service at an ASCP.

Water Dispensers, Food Safety

Water dispensers must be monitored and properly refilled and sanitized. CE staff would be responsible for maintaining all equipment which includes water dispensers.

Meal Pattern Resources

TDA Resources

Menu Planning Software

TDA provides free nutrition analysis software for CEs participating in NSLP and SBP. The MENU Module includes a variety of tools to assist with both menu planning and marketing. CEs can get additional information on this free software, from the following sources:

- TDA website at *www.SquareMeals.org*, (F&N Resources tab)
- CE's ESC child nutrition specialist

SquareMeals Website

TDA has developed the numerous resources to assist CEs in implementing the NSLP and SBP meal patterns that are available at *www.SquareMeals.org* (F&N Resources tab):

- School Meal Success Stories
- Boost Meal Appeal
- Texas Farm Fresh

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TDA Forms

TDA provides template forms at *www.SquareMeals.org*. CEs are not required to use the forms provided by TDA for their records retention system unless specified, but TDA strongly recommends that CEs do so. In cases where CEs are allowed to develop their own versions of a record, CEs are responsible for making sure that all required information and elements included in the TDA forms are collected in the CE's version.

The following forms are available at *www.SquareMeals.org*

- *Daily Food Production Record for Central Kitchen, Receiving Kitchen, and Onsite Kitchen*
- *Fluid Milk Substitute Worksheet*
- *Onsite Monitoring Form | School Breakfast Program*

USDA Resources

USDA provides the following resources to assist CEs in implementing the NSLP and SBP meal patterns:

- *Food Buying Guide for Child Nutrition Programs*—Web-based interactive tool that assists in calculating food yields and provides purchasing information available at *https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs*; USDA has also released the *Food Buying Guide for Child Nutrition Programs* as a mobile app. See the following website for additional information on the app: *https://www.fns.usda.gov/tn/food-buying-guide-mobile-app*
- Smarter Lunchrooms available at *https://theicn.org/cnss/state-sharing-center/smarter-lunchrooms/*
- Tools for Schools available at *www.fns.usda.gov/school-meals/tools-schools*
- What's Shaking available at *www.usda.gov/media/blog/2015/08/25/whats-shaking-school-meals*

The Institute of Child Nutrition (ICN)[77] also provides numerous online training materials and information materials[78]

Available at *www.theicn.org*.

Food Production Records

The CE must keep complete and accurate food production documentation, including food production records, menus, records indicating food substitutions, invoices, or receipts for food product purchases, and meal pattern contribution documentation for the meals they produce. Food production documentation demonstrates that the meals served and claimed met meal pattern requirements and are, therefore, reimbursable.[79]

While there is no one specific strategy for maintaining food production documentation, TDA recommends that each CE develop a system that aligns with its menu cycle.

For Example: A CE uses a four-week menu cycle. For each week, the CE has created a notebook that has a divided section for each serving day of the week. In each daily section, the CE has collected

[77] Formerly National Food Service Management Institute (NFSMI)
[78] ICN's materials are not regulatory
[79] See *Administrator's Reference Manual (ARM), Section 30, Records Retention* and *Section 20, Counting & Claiming* for additional information on these topics.

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that day's food production documentation, standardized recipes, product labels or manufacturer's product formulation statements, and other information.

CEs should use the following guidance in maintaining production records:

- CEs should keep in mind that this requirement includes all breakfasts, including theme bars, quick lines, sack meals, etc.
- These records must show how the meals offered contribute to the required food components and food quantities for each age/grade group every day, including, but not limited to,
  - food item replaced,
  - substituted food item, and
  - reason for the substitution.
- Any meal claimed for reimbursement must be supported by a food production documentation.
- When recording the amount of prepared food on a food production record, CEs should record amounts by purchased unit/container size. These reporting units are also used in the *Child Nutrition Program Food Buying Guide (FBG)*[80] The Shopping List function in the web-based (or app) FBG can also be used to quickly determine the number of servings in a unit/container.

  For Example: If a CE is planning to prepare 310 one oz eq servings of sausage, the CE will report the total amount prepared as 3 cases@96/case +12. The sausage patties come 96 to the case.

- When recording the amount of leftover food on a food production record, CEs may record amounts by number of remaining servings.

Planned, Offered, and Selected/Served

CEs must use the following definitions as they prepare menus and food production documentation:

- **Planned**. A planned menu is what the menu planner intends to offer or serve to students. It represents the CE's calculation of the items that will need to be prepared for a school's usual average daily participation (ADP). Ideally, the planned and the offered or served meals are the same.
- **Offered**. An offered menu is what is actually prepared and set out on the serving lines for students to take. Offered or served menus may differ from *planned* menus when there are unexpected circumstances.

  For Example: A planned food item was not received from the distributor, and the menu planner had to offer a different food item.

- **Selected or Served.** Selected or served refers to the foods that were actually served to or selected by students. Menu planners should use selected or served food item data to inform future menu planning and reduce food waste, so the school does not offer items that students do not select. Production records should be updated to indicate actual selected or served food items after the meal service so that production records reflect serving trends.

[80] Available at *https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs*

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Records Retention

CEs must retain documentation about food production and service. All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, nonprofit organizations, and residential child care institutions after the end of the fiscal year to which they pertain. CEs have the option to maintain records on paper or electronically

TDA may also request documentation for both offsite and onsite administrative reviews. CEs are encouraged to develop a system of document retention that allows them to readily retrieve documentation.

Information Box 3

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Nonprofit private schools, other organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

For more information on the specific types of documentation that are required, see *Administrator's Reference Manual (ARM), Section 30, Records Retention*.

Compliance

The Administrative Review (AR) will include an assessment of food production documentation and a review of the breakfast meal pattern and may include a nutrient analysis of menus.

TDA has the discretion to take fiscal action for the following violations:

- Not meeting the meal pattern requirements
- Not meeting food quantity requirements
- Not meeting nutrition standards
- Inadequate or unavailable documentation[81]

[81] See *Administrator's Reference Manual (ARM), Section 24, Food Product Documentation* for additional information on this topic.

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Section 8

Lunch Meals

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Section 8, Lunch Meals

Update Guide

July 28, 2022	Updated *Section 8, Lunch Meals* to correct minor typos. Clarified guidance on the following topics: - Crediting juice - Food production records - Grains component of the reimbursable breakfast - Meal pattern - Milk component of the reimbursable breakfast - Nutrient standards Incorporated the following United States Department of Agriculture (USDA) memos and guidance: - *USDA Memo SP 04-2022, Questions and Answer Guidance on the Final Rule titled Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium Effective July 1, 2022* (March 2, 2022) - *USDA Memo SP 05-2022, Meal Requirements Under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators Updated to Support the Transitional Standards for Milk, Whole Grains, and Sodium Effective July 1, 2022* (March 2, 2022)
August 12, 2020	Updated *Section 8* to apply updated the *Administrator's Reference Manual (ARM)* section references. Removed meal flexibilities no longer available. Updated the milk substitute weight amounts for Vitamin A and Vitamin D to meet the nutritional profile of fortified cow's milk as required by the Food and Drug Administration (FDA). Provided clarification or information on the following issues – Food production records – Meal pattern chart – Traditional foods
February 26, 2020	Updated *Section 9, Lunch* to update information related to Institute for Child Nutrition, formerly the National Food Service Management Institute (NFSMI).
October 4, 2019	Updated *Section 9, Lunch* to incorporate the following United States Department of Agriculture (USDA) memos and guidance as well as incorporate Texas law: – *USDA Memo SP 40, 2019, Smoothies Offered in the Child Nutrition Program* (September 23, 2019) – *USDA Memo SP 39, 2019, Clarifications on the Milk and Water Requirements in the School Meals Programs* (September 23, 2019) – *USDA Memo SP 38, 2019, Meal Requirements under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators* (September 23, 2019) – *USDA Memo SP 37, 2019, Questions and Answers on the Final Rule Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (September 23, 2019) – *USDA Memo SP 34-2019, Crediting Coconut, Hominy, Corn Masa, and Masa Harina in the Child Nutrition Programs* (August 22, 2019) – *USDA Memo SP 26-2019, Crediting Pasta Products Made of Vegetable Flour in the Child Nutrition Programs* (April 17, 2019) – *USDA Memo SP 25-2019, Crediting Tempeh in the Child Nutrition Programs* (April 17, 2019) – *USDA Memo SP 24-2019, Crediting Surimi Seafood in the Child Nutrition*

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Programs (April 17, 2019)

- *USDA Memo SP 23-2019, Crediting Popcorn in the Child Nutrition Programs* (April 17, 2019)
- *USDA Memo SP 22-2019, Crediting Coconut, Hominy, Corn Masa, and Corn Flour in the Child Nutrition Programs* (April 17, 2019)
- *USDA Memo SP 21-2019, Crediting Shelf Shelf-Stable, Dried and Semi-Dried Meat, Poultry, and Products in the Child Nutrition Programs* (April 17, 2019)
- *Child and Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium, Final Rule, Federal Register, Volume 83, Number 238, page 63775* (December 12, 2018)
- *USDA Memo SP 19, 2018, Clarifications on the Milk and Water Requirements in the School Meal Programs* (August 6, 2018)

Provided clarification or information on the following issues

- Fruit/Vegetable component
- Grains component
- Meat/Meat alternate substitution
- Milk component
- New creditable food items: grains, vegetables, meat/meat alternates
- Resources
- Signage
- Sodium requirement
- Water

June 28, 2017

Updated *Section 9, Lunch* to incorporate the following United States Department of Agriculture (USDA) memos and guidance as well as incorporate Texas law:

- *USDA Memo SP 32-2017, School Meal Flexibility for School Year 2017-2018* (May 22, 2017)
- *USDA Memo SP 15-2017, Flexibility for the Target 2 Sodium Requirements for School Year 2017-2018* (January 6, 2017)
- *USDA Memo SP 59-2016, Policy Memorandum on Modifications to Accommodate Disabilities in the School Meal Program* (September 27, 2016)
- *USDA Memo SP 32-2015, Statements Supporting Accommodations for Children with Disabilities in the Child Nutrition Programs* (March 30, 2015)

Provided clarification or information on the following issues

- Milk substitutes
- Non-creditable juice products labeled *juiced*
- Pre-kindergarten meal pattern
- Sodium targets

August 29, 2016

Updated *Section 8, Breakfast* to incorporate the following United States Department of Agriculture (USDA) memos and guidance:

- *USDA Memo SP 10-2012 (v.9), Questions & Answers on the Final Rule, "Nutrition Standards in the National School Lunch and School Breakfast Programs"* (August 3, 2015)
- *USDA Memo SP 10-2014 (v.3), Smoothies Offered in Child Nutrition Programs-Revised* (July 22, 2015)
- *USDA Memo SP 41-2015, Updated Offer versus Serve Guidance for the National School Lunch Program and School Breakfast Program Effective Beginning School Year 2015-2016* (July 21, 2015)

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Provided clarification or information on the following issues

- Definitions
- Extra items offered beyond the point of service
- Menuing grain items
- Requirements related to grains and milk
- Resources
- Shorter and longer weeks
- Smoothies
- Updated Child and Adult Care Food Program meal pattern
- Water

Removed guidance on the following topic that has been relocated to *Section 7, Counting and Claiming*

- Severe Need Lunch

Removed guidance on the following topic that has been relocated to *Section 7, Counting and Claiming* and *Section 14, Financial Information Concerning School Nutrition Funds*

- Universal free feeding sites

Removed guidance on following topics that have been relocated to *Section 19, Other Operational Issues*

- Point of service (POS)
- Meal service methods
- Sulfiting agents
- Home-canned foods
- A la carte
- In school suspension
- Meal pricing

May 18, 2015 — Updated *Section 9, Lunch* to correct a typo related to calculating weekly grains.

April 28, 2015 — Updated *Section 9, Lunch* to incorporate the following United States Department of Agriculture (USDA) memos and guidance:

- *USDA Memo SP 20-2015, Requests for Exemption from the School Meals' Whole-Grain Rich Requirement for School Years 2014-2015 and 2015-2016* (February 10, 2015)
- *USDA Memo SP 10-2012 (v.8), Questions & Answers on the Final Rule, "Nutrition Standards in the National School Lunch and School Breakfast Programs"* (August 4, 2014)
- *USDA Memo SP 57-2014, Updated Offer versus Serve Guidance for the National School Lunch Program and School Breakfast Program in School year 2014-2015* (August 1, 2014)

Provided clarification on the following issues

- Additional or extra beverages
- Combination food items
- Communicating with students about the contents of a reimbursable meal
- Condiments or accompaniments
- Crediting
- Dietary specifications
- Fruit (Vegetables)

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- Grains (breading and whole-grain rich)
- Home-canned products
- Juice
- Maximum serving recommendation for grains and meat/meat alternates
- Meat/meat alternates (maximum recommendations)
- Minimizing plate waste
- Milk (choice and smoothies)
- Nutrient analysis
- Planned, offered, and selected/served
- Potable water
- Reimbursable meal
- Meal service (double servings, family style meals, large food items, offer versus serve, point of service, refused item, seconds or additional servings, and vending machines
- Smoothies
- Vegetables (grits and starchy)

October 28, 2013 Updated *Section 9, Lunch* to incorporate the following United States Department of Agriculture (USDA) guidance:

- *Memo SP 49-2013, Frozen Fruit Products in NSLP and SBP in SY 2014-2015* (June 25, 2013)
- *USDA Memo SP 45-2013, Updated OVS Guidance for NSLP and SBP in SY 2013-2014* (June 13, 2013)
- *USDA Memo SP 26-2013, Extending Flexibility in the Meat/Meat Alternate and Grains Maximum for School Year 2013-2014* (February 25, 2013)
- *USDA Memo TA 07-2010 Revised, Guidance for Accepting Processed Product Documentation for Meal Pattern Requirements (MPR)* (January 15, 2013)
- *USDA Memo SP 02-2013, Corn Masa (Dough) for Use in Tortilla Chips, Taco Shells, and Tamales* (October 3, 2012)
- *USDA Memo SP 10-2012, (v. 7), Revised, Final Rule, Standards in the National School Lunch and School Breakfast Programs, Questions and Answers for Program Operators (*August 7, 2013)
- *USDA Memo SP 20-2012, Frozen Fruit Products and Nutrition Standards in the National School Lunch and School Breakfast Programs* (September 11, 2012)
- *USDA Memo SP 39-2012, Existing Inventory of USDA Foods and Commercial Products* (August 3, 2012)
- *USDA Memo SP36-2012, Smoothies Offered in Child Nutrition Programs* (July 11, 2012)
- *Memo SP 31-2013, Revised, Salad Bars in NSLP* (March 27, 2013)

Clarified information on the additional following topics:

- Access to water
- Methods of serving meals
- Milk and choice of beverages
- Point of service
- Pre-kindergarten menu planning

Added Contact Information page for the Texas Department of Agriculture (TDA)

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August 2012	Updated *Section 9, Lunch* to incorporate newly released United States Department of Agriculture (USDA) guidance (*SP-31-2012*, July 16, 2012)
July 2012	Revised *Section 9, Lunch* to reflect new meal patterns and nutrition standards requirements

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Lunch

The National School Lunch Program (NSLP) is a federally assisted meal program administered by the Texas Department of Agriculture (TDA) and operated by public schools, charter schools, nonprofit private schools, and residential child care institutions (RCCIs). The NSLP provides nutritionally balanced, economically priced, or free lunch to students each day. Contracting entities (CEs) that choose to participate in the NSLP receive reimbursement from the United States Department of Agriculture (USDA) for each lunch they serve. In return, CEs must serve lunches that meet the meal pattern requirements and offer free or reduced-priced meals to eligible students.

The guidance from the following *Administrator's Reference Manual (ARM)* sections will also be helpful in implementing the breakfast meal program:

- *Section 7, Breakfast Meals*
- *Section 9, Pre-Kindergarten Meals*
- *Section 14, USDA Foods*
- *Section 21, Meal Service*
- *Section 22, Competitive Foods*
- *Section 23, Food Product Labeling*
- *Section 25, Meal Accommodations*
- *Section 26, Food Safety*
- *Section 30, Record Retention*

Definitions for This Section

For this subsection, the following definitions will be useful:

Bran	Seed husk or outer coating of cereal grains such as wheat, rye, and oats.
Breakfast Cereal	Any cereal grain served in a cold and dry form. Breakfast cereals are traditionally served as a breakfast menu item but may be served in meals other than breakfast.
Cereal Grain	Edible part of a whole grain that has been processed for consumption.
Corn	Product labeled as whole corn (or other whole corn designations, such as whole-grain corn, whole ground corn, whole cornmeal, whole corn flour, etc.) or enriched corn (or other enriched corn designations, such as enriched yellow cornmeal, enriched corn flour, enriched corn grits, etc.).
Dietary Specifications	Specifications for calories, sodium, and saturated and trans fat for each age/grade group
Enriched	Product conforms to the Food and Drug Administration's Standard of Identity for levels of iron, thiamin, riboflavin, and niacin. The terms enriched means nutrients that were lost during food processing have been added back into the product, such as adding back certain vitamins lost in processing wheat to make white flour.
Extra Item	Beverage or food item offered to a student in the one or more of the following circumstances: – Beverage or food item that is not menued as part of the reimbursable meal and is located before or after the point of service (POS) that a student may take, such as salad dressing or condiments – Additional serving of a food or beverage item that is menued as part of a reimbursable meal that a student may take such as crackers or chips Extra items must be included in the weekly dietary specifications.
Flour	Product derived by finely grinding and bolting (sifting) wheat or other grains. Flour includes all grains (wheat, rye, corn, etc.).

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Food Component (Breakfast)	One of the three food groups—fruit (or vegetable), grain, and fluid milk—that make up a reimbursable breakfast meal.
Food Component (Lunch)	One of the five food groups—fruit, vegetable, grain, meat/meat alternate, and milk—that make up a reimbursable lunch meal.
Food Items (Breakfast)	Specific food items offered for a breakfast meal that contain one or more of the three food components. For breakfast, the CE must offer four food items.
Food Items (Lunch)	Specific food items offered for a lunch meal that contain one or more of the five food components.
Fortified Grain	Grain that has been processed to add certain vitamins and minerals to the food product to increase nutritional quality.
Juice	Undiluted product obtained by extraction from sound fruit.[1] It may be fresh, canned, frozen, or reconstituted from concentrate and may be served in either liquid or frozen state. Diluted juice is no longer allowed.
Meal (in Grain Products)	Product derived by coarsely grinding corn, oats, wheat, etc.
Meat By-Products	Pork stomachs or snouts; beef, veal, lamb or goat tripe; beef, veal, lamb, goat or pork hearts, tongues, fat, lips, weasands, and spleen; and partially defatted beef fatty tissue or partially defatted pork fatty tissue.
Menu Items	Actual food listed on the menu to be served such as tacos, fruit salad, or muffins. Menu items may contain one or more components or food items.
Offered Menu	Food items that are actually prepared and set out on the serving lines for students to take. This information is recorded on the CE's food production records.
Partially Defatted Beef (Pork) Fatty Tissue	By-product produced from fatty trimmings of less than 12 percent lean meat (contains 88 percent or more fat).
Partially Defatted Chopped Beef (Pork)	Prepared from fatty trimmings that contain at least 12 percent lean meat (may contain up to 88 percent fat).
Planned Menu	Food items the menu planner intends to offer to students. This information is recorded on the CE's food production records. It represents the CE's calculation of the items that will need to be prepared for a school's usual average daily participation (ADP).
Selected/Served Menu	Food items that are actually served to, or selected by, students. Menu planners should use selected/served food item data to inform future menu planning and reduce food waste, so the school does not offer items that students do not select. Production records should be updated to indicate actual selected/service food items after the meal service so that production records reflect serving trends.
Sound Fruit	Product made from 100% fruit.
Tofu	Soybean-derived food that is made by a process in which soybeans are soaked, ground, mixed with water, heated, filtered, coagulated, and formed into cakes. Basic ingredients are whole soybeans, one or more food-grade coagulants (typically a salt or an acid), and water.

[1] In this definition, s*ound fruit* means a product made from 100% fruit.

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Variety Meats	Meat by-products (above) except that the term variety meats is used specifically in reference to frankfurters, hotdogs, bologna, and similar cooked sausages. A label that states Frankfurter with Variety Meats indicates the use of meat by-products. Yields in the Food Buying Guide for Child Nutrition Programs[2] for frankfurters, bologna, knockwurst, and Vienna sausage are based on products that contain no meat or poultry by-products, cereals, or extenders. Therefore, these products, if containing variety meats, may not be CN labeled.
Whole Grain	Edible part of wheat, corn, rice, oats, rye, barley, etc. Parts of the grains such as the germ or the bran are not considered whole grain. Whole-grain flour or meal is the product derived by grinding the entire grain minus the husk/hull. If a flour or meal does not contain all edible parts of the grain, it is not whole grain.
Whole-Grain Rich	Grain products containing at least 50 percent whole grains. The remaining amount of grains in the product are enriched grains.

Meal Pattern

Under NLSP, lunches must meet regulations. The meal pattern outlined in the rule is food-based and divided by age/grade groups. The meal pattern focuses on specific nutrient standards: calories, sodium, and saturated and trans fat.

Regulations require the following:

- Five-component meal pattern: fruit, vegetables, grains, meat/meat alternate, and milk.
- A required daily serving of fruit.
- A required daily serving of vegetables plus a weekly requirement for Dark Green, Red/Orange, Beans/Peas (legumes), Starchy, and Other Vegetable subgroups.
- Increased quantities of fruits and vegetables.
- Weekly grain ranges plus minimum daily requirements. At least 80% of grains offered during the serving week must be whole-grain rich.
- Fat-free and 1 percent low-fat milk only. Either may be flavored or unflavored.
- Weekly meat/meat alternate ranges plus a daily requirement.
- Under Offer versus Serve (OVS), the student must select at least ½ cup of the fruit and/or the vegetable component to be considered a reimbursable meal.
- Calorie minimum and maximum levels based on age/grade groups.
- Sodium limits.
- Limit on saturated fat; the elimination of trans fat.

[2] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs*.

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Lunch Meal Pattern

The meal requirements are food-based and specify kinds and amounts of food for the five food components required for lunch. The *Nutrition Standards in the National School Lunch Program (NSLP)—Meal Pattern Chart* provides detailed information on the minimum meal pattern requirements for meals to be served for each age/grade group. Components must meet requirements for both daily and weekly servings. The nutrient specifications must be met weekly. This chart includes the requirements for pre-kindergarten students. See *Administrator's Reference Manual (ARM), Section 9, Pre-Kindergarten Meals* for detailed guidance on implementing the pre-K meal pattern.

The meal pattern is food-based and consists of five components:

- Fruit
- Vegetables (with five vegetable subgroups)
- Grains
- Meat/meat alternates
- Milk

The meal pattern is divided into four age/grade groups:

- Pre-Kindergarten students[3]
- Grades K–5 (ages 5–10)
- Grades 6–8 (ages 11–13)
- Grades 9–12 (ages 14–18)

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[3] CEs providing meals to pre-kindergarten students must use the pre-K meal pattern starting October 1, 2017.

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Nutrition Standards in the National School Lunch Program (NSLP)—Meal Pattern Chart

Minimum Amount of Each Food Component Per Week (Minimum Offering Per Day)

Pre-Kindergarten (Pre-K) Lunch Daily		
Meal Pattern Components	**Age 1-2**	**Age 3-5**
Milk, Unflavored Age 1-2, whole milk Age 3-5, 1 percent low fat or fat free	(½) cup	(¾) cup
Fruits[2]	(⅛) cup	(¼) cup
Vegetables	(⅛) cup	(¼) cup
Grains,[3] Whole Grain-Rich or Enriched		
Bread product such as biscuit, roll, or muffin	(0.5) oz eq	
Cooked breakfast cereal, cereal grain,[4] and/or pasta	(0.5) oz eq	
Meat/Meat Alternates[5]		
Lean meat, poultry, or fish	(1.0) oz eq	(1.5) oz eq
Tofu, soy product, or alternate protein products	(1.0) oz eq	(1.5) oz eq
Cheese	(1.0) oz eq	(1.5) oz eq
Large egg	(1.0) oz eq	(1.5) oz eq
Cooked dry beans or peas	(0.5) oz eq	(0.75) oz eq
Peanut butter, soy nut butter, or other nut or seed butter	(1.1) oz eq	(1.7) oz eq
Yogurt, plain, or flavored unsweetened or sweetened	(4.0) oz eq	(6.0) oz eq
Peanuts, soy nuts, tree nuts, or seeds	(0.5) oz eq	(0.75) oz eq

School Age Daily and Weekly				
Meal Pattern Components	**Grades K–5**	**Grades 6–8**	**Grades K-8**	**Grades 9–12**
Milk, Unflavored or flavored fat free or [1] 1 percent low fat	5 (1) cups	5 (1) cups	5 (1) cups	5 (1) cups
Fruits	2½ (½) cups	2½ (½) cups	2½ (½) cups	5 (1) cups
Vegetables	3¾ (¾) cups	3¾ (¾) cups	3¾ (¾) cups	5 (1) cups
Dark Green	½ cup	½ cup	½ cup	½ cup
Red/Orange	¾ cup	¾ cup	¾ cup	1¼ cups
Beans/Peas (Legumes)	½ cup	½ cup	½ cup	½ cup
Starchy	½ cup	½ cup	½ cup	½ cup
Other	½ cup	½ cup	½ cup	¾ cup
Additional Vegetable	1 cup	1 cup	1 cup	1½ cups
Grains, 80% Whole Grain-Rich	8.0-9.0 (1.0) oz eq	8.0-10.0 (1.0) oz eq	8.0-9.0 (1.0) oz eq	10.0-12.0 (2.0) oz eq
Meat/Meat Alternates	8-10 (1) oz eq	9-10 (1) oz eq	9-10 (1) oz eq	10-12 (2) oz eq
Other Nutrient Specifications: Daily Amount Based on the Average for a 5-Day Week				
Min-Max Calories (kcal)	550-650	600-700	600-650	750-850
Saturated Fat % of total calories	< 10	< 10	< 10	< 10
Sodium Target (mg)	T1 ≤ 1230 mg	T1 ≤ 1360 mg	T1 ≤ 1230 mg	T1 ≤ 1420 mg
Trans Fat	Product nutrition label/manufacturer specification must indicate 0 grams of trans fat per serving.			

1 For K-12, one choice of milk must be unflavored at each meal service.

2 Juice must be full strength (100 percent juice) and may be used to meet the vegetable or fruit requirement at one meal per day, including snack. For pre-k, a vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.

3 For pre-K, at least one serving per day, across all meals served must be whole grain-rich; remaining servings for the day must be enriched. Grain-based desserts (i.e., cereal bars, breakfast bars, granola bars, sweet rolls, sweet pie crusts, doughnuts, toaster pastries, cake, brownies, etc.) are not creditable toward meeting the grains requirement.

4 For pre-K, breakfast cereals must be at least 50% whole-grain rich, enriched, or fortified and contain no more than 6 grams of sugar per dry ounce (21.2 grams sucrose and other sugars per 100 grams of dry cereal).

5 Yogurt must contain no more than 23 grams of total sugars per 6 ounces. Any combination of peanuts, soy nuts, tree nuts, or seeds may be credited to meet 50% of the minimum amount to be served.

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The following chart may assist CEs as they determine the appropriate serving sizes based on different methods of measurement.

Measurement Conversion Chart
(Converting Common Serving Portion Sizes into Applicable Measurement Methods)[4]

Component			Other	Volume		Weight		Scoop Size (Scoop serving per quart)
				Level Measure (cup, Tbsp)	Fluid Ounce (fl oz)	Ounce (oz)	Ounce Equivalent (oz eq)	
Milk			--	½ cup	4	--	--	--
			--	¾ cup	6	--	--	--
Fruits/Vegetables			--	¼ cup	--	--	--	16
			--	½ cup	--	--	--	8
Grains	Bread Product: (biscuit, roll, muffin)		½ serving	--	--	0.5 oz	0.5 oz eq	--
	Cooked: Cereal, Cereal Grain, Pasta		--	¼ cup	--	0.5 oz	0.5 oz eq	16
	Ready-To-Eat Breakfast Cereal (Dry /Cold)	Flakes/Rounds	--	½ cup	--	0.5 oz	0.5 oz eq	8
		Puffed	--	¾ cup	--	1.0 oz	1.0 oz eq	4
		Granola	--	⅛ cup	--	0.5 oz	0.5 oz eq	30
Meat/ Meat Alternates	Lean meat, poultry, or fish		--	--	--	1.0 oz	1.0 oz eq	--
			--	--	--	1.5 oz	1.5 oz eq	--
	Tofu, soy product, or alternate protein products		--	⅛ cup	--	1.1 oz	0.25 oz eq	30
			--	⅓ cup	--	1.5 oz	0.33 oz eq	12
	Cheese		--	¼ cup	--	1.0 oz	1.0 oz eq	16
			--	⅓ cup	--	1.5 oz	1.5 oz eq	12
	Large egg		½ serving	⅛ cup	--	--	1.0 oz eq	30
			¾ serving	⅓ cup	--	--	1.5 oz eq	12
	Cooked dry beans or peas		--	¼ cup	--	0.5 oz	1.0 oz eq	16
			--	⅜ cup	--	1.5 oz	1.5 oz eq	10
	Peanut butter, soy nut butter, or other nut or seed butter		--	2 Tbsp	--	1.1 oz	1.0 oz eq	30
			--	3 Tbsp	--	1.7 oz	1.5 oz eq	20
	Yogurt, plain, or flavored unsweetened or sweetened		--	¼ cup	--	2.0 oz	0.5 oz eq	16
			--	½ cup	--	4.0 oz	1.0 oz eq	8
			--	¾ cup	--	6.0 oz	1.5 oz eq	4
	Peanuts, soy nuts, tree nuts, or seeds		--	--	--	0.5 oz	1.0 oz eq	--
			--	--	--	0.75 oz	1.5 oz eq	--

Lunch Menu Planning

To meet the requirements of the meal pattern, a reimbursable lunch must contain a specified quantity of each of the food components. The quantities for the food components vary by age/grade group. Refer to the *Nutrition Standards in the National School Lunch Program (NSLP)—Meal Pattern Chart* for information regarding specific quantities per age/grade group. Understanding the difference between components, food items, and menu items is essential when planning menus that meet requirements. The *Lunch Menu Planning Example Chart* provides examples of components, food items, and menu items.

[4] The *Child Nutrition Food Buying Guide* available at *http://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs* provides additional information on converting amounts.

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Lunch Menu Planning Example Chart		
Components	**Food Items**	**Menu Items**
1. Meat/Meat Alternates	1. Chicken	1. Southwest Baked Chicken
2. Fruit	2. Peaches	2. Fresh Fruit of the Day
3. Vegetable (Dark Green)	3. Spinach	3. Seasoned Spinach
4. Grains	4. Whole Wheat Roll	4. Roll
5. Milk	5. Fat-Free Milk	5. Unflavored Milk or Chocolate Milk

Food Component

A food component[5] means one of the five food groups—meat/meat alternates, fruit, vegetable, grains, and fluid milk—that make up a reimbursable lunch meal. A minimum of five food components must be offered prior to the point of service (POS)[6] to meet requirements for a reimbursable meal.

Food Items

Food items mean a specific food offered that contains one or more of the five lunch food components.

Menu Items

Menu items are the actual foods served such as potato casserole, grilled chicken, or fresh apples. Menu items may contain one or more components or food items.[7] The *Lunch Menu Planning Example Chart* provides examples of components, food items, and menu items.

Whether a menu item consists of one or more components, all five required food components must be offered in the required amount for the meal to be reimbursable. All menu items should be offered prior to the POS.[8]

While a menu item may contain only one food component as shown in the *Menu Planning Chart*, a menu item may also contain two or more food components by combining food items as shown in the *Lunch Menu Planning Chart—Multiple Components in One Menu Item Chart*. All menu items must be offered prior to the POS.

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5 For lunch there are five components.
6 See *Administrator's Reference Manual (ARM), Section 21, Meal Service* for additional information on this topic.
7 See the *Reimbursable Lunch Requirements* subsection in this section for additional information on combined food items.
8 See the *Administrator's Reference Manual (ARM), Section 21, Meal Service* for additional information on this topic.

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Lunch Menu Planning Chart—Multiple Components in One Menu Item Chart		
Components	**Food Items**	**Menu Item**
• 1.0 oz eq, Meat/Meat Alternate • ⅛ cup, Other vegetable • ⅛ cup, Red/Orange vegetable • 1.5 oz eq, Whole-grain rich grain	• Beef patty • Lettuce • Tomato • Bun	• Hamburger
• 1.5 oz eq, Meat/Meat Alternate • ¼ cup, Dark Green vegetable • ⅛ cup Red/Orange vegetable • 1.0 oz eq Grains	• Ground beef • Cheese garnish • Spinach • Tomato • Taco shell	• Spicy Tacos
• ¼ cup Fruit: apple • ⅛ cup Fruit: raisins • ¼ cup Grain: oat and whole grain	• Apple • Raisins • Oatmeal & whole grain topping	• Apple Surprise

Crediting Foods

Crediting is determined by rounding the food component down to the nearest

- 0.25 ounce equivalent (oz eq) for the grain and meat/meat alternate components
  or
- ⅛ cup for fruit, vegetable, and milk components.

Age/Grade Groups

The meal pattern is divided into three age/grade groups:

- Grades K–5 (ages 5–10)
- Grades 6–8 (ages 11–13)
- Grades 9–12 (ages 14–18)

CEs must use the meal pattern age/grade groups to plan the menus. Because of the three distinct age/grade groups, CEs cannot offer the same meal portions to all grade levels. In cases where a CE has an unusual grade configuration for grades K–8 that prevents the use of the required age/grade groups, it may serve the same lunch to students in grades K–8 as requirements across these age/grade groups overlap.

However, in these cases, the CE must be careful to meet the calorie requirements for each age/grade group. The CE must meet the lower age/grade group sodium standard when serving meals to more than one age/grade group.

CEs with sites with students in both age/grade groups 6–8 and 9–12 must serve different meal portion sizes for each age/grade group. No customization of the age/grade group in the meal pattern is allowed across these age/grade groups.

[NOTE: CEs are allowed to offer age-appropriate meals to individual students in unique situations.
For Example: A 16-year old student placed in a K–5 educational setting can be served portion sizes for age/grade group 9–12. This may also apply to students with an Individualized Education

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Plan (IEP). A CE must follow the IEP for any student that has one.][9]

Residential Child Care Institutions

Residential child care institutions (RCCIs) are not waived from the meal pattern requirements, including the nutrient standards.[10] To meet the caloric needs of students in RCCIs, the menu planner may increase the calories provided through other meal services such as snacks and the supper meal. If it is not possible to use the established age/grade groups, RCCI CEs do have some flexibility. See the *Administrator's Reference Manual (ARM), Section 28, Residential Child Care Institutions*, for additional information on this topic.

Menu Planning for Pre-Kindergarten (Pre-K) Students

CEs must implement the updated Child and Adult Care Food Program (CACFP) pre-kindergarten (pre-K) meal pattern which is described on the *Nutrition Standards in the School Lunch Program (NSLP)—Meal Pattern Chart*.

However, while CEs are required to implement the pre-K meal pattern for NSLP pre-K students beginning, other CACFP requirements do not apply unless a site is also operating CACFP At-Risk or a CACFP Center).

See *Administrator's Reference Manual (ARM), Section 9, Pre-Kindergarten Meals* or the *Child and Adult Care Food Program—Child Care Centers Handbook* for detailed information on the pre-K meal pattern.[11]

Weekly Menu Planning

The weekly range requirement applies to both the grains and meat/meat alternate components. For menu planning purposes, CEs must offer a weekly menu so that the sum of all minimum daily offering meets at least the weekly minimum requirement. For grades K–5 and 6–8, the daily grains minimum is only 1.0 oz eq and the weekly grains minimum is 8.0 oz eq Offering a minimum of only 1.0 oz eq daily would only total 5.0 oz eq across the week.

Therefore, on some days, CEs must offer more than 1.0 oz eq of grains as a minimum offering. The same applies to the weekly minimum amount of meat/meat alternates.

For Example: A menu planner has created a menu that gives age/grade K-5 students two options every day: a 1.0 oz eq grain item (crackers with a salad) or a 2.0 oz eq grain item (pizza). Each student is instructed to select one option only.

For the 1.0. oz eq daily option, the total weekly grains offered is 5.0 oz eq	For the 2.0 oz eq daily option, the total weekly grains offered is 10.0 oz eq
(1.0 oz eq x 5 days = 5.0)	(2.0 x 5 days =10.0)
This option does not meet the minimum weekly grains requirement of 8.0 oz eq for age/grade group K–5.	This option does meet the minimum weekly grains requirement of 8.0 oz eq for age/grade group K–5.

Because the lowest weighing menu option for the week offers less than 8.0 oz eq over the period of a week, this menu does not meet the required weekly minimum.

[9] See *Administrator's Reference Manual (ARM), Section 25, Meal Accommodations* for more information on this topic.
[10] See the *Administrator's Reference Manual (ARM), Section 28, Residential Child Care Institutions,* for additional information on this topic.
[11] Available at *www.SquareMeals.org*

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CEs should also plan their menus so that the sum of the daily recommended maximum offerings[12] for grains and meat/meat alternates is equal to or less than the weekly recommended maximum offerings in order to meet the weekly dietary specifications. Therefore, the sum of minimum daily offerings must meet the weekly minimum requirement, and the sum of the daily recommended maximum offerings should not exceed the weekly recommended maximum offerings.

For Example: A menu planner for an age/grade 9–12 site offers a variety of grains each day from which students may choose a grain item. Each day the largest grain option offered is 2.0 oz eq grain item. Even though there are lower weighted grain options offered during the week, the menu planner uses the highest weighted grain option to determine the maximum grain servings for the week. When the site offers 2.0 oz eq each day, the total for the week would be 10.0 oz eq. This menu would not exceed the recommended maximum weekly of 12.0 oz eq.

CEs with Shorter and Longer Weeks

CEs that regularly and consistently serve lunch more than five days per week must increase the weekly component quantities by 20 percent (⅕) for each additional day.

Similarly, CEs that regularly and consistently serve lunch less than five days per week must decrease the weekly component quantities by 20 percent (⅕) for each day less than five. The *Short and Long Week Adjustments for Lunch Chart* provides detailed information for planning menus for shorter and longer weeks.

For CEs with occasional decreases in the week length because of holidays, snow days, etc., the menus do not have to be adjusted. However, menu planners must plan their menus in a way that is consistent with the intent of the meal patterns. CEs should make sure they do not consistently fail to offer certain grains in portions that would exceed the weekly recommended ranges or menus that consistently eliminate required vegetable subgroups.

Short and Long Week Adjustments for Lunch Chart*			
	Grades K–5 Weekly (Daily)	**Grades 6–8 Weekly (Daily)**	**Grades 9–12 Weekly (Daily)**
Three-Day School Week			
Fruits (cups)	1½ (½)	1½ (½)	3 (1)
Vegetables (cups)	2¼ (¾)	2¼ (¾)	3 (1)
Dark Green	½	½	½
Red/Orange	½	½	1
Beans/Peas (Legumes)	½	½	½
Starchy	½	½	½
Other	¼	¼	½
Additional Vegetables to Reach Total	0	0	0
Grains (oz eq)	5.0–5.5 (1.0)	5.0–6.0 (1.0)	6.0–7.0 (2.0)
Meat/Meat Alternates (oz eq)	5.0–6.0 (1.0)	5.0–6.0 (1.0)	6.0–7.0 (2.0)
Milk, Fluid (cups)	3 (1.0)	3 (1.0)	3 (1.0)

[12] USDA has waived the maximum serving amounts for grains and meat/meat alternates.

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Short and Long Week Adjustments for Lunch Chart*			
	Grades K–5 Weekly (Daily)	**Grades 6–8 Weekly (Daily)**	**Grades 9–12 Weekly (Daily)**
Four-Day School Week			
Fruits (cups)	2 (½)	2 (½)	4 (1)
Vegetables (cups)	3 (¾)	3 (¾)	4 (1)
Dark Green	½	½	½
Red/Orange	¾	¾	1¼
Beans/Peas (Legumes)	½	½	½
Starchy	½	½	½
Other	½	½	¾
Additional Vegetables to Reach Total	¼	¼	½
Grains (oz eq)	6.5 –7.0 (1.0)	6.5 –8.0 (1.0)	8.0–9.5 (2.0)
Meat/Meat Alternates (oz eq)	6.5–8.0 (1.0)	7.0–8.0 (1.0)	8.0–9.5 (2.0)
Milk (cups)	4 (1.0)	4 (1.0)	4 (1.0)
Six-Day School Week			
Fruits (cups)	3 (½)	3 (½)	6 (1)
Vegetables (cups)	4½ (¾)	4½ (¾)	6 (1)
Dark Green	½	½	½
Red/Orange	¾	¾	1¼
Beans/Peas (Legumes)	½	½	½
Starchy	½	½	½
Other	½	½	¾
Additional Vegetables to Reach Total	1¾	1¾	2½
Grains (oz eq)	9.5 –11.0(1.0)	9.5 –12 (1.0)	12.0–14.5 (2.0)
Meat/Meat Alternates (oz eq)	9.5–12.0 (1.0)	11.0–12.0 (1.0)	12.0–14.5 (2.0)
Milk (cups)	6 (1.0)	6 (1.0)	6 (1.0)
Seven-Day School Week			
Fruits (cups)	3½ (½)	3½ (½)	7 (1)
Vegetables (cups)	5¼ (¾)	5¼ (¾)	7 (1)
Dark Green	½	½	½
Red/Orange	¾	¾	1¼
Beans/Peas (Legumes)	½	½	½
Starchy	½	½	½
Other	½	½	¾
Additional Vegetables to Reach Total	2½	2½	3½
Grains (oz eq)	11.0–12.5 (1.0)	11.0–14.0 (1.0)	14.0–17.0 (2.0)
Meat/Meat Alternates (oz eq)	11.0–14.0 (1.0)	12.5–14.0 (1.0)	14.0–17.0 (2.0)
Milk (cups)	7 (1)	7 (1)	7 (1)
These calculations are rounded to the nearest 0.5 oz eq and ¼ cup.			

[NOTE: Since the dietary specifications are based on average daily amounts, these are unaffected by varied week lengths, average over the length of the week, whether consisting of three or seven days. However, because of the weekly vegetable subgroup requirements, the 20 percent reduction for each day is not practical. Therefore, for shorter weeks, the CE should adjust the Additional vegetable category only.]

CEs with Multiple Age/Grade Groups

Some CEs include pre-kindergarten (pre-K) students as well as students in other age/grade groups in their lunch meal service. CEs that operate half-day pre-K programs may choose to serve pre-K students both breakfast and lunch or only one of these meals.

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See *Administrator's Reference Manual (ARM), Section 9, Pre-Kindergarten Meals* or the *Child and Adult Care Food Program—Child Care Centers Handbook* for additional information on the pre-K meal pattern.[13]

Overlapping Age/Grade Groups

If a K–8 site is unable to effectively offer different meal patterns for the K–5 students and the grade 6–8 students, the CE may offer students in these grades the same quantities of the food components because the quantities required by the lunch meal patterns for the age/grade groups K–5 and 6–8 are the same or overlap.

However, in order to accommodate the average daily nutrient limits and weekly required minimums and recommended maximum offerings for both grains and meat/meat alternates, CEs should work within the following parameters:

- Eight to nine (8.0–9.0) oz eq grains per week
- Nine to ten (9.0–10.0) oz eq meat/meat alternates per week
- Average daily calorie range of 600–650 per week
- Average daily sodium limit of ≤1230 mg per week

For Example: The CE would have to offer 8.0–9.0 oz equivalent of grains and 9.0–10.0 oz equivalent of meat/meat alternates to all students to meet the requirements for age/grade groups K–5 and 6–8. In addition, the meals offered to these students must consist of 600–650 calories to meet the nutrient standards for both groups. Also, the sodium content of these meals must meet the sodium specifications for the youngest group: grades K–5.

Non-Overlapping Menus for Age/Grade Groups

Menu planners must plan separate menus for age/grade groups 6–8 and 9–12 when grades 6–8 and 9–12 are located at a single site. The meal pattern does not allow for sites with a grade configuration with one grade above or below the age/grade grouping to follow the predominant age/grade group requirements, which was allowed in previous years. CEs may offer the same menu items to varied age/grade groups, but the portion size served to each student must match the student's age/grade group. See the *Residential Child Care Institutions* subsection in this section for additional information on age/grade requirements specific to RCCIs as well as the *Administrator's Reference Manual (ARM), Section 28, Residential Child Care Institutions*.

Strategies for Mixed Age/Grade Groups

One way to ease menu planning for CEs with grades 6–8 and 9–12 at one site is to start with a menu that is appropriate for grades 6–8 and then add in additional foods and larger portion sizes to meet the meal pattern requirements for the 9–12 age/grade group.

Therefore, on top of the requirements for the 6–8 age/grade group, CEs must make the following available to the students in age/grade group 9–12:

- One-half (½) cup more fruit daily
- One-quarter (¼) cup more vegetables daily and throughout the week
  - One-half (½) cup more Red/Orange vegetables

[13] Available at *www.SquareMeals.org*

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- One-quarter (¼) cup more of Other vegetables
- One-half (½) cup more additional vegetables (any subgroup)

Another option is to make the full 1 cup fruit and vegetables required for grades 9–12 available to both the 6–8 and 9–12 age/grade groups. There is no maximum requirement for the fruit and vegetable components. The site would use the same menu plan for these two food components, as long as these offerings do not exceed the calorie limit for the 6–8 age/grade group.

For Example: A CE can offer a salad bar to all students. Or, to meet the additional calorie needs of the 9–12 age/grade group, the site could consider an additional ounce equivalent (oz eq) of grain or meat/meat alternate to be served to the older students (e.g., additional bread options or a larger entrée serving size).

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Fruit and Vegetable Components of the Reimbursable Lunch

The *Fruit and Vegetable Components of the Reimbursable Lunch Chart* provides the required daily and weekly servings for these components.

Fruit and Vegetable Components of the Reimbursable Lunch Chart			
	Amount of Fruits and Vegetables Per Week (Minimum Per Day)		
Component	**Grades K–5**	**Grades 6–8**	**Grades 9–12**
Fruits (cups)[b]	2½ (½)	2½ (½)	5 (1)
Vegetables (cups)b	3¾ (¾)	3¾ (¾)	5 (1)
Dark Green[c]	½	½	½
Red/Orange[c]	¾	¾	1¼
Beans/Peas (Legumes)c	½	½	½
Starchy[c]	½	½	½
Other[c, d]	½	½	¾
Additional Vegetable to Reach Total[e]	1	1	1½

[a] Food items included in each food group and subgroup and amount equivalents. Minimum creditable serving amount is ⅛ cup.
[b] One-quarter cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than one half of the fruit or vegetable offerings over the course of the week may be in the form of juice. All juice must be 100% full-strength.
[c] Larger amounts of these vegetables may be served.
[d] This category consists of Other Vegetable as defined in regulations. The Other Vegetable requirement may be met with any additional amounts from the Dark Green, Red/Orange, and Beans/Peas (Legumes) vegetable subgroups.
[e] Any vegetable subgroup may be offered to meet the total weekly vegetable requirement.

Full-strength vegetable/fruit juice may not be used to meet more than one-half of the vegetable or fruit requirements over the course of the week. Any product, either liquid or frozen, labeled juice, full-strength juice, single-strength juice, or reconstituted juice is considered full-strength juice.

If juice offerings are a combination of 100% fruit and 100% vegetable juices, the CE must count the juice as

a fruit serving if the first ingredient is a fruit juice	or	a vegetable serving if the first ingredient is a vegetable juice.

Over the course of the serving week, CEs must offer all vegetable subgroups:[14]

- **Dark Green**, such as bok choy, broccoli, collard greens, kale, mustard greens, romaine lettuce, spinach, turnip greens, and watercress
- **Red/Orange**, such as acorn squash, butternut squash, carrots, pumpkin, tomatoes, tomato juice, and sweet potatoes
- **Dry Beans/Peas (Legumes)**, such as black beans, garbanzo beans, lentils, kidney beans, mature lima beans, navy beans, pinto beans, refried beans, and split peas
- **Starchy**, such as corn, cassava, green bananas, green peas, green lima beans, plantains, taro, water chestnuts, and white potatoes
- **Other Vegetable**, which includes all other fresh, frozen and canned vegetables, such as artichokes, asparagus, avocado, bean sprouts, beets, Brussels sprouts,

[14] The *Food Buying Child for School Nutrition Programs* provides detailed information on crediting mixed vegetable products, available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

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cabbage, cauliflower, celery, cucumbers, eggplant, green beans, green peppers, iceberg lettuce, mushrooms, okra, onions, parsnips, turnips, wax beans, and zucchini

The category for any unusual vegetables may be found at the following links:

- USDA's *ChooseMyPlate* website at available at *www.choosemyplate.gov/.*
- USDA's *Item Clusters, Percent of Consumption, and Representative Foods for 2010 USDA Food Patterns* at available at *https://fns-prod.azureedge.net/sites/default/files/usda_food_patterns/ItemClustersAndRepFoods.pdf.*

Crediting Fruits and Vegetables

The minimum creditable amount of a fruit or vegetable that may be credited toward the meal pattern is ⅛ cup. Under OVS, ½ cup is the minimum amount of fruits, vegetables, or combination of fruit and vegetables that a student must be served (or select if OVS) for a reimbursable lunch.

[NOTE: A student who is served a plated meal must be served the required minimum offering for each component but may request and be given a smaller portion size of any item. If the student takes a smaller portion size of any item, the remaining amount must meet the requirements described in the *Reimbursable Lunch Requirements* subsection in this section.]

Crediting Fruits and Vegetables for a Reimbursable Meal Chart	
Minimum Creditable Amount of Fruits (or Vegetables) Taken by a Student	**Minimum Portion Size or Amount of Fruits (or Vegetables) Taken by a Student**
⅛ Cup	**½ Cup**
How Creditable Amount Is Used…	**How Minimum Portion Size or Amount Is Used…**
A creditable amount contributes toward meeting the minimum serving portion size or amount.	A minimum serving portion size or amount counts toward meeting the minimum food component requirements for a reimbursable meal.

The creditable amount may be reached by combining different fruits and vegetables to reach a ½ cup serving amount.[15]

For Example: In an OVS service, the student takes a fruit/vegetable mix that contains ⅛ cup apples, ⅛ cup oranges, ⅛ cup grapes, and ⅛ cup avocado. The total fruit/vegetable mix is ½ cup.

There are no maximum limits (daily or weekly) on the amount of fruit or vegetable subgroups offered at lunch. However, CEs must offer at least the minimum quantities of all the vegetable subgroups weekly required in the NSLP meal pattern and ensure that they do not exceed the specific calorie limit requirements.

Non-Creditable Amount of Fruit or Vegetable

Small amounts (less than ⅛ cup) of fruits or vegetables used for flavoring or as an optional ingredient for a garnish must not be counted toward the vegetable or fruit component requirement.

CEs will find that the updated *Food Buying Guide for Child Nutrition Programs*[16] will provide detailed information on the amount of fruit needed for a creditable amount.

[15] See the *Reimbursable Lunch Requirements* subsection in this section for additional information.
[16] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs*.

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Order of Serving Vegetables During the Week.

CEs are not required to offer the vegetable subgroups at lunch in any specific sequence during the week. The menu planner decides when and how to offer the required vegetable subgroups. Salad bars are a great way to offer the vegetable subgroups.[17]

CEs may offer the same vegetable subgroup multiple times throughout the week in small amounts to add up to the required amount for the week. CEs may break up each subgroup requirement across the week as long as the week's menu as a whole meets the full subgroup requirements, and each day the CE offers the full daily vegetable minimum requirement.

For Example: To achieve the ½ cup weekly bean/pea (legume) requirement,

- One day a CE offers a ½ cup of bean/corn salsa that includes ¼ cup of beans per serving.
- Another day, the CE offers a 1 cup of black bean soup that includes ¼ cup of black beans per serving.

In this example, the CE would meet the Beans/Peas (Legumes) vegetable subgroup for the week—½ cup for all age/grade groups. However, this example assumes that the CE is providing additional vegetables with each of these meals to meet the minimum daily requirement for the vegetable component.

Offer Versus Serve (OVS) and the Fruit and Vegetable Components

Under OVS, CEs must offer enough servings for each student to take the full minimum daily requirement for each component.[18] For a reimbursable meal, a student must be offered at least 1 cup of either fruit or vegetables or a combination of fruit and vegetables and must take at least ½ cup of fruit or vegetables for a reimbursable meal. For additional information on OVS and fruits and vegetables, see the *Reimbursable Lunch Requirements* subsection in this section.

Multiple Serving Lines

CEs with multiple serving lines with different menu items must offer all the vegetable subgroups each week on each serving line. This strategy ensures that all students have access to all of the vegetable subgroups throughout the week regardless of the serving line selected by the student.

For Example: A student who consistently selects the pizza line would have access to all the vegetable subgroups on the pizza line throughout the week. Another option would be to offer a salad bar centrally located so that all students can access it more easily.

Crediting Fruits

CEs may offer the following types of fruits:

- Fresh
- Frozen, based on volume prior to freezing
- Canned in light syrup, water, or fruit juice
- Dried
- One hundred percent fruit juice, frozen or liquid

These types of fruits may be used interchangeably. To aid in the absorption of iron from bread and cereal products, it is recommended that a fruit high Vitamin C be offered daily.

[17] See *Recipes for Salad or Theme Bars* subsection in this section for additional information.
[18] See the *Fruit and Vegetable Components for Reimbursable Lunch Chart* subsection in this section for daily requirements by age/grade groups

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Coconut

Fresh, frozen, and 100% coconut juice are creditable by volume. Dried coconut is credited toward the fruit component at twice the volume served. When served as a food component, the minimum creditable amount to be served is ⅛ cup.

Coconut Water labeled as 100% coconut use is creditable by volume.

Coconut flour and coconut oil are not creditable.

Dried Fruit

Whole dried fruit and whole dried fruit pieces credit at twice the volume served.

For Example: A ¼ cup of raisins contributes ½ cup fruit toward the fruit requirement.

Dried fruit processed with sugar to keep the fruit pieces separated may credit toward a reimbursable meal

Frozen Fruit with Added Sugar

CEs may continue to serve frozen fruit with added sugar. However, frozen fruits with added sugar should be used in moderation to keep the average school meal within the weekly calorie ranges.

Fruit Desserts

The fruit in a dessert can credit toward the fruit component, regardless of whether there is added sugar in the recipe or not. However, sites should offer sweetened fruit in moderation to stay under the weekly calorie maximum.

Non-Grain-Based Desserts

A sweetened fruit dessert without grains, such as fruited gelatin or a baked apple, does not count toward the weekly limit on grain-based desserts.

Grain-Based Desserts

A CE can offer 2.0 oz eq of a grain-based dessert over the course of a week—offering a small portion on several days that equals the weekly total of 2.0 oz eq or the entire 2.0 oz eq on a single day.

For grain-based desserts, such as pies, cobblers, or crisps, the following crediting guidance applies:

- The fruit portion of the grain-based dessert may credit toward the fruit component. The fruit may be fresh, dried, or canned in 100% juice, light o extra light syrup.
- The grain portion (e.g., crust) may credit toward the grains component.

CEs may add a vegetable or fruit to a dessert item to enhance the nutritional profile of the dessert. However, adding a component to a dessert does not make the dessert creditable for a reimbursable meal. It is an extra food item that must be included in the dietary specifications for the week.

See the *Fruit Dessert* subsection in this section for more information on the limitations for crediting formulated grain products.

Fruit (or Vegetables) in Gelatin

Fruit (or Vegetables) pieces in gelatin are creditable based on volume of the fruit or vegetable pieces as served. If juice is also added to gelatin, the juice only credits if there is visible fruit or vegetables in the gelatin.

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Crediting Vegetables

100% Vegetable Flour

Pasta made with 100% vegetable four is creditable as a vegetable component by volume even if the pasta is not served with another recognizable vegetable. However, small amounts of vegetable powder included in grain-based products to add color (spinach, sun-dried tomato) are not creditable toward the vegetable component.

- When served as the vegetable component, pasta made with 100 percent vegetable flour is credited by volume and must be included in the weekly dietary specifications.
  - ½ cup of pasta made with 100% vegetable flour credits as ½ cup of vegetables.
- When the vegetable flour from one vegetable subgroup is used to make the pasta, the pasta credits toward the appropriate vegetable subgroup.
- When the vegetable flour from more than one vegetable subgroup is used to make the pasta, the pasta credits in one of two ways:
  1. When a product formulation statement details the actual volume of each vegetable (subgroup) per serving, the pasta product may credit toward the vegetable subgroups as long as the minimum creditable amount for each subgroup is served.
  2. When the vegetable subgroup contributions are not known, the product may credit toward the additional vegetable subgroup.
- When a food item is made from vegetable flour and other non-vegetable ingredients, the pasta made from vegetable flour may be credited toward the appropriate vegetable subgroup if a product formulation statement provides the contribution information for the actual volume of vegetable flour per serving.

Dry Peas and Beans

Dry or mature beans and peas may be offered as a meat alternate or as a vegetable, at the discretion of the menu planner. One serving may not count toward two different food components in the same meal. However, two different servings may count as two separate components: vegetable and meat/meat alternates.

For Example: One serving of refried beans can be offered as a vegetable in one meal. This serving of refried beans offered as a vegetable counts toward the weekly Beans/Peas (Legumes)requirement, but not toward the meat/meat alternate weekly range in that same meal.

Two servings of refried beans can be menued as both a vegetable and a meat/meat alternate. A ½ cup of beans incorporated into a burrito and 1 cup serving of beans may be offered as a vegetable.

For additional guidance on beans and peas, see: *www.choosemyplate.gov/* for the *Food Buying Guide for Child Nutrition Programs*.[19]

Extruded Vegetable Products

Meal pattern contributions of extruded vegetable products can be found in the *Food Buying Guide for Child Nutrition Programs*.[20] For any food item not listed in the guide,

[19] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs*.
[20] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs*.

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a manufacturer's product formulation statement should be used to determine the contribution extruded products make toward the meal pattern requirement.[21]

Herbs as Vegetables

A one-fourth (¼) cup garnish of herbs that are classified as Dark Green vegetables, such as parsley and cilantro credit as ⅛ cup of Dark Green vegetables. A one-fourth (¼) cup garnish of herbs that are classified as Other vegetables, such as chives and garlic, credit as ⅛ cup of Other vegetables. Herbs that are used in amounts smaller than ⅛ cup per serving portion as a garnish or seasoning do not credit toward the vegetable component.

Hominy, Vegetable Form

When served as a vegetable component, the food item is credited as a starchy vegetable subgroup by volume and must be included in the weekly dietary specifications.

- ¼ cup canned, drained hominy, or cooked, whole hominy from dried hominy credits by volume as ¼ cup for starchy vegetable subgroup

Leafy Salad Greens

Raw and cooked greens credit differently toward the meal pattern requirements. Raw, leafy salad greens credit <u>at half the volume served</u>.

For Example: A ½ cup serving of romaine lettuce contributes ¼ cup toward the Dark Green vegetable subgroup.

Cooked leafy greens, such as sautéed spinach, are credited by volume served. A ½ cup of cooked spinach credits ½ cup toward the Dark Green vegetable subgroup.

Iceberg lettuce is not considered a Dark Green vegetable, but a salad that consists of a variety of dark leafy greens (such as spinach or romaine lettuce) does count toward the Dark Green subgroup.

If the mixed salad contains different vegetable subgroups and the quantities of each subgroup are known, they can be credited toward each subgroup if the amount served is at least ⅛ cup.

If the quantities are not known, a mixed salad may count toward the Additional Vegetable requirement.

Pre-Packaged Salads

Many CEs offer pre-packaged salads as an option for a reimbursable meal. Pre-packaged salads may or may not contain all of the food components. Depending on the CE, students selecting the pre-packaged salad may or may not have the option to select another vegetable component on the line, in addition to the pre-packaged salad, in order to meet the food component requirement.

If the CE has pre-packaged salads that are complete reimbursable meals and <u>does not allow</u> the student to select another vegetable on the line, when selecting a pre-packaged salad, then the week's servings of pre-packaged salad must contain all the vegetable subgroups throughout the week as well as the appropriate servings of fruit, meat/meat alternates, and grains.

Roasted Legumes

Roasted legumes such as chickpeas and edamame (immature soybeans) may be used for school meals. They are often served the same way nuts and seeds are used as a meat/meat alternate or a legume vegetable.

[NOTE: Peanuts may be used only as a meat/meat alternate component.]

[21] For additional information, see *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* located at *www.SquareMeals.org*.

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Creditable Fruit or Vegetable Juice

Juice is defined as

> One hundred percent full-strength fruit or vegetable juice is an undiluted product obtained by extraction from sound[22] fruit. It may be fresh, canned, frozen, or reconstituted from concentrate and may be served in either liquid or frozen state. Diluted juice is no longer allowed.

Fruit and vegetable juice are creditable per meal over the course of the week. No more than one half (50%) of the weekly offering for the fruit or vegetable component may be served as juice each week. This maximum includes 100% juice offered as an extra item beyond the point of service, even if extra items offered beyond the point of service are *free*.

Liquid or frozen 100% juice is credited as the volume served.

For Example: One-half cup of apple juice will credit as ½ cup of juice.

Calculating the Weekly Juice Limit When Multiple Fruit/Vegetable Juices Are Offered

In most cases, the menu planner can total the amount of juice offered each day over a week and determine if the menu limits the amount of juice offered to ½ of the weekly fruit offered. However, if there are multiple lunch options during the week that offer different amounts of juice, the CE should total the amount of juice available at all meals over the course of the week and then divide the total by total fruit (vegetable) offerings for the week.

Calculation of Weekly Juice Amount Chart

Total Fruit/Vegetable Juice Offerings* for the Week in Cups		Total Fruit/Vegetable Offerings* for the Week in Cups *(Juice + Non-Juice)*		Percentage Fruit/Vegetable Juice Offerings for the Week
7 cups (Fruit/Vegetable Juice)	÷	15 cups (7 Fruit/Vegetable Juice + 8 Non-Juice Fruit/Vegetables)	=	.46 x 100 = 46 %

* Based on fruit/vegetable juices that are creditable toward a reimbursable meal.

Creditable Juice

For juice to be creditable toward the fruit component, a minimum of ⅛ cup of juice must be taken. However, juice and fruit juice concentrate cannot be credited when used as an ingredient in another food or beverage product.

For Example: One-quarter cup of gelatin made with 1 tablespoon of juice concentrate and water does not contribute as ¼ cup of juice since the fruit juice is no longer in the form of liquid or frozen juice.

There are four ways juice can credit toward the fruit requirement:

Not from Concentrate

- 100 percent liquid juice not from concentrate
- 100 percent frozen juice not from concentrate

From Concentrate

- 100 percent juice reconstituted from concentrate
- 100 percent frozen juice reconstituted from concentrate

[22] In this definition, s*ound fruit* means a product made from 100% fruit.

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When a juice concentrate is used in its reconstituted form, it is considered a full-strength juice, as appropriate, and is credited accordingly.

Juice Concentrate

A juice concentrate may be used toward meeting the fruit component of the lunch. When a juice concentrate or a juice drink concentrate is used in its reconstituted form, it is considered a full-strength juice or a juice drink, as appropriate, and is credited accordingly.

Creditable Juice Blends

If the first ingredient in the 100 percent juice blend or fruit and vegetable blend is fruit or vegetable juice, then, the 100 percent juice blend may contribute to the fruit or vegetable requirement.

100 Percent Vegetable

If the first ingredient is a vegetable juice, then 100% juice blend can contribute to the required vegetable component as follows:

- Vegetable juice blends containing vegetables from the same subgroup may contribute toward that vegetable subgroup component.
- Vegetable juice blends containing vegetables from more than one subgroup may contribute to the Additional Vegetable subgroup category.

For Example: A full-strength carrot/tomato vegetable juice blend may credit toward the Red/Orange vegetable subgroup component.

A full-strength vegetable juice blend containing carrots, spinach, tomato, and watercress may only credit toward the additional vegetable subgroup component.

Creditable Blended Dish Items with Pureed Fruit or Vegetables

Fruit and vegetable puree crediting is based on the actual volume served. For many fruits and vegetables, the pureed form has a smaller volume than the whole fruit or vegetable pieces. There are two sources that provide information to assist CEs in determining the volume amount served for pureed items:

- *Food Buying Guide for Child Nutrition Programs*,[23] including the introduction that contains information about how to obtain in-house yield data.
- Manufacturer's product formulation statement

Creditable amounts of pureed fruit or vegetable food components in a blended dish item may contribute toward the meal pattern requirements as long as a creditable amount (⅛ cup) of a recognizable food component is in the dish. If the dish does not contain at least ⅛ cup of a recognizable food component, then, the blended food item does not contribute to the meal pattern requirements.

For Example: When a macaroni and cheese dish contains ⅛ cup of recognizable diced squash and ⅛ cup of unrecognizable pureed carrots, both the squash and carrots may be credited toward the vegetable component since there is at least ⅛ cup of a recognizable vegetable component in the dish.

Non-Creditable Juice

The following uses of juice and juice concentrate cannot credit toward the fruit or

[23] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

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vegetable components:

- An ingredient in another food or beverage product
- Small amounts (less than ⅛ cup) of fruits or vegetables used for flavoring or as an optional ingredient for a garnish
- An ingredient added to a gelatin item
- A juice product with a label that says 100% juiced

Combination Entrees That Include Fruit and Vegetables

Menu items such as large combination fruit and vegetable salads that contain at least ¾ cup or more of fruit and vegetables in combination with a meat/meat alternate intended to be served as an entrée may credit as two or more servings of different components as long as the minimum serving amount for the component is contained in the combination entrée.

For Example: Chef's salad or a fruit plate with cottage cheese

Mixed Fruit and Vegetable Dishes

Menu items containing a mixture of fruit or vegetables are considered to be one serving of fruit or vegetables.

For Example: Fruit cocktail or mixed vegetables

However, vegetable combinations from the same subgroup (e.g., carrots and sweet potatoes are Red/Orange vegetables) may count toward that single vegetable subgroup. Vegetable combinations that contain at least ⅛ cup of each of different vegetable subgroups (e.g., carrots and corn) may credit each one toward the appropriate subgroup.

To credit mixed vegetable servings by subgroup, the CE must have a standardized recipe or obtain manufacturer-produced documentation that verifies the portion size for each vegetable to be credited by subgroup.[24] If the quantities of each vegetable are not known, the vegetable mixture may count as an Additional Vegetable or *Other*—in these cases, the CE should consult the *Food Buying Guide for Child Nutrition Program*[25] to determine the appropriate way to classify a vegetable by subgroup.

Salsas or Picante Sauce

Served in amounts ⅛ cup or greater, ingredients in salsas or picante sauces may be credited as a fruit or vegetable component as long as the product contains all fruit or vegetable ingredients plus minor amounts of spices or flavorings. For products that contain non-fruit or non-vegetable components, like gums, starches, or stabilizers, only that portion of the product that is a fruit or vegetable ingredient may be counted towards the ⅛ cup volume requirement. A manufacturer product formulation statement should be used to determine the contribution of the fruit or vegetables toward the meal pattern requirement.

Non-Creditable Fruit or Vegetable Food Items

The following foods may not be credited as a fruit or a vegetable for a reimbursable meal.

1. Rice, pasta (macaroni and cheese), and potato chips may not be counted as a vegetable to meet the fruit or vegetable components.

[24] See *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* for additional information on this topic.
[25] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

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2. Reimbursable meals must not credit snack-type fruit products. Snack type fruit products that are not creditable include the following:
   - One hundred percent (100%) fruit strips
   - Fruit drops
   - Other snack-type fruit or vegetable products

Common Problems: Fruits and Vegetables

The following problems are common in serving fruit and vegetables.

1. Food items that do not count toward contributing to the fruit or vegetable component are mistakenly used and counted. This includes pasta and rice, which actually contribute to the grains component, not the vegetable component.

   Solution: When in doubt about what contribution a particular food item makes to the lunch meal pattern, always consult the *Food Buying Guide for Child Nutrition Programs*.[26]

2. Juice drinks are mistakenly credited as full-strength fruit juice in contributing to the fruit and/or vegetable component.

   Solution: Read the labels of all juice products used in the CE and determine the appropriate portion size and contribution to the lunch meal pattern accordingly.

3. Breaded or extruded fruit or vegetable items are served and credited before a determination of the contribution of the product to the lunch meal pattern has been made including breaded okra, onion rings, and squash. Extruded items include a variety of vegetables or fruits combined with other ingredients and are often breaded.

   Solution: Take the following actions:

   - Determine the contribution of breaded products by removing the breading of the cooked product and measuring the volume of vegetable; document findings.
   - Determine the contribution of extruded products from the CN Label or by obtaining a manufacturer product formulation statement before serving.

Grains Component of the Reimbursable Lunch

Grains are a daily requirement in the NSLP. At least 80% of grain offerings in NSLP must be whole-grain rich.

- To qualify as whole-grain rich, products must contain at least 50 percent whole grains and the remaining grain, if any, must be enriched.
- To qualify as an enriched grain, products must have been fortified with additional nutrients to replace the vitamins lost during the refining process or may be a fortified cereal.

CEs are encouraged to use a variety of products—hot and cold.

Minimum Grains Requirement

Under the meal pattern requirements, the CE must offer the minimum daily requirement for grains—1.0 oz eq each day of whole-grain rich—for a reimbursable lunch for Grades K-8 and 2.0 oz eq for Grades 9-12. However, to meet the weekly lunch requirement for all age/grade groups, the CE will need to offer more than the minimum daily on some days of the week.

The menu planner has the discretion to decide the amount of grains to offer each day as

[26] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

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long as the minimum grain serving size requirement is met each day.

	Amount of Grains Per Week (Minimum Per Day)		
	Age/Grades K–5	Age/Grades 6–8	Age/Grades 9–12
Grains (oz eq)*	8.0–9.0 (1)	8.0–10.0 (1)	10.0–12.0 (2)
* All whole grains must be whole-grain rich.			

Recommended Maximum Grain Offerings

Currently, there is no maximum amount of grains to be served daily or weekly as long as the dietary specifications for calories, sodium, and saturated and trans fats are met for the week. The maximum is a recommended range to aid menu planners in staying within the dietary specifications for each age/grade group.

Whole-Grain Rich Foods

Quantities of grains in the meal patterns for the NSLP are based on oz eq. Whole-grain rich foods must meet (1) the serving size requirements for grains and (2) meet at least one of the following:

- Whole grains per serving must be ≥ 8 grams.
- The product must include the United States Food and Drug Administration's (FDA's) whole-grain health claim on its packaging.
- The product ingredient documentation lists *whole grain* first.
- If water is the first ingredient, a whole grain must be the second ingredient.

Whole grains consist of the entire cereal grain seed or kernel. The kernel has three parts:

1. Bran
2. Germ
3. Endosperm

If the finished product retains the same relative proportions of bran, germ, and endosperm as the original grain, it is considered a whole grain.

Criteria for Whole-Grain Rich Foods for Lunch

Foods that qualify as whole-grain rich products for the NSLP are foods that contain 100 percent whole grain or contain a blend of whole-grain meal and/or flour and enriched meal and/or flour, of which at least 50 percent is whole grain and the remaining grain, if any, must be enriched.

Fifty Percent Guideline

The 50 percent guideline for whole-grain rich requires that if the food item is a grain-based product (bread, cereal, etc.), it must contain 50 percent or more whole grains by weight or have a whole grain listed as the first ingredient on the ingredient label.

If water is the first ingredient on the label, a whole grain must be the second ingredient. If the food item is a mixed dish product (e.g., lasagna, stir fry, etc.), a whole grain must be the primary grain ingredient by weight.

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Adding Whole Grains to Menus

Menu planners should be creative when adding whole-grain foods to menus. The following items are examples of whole-grain rich products that can be incorporated into menus:

- Whole-grain rich ready-to-eat or cooked breakfast cereals
- Whole-grain rich granola or granola bars
- Whole-grain rich pancakes or waffles
- Whole-grain rich bagels, breads, rolls, buns, or muffins
- Whole-grain rich tortillas, or taco shells
- Whole-grain rich pita pockets
- Whole-grain rich cornbread
- Whole-grain rich crackers

Determining Whole-Grain Rich Products

CEs can use the following elements as a simple checklist to determine if a grain product meets the whole-grain rich criteria:

Element 1	Element 2
The food item must meet the portion size requirements for the grain component as defined in FNS guidance. See the *Lunch Meal Pattern Chart* for detailed specifications on the requirements by age/grade group.	The food must meet at least one of the following criteria: a. The whole grains per serving must be ≥ 8 grams.[27] b. The products include the following Food and Drug Administration (FDA)-approved whole-grain health claim on its packaging: Diets rich in whole-grain foods and other plant foods and low in total fat, saturated fat, and cholesterol may reduce the risk of heart disease and some cancers. **or** Diets rich in whole-grain foods and other plant foods, and low in saturated fats and cholesterol, may help reduce the risk of heart disease. c. The product ingredient declaration lists whole grains first, specifically as follows:[28] 1) Non-mixed dishes (e.g., breads, cereals): whole grains must be the primary ingredient by weight (a whole grain is the first ingredient in the list with the exception of water as the first ingredient for fully cooked grain and pasta items). 2) Mixed dishes (e.g., pizza, corn dogs): Whole grains must be the primary grain ingredient by weight (whole grain is the first grain ingredient in the list). Flour blends are listed in the ingredient list and grouped together with parentheses. For Example: Flour blend (whole wheat flour, enriched flour), sugar, cinnamon, etc.

[27] This may be determined from information provided on the product packaging or by the manufacturer, if available. Also, manufacturers may apply for a CN Label for qualifying products to indicate the numbers of grains serving that are whole-grain rich. For more information on CN Labeling, see *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* or the CN Labeling Program website at *www.fns.usda.gov/cnlabeling/child-nutrition-cn-labeling-program* for details regarding qualifying products.

[28] The product ingredient declaration is a practical way for CEs to identify whole-grain rich products because manufacturers are not required to provide information about the grams of whole grains in their products, and the FDA whole grain health claim is not mandatory. Detailed instructions for this method appear in the *Whole Grain Resource for the National School Lunch and School Breakfast Program*, which is available online at *www.fns.usda.gov/tn/whole-grain-resource*.

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The menu planner will need to know whether the whole grain content is at least 8.0 grams per oz eq or that the weight of the whole grain is greater than the first ingredient listed after the flour blend, such as the sugar in Element 2.

[NOTE: While the Whole Grain Stamp that is applied to some products provides useful information, it does not indicate that the product meets the whole-grain rich requirement for the grains component.]

Crediting Grains

The following whole grains are allowed:

Barley
- Whole barley
- Whole-grain barley
- Whole-barley flakes
- Whole-barley flour
- Whole-grain barley flour

Corn
- Whole corn
- Whole-corn masa
- Whole cornmeal
- Whole-corn flour
- Whole-grain corn flour
- Whole-grain corn harina
- Whole-grain corn masa
- Whole-grain cornmeal

Oats
- Whole oats
- Oat groats
- Oatmeal or rolled oats
- Whole-oat flour

Rice
- Brown rice
- Brown rice flour

Rye
- Whole rye
- Rye berries
- Whole-rye flour
- Whole-rye flakes

Wheat
- Wheat berries
- Whole-grain wheat
- Cracked wheat
- Whole-wheat flour
- Graham flour
- Whole durum flour
- Sprouted wheat
- Bulgur
- White whole wheat flour

Wild Rice
- Wild rice
- Wild rice flour

Cereal Grains

Grain products, such as enriched corn grits and enriched rice, that do not include whole grains are not creditable as a single ingredient.

Grain products that are at least 50% whole grain blended with not more than 50% enriched or fortified grain will continue to be creditable.

For Example: A quarter (¼) cup cooked brown rice blended with ¼ cup cooked enriched rice is 1.0 oz eq grain that meets the whole grain-rich criteria for Grades K-8.

If a 100% whole grain cereal is offered, it does not have to be fortified.

Corn Masa, Corn Flour, Corn Harina, and Cornmeal Products—Whole Grain

When served as a grain component, corn masa, corn flour, corn harina, and cornmeal products labeled as whole grains are credited by weight for these products as described in *Exhibit A: Grain Requirement for Child Nutrition Programs*.

Corn Flour or Corn Meal—Nixtamalized or Treated with Lime

Corn flour or corn meal that has been nixtamalized or treated with lime may be credited toward the grain component by weight as described in *Exhibit A: Grain*

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Requirement for Child Nutrition Programs or by grams of creditable grain per portion. The following statement on the packaging of nixtamalized corn products or corn treated with lime indicates that the product is a least 50% whole grain:

- Diets rich in whole-grain foods and other plant foods and low in total fat, saturated fat and cholesterol may reduce the risk of heart disease and some cancers.

  or

- Diets rich in whole-grain foods and other plant foods, and low in saturated fat and cholesterol may help reduce the risk of heart disease.

In any corn-flour or corn-meal product that has been nixtamalized or treated with lime that is labeled as enriched or includes nutrients sub-listed after the corn ingredient in the ingredient statement, the corn ingredient can only contribute as an enriched grain. If used, these products must be used in a grain product where at least 50% of the grain product is whole-grain rich.

For Example: The ingredient statement says yellow corn flour (folic acid, riboflavin, niacin, and thiamine). The nutrients sub-listed after yellow corn flour indicate that this grain product is enriched, not whole grain.

Formulated Grain-Fruit Products

A formulated grain-fruit product is considered to be a grain-based dessert for a lunch meal. CEs should consult the *Food Buying Guide for Child Nutrition Programs*[29] to determine which products are considered dessert items and, therefore, must be included in the weekly dessert limit of no more than a total of 2.0 oz eq or less of grain-based desserts each week.[30]

While the fruit in a formulated grain-fruit product does not count toward the fruit component, the grain in the product may be counted toward the grains requirement if the product contains a creditable amount of grains (0.25 oz eq). The requirements for dietary specifications apply.

Grains and Combination Food Items

Every reimbursable meal offered must meet the minimum daily requirement for all components, including combination food items. If a combination food is offered and the menu planner intends for the combination item to count toward the grain component, the CE must ensure that the grain food item contains enough grains to meet the minimum daily requirement.

For Example: A sandwich roll contains 1.2 oz eq of grains. Since the minimum daily offering of the grains component is 1.0 oz eq, the 1.2 oz eq in the sandwich roll meets the minimum requirement and counts toward meeting the daily grain component minimum requirement for Grades K-8.

A chef salad with 2 crackers contains .2 oz eq of grains. Unless an additional .8 oz eq of grains is offered, the day's menu does not offer enough grains to meet the 2.0 oz eq minimum daily requirement for the grains component for Grades 9-12.

Hominy, Corn Masa, Masa Harina, Corn Flour, Nixtamalized Corn Flour or Nixtamalized Corn Meal—Non-Whole Grain or Non-Enriched Grain

Hominy, corn masa, masa harina, corn flour, nixtamalized corn flour, or nixtamalized corn meal that is not labeled as a whole grain product is not creditable toward the grains

[29] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs*.
[30] See the *Fruit Dessert* subsection in this section for more information on crediting fruits in desserts. For additional information on grain-based desserts, see the *Food Buying Guide for Child Nutrition Programs, Exhibit A: School Lunch and Breakfast Grain Chart*, available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs*.

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component.

Hominy, Corn Masa, or Masa Harina—Enriched

Hominy, corn masa, or masa harina products labeled as enriched grains are only creditable toward the grain component as enriched grains. If used, these products must be used in a grain product where at least 50% of the grain product is whole-grain rich.

Hominy, Dried or Milled—Whole Grain

When hominy is offered in a dried, milled form, such as grits, the food item credits by weight toward the grains component as whole-grain rich food.

- ½ cup of cooked or 1 ounce (28 grams) of dry hominy grits credits by weight as 1-ounce equivalent grains (oz eq)

Grits

Products labeled as grits which do not indicate that the product is made of whole grain hominy or corn are not creditable toward the grains component.

Less than Two Percent of Product, Non-Creditable Grain Ingredients

Non-creditable grain ingredients in products, at very low levels, used as processing aids are allowable at levels of less than two percent but do not credit toward a reimbursable meal.

Non-Credited Extra Grain Food Items

Any whole-grain, enriched grain, or fortified cereal served as an extra food item for a reimbursable meal in amounts greater than 0.25 oz eq must be counted toward the total amount of grains served based on the grain type.

For Example: If an extra food item is served that is 1.0 oz eq of enriched grain, the 1.0 oz eq must be counted in the weekly total of enriched grains offered.

Non-Creditable Grains Products

Snack-type foods, such as non-whole-grain rich/non-enriched chips or potato chips, do not qualify as grains and may not be credited toward meeting the grains requirement in meals served in the NSLP. The following grains products are also not creditable:

- Products made from processed grains that are not whole-grain rich.

Popcorn

Popcorn (popped popcorn) is creditable as a food component as a whole-grain rich product by weight or may be served as competitive food as long as the CE has adequate documentation to demonstrate compliance with applicable requirements. USDA has updated the *FBG* to include popcorn.

[NOTE: Because of the choking hazard, popcorn is not recommended for young children.]

When served as a food component, the food item must be included in the weekly dietary specifications.

- 0.25 ounces (¾ cup or 7 grams) of popcorn credits as 0.25 oz eq of whole grains.
- 0.5 ounces (1½ cups or 14 grams) of popcorn credits as 0.5 oz eq of whole grains.
- 1.0 ounces (3 cups or 28 grams) of popcorn credits as 1.0 oz eq of

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whole grains.

Ready to Eat Breakfast Cereal

A ready-to-eat (RTE) breakfast cereal must list a *whole grain* as the primary ingredient. If the grain product includes enriched ingredients, or the product itself is enriched, the ingredients or the grain product must meet the FDA's standard of identity for enrichment.[31] One hundred percent whole grain cereals do not need to be fortified. Bran and germ are not creditable as an enriched ingredient in NSLP. Non-creditable grain ingredients in products at very low levels used as processing aids are allowable at levels less than two percent.

Serving Non-Whole-Grain Rich, Non-Enriched Grains, or Non-Fortified Cereal

If a CE offers grains that do not meet the whole-grain rich, enriched, or fortified specifications, the CE may count the grains as an Extra food item. Extra food items must be counted toward the weekly dietary specifications but are not creditable toward the grains component for a reimbursable meal.

Snack Type Grains Products

Snack-type foods, such as non-enriched chips or potato chips, do not qualify as grains and may not be credited toward meeting the grains requirement in meals served in the SBP. The following grains products are also not creditable:

- Products made from processed grains that are not whole-grain rich or enriched

Stone-Ground Corn or Degermed Corn

Products labeled as stone-ground corn or degermed corn are not creditable toward the grains component.

Woman, Infant, and Children (WIC)-Approved Whole Grain List

Items designated as WIC-approved credit toward whole-grain rich even if the product has non-creditable grain ingredients anywhere in the ingredient statement.

Determining Daily Grain Contribution

To determine the daily and weekly required minimum and the recommended maximum grain offerings for a planned menu, the menu planner must identify the menu item(s) with the smallest grain contribution for the day and the menu item(s) with the largest grain contribution for the day. Then, do the following:

1. Minimum Offering—Sum the smallest daily contributions for the week
   (Multiply the smallest daily amount times the number of days in that week)
2. Maximum Recommended Offering—Sum the largest daily contributions for the week
   (Multiply the largest weekly amount times the number of days in that week)

The daily and weekly minimums must be within the age/grade group guidelines for which the specific menu was planned. The daily and weekly maximums will help the CE to serve healthy meals and meet the weekly dietary specifications.

Food Buying Guide for Child Nutrition Programs

CEs should refer to the *Food Buying Guide for Child Nutrition Programs, Appendix E, Exhibit A*[32] for an updated list of whole-grain rich equivalent

[31] See *21 CFR 137* for additional information on this topic.
[32] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

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requirements for school nutrition programs. When any cereal grain is used as an ingredient in a grain product, use the serving size given for the appropriate grain group.

For Example: A serving of oatmeal cereal should weigh 29 grams (*Food Buying Guide for Child Nutrition Programs, Appendix E, Exhibit A: Grain Requirements for Child Nutrition Programs*).

Criteria for Determining Ounce Equivalent Serving Sizes

All grains offered in amounts of 0.25 oz eq—the minimum creditable amount—or greater must be included in the calculation of daily and weekly grain offerings, as well as in the dietary specifications (calories, sodium, and saturated and trans fat).

The criteria to credit various grain products on the oz eq standards are as follows:

- Baked goods, such as bread, biscuits, bagels, etc., require 16 grams of creditable grain ingredients in order to provide 1.0 oz eq credit.
- For cereal grains, such as oatmeal, pasta, and brown rice, a 1.0-oz eq is 28 grams (approximately 1.0 oz by weight) of dry product. Since these grains are served cooked and water is added in preparation, the cooked volume equivalent is ½ cup cooked cereal, pasta or rice.
- For ready-to-eat (RTE) breakfast cereal, 28 grams or 1.0 oz of product is considered an oz eq. The oz eq volumes are 1-cup flakes or rounds, 1¼ cups puffed cereal, and ¼ cup granola.

Weekly Grain Minimum Requirement and Maximum Recommendation

All grains offered in the amount of 0.25 oz eq or more must be counted toward meeting these minimum requirements and maximum recommendations using the oz eq. The meal pattern provides a minimum required and maximum recommended number of oz eq for total weekly grains servings by age/grade group.

Breaded Products

All grains offered that are part of battered and/or breaded products in the amount of 0.25 or more must be counted towards the weekly grains requirement. All grains incorporated into battered and breaded products that are less than 0.25 oz eq are considered extra food and do not count toward meeting the grains requirement even if whole-grain rich. All breaded products must be included in the weekly dietary specifications.

Fully Cooked Grains, Water as First Ingredient

Fully cooked grain and pasta items with nutrition labels that have *water* as the first ingredient, followed by a whole grain are considered whole-grain rich.

Documentation for Crediting Grains

CEs have the flexibility to use a wide range of products in planning meals which meet the lunch meal pattern and nutrition specifications. CEs are strongly encouraged to offer food items that are low in added sugars, sodium, and saturated fat in order to meet the meal pattern requirements and nutrition specifications and to provide foods that are consistent with the *Dietary Guidelines for Americans*.

CEs should use the updated *Food Buying Guide for Child Nutrition Programs (FBG)*[33] to assist them in determining the grain contribution in a recipe. If this information is not listed, the *FBG*

[33] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

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also provides a formula for making this calculation. CEs may also use a manufacturer product formulation statement to help with this determination.

A measurement of 0.25 oz eq is the smallest amount allowable to be credited toward the quantity of grains. The minimum daily requirement for grains can be met by offering multiple food items.

For Example: A combination of 0.5 oz eq of one grain item and 0.5 oz eq of another grain item

Grains products that have ingredients labels with the words *whole wheat* or *entire wheat* before the product type (i.e., whole-wheat bread) are 100 percent whole grain products that are creditable. The oz eq for grains may be determined by using either the weights or volumes listed in the *Food Buying Guide for Child Nutrition Programs*.[34] Or, the CE may request documentation from a manufacturer certifying the grams of creditable grains per portion for determining the oz eq from a given product.

The crediting of a food item as oz eq grains is determined by

Total Grams of Creditable Grains in the Food Product	÷	16.0	=	Number of Ounce Equivalents in Food Product

If calculating the total grams of creditable grains for a product or recipe and the total grams of creditable grains is not reported by serving portion size, divide the total number of serving portions in the product or recipe.

Reminders Regarding Grains

1. Do not include grain food items offered at breakfast as contributing to the required number of servings of grains per week required by the lunch meal patterns.
2. The grain requirement is determined on a weekly basis. All of the grains offered for the week must be whole-grain rich. Any grain offered that is not whole-grain rich is not creditable. If offered, the non-whole-grain rich non-enriched grain product must be counted as an Extra item and must be included in the weekly dietary specifications.
3. When a choice of two different menu items is offered, CEs should credit for the smaller sized grain offering for the day when determining the minimum amount of grain offered each day and for the weekly total

For Example: In the following example, the menu planner should count the day's minimum grain offering as 1 grain and the maximum offering as 2 grains.

Salad Bar	Hamburger on Bun
8 square saltine crackers = 1 grain	1 bun = 2 grains

Grains Product Labeling

Manufacturers producing qualifying products (meat/meat alternate entrées containing grains) may apply for a Child Nutrition (CN) Label[35] to indicate the number of oz eq grains that meet the whole-grain rich criteria. The term *oz eq grains* on the CN Label indicates that the product meets the whole-grain rich criteria.[36]

For Example: The label may say that the grain "provides X.X servings of whole-grain rich (or WGR) grains

[34] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

[35] If a manufacturer does not have a CN Label for a product, a CE may request a product formulation statement. See the *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* for additional information on product formulation statements.

[36] See the *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* for additional information or the CN Labeling Program website at *www.fns.usda.gov/cns/cnlabeling* for details regarding qualifying products.

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for Child Nutrition Programs."

Common Problems: Grains

1. Purchased-prepared (or partially prepared) grain items are served and credited as contributing to the lunch meal pattern before it has been determined whether the items are whole-grain rich. Examples of purchased-prepared grain items include refrigerated rolls, taco shells, tortillas and tortilla pieces, dry biscuit and muffin mixes, and prepared pizza crusts.

   Solution: Secure an ingredient statement from the individual product wrapper, bulk packing container, or manufacturer demonstrating that a serving contains at least 50 percent whole grain.

2. A smaller-sized portion of the menu item being credited daily as a grain is served in the lower grades (Grades K-5 and 6-8, 1.0 oz eq) thus reducing the serving size to less than one full serving including rice, macaroni and spaghetti, taco shells and crackers.

   Solution: When reducing the portion size of a grain menu item to less than a full-sized serving for students in the lower grades, be certain that the item is not the sole source of grain in the daily menu. Less than a full-sized serving of grains may be counted toward the weekly grain requirement, but the minimum daily requirement for age/grade groups K-5 and 6-8 is one full serving of grains.

Meat/Meat Alternate Component of the Reimbursable Lunch

To be counted in meeting this requirement, the meat/meat alternates must be served in a main dish or in a main dish and one other menu item.

Meat/Meat Alternates (oz eq)	Amount of Meat/Meat Alternates[a] Per Week (Minimum Per Day)		
	Grades K–5	Grades 6–8	Grades 9–12
	8–10 (1)	9–10 (1)	10–12 (2)

[a] Food items included in each food group and amount equivalents.

Minimums Meat/Meat Alternate Requirement

The meal pattern allows the offering of the meat/meat alternate as a weekly total with a minimum daily serving size of 1.0 oz eq for grades K–5 and grades 6–8 and 2.0 oz eq for grades 9–12. Menus can have more than one meat/meat alternate at one meal as long as the total equals the minimum daily requirement. The minimum creditable serving is 0.25 oz eq

An advantage to having a minimum daily and weekly requirement is that serving a smaller size of a higher fat meat/meat alternate on one day could reduce the fat level for the menu. In the case of only one daily choice, another meat/meat alternate of a lower fat content could be served in a larger portion during the week to make up the ounce (oz) difference.

[NOTE: To successfully use this option, the food production record and related documentation must clearly identify the daily serving size of the meat/meat alternate.

For Example: For grades K–5, a CE can serve 4.0 oz of peanut butter with ½ cup apples and 4.0 oz of yogurt]

[NOTE: Modifications are allowed but the CE must still comply with the requirements for OVS.]

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The daily quantity of meat/meat alternates can be varied on a daily basis as long as the total amount served over the serving week meets the weekly requirement.

For Example: For grades 6–8, 1.0 oz eq meat/meat alternate is the minimum daily requirement. However, serving the minimum 1.0 oz eq of meat/meat alternate every day for a five-day week (1.0 oz eq x 5 = 5.0 oz eq) will not meet the total weekly minimum requirement of 9.0 oz eq. To meet the 9.0 to 10.0 oz eq weekly-required range, a CE will need to offer more than 1.0 eq oz of meat/meat alternate on some days.

Monday	Tuesday	Wednesday	Thursday	Friday	Total
2.0 oz eq	1.0 oz eq	3.0 oz eq	2.0 oz eq	1.0 oz eq	9.0 oz eq

Crediting Meat/Meat Alternate Items

It is sometimes difficult to determine the contribution various meat products make toward meeting the meat/meat alternate requirement by reading the label. Using the following questions will help in resolving issues related to meat products served at lunches.

1. What percent of fat is in the meat?
2. If cooked dry beans are used, what is the volume measure?
   [NOTE: The serving size of beans is measured by volume, not weight.]
3. If an Alternate Protein Product (APP) is used to contribute toward the meat/meat alternate requirement, is it used in compliance with regulations?
4. Finally, what contribution does the total product make toward meeting the meat/meat alternate requirement?

Minimum Amounts to Be Credited

Small amounts (less than .25 oz eq) of meat/meat alternate used as garnishes, seasoning, or in breading do not count toward meeting the meat/meat alternate requirement of the meal.

For Example: Grated Parmesan cheese used as a garnish over spaghetti or egg used in breading cannot be counted toward meeting the meat/meat alternative requirements. However, the use of such garnishes is encouraged to make the lunch more appealing.

Determining the Contribution of a Menu Item to the Meat/Meat Alternate Component

The following questions, examples, and suggested actions can be used to help in determining the contribution of a menu item toward meeting the meat/meat alternate component.

To use these questions, first, identify the product and then begin with Question 1. If the answer is yes, stop and take the suggested action. If the answer is not yes, continue to the next question until the answer is yes and take the action suggested.

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Question 1 Is the product made in a kitchen in the CE from scratch? OR Do you know the total weight or measure of the ingredients contributing to the meat/meat alternate component (and the fat content when applicable)? For Example: Kitchen-made chili con carne, tuna noodle casserole, turkey potpie, and beef patties shaped from bulk ground beef.	**If YES, do this.** Using the *Food Buying Guide for Child Nutrition Programs*[37] and your CE's recipe for the product, determine if the total amount of meat/meat alternate used will yield the projected number of servings.
Question 2 Is the purchased-prepared meat item 100% meat/meat alternate? For Example: Preformed ground beef patties and unbreaded fish portions	**If YES, do this.** Weigh the cooked product.
Question 3 Is it possible to separate the meat/meat alternate from the other ingredients in the purchased-prepared menu item? For Example: Preformed ground beef patties and spaghetti and meat sauce	**If YES, do this.** Separate the meat/meat alternate from the other ingredients and weigh the cooked meat/meat alternate. or Purchase a CN labeled product. or Secure a manufacturer product formulation statement before serving the product.
Question 4 Is the purchased-prepared menu item a combination of foods from which the meat/meat alternate cannot be separated from the other ingredients? For Example: Beef in BBQ sauce, corn dog and breaded fish portion	**If YES, do this.** Purchase a CN labeled product. or Secure a manufacturer product formulation statement before serving the product.

Basis for Crediting Meat, Poultry and Seafood Products

Meat, poultry, and seafood products used in the NSLP are credited on the raw basis using the appropriate cooking yields listed in the *Food Buying Guide for Child Nutrition Programs*.[38] The method uses the product's raw weight and appropriate cooking yield to determine the creditable portion. The basic concept underlying product crediting is *nutrient concentration*—the amount of nutrients by weight in a finished cooked product. When a product is cooked, fat and water are lost while the essential nutrients are retained in a slightly more concentrated form. This is done to provide equity in crediting different types of products regardless of the cooking methods used or the addition of binders or extenders. This, in turn, provides for comparable nutritional value (e.g., protein content) of a product when it is cooked by several different methods.

For Example: Ground beef patties weighing 3.0 oz are cooked three different ways: (1) pan fried, (2) oven broiled and (3) grilled. Their cooked weights are 2.20 oz eq, 2.75 oz eq, and 2.63 oz eq, respectively. If these patties were to be credited according to their cooked weights, Patty 2 would receive more credit than Patty 1 or Patty 3 even though all the patties were prepared with exactly the same amount of meat. The variation in

[37] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs*.
[38] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs*.

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cooked weights is due to differences in fat and water losses with only a minimal loss of nutrients.

Another illustration of differences in crediting is when 3-oz beef patties are cooked by the same methods described above but contain 28 percent hydrated soy protein flour. The presence of the soy protein flour will decrease the amount of fat and water lost during cooking; therefore, the cooked weights of the beef-soy patties will be greater than the cooked weights of the all-beef patties. However, the nutritional value of the beef-soy patties, as served, is not greater. Their higher weights reflect an increased retention of fat and water only.

This product information can be obtained from the *Food Buying Guide for Child Nutrition Programs*[39] and/or a product formulation statement provided by the manufacturer.

Recommended Maximum Meat/Meat Alternate Offering

Currently, there is no maximum number of meat/meat alternates to be served daily or weekly as long as the dietary specifications for calories, sodium, and saturated and trans fats are met for the week.

CEs must offer meat/meat alternates daily as part of the lunch meal. The quantity of meat/meat alternate must be the edible portion served. CEs may adjust the daily quantities of the meat/meat alternate component provided that (1) a minimum of 1.0 oz eq is offered daily to students in grades K–8 or 2.0 oz eq is offered daily to students in grades 9–12 and (2) the total weekly minimum requirement is met over a five-day period

Using Combinations

Using combinations to meet the meat/meat alternate requirement is allowed under NSLP regulations. When doing so, remember that it is more difficult for the cashier to determine if a complete meal has been selected when using OVS.

For Example: The following combinations meet the 2.0 oz meat/meat alternate minimum daily requirement for students in the age/grade group 9–12.

- One (1.0) oz cooked lean meat + 1.0 oz cheese
- One (1.0) oz cooked lean meat + ¼ cup cooked dry beans
- One (1.0) oz and one-half (1.5) oz cooked poultry + 1 tbsp. peanut butter
- One-quarter (¼) cup cooked dry peas + 1.0 oz cheese
- One (1.0) oz cooked fish + ½ large egg
- One-quarter (¼) cup cottage cheese + ½ large egg
- One and one-half (1.5) oz cooked lean meat + .5oz cheese
- One-half (½) cup soy yogurt + ½ large egg
- Two tablespoons. peanut butter + 1.0 oz cheese
- One-quarter (¼) cup cooked beans + ¼ cup tofu

However, if combinations are used, they should be menued and merchandised together as a

[39] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

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single item.

For Example: A soup and sandwich combo that contains all of the required components for a reimbursable meal may be offered. If a student selects the combo, the student has chosen a reimbursable meal.

However, if a soup and sandwich combo that contains three required components is offered, and the student takes only the soup, the soup is not a reimbursable meal. To select a reimbursable meal, the student must select other items to accompany the soup so that the student selects the required components for a reimbursable meal.

Meat/Meat Alternate, Special Guidance

100% Vegetable (Legume) Flour

Pasta made with 100 percent legume flour is creditable as a meat/meal alternate food component by volume if the pasta is served with another recognizable meat/meat alternate. CEs may use a product formulation statement or the bean flour crediting information in the *FBG Appendix C, Food Items for Further Processing*.

When a legume flour credits as a meat/meat alternate, ½ cup of cooked pasta made of 100 percent legume flour credits as 2 oz eqs of meat/meat alternate.

When legume flour credits as a meat/meat alternate, the same serving cannot be credited as a vegetable component serving.

Alternate Protein Products

Developments in food technology have created new types of alternate protein products that CEs can now use. An alternate protein product may be used to resemble and substitute for meat, poultry, or seafood.

CEs may use alternate protein products to fulfill all or part of the meat/meat alternate component for the meal pattern including the use of commercially prepared meat or meat alternate product combined with alternate protein products or the use of commercially prepared products that contain only the alternate protein products. Alternate protein products may be used in the dry form (dehydrated), partially hydrated, or fully hydrated form. The alternate protein product may be used alone or in combination with other food ingredients.

For Example: Combined food items include beef patties, beef crumbles, frankfurters, pizza topping, meat-loaf, meat sauce, taco filling, burritos, and tuna salad.

An alternate protein product used alone or in combination with meat or other meat alternatives must have product documentation[40] that demonstrates that it meets the following criteria:

1. Processed so that some portion of the non-protein constituents of the food is removed.
2. Made of safe and suitable edible products produced from plant or animal source(s).
3. Have a protein biological quality that is at least 80 percent that of casein as determined by Protein Digestibility Corrected Amino Acid Score (PDCAAS).

[40] See the *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* for additional information on acceptable product documentation.

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4. Must contain 18 percent protein by weight when fully hydrated.

For alternate protein products, documentation must include sufficient information to determine if the product meets the criteria listed above, including the percent protein contained in the dry alternate protein product and for the prepared to serve alternate protein product.

For alternate protein product mixes, documentation must include sufficient information to determine the weight of dry alternate protein product in the package when the directions for the hydration and mixing with meat or other meat alternates are used.

Cheese Food and Cheese Spread Substitutes

Cheese food substitutes and cheese spread substitutes would receive the same credit as cheese foods and cheese spreads (2.0 oz provide 1.0 oz eq meat alternate). Remember that cheese food and cheese spread are items that have a specific standard of identity. The term *cheese product* is a category name and is nonstandardized; therefore, any item that only has the name *cheese product* would receive no credit toward the meal pattern requirement. Similarly, while substitutes may receive credit in the NSLP, any product labeled as an imitation is not creditable.

Cheese Substitutes

USDA allows cheese substitutes to be used in the NSLP. Cheese substitutes can be used with another meat/meat alternate or they can be used alone to meet the total meat/meat alternate requirement. One (1.0) oz of cheese substitute provides 1.0 oz eq meat alternate. When a CE uses a cheese substitute or cheese spread, the CE must have product documentation[41] that demonstrates that the product meets these requirements for the food item to be creditable.

Cooked Dry Beans or Peas (Legumes)

Cooked dry beans and peas (legumes) may be used to meet all or part of the meat/meat alternate component. However, cooked dry beans or peas (legumes) may also be used as a vegetable. Dry beans and peas (legumes) may meet the requirement for both components in the same meal. However, to count as both a meat/meat alternate and a vegetable, the items must be two different servings—a single serving cannot be credited for both a meat/meat alternate and a vegetable.

For Example: Beans in chili served as the main dish may be credited as the meat alternate or as a vegetable component.

Beans in the burrito may be credited as the meat alternate and an additional serving of beans as a vegetable side dish may be counted as a vegetable in the same meal.

Enriched Macaroni Products with Fortified Protein

Enriched macaroni with fortified protein is a macaroni product to which protein has been added. It is not the same as regular enriched macaroni. Enriched macaroni with fortified protein must be combined with meat, poultry, fish, or cheese. Dry enriched macaroni with fortified protein may be used to meet no more than 50 percent of the meat/meat alternate requirement. Only products that appear on the USDA listing of acceptable enriched macaroni with fortified protein may be used. The label for these products must have a statement similar to the following:

> One (1.0) oz dry weight of this product meets one-half of the meat or meat alternate requirement of lunch in the NSLP when served in combination with one or more ounces of cooked meat, poultry, fish, or cheese.

[41] See the *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* for additional information on acceptable product documentation.

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One (1.0) oz (28.35 grams) dry weight of this product meets ½ of the meat/meat alternate requirement for lunch for the USDA child nutrition programs when served in combination with 1.0 or more oz (28.35 grams) of cooked meat, poultry, fish, or cheese.

Low-Fat and Reduced-Fat Cheeses

The Food and Drug Administration (FDA) has announced regulations or requirements for foods named by use of a nutrient content claim and a standardized term for these products. The regulations allow manufacturers to reduce the fat content of their products and call them *low fat*, *light,* or *reduced*, as appropriate, as long as the food is still nutritionally equivalent and otherwise complies with the standardized version.

Low-fat and reduced-fat cheeses are allowed to be credited toward meeting meal pattern requirements in the NSLP on an ounce-per-ounce basis, the same as regular fat cheeses. These products can be served by themselves or in combination with regular fat cheeses. For companies to make low-fat or reduced-fat claims, this guidance must be followed:

- Low-fat cheese must contain 3 grams or less total fat per 50 grams of product.
- Reduced-fat cheese must contain at least 25 percent less fat per 50 grams than the regular fat product.

CEs may use the *Food Buying Guide for Nutrition Programs*[42] for a list of cheeses that meet the described criteria.

Non-Meat Alternate Protein Foods

Non-meat alternate protein foods include enriched macaroni products with fortified protein and alternate protein products.

Nuts and Seeds

Peanuts, soy nuts, tree nuts, or seeds can only count as one half of the meat/meat alternate requirement. They must be combined in the meal with another meat/meat alternate (lean meat, poultry, fish, cheese, large egg, cooked dry beans or peas (legumes), peanut butter or other nut or seed butters) to fulfill the requirement.

Acorns, chestnuts, and coconuts cannot be counted as a meat alternate in the NSLP.

For Example: One (1) oz of chopped nuts served in a chicken dish with 1.0 oz chicken, or 1.0 oz of peanuts served with a sandwich containing 1.0 oz eq of cheese fulfills the 2.0 oz eq meat/meat alternate requirement.

Shelf-Stable, Dried and Semi-Dried Meat, Poultry, and Seafood Products

Shelf-stable, dried and semi-dried meat, poultry, and seafood are creditable as a meat/meat alternate component as long as the contracting entity (CE) retains adequate documentation to demonstrate compliance with applicable requirements. When served as a food component, the food item must be a credible portion size and must be included in the weekly dietary specifications.

Because of the varied production standards for this type of food product, USDA will not include these items in the *Food Buying Guide for Child Nutrition*

[42] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs*.

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Programs (FBG). Documentation must be a product formulation statement or a nutrition fact label which provides the following information:

1. Creditable meat ingredient listed on a product formula statement that matches or has a similar description as the ingredient listed on the product label.

   For Example: ground beef, not more than 30 percent fat or beef round roast.

2. Creditable meat ingredient listed on the product formulation statement must have a similar description to a food item in the *FBG*.
3. Creditable amount cannot exceed the finished weight of the product.

Surimi Seafood

Chunked, shredded, and flaked surimi seafood is credible as a meat/meat alternate component by weight as long as the CE retains adequate documentation to demonstrate compliance with applicable requirements. USDA has updated the *FBG* to include surimi seafood products.

[NOTE: Surimi products may include other products which may also be creditable toward one of the other food components. CEs must read product labeling carefully to determine the amount creditable for meat/meat alternates or other components.]

When served as a food component, surimi is credited by weight as a meat/meat alternate and must be included in the weekly dietary specifications.

- 4.4 ounces credits as 1.5 oz eq of meat/meat alternate.
- 3.0 ounces credits as 1.0 oz eq of meat/meat alternate.
- 1.0 ounce credits as 0.25 oz eq of meat/meat alternate.

Tempeh

Tempeh with ingredients limited to soybeans (or other legumes), water, tempeh culture, and, for some varieties, vinegar, seasonings, and herbs may be credited as a food component by weight or maybe served as a competitive food as long as the CE retains adequate documentation to demonstrate compliance with applicable requirements.

NOTE: Tempeh is produced using the Rhizopus culture. This may be listed on the ingredients label, for example, as rhizopus oligosporous culture, rhizopus culture, rhizopus, tempeh culture, or starter culture

When served as a food component, tempeh is credited by weight as a meat/meat alternate and must be included in the weekly dietary specifications.

- 1.0 ounces credits as 1.0 oz eq of meat/meat alternate.

A creditable amount of tempeh which also contains other creditable ingredients, such as brown rice, sunflower, seeds, flax seeds, and/or vegetables, may also create as a food component as appropriate to the ingredient. CEs must have documentation that demonstrates the crediting amount for each food component.

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Yogurt

Yogurt may be used to meet all or part of the meat/meat alternate requirement. Four oz or ½ cup of yogurt fulfills the equivalent of 1.0 oz of the meat/meat alternate requirement in the meal pattern. It may be plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts, or similar products cannot be credited toward the meat/meat alternate contribution.

Tofu and Soy Yogurt

Tofu is defined as follows:

> Tofu means a soybean-derived food, made by a process in which soybeans are soaked, ground, mixed with water, heated, filtered, coagulated, and formed into cakes. Basic ingredients are whole soybeans, one or more food-grade coagulants (typically a salt or an acid), and water.

Tofu and soy yogurt can be offered as a meat alternate in a reimbursable meal. For tofu and other soy products to be creditable, it must be commercially prepared. Noncommercial tofu and soy products are not creditable.

Creditable Tofu

Tofu does not currently have a standard of identity; however, it is encouraged to use plant-based sources of protein such as tofu. Tofu is commonly used to produce other meat alternate products, such as links and sausages made from tofu. Links and sausages made from tofu can be easily recognized by students as a meat alternate and are creditable if it meets the requirements for tofu. CEs are not required to offer tofu as part of the lunch menu; however, consumption of a balanced variety of protein-rich foods can contribute to improved nutrient intake and health benefits.

When considering processed tofu products from links and sausages made from tofu as a meat alternate, the tofu ingredient must contain the required five grams of protein per 2.2 oz by weight. This means the tofu must contain at least 18 percent protein when fully hydrated or formulated to be credited.

For Example: One-quarter (¼) cup (2.2 oz) tofu with ≥ 5 grams of protein is creditable as 1.0 eq oz meat alternate.

One-half (½) cup (4.0 fl oz) soy yogurt is creditable as 1.0 oz eq meat alternate. This is the same as the crediting of dairy yogurt when CEs use dairy yogurt as a meat alternate.

The additional ingredients beyond the tofu in a meat substitute, such as tofu sausage, should also be included on the nutrition label. Unless the product carries a CN Label,[43] the protein amount listed on the label for the meat alternate does not necessarily indicate the protein of the tofu for compliance with the meal pattern requirements. Therefore, the CE would need to obtain this information on a manufacturer product formulation statement from the tofu manufacturer.

[43] See *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* for additional information on this topic.

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Types of Not Creditable Tofu

The following types of tofu must not be counted as a meat/meat alternate for a reimbursable meal.

- Products made with tofu that are not easily recognized as a meat substitute would not contribute as any component of the reimbursable meal and do not meet the function of the meat/meat alternate component.

  For Example: Soft tofu that has been blended into a recipe so that it is not recognizable (i.e., in a soup) or does not represent a meat substitute (i.e., tofu noodles) do not qualify as a meat alternate.

- If the amount of protein in the tofu is not listed on the nutrition facts label, it is not creditable. To ensure that the tofu product meets the requirements to be credited in a reimbursable meal, TDA suggests that the CE request that the tofu product be manufactured under the Child Nutrition (CN) Labeling Program.[44]

- Firm tofu that meets USDA requirements for tofu can be diced into miso soup and be credited toward the meat alternate component. The miso ingredient, dissolved into the broth of the miso soup, is a fermented soy product that is not creditable as it is not tofu.

- Soft tofu, pureed into a soup, is not creditable because it is not recognizable and does not represent a meat substitute. Therefore, the blended tofu is not creditable.

- Noodles made from tofu do not represent a meat alternate and are not composed of grains and, therefore, are not creditable for either meat alternate or grains.

Information Box 1

Additional Information on Meat Products

Meat and Poultry Inspection in Texas

The Texas Department of State Health Services (DSHS), Division for Regulatory Services, Meat Safety Assurance Unit, is responsible for administering the meat and poultry inspection program in Texas. All State of Texas meat and poultry plant labels are reviewed by the Labels and Standards Program to assure they are truthful and accurate at the time of approval. For additional information, contact DSHS.

Meat Safety Assurance Unit, MC 1872
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

Telephone: (512) 834-6760
TDD: 1-800-735-2989

Fax: (512) 834-6763

Standards for Meat and Poultry Products

USDA standards for meat and poultry products set legal requirements for content, preparation, and labeling before being manufactured and sold in commerce. Standards of identity set specific (and optional) ingredients a food must contain—such as the kind and amount of meat, percent of fat or moisture and additives, if any—when a product is to be labeled or identified by a common product name. See USDA FNS website (*www.fns.usda.gov/fdd/specifications-us-grade-standards*) for more information on the standards for meat and poultry products.

[44] See *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* for additional information on this topic.

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Purchasing and Crediting Tofu

One pound tofu with 37 grams of protein equals a 7.28 oz eq serving. Quarter cup (¼ cup) servings per pound and provides 7.25 oz eq meat alternate.

Refer to the *Food Buying Guide for Child Nutrition Programs, Specifications for Tofu and Soy Yogurt Chart*[45] for more information on purchasing and crediting tofu.

Steps Before Purchasing Any Meat, Poultry, Fish, or Tofu Product

CEs should take the following steps before purchasing any meat, poultry, fish, or tofu product:

- Request a sample of the product and the product label and be certain that the product purchased with the same label is received.
- Check to see if the label has percentage ingredient listing and request percent labeling on products purchased to know the product's ingredients that contribute to the meal pattern if necessary.
- Check to see if the fat content, both total fat and saturated fat, of the item is listed on the label.
- Check to see if the amount of trans fat is listed on the label.
- Check to see if the sodium content is listed on the label.
- Weigh the actual product to see if the net weight is correct.
- Check to see if the USDA statement verifying the use of the alternate protein product in the NSLP is printed on the label (if the product contains alternate protein product). This statement is not required to appear on meat, poultry, or fish labels but often does.

Common Problems: Meat/Meat Alternate

1. Meat products with an unknown meat and fat content are purchased and served as a reimbursable component of the lunch.

   Solution:

   - Secure a CN label or manufacturer product formulation statement before purchasing the menu item.
   - Monitor deliveries to ensure that the products used are those ordered and documented.
   - Use the USDA Standards for Meat and Poultry Products to determine the content of certain products.[46]

2. The recipe does not include a sufficient amount of meat/meat alternate to yield the predicted number of servings.

   Solution: Check all CE recipes against the ***Food Buying Guide for Child Nutrition Programs***.[47]

3. The menu item is served with the wrong-sized utensils, thus changing the contribution of

[45] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs*.
[46] See the USDA Agricultural and Marketing Services website (*www.ams.usda.gov)* as well as information on select Grading, Certification, and Verification for additional information on this topic.
[47] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs*.

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the menu item to the meat/meat alternate component.

Solution:

- List serving size or proper utensil to be used on production record as well as a recipe card.
- Monitor meal service and production records for unexpected leftovers or shortages.
- Provide staff training on using appropriate serving utensils

4. Cooked dry beans or peas (legumes) are used as meat alternate and a vegetable in the same meal.

Solution:

- Remember to offer Dry Beans/Peas (Legumes) in sufficient amounts at other times in the week when using cooked dry beans or peas (legumes) as the meat/meat alternate in a menu item, such as chalupas.
- Provide adequate separate servings of beans when offering them as both a meat/meat alternate and a vegetable within the same meal.

Milk Component of the Reimbursable Lunch

Unflavored and flavored fat-free and low-fat (1%) milk may be offered as part of the reimbursable meal for children in grades K to 12. If a site serves a flavored milk choice, the site must also serve an unflavored milk choice at the meal service.

All milk served must be fluid types of milk that are pasteurized and meet state and local standards for milk. The milk shall contain vitamins A and D at levels specified by the FDA and consistent with state and local standards. To meet the nutrition standards, it is recommended that fluid milk with the lowest fat and sugar content be offered.

No matter what type of meal service is used,[48] every reimbursable meal must include a choice of milk.

Lactose-Free Milk

CEs may serve lactose-free milk as long as it meets the following criteria:

1. Is unflavored or unflavored one percent low fat or fat-free milk
2. Meets the flavor and nutritional requirements.

Organic

CEs may offer all students milk labeled as organic milk or offer milk produced from cows not treated with hormones. However, CEs are not required to honor a request to substitute a type of milk or offer organic milk or offer milk with a label indicating it was produced from cows not treated with hormones.

Requirement to Take Milk

If the site does not use OVS, a reimbursable meal must include milk or an acceptable milk substitute, except as determined to be necessary for a student with a disability, for a reimbursable meal.[49] Under OVS, a meal without fluid milk is reimbursable.

CEs must not promote other beverages, including water, as an alternative to fluid milk in the service line. Water should be offered after the student has the option to select milk, and signage

[48] See *Administrator's Reference Manual (ARM), Section 21, Meal Service* for more information on types of meal service.

[49] See the *Milk and Children with Disabilities or Other Dietary Issues* subsection in this section for additional information.

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should be clear that water is not a meal component.

Guidance for Offering Milk and Other Beverages

The CE must adhere to the following guidance in offering milk and other beverages:

- The CE may not
  offer juice for free to students who refuse milk while charging an a la carte price for juice to other students who select milk as part of a reimbursable meal.
- The CE may
  offer milk as a component of the reimbursable meal and charge all students selecting juice an a la carte price for their juice.
  or
  provide all students with milk and a second beverage at no extra charge.

  If CEs choose to offer one of these two options, CEs must make sure that students understand these options by publicizing information about the option/s.
- The CE may not offer students a choice among milk, tea (high school only),[50] and a fruit-flavored drink for a reimbursable meal.
- Any fluid milk and/or beverage that is served as part of the reimbursable meal must be included in the nutrient assessment for the meal—calories, sodium, and saturated and trans fat.
- Additional or extra beverages—100 percent juice, water, iced tea (high school only),[51] etc.—may be offered after the POS, but these beverages must be included in the dietary specifications for the week. Any 100 percent juice offered after the POS must count toward the weekly juice limit.
- Additional or extra beverages, including water, must be placed in such a way that they do not discourage students from taking milk.

Fluid Milk Substitutes

A CE has the option to offer a nondairy milk substitute of its choice to a student with a non-medical or a special dietary need that is not a disability.[52] If a CE chooses to offer a nondairy milk substitute for students who do not have a medical disability, it must make that substitute available to all students.

Non-dairy beverages (milk substitutes) must be nutritionally equal to milk and meet the nutritional standards for fortification of calcium, protein, Vitamin A, Vitamin D, and other nutrients to levels found in cow's milk, as outlined Food and Drug Administration (FDA). If CEs offer a milk substitute, they must notify TDA about the milk substitute product.[53]

Milk Substitute Specifications

If CEs choose to offer a milk substitute, they are not required to offer a choice of acceptable milk substitutes. However, any nondairy beverage offered as a milk substitute must be nutritionally equivalent to fluid milk as demonstrated by the nutritional profile

[50] See the *Administrator's Reference Manual (ARM), Section 22, Competitive Foods* for additional information on this topic.
[51] See the *Administrator's Reference Manual (ARM), Section 22, Competitive Foods* for additional information on this topic.
[52] See *Administrator's Reference Manual (ARM), Section 25, Meal Accommodations* for more information on parent requests for milk substitutes.
[53] See the Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition box located after the table of contents for this section.

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of the product. See the *Milk Substitute Nutritional Profile Chart* for specific nutritional information for milk substitutes.

Milk Substitute Nutritional Profile Chart (mg=milligram; g=gram; mcg=micrograms)	
Nutrient	**Minimum Amount Per 1 Cup Serving as Reported on Product Documentation**
Calcium	≥ 276 mg
Protein	≥ 8 g
Vitamin A	≥ 150 mcg
Vitamin D	≥ 2.5 mcg
Magnesium	≥ 24 mg
Phosphorus	≥ 222 mg
Potassium	≥ 349 mg
Riboflavin	≥ 0.44 mg
Vitamin B-12	≥ 1.1 mcg
The fat content of fluid milk substitutions, such as soy milk are not subject to the regulations regarding fat content that apply to regular fluid milk. Therefore, fluid milk substitutions can have a higher fat content than fat-free or 1% milk. A manufacturer's signed statement may be used to provide nutrient information for milk substitutes.	

TDA has developed the *Fluid Milk Substitute Worksheet*[54] for CEs to use to notify TDA that the CE is using a milk substitute that contains the required nutritional values. However, if the CE offers lactose-free milk as a creditable component of a reimbursable meal, the CE is not required to submit notification to TDA.

Special Guidance, Milk Substitutes

CEs must use the following guidance when using a milk substitute.

Lactose-Reduced Milk

If a student requires lactose-reduced milk, the SNP may provide lactose-reduced/lactose-free milk as a creditable part of a reimbursable meal without additional documentation.

Milk and Children with Disabilities or Other Dietary Issues

For a child with a recognized disability, the meal may consist of fewer than 5 components. The child may be served as an alternate beverage if so prescribed by a licensed physician.[55] If the CE does not offer an acceptable milk substitute for children without disabilities, the child has to take the fluid milk for the meal to be reimbursable if the CE does not use OVS.

Nutrient Analysis of Milk Substitutes

Milk substitutes offered as part of the reimbursable meal must be included in the weighted nutrient analysis and, therefore, are subject to the overall weekly average fat limit and calorie ranges of the meal pattern.

Recombined/Reconstituted Milk Dispensed from a Machine

CEs may serve recombined/reconstituted milk dispensed from a machine to meet the milk component requirement for lunch as long as the following criteria are met. The recombined or reconstituted milk (1) is combined with water so that it meets

[54] Available at *www.SquareMeals.org*.
[55] See *Administrator's Reference Manual (ARM), Section 25, Meal Accommodations*, located at *www.SquareMeals.org* for additional information regarding disabilities and milk substitutions for other reasons.

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the requirements to be a *recombined milk* or *reconstituted milk*, (2) meets the nutritional requirements for fluid milk, and (3) meets the local and state standards for pasteurized fluid milk.

Water

Water is not an acceptable substitute for fluid milk. Only a nondairy beverage meeting the nutrient standards can be substituted for fluid milk.[56]

Smoothies

At lunch, the following ingredients may count toward meeting the food component requirements:

Crediting Smoothie Ingredients Chart		
Ingredient	**Minimum Crediting Amount**	**Component**
Pureed fruit	⅛ cup	Fruit Component, counted as juice
Pureed vegetable	⅛ cup	Vegetable Component by Subgroup, counted as juice
One percent or nonfat flavored or unflavored fluid milk	¼ cup	Milk Component
Dairy or soy yogurt	1 oz as .25 oz eq (about ¼ cup)	Meat/Meat Alternate
All smoothie ingredients count toward the weekly dietary specifications.		

CEs must identify the components the smoothie contains on the serving line.

USDA recommends that CEs serve smoothies for only one meal per day. Menu planners also need to remember that smoothies count toward weekly juice, calorie, sodium, and fat totals.
TDA encourages program operators to offer additional food components on the serving line when smoothies are offered.

The requirements for smoothies prepared by program operators and those prepared by commercial companies are the same.

Components Allowed in Smoothie

Smoothies made by program operators and commercially prepared smoothies may count toward the required fruit, vegetable, meat/meat alternate, or milk components. All ingredients in a program operator prepared smoothie count toward the weekly limits on juice, calories, fat, and sodium. These smoothies may be prepared ahead of time or at the time of service.

- **Fruit Component.** To credit toward the fruit component, the smoothie must contain the minimum creditable amount of ⅛ cup of fresh, frozen, canned, 100% fruit juice, and/or a 100% juice blend of fruit or vegetables.
  - Credited amounts of fruit in a smoothie count as a juice serving. Juice offerings in smoothies are added to the weekly total of juice offered.
  - Pureed fruit is measured by volume amount served.[57]

[56] See *Administrator's Reference Manual (ARM), Section 25, Meal Accommodations* for additional information on this topic.

[57] There are two sources that provide information to assist CEs in determining the volume amount served for pureed items: *Food Buying Guide for Child Nutrition Programs*, including the introduction that contains information about how to obtain in-house yield data, and a manufacturer's product formulation statement.

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  - Blended fruit and vegetable puree or 100% juice may count as a fruit if the fruit is the most predominant ingredient.

- **Vegetable Component.** To credit toward a vegetable serving, the smoothie must contain the minimum creditable amount of ⅛ cup of fresh, frozen, canned, 100% vegetable juice, and/or a 100% juice blend of fruit or vegetables.
  - Credited amounts of vegetables in a smoothie count as a juice serving. Juice offerings in smoothies are added to the weekly total of juice offered.
  - Pureed vegetables are measured by volume.
  - Blended vegetable puree or 100% juice made of vegetables from a single subgroup may count toward the weekly offerings of that subgroup.
  - Blended vegetable puree or 100% juice made of vegetables from more than one subgroup may count toward the weekly offering of the Additional vegetable subgroup.
  - Blended vegetable and fruit puree or 100% juice may count as a vegetable if vegetables are the most predominant ingredient; it may count toward the weekly offering of the Additional vegetable subgroup.
  - Dried beans or peas may credit as vegetable juice in smoothies
- **Milk.** To credit as the milk component, the smoothie must be made of 1 percent unflavored fluid (not powdered) milk or fat-free unflavored or flavored fluid (not powdered) milk.
  - Smoothies do not have to contain the full cup serving (8.0 fl oz) of milk. The minimum creditable amount of milk is ¼ cup.
  - Even if the smoothie contains a 1 cup serving (8.0 fl oz) of milk, the CE must still offer a full 1 cup serving of two types of milk on the serving line.
- **Meat/Meat Alternate.** To credit yogurt as a meat/meat alternate component, the smoothie must contain the minimum creditable amount of yogurt—1 oz of yogurt credits as .25 oz eq of meat/meat alternate.
  - Soy or dairy yogurt may be credited.

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Guidance about Smoothie Content and Crediting

All smoothies must be served under the following guidance:

- **Amount of Fruit or Vegetable.** Crediting fruit or vegetables in a smoothie is determined by volume. Volume for fruit or vegetables in a smoothie is based on the pureed amount of the ingredient. If the pureed ingredient is not listed in the *Food Buying Guide for Child Nutrition Programs*,[58] the program operator should determine the crediting amount based on the volume after pureeing the fruit or vegetable.
- **Concentrated Fruit Puree.** Smoothies with concentrated fruit puree can only be used in meeting the meal pattern requirements when they are reconstituted to the full-strength fruit puree. Without being reconstituted to the original strength, concentrated fruit puree is considered to be added sugar and cannot be credited toward the fruit/vegetable component.
- **Dietary and Herbal Supplements.** Smoothies with dietary and herbal supplements are not credible. However, smoothies made with juice that has been fortified with vitamins and minerals such as orange juice with calcium and Vitamin D added may credit.
- **Juice in Smoothies**. Juice in smoothies may be fortified with vitamins and minerals.

  For Example: Orange juice fortified with calcium and Vitamin D.

Because smoothies contain juice as well as other ingredients, smoothies with less than 100 percent juice content are the only example of when less than 100% juice may be offered and credited as a fruit or vegetable component.

For Example: An 8.0 oz smoothie beverage made from peach puree with the juice content labeled as "contains 50% juice" would credit as 4 fl oz or ½ cup of juice as long as the 4 fl oz or ½ cup of juice is 100% juice.

- **Offering Fluid Milk.** The milk in a smoothie must not be offered in place of a serving of fluid milk. Even if the smoothie contains a full 1 cup of milk, the CE must still offer the milk component as a separate item on the serving line.
- **Other Items in Smoothies.** Grain items such as oatmeal or meat/meat alternates such as peanut butter do not contribute to the meal pattern requirements. However, all ingredients in smoothies must be counted toward the weekly limits on juice, calories, fat, and sodium.

Common Problems: Milk

1. Milk is placed on the tray of students in lower grades, thus not allowing them to make a choice.

   Solution: Allow each student to select his/her own milk.

2. Milk is offered as a choice against another beverage.

   Solution: There is no substitute for milk; therefore, it can never be offered as a choice against another food or beverage.[59]

3. The CE is temporarily unable to obtain a supply of milk.

   Solution: If emergency conditions temporarily prevent a CE from having milk available, TDA may approve the service of lunches during the emergency period

[58] Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs*.
[59] See *Administrator's Reference Manual (ARM), Section 25, Meal Accommodations*, located at *www.SquareMeals.org* for additional information regarding disabilities and milk substitute.

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without milk. Contact TDA as soon as possible prior to the meal service.

Traditional Foods

CEs that primarily serve Indian populations are allowed to accept the donation of traditional foods and serve traditional foods[60] as part of the school nutrition program. Traditional foods are defined as food that has traditionally been prepared and consumed by an Indian tribe which includes the following types of food:

- Wild game meat
- Fish
- Seafood
- Marine mammals
- Plants
- Berries

To make use of these products, the CE must make sure the following requirements are met:

- Ensure that the food received is whole, gutted, gilled, as quarters, or as a roast, without further processing.
- Make a reasonable determination that
  - the animal was not diseased;
  - the food was appropriately butchered, dressed, transported, and stored to prevent contamination, undesirable microbial growth, or deterioration; and
  - the food will not cause a significant health hazard or potential for human illness.
- Carry out any further preparation or processing of the food at a different time or in a different space from the preparation or processing of other food for the applicable program to prevent cross-contamination.
- Clean and sanitize food-contact surfaces of equipment and utensils after processing the traditional food.
- Label donated traditional food with the name of the food item.
- Store the traditional food separately from other food for the program, including through storage in a separate freezer or refrigerator or in a separate compartment or shelf in the freezer or refrigerator.
- Follow Federal, State, local, county, Tribal, or other non-Federal law regarding the safe preparation and service of food in public or nonprofit facilities.
- Follow other such criteria as established by the Secretary of Agriculture and Commissioner of the U.S. Food and Drug Administration.

Menu Substitutions

A *substitution* is made or required whenever a planned food item is not available to be served for any reason. When a substitution must be made, the new food item must (1) be within the same

[60] The *Food Buying Guide for School Nutrition Programs* will be updated to allow the use of donated traditional foods in school nutrition programs that primarily serve Indian populations.

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food component group or subgroup as the original item and (2) match the daily and weekly contribution of the item that is replaced. CEs are required to record menu substitutions daily on documentation related to meal service.[61]

For the purposes of meeting the meal pattern requirements, a similar food item will mean that at the site level, the substitution is from the same food component group and provides the same component contribution and subgroup, if applicable, requirement and/or provides an equivalent meal contribution.

For Example: Menu Substitution Examples

Example 1: The September 14 menu calls for orange wedges. The supplier informs the CE that they have no oranges to ship to the CE. The menu planner decides to substitute apple wedges for that day's menu.

Is this an appropriate substitution?—Yes, since both apples and oranges can be menued to meet the fruit component requirement.

Example 2: On September 18, there are 20 servings of rice leftover. The cook freezes the leftovers. On September 24, the campus runs out of rolls to serve with the baked chicken. The cook reheats the leftover rice and serves it with the chicken.

Is this an appropriate substitution?—Yes, rolls and rice both meet the grains component requirement, so this is an appropriate substitute. The CE must evaluate the amount of grain contribution each item provides.

Example 3: The September 29 menu calls for baby carrots. Because of distribution shortages, the CE did not receive enough product for 10% of its campuses. The food manager substitutes canned green beans for the baby carrots because the CE has a large stock of green beans.

Is this an appropriate substitution?—No, the baby carrots were menued to meet the Red/Orange vegetable requirements. However, if the CE chooses to reformulate its menu for that week, the CE may serve canned green beans as a substitute for the carrots as long as the CE offers a Red/Orange vegetable later in the same week.

Substitution, Emergency Situation

When food substitutions are made because of an emergency situation (i.e., food shortage), it is important that the meal pattern component requirements are maintained. A menu substitution should be the same component category and same subgroup if a vegetable.

Reimbursable Lunch Requirements

A student's reimbursable meal is determined by how each item is menued. When not using OVS, for a reimbursable lunch, the CE must serve food items which contain the following five food components:

- Fruit
- Vegetables
- Grains
- Meal/Meat Alternates
- Milk

[61] See *Administrator's Reference Manual (ARM), Section 30, Records Retention* for more detailed information on this topic.

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Special Guidance for Reimbursable Meals

Combination Foods Containing More Than One Component

A food item may contain one or more components. The menu planner may include menu items that are combination foods that consist of more than one component.

- A menued combination item may contain the full minimum serving of more than one food component—In this case, each component in the combination item will credit toward a reimbursable meal.

  For Example: A turkey sandwich contains 1.0 oz eq serving of grain and a 1.0 oz eq serving of meat/meat alternate.

- Several menued combination items may be added together to contain the full minimum servings of more than one food component—In this case, full minimum servings of the included components are split across several combination foods, so the student must take the corresponding combination foods for a reimbursable meal.

Double Servings

Double servings of components or food items are allowed for fruit or vegetable and grain, and meat/meat alternate components in order to meet the minimum portion size requirement as long as the menu planner has noted this option on the menu.

For Example: A student is offered 1 cup of milk, 1 cup of fruit, 1.0 oz eq cereal, and 1.0 oz eq toast. The student may take ½ cup of fruit and two 1.0 oz eq servings of toast for a reimbursable meal. In this case, the student had a choice of combinations offered for the meal.

Field Trips

Field trip meals will be viewed as part of the overall week's menu requirements just as if they were meals served at a CE site.

Free or Extra Food Offered After the Point of Service (POS)

Any additional food offered at no charge to students who have a reimbursable meal must count toward the weekly dietary specifications. This includes a serving of juice provided at no charge. Juice provided to students at no charge also counts toward the weekly limitation.

Large Food Items

The menu planner may menu a large food item as two items as long as each part meets the minimum requirement for that food component.

For Example: The menu planner designates a large apple to credit as two ½ cup servings of fruit with each of the ½ cup servings counted as an individual food item.

Leftovers

Occasional, small quantities of leftover food served on another day will not be counted toward the meal pattern requirements, including the vegetable subgroups. However, if this practice occurs commonly and the quantities are not reasonable based on the number of students to be served, the leftovers must be included in the weekly dietary specifications.

OVS

Under OVS, the CE must offer food items containing all five components, and the student must take food items that contain at least three of the food components, including a minimum serving of ½ cup of fruit or vegetable.

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OVS, Extra Food Items

A school may offer Extra food items, such as ice cream or pudding, which are not creditable. These foods may complement a reimbursable meal or entice students to purchase a meal. Extra food items do not credit toward the minimum number of food components/food items a school is required to offer under OVS. However, Extra food items must be included in a nutrient analysis to assess compliance with the weekly dietary specifications (calories, saturated fat, and sodium).

Refusing an Item

Even if a CE is not using OVS, a student may refuse to take all food items. When a student declines a full portion of a food component, a smaller portion may be offered. However, the student must take enough of the other components for a meal to be reimbursable, including a ½ cup of fruit or vegetable.

However, the student must take three of the five components, and one of the three components must be a minimum of a ½ cup serving of fruit and/or vegetables for a student's meal to be reimbursable.

[NOTE: When a student refuses a menu item, the student may be refusing a single component or may be refusing more than one component. As the student moves through the service line, he or she needs to know what components are in each menu item in order to choose a reimbursable meal. The cashier also needs to know what components are contained in each menu item in order to identify a reimbursable meal.[62]

For Example: A hamburger may include ingredients that count toward the grains and meat/meat alternate components as well as vegetable component subgroups. By declining the hamburger, the student's meal may not be reimbursable unless there are other items offered that will fulfill the requirements for the grains, meat/meat alternate components, and vegetable component subgroups.]

The CE does have additional discretion in how to handle a situation when a student refuses a food item/component. The following guidance describes a CE's options:

- CEs are not required to offer another food item should a student refuse one of the food items/components in the meal.
- CEs may offer a student the option to purchase food items a la carte when food items taken do not make a reimbursable meal. Any student who has the money either in hand or in his/her account may purchase food a la carte. However, in these cases, serving staff must prevent the overt identification of the eligibility status of the students.
- CEs may allow the student to take the food for free and not claim the meal for reimbursement.

If a student refuses to take the required food item/s for a reimbursable, the meal is not reimbursable. To address this situation, the CE must have a policy in place regarding a student's selection of incomplete meals. If the school's policy is not to serve non-reimbursable meals and not to offer other food options, this policy must be communicated to students and parents in advance.

[62] See the *Lunch Menu Planning* subsection in this section for additional information on food items, food components, and menu items.

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Seconds or Additional Servings

When a student is served a reimbursable meal, and the student asks for seconds or additional servings, the CE has two options in addressing this situation:

1. The student may be given the seconds or additional servings. Seconds and additional servings must count toward the weekly requirements, including dietary specifications.
2. The student may be asked to pay for the additional servings a la carte. If the student is provided seconds or additional servings and pays for the extra serving as an a la carte purchase, the additional servings do not count toward the weekly dietary specifications for reimbursable meals.

[NOTE: Additional or extra food offered to students at no charge who have a reimbursable meal does count toward the dietary specifications—calories, sodium, and saturated and trans fat. If the items are creditable toward a food component, the additional food counts toward the weekly requirements.]

Student Identification of a Reimbursable Meal

For the purpose of identifying a reimbursable meal at the POS, the menu planner must provide students and cashiers with details about the various combinations of menu items (including the various entrees) that may constitute a reimbursable meal to ensure the accuracy of meal counts.

A CE may use a variety of methods to assist students in identifying what food items are required for a reimbursable meal. At a minimum, the CE must clearly communicate this information in an area located near or at the beginning of the serving line. The following strategies are commonly used for this purpose:

- **Signage**
  Signage, including menu boards, that communicates what food items must be taken for a reimbursable meal.

- **Labels, Pictures, or Symbols**
  Label, pictures, or symbols that indicate which items are required for a reimbursable meal posted in the serving area (such as on sneeze guard).[63]

- **Other Communications**
  Information the requirements for a reimbursable meal (and specifically OVS) as published in menus, newsletters, communications with parents, or updates posted on websites.

- **Field Trips**
  Signage is not required for field trips. However, if choices are offered in these situations, CEs need to implement a method to inform students that OVS is being used and what to select for a reimbursable meal.

- **Other Service Options**
  When a CE uses other service options, such as offsite meals for students in college credit programs, the CE needs to ensure that students are provided information about what items are required for a reimbursable meal. If choices are offered in these situations, CEs need to implement a method to inform students that OVS is being used and what to select for a reimbursable meal.

[63] USDA provides examples of strategies to promote student identification of reimbursable meals at *www.choosemyplate.gov*.

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This includes information that allows students to select the correct quantities, including at least ½ cup of fruit or vegetables or a ½ cup combination of fruit and vegetables.

Fruit(s) and Vegetable(s) Serving for a Reimbursable Meal

For a meal to be reimbursable, a minimum reimbursable serving of fruit and/or vegetable must be portioned as follows:[64]

½ cup fruit(s)*	or	½ cup vegetable(s)*	or	½ cup combination* of fruit(s) and vegetable(s)

* The minimum credible size portion—when combining fruits or vegetables of different types to achieve a minimum serving portion size—is ⅛ cup of any one fruit or vegetable item.

[NOTE: A minimum credible portion size is not the same as the minimum serving portion size for a reimbursable meal. A credible portion size counts toward meeting the minimum serving portion size.

For Example: A student is served a minimum credible size portion of apples—⅛ cup. Unless the student takes an additional portion of another fruit or vegetable so that a combined portion size of at least ½ cup of fruit, vegetable, or combination of fruit and vegetable is taken, the ⅛ cup of apples does not provide the minimum fruit or vegetable component for a reimbursable meal.]

Offering more than one type of fruit and vegetable food item in different serving sizes will help students make selections and ensure that the CE meets the meal pattern requirement.

The following guidance applies when a combination of fruit and vegetables are offered and selected.

- A CE may offer ½ cup of a dish consisting of different fruits (e.g., fruit salad), different vegetables (e.g., mixed vegetables) or a combination of only fruits and vegetables (e.g., carrot/raisin salad).
- A student may select ¼ cup fruit (e.g., oranges) and ¼ cup vegetable (e.g., broccoli) to meet the ½ cup requirement for the fruit and/or vegetable component under OVS. The student would not be required to select additional fruits or vegetables if the reimbursable meal under OVS includes two other components in full portion.
- If a student selects three components, and two of the three components are fruits and vegetables, the student may select a smaller serving of ½ cup of either fruit or vegetable, but the third component must be the full portion.

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[64] The *How to Recognize a Reimbursable Meal Chart—Lunch* in this section provides examples of reimbursable and non-reimbursable meals.

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The *Options for Meeting the Requirement for a Half (½) cup of Fruit and/or Vegetable Component(s) Chart* provides an illustration of the options a CE has in providing the fruit and vegetable components by serving or offering a single fruit, vegetable, or mixed fruits and vegetables.

Options for Meeting the Lunch Requirement for a Half (½)* Cup of Fruit and/or Vegetable Component(s) Chart[65]			
Option 1	½ cup fruit		
Option 2	½ cup vegetable		
Option 3	¼ cup one fruit	+	¼ cup another fruit
Option 4	¼ cup one fruit	+	¼ cup one vegetable
Option 5	¼ cup one vegetable	+	¼ cup another vegetable
* ⅛ cup is the minimum creditable amount for the fruit or vegetable component. Menu planners may also combine multiple ⅛ cup portions of different fruits or vegetables to reach the ½ cup serving—⅛ cup pears and ⅜ cup carrots equal ½ cup.			

Grains for Serving for a Reimbursable Meal

To count the grain as one food component, a full minimum daily portion of grain[66] must be taken.

Age/Grades	Minimum Per Day Grains (oz eq)*
K–5	1
6–8	1
9–12	2

The grain food component may be planned so that it comes from more than one food item.

For Example:

- Half (½) slice bread + ¼ cup spaghetti = 1 grain
- One taco shell + ¼ cup rice = 1 grain
- Four saltine crackers + ¼ cup macaroni = 1 grain

A grain item may be counted only once in each reimbursable meal.

For Example: If a student selected ½ cup spaghetti and eight crackers, the items can only be credited toward meeting the grains component.

[65] At lunch for high school students and at breakfast for all students, a student must take the full serving of either fruit or vegetable if the reimbursable meal is a fruit, a vegetable, and one other component.

[66] CEs may use the *Food Buying Guide for Child Nutrition Programs*[66] to assist them in determining if grain servings are creditable as whole-grain rich. It is available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs.*

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Meat/Meat Alternate Serving for a Reimbursable Meal

The meat/meat alternate may be served in one menu item, in split menu items, or in a main dish plus one or more other menu items. If the meat/meat alternate is split between menu items, both items must be taken in order for the meat/meat alternate to count as one of the five food components.

For Example: For grades 9-12, the menu planer creates a menu that splits the required minimum meat/meat alternate between two menu items—soup with 0.5 oz eq of meat/meat alternate and ½ cup of vegetables and 1.5 oz eq in a grilled cheese sandwich with 1.5 oz eq of meat/meat alternate and 2.0 oz eq of grains. In this case, the student must take both the soup and sandwich to get a full serving of meat/meat alternate, 2.0 oz eq.

In this case, if a student selects the soup, the meal does not have a full minimum serving of meat/meat alternate. However, the student may still have a reimbursable meal if the student takes complete servings of three other components.

Milk Serving for a Reimbursable Meal

In order to count milk as a food component, 1 cup of fluid milk must be taken. CEs that do not offer an approved fluid milk substitute can offer both fluid milk and water; however, water does not substitute for fluid milk in determining a reimbursable meal.[67] A meal without fluid milk is reimbursable under OVS.

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[67] See *Administrator's Reference Manual (ARM), Section 25, Meal Accommodations* for additional information on this topic.

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Reimbursable Meal Determination

While a student may choose to take a smaller portion of any component, the smaller portion does not count toward a reimbursable meal with the exception of a minimum serving of fruit and/or vegetable.[68]

The *How to Recognize a Reimbursable Meal Chart—OVS Lunch* provides a snapshot of the choices students have in selecting the three components.

How to Recognize a Reimbursable Meal Chart—OVS Lunch

Sample Meal Choices	Components					Is the Meal Reimbursable?
	Meat/Meat Alternates	Grains	Milk	Fruit*	Vegetable*	
	Student must choose at least **1** of these components.			Student must choose at least **1** of these components.		Student must choose a total of **3** components.
Choice 1	☑	———	———	☑~	☑~	**YES~**
Choice 2		☑	☑	☑	———	**YES**
Choice 3	☑	———	☑	———	☑	**YES**
Choice 4	☑	☑	☑	———	☑	**YES**
Choice 5	☑	☑	☑	———	———	**NO^**
Choice 6	☑	———	———	☑	———	**NO+**

* Students must be offered the full portion but may take a minimum of a ½ cup for a reimbursable meal.

~ At lunch for high school students and at breakfast for all students, a student must take the full serving of either fruit or vegetable if the reimbursable meal is a fruit, a vegetable, and one other component.

^ The student did not take a fruit or vegetable, so the meal is not reimbursable.

+ The student did not take 3 components, so the meal is not reimbursable.

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[68] See the *Fruit and Vegetable Components of the Reimbursable Lunch* subsection in this section for additional information on this topic.

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Nutrient Standards

Menus must meet the dietary specifications for calories, sodium, and saturated and trans fat for each age/grade group. The *Lunch Nutrient Standard Chart* provides a range for the average amount for each of the nutrient standards for the week. CEs are expected to determine if they are meeting the dietary specifications by averaging the number of calories, sodium, and saturated fat over the serving week.

Lunch Nutrient Standard Chart				
	Age/Grades K-5	**Age/Grades 6-8**	**Age/ Grades 9-12**	**Age/Grades K-8**
Min-Max Calories (kcal)[h, i]	550-650	600-700	750-850	600-650
Saturated Fat (% of total calories)[i]	< 10	< 10	< 10	< 10
Sodium Target 1 (mg)[i, j]	≤ 1230	≤ 1360	≤ 1420	≤ 1230
Trans Fat[k]	Nutrition label or manufacturer specification must indicate zero grams of trans fat per serving			

[h] The average daily amount of calories for a 5-day serving week must be within the range (at least the minimum and no more than the maximum values).
[i] Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, trans fat, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent milk fat are not allowed.
[j] See *Sodium Limits and Timeline—Lunch* table for additional information.
[k] Less than 0.5 grams per serving.

Calculating Dietary Specifications for the Week.

CEs calculate the dietary specifications by averaging the daily calories, sodium, and saturated fat. The weekly average must fit within the specifications for calories, sodium, and saturated fat. CEs must use Child Nutrition (CN) Labels, Nutrition Fact Labels, and/or product formulation statements for each food item to perform these calculations.[69]

If the CE Serves All Students the Same Meal,

the CE adds the total calories, sodium, and saturated fat for each day of the week to get the weekly total and then divides by the number of days to get the average daily amount for the week.

If the CE Gives Students a Choice of Multiple Entrees and Side Items or Lines,

the CE averages of the calories, sodium, and saturated fats across the items for each day; adds the average calories, sodium, and saturated fat for each day to get the weekly total; and divides by the number of days in the week to get the average daily amount for the week.

If the CE includes non-credible items in its menu, these items must be included in the dietary specification calculations.

To Determine Dietary Specifications

Step 1:

Divide the weekly total for the dietary specification—calories, sodium, and saturated fat—by the number of serving days for the week

Weekly Total for the Dietary Specification	÷	Number of Serving Days for the Week	=	Average Daily Amount for the Nutrient Standard

[69] See the *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* for detailed information on this topic.

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Step 2:

Repeat this calculation for each dietary specification.

Step 3:

Compare the average daily amount for each dietary specification to the required range for each dietary specification in the Nutrient Standard Chart.

If the average daily amount for the nutrient standard falls within the range for the dietary specification, the CE has met the requirements for that dietary specification.

Calculating Dietary Specifications for a Single Condiment or Accompaniment for a Designated Menu Item

If condiments or accompaniments are not pre-proportioned or pre-packaged for a designated menu item, the CE must include the dietary specifications for the average serving—that is dividing the total amount served by the number of servings taken.[70]

Calculation Condiment or Accompaniment Amount Chart				
Average Portion Size				
Total Amount for All Portions Served		Number of Servings		Average Accompaniment Portion Size
48 oz	÷	55	=	.818

After calculating the average portion size, the CE will determine the dietary specifications for the portion size and add this amount to the weekly dietary specification totals.[71]

Choice Among Various Condiments or Accompaniments for a Designated Menu Item

If condiments or accompaniments are not pre-proportioned or pre-packaged for a designated menu item and the student is allowed to select from among various condiments or accompaniments, the CE must take the following actions to calculate the dietary specifications:

1. Calculate the average portion size for each condiment or accompaniment that is provided.
2. Determine the dietary specifications for each condiment or accompaniment.
3. Average the dietary specifications for all condiments or accompaniments.
4. Add the average to the weekly dietary specifications total. [72]

Extra Items Served after the Point of Service

The CE may offer extra items beyond the point of service. This may include, but is not limited to, condiments, 100% juice, or tea. However, these items must be included in the calculation for the weekly dietary specifications even if these items are *free*. If the extra item is intended to be consumed with the reimbursable meal, it is part of the reimbursable meal.

If 100% juice is offered as an extra item, the 100% juice counts toward the maximum weekly amount of juice for the week.

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[70] See the *Administrator's Reference Manual (ARM), Section 22, Competitive Foods* for additional information related to accompaniments or condiments intended to be used with a beverage or food item that is sold.
[71] CEs must retain calculations records that demonstrate established averages with meal production records.
[72] CEs must retain calculations records that demonstrate established averages with meal production records.

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Calories
Lunches offered to each age/grade group must average over the serving week to a range between the minimum and maximum calorie levels specified in the *Nutrient Standard Chart*.

Saturated Fat
Lunches offered to all age/grade groups must average over the serving week to provide less than 10 percent of total calories from saturated fat.

Sodium
Lunches offered to each age/grade group must average over the serving week to reflect the levels of sodium specified in the *Lunch Nutrient Standard Chart*. Sodium targets will be phased in.

The following timeline shows the implementation of the sodium targets over various SYs:

Sodium Limits and Timeline Chart—Lunch		
Age/Grade Groups	**Target 1: SY 2022 - 2023**	**Target 1A: SY 2023 - 2024**
K-5	≤ 1230 mg	≤ 1110 mg
6-8	≤ 1360 mg	≤ 1225 mg
9-12	≤ 1420 mg	≤ 1280 mg

Trans Fat
Nutrition label or manufacturer specification must indicate that each menu item contains zero grams of trans fat per serving. Nutrition labels indicating less than 0.5 grams per serving are acceptable. Naturally occurring trans fat found in products such as beef, lamb, and dairy products made with whole milk is excluded from the trans fat requirement.

Commercially-Prepared Products
For commercially-prepared products, CEs must refer to the nutrition facts label or a manufacturer's specifications to determine that there are zero grams of trans fat per serving. For mixed dishes that may contain both naturally occurring trans fat (e.g., beef) and added or synthetic trans fats (partially hydrogenated oil), the CE must determine if the product is in compliance by requesting information from suppliers on how much of the trans fat is naturally occurring versus if any of the ingredients contain added (synthetic) trans fat.

Nutrition Labels and Manufacturer Specifications
CEs must rely on nutrition labels and manufacturer product formulation statements to determine the specifications for the amount of trans fat in a food. Nutrition facts labels and/or manufacturing specifications must be available during an administrative review to verify food items served are trans fat free.

Nutrition Software
Software may be used for the analysis of trans fat for information purposes only; however, current nutrition databases do not have complete data for trans fat. Therefore, trans fat is not required in the nutrient analysis for the one-week of menus when using an approved software program. As more trans fat information becomes available, it will be included in the Child Nutrition Database, required by all USDA-approved software.

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Nutrition Goals

Menu planning is designed to meet specified nutrient levels for the various age/grade groups. The food-based menu planning system sets minimum daily and weekly amounts, and in some cases recommended maximum offerings, for each of the five food components. Calorie ranges and limits on sodium and saturated and trans fats are established for each of the three age/grade groups. The menu planner establishes what the entrees are and the serving sizes of the menu items.

Nutrient Analysis of Meals

CEs are not required to conduct a nutrient analysis to ensure that they are meeting the nutrient standards. However, the CE may choose to do so. CEs that choose to conduct a nutrient analysis must adhere to the following guidance:

- The nutrient analysis must be conducted for all food items offered on each serving line.
- CEs may use any software program to conduct a nutrient analysis. However, if the CEs use SNP program funds to purchase nutrient analysis software, CEs must purchase USDA-approved nutrient analysis software. A list of USDA-approved nutrient analysis software is available at *www.fns.usda.gov/tn/usda-approved-nutrient-analysis-software.*[73]
- CEs may use the worksheets available for submitting menus to achieve certification of meal pattern compliance to do a simplified nutrient assessment of menus.[74]

CEs may also request technical assistance from their education service center (ESC).

State agencies may also conduct a nutrient analysis as part of the administrative review.

> [NOTE: Planned meals represent the CE's calculation of the items that will be prepared for a site's usual average daily participation (ADP). Ideally, the planned and the offered meals are the same, except for substitutions because of a product shortage, delivery failure, etc. TDA will review (or conduct) the nutrient analysis based on what is planned to correctly assess the calorie, saturated fat, and sodium levels in the meals.]

The nutrient analysis must include the following information:

- Calories
- Saturated fat, both in grams and percent of calories
- Sodium

These are the nutrients that are monitored by TDA. These nutrients will be compared to the required dietary specifications for calories (minimum and maximum levels), sodium, and saturated fat. Trans fat is not included in the nutrient analysis since trans fat is not allowed. If it is included, the trans fat value will not be used to determine if the menus meet the dietary specifications for trans fat. Product nutrient labels or manufacturer specifications will be used to determine that the menued item contains no trans fat.

[73] Software developers of the currently approved programs must show USDA that they have made all the required changes before being moved to the list of Nutrient Analysis Software Approved by USDA for Administrative Reviews. New software developers must be evaluated by USDA and approved before being added to this list.

[74] Forms available at *www.SquareMeals.org*.

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The Child Nutrition (CN) Database currently includes calories, sodium, and saturated and trans fat. Meal pattern information is not and will not be included in the CN Database.

Weighted Averages

Planned menus must be analyzed and compared to the appropriate nutrient standard using weighted averages based on the planned servings of each menu item and condiment. Weighted averages must be used. Simple averaging is not allowed. A weighted nutrient analysis gives more weight to nutrients in popular foods that are more frequently selected by students. Weighted analyses allow for a greater contribution of nutrients to come from menu items that are selected more often and less nutrient contribution from those menu items selected less often.

CEs that conduct nutrient analyses of centralized menus will need to consolidate or aggregate production records for all menu items served in reimbursable meals in all of their sites in order to weigh the analysis. In weighted averaging, the total number of planned reimbursable meals with the planned number of servings for each menu item, excluding food items sold as adult meals and a la carte, is required for each menu.

Determining Planned Servings for Weighted Averages

The nutrient analysis software system should perform the following tasks:

1. Calculate nutrients and provide a production record based on planned servings.
2. Estimate the number of projected servings based on past production records and meal counts.

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The *Sample Estimate of Number of Servings Needed Chart* illustrates one method for determining the number of servings needed.

Sample Estimate of Number Servings Needed Chart (Based on Previous Serving Records)		
Meal Choice	**Menu**	**Previous Number of Portions Served**
Select One	Chicken Nuggets	600
	Fish Fillet	100
	Spaghetti/Meat Sauce	200
Select One	French fries	875
	Tossed Salad	325
	Carrots	350
	Broccoli	250
Select One	Applesauce	350
	Pears	250
	Orange Juice	150
Select One	Dinner Roll	400
	Hamburger Bun	100
	Garlic Bread	300
Select One	Nonfat Unflavored Milk	150
	1% Unflavored Milk	700
	Nonfat Chocolate Milk	50

The CE should conduct weighted averaging at the CE level if a centralized system of menus is used. A system to aggregate the data on the amounts that will be prepared for reimbursable meals from the individual sites is needed. If meal planning is done at the individual site level, weighting would be based on the amounts planned for reimbursable meals at that site.

Processed Foods

When processed foods are used in menu planning, the nutrient analysis of these products either must be in the National Nutrient Database for Child Nutrition Programs or entered into the CE's local database. The nutrient analysis of the actual product must be used. CEs may obtain this information from the USDA's Child Nutrition (CN) label (CN Label) or the manufacturer product formulation statement. For more information on product labeling and manufacturer-created nutritional information sources, see the *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling*.

Standardized Recipes and Preparation Techniques

All CEs must develop and follow standardized recipes. Standardized recipes and preparation techniques must be used when planning and serving reimbursable meals. In order to qualify as a standardized recipe, a recipe must have an established and specified yield, portion size, and quantity. In addition, the ingredients must be constant in measurement and preparation.

Standardized recipes developed by USDA are in the Child Nutrition Database. Examples of standardized recipes are included in the USDA *Quantity Recipes for Schools* and the *New School Lunch and Breakfast Recipes…A Tool Kit for Healthy School Meals*.[75] The ESC Child Nutrition staff has copies of these resources. CEs may also use local or state standardized

[75] This resource and other recipe resources are available at *www.nutrition.gov/topics/shopping-cooking-and-food-safety/recipe-collection*.

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recipes. If a CE uses its own recipes, the recipes must be added to its local database of recipes.

Recipes for Salad or Theme Bars

Menu planners must make a recipe for each salad or theme bar listed on the menu. The salad or theme bar recipes are treated as another menu choice and averaged into the weekly nutrient analysis based on planned servings and portion sizes. If a student is able to select a reimbursable meal from the salad or theme bar, then, the menu planner must assure that the salad or theme bar menu meets all the components including subgroups and nutrient requirements of the meal pattern.

While there is no exact method for pre-planning portion sizes, menu planners are expected to use reasonable judgment in determining expected portion sizes.

For Example: A cup of lettuce would be a reasonable expectation for a portion size; a cup of radishes would not be a reasonable expectation.

The weekly recipe and nutrient analysis of the salad bar or theme bar is based on historical usage of the salad or theme bar items. The recipe should be constructed based on a typical day. The menu planner should take the following steps to determine the serving size and food ingredients for a salad or theme bar:

1. Determine the serving size.
2. Determine the number of servings the recipe produces.
3. Determine the amount of each food ingredient in the recipe.
   - Measure the amount of each ingredient placed on the salad or theme bar on a typical day.
   - Measure the amount of each ingredient leftover on the salad or theme bar at the end of the meal service.
   - Subtract the amount leftover from the amount placed on the salad or theme bar for each ingredient to determine the amount of each ingredient to enter for the recipe.

   or

   - Measure the amount of each ingredient placed on the salad or theme bar over the course of a week.
   - Measure the amount of each ingredient leftover on the salad or theme bar at the end of each day and add all the amounts for a total for the week.
   - Subtract the amount leftover from the amount placed on the salad or theme bar for each ingredient to determine the amount of each ingredient needed for the week.
   - Divide the remaining amount by the number of days in the serving week and use that average amount to determine a daily recipe.

Minimize Plate Waste

CEs may use a variety of strategies to minimize plate waste, including OVS, taste tests, creative marketing, presentation of foods, and self-service bars. The following sources provide additional tips on minimizing plate waste:

TDA

SquareMeals Website, Boost Meal Appeal—www.SquareMeals.org

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USDA

Fruits and Vegetables Galore: Helping Kids Eat More—https://www.fns.usda.gov/tn/fruits-vegetables-galore-helping-kids-eat-more

Kid-Friendly Veggies and Fruits—www.choosemyplate.gov/ten-tips-kid-friendly-veggies-and-fruits

Smarter Lunchrooms—https://theicn.org/cnss/state-sharing-center/smarter-lunchrooms/

Water Availability During Meal Service

CEs participating in the NSLP are required to make potable water available to students at no charge in the place where lunch meals are served during the meal service. There are a variety of ways that sites can implement this requirement.

For Example: The CE can provide water through the following methods.

- Offer water pitchers and cups on lunch tables
- Allow students to use a nearby water fountain
- Allow students to fill personal water bottles or cups with drinking water
- Provide prefilled glasses of water offered on each line

Whatever solution is chosen, the water must be available to all students where meals are served.

While potable water is required to be made available to students, it is not considered part of the reimbursable meal. Students are not required to take water. If a CE sells bottled water, the CE must let students know that they may obtain water without a cost.[76]

Water may be served chilled or at room temperature; however, students may find the water more palatable if it is served chilled. The water must be served plain; therefore, adding flavoring, including fruit and vegetables, is not allowed.

Location of and Access to Water

Potable water must be provided during meal service where reimbursable meals are served (including cafeterias, classrooms, courtyards, auditoriums, etc.). The location of the potable water must be in the meal service area or immediately adjacent to the meal service area. The water should be located so that it is offered after the student has the option to select milk. Signage should be clear that water is not a meal component.

For Example: A water fountain that is immediately outside the door of the meal service area (and is accessible to all students during the lunch period) would meet this requirement.

Water Fountain

The water fountain must be operational and able to provide potable water to students in a reasonable time during their meal period. The CE must ensure that students have enough time to use the water fountain during their meal period. Students should not have to wait in long lines.

If a CE uses a water fountain to provide the students with potable water, it is allowed to require students to raise their hands to get up and go to the fountain. This method is not ideal. However, it may be used as long as it is used to provide order, and a student is not denied the opportunity to obtain water. All students should be able to use the water fountain in a timeframe that still allows enough time for consumption of the meal.

[76] See the *Milk Component* and *Fruit Component* subsections in this section for additional information on beverages served.

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Cups for Water

The CE must provide cups for students to get the water at no cost if the water is provided in a bulk container (i.e., a five-gallon dispenser).

- Students cannot be required to bring their own cups for water provided in a bulk container.
- Students may, at the decision of the CE, provide their own cups, bottles, or drinking vessels to fill with water. However, this must not be a requirement.
- CEs must not charge students for cups in order to access water as this would be considered restricting access to potable water.

This is not required if the site is using a water fountain to provide the water to the students.

Reasonable Costs of Providing Water

Providing water would be an allowable cost to the nonprofit food service account. However, the cost must be reasonable. The cost must be a result of sound business practice and competitive prices. The cost must be reasonable, necessary, and allocable to the SNP to be an allowable cost. In determining whether a cost is a reasonable and necessary cost associated with providing water, a CE should ask the following questions:

- Would a prudent person find the cost to be reasonable?
- Is this cost at a fair rate or do alternatives exist that may be more cost effective?
- Is the cost a significant deviation from the established practices of the CE, which may unjustifiably increase costs borne by the nonprofit food service account?
- Could the CE defend this purchase to TDA?

For Example: The cost of providing pitchers or cups that would be filled with potable water from the faucet or providing them to students to fill with potable water from a faucet is a reasonable cost.

Some sites may want to provide water bottles to students or other alternatives. However, the CE would need to determine whether such an option would meet the requirements for an allowable cost (i.e. necessary, reasonable, and allocable) and meet the specific needs of the CE.

The cost of a five-gallon dispenser could be an allowable cost, as long as the CE has determined that providing water in a five-gallon dispenser would be cost efficient and practical.

Additionally, a cost is generally not reasonable if it adds materially to the value of the CE building and related facilities or appreciably prolongs its intended life, as those types of costs are capital expenditures and should be borne by the CE's general fund. While the cost associated with major plumbing would likely add to the permanent value of the building and is typically a cost that should be borne by the CE's general fund, the addition of a water fountain to allow for compliance with the statutory potable water requirement makes the cost acceptable. Moreover, equipment to filter water (e.g., a reverse osmosis filter system) could be reasonable depending on the cost, the need for such equipment and if the CE

1. has sufficient funds,
2. is lacking in capital improvement funding, and
3. is spending the funds necessary to carry out the mission of the program.

It is difficult to assess reasonableness without knowledge of the specific cost and an

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understanding of that cost. Many costs are analyzed on a case-by-case basis in order to determine if the cost is truly reasonable; in such cases, the CE should contact TDA for guidance.

Providing Potable Water in Other School Nutrition Programs

Seamless Summer Option (SSO)

CEs must make potable water available to students at SSO sites if the site is located at a school. Non-school sites are encouraged, but not required, to provide potable water.

Afterschool Care Snack Program (ASCP)

Potable water is recommended during meal service at an ASCP.

Water Dispensers, Food Safety

Water dispensers must be monitored and properly refilled and sanitized. CE staff would be responsible for maintaining all equipment which includes water dispensers.

Meal Pattern Resources

TDA Resources

Menu Planning Software

TDA provides free nutrition analysis software for CEs participating in NSLP and SBP. The MENU Module includes a variety of tools to assist with both menu planning and marketing. CEs can get additional information on this free software, from the following sources:

- TDA website at *www.SquareMeals.org*, (F&N Resources tab)
- CE's ESC child nutrition specialist

SquareMeals Website

TDA has developed the numerous resources to assist CEs in implementing the NSLP and SBP meal patterns that are available at *www.SquareMeals.org* (F&N Resources tab):

- School Meal Success Stories
- Boost Meal Appeal
- Texas Farm Fresh

TDA Forms

TDA provides template forms at *www.SquareMeals.org*. CEs are not required to use the forms provided by TDA for their records retention system unless specified, but TDA strongly recommends that CEs do so. In cases where CEs are allowed to develop their own versions of a record, CEs are responsible for making sure that all required information and elements included in the TDA forms are collected in the CE's version.

The following forms are available at *www.SquareMeals.org*:

- *Daily Food Production Record for Central Kitchen, Receiving Kitchen, and Onsite Kitchen*
- *Fluid Milk Substitute Worksheet*
- *Onsite Monitoring Form | National School Lunch Program*

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USDA Resources

USDA provides the following resources to assist CEs in implementing the NSLP and SBP meal patterns:

- *Food Buying Guide for Child Nutrition Programs*—Web-based interactive tool that assists in calculating food yields and provides purchasing information available at *https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs*; USDA has also released the *Food Buying Guide for Child Nutrition Programs* as a mobile app. See the following website for additional information on the app: *https://www.fns.usda.gov/tn/food-buying-guide-mobile-app*
- *Smarter Lunchrooms* available at *https://theicn.org/cnss/state-sharing-center/smarter-lunchrooms/*
- *Tools for Schools* available at *www.fns.usda.gov/school-meals/tools-schools*
- *What's Shaking* available at *www.usda.gov/media/blog/2015/08/25/whats-shaking-school-meals*

The Institute of Child Nutrition (ICN)[77] also provides numerous online training materials and information materials[78]

Available at *www.theicn.org*.

Food Production Records

The CE must keep complete and accurate food production documentation including food production records, menus, records indicating food substitutions, invoices or receipts for food product purchases, and meal pattern contribution documentation for the meals they produce. Food production documentation demonstrates that the meals served and claimed met meal pattern requirements and are, therefore, reimbursable.[79]

While there is no one specific strategy for maintaining food production documentation, TDA recommends that each CE develop a system that aligns with its menu cycle.

For Example: A CE uses a four-week menu cycle. For each week, the CE has created a notebook that has a divided section for each serving day of the week. In each daily section, the CE has collected that day's food production documentation, standardized recipes, product labels or manufacturer product formulation statements, and other information.

CEs should use the following guidance in maintaining production records:

- CEs should keep in mind that this requirement includes all lunches including salad and other food bars, quick lines, sack meals, field trips, etc.
- These records must show how the meals offered contribute to the required food components and food quantities for each age/grade group every day including, but not limited to,
  - food item replaced,
  - substituted food item, and
  - reason for the substitution.

[77] Formerly National Food Service Management Institute (NFSMI)
[78] ICN's materials are not regulatory
[79] See *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on the claims process.

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- Any meal claimed for reimbursement must be supported by a food production documentation.
- When recording the amount of prepared food on a food production record, CEs should record amounts by purchased unit/container size. These reporting units are also used in the *Child Nutrition Program Food Buying Guide (FBG)*[80] The Shopping List function in the web-based (or app) FBG can also be used to quickly determine the number of servings in a unit/container.

  For Example, if a CE is planning to prepare 310 one oz eq servings of sausage, the CE will report the total amount prepared as 3 cases@96/case +12. The sausage patties come 96 to the case.

- When recording the amount of leftover food on a food production record, CEs may record amounts by the number of remaining servings.

Planned, Offered, and Selected/Served

CEs must use the following definitions as they prepare menus and food production documentation:

- *Planned*. A planned menu is what the menu planner intends to offer or serve to students. It represents the CE's calculation of the items that will need to be prepared for a school's usual average daily participation (ADP). Ideally, the planned and the offered or served meals are the same.
- *Offered*. An offered menu is what is actually prepared and set out on the serving lines for students to take. Offered or served menus may differ from *planned* menus when there are unexpected circumstances.

  For Example: A planned food item was not received from the distributor, and the menu planner had to offer a different food item.

- *Selected or Served*. Selected or served refers to the foods that were actually served to or selected by students. Menu planners should use selected or served food item data to inform future menu planning and reduce food waste, so the school does not offer items that students do not select. Production records should be updated to indicate actual selected or served food items after the meal service so that production records reflect serving trends.

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[80] Available at *https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs*

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Records Retention

CEs must retain documentation about food production and service. All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, nonprofit organizations, and residential child care institutions after the end of the fiscal year to which they pertain. CEs have the option to maintain records on paper or electronically.

TDA may also request documentation for both offsite and onsite administrative review. CEs are encouraged to develop a system of document retention that allows them to readily retrieve documentation.

For more information on the specific types of documentation that are required, see *Administrator's Reference Manual (ARM), Section 30, Records Retention*.

Information Box 2

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Nonprofit private schools, other organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

Compliance

The Administrative Review (AR) will include an assessment of food production documentation and a review of the lunch meal pattern and may include a nutrient analysis of menus.

TDA has the discretion to take fiscal action for the following violations:

- Not meeting the meal pattern requirements
- Not meeting food quantity requirements
- Not meeting nutrition standards
- Inadequate or unavailable documentation[81]

[81] See *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* for additional information on this topic.

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Section 9

Pre-Kindergarten Meals

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Section 9, Pre-Kindergarten Meals

Update Guide

July 28, 2022	Updated *Section 8, Pre-Kindergarten Meals* to clarify guidance on: - Food production records
January 4, 2022	Updated *Section 8, Pre-Kindergarten Meals* to incorporate the following United States Department of Agriculture (USDA) memos and guidance: - *USDA Memo SP 11-2021, Consolidated Appropriations Act, 2021: Effect on Child Nutrition Programs - REVISED* (May 14, 2021)
August 12, 2020	Updated *Administrator's Reference Manual (ARM), Section 9* to update *Administrator's Reference Manual (ARM)* section references. Removed meal flexibilities no longer available.
December 13, 2019	Updated *Section 11, Pre-Kindergarten (Pre-K) Meal Pattern for School Nutrition Program (SNP) Operators* to address typos in the meal pattern chart.
October 4, 2019	Updated *Section 11, Pre-Kindergarten (Pre-K) Meal Pattern for School Nutrition Program (SNP) Operators* to incorporate the following United States Department of Agriculture (USDA) memos and guidance as well as incorporate Texas law: – *USDA Memo SP 19, 2018, Clarifications on the Milk and Water Requirements in the School Meal Programs* (August 6, 2018) Provided clarification or information on the following issues – Medical disabilities – Grain component – Meat/Meat alternate component – Juice – Offer versus serve (OVS) – Plated meal For clarification on the following memos use the guidance in *Administrator's Reference Manual (ARM) Sections 8, Breakfast* and *Section 9, Lunch* – *USDA Memo SP 40, 2019, Smoothies Offered in the Child Nutrition Program* (September 23, 2019) – *USDA Memo SP 39, 2019, Clarifications on the Milk and Water Requirements in the School Meals Programs* (September 23, 2019) – *USDA Memo SP 38, 2019, Meal Requirements under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators* (September 23, 2019) – *USDA Memo SP 37, 2019, Questions and Answers on the Final Rule Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (September 23, 2019) – *USDA Memo SP 34-2019, Crediting Coconut, Hominy, Corn Masa, and Mas Harina in the Child Nutrition Programs* (August 22, 2019) – *USDA Memo SP 26-2019, Crediting Pasta Products Made of Vegetable Flour in the Child Nutrition Programs* (April 17, 2019) – *USDA Memo SP 25-2019, Crediting Tempeh in the Child Nutrition Programs* (April 17, 2019) – *USDA Memo SP 24-2019, Crediting Surimi Seafood in the Child Nutrition Programs* (April 17, 2019) – *USDA Memo SP 23-2019, Crediting Popcorn in the Child Nutrition Programs* (April 17, 2019) – *USDA Memo SP 22-2019, Crediting Coconut, Hominy, Corn Masa, and Corn Flour in the Child Nutrition Programs* (April 17, 2019)

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- *USDA Memo SP 21-2019, Crediting Shelf Shelf-Stable, Dried and Semi-Dried Meat, Poultry, and Products in the Child Nutrition Programs* (April 17, 2019)

January 22, 2018

Updated *Section 11, Pre-Kindergarten (Pre-K) Meal Pattern for School Nutrition Program (SNP) Operators* to incorporate the following United States Department of Agriculture (USDA) memos:

- *USDA Memo SP 01-2018, Updated Infant and Preschool Meal Patterns in the National School Lunch Program and School Breakfast Program; Questions and Answers (*October 19, 2017)

  USDA Memo CACFP 01-2018, Grain Requirement in the Child and Adult Care Food Program; Questions and Answers (October 19, 2017)
- *USDA Memo SP 37-2017, Flexibility for Co-Mingled Preschool Meals: Questions and Answers* (June 30, 2017)

Provided clarification or information on the following issues

- Grains, grain-based dessert
- Juice
- Meal pattern flexibility for comingled age/grade groups
- Meal service options for pre-K students
- Milk
- Offer versus serve (OVS)
- Water

June 28, 2016

Updated *Administrator's Reference Manual (ARM), Section 11, Infant Feeding* so that it now provides general pre-kindergarten (pre-K) meal pattern guidance for School Nutrition Programs (SNPs) that operate the Child and Adult Care Food Program (CACFP) or serve meals to pre-kindergarten students. The new title of the section will be *Pre-Kindergarten (Pre-K) Meal Pattern for School Nutrition Program (SNP) Operators*.

Revisions were made to incorporate general guidance from the following United States Department of Agriculture (USDA) memos and guidance:

- *USDA Memo SP 30-2017, Transition Period for the Updated Child and Adult Care Food Program Meal Patterns and the Updated National School Lunch Programs and School Breakfast Program Infant and Preschool Meal Patterns* (May 10, 2017)
- *USDA Memo CACFP 09-2017, Vegetable and Fruity Requirements in the Child and Adult Care Food Program; Questions and Answers* (March 23, 2017)
- *USDA Memo CACFP 02-2017, Grain Requirements in the Child and Adult Care Food Program; Questions and Answers* (October 14, 2016)
- *USDA Memo CACFP 25-2016, Vegetable and Fruit Requirements in the Child and Adult Care Food Program; Questions and Answers* (September 9, 2016)
- *USDA Memo SP 42-2016, Early Implementation of the Updated Child and Adult Care Food Program Meal Pattern Requirements and the National School Lunch Programs' Infant and Preschool Meal Patterns* (June 24, 2016)
- *Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010, Final Rule* (April 25, 2016)

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

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Pre-Kindergarten Meals

Contracting Entities (CEs) that operate the National School Lunch Program (NSLP) and/or the School Breakfast Program (SBP) must use Child and Adult Care Food Program (CACFP) pre-kindergarten (pre-K) meal pattern when serving students 5 years of age and under who are not enrolled in kindergarten.

[NOTE: CEs are required to implement the updated CACFP pre-K meal pattern for SBP and NSLP pre-K students, but other CACFP operational requirements do not apply to NSLP or SBP sites.]

The information in this section provides guidance for the pre-K meal pattern that is specific to CEs operating NSLP or SBP.

- For detailed guidance on the ASCP and CACFP At-Risk meal patterns, see the *Administrator's Reference Manual (ARM), Section 10, Afterschool Snacks & Meals*.
- For more detailed guidance on the pre-K meal pattern, see the *Child and Adult Care Food Program—Child Care Centers Handbook*, available at *www.SquareMeals.org*.
- For more detailed guidance on the SBP meal pattern, see *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals*, available at *www.SquareMeals.org*.
- For more detailed guidance on the NSLP meal pattern, see *Administrator's Reference Manual (ARM), Section 8, Lunch Meals*, available at *www.SquareMeals.org*.

CEs may also find the crediting guidance for specific food products contained in the *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals* and *Section 8, Lunch Meals* helpful.

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Definitions for This Section

For this section, the following definitions provide information that may assist CEs in determining eligibility:

Enriched	Product conforms to the Food and Drug Administration's Standard of Identity for levels of iron, thiamin, riboflavin, and niacin. The terms enriched means nutrients that were lost during food processing have been added back into the product, such as adding back certain vitamins lost in processing wheat to make white flour.
Fortified Grain	Grain that has been processed to add certain vitamins and minerals to the food product to increase nutritional quality.
Juice	Undiluted product obtained by extraction from sound fruit.[1] It may be fresh, canned, frozen, or reconstituted from concentrate and may be served in either liquid or frozen state. Diluted juice is no longer allowed.
Offer Versus Serve (OVS)	Meal service method that allows students to decline some of the food items/ components offered in a reimbursable lunch or breakfast. [NOTE: A choice of food items within the same food component is not considered to be OVS.] As long as the student takes the minimum servings of the required components for a reimbursable meal under OVS, the meal is reimbursable. The goals of OVS are to reduce food waste and to permit students to choose the foods they want to eat. High schools must implement OVS. Pre-K students cannot be served using the OVS meal pattern.
Plated Meal	Menued meal that includes all required food components in the required minimum serving size.
Sound Fruit	Product made from 100% fruit.
Tofu	Soybean-derived food that is made by a process in which soybeans are soaked, ground, mixed with water, heated, filtered, coagulated, and formed into cakes. Basic ingredients are whole soybeans, one or more food-grade coagulants (typically a salt or an acid), and water.
Whole Grain	Edible part of wheat, corn, rice, oats, rye, barley, etc. Parts of the grains such as the germ or the bran are not considered whole grain. Whole-grain flour or meal is the product derived by grinding the entire grain minus the husk/hull. If a flour or meal does not contain all edible parts of the grain, it is not whole grain.
Whole-Grain Rich	Grain products containing at least 50 percent whole grains. The remaining amount of grains in the product are enriched grains.

Milk Component

Fat Content

- One-year-olds must be served whole milk.[2]
- Two-year-old children and older must be served low-fat or fat-free unflavored milk.
- All milk must be pasteurized.

Allowable Types of Milk

- Low-fat or fat-free milk
- Low-fat or fat-free lactose reduced milk or low-fat or fat-free lactose-free milk
- Low-fat or fat-free buttermilk
- Low-fat or fat-free cultured milk
- Low-fat or fat-free acidified milk

[1] In this definition, s*ound fruit* means a product made from 100% fruit.
[2] For more information on the transition of infants to whole milk, see *Child and Adult Care Food Program—Child Care Centers Handbook* which is available at *www.SquareMeals.org*.

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Non-Dairy Beverages

- Non-dairy fluid milk substitutes that meet the dietary specifications for a milk substitute may be served to students if the CE provides the same substitute to all students in accordance with CE policy.[3]
- Other beverages, including water, cannot be offered in place of milk as part of the reimbursable meal or snack.

Fruit and Vegetable Components

Breakfast

- Fruit and vegetables are one component at breakfast.

Lunch, Supper, and Snack

- Fruit and vegetables are two separate components at lunch, supper, and snack.
- Two vegetables may be served in place of a fruit component and a vegetable component for breakfast and lunch. If two vegetable servings are offered at breakfast and lunch, two different vegetables must be served.
- Food items that are mixtures of fruit and vegetables may credit for the fruit component as long as the fruit portion size is creditable (⅛ cup or more) and for the vegetable component as long as the vegetable portion size is creditable (⅛ cup or more).

Beans and Peas

- If two distinct servings of beans and peas (legumes) are provided, the CE may credit one serving toward the vegetable component and one serving toward the meat/meat alternate component as long as the beans and peas (legumes) are in separate food items and are not the same vegetable. Two serving of the same vegetable at the same meal service cannot be credited as one serving of the vegetable component and one serving of the meat/meat alternate component for pre-K students.

Juice

- Juice must be full strength, 100 percent juice. Mixed fruit and vegetable juice credit as either the fruit or vegetable component (not both) based on the most prominent ingredient.
- Pureed fruits or vegetables in a smoothie may be credited toward the fruit and/or vegetable component as 100 percent juice. The limitation on the number of juice servings per day applies to the juice in a smoothie.
- Fruit juice is creditable at one meal per day across all meals at the site based on the programs the CE operates as defined in the *Pre-K Juice Option Scenario Chart*.

[3] If a CE offers a milk substitute, the CE must notify TDA using the *Milk Substitute Worksheet* which is available at *www.SquareMeals.org*. NSLB/SBP operators must follow the NSLP or SBP requirements as described in *Administrator's Reference Manual (ARM), Section 25, Meal Accommodations.*

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Pre-K Juice Option Scenario Chart One Juice Serving Across All Meals at the Same Site on the Same Day						
	SNP			CACFP At-Risk		Allowable?
Scenarios	SBP	NSLP	ASCP	Snack	Supper	
Scenario 1	Juice	No Juice	No Juice	Juice	No Juice	Yes
Scenario 2	No Juice	Juice	No Juice	No Juice	Juice	Yes
Scenario 3	No Juice	No Juice	Juice	Juice	No Juice	Yes
Scenario 4	Juice	Juice	No Juice	No Juice	No Juice	No[1]
Scenario 5	No Juice	Juice	Juice	Juice	No Juice	No[2]
Scenario 6	Juice	No Juice	No Juice	Juice	Juice	No[3]

[1] Juice cannot be offered in two SNP meals services at the same site on the same day.
[2] Juice cannot be offered in two SNP meal services at the same site on the same day.
[3] Juice cannot be offered at two CACFP snacks/meals at the same site on the same day.

SNP Sites Operating Any Combination of SBP, NSLP, and ASCP

CEs may credit juice as the fruit or vegetable component (not both) for pre-K students one time across all meals or snacks served each day at the same site across all SNPs operating at the site.

SNP Half-Day Pre-K Programs Operating SBP Only, NSLP Only, or NSLP and ASCP

CEs may credit juice as the fruit or vegetable component (not both) for pre-K students one time for pre-K students attending a morning half-day session and a second time for the other pre-K students attending an afternoon half-day session. The CE may also treat the combined half-day sessions as a whole day and only serve juice in either the morning session or afternoon session. If the students in the afternoon session also attend ASCP, the juice may credit as the fruit or vegetable component (not both) for pre-K students one time across the lunch and snack services.

For half-day pre-K programs, the juice crediting option the CE uses must be consistent with the requirement to serve a whole-grain rich food item once per day as described in the *Grain Component* subsection of this section.

CACFP Sites Operating At-Risk Snack and At Risk Supper

CEs may credit juice as the fruit or vegetable component (not both) for pre-K students one time across all meals or snacks served each day at the same site across all CACFPs operating at the site.

Minimum Creditable Amount for Fruit and Vegetables

- The minimum creditable amount for fruits and vegetables is ⅛ of a cup.

Grain Component

Serving

- One whole-grain rich food item must be served each day across all meals. The remaining grains served throughout the day must be enriched.

NSLP, SBP, ASCP

When a CE operates one or more SNPs, the CE must offer pre-K students a whole-grain rich food item at least once over all SNP meal services for the day at the site.

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- If the CE is offering grains at other meals on the same day, the CE may provide whole-grain rich food items for all meal services.
- If the CE does not provide other whole-grain rich food items at other meal services, all other grains must be enriched grain food items.
- If operating only one SNP and a grain is offered, the grain must be whole-grain rich at the meal/snack service for the day at the location.
- If a grain food item is provided that is not whole-grain rich or enriched, the grain is not creditable toward a reimbursable meal.

Half-Day Pre-K

For half-day pre-K programs, the CE may choose to implement the whole-grain rich requirement as one whole-grain rich food item for each half-day session or may offer one whole-grain rich food item across all meals offered for all half-day sessions on that day in that location.

For half-day pre-K programs, the requirement to serve a whole-grain rich food item once per day must be consistent with the juice crediting option the CE uses as described in the *Juice* subsection in this section.

CACFP At-Risk

When a CE operates a CACFP At-Risk program for pre-K students and offers a grain, the CE must offer a whole-grain rich food item at least once over all CACFP At-Risk meal services for the day at the location.

- If the CE provides snack only and a grain is offered, the grain must be whole-grain rich.
- If the CE provides snack and supper and a grain is offered, a whole-grain rich item must be offered in at least one of the meal services.

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Grain-Based Desserts

- Grain-based desserts are not creditable toward the grains component.
- Quick breads,[4] pancakes, waffles, savory[5] scones, savory puddings, and savory pies are not considered to be grain-based desserts.
- CEs may serve grain-based desserts as an additional food item that is not part of a reimbursable meal. This option should be used occasionally, not frequently.
- The fruit in a grain-based dessert may credit toward the fruit component, even though the grain portion of a grain-based dessert cannot count toward the grain component.

Information Box 1

Grain-Based Desserts

The following food items are considered to be grain-based desserts:

- Breakfast bars
- Brownies, including black bean brownies
- Cake
- Cereal bars
- Cookies
- Doughnuts
- Granola bars (made in house or commercial)
- Rice pudding
- Sweet bread pudding
- Sweet pie crusts
- Sweet rolls
- Sweet scones
- Toaster pastries

This list is not exhaustive. When there is a question about whether food item may be a grain-based dessert, CEs should consider the ingredients and appearance of the product if the specific grain food item is not listed in ***Exhibit A: Grain Requirements for Child Nutrition Programs, Food Buying Guide for Child Nutrition Programs or other USDA guidance.***

Breakfast Cereals

- Breakfast cereals must contain no more than 6 grams of sugar[6] per dry ounce.
- Breakfast cereals must be whole grain, enriched, or fortified.

Substitution

- Meat and meat alternates may be substituted for the entire grain requirement a maximum of three times a week.

Meat/Meat Alternate Component

Serving

- Meat/Meat alternates may be served for the entire grain component no more than three times per week for breakfast.

Meat Alternates

- Tofu may be served.[7]
- Yogurt must contain no more than 23 grams of sugar per 6 ounces.

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[4] See *Exhibit A* of the *USDA Memo CACFP 01-2018, Grain Requirements in the Child and Adult Care Food Program, Questions and Answers* for additional information on crediting quick breads. USDA has also updated the *Food Buying Guide for Child Nutrition Programs* to include this information. Available at *http://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs.*

[5] In this reference savory means a food item that is not sweet. Savory food items are typically flavored with herbs and often contain protein ingredients such as cheese.

[6] This formula is not the same formula used to calculate sugar for Competitive Foods.

[7] Same specifications as NSLP or SBP, see the *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals* or *Section 8, Lunch Meals* for additional information on the specifications.

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Water Availability

CEs serving meals to pre-K students must continue to follow the NSLP or SBP requirement to have water available during meal service. Moreover, since very young children may lack the ability to request water, CEs are encouraged to offer water to pre-K students at every meal rather than just have it available.

Dietary Specifications

Sugar

- Breakfast cereals can have no more than 6 grams of sugar per dry ounce.[8]
- Yogurt can have no more than 23 grams of sugar per 6 ounces.

Daily Specifications

- All dietary specifications for the pre-K meal pattern are based on daily or individual item limits; therefore, meals served under the pre-K meal pattern are not included in the weekly dietary specifications for NSLP or SBP.
- Pre-K students may be served the same size portions as older students as long as the daily or individual food item specifications are met.

Information Box 2

Calculating the Amount of Sugar in Breakfast Cereal

To determine if there is more than 6 grams of sugar per ounce, use the following formula:

1. Find the serving size in grams and the amount of sugar per serving on the product label.
2. Divide the total sugars by the serving size in grams.

Total Grams Sugar per Serving	÷	Total Grams Serving Size	=	Grams of Sugar per Ounce
9 Grams	÷	**55 Grams**	=	**0.164**

If the answer is 0.212 or less, the cereal is within the required sugar limits.

Calculating the Amount of Sugar in Yogurt

To determine if there is more than 6 grams of sugar per ounce, use the following formula:

1. Find the serving size in grams and the amount of sugar per serving on the product label.
2. Divide the total sugars by the serving size in grams.

Total Grams Sugar per Serving	÷	Total Grams Serving Size	=	Grams of Sugar per Ounce
23 Grams	÷	**6 Grams**	=	**3.833**

If the answer is 3.833 or less, the yogurt is within the required sugar limits.

Pre-K Meal Service Methods for NSLP or SBP Operators

Offer Versus Serve (OVS) Method for Pre-K Students

- OVS is not allowed for pre-K students.[9]
- A choice of food items within the same food component is not considered to be OVS.

Plated Meal Method for Pre-K Students

- The use of *choice* among food items or food components is applied differently for plated meals for pre-K students served under the pre-K meal pattern and

[8] USDA provides calculation tools and training related to calculating sugar in breakfast cereal and yogurt at *https://www.fns.usda.gov/tn/cacfp-meal-pattern-training-tools.*

[9] See the *Meal Pattern Flexibility for Comingled Age/Grade Groups* subsection in this section for information on flexibility for meal service options.

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K-8 students served under the National School Lunch Program (NSLP) and School Breakfast Program (SBP).

- A plated meal must include all required food components[10] in the required minimum serving size for each required food component.
- The menued meal may include a choice of items within the same component.
  For Example:
  - Vegetable Component: green beans or carrots
  - Meat/Meat Alternate Component: chicken or beef
  - Milk Component: low fat or fat-free unflavored milk
- If the student does not take a meal which includes all food components,[11] it is not a reimbursable meal.

Family Style Method for Pre-K Students

- Family style service is allowed for all age groups.
- A pre-K student must take at least ¼ cup of a vegetable or fruit for a meal to be reimbursable.
- The supervising adult should initially offer the required minimum serving size of each food component/food item to each pre-K student.

Crediting

Alternate Meal Item

- For NSLP or SBP sites providing pre-K meals, a parent may provide food items for the student to eat onsite as long as it is allowable under local policy. However, the CE must provide all meal components for a reimbursable meal—the parent cannot replace a food component for a reimbursable meal.

Standardized Recipes

- CEs may credit food items with more than one component if the CE uses a standardized recipe, CE-developed, or manufacturer developed.[12]
  - All USDA Foods recipes are standardized; therefore, CEs may use the crediting information provided on the recipe as long as the CE follows the recipe.
  - Child Nutrition (CN) label crediting information is created using standardized recipes; therefore, CEs may use the crediting information as long as the CE follows the preparation and serving directions provided on the CN label.[13]
  - A manufacturer may provide a product formation statement with crediting information; therefore, if a product formula statement is provided, the CE may use the

[10] For lunch, five components; for breakfast, three components.
[11] For lunch, five components; for breakfast, three components.
[12] USDA provides guidance on creating standardized recipes in the *Food Buying Guide for Child Nutrition Programs*, available at *http://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs*.
[13] See the *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional information on this topic.

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crediting information as long as the product is prepared and served as specified.[14]

- CEs may also create their own standardized recipes using the information provided in the *Food Buying Guide for Child Nutrition Programs*[15] in the recipe analysis section and credit components based on the calculations described in the standardized recipe development process.

Pre-K Students with Medical Disabilities or Special Dietary Needs

For pre-K students with medical disabilities or special dietary needs, CEs that operate NSLP or SBP must follow the guidance described in the *Administrator's Reference Manual (ARM), Section 13, Meal Accommodations*.

A La Carte Items

CEs may sell a la carte items to pre-K students. However, the sale of a la carte items must not encourage a student to purchase an a la carte item over a reimbursable meal. A la carte sales for pre-K students must meet the competitive food rule.

Performance-Based Reimbursement

When the CE serves pre-K students under the NSLP program, all reimbursable lunches served, including lunches to pre-K students, earn the performance-based reimbursement.

Severe Need Reimbursement

When a CE serves pre-K students under NSLP or SBP, all reimbursable meals served, including meals served to pre-K students, earn severe need reimbursement if the CE/site receives severe need reimbursement.

Meal Pattern Flexibility for Comingled Age/Grade Groups

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. The flexibility to use comingle is based on the CE's ability to identify the age/grade groups of the students and the amount of time to serve the meals. However, USDA encourages CEs to evaluate a variety of serving strategies that will allow them to serve the pre-K meal pattern to pre-K students before utilizing this flexibility.

Before adopting this flexibility, the CE must consider the following:

1. Can the pre-K class or group of pre-K students be reasonably distinguished in the service line?
2. Is there reasonably sufficient time to serve the pre-K students the pre-K meal pattern before older students are served?

[14] See the *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional information on this topic.

[15] Available at *http://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs*

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The presence of pre-K students in the dining area at the same time as older students does not mean that the meal service is comingled. The CE must still consider the ability to distinguish age/grade groups and if there is reasonable time or opportunity to change the service line. CE's may also find that there is a comingled serving situation at one meal service and not another.

Serving Options That Are Not Considered to Be Comingled

When the pre-K student is easily distinguishable, and there is time and opportunity to serve the appropriate pre-K meal pattern, the pre-K meal pattern must be used.

For Example:

- Pre-K students are served and consume breakfast in the classroom. In this situation, pre-K students are served the pre-K meal pattern.
- Pre-K students pick up a grab-n-go meal in an area of the building dedicated to pre-K students. In this situation, pre-K students are served the pre-K meal pattern.

Serving Options That May Be Considered to Be Comingled

When the pre-K student is not easily distinguishable, and there is not the time or opportunity to change the service line set up for different age/grade groups, the CE may use the meal pattern that is used for kindergarten students at that meal service. For breakfast, the age/grade groups are K-5, K-8, or K-12; for lunch, K-5 or K-8.

For Example:

- Pre-K students pick up a grab-n-go meal in the cafeteria where students of all age/grade groups pick up a grab-n-go meal. In this situation, pre-K students may be served the kindergarten meal pattern.
- Pre-K students go through the cafeteria line and are intermingled with older students or are served in a fashion where pre-K classes alternate with older age/grade group classes. In this situation, pre-K students may be served the kindergarten meal pattern.

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Pre-K Meal Pattern for SBP and NSLP

The following charts provide general information on the portion size requirements for each food component for pre-K students for NSLP and SBPs.

Nutrition Standards in the School Breakfast Program (SBP)—Meal Pattern Chart
Minimum Amount of Each Food Component Per Week (Minimum Offering Per Day)

Pre-Kindergarten (Pre-K) Daily		
Meal Pattern Components	**Age 1-2**	**Age 3-5**
Milk, Unflavored Age 1-2, whole milk Age 3-5, 1 percent low fat or fat free	(½) cup	(¾) cup
Fruits (and Vegetables)[2]	(¼) cup	(½) cup
Grains,[4] Whole Grain-Rich or Enriched		
Bread Product (i.e., biscuit, roll, muffin)	(0.5) oz eq	
Cooked: Cereal, Cereal Grain, Pasta	(0.5) oz eq	
Ready-To-Eat Breakfast Cereal, Dry or Cold:[5] Flakes or Rounds Puffed Cereal Granola	 (0.5) oz eq (0.7) oz eq (0.2) oz eq	

School Age Daily and Weekly				
Meal Pattern Components	**Grades K–5**	**Grades 6–8**	**Grades 9–12**	**Grades K-12**
Milk, Unflavored 1 percent low fat or unflavored or flavored[1] fat-free milk	5 (1) cups	5 (1) cups	5 (1) cups	5 (1) cups
Fruit (and Vegetables)[3]	5 (1) cups	5 (1) cups	5 (1) cups	5 (1) cups
Grains, Whole Grain-Rich	7.0-10 .0 (1.0) oz eq	8.0-10.0 (1.0) oz eq	9.0-10 .0 (1.0) oz eq	9.0-10 .0 (1.0) oz eq
Nutrient Specifications: Daily Amount Based on Average 5-Day Week				
Min-Max Calories (kcal)	350-500	400-550	450-600	450-500
Saturated Fat % of total calories	< 10	< 10	< 10	< 10
Sodium Target (mg)	T2 ≤ 485 mg	T2 ≤ 535 mg	T2 ≤ 570 mg	T2 ≤ 485 mg
Trans Fat	Product nutrition label/manufacturer specification must indicate 0 grams of trans fat per serving.			

1 For K-12, one choice of milk must be unflavored at each meal service.
2 Juice must be full strength (100 percent juice) and may be used to meet the vegetable or fruit requirement at one meal per day, including snack.
3 Through June 30, 2022, CEs may substitute any vegetable from any subgroup in place of a fruit.
4 For pre-K, at least one serving per day, across all meals served must be whole grain-rich unless a meat/meat alternate is being served in place of grain that day. Remaining servings for the day must be enriched. Meat/Meat alternates may be substituted for the entire grain requirement a maximum of three times a week. See the ***Meat/Meat Alternates*** subsection in this section for more information on this topic. Grain-based desserts (i.e., cereal bars, breakfast bars, granola bars, sweet rolls, sweet pie crusts, doughnuts, toaster pastries, cake, brownies, etc.) are not creditable toward meeting the grains requirement.
5 For pre-K, breakfast cereals must be whole grain-rich, enriched, or fortified and contain no more than 6 grams of sugar per dry ounce (21.2 grams sucrose and other sugars per 100 grams of dry cereal).

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Nutrition Standards in the National School Lunch Program (NSLP)—Meal Pattern Chart

Minimum Amount of Each Food Component Per Week (Minimum Offering Per Day)

Pre-Kindergarten (Pre-K) Lunch Daily		
Meal Pattern Components	**Age 1-2**	**Age 3-5**
Milk, Unflavored Age 1-2, whole milk Age 3-5, 1 percent low fat or fat free	(½) cup	(¾) cup
Fruits[2]	(⅛) cup	(¼) cup
Vegetables	(⅛) cup	(¼) cup
Grains,[3] Whole Grain-Rich or Enriched		
Bread product such as biscuit, roll, or muffin	(0.5) oz eq	
Cooked breakfast cereal, cereal grain,[4] and/or pasta	(0.5) oz eq	
Meat/Meat Alternates[5]		
Lean meat, poultry, or fish	(1.0) oz eq	(1.5) oz eq
Tofu, soy product, or alternate protein products	(1.0) oz eq	(1.5) oz eq
Cheese	(1.0) oz eq	(1.5) oz eq
Large egg	(1.0) oz eq	(1.5) oz eq
Cooked dry beans or peas	(0.5) oz eq	(0.75) oz
Peanut butter, soy nut butter, or other nut or seed butter	(1.1) oz eq	(1.7) oz eq
Yogurt, plain, or flavored unsweetened or sweetened	(4.0) oz eq	(6.0) oz eq
Peanuts, soy nuts, tree nuts, or seeds	(0.5) oz eq	(0.75) oz eq

School Age Daily and Weekly				
Meal Pattern Components	**Grades K–5**	**Grades 6–8**	**Grades K-8**	**Grades 9–12**
Milk, Unflavored 1 percent low fat or unflavored or flavored[1] fat-free milk	5 (1) cups	5 (1) cups	5 (1) cups	5 (1) cups
Fruits	2½ (½) cups	2½ (½) cups	2½ (½) cups	5 (1) cups
Vegetables	3¾ (¾) cups	3¾ (¾) cups	3¾ (¾) cups	5 (1) cups
Dark Green	½ cup	½ cup	½ cup	½ cup
Red/Orange	¾ cup	¾ cup	¾ cup	1¼ cups
Beans/Peas (Legumes)	½ cup	½	½	½
Starchy	½ cup	½ cup	½ cup	½ cup
Other	½ cup	½ cup	½ cup	¾ cup
Additional Vegetable	1 cup	1 cup	1 cup	1½ cups
Grains, Whole-Grain Rich	8.0-9.0 (1.0) oz eq	8.0-10.0 (1.0) oz eq	8.0-9.0 (1.0) oz eq	10.0-12.0 (2.0) oz eq
Meat/Meat Alternates	8-10 (1) oz eq	9-10 (1) oz eq	9-10 (1) oz eq	10-12 (2) oz eq
Other Nutrient Specifications: Daily Amount Based on the Average for a 5-Day Week				
Min-Max Calories (kcal)	550-650	600-700	600-650	750-850
Saturated Fat % of total calories	< 10	< 10	< 10	< 10
Sodium Target (mg)	T2 ≤ 935 mg	T2 ≤ 1035mg	T2 ≤ 935 mg	T2 ≤ 1080mg
Trans Fat	Product nutrition label/manufacturer specification must indicate 0 grams of trans fat per serving.			

1 For K-12, one choice of milk must be unflavored at each meal service.

2 Juice must be full strength (100 percent juice) and may be used to meet the vegetable or fruit requirement at one meal per day, including snack. A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.

3 For pre-K, at least one serving per day, across all meals served must be whole grain-rich; remaining servings for the day must be enriched. Grain-based desserts (i.e., cereal bars, breakfast bars, granola bars, sweet rolls, sweet pie crusts, doughnuts, toaster pastries, cake, brownies, etc.) are not creditable toward meeting the grains requirement.

4 For pre-K, breakfast cereals must be whole grain-rich, enriched, or fortified and contain no more than 6 grams of sugar per dry ounce (21.2 grams sucrose and other sugars per 100 grams of dry cereal).

5 Yogurt must contain no more than 23 grams of total sugars per 6 ounces. Any combination of peanuts, soy nuts, tree nuts, or seeds may be credited to meet 50% of the minimum amount to be served.

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The following chart may assist CEs as they determine the appropriate serving sizes based on different methods of measurement.

Measurement Conversion Chart
(Converting Common Serving Portion Sizes into Applicable Measurement Methods)[16]

Component			Other	Volume		Weight		Scoop Size (Scoop serving per quart)
				Level Measure (cup, Tbsp)	Fluid Ounce (fl oz)	Ounce (oz)	Ounce Equivalent (oz eq)	
Milk			--	½ cup	4	--	--	--
			--	¾ cup	6	--	--	--
Fruits/Vegetables			--	¼ cup	--	--	--	16
			--	½ cup	--	--	--	8
Grains	Bread Product: (biscuit, roll, muffin)		½ serving	--	--	0.5 oz	0.5 oz eq	--
	Cooked: Cereal, Cereal Grain, Pasta		--	¼ cup	--	0.5 oz	0.5 oz eq	16
	Ready-To-Eat Breakfast Cereal (Dry /Cold)	Flakes/Rounds	--	½ cup	--	0.5 oz	0.5 oz eq	8
		Puffed	--	¾ cup	--	1.0 oz	1.0 oz eq	4
		Granola	--	⅛ cup	--	0.5 oz	0.5 oz eq	30
Meat/ Meat Alternates	Lean meat, poultry, or fish		--	--	--	1.0 oz	1.0 oz eq	--
			--	--	--	1.5 oz	1.5 oz eq	--
	Tofu, soy product, or alternate protein products		--	⅛ cup	--	1.1 oz	0.25 oz eq	30
			--	⅓ cup	--	1.5 oz	0.33 oz eq	12
	Cheese		--	¼ cup	--	1.0 oz	1.0 oz eq	16
			--	⅓ cup	--	1.5 oz	1.5 oz eq	12
	Large egg		½ serving	⅛ cup	--	--	1.0 oz eq	30
			¾ serving	⅓ cup	--	--	1.5 oz eq	12
	Cooked dry beans or peas		--	¼ cup	--	0.5 oz	1.0 oz eq	16
			--	⅜ cup	--	1.5 oz	1.5 oz eq	10
	Peanut butter, soy nut butter, or other nut or seed butter		--	2 Tbsp	--	1.1 oz	1.0 oz eq	30
			--	3 Tbsp	--	1.7 oz	1.5 oz eq	20
	Yogurt, plain, or flavored unsweetened or sweetened		--	¼ cup	--	2.0 oz	0.5 oz eq	16
			--	½ cup	--	4.0 oz	1.0 oz eq	8
			--	¾ cup	--	6.0 oz	1.5 oz eq	4
	Peanuts, soy nuts, tree nuts, or seeds		--	--	--	0.5 oz	1.0 oz eq	--
			--	--	--	0.75 oz	1.5 oz eq	--

TDA Forms

TDA provides the following forms on the *SquareMeals* website[17] to assist CEs in implementing the guidance presented in this section:

- *Daily Food Production Record for Central Kitchen, Receiving Kitchen, and Onsite Kitchen*
- *Fluid Milk Substitute Worksheet*

USDA Resources

USDA provides a large number of tools that can help CEs in operating NSLP and SBP, including the following:

- *Calculating Sugar Limits for Yogurt in the Child and Adult Care Food Program*—Fill in the blank calculation tool.

[16] The *Child Nutrition Food Buying Guide* available at *http://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs* provides additional information on converting amounts.
[17] Available at *www.SquareMeals.org*.

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Available at *https://fns-prod.azureedge.net/sites/default/files/tn/CACFPCalcYogurt.pdf*

- *Food Buying Guide for Child Nutrition Programs*—Web-based interactive tool that assists in calculating food yields and provides purchasing information

  Available at *https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs;*

  USDA has also released the *Food Buying Guide for Child Nutrition Programs* as a mobile app.

  See the following website for additional information on the app: *https://www.fns.usda.gov/tn/food-buying-guide-mobile-app*

- *Tools for Schools Webpage*—Website hosting a variety of tools to assist schools in implementing the meal pattern.

  Available at *https://www.fns.usda.gov/school-meals/tools-schools*

USDA has released an updated *Food Buying Guide for Child Nutrition Programs (FBG)* that provides information on standardized portion size information. The updated guide is a resource tool for NSLP, SBP, CACFP, and the Summer Food Service Program (SFSP) meal patterns. The *FBG* is available as a single PDF file, a web-based tool and as an app that can be used on phones or tablets. Access to all versions is available at *https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs*. USDA has also released the *Food Buying Guide for Child Nutrition Programs* as a mobile app. See the following website for additional information on the app: *https://www.fns.usda.gov/tn/food-buying-guide-mobile-app.*

Food Production Records

The CE must keep complete and accurate food production documentation including, but not limited to, food production records, menus, standardized recipes, Child Nutrition (CN) labels, production formulation statements, records indicating food substitutions, invoices or receipts for food products purchases, and meal pattern contribution documentation for the meals they produce. Food production documentation demonstrates that the meals served and claimed met meal pattern requirements and are, therefore, reimbursable.[18]

Information Box 3

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Nonprofit private schools, other organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

For meals served to pre-K students, CEs may use their existing NSLP or SBP food production record system as long as they retain documentation that demonstrates their compliance with the pre-K meal pattern which includes, but is not limited to, portion sizes, number of servings prepared, number of servings served, and amount of not served. CEs may keep separate records for pre-K students or may combine the records with other age/grade groups. CEs may also use the CACFP food production record form for pre-K meals.

While there is no one specific strategy for maintaining food production documentation, TDA recommends that each CE develop a system that aligns with its menu cycle.

For Example: A CE uses a four-week menu cycle. For each week, the CE has created a notebook that has a divided section for each serving day of the week. In each daily section, the CE has collected that day's food production documentation, standardized recipes, product labels, or manufacturer product formulation statements, and other information.

[18] See *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on the claims process.

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CEs should keep in mind that this requirement includes all meal services (breakfast, lunch, and snack), including salad and other food bars, quick lines, sack meals, field trips, etc.

CEs should use the following guidance in maintaining production records:

- These records must show how the meals offered and served[19] contribute to the required food components and food quantities for each age/grade group every day including, but not limited to,
  - food item replaced,
  - substituted food item, and
  - reason for the substitution.
- Any meal claimed for reimbursement must be supported by food production documentation.
- When recording the amount of prepared food on a food production record, CEs should record amounts by purchased unit/container size. These reporting units are also used in the *Child Nutrition Program Food Buying Guide (FBG)*[20] The Shopping List function in the web-based (or app) FBG can also be used to quickly determine the number of servings in a unit/container.

  For Example: If a CE is planning to prepare 310 one oz eq servings of sausage, the CE will report the total amount prepared as 3 cases@96/case +12. The sausage patties come 96 to the case.
- When recording the amount of leftover food on a food production record, CEs may record amounts by the number of remaining servings.

Planned, Offered, and Selected/Served

CEs must use the following definitions as they prepare menus and production documentation:

- **Planned.** A planned menu is what the menu planner intends to offer to students. It represents the CE's calculation of the items that will need to be prepared for a school's usual average daily participation (ADP). Ideally, the planned and the offered meals are the same.
- **Offered**. An offered menu is what is actually prepared and set out on the serving lines for students to take. Offered menus may differ from *planned* menus when there are unexpected circumstances.

  For Example: A planned food item was not received from the distributor, and the menu planner had to offer a different food item.
- **Selected/Served**. Selected or served refers to the foods that were actually served to, or selected by,[21] students. Menu planners should use selected/served food item data to assist in future menu planning and reduce food waste, so the school does not offer items that students do not select. Food production records should be updated to indicate actual selected/service food items after the meal service so that production records reflect serving trends.

[19] Meals service for pre-K students does not include offer versus serve (OVS), however, a student is allowed to refuse a food item.
[20] Available at *https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs*
[21] Meals service for pre-K students does not include offer versus serve (OVS); however, a student is allowed to refuse a food item.

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Records Retention

CEs must retain documentation about food production and service. All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, nonprofit organizations, and residential child care institutions after the end of the fiscal year to which they pertain. CEs have the option to maintain records on paper or electronically.

TDA may also request documentation for both offsite and onsite administrative review. CEs are encouraged to develop a system of document retention that allows them to readily retrieve documentation.

For more information on the specific types of documentation that are required, see *Administrator's Reference Manual (ARM), Section 30, Records Retention*.

Compliance

TDA will review documentation submitted through TX-UNPS, retained onsite during Administrative Reviews (ARs), or on request to ensure that the CE is in compliance with the regulations described in this section. A review will include an assessment of food production documentation and a review of the meal pattern and may include a nutrient analysis of individual food items served. TDA has the discretion to take fiscal action for the following violations:

- Not meeting the meal pattern requirements
- Not meeting food quantity requirements
- Not meeting nutrition standards for food item as appropriate
- Inadequate or unavailable documentation[22]

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[22] See *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional information on this topic.

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Section 10

Afterschool Snacks & Meals

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Section 10, Afterschool Snacks & Meals

Section 10 Update Guide

July 28, 2022	Clarified guidance on the following topics: - Extended/expanded instructional day - Meal pattern charts - *Security Authority for Users Access Manager Form* (FND-135) Incorporated the following United States Department of Agriculture (USDA) memos and guidance: - *USDA Memo SP 04-2022, Questions and Answer Guidance on the Final Rule titled Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium Effective July 1, 2022* (March 2, 2022)
January 4, 2022	Updated *Section 10, Afterschool Snacks & Meals* to correct minor typos.
August 12, 2020	Updated *Administrator's Reference Manual (ARM), Section 10, Afterschool Snacks & Meals* to apply a new title and updated the *Administrator's Reference Manual (ARM)* section references. Clarified information on the following topics: – Accuracy of claims – Closed enrolled sites – Days of operation – Educational and enrichment activities – Fiscal accounting – Food storage – General program requirements – Nontraditional afterschool program – Onsite monitoring – Open-to-all – Pre-approval onsite visits for CACFP At-Risk – Requirement to participate – Rosters/Lists – Site area eligibility – Times of operation
January 15, 2019	Updated *Section 10, Afterschool Meal Programs* to incorporate the following United States Department of Agriculture guidance: – *USDA Memo SP 01-2018, Updated Infant and Preschool Meal Patterns in the National School Lunch Program and School Breakfast Program; Questions and Answers (*October 19, 2017) – *USDA Memo CACFP 01-2018, Grain Requirement in the Child and Adult Care Food Program; Questions and Answers* (October 19, 2017) – *USDA Memo SP 37-2017, Flexibility for Co-Mingled Preschool Meals: Questions and Answers* (June 30, 2017) – *At-Risk Afterschool Meals, A Child and Adult Care Food Program Guide* (April 2017) Clarified information on the following topics: – Area eligibility for sites – Counting and claiming – Extended/Expanded Learning Program Flexibility – Health and safety – Pre-Kindergarten meal pattern – Program application

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	– USDA Foods
March 6, 2017	Updated *Section 10, Afterschool Meal Programs* to incorporate the following United States Department of Agriculture guidance: – *USDA Memo SP 61-2016, Fall 2016 Edition: Community Eligibility Provision (CEP) Planning and Implementation Guidance* (September 30, 2016) with attached *2nd Edition of the Community Eligibility Provision (CEP) Planning & Implementation Guidance* (September 2016) – *USDA Memo SP 10-2015, Area Eligibility Using Census Data* (April 21, 2014) Clarified information on the following topics: – Area eligibility for sites – Counting and claiming – Contracted services – Education and enrichment activities (including expanded learning) – Identified end of school day – Meal pattern – Meal service options – Number of meals served – Onsite monitoring review requirements – Point of service (POS) – Program application requirements – Record retention – Required content for a CACFP At-Risk application – Residential Child Care Institutions (RCCIs) – Special provision sites – USDA Foods
October 28, 2013	Updated *Section 10, Afterschool Meal Programs* to provide clarification on the following topics: – Affiliated and unaffiliated as it applies to sites operated under the National School Lunch Program (NSLP) within the Texas Unified Nutrition Programs System (TX-UNPS) – Meal service options – Onsite monitoring review requirements – Required content for a CACFP At-Risk application Added a page with contact information for the Texas Department of Agriculture (TDA)
September 20, 2013	Updated *Section 10, Afterschool Meal Programs* to clarify content on the following topics: – CACFP At-Risk Application requirement for board member name and birth date – Submission of the amendment to the Food and Nutrition Agreement required when a CE chooses to administer a new food and nutrition program. – Use of term in *affiliated* (school-based) and *unaffiliated* (non-school based) sites in TX-UNPS – Onsite monitoring conducted by CE
September 9, 2013	Updated *Section 10, Afterschool Meal Programs* to include revised information on the Child and Adult Care Food Program At-Risk Afterschool Care Component (CACFP At-Risk) supper and snack meal pattern.

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August 28, 2013	Updated *Section 10, Afterschool Meal Programs* to correct Child and Adult Care Food Program At-Risk Afterschool Care Center Component (CACFP At-Risk) meal service timing information.
August 27, 2013	Updated *Section 10, Afterschool Meal Programs* to clarify guidance in the following areas: – Afterschool Care Program (ASCP) and Child and Adult Care Food Program At-Risk Afterschool Care Center Component (CACFP At-Risk) meal service – ASCP and CACFP At-Risk meal pattern – Educational and enrichment activities – Hours of operation – Licensing requirements – Program participants – RCCI flexibility – Record retention – Reimbursement – Site eligibility – Streamlined requirements for NSLP CEs that choose to administer CACFP At-Risk
August 9, 2013	Updated *Section 10, Afterschool Meal Programs*, to provide additional clarification on the following topics: – Regular hours – Educational enrichment activities – Point of service procedures – Counting and claiming – Reimbursable meals Updated the serving sizes for yogurt to reflect current meal pattern guidelines.
August 2, 2013	Changed the name of this section from *Afterschool Care Program to Afterschool Meal Programs* since the section now includes significant information on the National School Lunch Program (NSLP) Afterschool Care Program (ASCP) as well as the Child and Adult Care Food Program At-Risk Afterschool Care Center Component (CACFP At-Risk). Updated the section to include the following guidance: – *USDA Memo, CACFP 08-2012, At-Risk Meals Component of the Child and Adult Care Food Program Questions and Answers* (February 17, 2012) – *USDA Memo, SP 06-2013, Determining Area Eligibility Based on School Data* (November 23, 2012) – *USDA Memo, SP 09-2013, Streamlining At-Risk Meal Participation for School Food Authorities* (November 28, 2012) Provided clarification on the following topics: – CE monitoring of contracted services – CE self-monitoring – Comparison of the ASCP and CACFP At-Risk – Determining site eligibility – Records retention – Reimbursable snacks or meals and meal service – Streamlined requirements for NSLP sponsors administering CACFP At-Risk

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Afterschool Snacks & Meals

National School Lunch Program (NSLP) Afterschool Care Program (ASCP) and Child and Adult Care Food Program At-Risk Afterschool Care Center Component (CACFP At-Risk)

The United States Department of Agriculture (USDA) provides funding for afterschool meal assistance for students through two programs that the Texas Department of Agriculture (TDA) administers:

- National School Lunch Program (NSLP) Afterschool Care Program (ASCP)
- Child and Adult Care Food Program (CACFP) At-Risk

NSLP Contracting entities (CEs) may elect to participate in either program or both in some situations.

The Administrator's Reference Manual (ARM), Section 10, Afterschool Snacks & Meals does not provide detailed guidance on CACFP At-Risk program requirements. This section only provides guidance on operational practices that are specific to NSLP operators. For CACFP At-Risk topics that are not specific to NSLP operators, CEs must use the *Child and Adult Care Program (CACFP) At-risk Afterschool Care Center Handbook* located at *www.SquareMeals.org*.[1]

This section is intended to provide explanations and guidance about the following:

- Information that helps NSLP CEs determine the afterschool meal program option/s that best meets their needs
- Specific regulations that apply to ASCP operation
- NSLP CE specific requirements for CACFP At-Risk operation

  [NOTE: USDA provides specific flexibilities for NSLP CEs operating CACFP At-Risk. This section provides guidance on those flexibilities, so CEs will know when flexibilities apply and when the traditional CACFP At-Risk guidance applies.]

Intent of Afterschool Meal Programs

The afterschool meal programs are designed to have three components:

1. regulated activities in a structured and supervised environment,
2. child care, and
3. snack or meal as appropriate to the program.

These programs are not intended to be a grab and go meal opportunity. Like other Child Nutrition Programs (CNPs), congregate feeding is required. Meals may take place before, after, or in between educational and/or enrichment activities.

Even though the CE is required to offer an enrichment or educational activities for ASCP and CACFP At-Risk, (1) a student cannot be required to participate in the activity to receive a snack or meal, and (2) a student cannot be required to take a snack or meal if participating in the enrichment or educational activity offered.

Definitions for This Section

For this section, the following terms will be used:

[1] The guidance in this section is not intended to be used by any operator that does not also operate NSLP.

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Afterschool Meal Program	One of two nutrition programs sponsored by the USDA and administered by TDA—ASCP and CACFP At-Risk.
Attendance Area	Designated geographic area that determines where a student goes to school. CEs use the data from attendance areas to determine eligible sites for afterschool meal programs.
Double Claim	Claiming more than one snack or meal for the same student at the same time. This practice is not allowed.
Educational and Enrichment Activities	Requirement for afterschool programs to provide students with regularly scheduled activities in an organized, structured, and supervised environment that includes educational or enrichment activities (or expanded learning opportunities). Educational and enrichment activities include, but are not limited to, academic enrichment, arts and crafts, computer skills, homework assistance, life skills, music, tutoring, and sports activities. [NOTE: Competitive sport team events cannot be designated as educational and enrichment activities; however, students involved in competitive sports programs may participate in afterschool meal programs as described in the *Program Participants* subsection in this section.]
Site Area Eligibility	Determination of site's eligibility to offer an afterschool meal program based on the total number of students approved for free or reduced-price meals at a site or census data for the location.
End of Regular Instructional School Day	Identified time when the regular instructional day ends and an afterschool program may begin. CEs identify the end of the regular instructional day based on the type of afterschool program they operate. Regular Instructional Day—Schools operating a regular instructional day have a school year schedule approved by the Texas Education Agency that ensures that students receive the yearly minimum minutes of instruction (75,600). Extended/Expanded Instructional Day—Schools operating an extended/expanded instructional day have a school year schedule approved by the Texas Education Agency that significantly increases the number of instructional days and/or the length of each instructional day to ensure that student instructional time significantly exceeds the yearly required amount of instructional time of 75,600 minutes per year. For these schools, the instructional day is purposefully designed to include additional time for extended/expanded learning activities: – Rigorous coursework – Mentoring – Tutoring – Physical activity – Academic support – Educational enrichment in one or more subjects, including fine arts, civic engagement, science, technology, engineering, and mathematics
Expanded Learning Time	Common term used in the education arena to describe efforts by schools to significantly expand the regular instructional school day to improve academic achievement.
Good Standing	Descriptor for a CE that has had no significant findings or deficiencies in a Child Nutrition Program (CNP).
Nontraditional Afterschool Program	Afterschool program that is designed to meet the needs of students who are attending a school that purposefully adds instructional time or expanded learning opportunities for select academic areas throughout the day. These schools schedule the number of instructional days to ensure that student instructional time significantly exceeds the required yearly minimum minutes of instruction.
Open to All	Site that serves meals or snacks to any student who comes to the site within the limitations of space and safety.

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Traditional Afterschool Program	An afterschool program that begins after the last official instructional period ends. Schools operating a traditional afterschool program schedule the number of instructional days to ensure that students have the yearly minimum minutes of instruction.
Unaffiliated	Term used in TX-UNPS. For afterschool programs, *unaffiliated* means non-school-based sites.

General Program Requirements

To participate in the ASCP or CACFP At-Risk, the CE is required to complete an application that is specific to the program in TX-UNPS, but an existing CE is allowed to use a streamlined application process.

[NOTE: Within TX-UNPS, the NSLP screens are coded with a blue bar at the top of the screen, and the CACFP screens are coded with a green bar at the top of screen.]

General Application Requirements

- *Amendment to the Food and Nutrition Division Permanent Agreement, Contracting Entity Specific Amendment*

  For ASCP and CACFP At-Risk

  The CE is required to download the *Amendment to the Food and Nutrition, Division Permanent Agreement Contracting Entity Specific Amendment* from TX-UNPS, complete the form using the Section 1 instructions in TX-UNPS, and return the form by fax or an email attachment to TDA.[2]

- Board of Directors

  For CACFP At-Risk

  Since CEs that administer NSLP are managed under the authority of a local education agency with an existing board of education or have an existing governing board specific to the entity, NSLP CEs are not required to establish or submit information on a board of directors for CACFP At-Risk, even though this is required of non-NSLP CEs.

  However, TX-UNPS is designed to require CEs to record a board member's name and date of birth in the program application.[3] Since NSLP CEs are not required to provide this information, TDA recommends that NSLP CEs record the name and birthdate of the school nutrition director in this field.

- Budget, Fiscal Viability

  For CACFP At-Risk

  CEs that currently administer NSLP are not required to submit a detailed budget annually. However, NSLP CEs must provide the information described below in order for their CACFP program application to be submitted each year:

  1. To get to the budget section in TX-UNPS for the CACFP program application,
     - Log on to TX-UNPS.

[2] See the Contact Information for the Texas Department of Agriculture page located after the table of contents page in this section.

[3] See Item 2220 of the *At-risk Afterschool Care Center Handbook* for additional information on this topic. Available at *www.SquareMeals.org*.

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- Select CACFP.
- Click on Application.
- Click on Add next to Contracting Entity Budget Detail.

2. To record the required budget information,
   - Locate the Projected Annual CACFP Income header.
   - Click on Anticipated Annual CACFP Reimbursement (Project Total Meals X Rate Annual Revenue under the Projected Annual CACFP Income header.
   - Locate the Supper, Free[4] row under the ADP header. Type the number 1 in first text box and in the second text box on that row.

     TX-UNPS will automatically calculate the appropriate rate and populate the last box in the row with the worksheet total. This amount may change each year.
   - Scroll to the bottom of the ADP section. Click Close.

     If a warning message is generated, ignore the warning message and submit. The Contracting Entity Budget Detail screen will appear.
3. To answer the additional required questions,
   - Locate Section H on the Contracting Entity Budget Detail screen.
   - Click the No checkbox for each of the questions in Section H.
4. To certify the information provided,
   - Locate the Certification statement toward the bottom of screen.
   - Click the checkbox in front of the statement to indicate that the information recorded is accurate.
5. To complete the application,
   - Click Submit to complete the budget reporting process.

- Budget, Administrative Capability and Financial Viability

  For CACFP At-Risk

  NSLP CEs that are in good standing[5] with NSLP are not required to provide additional evidence of administrative capability and financial viability beyond what is described in this subsection unless specifically requested to do so during the application process.

- Security Authority for Users Access Manager Form (FND-135)

  For CACFP At-Risk

  An NSLP CE operating CACFP At-Risk must submit an FND-135 form for any individuals who will be designated as an authorized representative (AR) for CACFP At-Risk even if that person has an active FND-135 under

[4] Even if the CE is offering At-Risk snack, the Supper, Free row should be used.
[5] See the *Definitions for This Section* subsection in this section for more information on this topic.

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NSLP. If submitting the form by email, please use the CACFP email[6] address on the Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition page that follows the table of contents.

- Certification of Truth and Accuracy

  For ASCP and CACFP At-Risk

  The NSLP CE must certify that all information on the application submitted in TX-UNPS is true and correct.

- Documentation of Site Eligibility

  For ASCP

  CEs operating ASCP must provide documentation that verifies the serving site's area eligibility using school claiming data or census data.[7]

  For CACFP At-Risk

  NSLP CEs operating CACFP At-Risk must use TX-UNPS school claiming data from the most recent October[8] to demonstrate that 50 percent or more of the students are eligible for free and reduced-price meals. CACFP At-Risk site area eligibility must be established using site claiming data (school data); census data cannot be used to establish site eligibility.

- Certification Statement about Eligibility for Participation

  For ASCP and CACFP At-Risk

  CEs must indicate their certification of eligibility to participate in School Nutrition Programs (SNP) Application screen in TX-UNPS as part of the NSLP and CACFP application/renewal process. CEs must certify that the CE and any individuals responsible for food service have not been declared ineligible to participate in any other federally funded program by reason of violating that program's requirements.[9]

  or

  If a person has been previously declared ineligible and that person is now determined to be eligible for participation or is reinstated, the CE must provide documentation of eligibility or reinstatement including documentation about the payment of any debts if applicable.

- Explanation of Educational and Enrichment Activities

  For CACFP At-Risk

  NSLP CEs operating CACFP At-Risk must include an explanation of their education and enrichment activities or expanded learning opportunities to be offered by the CACFP At-Risk program in the program application.

  [NOTE: Competitive sport team activities or events cannot be designated as educational and enrichment activities. However, students participating in team sports may receive meals or snacks under CACFP At-Risk as long as the program is open to all as described in the ***Program Participants*** subsection in this section.]

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6 CACFP email address is available on the Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition that follows the table of contents in this section.

7 See the *Site Application/Designation* subsection in this section for additional information on this topic.

8 If more recent claiming data indicates site eligibility and October data does not, a CE may contact TDA to determine if using more recent data is allowable in the circumstances.

9 According to 2 Code of Federal Regulations (CFR) 200.208(d), These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

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- Site Application/Designation

  For ASCP

  CEs operating ASCP must indicate which sites will operate ASCP in the SNP Application screen in TX-UNPS.

  For CACFP At-Risk

  NSLP CEs operating CACFP At-Risk must email TDA[10] a list of sites to be operating CACFP At-Risk. TDA will activate the sites in TX-UNPS. Once the sites are activated, the CE must indicate each site as operating CACFP At-Risk in the Application Packet. This includes existing NSLP sites as well as new sites.

  [NOTE: If a site exists in NSLP, the same site identification number must be used for CACFP At-Risk.]

- Accurate Designation of Days of Operation

  For ASCP and CACFP-At Risk

  In the afterschool program application, the CE must record the actual days of operation. TDA encourages CEs to operate afterschool programs throughout the entire school year to meet the intent of the program's purpose.

Pre-Approval Onsite Visit, Conducted by CE

For CACFP At-Risk

Pre-approval onsite visits conducted by the CE occur before program operation starts. NSLP CEs are not required to conduct an onsite visit for school sites that are participating in NSLP before the sites are approved to participate in CACFP At-Risk. However, the CE must conduct pre-approval visits for any sites that have not previously participated in NSLP and all non-school sites the NSLP CE intends to sponsor.

Training

For ASCP and CACFP At-Risk

All CEs operating a Child Nutrition Program (CNP) are required to ensure that all staff have sufficient training on program requirements to allow them to operate the program effectively and in compliance with all regulations.

CEs administering any CNP are required to attend Civil Rights and program operations training. However, since CEs that administer NSLP have already received training and other technical assistance in how to administer federal programs, their staff members are not required to attend the following training that is required under CACFP At-Risk:

- Pre-application training—*Introduction to CACFP for Child Care Centers*
- Food service staff training

However, TDA encourages NSLP CEs to obtain this training as there are differences in the regulatory requirements for NSLP and CACFP At-Risk.

[10] Use the CACFP email address on the Contact Information for the Texas Department of Agricultural (TDA), Food and Nutrition page which follows the table of contents in this section.

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USDA Foods

For ASCP and CACFP At-Risk

A CE may use USDA Foods received from NSLP in any CNP, but CEs do not receive additional USDA Foods based on afterschool program participation.[11]

For CACFP At-Risk

Under CACFP At-Risk, NSLP CEs will automatically receive cash in lieu of USDA Foods as part of their reimbursement for suppers (and breakfast and lunch if applicable).

Facilities

CEs that administer NSLP may locate afterschool meal programs at a school-based site or in another location that better serves the needs of students involved in the afterschool program.

Health and Safety Standards

For ASCP

NSLP CEs operating ASCP must meet the state and local health standards described in *Administrator's Reference Manual (ARM), Section 26, Food Safety*.

For CACFP At-Risk

NSLP CEs that operate CACFP At-Risk must meet state and local health and safety standards required for operation of an NSLP or SBP as described in the *Administrator's Reference Manual (ARM), Section 26, Food Safety*.

Licensing

For ASCP and CACFP At-Risk

CEs operating a school-based site for afterschool programs are not required to be licensed childcare facilities. However, if a CE chooses to operate a non-school-based site, the non-school-based site must meet local and state licensing requirements for the facility type.

Food Storage

For ASCP and CACFP At-Risk

The CE does not have to keep separate inventory facilities or locations for NSLP and CACFP. However, the CE must be able to account for inventory items used for each program.

Fiscal

For ASCP and CACFP At-Risk

An NSLP CE participating in CACFP is allowed to streamline the following fiscal practices:

- NSLP and CACFP expenses do not have to have distinct or separate accounting systems, but the CE must be able to track each program's costs and income separately, including designation of the proper Federal Award Identification Number (FAIN) and Catalog of Federal Domestic Assistance (CFDS) numbers.[12]

[11] See the *Administrator's Reference Manual (ARM), Section 14, USDA Foods* for additional information on how to use USDA Foods.

[12] FAIN and CFDA numbers are available at *www.SquareMeals.org*.

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- Reimbursement may be applied to any child nutrition program.

Contracted Services

For ASCP and CACFP At-Risk

The CE is not required to use its own staff or facilities. Contracted services may include, but are not limited to, the following:

- **Enrichment or Educational Activities**—CEs may contract with another organization to provide enrichment or educational activities for an afterschool meal program.
- **Food Service Management Companies (FSMC)**—CEs that administer NSLP and contract with FSMCs for some or all aspects of the management of NSLP food service program may allow the FSMC to conduct the same activities for CACFP At-Risk. However, the addition of CACFP At-Risk meals may represent a material change to an FSMC contract if this program is not listed on the FSMC solicitation and resulting contracting.[13]

If the CE chooses to contract program services, it must meet the following administrative and fiscal requirements:

- Be the party that enters into the agreement with the TDA.
- Retain control of the administrative and fiscal responsibility for the meal service, including, but not limited to, claims submission, monitoring food service and operations, and control of the quality of the food service.
- Obtain contracted services through appropriate procurement procedures.
- Assume full responsibility for meeting all program requirements.

For Example:

- Enrichment Activity. A CE may choose to contract with another organization to provide enrichment or educational activities for the program. While the contractor organizes and manages the activities, it is still the CE's responsibility to monitor those activities to ensure that they meet program requirements.
- Meal Service. A CE may contract with another organization or food management company to provide snacks or meals. While the organization or food management company may prepare and serve the snacks or meals, the CE is still responsible to monitor the food production and service and ensure that snacks and meals meet required meal patterns and local and state health and safety standards.

Procurement

For ASCP and CACFP At-Risk

NSLP CEs may follow the NSLP procurement standards instead of CACFP procurement standards if they operate a CACFP At-Risk meal service.[14]

[13] See *Administrator's Reference Manual (ARM), Section 17 Procurement* and *Section 18, Food Service Contracts* for additional information on this topic.
[14] See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on this topic.

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Program Participants

For ASCP and CACFP At-Risk

Public schools, charter schools, private schools, and residential childcare institutions (RCCIs) that are administering NSLP programs may provide ASCP snacks or CACFP At-Risk snacks/meals to

students up through the age of 18 [NOTE: If a student's nineteenth birthday occurs during the school year, snack reimbursement may be claimed for the student for the remainder of the school year.]	or	individuals, regardless of age, who are determined by the state agency to be mentally or physically disabled

who participate in programs organized to provide afterschool care as well as educational and enrichment activities for program participants in the late afternoon or evening. Programs may use (1) a drop-in or (2) an enrolled participation system.

While the SNP do not need to establish formal enrollment procedures for afterschool programs, there must be (1) a means of counting the number of students that are participating in afterschool enrichment or academic activities each day and (2) accurately counting which students are served a reimbursable snack and/or meal each day. If the SNP staff do not maintain the list of students participating each day,

- The SNP must have access to the participation lists from each enrichment or educational activity for each day as needed.
- The SNP must have an accurate number of the total number of students that are eligible to participate in the afterschool program each day in order to ensure the accuracy of claims. CEs will use the highest number of students eligible to participate in the program as the total enrollment for claiming and for the accuclaim process.[15]

Open-to-All

For ASCP and CACFP At-Risk

Afterschool snack and/or meal programs must be open to all students—limiting program participation to students involved in designated extracurricular activities, such as choir, debate, drama, interscholastic, or competitive programs, is prohibited. The program must be open to all students who are allowed to be on the campus for any enrichment or academic activities at the time of the meal service.

In an open-to-all program, a site may provide snacks to students who participate in extracurricular activities as long as the snack is also open to students who do not participate in special programs. An open-to-all afterschool program cannot be limited to competitive teams, including athletics.

Space and Security Considerations

Even though participation in these programs must be open to all students, the total number of participants may be limited based on space or security considerations.

Special Needs Programs

Afterschool meal programs designed to accommodate students

[15] See *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information in the accuclaim process. CEs must use either the TDA *Daily Record/Accuclaim Form | Afterschool* form for the accuclaim process or a similar reporting instruction that includes all the elements in the TDA form. TDA's forms are available at *www.SquareMeals.org*.

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with special needs or who have other limiting factors may be eligible to participate in the program although they are not open to all participants. Special needs students include those who have learning disabilities or academically gifted.

Emergency Shelters

For CACFP At-Risk

Emergency shelters that operate CACFP At-Risk for homeless students and youth during the school year may participate without regard to location.

Education or Enrichment Activities (Including Expanded Learning Opportunities)

For ASCP and CACFP At-Risk

Each site must provide students with education and/or enrichment activities in an organized, structured, and supervised environment.

For Example: An enrichment activity might include mentoring or tutoring.

However, a student cannot be forced to participate in the enrichment or academic activity to receive a snack and/or meal.

Distinct Programing

For ASCP and CACFP At-Risk

Site activities must be distinct from extracurricular programs organized primarily for scholastic, cultural, athletic, or other purposes. Therefore, those programs designed to provide snacks or meals (supper) solely to competitive interscholastic sports teams are not eligible to receive snacks or meals as part of an afterschool program.

For Example: Youth activity groups such as community athletic leagues, Babe Ruth or Pop Warner leagues with limited group participation are not eligible for reimbursement for snacks or meals through ASCP or CACFP At-Risk. However, if the NSLP CE provides an afterschool program for youth activity groups and students who are not participating in youth activity groups, snacks and/or meals may be claimed.

However, if students participating in a program for scholastic, cultural, or other purposes are provided snacks and/or meals at a site open to all students, including those not participating in these programs, they are eligible to serve snacks or meals through ASCP or CACFP At-Risk.

For CACFP At-Risk

In most cases RCCIs, with the exception of homeless shelters, are not eligible to participate in CACFP At-Risk. However, if an RCCI has a non-residential afterschool care program that offers education and enrichment programs for non-residential students, the NSLP-CE may be eligible for CACFP At-Risk.

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Extended/Expanded Instructional Day

For ASCP and CACFP At-Risk

Afterschool programs cannot begin operation until after the official end of the instructional day (final bell).

However, USDA allows sites the flexibility to provide a snack or meal before the end of the official instructional day (final bell) if the school (1) operates an extended/ expanded instructional day and (2) ends the extended/expanded instructional day one hour (60 minutes) later than the school day would have ended if not providing an extended/expanded instructional day. See *Information Box 1, Expanded/Extended Instructional Day* for more information on this type of instructional day.

Information Box 1

Extended/Expanded Instructional Day

In Texas, there is no minimum or maximum number of instructional minutes per day. Instead, Texas uses minimum number of instructional minutes (75,600) per school year.

Schools operating an extended/expanded instructional day have a school year schedule that significantly increases the number of instructional days and/or the length of each instructional day to ensure that student instructional time significantly exceeds the yearly required 75,600 minutes of required instructional time.

For these schools, the extended/expanded instructional day is purposefully designed to include additional time for one or more of the following extended/expanded learning activities:

- Rigorous coursework
- Mentoring
- Tutoring
- Physical activity
- Academic support
- Educational enrichment in one or more subjects, including fine arts, civic engagement, science, technology, engineering, and mathematics

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Afterschool Program

When the school operates a regular instructional day that does not extend/expand learning time, the afterschool program begins, and snack and/or meal is served, after the last instructional period ends, i.e., after the final bell for the day.

Afterschool Program with Extended/Expanded Instructional Day

When the school operates an extended/expanded instructional day, the school may offer a snack and/or meal service for its afterschool program before the end of the school day if the instructional day extends/expands the instructional day by at least one hour (60) minutes later than the school day would have ended if not providing an extended/expanded instructional day.

If using this flexibility, the snack or meal must be served after the time when the regular school day would have ended if the school was not providing an extended/expanded instructional day.

The CE will identify the end of the regular and extended/expanded instructional day in one of two ways:

1. For public and charter schools, divide the number of instructional minutes[16] greater than 75,600 by the number of instructional days.

Number of Instructional Minutes Exceeding 75,600 (Total Yearly Instructional Minutes – 75,600)	÷	Number of Instructional Days for School Year	=	Average Extended/ Expanded Instructional Minutes Per Day

   Subtract the average number of extended/expanded instructional minutes per day from the time the school day ends to identify when the regular school day would have ended if the school were not providing an extended/expanded instructional day.

2. For private schools or residential child care institutions (RCCIs) not under the jurisdiction of TEA, identify the end of the regular instructional day and extended/expanded instructional day using one of the following methods:
   a. Use the end time for a local education agency that has the same number of instructional days to determine if the school provides at least 60 minutes of instruction beyond the time the regular instructional day ends for the local education agency.

      OR

   b. Use the average length of the regular instructional day for surrounding local education agencies that also offers the same number of instructional days to determine if the school provides at least 60 minutes of instruction beyond the time the regular instructional day average ends for the local education agencies.

[16] Number of instruction minutes based on the school calendar documentation submitted to and approved by the Texas Education Agency (TEA) that identifies the total number of instructional minutes and instructional days for the school year.

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If a CE chooses to use the flexibility to serve an earlier snack and/or meal for eligible extended/expanded instructional day sites, the CE must retain documentation that demonstrates that the site is eligible for the earlier snack or meal service.

The identified end of the school instructional day for a CE may vary based on the age of the students. It is not unusual for very young students to end their day earlier in the day, while older students to go later into the mid-afternoon.

Approval for Earlier Snack or Meal Service, Extended/Expanded Instructional Day

CEs must receive TDA's approval before implementing the early snack or meal option. On the program site application in TX-UNPS, indicate that the snack service time occurs before the end of the school day then complete the additional questions that populate.

Meal Service

A CE may choose to administer ASCP, CACFP At-Risk, or a combination of ASCP and CACFP At-Risk. The following descriptions illustrate the meal service options a CE has in administering afterschool meal programs:

Option 1: When the CE participates in ASCP only, the CE has only one option:		
Serve a snack after the end of the regular instructional day		
Option 2: When the CE participates in ASCP and CACFP At-Risk, the CE may choose one of the following meal service options in addition to its regular breakfast (SBP) and lunch (NSLP) meal services:		
Regular Instructional School Day:	**Weekends and Holiday:**	
Serve the following: – Snack under ASCP and supper under CACFP At-Risk	Serve the following under CACFP At-Risk:[17] – Snack only or – Snack and one meal (breakfast, lunch, or supper) or – Two snacks with TDA approval Snack and/or supper under CACFP At-Risk	

[17] See the *At-risk Afterschool Care Center Handbook* (available at *www.SquareMeals.org*) for additional guidance on number of meals that can be claimed.

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Option 3: When a CE participates in CACFP At-Risk and does not participate in ASCP, the CE may choose one of the following meal service options in addition to its regular SBP and NSLP meal services:[18]	
Regular Instructional School Day: Serve one of the following under CACFP At-Risk: – Snack only or – Supper only or – Snack and supper or – Two snacks with TDA approval	**Weekends and Holiday:** Serve one of the following under CACFP At-Risk: – Snack only or – Snack and one meal (breakfast, lunch, or supper) or – Two snacks with TDA approval

Onsite Meal Service

Meals may be served in a cafeteria, open or common area, classroom, or other suitable location as allowed by applicable health and safety regulations. Meals may take place before, after, or in between educational and/or enrichment activities.

While students are allowed to save uneaten portions of a snack or meal to consume later, snacks and meals are intended to be served and consumed onsite. It is the CE's responsibility to ensure that students do not pick up a snack or meal and leave the site to consume it. If a student picks up a snack or meal and leaves the site to consume it, the snack or meal is not reimbursable.

Time of Operation

For ASCP

- Meal service must begin after the end of the identified regular instructional school day. Sites are not required to wait a specified time after the end of the identified regular instructional school day to begin meal service. However, there is a time requirement between supper and ASCP snack service.[19]

  Two hours must elapse between an ASCP snack service and a supper service offered under CACFP At-Risk, i.e., the beginning of one to beginning of the other service. This requirement also applies when the order of snacks/meals is reversed.

- During exam week, if the CE has a special schedule for exam days, the CE may serve a snack at a time that is after the end of the scheduled day—even if this time would be during the regular day if the site was not on a special schedule. A site cannot start the program before exams and then stop the program when exams are complete.

- ASCP snacks cannot be reimbursed on weekends, holidays, or official vacations.

For CACFP At-Risk

[18] See the *At-risk Afterschool Care Center Handbook* (available at *www.SquareMeals.org*) for additional guidance on number of meals that can be claimed.

[19] See the *Determining the End of the Regular Instructional School Day for Afterschool Programs* subsection in this section for information on flexibility for sites with extended/expanded instructional days.

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- Snacks or meals must begin after the end of the identified regular instructional school day. Sites are not required to wait a specified time after the end of identified regular instructional school day to begin meal service. However, there is a time requirement between supper and ASCP snack service.
- Two hours must elapse between a CACFP At-Risk supper service and an ASCP or CACFP At-Risk snack service, i.e., beginning of one snack or meal service to the beginning of other service. This requirement also applies when the order of snacks/meals is reversed.
- CACFP At-Risk supper service must last no more than two hours.
- CACFP At-Risk snack service must last no more than one hour.
- CACFP At-Risk snacks and meals may be reimbursed during weekends, holiday, and official vacations during the regular school year.

For ASCP and CACFP At-Risk

- CEs cannot claim reimbursement for ASCP or CACFP At-Risk snacks or meals during the summer unless the snack or meals are served during summer school when the site has extended NSLP operation for summer classes; the site is a year-round school or located in the attendance area of a school operating a year round calendar; or, in approved circumstances, when there is an unexpected school closure.

For ASCP and CACFP At-Risk

- CEs that serve both an ASCP snack and CACFP At-Risk supper have flexibility in determining whether to serve a snack first and a supper later in the evening or a supper first and a snack later in the evening. Whether serving a snack or supper first, CEs must allow two hours between snack and supper service.

Point of Service (POS) for Afterschool Programs

For ASCP

- Even though the CE is not required to have a point of service (POS), the CE must have a method to accurately count the snacks served which includes a method to match the student to a snack served. A CE may use the same system it uses for NSLP or may use a different system.
- CEs may use an electronic or manual system.
- CEs must also have a system that allows them to separately count the meals or snacks served for each CNP the CE operates.

For CACFP At-Risk

- The CE must have a method to accurately count each snack or meal served. CEs may use their NSLP point of service (POS) system, the *Daily Meal Count and Attendance Record (At-Risk) Form H1535-AT*, or another method that collects the same information for this purpose.

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- CEs may use an electronic or manual system.
- CEs must also have a system that allows them to separately count the meals or snacks served by each CNP the CE operates.

Meal Pattern Used

For ASCP

- CE must use the ACSP meal pattern for grades K-12.
- Pre-kindergarten students must be served the pre-kindergarten meal pattern[20] unless there is a comingled situation as described in *Administrator's Reference Manual (ARM), Section 11, Pre-Kindergarten Meals*.

For CACFP At-Risk

- CEs may use the ASCP meal pattern[21] or the CACFP At-Risk meal pattern[22] for students in kindergarten and above.
- Pre-kindergarten students must be served the pre-kindergarten meal pattern[23] unless the CE is using the NSLP meal pattern, and there is a comingled situation as described in *Administrator's Reference Manual (ARM), Section 9, Pre-Kindergarten Meals*

Meal Pattern Requirements

For ASCP

- **Food Components.** Snacks must contain two full portions of different components from the four required components: fruit or vegetable, grains, meat/meat alternates, and milk.[24]
- **Fruit or Vegetable**. Serving of vegetable(s) or fruit(s), full-strength vegetable or fruit juice, or equivalent quantity of any combination of these foods.

  If juice is served as a fruit or vegetable component, milk cannot be served as the only other component. In these cases, a third component, in addition to juice and milk, must be offered.

  - **Grains.** A serving of whole-grain products
  - **Meal/Meat Alternate.** A serving of meats/ meat alternates (M/MA)
  - **Milk.** A serving of fluid milk—fat free or one percent low fat

For CACFP At-Risk

[20] See the meal pattern charts that follow and the *Administrator's Reference Manual (ARM), Section 9, Pre-Kindergarten Meals* for additional information on the Pre-K meal pattern.
[21] See the *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals* or *Section 8, Lunch Meals* for additional information on each component.
[22] See the *CACFP At-Risk Meal Pattern Specifications* subsection in this section and the *Child and Adult Care Program (CACFP) Child Care Centers Handbook* for additional information on this topic.
[23] See meal pattern charts that follow and the *Administrator's Reference Manual (ARM), Section 9, Pre-Kindergarten Meals* for additional information on the Pre-K meal pattern.
[24] See the *ASCP Meal Pattern Specifics* subsection in this section and the *Afterschool Care Program Meal Pattern Chart* for specific information on the serving portions for each component.

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- **Portion Size.** The portion sizes are the same for students ages 6-18. However, it is recommended that sites offer larger portions for students aged 13-18 to meet their greater food energy requirements.
- **Components.** The meal pattern for snack and supper includes vegetables, fruits, grains, meats/meat alternates, and milk. CEs are required to meet specific meal pattern requirements by age group.[25]

ASCP Meal Pattern Specifications

The site must provide two different components from the four components listed for a reimbursable snack in the *ASCP Snack Meal Chart*. It is recommended that sweet items be served no more than twice a week.

Water Requirements

For ASCP

- CEs should make water available to all participants.

For CACFP At-Risk

- CEs must make water available to all participants.

CACFP At-Risk Meal Pattern Specifications

The site must provide two food items from two difference components for a reimbursable snack and a food item for each of the five food components for a reimbursable supper as described in the *Snack CACFP At-Risk Meal Pattern for Children One Year Old or Older Chart* and the *Supper CACFP At-Risk Meal Pattern for Children One Year Old or Older Chart Supper*.

Additional Guidance, CACFP At-Risk Meal Pattern

The following items cannot be used to satisfy the meat/meat alternate component for a snack:[26]

- Frozen yogurt
- Yogurt bars
- Yogurt covered fruits or nuts
- Yogurt flavored products
- Homemade yogurt

[NOTE: Commercially added flavorings foods or ingredients in yogurt cannot be counted as the second component of a snack. Added flavorings foods or ingredients that cannot be counted include, but are not limited to, the following food items:

- Fruit
- Fruit juice
- Juice
- Nuts, seeds
- Granola]

[25] See the *ASCP Meal Pattern Specifications* subsection in this section and the *Snack CACFP At-Risk Meal Pattern Chart for Children One Year old or Older Chart* and *Supper CACFP At-Risk Meal Pattern Chart for Children One Year old or Older Chart* for specific information on the serving portions for each component.

[26] This list is not exhaustive.

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Fluid milk served to students ages two and older must be pasteurized fluid milk that meets State and local standards, and must be of the following types:

- Fat-free or low-fat milk
- Fat-free or low-fat lactose reduced milk
- Fat-free or low-fat lactose free milk
- Fat-free or low-fat buttermilk
- Fat-free or low-fat acidified milk

Whole milk and reduced-fat (2%) milk may not be served to students two years and older.

Offer Versus Serve (OVS)

For ASCP

Offer Versus Serve (OVS) is not allowed for snack meal service.

For CACFP At-Risk

OVS is not allowed for snack meal service. OVS may be used for supper.

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Meal Pattern Charts

ASCP Snack Meal Pattern Chart (oz = ounce; oz fl = fluid ounces; Tbsp = tablespoon)			
Components (Two of Four Components must be served. Only one of the two components may be a beverage.)	**Age Group Serving Size**		
	Ages 1-2	**Ages 3-5**	**Age 6 & Older[1]**
Fruit or Vegetable			
Juice,[2,3] fruit, and/or vegetable	½ cup (4.0 fl oz)	½ cup (4.0 fl oz)	¾ cup (6.0 fl oz)
Grains/Breads[4,5]			
Bread	½ slice	½ slice	1 slice
Cornbread, biscuit, roll or muffin	½ serving	½ serving	1 serving
Cold dry cereal[5]	¼ cup or .33 oz[4]	⅓ cup or 0.5 oz[4]	¾ cup or 1.0 oz[4]
Cooked cereal grains	¼ cup	¼ cup	½ cup
Cooked pasta or noodles	¼ cup	¼ cup	½ cup
Meat/Meat Alternate			
Lean meat or poultry or fish[6]	0.5 oz	0.5 oz	1.0 oz
Alternate Protein Products[7]	0.5 oz	0.5 oz	1.0 oz
Cheese	0.5 oz	0.5 oz	1.0 oz
Egg (large)	½ large egg	½ large egg	½ large egg
Cooked dry beans or peas	⅛ cup	⅛ cup	¼ cup
Peanut or other nut or seed butters	1 Tbsp	1 Tbsp	2 Tbsp
Nuts and/or seed[8]	0.5 oz = 50%[8]	0.5 oz = 50%[8]	1.0 oz = 50%[8]
Yogurt – plain or flavored, unsweetened or sweetened – commercially prepared	4.0 oz = ½ cup	4.0 oz = ½ cup	4.0 oz = ½ cup
Milk, Fluid			
Fat free or 1% low fat milk, flavored/unflavored	½ cup (4.0 fl oz)	½ cup (4.0 fl oz)	1 cup (8.0 fl oz)

1 Schools should offer larger portions for students ages 13 through 18 based on their greater food energy requirements.
2 Full-strength vegetable and/or fruit juice or equivalent quantity of any combination of vegetable(s), fruit(s), and juice.
3 Juice may not be served when milk is the only other component.
4 Grains/Breads must be at least 50 percent whole grain (whole-grain rich). Cereal must be at least 50 percent whole grain (whole-grain rich). Any other grains in the product must be enriched or fortified.
5 Either volume (cup) or weight (oz.), whichever is less.
6 A serving consists of the edible portion of cooked lean meat or poultry or fish.
7 Alternate protein products must meet requirements in *7 CFR Part 210, Appendix A.*
8 Nuts and seeds are generally not recommended to be served to children ages 1-3 since they present a choking hazard. If served, nuts and seeds should be finely minced.

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Snack CACFP At-Risk Meal Pattern for Children One Year Old or Older Chart (oz = ounce; oz fl = fluid ounces; Tbsp = tablespoon)			
Components Must Offer (Must serve two of the five components. Only one of the two components may be a beverage.)	**Age Group Serving Size[1]**		
	Ages 1-2	**Ages 3-5**	**Ages 6 & Older**
Milk Component			
Milk, fluid low-fat (1%) or fat-free(skim); fat-free flavored for kindergarten and older	½ cup (4.0 fl oz)	½ cup (4.0 f. oz)	1 cup (8.0 fl oz)
Vegetable Component			
Vegetable(s)	½ cup	½ cup	¾ cup
Full strength vegetable juice[2]	½ cup (4.0 fl oz)	½ cup (4.0 fl oz)	¾ cup (6.0 fl oz)
Fruit Component			
Fruit(s)[3]	½ cup	½ cup	¾ cup
Full strength juice[2]	½ cup (4.0 fl oz)	½ cup (4.0 fl oz)	¾ cup (6.0 fl oz)
Grains Component[4] (serving may be combination of items)			
Whole grain-rich or enriched bread	½ slice	½ slice	1 slice
Whole grain-rich or enriched bread product, such as a biscuit, roll, or muffin	½ serving	½ serving	1 serving
Whole grain-rich, enriched, or fortified cooked breakfast cereal,[5] cereal grain, and /or pasta	¼ cup	¼ cup	½ cup
Whole grain-rich, enriched or fortified ready-to-eat breakfast cereal (dry, cold)[5]			
Flakes or rounds cereal	½ cup	½ cup	1 cup
Puffed cereal	¾ cup	¾ cup	1¼ cup
Granola	⅛ cup	⅛ cup	¼ cup
Meat/ Meat Alternates Component (serving may be combination of items)			
Lean meat or poultry or fish	0.5 oz	0.5 oz	1.0 oz
Cheese	0.5 oz	0.5 oz	1.0 oz
Egg (large)	0.5 oz	0.5 oz	½ large egg
Tofu, soy product or alternate protein products	½ large egg	½ large egg	1.0 oz
Cooked dry beans or peas	⅛ cup	⅛ cup	¼ cup
Peanut butter or soynut butter, or other nut or seed butters	1 Tbsp	1 Tbsp	2 Tbsp
Peanuts or soynuts or tree nuts or seeds[6]	0.5 oz = 50%	0.5 oz = 50%	0.5 oz = 50%
Yogurt—plain or flavored, unsweetened or sweetened[7]	2.0 oz or ¼ cup	2.0 oz or ¼ cup	4.0 oz or ½ cup

[1] Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs. For more information on the meal pattern for students aged 1 to 5 see the *Administrator's Reference Manual (ARM), Section 11, Pre-Kindergarten (Pre-K) Meal Pattern for School Nutrition Program Operators*.

[2] Fruit or vegetable juice must be full-strength. Fruit or vegetable juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day. Juice may not be served when milk is the only other component.

[3] A vegetable may be used to meet the entire fruit requirement.

[4] All grains must be made with enriched or whole grain meal or flour. At least one serving per day, across all meals served must be whole-grain rich. Grain based desserts do not count toward the grains requirement.

[5] Ready-to-eat breakfast cereals must contain no more than 6 grams of sugar per dry ounce or no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal.

[6] Nuts and seeds may meet only one-half of the total meat/meat alternate serving. Nuts and seeds are generally not recommended to be served to children ages 1-3 since they present a choking hazard. If served, nuts and seeds should be finely minced.

[7] Yogurt may be plain or flavored, unsweetened, but must contain no more than 23 grams of total sugars per 6 ounces.

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Supper CACFP At-Risk Meal Pattern for Children One Year Old or Older Chart (oz = ounce; oz fl = fluid ounces; Tbsp = tablespoon)			
Components (Must serve all components with two or more kinds of vegetable(s) and/or fruit(s) or combination of both.)	**Supper—Age Group Serving Size**		
	Ages 1-2	**Ages 3-5**	**Ages 6 & Older[1]**
Milk Component			
Milk, fluid low fat (1%) or fat-free (skim); fat-free flavored for kindergarten and older	½ cup (4.0 fl oz)	¾ cup (6.0 fl oz)	1 cup (8.0 fl oz)
Vegetable Component (2 or more)			
Vegetable(s)[2]	⅛ cup	¼ cup	½ cup
Vegetable or fruit juice[2] (full strength)	⅛ cup (1 fl oz)	¼ cup (2 fl oz)	½ cup (4 fl oz)
Fruit Component			
Fruit(s)[2]	⅛ cup	¼ cup	¼ cup
Fruit juice[3] (full strength)	⅛ cup (1 fl oz)	¼ cup (2 fl oz)	¼ cup (2 fl oz)
Grains Component[4] (1 serving; serving may be combination of grain items)			
Whole grain-rich or enriched bread	½ slice	½ slice	1 slice
Whole grain-rich or enriched bread product, such as a biscuit, roll, or muffin	½ serving	½ serving	1 serving
Whole grain-rich, enriched, or fortified cooked breakfast cereal,[5] cereal grain, and /or pasta	¼ cup	⅓ cup	½ cup
Meat/ Meat Alternates Component (Serving may be combination of meat/meat alternates)			
Lean meat or poultry or fish	1.0 oz	1.5 oz	2.0 oz
Cheese	1.0 oz	1.5 oz	2.0 oz
Egg (large)	½ large egg	¾ large egg	1 large egg
Tofu, soy product or alternate protein products	1.0 oz	1.5 oz	2.0 oz
Cooked dry beans or peas	¼ cup	⅜ cup	½ cup
Peanut butter or soynut butter, or other nut or seed butters	2 Tbsp	3 Tbsp	4 Tbsp
Peanuts or soynuts or tree nuts or seeds[6]	0.5 oz = 50%	0.75 oz = 50%	1.0 oz = 50%
Yogurt—plain or flavored, unsweetened or sweetened[7]	4.0 oz or ½ cup	6.0 oz or ¾ cup	8.0 oz or 1 cup

[1] Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.
[2] A vegetable may be used to meet the fruit requirement; fruit cannot be used to meet the vegetable component. When two vegetables are served at supper, two different kinds of vegetables must be served.
[3] Fruit or vegetable juice must be full-strength. Fruit or vegetable juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.
[4] All grains must be made with enriched or whole grain meal or flour. At least one serving per day, across all meals served must be whole-grain rich. Grain based desserts do not count toward the grains requirement.
[5] Ready-to-eat breakfast cereals must contain no more than 6 grams of sugar per dry ounce or no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal.
[6] Nuts and seeds may meet only one-half of the total Meat/meat alternate serving and must be combined with another meat/meat alternate to fulfill the lunch or supper requirement. Nuts and seeds are generally not recommended to be served to children ages 1-3 since they present a choking hazard. If served, nuts and seeds should be finely minced.
[7] Yogurt may be plain or flavored, unsweetened, but must contain no more than 23 grams of total sugars per 6 ounces.

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Meal Pricing Requirements

For ASCP

The CE must not charge students for snacks claimed at the free reimbursement rate. The amount charged for reduced-price snacks may not exceed 15 cents.

For CACFP At-Risk

The CE may charge a tuition charge but cannot charge a separate fee for meals.

Site Area Eligibility

While it is possible for the CE-wide free and reduced-price percentage to reach the threshold of 50 percent required for afterschool meal programs, site eligibility is not determined at the CE level—it is determined at the site level. If at least 50 percent of the students at the site are eligible to receive free or reduced-price meals, the site is eligible to provide snacks under the afterschool meal programs. When a site meets this threshold, the site is called an *area eligible site*.

Multiple Sites, Same Attendance Area

Any site located in the attendance area of another site that has 50 percent of the students eligible for free and reduced-price meals is area eligible.

For Example: Blue Elementary School, Green Elementary School, and Red Elementary School are located in the attendance area for Large Middle School. Large Middle School has 50 percent of its students eligible for free and reduced-price meals; therefore, all three elementary schools are also area eligible.

Blue Elementary School has 50 percent of its students eligible for free and reduced-price meals. Tall High School is located in the attendance area of Blue Elementary School. Tall High School is also area eligible.

Designated Attendance Area Where Students Are Bused or Have Choice of Site

If the CE has assigned attendance areas and students are bused to a designated site or have a choice of sites (i.e., school choice) to attend, the site's area eligibility may be based on enrollment or attendance data in one of two ways:

1. Site the students attend

   or

2. Site the students would have attended—the neighborhood site—were it not for the busing or school choice policy.

In these cases, the CE must be able to document the percentages of students eligible for free and reduced-price meals based on the way enrollment or attendance data is accumulated for the CE.

Limited Site Enrollment

If the attendance at the site is limited to students enrolled[27] at a single site location, at least 50 percent of the enrolled students must be eligible for free or reduced-price meals for the site to be area eligible.

[27] See the *Closed Enrolled Sites, Student Eligibility Based on Income and Categorical Participation* subsection in this section for additional information on closed enrolled sites.

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Site Designation in TX-UNPS

If the afterschool site is located at a school site that also operates NSLP/SBP, the CE must use the same name, site identification number, and address used for NSLP/SBP site. If a CE has unique circumstances that warrant the use of a different name, identification number, or address, the CE must request approval.[28]

Data Used to Determine Area Eligibility

School Data

For ASCP

The CE must one of two types of data:

- First, the CE will use claiming data to determine if 50 percent of the students were eligible for free or reduced-price meals. Typically, the CE will use the most current October data;[29] however, TDA may allow a CE to use a different month if that data more accurately reflects the economic status of the students.

  Closed Site. A closed site may use household meal applications to establish area eligibility if the closed site cannot establish area eligibility.[30]

- If it is not possible to accurately determine area eligibility for non-school based sites, the CE cannot use school data and must use census data to determine area eligibility.

For CACFP At-Risk

- NSLP CEs operating CACFP At-Risk use TX-UNPS school claiming data from the most recent October;[31] however, TDA may allow a CE to use a different month if a different month's data more accurately reflect the economic status of the students. If 50 percent of the students are eligible for free or reduced-price meals, the site is area eligible.

Census Data to Determine Site Eligibility (ASCP)

For ASCP

A CE using census data must use data from one of the following USDA approved data sources:[32]

- **Current Census Block Group (CBG) Data**[33]—The American Community Survey (ACS) now provides yearly updates to current census block data for the next five–year cycle. CEs may use CBG to

[28] See the Contact Information for the Texas Department of Agriculture page located after the table of contents for information on how to contact TDA.

[29] If a CE applies for site area eligibility in August 2013, the most current October data would be October 2012. If a CE applies for area site eligibility in December 2013, the most current October data would be October 2013.

[30] See the *Closed Enrolled Sites, Student Eligibility Based on Income and Categorical Participation* subsection in this section for additional information on closed enrolled sites.

[31] If a CE applies for site area eligibility in August 2019, the most current October data would be October 2018. If a CE applies for site area eligibility in December 2019, the most current October data would be October 2019. If the CE plans to use a different month to qualify a site as area eligible, the CE must provide that information to TDA. See the Contact Information for the Texas Department of Agriculture page located after the table of content for information on how to contact TDA.

[32] Area eligibility established for an afterschool meal program may be used to establish area eligibility for a summer meal program if the type of data used for this purpose meets the determination requirement for the program.

[33] Block group census data is available at *www.SquareMeals.org*. Block group census data is updated yearly.

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establish area eligibility if 50 percent of the students living in the CBG are eligible for free or reduced-price meals.

TDA provides directions for how to use census block group data at *www.SquareMeals.org/FandNResources/Toolsamp;Links/CensusData.aspx.* CEs that use this method must indicate the method used in the Application Packet screen in TX-UNPS and must retain documentation that demonstrates the site's eligibility.

- **Combined Current Census Block Group Data (CBG)**—With TDA and USDA approval, up to three adjacent census block groups (CBG) may be averaged, using a weighted average, to determine eligibility. One of the CBGs must be the CBG where the site is physically located.

  When the CBGs are averaged, the site is considered eligible if 50 percent or more of the students are approved for free or reduced-price meals. Each of the combined census bock groups must have at least 40 percent or more students approved for free or reduced-price meals for an ACSP site to qualify using combined census block group data.

  TDA provides directions for how to calculate the combined census block group data at *www.SquareMeals.org/FandNResources/Toolsamp;Links/CensusData.aspx.* CEs that use this method must indicate the method used in the Application Packet screen in TX-UNPS and must retain documentation that demonstrates the site's eligibility.

- **Current Census Track**—ACSP sites may also establish area eligibility if 50 percent of students living in the track are eligible for free or reduced-price meals.

  TDA provides directions for how to use track group data at *www.SquareMeals.org/FandNResources/Toolsamp;Links/CensusData.aspx.* CEs that use this method must indicate the method used in the Application Packet screen in TX-UNPS and must retain documentation that demonstrates the site's eligibility.

- **Other Current Data Sources**—If a CE would like to use data from other sources such as the departments of welfare and education, or zoning commission reports, the CE must submit a request to TDA for approval from USDA.

For CACFP At-Risk

CEs operating CACFP At-Risk cannot use census data to establish site area eligibility.

Closed Enrolled Sites, Student Eligibility Based on Income and Categorical Participation

For ASCP

Closed enrolled sites may use household meal applications and categorical eligibility determinations to establish that a site has 50% or more of enrolled students eligible for free or reduced-price meals. In these cases, the CE will determine eligibility as described in *Administrator's Reference Manual (ARM), Section 4, Determining Eligibility*.

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CEs that use this method must indicate the method used in the Application Packet screen in TX-UNPS and must retain documentation that demonstrates individual participant eligibility and the site's eligibility.

For CACFP At-Risk

CACFP At-Risk site eligibility cannot be determined based on the distribution and collection of household meal applications or through categorical eligibility determinations with the exception of emergency shelters. Closed enrolled CACFP-At Risk sites must establish site eligibility with school data.

Duration of Site Area Eligibility

For ASCP

If school claiming data or census data is used to determine ASCP site area eligibility, area eligibility is valid for five years from the month in which the determination was made.

When ASCP site area eligibility for a closed enrolled site is established by individual student household applications or categorical eligibility, area eligibility is valid for one year only.

For CACFP At-Risk

All CACFP At-Risk sites must use school claiming data to establish area eligibility. For these sites area eligibility is valid for five years from the month in which the determination was made.

For closed enrolled CACFP At-Risk sites, the site must use school claiming data to establish area eligibility. For these sites, the site area eligibility is valid for five years from the month in which the determination was made.

Special Provision Programs Operating ASCP

Provision 2 CEs[34] may use (1) a site's base year data for enrolled eligible students or (2) census data from a USDA approved data source.

Community Eligibility Provision (CEP) Sites may use (1) the current claiming percentage based on the identified student percentage for the site or (2) census data from a USDA approved data source.[35] When the site has been grouped with other sites to establish a group claiming percentage, the CE must calculate the individual site's claiming percentage to determine if 50% of the students at the site are eligible for free or reduced priced meals.[36]

RCCIs

For ASCP

Because of the institutional structure of an RCCI, a CE that is also an RCCI may serve an afternoon or evening snack during regular hours—as defined in the *Definitions* subsection of this section—if the institution meets the specific required conditions of structured care and education and enrichment activities. If the RCCI does meet these conditions and snacks are served at multiple times during the afterschool time, the RCCI must make sure that only one snack per student is claimed as reimbursable. RCCI should contact TDA with questions

[34] For more information on special provisions, see the *Administrator's Reference Manual (ARM), Section 5, Special Provision Options*.

[35] For additional information on how to calculate a site's identified student percentage (ISP), see *Administrator's Reference Manual (ARM), Section 5, Special Provision Options*.

[36] See *Administrator's Reference Manual (ARM), Section 20, Counting and Claiming f*or additional information on this topic.

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regarding flexibility for serving snacks.[37]

For CACFP At-Risk

In most cases RCCIs, with the exception of homeless shelters, are not eligible to participate in CACFP At-Risk. However, if an RCCI has a non-residential care program that offers afterschool education and enrichment programs for non-residential students, they may be eligible for CACFP Risk.

Reimbursement

For ASCP and CACFP At-Risk

CEs submit claims for reimbursement for afterschool meal programs through TX-UNPS.

While students are allowed to save uneaten portions of a snack or meal to consume later, snacks and meals are intended to be served and consumed onsite. If a student picks up a snack or meal and leaves the site to consume it, the snack or meal is not reimbursable.

Accuracy of Claims

For ASCP and CACFP At-Risk

CEs must use the *Daily Record/Accuclaim Form | Afterschool* or a similar reporting instrument that contains the same information to ensure the accuracy of claims. For this form or the similar reporting instrument, the CE must use the highest total number of students who are eligible (allowed) to participate in the afterschool program each day at the site instead of the site's total enrollment. Because the afterschool participation is a subset of the site's total enrollment, using the highest number of eligible participants is more accurate representation of site participation.

If a CE operates CACFP At-Risk and does not use the accuclaim form or similar reporting instrument, the CE must use the five-day reconciliation process described in the *Child and Adult Care Program (CACFP) At-risk Afterschool Care Center Handbook* located at *www.SquareMeals.org*.

Dual Afterschool Meal Program Participation

For ASCP and CACFP At-Risk

Even though CEs may participate in both ASCP and CACFP At-Risk, they must not submit reimbursement for the same student for a snack under ASCP and a snack/supper under CACFP At-Risk at the same serving time for both ASCP and CACFP At-Risk (i.e., double claim).

While a CE may serve a snack under ASCP and a supper under CACFP to the same student on the same day, a CE cannot claim a snack under ASCP and a second snack under CACFP At-Risk for the same student on the same day.

For Example: A CE may claim an ASCP snack served to a student at 3:15 p.m. under NSLP and claim a supper served to the same student at 6:20 p.m. under CACFP At-Risk. In this case, an additional snack served to the same student at 8:30 p.m. under CACFP At-Risk cannot be claimed since the CE claimed a snack for the student at 3:15 p.m. under ASCP.

[37] See *Administrator's Reference Manual (ARM), Section 28, Residential Child Care Institutions* for additional information.

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Submitting Claims

For ASCP

ASCP claims are submitted through the SNPs module in TX-UNPS.

For CACFP At-Risk

CACFP At-Risk claims are submitted through the CACFP module in TX-UNPS.

Overclaims

For ASCP

Overclaims for afterschool meal programs are assessed by program, i.e., ASCP will use the guidance in *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* to assist them in correctly submitting claims

For CACFP At-Risk

CACFP At-Risk will use guidance from the *At-risk Afterschool Care Center Handbook*.[38]

Onsite Monitoring Review Requirements

CEs that administer an afterschool program are required to conduct onsite monitoring of their programs. While the onsite monitoring review information is recorded on the same form, there are differences in timing and number of reviews to be conducted.

For ASCP

CEs that administer the ASCP are required to use the ASCP form and process.

- The first monitoring or review must occur during the first four weeks of snack service.
- The next onsite monitoring review must occur before the school year is completed.
- The onsite monitoring review should be completed by a food service staff member.
- The onsite monitoring review records must be retained and made available for USDA and/or TDA review.

The *Onsite Monitoring Form | Afterschool Care Program (ASCP) and Child and Adult Care Food Program At-Risk (CACFP At-Risk)* is available at *www.SquareMeals.org*.

For CACFP At-Risk

CEs that administer CACFP At-Risk must use the CACFP At-Risk form and process to meet this requirement.

- The CE must monitor or review CACFP At-Risk sites at least three times each year with no more than six months between reviews.
- The first monitoring review must occur within the first four weeks of operation.
- The CE must conduct at least two of the three monitoring reviews unannounced.
- The CE's monitor or reviewer must include the observation of meal/snack service in one of the unannounced reviews.

[38] Available at *www.SquareMeals.org*.

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- The CE's monitor or reviewer must vary the timing of the unannounced reviews so that review times are unpredictable.
- The onsite monitoring records must be retained and made available for USDA and/or TDA review.

The *Onsite Monitoring Form | Afterschool Care Program (ASCP) and Child and Adult Care Food Program At-Risk (CACFP At-Risk)* is available at *www.SquareMeals.org*.

TDA Resources

TDA has the following resources available that are specific to afterschool meal programs.

- *Extended/Expanded Learning Time Programs—Afterschool Programs for NSLP & CACFP Form* at *www.SquareMeals.org*
- *Onsite Monitoring Form | Afterschool Care Program (ASCP) and the Child and Adult Care Food Program At-Risk (CACFP At-Risk)* at *www.SquareMeals.org*
- *Daily Record/Accuclaim Form | Afterschool* at *www.SquareMeals.org*
- *Daily Mal Count and Attendance Record (At-Risk) form* at *www.SquareMeals.org*

Records Retention

The CE is required to maintain an organized system of record retention that is accessible to appropriate CE staff members and federal or state reviewers.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, nonprofit organizations, and residential childcare institutions after the end of the school year to which they pertain. For NSLP, the year begins on July 1 and ends on June 30. If audit findings have not been resolved, the records must be maintained as long as required for the resolution of the issues raised by the audit.

Information Box 2
Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

The CE must be able to track program income and costs specific to an afterschool program separately from other food service programs. There are a variety of strategies the CE may use to differentiate afterschool income and costs. TDA does not require a specific methodology.

The records and documentation the CE must be able to produce for its afterschool meal program include, but are not limited to, the following:[39]

- Rosters/Lists or records of program participants

  For ASCP and CACFP At-Risk

  CEs must retain a roster or list of program participants, paper or electronic. If the site is area eligible, student eligibility documentation is not required. If the CE uses applications to determine a closed site's

[39] See the *Administrator's Reference Manual (ARM), Section 30, Record Retention* for detailed information on records that must be included in a CE's records retention system.

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eligibility, the CE must retain documentation related to each student's eligibility status. While CACFP At-Risk regulations require a roster/list which includes the student's name and the student's date of birth, NSLP CEs operating CACFP At-Risk that have a data management system (point of service and/or Public Education Information Management System (PEIMS) that allows them to access a student's date of birth if needed, the CE does not need to record the student's date of birth on the roster/list record.

- Daily and cumulative monthly records of program participation and meals or snacks served

  [NOTE: School-based afterschool programs commonly include participants from multiple afterschool activities. CEs must have a method of identifying participants and determining accurate eligible participants for each meal service.]

- Daily and cumulative monthly records for income and expenses for the program
- Records related to site eligibility
- Documentations demonstrating eligibility flexibility for snack/meal service time for extended/expanded instructional programs if used
- Food production records demonstrating all aspects of meal production—including, but not limited to meal preparation, meal pattern, dietary specifications, food storage, and food safety
- Documentation supporting reimbursement claims
- Copies of documentation about outreach and communication with the families of program participants and the larger community
- Copies of documentation about enrichment activities
- Civil rights notice, *Justice for All* poster
- CE onsite monitoring records
- Training provided to staff operating the program

CEs have the option to maintain records in paper or electronically.

Compliance

TDA will combine meal service and financial monitoring efforts for CEs that administer both NSLP and CACFP whenever possible. TDA will review documentation submitted through TX-UNPS, during administrative reviews, or at other times as appropriate to determine if the CE is compliant with all program requirements. CEs with findings will be required to submit an approvable Corrective Action Document (CAD). TDA will take fiscal action, as appropriate, for benefit issuance (eligibility determinations) violations. Noncompliance in these areas can require fiscal action.

For ASCP

Administrative reviews and fiscal action will follow the requirements for NSLP.

For CACFP At-Risk

CEs that have deficiencies discovered during the monitoring process, TDA will address those deficiencies according to CACFP regulations including the requirements regarding termination, disqualification, and submission to the CACFP National Disqualified List.

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Section 11

Summer Meals

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Section 11, Summer Meals

Update Guide

January 4, 2022	Updated Administrator's Reference Manual (ARM), *Section 11, Summary Meals* to correct links and minor typos. Clarified information on the following topics: - Open sites - Onsite monitoring
August 12, 2020	Updated Administrator's Reference Manual (ARM), *Section 11, Summary Meals* to update the *Administrator's Reference Manual (ARM)* section references. Clarified information on the following topics: – Bused students – Community Eligibility Provision (CEP)/Special Provision 2 – Definition for participant – Definition for summer – Meal cost for children – Meal pattern – Reimbursement rate – Times of operation – Types of sites
August 17, 2017	Updated *Section 12, Seamless Summer Option (SSO)* to incorporate the following United States Department of Agriculture guidance: – *USDA Memo, SP 14-2017, Demonstration Project for Non-Congregate Feeding for Outdoor Summer Meal Sites Experiences Excessive Heat with Q&As* (January 3, 2017) – *USDA Memo, SP 010-2017, Meal Service Requirements in the Summer Meal Programs, with Questions and Answers--Revised* (December 5, 2016) – *USDA Memo, SP 09-2017, 2017 Edition of Questions and Answers for the National School Lunch Program's Seamless Summer Option* (December 1, 2016) Clarified information on the following topics: – Area eligibility – Camp sites – Community Eligibility Provision (CEP) – Mealtimes – Operating more than one program – Vacation service – Year around schools Relocated guidance on the following topics – Counting and claiming guidance to *Section 7, Counting and Claiming*
April 26, 2016	Updated *Section 12, Seamless Summer Option (SSO)* to incorporate the following United States Department of Agriculture guidance: – *USDA Summer Food Service Program (SFSP) 2016 Administrative Guidance for Sponsors* (March 2016) – *USDA Memo, SP 06-2016, Promoting Nutrition in Summer Meals Programs, with Best Practices* (November 12, 2015)

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- *USDA Memo, SP 07-2016, Local Food and Related Activities in Summer Meals with Questions and Answers* (November 12, 2015)
- *USDA Memo, SP 05-2016, Meal Service Requirements in the Summer Meal Programs, with Questions and Answers* (November 12, 2015)
- *USDA Memo, SP 37-2015, 2015 Edition of Questions and Answers for the National School Lunch Program's Seamless Summer Option (*May 22, 2015)
- *USDA Memo, SP 13-2015(v2), Summer Meal Programs Meal Service Requirements Q&As-Revised* (January 12, 2015)
- *USDA Memo, SP 14-2015, Demonstration Project for Non-Congregate Feeding for Outdoor Summer Feeding Sites Experiencing Excessive Heat Revised Q&As* (December 11, 2014)
- *USDA Memo, SFSP 16-2014, Streamlined and Simplified Summer Food Service Program Requirements: Frequently Asked Questions* (April 24, 2014)

Clarified information on the following topics:

- Adult meals
- Budget
- Food service management company
- Meal pattern
- Onsite monitoring
- Record retention
- Reimbursement
- Site eligibility
- Site location
- State mandated summer feeding
- Submission of site eligibility documentation when using nonschool data
- Training

October 17, 2014 — Updated *Section 12, Seamless Summer Option (SSO)* to address typos in the Update Guide

October 3, 2014 — Updated *Section 12, Seamless Summer Option (SSO)* to incorporate the following United States Department of Agriculture guidance:

- *USDA Memo, SP 39-2014, 2014 Edition of Questions and Answers for the National School Lunch Program's Seamless Summer Options* (April 21, 2014)
- *USDA Memo, SP 38-2014, Area Eligibility Using Census Data*, (April 21, 2014)
- *USDA Memo, SP 21-2014, Community Eligibility Provision: Guidance and Q&As* (February 25, 2014)
- *USDA Memo, SFSP 16-2014, Streamlined and Simplified Summer Food Service Program Requirements: Frequently asked Questions* (April 26, 2014)
- *USDA Memo, SP 16-2014, Demonstration Project for Non-Congregate Feeding for Outdoor Summer Feeding Sites Experiencing Excessive Heat Revised Q&As* (January 10, 2014)
- *USDA Memo, SFSP 09-2014, Summer Food Service Program Questions and Answers 2014* (November 12, 2013).
- *USDA Memo, SP 08-2014, Meal Service Requirement*s (November 12, 2013)
- *USDA Memo, SP 07-2014, Expanding Awareness and Access to Summer Meals* (November 12, 2013)

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- *USDA Memo, SP 06-2014, Available Flexibilities for CACFP At-risk Sponsors and Centers Transitioning to Summer Food Service Program (SFSP)* (November 12, 2013)
- *USDA Memo, SP 05-2014, Use of School and Census Dat*a (November 12, 2013)
- *USDA Memo, SP 04-2014, Promoting Nutrition in Summer Meals* (November 12, 2013)
- *USDA Memo, SP 03-2014, Census Data Release: Fiscal Year 2014* (November 8, 2013)
- *USDA Memo, SP 02-2014, Mobile Feeding Options in Summer Feeding Programs* (November 8, 2013)
- *USDA Eligibility Manual* (August 2013), information related to Community Eligibility Provision (CEP)

Clarified information on the following topics:

- Clarification Texas School Nutrition Policy
- Contact Information for the Texas Department of Agriculture (TDA)
- Eligibility based on Community Eligibility Program—Identified Student Percentage (ISP)
- Onsite self-review or self-monitoring
- Participation in the Seamless Summer Option (SSO) program
- Record retention
- Seamless Summer Option (SSO) age/grade exemption
- Seamless Summer Option (SSO)meal pattern
- Second meals
- Use of data to establish site/location area eligibility

July 22, 2013

Updated *Section 12, Seamless Summer Option (SSO)* to reflect the renumbering of *Section 9C* to *Section 2C, Certification for Performance-Based Reimbursement* in order to relocate the information on certification adjacent to *Section 2, Application and Agreement* since certification is now part of the application process.

Deleted all references to Section 8N since that section has been removed from the *Administrator's Reference Manual (ARM)*. CEs must follow the guidance provided in *Section 8, Breakfast since Section 8N* applied to SY 2012–2013 only.

May 30, 2013

Updated *Section 12, Seamless Summer Option (SSO)* to incorporate new USDA guidance and clarification of Texas Public School Nutrition Policy (TPSNP) requirements.

USDA guidance: clarification on closed and restricted open sites, the demonstration project for non-congregate feeding during excessive heat weather conditions, clarification on the use of census block data, information on meal service during a disaster, clarification on self-monitoring requirements, additional information on outreach and notification, clarification on records retention requirements, information on claiming meals for youth workers, and information on the streamlined process for participation in the Summer Food Service Program (SFSP).

Texas Public School Nutrition Policy (TPSNP) requirements: clarification on applying TPSNP in nonschool sites, clarification on mandatory summer feeding participation; clarification on the SSO application process, and clarification on SSO meal reimbursement.

January 2013

Updated the *Section 12, Seamless Summer Option (SSO),* to incorporate new USDA guidance (*USDA Memos, SP 07-2013,* November 23, 2012 and *SP 06-2013,*

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November 23, 2012) on summer feeding options, area eligibility, block data sources, and requirements for the new meal pattern; incorporated new TDA SSO application deadlines; and clarified guidance on meals to be served and site requirements; and removed the CN labeling material which will be relocated into a new section.

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Summer Meals

Seamless Summer Option (SSO) & Summer Food Service Program (SFSP)

The United States Department of Agriculture (USDA) provides funding for summer meal programs through two programs that the Texas Department of Agriculture (TDA) administers:

- Seamless Summer Option (SSO) operated under the National School Lunch Program (NSLP)
- Summer Food Service Program (SFSP)

The guidance provided in this section applies to

1. Contracting entities (CEs) operating SSO and
2. NSLP CEs operating SFSP. SFSP guidance in this section is limited to USDA flexibilities for NSLP operators.

Unless USDA has provided flexibility, NSLP CEs operating SFSP must follow the regulatory guidance for SFSP operators.[1]

By implementing an SSO program,[2] the CE may

- reduce paperwork and the administrative burden that is normally associated with operating multiple programs and
- operate under many of the same regulations, procedures, and policies that it currently operates under during the regular fiscal year.

Summer Meal Participants

Meals are available for all children or students who meet the following criteria:

- Children ages 18 years and younger, and
- Students enrolled in a school of high school grade and under as determined by the Texas Education Agency (TEA),[3] including students past the age of 18 but under the age of 21 who continue to be enrolled at the school and are identified as mentally or physically disabled through a special education program or the 29 U.S.C § 70, Section 504, Rehabilitation Act of 1973. If this is the case, the student is eligible through age 21.

Time Period When Summer Programs Can Operate

Summer feeding programs ensure that students in low-income areas continue to receive meals during school vacations longer than 10 school days when students do not have access to school lunch or breakfast. For these programs, summer means the period of time the state education agency does not count toward meeting the required instructional time for the school year.

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1 NSLP and SBP CEs operating SFSP will find additional guidance in *USDA Summer Food Service Program (SFSP) Administrative Guidance for Sponsors* and TDA's *Summer Food Service Program (SFSP) Supplemental Handbook*. Both of these resources are available at *www.SquareMeals.org*.

2 See the *Comparison of SSO and SFSP Chart* in this section for more information on the similarities and differences among these programs.

3 See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for more detailed guidance on enrolled students who are eligible to participate in

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Definitions for This Section

For this section, the following terms will be used:

Area Eligible Site	Designated geographic area within an attendance zone where 50 percent of the children living in the area qualify for free or reduced-price meals under NSLP or SBP or census data from a United States Department of Agriculture (USDA) approved sources.
Attendance Zone	Designated geographic area that determines where a child goes to school. Approved Attendance Zone—Designated geographic area that determines where a child goes to school that has been identified by TDA as eligible for SSO services.
Eligible Site	Site eligible to operate SSO based on area eligibility or standard eligibility determinations
Eligible SSO Program Participant[4]	All children enrolled in a school of high school grade and under as determined by the Texas Education Agency (TEA) including persons enrolled in a school program for the mentally or physically disabled, and person under 21 enrolled in an RCCI. See the ***Administrator's Reference Manual (ARM), Section 4, Eligibility Determination*** for additional information on the state's definition for enrolled student.
Non-Area Eligible Site	Designated geographic area with an attendance zone where 50 percent of the children living in the area do not qualify for free or reduced-price meals under NSLP or SBP.
Summer	Period of time the state education agency when school attendance does not count toward meeting the number of yearly total of required instructional minutes.
Summer Feeding Program	Meal services offered for either the SSO or the SFSP.
Viability, Administrative Capability, and Accountability (VCA)	A financial term used in reference to a CE's ability to properly operate the program.

State Mandated Summer Feeding Program Participation

Texas law mandates that public school districts in which 50% or more of the enrolled students are eligible to receive NSLP free or reduced-price meal benefits must take one of the following actions:

1. Operate a summer feeding program by offering SSO or SFSP.[5]
2. Arrange for another NSLP CE to operate a summer feeding program in the district.
3. Work with another entity to arrange for the operation of SFSP in the district.

[4] SFSP provisions provide a different definition for eligible participants. CEs operating SFSP must use the SFSP definition and not the SSO definition. The *USDA Summer Food Service Program (SFSP) Administrative Guidance for Sponsors* provides additional information about eligibility for SFSP.

[5] If an NSLP or SBP CE chooses to participate in SFSP, the program application process has been streamlined. However, SFSP operational requirements and SSO operation requirements are not the same. Unless stipulated, a CE operating SFSP must operate the program in compliance with SFSP requirements.

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4. Request and receive a waiver from TDA from participating in a summer feeding program by completing the waiver section of the Texas Summer Mandate screen in TX-UNPS.[6]

Any CE requesting a waiver must assist TDA in identifying an alternate provider for the summer feeding program that will provide meals to the students the CE typically serves.

Decrease in Percentage of Students Qualifying for Free and Reduced-Price Meals

A CE's identification for mandatory participation in SSO or SFSP during one school year does not carry over to the next year. If a CE's overall free and reduced-price eligibility percentage falls below 50 percent in the school year following the mandated school year, it is not mandated to continue to offer a summer feeding program. However, the CE may continue to offer a summer feeding program at any site or within any attendance zone that meets the requirement of 50 percent or more of the children eligible to receive free or reduced-price meals because individual site eligibility remains in effect for five years.[7]

Notice of Eligibility to Participate in SSO or SFSP

In the fall of each year, TDA will notify CEs with 50 percent or greater free or reduced-price eligibility by letter about summer feeding program requirements and waiver options. This information is based on enrollment information entered by the CE into Texas Unified Nutrition Programs System (TX-UNPS).

CEs should also use the information provided in TX-UNPS to assist them in identifying the most appropriate location(s) for summer feeding.

Requirement to Declare Intention

Each year CEs that are mandated to participate in a summer feeding program must indicate their intention to operate or not to operate a summer feeding program in the Summer Program Intention section on Texas Summer Mandate screen in TX-UNPS[8] by January 31.

Dates of Operation

CEs mandated to operate a summer program must operate the program for at least 30 calendar days during the summer recess.

For Example: A CE provides meals 4 days a week from June 1 through June 30. June 1 through June 30 meets the 30-calendar day requirement even though the CE only serves meals four days per week.

Waiver to Not Participate

CEs under this mandate may be granted a one-year waiver for the following reasons:

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6 Access to the summer mandate screen is located in TX-UNPS, Applications screen, Texas Summer Mandate hyperlink.

7 If a CE has established site area eligibility and then does not operate SSO or SFSP for one or more summers, the CE must reestablish area eligibility for all previously approved sites when it restarts operation of a summer meal program. This requirement does not apply when a CE switches from SSO operation to SFSP operation or the reverse.

8 Access to the summer mandate screen is located in TX-UNPS, Applications screen, Texas Summer Mandate hyperlink.

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- Fewer than 100 students in the CE are eligible for free or reduced-price meals.
- Transportation is an insurmountable obstacle.
- School buildings or cafeterias are under renovation or construction.
- Projected operational expenses are cost prohibitive.
- The CE has other extenuating circumstances and has worked with TDA to determine if an alternate provider is available.

CEs that choose to submit a waiver must send TDA verifiable documentation demonstrating that the CE is unable to provide or arrange for program meal services in order for the waiver to be considered. Waivers are valid for one year only.

In all cases, documentation must demonstrate that the CE has worked with TDA to identify another possible summer feeding provider in the area.

Verifiable Waiver Documentation Requirement

The CE must submit the following information with the waiver request:

- Fewer than 100 students

  Documentation must show…

  that there are fewer than 100 students in the CE currently eligible to receive free or reduced-price meals under the NSLP.

- Transportation

  Documentation must show…

  that (1) providing the transportation services needed to enable the CE's students to participate in the program is an insurmountable obstacle to delivering meal services and (2) despite consultation with local public transit providers, the CE is unable to provide the needed transportation services that will enable the CE's students to participate in the program.

- Renovation or construction

  Documentation must show…

  that (1) the CE is unable to provide or arrange for delivering meals services because of renovation or construction of CE facilities and (2) is unable to make arrangements with an appropriate alternate provider or site to deliver meal services.

- Other extenuating circumstances

  Documentation must show…

  that (1) the CE is unable to provide the meal services because of extenuating circumstances, and (2) there is not an appropriate alternate site or provider available.

- Projected operational expenses

  Documentation must show…

  the cost of operating a summer feeding program is greater than the sum of expected federal reimbursements plus one month of the food service program's three months operating expenses on hand. The following formula may be used to determine if the operation of summer feeding program will be cost prohibitive:

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Cost Prohibitive Formula Chart				
Projected Operational Food Service Expenses	> Greater Than	Expected Federal Reimbursements	+	One Month of Allowable Operating Expenses for the Food Service Fund on Hand[9]

To demonstrate that operation of a summer feeding program is cost prohibitive, a CE must provide a financial statement that includes the following information:

- Projected Summer Nutrition Program budget for program year
  - based on number of expected participants
  - including specific cost items to support possible determination of cost-prohibitive nature of program operation
- Expected federal reimbursement amount based on the previous year's program participation or interest survey data taken since start of current school year
- Calculation of the food service department's three months operating food service fund expense balance including the following:
  - Current fund balance
  - Current year's total operating expense
  - Available cash on hand
- Financial statements which indicate that the child nutrition program's net cash resources are below two month's net cash reserves
- Written explanation of efforts made to attempt partnership with another CE to operate a summer feeding program or arrange for another entity for SFSP operation including the following actions:
  - Contacting TDA
  - Discussing potential partnerships with two or more other entities

Requirements for SSO Site Applications

Applications for SSO programs are due to TDA by May 31 of each year and are submitted through TX-UNPS. The *SSO Timeline and Deadline Chart* provides a complete list of date-related requirements.

[9] CEs are allowed to keep three (3) months of operating food service expenses on hand.

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SSO Timeline and Deadline Chart		
Fall	–	Receive notice of eligibility to participate in SSO or SFSP from TDA
January 31	–	Declare intention in TX-UNPS for SSO (or SFSP) if mandated to operate a summer feeding program
January 31	–	Submit waiver request in TX-UNPS and verifiable documentation to TDA by email or fax
April 1	–	Submit verifiable documentation outlining the CEs agreement to partner or collaborate with another CE or entity to provide a summer feeding program to TDA by email or fax
May 31	–	Submit application in TX-UNPS – Designate intention to request non-congregate feeding for approved outdoor summer feeding sites experiencing excessive heat[10] in the CE and site application in TX-UNPS – Submit age/grade group exemption if staff are unable to determine the age/grade groups of the children being served[11]

Budget for SSO

CEs are not required to submit a budget as part of the SSO application, but they are expected to establish a system for tracking income and expenses for the program.[12] The CE must be able to report income and expenses for the SSO program separately from other child nutrition programs.

Budget for SFSP

NSLP or SBP CEs that operate SFSP must submit an annual budget for SFSP program costs in the TX-UNPS application screen. A CE cannot enter zeros for the budget fields; the CE must enter actual budget amounts in the budget fields in TX-UNPS. The CE must be able to report income and expenses for the SFSP program separately from other child nutrition programs.

Non-Congregate Feeding Waiver

CEs that intend to participate in Demonstration Project for Non-Congregate Feeding for Outdoor Summer Feeding Sites Experiencing Excessive Heat must ensure that their intent to participate is indicated in the *SNP Application Packet* in TX-UNPS at the CE level—*Contracting Entity Application Screen*—and at the site level—*SSO Site Application Screen* or *SFSP Site Application Screen*.[13]

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[10] For more information on the Demonstration Project for Non-Congregate Feeding for Outdoor Summer Feeding Sites Experiencing Excessive Heat, see the *Requirements for SSO Site Application, Non-Congregate Feeding Waiver* and *Non-Congregate Feeding Sites* subsection in this section. USDA has allowed participation in the demonstration project to continue for SY 2014-2015; it is not a permanent option at this time.

[11] See the *Age/Grade Exemption for SSO* subsection in this section for additional information on this topic.

[12] NSLP CEs operating SFSP must submit a budget.

[1313] See the *Non-Congregate Outdoor Feeding Sites* subsection in this section for additional information on this topic.

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Encouraging Program Participation, Raising Awareness for SSO

Before the end of the school year, whether a CE participates in SSO, SFSP,[14] or does not participate in a summer feeding program, a CE must promote the availability of meal services and notify households in its geographical area of the availability and locations of summer feeding sites. This notification or outreach must include the following information:

- Location of all nearby summer feeding program meal sites
- Days and times of summer meal service sites
- CE or organization contact information, if available at that time, for meal service sites
- Notice of summer feeding website (*www.SquareMeals.org/Programs/SummerFeedingPrograms.aspx*) and Texas 2-1-1 phone number

CEs must indicate its outreach strategies in its summer program application in TX-UNPS.

Academic Summer School

A CE operating academic summer school and SSO simultaneously should ensure that staff make a concerted effort to increase the participation of children who are not attending summer school in the summer feeding program.

Outreach Expenses

The cost of developing and distributing the outreach materials should be covered by summer feeding program funds rather than NSLP funds.

TDA Support for Outreach

Each year TDA develops outreach materials for CEs to download and distribute. These materials will be available at *www.SquareMeals.org* and *www.summerfood.org* prior to the end of the school year. TDA recommends that these outreach materials be included in each child's report card or other end-of-year materials distributed on the last day of school as well as posted on the CE's website.

Restrictions on Participation in the SSO

Before TDA approves a CE for SSO, the CE must be able to demonstrate its financial viability, administrative capability, and accountability (VCA) processes and procedures that will allow it to properly operate the program.

[NOTE: Because SSO is under NSLP, the CE is considered to have already provided sufficient information about the CE's VCA as part of its NSLP or SBP application. This information along with information from NSLP or SBP offsite and onsite reviews will be considered by TDA in determining a CE's eligibility for participation in the SSO.]

TDA will not approve applications for CEs if the following actions have been taken as a result

[14] TDA provides a statewide media release on behalf of all SFSP sponsors. However, schools operating NSLP or SBP must still provide notification regarding summer feeding programs at the end of the school year.

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of fiscal, administrative review (AR), or serious deficiency findings:

- CE has been placed on financial hold status.
- CE has sites that have been determined to be seriously deficient in the administration of Child and Adult Care Food Program (CACFP) or the SFSP.

SSO Sites—Site Eligibility

For SSO, site eligibility is based on the following criteria:

SSO Site Eligibility Chart

Site Eligibility Type[15]	Description Site Eligibility Determination Method	Duration
Site Area Eligibility for Open Sites	**School-based Data or Census Data** Fifty percent of the children in a geographic area qualify for free or reduced-price meals as demonstrated by NSLP and SBP school-based data or census data from a USDA approved source.	Remains in effect for five years*
Site Eligibility for Closed Enrolled Sites	**Standard Eligibility Determination** Fifty percent of the enrolled children qualify for free or reduced-price meals as demonstrated by standard income or categorical eligibility determinations.[16]	Remains in effect for one year
Site Eligibility for Camps	**Standard Eligibility Determination** Individual participant eligibility determination as demonstrated by standard income or categorical eligibility determinations.[17]	

* If a CE has established site area eligibility and then does not operate SSO or SFSP for one or more summers, the CE must reestablish area eligibility for all previously approved sites when it restarts operation of a summer meal program. This requirement does not apply when a CE switches from SSO operation to SFSP operation or the reverse.

Data Used to Determine Site Eligibility for SSO

CEs may use the following methods to determine if a site[18] is eligible:

School-Based Data

A CE may use school data to establish site area eligibility. Regulations do not require the use of a specific month when using school data from the regular school year to establish area eligibility.

[15] For more information on types of sites, see the *Types of SSO Sites* subsection under *SSO Site Location* in this section.

[16] For more information on standard eligibility determination, see the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination.*

[17] For more information on standard eligibility determination, see the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination*.

[18] For more information on types of sites, see the *Types of SSO Site*s subsection under *SSO Site Location* in this section.

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- Provision 2 CEs[19] may use (1) a site's base year data for enrolled eligible students or (2) census data from a USDA approved data source.
- Community Eligibility Provision (CEP) Sites may (1) use the current claiming percentage based on the identified student percentage for the site; (2) establish an identified student percentage (ISP) and claiming percentage for summer school operations; or (3) use census data from a USDA approved data source.[20]
  - When the site has been grouped with other sites to establish a group claiming percentage, the CE must calculate the individual site's claiming percentage to determine if 50% of the students at the site are eligible for free or reduced priced meals.[21]

    If a CEP school does not meet the area eligibility requirements, it cannot use data from alternate household meal applications that have been collected for other purposes to establish area eligibility.
  - When a CEP site reestablished a summer operation ISP and claiming percentage, the site may continue to use the summer ISP and claiming percentage for the remainder of the CEP cycle.

Census Data to Determine Site Eligibility

A CE may qualify a site for participation by using data other than a site's percentage of free or reduced-price enrollment with the following sources:[22]

- **Current Census Block Group (CBG) Data**[23]—The American Community Survey (ACS) now provides yearly updates to current census block data for the next five–year cycle. CEs may use CBG to establish area eligibility if 50 percent of the children living in the CBG are eligible for free or reduced-price meals.

TDA provides directions for how to use census block group data at *https://squaremeals.org/FandNResources/CensusData.aspx*.

CEs that use this method must indicate the method used in the Application Packet screen in TX-UNPS and must retain documentation that demonstrates the site's eligibility.

- **Combined Current Census Block Group Data (CBG)**—With TDA and USDA

[19] For more information on special provisions, see the *Administrator's Reference Manual (ARM), Section 5, Special Provision Options*.

[20] For additional information on how to calculate a site's identified student percentage (ISP), see *Administrator's Reference Manual (ARM), Section 5, Special Provisions*.

[21] See *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on this topic.

[22] Area eligibility established for an afterschool meal program may be used to establish area eligibility for a summer meal program if the type of data used for this purpose meets the determination requirement for the program.

[23] Block group census data is available at *www.SquareMeals.org*. Block group census data is updated yearly.

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approval, up to three adjacent census block groups (CBG) may be averaged, using a weighted average, to determine eligibility. One of the CBGs must be the CBG where the site is physically located.

When the CBGs are averaged, the site is considered eligible if 50 percent or more of the students are approved for free or reduced-price meals. Each of the combined census bock groups must have at least 40 percent or more students approved for free or reduced-price meals for an SSO site to qualify using combined census block group data.

TDA provides directions for how to calculate the combined census block group data at *www.SquareMeals.org/FandNResources/Toolsamp;Links/CensusData.aspx.*

CEs that use this method must indicate the method used in the Application Packet screen in TX-UNPS and must retain documentation that demonstrates the site's eligibility.

- **Current Census Track**—SSO sites may also establish area eligibility if 50 percent of students living in the track are eligible for free or reduced-price meals.

  TDA provides directions for how to use census block group data at *www.SquareMeals.org/FandNResources/Toolsamp;Links/CensusData.aspx.*

  CEs that use this method must indicate the method used in the Application Packet screen in TX-UNPS and must retain documentation that demonstrates the site's eligibility.

- **Other Current Data Sources**—If a CE would like to use data from other sources such as the departments of welfare and education, or zoning commission reports, the CE must submit a request to TDA for approval from USDA.

Standard Income or Categorical Participation Eligibility Determinations Made by the CE

Standard eligibility determinations are used in two situations: (1) Closed enrolled sites may use household meal applications and categorical eligibility determinations to establish that 50% or more of children enrolled are eligible for free or reduced-price meals. (2) Camps must use individual household meal applications and categorical eligibility determinations to establish free and reduced-price eligibility for the site. In these cases, the CE will determine eligibility as described in *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination*.[24]

[NOTE: For summer meal participants coming from Community Eligibility Provision (CEP) sites, the CE may use the Identified Student documentation that establishes individual student eligibility for a closed enrolled or camp site. If the student is not an Identified Student for CEP, the CE must establish eligibility through a household application or categorical participation for closed enrolled or camp site.][25]

[24] For more information on types of sites, see the *Types of SSO Sites* subsection under *SSO Site Location* in this section.

[25] For additional information on CEP Identified Students see *Administrator's Reference Manual (ARM), Section 5, Special Provision Options*.

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CEs that use income and categorical participation to establish site eligibility must indicate the method used in the Application Packet screen in TX-UNPS and must retain documentation that demonstrates individual participant eligibility and the site's eligibility.

SSO Site Location

Sites[26] may be located in schools or nonschool facilities. If school-based, the entire campus of a site including the surrounding grounds and classrooms is considered part of the site unless the CE designates specific areas of the campus as feeding sites. If children are served meals in multiple locations on the campus, each location must be monitored during the meal service.

A CE cannot serve SSO and SFSP meals at the same site on the same day at the same time. In certain circumstances, TDA may approve one CE to serve specified meals at a site and another CE to serve specified meals at the same site at different times as long as the meals served per day do not exceed the maximum allowed.

For Example: CEs may be approved by TDA to offer the following meals: CE 1 serves breakfast at a site, and CE 2 serves lunch or a snack at the same site.[27]

CEs may be approved by TDA to offer the following meals: CE 1 serves breakfast and lunch Monday through Thursday at a site, and CE 2 serves breakfast and lunch Friday and Saturday at the same site.

Site Locations and Attendance Zones

CE's (1) must be able to document the percentage of children eligible for free and reduced-price meals at each serving location and (2) must retain the documentation.

CEs should consider the following attendance zone configurations when determining site eligibility:

Attendance Zone Configuration	Services can be offered in...	
	Area Eligible Site?	Non-Area Eligible Site?
Attendance Zone with 50 Percent or More Eligible Children	Yes	Yes
Attendance Zone with Less than 50 Percent Eligible Children	Yes	No

Sponsor a Site Outside of Approved Attendance Zone

A CE may operate a site that is located outside of an approved attendance zone with TDA approval in the following types of situations:[28]

- A non-area eligible site if the site is located in an attendance zone of another site with 50 percent free or reduced-price eligibility
- An area eligible site located in an attendance zone of another site with less

[26] For more information on types of sites, see the *Types of SSO Sites* subsection under *SSO Site Location* in this section.

[27] Only two meals or one meal and one snack may be served at a site even if two different CEs are approved to operate at the same site.

[28] Current USDA guidance gives NSLP CEs the flexibility to sponsor a site outside of an approved attendance zone in specific situations.

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than 50 percent eligible students

- An attendance zone for a school with 50 percent free or reduced-price eligibility located in another CE

For Example: The CE has identified two locations that would allow the CE to serve the largest number of children.

Site 1—The first site is an area eligible site and is the most accessible site in the district.

Site 2—The second site is a non-area eligible site located in a attendance zone that has 50 percent eligibility in a neighboring CE. The neighboring CE agrees to allow the CE to provide SSO services.

Busing Students to a Site

CEs may bus students to a site outside of a regular attendance zone to participate in SSO programs. However, the CE must use the same method of determining site eligibility for all sites in which busing occurs.

When busing is used, site eligibility may also be based on the enrollment or attendance data obtained for the site as follows:

1. A centrally located site where buses drop off students from the larger community—the majority of students participating at this site are bused to the location.

   For Example: Busing Students to a Central Feeding Site. The CE determines that the most cost-effective method of serving students with the highest need will be to provide meals at one central feeding site. This strategy is intended to provide an opportunity for students from the larger community to participate in summer meals. Sixty-five percent of the students attending the school at this site qualify for free or reduced-price meals. The students participating in the summer meal program at this site come from homes close to the school and two neighborhoods from which students are bused. The neighborhoods from which the students are bused also have significant percentages of students that qualify for free and reduced-price meals as well. The CE will provide busing to the site for all students who do not live close by including those students that are regularly bused to the site.

2. The school that students would have attended if it were not for the district's busing policy—students live in a neighborhood where students are bused to a school outside of their neighborhood even though there is a school located closer to where they live.

   For Example: Serving Meals at Targeted, Geographically Located Sites Rather Than Busing Students to a Central Feeding Site. The CE determines that the most efficient way to reach out to the greatest number of students with the greatest need is to locate two sites where the highest numbers of eligible students live rather than bus students to their regular schools which are located away from their home neighborhoods. This will save the CE the cost of busing the students while also providing meals to the students with the highest need. The CE will provide meal services at these two sites and open them to all students no matter which attendance zone they live in.

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Sites Also Administering Other Programs

Sites offering both SSO and academic programs[29] at the same time must adhere to the following guidelines:

If the site offers an accredited summer school or other program,	the site must ensure that the site's food service meets the following requirements if the meals served are to be reimbursed: 1. Provides meals to <u>all</u> children residing in the area, not just the children participating in the summer school or other programs. 2. Provides <u>all</u> children the same meal. 3. Prepares enough meals so that all children who come to the site for a meal are provided a meal.
If the site is not open to all the children of the community and only provides meals to students enrolled in summer school,	the site is not eligible to participate in the SSO.
If the site offers enrichment courses or activities that are not considered part of the academic curriculum and does not have mandatory attendance,	the site may be eligible to participate in the SSO as an open or closed-enrolled site.

Partnerships

CEs may partner with other organizations or agencies to provide SSO meal service to increase access to summer feeding programs with TDA approval.[30] In all cases where a CE partners with another organization or agency for a summer feeding program, the CE must retain responsibility for effective program operation and compliance with all regulations.

Partnering with For-Profits

CE may partner with a for-profit organization for SSO <u>sites</u>[31] if <u>all</u> of the following criteria are met:

1. Sponsorship—Must be operated under the administration of an eligible public or private nonprofit service institution. In this case, the NSLP/SBP CE is a public nonprofit service institution administering the SSO operation.
2. Type of Site—Must operate as an open site or restricted open site—must <u>not</u> operate an enrolled or camp site.

[29] Programs include, but are not limited to, academic, art, athletic, music, language development, and others. For more information on types of sites, see the *Types of SSO Sites* subsection under *SSO Site Location* in this section.

[30] When NSLP CEs partner with other organizations, there may be state or local health and safety standards or licensing requirements that apply to meal preparation or serving locations. CEs should confer with state and local officials and health authorities to ensure that program operations are in compliance with any applicable health and safety standards or licensing regulations.

[31] For more information on types of sites, see the *Types of SSO Sites* subsection under *SSO Site Location* in this section.

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3. Location—Must be 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 based on school data or census data.
4. First Come, First Served—Must make meals available to all children in the area and must serve meals to children on a first come, first served basis.
5. Cost of Meals—Must serve all meals at no charge.

Partnering with Nonprofits

CEs may expand summer food service by partnering with nonprofit organizations to operate nonschool sites. Possible partners include government entities, recreational programs, and enrichment classes or programs.

For Example: The CE has determined that partnering with a local YMCA will allow the CE to reach out to a greater number of children as well as allow children and families to take advantage of other services housed at the YMCA. The CE contacts the YMCA, and the two organizations negotiate an agreement for the CE to sponsor an SSO site located at YMCA.

Partnering with Other School Districts

CEs may also partner with another CE to expand summer food service.

Types of SSO Sites

The SSO program offers CEs a wide range of options for SSO. However, TDA must approve the type of site a CE chooses to operate for SSO. TDA will review the information provided in the CE's application submitted in TX-UNPS to make this determination.

All SSO sites must meet the site eligibility requirements, provide meals to all eligible participants,[32] and meet the requirements for the type of site.

Open Sites

An open site is located within the geographical boundaries of the attendance area of a school where a minimum of 50 percent of the students are eligible for free or reduced-price meals based on school or census data as described in this section.

Additional Information Required for an Open Site Application

- An indication of how the CE has determined site eligibility

Open Site Guidance

- The CE may choose the meals that will be served based on the following guidance:
  - If two meals are served, one of the meals must be lunch.
  - If the site serves a single meal, the meal may be breakfast,

[32] For SSO, all children enrolled in a school of high school grade and under as determined by the Texas Education Agency (TEA) including persons enrolled in a school program for the mentally or physically disabled, and person under 21 enrolled in an RCCI are eligible program participants. See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on the state's definition for enrolled student. SFSP provisions provide a different definition for eligible participants. CEs operating SFSP must use the SFSP definition and not the SSO definition. The *USDA Summer Food Service Program (SFSP) Administrative Guidance for Sponsors* provides additional information about eligibility for SFSP.

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lunch, or a snack, but not supper.

- The site may claim a maximum of two meals per day.

  For Example: Lunch and breakfast or lunch and p.m. snack

  A CE may claim lunch and supper meals if lunch and supper are served on different days. If the CE chooses this option, it should communicate the service days and times clearly in its public notifications and outreach to the community.

- Reimbursable meals are served to all participating children through age 18 (and those persons over age 18 who meet the state's definition for mentally or physically disabled).
- Open site area eligibility remains in effect for five years.[33]

Restricted Open Sites

A restricted open site is located within the geographical boundaries of the attendance area of a school where a minimum of 50 percent of the students are eligible for free or reduced-price meals based on school or census data as described in this section. Restricted open sites limit meal participation based on security, safety, or control.

Additional Information Required for a Restricted Open Site Application

- An indication of how the CE has determined site eligibility
- Explanation of the reason the CE plans to operate a restricted open site

Restricted Open Site Guidance

- A restricted open site is open to the entire community on a first-come, first-served basis. Restricted open sites cannot limit participation to a select group of students. A restricted open site cannot provide meals to a select group of students and then open the site to other children on a first-come, first-served basis. All children must have the same opportunity to be served a meal.

  Acceptable Restriction for Restricted Open Site: The number of children served at the site is limited based on fire code requirements.

- The media release or public announcement about the site must describe that the site is open to the entire community on a first-come, first-served basis.
- The CE may not charge a fee for children to attend.
- The CE may choose the meals that will be served based on the following guidance:
  - If two meals are served, one of the meals must be lunch.
  - If the site serves a single meal, the meal may be breakfast, lunch, or a snack.
- The site may claim a maximum of two meals per day.

[33] If a CE has established site area eligibility and then does not operate SSO or SFSP during one or more summers, the CE must reestablish area eligibility for all previously approved sites when it restarts operation of a summer meal program. This requirement does not apply when a CE switches from SSO operation to SFSP operation or the reverse.

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For Example: Lunch and breakfast or lunch and a.m. snack[34]

A CE may claim lunch and supper meals if lunch and supper are served on different days. If the CE chooses this option, it should communicate the service days and times clearly in its community notifications and outreach efforts.

- Restricted open site area eligibility remains in effect for five years.[35]

Closed Enrolled Sites

A closed enrolled site serves an identified group of children who are participating in a specific program or activity and has a student enrollment where at least 50% of the enrolled students are eligible for free or reduced-price meals.

Site eligibility may be established through the following methods:

1. Site is located within the geographical boundaries of the attendance area of a school where a minimum of 50 percent of the students are eligible for free or reduced-price meals
2. Site is located within the geographic boundaries of a census area where census data qualifies the site as eligible.
3. Individual household meal applications or categorical eligibility indicate that 50% of the students enrolled are eligible for free or reduced-price meals.

Additional Information Required for a Closed Enrolled Site Application

- An indication of how the CE has determined site eligibility
- Explanation of why the CE plans to operate a closed site

Closed Enrolled Site Guidance

- A closed enrolled site may take household meal applications to determine eligibility or may use eligibility information obtained from the enrolled child's household.
- The specific program or activity must not be an academic summer school that is closed to the public.

  Acceptable Program or Activity for Closed Enrolled Site: CE offers a recreational program with enrichment classes that require enrollment to attend.

- The CE may sponsor and operate these sites or sponsor sites that are operated by local government or private nonprofit organizations.
- The CE may choose the meals that will be served based on the

[34] See the *Reimbursement Guidelines Chart* for additional information on the number of and the type of meals for which a site can be reimbursed.

[35] If a CE has established site area eligibility and then leaves the program (i.e., does not operate SSO), the CE must reestablish area eligibility for all sites when it restarts operation of a summer program. This requirement does not apply when a CE switches from SSO operation to SFSP operation or the reverse.

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following guidance:

- If two meals are served, one of the meals must be lunch.
- If the site serves a single meal, the meal may be breakfast, lunch, or a snack.

– A closed enrolled site may claim a maximum of two meals per day.

For Example: Lunch and breakfast or lunch and a.m. snack

A CE may claim lunch and supper meals as long as lunch and supper are served on different days. If the CE chooses this option, it should communicate the service days and times clearly in its community notifications.

– Closed enrolled sites that base site eligibility on individual student eligibility determinations must re-determine site area eligibility each year.

However, closed enrolled sites that base site eligibility on location within the geographical boundaries of the attendance area of a school where a minimum of 50 percent of the students are eligible for free or reduced-price meals or where census data qualifies the site as eligible are not required to reestablish site eligible each year.

Camp Sites

CEs may sponsor camp sites[36] that serve regularly scheduled meals at residential summer camps and non-residential day camps and may be located in an area eligible location or not. Eligibility must be established for each enrolled child by application or categorical participation. Census data cannot be used. These sites offer a continuous schedule of organized cultural or recreational activities for participants.

Additional Information Required for a Camp Site Application

- Indication of type of camp: residential or nonresidential (day camp)
- Brief description of organized program for participating children if CE is operating a nonresidential camp
- Explanation of why the CE plans to operate a camp rather than a more conventional SSO site
- Method the CE will use to determine children's eligibility

Camp Site Guidance

- For camp sites (residential or non-residential), CEs cannot use area eligibility determination. Instead, CEs determine each child's eligibility for free meals through the following methods:
  - Collecting and accessing the multi-child or multi-use household income eligibility applications used in NSLP or SBP[37]

[36] CEs should confer with state and local officials to ensure that their operation of a camp site is in compliance with any applicable health and safety standards or licensing regulations.

[37] Household meal applications are available at *www.SquareMeals.org*. For additional information, see the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination*.

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- Obtaining information from the child's regular school
- Making a determination based on categorical eligibility or direct certification conducted by the sponsoring school or CE[38]

– The CE may serve breakfast, a.m. or p.m. snack, lunch, or supper based on the following guidance:
  - CEs may serve a maximum of three meals each day.
  - Lunch and supper may be claimed when served to the same children on the same day.
  - The same meal must be available to all children regardless of reimbursement status.
  - Reimbursable meals are reimbursed at the appropriate NSLP or SBP free rate for eligible children in attendance. Meals for students who do not qualify for free or reduced-price meals must not be claimed.
  - The CE is not reimbursed for the meals of children who are ineligible for free or reduced-price benefits.

– For students who normally attend special provision schools and will be participating in a summer camp, the following guidance must be used in establishing individual student eligibility status:
  - If a student is one of the students identified for the most recent March Community Eligibility Provision (CEP) report, the documentation used to identify the student as eligible without an application can also establish the student's eligibility status for a summer camp.
  - If a student attends a Provision 2 school operating in the base year, a current household application or categorical participation determination can be used to establish the student's eligibility status for a summer camp. If not in the base year, the student's eligibility must be determined by a household application or categorical participation.
  - If no household application has been processed and no categorical documentation exists, the student's eligibility status must be established by household application or categorical participation for the summer camp.
  - Another CE may share eligibility information (categorical or application) by a written statement (email, fax, or paper) for any out of district student attending the summer camp. The eligibility information shared can be as simple as stating if the student is free, reduced-price, or paid. The summer camp can accept that written statement if it is dated and signed (electronic signature or actual).

Migrant Sites

Migrant sites provide meals primarily[39] to the children of migrant families through age 18 as certified by a migrant coordinator who is employed by the CE or who is employed

[38] For additional information, see *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination.*
[39] Students certified as migrant by the migrant coordinator or liaison are eligible for participation in SSO.

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by an organization providing services under the migrant program.

Restricted Open Site Guidance

- The CE may serve breakfast, a.m. or p.m. snack, lunch, or supper based on the following guidance:
  - CEs may serve a maximum of three meals each day.
  - Lunch and supper may be claimed when served to the same children on the same day.
- Eligible SSO meals served to all participating students are reimbursable.

Non-Traditional Rural or Urban Open Sites for SSO

CEs may request to operate a non-traditional serving site in order to provide the most cost effective and efficient meal service to high need children.

Mobile Sites

CEs may operate two types of mobile site.

Rural

CEs in rural areas often have difficulty identifying sites: The rural population may be dispersed, or it may not be cost-effective to transport children from rural areas to sites located in the town's traditional meal service facilities.

Urban

Urban sites also face challenges. Since students often attend schools outside of their home neighborhoods, transportation may be significant challenge. CEs may also find that using locations that are close to or house other support services may be beneficial to students and their families.

For Example: CEs may establish mobile feeding sites to serve students who live in urban housing projects or mobile home parks and do not have access to sites at fixed locations. This allows the CE to transport meals to students instead of transporting the students to meal service sites.

CE may use a bus as a meal service site. The bus stops at numerous locations and provides meals to students at each stop. The students eat on or near the bus.

Additional Information Required for a Mobile Open Site Application

- Explanation of why the CE has chosen to operate a non-traditional open site
- Method of meal service including how the CE will maintain congregate feeding, mobile route, and mealtimes for each site
- Documentation demonstrating site eligibility for each meal service site including the method for calculating eligibility if census data is used to determine eligibility

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- Adjusting Meal Deliveries. The CE must have the ability to adjust meal deliveries to address fluctuations in attendance.
- Advertising. CEs must advertise that the mobile feeding sites are available and include specific descriptions of meal service locations and times.
- Allowable Costs. CEs may include the allowable cost of transporting food to children in rural areas in the same manner that they claim the costs of transporting children to food service sites. In these cases, the costs must be necessary and reasonable. Allowable expenses may also include costs related to processing, distributing, transporting, storing, and handling of food purchased for, or donated to the program.[40]
- Delivery Routes. CEs in rural areas may use bus routes to distribute meals and meet the needs of low-income children if the following requirements are met:
  - Each location where meals are dispensed must meet site eligibility criteria.
  - Consumption of meals must take place on or near the bus or vehicle.
  - The meal service must adhere to established meal service times.
  - The requirements for the display of nondiscrimination poster must be followed.
- Health and Safety. CEs must ensure the safety of the food that is served to the children. This includes the following:
  1. Adhere to the Hazard Analysis Critical Control Point (HACCP) Standard Operating Procedures (SOPs).
  2. Maintain proper temperatures of food throughout the delivery route.
  3. Meet state and local health standards.
- Inclement Weather. CEs must make arrangements for meal service during period of inclement weather. This includes making a reasonable effort to inform students of contingency plans to deal with extreme weather conditions, particularly if meals are canceled.

Sites for Year-Round Schools with Off-Track Breaks

CEs approved on a year-round or continuous schedule that have off-track breaks that are officially part of the site schedule may be approved to operate the SSO during the breaks. Typically, the off-track breaks are of two to three weeks. To provide SSO meals in these circumstances, the school vacation must be 10 school days or more.

- TDA must approve SSO meal service for these locations because site

[40] See the *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on allowable costs.

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breaks may be less than 30-calendar days.

- The CE must be able to distinguish between the two types of program service:
  - Off-track students who receive meals free of charge under the SSO
    and
  - On-track students who may pay reduced-price or full prices (paid meals) for meals under the NSLP or SBP.

  The CE must submit claims for reimbursement accordingly.

Operating Extended-Year or Year-Round Schools, Operating NSLP or SBP and the SSO Program Simultaneously

CEs that have an extended-year or year-round school year may operate NSLP or SBP and the SSO during the same time period if the continuous schedule and off-track breaks are officially part of the school schedule. Even though the programs are run simultaneously, they must be operated as two separate programs.

If the site is extending its NSLP or SBP operation into the summer months, the NSLP or SBP requirements apply. ▶	The CE must request TDA approval for these sites.
If the site is planning to offer SSO, the SSO requirements apply. ▶	The CE must submit an SSO site application for these sites.

Since all children at SSO sites receive meals free of charge,[41] the site must be able to distinguish between (1) meal service to SSO participants who receive free meals and (2) extended-year children who receive free meals or pay reduced-price or full price (paid meals) for meals under the NSLP or SBP.

Non-Congregate Outdoor Feeding Sites—Excessive Heat for SSO

USDA continues to provide CEs flexibility through the Demonstration Project for Non-Congregate Feeding for Outdoor Summer Feeding Sites Experiencing Excessive Heat (Demonstration Project) for the summer of 2017. This project allows non-congregate feeding at approved outdoor summer meal sites experiencing excessive heat if a CE meets the requirements for participation in the Demonstration Project.

Under this project, non-congregate meal service shall be permitted only on the days when the National Weather Service (NWS) has issued a Heat Advisory, an Excessive Heat Warning, or an Excessive Heat Watch for the area in which an approved outdoor site is located. The Demonstration Project flexibility may only be applied at sites where there is no suitable alternative feeding location that provides shelter from extreme heat.

[41] Camp sites are an exception. Only the meals served to children who are eligible for free or reduced-price meals are reimbursable.

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When a CE that has indicated that it will participate in the Demonstration Project provides meals on an excessive heat day, the CE cannot shorten or extend its regular meal service time. With the exception of allowing a meal participant to eat the meal off site, all other requirements apply.

Required Actions

If a CE chooses to participate in this program, the CE must take the following actions:

1. Indicate its intension to offer non-congregate feeding at approved outdoor summer meal sites in the *SNP Application Packet* in TX-UNPS before using this option. This intention must be marked at both the CE and site levels.

   (NOTE: If the intention to offer non-congregate feeding is not indicated in the SNP Application Packet, and the CE exercises this option, the CE will not be reimbursed for meals claimed on the days non-congregate meal service was used because of excessive heat.)

2. Retain copies of notices provided by the National Weather Service for each day the approved site offered non-congregate feeding because of a Heat Advisory, an Excessive Heat Warning, or an Excessive Heat Watch for the area in which an approved outdoor site is located.

   (NOTE: If the CE does not maintain adequate documentation for non-congregate feeding offered under the Demonstration Project, TDA may take fiscal action.)

3. Report the number of days and number of meals served at non-congregate feeding sites at the end of each month in the online data collection tool as directed by TDA after receiving approval for the site to participate in the demonstration project.

Designated SSO Meal Periods and Months of Operation

SSOs are required to meet the following mealtime guidelines:

Meal Type	Served…
Breakfast	in the morning hours
Lunch	between 10:00 a.m. and 2:00 p.m.
Supper	After lunch and recommended to begin before 7:00 p.m. and end by 8:00 p.m.
Snacks	evenly and adequately spaced between other meal service times to minimize food waste and ensure good nutrition practices

TDA recommends a two-hour interval between all meal services.

Months of Operation

SSO meals may be served according to the following schedule:

Regular School Year	May through September when school is not in session
Continuous or Year-	Summer meal service may be offered during scheduled breaks of at least 10 school days, but

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Round Sites	may be shorter with TDA approval

Operation in a Declared Disaster

CEs with a current permanent agreement may provide meal services during a declared disaster with the approval of TDA. If, as a result of a declared disaster, approved SSO sites are damaged and unable to provide meals, TDA will expedite the process for approving a non-area eligible site in order to facilitate meal service. CEs should take extra care in these cases to ensure that correct claims are submitted for meals or snacks served. Meals claimed must match the program for which they were served.

Unanticipated School Closure

In the case of an unanticipated school closure, CEs must provide meal services at a non-school site if an alternate school site is not available. An unanticipated school closure is defined as

> a natural disaster, unscheduled major building repair, court order relating to school safety or other issues, labor-management dispute, or other similar cause as approved by TDA.

Staggered Meal Service Times

CEs operating an open site in the SSO may serve meals at staggered times for students attending summer school and children coming from the wider community. However, CEs must serve the same meal service for all service times—including, but not limited to, food items served, length of serving time,[42] eating area, and meal service locations.

Weekend Meal Service

CEs must request approval from TDA for weekend meal service. This request should be included in the site application submitted through TX-UNPS.

Meal Service, SSO

Meal Pattern

CEs must meet the NSLP or SBP meal pattern and nutritional standards requirements for lunch, breakfast, snacks, or supper. For SSO sites, supper meals served and claimed for reimbursement must meet the NSLP lunch meal pattern requirements.[43] For more information on the meal patterns, see the *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals; Section 8, Lunch Meals;* or *Section 9, Pre-Kindergarten Meals*.[44]

Age/Grade Exemption for SSO

CEs operating SSO should make every effort to follow the required age/grade group portion sizes in serving meals to children. This includes adding slightly larger or smaller servings of grains and meat/meat alternates for different aged

[42] This requirement is to ensure that a CE does not shorten the meal service time for children coming from the wider community. However, if the CE found that there were many more children from the community participating than the summer school participants, the CE could extend the serving time for the children from the community in order to ensure that all children had enough time to finish their meals.

[43] Additional information on the appropriate meal pattern can be found in the *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals* and *Section 8, Lunch Meals*, available at *www.SquareMeals.org*.

[44] On October 1, 2017, the Child and Adult Care Food Program meal pattern for pre-kindergarten students will be an age/grade group for the NSLP/SBP meal pattern.

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children. However, CEs, operating open and restricted open sites under SSO, may apply for an SSO Age/Grade Portion Size Waiver in order to serve only one portion size if the site is having difficulty implementing the age/grade group requirements. The exemption, if approved, will allow the CE to serve the portion size that is consistent with the most commonly served age/grade group at that site. An age/grade exemption is approved for a specific site.

The exemption application for each site must include the following:

- A designation of the age/grade group that has the most participants at the specific site.
- A detailed explanation why this particular site is unable to identify each child's age/grade group as part of the process for serving food.
- A statement that the site will serve portions to all participants based on guidelines for the most common age/grade group.

If approved, an SSO age/grade exemption applies only to the summer for which it is granted.

Submitting an Age/Grade Exemption for SSO

CEs submit an age/grade exemption for SSO through the Download Forms screen accessed from the Application Screen in TX-UNPS.

Shorter and Longer Weeks

CEs that regularly and consistently serve SSO meals more than five days per week must increase the weekly component quantities by 20 percent (⅕) for each additional day. Similarly, CEs that regularly and consistently serve SSO meals for less than five days per week must decrease the weekly component quantities by 20 percent (⅕) for each day less than five.[45]

[NOTE: Since the dietary specifications are based on average daily amounts, they are unaffected by varying week lengths. They represent an average over the length of the week, whether consisting of three or seven days.]

SSO Meal Service

A La Carte Sales for SSO

A la carte sales are not encouraged during summer meal service. Children should be encouraged to participate in the meal service being offered before they pay for a la carte items.

Family Style Meal Service for SSO

Closed enrolled and camp sites are the only types of sites that may offer family style meal service.

Field Trips During SSO Operation.

There is no requirement that CEs must obtain permission prior to serving meals

[45] See *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals* or *Section 8, Lunch Meals* for additional information on planning for shorter or longer weeks.

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on a field trip when operating SSO.[46]

Offer Versus Serve (OVS) for SSO

A CE, regardless of the location of its sites, may choose to use the OVS option for SSO if the CE or a specific site under its direction meets the following criteria:

- Indicate in TX-UNPS that the CE is operating an OVS meal service.
- Used the offer versus serve option during the current NSLP school year
- Serves the food cafeteria style at the site
- Uses OVS for breakfast and lunch only
- Follows the requirements of NSLP or SBP as described in the *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals* and *Section 8, Lunch Meals*[47]

Food Service Management Company's Role in SSO

A food service management company (FSMC) under contract with a CE for NSLP meal service may handle the same administrative tasks for meals served under the SSO. The contract must include summer meal service in the NSLP solicitation and contract. CEs must be compliant with all requirements related to contract procurement as described in *Administrator's Reference Manual (ARM), Section 17, Procurement* and *Section 18, Food Service Contracts*. FSMC personnel must follow the NSLP regulations, 7 CFR 210.16, which describe permissible administrative tasks that the company can perform on behalf of the CE.[48]

Training for SSO

The CE is expected to ensure that all staff involved in the SSO have the knowledge and skills needed to perform assigned tasks. CEs may utilize training and technical assistance provided by TDA or their regional education service center (ESC).[49] CEs may also provide in-house training or use any other appropriate training source.

Summer Food Service Program (SFSP)

Staff from NSLP CEs that operate SFSP are not required to attend training on the general operation of federal Child Nutrition Programs (CNPs). However, prior to the start of SFSP operations, program supervisory personnel responsible for the SFSP food service must attend TDA training that has been developed for NSLP CEs operating SFSP. CEs should contact their education service center (ESC) for additional information on available training.

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46 Under the requirements for SFSP, NSLP CEs must notify TDA via TX-UNPS about planned field trips and have approval for meals served on field trips.

47 Available at *www.SquareMeals.org*.

48 See the *Administrator's Reference Manual (ARM), Section 18, Food Service Contracts* for additional information on this topic.

49 Information on TDA training is available at *www.SquareMeals.org*.

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SSO Reimbursement Rates

Meals served under the SSO are reimbursed at the *free* rate as prescribed by USDA for NSLP (including snacks) and SBP. Supper meals are reimbursed at NSLP *free lunch* rate. However, for camp sites, meals served to children eligible for free and reduced-price meals are reimbursed at the free rate; meals served to children who are not eligible for free or reduced-price meals may not be claimed. TDA provides current reimbursement rates at *www.SquareMeals.org*.

Additional Reimbursement Amounts

For those CEs that receive additional reimbursement amounts the following guidelines apply:

Performance-Based Reimbursement

Qualifying sites will continue to receive performance-based reimbursement awarded under NSLP for the SSO program.

Severe Need

Qualifying sites continue to receive severe need breakfast and lunch rates awarded under NSLP or SBP for the SSO program.

Paid Meals for Children

CEs may not charge participating children for reimbursable meals unless the meals are served at a camp site. In a camp site, CEs may charge children who are not eligible for free or reduced-price meals for their meals. CEs cannot claim the meals for students who are not free or reduced-price—that is, paid meals are not reimbursable. In these cases, CEs need to ensure that staff do not overtly identify those children who are eligible for free or reduced-price meals.

Reimbursement During SY Transition from One Fiscal Year to Another

Since the rates change on July 1 each year, the June and July claims for reimbursement cannot be combined. June meals served under the SSO would be included in the same claim as regular NSLP meals for June.

- If the CE did not operate the regular NSLP in June but operated the SSO for 10 days or less in June, the CE may combine the June SSO meals on the May claim.
- Conversely, if the CE operates the SSO for 10 days or less during July, it may combine the July and August claims for reimbursement.

Second Meals

Second lunch and supper meals and snacks are not reimbursable in the SSO and, therefore, may not be claimed. However, second reimbursable breakfasts may be offered and claimed as long as the CE prepared.[50] If second meals are served, the CE must count and record these meals separately on daily meal count forms.

Supper Meals

A CE must not claim lunch and supper for the same student at the same site on the same day unless operating a migrant or camp site.

[50] Second meals may be disallowed if TDA determines that the CE has failed to plan and prepare or order meals with the objective of providing only one meal per child at each service.

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USDA Foods (Commodity) Entitlement

NSLP CEs may use their USDA Foods (commodity) allotment or bonus USDA Foods during summer operation.

Youth Workers

A CE may claim reimbursement for meals served to children or youths under the age of 18 who work for the CE's SSO program in open or restricted open sites. However, CEs must not claim reimbursement for meals served to children or youths under the age of 18 who work under the CE's SSO program in closed enrolled sites.

The *Reimbursement Guidelines Chart* provides information on the requirements for reimbursement based on site type.

Reimbursement Guidelines Chart

Type of Site	Meal Reimbursement Guidelines	Types of Meals Than May be Reimbursed*					
		B	a.m Sn	L	p.m. Sn	S	Per Day
Camp Site	Meals reimbursed at the free meals rate for individual free and reduced-price eligible children in attendance. Meals served to ineligible (paid) children are not reimbursed; camps may charge ineligible children for meals. May claim a maximum of 3 meals per child per day from the following: breakfast, lunch, snack, or supper. Only camp and migrant sites may claim lunch and supper served to the same children on the same day.	x	x	x	x	x	3
Closed Enrolled Site	Meals reimbursed for all children in attendance at the free meals rates when the site meets one of the following conditions: • At least 50 percent of the students enrolled at the site are approved for free or reduced-price meals. • The CE has documentation indicating that the site is located within the geographical boundaries of an attendance zone with at least 50% of its children approved for free or reduced-price meals or has used other data from TDA approved sources that demonstrate high economic need. May claim a maximum of 2 meals per child per day: lunch and breakfast, lunch and one snack, breakfast and one snack, or one a.m. snack and one p.m. snack; may not claim both lunch and supper on the same day.	x	x	x	x	x	2
Migrant Site	Meals are reimbursed at free meal rates for all attending students. May claim a maximum of 3 meals per child per day from the following: breakfast, lunch, snack, or supper. Only camp and migrant sites may claim lunch and supper served to the same students on the same day.	x	x	x	x	x	3
Open Site	Meals are reimbursed at the free meal rates for all attending children. May claim a maximum of 2 meals per child per day: lunch and breakfast, lunch and one snack, breakfast and one snack, or one a.m. snack and one p.m. snack. If two meals are served, one meal must be lunch.	x	x	x	x	x	2
Restricted Open Site	Meals are reimbursed at free meal rates for all attending children. May claim a maximum of 2 meals per child per day: lunch and breakfast, lunch and one snack, breakfast and one snack, or one a.m. snack and one p.m. snack; may not claim both lunch and supper on the same day.	x	x	x	x	x	2

*B = Breakfast; L = Lunch; a.m. Sn = a.m. Snack; p.m. Sn = p.m. Snack; S = Supper

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Adult Meals in SSO

In all circumstances, all children must be fed before adults receive a free or paid meal. The CE must maintain separate meal counts for all adult meals—free and paid.

Free Meal for Adults

Adults Working Directly with the Meal Service

Meals for adults working directly with meal service at a site—volunteers or paid employees—may be served free to those adults who meet this definition. These meals may not be claimed for reimbursement as a reimbursable meal but are an allowable expense for the program.

Meal Supervision or Security

The cost of one meal at each site during each meal service—breakfast, lunch, snack, or supper—for security personnel is an allowable expense that can be absorbed through use of reimbursement funds. This allowed expenditure assists CEs in providing security for open site campuses and demonstrates a strong partnership between education, community, and local law enforcement.[51]

The security official must be a salaried employee from a local, municipal, county, or state government law enforcement agency.

Paid Meal for Adults

Parents or adults who do not work directly with meal service at a site may be served a meal; however, the CE must charge the adult the full cost of the meal or use funds from a non-SNP source to cover the cost of the adult meal. [52]

All income from the sale of adult meals must accrue to the SNP nonprofit food service account.

CE Onsite SSO Self-Review or Self-Monitoring

The CE must conduct onsite monitoring to review the meal counting, claiming, meal planning and pattern compliance, and food safety requirements for all lunch sites and 50 percent of all breakfast sites at least once during its SSO operation if the CE operates more than one feeding site. TDA has provided a prototype monitoring form to be completed by the CE for each site.[53] A CE must fully complete the onsite self-monitoring form and take action to improve its program based on the information from self-monitoring form.

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[51] See *Administrator's Reference Manual (ARM), Section 19, Meal Pricing* for additional information on this topic.
[52] See *Administrator's Reference Manual (ARM), Section 19, Meal Pricing* for additional information on this topic.
[53] Forms are available at *www.SquareMeals.org*.

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SFSP Onsite Review

SFSP regulations include additional review requirements, including an onsite review during the first week of operation. For CEs that also operate NSLP/SBP, the onsite review during the first week of operation is waived if the CE is a returning CE in good standing. A CE that is in compliance with all program requirements is considered to be in good standing. If a CE's funds are on hold, it is not in good standing.

Edit Checks

Edit checks are not required for the SSO sites. However, CEs must ensure that meal counts are correctly claimed based on their records of meals served.

Extended-Year Programs

If a CE is operating an NSLP or SBP and SSO simultaneously, the CE must conduct an edit check on the NSLP and SBP, but not the SSO.

Comparison of SSO and SFSP

The *SSO and SFSP Comparison Chart*[54] illustrates the shared and dissimilar qualities of the programs.

SSO and SFSP Comparison Chart	
SSO	**SFSP**
Eligible Sponsors[55]	
School districts, schools, and charter schools that participate in NSLP or SBP.	School districts, schools, and charter schools (school food authorities or SFAs); local government agencies; private-nonprofit organizations; universities or colleges; or community and faith-based organizations.
Eligible Participants	
All children enrolled in a school of high school grade and under as determined by the Texas Education Agency (TEA) including persons enrolled in a school program for the mentally or physically disabled, and persons under 21 enrolled in an RCCI.[56]	Persons 18 years or younger and Persons 19 or older with a physical or mental disability (as determined by TEA or a local education agency) and who participate during the school year in a public or private nonprofit school program (established for the mentally or physically disabled).

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54 USDA provides a more detailed version of this chart in the *Administrative Guidance for Sponsors* and on the USDA website at *www.fns.usda.gov/school-meals/child-nutrition-programs*.

55 USDA uses the term School Food Authority (SFA) to refer to all agencies or organizations that sponsor USDA nutritional programs. Since sponsors include agencies or organizations that are not schools, TDA uses the term Contracting Entity (CE).

56 See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on the state's definition for enrolled student.

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SSO and SFSP Comparison Chart	
SSO	**SFSP**
Maximum Number of Meals	
The following meals may be served: Breakfast, a.m. snack, lunch, p.m. snack, and supper • Maximum two meals for all types of sites except Migrant and camp.[57] • Maximum three meals for Migrant sites and camps. Lunch and supper cannot be reimbursed on the same day by the same site, except for camp and migrant sites.	
Meal Cost for Children	
All meals are free. (Exception: Camps may charge paid students for meals, or a camp sponsors may provide meals free of charge to all children. If a CE chooses to serve all students at no charge, a CE operating a camp may only claim free and reduced-price reimbursable meals. The CE cannot claim the paid price reimbursable meals.)	
Meal Pattern	
Must meet requirements for the NSLP and SBP meal pattern[58] including portion sizes based on age/grade groups unless the CE has an approved SSO age/grade exemption. Must meet the pre-kindergarten meal pattern for very young children unless the meal service is comingled.	Meal pattern must meet the SFSP meal pattern. However, NSLP CEs may use the NSLP or SBP meal patterns.
Meal Service Locations	
Schools, camps churches, community centers, housing projects, libraries, migrant centers, parks, playgrounds, pools, other public sites where children gather.	
Meal Service Times	
• Breakfast must be served in the morning hours. • Lunch must be served between 10 a.m. and 2:00 p.m.[59] • Snacks must be evenly spaced between other meal service times. • Supper mealtimes must be established for each site.	No time limits on duration of meal service or amount of time that must elapse between the beginning of one meal and the beginning of the next.
Monitoring Required of State	
TDA conducts administrative reviews every 4 years. TDA must include one seamless site in an AR if a CE operates SSO.	TDA review every 3 years; at least one review during the first year of operation; and more frequently based on program size and prior problems identified by TDA.

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57 See the *Reimbursement Guidelines Chart* in this section for additional information on what meals a CE may claimed based on the type of site.

58 For information on the new meal pattern, see *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals* or *Section 8, Lunch Meals* available at *www.SquareMeals.org*.

59 TDA may approve a different meal service time as long as the change follows the order of normal meals—i.e., breakfast comes before lunch, lunch comes before supper. For additional information on other meal service times, see the *Administrator's Reference Manual (ARM), Section 21, Meal Service*.

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SSO and SFSP Comparison Chart	
SSO	**SFSP**
Reimbursement Rates	
NSLP and SBP rates are typically published in July of each year. • If area eligible, all meals are reimbursed at NSLP/SBP free rate. • Camps: If applications and categorical program participation are used to determine site eligibility, free and reduced-price meals are reimbursed at free NSLP or SBP rate. CEs operating camps must not claim reimbursement for paid meals even if the paid students are not charged for their meals. • Closed Enrolled: If applications and categorical program participation are used to determine site eligibility, all meals are reimbursed at the free rate.	SFSP rates established in January of each year. • SFSP CEs will only receive reimbursement for the number of meals claimed up to the maximum number of meals approved to be served at each site (without regard to actual or budgeted costs). • SFSP CEs may use reimbursement to pay for any allowable program costs. • Camps are reimbursed only for meals served to eligible children.
Times of Operation	
• May to September for traditional school calendar areas • October to May during unanticipated school closures (disasters or emergency situations) • During vacations of 10 school days or more for sites on a continuous year calendar	• May to September for traditional school calendar areas • October to May during unanticipated school closures (disasters or emergency situations) • During vacations of 10 school days or more for sites on a continuous year calendar
Types of Sites Eligible to Be Included in Program Services	
Camps: Offer a regularly scheduled food service as part of an organized program for enrolled children. Closed Enrolled: Fifty percent or more of enrolled students are eligible for free or reduced-price meals, determined by approved application or categorical program participation. Migrant: Certification by a migrant organization that the sites primarily serve students of migrant farm workers. Open: (1) Attendance area of a site or geographic area defined by a local education agency where 50% or more of students qualify for free or reduced-price meals or (2) geographic area defined by current census block data, combined current census block data, or current census track data[60] where 50 percent or more of the children qualify for free or reduced-price meals. These sites are open to the community.	
USDA Foods (Commodities)[61]	
NSLP CEs may use their commodity allotment or bonus commodities during summer operation for SSO or SFSP.	

[60] See the *SSO Sites—Site Eligibility* subsection in this section for additional information on this topic.
[61] See the current reimbursement rate for the USDA Foods (Commodity) Program at *www.SquareMeals.org*.

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Records Retention

CEs must retain documentation about meal production and service as well as counting and claiming. CEs are not required to use the forms provided by TDA for their records retention system, unless specified, but TDA strongly recommends that CEs do so. If the CE uses its own form/s, the form/s must include all elements included on the TDA forms. CEs also have the option to maintain records in paper or electronically.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, nonprofit organizations, and residential child care institutions after the end of the fiscal year to which they pertain. If audit findings have not been resolved, the records must be maintained as long as required for the resolution of the issues raised by the audit.

The CE must retain the following types of documentation in its record retention system:[62]

- Administration of the program
- Counting and claiming,[63] including a separate accounting for adult meals served as well as second meals served to children
- Food production records
- Meal pattern documentation
- Non-congregate feeding
- Program and nonprogram expenses and income[64]
- Records indicating income from nonprogram sources including paid adult meals
- Records demonstrating that paid meals served to adults were priced to cover the cost of the meal[65]
- Site eligibility

TDA may request documentation for both offsite and onsite administrative reviews. CEs are encouraged to develop a system of document retention that allows them to readily retrieve documentation.

Information Box 1

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

Mandated Summer Participation Operating Cost Report

Any CE that is mandated to participate in the SSO or SFSP and

1. operates a summer program as part of the Texas mandatory participation requirement or

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62 See *Administrator's Reference Manual (ARM), Section 30, Records Retention* for additional information on this topic.

63 See the *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming; Section 7, Breakfast Meals* and *Section 8, Lunch Meals* for additional information on point-of-service.

64 CEs income and costs for program and nonprogram operation must be proportional as describe in *Administrator's Reference Manual (ARM), Section 16, Financial System.*

65 See the adult meal pricing information in *Administrator's Reference Manual (ARM), Section 19, Meal Pricing* for additional information on calculating adult meal price.

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2. partners or collaborates with another organization or CE for the operation of a summer program in order to fulfill the Texas mandatory participation requirement

must submit the CE's summer operating costs at the end of summer through TX-UNPS.

This information is known as the *Summer Cost Report* and can be found in TX-UNPS. Costs on this report should include operating expenses that are incurred directly by the CE that is mandated to provide a summer feeding program. The following types of expenses should be reported:[66]

Administrative	Facilities	Meal Service
– Managing payroll and accounting – Oversight – Management salaries – Security – Training – Utilities – Mileage and transportation – Outreach materials – Printing and postage – Public service announcements (PSAs)	– Cost of opening the building – Renting space – Equipment – Commodity processing and storage – Non-food – Paper and cleaning products – Custodial services	– Food purchased – Value of USDA foods used

Compliance

TDA will conduct an onsite review of the CE's SSO program either the summer before a scheduled Administrative Review (AR) or the summer following a scheduled AR. During a scheduled AR, TDA will review at least one SSO site in operation.

TDA may also conduct additional offsite and onsite reviews.

Community Participation

During a scheduled AR, TDA will also observe community participation at the site and attempt to confirm whether the site advertised meals as described in the CE's application.

Additional Review

TDA may review SSO sites even if an AR is not scheduled for a CE especially if concerns arise about management of the SSO operations.

SSO Administrative Review Findings

Even though fiscal action for the SSO is computed separately from AR findings, the amount of fiscal action for the NSLP and SSO must be combined to determine if the $600 disregard can be applied to any over-claim.

[66] CEs that partnered or collaborated with another CE or organization and did not incur any costs must report .01 in the summer operating cost field in TX-UNPS even if they do not have any expenses to report.

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CEs with findings will be required to submit an approvable Corrective Action Document (CAD). Noncompliance in SSO can require adverse fiscal action. TDA may also take appropriate adverse fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance with accounting and financial requirements, including corrective action related to audits.

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Section 12

Fresh Fruit & Vegetable Program

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Section 12, Fresh Fruit & Vegetable Program

Update Guide

DATE	Clarified guidance on the following topics: - FFVP Funding Year - FFVP Service - time
January 4, 2022	Updated *Administrator's Reference Manual (ARM), Section 12, Fresh Fruit & Vegetable Program* to correct minor typos.
August 12, 2020	Updated *Administrator's Reference Manual (ARM), Section 12, Fresh Fruit & Vegetable Program* to update the *Administrator's Reference Manual (ARM)* section references. Clarified guidance on the following topics: – Financial systems – Allowable costs
April 22, 2020	Created a new section in the *Administrator's Reference Manual (ARM), Section 16, Fresh Fruit and Vegetable Program (FFVP).* Moved the guidance on confidentiality that was previously located in *Section 16* to a new *Section 4A, Protecting Confidential Information*. Moved the guidance on program integrity that was previously located in *Section 16* has been moved to a new *Section 17A, Program Integrity*. Provided guidance from the following documents has been incorporated into this section: – *USDA Memo SP 06-2015, Farm to School and School Garden Expenses* (November 21, 2014) – *USDA Memo SP 08-2011, Teacher Modeling in the Fresh Fruit and Vegetable Program (FFVP)* (November 5, 2010) – *Fresh Fruit & Vegetable Program: A Handbook for Schools (USDA)* (December 2010) – *USDA Memo SP 32-2009, School Gardens Q&As* (July 29, 2009) – *USDA Memo SP 35-2008, Frequently Asked Fresh Fruit and Vegetable Program Questions* (August 8, 2008)

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Fresh Fruit & Vegetable Program

The Fresh Fruit and Vegetable Program (FFVP) provides students in participating schools with free fresh fruits and vegetables during the school day. The program is intended to accomplish the following goals:

- Introduce students to a variety of fresh fruit and vegetables.
- Promote healthy eating habits.
- Increase students' fruit and vegetable consumption.
- Promote partnerships at the state and local level to support implementing and operating the program.
- Promote stakeholder engagement.
- Promote a healthier school environment by including as an activity for a school's local wellness policy.

Additional Guidance for Operation of the Fresh Fruit and Vegetable Program (FFVP)
Guidance which applies to the FFVP is also provided in other *Administrator's Reference Manual (ARM)* sections, including, but not limited to, the following:

- *Section 15, Program Integrity*: Ethical standards, code of conduct, and conflict of interest
- *Section 16, Financial System*: Allowable and unallowable costs, equipment purchases, disposal of equipment, purchases from school gardens
- *Section 17, Procurement*: Purchasing methods, local preference, and Buy American
  [NOTE: CEs may combine FFVP procurements with procurement for other programs. However, the CE must be able to document the costs that are specific to FFVP for these procurements.]
- *Section 17a, Procurement Procedures:* Procedures or processes that promote program integrity.
- *Section 20, Counting & Claiming*: Reimbursement for costs
- *Section 25, MealAccommodations:* Required and optional accommodations
- *Section 26, Food Safety:* Handling food items safely

FFVP Site Selection and Program Application

FFVP Funding Year
Funds provided for FFVP are allocated according to the federal fiscal year—October 1 to September 30. In Texas, each approved site receives a $50 minimum allocation for each student during the October 1 through June 30 period of operation.

Funds must be expended by the end of the period assigned.

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FFVP Site Selection and Program Application

Because of the large number of possible eligible sites across Texas, TDA is only able to provide funds to a select number of sites for each period of operation during each year.

Notification of Eligibility

TDA will notify all contracting entities (CEs) of site eligibility for each period of operation for each year.

Program Application Timeline

The CE must complete and submit the program application as directed by TDA. If the CE does not submit all of the required documentation to operate the FFVP according to the TDA timeline, the funds for the CE's site(s) may be reallocated to another CE.

Site Selection Criteria

TDA assigns priority for FFVP site allocation using the following criteria:

1. Represents the highest free and reduced-price enrollment for the state based on October enrollment from the previous year.

   [NOTE: Sites that are eligible in one school year may not receive funds in the following school year. Sites selected for the first allocation period for the school year may not be selected for the second allocation period of the school year.]

   Change in Student Population After Site Is Approved for FFVP—If a CE school reorganization results in significantly reducing the high percentage of free and reduced students for an approved site, the site's student population no longer represents accurate data from the previous October. Therefore, the site is no longer eligible to participate in FFVP.

   If this occurs, the CE must notify TDA immediately.[1]

2. Operates as an elementary school at the first of the school year.

   Approved FFVP Site Is No Longer an Elementary School—If a CE reorganizes schools so that an approved FFVP site that was an elementary school in October of the previous year is not an elementary under the reorganization, the site is not eligible to operate FFVP.

   If this occurs, the CE must notify TDA immediately.[2]

3. Participates in NSLP.

4. Has successfully operated the FFVP previously and/or other Child Nutrition Programs (CNPs).

   [NOTE: Successful operation of the FFVP includes, but is not limited to, adequate administrative support, timely and accurate

[1] See the Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition page which follows the table of contents for TDA contact information.

[2] See the Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition page which follows the table of contents for TDA contact information.

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submission of reimbursement claims, and appropriate and efficient use of funds.]

Special Guidance, Site Selection

Full Year Operation

If a site is not expected to remain open for the entire school year, the CE must not submit an application for that site.

For Example: A CE plans to close a school mid-school year.

New Site Identification Number

To identify which sites represent the highest free and reduced-price enrollments, TDA's calculations are associated with the site identification number, not the site name. Therefore, if a site changes its identification number before receipt of FFVP funds or after FFVP funds have begun to be paid, the remaining FFVP funds cannot be paid to the site with the new site identification number.

If this occurs, the CE must contact TDA immediately.[3]

Sites with High Free and Reduced Enrollment, Not Selected to Receive FFVP Funds

Even though a site's student population indicates that a site may be eligible for participation in the FFVP, a site may not be approved to receive FFVP funds for the following reasons:

- FFVP application is not submitted by the deadline for receipt.
- Site does not have the administrator support for operation the FFVP based on information submitted in the CE's FFVP application for the site.
- CE or site has a previous record of lack of administrator support for the operation of the FFVP.
- CE or site has a previous record of noncompliance with FFVP or another CNP.
- CE or site has a previous record demonstrating that it does not have an effective financial management system to support the operation of FFVP or another CNP.

Program Participants

FFVP sites must be operated exclusively at elementary schools. Program participants include the following:

Any student enrolled in the elementary site receiving FFVP funds, including students enrolled in pre-kindergarten (pre-K) or Head Start programs operated at an approved FFVP site. However, a CE may elect to include all students or a select group of students to receive fresh fruit and vegetables.
Teachers who are directly responsible for serving fruit or vegetables to students. Teachers are encouraged to model healthful eating habits by eating with their students.

Ineligible Participants

FFVP service is not available to the following individuals:

- Parents or other adults visiting an approved FFVP site

[3] See the Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition page which follows the table of contents for contact information.

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- General teacher population
- Administrators
- Children who are not students at the approved FFVP site

Planning for FFVP Operation

CEs are expected to take the following actions to implement FFVP:

- Establish a detailed plan for implementing the FFVP, which addresses the following issues—roles and responsibilities, timeline, procurement, and reporting.

  Establishing a detailed implementation plan within 60 days of the award and following that plan are critical actions for successful program implementation and efficient use of awarded funds.

  CEs that do not establish a detailed plan are often unable to use the awarded funds in a timely and efficient manner. In circumstances where a CE has not begun to use awarded FFVP funds within a reasonable period of time, TDA may reclaim the funds and reallocate the funds to another CE.

- Create a monthly budget to assist in tracking the use of funds and ensure that the funds awarded for each site will be fully expended by the end of the allocation period.

  TDA monitors each site's use of funds throughout the school year.

  - If the site (or CE) does not submit FFVP claims in a timely and efficient manner, TDA may reallocate the funds to a different CE.
  - If a site or CE's claiming practices during the program year indicate that the awarded funds will not be spent before the end of the allocation period, TDA may reallocate the funds mid-year to a different CE.

  A site that does not expend/claim a minimum of 95% of the awarded FFVP funds by the end of the allocation period may jeopardize the site's selection for FFVP participation in future program years, even if the site has a high free/reduced-price claiming percentage.

  To ensure that all funds are used in a timely manner, CEs should (1) include expected monthly costs in planning and (2) establish a process for monitoring the use of funds each month.

- Develop internal processes to validate and submit claims in a timely manner.

  This includes ensuring that claims for costs are submitted each month and that all submitted claims for reimbursement are allowable costs.

- Develop a plan to incorporate nutrition education and enrichment activities into the daily curriculum, preferably during the service of fresh fruits and vegetables.

  Incorporating nutrition lessons into the academic curriculum strengthens nutrition and enrichment activities. Engaging community partners in education and enrichment activities will widen the range of the experiences for the students.

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- Develop a plan for training staff to perform assigned roles and responsibilities.

  Incorporating assigned roles and responsibilities into the written plan will allow the CE to more closely monitor program activities and ensure that all those involved know what they are assigned to do and the timeline for all assignments.

- Obtain confirmation of support for operating the FFVP from the following officials: child nutrition director, site cafeteria manager, school principal at each site awarded FFVP funds, and the superintendent.

  Making sure that the program will have support from key leadership will help to build a strong foundation for program operation. If there are staff changes during the program year, written confirmations should be obtained from the new staff to ensure that they aware of expectations for the FFVP award.

  [NOTE: The FFVP application requires that the individual completing the form has confirmed that the child nutrition director, site cafeteria manager, school principal, and superintendent will support the operation of the FFVP for each site operating the program.]

  If there is a change in staff before the start of FFVP operation, the CE is expected to ensure that the new staff member will support the operation of the program.

Optional but Recommended

- Include the FFVP in the CE's local wellness policy.
- Utilize TDA's Farm Fresh Network resources to plan purchases from local Texas fruit and vegetable producers at *http://squaremeals.org/FandNResources/TexasFarmFresh/TexasFarmFreshNetwork.aspx*

Financial Management and Procurement Guidance

Financial management and procurement requirements[4] for the FFVP align to other Child Nutrition Programs (CNPs) in all situations except the following:

FFVP Allowable Administrative Costs

- All costs must be reasonable, allocable, and allowable as described in *Administrator's Reference Manual (ARM), Section 16, Financial System*.
- Up to 10% of a CE's FFVP funds may be used to cover administrative costs. Administrative costs beyond 10% must be covered by funds that do not come from the nonprofit school food service account.
  - Durable/Large equipment with TDA approval[5]—For durable/large equipment, the CE must document each of the following:
    1. Reason the CE's current equipment is not sufficient for FFVP operations.

[4] See *Administrator's Reference Manual (ARM), Section 15, Program Integrity; Section 16, Financial System; Section 17, Procurement*; and *Section 17a, Procurement Procedures*.

[5] See the Contract Information for the Texas Department of Agriculture (TDA), Food and Nutrition page that follows the table of content for contact information for issues related to claims.

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2. Number of times the FFVP snack is offered each week and the months of operation.
3. Percentage of time equipment is used for the FFVP.

If the equipment costs $5,000 or more, a capital expenditure request[6] must be submitted in the Texas Unified Nutrition Programs System (TX-UNPS). In that request, the CE must provide the information listed above to justify the purchase of the equipment.

Durable equipment includes, but is not limited to, refrigerators, coolers, portable service kiosks, carts, or food bars.

- Minimal labor costs for employees who plan program activities, including planning and writing menus; manage paperwork and submit reports; procure food items, equipment, and supplies; track inventory; and coordinate nutrition promotion activities.

FFVP Allowable Non-Administrative Costs

- Allowable fresh fruit and vegetable food products[7]
- Cleaning supplies
- Food items purchased from school gardens[8]
- Food service items, such as napkins, paper plates, serving bowls, and serving trays
- Minimal labor costs for employees who prepare foods for snack service, distribute snacks, set up snack distribution, and clean up
- Small equipment needed for snack preparation and service

FFVP Unallowable Non-Administrative Costs

- Additional food items used in cooking fruits and/or vegetables

  For Example: As a program activity, a teacher sets up stations for students to try varied methods for cooking and serving a vegetable or fruit. Some of the preparation methods call for spices or herbs, low-calorie oil, or dressing. The cost of the spices or herbs, low-calorie oil, and dressing are not allowable costs to the program.

- Materials for school gardens, i.e., seeds, plants, and tools
- Nutrition education materials
- Promotional materials, including, but not limited to, fruit/vegetable baskets for teachers or administrators
- Any food item not on the list of food items that can be served.[9]

Other Child Nutrition Program (CNP) Funds

- Funds from other CNPs cannot cover FFVP costs.

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6 See *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional guidance on capital expenditures.
7 See the *FFVP Snack Service* subsection in this section for additional information on allowable food items.
8 FFVP funds cannot be used for materials, tools, equipment, or seeds for the garden.
9 See the *FFVP Service* subsection in this section for additional guidance on allowable food items.

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Claims for Reimbursement

Unlike other Child Nutrition Programs (CNPs), CEs operating FFVPs are reimbursed for actual costs instead of reimbursement based on the number of meals or snacks served. CE's must use the following guidance in submitting claims for FFVP.

FFVP Claim Year Summary Screen

The FFVP Claim Year Summary screen in TX-UNPS allows CEs to monitor the following information for each site:

- Total allocated award amount
- Claim amounts processed to date
- Remaining allocation balance available for the remaining award months for each site

Monthly Claims

Each month, the CE submits its FFVP claim by site by cost item in the TX-UNPS Claims Module. FFVP claims are subject to the same late claim requirements as other CNPs. See *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for more information on the timeline for claim submission.

Allowable Costs for Claims

All claims must include only costs that are allowable by program regulations. See the other subsections under the *Financial Management and Procurement Guidance* subsection above for detailed guidance on allowable costs for FFVPs.

Certification of Accuracy

When the claim preparer submits a claim, the person is certifying that the claim is accurate and includes only allowable costs.

Claims Exceeding Allocation Amount

Claims exceeding the amount of allocated funds available will not be processed. The FFVP Claim Year Summary Screen provides information on the amount paid for all approved claims. This information will help the CE monitor the remaining available funds.

If a CE submits a claim which exceeds the available funds, the entire claim will be returned for correction. When an FFVP claim is returned for correction, the result may be a late claim submission.[10]

FFVP Service

Location

FFVP foods may be served in classrooms, in hallways, at kiosks, through vending machines, during nutrition education and enrichment activities, or other innovative locations.

Time

FFVP service must occur during the instructional school day but FFVP service **cannot** occur during the NSLP or SBP mealtimes.

[10] See *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for more information on the timeline for the submission of claims.

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FFVP items also cannot be served during the operation of the Seamless Summer Operation (SSO), Summer Food Service Program (SFSP), Afterschool Care Program (ASCP), and Child and Adult Care Food Program At-Risk (CACFP At-Risk).

If funding allows, TDA encourages CEs to operate FFVP throughout the program year after funding is received (October 1 through June 30).

Food Items Served

The food items served in the FFVP service must be fresh fruit and vegetables.

The following lists provide detailed guidance for food items that may be served in limited amounts and food items that cannot be served.

Allowed If Limited in Use	Not Allowed
– Dips for vegetables in a common condiment *serving size* as described on a Nutrition Facts Label—Dips must be low-fat yogurt or other low-fat or non-fat. – Cooked/Prepared fresh vegetables—Cooked/Prepared vegetables cannot be canned, frozen, dried, or otherwise processed. Serving cooked/prepared vegetables is limited to once-a-week. Cooked/Prepared vegetables must be served when there is also a nutrition education or enrichment lesson related to the cooked/prepared food item. The cost of any food item or spice added to cooked/prepared vegetables is an unallowable cost.[11]	– Processed or preserved fruits and vegetables—canned, frozen or dried – Dips for fruit – Fruit or vegetable juice – Snack-type fruit products such as fruit strips, fruit drops, fruit leather – Jellied fruit – Trail mix – Nuts – Cottage cheese – Fruit or vegetable pizza – Smoothies – Fruit with added flavorings, including fruit injected with flavorings – Carbonated fruit

Recommended Strategies for Increasing Program Participation/Service

The following strategies may assist CEs in increasing program participation and student acceptance of fruit and vegetables.

- Provide fresh fruits and vegetables a minimum of twice a week because repeated exposure to new foods is key to student acceptance of fruit and vegetables.
- Serve students' favorite fruits and vegetables, but also introduce new fruit and vegetable items at the same time.
- Use smaller portions when introducing a new fruit or vegetable and, then, increase portion size as student acceptance increases.
- Use serving methods that make fruit and vegetables easy for students to handle.
- Use new methods of service to raise student interest, including such methods as vending machines, tasting sessions, serving trays instead of individual servings, food kiosks, meet the farmer events, and food tastings.

[11] See *Administrator's Reference Manual (ARM), Section 16, Financial System* for addition information on allowable costs.

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- Precut fruit and vegetables to make them more appealing and less messy.

Building Stronger Support for FFVP

FFVP operators will build greater support for the FFVP service if they engage other community partners and stakeholders in planning and implementation. Engagement includes, but is not limited to, the following:

- Establish partnerships on a local level with groups such as
  - Local grocers and stores
  - Local farmers
  - Health departments, community health agencies, or hospitals
  - Extension services
  - Vocational clubs

  These partnerships can lead to additional resources to support program implementation, including nutrition education and enrichment activities, and may also result in additional funding for increased participation and services.
- Promote stakeholder engagement, including involvement and commitment from stakeholders such as
  - Teachers
  - Food service staff
  - Parents
  - Administrators
  - Other school staff such as school nurses and custodial staff
  - Parental involvement organizations
  - Students

  Engaging stakeholders may result in additional resources to support program implementation, help identify additional resources to support program operation, and build greater buy-in from all who have a stake in the program's success. The use of volunteers can reduce the administrative costs for operating the program.

Nutrition Education and Enrichment Activities for FFVP

FFVP are required to include nutrition education and enrichment activities with the snack service. Nutrition education and enrichment activities may include information about a specific fruit or vegetable, food safety, preparing fresh fruits and vegetables for eating, or manners. The following strategies are commonly used to foster nutrition education and enrichment activities:

Connect to Regular Classroom Activities

- Align nutrition education and enrichment activities to instructional topics occurring at the same time.
- Incorporate eating with classroom activities during silent reading or nutrition education and enrichment activities.

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- Foster coordination between classroom teachers and the FFVP to co-create lessons specific to fruits or vegetables such as a fruit or vegetable of the day that corresponds to a lesson in geography, science, reading, writing, or math.

Foster Good Manners

- Develop guidelines to remind students of good manners when they receive and eat their fruit and vegetable snacks and dispose of their trash.
- Create activities that combine fostering good manners with how the food items are served.

Promote Nutrition Education and Enrichment Activities Inside of the School

- Use daily announcements to promote the FFVP fruit or vegetable to be served on that day.
- Share pictures of events on school bulletin boards (including electronic or online communications).

Promote Nutrition Education and Enrichment Activities Outside of the School

- Incorporate school-to-farm visits or farmer-to-school visits as nutrition education and enrichment activities.
- Plan training activities for parents and community members to promote the fruits and vegetables served in the FFVP.
- Create weekly or monthly menus for the FFVP snacks for students to take home to share with student families.
- Create a monthly newsletter to alert students and parents about what fruit and vegetables have been served and will be served. The newsletter can also provide recipes that can be used at home, include pictures of students participating in the FFVP service, and describe student responses to new fruits and vegetables.
- Establish a communication plan to share information about the program with administrators, parents, students, and the public.
- Identify local resources for free nutrition education and enrichment materials.

Training

CEs must ensure that all staff involved in the FFVP have sufficient training to perform the tasks they perform in their assigned role before the CE begins operation of the FFVP. This includes, but is not limited to, the required civil rights training.[12]

CE employees who are assigned to work only in the FFVP and no other Child Nutrition Program (CNP) are not required to meet the professional standards as described in the *Administrator's Reference Manual (ARM), Section 27, Professional Standards*. However, employees who work in both the FFVP and NSLP/SBP may count training for the FFVP program toward meeting the professional standards requirements if the training aligns with NSLP/SBP operational tasks.

[12] See *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality* for additional guidance on civil rights.

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CEs must retain documentation that demonstrates that all staff have received the training necessary for them to perform the tasks assigned before beginning implementation of the program.

Resources

TDA Resources

TDA provides numerous resources on building a team, finding and buying local foods, food safety, curriculum integration, and more at *http://squaremeals.org/FandNResources/TexasFarmFresh/FarmFreshTraining.aspx*

USDA Resources

USDA Team Nutrition's website has a variety of resources specific for the FFVP available at *https://www.fns.usda.gov/ffvp/fresh-fruit-and-vegetable-program-resource-center*, including the *Fruits & Vegetables Galore: Helping Kids Eat More*.

Records Retention

The CE is required to maintain records for all program operations. CEs have the option to maintain records on paper or electronically.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, nonprofit organizations, and residential childcare institutions (RCCIs) after the end of the fiscal year to which they pertain. If audit findings have not been resolved, the records must be maintained as long as required for the resolution of the issues raised by the audit.

Documentation or records the CE must retain include, but are not limited to, the following topics:

- Claim submissions
- Financial and accounting documentation for program income and costs
- Food items served
- Nutrition education and enrichment activities
- Procurement
- Program participation
- Support documentation for claims submitted
- Training

Information Box 1

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Nonprofit private schools, other organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

Compliance

The CE is responsible for ensuring that FFVP activities are in compliance with all regulations. This includes, but is not limited to, use of funds, program activities, and claims submission.

TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance. CEs must make available, upon request of the awarding agency (state or federal), any or all documentation described in the *Records Retention* subsection in this section.

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Section 13

Special Milk Program

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Section 13, Special Milk Program

Update Guide	
August 12, 2020	Updated *Administrator's Reference Manual (ARM), Section 13, Special Milk Program* to update the *Administrator's Reference Manual (ARM)* section references.
August 28, 2017	Updated *Administrator's Reference Manual (ARM), Section 27, Special Milk Program* to add cross references to applicable guidance from other sections and reorganize guidance specific to the Special Milk Program.

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847
Phone 877-TEX-MEAL, (877) 839 -6325	**Email Contact** *SquareMeals@TexasAgriculture.gov*
Fax (888) 203-6593	**Website** *www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
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National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

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Special Milk Program (SMP)

The Special Milk Program (SMP) is intended to encourage the consumption of fluid milk by students/children and help defray the cost of providing milk to students/children. To participate in the SMP, contracting entities (CEs) must agree to operate a nonprofit milk service and use all SMP funds to conduct or improve the milk service operation for the benefit of the enrolled students/children. However, CEs can also use facilities, equipment, and personnel supported by SMP funds to operate a nonprofit nutrition program for the elderly.[1]

Additional Guidance for SMPs

CEs operating SMP are expected to adhere to applicable requirements as described in other sections of the Administrator's Reference Manual (ARM).

- *Section 2, Application and Agreement*

  Including, but not limited to, the following:

  - Application
  - Authorized Representative
  - Certificate of Authority
  - Food and Nutrition Agreement
  - Policy Statement
  - Program Agreement
  - Termination of Agreement
- *Section 3, Civil Rights & Confidentiality*
- *Section 4, Eligibility Determination*

  Including, but not limited to, the following:

  - Application prototypes
  - Appeals process
  - Carryover period
  - Electronic and web-based applications
  - Eligibility determination
  - Eligibility determination timeline
  - Information letter and media release
  - Letters to household
  - Limited English proficiency
- *Section 15, Program Integrity*

[1] See *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on the Nutrition Services Incentive Program (NSIP) which is administered by the United States Department of Health and Human Services, Administration on the Aging.

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- *Section 16, Financial System*

  Including, but not limited to, the following:

  - Allowable costs
  - Audits
  - Program revenue
  - Use of program funds
- *Section 17, Procurement*
- *Section 20, Counting & Claiming*

  Including, but not limited to, the following:

  - Counting, Coding, and Recording Milk Served
  - Claiming Reimbursement
- *Section 25, Meal Accommodations*

  Including, but not limited to, the following:

  - Accommodations for medical disabilities
  - Milk substitutes
- *Section 26, Food Safety*

  Including, but not limited to, the following:

  - Storage
- *Section 30, Records Retention*

  All forms required for SMP as described
- *Section 31, Administrative Review (AR)*

Types of Entities Operating SMP

The following types of entities commonly participate in SMP:

- Nonprofit school, grades 12 and under that does not currently participate in another Child Nutrition Program (CNP)—National School Lunch Program (NSLP), School Breakfast Program (SBP), Child and Adult Care Food Program (CACFP), or the Summer Food Service Program (SFSP).

  However, if the school has split-session kindergarten for which students/children do not have access to a meal program, the school may operate SMP for these students/children.
- Nonprofit nursery school
- Nonprofit licensed childcare center
- Nonprofit summer camp
- Settlement house
- Homeless shelter
- Residential child care institution (RCCI) that is a home for the mentally and physically impaired; home for unmarried mothers and their infants; group homes; halfway houses

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orphanages; temporary shelter for abused students/children and/or runaway students/children; long-term care facility or chronically ill students/children (hospital, skilled nursing facility, intermediate care facility or a facility intended for the care of students/children confined for 30 days or more); or juvenile detention center

[NOTE: Private RCCIs and private nonprofit non-residential child care centers must be licensed by the appropriate agency governing the operating of the entity type.]

Types of Special Milk Programs

CEs may operate one the following types of SMPs:

Pricing Program with Free Option

Milk is free to eligible students/children and is sold to other students/children at a reduced price. A standard rate of reimbursement is provided for the milk sold to paying students/children (paid eligible students/children), and an average of the actual price paid for the milk is reimbursed for the milk provided for non-paying students/children (free eligible students/children). This option requires eligibility determination documentation.

Pricing Program without Free Option

Milk is sold to all students/children at a reduced price, such as the actual price of the milk minus the amount of the USDA reimbursement. This option does not require eligibility determination documentation.

Nonpricing Program

Milk is served free to all participating students/children. The CE is reimbursed a standard rate for each half-pint of milk served. This option does not require eligibility determination documentation.

Types of Milk Served

CEs must offer pasteurized fluid types of unflavored or flavored 1% or skim milk, contain vitamins A and D as specified by the Food and Drug Administration (FDA), and be consistent with state and local standards for milk.

Milk may be purchased in bulk but is claimed in half pints. A milk substitute must be served at no additional charge if provided to a paid student/child or at no cost if a free student/child if a student/child has a medical disability as described in *Administrator's Reference Manual (ARM), Section 13, Accommodating Students with Medical Disabilities and Special Dietary Needs*.

Milk Prices for Paid Students/Children

There is no restriction on the amount a CE may charge a paid student/child for a half-pint of milk. However, the CE must operate the SMP on nonprofit basis and use reimbursement payments to reduce the price of the milk or improvement of the milk program.

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Milk Storage

Ensure that milk storage and service conform to local and state sanitation and health standards. Ensure that facilities for handling, storing, and distributing milk safeguard the milk properly against theft, spoilage, or other losses.

Reimbursement

The CE submits milk counts by site to TDA via the Texas Unified Nutrition Programs System (TX-UNPS). There is no restriction on the number of half-pints of milk that may be served to students/children enrolled in the facility. Milk served to adults cannot be claimed. Reimbursement rates are different for each category of milk benefit (free or paid). Thus, accurately counting, recording, and consolidating the number of half pints of milk served by category is the only way a claim for reimbursement can be properly submitted ensuring the CE is correctly paid for the milk served.

Reimbursement by Type of CE

The following guidance must be used in determining when milk may be claimed under SMP:

Traditional Schools

May be reimbursed for milk served on a day that is not a regular school day if the activity is an integral part of the curriculum or an actual extension of the local educational program and not a school-affiliated extracurricular event or activity such as football, band, or chorus

Boarding Schools

May be reimbursed for milk served on a weekend if the weekend is an extension of the weekday educational program

Residential Child Care Institutions (RCCIs)

May be reimbursed for milk served on weekends

Year-Round Schools

May be reimbursed for milk on days when students/children are attending a regular school day, i.e., may not be reimbursed for milk on vacation days

Information Box 1

Safe Milk Storage Tips

Milk spoilage, deterioration, and contamination usually occur because of refrigeration malfunction and improper storage practices. Follow these guidelines:

- Store milk in refrigerators and coolers that are operating properly and in good repair.
- Place containers on pallets or shelves, leaving a one- to two-inch space between the walls and the milk containers to ensure proper air circulation.
- Record temperatures in the refrigerators and coolers daily.
- Check thermometers and other refrigeration equipment periodically to ensure that they are operating properly and repair any malfunctioning equipment immediately.
- Equip refrigerators and coolers with an alarm system that allows easy detection of high temperatures and power failures.
- Check refrigerators and coolers immediately after a power failure to make sure they are operating properly and that milk is still in good condition.

A CE cannot deny milk as a disciplinary action against any student/child enrolled in a facility participating in a Child Nutrition Program. If, for disciplinary reasons, a student/child is not allowed to participate in milk service in the serving area with the other students/children, the CE must still ensure that milk is still available to the student/child. However, disciplinary action

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that indirectly causes a student/child to miss a milk service is allowable (i.e., suspension from school).

Point of Service System

The CE must have a point of service (POS) system that allows the CE to accurately count the number of half-pints of milk served to students/children. If the program is a pricing program with a free option, the POS system must record milk served by eligibility category—free or paid.

For pricing programs with the free option only, the reimbursement rates for milk served to eligible students/children equals the total cost of all milk purchased during the claim period divided by the total number of half-pints served to paying students/children. The CE may add a five-cent distribution charge to the cost of each half-pint of milk to cover the cost of straws, napkins, refrigeration, and handling.

If a CE operates NSLP or SBP for some students/children and SMP for another group of students/children, the CE must ensure that students/children served milk under SMP are not the same students/children participating in an NSLP or SBP meal service.

Claiming Information

The CE must include the following information in each month's claim:[2]

- Actual number of half-pints of milk served to students/children;
- Actual number of half-pints of milk served free to eligible students/children in programs that charge for paid students/children;
- Total cost of all half-pints of milk purchased (round to nearest dollar); and
- Total number of all half-pints of milk purchased.

TDA Forms

TDA provides the following forms for CEs to use with SMP:

- *Cooler or Freezer Temperature Recording Form*—This form may be used as a log to demonstrate that CE has kept milk at the proper temperature.
- *Media Release for Free Milk Sample (Special Milk Program)*—A sample media release that CEs may use to assist them in providing information to the public on the SMP the CE offers. The form is available at *www.SquareMeals.org*.
- *Multi-Child Application for Free Milk*—This application is used by CEs to collect the information necessary to determine eligibility. The form is available at *www.SquareMeals.org*.

[2] See the *Records Retention* subsection in this section for additional information on the documentation required for claiming.

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- *Multi-Use Application for Free Milk*—This application is used by CEs to collect the information necessary to determine eligibility and to provide information to other programs that may provide additional services to households. The form is available at *www.SquareMeals.org*.
- *Policy Statement for Special Milk, Attachment B: Milk Count/Collection Procedure(s) (Policy Statement)*—This form allows the CE to indicate how it will uniformly determining a student/child's eligibility to receive the benefits of the SMP. The Policy Statement is available at *www.SquareMeals.org* and in TX-UNPS in the *Download Forms* hyperlink accessed from the Applications screen.
- *Special Milk Program Worksheet*—A form a CE may use to record daily milk service and milk purchases. The form is available at *www.SquareMeals.org*.

Records Retention

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, nonprofit organizations, and residential childcare institutions after the end of the fiscal year to which they pertain.

CEs are encouraged to develop a system of document retention that allows them to readily retrieve documentation.

Information Box 2

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

The CE must retain the following types of documentation in its record retention system:[3]

- Administration of the program
- Communications with households
- Counting and claiming,[4] including a current Policy Statement and documentation of ½ pints of milk served
- Eligibility determination
- Financial records, including receipts and/or invoices for all milk purchases
- Licensing
- Outreach, including, but not limited to, the media release
- Safe storage of milk

For more information on the specific types of documentation that is required, see *Administrator's Reference Manual (ARM), Section 30, Records Retention*.

TDA may request documentation for both offsite and onsite administrative reviews.

[3] See *Administrator's Reference Manual (ARM), Section 30, Records Retention* for additional information on this topic.
[4] See the *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on point-of-service.

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Compliance

TDA will review documentation submitted through TX-UNPS, retained onsite, or on request to ensure that the CE is compliant with the regulations described in this section and other applicable sections. Operational areas to be reviewed, include, but are not limited to, milk served, eligibility determination, POS system, communication with households, outreach notifications, counting and claiming, financial records, and other issues as required by regulations.

CEs with findings will be required to complete adequate Corrective Action Documentation (CAD). Noncompliance in these areas can require fiscal action. TDA may also take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance with the accounting and financial requirements, including corrective action related to audits.

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Section 14

USDA Foods

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Section 14, USDA Foods

Section 14, USDA Foods Update Guide

September 29, 2022	Clarified guidance on the following topics: - Case minimums - Using USDA Foods
January 4, 2022	Updated *Section 14, USDA Foods* to clarify information on the following topic: - Food recalls
August 12, 2020	Updated *Administrator's Reference Manual (ARM), Section 14, USDA Foods* to update *Administrator's Reference Manual (ARM)* sections references.
October 25, 2019	Updated *Section 21, USDA Foods* to clarify information on the following topics: – Carryover USDA Foods – Conflict of interests and duplication of services – Definition for diverted products – Food Service Management Company (FSMC) and USDA Foods – Resources – Title for USDA Foods – Transfer of USDA Foods
September 5, 2019	Updated *Section 21, USDA Foods* to incorporate the following United States Department of Agriculture (USDA) memos and guidance: – *USDA Memo FD-64: Processing (Revised), Management of USDA Food Inventories at Processors* (April 2, 2019) – *Revisions and Clarifications in Requirements for Processing of Donated Foods, Final Rule for 7 CFR Part 250, Federal Register Vol. 83, No. 84* (May 1, 2018) – *USDA Memo FD-104: Value of USDA Donated Foods for Audits (Revised)* (December 2, 2016) Clarified information on the following topics: – Backhauling – Bonus foods – Buy American – Commingling – Compliance – Crediting for the value of USDA Foods – Definitions – Delivery and shipping of USDA Foods – Disaster – Distributors – Excess carryover inventory – Food recall/alert – Food Service Management Company (FSMS) contracts – Inventory – Loss of USDA Foods – Ordering USDA Foods – Processing and processing contracts

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- Purchasing cooperatives
- Record retention
- Replacement of USDA Foods
- Roles and responsibilities
- Storage
- Substitutions
- Texas Commodity System (TCS)
- Title to USDA Foods
- Value of USDA Foods for auditing purposes

July 21, 2016

Updated *Section 21, USDA Foods* to incorporate the following United States Department of Agriculture (USDA) memos and guidance:

- *USDA Memo SP 25-2014, School food Authorities (SFAs) Purchasing Produce from U.S Department of Defense (DoD) Vendors Using Section 4 and 11 or Fresh Fruit and Vegetable Program (FFVP) Funds* (March 6, 2014)
- *USDA Food Distribution National Policy Memorandum FD-125, Offering School Food Authorities the Required Value and Variety of USDA Foods, and Efficient and Cost-Effective Distribution* (October 11, 2012)
- *USDA Food Distribution National Policy Memorandum FD-119, Soliciting Bids from Commercial Distributors for End Products* (February 13, 2012)
- *USDA Food Distribution National Policy Memorandum FD-110, Clarification in Crediting for, and Use of, Donated Foods in Contracts with Food Service Management Companies—First and Final Contract Years* (January 25, 2011)
- *USDA Food Distribution National Policy Memorandum FD-067, School Food Authorities Acting as a Collective Unit in the Control and Use of Donated Foods* (December 14, 2009)

Clarified information on the following topics:

- Allocation of USDA Foods
- Compliance
- Contracting entity (CE) responsibilities
- Crediting for USDA Foods Values
- FSMC contracts
- Inventory management
- Finished end products
- Records retention
- Resources
- Substitutions
- Unused USDA Foods

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

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- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
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USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

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USDA Foods

The United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) is charged with administering the Food Distribution Program (FDP). Depending on market conditions, the Agricultural Marketing Service (AMS) purchases the following products for the FDP: meats, poultry, fish, fruit, vegetables, egg products, dry beans, and tree nuts. These purchases assist farmers and commodity processors (1) to maintain stable prices for United States agricultural products and (2) to support school nutrition programs (SNPs) in providing meals to students.[1] The agricultural commodities purchased through this program are called USDA Foods (formerly USDA-donated commodities).

USDA Foods are distributed to state agencies for use by eligible organizations, including contracting entities (CEs) that operate National School Lunch Program (NSLP). Each CE with a *USDA Foods Agreement Between Contracting Entity and Texas Department of Agriculture* is awarded an amount of funds—entitlement—that is used to obtain USDA Foods products. TDA, then, allocates specific USDA Foods products to CEs based on periodic surveys of available USDA Foods.

USDA Foods in Child Nutrition Programs

An NSLP CE may use its allocated USDA Foods in the following programs:

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Fresh Fruit and Vegetable Program (FFVP)
  - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)
- Adult Care Food Programs (CACFP), including At-Risk
- Summer Food Service Program (SFSP)

  [NOTE: Any NSLP CE that uses USDA Foods in SFSP and is not a public school or a charter school is required to complete the USDA Foods Inventory form at the end of the program operation each year. This form is sent the second week in August and must be returned to TDA by September 1 of each year.]

USDA Foods for Other Food Service Activities

- Other nonprofit school food service activities

  [NOTE: This includes a la carte foods sold to children; meals served to adults directly involved in the operation and administration of the nonprofit school food service, and other school staff; and training in nutrition, health, food service, or general home economics instruction for student.]

However, the CE's allocation of USDA Foods is based solely on its participation in the National School Lunch Program.

USDA Foods Agreement Between Contracting Entity and Texas Department of Agriculture

CEs are required to enter into a *USDA Foods Agreement Between Contracting Entity and Texas Department of Agriculture* with the Texas Department of Agriculture (TDA) in order to receive USDA Foods. The documents necessary to enter into this agreement for a contracting entity (CE) are included in the application packet for NSLP.

USDA Foods received by CEs must be used as required by federal regulations and cannot be sold, exchanged, or disposed of in any manner not allowed by regulation. CEs may charge for paid and

[1] Additional information on FDP is available at *www.ams.usda.gov*.

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reduced-price meals and a la carte[2] items which contain USDA Foods.

Roles and Responsibilities

The *Summary of USDA Foods Distribution Process Roles and Responsibilities Chart* outlines the roles and responsibilities in awarding USDA Foods entitlement and allocation of USDA Foods products.

Summary of USDA Foods Distribution Process Roles and Responsibilities Chart
USDA
• Announces each state's USDA Foods entitlement. • Works with agriculture to obtain suitable food products. • Provides USDA Foods product information to states. • Works with states to ship allocated USDA Foods.
TDA
• Surveys districts to assist USDA in determining what food items are needed by CEs. • Announces each CE's USDA Foods entitlement and posts the amounts in the Texas Unified Nutrition Programs System (TX-UNPS). • Posts USDA Foods offerings in TX-UNPS, so CEs can draw down entitlement. • Allocates specific USDA Foods items in response to the surveys located in TX-UNPS. • Contracts with companies to receive, store, and deliver USDA Foods to CEs. • Monitors USDA Foods shipment and inventory to state-contracted warehouses. • Imports and exports USDA Foods data between TX-UNPS and USDA's ordering system, Web-Based Supply Chain Management System (WBSCM). • Monitors USDA Foods inventory and usage of entitlement through TX-UNPS.
CE
• Completes surveys in TX-UNPS to order USDA Foods based on the allocated entitlement. • Takes possession of (receives) USDA Foods. • Uses allocated USDA Foods products. • Completes appropriate online forms to ship USDA Foods to properly procured processors. • Monitors its allocation of USDA Foods products and entitlement in TX-UNPS. • Monitors contracts to ensure the CE receives the full credit for all USDA Food values. • Monitor's inventory and usage at the processor through processor tracking systems. • Reports ongoing delays for shipment receipts to TDA.

[2] While CEs may incorporate USDA Foods in a la carte items or may sell leftover breakfast or lunch food items as a la carte sales, TDA recommends that CEs use their USDA Foods in student meals to the greatest extent possible.

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Processor
• Enters into an agreement with USDA and/or TDA to process USDA Foods as defined by USDA. • Ensures that there is an agreement with all distributors the processor uses as defined by USDA and/or TDA. • Secures performance bonds and surety bonds as required. • Provides Summary End Product Data Schedule (SEPDS) and provides updated SEPDS upon USDA approval to TDA as required. • Provides detailed product information to assist CEs in meeting menu and production requirements. • Delivers finished end products as described in the processing contract. • Takes possession of (receives) USDA Foods to make finished end products. • Invoices CEs for processing USDA Foods as described in the contract, including crediting the CE for the value of the use of its USDA Foods in the finished end products. • Maintains an accurate inventory and tracking system for USDA Foods received and delivered. • Provides routine (monthly) performance, inventory, and production reports to TDA and USDA 30 days after the reporting period. • Adheres to all applicable USDA, state, and local food safety regulations for the receipt, storage, and production of USDA Foods into finished end products. • Takes action in response to food product recalls as required by USDA. • Notifies TDA and CEs of prolonged production issues that will cause delivery delays and excess inventories.
Distributor
• Enters into an agreement, as defined by USDA, with USDA, TDA, processors, or CEs for the delivery of USDA Foods finished end products. • Stores and delivers USDA foods as stipulated in CE contracts and processor agreements. • Takes possession of (receives) USDA Foods. • Maintains an accurate inventory and tracking system for USDA Foods received and delivered. • Takes action in response to food product recalls as required by USDA.

Definitions for This Section

For this section, the following definitions will be useful:

A La Carte Sales	Individually priced food and/or beverage items sold during the meal service by the school nutrition program. These items may or may not be included in a reimbursable meal.
Acting on Behalf of CE	Entity or person who has been given the responsibility to take action for the CE.
Allocation	Quantity of USDA Foods allocated (or assigned) to CEs by TDA. CEs place requests for specific USDA Foods in TX-UNPS based on their total entitlement.
Backhauling	Delivery of USDA Foods to a processer for processing from a CE's or distributing agency's (TDA's) storage facility.
Bonus Foods	USDA Foods that are purchased under surplus removal or price support authority and then provided to TDA in addition to legislatively authorized levels of assistance. Bonus foods are not charged against a CE's food entitlement amount. A CE may request as many bonus foods as it can use without waste.

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Buy American	Requirement for schools to purchase, to the maximum extent practicable, domestic commodities and products. A domestic commodity or product means an agricultural commodity that is grown in the United States and (1) that is processed in the United States or (2) that is processed in the United States substantially using agricultural commodities that are produced in the United States.
Calendar Year	January 1 through December 31 of each year.
Carrier	Commercial enterprise that transports USDA Foods from one location to another but does not store USDA Foods.
Carryover Inventory	USDA Foods from the previous school year left with the processor.
Catering or Vended Meals	An agreement or contract with a food service management company (FSMC) to provide meals.
Commingling	Storage of USDA Foods together with commercially purchased foods.
Commercial Equivalent	Product of the same generic identity, of United States origin,[3] and of equal or better quality substituted for a USDA Foods product. This definition is specific to USDA Foods. For other purposes, the same definition may not apply.
Contract	Formal, legally enforceable agreement (terms and conditions) between a buyer (the CE) and a seller (contractor) that clearly and accurately describes the products and/or services to be delivered or performed and sets forth the method and the compensations the contractor receives when products and/or services are provided.
Cost Reimbursable Contact	Reimbursable contract that is a formal, legally enforceable contract that reimburses the contractor for allowable costs. In a cost reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor. In a cost reimbursable contract, the fixed price (fee) includes the contractor's direct and indirect administrative costs and profit allocable to the contract.[4]
Credits, Rebates, and Discounts and USDA Foods Values	Amounts given to a CE by contractors, cooperatives, foods service management companies, processors, and vendors that receive credits, rebates, and/or discounts for purchasing products and/or services and USDA Foods values for school nutrition programs (SNPs). The contract between the CE and the processor must specify the way that all credits, rebates, and discounts and USDA Foods Values will be returned to the CE.
Direct-Ship CEs (Direct Delivery)	CEs or school cooperatives that are large enough to handle a truckload—about 40,000 pounds or an estimated 912 cases of USDA Foods. Shipments go to CEs' storage facilities. Direct-ship storage facilities must be approved by TDA.
Direct Delivery or Direct Diversion	Requests by the CE to directly deliver or divert USDA Foods to a commercial processor to create finished end products.

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[3] The requirement to purchase products of United States (US) origin comes from the Buy American provision.
[4] See *Administrator's Reference Manual (ARM), Section 16, Financial System; Section 17, Procurement;* and *Section 18, Food Service Contracts* for additional information on cost reimbursable contracts and allowable costs.

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Disaster	Natural occurrence such as hurricanes, tornadoes, and floods or an exceptional emergency or man-made disaster. There are two types of disasters for which child nutrition resources may be used: Presidentially declared disaster (declared disaster) or situation of distress (other disaster). For both types of disasters, the CE must contact TDA as soon as possible to obtain permission to use child nutrition program resources and/or alter normal operational practices to assist and supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. As part of the Federal Emergency Response Plan, USDA's Food and Nutrition Service's (FNS) Food Distribution Division has the primary responsibility of supplying food to disaster relief organizations such as the Red Cross and the Salvation Army for mass feeding or household distribution during a presidentially declared disaster. Disaster organizations request food assistance through State agencies that run USDA's nutrition assistance programs. State agencies notify USDA of the types and quantities of food that relief organizations need for emergency feeding operations.
Distributing Agency	State agency authorized to distribute USDA Foods in the state. For Texas, the distributing agency is the Texas Department of Agriculture (TDA).
Distributor	Commercial food company or handler who is independent of a processor and both sells and bills for the finished end products delivered to CEs for goods and/or services provided. A CE may choose to have the same distributor manage both commercial finished end products and USDA Foods finished end products. [NOTE: There are companies that serve dual functions: distributor and state-contracted warehouse. If this is the case, the regulations must be applied based on the function the company is fulfilling for transaction.]
Distribution Charge	Cumulative charge imposed by state agencies (TDA) or CEs to help cover the cost of storing and distributing USDA Foods and administrative costs related to this activity.
Diverted Products	USDA Foods procured by USDA and shipped to a commercial processor in response to a recipient agency request.
Dunnage Platforms	Structures that allow users to store food off the floor, away from walls, and at different height levels which increases ventilation and helps prevent spoilage and contamination.
End Product Data Schedule	Detailed processor form that includes product formulation, USDA Foods ingredients and quantity and value of USDA Foods ingredients credited for each case of finished end product sold to CEs. EPDS are submitted by processors to USDA, but not publicly available.
Entitlement	*State Entitlement*—Value of USDA Foods that USDA authorizes TDA to receive in a specific program in accordance with program legislation. *CE Entitlement*—Value of USDA Foods that TDA authorizes the CE to receive based on historical counting and claiming data for lunches served through NSLP.
Fee for Service (Crediting for USDA Foods)	Type of crediting method for USDA Foods.[5] The processor charges the CE a fee for creating finished end products by the pound or case using USDA Foods. The processor does not charge for the price of the product itself. The processor fee—price by pound or case—includes the cost of ingredients (excluding USDA Foods), labor, packaging, overhead, and other costs incurred in the conversion of the USDA Foods into the specified processed end product.
Finished or Processed End Products	Product containing USDA Foods processed by a commercial processor. A finished end product is not a food provided by USDA in a processed form (such as chicken fajita strips or turkey taco filling). When a finished end product is created, the processor (or distributor, if applicable) *sells* the product to the CE for a price that is less the value of the USDA Foods included in the product.

[5] This definition applies only to USDA Foods. *Fee for service* is also a term used in contract services and procurement for other purposes.

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Firm Fixed Price Contract (Also Called Firm Price Contract)	Contracts that provide products or services for a price not subject to adjustment other than increases or decreases tied to an economic indicator stipulated by contract. Firm fixed price contracts are usually negotiated where reasonably finite specifications are available, and costs can be estimated with reasonable accuracy. A fixed price contract places minimum administrative burden on contracting parties but subjects a contractor to maximum risk arising from full responsibility for all cost escalations.
Fixed Fee	Agreed upon amount of money that is fixed at the inception of the contract. In a cost reimbursable contract, the fixed fee includes the contractor's direct and indirect administrative costs and profit allocable to the contract.
Food Alert	Notice from TDA and USDA Foods holds and recalls.
Food Recall	Action to remove food products from commerce when there is reason to believe the products may be unsafe, adulterated, or mislabeled. This action is taken to protect the public from products that may cause health problems or possible death.
Food Service Management Company (FSMC)	Any organization, whether commercial or nonprofit, that contracts with a CE to manage any aspect of the school nutrition program (SNP).
Ideal City	TDA designated location in each region. TDA bases the Ideal City on shipping logistics[6] and volume of USDA Foods. A CE's distance from its Ideal City may affect delivery charges.
In-Kind Replacement	Replacement of a loss of USDA Foods with the same type of food of US origin of equal or better quality as the USDA Foods, and of at least equal value to the lost USDA Foods.
Long-Term Storage	Storage of USDA Foods in a state-contracted warehouse that begins after 180 days.[7]
Manage the Contract	Procedures the CE has in place to ensure that contractors perform in accordance with the terms, conditions, and technical specifications of their contracts or purchase orders.
National Processing Agreement	Agreement between USDA Food and Nutrition Services and a multi-State processor to process USDA Foods into finished end products for sale to state agencies or CEs or a distributing agency (TDA).
Net Price	Amount to be paid by the CE—cost of processing USDA Foods minus the cost of the USDA Foods used in the finished end product.
Net Off Invoice (NOI) (Crediting for USDA Foods)	Type of crediting method for USDA Foods. The value of the food product is determined by the November 15 product price for the food product from the previous year established by USDA. The commercial price of the product minus the USDA Foods value equals the net price. *[Commercial Price] – [USDA Foods Value] = [Net Off Invoice (NOI) Amount Owed to CE]*
Out-of-Condition	Food products that are damaged, spoiled, or infected and cannot be salvaged.
Perpetual Inventory	Ongoing accounting system which requires daily entries to document the amounts of USDA Foods added or removed from storage.
Physical Book Inventory (also called book inventory)	Specific inventory level of USDA Foods at a particular point in time. This term is used in association with *perpetual inventory*.
Piggyback	Adding other purchases and/or services to a procured contract that may create a material change to the contract.

[6] Logistics includes efficient organization of resources and geographical factors.
[7] This definition applies only to USDA Foods. *Long-term storage* is also a term used for other purposes.

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Private Storage	State-contracted warehouse where a CE pays the warehouse to store USDA Foods after 45 days from the date of allocation. The date of allocation is indicated in TX-UNPS.
Procurement	Act of obtaining goods or services in exchange for money or value. [NOTE: Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.]
Purchasing Cooperative	Group of CEs joining together to purchase products and/or services with the intention of reducing costs and improving the quality of products and/or services available to members of a group. In this reference, a purchasing cooperative consists of a group of school districts. Purchasing cooperatives are commonly called *cooperatives*. [NOTE: When a CE is a member of a purchasing cooperative, the CE retains responsibility for ensuring that actions taken on its behalf are in compliance with all program requirements.]
Rebate (Crediting for USDA Foods)	Type of crediting method for USDA Foods.[8] After the CE receives USDA Foods finished end products through a distributor, the CE submits a rebate form to the processor. The processor uses the USDA November 15 price to pay the CE the value of USDA Foods contained in the processed end product. *[Value of USDA Foods Product] = [Rebate Amount Owed to CE]*
Received USDA Foods	Date when USDA Foods arrive at the school kitchen or the CE or Food Service Management Company (FSMC) storage facility in either raw form or in finished end products.
Recipient Agency (RA)	Agency or organization that receives USDA Foods through a contract with TDA or another RA. Contracting entities (CEs) are one type of recipient agency.
Recipient Agency Processing Agreement/ Contract	Agreement or contract between a CE or purchasing cooperative and a processor which describes the specifications, technical requirements, and terms and conditions for the processor's activities to use USDA Foods to create finished end products.
Regular USDA Foods	Regular USDA Foods that are ready for the CE to prepare and serve without processing. Regular USDA Foods were previously called Brown Box.
Reimbursable Meal	A meal that offers all of the required meal pattern food items in the required serving sizes for the student's age/grade group.[9]
Replacement Value	Price assigned by USDA to a USDA Foods item which must reflect the current price in the market to ensure compensation for USDA Foods lost in processing or other activities. The replacement value may be changed by USDA at any time.
Shipping Overage or Underage	Incorrect quantity delivered—overage, too much; underage, too little.
Short Term Storage	Reference to USDA Foods that are already allocated to a CE and are stored at a state-contracted warehouse. Storage of USDA Foods that begins with the 46th day of storage after the date of allocation indicated in TX-UNPS.[10]
Solicitation	Process of notifying prospective or qualified bidders about the specifications and technical requirements for purchase of products and/or services.
State-Contracted Warehouse	Warehouses that receive, store, and distribute USDA Foods. TDA selects state-contracted warehouses through competitive bids for service to specific regions of the state. [NOTE: There are companies that serve dual functions: distributor and state-contracted warehouse. If this is the case, the regulations must be applied based on the function the company is fulfilling for transaction.]
State Participation Agreement (SPA)	Agreement between TDA and a multi-state processor to permit the sale of finished end products produced under the processor's National Processing Agreement to eligible CEs in the state or between TDA and an in-state processor to permit the sale of finished end products produced under the processor's in-state agreement to eligible CEs in the state.

8 This definition applies only to USDA Foods. *Rebate* is a common term used in contract services and procurement for other purposes.

9 See the *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals; Section 8, Lunch Meals; Section 10, Afterschool Snacks & Meals*; and *Section 28, Residential Child Care Institutions* for additional information on a reimbursable meal.

10 This definition applies only to USDA Foods. *Short-term storage* is also a term used for other purposes.

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Substitution	Product of the same generic identity, of United State origin,[11] and of equal or better quality (commercial equivalent) substituted for a USDA Foods product.
Summary End Product Data Schedule (SEPDS)	Processor's description of its processing of USDA Foods into finished end product which includes the following: description of the finished end product, types and quantities of USDA Foods included in the finished end product, types and quantities of other ingredients in the finished end product, quantity of end product produced, processing yield information, and crediting information. This document is submitted to and approved by USDA.
USDA Foods Survey	List of USDA Foods that TDA makes available to CEs several times each year in TX-UNPS. Using the online process in TX-UNPS, CEs request USDA Foods from the USDA Foods Survey up to the amount of their entitlement.
USDA Foods Value	Credit, rebates, or discounts for the value of the CE's USDA Foods entitlement returned to the CE by processors or food service management companies that receive finished end products on behalf of the CE. The contract between the CE and the processor specifies the way that entitlement will be returned to the CE.
Weekly Commodity Bulletin (Bulletin)	Screen in TX-UNPS that provides CEs with the following information: beginning entitlement, processing balances, Department of Defense Fresh Farm to School (DoD Farm to School)[12] allocations, value of unfilled requests, bonus foods, and entitlement balance. This report also includes allocation of USDA Food and date of allocation including storage categories. TDA encourages each CE to check its bulletin weekly, each Friday morning.
Weighted Average	Type of cost applied to USDA Foods during the weekly allocation. The weighted average is determined by calculating the USDA Foods value divided by total units received to date for each USDA Foods product. *[USDA Foods Value] ÷ [Total Unit] = [Weighted Average]*
Yield Requirements	Information provided by the processor on the end product data schedule and other product specification documentation. This information includes the following: – Description of the end product – Types and quantities of USDA Foods included – Types and quantities of other ingredients included – Quantity of end product produced – Processing yield of USDA Foods which may be expressed as the quantity (pounds or cases) of USDA Foods needed to produce a specific quantity of end product or as the percentage of raw USDA Foods versus the quantity returned in the finished end product

Texas Unified Nutrition Programs System (TX-UNPS)

TDA provides online access to USDA Foods through Texas Unified Nutrition Programs System (TX-UNPS). Through this system, CEs can do the following:

- Renew the USDA Foods Agreement annually by completing the Contract Packet each January. This renewal includes steps for the CEs to opt-in for the various types of USDA Foods.
- Download Weekly Commodity Bulletin to monitor CE entitlement balances and inventories at TDA's contracted warehouses.
- Access the survey module in order to submit USDA Foods requests.

[11] The requirement to purchase products of US origin comes from the Buy American provision.
[12] This program is not the same program as the NSLP farm to school program.

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- Manage the CE's USDA Foods allocation.
- Access messages and announcements related to USDA Foods.

Allocation of USDA Foods

Except for bonus foods, USDA Foods are allocated to schools based on participation in NSLP and, whenever practical, should be used to prepare meals for NSLP. USDA Foods may also be used in the preparation of school breakfasts and other nonprofit school food services as described in the *Using USDA Foods* subsection in this section. Revenues received from the use of USDA Foods must accrue to the CE's nonprofit school food service account.

Timeline for USDA Foods Allocation

The ordering process for USDA Foods begins in the first quarter of the calendar year,[13] so CEs are able to plan and place orders for meals during the upcoming school year.[14]

First Quarter of Calendar Year	– TDA sets an estimated price for each USDA Food product using the best USDA pricing information available. – TDA provides each CE with its estimated entitlement to spend on USDA Foods for the upcoming school year. – CEs request USDA Foods to be used in the following school year by entering their quantities for specific USDA Foods in TX-UNPS.
Second Quarter of Calendar Year	– TDA submits USDA Food orders into the USDA system called Web-based Supply Chain Management System (WBSCM).
Throughout School Year	– TDA allocates the USDA Foods to CEs using a weighted average price. The weighted average price is different from the estimated price used during the first quarter of the year. – TDA releases USDA Foods surveys to allow CEs to order additional USDA Foods as they become available. – CEs monitor their USDA Foods inventory to ensure that USDA Foods are being effectively incorporated into menus. – TDA monitors CE inventories for excessive carryover.

Allocation Information

TDA provides updated information for school nutrition programs in TX-UNPS via the *Weekly Commodity Bulletin* (bulletin). This bulletin provides information under the following headings:

- Billing Entitlement
- Processing Balances
- Processing Reserve Remaining
- Department of Defense Fresh Fruit and Vegetable Program (DoD Fresh)[15] Allocations
- Department of Defense Fresh Farm to School (DoD Farm to School)[16] Allocations
- Unfilled Requests

[13] January 1 to December 31
[14] July 1 to June 30
[15] This program is not the same program as the NSLP Fresh Fruit and Vegetable Program (FFVP).
[16] This program is not the same program as the NSLP farm to school program.

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- Available Entitlement (updated every week)[17]
- Bonus Foods

The bulletin provides detailed information under each of the main headings. TDA encourages each CE to check its bulletin every Friday.

USDA Bonus Foods

A CE may order designated USDA bonus foods if the CE can use them without waste. Bonus foods do not displace USDA Foods that have been ordered on behalf of the CE or displace food products that have been properly procured.

If a CE orders USDA bonus foods and then wants to modify its regular USDA Foods order, TDA may be able to adjust the CE's entitlement if the CE's regular USDA Foods order has not already been submitted to USDA. However, TDA cannot adjust a CE's entitlement order after a CE's regular USDA Foods order has been submitted to USDA.

When bonus foods are available, TDA will notify eligible CEs and provide ordering instructions.

Available USDA Foods Items

TDA announces available food items through surveys in TX-UNPS.

Bulk USDA Foods

A CE may choose to have USDA Foods delivered in bulk packaging. These products are packaged in large quantities and sizes suitable for making finished end products and are shipped to a processor designated by the CE to create the finished end products.[18] Bulk USDA Foods[19] are not intended to be prepared and served after delivery—instead, these products are intended to be turned into finished end products.

Regular USDA Foods

A CE may choose to receive regular USDA Foods (previously called Brown Box). Regular USDA Foods are ready for the CE to prepare and serve without further processing.[20]

United States Department of Defense Fresh Fruit and Vegetable Program (DoD Fresh)

CEs may request to allocate some or all of their USDA Foods entitlement to purchase produce through the United States Department of Defense Fresh Fruit and Vegetable Program (DoD Fresh).

[NOTE: The United States Department of Defense Fresh Fruit and Vegetable Program or DoD Fresh is not the same program as the NSLP Fresh Fruit and Vegetable Program (FFVP).]

Once the CE's USDA Foods entitlement is spent, the CE cannot purchase (or piggyback) additional DoD Fresh produce directly from the DoD Fresh vendor through the DoD Fresh Fruit and Vegetable Order Receipt System (FFAVORS). Instead, the CE must procure additional produce through an appropriate procurement method. A DoD Fresh vendor may be awarded the contract.

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17 Currently TDA provides the update every Friday. CEs should review the update every week.

18 Some products more commonly shipped as regular USDA Foods may be bulk shipped if the products are intended to be turned into finished end products.
For Example: Grain-based product which incorporates canned fruit.

19 Bulk USDA Foods include, but are not limited to, cheese in barrels as well as boxes of coarse cut ground beef.

20 Some products more commonly shipped as regular USDA Foods may be bulk shipped if the products are intended to be turned into finished end products.
For Example: Grain-based product which incorporates canned fruit.

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Finished End Products

CEs may procure processors to create finished end products made from USDA Foods. If a CE chooses to use a processor, contractors that create finished end products must be properly procured.[21] In all cases, CEs must maintain proper oversight for all contracts to ensure compliance with all program requirements.

Processor Contracts

Even though regulations require that all companies that process USDA Foods have an agreement with TDA, the services of these processors must still be properly procured[22] by the CE before the CE can use one of the approved processors. See *Administrator's Reference Manual (ARM), Section 14A, USDA Foods Processors* for detailed guidance on processor contracts, including, but not limited to, the following:

- Contract specifications, technical requirements, and terms and conditions
- Involvement of food service management companies (FSMCs) in processor contracts
- Use of purchasing cooperatives
- Credit for sale of by-products
- Finished end product data schedules
- Finished end product labeling[23]

Food Service Management Contract (FSMC) and Processor Contracts

If a CE has contracted with an FSMC to operate the program, the following guidance must be used:

- FSMCs may assist the CE in procuring processors for finished end product contracts, but the CE must award and sign the contract. Moreover, CEs must ensure that there is no conflict of interest or duplication of services between the CE's FSMC and the company or agency awarded the contract. There is a conflict of interest and possible duplication of services if the contract is awarded to FSMC-owned or affiliated vendor.
- Finished end products must be properly procured.
- FSMC contracts must ensure that the CE receives credit, rebates, or discounts for the value of USDA Foods.

Distributor Contracts

If a CE uses a distributor for USDA Foods, the distributor must be properly procured. See *Administrator's Reference Manual (ARM), Section 14A, USDA Foods Processors* for detailed guidance on distributor contracts.

Purchasing Cooperatives (Cooperatives)

CEs participating in NSLP commonly procure finished end products made from USDA Foods through purchasing cooperatives (cooperatives).[24] These cooperatives may be interlocal/governmental, nonprofit, or for profit. See *Administrator's Reference Manual*

[21] See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on procuring processors.
[22] See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on procurement requirements.
[23] Also see *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional guidance on labeling.
[24] Purchasing cooperatives may also act on behalf of member CEs to purchase commercial products.

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(ARM), Section 17, Procurement for more detailed information on types of cooperatives and requirements related to procurement of and by cooperatives and third-party entity.

CEs that participate in purchasing cooperatives must ensure that their cooperative has a written agreement (or contract) that defines the roles and responsibilities and terms and conditions for membership.

When the CE has procured a contractor, such as an agent or third party, to act on its behalf, the CE is still responsible to oversee the use of USDA Foods and ensure that the services provided under the contract are in compliance with USDA requirements.

When the cooperative procures on behalf of the CE, the CE must ensure that the following procurement guidance is implemented:

- Proper procurement processes for all purchases, including proper procurement of processors to provide finished end products from USDA Foods, including, but not limited to, avoiding conflicts of interest when contracts are awarded to FSMC-owned or affiliated vendors.
- Application of credits, rebates, discounts as required, including any vendor fees or other types of fees collected by cooperative on behalf of the CE.

  [NOTE: If a cooperative collects a vendor fee or other type of fee as a method of covering the cost of cooperative services, USDA guidance states that these fees are credits owed to the CE. Therefore, the fees must be paid to the CEs. On receipt of the fees, the CE will, then, pay the cooperative the amount owed to the cooperative for services provided.]
- Accurate submission of Bulk USDA Foods USDA Foods.
- Monitoring USDA Foods inventory to ensure the CE uses its inventory in a timely manner.
- Proper storage USDA Foods which includes obtaining the services of a commercial processor, storage facility, food service management company (FSMC), or other commercial entities.
- Retention of inventory records for USDA Foods and making records available that demonstrate compliance with all regulations.
- Recodes provided to the CE that demonstrate compliance with all regulations.

Title to USDA Foods

The CE is responsible for the care and use of the USDA Foods when the products are received by the CE, the cooperative storage facility, or the CE's distributor. The CE has received the USDA Foods products, i.e., title to the USDA Foods, when the products are delivered to the direct ship storage facility or the CE's distributor.

For distributors and processors, title to USDA Foods transfers as follows:

Processor

When a processor delivers USDA Foods, title to the USDA Foods transfers to the CE on acceptance of the finished end products at the time and place of the delivery.

Distributor Acting on Behalf of the CE

When a CE contracts with a distributor to act as an authorized agent, title to finished end products transfers from a processor to the CE at the time and place the contracted distributor accepts the delivery of the food products.

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In all cases, the processor and/or distributor is responsible for the quality of the USDA Foods while the USDA Foods are in their possession. See the *Loss of USDA Foods* and *Inspection of USDA Foods on Delivery or Pickup* subsections in this section for additional information on this topic.

Receiving USDA Foods

A CE is the agency or organization that receives USDA Foods through a contract with TDA or another CE. CEs may receive USDA Foods through direct shipping (direct delivery) or from a state-contracted warehouse.

Direct Ship (or Direct Delivery)

A CE may choose to have its USDA Foods delivered to a CE or cooperative storage facility if the storage facility is able to receive and store large quantities of USDA Foods—a truckload of about 40,000 pounds.[25] Direct ship storage facilities must be approved by TDA.

These facilities must also be capable of meeting the criteria for safe storage of USDA Foods.[26]

State-Contracted Warehouse

TDA has divided the state into regions to more efficiently manage the delivery of USDA Foods.[27] For each region, TDA has procured a state-contracted warehouse to receive, store, and distribute USDA Foods to CEs.[28] If the CE chooses to use a state-contracted warehouse, the CE must indicate this choice during the annual program agreement[29] renewal period. CEs are responsible for paying for the services of state-contracted warehouses.

When a CE's USDA Foods are delivered to a state-contracted warehouse initially, the CE assumes responsibility for the care and use of the foods when they are delivered to or picked up by the CE.

The following requirements apply to a CEs' inventory at state-contracted warehouses:

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[25] Processors must be procured as described in *Administrator's Reference Manual (ARM), Section 17, Procurement*. When a CE plans to procure a larger quantity of products than its USDA Foods allocation, it may combine the procurement for the USDA Foods finished end products and commercial products in the same procurement and contract. In these cases, the CE is responsible for tracking all values credited for the USDA Foods as well as the credits, rebates, and discounts applied to commercial products. See *Administrator's Reference Manual (ARM), Section 14A, USDA Foods Processors* for additional information on processors.

[26] See the *Storage of USDA Foods* subtopic in this section for additional information on safe storage.

[27] Every five years, TDA selects state-contracted warehouses through competitive bid. TDA posts information on the TDA contracted warehouses at *www.SquareMeals.org/Programs/FoodDistributionProgramforCNPrograms/TDAContractedWarehouses.aspx*.

[28] For some regions, the state-contracted warehouse is not physically located inside the region. For this reason, TDA has also designated an Ideal City for each region.

[29] *USDA Foods Agreement Between Contracting Entity and Texas Department of Agriculture* with the Texas Department of Agriculture (TDA)

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Free Storage

The state-contracted warehouse provides CEs with free storage for 45 days after the date of allocation as indicated in TX-UNPS.

Information Box 1

State-Contracted Warehouse Storage of USDA Foods

Short-Term Storage begins with the 46th day of storage from the date of allocation as indicated in TX-UNPS.

Long-Term Storage begins at six months (or 181 days) from the date of allocation as indicated in TX-UNPS. For products in long-term storage, the state-contracted warehouse may charge double the short-term storage rate.

Short-Term and Long-Term Storage (Sometimes Called Private Storage)

Short-Term or Short-Term Private Storage

Starting on the 46th day, but before the 181st day, after the date of allocation, the CE has the following options:

1. Have the USDA Foods delivered to a CE storage facility—If the CE has USDA Foods delivered to a CE storage facility, the CE does not incur additional storage fees from the state-contracted warehouse.
2. Leave the USDA Foods in the state-contracted warehouse—If the CE leaves the USDA Foods in the state-contracted warehouse, the CE must pay storage fees since the storage is now short-term storage or short-term private storage.

Long-Term or Long-Term Private Storage

After six (6) months (181 days) from the date of allocation, if the CE continues to leave USDA Foods in state-contracted warehouse storage, the state-contracted warehouse may double the short-term storage rate. After six (6) months, the storage is long-term storage or long-term private storage.

In all cases, CEs should plan to use USDA Foods within 6 months of being allocated the food items to avoid food loss due to damage or spoilage. Short shelf-life items should be utilized immediately after allocation to avoid spoilage.

Delivery or Pickup of Products at the State-Contracted Warehouse

CEs may have products delivered to the CE or may pick up products stored at the state-contracted warehouse:

- Delivery—State-contracted warehouses deliver USDA Foods to the CE. State-contracted warehouses schedule deliveries between 6:30 a.m. and 2:30 p.m. State-contracted warehouses must notify CEs of a delivery schedule change at least 30 days in advance of the schedule change.
- Pickup—A CE may pick up inventory from the state-contracted warehouse between 8:00 a.m. and 3:00 p.m. Pickups must be scheduled in advance.

The state-contracted warehouse receipts for the USDA Foods shipments in TX-UNPS.

First Delivery or Pickup of the Month

For any calendar month, the state-contracted warehouse may charge the CE up to the contracted rate for the first delivery or pickup of USDA Foods regardless of the number of cases of food. This includes finished end products.

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Minimum Number of Case Delivered (Case Minimum)

TDA is not establishing pre-determined case minimums, or a 100-mile rule as has been done in the past. Contracted warehouses determine any case minimums or distance requirements as a part of their contract with TDA. CEs may find this information, including the contracted warehouse's fees, at SquareMeals.org under the Food Distribution Program for NSLP.

State-Contracted Warehouse Delivery Charge

CEs are charged delivery fees and fuel surcharges for deliveries of USDA Foods. The delivery fees are approved by TDA each year and are updated annually. A fuel surcharge is added to the delivery costs of USDA Foods. The fuel surcharge appears on the delivery invoice and fluctuates based on fuel prices. Fuel surcharge rates are updated and posted on the TX-UNPS message board. CEs should check the message board frequently.

Information Box 3

Explanation of Delivery Charges

The delivery charge is calculated by adding the per case charge for the number of cases delivered (or minimum number if applicable) plus the fuel charge, if applicable, for each actual case delivered.

[NOTE: If the number of cases delivered is less than the minimum, the per case charge is calculating using the minimum number. The fuel charge is calculated using the actual number of cases delivered, not the minimum.]

Number of Cases Delivered	x	Per Case Fee	+	Fuel Charge (if applicable)	x	Number Actual Cases Delivered	=	Delivery Charge

Inspection of USDA Foods on Delivery or Pickup

Before taking possession of and signing for USDA Foods (whether delivered or picked up), the CE must inspect the bill of lading (BOL) or invoice to ensure that the following requirements are met:

- High-security seal is intact.
- Temperature of product is acceptable for frozen and refrigerated foods.
- Delivered product belongs to the CE.
- Quantity is correct.
- Products are in good condition.

Products That Are Not in Good Condition

When the CE discovers that USDA Foods are not in good condition (commonly called *out-of-condition*) at the time of delivery or pickup, the CE must use the following guidance based on whether the CE accepts or refuses the delivery of the USDA Foods products.

Accept the USDA Foods

The CE may accept the USDA Foods products delivered if

1. some, but not a major portion, of the delivered products are out-of-condition and
2. the delivered products have only minor quantity discrepancies from quantity ordered.

In this case, the CE must take the following actions:

- Segregate the out-of-condition foods.

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- Notify[30] TDA about the out-of-condition foods.

Refuse to Accept the USDA Foods

The CE may refuse some of or all SDA Foods products delivered in the following conditions:

- Unsafe for consumption based on evidence of odors.
- Signs of infestation (dead insects or nesting materials).
- Damage to the inner or outer containers.
- Damage to actual products.
- Unsafe storage or transportation temperatures.

When a CE refuses to accept out-of-condition products, the actions the CE will take is based on the cause for the out-of-condition food products.

Is the out-of-condition issue caused by the warehouse or the manufacturer?		
	Identified on Delivery	**Identified after Delivery**
Warehouse	1. Refuse all or a portion of the affected products as appropriate to the condition of the products. 2. Contact and work with the warehouse to resolve the issue. **If unable to resolve the issue,** 3. Contact TDA[31] for further assistance.	1. Contact and work with the warehouse to resolve the issue. **If unable to resolve the issue,** 2. Contact TDA[32] for further assistance.
Manufacturer	1. Refuse all or a portion of affected products as appropriate to the condition of the products. 2. Take pictures of out-of-condition food items and packaging to demonstrate condition. 3. Complete the TDA complaint form.[33] 4. Send completed complaint form and pictures to TDA.	1. Take pictures of out-of-condition food items and packaging to demonstrate condition. 2. Complete the TDA complaint form. [34] 3. Send completed complaint form and pictures to TDA.[35]

Replacement for Out-of-Condition USDA Foods

In all cases, the processor, distributor, or vendor is responsible for replacement of USDA Foods or finished end products when delivered out-of-condition. This includes entitlement and bonus foods. The processor, distributor, or vendor may reimburse the CE for the value of the USDA Foods at the time of delivery (or another value as determined by USDA) or credit the CE's entitlement. See the *Loss of USDA Foods* subsection in this section for additional guidance on this topic.

[30] See the Contact Information for the TDA page which follows the Table of Contents in this section.
[31] See the *Contact Information for the Texas Department of Agriculture* page which follows the table of contents in this section for email and phone contact information.
[32] See the *Contact Information for the Texas Department of Agriculture* page which follows the table of contents in this section for email and phone contact information.
[33] Available in TX-UNPS
[34] Available in TX-UNPS
[35] See the *Contact Information for the Texas Department of Agriculture* page which follows the table of contents in this section for email and phone contact information.

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Buy American

All finished end products must meet the requirements for the Buy American provisions.[36] CEs are required to verify that all products received as USDA Foods finished end products have a label that indicates the product meets the Buy American provisions. [37]

The Buy American requirements are also applicable to food purchases made with cash-in lieu-of-donated-foods received for the Child and Adult Care Food Program (CACFP). To meet this requirement, CEs are required to verify that all food products purchased with cash-in-lieu funds must have a label that indicates the product meets the Buy American provisions. [38]

Receipt of Non-U.S. Food Products

If the CE receives USDA Foods or finished end products made from USDA Foods that are not marked as U.S. products[39] the product cannot be accepted. This incidence needs to be reported to TDA immediately.

Loss of USDA Foods

Processor Responsibility

The processor must compensate the CE, as appropriate, for the loss of USDA Foods, or for the loss of commercially purchased foods substituted for USDA Foods. Such loss may occur (1) if the processor fails to meet the required processing yield of USDA Foods or fails to produce finished end products that meet required specifications; (2) if USDA Foods are spoiled, damaged, or otherwise adulterated at a processing facility; or (3) if finished end products are improperly distributed. For detailed guidance on the processor's response in these situations, see *Administrator's Reference Manual (ARM), Section 14A, USDA Food Processors*.

Distributor Responsibility

Distributors must also compensate CEs for substandard, lost, or damaged finished end products made from USDA Foods when the USDA Foods are in the control of the distributor. For detailed guidance on the methods for compensating the CE in these situations, see *Administrator's Reference Manual (ARM), Section 14A, USDA Food Processors*.

CE Responsibility

When the CE receives the delivery of USDA Foods, the CE is responsible for ensuring that products are safeguarded. If a loss is caused by embezzlement, theft, or fraud, the CE must report the loss to TDA. Documentation must include the date, product description, and reason for loss.

Using USDA Foods

USDA Foods are intended to be used in meals and activities that primarily benefit school children. In all cases, any income (revenue) received from meal service which includes USDA Foods must accrue to the CE's nonprofit school food service account.

CEs may use USDA Foods for the following purposes:

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[36] For more information on the Buy American provisions, see *Administrator's Reference Manual (ARM), Section 17, Procurement*.

[37] See *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional information on the requirements for product labeling.

[38] See *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional information on the requirements for product labeling.

[39] See the *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional information on food product labeling requirements and *Section 17, Procurement* for more information on Buy American.

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A La Carte Food Items

A CE may sell USDA Foods as a la carte food items. Income from the sale of a la carte items must accrue to the CE's nonprofit food service account.

Adult Meals

A CE may include USDA Foods in meals or food items for adults. Income from the sale of adult meals must accrue to the CE's nonprofit food service account.

Catering and Vended Meals

A CE may incorporate USDA Foods into food items for catering or vended meals or food products for the school nutrition program (SNP) if the following requirements are met:

- The CE must ensure that the SNP recovers the total cost of preparing and transporting the meals or food products and all related operating costs as well as the cost of the USDA Food products incorporated into the food items. Recovering only the value of USDA Foods used is not compliance with this requirement—the CE must recover all costs associated with catering or vended meals.
- All funds derived from catering and vended meals that incorporate USDA Foods must be deposited into the nonprofit food service account and used to improve program operation and service.[40]

Classroom Instruction

A CE may use USDA Foods to train students in home economics, in teaching nutrition, and for health-related activities. This includes training college home economic students if the same facilities and instructors are used for training both high school and college students.

Food items made in class using USDA Foods can be served to non-students as part of a class learning activity. Any leftover foods from class may be given to children for consumption on school premises.

[NOTE: The SNP may charge fees for these types of class activities as long as all funds collected from the fees accrue to the SNP account.]

Other School-Related Functions

A CE may also use USDA Foods in the preparation for any school-related functions where the primary beneficiaries of the meals/food products are the students if the following conditions are met:

1. CEs must ensure that USDA Foods are being used to benefit the intended recipients: the students participating in NSLP.
2. The CE must ensure that the SNP is reimbursed for all costs related to the use of USDA Foods for meals/food products served at other school-related functions.[41]

Student Meals

CEs may use USDA Foods to prepare reimbursable meals and other meal service activities (a la carte sales and suppers and snacks in RCCIs).

State-Contracted Warehouse Storage Beyond 45 Days

TDA contacts each CE periodically while inventory is in short-term storage (46 to 180 days) to raise awareness that the CE has USDA Foods products that have

[40] See *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on this topic.
[41] See *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on this topic.

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not been used (still in private storage). When excess USDA Foods inventory is in short-term storage, the CE has two choices:

- Take immediate delivery of the inventory.
- Transfer the inventory to a different NSLP operator.[42]

When excess USDA Foods inventory goes into long-term private storage, TDA may also reallocate the inventory to a CE that can use food items more quickly. If this occurs, the first CE loses its entitlement, and TDA will not replace it.

CEs that wish to transfer USDA Foods to another CE must contact TDA for assistance.

Unacceptable Use of USDA Foods

USDA Foods awarded to NSLP operators are intended to be used in meals for students. While there are other appropriate uses as described in the explanation under the *Using USDA Foods* in the subsection above, there are also uses that are not acceptable. Examples of unacceptable uses of USDA Foods include, but are not limited to, the following:

- Catering operations for schools not participating in NSLP.
- Catering for childcare centers not participating in the Child and Adult Care Food Program (CACFP).
- USDA Foods beef patties served at a football banquet where the total cost of preparing the meals and USDA Foods value is not returned to the nonprofit school food service account.
- USDA Foods products used in baking items that are given or sold exclusively to adults (i.e., faculty and parent teacher associations) or the public.
- Catering banquets for the chamber of commerce, partisan political functions, or other community organizations.
- Supplying refreshments for any other non-student related event.

Storage of USDA Foods

CEs must maintain an inventory of USDA Foods but are not required to maintain a separate USDA Foods inventory from its commercial purchased product inventory as long as the CE has a method to track products from both sources. The CE's TX-UNPS Weekly Commodity Bulletin contains information the CE may use to assist in managing its USDA Foods inventory.

The CE's inventory management system[43] must be able to report the following information:

- Whether a food product is sourced from USDA Foods, a commercial source, or a local source as well as an indication that a commercial product was substituted for a USDA Foods product.
- Location of USDA Foods product (including, but not limited to, CE facility, processor, or state-contracted warehouse).
- Value of each USDA Foods product through one of three methods—
  - TDA value.

[42] See the *Transferring USDA Foods to Another CE* subsection in this section for additional information on this topic.
[43] The use of USDA Foods products in the CE's inventory should be reflected in the CE's food production records.

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  - Net cost of the product.
  - Combined weighted average of TDA value and net cost for the USDA Foods product.
- Quantity for USDA Foods products and commercial food products which includes amount received by date and amount used by date. If the food product is sourced from both USDA Foods and another source, the system must be able to report the quantity for each source.
- Tracking information for any USDA Foods used during a disaster and the replacement of those foods.
- Tracking system to assist the CE in managing the timely use of USDA Foods in order to
  - limit additional costs associated with short-term storage or long-term storage and
  - avoid exceeding the 180-day limit for storage.
- Documentation demonstrating that all inventoried foods are stored in a manner that meets all state and local health and safety requirements.

TDA has created the *Physical Inventory of Food Purchased Form*[44] for maintaining general information on a CE's inventory. If this form or another method is used, the CE must ensure that all requirements listed above are met.

Commingling USDA Foods and Commercially Purchased Foods

The processor may commingle USDA Foods and commercially purchased foods, unless the processing agreement/contract specifically stipulates that the USDA Foods must be used in processing, and not substituted, or the USDA Foods have been backhauled from a CE. However, if commingling is used, it must be performed in a manner that ensures the safe and efficient use of USDA Foods, as well as in compliance with substitution requirements or the reporting information about USDA Foods inventories. The processor must also ensure that commingling of finished end products and other food products, either at its facility or at the facility of a commercial distributor, ensures the sale and delivery of end products that meet the processing requirements, including affixing the applicable USDA certification stamp to the exterior shipping containers of end products.

Distributors

Distributors may also commingle USDA Foods and commercially purchased foods when the net off invoice method of crediting for USDA Foods is used.[45] The processor requirements for commingling apply to distributor commingling.

CE with an FSMC Contract

If a CE uses an FSMC, the CE's FSMC solicitation and contract may specifically prohibit the commingling of USDA Foods with commercially purchased foods. If the contract, however, does not prohibit commingling, the FSMC may store the CE's USDA Foods inventory together with commercial foods it has purchased for the CE's use.[46]

[44] Available at *www.SquareMeals.org*.
[45] See the Crediting for USDA Foods Values subsection in this section for additional information on this topic.
[46] The FSMC must use all finished end products as well as all USDA Foods in the CE's food service. This includes USDA donated ground beef and ground pork. If the FSMC substitutes commercially purchased foods, the foods must be of the same generic identity, of U.S. origin, and of equal or better quality than the USDA Foods.

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Commingling does not eliminate the requirement that FSMC's inventory system have a method for identifying USDA Foods (or approved substitutes) that have been used and/or inventory that remains in its storage facility.

Excess Carryover Inventory at the Processors

Beginning in School Year (SY) 2019-2020, TDA will review and evaluate each CE's USDA Foods inventory management to ensure that each CE uses its allocated USDA Foods in a timely manner. Any USDA Foods balance remaining in the processor's inventory at the end of the school year (June 30) is excess carryover inventory.

On July 1, any USDA Foods excess carryover remaining in a CE's inventory will be transferred to the state agency's (TDA's) account for redistribution. When excess carryover is transferred to the state, processors will also update their tracking systems to indicate the transfers.[47] Excess carryover inventory for each CE is calculated using the following formula:

USDA Foods Carryover Inventory as of June 30	-	USDA Foods Inventory Used as of July 1	=	Unused USDA Foods Carryover Inventory (If this number is zero or negative, the CE does not have carryover inventory. A positive number is excess carryover inventory.)
$10,000		$5,000		$5,000

Care and Storage of USDA Foods

CEs receiving USDA Foods must implement procedures to ensure that the safety[48] and quality of the USDA Foods are maintained. All USDA Foods, and substitutions if applicable, must be stored in a manner that meets local and state health and safety standards.

Food Delivery or Pickup

Check each delivery or pickup of USDA Foods for possible shortages and damage before the foods are accepted.

- The product and the quantity in the delivery or pickup must be the same as described on the delivery document (such as the bill of lading or the invoice) unless exceptions are noted.[49]
- Refrigerated products must be examined to ensure the temperature of the product is acceptable by the applicable food safety standards, and the products are in good condition. This action is essential for frozen foods.
- Canned foods must be examined to determine if there are any damaged, disfigured, or discolored cases or cans, which might indicate spoilage or deterioration.
- Foods subject to insect infestation must be thoroughly inspected.
- Foods found to be out-of-condition must be segregated from other foods and handled in accordance with the CE's Hazard Analysis and Critical Control Points (HACCP) procedures for managing unsafe or infested food.[50]

[47] There is no longer an exception which allows a CE to retain an excess carryover balance.
[48] USDA Foods, as with all other food used in the SNP, must comply with the school food safety program. Refer to *Administrator's Reference Manual (ARM), Section 26, Food Safety*, for information regarding the school food safety program and Hazard Analysis Critical Control Point (HACCP) requirements.
[49] See the *Inspection of USDA Foods on Delivery or Pickup* subsection in this section for additional information on this topic.
[50] See *Administrator's Reference Manual (ARM), Section 26, Food Safety* for additional information on HACCP procedures.

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Protecting USDA Foods from Infestation

Safeguards must be taken to protect USDA Foods from infestation in the storage facility.

- Facilities must be inspected routinely to ensure that there are no external openings in the structure of the building where foods are stored, which would allow rodent and insect infestation. TDA recommends that USDA Foods be inspected monthly.
- Facilities must use a proactive method to prevent infestation. This may include pesticide, traps, or other food safe method of eradication. Because some pesticides and extermination chemicals may not be safe for foods, CEs should ensure that food safe products are used.

The United States Environmental Protection Agency (EPA) has developed the following resources about protecting foods from infestation that provide information specific to school food service operations as well as general food service operations:

- *Keeping Rodents Out of Your School* available at *www.epa.gov/managing-pests-schools/keeping-rodents-out-your-school*
- *The Basics of School IPM (Integrated Pest Management)* available at *https://www.epa.gov/managing-pests-schools/basics-school-ipm*
- *Integrated Pest Management in Child Care Centers: Protecting our Children from Pests and Pesticides* available at *www.epa.gov/childcare/integrated-pest-management-child-care-centers-protecting-our-children-pests-and-pesticides*

Food Safety

Whether the food storage facilities are controlled by the CE or an entity (i.e., cooperative) acting on behalf of the CE outside of the state-contracted warehouse system, the USDA Foods must be stored in safe and secure conditions. The CE is responsible for (1) determining which regulations apply no matter whether the storage is controlled by the CE or not and (2) ensuring that the facility has an adequate plan and all necessary permits.[51]

- *Hazard Analysis Critical Control Point (HACCP)*—Apply the procedures described in the storage facility's Hazard Analysis Critical Control Point (HACCP) plan to ensure that food is kept at a safe temperature, in safe conditions, and other applicable requirements year-round. This includes, but is not limited to, the following safety practices:
  - Store foods in freezers and coolers that are thoroughly cleaned and dried, operating properly, and in good repair.

[51] For additional information on food safety, see the *Administrator's Reference Manual (ARM), Section 26, Food Safety*. Insuring safe and secure storage of USDA Foods at state-contracted warehouse is the responsibility of TDA.

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  - Monitor the temperature of freezers and coolers routinely. Temperatures in the refrigerators and freezers should be taken and recorded daily and recorded in a temperature log. Equipping freezers and coolers with an alarm system for easy detection of high temperatures and power failures may also help to prevent food spoilage.
  - Check freezers and coolers after a power failure to make sure the units are operating properly, and stored foods are still in good condition.
  - Place foods on shelves with a one- or two-inch space left between the walls and other food containers to ensure proper air circulation. In walk-in units, place foods on dunnage[52] platforms rather than directly on the floor and stack foods properly to prevent falling and possible damage.
  - Repair or replace malfunctioning equipment.
- *Security*—Place locks on freezers and coolers and all building doors where USDA Foods are stored. This will help prevent theft and vandalism.
- *Forecasting*—Limit ordering to quantities that can be properly stored and utilized without waste.

Information Box 4

Food Safety Resources

The following resources provide useful information on methods to ensure food safety.

[NOTE: Some of the resources are not specific to USDA Foods, but the information they provide is still applicable. SNP programs are also required to use retail food safety standards, not home food safety standards.]

Texas Department of State Health Services

- Regulations related to food establishments for the state of Texas at *https://dshs.texas.gov/foodestablishments/laws-rules.aspx*

Texas Department of Agriculture

- *Cooler or Freezer Temperature Recording Form* available at *www.SquareMeals.org*
- *Administrator's Reference Manual, Section 26, Food Safety* available at *www.SquareMeals.org*

United States Department of Agriculture

- *USDA Foods Product Information Sheets* available at *https://www.fns.usda.gov/fdd/nslp-usda-foods-product-information-sheets*

United States Food and Drug Administration (FDA)

- *Are You Storing Food Safely* available at *www.fda.gov/ForConsumers/ConsumerUpdates/ucm093704.htm*
- *Refrigerator & Freezer Storage Chart* available at *https://www.fda.gov/media/74435/download*
- *Refrigerator Thermometers: Cold Facts about Food Safety* available at *www.fda.gov/Food/ResourcesForYou/Consumers/ucm253954.htm*
- *Food and Drug Administration (FDA) HACCP Guidance* available at *https://www.fda.gov/food/hazard-analysis-critical-control-point-haccp/retail-food-service-haccp*

Maintaining the Quality of Grains and Grain Products

As with all foods, use first in, first out (FIFO) principles when storing whole-grain items. Because whole-grain ingredients (e.g., whole-wheat flour, brown rice) retain the bran and the oil-rich germ, these food items may turn rancid when stored in warm areas and have a shorter shelf life than their refined counterparts.

[52] Structures that allow users to store food off the floor, away from walls, and at different height levels which increases ventilation and helps prevent spoilage and contamination.

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To increase shelf life, store these products in a cool, dry place in airtight containers. From May through September, grain products must be refrigerated. At other times of the year, if products will not be used within a short period of time, they should be stored in the refrigerator or freezer.

Transferring USDA Foods to Another CE

CEs may transfer USDA Foods to other entities or organizations operating a USDA Child Nutrition Program (CNP) in the following situations:

Type of Transfer	CE Actions
• CEs may transfer USDA Foods to other participating NSLP CEs with TDA approval. • CEs may transfer USDA Foods to a CE operating a different child nutrition program (CNP) with TDA approval.[53]	For a CE-to-CE transfer, • CEs must use the ***Authorization to Transfer USDA Foods, Form H4529***[54] to transfer USDA Foods. Both the transferring and receiving CEs must sign the form. [Please note, TDA is developing a web-based form for the transfer request. As soon as the web-based form is available, TDA will notify CEs through the NSLP Bi-Weekly and the TX-UNPS Bulletin Board.] • CEs must also attach a processor commodity calculator[55] to justify the need and ability of the receiving CE to use the additional pounds. • The request form and commodity calculator must be submitted to TDA in order for the transfer to be approved.[56]
• CEs may transfer USDA Foods to the state agency (TDA) account for redistribution.	• The CE must contact TDA to make arrangements for this transfer.[57] TDA will provide instructions at the time of the request.
• CEs may transfer USDA Foods as described in the ***USDA Food Used During a Presidentially Declared Disaster*** subsection in this section.	• TDA will contact CEs and provide instructions if this occurs.

When a CE transfers USDA Foods to another School Nutrition Program (SNP) CE, a CE operating a different Child Nutrition Program (CNP), or TDA, the CE transferring the USDA Foods will not be given additional entitlement to replace the transferred USDA Foods. If the transfer is made for a presidentially declared disaster or emergency, the CE may receive replacement USDA Foods or substituted USDA Foods. In all cases, the transferring and receiving CE must retain documentation of what food items were transferred and when.

Warehouse Delivery Errors

If the warehouse delivers USDA Foods that have been requested by the CE, and the CE decides later that the entire order is not needed, the CE is responsible for the delivery charges of the original request. However, if the warehouse is responsible for delivering excess USDA Foods, the CE is not responsible for those delivery charges.

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53 Such programs include, but are not limited to, The Emergency Food Assistance Program (TEFAP), Child and Adult Care Food Program (CACFP), and the Summer Food Service Program (SFSP). TDA will forward to requests to USDA as appropriate.

54 Available at *SquareMeals.org*.

55 Each processor uses its own processor commodity calculator for ordering. CEs must use the individual processor tool when submitting a request to transfer USDA Foods to another CE.

56 See the Contract Information for TDA which located after the table of contents in this section for contact information.

57 See the Contract Information for TDA which located after the table of contents in this section for contact information.

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Food Recall/Food Alert

When there is an urgent concern about the safety, wholesomeness, and condition of USDA Foods or Child Nutrition (CN) label products, all CEs must take appropriate action. Each CE has the responsibility to:

- Have recall procedures in place.
- Implement the recall procedures upon notification of a recall of USDA Foods.
- Assign a food safety coordinator and alternate who will be contacted in the event of a recall.

While communication for each food recall or food alert may vary based on the specific recall situation, USDA has established the following protocol:

- Processors and distributors must include information on food recall and food alert procedures in agreements/contracts.
- Processors and distributors must notify TDA about the affected food items.
- TDA notifies all CEs that may have received the affected food items based on information provided by the processor and/or distributors. Initial notification will be made by an email blast containing information on the affected food products, including batch numbers, and the action the CE must take related to the affected food item.
- CE reports identification and quantity of affected food items to TDA, including quantity remaining in inventory and quantity already served. The email blast notification TDA sends will also direct CEs to TX-UNPS, where CEs will respond to a survey and report the amount of affected product in their possession.
- CE takes appropriate action as directed for the affected food item.
  - **Hold**—If the USDA Foods are on hold, the CE must segregate the product until USDA either releases the hold or provides further information.
  - **Dispose**—If the USDA Foods are recalled, TDA will instruct CEs ways to dispose of the product.
- TDA reports quantity of affected food items in inventory and quantity already served to USDA.

Information Box 5

Food Storage Temperatures

Cooler/Refrigerator Temperature	36º to 40º
Freezer Temperature	0º or below
Dry Storage	50º to 70 º, less than 70% humidity

See *Administrator's Reference Manual (ARM), Section 26, Food Safety* for additional information on this topic.

Detailed information on food alerts is provided by USDA on the USDA Food Safety website at *https://www.fsis.usda.gov/wps/portal/fsis/topics/recalls-and-public-health-alerts*.

Substitutions

Unless the processor agreement/contract specifically stipulates that the USDA Foods only must be used in processing, the processor may substitute commercially purchased foods for USDA Foods. The commercially purchased food must be of the same generic identity, of U.S. origin, and equal or better in all USDA procurement specifications than the USDA Foods.

Commercially purchased beef, pork, or poultry (1) must meet the same specifications as donated product, including inspection, grading, testing, and humane handling standards and (2) must be approved by USDA in advance of substitution if the items are processed by a multi-state processor and by TDA in advance of substitution if an in-state processor.

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Commercially purchased food substituted for USDA Foods must meet the same processing yield requirements as the USDA Foods.

The processor may also choose to make the substitution before the actual receipt of the USDA Foods. This is referred to as *front loading*. However, the processor assumes all risk and liability if, due to changing market conditions or other reasons, the USDA's purchase of USDA Foods and their delivery to the processor does not occur.

Substitution for Backhauled USDA Foods

The processor cannot substitute or commingle USDA Foods that are backhauled from a distributors or CE's storage facility, including a state-contracted warehouse. The processor must process backhauled USDA Foods into finished end products for sale and delivery to the distributor or CE using the USDA Foods that have been backhauled to the processor. The processor cannot substitute food products that have been provided by any other agency for the backhauled USDA Foods.

Distributors or CEs must purchase the finished end products utilizing USDA Foods backhauled to their contracted processor. The processor also cannot provide payment for backhauled USDA Foods in lieu of processing.

USDA Foods Used During a Presidentially Declared Disaster

When there is a presidentially declared disaster, USDA Foods are made available to those in need whether the USDA Foods are stored on CE property, CE-managed properties, or state-contracted warehouses. At the request of TDA,[58] CEs must make USDA Foods available to designated agencies, including, but not limited to, the Red Cross, Civil Defense, and Salvation Army.

When transferring USDA Foods to other entities during a presidentially declared disaster, the CE must retain proper receipts for all USDA Foods released to one of the designated agencies from a state-contracted warehouse or school even if the USDA Foods are not stored at facilities controlled by the CE.

If one of the CE's schools is operating as an emergency shelter during a presidentially declared disaster, the CE must also account for the use of all USDA Foods. Because commercial food items may not be replaced, CEs should use their USDA Foods before using commercial food items.

Replacement of USDA Foods Used During a Presidentially Declared Disaster

USDA will replace the value of USDA Foods used during a presidentially declared disaster from congregate feeding at approved shelters. USDA will determine if the value replacement will be in the form of entitlement or food. If USDA decides to replace the value as food, the food items are unlikely to be the same items used in the presidentially declared disaster.

USDA will not replace the value of USDA Foods damaged during a presidentially declared disaster. The CE may request reimbursement through their insurance policy. If an insurance policy does not cover food losses caused by a presidentially declared disaster, CEs may request financial assistance from the Federal Emergency Management Agency (FEMA) for lost food not covered by insurance.

If finished end products are used, CEs will only receive credit for the value of the USDA Foods in the finished end products. In this situation, the CE may request reimbursement for the additional cost under an insurance policy or from FEMA.

[58] TDA will make these requests in coordination with USDA.

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In all cases, the credit may not exceed the lesser of the actual USDA Foods supplied or the amount of the USDA Foods that the CE received during the past 12 months.

USDA Foods Used During a Situation of Distress or Other Disaster

When there is a natural disaster or other disaster situation that is specific to a geographic area and is not a presidentially declared disaster, these events are called situations of distress. It is possible that USDA Foods may be requested. In these cases, the state or local emergency authority will coordinate with TDA to request USDA Foods. TDA will obtain USDA approvals as needed. When using USDA Foods for other disaster situations, the CE must retain proper documentation of how USDA Foods were used.

Replacement of USDA Foods Used During a Situation of Distress or Other Disaster

USDA may replace the value of USDA Foods used during other disaster situations (situations of distress) if sufficient resources are available. USDA will determine if the value replacement will be in the form of entitlement or food. If USDA decides to replace the value as food, the food items are unlikely to be the same items used in the other disaster. In these situations, there is no guarantee of replacement.

Contracts, Food Service Management Company (FSMC)

A CE must enter into a contract[59] with an FSMC before USDA Foods are made available to the FSMC. The solicitation and contract must include the following:

1. **Scope of Work**—Description that details specific activities that an FSMC will perform with USDA Foods and assurance that all described activities will be performed in accordance with USDA and state requirements.[60] This includes whether the FSMC will order USDA Foods for the CE.
2. **Use of USDA Foods**—Statement that indicates that the FSMC must use all USDA Foods allocation in the CE's food service or may use commercial substitutes in place of such USDA Foods when a processor has provided an appropriate substitution for the USDA Foods.[61]

   [Note: An FSMC cannot refuse to incorporate USDA Foods into a CE's menu/s. In all situations, when an FSMC is awarded a contract, the FSMC is required to use USDA Foods allocations for the CE's meals even if the USDA Foods were ordered before the FSMC contract was awarded.]
3. **Credit USDA Foods Values**— Statement that the FSMC must credit the CE for the value of all USDA Foods and the number of pounds of each food product received for use in the CE's meal service according to all TDA and USDA requirements. See the *Crediting for USDA Foods Values* subsection in this section for more information on crediting methods.

   - The method and frequency must be determined before the terms and conditions of the contract take effect. The method and frequency cannot be stipulated after the contract has taken effect.
   - Credit must be given for the purchased value of the food products as assigned by TDA for all USDA Foods products: (1) entitlement foods, (2) bonus foods, and

[59] CEs may enter into either a fixed-price or a cost-reimbursable contract with an FSMC. Under a fixed-price contract, the CE pays either a fixed cost per meal provided or a fixed cost for a certain time period. Under a cost-reimbursable contract, the FSMC charges the CE for food service operating costs and also charges fixed fees for management or services.

[60] Activities may include, but are not limited to, preparing and serving meals in coordination with the CE; ordering or selecting USDA Foods in TX-UNPS to incorporate into the menu; and storing and managing the USDA Foods inventory.

[61] See the *Substitutions* subsection in this section for additional information on this topic.

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(3) finished end products. The negotiation of USDA Foods values is not permitted.

- The credit must occur in the school year or fiscal year in which the foods were received for use.
- For crediting purposes, the FSMC must update this price at least semi-annually to reflect the most recent purchase prices. TDA recommends crediting monthly or quarter for the CE to effectively manage and monitor the crediting of USDA Foods values.
- An FSMC may also pre-credit the CE for the use of USDA Foods. However, if pre-crediting is used, there must be a periodic reconciliation of all credits or yearly reconciliation of all credits to ensure the accuracy of the crediting.
- An FSMC may also credit by disclosure, i.e., the FSMC discloses in its billing for food costs the savings that result from the receipt of USDA Foods for the billing period. The CE must ensure that there is at yearly reconciliation of all credits received. However, TDA recommends that reconciliation occurs more frequently.

4. **USDA Foods Beef and Pork Products**— Type of crediting method for the USDA Foods.[62] After the CE receives USDA Foods finished end products, the CE submits a rebate form to the processor, and the processor credits or sends a payment to the CE for the credit value.

   And, If Applicable

   Statement that if substitutions are allowed, the FSMC will use the USDA Foods and, when not possible, will use commercially purchased foods of the same generic identity, of United States origin,[63] and of equal or better quality than the USDA Foods.

5. **Finished End Products**—Assurance statement that the procurement of finished end products on behalf of the CE[64] (1) will ensure compliance with all USDA requirements and with the provisions of the CE processing agreements and (2) will ensure crediting for any cost difference between the cost established in the processing agreement value and the actual cost as determined by USDA or TDA for the USDA Foods value contained in the products.

   The CE may require that no substitutions be made by the FSMC for USDA Foods.

6. **Processor**—Assurance statement that the FSMC itself will not enter into the processing agreement with the processor. The CE must establish the processing agreement with the processor even if the FSMC procures the processing agreement for the CE.

   The FSMC may pay the processing fees or may submit refund requests to a processor on behalf of the CE.

7. **Storage and Inventory**—Assurance that the FSMC will comply with the storage and inventory requirements for USDA Foods, including safe storage that meets all state and local health standards and safeguards against theft and spoilage or other loss.

[62] This definition applies only to USDA Foods. *Rebate* is a common term used in contract services and procurement for other purposes.
[63] The requirement to purchase products of US origin comes from the Buy American provision.
[64] The appropriate assurance statement will be determined by the roles and responsibilities assigned to the FSMC in the solicitation and the terms and conditions of the contract.

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The CE may require separate storage or may allow comingling of commercial USDA Foods inventories. However, in all cases, all USDA Foods must be accounted for in the inventory system.

8. **Monitoring**—Statement that USDA, TDA, the Inspector General, the CE, or their duly authorized representatives may perform onsite reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of USDA Foods.
9. **Records Retention**—Statement that the FSMC will maintain and retain the following records:
    - The USDA Food and finished end products received from, or on behalf of, the CE, for use in its food service.
    - Documentation that the FSMC has credited the CE for the value of all USDA Foods received for use in the CE's food service in the school or fiscal year.
    - Documentation of its procurement of finished end products on behalf of the CE, as applicable.
10. **Renewals**—Statement that extensions or renewals of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to USDA Foods.

This contract must also meet all of the requirements for procurement described in *Administrator's Reference Manual (ARM), Section 16, Financial System*; *Section 17, Procurement*; and *Section 18, Food Service Contracts* as well as all requirements included in this section.

Crediting for USDA Foods Values

The credit for the USDA Foods value in finished end products must be made using one of the following acceptable crediting methods:

Fee for Service

For the fee for service method,[65] the processor charges the CE a fee[66] for processing the bulk USDA Foods items into finished end products. Invoicing through a fee for service method includes all costs to produce the end products and excludes the value of the USDA Foods used in the finished end product. The following types of fee for service are used:

- Direct shipment and invoicing from the processor to the CE. This is commonly called *direct ship*.
- Multiple pallets of finished end products are shipped to the distributor with a list of which CE's own what products. This is commonly called *fee service through a distributor*.

The processor must identify any delivery charge for finished end products separately from the fee for service on invoicing. If the finished end products are delivered to a distributor, any delivery costs the distributor charges must also be identified separately on processor invoicing or billed separately by the distributor.

[NOTE: If delivery is made to state-contracted warehouse, CE orders finished end products from state-contracted warehouse. State-contracted warehouse charges CE storage and delivery fees.]

[65] This definition applies only to USDA Foods. *Fee for service* is also a term used in contract services and procurement for other purposes.

[66] This definition applies only to USDA Foods. *Fee for service* is also a term used in contract services and procurement for other purposes.

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The following sequence of actions describes the fee for service process for crediting.

1. Processor delivers end products to either the CE, the distributor, or the state-contracted warehouse.
2. Processor invoices CE the fee for service.

Net Off Invoice (NOI, Also Called Indirect Discount).

With this method, the commercial distributor purchases the product from the processor at the commercial value. The value of the food product is credited when the commercial distributor invoices the CE for the net price—commercial price of the product minus the USDA Foods value equals the net price. The processor must require the distributor to notify the processor of these sales at least on a monthly basis. Notification may be made through automated sales reports or other electronic or written submission. With this information, the processor compensates the distributor for the discount provided for the value of the USDA Foods. CEs must closely monitor invoices to ensure that the correct discounts are applied.

[Commercial Price] – [USDA Foods Value]	**=**	**[Net Off Invoice (NOI) Amount Owed to CE]**

The following sequence of actions describes the NOI process for crediting.

1. Distributor purchases end products for the commercial price.
2. Processor invoices the distributor the commercial price.
3. CE orders the end products from distributor.
4. Distributor invoices the CE the net price.
5. Distributor submits a rebate for the value of USDA Foods to the processor.

Rebate

When the rebate[67] method is used, the processor sells the finished end products containing USDA Foods to the CE, as appropriate, at the commercial or gross price. After the CE or distributor receives the finished end products, the CE submits a rebate[68] form to the processor. The processor credits or sends a payment to the CE for the credit value within 30 days of receiving a request. Refund requests must be in writing and may be transmitted by email or other electronic method.

[Value of USDA Foods Product]	**=**	**[Rebate Amount Owed to CE]**

The following sequence of actions describes the rebate process for crediting.

1. Distributor purchases end products for the commercial price.
2. Processor invoices the distributor the commercial price.
3. CE orders end products from distributor.
4. Distributor invoices the CE the commercial price.
5. CE submits rebate to processor for value of USDA Foods.
6. Processor either credits the rebate value or sends a payment to the CE.

[67] This definition applies only to USDA Foods. *Rebate* is a common term used in contract services and procurement for other purposes.

[68] This definition applies only to USDA Foods. *Rebate* is a common term used in contract services and procurement for other purposes.

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The CE must routinely review all documentation related to the crediting of USDA Foods values and ensure that the CE has received full credit for all USDA Foods both in pounds and dollar amounts. CEs must use the value of USDA Foods established by TDA.

Food Service Management Company (FSMC) Crediting for USDA Foods

An FSMC is also required to credit the CE for the value of all USDA Foods received by the FSMC on behalf of the CE during the school year. This requirement applies whether the USDA Foods are used in that year or not.

At the end of the year, the CE must be able to reconcile the total pounds and dollar amount for all USDA Foods allocated to the CE and total pounds and dollar amount for all USDA Foods received, including products received by the FSMC. CEs must use the value of USDA Foods established by TDA using one of the three acceptable methods described earlier in this subsection: fee for service, net off invoice (NOI), or rebate.

However, if the CE procures a processor contract that is separate from the CE's FSMC contract and if the CE arranges for finished end products made from USDA Foods outside of the FSMC contract, the processor must credit the value of USDA Foods directly to the CE. In these cases, the CE (not the FSMC) will receive the invoice for the finished end products, and the CE will pay processor costs.

CEs with an FSMC must ensure the following guidance is applied based on the type of contract in place:

Fixed Price Contracts

- The amount of USDA Foods received during the invoice period must be indicated on the FSMC's invoice. A CE may require the FSMC to credit for all USDA Foods monthly or quarterly in order to more effectively manage and monitor the crediting of values for USDA Foods. If the CE chooses to exercise this option, it must include this requirement in the solicitation and contract for the FSMC.
- The FSMC must credit the CE for the value of all USDA Foods received[69] in the school year, whether the foods were used or not. The only exception is when the FSMC makes a commercial substitution of the same generic identity, of United States origin,[70] and equal/better quality. TDA recommends crediting monthly or quarterly for the CE to more effectively manage and monitor the crediting of USDA Foods values. Additionally, the contract solicitation must stipulate that the FSMC show the total value of USDA Foods used and received for the specific billing period.
- The CE retains ownership of all USDA Foods unless the FSMC makes an appropriate substitution for the product.[71]
- In all cases, the CE must require crediting to be given at least annually. TDA recommends crediting monthly or quarterly for the CE to more effectively manage and monitor the crediting of USDA Foods values. Additionally, the contract

[69] When the USDA Foods are received by the CE storage facility, the CE kitchen, or FSMC storage facility, in either raw from or in finished end products, the USDA foods are considered to be received.
[70] The requirement to purchase products of US origin comes from the Buy American provision.
[71] The substitution option may permit an FSMC to use acceptable commercial substitutes, during the same school year in which the USDA Foods must be credited. However, the CE must ensure that when a substitution is made that the substituted product is of the same generic identity and that the CE receives credit for the value of all USDA Foods received.

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solicitation must stipulate that the FSMC show the total value of USDA Foods used and received for the specific billing period.

The FSMC may also pre-credit the value of USDA Foods by deducting the value for USDA Foods in the fixed-price contract; however, the CE must ensure that the FSMC provides additional credit for any USDA Foods unaccounted for in the fixed price per meal.

For Example: Each program year, the CE gives the FSMC the quantity for its inventory of USDA Foods, and the FSMC includes these quantities in its pricing structure. However, there are occasions when USDA Foods are made available later in the year. The CE is responsible to ensure that the FSMC credits the value for these additional USDA Foods.

Cost Reimbursable Contracts

- The amount of USDA Foods used during the invoice period must be included as a separate line item on the invoice. A CE may require the FSMC to credit for all USDA Foods monthly or quarterly in order to more effectively manage and monitor the crediting of values for USDA Foods. If the CE chooses to exercise this option, it must include this requirement in the solicitation and contract for the FSMC.
- The FSMC must credit the CE for the value of all USDA Foods received[72] in the school year received, whether the foods were used or not. The only exception is when the FSMC makes a commercial substitution of the same generic identity, of United States origin,[73] and equal/better quality.
- The CE retains ownership of all USDA Foods unless the FSMC makes an appropriate substitution for the product.
- In all cases, the CE must require crediting to be given at least annually. TDA recommends crediting monthly or quarterly for the CE to more effectively manage and monitor the crediting of USDA Foods values. Additionally, the contract solicitation must stipulate that the FSMC show the total value of USDA Foods used and received for the specific billing period.
- In cost-reimbursable contracts, crediting may be performed by disclosure. In other words, the FSMC discloses in its billing for food costs submitted to the CE the savings that result from the receipt of USDA Foods for the billing period.

FSMC Contract Termination/Non-Renewal and Title to USDA Foods

When a contract is terminated or not renewed, the FSMC must return all unused donated ground beef, donated ground pork, and finished end products. At the CE's discretion, the FSMC must return other unused USDA Foods as well.

USDA Foods Reconciliation

The CE must conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the FSMC credited the CE for the value of all USDA Foods received for use in the CE's food service in the school or fiscal year, including the value of USDA Foods contained in finished end products. The reconciliation process is much easier to manage if conducted monthly. However, the contract and solicitation must stipulate that the FSMC show the total value of USDA Foods both purchased and received for the specific billing period.

[72] When the USDA Foods are received by the CE storage facility, the CE kitchen, or FSMC storage facility, in either raw from or in finished end products, the USDA foods are considered to be received.

[73] The requirement to purchase products of US origin comes from the Buy American provision.

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Resources for Using USDA Foods

USDA provides numerous resources to assist in the operation of USDA Foods at *www.fns.usda.gov/usda-fis/school*. Click on the Technical Assistance & Guidance tab on the left side of the page for additional resources not listed on this page.

- *USDA Foods Toolkit* is a collection of valuable resources to assist Child Nutrition Professionals in effectively using their USDA Food entitlement and to help them educate students, staff, and the community about the healthy contributions that USDA Foods provide to their meal programs. This toolkit includes recipes, fact sheets, training, and marketing tools.
- *Food Distribution Webinars and Training* provides detailed information on using USDA Foods, strategies to increase the effectiveness of using USDA Foods, and other general use topics.
- *USDA Foods Business Management* is a project that is intended to review and re-design business processes for domestic nutrition assistance programs that is co-sponsored by the USDA Agricultural Marketing Service and Food and Nutrition Service.
- *USDA Foods Product Information Sheets* provides extensive information for each product available at *https://www.fns.usda.gov/usda-fis/usda-foods-product-information-sheets*

  See the *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional information on the *Information Sheets* and other forms of documentation.

USDA Foods E-Letters are available at *www.fns.usda.gov/fdd/usda-foods-e-letters*.

Value of USDA Foods for Auditing Purposes

When accounting for the receipt of USDA Foods for required program audits as described in *Administrator's Reference Manual (ARM), Section 16, Financial System*, CEs must consider all USDA Foods received in a fiscal year as expended. CEs have the following options in assigning the value of the USDA Foods received:

- Fair market value of the USDA Foods at the time of their receipt; fair market value must exclude non-food items.
- One of the accepted USDA Foods valuation methods which can be found on TX-UNPS.[74]
  - Cost-per-pound USDA Foods prices posted annually by USDA. TDA provides this information on TX-UNPS.
  - Most recent cost-per-pound price in the USDA Foods catalog which is found in the electronic USDA Foods ordering system.
  - Rolling average of USDA prices (average cost per pound), based on TDA's USDA Foods sales orders.

Information Box 6

Record Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

CEs must use one of these methods when valuing USDA Foods for the single audits. This includes single audits conducted under the administration of TEA.

[74] USDA recommends using this method rather than checking fair market value as each product is received.

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Records Retention

Records retained for USDA Foods serve to demonstrate compliance with all regulations. Public and charter schools are required to keep documentation related to school nutrition programs for 5 years. Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

Documentation for record retention related to USDA Foods includes, but is not limited to, the following:

Crediting for USDA Foods

- Statement of actual USDA Foods values used in crediting (available in TX-UNPS).
- Documentation that demonstrates the CE has validated the credits provided by processors, distributors, and FSMCs.

General Financial

- Invoices, bills of lading, or other appropriate documentation demonstrating the amount of USDA Foods and finished end products received and provided to the FSMC for use in the CE's food service including dollar and pound totals.
- Invoices, bills of lading, or other appropriate documentation indicating USDA Foods and finished end products received from, or on behalf of, the CE for use in its food service.
- Invoices, bills of lading, or other appropriate documentation that demonstrate that the FSMC credited the CE for the value of all USDA Foods received for use in the CE's food service in the school or fiscal year, including the value of USDA Foods contained in finished end products.

Managing USDA Foods

- Contracts and agreements related to the use, storage, and processing of USDA Foods.
- Documentation demonstrating that all USDA Foods were stored under safe conditions.
- Inventory control sheets.
- Documentation for crediting for the value of USDA Foods contained in finished end products.
- Receipt of end products purchased from processors or distributors.
- Receipts of USDA Foods shipments and end products, reports, audits, and claim actions.
- Receipts and/or freight bills for USDA Foods deliveries.
- Records indicating the location of all USDA Foods allocated to the CE (inventory).

Processing Agreements and Contracts

- Location for the delivery of the finished end products.
- Method of end product sales that will be utilized and assurance that crediting for USDA Foods will be performed in accordance with the applicable requirements for such method of sales.
- Price to be charged for the end product or other processing service.
- Procurement documentation as applicable.

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- Total value of the USDA Foods in the finished end products.

USDA Foods Used During a Presidentially Declared or Other Disaster

- Documentation of receipt of USDA Foods.
- Documentation of USDA Foods transferred because of disaster and reimbursement for transferred foods as appropriate.

For CEs that use an FSMC, the CE is responsible for ensuring the FSMC provides all documentation necessary to demonstrate compliance with all regulations.

Compliance

TDA will assess compliance with the use of USDA Foods and accounting and financial requirements for USDA Foods during onsite and/or offsite review processes.

Procurement

The cost of any products and/or services that were improperly procured are unallowable costs to the nonprofit school food service account. This includes any costs that the CE has incurred as a result of intentionally breaking up purchases into smaller amounts to qualify under the micro-purchase threshold or simplified purchase threshold as well as purchases made on behalf of the CE by a third party. For additional information on procurement, see *Administrator's Reference Manual (ARM), Section 17, Procurement*.

CEs must make available, upon request of the awarding agency (state or federal), any or all documentation described in the *Records Retention* subsection in this section. TDA may take appropriate fiscal action or terminate the USDA *Foods Agreement Between Contracting Entity and Texas Department of Agriculture* that is not in compliance with the requirements for USDA Foods.

Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations

CE's must report, in writing to TDA, all violations of federal criminal law—fraud, bribery, or gratuity.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).

Criminal Penalty

The maximum fine for embezzling, willfully misapplying, stealing, or obtaining by fraud, funds, assets, or property acquired under the National School Lunch Act or Child Nutrition Act is $25,000.

Fraud

Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

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Termination of the Agreement for Financial Fraud or Misuse of Funds. If serious deficiencies, such as fraud or misuse of funds occur, and corrective action is not practical, TDA will terminate the CE's participation in all child nutrition programs administered by TDA, including the NSLP, SBP, SMP, CACFP, and SFSP.

- Processors and CEs have agreements with TDA, but distributors have agreements generally with a processor or CE; in the latter case, in the case of fraud or misuse of funds, the processor or CE would terminate the agreement;
- In the case of a distributor's fraud or misuse of funds, suspected misconduct would be reported to USDA, and USDA would take appropriate action. Distributors would be prohibited from entering contracts to service USDA Foods for either processors or CEs.

Suspected fraud or misuses by processors and distributors will be reported to USDA; USDA will take action as appropriate to the situation. In this case, TDA may also refer the matter to the appropriate local, state, and/or federal authorities.

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Section 14a

USDA Foods Processing

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Section 14a, USDA Foods Processors

Update Guide

September 29, 2022	Clarified guidance on the following topics: - Audit requirements for In-State Processors - Contract duration - State Participation Agreement
August 12, 2020	Updated Administrator's Reference Manual (ARM), *Section 14a, USDA Foods* to update the *Administrator's Reference Manual (ARM)* sections references.
October 25, 2019	Updated *Section 21A, USDA Foods Processors* to clarify information on the following topics: – Carryover USDA Foods – Conflict of interests and duplication of services – Definitions: backhauling and entitlement – Resources
May 21, 2019	Created a new section, *Section 21A, USDA Foods Processors,* to incorporate the following United States Department of Agriculture (USDA) memos and guidance: – *USDA Memo FD-064: Processing (Revised), Management of USDA Food Inventories at Processors* (April 2, 2019) – *Revisions and Clarifications in Requirements for Processing of Donated Foods, Final Rule for 7 CFR Part 250, Federal Register Vol. 83, No. 84* (May 1, 2018)

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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USDA Foods Processors

USDA Foods are distributed to state agencies for use by eligible organizations, including contracting entities (recipient agencies) that operate the National School Lunch Program (NSLP) and/or the School Breakfast Program (SBP).

[Note: The Texas Department of Agriculture (TDA) commonly uses the term contracting entities or CEs when providing guidance. However, for this document, the term recipient agency will be used.]

USDA Foods received by recipient agencies must be used as directed by federal regulations. USDA Foods cannot be sold, exchanged, or disposed of in any manner not allowed by regulation.

The guidance in this section is intended to be used by processors and recipient agencies to ensure compliance with all applicable regulations when recipient agencies use processors to convert USDA Foods into finished end products.

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Roles and Responsibilities for USDA Foods Incorporated into Finished End Products

Each recipient agency with a *USDA Foods Agreement Between Contracting Entity and Texas Department of Agriculture* is awarded an amount of funds—entitlement—that is used to obtain USDA Foods products. The Texas Department of Agriculture (TDA), then, allocates specific USDA Foods products to recipient agencies based on periodic surveys of available USDA Foods. These surveys are available in the Texas Unified Nutrition Programs System (TX-UNPS).

Recipient agencies may divert bulk USDA Foods to commercial food processors who will convert the USDA Foods into ready-to-use/finished end products. Processing USDA Foods can be a cost-effective option to increase the variety of food products offered for the meal program and reduce costs. The processor produces finished end products that are created in controlled conditions to ensure standardized quantity and quality as well as meet food safety standards.

The *Summary of USDA Foods Distribution Process Roles and Responsibilities Chart* outlines the roles and responsibilities in awarding USDA Foods entitlement, allocation of USDA Foods products, and processing bulk shipments of USDA Foods.

Summary of USDA Foods Distribution Process Roles and Responsibilities Chart
USDA
• Announces each state's USDA Foods entitlement. • Works with agriculture to obtain suitable food products. • Provides USDA Foods product information to states. • Works with states to ship allocated USDA Foods.
TDA
• Announces each recipient agency's USDA Foods entitlement and posts the amounts in TX-UNPS. • Posts USDA Foods offerings in TX-UNPS, so recipient agencies can draw down entitlement. • Allocates specific USDA Foods items in response to the surveys located in TX-UNPS. • Contracts with warehouses to receive, store, and deliver USDA Foods to recipient agencies. • Monitors USDA Foods shipment and inventory to state-contracted warehouses. • Imports and exports USDA Foods data between TX-UNPS and USDA's ordering system, Web-Based Supply Chain Management System (WBSCM). • Monitors recipient agency use of entitlement through TX-UNPS, including bulk shipments to processors. • Monitors USDA Foods inventory and usage at the processor through processor tracking systems.

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Recipient Agency

- Completes surveys in TX-UNPS to order USDA Foods based on the allocated entitlement.
- Takes possession of (receives) USDA Foods.
- Completes appropriate online forms to ship USDA Foods to properly procured processors.
- Uses allocated USDA Foods products.
- Monitors its allocation of USDA Foods products and entitlement in TX-UNPS.
- Monitors USDA Foods shipped to processors and ensure that finished end products meet specifications and are used appropriately.
- Monitors contracts to ensure the recipient agency receives the full credit for all USDA Foods values.
- Monitor's inventory and usage at the processor through processor tracking systems.
- Reports ongoing delays for shipment receipts to TDA.

Processor

- Enters into an agreement with USDA and/or TDA to process USDA Foods as defined by USDA.
- Ensures that there is an agreement with all distributors the processor uses as defined by USDA and/or TDA.
- Secures performance bonds and surety bonds as required.
- Provides Summary End Product Data Schedule (SEPDS) and provides updated SEPDS upon USDA approval to TDA as required.
- Provides detailed product information to assist recipient agencies in meeting menu and production requirements.
- Delivers finished end products as described in the processing contract.
- Takes possession of (receives) USDA Foods to make finished end products.
- Invoices recipient agencies for processing USDA Foods as described in the contract, including crediting the recipient agency for the value of the use of its USDA Foods in the finished end products.
- Maintains an accurate inventory and tracking system for USDA Foods received and delivered.
- Provides routine (monthly) performance, inventory, and production reports to TDA and USDA 30 days after the reporting period.
- Adheres to all applicable USDA, state, and local food safety regulations for the receipt, storage, and production of USDA Foods into finished end products.
- Takes action for food product recalls as required by USDA.
- Notifies TDA and recipient agencies of prolonged production issues that will cause delivery delays and excess inventories.

Distributor

- Enters into an agreement, as defined by USDA, with USDA, TDA, processors, or recipient agencies for the delivery of USDA Foods finished end products.
- Stores and delivers USDA foods as stipulated in recipient agency contracts and processor agreements.
- Takes possession of (receives) USDA Foods.
- Maintains an accurate inventory and tracking system for USDA Foods received and delivered.
- Takes action in response to food product recalls as required by USDA.

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Definitions for This Section

For this section, the following definitions will be useful:

A La Carte Sales	Individually priced food and/or beverage items sold during the meal service by the school nutrition program. These items may or may not be included in a reimbursable meal.
Acting on Behalf of Recipient Agency	Entity or person who has been given the responsibility to take action for the recipient agency.
Allocation	Quantity of USDA Foods allocated (or assigned) to recipient agencies by TDA. Recipient agencies place requests for specific USDA Foods in TX-UNPS based on their total entitlement.
Backhauling	Delivery of USDA Foods to a processor for processing from a recipient agency's or distributing agency's (TDA's) storage facility.
Bonus Foods	USDA Foods that are purchased under surplus removal or price support authority and then provided to state agencies in addition to legislatively authorized levels of assistance. Bonus foods are not charged against a recipient agency's entitlement amount. A recipient agency may request as many bonus foods as it can use without waste.
Buy American	Requirement for schools to purchase, to the maximum extent practicable, domestic commodities and products. A domestic commodity or product means an agricultural commodity that is grown in the United States and (1) that is processed in the United States or (2) that is processed in the United States substantially using agricultural commodities that are produced in the United States.
Calendar Year	January 1 through December 31 of each year.
Carrier	Commercial enterprise that transports USDA Foods from one location to another but does not store USDA Foods.
Carryover Inventory	USDA Foods from the previous school year left with the processor.
Catering or Vended Meals	An agreement or contract with a food service management company (FSMC) to provide meals.
Commingling	Storage of USDA Foods together with commercially purchased foods.
Commercial Equivalent	Product of the same generic identity, of United States origin,[1] and of equal or better quality substituted for a USDA Foods product. This definition is specific to USDA Foods. For other purposes, the same definition may not apply.
Contract	Formal, legally enforceable agreement (terms and conditions) between a buyer (the recipient agency) and a seller (contractor) that clearly and accurately describes the products and/or services to be delivered or performed and sets forth the method and the compensations the contractor receives when products and/or services are provided.
Cost Reimbursable Contact	Reimbursable contract that is a formal, legally enforceable contract that reimburses the contractor for allowable costs. In a cost reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor. In a cost reimbursable contract, the fixed price (fee) includes the contractor's direct and indirect administrative costs and profit allocable to the contract.[2]

[1] The requirement to purchase products of United States (US) origin comes from the Buy American provision.

[2] See *Administrator's Reference Manual (ARM), Section 14, Financial Information Concerning School Nutrition Funds; Section 17, Procurement;* and *Section 22, Food Service Management Company* for additional information on cost reimbursable contracts and allowable costs.

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Credits, Rebates, and Discounts and USDA Foods Values	Amounts given to a recipient agency by contractors, cooperatives, food service management companies, processors, and vendors that receive credits, rebates, and/or discounts for purchasing products and/or services and USDA Foods values for school nutrition programs (SNPs). The contract between the recipient agency and the processor must specify the way that all credits, rebates, and discounts and USDA Foods Values will be returned to the recipient agency.
Direct-Ship Recipient Agencies	Recipient agencies or school cooperatives that are large enough to handle a truckload—about 40,000 pounds or an estimated 912 cases of USDA Foods. Shipments go to recipient agencies' storage facilities. Direct-ship storage facilities must be approved by TDA.
Direct Delivery or Direct Diversion	Requests by the recipient agency to directly deliver or divert USDA Foods to a commercial processor to create finished end products.
Disaster	Natural occurrence such as hurricanes, tornadoes, and floods or an exceptional emergency or man-made disaster. There are two types of disasters for which child nutrition resources may be used: Presidentially declared disaster (declared disaster) or situation of distress (other disaster). For both types of disasters, the recipient agency must contact TDA as soon as possible to obtain permission to use child nutrition program resources and/or alter normal operational practices to assist and supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. As part of the Federal Emergency Response Plan, USDA's Food and Nutrition Service's (FNS) Food Distribution Division has the primary responsibility of supplying food to disaster relief organizations such as the Red Cross and the Salvation Army for mass feeding or household distribution. Disaster organizations request food assistance through State agencies that run USDA's nutrition assistance programs. State agencies notify USDA of the types and quantities of food that relief organizations need for emergency feeding operations.
Distributing Agency	State agency authorized to distribute USDA Foods in the state. For Texas this is the Texas Department of Agriculture.
Distributor	Commercial food company or handler who is independent of a processor and both sells and bills for the finished end products delivered to recipient agencies for goods and/or services provided. A recipient agency may choose to have the same distributor manage both commercial finished end products and USDA Foods finished end products. [NOTE: There are companies that serve dual functions: distributor and state-contracted warehouse. If this is the case, the regulations must be applied based on the function the company is fulfilling for each transaction.]
Distribution Charge	Cumulative charge imposed by distributing agencies or recipient agencies to help cover the cost of storing and distributing USDA Foods and administrative costs related to this activity.
Diverted Products	USDA Foods procured by USDA and shipped to a commercial processor in response to a recipient agency request.
Dunnage Platforms	Structures that allow users to store food off the floor, away from walls, and at different height levels which increases ventilation and helps prevent spoilage and contamination.
End Product Data Schedule (EPDS)	Detailed processor form that includes product formulation, USDA Foods ingredients and quantity and value of USDA Foods ingredients credited for each case of finished end product sold to recipient agencies. EPDS are submitted by processors to USDA, but not publicly available.
Entitlement	State Entitlement—Value of USDA Foods that USDA authorizes TDA to receive in a specific program in accordance with program legislation. Recipient Agency Entitlement—Value of USDA Foods that TDA authorizes the recipient agency to receive based on historical counting and claiming data for lunches served through NSLP.

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Fee for Service (Crediting for USDA Foods)	Type of crediting method for USDA Foods.[3] The processor charges the recipient agency a fee for creating finished end products by the pound or case using USDA Foods. The processor does not charge for the price of the product itself. The processor fee—price by pound or case—includes the cost of ingredients (excluding USDA Foods), labor, packaging, overhead, and other costs incurred in the conversion of the USDA Foods into the specified finished end product.
Finished or Processed End Products	Product containing USDA Foods processed by a commercial processor. A finished end product is not a food provided by USDA in a processed form (such as chicken fajita strips or turkey taco filling). When a finished end product is created, the processor (or distributor, if applicable) sells the product to the recipient agency for a price that is less the value of the USDA Foods included in the product.
Firm Fixed Price Contract (Also Called Firm Price Contract)	Contracts that provide products or services for a price not subject to adjustment other than increases or decreases tied to an economic indicator stipulated by contract. Firm fixed price contracts are usually negotiated where reasonably finite specifications are available, and costs can be estimated with reasonable accuracy. A fixed price contract places minimum administrative burden on contracting parties but subjects a contractor to maximum risk arising from full responsibility for all cost escalations.
Fixed Fee	Agreed upon amount of money that is fixed at the inception of the contract. In a cost reimbursable contract, the fixed fee includes the contractor's direct and indirect administrative costs and profit allocable to the contract.
Food Alert	Notice from TDA and USDA Foods about holds and recalls.
Food Recall	Action to remove food products from commerce when there is reason to believe the products may be unsafe, adulterated, or mislabeled. This action is taken to protect the public from products that may cause health problems or possible death.
Food Service Management Company (FSMC)	Any organization, whether commercial or nonprofit, that contracts with a recipient agency to manage any aspect of the school nutrition program (SNP).
Ideal City	TDA designated location in each region. TDA bases the Ideal City on shipping logistics[4] and volume of USDA Foods. A recipient agency's distance from its Ideal City may affect delivery charges.
In-Kind Replacement	Replacement of a loss of USDA Foods with the same type of food of US origin of equal or better quality as the USDA Foods, and of at least equal value to the lost USDA Foods.
Long-Term Storage	Storage of USDA Foods in a state-contracted warehouse that begins after 180 days.[5]
Manage the Contract	Procedures the recipient agency has in place to ensure that contractors perform in accordance with the terms, conditions, and technical specifications of their contracts or purchase orders.
National Processing Agreement	Agreement between USDA Food and Nutrition Service (USDA FNS) and a multi-State processor to process USDA Foods into finished end products for sale to state agencies or recipient agencies.
Net Price	Amount to be paid by the recipient agency—cost of processing USDA Foods minus the cost of the USDA Foods used in the finished end product.

[3] This definition applies only to USDA Foods. *Fee for service* is also a term used in contract services and procurement for other purposes.
[4] Logistics includes efficient organization of resources and geographical factors.
[5] This definition applies only to USDA Foods. *Long-term storage* is also a term used for other purposes.

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Net Off Invoice (NOI) (Crediting for USDA Foods)	Type of crediting method for USDA Foods. The value of the food product is determined by the November 15 product price for the food product from the previous year established by USDA. The commercial price of the product minus the USDA Foods value equals the net price. [Commercial Price] – [USDA Foods Value] = [Net Off Invoice (NOI) Amount Owed to CE]
Out-of-Condition	Food products that are damaged, spoiled, or infected and cannot be salvaged.
Piggyback	Adding other purchases and/or services to a procured contract that may create a material change to the contract.
Private Storage	State-contracted warehouse where a recipient agency pays the warehouse to store USDA Foods after 45 days from the date of allocation. The date of allocation is indicated in TX-UNPS.
Procurement	Act of obtaining goods or services in exchange for money or value. [NOTE: Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.]
Purchasing Cooperative	Group of recipient agencies joining together to purchase products and/or services with the intention of reducing costs and improving the quality of products and/or services available to members of a group. In this reference, a purchasing cooperative consists of a group of school districts. Purchasing cooperatives are commonly called cooperatives. [NOTE: When a recipient agency is a member of a purchasing cooperative, the recipient agency retains responsibility for ensuring that actions taken on its behalf are in compliance with all requirements.]
Rebate (Crediting for USDA Foods)	Type of crediting method for USDA Foods.[6] After the recipient agency receives USDA Foods finished end products through a distributor, the recipient agency submits a rebate form to the processor. The processor uses the USDA November 15 price to pay the recipient agency the value of USDA Foods contained in the finished end product. [Value of USDA Foods Product] = [Rebate Amount Owed to recipient agency]
Received USDA Foods	Date when USDA Foods arrive at the school kitchen or the recipient agency or Food Service Management Company (FSMC) storage facility in either raw form or in finished end products.
Recipient Agency (RA)	Agency or organization that receives USDA Foods through a contract with TDA or another RA. Contracting entities (recipient agencies) are one type of recipient agency.
Recipient Agency Processing Agreement/ Contract	Agreement or contract between a recipient agency or purchasing cooperative and a processor which describes the specifications, technical requirements, and terms and conditions for the processor's activities to use USDA Foods to create finished end products.
Regular USDA Foods	Regular USDA Foods that are ready for the recipient agency to prepare and serve without processing. Regular USDA Foods were previously called Brown Box.
Reimbursable Meal	A meal that offers all of the required meal pattern food items in the required serving sizes for the student's age/grade group.[7]
Replacement Value	Price assigned by USDA to a USDA Foods which must reflect the current price in the market to ensure compensation for USDA Foods lost in processing or other activities. The replacement value may be changed by USDA at any time.
Shipping Overage or Underage	Incorrect quantity delivered—overage, too much; underage, too little.

[6] This definition applies only to USDA Foods. *Rebate* is a common term used in contract services and procurement for other purposes.

[7] See the *Administrator's Reference Manual (ARM), Section 8, Breakfast; Section 9, Lunch; Section 10, Afterschool Care Program*; and *Section 26, Residential Child Care Institutions* for additional information on a reimbursable meal.

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Short Term Storage	Reference to USDA Foods that are already allocated to a recipient agency and are stored at a state-contracted warehouse. Storage of USDA Foods that begins with the 46th day of storage after the date of allocation indicated in TX-UNPS.[8]
Solicitation	Process of notifying prospective or qualified bidders about the specifications and technical requirements for purchase of products and/or services.
State-Contracted Warehouse	Warehouses that receive, store, and distribute USDA Foods. TDA selects state-contracted warehouses through competitive bids for service to specific regions of the state. [NOTE: There are companies that serve dual functions: distributor and state-contracted warehouse. If this is the case, the regulations must be applied based on the function the company is fulfilling for each transaction.]
State Participation Agreement (SPA)	Agreement between the distributing agency (TDA) and a multi-state processor to permit the sale of finished end products produced under the processor's National Processing Agreement to eligible recipient agencies in the state.
Substitution	Product of the same generic identity, of United State origin,[9] and of equal or better quality (commercial equivalent) substituted for a USDA Foods product.
Summary End Product Data Schedule (SEPDS)	Processor's description of its processing of USDA Foods into finished end product which includes the following: description of the finished end product, types and quantities of USDA Foods included in the finished end product, types and quantities of other ingredients in the finished end product, quantity of end product produced, processing yield information, and crediting information. This document is submitted to and approved by USDA.
USDA Foods Survey	List of USDA Foods that TDA makes available to recipient agencies several times each year in TX-UNPS. Using TX-UNPS, recipient agencies request USDA Foods from the USDA Foods Survey up to the amount of their entitlement.
USDA Foods Value	Credit, rebates, or discounts for the value of the recipient agency's USDA Foods entitlement returned to the recipient agency by processors or food service management companies that receive finished end products on behalf of the recipient agency. The contract between the recipient agency and the processor specifies the way that entitlement will be returned to the recipient agency.
Weekly Commodity Bulletin (Bulletin)	Screen in TX-UNPS that provides recipient agencies with the following information: beginning entitlement, processing balances, Department of Defense Fresh Fruit and Vegetable Program[10] allocations, value of unfilled requests, bonus foods, and entitlement balance. This report also includes allocation of USDA Food and date of allocation including storage categories. TDA encourages each recipient agency to check its bulletin weekly, each Friday morning.
Weighted Average	Type of cost applied to USDA Foods during the weekly allocation. The weighted average is determined by calculating the USDA Foods value divided by total units received to date for each USDA Foods product. [USDA Foods Value] ÷ [Total Unit] = [Weighted Average]

Processors Agreements and Contracts

Each processor must have a national processor agreement with the United States Department of Agriculture (USDA) or a state processing agreement with the Texas Department of Agriculture (TDA) in order to provide these services.

USDA (Food and Nutrition Service or FNS) Multi-State Processing Agreement

A processor that provides processing services in multiple states must have a National Processing Agreement with USDA in order to process USDA Foods into finished end products. This agreement must address, but is not limited to, the following:

8 This definition applies only to USDA Foods. *Short-term storage* is also a term used for other purposes.
9 The requirement to purchase products of US origin comes from the Buy American provision.
10 This program is not the same program as the NSLP/SBP Fresh Fruit and Vegetable Program (FFVP).

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- Finished end product schedules
- Performance bond or letter of credit
- Requirements for participation in state processing agreement

A processor cannot assign any processing activities under its processor agreement to another entity to perform any aspect of the process without specific written consent of the other party to the agreement.

State Participation Agreement: TDA Multi-State or In-State Processing Agreement

The state agreement for multi-state or single state processors must address, but is not limited to, the following:

- Nutritional contribution provided by the finished end products.
- Marketability or acceptability of the finished end products.
- Method for distributing the finished end products.
- A list of recipient agencies eligible to receive end products.
- Price competitiveness of the finished end products.
- Processing yields of the USDA Foods.
- Labeling requirements.[11]
- Processor's record of ethics and integrity and capacity to meet the regulatory requirements.
- Performance bond or irrevocable letter of credit to protect the value of the USDA Foods to be received for processing which must be provided to USDA, TDA, or recipient agency. The performance bond or letter of credit must be received prior to receipt of USDA Foods for processing. For multi-state processor the following bond requirements apply:

  For Processors in Their First Year of Participation: The minimum amount of the performance bond or irrevocable letter of credit must be sufficient to cover at least 100% of the value of the USDA Foods in the processor's annual physical or book inventory and at the discretion of USDA Food and Nutrition Service (USDA FNS). The surety company from which a bond is obtained must be listed in the most current Department of Treasury's Listing of Approved Sureties (Department Circular 570).

  For Processors Past Their First Year of Participation: The minimum amount of the performance bond or irrevocable letter of credit must be sufficient to cover at least 75% of the value of the USDA Foods in the processor's annual physical or book inventory. The surety company from which a bond is obtained must be listed in the most current Department of Treasury's Listing of Approved Sureties (Department Circular 570).

A processor cannot assign any processing activities under its processor agreement to another entity to perform any aspect of the process without specific written consent of the other party to the agreement.

[11] See *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional information on required labeling information and product labeling guidance specific to Child Nutrition Programs (CNPs).

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Distributor Agreement

If the recipient agency procures a distributor to deliver finished end products, the processor and the distributor must also have an agreement that ensures compliance with all regulations and describes the process for control and use of USDA Foods. Processor/distributor agreements have a duration of no more than five years.

The processor/distributor agreement must address, but is not limited to, the following:

- Statement of financial liability, specifically who must pay for the replacement value of USDA Foods.
- Description of the reporting process to be used for finished end products which includes a report frequency of no less than monthly.
- Description of the method to be used to credit the recipient agency for the value of the USDA Foods that are included in finished end products.
- Process for transferring title to USDA Foods from the processor to the distributor.

The processor/distributor agreement must ensure that adequate data sharing, reporting, and crediting of USDA Foods occurs when finished end products are delivered.

A processor cannot assign any processing activities under its processor agreement to another entity to perform any aspect of the process without specific written consent of the other party to the agreement.

Processor Contracts with Recipient Agencies

Processor contracts with recipient agencies must be properly procured in accordance with TDA and USDA regulations before the processor can receive the recipient agency's USDA Foods and create finished end products. Moreover, a processor cannot assign any processing activities under its processor contract to another entity to perform any aspect of the process without specific written consent of the other party to the contract.

Processing contracts must address, but are not limited to, the following:

- Proper procurement practices[12] as defined by USDA as well as applicable state and local regulations or law.
- Specifications, technical requirements, and terms and conditions for the services and products to be provided to the recipient agency.
- Quantity for each product to be provided to the recipient agency.
- Price to be charged for the finished end product and processing services as applicable.
- Method used to credit the recipient agency with the value of the USDA Foods, frequency of credits, and reporting of credits.
- Location for the delivery of the finished end products, including, if applicable, use of a distributor.

[12] See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on procurement requirements.

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- Performance bond or irrevocable letter of credit to protect the value of the USDA Foods to be received for processing. The performance bond or letter of credit must be received prior to receipt of USDA Foods for processing.

  For Processors in Their First Year of Participation: The minimum amount of the performance bond or irrevocable letter of credit must be sufficient to cover at least 100% of the value of the USDA Foods in the processor's physical or book inventory and at the discretion of USDA FNS. The surety company from which a bond is obtained must be listed in the most current Department of Treasury's Listing of Approved Sureties (Department Circular 570).

  For Processors Past Their First Year of Participation: The minimum amount of the performance bond or irrevocable letter of credit must be sufficient to cover at least 75% of the value of the USDA Foods in the processor's physical or book inventory. The surety company from which a bond is obtained must be listed in the most current Department of Treasury's Listing of Approved Sureties (Department Circular 570).

Assurances

A processor/recipient agency contract must include the following assurances:

- Processor will provide a performance bond or irrevocable letter of credit to protect the value of USDA Foods it is expected to maintain in inventory.
- Processor will meet processing yields for USDA Foods.
- Processor will compensate the recipient agency, as appropriate, for any loss of USDA Foods.
- Processor will meet requirements for the substitution of commercially purchased foods for USDA Foods, including grading requirements.
- Processor will not substitute or commingle backhauled USDA Foods and will provide finished end products processed from such USDA Foods only to the recipient agency from which the foods were received.
- Processor will provide for the safe and effective storage of USDA Foods, meet inspection requirements, and maintain an effective quality control system at its processing facilities.
- Processor will report USDA Foods inventory activity and maintain inventories within approved levels.
- Processor will return USDA Foods to TDA, transfer the USDA Foods as directed by TDA, or pay for USDA Foods inventories remaining upon termination of the agreement.

  #### Payment for USDA Foods

  - Pay TDA an amount equal to USDA's most recent cost information on acquiring and delivering replacement food relative to the time of determination that a substitute is not allowed or available.
  - Pay TDA current per pound value established by the Processor Agreement or the Commodity Credit Corporation (CCC) unrestricted sales price.
- Processor will credit recipient agencies for the value of all USDA Foods.

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- Processor will obtain independent CPA audits and will correct any deficiencies identified in such audits.

Terms and Conditions

A processor/recipient agency contract must include the following terms and conditions:

Accountability and Monitoring

- Distributing agency, sub-distributing agency, or recipient agency, the Comptroller General, the Department of Agriculture, or their duly authorized representatives may perform onsite reviews of the processor's operation to ensure that all activities relating to USDA Foods are performed in accordance with the requirements.

Credits, Rebates, and Discounts

- Crediting method(s) for the value of the USDA Foods used in the finished end product sales—rebate, direct discount or net off invoice (indirect discount), or fee-for-service.

Duration of Contract

- Effective dates of the agreement.
- Description of the conditions for the termination of the contract, including immediate termination if the processor has not complied with its terms and conditions.
- Extensions or renewals of the agreement, if applicable, are contingent upon the fulfillment of all agreement provisions. Processors may be procured for a one-year contract with four additional renewals for a total of five years. Processor contracts are subject to the material change provisions as described in *Administrator's Reference Manual (ARM), Section 17, Procurement*.

Finished End Products

- Description of finished end products to be created and the grading requirements.
- Finished end product data schedules, with all required information which includes, but is not limited to, the following:
  - Description of the types and quantities of finished end products made from USDA Foods, including specifications or technical requirements.
  - Types and quantities of the other ingredients included in the finished end products made from the USDA Foods.
  - Processing yield of USDA Foods, which may be expressed as the quantity (pounds or cases) of the USDA Foods needed to produce a specific quantity of a finished end product or as the percentage of raw USDA Foods versus the quantity returned in the finished end product.
- Description of allowed substitutions and process for informing the recipient agency about allowable substitutions.

  [NOTE: Substitutions are not allowed for backhauled USDA Foods.]

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– Applicable labeling requirements.[13]

General

– Contact information for all appropriate parties to the agreement, including participating members of a purchasing cooperative.

Processor/Distributor Agreements

– Processor must enter into an agreement with any and all distributors delivering finished end products to recipient agencies that ensures adequate data sharing, reporting, and crediting of USDA Foods.

Reporting

– Method and timeline for reporting the following information to the recipient agency:
  - Quantity of USDA Foods the recipient agency has in the processor's inventory.
  - Quantity of USDA Foods transferred to the recipient agency or other entity if appropriate.
  - Quantity of USDA Foods losses.

Subcontracting

– Description of allowed subcontracting processor activities if permitted.
  [NOTE: A recipient agency may prohibit subcontracting.]

Other Regulatory Contract Requirements

Compliance with all applicable laws, rules, regulations, policies, and instructions including, but not limited to the following:

– **Buy American** [7 CFR 250.17(e); 7 CFR 250.34(a)]

  Applies to all finished end food products: all USDA Foods and allowable substitutions for USDA Foods must be domestic products; over 51% of the final processed food product must consist of agricultural commodities that are grown domestically.

  [NOTE: Domestic food products include food products from the United States territories: Guam, American Samoa, Virgin Island, Puerto Rico, and the Northern Marian Islands.

– **Byrd, Anti-Lobbing** [31 U.S.C. 1352]

  Applies to contracts exceeding $100,000 using Federal funds; requires contractor to complete specific forms related to lobbying (influencing or attempting to influence) in connection with obtaining a contract.

– **Civil Rights/Discrimination** [Title IV of the Civil Rights Action of 1964; Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement–Nutrition Programs and Activities]

[13] See *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional information on product labeling requirements. All USDA Foods finished end products must meet the requirements for the Buy American provisions. See A*dministrator's Reference Manual (ARM), Section 17, Procurement* for additional information on the Buy American provisions.

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Applies to contracts using Federal funds; prohibits the discrimination on the basis of age, color, disability, national origin, race, and sex.

- **Clean Air and Water Act and Federal Water Pollution Control Action** [Clean Water Act, 42 U.S.C. 7401-7671q; Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387); and Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15)]

  Applies to contracts exceeding $150,000 using Federal funds; requires compliance with all applicable standards, orders, and regulations; prohibits the award of contracts to contractors that are in violation of Clean Air Act. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- **Contract Work Hours and Safety Standards Action** [40 U.S.C. 327-330 Sections 103 and 107 as supplemented by Department of Labor regulations (29 CFR Part 5)]

  Applies to contracts that involve mechanics or laborers exceeding $100,000 using Federal funds; establishes standards for hourly and salaried employees related to workweek and overtime.

- **Energy Policy and Conservation Act** [Public Law 94-163, 89 Statute 871]

  Applies to contracts using Federal funds; establishes standards for the promotion of energy and water conservation methods when feasibly obtainable.

- **Solid Waste Disposal Act** [Section 6002 as amended by the Resource Conservation and Recovery Act]

  Applies to contracts exceeding $10,000 using Federal funds; requires contractors to maximize energy and resource recovery by using recycled materials and/or recycling waste products when reasonable, cost appropriate, and available.

- **Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms** [2 CFR Part 200.321]

  Applies to contracts using Federal funds; requires contractors to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises whenever to the maximum extent possible.

If the recipient agency procures a processor contract that is separate from the recipient agency's FSMC contract and if the recipient agency arranges for finished end products made from USDA Foods outside of the FSMC contract, the processor must credit the value of USDA Foods directly to the recipient agency. In these cases, the recipient agency (not the FSMC) will receive the invoice for the finished end products, and the recipient agency will pay processor costs.

At the end of the year, the recipient agency must be able to reconcile the total pounds and dollar amount for all USDA Foods allocated to the recipient agency and total pounds and dollar amount for all USDA Foods received, including products received by the FSMC. The processor must provide documentation to the recipient agency to support the reconciliation of total pounds and dollar amount of finished end products.

Recipient agencies and FSMCs should work collaboratively to ensure that all allocated USDA Foods are used during the school year (July 1 to June 30) and to manage USDA Foods inventories.

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Food Service Management Contracts (FSMCs) and Processing Activities

A recipient agency may allow an FSMC to assist in procuring a processor for USDA Foods to be used by the FSMC. However, an FSMC cannot contract directly with a USDA Foods processor. The recipient agency must award and sign the processor contract.

The procured processing contract must address, but is not limited to, the following:

- Compliance with the provisions of the recipient agency's processing agreements.
- Proper procurement practices[14] as defined by USDA as well as applicable state and local regulations or law, including, but not limited to, avoiding conflicts of interest by not awarding contracts to FSMC-owned or affiliated vendors.
- Specifications, technical requirements, and terms and conditions for the services and products to be provided to the recipient agency.
- Quantity for each product to be provided to the recipient agency.
- Price to be charged for the finished end product and processing services as applicable.
- Method used to credit the recipient agency with the value of the USDA Foods, frequency of credits, and reporting of credits.
- Location for the delivery of the finished end products, including, if applicable, use of distributor.
- Performance bond or irrevocable letter of credit to protect the value of the USDA Foods to be received for processing. The performance bond or letter of credit must be received prior to receipt of USDA Foods for processing.
- Other regulatory contract requirements as described in the *Other Regulatory Contract Requirements* subsection in this section.

Distributor Contract with Recipient Agencies

When a recipient agency procures a distributor, the resulting contract must meet federal, state, and local requirements for procurement and contracting. These contracts must address, but are not limited to, the following:

- Price to be charged for the finished end products and other processing services.
- Value of the USDA Foods contained in each finished end product.
- Method of finished end product sales that will be used.
- Method to be used to provide the recipient agency with credit for the value of the USDA Foods.
- Location for the delivery of finished end products.
- Compensation of recipient agencies for substandard, lost, or damaged finished end products made from USDA Foods.

[14] See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on procurement requirements.

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A recipient agency may choose to have the same distributor manage both commercial finished end products and USDA Foods finished end products. A distributor that delivers finished end products must also have an agreement with processors used by the recipient agency. See the *Processor/Distributor Agreement* topic in the *Processor Agreements and Contracts* subsection in this section for more information on this topic.

When the recipient agency procures storage and distribution of finished end products separately from the processing of USDA Foods, the recipient agency may provide the distributor written approval to act as the recipient agency's authorized agent for the total case price (i.e., including the fee-for-service and the delivery charge).

Recipient Agency-Created Purchasing Cooperatives

Recipient agencies that participate in a purchasing cooperative must have a written cooperative agreement or contract that defines scope of the actions the purchasing cooperative will take on behalf of the cooperative members.

When cooperatives are used by recipient agencies in purchasing finished end products created by processors, the processor must be properly procured. In all cases, the recipient agency is responsible for ensuring that all contractors, including processors, are in compliance with all regulations.

Audit Requirements for In-State Processors

In-State Processors must obtain an independent certified public accountant (CPA) audit in the first year that they receive donated foods for processing. Further, In-State Processors must submit a copy of the audit to TDA for review by December 31st of each year in which an audit is required.

After this initial requirement period, In-State Processors must obtain an independent CPA audit at a frequency determined by the average value of donated foods received for processing per year, as stated below:

- Annually, if it receives, on average, more than $5,000,000 in donated foods for processing per year;
- Every two years, if it receives, on average, between $1,000,000 and $5,000,000 in donated foods for processing per year; or
- Every three years, if it receives, on average, less than $1,000,000 in donated foods for processing per year.

The value of donated foods used in determining if an audit is required must be the contract value of the donated foods. The audit must determine that the Processor's performance complies with the requirements in this part and must be conducted in accordance with procedures in the FNS Audit Guide for Processors. All Processors must pay for audits required in this Agreement.

If an In-State Processor fails to obtain the required audit, or fails to correct deficiencies identified in the audit, TDA may terminate this Agreement and may not extend or renew such an Agreement. Additionally, FNS may prohibit the further distribution of donated foods to such processor.

Performance Bond or Irrevocable Letter of Credit

Performance bond or irrevocable letter of credit to protect the value of the USDA Foods to be received for processing. The performance bond or letter of credit must be received prior to receipt of USDA Foods for processing.

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Calling in a Processor's Performance Bond or Irrevocable Letter of Credit

TDA or recipient agency must call in a processor's performance bond or letter of credit in the following circumstances:

- The processor is not in compliance with the terms and conditions of the state or recipient agency processing agreement.
- Processor actions result in a loss of USDA Foods to a distributing or recipient agency and the processor fails to make restitution or respond to a claim action initiated to recover the loss.

USDA FNS will call in a processor's performance bond or irrevocable letter of credit in the following circumstances:

- The processor is not in compliance with the terms and conditions of the national processing agreement.
- Processor actions result in a loss of USDA Foods to a distributing or recipient agency and the processor fails to make restitution or respond to a claim action initiated to recover the loss.

Finished End Product Data Schedule

Finished end product data schedules (EPDS) provide accurate information on the finished end product, USDA Foods used in the product, and yield in a standard electronic format dictated by USDA FNS. Finished end product data schedules must be approved before the processor can process USDA Foods into finished end products.

To achieve consistency in yields, processors use standardized processes and internal controls as overseen by USDA.

National Processing Agreements

The finished end product data schedule must be approved by USDA.

In-State Processing Agreements

The finished end product data schedule must be approved by TDA with the exception of beef, pork, and poultry which are subject to approval by the Agricultural Marketing Service (AMS).

On the finished end product data schedule, the processor must describe its processing of USDA Foods into a finished end product, including the following information:

- Description of the finished end product
- Types and quantities of USDA Foods included
- Types and quantities of other ingredients included
- Quantity of finished end product produced
- Processing yield of USDA Foods, which may be expressed as the quantity (pounds or cases) of USDA Foods needed to produce a specific quantity of finished end product or as the percentage of the raw USDA Foods versus the quantity returned in the finished end product

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Processing Yields for USDA Foods

Processing yield options are limited to (1) 100 percent yield, (2) guaranteed yield, and (3) standard yield.

100 Percent Yield

The processor must ensure that 100 percent of the raw USDA Foods is returned in the finished end product.

Insufficient Product

If there is any loss of USDA Foods, the processor must replace the loss with commercially purchased food of the same generic identity, of U.S. origin, and equal or better in all USDA procurement specifications than the USDA Food.

The processor must demonstrate such replacement by reporting reductions in USDA Foods inventories on performance reports by the amount of USDA Foods contained in the finished end product rather than the amount that went into production.

[NOTE: USDA may approve an exception if a processor experiences a significant manufacturing loss.]

Guaranteed Yield

The processor must ensure that a specific quantity of finished end product (i.e., number of cases) will be produced from a specific quantity of USDA Foods (i.e., pounds), as determined by the parties to the processing agreement, and, for In-State Processing Agreements, approved by TDA.

Insufficient Product

If necessary, the processor must use commercially purchased food of the same generic identity, of U.S. origin, and equal or better in all USDA procurement specifications than the USDA Foods to provide the guaranteed number of cases of finished end product to the distributing or recipient agency, as appropriate.

Standard Yield

The processor must ensure that a specific quantity of finished end product (i.e., number of cases), as determined by USDA, will be produced from a specific quantity of USDA Foods. The established standard yield is higher than the yield the processor could achieve under normal commercial production and serves to reward those processors that can process USDA Foods most efficiently.

Insufficient Product

If necessary, the processor must use commercially purchased food of the same generic identity, of U.S. origin, and equal or better in all USDA procurement specifications than the USDA Foods to provide the number of cases required to meet the standard yield to the distributing or recipient agency, as appropriate.

Labeling

The processor must ensure that all finished end product labels meet Federal labeling requirements. A processor that claims finished end products fulfill meal pattern requirements for a Child Nutrition Program (CNP) must comply with the procedures required for approval of

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labels of such finished end products.[15] Moreover, all finished end products made with USDA Foods must meet the Buy American provisions.

Buy American

When USDA Foods[16] items are manufactured into finished end products, 51% of the final processed food product must consist of agricultural commodities that were grown domestically (sometimes, referred to as processed *substantially* using domestic agricultural commodities). The products must be manufactured/processed in the United States. Products grown in another country and processed in the United States do not meet the Buy American provisions. Products grown in the United States and processed in another country do not meet the Buy American provisions.

[NOTE: Domestic food products include food products from the United States territories: Guam, American Samoa, Virgin Island, Puerto Rico, and the Northern Marian Islands.]

If a recipient agency receives USDA Foods products that do not meet these requirements, the recipient agency must refuse delivery and report the issue to TDA immediately.

Substitutions

Unless the processor agreement/contract specifically stipulates that the USDA Foods must be used in processing, the processor may substitute commercially purchased foods for USDA Foods. The commercially purchased food must be of the same generic identity, of U.S. origin, and equal or better in all USDA procurement specifications than the USDA Foods.

Commercially purchased beef, pork, or poultry must meet the same specifications as donated product, including inspection, grading, testing, and humane handling standards and must be approved by USDA in advance of substitution.

Commercially purchased food substituted for USDA Foods must meet the same processing yield requirements as the USDA Foods.

The processor may also choose to make the substitution before the actual receipt of the USDA Foods. However, the processor assumes all risk and liability if, due to changing market conditions or other reasons, the USDA's purchase of USDA Foods and their delivery to the processor does not occur.

Substitution for Backhauled USDA Foods

The processor cannot substitute or commingle USDA Foods that are backhauled from a distributor's or recipient agency's storage facility. The processor must process the backhauled USDA Foods into finished end products for sale and delivery to the distributor or recipient agency using the USDA Foods that have been backhauled to the processor. The processor cannot substitute food products that have been provided by any other agency for the backhauled USDA Foods.

Distributors or recipient agencies must purchase the finished end products utilizing USDA Foods backhauled to their contracted processor. The processor also cannot provide payment for backhauled USDA Foods in lieu of processing.

[15] See *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional information on the requirements for product labeling.

[16] See *Administrator's Reference Manual (ARM), Section 21, USDA Foods* for additional information on the Buy American requirements for processing USDA Foods.

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Substitutions Not Allowed or Available

In cases where a substitution is not allowed or a suitable substitution is not available, the processor must take one of the following actions:[17]

1. Return the USDA Foods to TDA.
2. Pay TDA an amount equal to USDA's most recent cost information on acquiring and delivering replacement food relative to the time of determination that a substitute is not allowed or available.
3. Pay TDA current per pound value established by the Processor Agreement or the Commodity Credit Corporation (CCC) unrestricted sales price.

Credit for Sale of By-Products Resulting from Processing USDA Foods

The processor must credit the recipient agency for the sale of any by-products produced in the processing of USDA Foods. The processor must credit for the net value of such sales, or the market value of the by-products, after subtraction of any documented expense incurred in preparing the by-product for sale. Crediting must be achieved through invoice reduction or by another acceptable means of crediting, including the methods described in the *Providing Credit for USDA Food Values* subsection in this section. In all cases, the processor must provide documentation that demonstrates that the recipient agency received appropriate credit amount.

Providing Credit for USDA Foods Values

The processor must provide credit for the USDA Foods value in the finished end products using one of the following acceptable crediting methods.

Direct Discount

With this method, the processor must sell finished end products to the distributor or recipient agency, as appropriate, at a net price that incorporates a discount from the commercial case price for the value of USDA Foods contained in the finished end products.

Fee for Service

For this method, the processor charges the distributor or recipient agency a fee[18] for creating finished end products not for the price of the product itself. A fee for service method includes all costs to produce the ending products and excludes the value of the USDA Foods used in the finished end product. There are three types of fee for services used:

- Direct shipment and invoicing from the processor to the recipient agency.
- Multiple pallets of finished end products are shipped to the distributor with a list of which recipient agencies own what products.
- Authorized agent bills the recipient agency for the total case price.

The processor must identify any delivery charge for finished end products separately from the fee for service on invoicing. If the finished end products are delivered to a distributor,

[17] Processors who have questions about this process should contact TDA. See the Contact Information for the Texas Department of Agriculture page which follows the table of contents in this section.

[18] This definition applies only to USDA Foods. *Fee for service* is also a term used in contract services and procurement for other purposes.

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any delivery costs the distributor charges must also be identified separately on processor invoicing or billed separately by the distributor.

[NOTE: If delivery is made to state-contracted warehouse, recipient agency orders finished end products from state-contracted warehouse. State-contracted warehouse charges recipient agency storage and delivery fees.]

Net Off Invoice (NOI, Also Called Indirect Discount)

With this method, the value of the food product is credited when the commercial distributor invoices the recipient agency for the net price—commercial price of the product minus the USDA Foods value equals the net price. The processor must require the distributor to notify the processor of these sales at least on a monthly basis. Notification may be made through automated sales reports or other electronic or written submission. With this information, the processor compensates the distributor for the discount provided for the value of the USDA Foods. Recipient agencies must closely monitor invoices to ensure that correct discounts are applied.

[Commercial Price] – [USDA Foods Value]	=	[Net Off Invoice (NOI) Amount Owed to CE]

Rebate

When the rebate method is used, the processor sells the finished end products containing USDA Foods to the distributing or recipient agency, as appropriate, at the commercial or gross price. After the recipient agency or distributor receives the finished end products, the recipient agency submits a rebate[19] form to the processor. The processor credits or sends a payment to the recipient agency for the credit value within 30 days of receiving a request. Refund requests must be in writing and may be transmitted by email or other electronic method.

[Value of USDA Foods Product]	=	[Rebate Amount Owed to CE]

Transfer of Title for USDA Foods

When USDA Foods are processed into finished end products, title to the USDA Foods transfers to the recipient agency at the time and place delivery of the finished end products occurs. It is the responsibility of the agency that receives the products to ensure quality and proper handling.

For distributors and multi-state processors, title to USDA Foods transfers as follows:

Distributor Acting on Behalf of the Recipient Agency

When a recipient agency contracts with a distributor to act as the authorized agent, title to finished end products transfers from a multi-state processor with a national processing agreement to the recipient agency at the time and place the contracted distributor accepts the delivery of the food products.

Multi-State Processor with a National Processing Agreement

When a multi-state processor delivers USDA Foods as described in the national processing agreement, title to the USDA Foods transfers to the recipient agency on acceptance of the finished end products at the time and place of the delivery.

When a recipient agency contracts with a distributor to store or transfer finished end products that utilize USDA Foods, the distributor must notify the processor of its sales of the finished end

[19] This definition applies only to USDA Foods. *Rebate* is a common term used in contract services and procurement for other purposes.

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products to the recipient agency in a timely manner, so that the processor may report such sales and reductions of the USDA Foods inventories to the TDA in its monthly performance reports. Such notification may be provided by electronic means—e.g., through sales velocity reports or other automated sales reports.

Inspection of USDA Foods on Delivery or Pickup

Before taking possession of and signing for USDA Foods (whether delivered or picked up), the processor, distributor, or recipient agency must inspect the bill of lading (BOL) or invoice to ensure that the following requirements are met:

- High-security seal is intact.
- Temperature of product is acceptable for frozen and refrigerated foods.
- Delivered product belongs to the recipient agency.
- Quantity is correct.
- Products are in good condition.

Products That Are Not in Good Condition

When the processor, distributor, or recipient agency discovers that USDA Foods or finished end products are not in good condition (commonly called *out-of-condition*) at the time of delivery or pickup, the processor, distributor, or recipient agency must use the following guidance.

Accept the USDA Foods of Finished End Products

The processor, distributor, or recipient agency may accept the USDA Foods or finished end products delivered if

1. some, but not a major portion, of the delivered products are out-of-condition, and
2. the delivered products have only minor quantity discrepancies from quantity ordered.

In this case, the processor, distributor, or recipient agency must take the following actions:

- Segregate the out-of-condition foods.
- Notify[20] TDA about the out-of-condition foods.

Refuse to Accept Some or All of the USDA Foods or Finished End Products

The processor, distributor, or recipient agency is not required to accept USDA Foods or finished end products delivered in the following conditions:

- Unsafe for consumption based on evidence of odors.
- Signs of infestation (dead insects or nesting materials).
- Damage to inner or outer containers.
- Unsafe storage or transportation temperatures.

[20] See the Contact Information for the Texas Department of Agriculture page which follows the table of contents in this section.

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When food products exhibit any of these conditions, the processor, distributor, or recipient agency may refuse delivery of all or some of the USDA Foods or finished end products in the delivery order.

Before refusing or accepting delivery of out-of-condition USDA Foods or finished end products, the processor, distributor, or recipient agency must call TDA immediately.

Replacement for Out-of-Condition USDA Foods or Finished End Products

In all cases, the processor or distributor is responsible for replacement of the USDA Foods or the finished end products when delivered out-of-condition. This includes entitlement and bonus foods. The processor or distributor may reimburse the recipient agency for the value of the USDA Foods at the time of delivery (or another value as determined by USDA) or credit the recipient agencies entitlement.

Non-U.S. Food Products

If the food items delivered are not U.S. products or the finished end products do not meet the Buy American standards,[21] the processor, distributor, or recipient agency cannot accept delivery.[22]

When this occurs, the receiving agency must report this circumstance to TDA immediately.

Storage and Inventory Management for USDA Foods

Processors, distributors, and recipient agencies must maintain an inventory of USDA Foods which allows for reporting of the following information:

- Whether a food product is sourced from USDA Foods or commercially sourced food products substituted for USDA Foods
- Location of the USDA Foods product (including, but not limited to, a recipient agency facility, processor, distributor, or state-contracted warehouse)
- Value of each USDA Foods product
- Quantity for USDA Foods products or commercially sourced food products substituted for USDA Foods. This includes amount received by date and amount used by date.

  If the food product is sourced from both USDA Foods and another source, the system must be able to report the quantity for each source.
- Tracking system to assist the recipient agency in managing the timely use of USDA Foods in order to address the following concerns:
  - Limit additional costs associated with short-term storage or long-term storage.
  - Avoid exceeding the 180-day limit for storage.

[21] See the *Administrator's Reference Manual (ARM), Section 23, Food Product Documentation* for additional information on food product labeling requirements and *Section 17, Procurement* for more information on Buy American.

[22] For additional information on Buy American standards see *Administrator's Reference Manual (ARM), Section 17, Procurement*.

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- Documentation demonstrating that all inventoried foods are stored in a manner that meets all state and local health and safety requirements.

Storage of USDA Foods

Commingle USDA Foods and Commercially Purchased Foods

The processor may commingle USDA Foods and commercially purchased foods, unless the processing agreement specifically stipulates that the USDA Foods must be used in processing, and not substituted, or the USDA Foods have been backhauled from a recipient agency. However, such commingling must be performed in a manner that ensures the safe and efficient use of USDA Foods, as well as compliance with substitution requirements or the reporting information about USDA Foods inventories. The processor must also ensure that commingling of finished end products and other food products, either at its facility or at the facility of a commercial distributor, ensures the sale and delivery of finished end products that meet the processing requirements including affixing the applicable USDA certification stamp to the exterior shipping containers of finished end products.

Excessive Inventory Limitations

Inventories of USDA Foods at processors may not exceed a six-month supply, based on an average amount of USDA Foods used by recipient agencies or expected to be used unless the processor submits a written justification to TDA and TDA grants approval.[23]

Future Orders

If a processor reports no sales activity during the prior year's contract period, TDA is not permitted to submit food orders to this processor unless the processor submits documentation of the processor's plan for USDA Foods drawdown, product promotion, or sales expansion to TDA and TDA approves.

[NOTE: USDA may require the transfer of inventory and/or entitlement to another State or processor to ensure utilization prior to the end of the school year.]

End of Year Reconciliation

If the processor has USDA Foods inventories in excess of a six-month supply based on an average amount of USDA Foods used by recipient agencies at the end of the school year, TDA may take one of the following actions:[24]

- Permit the processor to carry over specified inventory of USDA Foods into the next school year if TDA determines the processor is able to efficiently store and process the quantity of USDA Foods.
- Direct the processor to transfer the specified inventory of USDA Foods to other recipient agencies, the Texas State Account, or to another state distributing agency.
- Require the processor to pay TDA for the replacement value of the USDA Foods.

[23] TDA will forward the request to USDA for approval once all needed information is submitted if required.
[24] Processors who have questions about this process should contact TDA. See the Contact Information for the Texas Department of Agriculture page which follows the table of contents in this section.

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Disposition of USDA Foods on Termination of a Processor Agreement

When a processor agreement is terminated, the processor must take one of the following actions with respect to remaining USDA Foods:[25]

- Return the USDA Foods or commercially purchased foods that meet the substitution requirements to TDA or the recipient agency as appropriate.
- Pay TDA or the recipient agency with USDA approval, as appropriate, for the USDA Foods at the contract or replacement value of the USDA Foods whichever is higher.
- Transfer the USDA Foods or commercially purchased foods that meet the substitution requirements to another state distributing agency or recipient agency with which it has a processing agreement.

The processor must pay the cost of transporting any USDA Foods when the agreement is terminated at the processor's request or as a result of the processor's failure to comply with agreement requirements.

Excess Carryover Inventory at the Processors

Unused recipient agency USDA Foods inventory that is left with the processor on June 30 is called carryover inventory. Any carryover inventory remaining in a processor's inventory on July 1 is excess carryover inventory and will be transferred to the state agency (TDA) for redistribution.[26] When the excess inventory is transferred to the state, processors must update their tracking system to indicate the transfer of the USDA Foods to TDA.

Transfer of USDA Foods—Recipient Agency to Recipient Agency

Before a recipient agency can transfer unused USDA Foods to another recipient agency, TDA must approve the transfer. TDA will provide processors with a copy of the approved transfer request for the recipient agency to recipient agency transfer. Once the processor receives the transfer form, the processor will make the transfer as approved. TDA will require corrective action from the processor for any transfers that occur without TDA approval. Any transactions that occur prior to the implementation of the corrective action will be at the expense of the processor.

Care of USDA Foods

Processors, distributors, and recipient agencies receiving USDA Foods should take watchful and reasonable upkeep of these products. This includes, but is not limited, to the following:[27]

Food Delivery or Pickup

Check each delivery or pickup of food for possible shortages and damage before the foods are accepted.

- The product and the quantity in the delivery or pickup must be the same as described on the delivery document (such as the bill of lading or the invoice) unless exceptions are noted.[28]

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[25] Transfer the USDA Foods or commercially purchased foods that meet the substitution requirements to another state distributing agency or recipient agency with which it has a processing agreement.

[26] There is no longer an exception which allows a CE to retain an excess carryover balance.

[27] USDA Foods, as with all other food used in the SNP, must comply with the school food safety program. Refer to *Administrator's Reference Manual (ARM), Section 26, Food Safety*, for information regarding the school food safety program and Hazard Analysis Critical Control Point (HACCP) requirements.

[28] See the *Inspection of USDA Foods on Delivery or Pickup* subsection in this section for additional information on this topic.

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- Refrigerated products must be examined to ensure the temperature of the product is adequate, and the products are in good condition. This is especially essential for frozen foods.
- Canned foods must be examined to determine if there are any damaged, disfigured, or discolored cases or cans, which might indicate spoilage or deterioration.
- Foods that commonly have insect infestation must be thoroughly inspected to ensure that there is no infestation.
- Foods found to be out-of-condition must be segregated from other foods and handled in accordance with the applicable Hazard Analysis and Critical Control Points (HACCP) procedures for managing unsafe or infested food.

Protecting USDA Foods from Infestation

Adequate safeguards must be taken to protect USDA Foods from infestation in the storage facility.

- Facilities must be inspected routinely to ensure that there are no external openings in the structure of the building where foods are stored, which would allow rodent and insect infestation. TDA recommends that USDA Foods be inspected monthly.
- Facilities must use a method to prevent infestation. This may include pesticide, traps, or other food safe method of eradication. Because some pesticides and extermination chemicals may not be safe for foods, agencies should ensure that food safe products are used.

Information Box 1

Food Storage Temperatures

Cooler/Refrigerator Temperature	36º to 40º
Freezer Temperature	0º or below
Dry Storage	50º to 70 º, less than 70% humidity

The United States Environmental Protection Agency (EPA) has developed the following resources about protecting foods from infestation that provide information specific to school food service operations as well as general food service operations:

- *Keeping Rodents Out of Your School* available at *www.epa.gov/managing-pests-schools/keeping-rodents-out-your-school*
- *The Basics of School IPM (Integrated Pest Management)* available at *https://www.epa.gov/managing-pests-schools/basics-school-ipm*
- *Integrated Pest Management in Child Care Centers: Protecting our Children from Pests and Pesticides* available at *www.epa.gov/childcare/integrated-pest-management-child-care-centers-protecting-our-children-pests-and-pesticides*

Food Safety

Processors and distributors must ensure the safe and effective storage of USDA Foods, including compliance with the general storage requirements as required by federal, state, and local food safety and health laws and regulations. This includes, but is not limited to, maintaining sanitary conditions, keeping foods at the proper temperature and humidity, and ensuring adequate air circulation. Processors and distributors must also ensure appropriate control procedures are in place to protect USDA Foods against theft, spoilage, damage, or other loss.

- Store foods in freezers and coolers that are thoroughly cleaned and dried, operating properly, and in good repair.

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- Monitor the temperature of freezers and coolers routinely. Temperatures in the refrigerators and freezers should be taken and recorded daily and recorded in a temperature log. Equipping freezers and coolers with an alarm system for easy detection of high temperatures and power failures may also help to prevent food spoilage.
- Check freezers and coolers after a power failure to make sure the units are operating properly, and stored foods are still in good condition.
- Place foods on shelves with a one- or two-inches of space left between the walls and other food containers to ensure proper air circulation. In walk-in units, place foods on dunnage platforms[29] rather than directly on the floor and stack foods properly to prevent falling and possible damage.
- Repair or replace malfunctioning equipment.
- Place locks on freezers and coolers and all building doors where USDA Foods are stored. This will help prevent theft and vandalism.
- Limit ordering to quantities that can be properly stored and utilized without waste.

Maintaining the Quality of Grains and Grain Products

As with all foods, use first in, first out (FIFO) principles when storing whole-grain items. Because whole-grain ingredients (e.g., whole-wheat flour, brown rice) retain the bran and the oil-rich germ, these food items may turn rancid when stored in warm areas and have a shorter shelf life than their refined counterparts.

To increase shelf life, store these products in a cool, dry place in airtight containers. From May through September, grain products must be refrigerated. At other times of the year, if products will not be used within a short period of time, they should be stored in the refrigerator or freezer.

Loss of USDA Foods

The processor must compensate the recipient agency, as appropriate, for the loss of USDA Foods, or for the loss of commercially purchased foods substituted for USDA Foods. Such loss may occur (1) if the processor fails to meet the required processing yield of USDA Foods or fails to produce finished end products that meet required specifications; (2) if USDA Foods are spoiled, damaged, or otherwise adulterated at a processing facility; or (3) if finished end products are improperly distributed.

If losses are due to an infestation, the processor must work directly with USDA to report the loss and final outcome of the infestation. This report will include temperature logs, shipment numbers and delivery dates, documentation of a professional exterminator visit, current condition of the affected product, and storage location. USDA will provide guidance to the processor for how to handle the product based on their evaluation and determinations.

To compensate for such loss, the processor must take one of the following actions:

1. The processor must replace the lost USDA Foods or commercial substitute with commercially purchased food of the same generic identity, of U. S. origin, and equal or better in all USDA procurement specifications than the USDA Foods.

[29] Structures that allow users to store food off the floor, away from walls, and at different height levels which increases ventilation and helps prevent spoilage and contamination.

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2. The processor must return finished end products that are wholesome but do not meet required specifications to production for processing into the requisite quantity of finished end products that meet the required specifications (commonly called rework products).
3. The processor may pay the recipient agency for the replacement value of the USDA Foods or provide a commercial substitute with approval from TDA.[30]

Determining the Value of USDA Foods When There Is a Loss

Once a distributing or recipient agency has selected a method of assigning value to USDA Foods, it must use that method consistently in all audit activities and must maintain a record of the means of valuing USDA Foods for such purpose.

The distributing agency (TDA) or recipient agency must use one of the following methods to determine the value of USDA Foods:

1. Fair Market Value (FMV) of USDA Foods at the time of their receipt, FMV must exclude non-food items from the value of the USDA Foods.
2. Cost-per-pound of USDA Foods prices posted annually by the USDA, Food and Nutrition Service.
3. Most recently published cost-per-pound price in the USDA Foods catalog, found in the FNS electronic USDA Foods Food and Nutrition Service ordering system, Web-Based Supply Chain Management (WBSCM).
4. Rolling average of the USDA Foods prices (average cost per pound), based on each State distributing agency's USDA 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 for the material.

Food Recall

Detailed information on food alerts is provided by USDA on the USDA Food Safety website.[31]

[NOTE: Systems for addressing food safety issues, particularly in the event of recalls may change frequently; processors and distributors are expected to check the USDA website regularly to keep up to date.]

In the food alerts, USDA FNS will determine whether a recalled product should be held or disposed of. TDA will communicate this information to processors, recipient agencies, and USDA Foods distributors.

- Hold—If the USDA Foods are on hold, the agency must segregate the product until USDA either releases the hold or provides further information.
- Dispose—If the USDA Foods are recalled, TDA will instruct recipient agencies ways to dispose of the product. Processors and recipient agencies are encouraged to avoid disposing of the product until notified by TDA.

In the event a USDA Foods product is subject to a recall, USDA has developed a notification system for automated email alerts.[32]

Because processors are the only entities that know if a recipient agency or USDA Foods distributor has received a recalled food product or if a product contains a food item that has been recalled, processors are responsible for maintaining records for all food products sent to all

[30] If the processor cannot take Action 1 or 2 and is requesting Action 3, contact TDA for assistance and approval.
[31] Available at *www.fns.usda.gov/*, food safety hyperlink.
[32] More information on this alert system is available at *www.fns.usda.gov/*, food safety hyperlink.

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recipient agencies or USDA Foods distributors in order to trace the distribution of recalled foods. Processors are also responsible for notifying all affected recipient agencies or USDA Foods distributors about recalls using the most expeditious method possible, ideally 24 hours or less.

Food Recall Notifications for Processors with National Processing Agreements

The following list describes the expected sequence of actions taken to respond to a food recall.

1. Processors are contacted directly by USDA FNS and provided information about the recalled product including product identification information.
   [NOTE: USDA FNS also notifies TDA about recalled food items.]
2. Processors determine if the recalled product was used to produce finished end products that were distributed to recipient agencies or USDA Foods distributors, or if a substitute of a commercially purchased food was made in place of the USDA Foods.
3. Processors provide information about how recalled products were used and distributed to USDA FNS.
   - If commercially purchased foods were substituted for USDA Foods, the recall is considered a commercial recall and USDA FNS does not track the finished end products.
   - If recalled foods were used to make finished end products for recipient agencies or USDA Foods distributors, the processors must initiate notification to agencies that received the recalled food.
4. Processors notify TDA, recipient agencies, and USDA Foods distributors that received the recalled products. If none of these agencies received the recalled products, the processor will still contact TDA to confirm that TDA, recipient agencies in the state, and USDA Foods distributors in the state did not receive the recalled foods.
5. USDA Foods distributors immediately notify TDA, processors, and recipient agencies about the quantity of the recalled product remaining in their inventory and the quantity of the recalled product delivered to each recipient agency.
6. Processors compile information from each USDA Foods distributor about the quantity of product remaining in the distributor's inventory and the quantity of the recalled product shipped to each recipient agency and provides that information to TDA.
7. TDA reports all information obtained by the processor (including USDA Foods distributor information) to USDA FNS.
8. USDA FNS may also request information directly from the processors about recalled foods.

Food Recall Notifications for Processors with In-State Processing Agreements

The following list describes the expected sequence of actions taken to respond to a food recall.

1. USDA FNS notifies TDA about the recalled food.
2. TDA notifies processors about USDA Foods recall.
3. Processors determine if the recalled product was used to produce finished end products that were distributed to recipient agencies or USDA Foods distributors, or if a substitution of commercially purchased food was made in place of the USDA Foods.

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4. Processors provide information about how recalled products were used and distributed to TDA.
5. TDA provides information to USDA FNS about the status of the recalled foods.
    - If commercially purchased foods were substituted for USDA Foods, the recall is considered a commercial recall and USDA FNS does not track the finished end products.
    - If recalled foods were used to make finished end products for recipient agencies or USDA Foods distributors, the processors must initiate notification to agencies that received the recalled food.
6. Processors notify TDA, recipient agencies, and USDA Foods distributors that received the recalled products. If none of these agencies received the recalled products, the processor will still contact TDA to confirm that TDA, recipient agencies in the state, and USDA Foods distributors in the state did not receive the recalled foods.
7. USDA Foods distributors immediately notify TDA, processors, and recipient agencies about the quantity of the recalled product remaining in their inventory and the quantity of the recalled product delivered to each recipient agency.
8. Processors compile information about each USDA Foods distributor about the quantity of product remaining in the distributor's inventory and the quantity of the recalled product shipped to each recipient agency and provides that information to TDA.
9. TDA reports all information obtained by the processor (including USDA Foods distributor information) to USDA FNS.
10. USDA FNS may also request information about recalled foods from the processors.

Resources for Using USDA Foods

USDA provides numerous resources to assist in the operation of USDA Foods at *https://www.fns.usda.gov/usda-fis/school*, including manuals, tip sheets and webinars.

The following resources provide useful information on methods to ensure food safety.

[NOTE: Some of the resources are not specific to USDA Foods.]

Texas Department of State Health Services (DSHS)

- Regulations related to food establishments for the state of Texas available at *www.dshs.state.tx.us/foodestablishments/laws-rules.aspx*

Texas Department of Agriculture (TDA)

- *Cooler or Freezer Temperature Recording Form* available at *www.SquareMeals.org*
- *Administrator's Reference Manual (ARM), Section 26, Food Safety* available at *www.SquareMeals.org*

United States Department of Agriculture (USDA)

- *NSLP USDA Food Product Information Sheets* available at *https://www.fns.usda.gov/usda-fis/usda-foods-product-information-sheets*
- *USDA Foods E-Letters* available at *www.fns.usda.gov/fdd/usda-foods-e-letters*

United States Food and Drug Administration (FDA)

- *Are You Storing Food Safely* available at

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www.fda.gov/ForConsumers/ConsumerUpdates/ucm093704.htm

- *Refrigerator & Freezer Storage Chart* available at *www.fda.gov/downloads/food/resourcesforyou/healtheducators/ucm109315.pdf*
- *Refrigerator Thermometers: Cold Facts about Food Safety Available* at *www.fda.gov/Food/ResourcesForYou/Consumers/ucm253954.htm*
- *Food and Drug Administration (FDA) HACCP Guidance* available at *www.fda.gov/Food/GuidanceRegulation/haccp/ucm2006810.htm*

Records Retention

Records retained for USDA Foods serve to demonstrate compliance with all regulations. Distributors and processors are required to keep documentation for 3 years after the close of the federal fiscal year to which they pertain unless longer retention is required for the resolution of an audit, litigation, other regulations, or state law.

Processors must fully account for all USDA Foods delivered and carried forward from one year to the next. These records must demonstrate that production and delivery of USDA Foods and finished end products is equal to the USDA Food received and handled in accordance with its National Processing Agreement or In-State Processing Agreement with TDA and its contracts with individual distributors and recipient agencies.

USDA Foods or the value of USDA Foods not accounted for shall be the liability of the Processor.

Documentation will be used to determine if processors, distributors, and recipient agencies have properly accounted for all USDA Foods under their control. In regulation USDA states the following:

> Failure of the distributing agency, recipient agency, processor, or other entity to comply with recordkeeping requirements must be considered prima facie evidence of improper distribution or loss of donated foods and may result in a claim against such party for the loss or misuse of donated foods, in accordance with § 250.16, or in other sanctions or corrective actions.

Information Box 2

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

Distributors and processors are required to keep documentation for 3 years after the close of the federal fiscal year to which they pertain unless longer retention is required for the resolution of an audit, litigation, other regulations, or state law.

Records retained for USDA Foods include, but are not limited to, the following types of documentation:

- Agreements and contracts
- Amount of USDA Foods in inventory, including length of time in inventory and all transfers
- Finished end products
  - Batch identification data
  - Batch recipes
  - Commercial product substitutions
  - Credited value of the USDA Foods contained in the finished end products

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  - End product data schedules
  - Grading certificates, if applicable; waivers of grading requirements, if applicable
  - Product and performance reports
  - Product labeling
  - Product loss records
  - Production, sale, and delivery of finished end products, including sales through distributors
  - Quality control records, including packaging, net weight, and food safety
  - Quantity of the finished end products created for the period
  - Quantity of USDA Foods included, or commercial substitutes included in the finished end products
  - Receipts of USDA Foods shipments and finished end products
- Financial records
  - Assurances and documentation demonstrating crediting method and payments for USDA Foods
  - Audits, including documentation of findings and corrective action
  - Invoices, bills of lading, or other appropriate documentation that demonstrates the following:
    - Amount of USDA Foods and finished end products received and provided to the FSMC for use in the recipient agency's food service including dollar and pound totals
    - Amount of USDA Foods and finished end products received from, or on behalf of, the recipient agency for use in its food service
    - Amount(s) FSMC credited the recipient agency for the value of all USDA Foods received for use in the recipient agency's food service in the school or fiscal year, including the value of USDA Foods contained in finished end products
  - Procurement documentation for processing contracts
    - Price charged for the finished end product or other processing service
    - Method of finished end product sales
    - Value of the USDA Foods in the finished end products
    - Time and location for the delivery of the finished end products
- Health and safety records, including any required inspections or certificates and product recall documentation and notifications
- Transfer records for all USDA Foods and finished end products

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Compliance

TDA will assess compliance with the use of USDA foods based on onsite and/or offsite processes.

Recipient Agency

TDA may take appropriate fiscal action or terminate the USDA *Foods Agreement Between Contracting Entity and Texas Department of Agriculture* for any recipient agency that is not in compliance with the requirements for USDA Foods. Corrective action may include requiring a contracting entity (recipient agency) to hold a processor or distributor accountable as required by regulation. TDA may also report noncompliance directly to USDA for USDA to make an appropriate response.

In-State Processors

TDA will take appropriate action to terminate the processor agreement or report noncompliance directly to USDA for USDA to make an appropriate response.

Multi-State Processors

TDA will report noncompliance direction to USDA for USDA to make an appropriate response.

Distributors

TDA will report noncompliance directly to USDA for USDA to make an appropriate response.

The cost of any products and/or services that were procured improperly is an unallowable cost to the nonprofit school food service account, including purchases made on behalf of the recipient agency by a third party.

Obligation of the Contracting Entity (recipient agency) to Report Fraud, Bribery, and Gratuity Violations

Processors, distributors, and recipient agencies must report, in writing to TDA, all violations of federal criminal law—fraud, bribery, or gratuity.

> The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR Part 200.113; 31 U.S.C. 3321).

Criminal Penalty

The maximum fine for embezzling, willfully misapplying, stealing, or obtaining by fraud, funds, assets, or property acquired under the National School Lunch Act or Child Nutrition Act is $25,000.

Fraud

> Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether

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received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

Termination of the Agreement for Financial Fraud or Misuse of Funds. If serious deficiencies, such as fraud or misuse of funds occur, and corrective action is not practical, TDA will terminate the processor's or recipient agency's participation in all child nutrition programs administered by TDA, including the NSLP, SBP, SMP, CACFP, and SFSP.

- Processors and recipient agencies have agreements with TDA, but distributors have agreements generally with a processor or recipient agency; in the latter case, in the case of fraud or misuse of funds, the processor or recipient agency would terminate the agreement;
- In the case of a distributor's fraud or misuse of funds, suspected misconduct would be reported to USDA, and USDA would take appropriate action. Distributors would be prohibited from entering contracts to service USDA Foods for either processors or recipient agencies.

Suspected fraud or misuses by processors and distributors will be reported to USDA; USDA will take action as appropriate to the situation. TDA may also refer the matter to the appropriate local, state, and/or federal authorities.

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Section 15

Program Integrity

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Section 15, Program Integrity

Program Integrity Update Guide

July 28, 2022	Updated *Section 16, Program Integrity* to clarify the following: - Definitions
August 16, 2021	Updated the definition of aggregate.
May 27, 2021	Updated *Section 16, Program Integrity* to clarify the following: - Definitions
August 12, 2020	Updated *Administrator's Reference Manual (ARM), Section 15, Program Integrity* to update the *Administrator's Reference Manual (ARM)* section references.
January 28, 2020	Created a new program integrity section in *Administrator's Reference Manual (ARM), Section 17A, Program Integrity*.

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Program Integrity

School Nutrition Programs (SNPs) are designed and funded to provide nutritional meals to students. Contracting entities (CEs) and CE employees are expected to operate these programs in a manner that promotes program integrity.

> There are multiple terms that are commonly used related to program integrity—ethical standards, code of conduct, and conflict of interest; for this section, program integrity includes all these topics.

While program integrity is a key element of all aspects of program operation, the guidance in the following *Administrator's Reference Manual (ARM)* sections will also assist the CE in promoting program integrity:

- *Section 2, Program Application & Agreement*
- *Section 3, Civil Rights and Confidentiality*
- *Section 16, Financial System*
- *Section 16a, Contract Management*
- *Section 17, Procurement*
- *Section 17a, Procurement Procedures*
- *Section 17b, Buy American*
- *Section 17c, Cooperative Purchasing*
- *Section 18, Food Service Contracts*
- *Section 19, Meal Pricing*
- *Section 20, Counting & Claiming*
- *Section 30, Records Retention*
- *Section 31, Administrative & Other Compliance Reviews*

Intention for Program Integrity Efforts

Program integrity is defined *as an organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds*. This type of financial management system provides safeguards that improve the stewardship of program income and costs and reduces fraud and improper payments by the use of internal controls.

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Definitions for This Section

The nature of financial processes fosters the use of terms and vocabulary that are more commonly used by accountants than by school nutrition staff. For School Nutrition Programs (SNPs), the following financial and procurement terms are used:

Acting on Behalf of CE	Entity or person who has been given the responsibility to act for the CE.
Agent	Person or business that is procured to act on behalf of the CE. This includes procuring on behalf of the CE.
Aggregate Purchase Amount	The total cost of all products and services in a single procurement transaction.
Agreement (for School Nutrition Programs)	Written legal document summarizing contractual obligations between two or more entities. This includes intergovernmental and interlocal agreement.
Allocable	Assigning a cost, or group of costs, to one or more cost objectives, in reasonable and realistic proportion to the benefit provided or other equitable relationship—the cost meets one of the following principles: – is incurred specifically for the award/program or – benefits both the award/program and necessary work and can be distributed in reasonable proportion to the benefits received or – is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.
Allowable	Direct or indirect costs that may be paid by SNP funds.
Approved Supplier List	List of suppliers or potential contractors who have demonstrated the ability to perform successfully under the terms and conditions of a proposed procurement, consideration being given to contractor integrity, compliance with applicable policy or regulations, record of past performance, and financial and technical resources.
Arms-Length Transaction	Transaction in which the parties are dealing from equal bargaining positions—neither party is subject to the other's control or dominant influence, and the transaction is treated with fairness, integrity, and legality. Less than Arms-Length Transaction A less than arms-length transaction occurs when a person responsible for making a purchase and appears to have a stake in the outcome is able to control or substantially influence the actions of others. This may include agreements between divisions of an organization; organizations under common control through common officers, directors, or members; and an organization and a director or employee of the organization and his or her immediate family.
Audit	Independent examination of accounting and financial records for accuracy, efficiency, and consistency. This is also called the annual audit or single audit.
Audit Report	Final summary of audit findings provided by a financial auditor.
Audit Corrective Action Plan	Plan in which the CE describes the strategies or actions the CE will adopt to address each finding reported in the audit report.
Audit Summary Schedule or Work Plan	Document that contains a cumulative list of audit findings by year and explanations of the strategies and actions the CE plans to take or has taken to resolve each audit finding. This summary allows the CE, auditor, or TDA staff member to review the actions planned or taken from year to year to maintain an accurate, efficient, and consistent accounting and financial system.
Bid Guarantee	Guaranteed percentage of bid price provided by the offeror at the time the offer is submitted. The CE must return all bid guarantees to all unsuccessful offerors when the contract is awarded and to the winning offeror as soon as the contract is signed.

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Bond	Insurance agreement pledging surety for financial loss caused in connection with the contract. For school nutrition programs, if a loss occurs in connection with a contract related to program operations, the loss will be covered to the extent agreed upon in the bond.
Breach of Ethics	Attempt to realize personal gain through public employment with a CE by any conduct inconsistent with the proper discharge of the employee's duties.
Brokers	Independent sales agents who negotiate sales for manufacturers by working with food distributors and/or school nutrition operations.
Buy American	Requirement for schools to purchase, to the maximum extent practicable, domestic commodities, and products. A domestic commodity or product means an agricultural commodity that is grown in the United States and processed in the United States or that is processed in the United States substantially using agricultural commodities that are produced in the United States.
Capital Assets	Land, buildings (facilities), and equipment that have a useful life of more than one year which are capitalized in accordance with Generally Accepted Accounting Principles (GAAP).
Capital Expenditures	Direct cost expenses to acquire capital assets or to make additions, improvements, modifications, replacements, reinstallations, renovations, or alternations to capital assets to be used for general purposes for multiple years and which materially increase the value or useful life of the asset.[1]
CE Employee (Specific to Program Integrity)	Term used in this section to represent a CE employee or official; family member of CE employee or official; or business partner of a CE employee or official.
Charge Period	Span of time during which a cost is paid. This payment process includes spreading payments over a period of weeks or months or establishing milestones that are linked to payments.
Code of Conduct	Set of written standards the CE must develop that outline the responsibilities of, or proper practices for, an individual or organization and which governs the following: 1. Performance of the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by Food and Nutrition Service (FNS) program funds. 2. Methods of procurement, including the requirement that the CE perform a cost or price analysis for every procurement (including contract modifications) and determination of which contract clauses and certifications are required in the CE's contracts.
Cognizant Agency Related to Indirect Costs	Agency that has primary responsibility for negotiating the indirect cost methodologies for non-federal entities.
Conflict of Interest	Any action that allows a person to benefit at the expense of the public interest or the expense of an employer. A conflict of interest may be a real or apparent conflict of interest.
Contract	Formal, legally enforceable agreement (terms and conditions) between a buyer (the CE) and a seller (contractor) that clearly and accurately describes the products and/or services to be delivered or performed and sets forth the method and the compensation the contractor receives when products and/or services are provided.
Consultant	Consultant that provides temporary support to the CE in areas where the CE lacks the necessary resources, skills, and/or abilities in order to assist the CE in gaining the necessary resources, skills, and/or abilities to operate an effective and compliant program.
Cooperative Purchasing	Group of entities who join together to purchase products and/or services with the intention of reducing costs and improving the quality of products and/or services available to members of a group. In this reference, a purchasing cooperative consists of a group of CEs.

[1] TDA must approve capital expenditures before a CE makes a capital expenditure purchase.

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Cost Analysis	Review and evaluation of each element of cost to determine reasonableness, allocability, and allowability for products and/or services to procured. A cost analysis will include the total projected cost for the products and/or services to be procured.
Cost Index	Tool designed to show the impact of an economic measure on the price of purchasing a specific type of item. TDA has approved the use of the Consumer Price Index (CPI) Food Away from Home for this purpose.
Cost Objective	Program function or activity for which cost data and for which specification is made to accumulate and measure the cost of processes, products, jobs, or other expenses.
Cost Plus Percentage of Cost	Method of pricing where the contract or agreement creates a pricing structure that charges the cost of the product or service plus a percentage of the cost. This pricing structure is not allowable for any purchase under USDA regulations. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).
Cost-Reimbursable Contract	Reimbursable contract that is a formal, legally enforceable contract that reimburses the contractor for costs incurred under the contract but does not provide for any other payment to the contractor with a fixed fee or with a cost-reimbursement fee. [NOTE: The fixed fee associated with these types of contracts may be called management fees or administrative fees.] In a cost-reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor. In a cost-reimbursable contract, the fixed price (fee) includes the contractor's direct and indirect administrative costs and profit allocable to the contract.
Debarment	Action taken by a debarring official to exclude a person from participating in covered transactions.[2] A person so excluded is debarred, that is, unable to participate.
Direct Cost	Expenses that can be identified specifically with a particular cost objective used to meet a specific program goal or goals.
Distributor	Commercial food company that purchases, receives, and/or stores commercial food products and then sells, delivers, and bills the recipient agency for goods and/or services provided.
Drop Delivery	Delivery to one location within the CE, such as a central warehouse.
Economies of Scale	Purchase of large quantities of a product and/or service in order to obtain a better price.
Escalator/De-escalator Clause or Market-based Pricing	Predetermined provisions in a contract stipulating specific conditions for an increase or decrease in price.
Equipment (Property)	Items which have been purchased and are nonexpendable; items have a useful life of more than one year. Equipment purchases of $5, 000 or more are capital expenses and require prior approval.[3]
Ethics	Principles of conduct governing and guiding decisions for an individual or a group in their personal and professional lives. School nutrition professionals have a responsibility to act ethically in accordance with all federal, state, and local guidelines.
Excess Net Cash Resources (Excess Fund Balance)	Net cash resources that that exceed three months of operating expenses. For NSLP and SBP an excessive fund balance refers to net cash resources.

[2] Covered transactions in this section refer to transactions related to child nutrition programs.
[3] See the *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on this requirement.

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Exclusive Contract (Including Exclusive Beverage Contracts)	Contract between an entity or organization and a distributor/vendor that prevents the entity or organization from buying or selling similar products from other distributors/vendors. The distributor/vendor may offer the entity or organization financial, product, or service incentives for signing an exclusive contract.
Expenditures (Costs)	Amount of money that is spent on an item or service.
Firm Fixed-Price Contract (Also Called Firm Price Contract)	Contracts that provide products or services for a price not subject to adjustment other than increases or decreases tied to an economic indicator stipulated by contract. Firm-fixed price contracts are usually negotiated where reasonably finite specifications and/or technical requirements are available, and costs can be estimated with reasonable accuracy. A fixed price contract places minimum administrative burden on contracting parties but subjects a contractor to maximum risk arising from full responsibility for all cost escalations.
Fixed-Price	Agreed-upon amount of money that is fixed at the inception of a contract and is guaranteed for a specific period of time. A fixed-price contract may also contain an economic cost adjustment provision tied to the Consumer Price Index (CPI) Food Away from Home.
Fixed Price (Fee)	Agreed upon amount of money that is fixed at the inception of the contract.
Food Service Management Company (FSMC)	Any organization, whether commercial enterprise or a nonprofit organization, that is or may be contracted by the CE to manage any aspect of the school food service.[4] CEs must use an FSMC from TDA's list of approved FSMCs.
Food Service Management Company (FSMC) Solicitation/ Contract	TDA term used to reference the TDA prototype combined solicitation and contract. This term is applicable to this section only.
Forecasting	Process of analyzing current and historical data to determine procurement needs. In the case of school nutrition programs, forecasting involves predicting and estimating the goods, works, and services needed in specified areas for the coming year, and/or assessing needs by reviewing current procurement activities. Forecasting allows for procurement timelines and tasks to evolve each fiscal year.
Full and Open Competition	Situation where all potential contractors are competing on a level playing field and have the same opportunity to compete and be awarded a contract. Full and open competition is also commonly referred to as free and open competition
Fund Balance (Net Cash Resources)	See "net cash resources."
Grade Standards	USDA quality standards based on measurable attributes that describe the value and utility of the products.
Grantees	Governmental or other legal entity to which a grant is awarded where the receiving entity is held accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.
Incentives	Rewards or benefits received as a result of performing requested actions and/or meeting predetermined milestones.
Indirect Cost	Expenses that are incurred for the benefit of multiple programs or functions and are necessary for the general operation of the SNP program—but cannot be directly attributable to the program.
Indirect Cost Rate	Established percentage of awarded funds that is dedicated to pay costs that have been identified as indirect costs.

[4] If an NSLP CE operates a Child and Adult Care Food Program and/or Summer Food Service Program, there may be additional regulations that applied for the use of an FSMC to operate the program.

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Internal Controls	Procedures or processes designed to establish and maintain effective internal control over the SNP's financial management system that provides reasonable assurance that the CE is managing the program in compliance with all federal, state, and local regulations and terms and conditions of the program award. These procedures or processes help the CE to (1) define actions related to financial management and the procurement activities, (2) establish standards of ethical conduct, and (3) provide full and open competition.
Invitation for Bid (IFB)	Formal method of procurement that uses sealed bidding and results in a fixed-price contract with or without adjustment factors.
Just-in-Time (JIT)	Food and supplies kept in quantities an entity anticipates will meet its immediate needs, which results in the entity maintaining a low inventory level.
LEA	Local education agency, an entity having administrative control and direction of a public or private nonprofit elementary or secondary school.[5]
Lead Time	Amount of time necessary for a distributor to prepare and deliver products and/or services to the CE.
Local Product	Unprocessed locally grown or raised agricultural products that retain their inherent character.
Managing the Contract	Procedures the CE has in place to ensure that contractors perform in accordance with the specifications, technical requirements, and terms and conditions described in a contract or purchase order.
Market Basket	Solicitation strategy that allows a CE to procure a list of products with varied pricing options for a finite number of products. Each product on the market basket list must have (1) a description with the quantity to be purchased, (2) specifications and/or technical requirements for each product, and (3) a description of how each product will be awarded on the contract.
Market Basket, Total Cost Analysis and Scoring	Analysis and scoring evaluation based on the aggregate total cost or by line item total.
Market Basket, Simplified Total Cost Analysis and Scoring	Analysis and scoring evaluation based on a representative sample of all products.
Material Change	Change made to a contract after the contract has been awarded that alters the terms and conditions of the contract substantially enough that had other offerors known of the change in advance, they may have bid differently and more competitively.
Meal Equivalency Factor (MEF)	Statistical tool that is used to convert a la carte sales into a standard of measure, in this case a "meal." The MEF is often used to convert a la carte sales into meal equivalents for billing purposes in fixed price contracts.
Micro-purchase Method	An acquisition of supplies or services using simplified acquisition procedures, the aggregate purchase amount of which does not exceed the micro-purchase threshold.
Necessary	Item or service that is essential to the operation of the program.
Negative Net Cash Resources (Fund Balance)	A CE must not carry negative net cash resources into the next school year. Negative net cash resources exist when all net cash resources have been depleted, and the resulting negative balance constitutes a liability to the organization.

[5] This definition is taken from USDA regulation.

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Net Cash Resources	Amount of funds the SNP account has available to spend—total revenue less total liabilities (expenditures). USDA further defines Net Cash Resources as This includes all monies, as determined in accordance with the State agency's established accounting system that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds, or other negotiable securities.
Noncompetitive Method	Procurement method used when there is an insufficient number of offers submitted in response to a solicitation. In this case, full and open competition is deemed inadequate, and there is no way to remedy the situation.
Non-Federal Entity	State, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.
Open Award	Contract award in which all vendors that submit an offer are awarded a contract. This type of award does not promote full and open competition or pricing that is advantageous to the program. An open award is not the same as using a market basket strategy.
Operating Months	Months during which the CE operates any child nutrition program—NSLP, SBP, CACFP At-Risk, or a summer feeding program. This includes reasonable amounts of time to set up program operations before meal service begins and time to close program operations at the end of the meal service period. Days on which operational tasks occur may be for a full month of operation or a partial month of operation.
Operator	Entity that operates a Child Nutrition Program.
Operator-Only Cooperative	Any type of agreement that is formed solely among CNP operators, including regional education service center (ESC) cooperatives.
Pass-Through Entity	Entity receiving federal funds that have passed through another entity. This definition is specific to funding from federal sources and applies to state agencies, CEs, group purchasing cooperatives, and third-party entities. These funds are used to fulfill the purposes of a federally funded program.
Payment Bond	Bond that covers the cost of materials and works for construction contracts.
Performance Bond	Bond which covers the cost of ensuring that the work is done as specified in the terms of the contract.
Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events or financial transactions. For this section, the word procedure is used to refer to all of these types of documents.
Procurement	Act of obtaining of goods or services in exchange for money or value. [NOTE: Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.]
Procurement Standards	Standards of conduct that shall govern the performance of the CE's officers, employees, or agents in contracting for payment and expending program funds. State and federal procurement regulations require each CE to maintain written standards of conduct, including a code of conduct that prohibits employees from participating in the selection, award, and administration of any contract to which an entity or certain persons connected to them have a financial interest.
Program Integrity	Organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds. [NOTE: Program integrity includes practices associated with ethical standards and codes of conduct.]
Program Specific Audit	Review of the financial transactions—income and expenditures—and accounting procedures for a designated program.
Proprietary Products	Manufactured products ordered specifically for a particular program or are unique to a manufacturer.
Reasonable Cost	Amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.

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Regulatory Authority	Oversight authority dictated by legislative act or regulation.
Request for Proposals (RFP)	Formal procurement method where potential contractors submit an offer to provide products and/or services under a fixed-price or cost-reimbursable type contract.
Responsible (Offer)	Capable of providing the product(s) and/or service(s), as described in the solicitation.
Responsive (Offer)	Offer that addresses the terms and conditions of the solicitation, including the specifications and/or technical requirements for product(s) and/or service(s).
Revenue	Income received by an organization.
Revenue to the School Nutrition Program (SNP) Account	All income that is collected or awarded to the SNP account is revenue (or income) to the SNP account. This includes, but is not limited to, the following: – Federal reimbursement – State or local funds, such as per meal subsidies and state revenue matching funds – Students' payment for reimbursable meals and a la carte sales – Payments for items purchased for fund raisers and vending machines – Income from catering and adult meals
Service Fee	Fee charged for the performance of a specific service.
Simplified Acquisition Threshold (Also Called Small Purchase Threshold)	Amount established by federal, state, or local regulations that defines when formal and informal procurement methods must be us
Single Audit	Organization–wide review of the financial transactions—income and expenditures—and accounting procedures.
Sole Source Method	Noncompetitive procurement method used when products and/or services are available from only one supplier, distributor, or contractor. TDA must approve all sole source methods of procurement.
Solicitation	Process of notifying prospective or qualified offerors about the specifications or technical requirements for the purchase of products and/or services. For informal procurement, the solicitation may be communicated by email, in person, by fax, or by phone as long as the person soliciting offers documents the specifications or technical requirements to ensure that every possible contractor is given the same information. For a formal procurement, a written solicitation is required.
Specifications and Technical Requirements	Detailed information included in the solicitation and in the final contract that describes the product(s) and/or service(s) that will be provided to the CE under the contract.
State Matching Funds	Matching funds provided to local education agencies (LEAs) that participate in NSLP by the state of Texas based on the number of lunches reported on reimbursement claims filed during the period of September 1 through August 31 of the prior year. RCCIs and private schools do not receive state matching funds.
Subgrantees	Governmental or other legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided.
Supplier (Sometimes Called Vendor)	Commercial enterprise, public or nonprofit private organization, or individual that enters into a contract with a CE to provide products and/or services. A supplier is also referred to as an offeror during the solicitation phase of procurement.
Supplies	Items that are expendable or consumed in day-to-day activities and replenished as needed.

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Tangible Benefit	Special offer for a particular item in order to incentivize a purchase which includes, but is not limited to, offering (1) a special item at much lower price than the price structure for a current contract, (2) an item not presently used at a special price that is below market value; or (3) an incentive, such as equipment or other prizes for purchasing items.
Terms and Conditions	General provisions, definitions for terminology, renewal options, protests, termination, and other standards inherent to the contract.
Third-Party	Entity that is contracted to act on behalf of another entity.
Third-Party Cooperative	Any type of cooperative agreement that is formed by sources that are external to CEs which includes the following types of cooperatives: **Non-Child Nutrition Program State Agency Procurement Agency Agreements** Intergovernmental agreements with the State which may include public, private, and nonprofit entities and are conducted for State facility needs using State procurement standards. These agreements allow local educational agencies and other Child Nutrition Program operators to purchase from the State's contracted sources. **Interagency Agreements** Public, private, and nonprofit entities formed for the purpose of procuring goods and services. **Group Purchasing Organizations, Group Buying Organizations, and Third-Party Vendors** (Collectively Referred to as GPOs) CNP and non-CNP operators such as public and private schools, hospitals, universities, law enforcement, public works, etc., who join a third-party company or service provider. A GPO may be a for-profit or a nonprofit entity. Typically, a GPO includes a membership fee for those granted access to the GPO price list of products and services.
Transaction	Occurrence in which two or more entities exchange goods, services, or money between them or among them under an agreement formed for their mutual benefit.
Unallowable Cost	Direct or indirect cost that cannot be paid using funds from the nonprofit school food service account because the cost is not reasonable, allowable, and/or allocable. A cost that is unallowable for the CE is also unallowable for a third-party acting on behalf of the CE. The term *disallowed* is sometimes used in place of unallowable.
Unit Cost	Cost for a single item.
Value	Something of monetary or material worth or something that has a usefulness that can be exchanged for something of worth, merit, or importance.
Velocity Report	Report providing the quantity, date of purchase, and other valuable information for specific products and/or services purchased by CEs used to assist with forecasting future purchasing needs.
Vended Meal Contract	Contractor or merchandiser providing the CE with complete meals, meal components, and raw materials for the meal service.
Vendor Participation Fees	Charge to participate. The charge to participate may be paid by the participant, or it may be paid by those providing products and/or services.
Written Financial and Procurement Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events, including financial and procurement transactions. For this section, the word *procedure* is used to refer to all of these types of documents. Procedures define the critical steps taken to establish and operate effective and efficient systems for (1) financial management, (2) procurement, and (3) management of contracts and agreements. Written procurement procedures may include a procurement plan with timelines and tasks, or a procurement plan may be a separate document from the procedures. Written financial and procurement procedures must be established by all CEs.

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Program Integrity and Financial Management Systems

School Nutrition Program (SNP) accounts are required to comply with generally accepted accounting principles (GAAP) for federally funded programs. Compliance with the GAAP includes compliance with the *Standards for Internal Control in the Federal Government*[6] issued by the Comptroller General of the United States or the *Internal Control Integrated Framework*[7] issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In Texas, CEs must also apply all local and state financial and accounting requirements that are not in conflict with USDA regulations. This includes, but is not limited to, Texas Education Agency (TEA) regulations that apply to school districts and charter schools.

A financial management system provides safeguards that improve the stewardship of federal money and reduce fraud and improper payments by the use of internal controls.

The CE is responsible for compliance with all program regulations. This includes, but is not limited to, the following:

- Procurement practices
- Use of all funds, including allowable and unallowable costs
- Credit for all income to the nonprofit school food service account, including, but not limited to, reimbursements and other payments to the program
- Credit for the value of USDA Foods
- Credits, rebates, and discounts
- Operational requirements as defined in regulation

For procurement, the internal controls incorporated into a CE's financial management system must (1) define actions related to financial and procurement processes, (2) establish standards of ethical conduct, and (3) provide full and open competition.[8]

External Contracts and Agreements

For CEs that have external contracts and agreements to assist them with financial operations and program operation, the CE's financial management system must also incorporate methods to manage these contracts in compliance with all applicable regulations.

Internal Controls

To foster program integrity, the CE must include internal controls in its financial management system, which includes, but is not limited to, the following:

1. Establish and maintain effective oversight over the SNP's financial management system to ensure that the CE is managing the program in compliance with all federal, state, and local regulations and terms and conditions of the program award.[9]
2. Establish and maintain effective oversight over actions related to all financial processes, including, but not limited to, accounting for revenue to the program.

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6 Available at *www.gao.gov/products/gao-14-704G*
7 Available at *www.coso.org*
8 See the *Full and Open Competition* subsection in this section for additional information on this topic.
9 See *Administrator's Reference Manual (ARM), Section 14, Financial System* for additional information on this topic

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3. Establish standards of ethical conduct for all financial actions, including, but not limited to, real or apparent conflicts of interest.
4. Govern the performance of employees, officers, or agents of the CE that are engaged in the selection, award, and administration of the contracts.
5. Prohibit the solicitation and acceptance of gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.[10]
6. Establish standards for situations when an unsolicited gift of nominal value may be accepted.[11]
7. Include procedures for employee disclosure of and action to address all real or apparent conflicts of interest.
8. Describe disciplinary actions for violations of ethical standards or code of conduct.
9. Establish training to assist employees in avoiding conflicts of interest and addressing conflicts of interest.

Each of these internal controls must be addressed in the CE's written procedures and communicated to CE employees.

Well-designed internal controls for financial systems will result in the following qualities:

- Effectiveness and efficiency of operations
  - Trackable method to reconcile all financial transactions, including but not limited to, bank statements and claims
  - Method to maintain accountability for assets
- Reliability of reporting for internal and external use
  - Preparation of reliable financial statements and reports
  - Safeguards for the loss from unauthorized use or disposition of funds, property, and other assets which safeguarded against loss from unauthorized use or disposition which includes, but is not limited to, the following:
    - Segregation of financial duties
    - Restricted access to information, i.e., one person does not control all financial operations without oversight
    - Edit check mechanisms built into all financial management operations
- Compliance with applicable laws and regulations.
  - Demonstrate compliance with federal, state, and local statutes, regulations, and the terms and conditions of the program award
  - Prompt action when instances of noncompliance are identified including, but not limited to, noncompliance identified in audit findings.

[10] See the *Nominal Value* and *Real or Apparent Conflict of Interest* subsections in this section for additional guidance on this topic

[11] See the *Nominal Value* and *Real or Apparent Conflict of Interest* subsections in this section for additional guidance on this topic

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Real or Apparent Conflicts of Interest, CE Employees

For this section, the term CE employee will be used to represent a CE employee or official; a family member of CE employee or official; or business partner of a CE employee or official.

CE employees must not solicit or accept gratuities, favors, or anything of value to perform improper financial actions, including actions related to procuring contractors or parties to subcontracts. When this occurs, there is a conflict of interest.

A conflict of interest is any action that allows a person to benefit at the expense of the public interest or the expense of his or her employer. A conflict of interest may be real or apparent, i.e., a conflict of interest does not have to be acted upon to be considered a conflict of interest.

A real or apparent conflict of interest occurs in situations such as the following:

- CE employee has a financial or other interest in a business being considered for a contract.
- CE employee receives a tangible personal benefit from a business being considered for a contract.
- CE employee has a personal relationship or friendship with a business being considered for a contract.
- CE employee is employed by, about to be employed by, or is seeking employment from a business being considered for a contract.

Information Box 1

Individuals or Entities, Conflict of Interest

The following circumstances may foster conflicts of interests:

- Arbitrary action
- Business interest in or corporate relationship among those involved
- Financial or other interest
- Noncompetitive contracts
- Organizational conflicts
- Relationships between affiliate or subsidiary organizations/firms/companies
- Tangible benefit received

In all cases, if the CE has a question about whether a specific situation is a conflict of interest, the CE should consult with legal counsel.

Nominal Value

CEs should set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value.[12] The nominal value is commonly defined as the cost of a cup of coffee. Nominal value must be included in the CE's written procedures and communicated to CE employees.

CE Employee Tangible Benefit

If a CE employee receives a tangible benefit for taking a financial action or procurement, there is a conflict of interest. A tangible benefit includes, but is not limited to, the following:

- Offering a special item at a much lower price than the price structure for a current contract.
- Offering an item not presently used by the CE at a special price that is below market value.

[12] Examples of nominal value include inexpensive aprons, calendars, mousepads, or coffee cups.

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- Offering an incentive, such as equipment or other prizes for purchasing items.
- Allowing staff to make purchases from a CE-procured contract. See *Information Box 2, Employee Purchase of Items on a CE's Contract Conflict of Interest* for additional guidance on this topic.

Contracts

When there is a real or apparent conflict of interest, the employee, officer, or agent cannot participate in the selection, award, or administration of a contract supported by federal funds.

Incentives, Gratuities, or Kickbacks

CE employees cannot receive incentives, gratuities, or kickbacks to take a financial action or procure an item or service; this includes, but are not limited to, personal gifts, gratuities, or personal purchases[13] off a CE-procured contract. These benefits or incentives may be construed to have been given to influence the purchasing process.

Incentive or Benefits Received

In a case where a benefit offered as part of a responsive[14] offer is allowable, the benefit or incentive must become the property of the SNP. Under no condition can the incentive become the property of an individual.

Food Taken from SNP Sites

No food, not even leftover food (including milk), can be taken from SNP sites by CE employees for personal use, personal gain, or benefit to another person or entity.[15]

The CE must address these issues in its written procedures and must communicate these procedures to CE employees. See the *Written Procedures to Support Program Integrity* subsection in this section for additional guidance on written procedures for this purpose.

Information Box 2

Employee Purchase of Items on a CE's Contract Conflict of Interest

When a CE employee makes a purchase for an item on a CE-awarded contract, the individual is accepting the cash difference between the bid or discount price and the amount the CE employee would have paid for the item in the regular retail market. This is a financial incentive.

Even though the individual pays for the purchase, the payment does not remove the financial incentive. Even if the contractor were to charge the retail price, the individual would still be receiving the convenience of a personal delivery and would be accepting a favor from the contractor—therefore, this is an unallowable practice.

Real or Apparent Conflicts of Interest, Other Individuals or Entities

Any individual or entity acting on behalf[16] of a CE operating a Child Nutrition Program (CNP) is also required to follow all state and federal program integrity regulations.

Actions that can result in real or apparent conflicts of interest apply to any individual or agency that is affiliated with, associated with, partnered with, or has a subsidiary relationship with the individual or agency acting on behalf of the CE.

13 See *Information Box 2, Employee Purchase of Items on a CE's Contract Conflict of Interest* for additional guidance on this topic

14 See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on responsive offers.

15 See *Administrator's Reference Manual (ARM), Section 14, Financial System* and *Section 21, Meal Service* for additional information on giving food away at no charge and donation programs.

16 See the *Definitions for This Section* subsection in this section for additional information on this topic.

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[NOTE: These types of real or apparent conflicts of interest often result in duplicative services and lack of competition.]

CE Communication

A CE must communicate its expectations and applicable procedures related to program integrity to individuals and entities acting on the CE's behalf.[17] This information must be included in solicitations, agreements, contracts, and other communications as appropriate. The expectations and applicable procedures must include, but are not limited to, documentation to demonstrate compliance with all requirements and regulations.

Information Box 3

Individuals or Entities, Conflict of Interest

Individuals or agencies acting on behalf of the CE include, but are not limited to, the following:

- Agent
- Business
- Consultant
- Contractor
- Cooperative
- Distributor
- Food Processor
- Food Service Management Company (FSMC)
- For Profit Organization
- Nonprofit Organization
- Third party
- Vendor

Necessary Documentation

All third-party entities must provide the CE with adequate documentation,[18] so the CE is able to determine if the procurement regulations have been implemented appropriately by the third-party entity. This includes, but is not limited to, documentation related to credits, rebates, discounts, and USDA Foods values.

Third Parties, Including Contractors and Cooperatives, Acting on Behalf of the CE

USDA also prohibits third party contractors or cooperatives that procure products and/or services on behalf of the CE from procuring the products and/or services from the third party's parent company, subsidiary of the parent company, or other entities with a financial relationship to the third party. These types of situations represent a real or apparent conflict of interest, limit competitive procurement, and result in the use of school nutrition funds to pay for the costs of duplicative services. Duplicative costs are unallowable to nonprofit school food service account.

Conflict of interest circumstances include, but are not limited to, a third-party purchasing from the third party owned (contractor or cooperative) or affiliated vendors. Moreover, when a third party publishes a solicitation and procures on behalf of a CE , the third party cannot award a contract to the third party's parent company, a subsidiary company of the third party's parent company, or any entity with a financial relationship with the third party.

In this circumstance, awarding a contract to an entity that has a financial relationship with a third party acting on behalf of the CE constitutes an unfair advantage and is in violation of federal procurement requirements. This type of arrangement may also result in the CE paying for duplicative services. Duplicative costs are an unallowable cost to the nonprofit school food service account.

[17] See the *Definitions for This Section* subsection in this section for additional information on this topic.
[18] See the *Records Retention* subsection in this section for additional information on documentation.

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Persons and Companies Assisting in Developing a Solicitation

When acquiring goods and services, CEs may contract with agents or companies that provide technical information in drafting procurement specifications and/or technical requirements. This provision is intended to encourage program administrators to obtain information from as many sources as possible to assist them in drafting procurement documents.[19]

Potential Offerors or Interested Parties Involved in Developing a Solicitation

It is a conflict of interest for a potential offeror to have prior knowledge of the solicitation or assist in the development of solicitation. Prior knowledge and assistance include, but are not limited to, the potential offeror having input into any aspect of solicitation specifications and/or technical requirements, solicitation documentation, evaluation criteria, or award process.

For Example: If a food service management company (FSMC) provides a cycle menu to a CE that will be included in a solicitation, the FSMC cannot submit an offer for the contract.

If a potential consultant contractor writes a job description for the scope of work to be included in the solicitation, the consultant cannot submit an offer for the contract.

If a CE awards a contract to any individual, entity, business, or organization that has provided information or documentation for the solicitation or contract, the costs of the contract are unallowable and cannot be paid with funds from the nonprofit school food service account.

Therefore, the CE must not (1) engage an individual, entity, business, or organization in the development of a food service solicitation and/or contract if that individual, entity, business, or organization will be submitting an offer for a food service contract or (2) use information that is prepared by any individual, entity, business, or organization that will be submitting an offer for a contract.

Moreover, when any individual, entity, business, or organization assists a CE in the development of a solicitation or contract to procure additional services and/or products outside of a current contract, the CE must not award the contract to an offeror if any one of the following conditions exists:

- The offer is submitted by an individual, entity, business, or organization that assisted the CE in the development of the solicitation.
- The offer is submitted by the parent company of the individual, entity, business, or organization that assisted the CE in the development of the solicitation.
- The offer is submitted by any subsidiaries of the individual, entity, business, or organization that assisted the CE in the development of the solicitation.

CE Survey of Possible Bidders for Product and/or Service Availability

A CE may survey prospective offerors to determine if there are individuals, entities, businesses, or organizations that are able to provide specific products and services. In cases where CEs conduct a survey of potential offerors, the CE must take care to ensure

[19] See the W*ritten Procurement Procedures* subsection in this section for additional information on requirements related to this topic.

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that possible offerors do not assist the CE in preparing the solicitation/contract. If a potential bidder assists the CE in preparing a solicitation or contract, the potential offeror cannot be awarded the contract.

A CE's written procedures must address when and how it will use agents or companies to assist them in developing solicitations.

Certification Regarding Lobbying

Lobbying certification requirements are applicable to grants, subgrants, cooperative agreements, and contracts exceeding $100,000 in federal funds. CEs must have procedures in place that describe how this requirement will be met, which include, but are not limited to, the following:

- Documentation: Actions taken to ensure that the proper documentation is prepared, shared as required, and retained.[20]
- Use of Funds: Statement that federal funds must not be paid by or on behalf of the CE to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

Debarment and Suspension

CEs and their subcontractors must not make or permit any award, subaward, subgrant, or contract with an individual or entity that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

In its written procedures, the CE must define how it will obtain a debarment and suspension certification from each of its contracts.

The CE may use any of the following actions to accomplish this purpose:

- Include the following debarment and suspension certification in the written agreement with the subcontractor:

  {Enter name of subcontracting organization} certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency or by the State of Texas. {Enter name of subcontracting organization} shall immediately provide written notice to {Enter name of CE} if at any time the {Enter name of subcontracting organization} learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. {Enter name of CE} may rely upon a certification of a subcontractor that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless it knows that the certification is erroneous.

- Require the subcontractor to sign and submit the TDA form entitled *Certification Regarding Debarment, Suspension, Ineligibility and*

[20] See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on this topic.

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Voluntary Exclusion for Covered Contracts (H2048)[21] and maintain the signed form with its contract record.

– Print the page from the System for Award Management, which indicates the subcontractor 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 maintaining that document on file with the contract documents. The System for Award Management can be accessed at *www.sam.gov/portal/SAM/#1*.

Staff Taking Food for Personal Use

SNP staff must also be mindful that they cannot take SNP food for personal use,[22] i.e., personally profit from the SNP. CEs must have policies or guidelines in place that ensure that SNP staff do not profit from the SNP, including through donation programs.

Written Procedures to Support Program Integrity

CEs are required to have written procedures to encourage and support program integrity that establishes ethical standards for the operation and management of Child Nutrition Programs (CNPs). These written procedures must **reflect applicable local, state,[23] and federal regulations** that include, but are not limited to, checks and balances that provide internal controls for all financial matters.

CEs may have a set of overarching procedures at the CE level and more detailed procedures at the site level. Or, they may have a single set of procedures that are applied at all levels. They may have a written plan which describes actions specific to topics or schedules with timelines and tasks in procedures or as standalone documents.

> For this section, the term procedure is used to refer to processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take.

The CE's procedures must state how the CE will incorporate program integrity requirements into its financial management system and must state the specific roles and responsibilities of employees in maintaining internal controls. These procedures are intended to (1) guide employees by defining the roles and responsibilities for all involved and (2) address the code of conduct that governs the performance of the CE's employees, officers, and agents as required by local, state, and federal regulations.

These procedures must also ensure that CE personnel do not circumvent federal and state regulations—no matter the reason, well-intentioned or fraudulent.

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21 Available at *www.squaremeals.org*

22 SNP staff assisting with the operation and supervision of the nutrition program may be served a meal at no cost before, during, or after the meal service.

23 CEs that are administered or managed by a state or local government or Indian tribe may be required to follow written standards of conduct established by the governing state or local government or Indian tribe. In these cases, the CE must ensure that the code of conduct required by the state or local government or Indian tribe is also in compliance with USDA regulations.

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Written Procedures, Conflict of Interest

Procedures for conflict of interest include, but are not limited to, the following:

- Definitions for conflict of interest terms, including, but not limited to, real or apparent conflicts of interest; nominal value; tangible benefits; incentives, gratuities, or kickbacks; incentives or benefits; and food taken from SNP sites.[24]
- Disciplinary actions to be applied for violations of such standards by CE employees, CE officers, or individuals or agents acting on the CE's behalf.
  - This includes methods to address how employees will avoid conflicts of interest and how the CE will treat situations where individuals receive incentives, gratuities, or kickbacks for financial transactions.
  - This includes addressing situations where the CE or individual, or entity acting on behalf of the CE, is unable, or appears to be unable, to be impartial in conducting action involving a related entity or organization.
- Guidance on how to avoid undue influence.
- Method(s) for an individual to disclose in writing any possible situations where there is an appearance of incentives, gratuities, or kickbacks being received.[25]

Resources

CEs may find the following resources helpful in establishing procedures for program integrity:

Texas Resources

Resources include the following:

- Texas Procurement and Support Services (TPASS) (Formerly the Texas Building and Procurement Commission). Available at *www.window.state.tx.us/procurement/*
- Texas Comptroller of Public Accounts. Available at *www.cpa.state.tx.us*
- *Texas Comptroller's Office, Model Purchasing Manual for Texas Cities and Counties 2010,* which includes information that applies to all governmental entities including schools. Available at *www.texasahead.org/lga/finances/purchasing/96-449_Model_Purchasing_Manual_11_10.pdf*
- *Texas Comptroller's Office, State of Texas Contract Management Guide* which provides guidance and recommendations on improving existing contract management processes and practices. Available at *www.comptroller.texas.gov/purchasing/publications/contract-management-guide.php*
- *Texas Education Agency, Financial Accountability System Resource Guide* provides detailed guidance of financial accountability, including Module 5, Purchasing, for local education agencies and charter schools. Available at *www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial__Accountability_System_Resource_Guide/*

[24] See the Real or Apparent Conflict of Interest subsections in this section for additional guidance on this topic.

[25] The Texas Education Agency has additional requirements related to proper disclosure. These requirements are not in conflict with USDA regulations. TEA requires that school districts and charter schools use *Form 1295, Certificate of Interested Parties* for this purpose. CEs may include the use of this form to address potential conflicts of interest in SNP procurement.

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United States Office of Management and Budget (OMB)

- *2 Code of Federal Regulations (CFR), Part 200*—These regulations provide detailed information on the required federal procurement process. Available at *www.fns.usda.gov/es/node/73141*

National Institute of Government Purchasing (NIGP)

- Universal Public Purchasing Certification Council/National Institute of Government Purchasing (NIGP), available at *www.nigp.org*

Information Box 4

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Nonprofit private schools, other organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

Records Retention

The CE must maintain records for all program operations, including procedures and processes related to program integrity. Records related to program integrity will include documentation related to all operational issues, including, but not limited to, financial management and procurement. CEs have the option to maintain records on paper or electronically.

These records must be accessible to appropriate CE employees and federal or state reviewers. TDA may request documentation related to program integrity during both offsite and onsite administrative review processes as well as reviews specific to procurement.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, other nonprofit organizations, and residential child care institutions (RCCIs) after the end of the fiscal year to which they pertain.

Compliance

While there are many practices a CE may implement to promote program integrity, there are state and federal regulations that also require that TDA take an active role in ensuring that all SNPs operate with program integrity. At a minimum, each CE will participate in the following efforts to ensure program integrity.

Administrative Review of SNPs

Conducted by TDA—TDA reviews the operational practices, including resource management or financial operations, of each CE at least once every three years. Reviews may also be conducted more frequently based upon TDA's risk assessment.

Procurement Review of SNPs

Conducted by TDA—TDA reviews the CE's procurement practices at least once every three years. Reviews may also be conducted more frequently based upon TDA's risk assessment.

Single Audit of CE's General Accounting Practices

Administered as required by Texas Education Agency (TEA) and conducted by a third-party auditor—The third-party auditor assesses the CE's general financial management system, including the financial management of nonprofit school food service account funds, each year. TDA reviews the CE's single audit documentation to ensure that the CE is compliant with all CNP requirements.

Administrative Financial Review

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Conducted by TDA—TDA reviews the CE's financial management system focusing on financial transactions related to SNP operation at least every three years. Reviews may also be conducted more frequently based upon TDA's risk assessment.

TDA endeavors to conduct each type of review within the same program or fiscal year.

TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance. CEs must make available, upon request of the awarding agency (state or federal), any or all of the documentation described in the *Records Retention* subsection in this section. TDA will assess compliance with the related operational, accounting, procurement, and financial requirements based on the documentation that CE has submitted throughout the year as well as documentation submitted for offsite and onsite administrative review processes or other procurement review activities.

Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations

CE's must report, in writing to TDA, all violations of federal criminal law—fraud, bribery, or gratuity.

> The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in§ 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).

Criminal Penalty

The maximum fine for embezzling, willfully misapplying, stealing, or obtaining by fraud, funds, assets, or property acquired under the National School Lunch Act or Child Nutrition Act is $25,000.

Fraud

> Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

Termination of the Permanent Agreement for Financial Fraud or Misuse of Funds

If serious deficiencies, such as fraud or misuse of funds occur, and corrective action is not practical, TDA will terminate the CE's participation in the SNP. In this case, TDA may also refer the matter to the appropriate local, state, and/or federal authorities.

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Section 16

Financial System

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Section 16, Financial System

Section 16 Update Guide

July 28, 2022	Updated *Section 16, Financial System* to clarify the following: - Allowable/Unallowable Costs - Excess net cash resources (excess fund balance) - Capital expenditures – new kitchens
January 4, 2022	Updated *Section 16, Financial System* to clarify the following: - Capital expenditure request instructions - Stipends - Program/nonprogram calculation - Financial report
August 16, 2021	Updated the definition of aggregate.
May 27, 2021	Updated *Section 16, Financial System* to clarify the following: - Definitions
August 12, 2020	Updated Administrator's Reference Manual (ARM), *Section 16, Financial System* to update the *Administrator's Reference Manual (ARM)* section references. Clarified information on the following topics: – Allowable/Unallowable costs – Contingency contract approval – Bad debt – Equipment/Property disposal – Excessive fund balance definition – Financial Form due date – Fresh Fruit and Vegetable Program – Loans – Operating month definition – Program/Nonprogram proportion – Proprietary Rights – Revenue (Income) – School garden expenses – State matching funds – Student debt
February 26, 2020	Updated *Section 14, Financial Information Concerning School Nutrition Funds* to update information related to Institute for Child Nutrition, formerly the National Food Service Management Institute (NFSMI).
November 7, 2018	Updated *Section 14, Financial Information Concerning School Nutrition Funds* to clarify information on the following topics: – Audits – Capital expenditure – Cognizant agency – Delinquent and bad debt – Direct costs – Excessive fund balance – Financial report – Indirect costs – Maintenance and repair costs – Revenue

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- Teacher retirement system, fringe benefits

April 3, 2018

Updated *Section 14, Financial Information Concerning School Nutrition Funds* to incorporate the following United States Department of Agriculture (USDA) guidance:

- *USDA Memo SP 24-2017, Local School Wellness Policy: Guidance and Q&As* (April 6, 2017)
- *USDA Memo SP 60-2016, Indirect Cost Guidance* (September 30, 2016)

Moved guidance on student account balances to *Section 15, Meal Pricing* and removed from *Section 14, Financial Information Concerning School Nutrition Funds*

Clarified information on the following topics:

- Allowable/Unallowable costs related to the following:
  - Fresh Fruit and Vegetable Program
  - Implementation of the local wellness policy
  - Insufficient check charges
  - Meal production related activities
  - Mobile or temporary sites
  - Supplies, expendable items, and other supplies
  - Transportation
  - Uniforms
- Capital expense
- Check charges
- Compliance
- Equipment/property disposal
- Financial report
- Indirect cost rate
- Program integrity
- Single audit

March 13, 2017

Updated *Section 14, Financial Information Concerning School Nutrition Funds* to correct dates.

March 7, 2017

Updated *Section 14, Financial Information Concerning School Nutrition Funds* to address date typos.

February 23, 2017

Updated *Section 14, Financial Information Concerning School Nutrition Funds* to incorporate the following United States Department of Agriculture (USDA) guidance:

- *USDA Memo SP 60-2016, Indirect Cost Guidance* (September 30, 2016)
- *USDA Memo SP 58-2016, 2016 Edition: Overcoming the Unpaid Meal Challenge: Proven Strategies from Our Nation's Schools* (September 19, 2016)
- *USDA Memo SP 57-2016, Unpaid Meal Charges: Guidance and Q&As* (September 16, 2016)
- *USDA Memo SP 47-2016, Unpaid Meal Charges: Clarification on Collection of Delinquent Meal Payments* (July 8, 2016)
- *USDA Memo SP 46-2016, Unpaid Meal Charges: Local Meal Charge Policies* (July 8, 2016)
- *USDA Memo SP 40, 2016, Updated Guidance: Contracting with Food Service Management Companies* (June 2, 2016)
- *USDA Memo SP 20- 2016, Nonprofit School Food Service Account Nonprogram Food Revenue Requirements* (December 23, 2015)

Clarified information on the following topics:

- Additional Texas financial resource
- Bad debt
- Cost sharing
- Costs, meal accommodation

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- Costs, translations
- Direct and indirect costs
- Education Service Provider (ESP)
- Nonprogram costs
- Regulatory authority
- Revenue
- Universal free feeding programs
- USDA Foods

April 26, 2016 — Updated *Section 14, Financial Information Concerning School Nutrition Funds* to incorporate the following United States Department of Agriculture (USDA) guidance:

- *2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (January 1, 2015)
- *USDA Memo, SP 07-2016, Local Food and Related Activities in Summer Meals with Questions and Answers* (November 12, 2015)
- *USDA Memo SP 02-2016, Questions and Answers on the Transition to and Implementation of 2 CFR Part 200* (October 30, 2015)

Clarified information on the following topics:

- Allowable and unallowable costs
- Audit
- Income to the program, catering
- Excessive fund balance
- Excessive operating balance
- Exclusive contracts
- Financial audit
- Loans
- Locally purchased food
- Nonprogram/program food proportion
- Pass-through entities
- Payroll or employee salary and wage certification and documentation
- Program integrity
- Program revenue
- Records retention

May 4, 2015 — Updated *Section 14, Financial Information Concerning School Nutrition Funds* to incorporate the following United States Department of Agriculture (USDA) guidance:

- *2 CFR Part 200* (December 19, 2014)
- *USDA Memo SP 6-2015, Farm to School and School Garden Expenses* (November 12, 2014)
- *USDA Memo SP 7-2015, Assessing Proposed Nutrition Education Costs in the National School Lunch Program and School Breakfast Program* (November 18, 2014)
- *USDA Memo SP 32-2009, School Garden Q&As* (July 29, 2009)

Clarified information on the following topics:

- Allowable, allocable, reasonable, and necessary costs
- Audits
- Cafeteria monitors
- Capital expenses
- Consistent payment practices
- Depreciation
- Equipment use, inventory, and disposal

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- Excessive balance
- Expenditures (costs)
- Farm to school, school farm or garden
- Financial audits
- Financial Report
- Indirect costs
- Memberships, subscriptions, or professional publications
- Net Cash
- Nutrition education expenses
- Land purchases
- Loans
- Loss of equipment
- Proportional program/nonprogram revenue
- Record related to employee salaries and wages
- Rental or usage fees
- Revenue
- State matching funds
- Student account balances
- Source of bill payment
- Supplies
- TDA forms
- Unit cost
- Use of facilities for nutrition programs for the elderly
- Utilities
- Vending

August 1, 2014 Updated *Section 14, Financial Information Concerning School Nutrition Funds* to incorporate the following United States Department of Agriculture (USDA) guidance:

- *2 CFR, Part 225*
- *USDA Memo SP 11-2012, Guidance on the Food Donation Program in Child Nutrition Programs* (February 3, 2012)
- *USDA Memo SP 41-2011, Child Nutrition Reauthorization 2010: Indirect Cost Guidance* (July 7, 2011)
- 7 CFR, Part 3016

Clarified information on the following topics:

- Allowable and Unallowable Costs
- Audit Requirements
- Capital Expenditures
- Compliance
- Definitions that apply to financial issues
- Excessive Fund Balance
- Excessive Operating Balance
- Loans
- Payroll or Employee Salary and Wage Certification and Documentation
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- SNP Food Donations
- TDA Forms

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excess Net Cash Resources Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

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Financial System

School Nutrition Program (SNP) accounts are required to comply with generally accepted accounting principles (GAAP) for federally funded programs as well as accounting and financial requirements that are specific to the SNP.

This section provides information on accounting and financial requirements for the following programs:

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Seamless Summer Option (SSO)
  - Fresh Fruit and Vegetable Program (FFVP)

    [NOTE: See *Administrator's Reference Manual (ARM), Section 12, Fresh Fruit and Vegetable Program* for detailed guidance on allowable and unallowable costs specific to FFVP.]
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

While the guidance in this section applies to public and charter schools, private schools, and residential child care centers (RCCIs), some types of organizations may have different requirements. Those differences are noted when they apply. However, each type of CE is expected to adopt financial practices that align to all applicable regulatory guidance.

Additional Guidance on Financial Issues

CEs may find the following *Administrator's Reference Manual (ARM)*, sections useful to review in addition to the guidance in this section:

- *Section 15, Program Integrity*
- *Section 17, Procurement*
- *Section 17a, Procurement Procedures*
- *Section 17b, Buy American*
- *Section 17c Cooperative Purchasing*
- *Section 18, Food Service Contracts*
- *Section 19, Meal Pricing*
- *Section 22, Food Service Contracts*

In order to meet this requirement, contracting entities (CEs) must have an accurate, efficient financial management system that applies sound and consistent management practices that allows CEs to

- Identify all funds received and expended by

Information Box 1

Guidance on Program Financial Issues

The following federal publications provide detailed guidance on accounting and financial requirements:

- United States Office of Management and Budget (OMB), *2 CFR, Subtitle A, Chapter II, Part 200—Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards*, available at *www.ecfr.gov/*
- United States Department of Agriculture (USDA), *Financial Management—Child and Adult Care Food Program, 796-2, Rev. 4*, available at *www.SquareMeals.org*
- United States Department of Agriculture (USDA), *USDA Memo SP 41-2011, Indirect Costs: Guidance for State Agencies and School Food Authorities*, available at *www.SquareMeals.org*
- Texas Comptroller of Public Accounts, *State of Texas Contract Management Guide (September 1, 2016)*, available at *https://www.comptroller.texas.gov/purchasing/publications/contract-management-guide.php*
- Texas Education Agency (TEA), *Financial Accountability System Resource Guide*, available at *www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial__Accountability_System_Resource_Guide/*
- Texas Education Agency (TEA), *Indirect Cost Rate Guidance and Worksheet*, available at *www.tea.texas.gov/Finance_and_Grants/Grants/Federal_Fiscal_Compliance_and_Reporting/Indirect_Cost_Rates/Indirect_Cost_Rates/*
- Institute for Child Nutrition (ICN), *ICN Financial Management Information System, 2ND Edition (2018)*, available at *www.theicn.org*

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program.

- Identify the source and application of school nutrition program funds.
- Ensure effective control over, and accountability for, all funds, property, and other assets.
- Provide accurate, current, and complete disclosure of financial and accounting system as required.
- Operate under specific written procedures for determining the allowability of costs.

Regulatory Authorities

The majority of CEs across Texas are governed by the financial regulations of more than one federal, state, or local agency. If the funds to be used come to the public school or charter school from United States Department of Agriculture (USDA) through the Texas Department of Agriculture (TDA) or the funds come from income from the operation of a Child Nutrition Program (CNP), the CE must follow all applicable USDA regulations. If another governing agency has a more restrictive requirement, the CE must apply that requirement as long as it does not conflict with USDA regulation. This applies to all financial transactions, including procurement.

Private schools and residential child care centers (RCCIs) may fall under the regulatory authority of a wide range of different federal, state, and local agencies. Public schools and charter schools most commonly fall under two federal regulatory funding sources—(1) education funds coming from the United States Department of Education (ED) and the Texas Education Agency (TEA) and (2) food and nutrition funds from the USDA and TDA. Fortunately, funds coming from ED and USDA are both subject to the recently updated Code of Federal Regulations (CFR), Part 200,[1] so most requirements are the same. However, there are a few conflicts that are stipulated by legislation specific to the program. When the funding source for the activity comes from USDA/TDA or the CE's operation of a CNP, the CE must follow USDA/TDA regulations. CEs need to be aware of this possibility as they design their procedures and processes for handling all financial issues.

Educational Service Provider (ESP)

If a CE (school district, charter school, private school, or RCCI) has assigned administrative responsibility to an education service provider (ESP)[2] for the operation of all functions, the ESP may be given operational authority; however, the CE must retain responsibility to ensure that all financial requirements for the program are met.

Program Integrity and Internal Controls

The CE's financial management system must promote program integrity and establish internal controls. This type of financial management system provides safeguards that improve the stewardship of program income and costs and reduces fraud and improper payments by the use of internal controls.

> Program Integrity is defined as an organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds.

[1] Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

[2] Authority for ESPs to manage education and other operations for a school district or charter school is given by the Texas Education Agency; authority for an RCCI by the agency with regulatory authority for the RCCI; and authority for private schools by the governing board.

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When program integrity is applied to a financial management system, *Internal controls* means a process designed to establish and maintain effective oversight or internal control over the SNP's financial management system that provides reasonable assurance that the CE is managing the program in compliance with all federal, state, and local regulations and terms and conditions of the program award. Additional guidance on program integrity is located in the *Administrator's Reference Manual (ARM), Section 15, Program Integrity*.

Effective Financial Management System

School Nutrition Program (SNP) accounts are required to comply with generally accepted accounting principles (GAAP) for federally funded programs. Compliance with the GAAP includes compliance with the *Standards for Internal Control in the Federal Government*[3] issued by the Comptroller General of the United States or the *Internal Control Integrated Framework*[4] issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In Texas, CEs must also apply all local and state financial and accounting requirements that are not in conflict with USDA regulations. This includes, but is not limited to, Texas Education Agency (TEA) regulations that apply to school districts and charter schools.

The CEs financial management system must have written procedures that describe its (1) method for determining if a cost is allowable, (2) process for making payments, and (3) procurement procedures[5] as well as (4) records that clearly report all financial transactions.

CEs must consider the following financial management standards in developing a financial management system:

Accounting System Qualities

1. Documentation that demonstrates accurate, current, and complete disclosure of the program's financial transactions—including budgeted authorizations, obligations, unobligated balances, assets, liabilities, and expenditures as well as income or revenue
2. Procedures that ensure that no one person has complete control over all aspects of financial transactions
3. Methodology that allows for the comparison of actual expenditures against budgeted amounts

   [NOTE: Any time a projected budget line is within 20 percent of or exceeds 20 percent of the maximum amount projected, the CE must have a method to evaluate the projected amount and see if a correction needs to be made. If a transfer of funds from one cost line to another is warranted, the CE may adjust the projected budget as long as documentation demonstrates where, why, and when funds are moved.]

Accounting Practices

4. Procedures that ensure that all costs are necessary, reasonable, allocable, and allowable
5. Procedures that track the source of funds
6. Procedures that track the allocation or planned use of funds
7. Procedures that track the application or use of funds
8. Procedures that track the person who authorized the use of funds to pay

[3] Available at *www.gao.gov/products/gao-14-704G*
[4] Available at *www.coso.org*
[5] A CE's written process will include procurement. See the *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on written procurement procedures.

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expenses

Audit Practices

9. Procedures that require organization-wide audits, or program specific audits if applicable, to determine, at a minimum, the fiscal integrity of financial transactions and reports, compliance with laws, regulations, and administrative requirements
10. Procedures that ensure that there is a systemic method for assuring timely and appropriate resolution of all audit findings and recommendations, including organization-wide strategies

Definitions for This Section

The nature of financial processes fosters the use of terms and vocabulary that are more commonly used by accountants than by school nutrition staff. For School Nutrition Programs (SNPs), the following financial and procurement terms are used:

Acting on Behalf of CE	Entity or person who has been given the responsibility to act for the CE.
Agent	Person or business that is procured to act on behalf of the CE. This includes procuring on behalf of the CE.
Aggregate Purchase Amount	The total cost of the same category of products and services purchased over the CE's fiscal year.
Agreement (for School Nutrition Programs)	Written legal document summarizing contractual obligations between two or more entities. This includes intergovernmental and interlocal agreement.
Allocable	Assigning a cost, or group of costs, to one or more cost objectives, in reasonable and realistic proportion to the benefit provided or other equitable relationship—the cost meets one of the following principles: – is incurred specifically for the award/program or – benefits both the award/program and necessary work and can be distributed in reasonable proportion to the benefits received or – is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.
Allowable	Direct or indirect costs that may be paid by SNP funds.
Approved Supplier List	List of suppliers or potential contractors who have demonstrated the ability to perform successfully under the terms and conditions of a proposed procurement, consideration being given to contractor integrity, compliance with applicable policy or regulations, record of past performance, and financial and technical resources.
Arms-Length Transaction	Transaction in which the parties are dealing from equal bargaining positions—neither party is subject to the other's control or dominant influence, and the transaction is treated with fairness, integrity, and legality. Less than Arms-Length Transaction A less than arms-length transaction occurs when a person responsible for making a purchase and appears to have a stake in the outcome is able to control or substantially influence the actions of others. This may include agreements between divisions of an organization; organizations under common control through common officers, directors, or members; and an organization and a director or employee of the organization and his or her immediate family.
Audit	Independent examination of accounting and financial records for accuracy, efficiency, and consistency. This is also called the annual audit or single audit.
Audit Report	Final summary of audit findings provided by a financial auditor.

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Audit Corrective Action Plan	Plan in which the CE describes the strategies or actions the CE will adopt to address each finding reported in the audit report.
Audit Summary Schedule or Work Plan	Document that contains a cumulative list of audit findings by year and explanations of the strategies and actions the CE plans to take or has taken to resolve each audit finding. This summary allows the CE, auditor, or TDA staff member to review the actions planned or taken from year to year to maintain an accurate, efficient, and consistent accounting and financial system.
Bid Guarantee	Guaranteed percentage of bid price provided by the offeror at the time the offer is submitted. The CE must return all bid guarantees to all unsuccessful offerors when the contract is awarded and to the winning offeror as soon as the contract is signed.
Bond	Insurance agreement pledging surety for financial loss caused in connection with the contract. For school nutrition programs, if a loss occurs in connection with a contract related to program operations, the loss will be covered to the extent agreed upon in the bond.
Breach of Ethics	Attempt to realize personal gain through public employment with a CE by any conduct inconsistent with the proper discharge of the employee's duties.
Brokers	Independent sales agents who negotiate sales for manufacturers by working with food distributors and/or school nutrition operations.
Buy American	Requirement for schools to purchase, to the maximum extent practicable, domestic commodities, and products. A domestic commodity or product means an agricultural commodity that is grown in the United States and processed in the United States or that is processed in the United States substantially using agricultural commodities that are produced in the United States.
Capital Assets	Land, buildings (facilities), and equipment that have a useful life of more than one year which are capitalized in accordance with Generally Accepted Accounting Principles (GAAP).
Capital Expenditures	Direct cost expenses to acquire capital assets or to make additions, improvements, modifications, replacements, reinstallations, renovations, or alternations to capital assets to be used for general purposes for multiple years and which materially increase the value or useful life of the asset.[6]
CE Employee (Specific to Program Integrity)	Term used in this section to represent a CE employee or official; family member of CE employee or official; or business partner of a CE employee or official.
Charge Period	Span of time during which a cost is paid. This payment process includes spreading payments over a period of weeks or months or establishing milestones that are linked to payments.
Code of Conduct	Set of written standards the CE must develop that outline the responsibilities of, or proper practices for, an individual or organization and which governs the following: 1. Performance of the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by Food and Nutrition Service (FNS) program funds. 2. Methods of procurement, including the requirement that the CE perform a cost or price analysis for every procurement (including contract modifications) and determination of which contract clauses and certifications are required in the CE's contracts.
Cognizant Agency Related to Indirect Costs	Agency that has primary responsibility for negotiating the indirect cost methodologies for non-federal entities.
Conflict of Interest	Any action that allows a person to benefit at the expense of the public interest or the expense of an employer. A conflict of interest may be a real or apparent conflict of interest.

[6] TDA must approve capital expenditures before a CE makes a capital expenditure purchase.

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Contract	Formal, legally enforceable agreement (terms and conditions) between a buyer (the CE) and a seller (contractor) that clearly and accurately describes the products and/or services to be delivered or performed and sets forth the method and the compensation the contractor receives when products and/or services are provided.
Consultant	Consultant that provides temporary support to the CE in areas where the CE lacks the necessary resources, skills, and/or abilities in order to assist the CE in gaining the necessary resources, skills, and/or abilities to operate an effective and compliant program.
Cooperative Purchasing	Group of entities who join together to purchase products and/or services with the intention of reducing costs and improving the quality of products and/or services available to members of a group. In this reference, a purchasing cooperative consists of a group of CEs.
Cost Analysis	Review and evaluation of each element of cost to determine reasonableness, allocability, and allowability for products and/or services to procured. A cost analysis will include the total projected cost for the products and/or services to be procured.
Cost Index	Tool designed to show the impact of an economic measure on the price of purchasing a specific type of item. TDA has approved the use of the Consumer Price Index (CPI) Food Away from Home for this purpose.
Cost Objective	Program function or activity for which cost data and for which specification is made to accumulate and measure the cost of processes, products, jobs, or other expenses.
Cost Plus Percentage of Cost	Method of pricing where the contract or agreement creates a pricing structure that charges the cost of the product or service plus a percentage of the cost. This pricing structure is not allowable for any purchase under USDA regulations. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).
Cost-Reimbursable Contract	Reimbursable contract that is a formal, legally enforceable contract that reimburses the contractor for costs incurred under the contract but does not provide for any other payment to the contractor with a fixed fee or with a cost-reimbursement fee. [NOTE: The fixed fee associated with these types of contracts may be called management fees or administrative fees.] In a cost-reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor. In a cost-reimbursable contract, the fixed price (fee) includes the contractor's direct and indirect administrative costs and profit allocable to the contract.
Debarment	Action taken by a debarring official to exclude a person from participating in covered transactions.[7] A person so excluded is debarred, that is, unable to participate.
Direct Cost	Expenses that can be identified specifically with a particular cost objective used to meet a specific program goal or goals.
Distributor	Commercial food company that purchases, receives, and/or stores commercial food products and then sells, delivers, and bills the recipient agency for goods and/or services provided.
Drop Delivery	Delivery to one location within the CE, such as a central warehouse.
Economies of Scale	Purchase of large quantities of a product and/or service in order to obtain a better price.
Escalator/De-escalator Clause or Market-based Pricing	Predetermined provisions in a contract stipulating specific conditions for an increase or decrease in price.
Equipment (Property)	Items which have been purchased and are nonexpendable; items have a useful life of more than one year. Equipment purchases of $5, 000 or more are capital expenses and require prior approval.[8]

[7] Covered transactions in this section refer to transactions related to child nutrition programs.
[8] See the *Capital Expenditures* subsection in this section for additional information on this requirement.

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Ethics	Principles of conduct governing and guiding decisions for an individual or a group in their personal and professional lives. School nutrition professionals have a responsibility to act ethically in accordance with all federal, state, and local guidelines.
Excess Net Cash Resources (Excess Fund Balance)	Net cash resources that exceed three months of operating expenses.
Exclusive Contract (Including Exclusive Beverage Contracts)	Contract between an entity or organization and a distributor/vendor that prevents the entity or organization from buying or selling similar products from other distributors/vendors. The distributor/vendor may offer the entity or organization financial, product, or service incentives for signing an exclusive contract.
Expenditures (Costs)	Amount of money that is spent on an item or service.
Firm Fixed-Price Contract (Also Called Firm Price Contract)	Contracts that provide products or services for a price not subject to adjustment other than increases or decreases tied to an economic indicator stipulated by contract. Firm-fixed price contracts are usually negotiated where reasonably finite specifications and/or technical requirements are available, and costs can be estimated with reasonable accuracy. A fixed price contract places minimum administrative burden on contracting parties but subjects a contractor to maximum risk arising from full responsibility for all cost escalations.
Fixed-Price	Agreed-upon amount of money that is fixed at the inception of a contract and is guaranteed for a specific period of time. A fixed-price contract may also contain an economic cost adjustment provision tied to the Consumer Price Index (CPI) Food Away from Home.
Fixed Price (Fee)	Agreed upon amount of money that is fixed at the inception of the contract.
Food Service Management Company (FSMC)	Any organization, whether commercial enterprise or a nonprofit organization, that is or may be contracted by the CE to manage any aspect of the school food service.[9] CEs must use an FSMC from TDA's list of approved FSMCs.
Food Service Management Company (FSMC) Solicitation/ Contract	TDA term used to reference the TDA prototype combined solicitation and contract. This term is applicable to this section only.
Forecasting	Process of analyzing current and historical data to determine procurement needs. In the case of school nutrition programs, forecasting involves predicting and estimating the goods, works, and services needed in specified areas for the coming year, and/or assessing needs by reviewing current procurement activities. Forecasting allows for procurement timelines and tasks to evolve each fiscal year.
Full and Open Competition	Situation where all potential contractors are competing on a level playing field and have the same opportunity to compete and be awarded a contract. Full and open competition is also commonly referred to as free and open competition
Fund Balance (Net Cash Resources)	See "net cash resources."
Grade Standards	USDA quality standards based on measurable attributes that describe the value and utility of the products.
Grantees	Governmental or other legal entity to which a grant is awarded where the receiving entity is held accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

[9] If an NSLP CE operates a Child and Adult Care Food Program and/or Summer Food Service Program, there may be additional regulations that applied for the use of an FSMC to operate the program.

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Incentives	Rewards or benefits received as a result of performing requested actions and/or meeting predetermined milestones.
Indirect Cost	Expenses that are incurred for the benefit of multiple programs or functions and are necessary for the general operation of the SNP program—but cannot be directly attributable to the program.
Indirect Cost Rate	Established percentage of awarded funds that is dedicated to pay costs that have been identified as indirect costs.
Internal Controls	Procedures or processes designed to establish and maintain effective internal control over the SNP's financial management system that provides reasonable assurance that the CE is managing the program in compliance with all federal, state, and local regulations and terms and conditions of the program award. These procedures or processes help the CE to (1) define actions related to financial management and the procurement activities, (2) establish standards of ethical conduct, and (3) provide full and open competition.
Invitation for Bid (IFB)	Formal method of procurement that uses sealed bidding and results in a fixed-price contract with or without adjustment factors.
Just-in-Time (JIT)	Food and supplies kept in quantities an entity anticipates will meet its immediate needs, which results in the entity maintaining a low inventory level.
LEA	Local education agency, an entity having administrative control and direction of a public or private nonprofit elementary or secondary school.[10]
Lead Time	Amount of time necessary for a distributor to prepare and deliver products and/or services to the CE.
Local Product	Unprocessed locally grown or raised agricultural products that retain their inherent character.
Managing the Contract	Procedures the CE has in place to ensure that contractors perform in accordance with the specifications, technical requirements, and terms and conditions described in a contract or purchase order.
Market Basket	Solicitation strategy that allows a CE to procure a list of products with varied pricing options for a finite number of products. Each product on the market basket list must have (1) a description with the quantity to be purchased, (2) specifications and/or technical requirements for each product, and (3) a description of how each product will be awarded on the contract.
Market Basket, Total Cost Analysis and Scoring	Analysis and scoring evaluation based on the aggregate total cost or by line item total.
Market Basket, Simplified Total Cost Analysis and Scoring	Analysis and scoring evaluation based on a representative sample of all products.
Material Change	Change made to a contract after the contract has been awarded that alters the terms and conditions of the contract substantially enough that had other offerors known of the change in advance, they may have bid differently and more competitively.
Meal Equivalency Factor (MEF)	Statistical tool that is used to convert a la carte sales into a standard of measure, in this case a "meal." The MEF is often used to convert a la carte sales into meal equivalents for billing purposes in fixed price contracts.
Micro-purchase Method	Single purchase or transaction with an aggregate total cost that does not exceed $10,000 whether that purchase occurs weekly, monthly, or annually
Necessary	Item or service that is essential to the operation of the program.

[10] This definition is taken from USDA regulation.

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Negative Net Cash Resources (Fund Balance)	A CE must not carry negative net cash resources into the next school year. Negative net cash resources exist when all net cash resources have been depleted, and the resulting negative balance constitutes a liability to the organization.
Net Cash Resources	Amount of funds the SNP account has available to spend—total revenue less total liabilities (expenditures). USDA further defines Net Cash Resources as This includes all monies, as determined in accordance with the State agency's established accounting system that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds, or other negotiable securities.
Noncompetitive Method	Procurement method used when there is an insufficient number of offers submitted in response to a solicitation. In this case, full and open competition is deemed inadequate, and there is no way to remedy the situation.
Non-Federal Entity	State, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.
Open Award	Contract award in which all vendors that submit an offer are awarded a contract. This type of award does not promote full and open competition or pricing that is advantageous to the program. An open award is not the same as using a market basket strategy.
Operating Months	Months during which the CE operates any child nutrition program—NSLP, SBP, CACFP At-Risk, or a summer feeding program. This includes reasonable amounts of time to set up program operations before meal service begins and time to close program operations at the end of the meal service period. Days on which operational tasks occur may be for a full month of operation or a partial month of operation.
Operator	Entity that operates a Child Nutrition Program.
Operator-Only Cooperative	Any type of agreement that is formed solely among CNP operators, including regional education service center (ESC) cooperatives.
Pass-Through Entity	Entity receiving federal funds that have passed through another entity. This definition is specific to funding from federal sources and applies to state agencies, CEs, group purchasing cooperatives, and third-party entities. These funds are used to fulfill the purposes of a federally funded program.
Payment Bond	Bond that covers the cost of materials and works for construction contracts.
Performance Bond	Bond which covers the cost of ensuring that the work is done as specified in the terms of the contract.
Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events or financial transactions. For this section, the word procedure is used to refer to all of these types of documents.
Procurement	Act of obtaining of goods or services in exchange for money or value. [NOTE: Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.]
Procurement Standards	Standards of conduct that shall govern the performance of the CE's officers, employees, or agents in contracting for payment and expending program funds. State and federal procurement regulations require each CE to maintain written standards of conduct, including a code of conduct that prohibits employees from participating in the selection, award, and administration of any contract to which an entity or certain persons connected to them have a financial interest.
Program Integrity	Organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds. [NOTE: Program integrity includes practices associated with ethical standards and codes of conduct.]
Program Specific Audit	Review of the financial transactions—income and expenditures—and accounting procedures for a designated program.

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Proprietary Products	Manufactured products ordered specifically for a particular program or are unique to a manufacturer.
Reasonable Cost	Amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.
Regulatory Authority	Oversight authority dictated by legislative act or regulation.
Request for Proposals (RFP)	Formal procurement method where potential contractors submit an offer to provide products and/or services under a fixed-price or cost-reimbursable type contract.
Responsible (Offer)	Capable of providing the product(s) and/or service(s), as described in the solicitation.
Responsive (Offer)	Offer that addresses the terms and conditions of the solicitation, including the specifications and/or technical requirements for product(s) and/or service(s).
Revenue	Income received by an organization.
Revenue to the School Nutrition Program (SNP) Account	All income that is collected or awarded to the SNP account is revenue (or income) to the SNP account. This includes, but is not limited to, the following: – Federal reimbursement – State or local funds, such as per meal subsidies and state revenue matching funds – Students' payment for reimbursable meals and a la carte sales – Payments for items purchased for fund raisers and vending machines – Income from catering and adult meals
Service Fee	Fee charged for the performance of a specific service.
Simplified Acquisition Threshold (Also Called Small Purchase Threshold)	Amount established by federal, state, or local regulations that defines when formal and informal procurement methods must be us
Single Audit	Organization–wide review of the financial transactions—income and expenditures—and accounting procedures.
Sole Source Method	Noncompetitive procurement method used when products and/or services are available from only one supplier, distributor, or contractor. TDA must approve all sole source methods of procurement.
Solicitation	Process of notifying prospective or qualified offerors about the specifications or technical requirements for the purchase of products and/or services. For informal procurement, the solicitation may be communicated by email, in person, by fax, or by phone as long as the person soliciting offers documents the specifications or technical requirements to ensure that every possible contractor is given the same information. For a formal procurement, a written solicitation is required.
Specifications and Technical Requirements	Detailed information included in the solicitation and in the final contract that describes the product(s) and/or service(s) that will be provided to the CE under the contract.
State Matching Funds	Matching funds provided to local education agencies (LEAs) that participate in NSLP by the state of Texas based on the number of lunches reported on reimbursement claims filed during the period of September 1 through August 31 of the prior year. RCCIs and private schools do not receive state matching funds.
Subgrantees	Governmental or other legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided.
Supplier (Sometimes Called Vendor)	Commercial enterprise, public or nonprofit private organization, or individual that enters into a contract with a CE to provide products and/or services. A supplier is also referred to as an offeror during the solicitation phase of procurement.

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Supplies	Items that are expendable or consumed in day-to-day activities and replenished as needed.
Tangible Benefit	Special offer for a particular item in order to incentivize a purchase which includes, but is not limited to, offering (1) a special item at much lower price than the price structure for a current contract, (2) an item not presently used at a special price that is below market value; or (3) an incentive, such as equipment or other prizes for purchasing items.
Terms and Conditions	General provisions, definitions for terminology, renewal options, protests, termination, and other standards inherent to the contract.
Third-Party	Entity that is contracted to act on behalf of another entity.
Third-Party Cooperative	Any type of cooperative agreement that is formed by sources that are external to CEs which includes the following types of cooperatives: Non-Child Nutrition Program State Agency Procurement Agency Agreements Intergovernmental agreements with the State which may include public, private, and nonprofit entities and are conducted for State facility needs using State procurement standards. These agreements allow local educational agencies and other Child Nutrition Program operators to purchase from the State's contracted sources. Interagency Agreements Public, private, and nonprofit entities formed for the purpose of procuring goods and services. Group Purchasing Organizations, Group Buying Organizations, and Third-Party Vendors (Collectively Referred to as GPOs) CNP and non-CNP operators such as public and private schools, hospitals, universities, law enforcement, public works, etc., who join a third-party company or service provider. A GPO may be a for-profit or a nonprofit entity. Typically, a GPO includes a membership fee for those granted access to the GPO price list of products and services.
Transaction	Occurrence in which two or more entities exchange goods, services, or money between them or among them under an agreement formed for their mutual benefit.
Unallowable Cost	Direct or indirect cost that cannot be paid using funds from the nonprofit school food service account because the cost is not reasonable, allowable, and/or allocable. A cost that is unallowable for the CE is also unallowable for a third-party acting on behalf of the CE. The term *disallowed* is sometimes used in place of unallowable.
Unit Cost	Cost for a single item.
Value	Something of monetary or material worth or something that has a usefulness that can be exchanged for something of worth, merit, or importance.
Velocity Report	Report providing the quantity, date of purchase, and other valuable information for specific products and/or services purchased by CEs used to assist with forecasting future purchasing needs.
Vended Meal Contract	Contractor or merchandiser providing the CE with complete meals, meal components, and raw materials for the meal service.
Vendor Participation Fees	Charge to participate. The charge to participate may be paid by the participant, or it may be paid by those providing products and/or services.
Written Financial and Procurement Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events, including financial and procurement transactions. For this section, the word *procedure* is used to refer to all of these types of documents. Procedures define the critical steps taken to establish and operate effective and efficient systems for (1) financial management, (2) procurement, and (3) management of contracts and agreements. Written procurement procedures may include a procurement plan with timelines and tasks, or a procurement plan may be a separate document from the procedures. Written financial and procurement procedures must be established by all CEs.

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Revenue (Income to the Program)

All revenues received by or accruing to the SNP account must only be used for the operation and improvement of the school nutrition program.

Types of Revenue

Revenues include, but are not limited to, the following sources of income:

- Catering departments operated by the SNP
- Credits, discounts, and rebates awarded for the purchase of products or services as well as the value of USDA Foods[11]

  [NOTE: A CE's USDA Food allocation cannot be included as income in calculating whether a CE has an excess net cash resources or used in determining the CE's final net balance at the end of the CE's fiscal year.]
- Earnings on SNP investments
- Interest earned on federal and nonfederal program income
- Federal and state reimbursements received by or accruing to the SNP account
- Non-federal funds supporting the meal or milk programs
- Other local revenues that support the meal or milk programs
- Snack bar and a la carte incomes
- Student and adult meals or milk in the National School Lunch Program (NSLP), School Breakfast Program (SBP), or Special Milk Program (SMP)
- Vending machine income if operated by the SNP[12]

Catering

If the SNP operates a catering program, it must ensure that the income received for catering events covers the full cost of preparing and serving the catered items.

Fundraising

The CE may use funds from its SNP fundraising activities for any allowable cost.[13]

Funds Raised by Recycling

If SNP funds are used to purchase recycling equipment or products purchased with SNP funds are recycled, any funds raised from these efforts must be credited to the SNP financial accounts. If the cost and items for recycling is shared with other programs, any funds raised from these efforts must be credited to the SNP financial accounts in proportion to the SNP contribution.

Investments

Earnings on investments using SNP funds totally or in part for investment purposes must accrue to the SNP account and must be used for authorized program purposes.

Revenue from Any Meal Service That Incudes USDA Foods

All income that comes from any meal service in which USDA Foods were used must be deposited into the nonprofit school food service account and must be used for the operation or improvement of such service. These funds cannot be deposited into a separate account (i.e., catering or vending). Moreover, the CE cannot reimburse the nonprofit school food service account for the value of the

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11 See the *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on this topic.

12 Items sold in vending machines must adhere to the requirements of the competitive food requirements. See the *Administrator's Reference Manual (ARM), Section 22, Competitive Foods* for additional information on this topic.

13 See *Fundraising, Actions to Raise Funds for the Program* under the *General Expenditures—Allowable and Unallowable Costs* subsection in this section for additional information on this topic.

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USDA Foods in lieu of depositing all income that comes from these meals into the nonprofit school food service account.

End of Year Net Cash Resources (Fund Balance)

Any positive balance remaining in the SNP account at the end of the school year must be carried over to the next school year as the beginning balance in the SNP account. Any negative balance in the SNP account at the end of the year must be cleared by funds from non-SNP sources. A CE cannot carry a negative fund balance (net cash resources) into the next school year. A negative fund balance exists when all net cash resources have been depleted, and the resulting negative balance constitutes a liability to the organization.

Excess Net Cash Resources (Excess Fund Balance)

To maintain the nonprofit status required for the SNP, the (net cash resources[14] of the SNP account must not exceed three month's average expenditures at any time.

Excess Net Cash Resources Calculation Chart

Determine the CE's average monthly operating expenses by dividing the prior year's expenses by the number of months in operation in the prior year.

Prior Year's Expenses		Number Months in Operation Prior Year[15]		Average Monthly Operating Expenses
$900,000	÷	10	=	$90,000

Determine if the CE has an excess net cash resources by comparing the total net cash on hand (Amount A) to three month's average expenses (Amount B).

Amount A					*Amount B*
Current Operating Balance—Total Net Cash Resources on Hand		Average Monthly Operating Expenses			Three Month's Average Expenses
$200,000		$90,000	x	3 =	$270,000

If Amount A is larger than Amount B, the CE has excess net cash resources and needs to submit a plan for eliminating its excessive balance to TDA.

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[14] *Excess net cash resources* is the amount of funds the SNP account has available to spend, as the total revenue less total liabilities (expenditures). See the *Definitions* subsection in this section for a more detailed definition. The Government Accounting Standards Board (GASB) describes this as spendable funds. Items such as inventories are not spendable, so are not included in the calculation for an excess net cash resources or for other USDA reports.

[15] *Number Months in Operation Prior Year* includes any month when the CE was operating any meal program. This includes summer feeding programs.

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Determining If There Are Excess Net Cash Resources

Use the following method to calculate the CEs average monthly operating expenses.

1. Divide the prior year's total food service expenses by the number of months in operation for the prior year.

Prior Year's Expenses		Number of Months in Operation Prior Year		Average Monthly Operating Expenses
	÷		=	

2. Record the amount of total net cash on hand for the food service program in column **Amount A, Current Operating Balance—Total Net Cash Resource on Hand.**
3. Record the CE's average monthly expenses for the food service account in the **Average Monthly Operating Expenses.**
4. Multiply the **Average Monthly Operating Expenses** by 3 to calculate **Three Month's Average Expenses** and record this amount under **Amount B, Three Month's Average Expenses.**

Amount A Current Operating Balance—Total Net Cash Resources on Hand		Average Monthly Operating Expenses		Amount B Equals Three Month's Average Expenses
			x 3	

If **Amount A** is larger than **Amount B,** the CE has excess net cash resources and needs to submit a plan for eliminating its excessive balance to TDA. The CE must use this form to submit its plan.

If **Amount B** is larger than **Amount A,** the CE does not have excess net cash resources and does not need to submit a plan or use this form.

Resolving Excess Net Cash Resources

If an excess occurs, the CE must immediately take steps to reduce its net cash resources or have an acceptable plan for using surplus net cash resources. Since program funds must be used only for program purposes, excess net cash resources must be reduced by improving the quality of food served[16] or purchasing needed supplies, services, or equipment.

The plan must be submitted to *school.operations@TexasAgriculture.gov* on the *Excess Net Cash Resources Plan*[17] form available on TDA's SquareMeals website (*www.SquareMeals.org*). The plan must provide the following:

- Explanation of how the CE will reduce net cash resources to an acceptable level within one year by improving the quality of food served or by purchasing needed supplies, service, or equipment[18]
- Explanation of what the CE will do to ensure that excess net cash resources will not occur in the future

16 TDA's *Boost Meal Appeal* website provides numerous resources that CE may use to improve the quality of food served. These resources are available at *www.SquareMeals.org*.

17 Additional directions on how to submit the form are located on the form itself.

18 Excess net cash resources cannot be reduced by altering children's meal pricing structures when altered pricing conflicts with the paid lunch equity requirements. See the *Administrator's Reference Manual (ARM), Section 19, Meal Pricing* for additional information on this topic.

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Special Guidance, Excess Net Cash Resources

Allowing net cash resources to build up in the food service account for an extended period to save for a future project is unallowable. If the proposed expenditure project is a construction project, construction projects are typically not allowable.

Continued Failure to Resolve an Excess Net Cash Resources

If a CE continues to have an unresolved excess net cash resources over multiple years, USDA regulations state that TDA must adjust the rate of reimbursement to assist the CE in maintaining a fund balance that is not excessive.

Reimbursement Rates

Reimbursement rates are updated annually by USDA and can be found on the TDA website at *www.SquareMeals.org*. For additional information on this topic, see the *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming*.

State Matching Funds

Public school districts and charter schools participating in NSLP receive an annual payment of state matching funds based on the number of lunches reported on reimbursement claims filed during the previous year from September 1 through August 31 as required by federal law. These funds are recorded in the Monthly Claim Summary in TX-UNPS each spring for each CE receiving the funds. The funds must be used for SNP operation and improvement.

Expenditures (Costs)

Revenues must be used for expenses that are necessary for SNP operation and improvement. This includes, but is not limited to, food, equipment, supplies, and program personnel. SNP funds must not be used for expenditures that are not directly related to the SNP operation and improvement even though the SNP account may be part of the CE's general fund. All expenditures must be reasonable, allowable, and allocable.

All financial transactions related to expenditures are subject to the procurement regulations described in the *Administrator's Reference Manual (ARM), Section 17, Procurement*. CEs must use that guidance in addition to the guidance in this section to ensure that they are compliant with all regulations related to financial management.

All costs are either categorized as direct or indirect. A direct cost cannot be an indirect cost. It must be one or the other—not both. CEs must use the following guidance in determining if an expense is allowable.

Direct Cost

Direct cost is defined as expenses that can be identified specifically with a particular cost objective used to meet a specific program goal(s).

Direct costs include, but are not limited to, the following:

- Payroll
- Contracted services
- Food and milk costs
- Equipment and supplies
- Repairs to equipment

Indirect Cost

Indirect cost is defined as expenses that are incurred for the benefit of multiple programs or functions and are necessary for the general operation of the SNP program, but these

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expenses cannot be directly attributable to the SNP.

[NOTE: Expenses that can be directly attributable to the program are classified as direct costs. Costs that can be directly attributable to the program include, but are not limited to, payroll services, building utilities, contracted services specific to the SNP, and food costs.]

Documentation Demonstrating Direct and Indirect Costs

The following list of direct and indirect cost items helps to illustrate how documentation assists in the decision about whether a cost is direct or indirect. This list is not exhaustive.

Cost Item		Description	Documentation[19]
Food and Food Supplies	Direct Cost	Items used to prepare and serve meals	Itemized vendor invoices
Labor	Direct Cost	Wages and salaries of full or part time employees involved in operating the food service program	Timecard[20] indicating actual time by program
Custodial Services	Direct Cost	Services to clean kitchen/serving areas only	Timecard indicating actual time by program
Custodial Services	Indirect Cost	Services to clean entire school, including kitchen/serving area	Timecard not indicating time by program
Maintenance Charges	Direct Cost	Equipment/materials in kitchen/serving areas repaired or replaced by in-house personnel or external vendor	Itemized vendor invoice indicating actual time or timecard indicating actual time by program
Maintenance Charges	Indirect Cost	Kitchen/serving area equipment/materials repaired or replaced by in-house personnel or a vendor	Vendor invoice not specific to program area or timecard not indicating time by program
Trash Collection	Direct Cost	Trash pickup for school and kitchen/serving area	Itemized vendor invoice indicting actual time or timecard indicating actual time by program
Trash Collection	Indirect Cost	Trash pickup for school and kitchen/serving area	Vendor invoice not specific to program area or timecard not indicating time by program
Utilities	Direct Cost	Meter for kitchen/serving area	Vendor invoice specific to program area
Utilities	Indirect Cost	Meter for the entire school	Vendor invoice not specific to program area
Accounting Services	Direct Cost	School office personnel providing change, verify daily receipts, perform banking duties, etc.	Timecard indicating actual time by program
Accounting Services	Indirect Cost	School office personnel providing change, verify receipts, perform banking duties, etc.	Timecard not indicating time by program
Payroll Services	Indirect Cost	Services provided CE-wide	Timecard not indicating time by program

[19] See *Employee Timekeeping* subsection in this section for additional information on the requirements for tracking time to be charged to the nonprofit food service account as direct or indirect costs.

[20] Employees may account for time in a variety of forms. Accounting may be traditional paper timecards, activity reports, time sheets submitted through electronic systems, or any other appropriate method.

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Cost Item		Description	Documentation[19]
Information Technology Support	Direct Cost	Services provided specific to operation of the food service program	Timecard indicating actual time by program
Information Technology Support	Indirect Cost	Services provided CE-wide	Timecard not indicating time by program
Pest Control	Direct Cost	Services specific to kitchen/serving /food storage areas	Itemized vendor invoice or timecard indicating cost by program area
Pest Control	Indirect Cost	Services provided to various areas of the school	Vendor invoice not specific to program area or timecard not indicating time by program area

Questions Related to Determining Direct or Indirect Costs

In determining whether a cost should be a direct or indirect cost, the CE should use the following questions to help decide whether the cost is direct or indirect:

Questions to Consider	Common Practices
Does the cost benefit multiple programs or other cost objectives, or is it solely for the school food service?	Costs that are common to more than one program are typically appropriate to allocate as indirect costs. Costs which are unique to a specific program are typically appropriate to allocate as direct costs.
Does the cost have a direct relationship to the operation of the SNP?	Costs which are unique to SNPs are commonly 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—an indirect or direct cost?	CEs must treat costs as direct or indirect consistently over time.

Types of Indirect Cost Rates

There are two types of indirect cost rates: restricted and unrestricted.

Restricted	Unrestricted
Use if grant funds specify supplement, not supplant. This method is intended to minimize the amount of program funds used for indirect costs.	Use if supplement, not supplant, does not apply. This method is intended to maximize the allowed amount of program funds used for indirect costs.

SNPs may use either the restricted or unrestricted indirect cost rate. However, if a CE charges indirect costs incorrectly, the resulting costs are unallowable.

Method for Calculating Indirect Costs

The *Indirect Calculation Chart* below demonstrates how direct costs are calculated.

Indirect Calculation Chart				
Unrestricted Indirect Cost Rate Calculation				
Indirect Cost Pool (Sum of Allowable Indirect Costs)	÷	**Direct Cost Base** (Allowable + Unallowable Direct Costs)	=	**Unrestricted Indirect Cost Rate**
Restricted Indirect Cost Rate Calculation				

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Organizational Costs (General Management Costs + Fixed Costs)	÷	Direct Cost Base (Allowable + Unallowable[21] Costs)	=	Restricted Indirect Cost Rate

[a] Costs incurred for the direction and control of the organization as a whole, i.e., accounting, payroll, human resources, audit, procurement
[b] Contributions to fringe benefits associated with wages and salaries that are charged as indirect costs

Total Program Costs

Direct Costs	+	Indirect Costs	=	Total Program Costs

Eliminating Costs That Distort the Indirect Cost Calculation

In calculating the indirect cost amount, the CE must exclude any cost that distorts the calculation. Types of costs that may distort the indirect cost rate calculation include, but are not limited to, the following:

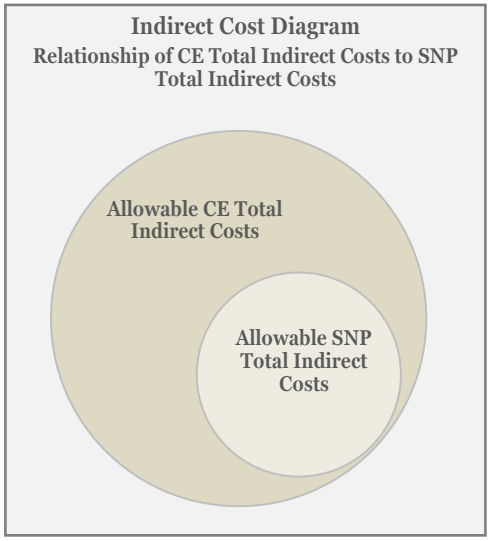
- Cost for a contract or purchase beyond $25,000
- Equipment purchases and other capital expenditures
- Food costs
- Renovations or alterations to facilities
- Fines, penalties, bad debt

Costs items which may distort the indirect cost are removed from the direct cost base when calculating the total amount of indirect cost allowed to be charged to the nonprofit school food service account. This creates the modified direct cost base which is used to calculate the total allowed indirect cost that can be applied to the actual indirect cost total as demonstrated in the following formula.

Applying an Indirect Cost Rate for SNP

SNP Indirect Cost Rate	x	SNP Modified Direct Cost Base (SNP Allowable Direct Costs Minus Distorted Costs)	=	Total Allowed SNP Indirect Cost That Can Be Applied to SNP Actual Indirect Cost Total

The *Indirect Cost Diagram* illustrates the relationship of the SNP allowable indirect costs to the CE's allowable indirect costs.



Consistent Application

The program operator must classify all similar costs as direct or indirect in a consistent manner. That is, the same cost item incurred under the same circumstances must be treated consistently as a direct cost or indirect cost.

The CE must also apply the indirect cost rate(s) in a consistent manner.

For Example: A CE has an unrestricted indirect cost rate of 11.66%. The rate applies to 7 programs, including SNP. The nonprofit school food service account is charged indirect costs for 30% of utilities (phone, electricity, gas, and internet), 30% of administrative costs, and 30% of office supplies. The other programs apply the indirect cost rate of 11.66% In this case, the SNP portion is not

[21] Unallowable costs are included in this calculation step. However, while unallowable costs are used in this calculation step, the CE cannot charge unallowable costs to the nonprofit school food service account.

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consistent with the other programs, i.e., the SNP is paying 30%; all other programs are paying much less.

The nonprofit school food service account cannot be charged a higher indirect cost rate than other programs unless another program is required to have a different rate.

Moreover, office supplies are typically categorized as direct costs. If office supplies are charged as an indirect cost, the CE needs documentation that demonstrates why office supplies cannot be charged as a direct cost.

When There Are Programs That Require a Restricted Indirect Cost Rate

An SNP may use the restricted or unrestricted indirect cost rate, but there are programs that must[22] apply the restricted indirect cost rate. In cases where the CE is able to demonstrate that a program is required to apply a restricted indirect cost rate to specific programs and where the CE chooses to use the unrestricted indirect cost rate for the SNP, charging a restricted indirect cost rate to some programs and an unrestricted to others is allowable.

When the use of different indirect cost rates is permissible, the CE must ensure that the indirect cost rates are still treated consistently. If the nonprofit school food service account is charged the highest allowable indirect cost rate, then, all programs must be charged the highest allowable indirect cost rate.

If an indirect cost rate applied to any program is less than the allowed indirect cost rate, the indirect cost rate charged to the nonprofit school food service account must be decreased by an equitable proportion to be treated consistently.

For Example: The CE is required to use a 3.7% restricted indirect cost rate for one of its federally funded programs and uses a 13.75% unrestricted indirect cost rate for the SNP. The CE decides to reduce the restricted indirect cost rate by one percent, so the CE must reduce the SNP unrestricted indirect cost rate by one percent in a consistent and proportional method.

In this case, the following method of decreasing the indirect cost rate is not proportional and does not result in consistent treatment:

Restricted, (3.7% - 1%) = 2.7%
Unrestricted, (13.75% - 1%) = 12.75

The following method of decreasing the indirect cost rate is proportional and does result in consistent treatment:

Restricted, [3.7 – (3.7% x 1%)] = 3.33%
Unrestricted, [13.75 – (13.75% x 1%)] = 12.375%

Retroactive Indirect Cost Rate

It is also unallowable to bill the nonprofit school food service account for indirect costs that were paid from the general fund in prior years unless an agreement, established at the time the indirect costs were not charged, exists to show that the CE has been *loaning* the nonprofit school food service account funds to cover the indirect costs in one or more prior years.

[22] In general, funds which come from the US Department of Education require supplement, not supplant, and, therefore, require the use of the restricted rate.

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Actual Total Indirect Cost, Greater Than the Actual Total Indirect Cost

When the total allowable indirect cost amount is greater than the actual total indirect cost, the portion of the cost which exceeds the actual total indirect cost is unallowable to the nonprofit school food service account.[23]

For Example: The CE sums the allowable indirect costs for all of the CE's programs as $374,000, but the actual total of all indirect cost items for all programs is $264,840. The CE cannot charge the full allowed amount calculated ($374,000) for indirect costs because the amount is 141% of the actual cost—i.e., $109,160 is unallowable because the amount exceeds the actual total cost for all indirect cost items for all programs.

Therefore, when applying the indirect cost rate, the CE must ensure that the nonprofit school food service account is charged a proportional amount of actual allowable indirect costs that is consistent with the amount all programs are charged for indirect costs.

Actual Total Indirect Cost, Less Than the Actual Total Indirect Costs

When the CE applies both restricted and unrestricted rates as appropriate to different programs, the result may be that CE's total actual indirect cost amount may not be covered. If this occurs, the nonprofit school food service account funds cannot be used to cover any amount greater than the allowed indirect costs for the SNP based on its indirect cost rate.

For Example: The CE has an actual total indirect cost of $134,840 for all of the CE's programs. Across the CE's programs, 3 are required to use a restricted indirect cost rate and 4 use an unrestricted indirect cost rate.

When the CE applies the indirect cost rate to each program's modified direct cost base, the total allowed indirect cost amount is $89,965.24. This amount is $44,874.76 less than the actual cost for all programs.

In this case, any portion of or the full $44,874.76[24] exceeding the actual cost is an unallowable cost to the nonprofit school food service account. These remaining costs must be paid by another funding source. The nonprofit school food service account may only cover the amount calculated as its indirect costs for the SNP.

Indirect Cost Rate, Private Schools and Residential Child Care Institutions (RCCIs)

Private schools and RCCIs should identify their cognizant agency and work with this agency to establish an approved indirect cost rate.

Indirect Cost Rate, Texas School Districts and Texas Charter Schools

For Texas school districts and charter schools the Texas Education Agency (TEA) is their cognizant agency. The indirect cost rate for Texas school districts and charter schools is established through a cooperative agreement between the United States Department of Education and TEA. TEA provides resources and guidance on indirect calculation procedures and rates.[25] The rates established through this cooperative agreement are also applicable to Child Nutrition Programs (CNPs). The cost items that will be included as indirect costs must be indicated in the CE's indirect plan and in the CE's financial management procedures.

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[23] This discrepancy is unlikely to occur when CEs calculate the indirect rate using the Texas Education Agency's indirect rate process, but it may happen if a CE uses the de minimus indirect rate as described under the *Indirect Cost Rate, Without a Cognizant Agency* subheader in this section.

[24] In general, when a restricted indirect cost rate is applied to actual indirect costs, the actual total cost of the indirect costs may not be completely covered because restricted rates are designed to ensure that the CE supplements existing funds and does not supplant or replace existing funds. The restricted indirect cost rate is intended to minimize the use of program funds and, when used, may result in amount applied which is less than the total actual indirect costs.

[25] Information on indirect cost rate is available at *www.tea.state.tx.us/index2.aspx?id=3842&menu_id=645*.

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TEA provides detailed guidance on indirect cost rates on the TEA website at *https://tea.texas.gov/Finance_and_Grants/Grants/Federal_Fiscal_Compliance_and_Reporting/Indirect_Cost_Rates/Indirect_Cost_Rates/.*

Indirect Cost Rate, Without a Cognizant Agency

If a CE does not have a cognizant agency, the CE may calculate its indirect rate each year using the guidance provided by USDA in *Indirect Costs, Guidance for State Agencies & School Food Authorities* (2016) or may use the de minimis indirect rate of 10%.

Special Guidance, Indirect Costs

The following guidance applies to the calculation for or designation as indirect costs.

Indirect Costs, Fundraising

Both allowable and unallowable fundraising and investment activities must be allocated as an appropriate share of indirect costs as described in the terms and conditions of the award.

Factors Determining If the Cost Can Be Paid Using Nonprofit School Food Service Account Funds

In all cases, CEs must avoid unnecessary and duplicative costs and use the following factors to determine if a cost can be covered using the nonprofit school food service account:

Reasonable

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 purchase decision was made. In determining the reasonableness of a purchase cost, consideration must be given to the following issues:

- Necessary. Is the cost generally recognized as ordinary and necessary for the operation of the SNP or the proper and efficient performance of the program? Is the cost for services under a contract duplicative of the costs for services provided under another contract or agreement?
- Sound Business Practices and Regulations. Does the purchase meet the standards or regulations imposed by sound business practices; federal, state, local, tribal, and other laws and regulations; and terms and conditions of CE's agreement with TDA?
- Fair Price. Is the cost in line with market prices for comparable goods or services for the geographic area?
- Prudent. Have the individuals involved with the purchase acted sensibly[26] in the situation or circumstance considering their responsibilities to the CE?
- Established Practices. Does this purchase significantly deviate from the CE's established practices and policies regarding such purchases?

Allocable

A cost is allocable to a specific program or other cost objective if the goods or services involved are chargeable or assignable to that program or cost objective based on the relative benefits received. In determining if a cost is allocable, consideration must be given to the following issues:

- Purpose. Is the purchase cost aligned with the purposes described for the federal program for which the funds were awarded?

[26] In this case, sensibly means managing carefully, wise, judicious, without extravagance.

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- Shared Benefits. If the purchase benefits both the program and other non-program activities, can the cost be distributed proportionally to all programs that benefit from the purchase?
- Necessary and Allowable. Is the cost necessary and allowable?
- Indirect Costs. Will any indirect cost associated with this purchase be treated consistently across programs, including the determination of unallowable and allowable cost?
- Duplicative. Does the contract provide services the CE's is already paying for in another contract or agreement?

Consistency

The cost must be consistent with the policies and procedures that apply uniformly to both the federally financed and other activities of the CE.

- Ordinary and Common. Is the item or service generally considered an ordinary and a common expense for an SNP program?
- Consistent Treatment. Is the cost for the item or service consistent with the way the CE charges the costs for other programs for direct and indirect costs?

Is the Cost Allowable?

Using the criteria described in the *Factors Determining If the Cost Can Be Paid Using Nonprofit School Food Service Account Funds* subsection in this section, the CE determines if the cost of the item is allowable. The cost of an item or service is allowable if it meets the criteria described in the following questions:[27]

Questions to Help Determine if a Cost Is Necessary, Reasonable, and Allocable

- Could the CE justify the purchase to USDA, TDA, the media, or auditors? Would a taxpayer deem the cost to be appropriate for the objectives of the SNP?
- Would a prudent person consider the cost to be reasonable? Is the cost charged at a fair rate or do alternatives exist that may be more cost effective?
- Does the item or service support the operation of the program? Does the item or service help the CE to achieve program objectives?

Questions to Help Determine if a Cost Is Consistent with Federal, State, and Local Requirements

- Is the payment method for the item or service consistent with the way other programs pay for direct and indirect costs?
- Has the CE made sure that the cost of the item or service is not associated with any cost or matching contributions for any other grant?
- Is the payment for services provided a duplicate of services paid through other contracts or agreements?

Questions to Help Determine if a Cost Is in Line with Accounting Principles

- Is the use of the item or service recognized as ordinary and appropriate for SNP operation?

[27] Questions based on guidance on allowability from 2 CFR, Subtitle A, Chapter II, Part 200—Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards.

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- Is use of the item or service consistent with federal law, regulation, and terms of the grant or contract?
- Is payment for item or service consistent with the Generally Accepted Accounting Principles (GAAP)?
- Will payment for the item or service be made from SNP funds or from general funds?
- Is the invoice and payment for the item or service adequately documented?

Unit Cost Maximum

An expenditure of any single item that exceeds $5,000 must have preapproval from TDA for the cost to be allowable. See the *Capital Expenditure* subsections in this section for additional information on this topic.

General Expenditures—Allowable and Unallowable Costs

All expenditures must be reasonable, allowable, and allocable. The following examples describe common allowable and unallowable uses of SNP funds.[28]

Advertising, Disposal of Surplus Materials

Allowable:

- Materials and expenses to obtain services to properly dispose of surplus materials

Advertising, Outreach

Allowable:

- Materials and expenses for communication with parents and the community about program activities and services

Unallowable:

- Materials and expenses for public relations materials or activities designed solely to promote CE and not promote the school nutrition program(s) the CE operates

Advertising, Procurement

Allowable:

- Materials and expenses to publicize procurement solicitations

Advertising, Recruitment

Allowable

- Materials and expenses to recruit personnel

Unallowable

- Stipends, incentive awards, or other payments to SNP staff who recruit employees[29]

Contributions

Unallowable

[28] This list is not exhaustive. *Information Box 1, Guidance on Program Accounting and Financial Systems* provides a list of resources that provides additional examples of allowable and unallowable costs items.

[29] See *Administrator's Reference Manual (ARM), Section 15, Program Integrity* for additional information on conflicts of interest.

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- Contributions of cash, property, and services by the CE to another entity

Duplicative Services

Unallowable

- Cost for a product and/or service that is included as a product and/or service cost in another contract or procurement agreement

Emergency, Loss of Food Inventory, Supplies, or Equipment

Allowable

- Cost of replacing food inventory, supplies, or equipment lost due to a natural emergency or emergency evacuation of the school property

Equipment, Disposal of Equipment

Allowable

- Costs associated with the disposal or transfer of equipment if the CE is instructed by TDA to dispose of the equipment[30]

Equipment and Supplies, Expendable Items and Other Items

Allowable

- Materials or supplies used specifically in the SNP operation, including items that must be replaced from time to time: pots and pans, serving trays, dishes, glassware, silverware, linen, mops, brooms, and cleaning supplies

  If the CE purchases items as part of central contract, supplies must be charged to the program at net cost.

- Uniforms or shoes purchased specifically for SNP staff which staff are required to wear as part of regular program operation

  If the CE purchases uniforms or shoes, the CE must establish a standard that use is limited to tasks related to program operation and must ensure that the cost is reasonable and necessary for the staff member's assigned tasks.

  For Example: A staff member who works in the kitchen or in transporting food to another campus may need to have steel-toed shoes to prevent foot injury. A staff member located in the central office would not be assigned tasks that warrant the purchase of steel-toed shoes.

  or

  The CE may require all staff who enter food preparation or food service areas wear a specific type of hair covering. Since this is a health and safety issue, the CE may provide hair coverings to staff for this purpose.

Equipment, Nonexpendable Items

Allowable

- Items or equipment used directly in preparing, storing, or serving meals, including items such as ranges, refrigerators, freezers, steam tables, mixers, storage cabinets, garbage containers, tables, chairs, hot water heaters, and portable fans

  This category may include charges for installing equipment and connecting to utilities in the building in which the SNP operates as well as maintenance service, upkeep, and repair of equipment.

[30] CEs may trade in old equipment as part of the cost for new equipment.

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Equipment, Office Equipment

Allowable

- Items used to support program goals and objectives including such items as cash registers, adding machines, software, communication equipment, and other equipment used exclusively for the SNP operation as well as maintenance, upkeep, and repair of allowable office equipment

  This category may include charges for installing equipment and connecting utilities in the building in which the SNP operates as well as maintenance service, upkeep, and repair of equipment.

Equipment, Office Equipment, Cell Phone

Allowable

- Cell phones and cell phone expenses if the cell phone contract is in the CE's name and not in the name of the individual employee using the cell phone

Unallowable

- Cell phones and cell phone expenses considered to be a stipend or allowance
- Cell phones and cell phone expenses purchased and registered in the name of the employee

Equipment, Computers

Allowable

- Computers/computing devices that are essential to program operation[31]

Facilities, Improvement, Rearrangement, and Reconversion

Allowable

- Supplies, equipment, and labor costs associated with facility improvement, rearrangement, and reconversion with TDA approval before incurring the cost

Unallowable

- Supplies, equipment, and labor costs associated with facility improvement, rearrangement, and reconversion without TDA approval before incurring the cost

Facilities, Insurance

Allowable

- Premiums for covering SNP property in connection with general operations and sound business practices
- Premiums for insurance that the CE is required to carry by federal, state, or local regulation or law

Unallowable

- Loss resulting from failure to maintain insurance as prescribed by regulation

[31] When CEs purchase computers to use for SNP programs, staff must ensure that private information is safeguarded. This includes protecting private information collected by the SNP from being seen by anyone not authorized to access the information.

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Facilities, Land Purchase, Acquisition, Construction, and Renovation

Allowable

- Payment to purchase land, acquire or construct buildings, or make alterations to existing buildings that materially increase the value of capital assets when the CE has been approved to do so prior to purchase

  A request for this type of purchase must be sent to TDA. TDA will review the request and submit it to USDA for approval.[32]

Unallowable

- Payment to purchase land, acquire or construct buildings, or make alterations to existing buildings that materially increase the value of capital assets unless the CE has been approved to do so prior to purchase

  A request for this type of purchase must be sent to TDA. TDA will review the request and submit it to USDA for approval.[33]

Facilities, Mobile or Temporary Sites

Allowable

- Costs associated with transporting food items from one location to another, including vehicle costs and equipment
- Equipment to hold food at the correct food safe temperature[34]
- Serving equipment or supplies specific to the operation of a mobile or temporary site
- Retrofitting a vehicle or equipment for food transportation or meal service functions

  [NOTE: Care must be taken to ensure that any cost associated with retrofitting a vehicle or equipment does not constitute the creation of infrastructure. SNP funds cannot be used to create infrastructure. Because retrofitting can be unique to a CE's situation, CEs should contact their ESC or TDA if they are unsure if their planned costs are allowable. Any single cost item that exceeds the capital expense threshold must be submitted to TDA for approval. See the ***Capital Expenditures*** subsection of this section for additional information on this topic.]

- Portion of any shared equipment or supplies to be shared with other groups in proportion with the use by the Child Nutrition Program (CNP)

Unallowable (Unless Approved by USDA)

- Infrastructure needed for operation of the program, including a food truck or food trailer used to prepare food

  [NOTE: CEs may submit a request to TDA to use funds from the nonprofit food service account for infrastructure. TDA will review the request and forward the request to USDA for approval.]

- Rental of a food truck or food trailer purchased by the CE with non-SNP funds

  [NOTE: Any rental fee for CE-owned property is an unallowable cost to the SNP.]

Facilities, Rental of Facilities or Equipment

Allowable

[32] Requests for these purchases should be submitted using the contact information provided on the *Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition* page in this section.

[33] Requests for these purchases should be submitted using the contact information provided on the *Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition* page in this section.

[34] If any cost of a single item exceeds $5,000, the CE must submit a request for a capital expense in the Texas Unified Nutrition Programs System (TX-UNPS).

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- Rental or lease fees for non-SNP owned facilities such as cafeterias, kitchens, or storage facilities required for specific program needs

Unallowable

- Rental or usage fees for CE-owned equipment or facilities such as cafeterias, kitchens, or storage facilities

Facilities, Security

Allowable

- Expenses for the protection and security of facilities, personal, and work products including wages and uniforms of personnel engaged in security activities, equipment, barriers, and contracted services

Facilities, Services

Allowable

- Services which are necessary for the operation of the program, including services such as pest control, trash removal, security, and janitorial

Facilities, Utilities

Allowable

- Actual costs accounted for separately or prorated for the SNP and applied consistently for all programs. CEs must use a reasonable method to determine the cost of utilities

  The best method is using separate meters. The next best is a utility company survey. Applying the square foot percentage of total building space in use by the SNP to determine the SNP's proportion of the utility cost is an acceptable method. In all cases, the CE must retain documentation that demonstrates that the method for determining utility costs is reasonable.

Financial, Audits

Allowable

- Cost for audits conducted in accordance with program requirements or a proportional share of the costs of audits (if the audit covers non-SNP programs) conducted in accordance with program requirements

Unallowable

- Cost for any audit not conducted in accordance with requirements

Financial, Cost Sharing

Unallowable

- Charging any goods or services that are part of a cost sharing or matching requirement to the food service account, including prorating of expenses in an inconsistent method with other programs without adequate documentation

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Financial, Depreciation

Allowable

- Depreciation or use allowances based on a straight line calculation method (the pattern of consumption of the asset) that have a useful life of more than one year for assets purchased after December 26, 2014 or another method which allows the CE to demonstrate with *clear evidence* that the expected pattern of consumption would be greater in the earlier portions of the asset's useful life[35]

Unallowable

- Depreciation calculated by any method other than a straight line calculation for items purchased after December 26, 2014[36] unless the CE is able to demonstrate with *clear evidence* that the expected pattern of consumption would be greater in the earlier portions of the asset's useful life
- Depreciation recorded on the cost of land; any portion of the cost of a building donated by the federal government no matter where the title was originally vested
- Depreciation for any asset purchased with restricted program funds
- Depreciation for any asset that has been paid for in full though payments were made over more than one fiscal year
- Depreciation for any asset that has outlived its depreciable life
- Depreciation for any asset that is paid for in full in the current fiscal year

Financial, Improperly Procured Products or Services

Unallowable

- Costs incurred as result of improperly procured products and/or services whether the cost be incurred through micro-purchase, small purchase, invitation for bids, or request for proposals method

Financial, Interest

Allowable

- Interest at the prevailing loan rate

Unallowable

- Interest costs for the use of the program's own funds
- Expenses used for lobbying and membership in an organization that devotes substantial activities to lobbying and influencing legislation

Financial, Scholarship

Unallowable

Information Box 2

Resources for Depreciation

Texas Comptroller of Public Accounts Website search for depreciation schedule from main page, *www.comptroller.texas.gov/*

Internal Revenue Service, search for ***Publication 946, How to Depreciate Property*** from the main page, *www.irs.gov*

[35] Not all CEs depreciate equipment. Use of the depreciation option is often determined by requirements from the funding source. CEs should consult with business or financial managers to determine the appropriate depreciation use allowances for their programs. The straight-line depreciation method identifies the number of years an asset, tangible or intangible, is expected to function and divides the total cost by the number of years.

[36] The straight-line depreciation method identifies the number of years an asset, tangible or intangible, is expected to function and dividing the total cost by the number of years. 2 CFR 200 states that depreciation must reflect the pattern of consumption of the asset and not the loss of economic value that might occur in the earlier years of use with such items as automobiles or computers.

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- Use of funds from any SNP payments, rebates, credits, or other income for student scholarships

Financial, School Improvement

Unallowable

- Use of funds from any SNP payments, rebates, credits, or other income for school improvement expense

Food Operation, Food Service

Allowable

- Food purchases and costs directly related to the storage, handling, processing, and transportation of food

Fresh Fruit and Vegetable Program (FFVP)

See *Administrator's Reference Manual (ARM), Section 12, Fresh Fruit and Vegetable Program* for detailed guidance on allowable and unallowable costs specific to FFVP.

Fundraising, Actions to Raise Funds for the Program

Allowable

- Costs related to the physical custody and control of monies and securities that result from fundraising
- Costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency.

Unallowable

- Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions
- Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this part

Insufficient Check Charge

Allowable

- Bank charges for insufficient checks that the CE receives from individuals or entities

Unallowable

- Bank charges when the CE issues an insufficient check

Legal Expenses, Attorney's Fees

Allowable

- Appropriate fees that are consistent with normal program operations

  CEs must consult with TDA when there is a question as to whether the fee supports normal program operations.

Unallowable

- Costs incurred in the defense of any civil, criminal, or administrative fraud proceeding or similar charge

Legal Expenses, Fines and Penalties

Unallowable

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- Fines, penalties, damages, or other settlements resulting from violations or alleged violations of, or failure of the entity to comply with, federal, state, local, or other government agencies

Lobbying, Political Activities and Events

Unallowable

- Expenses used to influence the outcomes of any federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity
- Expenses used to establish, administer, contribute to, or pay the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States
- Expenses used in an attempt to influence the introduction of federal or state legislation; the enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity); or any government official or employee in connections with a decision to sign or veto enrolled legislation
- Expenses used to attend a legislative session or committee hearing with the intent of gathering information regarding legislation and analyzing the effect of legislation when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying

Meal Accommodation

Allowable

- Expenses related to a required meal accommodation as described in a medical statement or written into a student's Individualized Education Plan (IEP)

Outreach and Public Relations, Committees

Allowable

- Expenses for organizing or activities related to committees or councils that increase outreach and promote program involvement

Outreach and Public Relations, Incentives/Prizes to Participating Families

Allowable

- Reasonable incentives to encourage households to return completed free and reduced-price meal applications

Outreach and Public Relations, Promotional Materials

Allowable

- Exhibits or other information sharing activities related specifically to the SNP as well as printed materials to communicate information and messages central to program operations and program mission
- Activities to maintain and promote understanding and favorable relations with the community or public at large or any segment of the public
- Translation of materials for food service purposes[37]

[37] TDA provides translated household meal applications and related documents at *www.SquareMeals.org*. USDA provides translated household meal applications at *www.fns.usda.gov/school-meals/applying-free-and-reduced-price-school-meals*.

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Unallowable

- Expenses for meetings, conventions, and convocations for purposes other than those described above as allowable
- Cost of displays, demonstrations, and exhibits, meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events other than those described above as allowable
- Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, or providing briefings other than those described above as allowable
- Cost of promotional items and memorabilia, including models, gifts, and souvenirs other than those described above as allowable
- Cost of advertising or public relations designed and intended to promote the CE and not the SNP

Program Operations, Printing and Reproduction Equipment or Services

Allowable

- Materials used to provide notification, maintain records, or other uses related specifically to program objectives
- Translation of materials for food service purposes[38]

Staff, Cafeteria Monitor

Allowable

- Funds used for personnel directly involved in operating or administering the SNP who have monitoring duties assigned to them as part of or integral to their regular SNP responsibilities

Unallowable

- Funds used to pay meal service monitor salaries for personnel not directly involved in operating or administering the SNP and who do not have monitoring duties assigned to them as part of or integral to their regular SNP responsibilities

Staff, College Credits

Unallowable

- Cost incurred by an individual to obtain the college credits needed to meet the hiring professional standards

Staff, Employee Recognition

Allowable

- Reasonable expenses for recognizing employee efforts, including merit or bonus pay, in the following conditions.

  The recognition is:

  - A part of the CE's established practice.
  - For employees who work directly for the SNP department or whose salaries are paid out of the SNP fund.
  - Intended to improve employee performance.
  - Intended to improve employee-employer relations.

[38] TDA provides translated household meal applications and related documents at *www.SquareMeals.org*. USDA provides translated household meal applications at *www.fns.usda.gov/school-meals/applying-free-and-reduced-price-school-meals*.

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- Not incentive for staff to recruit more staff.
- Not a stipend (money for a specific use).

Staff, Fringe Benefits

Allowable

- Benefits for employees such as the following: leave, insurance, pension,[39] and unemployment plans provided the following criteria are met:
  - Established in written policies
  - Equitable allocation for related activities for all programs
  - Appropriate accounting procedures are in place

Unallowable

- Benefits that include use of an automobile for personal use of an employee, including transportation to and from work, whether the cost is direct or indirect cost to the program and whether the cost is reported as taxable income to the employee.

  Use of an automobile may be allowable for program use. See *Transportation, Meal Production Related Activities* in this section for more information.
- Stipends or any other fixed, regular sum paid as a salary or allowance.

Staff, Health and Welfare of Employees

Allowable

- Costs for improving working conditions, employee-employer relations, employee health, and employee performance

  To be allowable these goals and actions must be described in the CEs written policy, and the cost must be equitably distributed to all programs involved in these activities not just the SNP.

Unallowable

- Gym memberships and other off-site, long-term wellness activities.

Staff, Labor

Allowable

- Payments for labor and other services directly related to SNP operation

  This includes employer's share of retirement, social security, insurance payments, and fringe benefits as well as severance required by law, employer-employee agreement, established institutional policy, or circumstances of the particular employment.
- Prorated portion of the salaries of janitorial, maintenance workers, secretarial, and finance staff for services performed specifically for the SNP operation
- Hazard pay or a temporary increase in salary for working during an emergency situation, including a disaster or health emergency, if the additional payment is applied consistently across all program funds
- Continued payment of wages during an unexpected closure for a disaster or emergency if the continued payment is applied consistently across all program funds

[39] The Texas Teacher Retirement System (TRS) has developed the *Supplemental Instructions for Child Nutrition Payment* tool to assist CEs in calculating retirement for SNP employees. Pension or retirement costs calculated with this tool are allowable.

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Staff, Memberships, Subscriptions, and Professional Publications

Allowable

- Fees for memberships, materials, subscriptions, and professional activities used to benefit or improve the operation of the SNP

Unallowable

- Fees for memberships in any civic or community organization as well as country club or social or dining club or organization
- Costs for membership in organizations whose primary purpose is lobbying

Staff, Personal Use

Unallowable

- Costs of goods or services for an employee's personal use even if reported as taxable income to the employee

Staff, Severance Pay

Allowable

- Payment in addition to regular salaries and wages for workers who are being terminated as long as each instance is (1) required by law and employer-employee agreement and (2) established by policy that constitutes an implied agreement between employee and employer

Unallowable

- Payments that are in excess of normal severance pay paid by the employer upon termination of employment contingent upon a change in management control over, or ownership of the CE's assets

  Severance payment that is considered abnormal or for mass terminations are only allowable on a case-by-case basis. In these cases, the CE must contact TDA for assistance.

Staff, Training, Conferences, and Professional Certifications

Allowable

- Costs of meeting and conferences for which the primary purpose is the sharing of technical information, including meals, transportation, facility rental, speaker's fees, identification of dependent-care resources, and conference registration fees

  This also includes the costs associated with meeting the professional standards requirements.
- Costs of professional certification for which the primary purpose is to benefit or improve operation of the SNP

Unallowable

- Costs associated with obtaining a degree to meet the hiring standards
- Costs for daycare for employees attending training or conference

Transportation, Meal Production Related Activities

Allowable

- Reasonable costs associated with purchasing, transporting, and disposing of food items, meals, or stored items used to support the SNP

  [NOTE: Reasonable costs may be actual cost or per diem/mileage. Costs must be applied consistently with the CE's travel reimbursement policy and CE's policy for travel for all programs. If a CE allows the use of per diem, the per diem must be applied as described

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by the Texas Comptroller of Public Accounts. When mileage is paid, mileage must be paid based on the rate provided by the Texas Comptroller of Public Accounts.][40]

Travel, Conferences and Training

Allowable

- Expenses incurred for staff travel related to SNP improvement and to meet the professional standards requirements, such as workshops, conferences, and training programs

Special Situations, Allowable and Unallowable Costs

The following guidance describes special situations for allowable and unallowable uses of SNP funds.[41]

Allocable Cost Charged to Other Federal Awards

Any cost to a particular federal award that is allocable may not be charged to other federal awards[42] to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or terms and conditions of the federal awards; or for other reasons. However, this prohibition would not preclude a CE from shifting costs that are allowable under two or more federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the federal awards.

Contingency Contract Approval

If a contract has a contingency approval by TDA or for other purposes, contingency documentation must be submitted and approved before the costs are allowable. Any costs incurred before the contingency approval is resolved, are unallowable.

Bad Debt

Bad debt is defined as debts which have been determined to be uncollectable. Uncollectible debt is debt that is not possible for the CE to collect—debt that the CE has no reasonable probability or likelihood of collecting. Bad debt is an unallowable cost to the program. The CE must resolve any nonprofit school food service account negative balance (net cash resources) with non-SNP funds at the end of the school year. Once a debt is determined to be uncollectable any cost associated with legal services for that debt is also unallowable.

After the CE's general funds have been used to clear bad debt for the nonprofit school food service account at the end of the school year, the CE may attempt to collect the bad debt and repay the general fund for the cost of clearing the bad debt. When the CE continues to collect the debt after nonprofit school food service fund account has been cleared, any costs associated with continued collection efforts (staff and other costs) are not allowable costs for the school nutrition program. However, after the general fund covers the cost of bad debt, any funds collected for the debt accrue to the CE's general fund and not the nonprofit school food service account.

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40 Per diem and mileage information is provided on the Texas Comptroller of Public Accounts website at *https://fmx.cpa.texas.gov/fmx/travel/textravel/rates/current.php*

41 This list is not exhaustive. *Information Box 1, Guidance on Program Accounting and Financial Systems* provides a list of resources that provides additional examples of allowable and unallowable costs items.

42 In this case, *other federal awards* refers to non-Child Nutrition Program awards.

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Outstanding Student Debt, Delinquent Debt or Bad Debt

When a student owes unpaid meal charges,[43] a debt is owed to the nonprofit school food service account. Since outstanding bad debt resulting from nonpayment for school meals or milk cannot be absorbed by the nonprofit school food service account, the CE must have written procedures/processes in place that demonstrate compliance, including, but not limited to the following: (1) methods the CE uses to communicate with households about unpaid charges and collection of debt; (2) routine CE actions when there are unpaid student meal or milk charges; (3) debt collection time period, not to exceed two school years, for bad debt; and (4) criteria for reclassification of delinquent student debt for unpaid meal charges to bad debt.

- Household Response— The CE must not continue to carry delinquent debt beyond the end of the school year if there is not a probability or likelihood that the debt will be collected.

  [NOTE: A household's response to debt collection contacts may indicate whether there is a reasonable probability or a likelihood of collection.]

- Probability or Likelihood of Collection—For there to be a probability or likelihood of the debt for student unpaid meal or milk charges to be collectible, the student who incurred the debt must continue to attend classes in the school system. If the student does not continue to attend classes in the school system, the CE must reclassify the delinquent debt for student unpaid meal or milk charges as bad debt by the end of the school year.

Debt Period Options for Student Unpaid Meal or Milk Charges

Delinquent debt is debt the CE has the possibility of collecting, i.e., the CE's procedures/processes are structured so that there is a reasonable probability (likelihood) that the debt will be collected. Therefore, if the payment is likely to occur, the debt may be classified as delinquent debt.[44]

However, if the payment is not reasonably probable or likely to occur, the debt must be reclassified as bad debt. CEs may choose to apply a one-year or two-year delinquent debt collection period for student unpaid meal or milk charges.

- One School Year Period—The CE may limit delinquent debt[45] for student unpaid meal or milk charges to the school year in which the student incurred the debt. If this option is used, at the end of that school year, any remaining debt for unpaid meal charges must be reclassified as bad debt.

  When the debt for student unpaid meal or milk charges is classified as bad debt, the CE must resolve the bad debt at the end of the school year with non-SNP funds.

- Two School Year Limitation—The CE may carry delinquent debt[46] for student unpaid meal or milk charges forward one school year after the school year in which the student debt was incurred if there is a reasonable probability or likelihood that the CE will be able to collect the debt in the second school year. If this option is

[43] CEs must make the determination of how many meals a student is allowed to charge or milk that may be charged under the Special Milk Program. See *Administrator's Reference Manual (ARM), Section 19, Meal Pricing* for additional information on the charge grace period required for NSLP and SBP operators.

[44] This includes debt incurred during SY 2017-2018.

[45] This includes debt incurred during SY 2017-2018.

[46] This includes debt incurred during SY 2017-2018.

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used, at the end of the second school year, any remaining debt for student unpaid meal or milk charges must be reclassified as bad debt.

When the debt for student unpaid meal or milk charges is classified as bad debt, the CE must resolve the bad debt at the end of the second school year with non-SNP funds.

Special Guidance, Student Unpaid Meal or Milk Charges

CE's must use the following guidance for delinquent and bad debt for student unpaid meal or milk charges:

- Alternate Method of Payment—When a student has unpaid meal or milk charges, the CE must provide a method for the student (or the student's household) to pay for future meals or milk even through the student has an unpaid meal or milk balance.

  [NOTE: If the CE has an online payment system, the system must clearly communicate how funds paid into the online account will be applied when there is existing debt for student unpaid meal or milk charges.]

  If the student pays with cash and has change due, the cashier must give the student two options (1) apply the change to the student's account and (2) be given the change.

- Communication about Procedures/Policies to Households about Unpaid Student Debt—The debt collection procedure/policy must be communicated to households.

- Communication about Resolving Unpaid Student Debt—The CE must have written procedures/processes for routinely contacting a household to prompt payment. Contacts may be made by electronic, regular mail, or phone methods. CEs must clearly communicate amounts owed to the household and provide information on how to resolve the unpaid meal or milk charge debt, including a repayment plan.

- Online Student Account Systems—If a CE uses an online system for communicating student account balances, the CE must offer households a non-online method for obtaining information about student meal or milk account balances.

- Cost of Delinquent Debt Collection for Student Unpaid Meal or Milk Charges—Reasonable costs associated with the collection of delinquent debts are allowable costs to the nonprofit school food service account. These costs cannot be added to the student's unpaid meal or milk charges.

- Documentation for Efforts to Collect Student Unpaid Meal or Milk Charges—CEs must retain documentation of contacts and results of contacts, all payments made, and all remaining balances that are reclassified as delinquent or bad debt.

- Financial Accounting—The CE must use an account payable debt system to document and track student unpaid meal or milk charges by individual student.

- Grace Period for Student Charges (NSLP/SBP)—The CE's grace period for student charges is applied each school year even if the

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CE has chosen the option to carry student unpaid meal charges forward to a second school year, when appropriate.

- Student Unpaid Meal or Milk Charges Paid by a Person or Entity Other Than the Household—If the CE allows individuals or entities to cover unpaid student debt, the CE must have a method to document when these funds are applied to a student's meal or milk account and how the household is notified. The requirements for confidentiality of student information applies when an individual or entity covers unpaid student debt.[47]

- Transfer of Funds to Clear Bad Debt—Once debt for student unpaid meal or milk charges is reclassified as bad debt, the CE must transfer funds to cover the bad debt from a non-SNP funding source to the nonprofit school food service account. Documentation demonstrating the transfer is required.

  If the CE intends to continue to collect the debt after the transfer of funds, the SNP should provide individual student debt balances and payment information to the CE staff who will seek repayment.

Changing Funding Source for a Payment

If a CE pays a bill with funds from the SNP account that was not previously charged to the SNP account, the CE must add an equal amount of nonfederal funds to the SNP account for the payment to be an allowable cost.[48]

Fresh Fruit and Vegetable Program (FFVP) Equipment Purchases

If the equipment to be purchased is also to be used by other programs, the cost of the equipment must be prorated among all programs based on percentage of use. For detailed guidance on allowable and unallowable expenses for the FFVP, see *Administrator's Reference Manual (ARM), Section 12, Fresh Fruit and Vegetable Program*.

Employee Timekeeping

CEs are expected to ensure that salary and wage expenses are correctly charged to the SNP. CEs must have a timekeeping record system, paper or electronic, that accurately reflects the work performed by employees for the SNP.

The timekeeping record system must meet the following requirements:

- Be supported by a system of internal controls which provides reasonable assurance that the charges are accurate, allowable, and properly allocated.

- Be incorporated into the CE's official records that include a hand or electronic signature by the employee and the supervisor certifying the accuracy of the records.

- Comply with the established accounting policies and practices put in place by the CE to ensure program integrity.

[47] See *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality* for additional information on this topic.

[48] Since CEs commonly use electronic accounting procedures, CEs should take care to document electronic transfers adequately.

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The timekeeping record system must provide the following information:

- Actual hours worked, not estimated hours worked, for both hourly and salaried employees compensated by the CE for each pay period, integrating compensation provided by SNP funds and non-SNP funds.

  Charging a percentage of time to the SNP without a method to record actual time is an unallowable cost.

  [NOTE: For budget planning, it is common to assign time by percentage, but when charging the nonprofit school food service account for labor costs, it must be done by actual time.]

- Distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on SNP and non-SNP projects.

Maintenance and Repair Costs (Not Capital Expenditures)

Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment to promote efficient operating conditions do not require TDA approval.

Maintenance and repair costs include, but are not limited to, the following:

- Repainting a wall when new kitchen equipment is installed
- Restriping lines or adding graphics in the service area that help students understand how to move through the service line
- Routine freezer and cooler maintenance contracts
- Replacing tiles when there is water damage in the service area

However, costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures. If this is the case, see *Capital Expenditures (Equipment and Facility Improvement)* subsection in this section for additional information on how to request approval for a capital expenditure.

If the CE has a question about whether a cost is for maintenance and repair or a capital expenditure, the CE should contact its ESC or TDA.[49]

Special Guidance, Painting and Graphics

Allowable costs associated with painting and graphics must be specifically associated with an SNP operational objective.

[49] The Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition page which follows the Table of Contents provides the email address to submit questions about capital expenditures.

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Examples of Unallowable and Allowable Maintenance and Repair Costs for Painting and Graphics	
Unallowable	**Allowable**
– Repainting the cafeteria walls and adding graphic elements not associated with SNP operation	– Repainting a wall that was renovated to allow for the installation of new SNP equipment – Appropriate proportion of painting costs specific to SNP operation
– Adding artwork to the walls in the meal service area that is not specific to the school meal program (murals or school mascots)	– Adding artwork to walls in the meal service area that is specific to the operation of the school meal programs (meal pattern information)

If the cost for the painting or graphics is part of a larger project that includes a portion of the work that is associated with an SNP operational objective, only that portion of the cost that is appropriate to the SNP is allowable.

Capital Expenditures (Equipment and Facility Improvement)

Capital expenditures are costs exceeding $5,000 for a single item that are incurred to acquire (1) capital assets or equipment or (2) to make improvements, additions, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.[50]

USDA requires CEs to obtain approval[51] before incurring the cost for capital expenditures in the following conditions:

1. Capital Asset or Equipment—Cost that exceeds $5,000 for a single item.
2. Capital Improvements—Cost that exceeds $5,000 for an addition, improvement, modification, replacement, reinstallation, renovation, or alteration to a capital asset[52] that materially increases the value or useful life of the asset.

   Costs which are classified as capital improvements are intended to achieve one the following results:

   – Make the property better by removing a defect, adding enhancements, or increasing strength or capacity.

   – Restore the property to a condition existing before the property was acquired or rebuilding to a like-new condition.

   – Adapt the property to a new or different use.

50 If the expense is an ordinary maintenance or repair cost, see the guidance provided in the *Maintenance and Repair Cost (Not Capital Expenditures)* subsection in this section.

51 CE must complete the *Capital Expenditure Request* located in TX-UNPS | Applications | Capital Expenditure Request.

52 Assets are defined as buildings (facilities), and equipment that have a useful life of more than one year which are capitalized in accordance with Generally Accepted Accounting Principles (GAAP).

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New Kitchens

The initial cost to build the school building and its contents belongs to the CE. Because the costs of building a kitchen are analogous to the costs of constructing school buildings, the initial cost to build a kitchen also belongs to the CE.

A kitchen is more than the structure that houses the kitchen and includes the contents that allow it to function as a kitchen. Therefore, an empty building is not a kitchen until it is capable as functioning as one—that is, equipped with electricity, water, sewage, stoves, sinks, etc. Because the cost to create a functioning kitchen is considered an element of building a kitchen, the cost is the responsibility of the CE.

Capital Expenditures (Equipment and Facility Improvement) Request for Approval

CEs must request and receive approval before paying for capital expenditures—equipment or facility improvement—with a cost of $5,000 or more per item.[53]

Procedure to Request a Capital Expenditure (Equipment or Improvement) Approval

To request approval for a capital expenditure, CEs must complete the capital expenditure form located in TX-UNPS under the Applications tab, *Capital Expenditure Request* hyperlink.

Additional instructions are found at *https://squaremeals.org/Portals/8/FND%20Forms/Program%20Forms/Capital_Expenditure_Request_Instructions.pdf*.

Request by Item Location

Requests for capital expenditures must be made by location/site. For each cost item provide the type of item, age, quantity, cost per item, total cost, and percentage paid by SNP funds. Use the Comment field (Number 6) to describe how the item will be used and why it is a necessary purchase.

Indication of Capital Improvement Expenditure

If the CE is requesting approval for a capital improvement expenditure, the CE will complete the *Capital Expenditure Request* form in TX-UNPS and record a note in the Comment section stating that the request is for a capital improvement expenditure.

[NOTE: If the Type of Item dropdown menu does not contain a descriptor that matches the cost item or if the best descriptor is Other, the cost is likely a capital expenditure for improvement request.]

Corrections to Form

TX-UNPS does not allow for correction of this form after it has been submitted. A new form will need to be submitted.

Approval or Disapproval

Approval is granted on a case-by-case basis. Approval or disapproval for the request will be indicated in TX-UNPS. If a CE incurs and pays for the cost of a capital expenditure without the required approval, the cost is unallowable.

[53] While capital expenditures for equipment or improvement for more than $5,000 per item require prior approval, CEs must still ensure that equipment or improvements that cost less than $5,000 are allowable costs. See the *General Expenditures—Allowable and Unallowable* for more information on this topic.

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Capital Expenditures for Equipment, Special Guidance

A capital expenditure for equipment request is an expense of $5,000 or more for an item that is intended to be used for multiple years. For capital expenditures for equipment, CEs must use the following guidance:

Charge Period

Capital expenditures for equipment must be charged in the period in which the expenditure is incurred unless TDA approves a payment structure that spans multiple funding years.

Direct Cost

Capital expenditures for equipment must be coded as a direct cost; they cannot be classified as an indirect cost.

Purpose

For this cost to be allowable, capital expenditures for equipment must be specifically linked to operation of the SNP.

[NOTE: When a CE provides information on how the cost item will be used and why it is necessary in the Comment field (Number 6), lack of specificity can lengthen the approval process. Specific detailed descriptions will assist staff in making a determination in a timely manner.]

Proportion of Cost

If the equipment will be used by the SNP and other programs, the CE must charge only the proportional amount to the nonprofit school food service account that is consistent with SNP's use of the equipment.

Capital Expenditures for Improvements, Special Guidance

SNP capital expenditures for improvements to land, buildings (cafeteria and food preparation space) which materially increase the value or useful life of facilities and exceed $5,000[54] are unallowable except with the prior approval of the TDA.[55] This requirement applies to improvements, renovations, construction, and other activities that are not considered to be repairs to the existing cafeteria and meal preparation space. In all cases, when the CE is unsure if the expense will be considered to be an improvement to the land, building, or equipment which will materially increase value of useful life, the CE should contact its ESC or TDA.[56]

For capital improvement costs, CEs must use the following guidance:

Charge Period

Capital expenditures for improvements must be charged in the period in which the expenditure is incurred unless TDA approves a payment structure that spans multiple funding years.

Direct Cost

Capital expenditures for improvement must be coded as a direct cost; they cannot be classified as an indirect cost.

Purpose

For these expenditures to be allowable, capital expenditures for

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54 All costs for renovations, construction, improvement, or other activities that are less than $5,000 must still be an allowable cost to be charged to the nonprofit school food service account. See the *General Expenditures—Allowable and Unallowable Costs* subsection in this section for more information on what costs are allowable.

55 If approved, TDA will submit the request to USDA. USDA must provide final approval for capital improvement expenditures before costs are incurred.

56 See the Contact Information for the Texas Department (TDA), Food and Nutrition page which follows the table of contents in this section for contact information.

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improvements must be specifically linked to operation of the SNP.

[NOTE: When a CE provides information on how the cost item will be used and why it is necessary in the Comment field (Number 6), lack of specificity can lengthen the approval process. Specific detailed descriptions will assist staff in making a determination in a more timely manner.]

Proportion of Cost

When determining whether a requested capital expenditure for improvement is allowable, CEs need to consider the proportion of use. While it is true that the cafeteria and food preparations area are used for meal service, they are also often used for other purposes—meetings, trainings, special events, instruction, and such. When the space for the improvement can be specifically linked to other programs, the nonprofit school food service account must pay only the proportion of the cost that is consistent with the SNP's use of the area.

Equipment/Property, Care and Maintenance

CEs must use the following guidance for equipment/property bought with SNP funds:

- Must retain equipment/property records that include the following information:
  - Description of the equipment/property
  - Serial number or other identification number
  - Source for the equipment/property
  - Entity holding the title, if applicable
  - Acquisition date
  - Cost of the equipment/property
  - Location
  - Percentage of federal funds in the cost of the equipment/property
  - Disposition data including the date of disposal and sale price of the equipment/property if sold
- Must take a physical inventory of the equipment/property, and the results reconciled with the records at least once every two years.
- Must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the equipment/property. Any loss, damage, or theft must be investigated.
- Must develop adequate maintenance procedures to keep the equipment/property in good condition.

Equipment/Property, Disposal

The guidance in this subsection applies to all Child Nutrition Programs (CNPs). Disposition of equipment/property should follow these requirements:

Items Valued Less Than $5,000

Items of equipment/property with a current per unit fair market value of less than $5,000 may be retained, sold, or otherwise disposed of with no further obligation to the CE. However, if the item is sold, all funds from the sale must be credited to the SNP account.

Items Valued More Than $5000

Items of equipment/property with a current per unit fair market value in

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excess of $5,000 may be retained or sold. If sold and the SNP paid the total cost of the equipment, the SNP account must be credited for the full amount received for the equipment/property. If sold and the SNP paid a percentage of the total cost for the equipment/property, the SNP must receive a portion of the sale price (percentage of cost) that is equal to the portion the SNP paid (percentage of cost) toward purchase—multiply the current market value or proceeds from sale by SNP share of the equipment/property.

Retired Equipment/Property That Will Not Be Replaced

Equipment/Property purchases for use in the SNP program must be used by the CE in the program(s) for which it was acquired for as long as it is needed. When equipment/property is no longer needed by the SNP and will not be replaced, other Child Nutrition Programs (CNPs) have first preference in using the equipment/property. If the retired equipment/property is donated to another CNP, the use of the equipment/property must not interfere with operation of the SNP.

Retired Equipment/Property That Is Replaced

If acquiring replacement equipment/property, the CE may also use the retired equipment/property as a trade-in or sell the property and use the proceeds to offset the cost of the replacement equipment/property.

The CE must establish proper procedures for the sale of retired or replaced equipment/property to ensure the highest possible return if the equipment/property is sold or donated. All funds from the disposition of equipment/property must be deposited into the SNP account. TDA will review records related to the disposal of equipment/property as part of the agency's effort to monitor program integrity.

Local Wellness Policy

Nonprofit school food service account funds may be used to implement its local wellness policies if the local school wellness policy is directly supporting the operation or improvement of the SNP. In cases where only a portion of the local school wellness policy activities are a direct support to the operation or improvement of the SNP, then, only that portion of cost must be charged to the nonprofit school food service account. This includes the nonprofit school food service account covering all or a portion of a local wellness policy coordinator. Please see the Employee Timekeeping subsection in this section for additional guidance on how a local wellness policy coordinator's time would be covered.

Nutrition Education Expenses

Nutrition education and related activity expenses are allowable if the expense meet the following criteria:

1. Are reasonable, necessary, and allocable as defined in this section
2. Support the operation of and/or improvement of the SNP objectives to serve nutritious meals that meet the meal pattern.

Universal Free Feeding Programs

CEs may choose to allow sites to provide meals to all students at no charge—universal free feeding—at breakfast, lunch, both breakfast and lunch, or afterschool snack. CEs may operate universal free feeding under the Community Eligibility Provision (CEP), Special Provision 2 (P2), or under standard counting and claiming.

If the CE adopts a universal free feeding program, the CE agrees to supplement SNP

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funds with nonprogram funds if the cost of operating the universal free feeding program exceeds SNP revenue. Nonprogram funds include the following revenue types:

- Any portion of State revenue matching funds that exceeds the minimum requirement
- Profits from a la carte sales
- Cash donations (such as Angel Funds)
- In-kind contributions from outside sources, such as volunteer services

Farm to School and School Farm or Garden Expenses and Revenue

SNP funds may be used to support farm to school activities, including school gardens, if the expenditure is an allowable cost. The *Farm to School/School Garden Allowable Cost Assessment Chart* may be used by the CE to determine if farm to school or school garden expenses are allowable.

Farm to School/School Garden Allowable Cost Assessment Chart **If the answer is no, the cost is not allowable.**		
SNP Program Objectives		
– Do the farm to school or school garden activities support the SNP objectives and/or promote program improvement? (Includes nutrition education)	☐ **Yes**	☐ **No**
Support the Operation or Improvement of the School Meal Program		
– Is the purchase for the farm to school or school garden activities helping to support the operation of or improvement of the school meal program	☐ **Yes**	☐ **No**
Reasonable		
– Are the costs associated with these activities reasonable—that is proportional to the benefits and results?	☐ **Yes**	☐ **No**
– Are the costs associated with SNP activities or support for or improvement of the SNP program?	☐ **Yes**	☐ **No**
Compliance with NSLP/SBP Meal Pattern ^		
– Are the costs associated with efforts aligned with or supportive of NSLP/SBP meal pattern compliance? (Includes, but is not limited to, activities that enhance students' preference for fruits and vegetables, increase the likelihood of students eating fruit and vegetables offered on the serving line, and nutrition education activities.)	☐ **Yes**	☐ **No**
Proportional Allocation for Staff Salaries*		
– In cases where only a portion of the farm to school or school garden coordinator's time is spent directly in support of the SNP operation, does the site cover the portion of the coordinator's salary that is deemed necessary, reasonable, and allocable?	☐ **Yes**	☐ **No**
^ Net cash resources and prioritizing funds to support the operation or improvement of the school meal program. * Staff positions strictly supporting horticulture classes, Future Farmers of American, or other school associations cannot be funded by the SNP account.		

Supplies or Equipment for School Farms or Gardens

If the school farm or garden is used within the context of the school meal programs and serves the purpose of supporting the operation of or improving the school meal program, supplies and equipment for the school farm or garden may be purchased with funds from the SNP account.

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Supplies (i.e., seeds, fertilizer, water cans, or rakes) and equipment (i.e., hoop houses and high or low tunnels) are allowable if (1) the CE has assessed the purchase using the questions from the *Farm to School/School Garden Allowable Cost Assessment Chart* and determined that the costs are allowable and (2) the products grown in the school garden or farm are used within the context of the SNP.

Building Structures

The purchase of land or buildings is not allowable unless the CE has received approval prior to purchase. To obtain approval, the CE must submit an approval request to TDA. TDA will review the request and forward it to USDA for approval.

Intergovernmental Agreement

CEs may enter into an intergovernmental or interdepartmental agreement with a school farm or garden local government agency[57] to purchase products from the garden. The agreement may outline the price for the produce, relative timelines, and expectations of both parties. However, before establishing an agreement, the CE must conduct a price analysis to ensure that products purchased from the garden are purchased at reasonable prices.

Procured Farm to School Products

CEs may conduct procurement for garden produce even if the purchase falls below the small purchase threshold. Geographic preference may be used.[58] The CE must still ensure that products purchased from the garden are purchased at reasonable prices.

Sale of Produce from a Garden Funded by the SNP

If the CE sells produce from a school garden or farm that is funded by the SNP, the revenue must accrue back to the SNP account. If the CE contributes a proportion of the total cost, the amount accrued back to the SNP may be proportional to the amount of the SNP's contribution.

Use of Fresh Fruit and Vegetable Program Funds (FFVP)

CEs must not use funds from the FFVP to purchase supplies or equipment for school gardens.

Proportion of Program/Nonprogram Revenue and Food Cost

Each year, CEs must assess their revenue from program food (reimbursable meals) and nonprogram food (non-reimbursable meals) to ensure that nonprogram food revenue generates at least the same proportion of revenue as it contributes toward total food costs.[59]

Revenue

For the program/nonprogram proportion, revenue is all money that is provided to the SNP account. This includes, but is not limited to, the following:

- Federal reimbursement

[57] Government entities include such agencies as local recreation department.

[58] See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on local preferences.

[59] Section 205 of the *Healthy, Hunger-Free Kids Act of 2010*. The Institute for Child Nutrition (ICN) *Financial Management Information System* booklet (2018) provides various tools and worksheets to assist CEs in tracking program/nonprogram revenue and food costs. Available at *www.theicn.org*. See the *Administrator's Reference Manual (ARM), Section 19, Meal Pricing* for additional information on topics related to the proportion of program /nonprogram costs and revenues, including Paid Lunch Equity.

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- State or local funds, such as per meal subsidies and State revenue matching funds
- Children's payments for reimbursable meals and a la carte sales
- Credits, rebates, and discounts and USDA Foods values credits
- Income from catering, adult meals, vended meals
- Payments for items purchased for fund raisers and vending machines

Nonprogram Revenue

For the program/nonprogram proportion, nonprogram sales include, but are not limited to, the following:

- A la carte items sold in competition with reimbursable meals
- Adult meals
- Catered or vended meals
- Items purchased for fundraisers, vending machines, and school stores

Costs

For program/nonprogram proportion, the CE will use only the cost of the actual food. The CE will not include labor or other costs in this calculation.

[NOTE: If the menu item is made from scratch, the CE would need to determine the price of all ingredients to calculate the food costs.]

Cost for Each Meal

Calculating program and nonprogram food revenue and costs is essential to knowing the cost of each item served and each meal served.

If the nonprogram food revenue is not proportional to program food revenue, the CE must act immediately to make the program/nonprogram revenue proportional. *Proportional* means that the food costs for nonprogram foods must be equal to or greater than program food costs, and nonprogram revenue must be equal to or greater than program revenue. TDA has developed *Program/Nonprogram Revenue and Cost Proportion Calculation Worksheet*[60] to assist CEs in calculating the proportion of program/nonprogram revenue and food costs.

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[60] Available at *www.SquareMeals.org*.

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Steps for Calculating Proportion of Program/Nonprogram Revenue

The CE should calculate the proportion of total nonprogram food costs by taking the following actions:

Step 1: Determine the total program and nonprogram cost and revenue.

Step 2: Determine the percentage of total program and nonprogram food cost.

Step 3: Determine the percentage of nonprogram and revenue and food cost Based on total revenue and food cost.

Step 4: Compare the total nonprogram revenue and food cost percentages to ensure that the total nonprogram food cost and revenue are proportional to the total food cost and revenue.

The *Program/Nonprogram Revenue/Food Revenue and Cost Calculation Chart* illustrates an example of the calculation to determine the correct proportion of program/nonprogram revenue/food cost.

Program/Nonprogram Revenue and Food Cost Proportion Calculation Chart

Step 1: Determine the Total Program and Nonprogram Cost and Revenue.

- Sum the Total Program Food Cost and the Total Nonprogram Food Cost to calculate the Total Food Cost.
- Sum the Total Program Revenue and the Total Nonprogram Revenue to calculate the Total Revenue.

Total Program Food Cost	+	**Total Nonprogram Food Cost**	=	**Total Food Cost** (Program & Nonprogram Combined)
$122,359		$301,854		$424,213
Total Program Revenue	+	**Total Nonprogram Revenue**	=	**Total Revenue** (Program & Nonprogram Combined)
$160,987		$303,697		$464,684

Step 2: Determine Percentage of Total Program and Nonprogram Food Costs.

- Divide the Total Program Food Cost by the Total Food Cost to calculate the Total Program Food Cost Percentage.
- Divide the Total Nonprogram Food Cost by the Total Food Cost to calculate the Total Nonprogram Food *Cost* Percentage.

Total Program Food Cost	÷	**Total Food Cost** (Program & Nonprogram Combined)	=	**Total Program Food Cost Percentage**
$122,359		$424,213		28.84%
Total Nonprogram Food Cost	÷	**Total Food Cost** (Program & Nonprogram Combined)	=	**Total Nonprogram Food Cost Percentage**
$301,854		$424,213		71.16%

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Step 3: Determine the Percentage of Nonprogram Revenue and Food Cost Based on Total Revenue and Food Cost.

- Divide the Total Nonprogram Revenue by the Total Revenue to calculate the Total Nonprogram Revenue Percentage.
- Divide the Total Nonprogram Food Cost by the Total Food Cost to calculate the Total Nonprogram Food Cost Percentage.

Total Nonprogram Revenue	÷	**Total Revenue** (Program & Nonprogram Combined)	=	**Total Nonprogram Revenue Percentage**
$303,697		$464,684		65.36%
Total Nonprogram Food Cost	÷	**Total Food Cost** (Program & Nonprogram Combined)	=	**Total Nonprogram Food Cost Percentage**
$301,854		$424,213		71.16%

Step 4: Compare the Total Nonprogram Revenue and Food Cost Percentages to ensure that the Total Nonprogram Food Cost and Revenue are proportional to the Total Food Cost and Revenue.

- If the Total Nonprogram Revenue Percentage is greater than or equal to the Total Nonprogram Food Cost Percentage, no action is required.
- If the Total Nonprogram Revenue Percentage is not greater than or equal to the Total Nonprogram Food Cost Percentage, the CE must take action to make the Total Nonprogram Revenue Percentage and Total Nonprogram Food Cost Percentage proportional.

Total Nonprogram Revenue Percentage	**is less than**	**Total Nonprogram Food Cost Percentage**	In this case, the food cost is not proportional to the revenue; the CE must take action to address the disproportion.
65.36%		71.16%	

CEs may use the *Program/Nonprogram Revenue Proportion Calculation Worksheet* to calculate the proportion of program and nonprogram income and expenses.[61]

Universal Free Programs, of Program/Nonprogram Proportion Revenue and Costs

All CEs, including those that operate the Community Eligibility Provision (CEP), Provision 2, or universal free, are required to perform the Program/Nonprogram Proportion Calculation if the CE sells nonprogram foods or adult meals.

Adjusting the Proportion for Program/Nonprogram Revenue/Costs

The CE may adjust the nonprogram revenue in a variety of ways including, but not limited to, increased prices for nonprogram food items and contribution of funds from non-SNP sources. The CE must use the following guidance in establishing proportional program/nonprogram revenue and costs:

Different Nonprogram Foods

A CE may choose to increase the price of one type of nonprogram food revenue more than another type. This is permissible as long as the proportional requirement is met.

Direct or Indirect Charges

The CE cannot count direct or indirect charges as a contribution of nonprogram funds if the CE does not actually add the funds to the SNP account. This

[61] Form available on *www.SquareMeals.org*

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transaction must be documented before applying the contribution to the proportional requirement.

Special Circumstances

If the CE's normal months of operation are impacted by a natural disaster, the CE may use a representative month to determine revenue or income for the fiscal year. The CE should contact TDA if this occurs.

Exclusive Contracts

An *exclusive contract* is a contract between a CE and a distributor/vendor that prevents the CE, and the SNP administered by the CE, from buying or selling similar products from other distributors/vendors. The distributor/vendor may also offer the CE financial, product, or service incentives for signing an exclusive contract. USDA has provided the following guidance and clarifications for exclusive contracts:

1. If the exclusive contracts do not involve the SNP account funds, there are no federal SNP procurement issues involved. State law or local regulation and policy may apply to the procurement of an Exclusive Contract. TDA strongly recommends that the CE consult its attorney before entering into a solicitation or other type of procurement for an Exclusive Contract.
2. If any SNP products are purchased via the exclusive contract, then all federal procurement requirements must be met.
3. Additionally, if SNP products are included in the contract, any rebates, commissions, or any other payments back to the CE or CE-related organizations must be reimbursed to the SNP account on a prorated basis. The distributor/vendor must provide the CE with the documentation necessary to assure that rebates, commissions, or other payments are properly applied.
4. Many of these contracts are multi-year contracts.[62] School procurement officials should consider the impact of multi-year contracts, as opposed to single-year contracts, on the purchase of beverage and snack items.
5. School districts with existing contracts in place that include SNP products must reimburse the SNP account its pro-rata share in accordance with Item 3 above for the current and subsequent school years and maintain appropriate documentation to demonstrate compliance with this requirement.

Proprietary Rights

Any discovery, invention, and/or software/program that are paid for using funds from the school nutrition program must remain the property of the school nutrition program. TDA and USDA must have unrestricted rights for use and access to the discovery, invention, and/or software/program.

Loans from the SNP Account to the CE

SNP funds may be loaned to the CE on a short-term basis (a school year) as long as the loan does not jeopardize the integrity of the foods service program to students and the balance of the fund is not reduced below operational costs for a three-month period —it must be repaid within the fiscal year in which the loan is made. Multi-year obligations are not permissible.

Interest

The CE must pay interest at the prevailing loan rate to the SNP account for funds loaned from the SNP account. The rate of interest charged on the loan must be equal to the rate that would have been paid if the loan were obtained from a commercial source, and no less than the normal rate of interest the SNP would

[62] Other than food service management companies.

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have earned by keeping the SNP funds deposited in an interest-bearing account.

Loan Stipulations

The loan agreement must contain such stipulations as the purpose; interest rate (simple or compounded); the repayment schedule for the principal; and interest and any penalties for late payment.

Loan Records Retention

The original loan agreement, duly executed, and the payments for the principal and interest must be maintained and be on file for the duration of the loan plus the retention period as described in the *Records Retention* subsection in this section.

Loans from the CE Account to the SNP, Retroactively Determined as a Loan

CEs must not retroactively determine that funds transferred from the general fund to cover SNP deficits are a loan subject to repayment. For a liability to exist, a bona fide loan agreement between the CE and SNP must be in effect at the time that the funds are transferred. Records that demonstrate an existing agreement include a written agreement and financial records that document the contributions from the CE to SNP as well as from the SNP to the CE.

Financial Single Audit Requirement

Federal law requires that all non-federal entities that expend $750,000[63] or more in federal awards[64] have an annual audit or single (organization-wide) audit[65] or a program specific audit each year as described in the *Audit, Program Specific Audit* subsection in this section. All audits must be conducted in accordance with Generally Accepted Accounting Auditing Standards (GAAS).

Because the rules and regulations applying to audits are highly technical, and different auditing requirements apply by type of entity and amount of funds received, this subsection only provides an overview for the audit requirements for CEs administering NSLP or SBP. See *Information Box 1* in this section for additional information on federal resources on audits.

Records Reviewed in a Single Audit

At a minimum, auditors will review the following records:

General Accounting Documentation

- Records (receipts, ledgers, files) of food, milk, nonfood items and purchased equipment
- Bank statements
- Procurement documentation, including receipt of credits, discounts, and rebates as well as the value of USDA foods

  [NOTE: When procurement relates to a major program in an audit, the scope of the audit must include determining whether these transactions are compliant federal statutes, regulations, and the terms and conditions of the federal award.]

63 2 CFR §§200.110(b) and 200.501(a), changed from $500,000 to $750,000 for all federal awards made after December 26, 2014

64 In this case, *Federal Award* means federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal agencies or indirectly from pass-through entities. TDA is a pass-through entity for the SNP (2 CFR Part 200).

65 A financial audit is not considered to be the same as a single (organization-wide) audit.

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Staff Cost Documentation

- Labor costs, including fringe benefits, for all staff involved in food service

Food Production Documentation

- Food service equipment depreciation schedules, if claiming depreciation
- Records of reimbursements including claim forms and worksheets
- Records describing the value of USDA foods
- Records accounting for food sold as part of the meal program—a la carte, milk, and reimbursable meals, catering, a la carte, or other food services
- Records describing food and nonfood inventories

Program Participation Documentation

- Records providing participant data

Financial Single Audit Due Date

TDA[66] must receive an acceptable audit within nine months of the last day of the CE's accounting fiscal year if the CE is required to submit an annual audit. Each CE must use the accounting fiscal year that its organization follows to determine the audit due date.

For Example:

Calendar Year	or	NSLP Fiscal Year	or	Federal Fiscal Year
January 1 to December 31		July 1 to June 30		October 1 to September 30

- If a CE's accounting fiscal year ends on December 31, its audit report is due before September 30 of the following year.
- If a CE's accounting fiscal year ends June 30, its audit report is due before March 31 of the following year.
- If a CE's accounting fiscal year ends September 30, its audit report is due before June 30 of the following year.

[NOTE: CEs should review and accept the audit report before sending it to TDA. TDA requires only the final draft of the audit report.]

Financial Single Audit Due Date Reminder

TDA will provide RCCIs and private schools[67] two notifications about the CE's audit due date:

- First reminder—three months prior to due date
- Second reminder—one month prior to due date

Financial Single Audit, Public School Districts

The Texas Education Agency (TEA) conducts single (organization-wide) audits for all Texas public school districts and charter schools and shares those audits with TDA as part of a

66 CEs must send one printed copy or an electronic copy on a CD to the TDA address on the Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition page in this section. Because of the size limitation on incoming email to TDA, TDA does not recommend that CEs email their audit files to TDA. To ensure that the document is delivered correct, add *ATT: Business Operations—Audit* to the mailing address.

67 Audits for public and charter schools are conducted by the Texas Education Agency; therefore, these notices only go to RCCIs and private schools.

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formal agreement between the two agencies. Since TDA is able to access this report through its cooperative agreement with TEA, TEA's single audit fulfills the audit requirement for these CEs.

Financial Single Audit, Program Specific Audit

A CE that receives more than $750,000 may elect to have a program specific audit. To be eligible for a program specific audit, the CE must meet two conditions.

1. The federal program's laws, regulations, or grant agreement must allow the CE to conduct a program specific audit.
2. The CE must administer only one federal award program as defined by the following criteria:

If all federal awards have the same Catalog of Federal Domestic Assistance (CFDA) number,	➡	the program(s) are considered to be one program for purposes of a program specific audit.
If a CFDA is not assigned for the federal awards and all awards come from the same agency and are made for the same purpose,	➡	

For Example: A CE administers NSLP and SBP as well as receives USDA Foods. All of these programs share the same CFDA number. In this case, the CE can perform a program specific audit.

A CE administers NSLP and SBP, receives USDA Foods, and administers a Head Start program. Some of the programs have CFDA numbers; others do not. While the NSLP, SBP, and USDA Foods may be treated as one program under the criteria, the Head Start is funded through a different federal agency and has a different purpose. In this case, the CE cannot perform a program specific audit.

If a program specific audit is conducted, the audit report must be sent to TDA as described in the *Financial Audit Due Date* subsection in this section or to USDA upon request.

Other Audits

TDA retains the right to conduct additional audits, as necessary.

Federal Audit Clearinghouse Requirement for Single Audits

CEs must submit their final single audit to the Federal Audit Clearinghouse each year. All fiscal year 2015 audits must include the standard audit finding reference number format and must be submitted in an unlocked, unencrypted, and text-searchable PDF format. The Federal Audit Clearinghouse provides detailed information on the new requirements and how to upload a single audit at *https://facweb.census.gov/uploadpdf.aspx*.

[NOTE: Public and charter schools are not required to submit an audit or submit their audits to the Federal Audit Clearinghouse unless they participate in CACFP and expend $500,000 [$750,000 for audits of fiscal years beginning on or after December 26, 2014] for new or modified awards] or more in federal funds.]

CE Response to Single Audit Findings, Corrective Action Plan

All CEs receiving a single audit are responsible for follow-up to the single audit which includes the CE's creation of a corrective action plan to address all audit findings. This applies to CEs whose single audit is administered by the Texas Education Agency (TEA), another state or federal agency, a sponsoring organization, or the CE itself. When CEs develop their corrective action plan for addressing audit findings, the plan must span audit findings for multiple years. This allows the CE and anyone reviewing the audit plan to address any issues that carry forward over multiple years. Moreover, the corrective action plan must describe how the CE will prevent further violations for all audit findings.

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60 Calendar Day Claim Rule

When there is a single audit finding[68] and the CE must adjust prior claims upward or downward, the 60-Calendar day claim rule is suspended. In this circumstance, the CE must contact TDA to arrange for the adjusted claims.

The CE must prepare the following documentation as part of its corrective action plan to address audit findings:

1. **Audit Summary Schedule or Work Plan for Prior Audit Findings That Have Not Been Corrected**—The summary work plan must include the following information:
   - Reference number and the year for each audit finding
   - Explanation of the status of actions to address each finding
   - Planned corrective action for any finding that has not be corrected as well as any partial corrective action that has been taken
   - Explanation of any corrective action that is different from the planned corrective action described in the summary work plan for previous audit
   - Explanation of why a finding, as applicable, is no longer valid or does not warrant further action.

2. **Audit Corrective Action Plan for the Current Year's Audit Findings**—The corrective action plan must include the following:
   - List of all findings by assigned number
   - Description of corrective action to be taken for each finding
   - Name of contact person responsible for each corrective action
   - Anticipated completion date for each corrective action
   - Explanation of why the CE does not agree with any finding submitted by the auditor and why corrective action is not needed
   - Submission of amended claims if audit findings determine submitted claims are incorrect.

The CE's response to the audit findings must be retained onsite as described in the *Records Retention* subsection in this section and available for review on request.

Using School Meal Facilities for the Elderly Nutrition Programs or Other Non-School Nutrition Programs

CEs are also permitted to use NSLP facilities, equipment, and personnel to support elderly nutrition projects. If CEs use their facilities for this purpose, they must meet the following financial requirements:

- Have a system in place that allows the CE to distinguish SNP costs and revenues from the costs and revenues of other nutrition activities, including Nutrition Services Incentive Program (NSIP).

[68] The single audit conducted under the Texas Education Agency regulations is not the Administrative Review, Procurement Review, or Administrative Financial Review conducted by TDA. See *Administrator's Reference Manual (ARM), Section 31, Administrative Review (AR) & Other Compliance Reviews* for additional information on corrective action associated with a compliance review.

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- Ensure that any cost involved with feeding activities for the elderly are not included in costs associated with the SNP.
- Use USDA Foods according to regulations and instructions.
- Ensure that any food and/or supplies[69] purchased with SNP funds are not used for feeding activities for the elderly.

Financial Report

Each CE must complete the *Financial Report* annually[70], providing data that reflects all revenue and expenses—program and nonprogram—from the prior fiscal year. TDA uses the *Financial Report* for a variety of purposes, including, but not limited to, Administrative Reviews, Administrative Financial Reviews, and other financial audits. The financial data that CEs report to the Texas Education Agency (TEA) may be used to assist CEs in completing the form.

[NOTE: TDA commonly reviews CE single audits and other financial reports collected by TEA. TDA also reviews all reports released by the Texas Legislative Budget Board (LBB). These reports and the Financial Report submitted in TX-UNPS are expected to have consistent financial information.]

For the *Financial Report*, the CE must ensure that the reported data accurately reflects the CE's financial operations for the fiscal period reported. Each year the report rolls the balance forward to the next year. If the CE has updated its financial report from the previous year and this adjustment results in a change in its financial balance, the CE must adjust the amount of the previous balance rolled forward.

CEs should review the directions for the *Financial Report* before completing the form. This will help the CE to accurately record the required financial information in each field.

[NOTE: The financial data reported in each field is determined by regulatory specifications and may not reflect data categories typically used in standard accounting practices.]

The following information will assist the CE in completing the form; however, more detailed directions are provided on the form.

- **Access to the Form**—To access the form,
  - **For School Year 2020-2021,** TDA will post a web-based form which is accessed through the TX-UNPS | Program Applications |Download Forms page. TDA will provide additional directions in the upcoming future.
  - **For School Year 2021-2022,** TDA will email the web-based form to each CE for completion.
- **Distinct Information in Each Field**—Each type of income and revenue field should contain distinct information, that is, if a type of revenue or expenditure is included in one field, it should not be included in another reporting field.

  For Example: The program revenue field will include payments for paid meals, but it will not include the federal and state reimbursements. Federal and state reimbursements are reported in another field.
- **Auto-Populating Fields**—For those fields that require a number to be recorded that is a sum or percentage based on numbers recorded in other fields, the system will automatically calculate the amounts and populate the field after the data is entered and

[69] Supplies include items that are expendable or consumed in day-to-day activities and replenished as needed.
[70] For more information, visit *https://squaremeals.org/Programs/NationalSchoolLunchProgram/Compliance/FinancialReport.aspx*.

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the form is saved. The formulas are provided, so CE will know what is included in the automatic calculations. Even though the message says *submitted* on exit—the data is still editable until the form is closed for the year.

- **What to Include**—This form should cover all monetary revenue and expenses for the Child Nutrition Programs (CNPs). This would include all relevant CNP revenue and expenses, including the summer feeding program and Child and Adult Care Food Program (CACFP), catering, a la carte, adult meals, concessions, etc. This report must include all monetary revenues and expenses attributed to and processed through the CNP account(s). This report does not include non-monetary revenue and expenses such as the value of the USDA Foods received during the prior fiscal year.

- **Who Should Report**—All CEs operating the National School Lunch Program (NSLP), School Breakfast Program (SBP), or the Special Milk Program (SMP) should complete the report. However, CEs must report income and costs for all CNPs, not just the NSLP, SBP, or SMP programs. New CEs that do not have a prior fiscal year for NSLP, SBP, or SMP programs are not required to complete the *Financial Report* the first year.

TDA Forms

TDA provides template forms at *www.SquareMeals.org* that may be useful to CEs in managing program finances and accounting efforts. CEs are not required to use the forms provided by TDA for their financial records, unless specified, but TDA strongly recommends that CEs do so. In cases where CEs develop their own versions of forms or records, CEs are responsible to make sure that all required information and elements included in TDA forms are collected in the CE's forms or records.

Information Box 3

Record Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

The following TDA forms will assist CEs in collecting the information required to determine whether the CE is compliant with accounting and financial requirements:

- *Adult Meal Calculator,* (available at *www.SquareMeals.org)*
- *Budget Tool* (available at *www.SquareMeals.org)*
- *Capital Expenditure Request* (located in TX-UNPS)
- *Daily Record of Income—National School Lunch Program and School Breakfast Program Form* (available at *www.SquareMeals.org*)
- *Food Service Pro-rata Share of Exclusive Beverage Contract Form* (available at *www.SquareMeals.org*)
- *Income from Food Service Operations Form* (available at *www.SquareMeals.org*)
- *Physical Inventory of Food Purchased Form* (available at *www.SquareMeals.org*)
- *Excess Net Cash Resources Plan* (available at *www.SquareMeals.org*)
- *Program/Nonprogram Revenue and Cost Proportion Calculation Worksheet* (available at *www.SquareMeals.org*)
- *Record of Program Expenditures Form* (available at *www.SquareMeals.org*)

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Each CE is required to complete the following form each year.

- *Financial Report* (located in TX-UNPS)

Records Retention

The CE is required to maintain an organized system of accounting and financial records retention that is accessible to appropriate CE staff members and federal or state reviewers. CEs have the option to maintain records on paper or electronically.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, nonprofit organizations, and residential child care institutions (RCCIs) after the end of the fiscal year to which they pertain. If audit findings have not been resolved, the records must be maintained as long as required for the resolution of the issues raised by the audit.

TDA may request financial documentation for both offsite and onsite processes for the Administrative Review, Procurement Review, Administrative Financial Review, and other audits as appropriate. The CE must be able to produce the following documentation in relation to its financial management of foodservice account funds:

Employees

- Activity reports, and all related documentation, for all SNP employees

Equipment/Property Disposal

- Records demonstrating how the CE disposed of equipment/property, including a justification for the CE's method of disposal.

Excess Net Cash Resources (Excess Fund Balance)

- Forms demonstrating the CE's efforts to address excess net cash resources, if applicable

Financial Management

- Records of financial transfers into and out of the SNP account
- Audit reports and related documentation
- Documentation related to corrective action taken as a result of an audit
- Records of any nonprogram funding sources used to cover any excess meal costs
- Documentation supporting the accuracy of internal and external financial reports

Fresh Fruit and Vegetable Program (FFVP) Equipment Purchases

- Documentation which justifies the equipment purchase, including (1) an explanation for why the additional equipment is needed and why current equipment will not suffice, (2) the extent of use for use in the program, and (3) the number of days per week the program operates.

Income and Costs

- Daily and cumulative monthly records of income received for meal service including reduced-price and paid meals and milk, a la carte, and adult meals served

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- Daily and cumulative monthly records for cost and income from all sources, federal and non-federal with the ability to report income and cost by program
- Daily and cumulative monthly records for program and nonprogram expenses and revenue
- Invoices, payment stubs, and any record documenting expenses paid out of the SNP foodservice account

  [NOTE: Expenditures, no matter the method of payment, must be documented by itemized receipts, invoices, and/or cancelled checks. If an invoice is split between more than one program, there must be a method to document the charge to each program.]

Indirect Cost Rate

- Documentation indicating the approved indirect cost rate which includes the agreement/plan/proposal indicating the approved indirect cost rate, indirect cost items included in the indirect cost pool, and financial documentation demonstrating consistent treatment of indirect costs.

Locally Purchased Food

When a CE purchases food items from local farm stands, farmer's markets, community supported agriculture programs, or farms a handwritten receipt is acceptable as long as the receipt includes the following information:

- Amount purchased
- Date of purchase
- Item cost
- Name of the vendor or farmer
- Total cost of the food items purchased

Pass-Through Entities

When a CE *passes* funds to another entity (contractor, vendor, supplier, processor, organization, etc.) to act on behalf of or assist the CE in operating one of the child nutrition programs, the entity receiving the funds is expected to meet the terms and conditions established by the CE and operate in compliance with all program requirements, including all financial requirements. In order for the CE to ensure that all terms and conditions are met and that the entity acting on behalf of the CE is compliant with financial requirements, the CE must have access to the following documentation maintained:

- All records and financial statements necessary to demonstrate compliance with all program regulations
- All records and financial statements that are necessary to evaluate the recipient's risk of noncompliance with federal statutes, regulations, and terms and conditions of the award.
- All records and financial statements that are necessary for audits
- All records that demonstrate that credits, discounts, and rebates and value of USDA Food have been accurately awarded to the CE

See the *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on methods to address these issues.

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School Gardens

If the CE operates a school garden, the CE must retain records that document expenses, income, and products used in meals or for nutrition education.

Compliance

TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance with the accounting and financial requirements, including corrective action related to single audits conducted under Texas Education Agency requirements, another state or federal agency, a sponsoring organization, or the CE itself. Any lack of action to appropriately address a single audit finding that requires amended claims may result in fiscal action.

Additionally, TDA will assess compliance with the accounting and financial requirements based on the documentation that CE has submitted throughout the year as well as documentation submitted for offsite and onsite administrative review processes.

See the *Records Retention* subsection in this section for more information on the kinds of documentation needed to demonstrate compliance.

Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations

CE's must report, in writing, all violations of federal criminal law—fraud, bribery, or gratuity.

> The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200. 113; 31 U.S.C. 3321).

Criminal Penalties Associated with Mishandling of Funds

The following statement from the NSLP regulations describes the penalties for the misuse or fraudulent use of program funds:

> Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall if such funds, assets, or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals, or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

Termination of the Permanent Agreement for Financial Fraud or Misuse of Funds

If serious deficiencies, such as fraud or misuse of funds, occur, and corrective action is not practical, TDA will terminate the CE's participation in the SNP. In this case, TDA may also refer the matter to the appropriate local, state, and/or federal authorities.

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Termination of the Permanent Agreement for Noncompliance with Audit Requirements

TDA may terminate the Permanent Agreement effective the first day of the month following the month in which the audit was due for any of the following reasons:

1. TDA does not receive the audit by the specified due date.
2. The CE submits an audit that does not meet audit requirements as defined in USDA regulations.
3. The CE requests but is not granted an extension of the audit due date and does not submit an acceptable audit as required.
4. The CE requests and is granted an extension of the due date but fails to submit an acceptable audit by the extended due date.

Unacceptable Audit Notification

TDA will notify the CE in writing that the audit is unacceptable. The CE must submit an acceptable audit within 30 calendar days of the date of the notice.

Extenuating Circumstances

If TDA determines that extenuating circumstances resulted in the CE's inability to submit an acceptable audit, TDA may conduct an additional audit or have an additional audit conducted through a third-party contract. The CE must pay all costs associated with such an audit. The CE does not have the right to appeal this decision.

Unacceptable CE Response to Audit Findings

As described in the *CE Response to Audit Findings—Corrective Action Plan* subsection in this section, if the audit findings indicate that the CE has submitted claims for reimbursement that are incorrect, the CE must amend the impacted claims[71] and take corrective action to prevent further violations. If the CE does not amend its claims and/or take appropriate corrective action, TDA may take fiscal action for any violations found during an audit.

Once the CE's Permanent Agreement has been terminated for failure to comply with the audit requirement, the CE must provide an acceptable audit for any outstanding audit year(s) and comply with audit requirement to be eligible to administer the program in the future.

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[71] When an audit finding results in the need for an upward or downward claim adjustment, the 60-calendar day claim rule is suspended. However, the CE must contact TDA before attempting to adjust claims. See *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on this topic.

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Section 16a

Contract Management

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Section 16a, Contract Management

Update Guide	
July 28, 2022	Clarified information on the following topics: - Definitions
August 16, 2021	Updated *Section 16a, Contract Management* to correct minor typos. Clarified information on the following topics: - Contract duration - Definitions
August 12, 2020	Created *Section 16a, Contract Management* and updated the *Administrator's Reference Manual (ARM)* sections references. Guidance for this new section was taken from the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Contract Management

The guidance in this section is intended to assist contracting entities (CEs) in (1) establishing effective practices for managing contracts and agreements and (2) ensuring that all contracts and agreements are operated according to the applicable regulations and guidance.

The guidance is this section applies to contracts that are procured on behalf of the CE.

The guidance in this section applies to the following school nutrition programs (SNPs):

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Fresh Fruit and Vegetable Program (FFVP)
  - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

The guidance in this section is intended to be used with the procurement and financial guidance provided in the following *Administrator's Reference Manual (ARM)* sections:

- *Section 14, USDA Foods*
- *Section 14a, USDA Foods Processors*
- *Section 15, Program Integrity*
- *Section 16, Financial System*
- *Section 17, Procurement*
- *Section 17a, Procurement Procedures*
- *Section 17b, Buy American*
- *Section 17c Cooperative Purchasing*
- *Section 18, Food Service Contracts*
- *Section 23, Food Product Documentation*
- *Section 26, Food Safety*
- *Section 27, Professional Standards*
- *Section 30, Records Retention*

Information Box 1

Additional Resources for Procurement

Texas Comptroller of Public Accounts

The website for the Texas Comptroller provides information on state regulations that apply to state and local governmental entities. Available at *www.comptroller.texas.gov/*

Resources include the following:

- *Model Purchasing Manual for Texas Cities and Counties 2010*—information that applies to all governmental entities, including schools. Available at *www.texasahead.org/lga/finances/purchasing/96-449_Model_Purchasing_Manual_11_10.pdf*
- *State of Texas Contract Management Guide*—guidance and recommendations on improving existing contract management methods and practices. Available at *www.comptroller.texas.gov/purchasing/publications/contract-management-guide.php*

Texas Education Agency (TEA)

Financial Accountability System Resource Guide provides detailed guidance of financial accountability, including Module 5, Purchasing, for local education agencies and charter schools. Available at *www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial__Accountability_System_Resource_Guide/*

United States Office of Management and Budget (OMB)

2 Code of Federal Regulations, Part 200—These regulations provide detailed information on required federal procurement process. Available at *www.fns.usda.gov/es/node/73141*

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Written Procurement Procedures Related to Contract Management

CEs are required to have written procurement procedures that reflect applicable local, state, and federal regulations that include, but are not limited to, checks and balances that provide internal controls for all financial matters including contract management. For detailed guidance on procurement procedures, see the *Administrator's Reference Manual (ARM), Section 17, Procurement Procedures*.

[NOTE: The requirement for written procedures also applies to agreements.]

Program Integrity and Internal Controls

The procurement process is intended to promote program integrity and establish internal controls.

> Program Integrity is defined as an organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds.

Contract management is a central factor in developing an effective financial management system that provides safeguards to ensure the stewardship of federal money and reduce fraud and improper payments by the use of internal controls. *Administrator's Reference Manual (ARM), Section 15, Program Integrity* provides detailed guidance on program integrity.

Responsibility for Contract Implementation

The CE is responsible for ensuring that a contract is compliant with all program regulations. Ensuring compliance is a central component of managing contracts even if a food service management company (FSMC) operates the program on behalf of the CE.

Information Box 2

Implementation of 2 Code of Federal Regulation (CFR) Part 200

The updates to this section include the consolidated 2 Code of Federal Regulation (CFR) Part 200 which replaced existing rules at 7 CFR Parts 3015, 3016, 3019, and 3052, and the following Office of Management and Budget (OMB) guidance documents; 2 CFR Part 220 (A-21), A-50 (sections related to audits), 2 CFR Part 225 (A-87), A-89, A-102, A-110, 2 CFR Part 230 (A-122), and A-133.

2 CFR Part 200 primarily serves to consolidate the previous regulations into one location as a convenience and for clarity. For procurement, 2 CFR Part 200 clarifies existing regulation and adds one new flexibility—micro-purchasing.

[NOTE: 2 CFR Part 200 also applies to all financial and accounting practices. *Section 17, Procurement* only addresses issues related to procurement. Other finance and accounting issues are addressed in Section 14, Financial Information Concerning School Nutrition Funds.]

Conflicting Program Regulations

For CEs operating Child Nutrition Programs (CNPs), there are federal, state, and local regulations that govern the actions of the CE. When there is a conflict between USDA regulations and other regulations, the CE must follow USDA regulations for the use of CNP funds. If other applicable federal, state, or local regulations do not conflict with USDA regulations, the CE will follow the most restrictive other federal, state, or local regulations. All programs that receive federal funds are required to follow 2 CFR Part 200 unless federal legislation supersedes 2 CFR Part 200.

Education Department General Administrative Regulations (EDGAR)

CEs receiving funds through the United States Department of Education are required to follow the regulations described in the ***Education Department General Administrative Regulations (EDGAR)*** for those funds, which incorporates 2 CFR Part 200. However, Child Nutrition Programs (CNPs) are required to follow USDA regulations for financial management, including procurement. While there are regulations in EDGAR that conflict with USDA regulations, in most situations, CEs will find the regulations to be compatible. However, if there is a regulatory conflict, CEs are required to follow the USDA regulations for all CNP funds (income, allowable and unallowable costs, and procurement).

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Definitions for This Section

The nature of financial processes fosters the use of terms and vocabulary that are more commonly used by accountants than by school nutrition staff. For School Nutrition Programs (SNPs), the following financial and procurement terms are used:

Acting on Behalf of CE	Entity or person who has been given the responsibility to act for the CE.
Agent	Person or business that is procured to act on behalf of the CE. This includes procuring on behalf of the CE.
Aggregate Purchase Amount	The total cost of all products and services in a single procurement transaction.
Agreement (for School Nutrition Programs)	Written legal document summarizing contractual obligations between two or more entities. This includes intergovernmental and interlocal agreement.
Allocable	Assigning a cost, or group of costs, to one or more cost objectives, in reasonable and realistic proportion to the benefit provided or other equitable relationship—the cost meets one of the following principles: – is incurred specifically for the award/program or – benefits both the award/program and necessary work and can be distributed in reasonable proportion to the benefits received or – is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.
Allowable	Direct or indirect costs that may be paid by SNP funds.
Approved Supplier List	List of suppliers or potential contractors who have demonstrated the ability to perform successfully under the terms and conditions of a proposed procurement, consideration being given to contractor integrity, compliance with applicable policy or regulations, record of past performance, and financial and technical resources.
Arms-Length Transaction	Transaction in which the parties are dealing from equal bargaining positions—neither party is subject to the other's control or dominant influence, and the transaction is treated with fairness, integrity, and legality. Less than Arms-Length Transaction A less than arms-length transaction occurs when a person responsible for making a purchase and appears to have a stake in the outcome is able to control or substantially influence the actions of others. This may include agreements between divisions of an organization; organizations under common control through common officers, directors, or members; and an organization and a director or employee of the organization and his or her immediate family.
Audit	Independent examination of accounting and financial records for accuracy, efficiency, and consistency. This is also called the annual audit or single audit.
Audit Report	Final summary of audit findings provided by a financial auditor.
Audit Corrective Action Plan	Plan in which the CE describes the strategies or actions the CE will adopt to address each finding reported in the audit report.
Audit Summary Schedule or Work Plan	Document that contains a cumulative list of audit findings by year and explanations of the strategies and actions the CE plans to take or has taken to resolve each audit finding. This summary allows the CE, auditor, or TDA staff member to review the actions planned or taken from year to year to maintain an accurate, efficient, and consistent accounting and financial system.
Bid Guarantee	Guaranteed percentage of bid price provided by the offeror at the time the offer is submitted. The CE must return all bid guarantees to all unsuccessful offerors when the contract is awarded and to the winning offeror as soon as the contract is signed.

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Bond	Insurance agreement pledging surety for financial loss caused in connection with the contract. For school nutrition programs, if a loss occurs in connection with a contract related to program operations, the loss will be covered to the extent agreed upon in the bond.
Breach of Ethics	Attempt to realize personal gain through public employment with a CE by any conduct inconsistent with the proper discharge of the employee's duties.
Brokers	Independent sales agents who negotiate sales for manufacturers by working with food distributors and/or school nutrition operations.
Buy American	Requirement for schools to purchase, to the maximum extent practicable, domestic commodities, and products. A domestic commodity or product means an agricultural commodity that is grown in the United States and processed in the United States or that is processed in the United States substantially using agricultural commodities that are produced in the United States.
Capital Assets	Land, buildings (facilities), and equipment that have a useful life of more than one year which are capitalized in accordance with Generally Accepted Accounting Principles (GAAP).
Capital Expenditures	Direct cost expenses to acquire capital assets or to make additions, improvements, modifications, replacements, reinstallations, renovations, or alternations to capital assets to be used for general purposes for multiple years and which materially increase the value or useful life of the asset.[1]
CE Employee (Specific to Program Integrity)	Term used in this section to represent a CE employee or official; family member of CE employee or official; or business partner of a CE employee or official.
Charge Period	Span of time during which a cost is paid. This payment process includes spreading payments over a period of weeks or months or establishing milestones that are linked to payments.
Code of Conduct	Set of written standards the CE must develop that outline the responsibilities of, or proper practices for, an individual or organization and which governs the following: 1. Performance of the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by Food and Nutrition Service (FNS) program funds. 2. Methods of procurement, including the requirement that the CE perform a cost or price analysis for every procurement (including contract modifications) and determination of which contract clauses and certifications are required in the CE's contracts.
Cognizant Agency Related to Indirect Costs	Agency that has primary responsibility for negotiating the indirect cost methodologies for non-federal entities.
Conflict of Interest	Any action that allows a person to benefit at the expense of the public interest or the expense of an employer. A conflict of interest may be a real or apparent conflict of interest.
Contract	Formal, legally enforceable agreement (terms and conditions) between a buyer (the CE) and a seller (contractor) that clearly and accurately describes the products and/or services to be delivered or performed and sets forth the method and the compensation the contractor receives when products and/or services are provided.
Consultant	Consultant that provides temporary support to the CE in areas where the CE lacks the necessary resources, skills, and/or abilities in order to assist the CE in gaining the necessary resources, skills, and/or abilities to operate an effective and compliant program.
Cooperative Purchasing	Group of entities who join together to purchase products and/or services with the intention of reducing costs and improving the quality of products and/or services available to members of a group. In this reference, a purchasing cooperative consists of a group of CEs.

[1] TDA must approve capital expenditures before a CE makes a capital expenditure purchase.

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Cost Analysis	Review and evaluation of each element of cost to determine reasonableness, allocability, and allowability for products and/or services to procured. A cost analysis will include the total projected cost for the products and/or services to be procured.
Cost Index	Tool designed to show the impact of an economic measure on the price of purchasing a specific type of item. TDA has approved the use of the Consumer Price Index (CPI) Food Away from Home for this purpose.
Cost Objective	Program function or activity for which cost data and for which specification is made to accumulate and measure the cost of processes, products, jobs, or other expenses.
Cost Plus Percentage of Cost	Method of pricing where the contract or agreement creates a pricing structure that charges the cost of the product or service plus a percentage of the cost. This pricing structure is not allowable for any purchase under USDA regulations. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).
Cost-Reimbursable Contract	Reimbursable contract that is a formal, legally enforceable contract that reimburses the contractor for costs incurred under the contract but does not provide for any other payment to the contractor with a fixed fee or with a cost-reimbursement fee. [NOTE: The fixed fee associated with these types of contracts may be called management fees or administrative fees.] In a cost-reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor. In a cost-reimbursable contract, the fixed price (fee) includes the contractor's direct and indirect administrative costs and profit allocable to the contract.
Debarment	Action taken by a debarring official to exclude a person from participating in covered transactions.[2] A person so excluded is debarred, that is, unable to participate.
Direct Cost	Expenses that can be identified specifically with a particular cost objective used to meet a specific program goal or goals.
Distributor	Commercial food company that purchases, receives, and/or stores commercial food products and then sells, delivers, and bills the recipient agency for goods and/or services provided.
Drop Delivery	Delivery to one location within the CE, such as a central warehouse.
Economies of Scale	Purchase of large quantities of a product and/or service in order to obtain a better price.
Escalator/De-escalator Clause or Market-based Pricing	Predetermined provisions in a contract stipulating specific conditions for an increase or decrease in price.
Equipment (Property)	Items which have been purchased and are nonexpendable; items have a useful life of more than one year. Equipment purchases of $5, 000 or more are capital expenses and require prior approval.[3]
Ethics	Principles of conduct governing and guiding decisions for an individual or a group in their personal and professional lives. School nutrition professionals have a responsibility to act ethically in accordance with all federal, state, and local guidelines.
Excess Net Cash Resources (Excess Fund Balance)	Net cash resources that exceed three months of operating expenses. For NSLP and SBP, an excessive fund balance refers to net cash resources.

[2] Covered transactions in this section refer to transactions related to child nutrition programs.
[3] See the *Capital Expenditures* subsection in this section for additional information on this requirement.

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Exclusive Contract (Including Exclusive Beverage Contracts)	Contract between an entity or organization and a distributor/vendor that prevents the entity or organization from buying or selling similar products from other distributors/vendors. The distributor/vendor may offer the entity or organization financial, product, or service incentives for signing an exclusive contract.
Expenditures (Costs)	Amount of money that is spent on an item or service.
Firm Fixed-Price Contract (Also Called Firm Price Contract)	Contracts that provide products or services for a price not subject to adjustment other than increases or decreases tied to an economic indicator stipulated by contract. Firm-fixed price contracts are usually negotiated where reasonably finite specifications and/or technical requirements are available, and costs can be estimated with reasonable accuracy. A fixed price contract places minimum administrative burden on contracting parties but subjects a contractor to maximum risk arising from full responsibility for all cost escalations.
Fixed-Price	Agreed-upon amount of money that is fixed at the inception of a contract and is guaranteed for a specific period of time. A fixed-price contract may also contain an economic cost adjustment provision tied to the Consumer Price Index (CPI) Food Away from Home.
Fixed Price (Fee)	Agreed upon amount of money that is fixed at the inception of the contract.
Food Service Management Company (FSMC)	Any organization, whether commercial enterprise or a nonprofit organization, that is or may be contracted by the CE to manage any aspect of the school food service.[4] CEs must use an FSMC from TDA's list of approved FSMCs.
Food Service Management Company (FSMC) Solicitation/ Contract	TDA term used to reference the TDA prototype combined solicitation and contract. This term is applicable to this section only.
Forecasting	Process of analyzing current and historical data to determine procurement needs. In the case of school nutrition programs, forecasting involves predicting and estimating the goods, works, and services needed in specified areas for the coming year, and/or assessing needs by reviewing current procurement activities. Forecasting allows for procurement timelines and tasks to evolve each fiscal year.
Full and Open Competition	Situation where all potential contractors are competing on a level playing field and have the same opportunity to compete and be awarded a contract. Full and open competition is also commonly referred to as free and open competition
Fund Balance (Net Cash Resources)	See "net cash resources."
Grade Standards	USDA quality standards based on measurable attributes that describe the value and utility of the products.
Grantees	Governmental or other legal entity to which a grant is awarded where the receiving entity is held accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.
Incentives	Rewards or benefits received as a result of performing requested actions and/or meeting predetermined milestones.
Indirect Cost	Expenses that are incurred for the benefit of multiple programs or functions and are necessary for the general operation of the SNP program—but cannot be directly attributable to the program.
Indirect Cost Rate	Established percentage of awarded funds that is dedicated to pay costs that have been identified as indirect costs.

[4] If an NSLP CE operates a Child and Adult Care Food Program and/or Summer Food Service Program, there may be additional regulations that applied for the use of an FSMC to operate the program.

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Internal Controls	Procedures or processes designed to establish and maintain effective internal control over the SNP's financial management system that provides reasonable assurance that the CE is managing the program in compliance with all federal, state, and local regulations and terms and conditions of the program award. These procedures or processes help the CE to (1) define actions related to financial management and the procurement activities, (2) establish standards of ethical conduct, and (3) provide full and open competition.
Invitation for Bid (IFB)	Formal method of procurement that uses sealed bidding and results in a fixed-price contract with or without adjustment factors.
Just-in-Time (JIT)	Food and supplies kept in quantities an entity anticipates will meet its immediate needs, which results in the entity maintaining a low inventory level.
LEA	Local education agency, an entity having administrative control and direction of a public or private nonprofit elementary or secondary school.[5]
Lead Time	Amount of time necessary for a distributor to prepare and deliver products and/or services to the CE.
Local Product	Unprocessed locally grown or raised agricultural products that retain their inherent character.
Managing the Contract	Procedures the CE has in place to ensure that contractors perform in accordance with the specifications, technical requirements, and terms and conditions described in a contract or purchase order.
Market Basket	Solicitation strategy that allows a CE to procure a list of products with varied pricing options for a finite number of products. Each product on the market basket list must have (1) a description with the quantity to be purchased, (2) specifications and/or technical requirements for each product, and (3) a description of how each product will be awarded on the contract.
Market Basket, Total Cost Analysis and Scoring	Analysis and scoring evaluation based on the aggregate total cost or by line item total.
Market Basket, Simplified Total Cost Analysis and Scoring	Analysis and scoring evaluation based on a representative sample of all products.
Material Change	Change made to a contract after the contract has been awarded that alters the terms and conditions of the contract substantially enough that had other offerors known of the change in advance, they may have bid differently and more competitively.
Meal Equivalency Factor (MEF)	Statistical tool that is used to convert a la carte sales into a standard of measure, in this case a "meal." The MEF is often used to convert a la carte sales into meal equivalents for billing purposes in fixed price contracts.
Micro-purchase Method	An acquisition of supplies or services using simplified acquisition procedures, the aggregate purchase amount of which does not exceed the micro-purchase threshold.
Necessary	Item or service that is essential to the operation of the program.
Negative Net Cash Resources (Fund Balance)	A CE must not carry negative net cash resources into the next school year. Negative net cash resources exist when all net cash resources have been depleted, and the resulting negative balance constitutes a liability to the organization.

[5] This definition is taken from USDA regulation.

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Net Cash Resources	Amount of funds the SNP account has available to spend—total revenue less total liabilities (expenditures). USDA further defines Net Cash Resources as This includes all monies, as determined in accordance with the State agency's established accounting system that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds, or other negotiable securities.
Noncompetitive Method	Procurement method used when there is an insufficient number of offers submitted in response to a solicitation. In this case, full and open competition is deemed inadequate, and there is no way to remedy the situation.
Non-Federal Entity	State, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.
Open Award	Contract award in which all vendors that submit an offer are awarded a contract. This type of award does not promote full and open competition or pricing that is advantageous to the program. An open award is not the same as using a market basket strategy.
Operating Months	Months during which the CE operates any child nutrition program—NSLP, SBP, CACFP At-Risk, or a summer feeding program. This includes reasonable amounts of time to set up program operations before meal service begins and time to close program operations at the end of the meal service period. Days on which operational tasks occur may be for a full month of operation or a partial month of operation.
Operator	Entity that operates a Child Nutrition Program.
Operator-Only Cooperative	Any type of agreement that is formed solely among CNP operators, including regional education service center (ESC) cooperatives.
Pass-Through Entity	Entity receiving federal funds that have passed through another entity. This definition is specific to funding from federal sources and applies to state agencies, CEs, group purchasing cooperatives, and third-party entities. These funds are used to fulfill the purposes of a federally funded program.
Payment Bond	Bond that covers the cost of materials and works for construction contracts.
Performance Bond	Bond which covers the cost of ensuring that the work is done as specified in the terms of the contract.
Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events or financial transactions. For this section, the word procedure is used to refer to all of these types of documents.
Procurement	Act of obtaining of goods or services in exchange for money or value. [NOTE: Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.]
Procurement Standards	Standards of conduct that shall govern the performance of the CE's officers, employees, or agents in contracting for payment and expending program funds. State and federal procurement regulations require each CE to maintain written standards of conduct, including a code of conduct that prohibits employees from participating in the selection, award, and administration of any contract to which an entity or certain persons connected to them have a financial interest.
Program Integrity	Organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds. [NOTE: Program integrity includes practices associated with ethical standards and codes of conduct.]
Program Specific Audit	Review of the financial transactions—income and expenditures—and accounting procedures for a designated program.
Proprietary Products	Manufactured products ordered specifically for a particular program or are unique to a manufacturer.

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Reasonable Cost	Amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.
Regulatory Authority	Oversight authority dictated by legislative act or regulation.
Request for Proposals (RFP)	Formal procurement method where potential contractors submit an offer to provide products and/or services under a fixed-price or cost-reimbursable type contract.
Responsible (Offer)	Capable of providing the product(s) and/or service(s), as described in the solicitation.
Responsive (Offer)	Offer that addresses the terms and conditions of the solicitation, including the specifications and/or technical requirements for product(s) and/or service(s).
Revenue	Income received by an organization.
Revenue to the School Nutrition Program (SNP) Account	All income that is collected or awarded to the SNP account is revenue (or income) to the SNP account. This includes, but is not limited to, the following: – Federal reimbursement – State or local funds, such as per meal subsidies and state revenue matching funds – Students' payment for reimbursable meals and a la carte sales – Payments for items purchased for fund raisers and vending machines – Income from catering and adult meals
Service Fee	Fee charged for the performance of a specific service.
Simplified Acquisition Threshold (Also Called Small Purchase Threshold)	Amount established by federal, state, or local regulations that defines when formal and informal procurement methods must be us
Single Audit	Organization–wide review of the financial transactions—income and expenditures—and accounting procedures.
Sole Source Method	Noncompetitive procurement method used when products and/or services are available from only one supplier, distributor, or contractor. TDA must approve all sole source methods of procurement.
Solicitation	Process of notifying prospective or qualified offerors about the specifications or technical requirements for the purchase of products and/or services. For informal procurement, the solicitation may be communicated by email, in person, by fax, or by phone as long as the person soliciting offers documents the specifications or technical requirements to ensure that every possible contractor is given the same information. For a formal procurement, a written solicitation is required.
Specifications and Technical Requirements	Detailed information included in the solicitation and in the final contract that describes the product(s) and/or service(s) that will be provided to the CE under the contract.
State Matching Funds	Matching funds provided to local education agencies (LEAs) that participate in NSLP by the state of Texas based on the number of lunches reported on reimbursement claims filed during the period of September 1 through August 31 of the prior year. RCCIs and private schools do not receive state matching funds.
Subgrantees	Governmental or other legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided.
Supplier (Sometimes Called Vendor)	Commercial enterprise, public or nonprofit private organization, or individual that enters into a contract with a CE to provide products and/or services. A supplier is also referred to as an offeror during the solicitation phase of procurement.
Supplies	Items that are expendable or consumed in day-to-day activities and replenished as needed.

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Tangible Benefit	Special offer for a particular item in order to incentivize a purchase which includes, but is not limited to, offering (1) a special item at much lower price than the price structure for a current contract, (2) an item not presently used at a special price that is below market value; or (3) an incentive, such as equipment or other prizes for purchasing items.
Terms and Conditions	General provisions, definitions for terminology, renewal options, protests, termination, and other standards inherent to the contract.
Third-Party	Entity that is contracted to act on behalf of another entity.
Third-Party Cooperative	Any type of cooperative agreement that is formed by sources that are external to CEs which includes the following types of cooperatives: Non-Child Nutrition Program State Agency Procurement Agency Agreements Intergovernmental agreements with the State which may include public, private, and nonprofit entities and are conducted for State facility needs using State procurement standards. These agreements allow local educational agencies and other Child Nutrition Program operators to purchase from the State's contracted sources. Interagency Agreements Public, private, and nonprofit entities formed for the purpose of procuring goods and services. Group Purchasing Organizations, Group Buying Organizations, and Third-Party Vendors (Collectively Referred to as GPOs) CNP and non-CNP operators such as public and private schools, hospitals, universities, law enforcement, public works, etc., who join a third-party company or service provider. A GPO may be a for-profit or a nonprofit entity. Typically, a GPO includes a membership fee for those granted access to the GPO price list of products and services.
Transaction	Occurrence in which two or more entities exchange goods, services, or money between them or among them under an agreement formed for their mutual benefit.
Unallowable Cost	Direct or indirect cost that cannot be paid using funds from the nonprofit school food service account because the cost is not reasonable, allowable, and/or allocable. A cost that is unallowable for the CE is also unallowable for a third-party acting on behalf of the CE. The term *disallowed* is sometimes used in place of unallowable.
Unit Cost	Cost for a single item.
Value	Something of monetary or material worth or something that has a usefulness that can be exchanged for something of worth, merit, or importance.
Velocity Report	Report providing the quantity, date of purchase, and other valuable information for specific products and/or services purchased by CEs used to assist with forecasting future purchasing needs.
Vended Meal Contract	Contractor or merchandiser providing the CE with complete meals, meal components, and raw materials for the meal service.
Vendor Participation Fees	Charge to participate. The charge to participate may be paid by the participant, or it may be paid by those providing products and/or services.
Written Financial and Procurement Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events, including financial and procurement transactions. For this section, the word *procedure* is used to refer to all of these types of documents. Procedures define the critical steps taken to establish and operate effective and efficient systems for (1) financial management, (2) procurement, and (3) management of contracts and agreements. Written procurement procedures may include a procurement plan with timelines and tasks, or a procurement plan may be a separate document from the procedures. Written financial and procurement procedures must be established by all CEs.

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Effective Management of Contracts and Agreements

It is the CE's responsibility to effectively manage all contracts the CE awards and all contracts procured on behalf of the CE. For this section, when the word *contract* is used, the guidance applies to both contracts and agreements.

The CE must have written procedures[6] for contract management.
Contract management includes, but is not limited to, the following:

1. Ensuring that the use of nonprofit school food service account funds is compliant with federal, state, and local regulations and guidance;
2. Ensuring that all specifications, technical requirements, and terms and conditions of the contract are executed correctly; and
3. Ensuring the CE does not cover the cost of duplicative services.

Additional Purchase beyond the Quantity Expressed in the Solicitation and Contract

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

- Ensure purchased products and/or services are included in the quantity described in the solicitation and contract.

Material Change

In the solicitation, each product and/or service to be purchased has a description which includes the quantity to be purchased. The purchase of an additional product and/or service beyond the quantity expressed in the solicitation and contract (i.e., added to an existing contract or piggybacking) may constitute a material change and may result in unallowable costs.[7] CEs should exercise caution when purchasing any additional products and/or services from a vendor that is not included in the original solicitation and contract.

Market Basket

Exception—The market basket procurement strategy to solicit, evaluate, and award a contract provides an option for additional purchases under specific conditions.

Additional Purchase of Already Procured Items from Another Source

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

- Ensure purchased products and/or services are made as described in the contract from the contractor.

Off Contract Purchases

When the contract is awarded, the CE is obligated to purchase the products and/or services listed on the contract from the contractor. The CE cannot buy these items from another vendor unless the quantity described in the contract has been exhausted, or the contract has been legally terminated.

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6 See *Administrator's Reference Manual (ARM), Section 17a, Procurement Procedures* for additional guidance on this topic.

7 An unallowable cost or expense cannot be paid using school nutrition program funds.

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When the quantity is exhausted, or the contract has been legally terminated, the CE must correctly procure the products and/or services through a new solicitation.

Bonding Requirements (if required)

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

- Ensure the bond is in effect for the required period of time.
- Notify the contractor when the required period of time for the bond to be in place ends.
- Release the bond, as appropriate, once the period of time for the bond to be in place ends.

Buy American

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement* and *Section 17b, Buy American*.

- Apply the Buy American requirements to all food purchases.

  Purchased Made on Behalf of the CE

  This includes requiring all contractors that purchase on behalf of the CE to meet the Buy American requirements.

- Maintain appropriate documentation when the CE determines an exception to the Buy American requirements are warranted.

Consultant Contracts

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement; Section 17b, Buy American;* and *Section 18, Food Service Contracts*.

- Limit consultant contracts to situations where the CE is addressing a short-term or temporary need when a CE lacks the necessary resources, skills, and abilities to manage and operate the program effectively.
- Apply the duration of contract requirements as described in the *Duration of Contract* subsection in this section.
- Review all services provided by the consultant routinely to ensure that the consultant's contract is making progress toward assisting the CE to obtain the necessary resources, skills, and abilities needed to manage and operate the program effectively.
- Apply the material change regulations to consultant contracts.

Contingency Approval

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

- Ensure that if a contract has a contingency approval by TDA or for other purposes that contingency documentation is submitted and approved before the costs are incurred.

  The CE must ensure that any costs incurred before the contingency approval is resolved are not paid with funds from the nonprofit school food service account.

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Cooperative Purchasing

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement* and *Section 17c, Cooperative Purchasing*.

- Ensure that the cooperative is providing services and operating as described in the cooperative agreement or contract.

  Cooperative Fee

  The contract must describe the fee to be charged to each CE, how those fees are to be collected, and how the cooperative will return any fee collected beyond the amount stipulated in the agreement or contract to each member.

- Establish a routine schedule to review documentation provided by the cooperative to ensure that the CE receives all credits, discounts, and rebates for all procurements conducted on behalf of the CE by the cooperative.

- Establish a routine schedule to review documentation provided by the cooperative (or vendors) to ensure that the CE receives all USDA Foods values for processed end products.

- Establish a routine schedule to review documentation to ensure that the CE receives credit for all vendor fees collected beyond the cost for providing services stipulated in the cooperative agreement.

Credits, Discounts, and Rebates and USDA Foods Values

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 14, USDA Foods; Section 14a, USDA Foods Processing; Section 17, Procurement;* and *Section 18, Food Service Contracts.*

- Establish a routine schedule to review documentation provided by vendors to ensure applicable credits, discounts, and rebates and USDA Foods values are given to the CE.

  Audit Clause

  CEs may elect to include an audit clause in their solicitation and contract that is linked to payment for credits, rebates, discounts, and USDA Foods values. These clauses require the contractor to provide documentation that allows the CE to reconcile the payments for credits, rebates, discounts, and USDA Foods with invoices or other appropriate documentation at regular intervals. If the contractor does not provide sufficient documentation for the CE to perform the reconciliation, the contractor will not receive payment. This requirement applies, but is not limited to, to FSMC cost-reimbursable contracts, processing contracts, and cooperative purchasing.

  Inability of Contractor to Meet Terms and Conditions for Crediting

  If a contractor cannot honor the contract terms and conditions related to credits, discounts, and rebates or the values of USDA Foods by providing another product (like or unlike) to the CE to cover the rebated value, the CE must

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receive the credit, discount, or rebate by one of the following methods:

1. Actual credit or discount amount documented on an invoice or statement.
2. Rebate payment in cash documented as appropriate.
3. Applied value documented on an invoice or statement.

Duration of Contract

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement* and *Section 18, Food Service Contracts*.

- Ensure the length of the contract is applied correctly.

  Consolidation

  When CEs consolidate, current contracts or purchasing agreements are null and void. In this case, each CE is responsible for notifying on existing contractors of the change is situation. The consolidated CE will, then, issue solicitations and award new contracts as appropriate.

  Contract Duration Period

  All contracts must have a duration of no more than one year.

  Renewal Options

  A solicitation and contract may contain a renewal clause that allows up to four one-year renewals. Each contract renewal cannot exceed one year.

  When a contract is renewed, the contractor continues to provide the products and/or services at the cost described in the solicitation and contract unless the solicitation and contract includes a modification clause as described in the *Modifications to the Cost of a Renewable Contract* or *Modifications to a Renewable Contract, Flexibility for Anticipated Changes* subsection in this section.

  Before applying a contract renewal clause, it is the CE's responsibility to verify that the contractor continues to meet the specifications, technical requirements, and terms and conditions of the contract as described in the solicitation and contract. If the contractor does not meet these expectations, the contract cannot be renewed.

- Rebid contracts using proper procurement methods once the contract has reached the end of the maximum duration allowed.
- Perform close out procedures after the end of each contract, ensuring that the CE has received all products and/or services as described in the solicitation and contract.
- Review final invoices to ensure that all credits, discounts, and rebates and USDA Foods values have been provided to the CE.

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Food Product Documentation

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement* and *Section 23, Food Product Documentation*.

- Review documentation provided by the contractor to ensure that the CE is able to demonstrate that food products, including commercially prepared products, meet the meal pattern or competitive food standards.[8]
- Review invoices and food product labels to ensure that the food items are sourced as required by the Buy American provisions.

Food Safety

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 26, Food Safety*.

- Establish a routine to review documentation to ensure that the contractor meets food safety and sanitation requirements, including, but not limited to, food safety inspections and hazard analysis and critical control point (HACCP) plan.
- Establish a routine to review documentation to ensure that sanitation and licensing requirements are met.

Franchise Agreements (If Applicable)

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

- Ensure that the specifications, technical requirements, and terms and conditions of franchise agreements are followed.
- Ensure that equipment purchases made with food service funds are properly procured.
- Ensure that franchise agreement restrictions do not create circumstances that cause the CE to be noncompliant with the meal pattern, competitive foods requirements, or other program requirements.
- Ensure that the operational practices of franchise are compliant with all local and state health and safety regulations related to the purchase and resell of food under the franchise agreement.
- Ensure that franchise agreements have a duration of no more than one year. See the *Duration of Contract* subsection in this section for additional information on this topic.

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[8] There is additional guidance specific to the meal pattern, competitive foods, and food product documentation in the *Administrator's Reference Manual (ARM), Section 8, Breakfast Meals; Section 9, Lunch Meals; Section 10, Afterschool Snacks and Meals; Section 17, Procurement and Section 18, Food Service Contracts; Section 22, Competitive Foods;* and *Section 23, Food Product Documentation*.

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Invoicing and Payments

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 16, Financial System* and *Section 17, Procurement*.

Cost Reimbursable Contract	Fixed-Price Contract
For a cost-reimbursable contract, the CE must not make any payments to the contractor in excess of the contract's actual, net allowable costs stated in the contract.	For a fixed-price contract, the CE must not make any payments to the contractor in excess of the contract's quoted fixed price for products and/or services.

- Review invoices or cost statements routinely to ensure that invoices or cost statements indicate how and when all discounts, rebates, credits; USDA Foods values; and other applicable credits are given to the CE.

  [NOTE: CEs may include a requirement for a routine auditing procedure as defined in the solicitation.]

- Ensure that invoices or statements provide the following information for each cost submitted for payment:
  1. Cost that is allowable and may be paid from the nonprofit food service account and
  2. Cost that is unallowable and must be paid from sources other than the school nutrition food service account.

- Ensure that all products and/or services invoiced correlate to the actual products and/or services received.

- Ensure that an adjustment or escalation clause is applied both upward and downward in alignment with the index at the frequency, as described in the solicitation and contract.[9]

- Review invoices prior to payment, including verifying information included on invoices to determine if costs are allowable.

- Ensure that the CE is not invoiced for or pays for duplicative services.

Modifications to the Cost of a Renewable Contract

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

- Ensure that any changes to the cost of products and/or services for a renewal contract are based on the Consumer Price Index (CPI) Food Away from Home as stipulated in the solicitation and awarded contract.

Modifications to a Renewable Contract, Flexibility for Anticipated Changes

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement* and *Section 18, Food Service Contracts*.

- Ensure that modifications to the cost of contract to reflect the growth of services because of increased or decreased student population, opening or closing sites, or other demographic factors are implemented as described in the solicitation and contract.

  Anticipated Growth

  CEs may include the possibility of an increased or decreased number of products and/or services as long as the increase or

[9] CEs may use the *Consumer Price Index (CPI) Food Away from Home* to allow a change in pricing for a contract for a contract with a multi-year renewal option. This is the only method to change the pricing structure for a fixed-price contract.

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decrease is reasonable and is clearly outlined in the solicitation and contract. Commonly, this type of option is used (1) to communicate anticipated growth or decline in student population and participation at a specified site or sites or (2) to add or remove a Child Nutrition Program (CNP) at all sites or specified sites.

Material Change

If the growth exceeds what is described or is not included in solicitation and contract, it is likely a material change.[10] When there is a material change, the contract must be rebid.

- Ensure that products and/or services are not added (commonly called piggy backing) to an existing contract unless the contract has a modification clause (described above) or is a market basket contract.

Piggybacking

Piggybacking on an existing contract may result in a material change and require a rebid of the contract.

Other Regulatory Requirements

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

- Ensure that all contracts procured on behalf of the CE include the provisions described in the *Other Regulatory Contract Requirements for Solicitations and Contracts* subsection in the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

Ownership of Equipment or Software

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 16, Financial System* and *Section 17, Procurement*.

- Ensure that CE is given ownership of any equipment or software purchased by a contractor on the CE's behalf.

Professional Certification and Professional Development (As Required)

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 27, Professional Standards*.

- Review documentation to ensure that contractor staff have professional certification requirements or minimum levels of required experience or education as required and/or described in the solicitation and contract.
- Review documentation to ensure that contractor staff have met the professional development training standards as required by regulations and as described in the solicitation and contract.

Specifications, Technical Requirements, and Terms and Conditions

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement* and *Section 18, Food Service Contracts*.

[10] See the definition for material change in the *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional guidance on this topic.

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- Ensure that all products and/or services and the scope of work[11] provided under the contract match the specifications, technical requirements, and terms and conditions of the awarded contract.
    - Are representative of the products and/or services to be delivered, as described in the solicitation and the contract—specifications, technical requirements, and terms and conditions.
    - Are delivered according to the timelines specified in the contract.
    - Are priced as quoted.

Contract Disputes

- Take action to remedy any circumstances where the contractor does not provide products and/or services that meet these expectations and apply the options to terminate or not renew a contract based as allowed by the terms and conditions of the contract.

Documentation

The CE must document efforts related to a possible or actual termination or non-renewal of a contract.

Procedures

When there is a dispute between the CE and the contractor, the CE must follow its written procedures[12] and term and conditions of the contract to resolve the dispute. This will include, but is not limited to, the following actions:

- Raise the issue with the contractor, communicating specifically how the problem is to be corrected in order to meet the specifications and/or technical requirements for the products and/or services, as described in the solicitation and contract.
- Provide the contractor written notification of the problem and state that immediate correction is expected, and failure to do so will be considered a breach of contract and could result in the cancellation of the contract.
- Provide this notification by a method that will date stamp the day sent, and the date received.

Many times, increased communication about area of concern will resolve the dispute. CEs may also find it helpful to consult with their legal counsel when determining appropriate responses.

Termination/Non-Renewal of a Contract

If a contractor continues to be unable to provide the contracted products and/or services, the CE must determine if termination of the contract or non-renewal of the contract is warranted. Should the CE choose to terminate the contract or not renew a contract, the CE will perform this action according to the terms and conditions of the contract.

[11] Detailed description of duties to be performed, hours of work, performance descriptions, levels of performance, and required outcomes

[12] See *Administrator's Reference Manual (ARM), Section 17a, Procurement Procedures* for additional information on this topic.

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In all cases, the CE must retain documentation to demonstrate what actions have been taken to resolve the issue and the result of each action.

Future Contracts

If the cancellation of the contract becomes necessary, the CE may take steps to disqualify the contractor from future bidding as a non-responsible offeror.

If a CE has a documented history of a contractor's poor performance, this documentation can be a cause for rejecting a bid with the lowest cost or best evaluation score. If the CE has not retained documentation of poor performance, there may not be sufficient evidence to reject a bid for this reason.

Third-Party Contracts Procured on Behalf of the CE

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement; Section 17c, Cooperative Purchasing;* and *Section 18, Food Service Contracts.*

- Establish a routine process to review documentation routinely to ensure that the third-party contractor acts in the best interest of the CE.[13]
- Establish a routine process to review procurement documentation to ensure that all products and/or services procured by a third-party entity acting on the CE's behalf are procured according to USDA requirements.
- Monitor the amount of collected vendor fees, or similarly applied collections, that exceed the agreed upon costs for providing the CE with products and/or services is refunded to the CE.
- Monitor credits, discounts, and rebates and USDA Food values to ensure that they are received and applied as income in the nonprofit school food service account.
- Ensure that all third-party contractors adhere to the federal guidelines for real or apparent conflicts of interest, including, but not limited to, the following:

  Unallowable Contracts

  - Not allowing the third-party contractor to procure products and/or services from the third-party's parent company, subsidiary of the parent company, or other entities with the financial relationship to the third party.
  - Not allowing the third-party contractor to provide information, documents, or contributes for a solicitation the third-party plans to respond to with an offer.
- Ensure that no third-party contract provides duplicative services that are also provided in another contract or third-party contract/agreement the CE has in place.
- Establish a routine process to review all documentation to ensure that the third-party contractor provides all needed documentation for the CE to demonstrate compliance.

[13] TDA recommends review take place at least quarterly.

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USDA Foods

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 14, USDA Foods; Section 14a, USDA Foods Processing; Section 17, Procurement; Section 17c, Cooperative Purchasing;* and *Section 18, Food Service Contracts*.

- Establish a routine process to evaluate and assess remaining USDA Foods inventory on hand, in processing, and in storage to determine the most efficient use of USDA Foods.
- Review the progress and implementation of all USDA Foods contracts to ensure that the specifications, technical requirements, and terms and conditions of all solicitations and contracts are being implemented as written.
- Review documentation, including, but not limited to, invoices, to ensure that USDA Food values are credit in full and in a timely manner.

[NOTE: For the FSMC to conduct procurement on behalf of the CE, the CE must indicate this procurement options in the TDA solicitation and contract prototype. If the CE does not indicate that the FSMC will conduct procurement on behalf of the CE in the TDA solicitation and contractor, the FSMC cannot conduct procurement for the CE. See *Administrator's Reference Manual (ARM), Section 18, Food Service Contracts* for additional information on this topic.]

Contract Protests

The CE is responsibility to ensure that all contract protests are resolved. The CE and any entity acting on their behalf must follow the CE's written procedures[14] to resolve protests. An interested party[15] may protest any of the following situations:

- Solicitation or another request for offers for a contract for the procurement of property or services
- Cancellation of a solicitation or other request
- Award or proposed award of a contract
- Termination of a contract, if the protest alleges that the termination was based on improprieties in the administration of the contract.

The CE and any entity acting on their behalf must retain all documentation related to protests, and the CE must notify TDA when a protest is received.[16]

The USDA Food and Nutrition Service (FNS) will also accept protests related to solicitation from a protestor directly if the following conditions have been met:

- The contract was made in connection with the School Nutrition Program (SNP).
- The protestor has exhausted all administrative remedies with the CE and any entity acting on the CE's behalf (grantee and subgrantee) before pursuing the protest with FNS.
- Violations of federal law or regulations and the standards of this section exist.[17]

[14] See *Administrator's Reference Manual (ARM), Section 17a, Procurement Procedures* for additional information on this topic.
[15] An *interested part* is defined as *any entity or person who may be affected by a situation, any entity or person who has a real or direct interest in action being proposed or taken.*
[16] See the *Contract Information for the Texas Department of Agriculture (TDA), Food and Nutrition,* which follows the table of contents for information on contracting TDA.
[17] Violations of state or local law will be under the jurisdiction of state or local authorities.

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- Violation of a CE's or entity acting on CE's behalf (grantee or subgrantee) protest procedures exists for failure to review a complaint or protest.

Protests received by FNS other than those specified above will be referred to the CE or the entity acting on behalf of the CE (grantee or subgrantee).

Additional Resources

TDA Resources

TDA resources are available on the SquareMeals website, *www.SquareMeals.org*.

- *Approved Purchase List*—Form designed to provide a list of products approved to purchase with information that will be helpful to menu planners and staff managing the contract.
- *Buy American Checklist for Non-Domestic Food Product Purchases*—Checklist to assist CEs in determining if a non-domestic product is acceptable.
- *Procurement Snapshot Tool*—Form designed to provide a summary of procurement activities for the program year or fiscal year.
- *Micro-Purchase Log*—Form designed to track purchases made under the micro-purchase method.
- *Informal Small Purchase Log*—Form designed to track offers and offerors for small purchase procurement.
- *Food Service Management Company (FSMC) Monitoring Form*—Form design to assist the CE in monitoring the FSMC's operation of the program.

Institute for Child Nutrition (ICN)

- *First Choice*, a handbook for developing an effective procurement process, available at *www.theicn.org*
- *Procurement in the 21st Century*, manual providing specific details on the procurement process, available at *www.theicn.org*
  [NOTE: This resource is not a guidance document, but it does provide useful information.]
- *State Agency Guidance on Procurement*, a series of web-based training on procurement, available at *www.theicn.org*

Other Websites

- Texas Procurement and Support Services (TPASS) (Formerly Texas Building and Procurement Commission), available at *www.window.state.tx.us/procurement/*
- Comptroller of Public Accounts, available at *www.cpa.state.tx.us*
- Universal Public Purchasing Certification Council/National Institute of Government Purchasing (NIGP), available at *www.nigp.org*

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Records Retention

The CE is required to maintain an organized accounting and financial system that includes documentation that demonstrates compliance with program regulations and the history of all financial transactions, including, but not limited to, procurement. Records retained for contract management must be sufficient to detail the history of financial transactions and to demonstrate that the CE manages all contracts and agreements as required.

Information Box 3

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

These records must be accessible to appropriate CE staff members and federal or state reviewers. TDA may request procurement documentation during both offsite and onsite administrative review processes as well as any additional review specific to procurement.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, other nonprofit organizations, and residential child care institutions (RCCIs) after the end of the fiscal year to which they pertain.

Third-Party Contracts

If a third-party contractor takes actions on behalf of the CE, the third-party must provide documentation to the CE that demonstrates the CE's compliance with all requirements.

Duplicative Services

The CE must retain records that demonstrate that it has not paid more than one contractor to provide the same products and/or services simultaneously.

The records retention guidance in this section is specific to contract management, but the CE will find the records retention guidance in all of the *Administrator's Reference Manual (ARM)*, sections that address financial issues to also be helpful.

Documentation that demonstrates compliance includes, but is not limited to, records that address the following issues.

- Additional purchases beyond the quantity expressed in the solicitation and contract
  - Explanation for why the costs of additional purchases are allowable
  - Rebid documentation
- Bond
  - Proof of bond
  - Notice to contractor to release bond
- Buy American
  - Product labeling that includes the county of origin for food products
  - Documentation of CE notification to contractors
  - Documentation of CE review of required elements when an exception is granted

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- Consultant Contract
  - Documentation demonstrating duration of contract, including contract renewals
  - Documentation of why a short-term or temporary consultant is needed
  - Explanation/expectation of consultant service timeline
- Cooperative Purchasing
  - Written agreement which includes, but is not limited to, membership and roles responsibilities, purchasing protocols, cost of services, timelines, and method for of providing credits, discounts, and rebates, and USDA Foods values.
  - Invoices demonstrating cost and repayment of fees if appropriate.
  - Documentation of payment for all credits, discounts, and rebates and USDA Food values.
- Credit, Discounts, and Rebates and USDA Food Values
  - Audit report results if an audit clause is included in solicitation and contract
  - Documentation of payment for all credits, discounts, and rebates and USDA Food values
- Duration of Contract
  - Proof of contract length and number of renewals
  - Rebid documentation
  - Documentation of payment for all credits, discounts, and rebates and USDA Food values
- Food Product Documentation
  - Documentation of food item country of origin, meal pattern contributions, and competitive food compliance
- Food Safety
  - Health inspection forms
  - Requests to health inspectors
  - HACCP plans and training documentation
- Invoicing and Payments
  - Documentation of payment for all credits, discounts, and rebates and USDA Food values
  - Invoice designation of allowable and unallowable costs
  - Cost indexes used to change the cost of a contract

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- Modifications to the Contract
  - Cost indexes used to change the cost of contract
  - Descriptions and other documentation to support modification of products and/or services
- Other Regulatory Requirements
  - Record or copies of contracts demonstrating inclusion of statements for other regulatory requirements
- Ownership of Equipment or Software
  - Inventories, other records, or pictures demonstrating ownership
- Professional Certifications and Professional Development
  - Copies of certifications and training records
- Specifications, Technical Requirements, and Terms and Conditions
  - Invoices demonstrating products or services meet expectations.
  - Performance evaluations
  - Checks for accuracy of delivery invoices and billing invoices
  - Documentation indicating CE approval for actions taken to address shortages, substitutions, and delivery issues

Compliance

TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance with the procurement requirements. Additionally, TDA will assess compliance with the accounting and financial requirements based on the documentation that the CE has submitted throughout the year as well as documentation submitted for offsite and onsite administrative review processes or other procurement review activities.

The cost for any products and/or services that were procured improperly are unallowable costs to the school nutrition program.[18] This includes any costs that the CE has incurred as a result of intentionally breaking up purchases into smaller amounts to qualify under the micro-purchase threshold or simplified purchase threshold as well as purchases made on behalf of the CE by a third-party.

CEs must make available, upon request of the awarding agency (state or federal), any or all of the documentation described in the *Records Retention* subsection in this section.

[18] An unallowable cost or expense cannot be paid using school nutrition program funds.

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Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations

CE's must report, in writing to TDA, all violations of federal criminal law—fraud, bribery, or gratuity.

> The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).

Criminal Penalty

The maximum fine for embezzling, willfully misapplying, stealing, or obtaining by fraud, funds, assets, or property acquired under the National School Lunch Act or Child Nutrition Act is $25,000.

Fraud

> Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

Termination of the Permanent Agreement for Financial Fraud or Misuse of Funds

If serious deficiencies, such as fraud or misuse of funds occur, and corrective action is not practical, TDA will amend the FND Agreement to terminate the CE's participation in the SNP. In this case, TDA may also refer the matter to the appropriate local, state, and/or federal authorities.

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Section 17

Procurement

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Section 17, Procurement

Update Guide	
August 16, 2021	Updated *Section 17, Procurement* to clarify information on the following topics: - Aggregate - Cost analysis for informal procurement - Micro-purchase method
May 27, 2021	Updated *Section 17, Procurement* to clarify information on the following topics: - Forecasting - Aggregate for micro-purchasing - Contract duration - Cost Analysis for small purchasing - Noncompetitive procurement - Inadequate competition - Conflicting regulations
August 12, 2020	Updated Administrator's Reference Manual (ARM), *Section 17, Procurement* to incorporate guidance on locally grown products that was previously located in *Section 19, Other Operational Issues* and updated *Administrator's Reference Manual (ARM)* sections references. Clarified information on the following topics: – Auctions – Bonding – Consultant contracts – Cost of total purchase – Definition-agreement – Forecasting – Formal procurement – Limiting competition – Market basket – Noncompetitive procurement – Rejecting an offer
February 26, 2020	Updated *Section 17, Procurement* to update information related to Institute for Child Nutrition, formerly the National Food Service Management Institute (NFSMI).
February 10, 2020	Updated *Section 17, Procurement* to correct a misstatement related to cooperative procurement.
January 28, 2020	Updated *Section 17, Procurement* to incorporate the following United States Department of Agriculture (USDA) memos and guidance: – *USDA Memo SP 20-2019, 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* (October 20, 2019)

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- *USDA Memo SP 04-2018, Market Basket Analysis When Procuring Program Goods and Modifying Contracted-For Product Lists* (January 17, 2018)

Clarified information on the following topics:

- Agent contract
- Aggregate
- Awarding a contract
- Buy American
- Conflicting program regulations
- Consultant contract
- Contract award
- Contract evaluation
- Contract negotiation
- Contract renewal
- Cooperative purchasing
- Cost-plus percentage contract
- Credits, rebates, and discounts
- Flexibility for growth
- Forecasting
- Full and open competition
- Local preference
- Market basket purchasing
- Material change
- Micro-purchase method
- Noncompetitive procurement
- Notification, publication of the solicitation
- Offer evaluation
- Other regulatory requirements
- Procurement planning
- Public advertising
- Records retention
- Regulatory conflicts
- Small purchase method
- Solicitation
- Specifications, terms, and conditions
- USDA Foods
- Vendor list
- Written procurement procedures

December 14, 2018 — Updated *Section 17, Procurement* to incorporate a new micro-purchase threshold.

June 25, 2018 — Updated *Section 17, Procurement* to incorporate the following United States Department of Agriculture (USDA) memos and guidance:

- *USDA Memo SP 04-2018, Market Basket Analysis When Procuring*

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	Program Goods and Modifying Contracted-For Product Lists (January 17, 2018) – *USDA Memo SP 38-2017, Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program (*June 30, 2017) Clarified information on the following topics: – Aggregate – Buy American – Conflicts with EDGAR – Definitions related to market basket purchasing – Developing solicitations – Market basket purchasing – Noncompetitive method – Reverse auction – Sole source – Written procurement procedures
April 4, 2017	Updated *Section 17, Procurement* to provide new guidance on the Buy America provision.
March 13, 2017	Updated *Section 17, Procurement* to remove detailed guidance on consultants, food service management companies (FSMC), and vended meals; this guidance has been moved to *Administrator's Reference Manual, Section 22, Food Service Contracts*. Incorporated the following United States Department of Agriculture (USDA) memo and guidance: – *USDA Memo SP 05-2017, Q&A: Purchasing Goods and Services Using Cooperative Agreements, Agents, and Third-Party Services* (October 19, 2016) Clarified information on the following topics: – Additional resources – Agent contracts – Aggregate – Brand name products – Buy American – Consultant contracts – Cooperative purchasing – Cost-plus percentage of cost pricing structures – Equipment technical requirements – New terms related to cooperative purchasing: agent, operator, operator-only cooperative, third-party cooperative – Noncompetitive method – Pricing – Vendor list
November 29, 2016	Updated to address typographical errors
October 26, 2016	Updated *Section 17, Procurement* to provide clarification on the following topic:

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- Micro-purchase

October 21, 2016 — Updated *Section 17, Procurement* to incorporate the following United States Department of Agriculture (USDA) memo and guidance:

- *USDA Memo SP 35-2016, Bonding Requirements for Food Service Management Companies and Other Subcontractors* (May 5, 2016)
- *USDA Memo SP 12-2016, Guidance on Competitive Procurement Standards for Program Operators* (November 13, 2015)

Clarified information on the following topics:

- Additional purchases (piggybacking)
- Advertising requirement
- Applicability of the *Education Department General Administrative Regulations (EDGAR)* and other Texas Education Agency regulations
- Awarding the contract
- Bonding requirements and bid guarantees
- Buy American Provision
- Code of conduct, ethical standards, and conflict of interest
- Consultant contracts
- Contract management
- Cooperative membership
- Cooperative purchasing
- Credits, rebates, and discounts
- Difference between consultant and food service management contracts
- Full and open competition
- Micro-purchase
- Noncompetitive procurement method, including sole source
- Offers received after the due date
- Opening offers prior to the due date
- Other regulatory contract requirements
- Preparation of solicitation
- Procuring fresh fruit and vegetables
- Protests
- Public advertising
- Purchase catalog
- Responsive offers
- Solicitation, purchase catalog, shared purchasing, taste-testing samples
- Total costs
- Vendor list for produce
- Written procurement procedures

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February 10, 2016

Updated *Section 17, Procurement* to incorporate the following United States Department of Agriculture (USDA) memos and guidance:

- *USDA Memo SP 24-2016, Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program* (February 3, 2016)

Clarified information on the following topics:

- Buy American Provision

January 5, 2016

Updated *Section 17, Procurement* to incorporate the following United States Department of Agriculture (USDA) memos and guidance:

- *USDA Memo SP 03-2016, Procurement Standards and Resource Management Requirements Related to Franchise Agreements* (November 6, 2015)
- *USDA Memo SP 02-2016, Questions and Answers on the Transition to and Implementation of 2 CFR Part 200* (October 30, 2015)
- *Procuring Local Foods for Child Nutrition Programs* (released by USDA September 8, 2015)
- *Updated Title 2 Code of Federal Regulations (CFR), Part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (August 10, 2015, and September 10, 2015)
- *USDA Memo 30-2015, Office of Management and Budget Super-Circular-2 CFR 200* (March 18, 2015)
- *USDA Memo SP 09-2015, Written Codes of Conduct and Performance of Employees Engaged in Award and Administration of Contracts* (November 21, 2014)
- *USDA Memo SP 23-2013, Guidance Reaffirming the Requirement that State Agencies and School Food Authorities Periodically Review Food Service Management Company Cost Reimbursable Contracts and Contracts Associated with USDA Foods* (February 12, 2013)
- *USDA Memo SP 03-2013, Procurement Geographic Preference Q&A's - Part II,* October 9, 2012)
- *USDA Memo SP 01-2103, Federal Small Purchase Threshold Adjustment* (October 2, 2012)
- *USDA Memo SP 35-2012, Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc.* (June 12, 2012)
- *USDA Memo SP 19-2012, Soliciting Bids from Commercial Distributors for End Products* (February 24, 2012)
- *USDA Memo SP 17-2012, Procurement Questions and Answers to Assist in the Implementation of the final rule titled Nutrition Standards in the National School Lunch and School Breakfast Program* (February 23, 2012)
- *USDA Memo SP 14-2012, Procurement Questions Relevant to the Buy American Provision* (February 13, 2012)

Clarified information on the following topics:

- Additional resources
- Compliance

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- Contracts
- Managing contracts
- Records Retention
- Solicitations
- Types of procurement methods
- Written procurement procedures

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Procurement

This procurement guidance is intended to assist contracting entities (CEs) in establishing effective and compliant procurement practices that ensure full and open competition (also called free and open competition) for the purchase of products and/or services.

> Procurement is the act of obtaining goods or services in exchange for money or value.[1]

The guidance in this section applies to the following school nutrition programs (SNPs):

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Fresh Fruit and Vegetable Program (FFVP)
  - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

NSLP CEs that operate CACFP At-Risk and/or SFSP may use the NSLP procurement regulations instead of the CACFP and/or SFSP procurement regulations.

In addition to the guidance in this section, contracting entities (CEs) will find additional guidance on procurement and financial systems in the following *Administrator's Reference Manual (ARM)*sections helpful:

- *Section 15, Program Integrity*
- *Section 16, Financial System*
- *Section 16a, Contract Management*
- *Section 17a, Procurement Procedures*
- *Section 17b, Buy American*
- *Section 17c Cooperative Purchasing*
- *Section 18, Food Service Contracts*

Information Box 1

Additional Resources for Procurement

Texas Comptroller of Public Accounts

The website for the Texas Comptroller provides information on state regulations that apply to state and local governmental entities. Available at *www.comptroller.texas.gov/*

State of Texas Procurement and Contract Management Guide—guidance and recommendations on procurement and improving existing contract management methods and practices. Available at *https://comptroller.texas.gov/purchasing/publications/procurement-contract.php*

Texas Education Agency (TEA)

Financial Accountability System Resource Guide provides detailed guidance of financial accountability, including Module 5, Purchasing, for local education agencies and charter schools. Available at *www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial__Accountability_System_Resource_Guide/*

United States Office of Management and Budget (OMB)

2 Code of Federal Regulations, Part 200—These regulations provide detailed information on required federal procurement process. Available at *www.fns.usda.gov/es/node/73141*

[1] Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.

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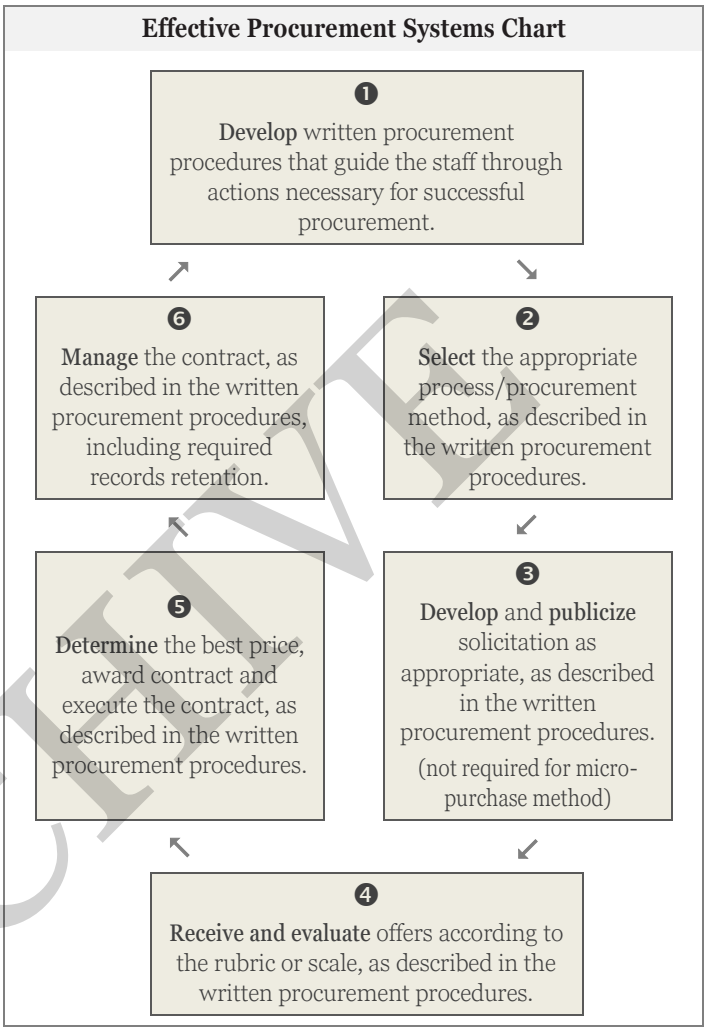
Effective Procurement Systems

The procurement process follows a set of prescribed steps:

1. Develop written procurement procedures that guide the staff through actions necessary for successful procurement.
2. Select the appropriate procurement method, as described in the written procurement procedures .
3. Develop and publicize the solicitation as appropriate, as described in the written procurement procedures.
4. Receive and evaluate offers according to the rubric or scale, as described in the written procurement procedures.
5. Determine the best value, award contract, and execute the contract, as described in the written procurement procedures.
6. Manage the contract, as described in the written procurement procedures, including required records retention.



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Planning for Procure

The following questions will assist the CE in planning each procurement:

Forecasting	**Analyze Data** → What is the historical and current usage? → What is the yearly budget? → What is the projected need for the product or service? **Determine the Appropriate Procurement Method** → What is the projected total cost? → Which procurement method offers the best cost savings?
Developing the Solicitation	**Advertising** → What methods or strategies will be used for advertising for a formal purchase? **Cost Analysis** → How will the CE ensure that accurate cost analysis is conducted as part of the method of developing the solicitation?[2] **Maximizing Competition** → Does the SNP ensure that procurement across programs is used when appropriate in order to increase competition? **Protests** → What information will staff include in the solicitation about contract protests? **Specifications, Technical Requirements, Terms, and Conditions** → How will staff identify the specifications and/or technical requirements for the products and/or services to be purchased?[3] → How will staff determine if there enough potential offerors that can meet the specifications, technical requirements, terms, and conditions to hold a competitive procurement? → How will staff ensure that the specifications, technical requirements, terms, and conditions are written into the solicitation to ensure that they do not limit competition? → Will the procurement include bonus points for local preference?4 → Does the solicitation include terms or specifications related to the Buy American Provision?
Establishing a Timeline for a Formal Contract Solicitation	**Timeline** → What will be the timeline for the purchasing for each type of procurement? [NOTE: USDA recommends that at least 45 days be allowed for the invitation for bid procurement method and 60 days for the request for proposal procurement method.[5]]

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2 See the *Cost Analysis* subsection in this section for additional information on this topic.
3 See the *Solicitation* subsection in this section for additional information on this topic.
4 See the *Local Preference* topic in the *Other State and Federal Regulations* for additional information on using local preference. See also USDA's *Procuring Local Foods for Child Nutrition Programs* available at *www.fns.usda.gov/farmtoschool/procuring-local-foods*.
5 See the *Procurement Purchasing Methods* subsection in this section for additional information on these procurement methods.

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Making the Award	**Approval** → What procedure will be used to award the contract for approval of contract awards for each type of procurement method? **Conflict of Interest** → What procedures will staff use to ensure that all conflicts of interest are addressed before a contract or vendor is selected? **Debarment and Suspension** → What procedures will staff use to ensure that the debarment and suspension regulations are followed in selecting a contractor or vendor?[6] **Evaluation Criteria** → What evaluation criteria will be used to evaluate offers for responsibility and responsiveness? Responsible: capable of providing products and/or services, as described in the solicitation. Responsive: pricing information specific to the products and/or services to be purchased, as described in the solicitation. **Micro-Purchase** → How does the CE determine a reasonable price or equitable distribution if a micro-purchase? → What documentation is needed to justify the need for a micro-purchase rather than a small purchase or formal procurement?
Preparing for the Post Contract Award	**Assigned Role and Responsibility** → What staff will be involved and responsible at each stage of purchasing? → What staff will have approval authority for each type of procurement? → Has staff reviewed the code of conduct? → Has the CE determined that there is no conflict of interest? **Disputes/Protests** → What methods or strategies will be used to settle all contractual and administrative protests, disputes, and claims arising out of procurements?[7] **Payments** → What CE protocols will apply for approving and processing payments? **Monitoring** → What procedures will be used to monitor the terms, conditions, specifications, and technical requirements of the contract, including specific staff assigned responsibilities?
Retaining Records	**Short and Long-Term Storage** → What methods will staff use to ensure that documentation demonstrating compliance is retained for the required period of time? → What procedures will staff use to document the history of all procurement actions for all types of procurement? **Small Purchase** → What method is used to document bids for a small purchase?

6 See *Administrator's Reference Manual (ARM), Section 17A, Program Integrity* for detailed guidance on this topic.

7 See the *Protests* subsection in this section for additional information on this topic.

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Program Integrity and Internal Controls

The procurement process is intended to promote program integrity and establish internal controls as a central component of the CE's financial system.

> Program Integrity is defined as an organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds.

For procurement, this means procurement will be conducted in such a way that provides safeguards that improve the stewardship of federal money and reduce fraud and improper payments by the use of internal controls. Any cost paid to a contractor as a result of improper procurement methods, whether paid by the CE or a third-party, is an unallowable expense. **Unallowable expenses must not be paid by the school nutrition program.** *Administrator's Reference Manual (ARM), Section 15, Program Integrity* provides detailed guidance on program integrity.

2 Code of Federal Regulation (CFR) Part 200

The updates to *Administrator's Reference Manual (ARM), Section 17, Procurement* include the consolidated 2 Code of Federal Regulation (CFR) Part 200 which replaced existing rules at 7 CFR Parts 3015, 3016, 3019, and 3052, and the following Office of Management and Budget (OMB) guidance documents; 2 CFR Part 220 (A-21), A-50 (sections related to audits), 2 CFR Part 225 (A-87), A-89, A-102, A-110, 2 CFR Part 230 (A-122), and A-133.

2 CFR Part 200 primarily serves to consolidate the previous regulations into one location as a convenience and for clarity. For procurement, 2 CFR Part 200 clarifies existing regulation and adds one new flexibility—micro-purchasing.

All CEs must adhere to the procurement regulations found in 2 CFR Part 200.

Conflicting Program Regulations

For CEs operating Child Nutrition Programs (CNPs), there are federal, state, and local regulations that govern the actions of the CE. When there is a conflict between USDA regulations and other regulations, the CE must follow USDA regulations for the use of CNP funds. If other applicable federal, state, or local regulations do not conflict with USDA regulations, the CE will follow the most restrictive other federal, state, or local regulations. All programs that receive federal funds are required to follow 2 CFR Part 200 unless federal legislation supersedes 2 CFR Part 200.

Therefore, any procurement utilizing CNP funds must adhere to USDA procurement regulations.

Program Regulations in Conflict with Education Department General Administrative Regulations (EDGAR)

CEs receiving funds through the United States Department of Education are required to follow the regulations described in the *Education Department General Administrative Regulations (EDGAR)* for those funds, which incorporates 2 CFR Part 200. However, Child Nutrition Programs (CNPs) are required to follow USDA

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regulations for financial management, including procurement. While there are regulations in EDGAR that conflict with USDA regulations, in most situations, CEs will find the regulations to be compatible. However, **if there is a regulatory conflict, CEs are required to follow the USDA regulations for all CNP funds** (income, allowable and unallowable costs, and procurement).

Other Entities Acting on Behalf of the Contracting Entity

Any agency, organization, group, business, food service management company, food processor, contractor, distributor, vendor, or other entity acting on behalf[8] of a CE for any of the SNP programs are also required to follow the federal procurement guidance described in this section for any procurement actions they take on behalf of the CE.

All third-party entities must provide adequate documentation[9] to a CE so that the CE can determine if the procurement regulations have been implemented appropriately, including, but not limited to, documentation related to credits, rebates, discounts, and USDA Foods values.

Definitions for This Section

For this section, the following definitions will be useful:

[NOTE: The definitions provided in this section are specific to financial transactions that occur for School Nutrition Programs.]

Acting on Behalf of CE	Entity or person who has been given the responsibility to act for the CE.
Agent	Person or business that is procured to act on behalf of the CE. This includes procuring on behalf of the CE.
Aggregate Purchase Amount	Total cost of all products and services in a single procurement transaction.
Agreement (for SNP)	Written legal document summarizing contractual obligations between two or more entities. This includes intergovernmental and interlocal agreement.
Approved Supplier List	List of suppliers or potential contractors who have demonstrated the ability to perform successfully under the terms and conditions of a proposed procurement, consideration being given to contractor integrity, compliance with applicable policy or regulations, record of past performance, and financial and technical resources.

8 See the *Definitions* subsection in this section for additional information on this topic.
9 See the *Records Retention* subsection in this section for additional information on documentation.

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Arms-Length Transaction	Transaction in which the parties are dealing from equal bargaining positions—neither party is subject to the other's control or dominant influence, and the transaction is treated with fairness, integrity, and legality. Less than Arms-Length Transaction A less than arms-length transaction occurs when a person responsible for making a purchase and appears to have a stake in the outcome is able to control or substantially influence the actions of others. This may include agreements between divisions of an organization; organizations under common control through common officers, directors, or members; and an organization and a director or employee of the organization and his or her immediate family.
Bid Guarantee	Guaranteed percentage of bid price provided by the offeror at the time the offer is submitted. The CE must return all bid guarantees to all unsuccessful offerors when the contract is awarded and to the winning offeror as soon as the contract is signed.
Bond	Insurance agreement pledging surety for financial loss caused in connection with the contract. For school nutrition programs, if a loss occurs in connection with a contract related to program operations, the loss will be covered to the extent agreed upon in the bond.
Brokers	Independent sales agents who negotiate sales for manufacturers by working with food distributors and/or school nutrition operations.
Buy American	Requirement for schools to purchase, to the maximum extent practicable, domestic commodities, and products. A domestic commodity or product means an agricultural commodity that is grown in the United States and processed in the United States or that is processed in the United States substantially using agricultural commodities that are produced in the United States.
Code of Conduct	Set of written standards the CE must develop that outline the responsibilities of, or proper practices for, an individual or organization and which governs the following: 1. Performance of the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by Food and Nutrition Service (FNS) program funds. 2. Methods of procurement, including the requirement that the CE perform a cost or price analysis for every procurement (including contract modifications) and determination of which contract clauses and certifications are required in the CE's contracts.
Conflict of Interest	Any action that allows a person to benefit at the expense of the public interest or the expense of their employer.
Contract	Formal, legally enforceable agreement (terms and conditions) between a buyer (the CE) and a seller (contractor) that clearly and accurately describes the products and/or services to be delivered or performed and sets forth the method and the compensation the contractor receives when products and/or services are provided.
Cooperative Purchasing	Group of entities who join together to purchase products and/or services with the intention of reducing costs and improving the quality of products and/or services available to members of a group.
Cost Index	Tool designed to show the impact of an economic measure on the price of purchasing a specific type of item.

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Cost Plus Percentage Cost	Method of pricing where the contract or agreement creates a pricing structure that charges the cost of the product or service plus a percentage of the cost. This pricing structure is not allowable for any purchase under USDA regulations. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).
Cost-Reimbursable Contract	Reimbursable contract that is a formal, legally enforceable contract that reimburses the contractor for costs incurred under the contract but does not provide for any other payment to the contractor with a fixed fee or with a cost-reimbursement fee. In a cost-reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor. In a cost-reimbursable contract, the fixed price (fee) includes the contractor's direct and indirect administrative costs and profit allocable to the contract.
Debarment	Action taken by a debarring official to exclude a person from participating in covered transactions.[10] A person so excluded is debarred, that is, unable to participate.
Distributor	Commercial food company that purchases, receives, and/or stores commercial food products and then sells, delivers, and bills the recipient agency for goods and/or services provided.
Drop Delivery	Delivery to one location within the CE, such as a central warehouse.
Economies of Scale	Purchase of large quantities of a product and/or service in order to obtain a better price.
Escalator/De-escalator Clause or Market-based Pricing	Predetermined provisions in a contract stipulating specific conditions for an increase or decrease in price.
Ethics	Moral standards individuals use to guide decisions in their personal and professional lives. School nutrition professionals have a responsibility to act ethically in accordance with all federal, state, and local guidelines.
Firm Fixed-Price Contract (Also Called Firm Price Contract)	Contracts that provide products and/or services for a price not subject to adjustment other than increases or decreases tied to an economic indicator stipulated by the contract. Firm fixed-price contracts are usually negotiated where reasonably finite specifications and/or technical requirements are available, and costs can be estimated with reasonable accuracy. A fixed-price contract places minimum administrative burden on contracting parties but subjects a contractor to maximum risk arising from full responsibility for all cost escalations.
Fixed-Price	Agreed-upon amount of money that is fixed at the inception of a contract and is guaranteed for a specific period of time. A fixed-price contract may also contain an economic cost adjustment provision tied to the Consumer Price Index (CPI) Food Away from Home.
Fixed Price (Fee)	Agreed upon amount of money that is fixed at the inception of the contract.

[10] Covered transactions in this section refer to transactions related to child nutrition programs.

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Food Service Management Company (FSMC)	Any organization, whether commercial enterprise or a nonprofit organization, that is or may be contracted by the CE to manage any aspect of the school food service.[11]
Forecasting	Process of analyzing current and historical data to determine procurement needs. In the case of school nutrition programs, forecasting involves predicting and estimating the goods, works, and services needed in specified areas for the coming year, and/or assessing needs by reviewing current procurement activities. Forecasting allows for procurement timelines and tasks to evolve each fiscal year.
Full and Open Competition	Situation where all potential contractors are competing on a level playing field and have the same opportunity to compete and be awarded a contract. Full and open competition is also commonly referred to as free and open competition.
Grade Standards	USDA quality standards based on measurable attributes that describe the value and utility of the products.
Grantees	Governmental or other legal entity to which a grant is awarded where the receiving entity is held accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.
Incentives	Rewards or benefits received as a result of performing requested actions and/or meeting predetermined milestones.
Internal Controls	Procedures established by the CE that (1) define actions related to the procurement activities, (2) establish standards of ethical conduct, and (3) provide full and open competition.
Invitation for Bid (IFB)	Formal method of procurement that uses sealed bidding and results in a fixed-price contract with or without adjustment factors.
Just-in-Time (JIT)	Food and supplies kept in quantities an entity anticipates will meet its immediate needs, which results in the entity maintaining a low inventory level.
Lead Time	Amount of time necessary for a distributor to prepare and deliver products and/or services to the CE.
Local Product	Unprocessed locally grown or raised agricultural products that retain their inherent character.
Managing the Contract	Procedures the CE has in place to ensure that contractors perform in accordance with the terms, conditions, and specifications and/or technical requirements of their contracts or purchase orders.
Market Basket	Solicitation strategy that allows a CE to procure a list of products with varied pricing options for a finite number of products. Each product on the market basket list must have (1) a description with the quantity to be purchased, (2) specifications and/or technical requirements for each product, and (3) a description of how each product will be awarded on the contract.
Market Basket, Total Cost Analysis and Scoring	Analysis and scoring evaluation based on the aggregate total cost or by line item total.

[11] If an NSLP CE operates a Child and Adult Care Food Program and/or Summer Food Service Program, there may be additional regulations that applied for the use of an FSMC to operate the program.

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Market Basket, Simplified Total Cost Analysis and Scoring	Analysis and scoring evaluation based on a representative sample of all products.
Material Change	Change made to a contract after the contract has been awarded that alters the terms and conditions of the contract substantially enough that had other offerors known of the change in advance, they may have bid differently and more competitively.
Micro-purchase Method	An acquisition of supplies or services using simplified acquisition procedures, the aggregate purchase amount of which does not exceed the micro-purchase threshold.
Noncompetitive Method	Procurement method used when there is an insufficient number of offers submitted in response to a solicitation. In this case, full and open competition is deemed inadequate, and there is no way to remedy the situation.
Open Award	Contract award in which all vendors that submit an offer are awarded a contract. This type of award does not promote full and open competition or pricing that is advantageous to the program. An open award is not the same as using a market basket strategy.
Operator	Entity that operates a Child Nutrition Program.
Operator-Only Cooperative	Any type of agreement that is formed solely among CNP operators, including regional education service center (ESC) cooperatives.
Pass-Through Entity	Entity receiving federal funds that have passed through another entity. This definition is specific to funding from federal sources and applies to state agencies, CEs, group purchasing cooperatives, and third-party entities. These funds are used to fulfill the purposes of a federally funded program.
Payment Bond	Bond which covers the cost of materials and works for construction contracts.
Performance Bond	Bond which covers the cost of ensuring that the work is done as specified in the terms of the contract.
Procurement	Act of obtaining of goods or services in exchange for money or value. [NOTE: Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.]
Procurement Standards	Standards of conduct that shall govern the performance of the CE's officers, employees, or agents in contracting for payment and expending program funds. State and federal procurement regulations require each CE to maintain written standards of conduct, including a code of conduct that prohibits employees from participating in the selection, award, and administration of any contract to which an entity or certain persons connected to them have a financial interest.
Program Integrity	Organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds.
Proprietary Products	Manufactured products ordered specifically for a particular program or are unique to a manufacturer.
Reasonable Cost	Amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.
Regulatory Authority	Oversight authority dictated by legislative act or regulation.
Request for Proposals (RFP)	Formal procurement method where potential contractors submit an offer to provide products and/or services under a fixed-price or cost-reimbursable type contract.

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Responsible	Capable of providing the product(s) and/or service(s), as described in the solicitation.
Responsive	Offer that addresses the terms and conditions of the solicitation, including the specifications and/or technical requirements for product(s) and/or service(s).
Service Fee	Fee charged for the performance of a specific service.
Simplified Acquisition Threshold (Also Called Small Purchase Threshold)	Amount established by federal, state, or local regulations that defines when formal and informal procurement methods must be used.
Sole Source Method	Noncompetitive procurement method used when products and/or services are available from only one supplier, distributor, or contractor. TDA must approve all sole source methods of procurement.
Solicitation	Process of notifying prospective or qualified offerors about the specifications or technical requirements for the purchase of products and/or services. For informal procurement, the solicitation may be communicated by email, in person, by fax, or by phone as long as the person soliciting offers documents the specifications or technical requirements to ensure that every possible contractor is given the same information. For a formal procurement, a written solicitation is required.
Subgrantees	Governmental or other legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided.
Supplier (Sometimes Called Vendor)	Commercial enterprise, public or nonprofit private organization, or individual that enters into a contract with a CE to provide products and/or services. A supplier is also referred to as an offeror during the solicitation phase of procurement.
Specifications and Technical Requirements	Detailed information included in the solicitation and in the final contract that describes the product(s) and/or service(s) that will be provided to the CE under the contract.
Third-Party	Entity that is contracted to act on behalf of another entity.

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Third-Party Cooperative	Any type of cooperative agreement that is formed by sources that are external to CEs which includes the following types of cooperatives: Non-Child Nutrition Program State Agency Procurement Agency Agreements Intergovernmental agreements with the State which may include public, private, and nonprofit entities and are conducted for State facility needs using State procurement standards. These agreements allow local educational agencies and other Child Nutrition Program operators to purchase from the State's contracted sources. Interagency Agreements Public, private, and nonprofit entities formed for the purpose of procuring goods and services Group Purchasing Organizations, Group Buying Organizations, and Third-Party Vendors (Collectively Referred to as GPOs) CNP and non-CNP operators such as public and private schools, hospitals, universities, law enforcement, public works, etc., who join a third-party company or service provider. A GPO may be a for-profit or a nonprofit entity. Typically, a GPO includes a membership fee for those granted access to the GPO price list of products and services.
Transaction	Occurrence in which two or more entities exchange goods, services, or money between them or among them under an agreement formed for their mutual benefit.
Unallowable Cost or Expense	Cost or expense which cannot be paid using school nutrition program funds. This includes costs and expenses incurred by the CE as well as any third-party acting on behalf of the CE. Disallowed is sometimes used in place of unallowable.
Value	Something of monetary or material worth or something that has a usefulness that can be exchanged for something of worth, merit, or importance.
Velocity Report	Report providing the quantity, date of purchase, and other valuable information for specific products and/or services purchased by CEs used to assist with forecasting future purchasing needs.
Vendor Participation Fees	Charge to participate. The charge to participate may be paid by the participant, or it may be paid by those providing products and/or services.
Written Procurement Procedures	Procedures that define the critical steps in determining the method of procurement to be used, roles, and responsibilities of staff when procuring products and/or services, and methods for monitoring procured products and/or services. For this section, the term procedure is used to refer to processes, protocols, standards of behavior, expectations, or any other written method of describing actions staff are to take related to procurement. Written procurement procedures may include a procurement plan with timelines and tasks, or a procurement plan may be a separate document from the procedures.

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Full and Open Competition

All procurement transactions must be conducted in a manner that provides full and open competition to all entities that choose to participate. Full and open competition means that all possible bidders or offerors are on a *level playing field* and have the same opportunity to compete for the purchase of products and/or services.

Full and open competition fosters decreased costs and increased quality of products and/or services. When full and open competition is achieved, potential offerors receive all the information necessary to respond properly to a solicitation, and the offers are accurately evaluated for the contract award.

The following situations may restrict full and open competition:

- Any arbitrary action in the procurement process.
- Overly restrictive definition for local when applying local preference.[12]
- Organizational conflicts of interest.
- Placing unreasonable requirements on firms in order for them to qualify to do business.
- Requiring unnecessary experience and excessive bonding.[13]
- Noncompetitive pricing practices between firms or between affiliated companies.
- Noncompetitive awards to consultants that are on retainer contracts.[14]
- Specifying only a brand name product instead of allowing an equal product to be offered.[15]
- Using specifications and technical requirements that are so restrictive that only one potential vendor can meet the specifications and/or technical requirements of the solicitation.[16]
- Any strategy or action that limits any possible bidder or offeror from participation.

Information Box 2

Economy and Efficiency of Procurement Practices

Excess and Surplus Property
CEs are encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. This includes, but is not limited to, USDA Foods.

Intergovernmental Agreements or Inter-Entity Agreements
To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services, the CE is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

Consolidating or Breaking Up Procurements
Consideration of when consolidating or breaking procurements to more than one contract may lead to a more economical purchase.

Effective Forecasting
Effective forecasting strategies will assist the CE in developing accurate solicitations.

Lease Versus Purchase
CE may conduct an analysis of lease versus purchase alternatives to determine the most economical approach to procuring products and/or services.

12 See the *Local Preference* subsection in this section for more information on using local preference.
13 See the *Bonding Requirement* subtopic in the *Other Regulatory Requirements for Solicitations and Contracts* subsection in this section for additional information on this topic.
14 A contract in which a contractor is paid an upfront fee for anticipated services and/or products.
15 See the *Use of Brand Names for All Contracts* subsection in this section for additional information on the use of brand names in solicitations.
16 See the *Noncompetitive Type-Sole Source* subsection in this section for additional guidance on when sole source procurement is appropriate.

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If any aspect of the procurement process has limited the number of possible offerors, the CE must address the issue(s) before awarding a contract. Action to address limiting competition includes restarting the procurement process.

Cost Analysis

The CE must perform a cost analysis before issuing a solicitation. In conducting a cost analysis, the CE will use the tools that are also used in forecasting as well as any other available tools or strategies that may help the CE to identify the estimated cost of the products and/or services to be purchased. The method and depth of the cost analysis is dependent on the complexity of the products and/or services to be purchased.

Forecasting

Forecasting is the process of analyzing current and historical data to determine procurement needs. In the case of school nutrition programs, forecasting involves predicting and estimating the goods, works, and services needed in specified areas for the coming year, and/or assessing needs by reviewing current procurement activities.

In formal procurement, forecasting helps to ensure that the CE develops a solicitation that includes accurate specifications and/or technical requirements. When forecasting is performed well, there is less likelihood that a material change[17] will occur.

Forecasting includes assessment of the following factors:

- Past purchases
- Current prices and trends for the same or like goods or services
- Student enrollment, current and projected
- Student average participation, current and projected[18]
- Future campus realignment, including new schools
- Available and future product storage
- Velocity reports (amount ordered/used or served in the past)
- Planned changes specific to products and/or services (menu offerings, adding operation of a different school nutrition program or child nutrition program[19] at a site or sites, results from taste and acceptability activities)
- Established schedule of purchasing to maximize competitive pricing (how often)

Information Box 3

Anticipating Student Tastes

CEs may opt for a shorter period of time for a contract. The shorter period of time gives the CE greater control of the inventory and allows the CE to easily make adjustments when student acceptability of food item changes.

17 See the *Material Change* in the *Contract* subsection in this section for additional information on this topic.

18 The monthly *Daily Record/Accuclaim* forms for each site provide this information. This form is available at *www.SquareMeals.org*.

19 Other child nutrition programs include Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP).

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Helpful Forecasting Tool

USDA's web-based *Food Buying Guide Calculator for Child Nutrition Programs*[20] provides a method to calculate the amount of food to purchase for a specified number of servings. This tool may be used to calculate the amount to purchase for a single food item or for all food items on a daily menu.

Procurement Purchasing Methods

CEs must use their written procurement procedures to guide them in selecting the appropriate procurement method, including the appropriate cost analysis method.[21] There are two types of procurement methods that CEs may use—formal and informal. The decision to use formal or informal is based on the total estimated cost of the purchase and whether the cost of the total purchase does or does not exceed the simplified acquisition threshold (small purchase threshold).[22]

Information Box 4

Cost-Plus Percentage Contract

In all cases, any contract or agreement that creates a pricing structure that charges the cost of the product or service plus a percentage of cost is <u>not</u> allowable for any purchase for a Child Nutrition Program (CNP).

Before Selecting a Procurement Method

To identify the most appropriate procurement method, the CE must follow its written procurement procedures and retain all records related to the procurement. This includes, but is not limited to, conducting a cost analysis to determine the estimated cost for the products and/or services to be procured[23] and all cost comparison documentation.

In all cases, the goal of the procurement process is for the CE to make the most economical and efficient use of federal funds while offering full and open competition.[24] The choices the CE makes should be based on this objective.

Simplified Acquisition Threshold (Small Purchase Threshold)

The simplified acquisition threshold is the highest total cost that can be procured using the informal procurement method.

- If the purchase is <u>*equal to or less*</u> than the simplified acquisition threshold, the purchase may be made using an informal or formal method.
- If the purchase <u>*exceeds*</u> (greater than) the simplified acquisition threshold, the purchase must be made using the formal process.

[NOTE: A CE may use a formal method when a purchase is less than the simplified acquisition threshold in order to take advantage of economies of scale, i.e., purchase of larger quantities resulting in lower costs.]

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20 Available at *www.theicn.org/*.
21 See the *Cost Analysis or Forecasting* subtopic in this section for additional information on this topic.
22 In limited cases, a CE may be allowed to use a noncompetitive procurement method. See the *Noncompetitive Procurement Method* subsection in this section for additional information on this topic.
23 See the *Cost Analysis or Forecasting* subtopic in this section for additional information on this topic.
24 See the *Full and Open Competition* subsection in this section for additional information on this topic.

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Most Restrictive Simplified Acquisition Threshold

The CE must follow the most restrictive simplified acquisition threshold requirements that apply based on the type of entity and the agency or organization that has regulatory authority (federal, state, or local) over the entity for all purchases. Each CE is responsible for ensuring that it applies the correct simplified acquisition threshold based on its entity type and regulatory authority.

Simplified Acquisition Threshold Chart
(Based on Cost Analysis Estimated Amount of Purchase)

Simplified Acquisition Threshold Purchase	**equal to or less (≤) than the threshold** may use an informal or formal procurement method.
	greater than (>) than the threshold must use a formal procurement method.

In Texas, most CEs operating NSLP and SBP will fall into one of three types of entities:

- Governmental, regulated by the Texas Education Agency (TEA)—These CEs, such as independent school districts (ISDs) and charter schools, must use the simplified acquisition threshold established by TEA.

  As of December 30, 2019, the simplified acquisition threshold for public school districts and charter schools regulated by TEA is less than $50,000. Less than $50,000 means equal to or less than $49,999.99.

  CEs should verify that their simplified acquisition threshold amount has not changed since the date this section was released. CEs may also be subject to a lower simplified acquisition threshold based on local or other applicable state regulations.

  TEA provides guidance on procurement and financial management at *www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial__Accountability_System_Resource_Guide/*.

- Governmental not regulated by TEA—These CEs, such as juvenile detention centers, must use the simplified acquisition threshold established by or adopted by the governmental agency that has regulatory authority for the CE.

  As of December 31, 2019, the simplified acquisition threshold for Texas governmental agencies (unless the agency/regulatory authority establishes other regulations) is less than $25,000. Less than $25,000 means equal to or less than $24,999.99.[25]

  CEs should verify their simplified acquisition has not changed since this date. CEs may be subject to a lower simplified acquisition threshold based on local or other applicable state

[25] Texas allows other thresholds for certain classifications of purchases. For additional guidance on these thresholds, see the Texas Comptroller of Public Accounts guidance at *www.comptroller.texas.gov*.

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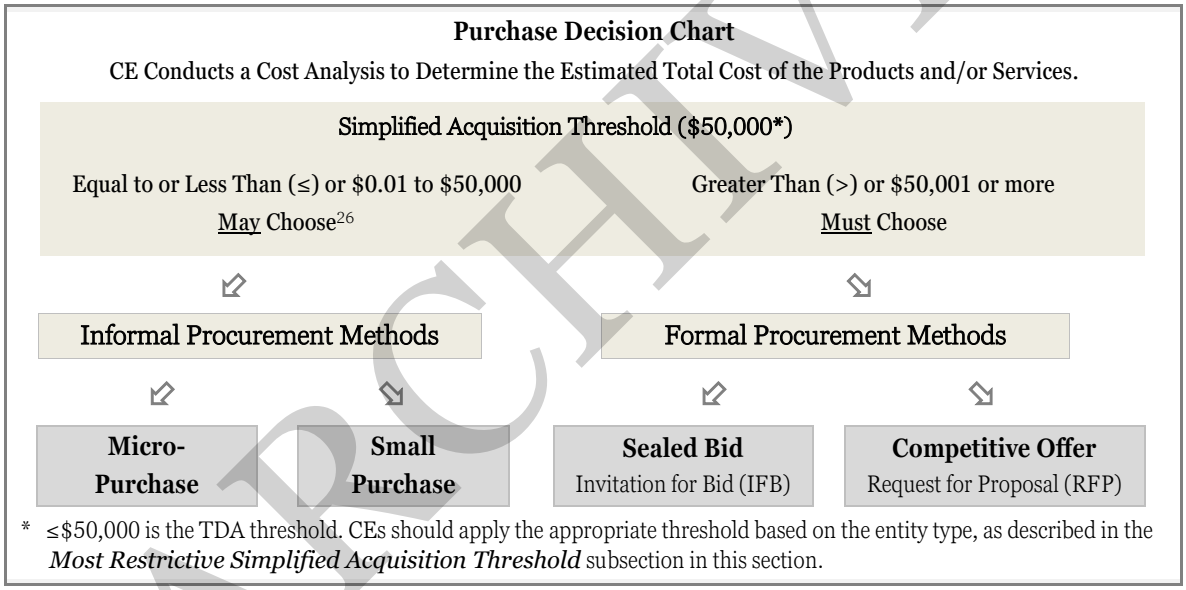
regulations.

The Texas Comptroller of Public Accounts website provides additional information and resources on financial management for governmental agencies at *www.comptroller.texas.gov*.

- Nongovernmental—These CEs, such as some Residential Child Care Institutions (RCCIs) or non-profits, must use the simplified acquisition threshold established by TDA, less than or equal to $50,000.

  CEs may be subject to a lower simplified acquisition threshold based on local or other applicable state regulations.

The *Purchase Decision Chart* demonstrates how the CE decides on which procurement method to use. If a CE has a different threshold that applies, that threshold amount should be substituted for the TDA threshold in the chart.



[26] 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.

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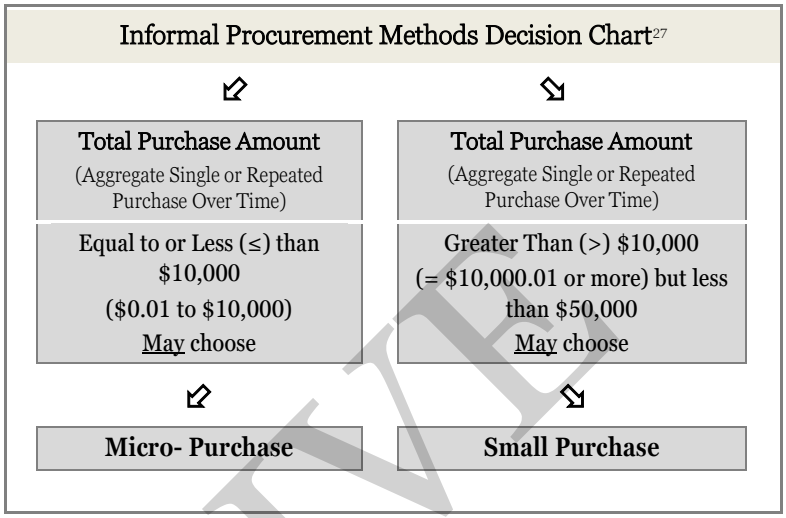
Informal Procurement Methods

If the total cost does not exceed the simplified acquisition threshold, the small purchase method can always be used for the purchase. In some circumstances, the CE may use the micro-purchase method.

In the selection of the procurement method and actions related to the procurement, the CE must follow its written procurement procedure[28] and retain all records related to the procurement. Any costs incurred as a result of improper procurement are unallowable costs to the school nutrition program.[29]



Micro-Purchase Method

The micro-purchase method is intended to minimize the burden for purchases of very small amounts. For micro-purchases, there are three elements for proper procurement: (1) aggregate purchase amount less than the $10,000 threshold, (2) equitable distribution of purchases, and (3) reasonable cost.

Micro-purchases are not intended to be the primary method of procurement. CEs are expected to forecast purchases to determine the appropriate procurement method, especially for products and services typically procured via the micro-purchase method multiple times throughout the year. A good general practice during the forecasting and budget process is to consolidate all products and services that fall under the same category and determine the annual cost. If the estimated total **annual** cost for any such product or service exceeds the micro-purchase threshold, the CE should determine if the Small Purchase method might be more cost effective than multiple micro-purchases and document justification for the method chosen.

The micro-purchase threshold may not be used in lieu of applicable procurement methods that may achieve a more economical approach. TDA will review overall purchases by product and vendor to identify trends, including whether inadequate forecasting led to multiple micro-purchases of the same type of products and services or from the same vendors. CEs may not break larger purchases into smaller amounts to qualify under the micro-purchase threshold, and any costs incurred as a result are unallowable.

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27 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.

28 See *Administrator's Reference Manual (ARM), Section 17a, Procurement Procedures* for additional information on procurement procedures.

29 An unallowable cost or expense cannot be paid using school nutrition program funds.

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Micro-Purchase Scenario Chart		
Purchase Scenario	Is Micro-Purchase Applicable?	Questions to Ask
Single purchase or transaction for computer paper, ink cartridges, and paper towels from the same supplier	If the total cost does not exceed $10,000, the micro-purchase method may be used.	• Has cost been distributed equally? • Will these same items be purchased more than one time? • Will the CE get a more competitive price by using a different procurement method?
Single purchase or transaction from Supplier 1 for computer paper and ink cartridges and a second single purchase or transaction from Supplier 2 for paper towels and cleaning supplies	If the total cost of each transaction does not exceed $10,000, the micro-purchase method may be used for each purchase or transaction.	

The following guidance must be used when making a micro-purchase.

- Aggregate purchase amount. Total cost of all products and services in a single procurement transaction. For micro-purchases, the aggregate purchase amount must not exceed $10,000. Note that a single micro-purchase can include items to be delivered over a period of time.
- Buy American. The Buy American provisions apply to micro-purchases.[30]
- Competitive Purchasing. Micro-purchases do not require the CE to solicit quotes or compare prices as long as the price is reasonable.[31]
- Cost Analysis. While a formal cost analysis is not required for the micro-purchase method, the CE should utilize budgeting and forecasting tools[32] to determine the appropriate procurement method and ensure the price is reasonable. Acceptable documentation includes, but is not limited to, the following:
  - Newspaper advertisements from various suppliers/vendors
  - Online advertisements from various suppliers/vendors
  - Written notes from discussions with vendors
  - Documentation of price from various suppliers/vendors to include
    - Supplier/vendor name

30 See the *Administrator's Reference Manual (ARM), Section 17b, Buy American* for additional information on this topic.

31 For procurement, *reasonable* is defined as an amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.

32 See the *Forecasting* subtopic in this section for additional information on this topic.

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- Name of person providing information
- Date(s)
- Information provided, including the pricing for the product and/or service

Other documentation for situational factors that demonstrate that the cost was reasonable if the price was not the determining factor, such as:

- Maps showing the distance between vendors when the distance is the factor
- Written procedures that specify micro-purchase must be used because space is the factor, such as refrigeration or storage space

- Equitable[33] Purchasing. Purchases must be distributed among all qualified suppliers that are able to provide the products and/or services at a reasonable cost. When multiple qualified suppliers are available, the CE cannot make all micro-purchases from one qualified supplier.

  The CE must include a description of how it will use equitable distribution of micro-purchasing among qualified suppliers in its written procedures.

  However, CEs located in rural areas may be limited in their ability to distribute purchases equitably 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 when it is not feasible for the CE to distribute purchases among a variety of suppliers. Documentation might include a mileage chart listing the distance to the next closest store or printout of an online map demonstrating the driving distance.

  Blanket Purchase Orders

  The requirement to equitably distribute purchases among possible vendors cannot be restricted by local policy or state regulation to limit the number of vendors with blanket purchase orders. CEs must be able to equitably distribute purchases in order to use the micro-purchase option.

- Most Restrictive Micro-Purchase Threshold. CEs must apply a more restrictive micro-purchase threshold based on local policy or state regulation. If a CE uses a more restrictive micro-purchase threshold, the CE must include this information in its procurement procedures.

[33] In this case *equitable* means *fair* or *balanced* distribution.

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However, when a CE applies a more restrictive micro-purchase threshold, the CE cannot eliminate the requirement to equitably distribute purchases among possible vendors.[34]

- Reasonable Cost. The cost must not exceed an amount incurred by a prudent person under similar circumstances. The CE must have a method to document that the cost of the products and/or services is reasonable (for example, a cost comparison).
- Routine Purchasing. Routine purchases must not be broken into smaller purchase amounts 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 method for purchasing these products and/or services and why the use of another procurement method is not possible or reasonable.

  For Example: There is a lack of storage space, so more frequent purchases are necessary.

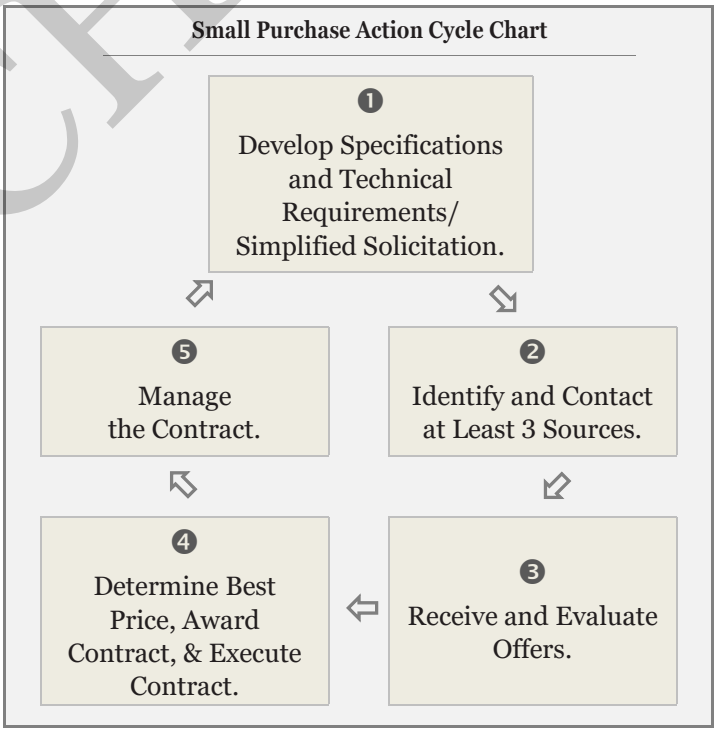
  The micro-purchase method is not appropriate when routine maintenance or repairs exceeding the micro-purchase threshold are broken into smaller payments. Instead, a small purchase method or formal method is the appropriate procurement method.

Small Purchase Method

A small purchase is appropriate when the products and/or services have a total cost equal to or less than the simplified acquisition threshold. **The small purchase method results in a contract between the CE and the contractor.**

Any costs incurred as a result of the CE breaking larger purchases into smaller amounts to qualify under the simplified acquisition threshold are unallowable costs to the school nutrition program.[35]

To obtain cost savings, a CE may use the small purchase method instead of the micro-



[34] See the equitable purchasing topic above for an example of an exception.
[35] An unallowable cost or expense cannot be paid using school nutrition program funds.

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purchase method if the amount of the purchase is equal to or less than the simplified acquisition threshold or may use the formal procurement method for purchases that qualify for informal purchasing methods.

The following guidance must be used when making a small purchase.

- Aggregate purchase amount. Total cost of all products and services in a single procurement transaction. For small purchases, the aggregate purchase amount must not exceed $50,000.

  For Example: The CE procured $13,278.28 in fresh fruit and vegetables from a local vendor. The fruit and vegetables were procured, ordered, and delivered all at one time with a single invoice. The total aggregate cost for this small purchase is $13,278.28.

  However, the total cost for a small purchase contract may be broken into multiple payments, which are paid as each product and/or service is delivered or when specified expectations are met. In these cases, the aggregate is the total cost when all payments are totaled.

  For Example: The CE procured and ordered fruit and vegetables for a total cost of $21,933.61. Each Monday for 4 weeks, the vendor delivers ¼ of the total order. Though the CE received 4 separate delivery invoices specifying the products delivered, the products were ordered in a single procurement transaction. The total aggregate cost for this small purchase is $21,983.61.

- Buy American. The Buy American provisions apply to small purchases.[36]
- Competitive Purchasing. When a CE uses the small purchase method, the CE must obtain price quotes from at least three responsible and responsive contractors.
  - Quotes may be obtained orally or in writing.[37] The CE must retain documentation demonstrating the price quotes and the information on specifications, terms, and/or conditions provided to each possible vendor.
  - Responsible contractors are capable of providing the products and/or services described in the specifications and/or technical requirements.
  - Responsive contractors provide pricing information specific to the products and/or services to be purchased.

  While a CE using a small purchase method may not have developed a formal solicitation document that is comparable to one developed for IFB or RFP, **the CE must have some type of documentation that demonstrates the specifications and technical requirements that were given to all offerors.**

[36] See the *Administrator's Reference Manual (ARM), Section 17b, Buy American* for additional information on this topic.

[37] See the *Records Retention* subsection in this section for additional information on documentation related to oral and written quotes.

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A CE may choose to issue an IFB or RFP for a small purchase. In that case, the CE should develop a solicitation, as described in the *Formal Procurement Methods* subsection in this section for information on conducting competitive purchasing for this type of procurement method.

- Contract. If the small purchase solicitation results in a contract, the CE must meet all requirements related to the development and use of a contract described in the *Solicitation* and *Contracts*[38] subsections in this section.
- Cost Analysis. The CE should utilize budgeting and forecasting tools[39] to determine the appropriate procurement method and ensure the price is reasonable. The CE must retain documentation, including any cost comparisons.
- Price. The CE must choose the most responsible and responsive offer with price as the primary consideration. The price must not be based on a cost-plus percentage of the cost.

  If the purchase results in credits, rebates, discounts, the CE must have documentation demonstrating the receipt of the credits, rebates, and discounts is applied to the nonprofit school food service account. This includes processed USDA Foods products.

  Market basket analysis may be used to award a small purchase contract.[40]
- Routine Purchasing. Routine purchases must not be broken into smaller purchase amounts in order to qualify for the small purchase method.

  If the CE is routinely using the small purchase method for the same items, the CE must maintain documentation that demonstrates why the small purchase method is the most suitable method for purchasing these products and/or services and why the use of another procurement method is not possible or reasonable.

  [NOTE: If the CE routinely uses the small purchase method for the same products and/or services, the cost savings from using formal competitive offers may be significant.]

  This includes procurements for routine maintenance fees that are paid multiple times in one year and exceed the small purchase threshold. When there are routine maintenance fees that are paid in smaller installments that total to an amount that is above the small purchase threshold, a formal method must be used.
- Solicitation. The CE must maintain documentation that provides the specifications and/or technical requirements given to potential

38 See *Administrator's Reference Manual (ARM), Section 16a, Contract Management* for additional information on managing a contract once it is awarded.
39 See the *Forecasting* subtopic in this section for additional information on this topic.
40 See the *Market Basket* subsections in this section for additional information on this topic.

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contractors who provided price quotes or pricing information from any other method the CE uses to compare prices. When specifications and/or technical requirements are communicated to possible vendors, each vendor must be given the same solicitation information.

Formal Procurement Methods

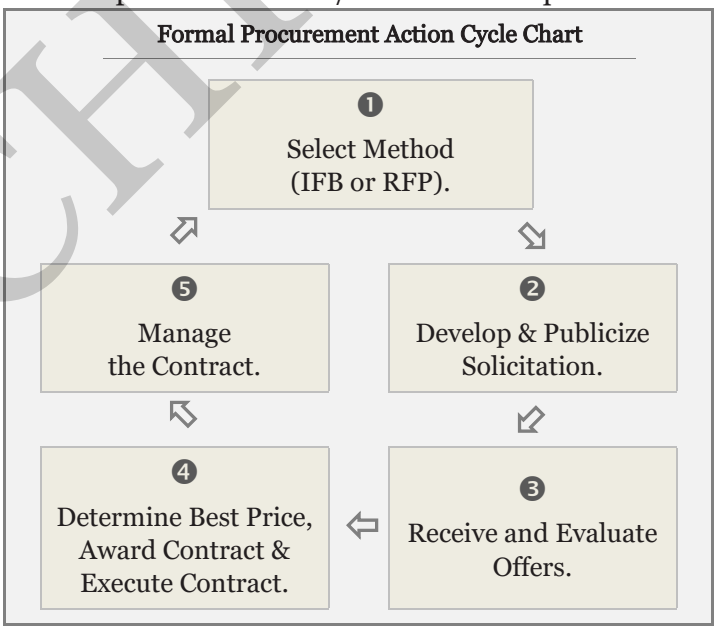
When the total estimated cost of products and/or services exceeds the simplified acquisition threshold, the CE must use a formal procurement method. Formal procurement methods are intended to be a more rigorous and prescriptive procedure that promotes full and open competition[41] and results in lower prices.

Any costs incurred as a result of improperly procured products and/or services are unallowable costs to the school nutrition program.[42]

Invitation for Sealed Bids (IFB)

An IFB is a competitive procurement method for a fixed-price contract where sealed bids are submitted. An IFB is an ideal procurement method to use when the offers only differ in the price for a lump sum or unit pricing. It is commonly used for a fixed-price contract and is most effective when there are clear specifications and/or technical requirements.

An IFB contract is awarded in writing to the most responsible and responsive offeror whose price is most advantageous to the program.



The following guidance must be used when using the IFB method.

- Aggregate purchase amount. The aggregate purchase amount for an IFB is the total amount of the cost for a single contract (or a single renewed contract). The total cost for IFB contracts is typically broken into multiple delivery invoices that are paid as each product and/or service is delivered or when specified expectations are met.
- Award. The award for an IFB will be made in writing to the lowest responsible and responsive offeror.

41 See the *Full and Open Competition* subsection in this section for additional information on this topic.
42 An unallowable cost or expense cannot be paid using school nutrition program funds.

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- Buy American. The Buy American provisions apply to IFB methods.[43]
- Competitive Purchasing. Offers must be solicited from an adequate number of known suppliers. For there to be competitive bidding, there must be two or more responsible[44] offerors that respond to the solicitation for a firm fixed-price contract.
- Contract. An IFB will result in a firm fixed-price contract award.
- Cost Analysis. When using the IFB method, a formal cost analysis or price comparison, as described in the CEs written procurement procedures is required.[45]
- Credits, Rebates, and Discounts. In a firm fixed-price contract, the winning contractor is not required to return credits, rebates, and discounts to the SNP as the contractor factors them into the fixed price for the contract period.
- USDA Food Values. In a firm fixed-price contract, the winning contractor must ensure that the value of USDA Foods is returned to the SNP.
- Evaluation of the Offers. When the sealed bids are opened, the CE must use the rubric or scoring tool that was provided in the solicitation to determine whether an offeror is both responsible and responsive.[46]
- Opening Sealed Bids. State and federal regulations mandate that the offers be opened publicly, so possible contractors and other interested parties are able to attend. The CE must provide a description of where and when the sealed bids will be opened. USDA recommends that at least two CE employees be present when sealed bids are opened. These employees should be directly involved with the procurement procedure (i.e., representatives from the School Nutrition Programs and/or from the purchasing department). School board members are not required to be present unless mandated by local policy

  If the specifications and/or technical requirements for the solicitation are complicated and the CE is not able to quickly and clearly determine which bid is most responsible and responsive, the CE may choose to announce which offers meet the criteria to be considered for an award at the bid opening and announce the actual award at a later date. If this is the case, the CE must clearly describe this possibility in its solicitation. This includes the time and place when the contract award will be announced.
- Price. The CE must choose the most responsible and responsive offer with price as the primary consideration. The price must not be based on cost-

[43] See the *Administrator's Reference Manual (ARM), Section 17b, Buy American* for additional information on this topic.
[44] Able to provide the product(s) and/or service(s), as described in the solicitation.
[45] See the *Cost Analysis or Forecasting* subtopic in in this section for additional information on this topic.
[46] Offer that addresses the specifications and/or technical requirements expressed in the solicitation for product(s) and/or service(s).

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plus a percentage of the cost. Any costs charged from this type of pricing structure are not allowable costs to a Child Nutrition Program (CNP).

Market basket analysis may be used to award an IFB contract.[47]

- Public Advertising. The invitation for offers must be publicly advertised with sufficient response time prior to the bid opening date to allow sufficient time[48] for potential offerors to respond in order to ensure that there is full and open competition.[49]

  For Example: Publicizing a solicitation in a regional newspaper may not be sufficient notification if the circulation of the paper is limited geographically. Potential contractors often check major newspapers for notification on solicitations but would not check a regional paper.

- Rejecting an Offer. Any or all offers may be rejected if there is a sound documented reason.

- Securing Sealed Bids. As each sealed bid arrives, the bid should be date stamped and stored in a secured place until the time of bid opening.

  For Example: Locked file cabinet, locked metal box, or any other tamper-proof location.

- Solicitation. The CE must provide the following information in the solicitation related to contract management:[50]
  - Specifications and/or technical requirements for the product(s)
  - and/or service(s) to be purchased
  - Bonding requirements if applicable
  - Method for submitting an offer
  - Method and criteria for evaluating the bid
  - Procedure for assigned staff to respond to and resolve all bid protests.[51]
  - Contractual statements required by law
  - Method for submitting a protest for the bid award

  The CE must maintain documentation that demonstrates the CE's actions to release the IFB to the public as well as all communication that occurs after the bid is released.

  If the CE answers a question from an offeror, there must be a method for the CE to share this information with all potential offerors. CEs

47 See the *Market Basket* subtopic under the *Special Situations, Awarding the Contract* subheader in this section for additional information on this topic.
48 See the *Solicitation* subsection in this section for additional information on this topic.
49 See the *Full and Open Competition* subsection in this section for additional information on this topic.
50 See the *Solicitation*, *Procurement Purchasing Methods, Other Regulatory Contract Requirements, Awarding the Contract,* and *Contracts* subsections in this section for additional information on these topics.
51 See the *Protests* subsection in this section for additional information on this topic.

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commonly post this information on their websites and the Electronic State Business Daily (ESBD) if the ESBD is used. [52]

Request for Competitive Proposals (RFP) Procurement Method

An RFP is a competitive procurement method that includes specifications and/or technical requirements of the product(s) and/or service(s) to be provided under a fixed price (fee) in a cost-reimbursable or firm fixed-price contract where offerors submit a detailed offer for providing the products and/or services. An RFP is an ideal procurement method to use when a sealed bid method is not appropriate.

An RFP contract is awarded to the most responsible and responsive[53] offeror whose offer is most advantageous to the program—price and other factors are considered. The following guidance must be used when using the RFP method.

- Aggregate purchase amount. The aggregate purchase amount for an RFP is the total amount of the cost for a single contract (or a single renewed contract). The total cost for an RFP contract may be broken into multiple delivery invoices that are paid as each product and/or service is delivered or when specified expectations are met.
- Award. An RFP should be made in writing to the most responsible and responsive offer.
- Buy American. The Buy American provisions apply to RFP methods.[54]
- Competitive Purchasing. Offers must be solicited from an adequate number of known suppliers. For there to be competitive bidding, there must be two or more responsible[55] offerors that respond to the solicitation for a contract resulting from an RFP.
- Contract. An RFP may be used for a firm fixed-price contract or a cost-reimbursable contract.
- Cost Analysis. When using the RFP method, a formal cost analysis or price comparison is required, as described in the CE's written procurement procedures.[56]
- Credits, Rebates, and Discounts. In a cost-reimbursable contract, the winning contractor must return credits, rebate, and discounts, to the SNP.
- USDA Food Values. In a firm fixed-price contract, the winning contractor must ensure that the value of USDA Foods is returned to the SNP.

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52 Available at *http://www.txsmartbuy.com/*

53 Responsible is defined as able to provide the product(s) and/or service(s) as described in the solicitation. Responsive is defined as an offer that addresses the specifications and/or technical requirements expressed in the solicitation for product(s) and/or service(s).

54 See the *Administrator's Reference Manual (ARM), Section 17b, Buy American* for additional information on this topic.

55 Able to provide the product(s) and/or service(s), as described in the solicitation.

56 See the *Cost Analysis or Forecasting* subtopic in in this section for additional information on this topic.

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- Evaluation of the Offers. The CE must use the rubric or scoring tool that was provided in the solicitation to determine whether an offer is both responsible and responsive.
- Price. The CE must choose the most responsible and responsive offer with price as the primary consideration. The price must not be based on cost-plus a percentage of the cost.

  Market basket analysis may be used to award an IFB contract.[57]
- Public Advertising. The request for proposals (RFP) must be publicly advertised with sufficient response time prior to the bid opening date to allow sufficient time for potential offerors to respond.[58] The RFP must be publicly advertised in such a way as to ensure there is full and open competition.[59]

  For Example: Publicizing a solicitation in a regional newspaper may not be sufficient notification if the circulation of the paper is limited geographically. Potential contractors often check major newspapers for notification on solicitations but would not check a regional paper.
- Rejecting an Offer. Any or all offers may be rejected if there are sound and causes and/or reasons that have been documented for the rejection. When a CE considers if it has documented cause and/or reason for rejecting an offer, the CE

  1. must avoid arbitrary decisions, i.e., a decision based on personal will or discretion

     and
  2. must determine if the CE has adequate documentation to support the cause and/reason for rejecting an offer.
- Solicitation. The CE must provide the following information in the solicitation related to contract management: [60]
  - Specifications and/or technical requirements for the product(s) and/or service(s) to be purchased
  - Bonding requirements if applicable
  - Method for submitting an offer
  - Method and criteria for evaluating the bid
  - Procedure for assigned staff to respond to and resolve all bid protests.[61]

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57 See the *Market Basket* subtopic under the *Special Situations, Awarding the Contract* subheader in this section for additional information on this topic.

58 See the *Cost Analysis or Forecasting* subtopic in in this section for additional information on this topic.

59 See the *Full and Open Competition* subsection in this section for additional information on this topic.

60 See the *Solicitation*, *Procurement Purchasing Methods, Other Regulatory Requirements for Solicitations and Contracts, Awarding the Contract,* and *Contracts* subsections in this section for additional information on these topics.

61 See the *Protests* subsection in this section for additional information on this topic.

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- Contractual statements required by law
- Method for submitting a protest for the bid award

The CE must maintain documentation that demonstrates the CE's actions to release the RFP to the public as well as all communication that occurs after the solicitation is released.

[NOTE: If the CE answers individual offeror questions about the solicitation, the CE must have a method to share all questions and answers with all potential offerors. CEs commonly post this information to their websites and the Electronic State Business Daily (ESBD) [62] if the ESBD is used.]

Inadequate Competition

Inadequate competition occurs when the CE actively and appropriately attempts to solicit offers from a number of sources, but competition is deemed inadequate. The number of offers that met the solicitation specifications and technical requirements (i.e., responsible and responsive offers) is less than expected.

If an inadequate number of offers was received, the CE must ensure that competition was not restricted or limited. A lack of offers is often caused by a poorly written solicitation or advertising that targets too small of a population base, rather than a lack of contractors or vendors capable of supplying the products and/or services to be procured. If the CE determines that the solicitation was not properly completed, the CE must (1) provide notification of its intention to rebid the contract, (2) review its solicitation, modify the solicitation as necessary, and (3) reissue the solicitation.

The CE may award the contract if the CE determines that the solicitation was properly completed. The CE must retain documentation to demonstrate that the CE (1) took appropriate actions to foster adequate competition and (2) reviewed its solicitation procedure to ensure that CE did not limit competition. Documentation for these purposes would include, but is not limited to, copies of advertising releases, mailing lists, communication documents, or contact logs.

Noncompetitive Procurement Method

Procurement by a noncompetitive method is an appropriate method of procurement when one or more of the following types of circumstances apply: public emergency or an unexpected emergency situation, or sole source.

When a CE uses any noncompetitive method of procurement, the CE must retain all related documentation onsite to demonstrate compliance.[63] If a CE enters into a sole source contract without TDA approval, the contract has been improperly procured. All costs associated with an improperly procured contract are unallowable, including any ongoing and maintenance costs, from the nonprofit food service account.[64]

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62 Available at *http://www.txsmartbuy.com/*

63 See the *Records Retention* subsection in this section for additional information on records retention requirements.

64 See the Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition page located after the table of contents for information on how to contact TDA.

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Noncompetitive Procurement—Public Emergency or Unexpected Emergency Situation

A public emergency (exigency) or unexpected emergency situation will not permit a delay in procurement caused by the additional time required for a full competitive solicitation for products and/or services—circumstances require immediate purchases. An emergency situation might include the failure of a refrigeration system, supplier canceling a contracted delivery without adequate notice, a natural event, or a Presidentially Declared Disaster.

Approval

A public emergency or unexpected emergency situation noncompetitive procurement[65] requires TDA approval. CEs must contact TDA immediately to initiate the approval process. To request approval to use a noncompetitive method during an emergency, the CE must submit the *Noncompetitive Procurement (Emergency or Sole Source) Request Form* found on the SquareMeals website, *www.SquareMeals.org*.

The CE should be prepared to provide the following information:

- Description of the emergency situation
- Products and/or services to be procured and estimated cost
- Supplier, distributor, or manufacturer from whom the product and/or services will be procured
- Period of time the CE plans to use the noncompetitive method for the emergency

TDA will provide notification of approval or disapproval via email.

Documentation

CEs must retain documentation about the emergency and all related procurement activities.

Noncompetitive Procurement—Sole Source

For a sole source purchase, the product and/or service is available only from a single (sole) source distributor, supplier, or manufacturer. When there is only one offer, the procurement is not necessarily a sole source procurement. There may be other potential offerors that could have submitted an offer but chose not to do so.

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.

For Example: A CE uses a branded software for its point of service (POS) system. The software must be updated once a quarter. Before the CE can request approval to procure the software updates as a sole source noncompetitive procurement, the CE must verify that no other vendor is allowed to provide the updates without voiding the warranty.

65 See *Administrator's Reference Manual (ARM), Section 24, Disaster Situations* for additional information on operation during a disaster situation.

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Approval

Sole source procurement requires TDA approval. To request approval to use a sole source contract, the CE must submit the *Noncompetitive Procurement (Emergency or Sole Source) Request Form* found on the SquareMeals website, *www.SquareMeals.org*. The CE should be prepared to provide the following information:

- Description of the product and/or services to be purchased and the cost
- Description of the method used to determine if the cost is reasonable
- Copies of the CE's solicitation, advertising, and other relevant documentation that indicate why the sole source method is appropriate
- Description of the CE's actions to ensure that the supplier, distributor, or manufacturer is the sole source, i.e., including documentation of the CE's effort to contact other suppliers, distributors, or manufacturers to confirm that the product or service is not available from another source
- Description of the CE's review of the solicitation, advertising, and other actions to ensure that the original solicitation was competitively solicited
- Period of time (i.e., week, number of months, year) the CE plans to use the sole source method

TDA will provide notification of approval or disapproval via email.

If a CE enters into a sole source contract without TDA approval, the contract has been improperly procured. Any costs, including any ongoing or maintenance costs associated with an improperly procured contract, are not allowable costs and cannot be covered with funds from the nonprofit school food service account.

Determination of Need for Sole Source Procurement

The sole source method of procurement is used when there is only one supplier, distributor, or manufacturer for the product(s) and/or services(s) that are being procured.

Identification of Sole Source Products and/or Services

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—procurement where there is only one offer is not necessarily sole source. There may be other suppliers, distributors,

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or manufacturers that could have submitted an offer but chose not to submit an offer.

For Example: There are 3 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 procurement. Instead, it is an inadequate competitive response to the solicitation. The CE must follow the guidance for that type of noncompetitive procurement.

For a sole source method to be used, there must be only one possible source for the product and/or service.

How Does the CE Determine the Product and/or Service Is a Sole Source Procurement?

1. A CE cannot accept a statement from the supplier, distributor, or manufacturer[66] as verification that the product and/or service is only available from a single source.
2. The CE must attempt to solicit offers from other suppliers, distributors, or manufacturers.
3. If the product and/or service is available from other sources, but one source offers a feature(s) that other sources do not offer, the special feature cannot become the only factor that defines a product and/or service as the sole source unless the CE can document why this feature is required, not just preferred.

Brand Name Sole Source Purchase

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

1. current equipment,
2. replacement part inventory, and
3. maintenance staff's expertise.

However, even if the CE meets the brand name sole source purchase criteria listed above, it must still determine if there is

[66] Exception, if the contract or product/service instructions indicate that all warranties or guarantees for the purchased item/service are void if CE allows non-authorized/uncertified vendors to provide service and/or parts, the CE may use this documentation as proof for a sole source purchase.

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more than one supplier for the brand of equipment or the services. If there are multiple suppliers, the CE must follow normal procurement procedures 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.]

Documentation:

CEs must retain records that demonstrate the following: (1) product and/or service availability from only one source; (2) efforts to determine if other suppliers, distributors, or manufacturers provide the product or service; and (3) all procurement-related activities.

Buy American

The Buy American provision applies to all food purchases made with SNP funds. This provision requires CEs and third parties, acting on behalf of CEs, to purchase domestically[67] grown and processed food to the maximum extent practicable. See *Administrator's Reference Manual (ARM), Section 17b, Buy American* for detailed guidance on this requirement.

Locally Grown Products

CEs may purchase locally grown products for their school nutrition program. Commonly used local products include, but are not limited to fruits, vegetables, beans, grains and flour, meat, poultry, fish, condiments, herbs, eggs, and dairy.

TDA has developed Texas Farm Fresh to promote the use of local products. The Texas Farm Fresh website provides information on strategies for offering local products, various programs that support the use of local products, best practices, success stories, a seasonal produce availability tool, and more. The Texas Farm Fresh website is located at *www.squaremeals.org/FandNResources/TexasFarmFresh.aspx.*

The following resources may also be helpful in promoting the use of locally grown products:

- Contact the local cooperative extension agent or educators to learn more about local products. A list of offices is available at *www.nifa.usda.gov/partners-and-extension-map.*
- Get information on strategies for buying local foods by viewing USDA's Finding, Buying, and Serving Local Foods Webinar Series at *www.fns.usda.gov/farmtoschool/procuring-local-foods*.
- Use USDA's Procuring Local Foods for Child Nutrition Programs available at *www.fns.usda.gov/farmtoschool/procuring-local-foods*.
- Use the USDA Census of Agriculture to get a list of the crops being grown in a specific area. Maps are available at

[67] Domestically grown food products are grown and processed in the United States.

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www.agcensus.usda.gov/Publications/2012/Online_Resources/Ag_Census_Web_Maps/.

Local Preference

CEs may[68] give preference or bonus points to local producers when soliciting and awarding contracts for the purchase of unprocessed locally grown or raised agricultural products as long as the preference or bonus points do not restrict full and open competition.[69] The CE must include its method or methods of using local preference in its written procurement procedures, in the solicitation for the food items, and in the contract as appropriate.

Locally Grown and Raised Agricultural Products Chart

Locally grown and raised foods commonly include, but are not limited to, the following:

- Beans
- Condiments
- Eggs
- Fish (with no additives or fillers)
- Fruits
- Grains and flour
- Herbs
- Meat (with no additives or fillers)
- Milk (unflavored fluid milk, but not flavored milk or any processed dairy products such as yogurt or cheese)
- Poultry
- Vegetables

Unprocessed locally grown or raised agricultural products mean those agricultural products that retain their inherent character. The following methods are appropriate handling and preservation techniques for locally grown or raised agricultural products:

- Addition of ascorbic acid or other preservatives to prevent oxidation of produce
- Butchering livestock and poultry
- Cleaning fish
- Cooling
- Drying/ dehydration
- Forming ground products into patties without any additives or fillers
- Freezing
- Packaging (such as placing eggs in cartons)
- Pasteurization of milk
- Refrigerating
- Size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding
- Vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package)
- Washing

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68 USDA regulation specifically gives the local entity the choice to use local preference for locally grown or raised products procured with school nutrition program funds or not to apply a local preference for these products.

69 See the *Full and Open Competition* subsection in this section for additional information on this topic.

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Defining Local

USDA regulations give the local entity the authority to define local as long as the definition does not restrict full and open competition. USDA regulations also prohibit any state agency from mandating a definition for local.

For procurement, the CE may define its local geographic areas as areas located within a specified number of miles or within a geographic boundary (county, state, or multi-state). It may use different geographic areas for different types of products and for different seasons.

For Example: A CE is located in the middle of the state and has defined two local geographic areas.

Local Geographic Area 1: Local products readily found with a 100-mile radius of the CE—This local area will be used for herbs, tomatoes, lettuce, potatoes, carrots, and green peppers.

Local Geographic Area 2: Local products readily available in the state, but not readily available within a 100-mile radius of the CE—This local area will be used for peaches, broccoli, and melons.

Local Procurement Preference or Bonus Points

CEs may apply a variety of types of preferences or bonus points methods as long as the methods do not limit full and open competition. CEs must describe all methods to be used in their written procurement procedures.

Information Box 6

Questions to Consider When Defining Local

- What product(s) does the SNP want to source first, and where can they be found?
- Are there products the SNP is already sourcing from nearby areas?
- What is the SNP's vision for local buying program and what types of producers can support that vision?
- How quickly does the SNP want to add local products to the menu?
- Does the SNP want to couple local purchases with farm visits and educational activities with producers and suppliers?

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Preference or Bonus Point Method Example Chart Method of giving local preference include, but are not limited to, to the following examples:	
Preference Applied to Price	**Preference Applied to Evaluation Points**
A CE may apply the preference to the product price for local producers located within a specified radius of the CE. In its written procurement procedures,[70] the CE states that it will give preference to local producers by subtracting a set amount from the bid price of local producers that are located within 100 miles of the CE. For Example: When procuring fresh fruit by the pound, the CE reduces the product price by $0.10 a pound for local producers located within 100 miles of the CE.	A CE may use a tiered approach to awarding preference points for local products. In its written procurement procedures, the CE describes how it will use a tiered approach to giving local preference. For Example: For products that are readily available within a 100-mile radius of the CE, the CE will give – 10 points for a vendor located within 20 miles, – 7 points for a vendor located within 50 miles, and – 5 points for a vendor located within 100 miles. For products that are not readily available within a 100-mile radius of the CE, the CE will give – 10 bonus points for vendors located within the state and – 5 bonus points for vendors located out of state.

Local Preference in the Solicitation and Contract Award

If a CE gives preference or bonus points for local producers, the CE must describe the way the local preference or bonus points will be used in its written procedures and provide this information in the solicitation. If the CE is procuring a third-party to procure on its behalf, the CE may also include a required preference for local procurement for third-party purchases.

[NOTE: While a CE may give preference or bonus points to local contractors, local cannot be listed as a specification or technical requirement on the solicitation. If local was designated as a specification or technical requirement, the exclusion of all non-locally grown agricultural products would restrict full and open competition.]

A CE must not award a contract based solely on local preference.

- For an IFB, if all points are equal for a local and a non-local producer based on the evaluation criteria, the CE must award the contract based on the most cost-effective use of federal funds.
- For an RFP, the CE must award the contract with primary consideration[71] given to the cost of the product but must also apply all other evaluation criteria in determining the most cost-effective use of federal funds.

[70] See *Administrator's Reference Manual (ARM). Section 17a, Procurement Procedures* for additional information on this topic.

[71] See the *Awarding the Contract* subsection in this section for additional information on primary consideration.

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Other Local Preference Regulations

For local preference, there are differences in the federal and state regulations as they apply to entities that are required to comply with the Texas law.

- Texas law requires (1) that governmental entities (including school districts and charter schools) define local preference as geographically within the state of Texas and (2) that a contract must be awarded to a local supplier over a non-local supplier if both meet the terms and conditions described in the solicitation.
- USDA regulations state (1) that SNPs have the authority to apply local preference in a variety of ways as long as the end result is the most cost-effective use of federal funds or not use local preference in procurement and (2) that a contract cannot automatically be awarded to a local supplier over a non-local supplier if both meet the terms and conditions described in the solicitation.

Information Box 7

Local Preference or Bonus Points Example

The CE reduces the offer price by $0.10 if the supplier meets the local preference criteria.

	Supplier Price	Meets Geographic Preference?	Price with Preference Points
Supplier 1	$1.97	No	$1.97
Supplier 2	$2.10	Yes	$2.00
Supplier 3	$2.03	No	$2.03

If the award is an IFB with firm fixed price, Supplier 1 is awarded the contract.

If the award is an RFP, the SNP will evaluate all criteria, including primary consideration for cost, and then make the award. Because there are additional criteria for determining this award, it is possible that the supplier with the lowest cost price may not be awarded the contract.

When the CE is making purchases for the school nutrition program, the CE's procurement actions must be in compliance with USDA regulations.

For Example: An SNP, located on the border of Texas and New Mexico, issues a solicitation for fresh melons, and applies bonus points for potential producers located within 90 miles. Two offers receive the same high score on the evaluation.

- One from a Texas farm 60 miles away
- One from a New Mexico farm 5 miles away

If this contract fell under Texas law for governmental entities, the contract must be given to the Texas farm.

However, because this purchase will be paid from the School Nutrition Program (SNP) funds, USDA regulations allow the SNP to define local to include farms located in New Mexico. In this case, the CE may award the contract to the New Mexico farm if it is the most cost-effective use of federal funds.

Other Regulatory Requirements for Solicitations and Contracts

When federal funds are used, CEs must include specific regulatory and legislative provisions in all solicitations/contracts. This subsection provides general explanations of what is required.

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For these requirements, the term, *contract,* applies to both legal contracts and operational agreements and applies to CEs and third-party entities acting on behalf of CEs to procure services and/or products.

BYRD, Anti-Lobbying

(31 U.S.C. 1352)

Required inclusion in solicitations/contracts exceeding $100,000 using federal funds; requires a contractor to complete specific forms related to lobbying (influencing or attempting to influence) in connection with obtaining a contract.

Civil Rights/Discrimination

Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities

Required inclusion in solicitations/contracts using federal funds; prohibits discrimination of all eligible program participants on the basis of age, color, disability, national origin, race, and gender.

Clean Air and Water Act and Federal Water Pollution Control Act

Clean Water Act, 42 U.S.C. 7401-7671q; Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387); and Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15)

Required inclusion when applicable to the services and/or products to be procured for solicitations/contracts exceeding $150,000 using federal funds; requires compliance with all applicable standards, orders, and regulations; prohibits the award of contracts to contractors that are in violation of Clean Air Act. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Contract Work Hours and Safety Standards Act

40 U.S.C. 327-330 Sections 103 and 107 as supplemented by Department of Labor regulations (29 CFR Part 5)

Required inclusion when applicable to the services and/or products to be procured for solicitations/contracts that involve mechanics or laborers exceeding $100,000 using federal funds; establishes standards for hourly and salaried employees related to workweek and overtime.

Copeland Anti-Kickback Act

(18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3)

Required inclusion in construction solicitations/contracts using federal funds; prohibits a contractor or subcontractor from inducing kickbacks from employees.

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Davis-Bacon Act

40 U.S.C. 276a to 276a-7 as supplemented by Department of Labor regulations (29 CFR Part 5)

Required inclusion in construction solicitations/contracts exceeding $2,000 using federal funds; requires contractors and subcontracts to include actual wage determinations in bid specifications and contracts.

Energy Policy and Conservation Act

Public Law 94-163, 89 Statute 871

Required inclusion when applicable to the services and/or products to be procured for solicitations/contracts using federal funds; establishes standards for the promotion of energy and water conservation methods when feasibly obtainable.

Equal Employment Opportunity

41 CFR, Chapter 60. Executive Order 11246 of September 24, 1965, entitled *Equal Employment Opportunity*, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60)

Required inclusion in construction solicitations/contracts using federal funds; prohibits hiring practices that do not provide an equal opportunity of all persons without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

Health and Safety Certifications, Licensing, or Regulations

Local, state, or federal health and safety certifications, licensing, or regulations

Required inclusion in solicitations/contracts using federal funds; requires all contractors to meet applicable local, state, and federal health and safety certifications, licensing, or regulations which include, but are not limited, to facility use, food establishment, and authorized providers.

Rights to Inventions (Pertaining to Patent Rights, Copyright and Rights)

37 CFR 401.2

Required inclusion, if applicable to solicitations/contracts using federal funds; requires all contractors to observe all applicable patent rights, copyright, and rights laws in operating the program.

Solid Waste Disposal Act

Section 6002 as amended by the Resource Conservation and Recovery Act

Required inclusion to the extent practicable when applicable to the services and/or products to be procured for to solicitations/contracts exceeding $10,000 using federal funds; requires contractors to maximize energy and resource recovery by using recycled materials and/or recycling waste products when reasonable, cost appropriate, and available.[72]

[72] The following websites provide additional information on possible waste management actions to meet this requirement: Environmental Protection Agency at *https://www.epa.gov/regulatory-information-topic/regulatory-information-topic-waste*; USDA, Biopreferred at *https://www.biopreferred.gov/BioPreferred/*

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[NOTE: The CE needs to determine what kinds of purchases and/or services are required to meet this provision. The CE should consider what is reasonable, cost appropriate, and available to the CE.]

Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms (Historically Underutilized Business or HUB)

2 CFR 200.321
Necessary affirmative steps to procure from minority firms, women's business enterprises, and labor surplus area firms whenever possible

Required inclusion in solicitations/contracts using federal funds; requires contractors to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises whenever to the maximum extent possible.

Preference Points to Encourage Participation of Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

CEs may include the following preference points in the evaluation to promote small, minority, and women's businesses and labor surplus forms.

- Placing 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 sources.
- Dividing specifications and/or technical requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Solicitation

A solicitation[73] is prepared by the CE to describe the products[74] and/or services the CE wants to acquire. Regulations specify that the solicitation must clearly define the items or services needed in order for the offerors to respond properly to the solicitation. The solicitation is intended to

[73] Micro-purchases do not require a solicitation.
[74] USDA's Agricultural Marketing Service provides examples of specifications that can be used. This information is available at *www.ams.usda.gov/*

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level the playing field so that all offerors have an equal opportunity to compete for the award of the contract.

[NOTE: Every aspect of the procurement procedure is important. However, if the solicitation is poorly prepared, the offers submitted will match the poor quality of the solicitation.]

Solicitation for Small Purchases

When products and/or services are procured through a small purchase method, the solicitation may take many forms because quotes for a small purchase may be accomplished by phone, email, or another method. To maintain accurate records, the CE's written procurement procedures should clearly describe how the CE will document solicitations for small purchases.

At a minimum, the CE must keep a record of contact information for all potential contractors that the CE contacted or attempted to contact, specifications and/or technical requirements provided to the potential contractors, offers or pricing information received, the method for determining the award, and the recipient of an award.

TDA has developed a sample form that may assist CEs with retaining this documentation. See the *TDA Resources* subsection of this section for additional information on this form and others developed by TDA to assist CEs with procurement.

Solicitation, IFB or RFP

When products and/or services are procured through either formal procurement method (IFB or RFP), the solicitation takes the form of documentation that describes the specifications and/or technical requirements for the products and/or services, the method and criteria for evaluation of responses, a method and schedule for submitting an offer, and the form of contract with standard terms. The standard terms are also called the *terms and conditions*. To maintain accurate records, the CE's written procurement procedures should clearly describe how the CE will develop and retain the solicitation document prepared for IFBs and RFPs.

The following issues must be addressed in a solicitation document for an IFB or RFP and, if applicable, to a small purchase when procuring products and/or services.

Solicitation/Contract Content

A CE's solicitation and the resulting contract must contain the following information:

Evaluation | Required for IFB and RFP Solicitation/Contract

- Statement of contract award to be awarded to one offeror or split among multiple offerors

  [NOTE: If a contract is to be split among multiple offerors, the statement must include how the split will be made: percentage, by product and/or service, or another method.]

- Description of criteria for identifying the most responsible and responsive offer and weight or percentage applied for each criterion may include actual rubric or a descriptive list of criteria

  For Example: The following evaluation criteria a CE may be included in solicitations:

  - Price/Cost (Cost must be the primary consideration.)

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- Responsiveness to specifications and technical requirements
- Demonstration of responsibility (experience, reference letters, financial condition/stability, business practices)
- Accounting and reporting systems
- Reporting systems
- Delivery schedules

Financial—Adjustment or Escalation Clause | Required If Included

- Name of the independent wholesale index used to adjust prices on contract renewal
- Description of the method for monitoring accuracy of the index adjustment[75]—increase or decrease

Financial—Bonding Requirement | Required If Included

- Description of the bonding[76] requirement

Financial—Costs Allowed to Be Invoiced | Required If Cost-Reimbursable

- Description of allowable costs (materials + direct labor hours)
- Statement of specific ceiling price, i.e., cost the contractor exceeds at its own risk

Financial—Cost of Contract | Required If Firm Fixed-Price

- Statement that the price is fixed for the duration of the contract
- Descriptions of any incentives given to the awarded contractor to control costs and perform with the greatest efficiency

Financial—Credits, Rebates, and Discounts | Required All Solicitations/Contracts

- Description of the acceptable method(s) to provide credits, rebates, and discounts
- Description of documentation awarded contractor must provide to demonstrate accurate receipt of credits, rebates, discounts, and USDA Foods values
- Statement indicating frequency to receive credits, rebates, discounts, and USDA Foods values
- Description of the penalty for not applying credits, rebates, discounts, and USDA Foods values
- Statement of the right-to-audit, which allows the CE routine access to the information necessary to verify receipt of accurate credits, discounts, rebates, and USDA Foods values

  [NOTE: Firm Fixed-Price contracts only require credits for the value of USDA Foods.]

75 TDA requires the use of the Consumer Price Index (CPI) Food Away from Home when an index is used to adjust prices.

76 See the *Bonding Requirements* subsection in this section for additional information on this topic.

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Financial—Forecasting | Required for All Solicitations/Contracts

- Description providing accurate forecasting[77] information

Financial—Preferences for Small and Minority Businesses | Required for All Solicitations/Contracts

- Explanation or preferences to encourage the participation of small and minority businesses, women's business enterprises, and labor surplus area firms

Local Preference | Required If Included

- Description of the method for applying and amount of bonus points or percentage for local[78] products

Market Basket Evaluation| Required If Included

- Finite list of products and or/services with quantities, specifications, and technical requirements for each item on the market basket list[79]
- Indication of how each product and/or service will be evaluated, including the percentage to be applied to the products included in the price evaluation
- Indication of the percentage of products that may be substituted for products not included in the original solicitation/contract

Offer Submission—CE Created Prequalified Lists | Required If Included

- Statement that CE will use a prequalified[80] list of persons, firms, or products
- Description of how an offeror can submit information to become prequalified

Offer Submission—Questions | Required for All Solicitations/Contracts

- Description of the method and location used to share additional information and questions and answers provided to any potential offeror

  [NOTE: Additional information is often posted on the CE's website for ease of access.]

Opening Offers | Required for All Solicitations/Contracts

- Description of when and where sealed bids/offers will be opened

Other Regulatory Requirements | Required for All Solicitations/Contracts as Applicable

- Statements of other regulatory requirements as applicable to the services and/or products to be procured, as described in the *Other Regulatory Requirements for Solicitations and Contracts* subsection in this section

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77 See the *Forecasting* subsection in this section for additional information on this topic.

78 See the *Local Preference* subsection in this section for additional information on using local preference. See also USDA's *Procuring local Foods for Child Nutrition Programs* available at *www.fns.usda.gov/farmtoschool/procuring-local-foods*.

79 See the *Market Basket* subsections in this section for additional information on using the market basket evaluation method.

80 Procurement procedures which incorporate prequalified lists must never unduly restrict or eliminate full and open competition. A vendor may submit a bid while waiting for approval for a prequalified list. See *Administrator's Reference Manual (ARM), Section 17a, Procurement Procedures* for additional information on this topic.

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Oversight—Management of Contract | Required for All Solicitations/Contracts

- Description of the methods or procedures the CE will use to manage the contract

Qualitative Evaluation Elements | Required If Included

- Explanation for the specific outcomes and/or expectations for the qualitative elements[81] required to ensure that the offeror has sufficient information to submit a responsive bid

Records Retention | Required for All Solicitations/Contracts

- Description of all applicable records retention requirements for the awarded contractor

Specifications, Technical Requirements, Terms, and Conditions—Contract Termination | Required for All Solicitations/Contracts

- Statement of the remedies in favor of the CE if the contractor cannot or does not perform as required
- Description of actions steps for terminating the contract

Specifications, Technical Requirements, Terms, and Conditions—Delivery | Required for All Solicitations/Contracts

- Description of the frequency and location of expected deliveries for products and/or services, including drop shipments, and, if required, varied packaging, amounts, or sizes per delivery

Specifications, Technical Requirements, Terms, and Conditions—Duration of Contract | Required for All Solicitations/Contracts

- Statement of the length of the contract
- Statement indicating if contract renewals will be allowed, and, if so, at what frequency[82]

Specifications, Technical Requirements, Terms, and Conditions—Equipment and Supplies | Required If Included

- Description of any expectations that the final contract will include the purchase or use of equipment which may include, but is not limited to, the following:
  - Utility and space requirements
  - Quality and features required
  - Installation requirements
  - Indication of whether the CE may retain the property and continue to make payments in accordance with an approved amortization schedule or return the property[83]

81 Qualitative evaluation elements are appropriate when products and/or services that more difficult to describe in objective, concrete terms

82 Contracts are awarded for a maximum of one year and may allow 4 one-year renewals.

83 Interest for payments for retained property is an unallowable cost.

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        - Other factors which may impact the cost of purchasing equipment
    - Description of supplies to be provided by CE and offeror

Specifications, Technical Requirements, Terms, and Conditions—Health and Safety | Required for All Solicitations/Contracts If Applicable by Local/State Food Safety Standards

- Statement that all contractors must adhere to all local, state, or federal safety licensing or standards

Specifications, Technical Requirements, Terms, and Conditions—Invoicing/Payments | Required for All Solicitations/Contracts

- Description of the method for submitting invoices for payment, including sufficient information to determine allowable and unallowable costs and submission timelines

Specifications, Technical Requirements, Terms, and Conditions—Products | Required for All Solicitations/Contracts

- Description which includes the following, as applicable:
    - Applicable nutrition standards
    - Delivery expectations
    - Basic features as well as size/weight/grade specifications and/or technical requirements
    - Packaging requirements, including quantity and warranty

Specifications, Technical Requirements, Terms, and Conditions—Protests | Required for All Solicitations/Contracts

- Description of the method to submit a protest[84] of the solicitation, cancellation of the solicitation, and contract award
- Description of the method to submit a protest of contract termination
- Description of the method for CE or contractor to file a complaint

Specifications, Technical Requirements, Terms, and Conditions—Samples for Taste-Testing | Required If Included

- Description of expectation for sample taste-testing, including frequency and numbers[85]

Specifications, Technical Requirements, Terms, and Conditions—Services | Required for All Solicitations/Contracts

- Description for services being procured, including the following, as applicable:
    - Required certifications and/or licensing

84 See the *Protests* subsection in this section for additional information on this topic.

85 The CE does need to consider if any product and/or services provided by a potential contractor will become an incentive to award a contract. Moreover, the CE should also remember that any samples provided by the potential contractor are not actually free. The offeror will include the costs for providing samples to the CE in its offer.

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- Description of duties to be performed, i.e., the scope of work
- Equipment provided by CE and expected to be provided by the contractor
- Hours of work
- Performance expectations
- Required outcomes

Submission of an Offer—Timeline | Required for All Solicitations/Contracts

– Description of start dates, major events, and end dates for solicitation and contract

One Solicitation, Award Multiple Contracts

When a CE uses one solicitation to award multiple contracts to different offerors by category group or line item, the CE should consider the following issues in making this decision:

– Will awarding one contract for the total purchase result in cost savings?

– Will awarding one contract for the total purchase encourage more potential contractors to submit offers?

– Will awarding one contract for the total purchase limit competition because fewer potential contractors are able to respond to the quantity or variety in the solicitation?

– What are the facility and staffing requirements for the contract awarded by total purchase or by multiple contracts?

Firm Fixed-Price Contract

A firm fixed-price contract may be awarded for an IFB or RFP. This type of contract is awarded to the lowest cost offer that addresses all the material terms and conditions (responsible and responsive)[86] of the solicitation.

Notification for Firm Fixed-Price Contracts

The solicitation must contain information about the method for submitting an offer, including, but not limited to, the following:

– Date bidding opens and closes

– Method to submit an offer, including location

– Method and criteria for evaluating the offer, including bonus or preference points

– Information about announcements related to the winning and losing offers

[86] Responsible is defined as able to provide the product(s) and/or service(s) as described in the solicitation. Responsive is defined as an offer that addresses the specifications and/or technical requirements expressed in the solicitation for product(s) and/or service(s).

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- Procedure to protest an offer, including contact information for the person handling protests and timeline for submitting
- Necessary attachments, including certifications, assurances, and sample contract terms and conditions, if applicable
- Method and location where questions, answers, and new information will be shared

Texas Comptroller of Public Accounts Tool

CEs may provide additional notification of invitations for sealed bids (IFBs) or requests for competitive proposals (RFPs) through postings on the Texas Comptroller of Public Accounts bid database, Electronic State Business Daily (ESBD).[87] This database is available to all CEs classified as governmental entities. This database is widely available to various types of potential contractors across the state and offers a venue for notification that may reach potential contractors the CE may not know about.

Specifications and/or Technical Requirements for Firm Fixed-Price Contracts

While this information for specifications and/or technical requirements must be specific, CEs must be careful to ensure they are not so specific that they limit competition. However, to award a contract, the CE must be specific enough in the specifications and/or technical requirements for the CE to be able to determine if the offeror is responsible and responsive.[88]

Vendor Lists for All Contracts

If the CE uses vendor lists, the CE must ensure the following criteria are used:

- The CE must ensure that all procurement prequalified lists of persons, firms, or products are current and include enough qualified sources to ensure maximum full and open competition.
- Procurement procedures that incorporate prequalified lists must never unduly restrict or eliminate full and open competition.
- Although the prequalification of potential contractors results in a more efficient procurement process, **CEs must not preclude potential offerors from qualifying for the vendor list during the solicitation period.**

Shared Purchasing for All Contracts

A CE may create a solicitation that combines the products and/or services for other school functions with an SNP products and/or services procurement when the following conditions apply:

1. if the additional items are included in the original solicitation specifications and/or technical requirements (including quantity) and

[87] Available at *http://www.txsmartbuy.com/.*

[88] Responsible is defined as able to provide the product(s) and/or service(s) as described in the solicitation. Responsive is defined as an offer that addresses the specifications and/or technical requirements expressed in the solicitation for product(s) and/or service(s).

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2. if the SNP recovers the full cost for the products and/or services.

Recovered cost includes, but is not limited to, the actual cost of the product, handling, transportation, and labor. This may include a proportional share of the cost if applicable.

Use of Brand Names for All Contracts

In addition to the specifications and technical requirements in the solicitation, a brand name or equal statement may be added to the description of a product to demonstrate the type of product the CE is attempting to purchase. However, a CE cannot stipulate that the only product that meets the specifications and technical requirements is a brand name product unless it is a sole source procurement, as described in the *Noncompetitive Procurement Method* subsection in this section.

Methods for Issuing Solicitations for an Individual Item or List(s) of Items

There are multiple methods for issuing solicitations that a CE may use to obtain the most competitive pricing for an individual product and/or service or a list of products and/or services.

[NOTE: The CE should keep in mind that a vendor may have more than one responsive product that meets the specifications and/or technical requirements, as described in a solicitation. In these cases, the CE will need to evaluate which responsive product to accept and award the full quantity/volume for that product, as described in the solicitation.]

One Solicitation with Groups of Items to Be Awarded to One or More Vendors

The solicitation describes the quantity, specifications, and technical requirements for each item within a group and provides an explanation that the contract for each group of items may be awarded to different vendors. There may be two groups of items or 20 groups of items. For this type of solicitation, vendors will have the option to offer a price option for one, some, or all groups of items. The most responsible and responsive vendor for each group of items is awarded a contract. A vendor may be awarded the bid for more than one group of items, or each group of items may be awarded to a different vendor.

For Example: A CE issues a solicitation which includes the quantities, specifications, and technical requirements for two groups of listed items: Group 1 with 5 bread items and Group 2 with 7 serving items (trays, utensils). After evaluating the offers, the CE awards the contract for the full quantity of the bread items listed in Group 1 to Company A and a contract for the full quantity of serving items listed in Group 2 to Company B.

Multiple Solicitations for One Item or One List to Be Awarded to One or More Vendors

Each solicitation describes the quantity, specifications, and technical requirements for an item or list of items. The most responsible and responsive vendor for each solicitation is awarded the contract. A vendor may be awarded multiple contracts or a single contract.

For Example: A CE issues 3 solicitation documents: (1) list of 12 condiment items which includes the quantity, specifications, and technical requirements for each item; (2) point of service software program

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with an explanation of specifications and/or technical requirements and needs; and (3) list of 5 types of milk which includes quantity, specifications, and technical requirements for each milk type. After evaluating each offer, the CE awards a contract for full quantity described in the solicitation to the most responsible and responsive offeror for each solicitation—in this case, 3 separate contracts.

One Solicitation for One Item with a Split Award by Percentage of Total Quantity

The solicitation describes the specifications and/or technical requirements for the item and provides an explanation that there will be multiple awards, with each awardee being given a specific percentage of the total quantity for the item. The vendor has the option to offer a price option for one or more of the percentages of the total quantity. The most responsible and responsive vendor for each percentage for the item is awarded the contract. The number of awarded contracts is based on the percentages described in the solicitation.

For Example: A CE issues a solicitation for beef patties with a description that provides specifications and/or technical requirements and indicates that one award will be for 60% of the total quantity/volume, a second for 20%, and a third for 20%. After evaluating the offers, the CE awards three contracts—one for each percentage described in the solicitation—60% of total quantity/volume to Company A, 20% of total quantity/volume to Company B, and 20% of total quantity/volume to Company C.

Market Basket Method—Issuing a Solicitation for a List of Items from One Vendor

A Market basket strategy allows a CE to procure a list of products with varied pricing options for a finite number of products.

For Example: A CE issues a solicitation asking for an offer for 100 food items, which includes specifications and/or technical requirements and the quantity of each item. After evaluating the offers, the CE awards the contract for the full quantity of each item on the list to one vendor.

Each product on the market basket solicitation list must have (1) a description of each product with the quantity to be purchased, (2) specifications and/or technical requirements for each product, and (3) a description of how each product will be awarded on the contract.

The solicitation must include a description of how the offers will be evaluated. There are two types of cost analysis and scoring for market basket method purchasing that can be used:

1. Total Price Cost Analysis and Evaluation Scoring for All Products—This analysis and scoring evaluation is based on the aggregate total cost or by line item total. This is the preferred method of awarding a contract.
2. Simplified Total Cost Analysis and Evaluation Scoring for a Portion of All Products—This analysis and scoring evaluation is based on a representative sample of all products. In this case, a representative sample must include the following:

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- Aggregate value of at least 75% of the total estimated value of the contract
  and
- Highest value products from the list of products to be procured.

Market Basket, Product Specifications

Each product on the list to be procured, including those products not evaluated in the representative sample for a Simplified Total Cost Analysis and Evaluation Scoring, must have clear and accurate specifications and estimated quantities.

Market Basket, Adding Products to an Existing Market Basket Contract

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

However, if the CE determines that adding the purchase of a limited number of products to a current market basket contract would be advantageous, the CE may do so if the following conditions are met:

1. Solicitation and Contract
   The option to add additional products must be included in the original solicitation and contract as a specific percentage of the estimated value of the contract, as described in the *Market Basket Allocation of Purchases by Percentage of the Estimated Contract Value of the Original Contract Chart* below.

Market Basket Allocation of Purchases by Percentage of the Estimated Contract Value of the Original Contract Chart				
Items Listed in Solicitation and Contract	➡	At Least 90% of Total Estimated Value Original Contract		
Items Added to Original Contract List	➡	Up to 10% of Total Estimated Value of Original Contract		
Items Listed in Solicitation and Contract	+	Items Added to Original Contract List	=	100 % of Total Estimated Value of Original Contract

2. Value of Added Products Exceeds Percentage Specified in Solicitation and Contract
   On an existing market basket contract, the purchase of any additional products that exceeds the percentage specified in the solicitation and contract is an unallowable cost. If the value for the added products

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exceeds the percentage specified in the solicitation and contract,[89] a separate procurement for those products must be conducted.

3. Contract Renewal
   The option to renew a market basket contract must be indicated in the original solicitation and contract.
   - The original solicitation and contract's specified percentages for listed and added products apply to all renewal contracts.
   - Instead of using the contract's estimated total value for renewal years, the percentages are applied to the contract's actual total cost for the previously completed contract year.

     For Example: A CE estimated the total cost for the contract to be $95,000. During the first year of the contract, the CE applied 95% of the estimated contract cost to purchase items on the list included in the solicitation and contract. Therefore, the CE was able to use $4,750 for added products.

     At the end of Year 1, the total contract cost was $94,775. The CE chose to exercise the renewal option for a second year. Therefore, the CE was able to use $4,738.75 for added products in the second year.

Market Basket, Simplified Total Cost Analysis and Evaluation Scoring

This method of analysis is appropriate when purchasing a list of products. It is not appropriate for equipment or service contracts.

For USDA Foods, a market basket analysis method may be used for Net-Off-Invoice (NOI) value pass-through contracts and must not be used for fee-for-service processing contracts.[90]

CEs that use the market basket simplified total cost analysis and evaluation scoring method must include the following information in the solicitation: a statement that indicates (1) that the CE will use a simplified total cost analysis and (2) how the CE will apply the simplified total cost analysis and evaluation scoring.

Special Situations, Guidance Related to the Solicitation

The following guidance will provide additional clarification:

Approved Brands

CEs may specify a list of approved brands as part of a product description in addition to the specifications and technical requirements in order to demonstrate

[89] The percentage allocated for added products in the solicitation and contract cannot exceed 10% of the total estimated value of the contract.

[90] See *Administrator's Reference Manual (ARM), Section 14, USDA Foods* and *Section 14a, USDA Foods Processing* for additional information on these types of contracts.

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what types of products are acceptable.[91] In these cases, the CE must include the phrase *or equal* after each approved brand item and indicate that any product that meets the same specification and technical requirement is acceptable.

Bread Specifications

If a bread item has a standard of identity, it is still necessary to specify the whole grain profile. The U.S. Food and Drug Administration (FDA) has standards of identity for non-enriched bread products as well as the whole grain-rich and enriched products.

Contracting with Persons and Companies for Assistance in Developing a Solicitation

When acquiring goods and services, contracting entities (CEs) may contract with persons and companies to provide technical information that the CE may use in drafting procurement specifications and/or technical requirements. This provision is intended to encourage program administrators to obtain information from as many sources as possible to assist them in drafting procurement documents.

However, if a person or company provides technical information to assist a CE in drafting procurement documents, the person or company is prohibited from submitting an offer. See the *Administrator's Reference Manual (ARM), Section 17a, Procurement Procedures* for more information on written procedures related to potential offerors and interested parties involved in developing a solicitation.

CE Survey of Possible Bidders for Product and/or Service Availability

A CE may survey prospective offerors to determine if there are individuals, entities, businesses, or organizations that are able to provide specific products and services. In cases where CEs conduct a survey of potential offerors, the CE must take care to ensure that possible offerors do not assist the CE in preparing the solicitation/contract. If a potential bidder assists the CE in preparing a solicitation or contract, the potential offeror cannot be awarded the contract.

Contract Documentation for Food Products

The CE must include a statement about the required documentation that demonstrates that food products, including commercially prepared products, meet the meal pattern or competitive food standards.[92] CEs should be consistent in the information requested by potential contractors. Any processed food product that does not have a yield listed in the *Food Buying Guide for School Nutrition Programs*[93] needs to either have (1) a CN label; (2) a signed and dated product formulation statement; or (3) depending on the product type and

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91 Many CEs test and approve brands that meet their standards and student preferences. The object of testing must not be to determine the best product on the market but rather to determine which products are of acceptable quality to meet the needs of the program. Product testing procedures must provide for an objective evaluation of tested products, and documentation of test results must be maintained on file with the CE.

92 See the *Administrator's Reference Manual (ARM)*, *Section 7*, *Breakfast Meals; Section 9*, *Lunch Meals*; *Section 10, Afterschool Snacks & Meal; Section 22, Competitive Foods;* and *Section 23, Food Product Documentation* for additional information on required food component contribution and competitive foods.

93 Available at *www.fns.usda.gov/tn/food-buying-guide-school-meal-programs*

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intended use, nutrition fact labels. The documentation must identify the contribution of the food product toward meeting the meal pattern requirements or the nutritional values required for the competitive food standards. A *USDA Foods Fact Sheet* may also be used for processed end products made from USDA Foods.

Flexibility for Growth

CEs may include the possibility of an increased number of products and/or services as long as the increase is reasonable and is clearly outlined in the solicitation. Commonly, this type of option is used (1) to communicate anticipated growth in student population and participation at a specified site or sites or (2) to add another Child Nutrition Program (CNP) at all sites or specified sites.

For enrollment changes to be reasonable, an increase based on student enrollment should correlate to the normal increase in enrollment for the CE and for the specified sites. For the addition of new programs to be reasonable, the solicitation must include the program name, anticipated sites, anticipated student participation, and anticipated date of implementation, which support the possibility of growth.

If the increase included in the solicitation is not reasonable, it is not allowable flexibility for an awarded contract. If the CE does not provide information on the possible program growth in the solicitation, it is not allowable flexibility for an awarded contract.

Generic Terminology

When writing a specification or technical requirement for a product without specifying a brand name, use a generic name or standard of identification that is usually listed under the trade name. A brief description of the product may also be included.

For Example: Generic names of breakfast cereals include the following:

- Toasted oat cereal, donut-shaped
- Puffed wheat cereal, sugarcoated
- Cornflakes, sugarcoated
- Shredded wheat biscuits, small, sugarcoated

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Grade Specifications and/or Technical Requirements

By including grade specifications and/or technical requirements in the solicitation, the CE lets the offeror know that the products must meet or exceed the USDA grading requirements. USDA, Agricultural Marketing Service (AMS) has developed the *Understanding Food Qualities Labels* tip sheet to assist consumers in understanding the grade specifications and/or technical requirements.[94] When the grade specifications and/or technical requirements are omitted, the offer may be made using undesirable products. If a potential contractor offers an item that is only supplier grade, it is a nonresponsive or overly responsive bid.

Minimum Drained Weight—Canned Fruits and Vegetables

It is necessary to specify minimum drained weights in specifications and/or technical requirements for canned fruits and vegetables in solicitations. This ensures the minimum acceptable amount of product per can.

Potential Offerors or Interested Parties Involved in Developing a Solicitation

A potential contractor or another interested party cannot participate in the procurement of items or services by assisting with or drafting the procurement specifications and/or technical requirements, procedures, or documents.

For Example: If a food service management company (FSMC) provides a cycle menu to be included in a solicitation, the FSMC cannot submit an offer for the contract.

If a potential consultant contractor writes a job description for the scope of work to be included in the solicitation, the consultant cannot submit an offer for the contract.

Pre-Bid Meetings for IFB/RFP Contracts

A CE may use a pre-bid meeting to (1) provide information concerning contract performance requirements (2) answer any questions prospective offerors may have regarding the solicitation. A pre-bid meeting cannot serve as a substitute for an offeror formally amending a deficient or ambiguous specification or to disseminate performance requirements in addition to those contained in the solicitation. CEs should consider the following issues in planning and conducting the pre-bid meeting:

Timing of Pre-Bid Meeting

The pre-bid meeting should be held approximately 2 weeks after the release of the solicitation. In the solicitation, the CE should state that it will not accept offers until after the pre-bid meeting is held.

Information Regarding Meeting

The CE is not required to put information about the pre-bid meeting in advertising, but the CE must include information regarding the meeting in the solicitation/solicitation packet. The following strategies will help the CE in preparing for the meeting:

- Prepare an agenda.

[94] Available at *www.ams.usda.gov/sites/default/files/media/AMS%20Product%20Label%20Factsheet.pdf*

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- Request questions in advance so answers can be prepared.
- Assign specific roles to staff attending the meeting:
  - Monitor to ensure that everyone signs the attendance sheet
  - Timekeeper to ensure that the meeting agenda is followed
  - Note taker so information from the meeting can be accurately shared after the meeting
  - Other roles as appropriate

Offeror Attendance

Attendance at the meeting by prospective offerors is strongly recommended but generally should not be required for submittal of an offer. However, a CE may add attending the pre-bid meeting as one of the evaluation criteria.

All potential offerors must be invited to the pre-bid conference. If more than one offeror responds to the public advertisement with an intention of submitting an offer, the CE must conduct a pre-bid conference for all interested offerors at least two weeks after the date of the last public advertisement. If only one offeror responds to the public advertisement to request the solicitation/solicitation packet and express an intention to submit an offer, the CE may conduct a walk-through of the facility instead of a pre-bid conference.

Information Shared at the Pre-Bid Meeting

The CE should tell all attending that the information shared in the meeting is not official until the information has been provided in writing to all potential offerors. All information shared in the meeting should be sent to all prospective offerors simultaneously to ensure that all possible offerors have the same information. See the *Solicitation* subsection in this section for additional information on this topic.

[NOTE: During the meeting questions may bring to light ambiguities, errors, or omissions in the IFB/RFP, which may later be corrected through written amendments to the IFB/RFP.]

If the questions asked at the meeting cause the solicitation/contract to be updated. The CE must send the updated solicitation/contract to TDA to be approved.

Documentation Related to the Pre-Bid Meeting

The CE must retain documentation about the pre-bid meeting. Documentation includes, but is not limited to, sign-in sheet for all in attendance and a summary of all information shared, questions asked, and answers provided.

The CE must document the pre-bid meeting occurred by providing a sign-in sheet for all in attendance, a summary of all information shared, questions asked, and answers provided.

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All information shared during the pre-bid meeting must be shared with all potential offerors using the method described in the solicitation. CEs may use an electronic method for sharing this information.

If there is an addendum to the solicitation, the addendum must be provided to all potential offerors. If more than one addendum is required, each addendum is numbered, and a copy of each addendum will be signed and returned with the offer as additional supporting documentation of receipt of all requirements for consideration as a responsible and responsive offeror. CEs may use an electronic method for sharing an addendum.

Procuring Fresh Fruit and Vegetables

While CEs are encouraged to take advantage of economies of scale[95] in order to get the best pricing, long-term contracts for fresh fruit and vegetables are not always available. In these cases, the CE needs to establish a purchasing schedule in its written procurement procedures that allows the CE to get the most cost-effective pricing.

A fresh fruit and vegetable procurement schedule include, but is not limited to, frequency of procurements and what products to purchase in each season.

[NOTE: A schedule of purchases not only helps the CE obtain a competitive price, but it will also assist menu planners.]

Each time the CE purchases fresh fruit and vegetables, it must be procured correctly. The CE may use any type of procurement method or contract allowed for child nutrition programs.

Single, Multiple, or Split Contract Awards

The CE may award a single, multiple, or split contracts. However, if the CE plans to award multiple or split contracts, it must describe how this will be done in the solicitation so that offerors are able to give their best prices based on this possibility. This includes an indication of quantity for each award that allows the offeror to provide the best price based on the economy of scale.

For Example: A solicitation states that 40% of a product quantity will be awarded to one company and 60% will be awarded to another. An offeror would then be able to quote a price for 40% and/or 60% of the total contract quantity.

Bonding Requirements

USDA has rescinded its previous guidance that bonds are required for all non-construction contracts in excess of $50,000 as of June 1, 2016. Instead, each CE must evaluate the products and/or services to be procured and determine if a bond is needed to safeguard any possible loss of funds.

[NOTE: Many contracts have financial guarantees. These guarantees may serve the same purpose as a bond.)

95 Procuring large quantities of a product to get a better price.

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- All New Non-Construction Solicitations and Contracts—If the CE determines a bonding requirement is needed and if the bonding requirement does not prevent competition,[96] the CE may require a bond for the products and/or services being procured. See the *Administrator's Reference Manual (ARM), Section 18, Food Service Contracts* for additional guidance related to new FSMC contracts and renewals.
- All Construction Contracts—All construction contracts in excess of the simplified purchasing threshold (exceeds $50,000) are required to ensure that the federal financial interest is adequately protected by including the minimum bonding requirements in the solicitation and contract: (1) bid guarantee of 5 percent of the bid price, (2) performance bond of 100 percent of the contract price, and (3) payment bond of 100 percent of the contract price. However, if a CE determines that the federal financial interest is adequately protected without requiring the minimum bonding requirements, as described in 2 CFR 200.326, the CE may request TDA to approve a different minimum security or bonding requirement. TDA will review the request in consultation with USDA.

When Bonds Are Used

If the CE determines a bond is necessary, the bonding requirements may be met through the use of a bid bond, certified check, or other negotiable instrument accompanying an offer as assurance that the offeror will, upon acceptance of the bid, execute such contractual documents as required within the time specified.

The CE must describe the bonding requirements in the solicitation, and the bonding requirements must be included in the final contract.

When a Bid Guarantee (Bid Bond) is Used

The bid guarantee or bid bond is intended to cover the cost of rebidding and/or cost of operating without a contract if an offeror does not execute a contract with the CE after being awarded the contract. The offeror must include a bid guarantee with its offer. The CE will return all guarantees to the unsuccessful offerors when the contract is awarded and to the awarded contract as soon as the contract is signed.

When a Performance Bond Is Used

A performance bond covers the cost of ensuring that the products and/or services are provided as specified by the terms of the contract. If the contractor does not provide the products and/or services, as described in the contract, the performance bond covers the following costs:

1. costs incurred for correcting problems,
2. costs associated with performing the services covered in the contract, and/or

[96] The cost of the bond is paid by the potential bidder. For this reason, if the contract has a high value, it may reduce the number of potential bidders

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3. cost associated with procuring a new contract.

Once the contract is awarded, the contractor must provide a performance bond for 100 percent of the contract price. This bond secures the fulfillment of all the contractor's obligations under the contract as part of the contract deliverables.

When a Payment Bond Is Used

A payment bond covers the cost of materials and workers under the subcontract. If the contractor fails to pay the supplier for products and services provided under the subcontract, the bond covers the cost of paying for those products and/or services.

When the contract is awarded, the contractor awarded the contract must provide a payment bond for 100 percent of the contract price, which assures payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract as part of the contract deliverables.

Public Advertising

The solicitation must be publicly advertised with sufficient response time prior to the bid opening date to allow enough time for potential offerors to respond. Typically, a sufficient amount of time is two weeks with notification being made at least twice during that period. However, CEs should check to see if there are public advertising requirements specified by the agency or organization that has regulatory authority (federal, state, or local) over the entity for all purchases. Moreover, in cases where the offer for an IFB or RFP is expected to be complicated or lengthy, CEs should expand the notification period in these cases.

Full and Open Competition

An IFB or sealed bid and an RFP must be publicly advertised in such a way as to ensure that there is full and open competition.[97]

Highest Possible Circulation

The choice of an advertising publication is expected to ensure that the announcement or notice of the solicitation has the highest possible circulation. Therefore, publicizing a solicitation in a regional newspaper may not be sufficient notification if the circulation of the paper is limited geographically.

For Example: A CE is issuing a solicitation for a maintenance contract for refrigerators located at 20 sites. It is likely there will be enough bidders in the city and surrounding areas to ensure that there are sufficient competitive bids for this contract. In this case, placing a notice in the city/county newspaper with the largest circulation will meet the requirement.

A CE is issuing a solicitation for 7 million single-serve, 5-compartment meal trays delivered in increments of 150,000 over a period of 6 months. After identifying that only 1 possible

[97] See the *Full and Open Competition* subsection in this section for additional information on this topic.

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bidder is located in the county where the CE is located, the CE realizes that it will need to advertise to wider circulation in order to get sufficient competitive bids. Therefore, the CE places its solicitation notice in the city paper with the largest circulation and in a larger newspaper with a circulation that includes 2 other large cities. In addition, the CE posts a notice in an online state-wide bid notice system. Placing a notice in the two newspapers and the online system will meet the requirement.

In addition to print publication, CEs should consider the value of using an online publication of solicitation documents to reach wider audiences.[98]

[NOTE: Under Texas law, public schools and charter schools are allowed to provide public notice for a procurement solicitation in the largest circulation newspaper in the county in which the district or charter school is located. This allowance is in conflict with the USDA guidance provided above. For all procurements using the nonprofit school food service account, the CE must use the USDA guidance.]

Texas Comptroller of Public Accounts, Electronic State Business Daily (ESBD)

All CEs classified as governmental entities may also post invitations for sealed bids (IFBs) or requests for competitive proposals (RFP) to the Texas Comptroller of Public Accounts, Electronic State Business Daily (ESBD).[99] This database is widely available to various types of suppliers across the state.

An advertisement of formal solicitations must contain the following information at a minimum:

- Address and telephone number for location where any potential offeror may obtain the solicitation
- Bonding requirements, if applicable[100]
- Date, time, and location of the opening of offers and awarding of contracts
- Deadline and method for submission
- General category, specification, or technical requirement for the item to be bid

  [NOTE: A CE may choose to put detailed specifications and/or technical requirements on a website or in a separate document that is provided on request instead of including lengthy specifications and/or technical requirements in public advertising. If the CE chooses to take this option, the CE must include the location and method to access the detailed specifications and/or technical requirements in the advertising announcement.]

- Indication of how the contract will be awarded
- Method and criteria for the evaluation of offers

  [NOTE: A CE may choose to include a summary list of the method and criteria for evaluation in the advertisement instead of the full evaluation rubric. If the CE chooses to

98 The Texas Comptroller of Public Accounts, Electronic State Business Daily (ESBD) is an example of an online publication method of solicitation.

99 Available at *http://www.txsmartbuy.com/.*

100 See the *Bonding Requirements* subsection in this section for additional information on this topic.

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take this option, the CE must include the location and method to access the detailed information on the evaluation method and criteria in the advertising announcement.]

- Method of payment
- Name of the CE

Cooperative Purchasing

CEs may use cooperative purchasing to take advantage of economies of scale. See *Administrator's Reference Manual (ARM), Section 17c, Cooperative Purchasing* for detailed guidance on this topic.

Agent Purchasing Contract

CEs may also procure an agent (also called a third-party vendor) to make purchases on behalf of the CE. The guidance in *Administrator's Reference Manual (ARM), Section 17, Cooperative Purchasing* and *Section 18, Food Service Contracts* will also be helpful in addition to the following guidance. An agent is defined as

> A person or business that is procured to act on behalf of the CNP operator to procure products and/or services

CEs must use the following guidance when they procure an agent to act on their behalf:

Conflict of Interest for an Agent Contract

USDA also prohibits third-party contracts that procure products or services from a third-party's parent company, subsidiary of the parent company, or other entities with a financial relationship to the third-party. This includes, but is not limited to, an FSMC purchasing from FSMC-owned or affiliated vendors. These types of situations represent a real or apparent conflict of interest, limit competitive procurement, and result in school nutrition funds to be used to pay for duplicative services.

An agent, agent's parent company, or subsidiary company of the parent company or the agent publishing a solicitation on behalf of a CNP operator (or CNP operator-only cooperative) cannot respond to this solicitation. Responding to this solicitation would constitute an unfair advantage and be in violation of federal procurement requirements.

Establishing an Agent Contract

An agent must be properly procured following USDA procurement regulations in order for the agent to procure on behalf of the CE. A CE paying a fee does not constitute a solicitation or contract with an agent. Agents cannot be procured if they do not openly provide the full price per purchase unit for their service.

Fees for an Agent Contract

Fees for an agent to procure on behalf of the CE must be fixed and based on purchase unit, volume, or cost.

The fee cannot be a percentage of the cost.

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Procurement for an Agent Contract

The solicitation and contract must require that the agent conduct all competitive procurement methods with the CE's interests solely in mind. The agent must apply USDA procurement requirements for all purchases made on behalf of the CE, including State and local procurement requirements if more restrictive as long as these regulations are not in conflict with USDA regulations. The solicitations and contracts for all purchases that the agent procures on behalf of the CE must include a statement that USDA regulations must be followed. It is the CE's responsibility to retain documentation required to demonstrate compliance with regulations.

- Credits, Rebates, Discounts, and USDA Foods Values: If there are financial transactions that include credits, rebates, discounts, the agent must provide the CE with the credits, rebates, and discounts. If any transactions conducted by the agent involve USDA Foods values, the agent must ensure that the CE receives these credits. In these cases, the agent must provide the CE with documentation that demonstrates compliance.
- Material Change: Material change requirements apply to a procured agent. Therefore, the solicitation and contract must clearly describe the expected services to be provided by the agent over the course of the contract.
- Pre-Existing Contractual Relationships: Agents may not use pre-existing contractual relationships instead of conducting a competitive procurement on behalf of a CE.
- Price: A price based on a cost-plus percentage of cost is not allowed for any purchases made on behalf of the CE by an agent. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).

CEs are responsible for monitoring contractor performance to ensure compliance with all contract provisions. See *Administrator's Reference Manual (ARM), Section 16a, Contract Management* for additional information on the requirements for managing agent contracts.

Consultant Contracts

Consultant contracts are intended to provide short-term or temporary services when a CE lacks the necessary resources, skills, and abilities to manage and operate the program effectively and in compliance with regulations.[101] If the consultant services include implementing or managing

[101] Before procuring a consultant, a CE should contact its ESC child nutritionist to see if the ESC is able to provide the needed support. See *Administrator's Reference Manual (ARM), Section 18, Food Service Contracts* for additional information on this topic.

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the day-to-day operations[102] of the program, a food service management contract should be used instead of a consultant's contract.

Short-term or temporary services may include a single consultation or a series of consultations over a defined period of time. If a consultant's contract is reissued multiple times over multiple years, the contract is no longer a temporary contract. See *Administrator's Reference Manual (ARM), Section 18, Food Service Contracts* for additional information on consultant contracts.

Franchise Agreements

The services and/or products of a franchise agreement must be properly procured through a competitive process, and the income and costs generated by the agreement must be compliant with financial regulations as well.[103] This includes, but is not limited to, the following requirements:

- All equipment purchases with food service funds must be properly procured.
- Franchise agreement restrictions must not create circumstances that cause the CE to be noncompliant with the meal pattern or other program requirements.
- Franchise agreements must have a duration of no more than one year and may include an option for a renewal clause.[104]
- Operational practices of the franchise must be in compliance with all applicable local and state health and safety regulations related to the purchase and resell of food under the franchise agreement.

It is the CE's responsibility to ensure that all terms and conditions of the franchise agreement and operation of a franchise are compliant with all local, state, and/or federal regulations. To ensure that the franchise agreement is compliant with regulations, TDA recommends that the CE consult with its legal counsel before creating a franchise agreement.

Procurement, USDA Foods Processing

A CE must competitively procure its USDA Foods processor. Moreover, any entity acting on behalf of the CE must also competitively procure its USDA Foods processor. CEs must take care after they have signed a contract with a processor not to add (piggyback) other purchases and/or services that will create a material change to a contract.[105]

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[102] Day-to-day operations include, but are not limited to, menu planning, inventory management, food production records, and common operational tasks.

[103] See the *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on this topic.

[104] A renewal clause cannot be automatic. Contracts may be renewed for an additional year four times.

[105] See the *Material Change* subtopic in the *Contracts* subsections in this section for additional information on this topic.

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The CE must also ensure that the USDA Foods values are credited back to the CE by its processor. The processor must provide adequate documentation to demonstrate that the crediting was done correctly. The Food Distribution Program Handbook is available at *www.SquareMeals.org* for details on USDA Foods. *Administrator's Reference Manual (ARM), Section 14, USDA Foods* and *Section 14a, USDA Foods Processors* also provide additional guidance.

Vendor List

For non-FSMC contracts, a CE may use a vendor list that the CE established when awarding contracts as long as the following criteria are met:

- The CE must have written procedures for how it will use vendor lists.
- The CE must include a statement in the solicitation that the contract may be awarded to an entity on a vendor list.
- The CE must include a description of how a vendor is approved to be on the list. This includes an option for vendors to achieve approval after the solicitation has been released, but before the due date for offers.
- The CE must ensure that the use of a vendor list does not limit competition.

Awarding the Contract

The CE must award the contract to the offeror that is most responsible and responsive to the solicitation based on the most cost-effective use of federal funds. CEs must retain documentation demonstrating why the offeror was awarded the contract.

In the evaluation process, the CE must not consider nonresponsive or overly responsive[106] features—the CE must only consider the responsive elements in the bid in its evaluation. A contract that is awarded based on incentives, investments, and/or value-added or overly responsive offers has not been properly procured.

After Offers Are Received

When all offers have been received, the CE must determine if the specifications, technical requirements, terms, and conditions, as described in the solicitation, have limited the number of offerors who were able to submit an offer:

Was there an adequate number of offerors that responded to the solicitation? Was full and open competition restricted?

- If there is not an adequate number of offers submitted, the CE must determine how to address the identified limitations in its solicitation and/or in its method for public advertising and reissue the solicitation.

[106] An overly responsive feature is one that is not requested in the solicitation.
For Example: The CE listed a specification that the POS system automatically generates a letter to households to notify them about a student's eligibility. A responsive offer would provide information on how the vendor's system provides notification. An overly responsive offer would provide information on how the vendor's system provides notification and additional information on how the vendor's system automatically sends emails to households about a student's account.

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[NOTE: An inadequate number of offers do not automatically indicate that the CE should pursue a noncompetitive procurement method.[107] A lack of offers is often caused by a poorly written solicitation or advertising that targets too small of a population base and not a lack of contractors or vendors capable of supplying the products and/or services to be procured. Therefore, the CE must provide notification that the CE is not awarding a contract, review its solicitation, make appropriate changes to the solicitation, and reissue the solicitation.]

- If there are an adequate number of offers submitted, the CE should move to the next step in its procurement procedures.

Opening Invitation for Bids (IFBs) Received

- Each offer submitted for an IFB solicitation must be time-stamped and dated upon receipt. A CE must not open sealed offers (IFB) before the announced date or at a location other than the location publicized.
- Unsealed offers or offers received after the designated time and date cannot be accepted.
- The CE is not required to announce the winning offer at the opening, but the name of each offeror and the offer price must be read aloud and recorded as each offer is opened. Other information may also be read aloud for each offer: products included in offer, payment terms, delivery date, and such.
- In cases where the scope of work and specifications and/or technical requirements require additional evaluation to determine if the offer is responsive and/or responsible, the CE is not required to announce the winning offer at the time of the opening, but must state the offer price and if the offer appears to be responsible and responsive.
- In cases where the CE cannot announce the winning offer formally until the school board or other authority has approved the contract award, the winning offeror should be notified of the CE's intent to award the contract, but must be informed of the need for approval by the board or other authority and the timeframe for approval.
- Once the timeframe established by the CE for bid protests has passed (and settled, if applicable) and final approval is obtained, the CE should provide written notice to the successful offeror.
- Unsuccessful offerors should be notified promptly.[108]

Opening Requests for Proposal (RFP) Received

- A CE may open submitted responses from RFP offers to determine if all requested documentation is included with the offer or for clerical errors. If CEs chooses to do this, they should set a specific date for opening offers and

[107] See the *Noncompetitive Procurement Methods* subsection in this section for additional information on this topic.

[108] The CE should contact their legal counsel to ensure compliance with all state procurement regulations regarding the intent to award and the protest period and to identify the CE's responsibilities regarding notification to unsuccessful offerors.

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set a specific date and method for sending notification for missing documentation or clerical errors. This includes allowing time for the offeror to submit an updated offer.

- All offerors must be given the same period of time to submit updated offers. Therefore, if the CE chooses to open the offers, it must return all offers lacking complete documentation or with clerical errors at the same time with the same amount of time for resubmission.

  For Example:

  - March 1, 2016, 5:00 p.m.: Due date for all offers
  - March 2-3, 2016: Period during which the CE will ensure that all offers have required documentation or if there are clerical errors
  - March 4, 2016: Date on which notification is sent to all CEs missing documentation or with clerical errors
  - March 9, 2016, 5:00 p.m.: Due date for all corrected offers

Evaluation of the Bid and Award of Contract

Responsible Contractors

The CE must only award contracts to responsible contractors who possess the ability to perform successfully under the terms and conditions of a proposed procurement and contract.

When determining if a contractor is responsible, the CE will consider the bidding contractor's integrity, compliance with public policy, a record of past performance, and financial and technical resources.

Responsive Contractors

When a CE is evaluating the documentation submitted by an offeror, the CE must only consider elements that are specifically responsive to the technical requirements presented in the solicitation for offers.

Contractor provided incentives (bonuses, stamps, equipment, or other benefits) that will be received by the CE, the school nutrition program, or enrolled students that may influence the contract award must be treated the same as a gratuity, favor, or anything of monetary value given to a school nutrition program employee, officer, or agent of the CE—these types of incentives may create a conflict of interest. These kinds of incentives are nonresponsive or overly responsive elements and must not be considered in awarding the contract. See Administrator's Reference Manual (ARM), Section 17a, *Procurement Procedures* and *Section 15, Program Integrity* for more information on ethical standards.

Cost as Primary Consideration for Awarding the Contract

No matter the type of contract, the cost must be the primary consideration in awarding a contract.

For all contracts, the contract is awarded to the offer that meets all of the terms and conditions described in the solicitation with cost as the primary consideration. Primary consideration

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means giving the cost criteria the greatest weight among all criteria.

For Example: A CE has five criteria in the solicitation evaluation. The maximum possible points are given according to the following distribution:

Criteria	Possible Points
Cost	35
Financial stability, business practices	5
Reporting systems	10
Product specifications and/or technical requirements	30
Delivery schedule	20

In this case, the cost is the primary consideration—cost is given the highest number of points among all of the criteria.

A CE, or any entity acting on a CE's behalf, must not make a purchase or award a contract with a cost-plus percentage of cost pricing structure.

Contract Negotiation Prior to Contract Award

When a solicitation contains qualitative elements, it is common for guidance to use the word *negotiate* when CE determines which offer will be awarded the contract. In these cases, the word *negotiate* does not mean that there is a give and take interchange resulting in contract award, i.e., a give and take approach may stifle full and open competition[109] if it creates options that were not addressed in the solicitation. Instead, for this purpose, *negotiate* means that the CE may seek clarification or additional detail. It does not mean to negotiate equal specifications and/or technical requirements.

As the CE evaluates the offers submitted, it may find that several vendors are responsive to the solicitation but have very different approaches. In this case, the CE may conduct *negotiations* with the contractors of the top-ranked offers to ask for clarification about the responsive features—the CE may ask each contractor to explain further how it will address specifications and/or technical requirements or to describe further a process or product included in the offer.

For Example: The CE should not say Contractor A is also offering to provide this special service or product: Can you? Instead, the CE might ask a contractor to define further a service the potential contractor will provide.

These *negotiations* are not intended to give one contractor an advantage over another; they are intended to make sure the CE has a clear understanding of what each contractor is offering. At the end of the negotiation, the CE will award the contract to the most responsible and responsive contractor.

After all offerors have provided clarification, the CE may also ask all or the top offerors to resubmit a *best price and final offer*.[110]

[109] See the *Full and Open Competition* subsection in this section for additional information on this topic.
[110] When an offeror submits a *best price*, the offer may be a lower price or the same price.

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Awarding a Contract with Contingency Approval

If a contract has a contingency approval by TDA or for other purposes, contingency documentation must be submitted and approved before the costs are allowable. Any costs incurred before the contingency approval is resolved, are unallowable.

Awarding a Cost-Reimbursable Contract

A cost-reimbursable contract is effective when there are uncertainties involved in the contract performance affecting price estimates. The contract is awarded to the vendor conforming to all the material terms and conditions of the solicitation and with cost as the primary consideration.[111] A cost-reimbursable contract cannot be awarded using an IFB solicitation; it must be awarded using an RFP solicitation.

Awarding a Firm Fixed-Price Contract

A firm fixed-price contract is most effective when there are clear and detailed specifications and/or technical requirements. The contract is awarded to the vendor conforming to all the material terms and conditions of the solicitation and whose offer or bid includes the best price. A firm fixed-price contract may be awarded using an IFB solicitation or an RFP solicitation.

Awarding a Noncompetitive Contract (Including Sole Source)

Before a CE can award a contract to a noncompetitive provider, the CE must ensure that the award of the noncompetitive contract is awarded appropriately, as described in the *Noncompetitive Procurement Method* subsection in this section.

Special Situations, Awarding the Contract

CEs must use the following guidance in awarding a contract:

Awarding a Contract to an Offeror Other Than Lowest Cost Offeror

There are cases where a CE can choose not to award a contract to the offeror with the lowest cost—when the lowest offeror is not the most responsible and responsive.

If the CE chooses to award the contract to a contractor that is not the lowest cost offeror, the CE must have adequate justification and documentation. In these cases, the CE must retain all documentation related to that justification.

[NOTE: Documentation about previous problems with an offeror includes, but is not limited to, notes or examples of prior practices by the offeror, letters sent to or received from the offeror, and phone call notes.]

Common reasons for not awarding the contract to the lowest offeror may include the following:

- The offer is not responsive to the specifications and/or technical requirements.

[111] See the *Costs as Primary Consideration for Awarding the Contract* subsection in this section for additional information on this topic.

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- The offeror is not responsible, i.e., contractor's integrity as documented by a record of past performance or references indicates a poor record of meeting expectations.
- The financial and technical resources of the contractor are not adequate to demonstrate the contractor is responsible.
- There is evidence of the contractor's noncompliance with public policy.

Awarding the Contract to Multiple Contractors or Splitting the Contract

The CE may award the contract to multiple contractors or split the contract as long as the CE has provided notice of this possibility in the solicitation, and the award is made as it is described in the solicitation.

Awarding a Contract That Includes Consultant Contracts, Expenses

If a consultant contract or agreement includes reimbursement for specific types of expenses, such as travel, these expenses must be described and specified by amounts and by type in the offer in order for the offer to be responsive.

If a consultant's offer is written so that expenses (including travel) do not have an allocated amount in the offer for this purpose, the payment of the expenses is an unallowable expense to the school nutrition program.

The CE may allow the offeror to provide an estimate of expenses, but the estimate must be a realistic expectation of the costs based on the specifications and technical requirements provided in the solicitation.

If the scope of work changes and necessitates an increase in the consultant's expenses, additional expenses may constitute a material change that may result in a rebid of the contract.

Awarding a Market Basket Contract

CE must apply the following guidance for market basket contracts:

Contract Award for Market Basket Contracts

- In all cases, (1) the contract must be awarded to the most responsive and responsible offeror; (2) price must be the primary evaluation factor; and (3) contracts must be awarded to the lowest offer or the offer that is most advantageous to the program.

Awarding a Market Contract Evaluation

A CE may use a Total Price Cost Analysis and Evaluation Scoring for All Products or a Simplified Total Cost Analysis and Evaluation Scoring for a Portion of All Products as described in *Market Basket Method—Issuing a Solicitation for a List of Items from One Vendor* subsection in this section. The method for evaluation and analysis for awarding the contract must be the same as described in the solicitation for the contract.

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Pricing for All Products for Market Basket Contracts

Even though the CE may base the decision for the award on the cost analysis and scoring of a representative sample from the market basket list, the CE must obtain prices for all products on the list to be purchased for the contract.

If the pricing for the representative sample is used to award the contract, the prices for the products not included in the representative sample must be reasonable[112] and comparable to market prices for the same products in the geographic area for the quantities purchased.

For Example: A CE issues a solicitation asking for 30 pounds of peaches, 80 pounds of tomatoes, 200 pounds of ground beef, .5 pound of black pepper, 1 pound of oregano, and 10 pounds of sour cream.

For the products listed above, the CE plans to use the Market Basket, Simplified Total Cost Analysis in awarding the bid and stipulates in the solicitation that the cost analysis will be based on the total price for the peaches, tomatoes, and ground beef. After receiving bids, the CE (1) evaluates the prices for the peaches, tomatoes, and ground beef for the two pricing options and (2) ensures that the costs for the pepper, oregano, and sour cream are reasonable. Then, the CE chooses the vendor that offers the lowest total price for the peaches, tomatoes and ground beef and offers a reasonable price for the other items.

[NOTE: Ensuring that the non-representative sample prices are comparable is central to awarding cost-effective market basket 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 products to win the contract and raising the prices for the non-representative sample products to make up the difference.]

No Offers Received

If a CE releases a solicitation and no offers are returned, the CE should first determine if there is a problem with the solicitation. If there are problems with the solicitation, the CE must restart the procurement process and address all limitations.

The following questions will assist the CE in determining what steps to take to address:

- Was the notice (or solicitation) sent to all potential offerors?
- Was sufficient time allowed for potential offerors to respond?
- Were specifications and/or technical requirements unduly restrictive, so offerors were not able to bid?
- Were unrealistic procurement or delivery schedules included or requested?

[112] See *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on reasonable cost.

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Nonresponsive or Overly Responsive Offers

If an offeror does not submit an offer that is responsive to the specifications and/or technical requirements described in the solicitation, the offer is considered nonresponsive or overly responsive.

Any extra products and/or services not described in the solicitation that are included in the offer are nonresponsive or overly responsive elements. The CE cannot consider the nonresponsive or overly responsive elements in awarding the contract. Extra products and/or services include, but are not limited to, the following:

- Additional equipment
- Prizes
- Stamps that can be used to obtain another item or service
- Scholarships

A nonresponsive or overly responsive offer cannot be awarded the contract.

If one contractor offers a product and/or service that is equal to another contractor's product and/or service but has additional special features beyond the specifications and/or technical requirements in the solicitation, the CE must be able to document why those additional special features are required, not just preferred.

Offers Received After the Due Date

The CE should address how it will handle offers received after the due date in its written procurement procedures and indicate that it will not accept offers after the due date in the solicitation. The CE is not required to open offers received after the due date. To provide an accurate record, the CE may record the names of offerors and date of receipt in a log in case there is a protest.

Opening Offers Prior to the Due Date

A CE may open offers before the due date to check for minor problems (i.e., missing date, signature without printed or typed name). This check for minor problems cannot be used to change the offer—it can only be used to provide notice to the offeror and allow the offeror to correct minor errors.

However, to ensure that the procurement process is fair and open, the CE should open and check all received offers before the due date has passed and send a notice to every offeror at the same time with the same revision deadline to submit a correction before the due date (i.e., 24 hours).

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Request for Best Price

The CE may ask the top offeror(s), as determined by the rubric/scale evaluation, to resubmit the best possible price before awarding the contract. If the CE chooses to make this request, the CE cannot change the specifications and/or technical requirements provided in the solicitation or change its rubric/scale used for evaluating offers. The offeror is also not required to change its price offer. While the request for the best price allows the CE to see if it is possible to obtain a more competitive price, it is not intended to be a give and take negotiation.

Request for Clarification

If the CE determines that an offeror is the most responsible and responsive as demonstrated by the score on the rubric or scale used to evaluate offers or the price, but the offeror does not fully respond to one of the specifications and/or technical requirements, the CE can request additional information to determine if the offeror can meet the specification and/or technical requirement as long as the CE does not provide additional information other than what was on the original solicitation document.

Based on the clarification provided by the offeror, the CE may award the contract or ask for a rebid. Asking for a rebid is often the best action, particularly, when the clarification provided by the offeror demonstrates the specifications and/or technical requirements in the solicitation were not clear.

Contracts

Once an offeror has been awarded a contract, the CE ensures that the resulting contract reflects the specifications and/or technical requirements laid out in the solicitation. A contract is

> a formal, legally enforceable agreement (terms and conditions) between a buyer (the CE) and a seller (contractor) that clearly and accurately describes the products and/or services to be delivered or performed and sets forth the method and the compensations the contractor receives when products and/or services are provided.

A CE must ensure that all contracts are the result of proper procurement procedures. All contracts, no matter the procurement method, must be awarded to a responsible and responsive offeror whose offer is the most advantageous to the program. For a fixed-price contract, the bid is awarded to the most responsible and responsive offeror with the best price. Third-party entities that procure on behalf of the CE are required to follow this same guidance.[113]

[113] In cases where third-party entities have the capability to provide additional products and/or services, but these products and/or services were not part of the original solicitation, purchasing these products and/or services without proper procurement may result in unallowable cost. An unallowable cost or expense cannot be paid using school nutrition program funds.

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Small Purchase Contract

While a CE using a small purchase method may not have developed a solicitation that is comparable to one developed for an IFB or RFP, the CE must document activities and procedures related to the following:

- Method or strategies used to obtain offers
- Product and/or service specifications and/or technical requirements communicated to potential offerors
- Cost quotes submitted by offerors

It is the responsibility of the CE to ensure that the contract requirements mirror those found in the solicitation and that all of the terms of the contract are being met. Any costs arising from a contract that was improperly procured are unallowable to the school nutrition program.

Elements of a Contract

The following elements, at a minimum, should be included in a contract.

General Contract Requirements

- Contract duration
- Identification of the parties in the contract
- Required compliance certifications
- Type of contract (i.e., fixed price or cost-reimbursable with fixed fee)

Contract Management

- Contract renewal options, including terms, conditions, and (as applicable) provisions for price changes

  [NOTE: Contracts may be renewed for an additional one year four times. After the fourth renewal, the contract must be rebid.]

- Contract termination rights for cause and convenience
- Contractor recordkeeping requirements
- Default and breach of contract provisions, remedies, cancellation procedures, and penalties

  For Contracts in Excess of $10,000

  - Termination for cause and for convenience clause with an explanation of when the clause applies and the basis for settlement

  For Contracts That Exceed the Simplified Acquisition Threshold

  - Administrative, contractual, or legal remedies in instances where contractors violate breach of contract terms which includes sanctions and penalties as appropriate

    [NOTE: The most restrictive simplified acquisition threshold local or state that applies. See the ***Procurement Purchasing Methods*** subsection in this section for additional information on the simplified acquisition threshold.]

- Procedures for contract modification

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Invoicing and Payments

- Method for tracking costs to ensure that the CE receives credits, rebates, discounts, USDA Foods values or and other applicable credits

  [NOTE: CEs may include a requirement for a routine auditing procedure as defined in the solicitation.]
- Method to ensure that an adjustment or escalation clause is applied both upward and downward in alignment with the index at the frequency, as described in the solicitation
- Procedures for issuing payments, including sufficient information included on invoices to determine if costs are allowable
- Ownership of any equipment or software purchased by the contractor on the CE's behalf or for the contract
- Procedures for contract modification
- Required compliance certifications
- Sanctions for noncompliance

Other Requirements

- Laws and regulations that govern the contract, including the provisions described in the *Other Regulatory Contract Requirements for Solicitations and Contracts* subsection of this section.

Products and/or Services to Be Provided

- Product specifications and/or technical requirements
- Professional certification requirements or minimum levels for required experience or education[114]
- Sanitation and licensing requirements
- Scope of work (i.e., a detailed description of duties to be performed, hours of work, performance descriptions, levels of performance, and required outcomes)

Viable IFB (Sealed) Bid Requirements

For a sealed bid to be awarded a contract—viable, the following conditions must be met.

- A firm fixed-price contract award will be made in writing to the lowest responsible and responsive offeror. 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 triggered.
- All offers must be publicly opened at the time and place prescribed in the invitation for bids (IFB) solicitation.
- Any or all offers may be rejected if there is a sound documented reason.

[114] See *Administrator's Reference Manual (ARM), Section 27, Professional Standards* for more information on requirements for continuing education/training and hiring for school nutrition program staff.

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- If the IFB required a separate presentation of a bid bond, coversheet, or attachment for the offerors to use to demonstrate compliance with the IFB's responsiveness criteria, these documents may be pre-screened to determine if the bid is responsive.
- Two or more responsible offerors are willing and able to compete effectively for the business.

Dispute Resolution

A well-written contract provides a method to resolve any disputes whether the dispute is caused by poor communication or results from a possible breach of the contract. The written contract should include clauses, which make the resolution of problems, including litigation, mediation, or arbitration, feasible and economically viable. CEs may want to consult with an attorney on the appropriate contract statement necessary to address dispute resolution.

For Example: When an attorney fee clause which stipulates that the loser pays the prevailing attorney's fees is added to a contract, it makes litigation financially possible, and it serves as a motivator for all parties to adhere to the contract because there is a cost for breach of contract other than losing the contract.

Duration of Contract

For the school nutrition program, the duration for all contracts may be less than one year but must not be longer than one school year with an option to renew. It is common for CEs or contractors to say that they have a multi-year contract; however, the school nutrition program does not allow contracts for a term of more than one year.

There is an option to renew for four additional contract periods. If there is a material change, the contract must be rebid.[115]

Once a CE has a signed contract, the CE is not free to obtain offers or quotes for the contracted products and/or services from another contractor or to purchase the same products and/or services from another contractor unless one the following circumstances occur:

- The specified quantity of product as written into the contract has been purchased.
- The amount to be purchased is in addition to the quantity of the products and/or services stipulated in the contract. In this case, the CE is still obligated to purchase the quantity specified in the contract.

  If the situation is appropriate for the CE to purchase from a second contractor, the CE must use the appropriate informal or formal procurement method for the purchase.

When CEs consolidate, current contracts or purchasing agreements are null and void.

[115] See the *Material Change* subsection in this section for additional information on this topic.

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Material Change

Material change applies to all procurement contracts. When a CE allows a winning offeror to make changes to contract terms that are materially inconsistent with the original solicitation for the contract, the CE has undermined full and open competition[116] by denying all possible contractors the opportunity to compete under the same terms and conditions.

Anticipated Change

Changes in the terms and conditions of the contract include, but are not limited to, quantity and scope of the products and/or services to be provided. If the CE stipulates expected changes in the solicitation, all potential offerors are able to include that information in their offer—it is a full and open competition and unlikely to be a material change.

The CE must rebid the contract when a change in purchasing products and/or services is inconsistent with the underlying solicitation on which the contract was based—a material change.

Any costs arising from improper procurement are unallowable to the school nutrition program.

A material change most often occurs in one of two situations:

- When the solicitation does not mirror the contract.
- When a change is made to a contract that alters the terms and conditions of the contract substantially enough that other potential contractors who responded to the solicitation may have bid differently and more competitively if they had known about the altered terms and conditions.

Making changes to the contract terms includes the purchase of products and/or services not included in the contract or within the terms of a contract renewal.

[NOTE: A solicitation that is written to be an open-ended procurement of additional products and/or services is likely to be an inappropriate procurement. When procurement is not done correctly with full and open competition, the cost of the contract and legal defense of the contract are unallowable expenses to the school nutrition program.][117]

Forecasting is an essential tool to make sure that a material change does not occur.[118] If a CE anticipates enrollment growth or a reconfiguration of site attendance zones, the CE should consider adding the anticipated changes to the solicitation and contract. However, even if the solicitation and contract include flexibilities based on anticipated growth or reconfigurations, the CE must still evaluate the impact of growth or reconfiguration to determine if a material change has occurred. Any increase in the purchase of products and/or services that is not reasonable may be a material change and may require a rebid of the contract.

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116 See the *Full and Open Competition* subsection in this section for additional information on this topic.

117 See the *Methods for Issuing Solicitations for an Individual Item or List(s) of Items* subsection of this section for additional information on this topic.

118 See the *Forecasting* subsection in this section for additional information on this topic.

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Material Change, Cooperative Contracts

A change—increase or decrease—in cooperative membership may cause a material change. Therefore, Operator-Only Cooperative agreements must clearly describe the expected level of membership for each participant, including, but not limited to, adding members and canceling membership. See the *Methods for Issuing Solicitations for an Individual Item or List(s) of Items* subsection of this section for additional information on this topic.

Material Change, Determination

The CE must consider the following issues when determining if there has been a material change:

Increase or Decrease to the Cost of the Contract

If there was an increase or decrease to the cost of the contract, would the increase or decrease in cost have caused offerors to quote the cost of products and/or services differently if the increase or decrease had existed at the time of the solicitation?

If yes, it is a material change. The CE must rebid the contract.

Increase or Decrease in the Products and/or Services

Would the prospective change materially affect the scope of services, types, and/or volume of the products and/or services in both the solicitation and resulting contract?

If yes, it is a material change. The CE must rebid the contract.

New Products and/or Services

Are there new products and/or services added to an existing contract?

If yes, it is a material change. The CE must rebid the contract.

If there is a material change to the contract and the CE does not rebid the contract, any contractor that responded to the solicitation and did not win may file a protest to the contract award.[119]

Protest of Contract

An interested party[120] may protest any of the following situations:

- Solicitation or another request for offers for a contract for the procurement of property or services
- Cancellation of a solicitation or other request
- Award or proposed award of a contract
- Termination of a contract, if the protest alleges that the termination was based on improprieties in the administration of the contract.

[119] See the *Protests* subsection in this section for additional information on this topic.

[120] An interested part is defined as any entity or person who may be affected by a situation, any entity or person who has a real or direct interest in action being proposed or taken.

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CEs and any entity acting on their behalf must have written procurement procedures in place to address and resolve protests or disputes relating to procurements.

- It is the CE's responsibility to ensure that all protests are resolved.
- The CE and any entity acting on their behalf must follow its written procedures to resolve protests.
- The CE and any entity acting on their behalf must retain all documentation related to protests.
- The CE must notify TDA when a protest is received.[121]

The USDA Food and Nutrition Service (FNS) will also accept protests related to solicitation from a protestor directly if the following conditions have been met:

- The contract was made in connection with the School Nutrition Program (SNP).
- The protestor has exhausted all administrative remedies with the CE and any entity acting on the CE's behalf (grantee and subgrantee) before pursuing the protest with FNS.
- Violations of federal law or regulations and the standards of this section exist.[122]
- Violation of a CE's or entity acting on CE's behalf (grantee or subgrantee) protest procedures exists for failure to review a complaint or protest.

Protests received by FNS other than those specified above will be referred to the CE or the entity acting on behalf of the CE (grantee or subgrantee).

Managing the Contract

The CE must have procedures in place to ensure that contractors perform in accordance with the contract or purchase order terms, conditions, specifications, and technical requirements—manage the contract. See *Administrator's Reference Manual (ARM), Section 16a, Contract Management* for additional guidance on this topic.

Additional Resources

TDA Resources

TDA resources are available on the SquareMeals website, *www.SquareMeals.org*.

- *Approved Purchase List*—Form designed to provide a list of products approved to purchase with information that will be helpful to menu planners and staff managing the contract.
- *Budget Tool*—Form designed to assist the CE in tracking various incomes and costs of the program, including cost analysis for products and/or services.

[121] See the Contract Information for the Texas Department of Agriculture (TDA), Food and Nutrition page, which follows the table of contents for information on contracting TDA.

[122] Violations of state or local law will be under the jurisdiction of state or local authorities.

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- *Buy American Checklist for Non-Domestic Food Product Purchases*—Checklist to assist CEs in determining if a non-domestic product is acceptable.
- *Procurement Snapshot Tool*—Form designed to provide a summary of procurement activities for the program year or fiscal year.
- *Micro-Purchase Log*—Form designed to track purchases made under the micro-purchase method.
- *Informal Small Purchase Log*—Form designed to track offers and offerors for small purchase procurement.

Institute for Child Nutrition (ICN)

- *First Choice*, a handbook for developing an effective procurement process, available at *www.theicn.org*
- *Procurement in the 21st Century*, manual providing specific details on the procurement process, available at *www.theicn.org*

  [NOTE: This resource *is not a guidance document, but it does provide useful information.]*
- *State Agency Guidance on Procurement*, a series of web-based training on procurement, available at *www.theicn.org*

USDA

- *Understanding Food Qualities Labels*, a manual provided by USDA's Agricultural Marketing Service (AMS) that provides a guide to product labeling that indicates quality, available at *www.ams.usda.gov/sites/default/files/media/AMS%20Product%20Label%20Factsheet.pdf*

Other Websites

- Texas Procurement and Support Services (TPASS) (Formerly Texas Building and Procurement Commission), available at *www.window.state.tx.us/procurement/*
- Comptroller of Public Accounts, available at *www.cpa.state.tx.us*
- Universal Public Purchasing Certification Council/National Institute of Government Purchasing (NIGP), available at *www.nigp.org*
- USDA Farm to School website, available at *www.fns.usda.gov/farmtoschool/*

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Records Retention

The CE is required to maintain an organized accounting and financial system that includes documentation that demonstrates compliance with program regulations and the history of all procurements. Records retained for procurement must be sufficient to detail the history of procurement for each procured product and/or service, including but not limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. CEs have the option to maintain records on paper or electronically.

Information Box 8

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

These records must be accessible to appropriate CE staff members and federal or state reviewers. TDA may request procurement documentation during both offsite and onsite administrative review processes as well as any additional review specific to procurement.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, other nonprofit organizations, and residential child care institutions (RCCIs) after the end of the fiscal year to which they pertain.

Procurement System

The CE has documentation that demonstrates that CE has established internal controls to promote program integrity. This includes, but is not limited to, documentation that illustrates the following:

- Written procurement procedures, including, but not limited to, actions or tasks for cost analysis, selection of procurement method, ethical standards, and other requirements, as described in this section
- Procedures for effective contract management
- Verification of third-party entity compliance with procurement regulations

See *Administrator's Reference Manual (ARM), Section 15, Program Integrity; Section 16a, Contract Management; Section 17a, Procurement Procedures; Section 17b, Buy American;* and *Section 17c, Cooperative Purchasing* for additional information on document retention for these purposes.

Solicitation

Documentation that demonstrates that the CE has issued a solicitation that meets the procurement requirements—this includes, but is not limited to, all solicitation documents released as part of the procurement process and documentation that illustrates the following:

- All offers submitted in response to the procurement solicitation
- Cost analysis

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- Evaluation and ranking criteria for each procured product and/or service, including rubrics, scales, or evaluation tools
- Expectations for the award of credits, rebates, discounts, USDA Foods values, application of adjustment or escalation clauses, and other credits as applicable
- Offeror responsibilities including terms and conditions, the timeline for major events, and other requirements or expectations
- Potential contractor's questions and method for sharing answers with other potential contractors
- Public advertisement or notification for solicitations
- Specifications and/or technical requirements
- Statements indicating compliance with all required federal regulations, including the Buy American provision

Contract

Documentation that demonstrates that the CE has issued a contract that meets the procurement requirements—this includes, but is not limited to, following:

- Actual contracts resulting from all methods of procurement
- Use of the *System for Award Management (SAM)*
- Compliance with all applicable requirements—federal, state, and local
- Health and safety certifications, licensing, or regulations as applicable
- Professional standards as applicable
- Records reflecting CE actions to manage and monitor all contracts
- Statements indicating compliance with all required federal regulations, including the Buy American provision
- Renewal contract and renewal contract amendments, including standard and market basket renewal documentation

Special Situations

Documentation related to the following situations:

- Approval to use a sole source procurement or emergency method
- Inability to buy an American product
- Material change when there is and is not a material change
- Micro-purchase equitable distribution of purchases or reason for an inability to do so
- Noncompetitive method procurements

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- Preference given for Small and Minority Firms, Women's Business Enterprise, Labor Surplus Area Firms, and other federal contract requirements as applicable
- Purchases made through a cooperative
- Purchases made through an agent
- Return of credits, rebates, discounts, and USDA Foods values to the CE as applicable to the type of contract (or agreement) including CEs participating in Group Buying Cooperatives; CEs using purchasing agents; and CEs participating in a operator-only cooperative.
- Third-party compliance with procurement regulations

Compliance

TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance with the procurement requirements. Additionally, TDA will assess compliance with the accounting and financial requirements based on the documentation that the CE has submitted throughout the year as well as documentation submitted for offsite and onsite administrative review processes or other procurement review activities.

The cost for any products and/or services that were procured improperly are unallowable costs to the school nutrition program.[123] This includes any costs that the CE has incurred as a result of intentionally breaking up purchases into smaller amounts to qualify under the micro-purchase threshold or simplified purchase threshold as well as purchases made on behalf of the CE by a third-party.

CEs must make available, upon request of the awarding agency (state or federal), any or all of the documentation described in the *Records Retention* subsection in this section.

Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations
CE's must report, in writing to TDA, all violations of federal criminal law—fraud, bribery, or gratuity.

> The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).

Criminal Penalty

The maximum fine for embezzling, willfully misapplying, stealing, or obtaining by fraud, funds, assets, or property acquired under the National School Lunch Act or Child Nutrition Act is $25,000.

[123] An unallowable cost or expense cannot be paid using school nutrition program funds.

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Fraud

Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

Termination of the Permanent Agreement for Financial Fraud or Misuse of Funds

If serious deficiencies, such as fraud or misuse of funds occur, and corrective action is not practical, TDA will amend the FND Agreement to terminate the CE's participation in the SNP. In this case, TDA may also refer the matter to the appropriate local, state, and/or federal authorities.

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Section 17a

Procurement Procedures

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Section 17a, Procurement Procedures

Update Guide

July 28, 2022	Clarified the following guidance: - Definitions
August 16, 2021	Updated the definition of aggregate.
May 27, 2021	Updated *Section 17a, Procurement Procedures* to clarify the following: - Definitions
August 12, 2020	Created *Section 17a, Procurement Procedures* and updated the *Administrator's Reference Manual (ARM)* sections references. Guidance for this new section was taken from *Administrator's Reference Manual (ARM), Section 17, Procurement*.

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Procurement Procedures

The guidance in this section is intended to assist contracting entities (CEs) in (1) establishing effective procurement procedures for purchasing products and/or services and for managing contracts and agreements and (2) ensuring that all contracts and agreements are operated according to the applicable procurement regulations and guidance.

For this section, when the word *contract* is used, the guidance applies to both contracts and agreements, as appropriate.

Procurement on Behalf of the CE

The guidance is this section also applies to contracts that are procured on behalf of the CE.

The guidance in this section applies to the following school nutrition programs (SNPs):

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Fresh Fruit and Vegetable Program (FFVP)
  - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

NSLP CEs that operate CACFP At-Risk and/or SFSP may use the NSLP procurement regulations instead of the CACFP and/or SFSP procurement regulations.

The guidance in this section is intended to be used with the procurement and financial guidance provided in the following *Administrator's Reference Manual (ARM)* sections:

- *Section 14, USDA Foods*
- *Section 14a, USDA Foods Processors*
- *Section 15, Program Integrity*
- *Section 16, Financial System*

Information Box 1

Additional Resources for Procurement

Texas Comptroller of Public Accounts

The website for the Texas Comptroller provides information on state regulations that apply to state and local governmental entities. Available at *www.comptroller.texas.gov/*

Resources include the following:

- *Model Purchasing Manual for Texas Cities and Counties 2010*—information that applies to all governmental entities, including schools. Available at *www.texasahead.org/lga/finances/purchasing/96-449_Model_Purchasing_Manual_11_10.pdf*
- *State of Texas Contract Management Guide*—guidance and recommendations on improving existing contract management methods and practices. Available at *www.comptroller.texas.gov/purchasing/publications/contract-management-guide.php*

Texas Education Agency (TEA)

Financial Accountability System Resource Guide provides detailed guidance of financial accountability, including Module 5, Purchasing, for local education agencies and charter schools. Available at *www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial__Accountability_System_Resource_Guide/*

United States Office of Management and Budget (OMB)

2 Code of Federal Regulations, Part 200—These regulations provide detailed information on required federal procurement process. Available at *www.fns.usda.gov/es/node/73141*

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- *Section 16a, Contract Management*
- *Section 17, Procurement*
- *Section 17b, Buy American*
- *Section 17c Cooperative Purchasing*
- *Section 18, Food Service Contracts*
- *Section 23, Food Product Documentation*
- *Section 26, Food Safety*
- *Section 27, Professional Standards*
- *Section 30, Records Retention*

Program Integrity and Internal Controls

Procurement procedures are intended to promote program integrity and establish internal controls.

> Program Integrity is defined as an organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds.

Procurement procedures assist users in applying internal controls that foster effective financial management system and safeguards to ensure the stewardship of federal money and reduce fraud and improper payments.

Administrator's Reference Manual (ARM), Section 15, Program Integrity provides detailed guidance on program integrity.

Information Box 2

Implementation of 2 Code of Federal Regulation (CFR) Part 200

The updates to this section include the consolidated 2 Code of Federal Regulation (CFR) Part 200 which replaced existing rules at 7 CFR Parts 3015, 3016, 3019, and 3052, and the following Office of Management and Budget (OMB) guidance documents; 2 CFR Part 220 (A-21), A-50 (sections related to audits), 2 CFR Part 225 (A-87), A-89, A-102, A-110, 2 CFR Part 230 (A-122), and A-133.

2 CFR Part 200 primarily serves to consolidate the previous regulations into one location as a convenience and for clarity. For procurement, 2 CFR Part 200 clarifies existing regulation and adds one new flexibility—micro-purchasing.

[NOTE: 2 CFR Part 200 also applies to all financial and accounting practices. *Section 17, Procurement* only addresses issues related to procurement. Other finance and accounting issues are addressed in Section 16, Financial System.]

Conflicting Program Regulations

For CEs operating Child Nutrition Programs (CNPs), there are federal, state, and local regulations that govern the actions of the CE. When there is a conflict between USDA regulations and other regulations, the CE must follow USDA regulations for the use of CNP funds. If other applicable federal, state, or local regulations do not conflict with USDA regulations, the CE will follow the most restrictive other federal, state, or local regulations. All programs that receive federal funds are required to follow 2 CFR Part 200 unless federal legislation supersedes 2 CFR Part 200.

Education Department General Administrative Regulations (EDGAR)

CEs receiving funds through the United States Department of Education are required to follow the regulations described in the ***Education Department General Administrative Regulations (EDGAR)*** for those funds, which incorporates 2 CFR Part 200. However, Child Nutrition Programs (CNPs) are required to follow USDA regulations for financial management, including procurement. While there are regulations in EDGAR that conflict with USDA regulations, in most situations, CEs will find the regulations to be compatible. However, if there is a regulatory conflict, CEs are required to follow the USDA regulations for all CNP funds (income, allowable and unallowable costs, and procurement).

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Definitions for This Section

The nature of financial processes fosters the use of terms and vocabulary that are more commonly used by accountants than by school nutrition staff. For School Nutrition Programs (SNPs), the following financial and procurement terms are used:

Acting on Behalf of CE	Entity or person who has been given the responsibility to act for the CE.
Agent	Person or business that is procured to act on behalf of the CE. This includes procuring on behalf of the CE.
Aggregate Purchase Amount	The total cost of all products and services in a single procurement transaction.
Agreement (for School Nutrition Programs)	Written legal document summarizing contractual obligations between two or more entities. This includes intergovernmental and interlocal agreement.
Allocable	Assigning a cost, or group of costs, to one or more cost objectives, in reasonable and realistic proportion to the benefit provided or other equitable relationship—the cost meets one of the following principles: – is incurred specifically for the award/program or – benefits both the award/program and necessary work and can be distributed in reasonable proportion to the benefits received or – is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.
Allowable	Direct or indirect costs that may be paid by SNP funds.
Approved Supplier List	List of suppliers or potential contractors who have demonstrated the ability to perform successfully under the terms and conditions of a proposed procurement, consideration being given to contractor integrity, compliance with applicable policy or regulations, record of past performance, and financial and technical resources.
Arms-Length Transaction	Transaction in which the parties are dealing from equal bargaining positions—neither party is subject to the other's control or dominant influence, and the transaction is treated with fairness, integrity, and legality. Less than Arms-Length Transaction A less than arms-length transaction occurs when a person responsible for making a purchase and appears to have a stake in the outcome is able to control or substantially influence the actions of others. This may include agreements between divisions of an organization; organizations under common control through common officers, directors, or members; and an organization and a director or employee of the organization and his or her immediate family.
Audit	Independent examination of accounting and financial records for accuracy, efficiency, and consistency. This is also called the annual audit or single audit.
Audit Report	Final summary of audit findings provided by a financial auditor.
Audit Corrective Action Plan	Plan in which the CE describes the strategies or actions the CE will adopt to address each finding reported in the audit report.
Audit Summary Schedule or Work Plan	Document that contains a cumulative list of audit findings by year and explanations of the strategies and actions the CE plans to take or has taken to resolve each audit finding. This summary allows the CE, auditor, or TDA staff member to review the actions planned or taken from year to year to maintain an accurate, efficient, and consistent accounting and financial system.
Bid Guarantee	Guaranteed percentage of bid price provided by the offeror at the time the offer is submitted. The CE must return all bid guarantees to all unsuccessful offerors when the contract is awarded and to the winning offeror as soon as the contract is signed.

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Bond	Insurance agreement pledging surety for financial loss caused in connection with the contract. For school nutrition programs, if a loss occurs in connection with a contract related to program operations, the loss will be covered to the extent agreed upon in the bond.
Breach of Ethics	Attempt to realize personal gain through public employment with a CE by any conduct inconsistent with the proper discharge of the employee's duties.
Brokers	Independent sales agents who negotiate sales for manufacturers by working with food distributors and/or school nutrition operations.
Buy American	Requirement for schools to purchase, to the maximum extent practicable, domestic commodities, and products. A domestic commodity or product means an agricultural commodity that is grown in the United States and processed in the United States or that is processed in the United States substantially using agricultural commodities that are produced in the United States.
Capital Assets	Land, buildings (facilities), and equipment that have a useful life of more than one year which are capitalized in accordance with Generally Accepted Accounting Principles (GAAP).
Capital Expenditures	Direct cost expenses to acquire capital assets or to make additions, improvements, modifications, replacements, reinstallations, renovations, or alternations to capital assets to be used for general purposes for multiple years and which materially increase the value or useful life of the asset.[1]
CE Employee (Specific to Program Integrity)	Term used in this section to represent a CE employee or official; family member of CE employee or official; or business partner of a CE employee or official.
Charge Period	Span of time during which a cost is paid. This payment process includes spreading payments over a period of weeks or months or establishing milestones that are linked to payments.
Code of Conduct	Set of written standards the CE must develop that outline the responsibilities of, or proper practices for, an individual or organization and which governs the following: 1. Performance of the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by Food and Nutrition Service (FNS) program funds. 2. Methods of procurement, including the requirement that the CE perform a cost or price analysis for every procurement (including contract modifications) and determination of which contract clauses and certifications are required in the CE's contracts.
Cognizant Agency Related to Indirect Costs	Agency that has primary responsibility for negotiating the indirect cost methodologies for non-federal entities.
Conflict of Interest	Any action that allows a person to benefit at the expense of the public interest or the expense of an employer. A conflict of interest may be a real or apparent conflict of interest.
Contract	Formal, legally enforceable agreement (terms and conditions) between a buyer (the CE) and a seller (contractor) that clearly and accurately describes the products and/or services to be delivered or performed and sets forth the method and the compensation the contractor receives when products and/or services are provided.
Consultant	Consultant that provides temporary support to the CE in areas where the CE lacks the necessary resources, skills, and/or abilities in order to assist the CE in gaining the necessary resources, skills, and/or abilities to operate an effective and compliant program.
Cooperative Purchasing	Group of entities who join together to purchase products and/or services with the intention of reducing costs and improving the quality of products and/or services available to members of a group. In this reference, a purchasing cooperative consists of a group of CEs.

[1] TDA must approve capital expenditures before a CE makes a capital expenditure purchase.

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Cost Analysis	Review and evaluation of each element of cost to determine reasonableness, allocability, and allowability for products and/or services to procured. A cost analysis will include the total projected cost for the products and/or services to be procured.
Cost Index	Tool designed to show the impact of an economic measure on the price of purchasing a specific type of item. TDA has approved the use of the Consumer Price Index (CPI) Food Away from Home for this purpose.
Cost Objective	Program function or activity for which cost data and for which specification is made to accumulate and measure the cost of processes, products, jobs, or other expenses.
Cost Plus Percentage of Cost	Method of pricing where the contract or agreement creates a pricing structure that charges the cost of the product or service plus a percentage of the cost. This pricing structure is not allowable for any purchase under USDA regulations. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).
Cost-Reimbursable Contract	Reimbursable contract that is a formal, legally enforceable contract that reimburses the contractor for costs incurred under the contract but does not provide for any other payment to the contractor with a fixed fee or with a cost-reimbursement fee. [NOTE: The fixed fee associated with these types of contracts may be called management fees or administrative fees.] In a cost-reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor. In a cost-reimbursable contract, the fixed price (fee) includes the contractor's direct and indirect administrative costs and profit allocable to the contract.
Debarment	Action taken by a debarring official to exclude a person from participating in covered transactions.[2] A person so excluded is debarred, that is, unable to participate.
Direct Cost	Expenses that can be identified specifically with a particular cost objective used to meet a specific program goal or goals.
Distributor	Commercial food company that purchases, receives, and/or stores commercial food products and then sells, delivers, and bills the recipient agency for goods and/or services provided.
Drop Delivery	Delivery to one location within the CE, such as a central warehouse.
Economies of Scale	Purchase of large quantities of a product and/or service in order to obtain a better price.
Escalator/De-escalator Clause or Market-based Pricing	Predetermined provisions in a contract stipulating specific conditions for an increase or decrease in price.
Equipment (Property)	Items which have been purchased and are nonexpendable; items have a useful life of more than one year. Equipment purchases of $5, 000 or more are capital expenses and require prior approval.[3]
Ethics	Principles of conduct governing and guiding decisions for an individual or a group in their personal and professional lives. School nutrition professionals have a responsibility to act ethically in accordance with all federal, state, and local guidelines.
Excess Net Cash Resources (Excess Fund Balance)	Net cash resources that exceed three months of operating expenses. For NSLP and SBP an excessive fund balance refers to net cash resources.

[2] Covered transactions in this section refer to transactions related to child nutrition programs.
[3] See the *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on this requirement.

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Exclusive Contract (Including Exclusive Beverage Contracts)	Contract between an entity or organization and a distributor/vendor that prevents the entity or organization from buying or selling similar products from other distributors/vendors. The distributor/vendor may offer the entity or organization financial, product, or service incentives for signing an exclusive contract.
Expenditures (Costs)	Amount of money that is spent on an item or service.
Firm Fixed-Price Contract (Also Called Firm Price Contract)	Contracts that provide products or services for a price not subject to adjustment other than increases or decreases tied to an economic indicator stipulated by contract. Firm-fixed price contracts are usually negotiated where reasonably finite specifications and/or technical requirements are available, and costs can be estimated with reasonable accuracy. A fixed price contract places minimum administrative burden on contracting parties but subjects a contractor to maximum risk arising from full responsibility for all cost escalations.
Fixed-Price	Agreed-upon amount of money that is fixed at the inception of a contract and is guaranteed for a specific period of time. A fixed-price contract may also contain an economic cost adjustment provision tied to the Consumer Price Index (CPI) Food Away from Home.
Fixed Price (Fee)	Agreed upon amount of money that is fixed at the inception of the contract.
Food Service Management Company (FSMC)	Any organization, whether commercial enterprise or a nonprofit organization, that is or may be contracted by the CE to manage any aspect of the school food service.[4] CEs must use an FSMC from TDA's list of approved FSMCs.
Food Service Management Company (FSMC) Solicitation/ Contract	TDA term used to reference the TDA prototype combined solicitation and contract. This term is applicable to this section only.
Forecasting	Process of analyzing current and historical data to determine procurement needs. In the case of school nutrition programs, forecasting involves predicting and estimating the goods, works, and services needed in specified areas for the coming year, and/or assessing needs by reviewing current procurement activities. Forecasting allows for procurement timelines and tasks to evolve each fiscal year.
Full and Open Competition	Situation where all potential contractors are competing on a level playing field and have the same opportunity to compete and be awarded a contract. Full and open competition is also commonly referred to as free and open competition
Fund Balance (Net Cash Resources)	See "net cash resources."
Grade Standards	USDA quality standards based on measurable attributes that describe the value and utility of the products.
Grantees	Governmental or other legal entity to which a grant is awarded where the receiving entity is held accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.
Incentives	Rewards or benefits received as a result of performing requested actions and/or meeting predetermined milestones.
Indirect Cost	Expenses that are incurred for the benefit of multiple programs or functions and are necessary for the general operation of the SNP program—but cannot be directly attributable to the program.
Indirect Cost Rate	Established percentage of awarded funds that is dedicated to pay costs that have been identified as indirect costs.

[4] If an NSLP CE operates a Child and Adult Care Food Program and/or Summer Food Service Program, there may be additional regulations that applied for the use of an FSMC to operate the program.

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Internal Controls	Procedures or processes designed to establish and maintain effective internal control over the SNP's financial management system that provides reasonable assurance that the CE is managing the program in compliance with all federal, state, and local regulations and terms and conditions of the program award. These procedures or processes help the CE to (1) define actions related to financial management and the procurement activities, (2) establish standards of ethical conduct, and (3) provide full and open competition.
Invitation for Bid (IFB)	Formal method of procurement that uses sealed bidding and results in a fixed-price contract with or without adjustment factors.
Just-in-Time (JIT)	Food and supplies kept in quantities an entity anticipates will meet its immediate needs, which results in the entity maintaining a low inventory level.
LEA	Local education agency, an entity having administrative control and direction of a public or private nonprofit elementary or secondary school.[5]
Lead Time	Amount of time necessary for a distributor to prepare and deliver products and/or services to the CE.
Local Product	Unprocessed locally grown or raised agricultural products that retain their inherent character.
Managing the Contract	Procedures the CE has in place to ensure that contractors perform in accordance with the specifications, technical requirements, and terms and conditions described in a contract or purchase order.
Market Basket	Solicitation strategy that allows a CE to procure a list of products with varied pricing options for a finite number of products. Each product on the market basket list must have (1) a description with the quantity to be purchased, (2) specifications and/or technical requirements for each product, and (3) a description of how each product will be awarded on the contract.
Market Basket, Total Cost Analysis and Scoring	Analysis and scoring evaluation based on the aggregate total cost or by line item total.
Market Basket, Simplified Total Cost Analysis and Scoring	Analysis and scoring evaluation based on a representative sample of all products.
Material Change	Change made to a contract after the contract has been awarded that alters the terms and conditions of the contract substantially enough that had other offerors known of the change in advance, they may have bid differently and more competitively.
Meal Equivalency Factor (MEF)	Statistical tool that is used to convert a la carte sales into a standard of measure, in this case a "meal." The MEF is often used to convert a la carte sales into meal equivalents for billing purposes in fixed price contracts.
Micro-purchase Method	An acquisition of supplies or services using simplified acquisition procedures, the aggregate purchase amount of which does not exceed the micro-purchase threshold.
Necessary	Item or service that is essential to the operation of the program.
Negative Net Cash Resources (Fund Balance)	A CE must not carry negative net cash resources into the next school year. Negative net cash resources exist when all net cash resources have been depleted, and the resulting negative balance constitutes a liability to the organization.

[5] This definition is taken from USDA regulation.

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Net Cash Resources	Amount of funds the SNP account has available to spend—total revenue less total liabilities (expenditures). USDA further defines Net Cash Resources as This includes all monies, as determined in accordance with the State agency's established accounting system that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds, or other negotiable securities.
Noncompetitive Method	Procurement method used when there is an insufficient number of offers submitted in response to a solicitation. In this case, full and open competition is deemed inadequate, and there is no way to remedy the situation.
Non-Federal Entity	State, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.
Open Award	Contract award in which all vendors that submit an offer are awarded a contract. This type of award does not promote full and open competition or pricing that is advantageous to the program. An open award is not the same as using a market basket strategy.
Operating Months	Months during which the CE operates any child nutrition program—NSLP, SBP, CACFP At-Risk, or a summer feeding program. This includes reasonable amounts of time to set up program operations before meal service begins and time to close program operations at the end of the meal service period. Days on which operational tasks occur may be for a full month of operation or a partial month of operation.
Operator	Entity that operates a Child Nutrition Program.
Operator-Only Cooperative	Any type of agreement that is formed solely among CNP operators, including regional education service center (ESC) cooperatives.
Pass-Through Entity	Entity receiving federal funds that have passed through another entity. This definition is specific to funding from federal sources and applies to state agencies, CEs, group purchasing cooperatives, and third-party entities. These funds are used to fulfill the purposes of a federally funded program.
Payment Bond	Bond that covers the cost of materials and works for construction contracts.
Performance Bond	Bond which covers the cost of ensuring that the work is done as specified in the terms of the contract.
Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events or financial transactions. For this section, the word procedure is used to refer to all of these types of documents.
Procurement	Act of obtaining of goods or services in exchange for money or value. [NOTE: Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.]
Procurement Standards	Standards of conduct that shall govern the performance of the CE's officers, employees, or agents in contracting for payment and expending program funds. State and federal procurement regulations require each CE to maintain written standards of conduct, including a code of conduct that prohibits employees from participating in the selection, award, and administration of any contract to which an entity or certain persons connected to them have a financial interest.
Program Integrity	Organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds. [NOTE: Program integrity includes practices associated with ethical standards and codes of conduct.]
Program Specific Audit	Review of the financial transactions—income and expenditures—and accounting procedures for a designated program.
Proprietary Products	Manufactured products ordered specifically for a particular program or are unique to a manufacturer.
Reasonable Cost	Amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.

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Regulatory Authority	Oversight authority dictated by legislative act or regulation.
Request for Proposals (RFP)	Formal procurement method where potential contractors submit an offer to provide products and/or services under a fixed-price or cost-reimbursable type contract.
Responsible (Offer)	Capable of providing the product(s) and/or service(s), as described in the solicitation.
Responsive (Offer)	Offer that addresses the terms and conditions of the solicitation, including the specifications and/or technical requirements for product(s) and/or service(s).
Revenue	Income received by an organization.
Revenue to the School Nutrition Program (SNP) Account	All income that is collected or awarded to the SNP account is revenue (or income) to the SNP account. This includes, but is not limited to, the following: – Federal reimbursement – State or local funds, such as per meal subsidies and state revenue matching funds – Students' payment for reimbursable meals and a la carte sales – Payments for items purchased for fund raisers and vending machines – Income from catering and adult meals
Service Fee	Fee charged for the performance of a specific service.
Simplified Acquisition Threshold (Also Called Small Purchase Threshold)	Amount established by federal, state, or local regulations that defines when formal and informal procurement methods must be us
Single Audit	Organization–wide review of the financial transactions—income and expenditures—and accounting procedures.
Sole Source Method	Noncompetitive procurement method used when products and/or services are available from only one supplier, distributor, or contractor. TDA must approve all sole source methods of procurement.
Solicitation	Process of notifying prospective or qualified offerors about the specifications or technical requirements for the purchase of products and/or services. For informal procurement, the solicitation may be communicated by email, in person, by fax, or by phone as long as the person soliciting offers documents the specifications or technical requirements to ensure that every possible contractor is given the same information. For a formal procurement, a written solicitation is required.
Specifications and Technical Requirements	Detailed information included in the solicitation and in the final contract that describes the product(s) and/or service(s) that will be provided to the CE under the contract.
State Matching Funds	Matching funds provided to local education agencies (LEAs) that participate in NSLP by the state of Texas based on the number of lunches reported on reimbursement claims filed during the period of September 1 through August 31 of the prior year. RCCIs and private schools do not receive state matching funds.
Subgrantees	Governmental or other legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided.
Supplier (Sometimes Called Vendor)	Commercial enterprise, public or nonprofit private organization, or individual that enters into a contract with a CE to provide products and/or services. A supplier is also referred to as an offeror during the solicitation phase of procurement.
Supplies	Items that are expendable or consumed in day-to-day activities and replenished as needed.
Tangible Benefit	Special offer for a particular item in order to incentivize a purchase which includes, but is not limited to, offering (1) a special item at much lower price than the price structure for a current contract, (2) an item not presently used at a special price that is below market value; or (3) an incentive, such as equipment or other prizes for purchasing items.

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Terms and Conditions	General provisions, definitions for terminology, renewal options, protests, termination, and other standards inherent to the contract.
Third-Party	Entity that is contracted to act on behalf of another entity.
Third-Party Cooperative	Any type of cooperative agreement that is formed by sources that are external to CEs which includes the following types of cooperatives: **Non-Child Nutrition Program State Agency Procurement Agency Agreements** Intergovernmental agreements with the State which may include public, private, and nonprofit entities and are conducted for State facility needs using State procurement standards. These agreements allow local educational agencies and other Child Nutrition Program operators to purchase from the State's contracted sources. **Interagency Agreements** Public, private, and nonprofit entities formed for the purpose of procuring goods and services. **Group Purchasing Organizations, Group Buying Organizations, and Third-Party Vendors** (Collectively Referred to as GPOs) CNP and non-CNP operators such as public and private schools, hospitals, universities, law enforcement, public works, etc., who join a third-party company or service provider. A GPO may be a for-profit or a nonprofit entity. Typically, a GPO includes a membership fee for those granted access to the GPO price list of products and services.
Transaction	Occurrence in which two or more entities exchange goods, services, or money between them or among them under an agreement formed for their mutual benefit.
Unallowable Cost	Direct or indirect cost that cannot be paid using funds from the nonprofit school food service account because the cost is not reasonable, allowable, and/or allocable. A cost that is unallowable for the CE is also unallowable for a third-party acting on behalf of the CE. The term *disallowed* is sometimes used in place of unallowable.
Unit Cost	Cost for a single item.
Value	Something of monetary or material worth or something that has a usefulness that can be exchanged for something of worth, merit, or importance.
Velocity Report	Report providing the quantity, date of purchase, and other valuable information for specific products and/or services purchased by CEs used to assist with forecasting future purchasing needs.
Vended Meal Contract	Contractor or merchandiser providing the CE with complete meals, meal components, and raw materials for the meal service.
Vendor Participation Fees	Charge to participate. The charge to participate may be paid by the participant, or it may be paid by those providing products and/or services.
Written Financial and Procurement Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events, including financial and procurement transactions. For this section, the word *procedure* is used to refer to all of these types of documents. Procedures define the critical steps taken to establish and operate effective and efficient systems for (1) financial management, (2) procurement, and (3) management of contracts and agreements. Written procurement procedures may include a procurement plan with timelines and tasks, or a procurement plan may be a separate document from the procedures. Written financial and procurement procedures must be established by all CEs.

Written Procurement Procedures

CEs are required to have written procurement procedures that reflect applicable local, state, and federal regulations that include, but are not limited to, checks and balances that provide internal controls for all financial matters.

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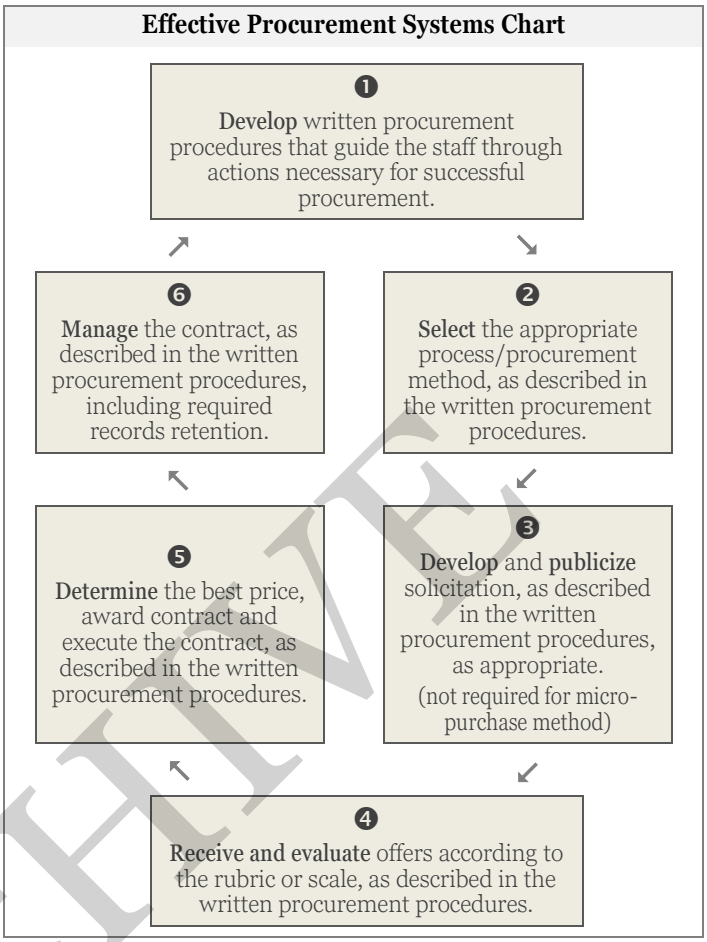
For this section, the term *procedure* is used to refer to processes, protocols, standards of behavior, expectations, or any other written method of describing actions staff are to take related to procurement.

CEs may have a set of overarching procedures at the CE level and more detailed procedures at the site level. Or they may have a single set of procedures that are applied at all levels. CEs should include a procurement plan or schedule with timelines and tasks by type of procurement, type of product, or type of service as a separate document or incorporate it into written procedures.

These procedures are intended to guide staff as they

- plan for procurement,
- define the roles and responsibilities,
- establish internal controls, and
- implement procurement actions.



Effective Procurement Systems
Procurement procedures provide consistent and replicable practices that are essential to an effective procurement system.

The procurement process follows a set of prescribed steps:

1. Develop written procurement procedures that guide the staff through actions necessary for successful procurement.
2. Select the appropriate procurement method, as described in the written procurement procedures (not required for the micro-purchase method).
3. Develop and publicize the solicitation as described in the written procurement procedures, as appropriate.
4. Receive and evaluate offers according to the rubric or scale, as described in the written procurement procedures.
5. Determine the best price, award contract, and execute the contract, as described in the written procurement procedures.
6. Manage the contract, as described in the written procurement procedures, including required records retention.

Written Procurement Procedures

CEs must have written procedures for the selection, award, and administration of procurement transactions that support the CE in accomplishing the following:

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For each of the following elements the CE must have procedures which describe the actions staff will take, including, but not limited to, actions that promote program integrity.

[NOTE: See the appropriate financial section of the *Administrator's Reference Manual (ARM)*, for additional guidance on these elements.]

Billing

- Steps to ensure cost billed and amount invoiced are accurate and match the cost as stipulated in the contract before payment is made, including appropriate actions for handling and approving invoices and billing statements.
- Steps to ensure the CE receives owed credits, rebates, discounts, and USDA Foods values, including routine auditing options.

Buy American

- Process for clearly communicating expectations for contractors to meet the Buy American requirements.[6]
- Strategies for ensuring the contractors provide products that are compliant with Buy American provisions.
- Process for an exception to the Buy American provision approval.

Code of Conduct

- Internal controls that address the responsibilities of, or proper practices for, staff that governs the performance for the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by Food and Nutrition Service (FNS) program funds.
- Internal controls that address the responsibilities of, or proper practices for, staff that governs the methods of procurement, including the requirement that the CE perform a cost or price analysis for every procurement (including contract modifications) and determination of which contract clauses and certifications are required in the CE's contracts.
- Disciplinary actions for violations of the code and conduct.

Conflict of Interest

- Internal controls that address the responsibilities of, or proper practices for, staff that governs the implementation of the CE's methods to address conflicts of interest and undue influence.
- Terminology and appropriate response for conflicts of interest.
- Disciplinary actions for violations of conflict of interest standards by CE employees, CE officers, or individuals or agents acting on the CE's behalf.
- Process to ensure that third-party contractors do not contribute to the development of solicitations for which the third-party contractor plans to submit an offer.

  If a third-party contractor does assist in the development of a solicitation, the third-part contractor cannot submit an offer for the solicitation.
- Internal controls to ensure that CEs do not procure contracts with duplicative services (paying for the same service twice) from the same contractor or different contractors.

[6] See *Administrator's Reference Manual (ARM), Section 17b, Buy American* for additional information on this topic.

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- Internal controls to ensure that CEs do not procure contracts from an individual, agency, or company that is affiliated with, associated with, partnered with, or has a subsidiary relationship with the individual or agency (organization, contractor, vendor, agent, or other entity) acting on behalf of the CE.

  This includes allowing a contractor to use a pre-existing contractual relationship instead of conducting a competitive procurement on behalf of a CE.

Contract Awards

- Staff authorized to make financial and procurement actions.
- Staff authorized to make decisions for financial and procurement actions.
- Strategies for the evaluation of bids, including determining the most responsible[7] and responsive offer.
- Process to ensure that price is the primary consideration in awarding a contract.

Contract Management

- Detailed methods for contact management as described in *Administrator's Reference Manual (ARM), Section 16a, Contract Management*.

Contract Solicitation

[NOTE: A solicitation is not required for a micro-purchase. For a small purchase, the solicitation may be as simple as a prepared list or description to communicate product and/or service quantity and specifications or technical requirements.][8]

- Timeline for creating solicitations for each purchasing method.
- Guidelines for developing the evaluation criteria to be communicated in a solicitation, including standard evaluation criteria that will apply to similar contracts.
- Processes for forecasting or conducting a cost analysis to establish a preliminary value for the purchase before the creating the solicitation.
- Staff assigned to develop and publicize solicitations.
- Processes for ensuring the notification is provided in a manner that ensures the solicitation reaches a large enough market for the CE to receive competitive offers from multiple vendors.

Cooperative Purchasing

- Conditions when the CE will use cooperative purchasing to take advantage of economies of scale.
- Type of cooperative(s) the CE will use.
- Types of products and/or services to be purchased through the cooperative.
- Practices that routinely review documentation to ensure that all credits, rebates, discounts, and USDA Foods values are properly paid to the CE.
- Method for review of the cooperative agreement and monitoring the agreement to ensure it is implemented as written.

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7 With a documented history, a CE may choose not to award a contract to the most responsive and responsible offer.
8 See the *Additional Resources* subsection in this section for additional tools to assist with micro purchases and small purchases.

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- Routine reconciliation of purchasing cooperative charges to ensure accuracy and ensure return of any funds over the amount agreed upon.

Dispute Resolution/Termination of Contract

- Process for resolving disputes.
- Processes for ensuring that all contracts contain clauses which describe how disputes will be resolved, including contract termination if issues cannot be resolved.

Dispute Resolution, Protest of an Awarded Contract

- Processes to proactively review procurement processes and solicitations to prevent situations where a valid protest of an awarded contract can be filed.
- Process for resolving protests.
- Method to notify TDA when a protest of an awarded contract occurs.

Full and Open Competition

- Implementation of written procedures to promote competition and avoid restricting competition.
- Process to determine if the CE procurement procedure limits competition
  - Do the CE's procurement procedures promote competition among offerors?
  - Does the solicitation procedure promote full and open competition?
  - Does the procurement procedure create a competitive environment?
- Conditions which require the CE to restart the procurement process because of lack of full and open competition.

Local Preference

- Conditions when local preference will be applied as a bonus factor to award contracts.
- Definition(s) for local preference that will be applied to purchasing.

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Local, State, and Federal Laws and Regulations

- Most restrictive threshold that applies for each procurement method: micro-purchase, small purchase, request for proposals, and invitations for bid
- Practices to ensure full implementation of the Buy American requirements, including established practices for CE staff to approve exceptions.
- Strategies for incorporating the provisions listed in *Information Box 3, Other Regulatory Requirements for Solicitations and Contracts*.

Material Change

- Process for evaluating to determine if a material change has occurred.

Procurement Methods

- Process for conducting the cost analysis used to determine appropriate procurement method.
- Conditions when the CE will use each procurement method.
  - Informal—Micro Purchase
  - Informal—Small Purchase
  - Formal—Request for Proposal (RFP)
  - Formal—Sealed Bid (IFB)
  - Criteria for using IFB procurement method
- Conditions under which a pre-qualified list will be used and strategies the CE implements to promote pre-qualification of all potential vendors.

Information Box 3

Other Regulatory Requirements for Solicitations and Contracts

BYRD, Anti-Lobbying
(31 U.S.C. 1352)

Civil Rights/Discrimination
Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities

Clean Air and Water Act and Federal Water Pollution Control Act
Clean Water Act, 42 U.S.C. 7401-7671q; Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387); and Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15)

Contract Work Hours and Safety Standards Act
40 U.S.C. 327-330 Sections 103 and 107 as supplemented by Department of Labor regulations (29 CFR Part 5)

Copeland Anti-Kickback Act
(18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3)

Davis-Bacon Act
40 U.S.C. 276a to 276a-7 as supplemented by Department of Labor regulations (29 CFR Part 5)

Energy Policy and Conservation Act
Public Law 94-163, 89 Statute 871

Equal Employment Opportunity
41 CFR, Chapter 60. Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60)

Health and Safety Certifications, Licensing, or Regulations
Local, state, or federal health and safety certifications, licensing, or regulations

Rights to Inventions (Pertaining to Patent Rights, Copyright and Rights)
37 CFR 401.2

Solid Waste Disposal Act
Section 6002 as amended by the Resource Conservation and Recovery Act

Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms (Historically Underutilized Business or HUB)
2 CFR 200.321

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- Process for developing evaluation criteria in order to award the contract to the most responsive and responsible offer.
- Timeline for planning and implementing the procurement method.

Micro-Purchase

- Strategies for identifying possible suppliers.[9]
- Strategies for equitable distribution for micro-purchases.

Small Purchase

- Strategies for identifying possible suppliers and obtain quotes from at least three potential suppliers.[10]
- Processes for requesting offers, including method for communicating specifications, technical requirements, and terms and conditions, as appropriate.

Formal Purchase—RFP and IFB

- Strategies for identifying possible suppliers.
- Strategies for developing specifications, technical requirements, and terms and conditions, as appropriate.
- Processes for planning the notification, creating solicitation, and issuing solicitation for the purchase.

Third-Party Procurement

- Timeline for reports from the third party for the CE to ensure contracts are operating as intended. TDA recommends that CEs receive reports monthly or quarterly.
- Timeline for the routine reporting of credits, rebates, discounts, and USDA Foods values.
- Process for ensuring that all vendor fees in excess of the stated cost of providing products and/or services are returned to the CE, if applicable.
- Processes of communicating local, state, and federal requirements to all contractors and potential contractors.

Additional Resources

TDA Resources

TDA resources are available on the SquareMeals website, *www.SquareMeals.org*.

- *Approved Purchase List*—Form designed to provide a list of products approved to purchase with information that will be helpful to menu planners and staff managing the contract.
- *Buy American Checklist for Non-Domestic Food Product Purchases*—Checklist to assist CEs in determining if a non-domestic product is acceptable.
- *Procurement Snapshot Tool*—Form designed to provide a summary of procurement activities for the program year or fiscal year.

[9] See the *Additional Resources* subsection in this section for additional tools to assist with micro purchases and small purchases.
[10] See the *Additional Resources* subsection in this section for additional tools to assist with micro purchases and small purchases.

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- *Micro-Purchase Log*—Form designed to track purchases made under the micro-purchase method.
- *Informal Small Purchase Log*—Form designed to track offers and offerors for small purchase procurement.

Institute for Child Nutrition (ICN)

- *First Choice*, a handbook for developing an effective procurement process, available at *www.theicn.org*
- *Procurement in the 21st Century*, manual providing specific details on the procurement process, available at *www.theicn.org*
  [NOTE: This resource is not a guidance document, but it does provide useful information.]
- *State Agency Guidance on Procurement*, a series of web-based training on procurement, available at *www.theicn.org*

USDA

- *Understanding Food Qualities Labels*, a manual provided by USDA's Agricultural Marketing Service (AMS) that provides a guide to product labeling that indicates quality, available at *www.ams.usda.gov/sites/default/files/media/AMS%20Product%20Label%20Factsheet.pdf*

Other Websites

- Texas Procurement and Support Services (TPASS) (Formerly Texas Building and Procurement Commission), available at *www.window.state.tx.us/procurement/*
- Comptroller of Public Accounts, available at *www.cpa.state.tx.us*
- Universal Public Purchasing Certification Council/National Institute of Government Purchasing (NIGP), available at *www.nigp.org*
- USDA Farm to School website, available at *www.fns.usda.gov/farmtoschool/*

Records Retention

The CE is required to maintain an organized accounting and financial system that includes documentation that demonstrates compliance with program regulations and the history of all procurements. Records retained for procurement must be sufficient to detail the history of procurement for each procured product and/or service, including but not limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. CEs have the option to maintain records on paper or electronically.

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These records must be accessible to appropriate CE staff members and federal or state reviewers. TDA may request procurement documentation during both offsite and onsite administrative review processes as well as any additional review specific to procurement.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, other nonprofit organizations, and residential child care institutions (RCCIs) after the end of the fiscal year to which they pertain.

Information Box 4

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

Procurement System

The CE has documentation that demonstrates that CE has established internal controls to promote program integrity. This includes, but is not limited to, documentation that illustrates the following:

- Written procurement procedures, including, but not limited to, actions or tasks for cost analysis, selection of procurement method, ethical standards, and other requirements, as described in this section
- Procedures for effective contract management
- Verification of third-party entity compliance with procurement regulations

The CE must retain records to demonstrate the CE has procurement procedures in place and the CE's implementation of those procedures.

Compliance

TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance with the procurement requirements. Additionally, TDA will assess compliance with the accounting and financial requirements based on the documentation that the CE has submitted throughout the year as well as documentation submitted for offsite and onsite administrative review processes or other procurement review activities.

The cost for any products and/or services that were procured improperly are unallowable costs to the school nutrition program.[11] This includes any costs that the CE has incurred as a result of intentionally breaking up purchases into smaller amounts to qualify under the micro-purchase threshold or simplified purchase threshold as well as purchases made on behalf of the CE by a third-party.

CEs must make available, upon request of the awarding agency (state or federal), any or all of the documentation described in the *Records Retention* subsection in this section.

Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations

CE's must report, in writing to TDA, all violations of federal criminal law—fraud, bribery, or gratuity.

[11] An unallowable cost or expense cannot be paid using school nutrition program funds.

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The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).

Criminal Penalty

The maximum fine for embezzling, willfully misapplying, stealing, or obtaining by fraud, funds, assets, or property acquired under the National School Lunch Act or Child Nutrition Act is $25,000.

Fraud

Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

Termination of the Permanent Agreement for Financial Fraud or Misuse of Funds

If serious deficiencies, such as fraud or misuse of funds occur, and corrective action is not practical, TDA will amend the FND Agreement to terminate the CE's participation in the SNP. In this case, TDA may also refer the matter to the appropriate local, state, and/or federal authorities.

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Section 17b

Buy American

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Section 17b, Buy American

Update Guide	
July 28, 2022	Updated *Section 17b, Buy American* to fix broken links. Clarified the following guidance: - Definitions
August 16, 2021	Updated the definition of aggregate.
May 27, 2021	Updated *Section 17b, Buy American* to clarify the following: - Definitions
August 12, 2020	Created *Section 17a, Buy American* and updated the *Administrator's Reference Manual (ARM)* sections references. Guidance for this new section was taken from *Administrator's Reference Manual (ARM), Section 17, Procurement*.

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Buy American

The guidance in this section is intended to assist contracting entities (CEs) in implementing the Buy American provision in procurement activities.

The Buy American provision applies to all food purchases made with School Nutrition Program (SNP) funds. This provision requires CEs and third parties, acting on behalf of CEs, to purchase domestically[1] grown and processed food to the maximum extent practicable.

The Buy American guidance in this section applies to the following school nutrition programs (SNPs):

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Fresh Fruit and Vegetable Program (FFVP)
  - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)

Information Box 1

Procurement

Procurement is the act of obtaining goods or services in exchange for money or value. Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.

The guidance in this section is intended to be used with the procurement and financial guidance provided in the following *Administrator's Reference Manual (ARM)* sections:

- *Section 14, USDA Foods*
- *Section 14a, USDA Foods Processors*
- *Section 15, Program Integrity*
- *Section 16, Financial System*
- *Section 16a, Contract Management*
- *Section 17, Procurement*
- *Section 17a, Procurement Procedures*
- *Section 17c, Cooperative Purchasing*
- *Section 18, Food Service Contracts*
- *Section 23, Food Product Documentation*
- *Section 26, Food Safety*
- *Section 27, Professional Standards*
- *Section 30, Records Retention*

[1] Domestically grown food products are grown and processed in the United States.

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Information Box 2

Implementation of 2 Code of Federal Regulation (CFR) Part 200

The updates to this section include the consolidated 2 Code of Federal Regulation (CFR) Part 200 which replaced existing rules at 7 CFR Parts 3015, 3016, 3019, and 3052, and the following Office of Management and Budget (OMB) guidance documents; 2 CFR Part 220 (A-21), A-50 (sections related to audits), 2 CFR Part 225 (A-87), A-89, A-102, A-110, 2 CFR Part 230 (A-122), and A-133.

2 CFR Part 200 primarily serves to consolidate the previous regulations into one location as a convenience and for clarity. For procurement, 2 CFR Part 200 clarifies existing regulation and adds one new flexibility—micro-purchasing.

[NOTE: 2 CFR Part 200 also applies to all financial and accounting practices. *Section 17, Procurement* only addresses issues related to procurement. Other finance and accounting issues are addressed in Section 16, Financial System.]

Conflicting Program Regulations

For CEs operating Child Nutrition Programs (CNPs), there are federal, state, and local regulations that govern the actions of the CE. When there is a conflict between USDA regulations and other regulations, the CE must follow USDA regulations for the use of CNP funds. If other applicable federal, state, or local regulations do not conflict with USDA regulations, the CE will follow the most restrictive other federal, state, or local regulations. All programs that receive federal funds are required to follow 2 CFR Part 200 unless federal legislation supersedes 2 CFR Part 200.

Education Department General Administrative Regulations (EDGAR)

CEs receiving funds through the United States Department of Education are required to follow the regulations described in the ***Education Department General Administrative Regulations (EDGAR)*** for those funds, which incorporates 2 CFR Part 200. However, Child Nutrition Programs (CNPs) are required to follow USDA regulations for financial management, including procurement. While there are regulations in EDGAR that conflict with USDA regulations, in most situations, CEs will find the regulations to be compatible. However, if there is a regulatory conflict, CEs are required to follow the USDA regulations for all CNP funds (income, allowable and unallowable costs, and procurement).

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Definitions for This Section

The nature of financial processes fosters the use of terms and vocabulary that are more commonly used by accountants than by school nutrition staff. For School Nutrition Programs (SNPs), the following financial and procurement terms are used:

Acting on Behalf of CE	Entity or person who has been given the responsibility to act for the CE.
Agent	Person or business that is procured to act on behalf of the CE. This includes procuring on behalf of the CE.
Aggregate Purchase Amount	The total cost of all products and services in a single procurement transaction.
Agreement (for School Nutrition Programs)	Written legal document summarizing contractual obligations between two or more entities. This includes intergovernmental and interlocal agreement.

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Allocable	Assigning a cost, or group of costs, to one or more cost objectives, in reasonable and realistic proportion to the benefit provided or other equitable relationship—the cost meets one of the following principles: – is incurred specifically for the award/program or – benefits both the award/program and necessary work and can be distributed in reasonable proportion to the benefits received or – is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.
Allowable	Direct or indirect costs that may be paid by SNP funds.
Approved Supplier List	List of suppliers or potential contractors who have demonstrated the ability to perform successfully under the terms and conditions of a proposed procurement, consideration being given to contractor integrity, compliance with applicable policy or regulations, record of past performance, and financial and technical resources.
Arms-Length Transaction	Transaction in which the parties are dealing from equal bargaining positions—neither party is subject to the other's control or dominant influence, and the transaction is treated with fairness, integrity, and legality. Less than Arms-Length Transaction A less than arms-length transaction occurs when a person responsible for making a purchase and appears to have a stake in the outcome is able to control or substantially influence the actions of others. This may include agreements between divisions of an organization; organizations under common control through common officers, directors, or members; and an organization and a director or employee of the organization and his or her immediate family.
Audit	Independent examination of accounting and financial records for accuracy, efficiency, and consistency. This is also called the annual audit or single audit.
Audit Report	Final summary of audit findings provided by a financial auditor.
Audit Corrective Action Plan	Plan in which the CE describes the strategies or actions the CE will adopt to address each finding reported in the audit report.
Audit Summary Schedule or Work Plan	Document that contains a cumulative list of audit findings by year and explanations of the strategies and actions the CE plans to take or has taken to resolve each audit finding. This summary allows the CE, auditor, or TDA staff member to review the actions planned or taken from year to year to maintain an accurate, efficient, and consistent accounting and financial system.
Bid Guarantee	Guaranteed percentage of bid price provided by the offeror at the time the offer is submitted. The CE must return all bid guarantees to all unsuccessful offerors when the contract is awarded and to the winning offeror as soon as the contract is signed.
Bond	Insurance agreement pledging surety for financial loss caused in connection with the contract. For school nutrition programs, if a loss occurs in connection with a contract related to program operations, the loss will be covered to the extent agreed upon in the bond.
Breach of Ethics	Attempt to realize personal gain through public employment with a CE by any conduct inconsistent with the proper discharge of the employee's duties.
Brokers	Independent sales agents who negotiate sales for manufacturers by working with food distributors and/or school nutrition operations.
Buy American	Requirement for schools to purchase, to the maximum extent practicable, domestic commodities, and products. A domestic commodity or product means an agricultural commodity that is grown in the United States and processed in the United States or that is processed in the United States substantially using agricultural commodities that are produced in the United States.
Capital Assets	Land, buildings (facilities), and equipment that have a useful life of more than one year which are capitalized in accordance with Generally Accepted Accounting Principles (GAAP).

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Capital Expenditures	Direct cost expenses to acquire capital assets or to make additions, improvements, modifications, replacements, reinstallations, renovations, or alternations to capital assets to be used for general purposes for multiple years and which materially increase the value or useful life of the asset.[2]
CE Employee (Specific to Program Integrity)	Term used in this section to represent a CE employee or official; family member of CE employee or official; or business partner of a CE employee or official.
Charge Period	Span of time during which a cost is paid. This payment process includes spreading payments over a period of weeks or months or establishing milestones that are linked to payments.
Code of Conduct	Set of written standards the CE must develop that outline the responsibilities of, or proper practices for, an individual or organization and which governs the following: 1. Performance of the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by Food and Nutrition Service (FNS) program funds. 2. Methods of procurement, including the requirement that the CE perform a cost or price analysis for every procurement (including contract modifications) and determination of which contract clauses and certifications are required in the CE's contracts.
Cognizant Agency Related to Indirect Costs	Agency that has primary responsibility for negotiating the indirect cost methodologies for non-federal entities.
Conflict of Interest	Any action that allows a person to benefit at the expense of the public interest or the expense of an employer. A conflict of interest may be a real or apparent conflict of interest.
Contract	Formal, legally enforceable agreement (terms and conditions) between a buyer (the CE) and a seller (contractor) that clearly and accurately describes the products and/or services to be delivered or performed and sets forth the method and the compensation the contractor receives when products and/or services are provided.
Consultant	Consultant that provides temporary support to the CE in areas where the CE lacks the necessary resources, skills, and/or abilities in order to assist the CE in gaining the necessary resources, skills, and/or abilities to operate an effective and compliant program.
Cooperative Purchasing	Group of entities who join together to purchase products and/or services with the intention of reducing costs and improving the quality of products and/or services available to members of a group. In this reference, a purchasing cooperative consists of a group of CEs.
Cost Analysis	Review and evaluation of each element of cost to determine reasonableness, allocability, and allowability for products and/or services to procured. A cost analysis will include the total projected cost for the products and/or services to be procured.
Cost Index	Tool designed to show the impact of an economic measure on the price of purchasing a specific type of item. TDA has approved the use of the Consumer Price Index (CPI) Food Away from Home for this purpose.
Cost Objective	Program function or activity for which cost data and for which specification is made to accumulate and measure the cost of processes, products, jobs, or other expenses.
Cost Plus Percentage of Cost	Method of pricing where the contract or agreement creates a pricing structure that charges the cost of the product or service plus a percentage of the cost. This pricing structure is not allowable for any purchase under USDA regulations. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).

[2] TDA must approve capital expenditures before a CE makes a capital expenditure purchase.

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Cost-Reimbursable Contract	Reimbursable contract that is a formal, legally enforceable contract that reimburses the contractor for costs incurred under the contract but does not provide for any other payment to the contractor with a fixed fee or with a cost-reimbursement fee. [NOTE: The fixed fee associated with these types of contracts may be called management fees or administrative fees.] In a cost-reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor. In a cost-reimbursable contract, the fixed price (fee) includes the contractor's direct and indirect administrative costs and profit allocable to the contract.
Debarment	Action taken by a debarring official to exclude a person from participating in covered transactions.[3] A person so excluded is debarred, that is, unable to participate.
Direct Cost	Expenses that can be identified specifically with a particular cost objective used to meet a specific program goal or goals.
Distributor	Commercial food company that purchases, receives, and/or stores commercial food products and then sells, delivers, and bills the recipient agency for goods and/or services provided.
Drop Delivery	Delivery to one location within the CE, such as a central warehouse.
Economies of Scale	Purchase of large quantities of a product and/or service in order to obtain a better price.
Escalator/De-escalator Clause or Market-based Pricing	Predetermined provisions in a contract stipulating specific conditions for an increase or decrease in price.
Equipment (Property)	Items which have been purchased and are nonexpendable; items have a useful life of more than one year. Equipment purchases of $5, 000 or more are capital expenses and require prior approval.[4]
Ethics	Principles of conduct governing and guiding decisions for an individual or a group in their personal and professional lives. School nutrition professionals have a responsibility to act ethically in accordance with all federal, state, and local guidelines.
Excess Net Cash Resources (Excess Fund Balance)	Net cash resources that exceed three months of operating expenses. For NSLP and SBP an excessive fund balance refers to net cash resources.
Exclusive Contract (Including Exclusive Beverage Contracts)	Contract between an entity or organization and a distributor/vendor that prevents the entity or organization from buying or selling similar products from other distributors/vendors. The distributor/vendor may offer the entity or organization financial, product, or service incentives for signing an exclusive contract.
Expenditures (Costs)	Amount of money that is spent on an item or service.
Firm Fixed-Price Contract (Also Called Firm Price Contract)	Contracts that provide products or services for a price not subject to adjustment other than increases or decreases tied to an economic indicator stipulated by contract. Firm-fixed price contracts are usually negotiated where reasonably finite specifications and/or technical requirements are available, and costs can be estimated with reasonable accuracy. A fixed price contract places minimum administrative burden on contracting parties but subjects a contractor to maximum risk arising from full responsibility for all cost escalations.

[3] Covered transactions in this section refer to transactions related to child nutrition programs.
[4] See the *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on this requirement.

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Fixed-Price	Agreed-upon amount of money that is fixed at the inception of a contract and is guaranteed for a specific period of time. A fixed-price contract may also contain an economic cost adjustment provision tied to the Consumer Price Index (CPI) Food Away from Home.
Fixed Price (Fee)	Agreed upon amount of money that is fixed at the inception of the contract.
Food Service Management Company (FSMC)	Any organization, whether commercial enterprise or a nonprofit organization, that is or may be contracted by the CE to manage any aspect of the school food service.[5] CEs must use an FSMC from TDA's list of approved FSMCs.
Food Service Management Company (FSMC) Solicitation/ Contract	TDA term used to reference the TDA prototype combined solicitation and contract. This term is applicable to this section only.
Forecasting	Process of analyzing current and historical data to determine procurement needs. In the case of school nutrition programs, forecasting involves predicting and estimating the goods, works, and services needed in specified areas for the coming year, and/or assessing needs by reviewing current procurement activities. Forecasting allows for procurement timelines and tasks to evolve each fiscal year.
Full and Open Competition	Situation where all potential contractors are competing on a level playing field and have the same opportunity to compete and be awarded a contract. Full and open competition is also commonly referred to as free and open competition
Fund Balance (Net Cash Resources)	See "net cash resources."
Grade Standards	USDA quality standards based on measurable attributes that describe the value and utility of the products.
Grantees	Governmental or other legal entity to which a grant is awarded where the receiving entity is held accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.
Incentives	Rewards or benefits received as a result of performing requested actions and/or meeting predetermined milestones.
Indirect Cost	Expenses that are incurred for the benefit of multiple programs or functions and are necessary for the general operation of the SNP program—but cannot be directly attributable to the program.
Indirect Cost Rate	Established percentage of awarded funds that is dedicated to pay costs that have been identified as indirect costs.
Internal Controls	Procedures or processes designed to establish and maintain effective internal control over the SNP's financial management system that provides reasonable assurance that the CE is managing the program in compliance with all federal, state, and local regulations and terms and conditions of the program award. These procedures or processes help the CE to (1) define actions related to financial management and the procurement activities, (2) establish standards of ethical conduct, and (3) provide full and open competition.
Invitation for Bid (IFB)	Formal method of procurement that uses sealed bidding and results in a fixed-price contract with or without adjustment factors.
Just-in-Time (JIT)	Food and supplies kept in quantities an entity anticipates will meet its immediate needs, which results in the entity maintaining a low inventory level.
LEA	Local education agency, an entity having administrative control and direction of a public or private nonprofit elementary or secondary school.[6]

[5] If an NSLP CE operates a Child and Adult Care Food Program and/or Summer Food Service Program, there may be additional regulations that applied for the use of an FSMC to operate the program.

[6] This definition is taken from USDA regulation.

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Lead Time	Amount of time necessary for a distributor to prepare and deliver products and/or services to the CE.
Local Product	Unprocessed locally grown or raised agricultural products that retain their inherent character.
Managing the Contract	Procedures the CE has in place to ensure that contractors perform in accordance with the specifications, technical requirements, and terms and conditions described in a contract or purchase order.
Market Basket	Solicitation strategy that allows a CE to procure a list of products with varied pricing options for a finite number of products. Each product on the market basket list must have (1) a description with the quantity to be purchased, (2) specifications and/or technical requirements for each product, and (3) a description of how each product will be awarded on the contract.
Market Basket, Total Cost Analysis and Scoring	Analysis and scoring evaluation based on the aggregate total cost or by line item total.
Market Basket, Simplified Total Cost Analysis and Scoring	Analysis and scoring evaluation based on a representative sample of all products.
Material Change	Change made to a contract after the contract has been awarded that alters the terms and conditions of the contract substantially enough that had other offerors known of the change in advance, they may have bid differently and more competitively.
Meal Equivalency Factor (MEF)	Statistical tool that is used to convert a la carte sales into a standard of measure, in this case a "meal." The MEF is often used to convert a la carte sales into meal equivalents for billing purposes in fixed price contracts.
Micro-purchase Method	An acquisition of supplies or services using simplified acquisition procedures, the aggregate purchase amount of which does not exceed the micro-purchase threshold.
Necessary	Item or service that is essential to the operation of the program.
Negative Net Cash Resources (Fund Balance)	A CE must not carry negative net cash resources into the next school year. Negative net cash resources exist when all net cash resources have been depleted, and the resulting negative balance constitutes a liability to the organization.
Net Cash Resources	Amount of funds the SNP account has available to spend—total revenue less total liabilities (expenditures). USDA further defines Net Cash Resources as This includes all monies, as determined in accordance with the State agency's established accounting system that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds, or other negotiable securities.
Noncompetitive Method	Procurement method used when there is an insufficient number of offers submitted in response to a solicitation. In this case, full and open competition is deemed inadequate, and there is no way to remedy the situation.
Non-Federal Entity	State, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.
Open Award	Contract award in which all vendors that submit an offer are awarded a contract. This type of award does not promote full and open competition or pricing that is advantageous to the program. An open award is not the same as using a market basket strategy.

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Operating Months	Months during which the CE operates any child nutrition program—NSLP, SBP, CACFP At-Risk, or a summer feeding program. This includes reasonable amounts of time to set up program operations before meal service begins and time to close program operations at the end of the meal service period. Days on which operational tasks occur may be for a full month of operation or a partial month of operation.
Operator	Entity that operates a Child Nutrition Program.
Operator-Only Cooperative	Any type of agreement that is formed solely among CNP operators, including regional education service center (ESC) cooperatives.
Pass-Through Entity	Entity receiving federal funds that have passed through another entity. This definition is specific to funding from federal sources and applies to state agencies, CEs, group purchasing cooperatives, and third-party entities. These funds are used to fulfill the purposes of a federally funded program.
Payment Bond	Bond that covers the cost of materials and works for construction contracts.
Performance Bond	Bond which covers the cost of ensuring that the work is done as specified in the terms of the contract.
Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events or financial transactions. For this section, the word procedure is used to refer to all of these types of documents.
Procurement	Act of obtaining of goods or services in exchange for money or value. [NOTE: Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.]
Procurement Standards	Standards of conduct that shall govern the performance of the CE's officers, employees, or agents in contracting for payment and expending program funds. State and federal procurement regulations require each CE to maintain written standards of conduct, including a code of conduct that prohibits employees from participating in the selection, award, and administration of any contract to which an entity or certain persons connected to them have a financial interest.
Program Integrity	Organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds. [NOTE: Program integrity includes practices associated with ethical standards and codes of conduct.]
Program Specific Audit	Review of the financial transactions—income and expenditures—and accounting procedures for a designated program.
Proprietary Products	Manufactured products ordered specifically for a particular program or are unique to a manufacturer.
Reasonable Cost	Amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.
Regulatory Authority	Oversight authority dictated by legislative act or regulation.
Request for Proposals (RFP)	Formal procurement method where potential contractors submit an offer to provide products and/or services under a fixed-price or cost-reimbursable type contract.
Responsible (Offer)	Capable of providing the product(s) and/or service(s), as described in the solicitation.
Responsive (Offer)	Offer that addresses the terms and conditions of the solicitation, including the specifications and/or technical requirements for product(s) and/or service(s).
Revenue	Income received by an organization.

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Revenue to the School Nutrition Program (SNP) Account	All income that is collected or awarded to the SNP account is revenue (or income) to the SNP account. This includes, but is not limited to, the following: – Federal reimbursement – State or local funds, such as per meal subsidies and state revenue matching funds – Students' payment for reimbursable meals and a la carte sales – Payments for items purchased for fund raisers and vending machines – Income from catering and adult meals
Service Fee	Fee charged for the performance of a specific service.
Simplified Acquisition Threshold (Also Called Small Purchase Threshold)	Amount established by federal, state, or local regulations that defines when formal and informal procurement methods must be us
Single Audit	Organization–wide review of the financial transactions—income and expenditures—and accounting procedures.
Sole Source Method	Noncompetitive procurement method used when products and/or services are available from only one supplier, distributor, or contractor. TDA must approve all sole source methods of procurement.
Solicitation	Process of notifying prospective or qualified offerors about the specifications or technical requirements for the purchase of products and/or services. For informal procurement, the solicitation may be communicated by email, in person, by fax, or by phone as long as the person soliciting offers documents the specifications or technical requirements to ensure that every possible contractor is given the same information. For a formal procurement, a written solicitation is required.
Specifications and Technical Requirements	Detailed information included in the solicitation and in the final contract that describes the product(s) and/or service(s) that will be provided to the CE under the contract.
State Matching Funds	Matching funds provided to local education agencies (LEAs) that participate in NSLP by the state of Texas based on the number of lunches reported on reimbursement claims filed during the period of September 1 through August 31 of the prior year. RCCIs and private schools do not receive state matching funds.
Subgrantees	Governmental or other legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided.
Supplier (Sometimes Called Vendor)	Commercial enterprise, public or nonprofit private organization, or individual that enters into a contract with a CE to provide products and/or services. A supplier is also referred to as an offeror during the solicitation phase of procurement.
Supplies	Items that are expendable or consumed in day-to-day activities and replenished as needed.
Tangible Benefit	Special offer for a particular item in order to incentivize a purchase which includes, but is not limited to, offering (1) a special item at much lower price than the price structure for a current contract, (2) an item not presently used at a special price that is below market value; or (3) an incentive, such as equipment or other prizes for purchasing items.
Terms and Conditions	General provisions, definitions for terminology, renewal options, protests, termination, and other standards inherent to the contract.
Third-Party	Entity that is contracted to act on behalf of another entity.

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Third-Party Cooperative	Any type of cooperative agreement that is formed by sources that are external to CEs which includes the following types of cooperatives: **Non-Child Nutrition Program State Agency Procurement Agency Agreements** Intergovernmental agreements with the State which may include public, private, and nonprofit entities and are conducted for State facility needs using State procurement standards. These agreements allow local educational agencies and other Child Nutrition Program operators to purchase from the State's contracted sources. **Interagency Agreements** Public, private, and nonprofit entities formed for the purpose of procuring goods and services. **Group Purchasing Organizations, Group Buying Organizations, and Third-Party Vendors** (Collectively Referred to as GPOs) CNP and non-CNP operators such as public and private schools, hospitals, universities, law enforcement, public works, etc., who join a third-party company or service provider. A GPO may be a for-profit or a nonprofit entity. Typically, a GPO includes a membership fee for those granted access to the GPO price list of products and services.
Transaction	Occurrence in which two or more entities exchange goods, services, or money between them or among them under an agreement formed for their mutual benefit.
Unallowable Cost	Direct or indirect cost that cannot be paid using funds from the nonprofit school food service account because the cost is not reasonable, allowable, and/or allocable. A cost that is unallowable for the CE is also unallowable for a third-party acting on behalf of the CE. The term *disallowed* is sometimes used in place of unallowable.
Unit Cost	Cost for a single item.
Value	Something of monetary or material worth or something that has a usefulness that can be exchanged for something of worth, merit, or importance.
Velocity Report	Report providing the quantity, date of purchase, and other valuable information for specific products and/or services purchased by CEs used to assist with forecasting future purchasing needs.
Vended Meal Contract	Contractor or merchandiser providing the CE with complete meals, meal components, and raw materials for the meal service.
Vendor Participation Fees	Charge to participate. The charge to participate may be paid by the participant, or it may be paid by those providing products and/or services.
Written Financial and Procurement Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events, including financial and procurement transactions. For this section, the word *procedure* is used to refer to all of these types of documents. Procedures define the critical steps taken to establish and operate effective and efficient systems for (1) financial management, (2) procurement, and (3) management of contracts and agreements. Written procurement procedures may include a procurement plan with timelines and tasks, or a procurement plan may be a separate document from the procedures. Written financial and procurement procedures must be established by all CEs.

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Buy American Purchases

The Buy American provision applies to all food purchases made with SNP funds. This provision requires CEs and third parties, acting on behalf of CEs, to purchase domestically[7] grown and processed food to the maximum extent practicable.

Food Products That Meet the Buy American Provision	Food Products That Do Not Meet the Buy American Provision
– Food products grown domestically, i.e., United States and its territories: Guam, American Samoa, Virgin Island, Puerto Rico, and the Northern Marian Islands. – Processed food products with over 51% of the final product consisting of agricultural foods that were grown domestically and processed into final end products in the United States.	– Food products grown and processed in another country. – Food products grown in another country and processed in the United States. – Products grown in the United States and processed in another country.

Administrator's Reference Manual (ARM), Section 23, Food Product Documentation provides detailed information on how to identify the origin of a product.

The Buy American provision does not apply to spices.

CEs may use local preference to assist them in purchasing food grown in the United States. See the *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on local preference.

Written Procurement Procedures

CEs are required to have written procurement procedures that reflect applicable local, state, and federal regulations that include, but are not limited to, checks and balances that provide internal controls for all financial matters. Written procurement procedures must include the Buy American provisions. See *Administrator's Reference Manual (ARM), Section 17a, Procurement Procedures* for additional information on procurement procedures.

Solicitations and Contracts

[NOTE: For this section, when the word *contract* is used, the guidance applies to both contracts and agreements, as appropriate.]

To address the Buy American provision in solicitations and contracts, CEs will incorporate the following guidance:

- Must require documentation from offerors, including statements on contracts and invoices that all food products will meet the Buy American provisions.

  A CE may require all contractors to sign a certification that the contractor will adhere to the Buy American provision; however, the solicitation and contract

[7] Domestically grown food products are grown and processed in the United States.

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must have a statement requiring that the contractor provide food products that meet the Buy American provision.

USDA provides the following sample language for contracts related to the Buy American provisions:

- General Statement for Solicitations and Contracts:

  The District/State agency/Territory participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A domestic commodity or product is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21(d).

- Required Certification from Offerors

  We require that suppliers certify the food product was processed in the U.S. and certify the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to us.

  or

  We require bidders to certify that ____ (insert product name) ____ was processed in the U.S. and contains over _____ (insert % of weight or volume) of its agricultural food component from the U.S.

CEs are not required to use this exact text, but they must include this requirement in solicitations and contracts.

- Must designate an offeror as non-responsive if the appropriate phrasing is not included in the offer.
- Establish penalties, including contract termination, for noncompliance with the Buy American provision.

  If the distributor, supplier, or vendor is repetitively unable to provide domestic food products, the CE should discuss the Buy American requirements with the distributor, supplier, or vendor and determine if the entity is capable of fulfilling the terms and conditions of the contract specific to the Buy American provision.

- Must include a statement in solicitations and contracts that the contractor must provide documentation that demonstrates that food products meet the Buy American Provision.

  A CE may require all contractors to sign a certification that the contractor will adhere to the documentation requirements for Buy American provision; however, the solicitation and contract must have a statement requiring that the contractor provide food products that meet the Buy American provision.

- Must include a statement in solicitations and contract that the contractor must notify CEs if a delivery contains non-domestic products, so the CE can approve delivery as an exception to the Buy American provision.[8]

  A CE may require all contractors to sign a certification that the contractor will adhere to the notification requirements for Buy American provision; however,

[8] See the *Buy American Exception* subsection in this section for additional information on this topic.

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the solicitation and contract must have a statement requiring that the contractor provide food products that meet the Buy American provision.

Third-Party Buy American Requirements

Third parties, acting on behalf of CEs, must purchase domestically[9] grown fresh produce and processed food to the maximum extent practicable. Third parties must also provide the CE with all documentation the CE requires (1) for the CE to make a determination that procured food products are compliant with the Buy American provisions and (2) for the CE to make a determination that an exception to the Buy American provision is warranted.

USDA Foods

Non-processed USDA Foods delivered to a CE must be grown in the United States. When USDA Foods[10] items are made into processed end products, 51% of resulting food products must be of United States (US) origin. The food products must be manufactured/processed in the United States.

If a CE receives USDA Foods products that do not meet the Buy American requirements, the CE must refuse delivery and report the issue to TDA immediately.

Buy American Exception

The purchase of a non-domestic food product should be an occasional, not frequent occurrence. As stated in the *Solicitations and Contracts* subsection of this section, if the distributor, supplier, or vendor is repetitively unable to provide domestic food products, the CE may consider this inability to provide domestic food products in determining if the entity is able to fulfill the specifications, technical requirements, and term and conditions of the contract. It is the CE's responsibility to ensure that food products are sourced domestically.

In all cases, the CE—not the distributor, supplier, or vendor—must determine that the use of a non-domestic food product is appropriate. The distributor, supplier, or vendor may provide information that will assist the CE in this determination; however, the decision to purchase or accept delivery of a non-US product must be made by the CE.

Frequency of Approval

The Buy American exception is intended to be an occasional occurrence. Therefore, when a CE approves a Buy American exception, the CE cannot make a blanket approval.

The decision must be by occurrence (i.e., delivery) because the contractor has stipulated in the awarded and signed contract that the contractor is able to provide domestic food products to fulfill the procurement. When the contractor provides information that supports the CE's decision, the same requirement applies, it is not a blanket support; it is by occurrence.

[9] Domestically grown food products are grown and processed in the United States.

[10] See *Administrator's Reference Manual (ARM), Section 14, USDA Foods* for additional information on the Buy American requirements for processing USDA Foods.

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Requirements for an Exception

When a CE determines an exception is allowed, the CE must use USDA prescribed questions in making the decision.

A. Is the food product grown domestically in large enough quantities of a satisfactory quality? Or does 51% of the final processed food product consist of agricultural commodities that were grown domestically?		
	No	**Yes**
	The food product is not produced in sufficient quantities of a satisfactory quality and/or is not of US origin. In this case, it may be possible to grant an exception. Go to Question B.	If the answer is yes, the purchase of a non-domestic food product is not appropriate. The CE must not grant an exception.
B. Are there other sources for purchasing a domestic food product instead of a non-domestic product?		
	No	**Yes**
	There is no alternative source that can provide a domestic product in sufficient quantities and/or of an acceptability quality. In this case, it may be possible to grant an exception. Go to Question C.	If the answer is yes, the purchase of a non-domestic food product is not appropriate. The CE must not grant an exception.
C. Is there another domestic food product that can be easily substituted for the non-domestic food product?		
	No	**Yes**
	There is no substitute domestic food product for this food product. In this case, it may be possible to grant an exception. Go to Question D.	If the answer is yes, the purchase of a non-domestic food product is not appropriate. The CE must not grant an exception.
D. Is the price difference between the domestic product and non-domestic product reasonable in light of the CE's anticipated per meal price?		
	No	**Yes**
	The cost difference in purchasing a non-domestic product is reasonable. In this case, it may be possible to grant an exception. Review the answers for Questions A-D.	If the answer is yes, the purchase of a non-domestic food product is not appropriate. The CE must not grant an exception.
	▼ All NOs ▼	
	If no is the answer to all questions, the CE may decide to approve an exception.	**▼ Any Yes ▼**
	If the CE has documentation that demonstrates that each of these questions has been considered and the non-domestic food product can be approved as an exception, the CE may purchase the non-domestic food product.	**If yes is the answer to any one of the four questions, the CE cannot approve an exception.**

TDA's *Buy American Checklist* is designed to help CEs maintain documentation for an approved exception.[11]

Sources of Documentation for Buy American Exception

The following information sources may assist the CE in documenting an exception to the Buy American provision:

- Information provided by a distributor, supplier, or vendor that supports the CE's decision that an exception is warranted.

  USDA does not allow CEs to use notifications, letters, or lists created by distributors, vendors, other suppliers, or

[11] Available at *www.SquareMeals.org*.

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organizations/agencies as the sole source of information to demonstrate that an exception to the Buy American provision is allowable.

- Information available from USDA.

  Agricultural Marketing Resource Center at *www.agmrc.org/commodities-products/* and/or USDA Marketing Resource Center at *www.ams.usda.gov/*

- Information obtained through general Internet agricultural news sources.
- Information from food product catalogs.
- Information from the USDA Foods survey list.

  USDA uses historical data and commodity forecasts to identify food items for the survey list. However, USDA only purchases food items when there is sufficient quantity at the time USDA issues the solicitation. If an item appeared on the survey list and was later dropped from the list, this is an indication that the product may be in short supply.

- Industry newsletters, bulletins, and reports on product availability and pricing.
- Notes created by CEs based on contacts with distributors, suppliers, vendors, or other commodity or agriculture sources.
- Responses recorded on the TDA form *Buy American Checklist for Non-Domestic Food Product Purchases.*[12]

Frequency of Establishing a Buy American Exception

Each time a non-domestic food product is purchased or delivered; the CE must determine if an exception to the Buy American provisions is appropriate.

For Example: A CE received non-domestic canned peppers as part of its regular delivery the first week of January. At that time, the CE determined that the purchase of a non-domestic product was acceptable and retained documentation demonstrating why it is appropriate. In April, the CE again received non-domestic canned peppers as part of its regular delivery. To be in compliance with the Buy American provision, the CE must again determine that the receipt of a non-domestic product is appropriate and retain documentation demonstrating why it is appropriate.

Additional Resources

TDA Resources

TDA resources are available on the SquareMeals website, *www.SquareMeals.org*.

- *Approved Purchase List*—Form designed to provide a list of products approved to purchase with information that will be helpful to menu planners and staff managing the contract.
- *Buy American Checklist for Non-Domestic Food Product Purchases*—Checklist to assist CEs in determining if a non-domestic product is acceptable.

[12] Available at *www.SquareMeals.org*.

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Institute for Child Nutrition (ICN)

- *First Choice*, a handbook for developing an effective procurement process, available at *www.theicn.org*
- *Procurement in the 21st Century*, manual providing specific details on the procurement process, available at *www.theicn.org*
  [NOTE: This resource is not a guidance document, but it does provide useful information.]
- *State Agency Guidance on Procurement*, a series of web-based training on procurement, available at *www.theicn.org*

USDA

- *Understanding Food Qualities Labels*, a manual provided by USDA's Agricultural Marketing Service (AMS) that provides a guide to product labeling that indicates quality, available at *www.ams.usda.gov/sites/default/files/media/AMS%20Product%20Label%20Factsheet.pdf*

Other Websites

- USDA Farm to School website, available at *www.fns.usda.gov/farmtoschool/*

Records Retention

The CE is required to maintain an organized accounting and financial system that includes documentation that demonstrates compliance with program regulations and the history of all procurements. Records retained for procurement must be sufficient to detail the history of procurement for each procured product and/or service, including but not limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. CEs have the option to maintain records on paper or electronically.

Information Box 3

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

These records must be accessible to appropriate CE staff members and federal or state reviewers. TDA may request procurement documentation during both offsite and onsite administrative review processes as well as any additional review specific to procurement.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, other nonprofit organizations, and residential child care institutions (RCCIs) after the end of the fiscal year to which they pertain.

Procurement System

The CE has documentation that demonstrates that CE has established internal controls to promote program integrity. This includes, but is not limited to, documentation that illustrates the following:

- Written procurement procedures, including, but not limited to, actions or tasks for cost analysis, selection of procurement method, ethical standards, and other requirements, as described in this section.

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- Procedures for effective contract management.
- Verification of third-party entity compliance with procurement regulations, including the requirements listed in this section.

Records retention to demonstrate compliance with the Buy American provision, including, but not limited to, documenting exceptions, descriptions on delivery invoices and receipts, and compliant product labels.

- Solicitation—Documentation that demonstrates that the CE has issued a solicitation that contains the Buy American provision requirement statement.
- Contract—Documentation that demonstrates that the CE has awarded a solicitation that contains the Buy American provision requirement statement.
- Food Products Received—Documentation that demonstrates the CE has received foods products that meet the Buy American provisions, including but not limited to, descriptions on delivery invoices and receipts and compliant product labels.
- Exceptions—Documentation that demonstrates the CE has used the questions USDA has provided to decide whether a Buy American exception can be made for the occurrence.
- Third-Party Contractor—Documentation that demonstrates that the CE has required all third-party contractors to apply the standards for the Buy American provision.

Compliance

TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance with the procurement requirements. Additionally, TDA will assess compliance with the accounting and financial requirements based on the documentation that the CE has submitted throughout the year as well as documentation submitted for offsite and onsite administrative review processes or other procurement review activities.

The cost for any products and/or services that were procured improperly are unallowable costs to the school nutrition program.[13] This includes any costs that the CE has incurred as a result of intentionally breaking up purchases into smaller amounts to qualify under the micro-purchase threshold or simplified purchase threshold as well as purchases made on behalf of the CE by a third-party.

CEs must make available, upon request of the awarding agency (state or federal), any or all of the documentation described in the *Records Retention* subsection in this section.

Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations

CE's must report, in writing to TDA, all violations of federal criminal law—fraud, bribery, or gratuity.

> The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies

[13] An unallowable cost or expense cannot be paid using school nutrition program funds.

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described in § 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).

Criminal Penalty

The maximum fine for embezzling, willfully misapplying, stealing, or obtaining by fraud, funds, assets, or property acquired under the National School Lunch Act or Child Nutrition Act is $25,000.

Fraud

Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

Termination of the Permanent Agreement for Financial Fraud or Misuse of Funds. If serious deficiencies, such as fraud or misuse of funds occur, and corrective action is not practical, TDA will amend the FND Agreement to terminate the CE's participation in the SNP. In this case, TDA may also refer the matter to the appropriate local, state, and/or federal authorities.

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Section 17c

Cooperative Purchasing

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Section 17c, Cooperative Purchasing

Update Guide	
September 29, 2022	Clarified the following guidance: - Catalog purchasing - USDA Foods: credits, rebates, and discounts
July 28, 2022	Clarified the following guidance: - Definitions
August 16, 2021	Updated the definition of aggregate.
May 27, 2021	Updated *Section 17c, Cooperative Purchasing* to clarify information on the following topics: - Cooperative agreement (or contract) - Third-party cooperatives - Buy boards and subscription services - Off-bid purchases - Definitions
August 12, 2020	Created *Section 17c, Cooperative Purchasing* and updated the *Administrator's Reference Manual (ARM)* section references. Guidance for this new section was taken from *Administrator's Reference Manual (ARM), Section 17, Procurement*.

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847
Phone 877-TEX-MEAL, (877) 839 -6325	**Email Contact** *SquareMeals@TexasAgriculture.gov*
Fax (888) 203-6593	**Website** *www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.Bops@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.Bops@TexasAgriculture.gov

Seamless Summer Option
SSO.Bops@TexasAgriculture.gov

Summer Food Service Program
SFSP.Bops@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.Bops@TexasAgriculture.gov

Claims
BCT.Bops@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.Bops@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Cooperative Purchasing

The guidance in this section is intended to assist contracting entities (CEs) in participating in purchasing cooperatives that allow CEs to take advantage of economies of scale[1] and reduce program costs.

> Procurement is the act of obtaining goods or services in exchange for money or value.[2]

The guidance in this section applies to the following school nutrition programs (SNPs):

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Fresh Fruit and Vegetable Program (FFVP)
  - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

NSLP CEs that operate CACFP At-Risk and/or SFSP may use the NSLP procurement regulations instead of the CACFP and/or SFSP procurement regulations.

The guidance in this section is intended to be used with the procurement and financial guidance provided in the following *Administrator's Reference Manual (ARM)* sections:

- *Section 14, USDA Foods*
- *Section 14a, USDA Foods Processors*
- *Section 15, Program Integrity*
- *Section 16, Financial System*
- *Section 16a, Contract Management*
- *Section 17, Procurement*
- *Section 17a, Procurement Procedures*
- *Section 17b, Buy American*

Information Box 1
Additional Resources for Procurement

Texas Comptroller of Public Accounts

The website for the Texas Comptroller provides information on state regulations that apply to state and local governmental entities. Available at *www.comptroller.texas.gov/*

Resources include the following:

- *Model Purchasing Manual for Texas Cities and Counties 2010*—information that applies to all governmental entities, including schools. Available at *www.texasahead.org/lga/finances/purchasing/96-449_Model_Purchasing_Manual_11_10.pdf*
- *State of Texas Contract Management Guide*—guidance and recommendations on improving existing contract management methods and practices. Available at *www.comptroller.texas.gov/purchasing/publications/contract-management-guide.php*

Texas Education Agency (TEA)

Financial Accountability System Resource Guide provides detailed guidance of financial accountability, including Module 5, Purchasing, for local education agencies and charter schools. Available at *www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial__Accountability_System_Resource_Guide/*

United States Office of Management and Budget (OMB)

2 Code of Federal Regulations, Part 200—These regulations provide detailed information on required federal procurement process. Available at *www.fns.usda.gov/es/node/73141*

[1] By joining together and compiling their total number of purchases, CEs get a better discount based on the increased number of product purchases—an economy of scale.

[2] Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.

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- *Section 18, Food Service Contracts*
- *Section 23, Food Product Documentation*
- *Section 26, Food Safety*
- *Section 27, Professional Standards*
- *Section 30, Records Retention*

The guidance in this section also applies to contracts for consultants, food service management companies (FSMCs), and vended meals. However, there is additional guidance specific to these types of contracts located in *Administrator's Reference Manual, Section 18, Food Service Contracts*.

Program Integrity and Internal Controls

Procurement activities must promote program integrity and establish internal controls.

> Program Integrity is defined as an organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds.

The use of program integrity and internal controls assists CEs in developing an effective financial management system that provides safeguards to ensure the stewardship of federal money and reduce fraud and improper payments. Internal controls must be incorporated into all procurement activities, including cooperative purchasing, to ensure program integrity.

Administrator's Reference Manual (ARM), Section 15, Program Integrity provides detailed guidance on program integrity.

Information Box 2

Implementation of 2 Code of Federal Regulation (CFR) Part 200

The updates to this section include the consolidated 2 Code of Federal Regulation (CFR) Part 200 which replaced existing rules at 7 CFR Parts 3015, 3016, 3019, and 3052, and the following Office of Management and Budget (OMB) guidance documents; 2 CFR Part 220 (A-21), A-50 (sections related to audits), 2 CFR Part 225 (A-87), A-89, A-102, A-110, 2 CFR Part 230 (A-122), and A-133.

2 CFR Part 200 primarily serves to consolidate the previous regulations into one location as a convenience and for clarity. For procurement, 2 CFR Part 200 clarifies existing regulation and adds one new flexibility—micro-purchasing.

[NOTE: 2 CFR Part 200 also applies to all financial and accounting practices. *Section 17, Procurement* only addresses issues related to procurement. Other finance and accounting issues are addressed in Section 16, Financial System.]

Conflicting Program Regulations

For CEs operating Child Nutrition Programs (CNPs), there are federal, state, and local regulations that govern the actions of the CE. **When there is a conflict between USDA regulations and other regulations, the CE must follow USDA regulations for the use of CNP funds.** If other applicable federal, state, or local regulations do not conflict with USDA regulations, the CE will follow the most restrictive other federal, state, or local regulations. All programs that receive federal funds are required to follow 2 CFR Part 200 unless federal legislation supersedes 2 CFR Part 200.

Education Department General Administrative Regulations (EDGAR)

CEs receiving funds through the United States Department of Education are required to follow the regulations described in the ***Education Department General Administrative Regulations (EDGAR)*** for those funds, which incorporates 2 CFR Part 200. However, Child Nutrition Programs (CNPs) are required to follow USDA regulations for financial management, including procurement. While there are regulations in EDGAR that conflict with USDA regulations, in most situations, CEs will find the regulations to be compatible. However, if there is a regulatory conflict, CEs are required to follow the USDA regulations for all CNP funds (income, allowable and unallowable costs, and procurement).

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Definitions for This Section

The nature of financial processes fosters the use of terms and vocabulary that are more commonly used by accountants than by school nutrition staff. For School Nutrition Programs (SNPs), the following financial and procurement terms are used:

Acting on Behalf of CE	Entity or person who has been given the responsibility to act for the CE.
Agent	Person or business that is procured to act on behalf of the CE. This includes procuring on behalf of the CE.
Aggregate Purchase Amount	Total cost of all products and services in a single procurement transaction.
Agreement (for School Nutrition Programs)	Written legal document summarizing contractual obligations between two or more entities. This includes intergovernmental and interlocal agreement.
Allocable	Assigning a cost, or group of costs, to one or more cost objectives, in reasonable and realistic proportion to the benefit provided or other equitable relationship—the cost meets one of the following principles: – is incurred specifically for the award/program or – benefits both the award/program and necessary work and can be distributed in reasonable proportion to the benefits received or – is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.
Allowable	Direct or indirect costs that may be paid by SNP funds.
Approved Supplier List	List of suppliers or potential contractors who have demonstrated the ability to perform successfully under the terms and conditions of a proposed procurement, consideration being given to contractor integrity, compliance with applicable policy or regulations, record of past performance, and financial and technical resources.
Arms-Length Transaction	Transaction in which the parties are dealing from equal bargaining positions—neither party is subject to the other's control or dominant influence, and the transaction is treated with fairness, integrity, and legality. Less than Arms-Length Transaction A less than arms-length transaction occurs when a person responsible for making a purchase and appears to have a stake in the outcome is able to control or substantially influence the actions of others. This may include agreements between divisions of an organization; organizations under common control through common officers, directors, or members; and an organization and a director or employee of the organization and his or her immediate family.
Audit	Independent examination of accounting and financial records for accuracy, efficiency, and consistency. This is also called the annual audit or single audit.
Audit Report	Final summary of audit findings provided by a financial auditor.
Audit Corrective Action Plan	Plan in which the CE describes the strategies or actions the CE will adopt to address each finding reported in the audit report.
Audit Summary Schedule or Work Plan	Document that contains a cumulative list of audit findings by year and explanations of the strategies and actions the CE plans to take or has taken to resolve each audit finding. This summary allows the CE, auditor, or TDA staff member to review the actions planned or taken from year to year to maintain an accurate, efficient, and consistent accounting and financial system.
Bid Guarantee	Guaranteed percentage of bid price provided by the offeror at the time the offer is submitted. The CE must return all bid guarantees to all unsuccessful offerors when the contract is awarded and to the winning offeror as soon as the contract is signed.

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Bond	Insurance agreement pledging surety for financial loss caused in connection with the contract. For school nutrition programs, if a loss occurs in connection with a contract related to program operations, the loss will be covered to the extent agreed upon in the bond.
Breach of Ethics	Attempt to realize personal gain through public employment with a CE by any conduct inconsistent with the proper discharge of the employee's duties.
Brokers	Independent sales agents who negotiate sales for manufacturers by working with food distributors and/or school nutrition operations.
Buy American	Requirement for schools to purchase, to the maximum extent practicable, domestic commodities, and products. A domestic commodity or product means an agricultural commodity that is grown in the United States and processed in the United States or that is processed in the United States substantially using agricultural commodities that are produced in the United States.
Capital Assets	Land, buildings (facilities), and equipment that have a useful life of more than one year which are capitalized in accordance with Generally Accepted Accounting Principles (GAAP).
Capital Expenditures	Direct cost expenses to acquire capital assets or to make additions, improvements, modifications, replacements, reinstallations, renovations, or alternations to capital assets to be used for general purposes for multiple years and which materially increase the value or useful life of the asset.[3]
CE Employee (Specific to Program Integrity)	Term used in this section to represent a CE employee or official; family member of CE employee or official; or business partner of a CE employee or official.
Charge Period	Span of time during which a cost is paid. This payment process includes spreading payments over a period of weeks or months or establishing milestones that are linked to payments.
Code of Conduct	Set of written standards the CE must develop that outline the responsibilities of, or proper practices for, an individual or organization and which governs the following: 1. Performance of the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by Food and Nutrition Service (FNS) program funds. 2. Methods of procurement, including the requirement that the CE perform a cost or price analysis for every procurement (including contract modifications) and determination of which contract clauses and certifications are required in the CE's contracts.
Cognizant Agency Related to Indirect Costs	Agency that has primary responsibility for negotiating the indirect cost methodologies for non-federal entities.
Conflict of Interest	Any action that allows a person to benefit at the expense of the public interest or the expense of an employer. A conflict of interest may be a real or apparent conflict of interest.
Contract	Formal, legally enforceable agreement (terms and conditions) between a buyer (the CE) and a seller (contractor) that clearly and accurately describes the products and/or services to be delivered or performed and sets forth the method and the compensation the contractor receives when products and/or services are provided.
Consultant	Consultant that provides temporary support to the CE in areas where the CE lacks the necessary resources, skills, and/or abilities in order to assist the CE in gaining the necessary resources, skills, and/or abilities to operate an effective and compliant program.
Cooperative Purchasing	Group of entities who join together to purchase products and/or services with the intention of reducing costs and improving the quality of products and/or services available to members of a group. In this reference, a purchasing cooperative consists of a group of CEs.

[3] TDA must approve capital expenditures before a CE makes a capital expenditure purchase.

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Cost Analysis	Review and evaluation of each element of cost to determine reasonableness, allocability, and allowability for products and/or services to procured. A cost analysis will include the total projected cost for the products and/or services to be procured.
Cost Index	Tool designed to show the impact of an economic measure on the price of purchasing a specific type of item. TDA has approved the use of the Consumer Price Index (CPI) Food Away from Home for this purpose.
Cost Objective	Program function or activity for which cost data and for which specification is made to accumulate and measure the cost of processes, products, jobs, or other expenses.
Cost Plus Percentage of Cost	Method of pricing where the contract or agreement creates a pricing structure that charges the cost of the product or service plus a percentage of the cost. This pricing structure is not allowable for any purchase under USDA regulations. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).
Cost-Reimbursable Contract	Reimbursable contract that is a formal, legally enforceable contract that reimburses the contractor for costs incurred under the contract but does not provide for any other payment to the contractor with a fixed fee or with a cost-reimbursement fee. [NOTE: The fixed fee associated with these types of contracts may be called management fees or administrative fees.] In a cost-reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor. In a cost-reimbursable contract, the fixed price (fee) includes the contractor's direct and indirect administrative costs and profit allocable to the contract.
Debarment	Action taken by a debarring official to exclude a person from participating in covered transactions.[4] A person so excluded is debarred, that is, unable to participate.
Direct Cost	Expenses that can be identified specifically with a particular cost objective used to meet a specific program goal or goals.
Distributor	Commercial food company that purchases, receives, and/or stores commercial food products and then sells, delivers, and bills the recipient agency for goods and/or services provided.
Drop Delivery	Delivery to one location within the CE, such as a central warehouse.
Economies of Scale	Purchase of large quantities of a product and/or service in order to obtain a better price.
Escalator/De-escalator Clause or Market-based Pricing	Predetermined provisions in a contract stipulating specific conditions for an increase or decrease in price.
Equipment (Property)	Items which have been purchased and are nonexpendable; items have a useful life of more than one year. Equipment purchases of $5, 000 or more are capital expenses and require prior approval.[5]
Ethics	Principles of conduct governing and guiding decisions for an individual or a group in their personal and professional lives. School nutrition professionals have a responsibility to act ethically in accordance with all federal, state, and local guidelines.
Excess Net Cash Resources (Excess Fund Balance)	Net cash resources that exceed three months of operating expenses. For NSLP and SBP an excessive fund balance refers to net cash resources.

[4] Covered transactions in this section refer to transactions related to child nutrition programs.
[5] See the *Capital Expenditures* subsection in this section for additional information on this requirement.

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Exclusive Contract (Including Exclusive Beverage Contracts)	Contract between an entity or organization and a distributor/vendor that prevents the entity or organization from buying or selling similar products from other distributors/vendors. The distributor/vendor may offer the entity or organization financial, product, or service incentives for signing an exclusive contract.
Expenditures (Costs)	Amount of money that is spent on an item or service.
Firm Fixed-Price Contract (Also Called Firm Price Contract)	Contracts that provide products or services for a price not subject to adjustment other than increases or decreases tied to an economic indicator stipulated by contract. Firm-fixed price contracts are usually negotiated where reasonably finite specifications and/or technical requirements are available, and costs can be estimated with reasonable accuracy. A fixed price contract places minimum administrative burden on contracting parties but subjects a contractor to maximum risk arising from full responsibility for all cost escalations.
Fixed-Price	Agreed-upon amount of money that is fixed at the inception of a contract and is guaranteed for a specific period of time. A fixed-price contract may also contain an economic cost adjustment provision tied to the Consumer Price Index (CPI) Food Away from Home.
Fixed Price (Fee)	Agreed upon amount of money that is fixed at the inception of the contract.
Food Service Management Company (FSMC)	Any organization, whether commercial enterprise or a nonprofit organization, that is or may be contracted by the CE to manage any aspect of the school food service.[6] CEs must use an FSMC from TDA's list of approved FSMCs.
Food Service Management Company (FSMC) Solicitation/ Contract	TDA term used to reference the TDA prototype combined solicitation and contract. This term is applicable to this section only.
Forecasting	Process of analyzing current and historical data to determine procurement needs. In the case of school nutrition programs, forecasting involves predicting and estimating the goods, works, and services needed in specified areas for the coming year, and/or assessing needs by reviewing current procurement activities. Forecasting allows for procurement timelines and tasks to evolve each fiscal year.
Full and Open Competition	Situation where all potential contractors are competing on a level playing field and have the same opportunity to compete and be awarded a contract. Full and open competition is also commonly referred to as free and open competition
Fund Balance (Net Cash Resources)	See "net cash resources."
Grade Standards	USDA quality standards based on measurable attributes that describe the value and utility of the products.
Grantees	Governmental or other legal entity to which a grant is awarded where the receiving entity is held accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.
Incentives	Rewards or benefits received as a result of performing requested actions and/or meeting predetermined milestones.
Indirect Cost	Expenses that are incurred for the benefit of multiple programs or functions and are necessary for the general operation of the SNP program—but cannot be directly attributable to the program.
Indirect Cost Rate	Established percentage of awarded funds that is dedicated to pay costs that have been identified as indirect costs.

[6] If an NSLP CE operates a Child and Adult Care Food Program and/or Summer Food Service Program, there may be additional regulations that applied for the use of an FSMC to operate the program.

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Internal Controls	Procedures or processes designed to establish and maintain effective internal control over the SNP's financial management system that provides reasonable assurance that the CE is managing the program in compliance with all federal, state, and local regulations and terms and conditions of the program award. These procedures or processes help the CE to (1) define actions related to financial management and the procurement activities, (2) establish standards of ethical conduct, and (3) provide full and open competition.
Invitation for Bid (IFB)	Formal method of procurement that uses sealed bidding and results in a fixed-price contract with or without adjustment factors.
Just-in-Time (JIT)	Food and supplies kept in quantities an entity anticipates will meet its immediate needs, which results in the entity maintaining a low inventory level.
LEA	Local education agency, an entity having administrative control and direction of a public or private nonprofit elementary or secondary school.[7]
Lead Time	Amount of time necessary for a distributor to prepare and deliver products and/or services to the CE.
Local Product	Unprocessed locally grown or raised agricultural products that retain their inherent character.
Managing the Contract	Procedures the CE has in place to ensure that contractors perform in accordance with the specifications, technical requirements, and terms and conditions described in a contract or purchase order.
Market Basket	Solicitation strategy that allows a CE to procure a list of products with varied pricing options for a finite number of products. Each product on the market basket list must have (1) a description with the quantity to be purchased, (2) specifications and/or technical requirements for each product, and (3) a description of how each product will be awarded on the contract.
Market Basket, Total Cost Analysis and Scoring	Analysis and scoring evaluation based on the aggregate total cost or by line item total.
Market Basket, Simplified Total Cost Analysis and Scoring	Analysis and scoring evaluation based on a representative sample of all products.
Material Change	Change made to a contract after the contract has been awarded that alters the terms and conditions of the contract substantially enough that had other offerors known of the change in advance, they may have bid differently and more competitively.
Meal Equivalency Factor (MEF)	Statistical tool that is used to convert a la carte sales into a standard of measure, in this case a "meal." The MEF is often used to convert a la carte sales into meal equivalents for billing purposes in fixed price contracts.
Micro-purchase Method	An acquisition of supplies or services using simplified acquisition procedures, the aggregate purchase amount of which does not exceed the micro-purchase threshold.
Necessary	Item or service that is essential to the operation of the program.
Negative Net Cash Resources (Fund Balance)	A CE must not carry negative net cash resources into the next school year. Negative net cash resources exist when all net cash resources have been depleted, and the resulting negative balance constitutes a liability to the organization.

[7] This definition is taken from USDA regulation.

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Net Cash Resources	Amount of funds the SNP account has available to spend—total revenue less total liabilities (expenditures). USDA further defines Net Cash Resources as This includes all monies, as determined in accordance with the State agency's established accounting system that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds, or other negotiable securities.
Noncompetitive Method	Procurement method used when there is an insufficient number of offers submitted in response to a solicitation. In this case, full and open competition is deemed inadequate, and there is no way to remedy the situation.
Non-Federal Entity	State, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.
Open Award	Contract award in which all vendors that submit an offer are awarded a contract. This type of award does not promote full and open competition or pricing that is advantageous to the program. An open award is not the same as using a market basket strategy.
Operating Months	Months during which the CE operates any child nutrition program—NSLP, SBP, CACFP At-Risk, or a summer feeding program. This includes reasonable amounts of time to set up program operations before meal service begins and time to close program operations at the end of the meal service period. Days on which operational tasks occur may be for a full month of operation or a partial month of operation.
Operator	Entity that operates a Child Nutrition Program.
Operator-Only Cooperative	Any type of agreement that is formed solely among CNP operators, including regional education service center (ESC) cooperatives.
Pass-Through Entity	Entity receiving federal funds that have passed through another entity. This definition is specific to funding from federal sources and applies to state agencies, CEs, group purchasing cooperatives, and third-party entities. These funds are used to fulfill the purposes of a federally funded program.
Payment Bond	Bond that covers the cost of materials and works for construction contracts.
Performance Bond	Bond which covers the cost of ensuring that the work is done as specified in the terms of the contract.
Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events or financial transactions. For this section, the word procedure is used to refer to all of these types of documents.
Procurement	Act of obtaining of goods or services in exchange for money or value. [NOTE: Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.]
Procurement Standards	Standards of conduct that shall govern the performance of the CE's officers, employees, or agents in contracting for payment and expending program funds. State and federal procurement regulations require each CE to maintain written standards of conduct, including a code of conduct that prohibits employees from participating in the selection, award, and administration of any contract to which an entity or certain persons connected to them have a financial interest.
Program Integrity	Organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds. [NOTE: Program integrity includes practices associated with ethical standards and codes of conduct.]
Program Specific Audit	Review of the financial transactions—income and expenditures—and accounting procedures for a designated program.
Proprietary Products	Manufactured products ordered specifically for a particular program or are unique to a manufacturer.
Reasonable Cost	Amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.

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Regulatory Authority	Oversight authority dictated by legislative act or regulation.
Request for Proposals (RFP)	Formal procurement method where potential contractors submit an offer to provide products and/or services under a fixed-price or cost-reimbursable type contract.
Responsible (Offer)	Capable of providing the product(s) and/or service(s), as described in the solicitation.
Responsive (Offer)	Offer that addresses the terms and conditions of the solicitation, including the specifications and/or technical requirements for product(s) and/or service(s).
Revenue	Income received by an organization.
Revenue to the School Nutrition Program (SNP) Account	All income that is collected or awarded to the SNP account is revenue (or income) to the SNP account. This includes, but is not limited to, the following: – Federal reimbursement – State or local funds, such as per meal subsidies and state revenue matching funds – Students' payment for reimbursable meals and a la carte sales – Payments for items purchased for fund raisers and vending machines – Income from catering and adult meals
Service Fee	Fee charged for the performance of a specific service.
Simplified Acquisition Threshold (Also Called Small Purchase Threshold)	Amount established by federal, state, or local regulations that defines when formal and informal procurement methods must be us
Single Audit	Organization–wide review of the financial transactions—income and expenditures—and accounting procedures.
Sole Source Method	Noncompetitive procurement method used when products and/or services are available from only one supplier, distributor, or contractor. TDA must approve all sole source methods of procurement.
Solicitation	Process of notifying prospective or qualified offerors about the specifications or technical requirements for the purchase of products and/or services. For informal procurement, the solicitation may be communicated by email, in person, by fax, or by phone as long as the person soliciting offers documents the specifications or technical requirements to ensure that every possible contractor is given the same information. For a formal procurement, a written solicitation is required.
Specifications and Technical Requirements	Detailed information included in the solicitation and in the final contract that describes the product(s) and/or service(s) that will be provided to the CE under the contract.
State Matching Funds	Matching funds provided to local education agencies (LEAs) that participate in NSLP by the state of Texas based on the number of lunches reported on reimbursement claims filed during the period of September 1 through August 31 of the prior year. RCCIs and private schools do not receive state matching funds.
Subgrantees	Governmental or other legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided.
Supplier (Sometimes Called Vendor)	Commercial enterprise, public or nonprofit private organization, or individual that enters into a contract with a CE to provide products and/or services. A supplier is also referred to as an offeror during the solicitation phase of procurement.
Supplies	Items that are expendable or consumed in day-to-day activities and replenished as needed.
Tangible Benefit	Special offer for a particular item in order to incentivize a purchase which includes, but is not limited to, offering (1) a special item at much lower price than the price structure for a current contract, (2) an item not presently used at a special price that is below market value; or (3) an incentive, such as equipment or other prizes for purchasing items.

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Terms and Conditions	General provisions, definitions for terminology, renewal options, protests, termination, and other standards inherent to the contract.
Third-Party	Entity that is contracted to act on behalf of another entity.
Third-Party Cooperative	Any type of cooperative agreement that is formed by sources that are external to CEs which includes the following types of cooperatives: Non-Child Nutrition Program State Agency Procurement Agency Agreements Intergovernmental agreements with the State which may include public, private, and nonprofit entities and are conducted for State facility needs using State procurement standards. These agreements allow local educational agencies and other Child Nutrition Program operators to purchase from the State's contracted sources. Interagency Agreements Public, private, and nonprofit entities formed for the purpose of procuring goods and services. Group Purchasing Organizations, Group Buying Organizations, and Third-Party Vendors (Collectively Referred to as GPOs) CNP and non-CNP operators such as public and private schools, hospitals, universities, law enforcement, public works, etc., who join a third-party company or service provider. A GPO may be a for-profit or a nonprofit entity. Typically, a GPO includes a membership fee for those granted access to the GPO price list of products and services.
Transaction	Occurrence in which two or more entities exchange goods, services, or money between them or among them under an agreement formed for their mutual benefit.
Unallowable Cost	Direct or indirect cost that cannot be paid using funds from the nonprofit school food service account because the cost is not reasonable, allowable, and/or allocable. A cost that is unallowable for the CE is also unallowable for a third-party acting on behalf of the CE. The term *disallowed* is sometimes used in place of unallowable.
Unit Cost	Cost for a single item.
Value	Something of monetary or material worth or something that has a usefulness that can be exchanged for something of worth, merit, or importance.
Velocity Report	Report providing the quantity, date of purchase, and other valuable information for specific products and/or services purchased by CEs used to assist with forecasting future purchasing needs.
Vended Meal Contract	Contractor or merchandiser providing the CE with complete meals, meal components, and raw materials for the meal service.
Vendor Participation Fees	Charge to participate. The charge to participate may be paid by the participant, or it may be paid by those providing products and/or services.
Written Financial and Procurement Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events, including financial and procurement transactions. For this section, the word *procedure* is used to refer to all of these types of documents. Procedures define the critical steps taken to establish and operate effective and efficient systems for (1) financial management, (2) procurement, and (3) management of contracts and agreements. Written procurement procedures may include a procurement plan with timelines and tasks, or a procurement plan may be a separate document from the procedures. Written financial and procurement procedures must be established by all CEs.

Procurement Procedures

CEs must include their use of cooperatives in their written procurement procedures. See *Administrator's Reference Manual (ARM), Section 17a, Procurement Procedures* for additional information on procurement procedures.

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USDA Foods: Credits, Rebates, and Discounts

Cooperatives must routinely provide members with all applicable credits, rebates, discounts, and USDA Foods values. The cooperative must also routinely provide the CE with documentation that demonstrates compliance.

Cooperative Agreement (or Contract)

CEs may join or form cooperative purchasing groups for procurement on behalf of their members. Cooperatives may be nonprofit or for-profit entities. For all types of cooperatives, the CE must have a written cooperative agreement or contract (agreement) to participate in the cooperative. The agreement must include the following elements:

- Roles and Responsibilities—Roles and responsibilities for all members and the entity administering the cooperative, including, but not limiting to, reporting, ordering process, and lead school (if applicable).
- Fees or Costs—Description of the amount of fees or costs to be charged for services, frequency of invoicing, and distribution of documentation that allows for reconciliation of charges.
- Returning Funds to Members—Description of how and when any collected fees or costs beyond the agreed upon costs for administering the cooperative are returned to the members. TDA recommends that reconciliation and return of funds owed to the members be done at least quarterly.

  Description of how and when all credits, rebates, discounts, and USDA Food values collected by the entity administering the cooperative will be routinely paid to the members. TDA recommends that reconciliation and return of funds owed to the members be done at least quarterly.
- Membership Changes—Description of requirements for adding and removing members.

  [NOTE: If the agreement includes an option for new members, the possible increase in quantity for orders may be a material change[8] to the awarded contract unless the solicitation and contract include a description of the anticipated increase in quantity based on a reasonable anticipation of growth.]
- Procuring on Behalf of the Members—Statement that all procurements will be conducted according to USDA regulations.
- Documentation Demonstrating Compliance—Explanation for how and when members will be provided documentation that allows them to determine if the cooperative operates in compliance with regulations and how members will be given documentation required for members to demonstrate their compliance with all regulations.

Other types of agreements, such as interlocal or participation agreements, may also qualify as a cooperative agreement if the above elements are included. If they are not included, the CE will need a separate cooperative agreement that includes these elements.

Management of the Agreement (or Contract)

The CE is responsible for managing the cooperative agreement or contract and must ensure that all agreements and contracts are operated according to the applicable rules and guidance. This includes, but is not limited to:

- Cost Analysis—Documentation provided by the cooperative to ensure cost analysis is completed as applicable and cost is determined reasonable prior to procurement. See

[8] See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on material change.

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Administrator's Reference Manual (ARM), Section 17, Procurement for additional information on cost analysis.

- Credits, Discounts, or Rebates—Documentation provided by the cooperative to ensure that the CE receives all credits, discounts, and rebates for all procurements conducted on behalf of the CE by the cooperative.
- USDA Foods— Documentation provided by the cooperative (or vendors) to ensure that the CE receives all USDA Foods values for processed end products.
- Vendor Fees— Documentation to ensure that the CE receives credit for all vendor fees collected beyond the cost for providing services stipulated in the cooperative agreement.

Type of Cooperatives

In procurement regulations, there are two types of cooperatives: (1) Operator-Only Cooperatives[9] and (2) Third-Party Cooperatives.[10]

A CE may belong to more than one cooperative. If the CE has membership in more than one cooperative, the CE must ensure that it establishes a protocol for the types of items or services to purchase from each cooperative. See the *Individual CE Purchases through an Operator-Only Cooperative* subsection in this section for additional guidance on this topic.

Type 1: Operator-Only Cooperatives

Any type of agreement that is formed solely among Child Nutrition Program (CNP) operators, including regional education service center (ESC) cooperatives

Establishment

This type of cooperative does not have to be procured. However, CEs must initiate the creation of these types of cooperatives or, in the case of the Texas ESCs, be established by state law and regulation to procure on behalf of specific entities—public school districts and charters.

Membership in this type of cooperative cannot be solicited.

Management

Each CE is responsible for monitoring the performance of the cooperative even if there is a designated lead school. Written agreements, which delineate the roles and responsibilities for all involved, will help to ensure that proper procurement occurs. However, having an agreement that delineates roles and responsibilities does not release an individual CE from its responsibility to monitor the performance of the cooperative.

Fees

Operator-only cooperative membership may include a fixed fee to cover the overhead or administrative costs as specified in the cooperative agreement.

Agents Procured by Operator-Only Cooperative

Members of operator-only cooperatives may procure an agent to manage the cooperative's services or to procure on behalf of the cooperative members. Members may pay a fee to a third-party agent for these services. The fee must be established in the solicitation and contract.

[9] Operator in this section means *an entity that operates a Child Nutrition Program*

[10] USDA released updated guidance in *USDA Memo SP 05-2017, Q&A: Purchasing Goods and Services Using Cooperative Agreements, Agents, and Third-Party Services* on October 19, 2016. This memo supersedes *USDA Memo SP 35-2012, Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc.*

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When Membership Fees Are Used: If the fee is prepaid, and the cost of services provided by the agent is less than the fee, the remaining fees must be returned to the members. The agent must provide members with documentation demonstrating the use of fees and the payment of any remaining fees to the members. Each cooperative member is responsible for ensuring that it receives credit for the remaining amount. Each cooperative is also responsible for retaining documentation that demonstrates the CE has been credited properly for remaining amounts and provide documentation demonstrating accuracy of payments to the CE.

When Transaction or Vendor Fees Are Used: An agent procured by an operator-only cooperative may also be paid through the use of transaction or vendor fees. Credits for transaction or vendor fees are classified as income to the SNP and must be credited to the CE's nonprofit school food service account.

However, a cooperative membership agreement may allow the agent to deduct the cost of services from the fees and pay any remaining amount to members on a regular basis.[11] Each cooperative member is responsibility for ensuring that it receives credit for the remaining amount. Each cooperative must retain documentation that demonstrates that the remaining amounts are paid to the CE.

Unanticipated Profits

Operator-only cooperatives are intended to help CEs make purchases that result in the most cost-effective use of federal funds. Therefore, regulations include a requirement that unanticipated profits from cooperatives must be returned to the CE.

For-Profit Cooperatives

When Membership Fees Are Used: At the end of the contract year, the cooperative must return all profit in excess of the profit margin, as described in the contract to the participating CEs. If there is a membership fee, the contractor must distribute to the members any funds received over the profit margin, as described in the contract to the members. Each cooperative member is responsibility for ensuring that it receives credit for the remaining amount. Each cooperative is also responsible for retaining documentation that demonstrates the CE has been credited properly for remaining amounts.

When Transaction or Vendor Fees Are Used: A cooperative may also use transaction or vendor fees to cover the cost of cooperative services (i.e., purchasing on behalf of the CE, providing documenting, etc.). Credits for transaction or vendor fees are classified as income to the SNP and must be credited to the CE's nonprofit school food service account.

However, a cooperative membership agreement may allow the cooperative to deduct the cost of services from the fees and pay any remaining amount to members on a regular basis.[12] Each cooperative member is responsible for ensuring that it receives credit for the remaining amount. Each cooperative member must retain documentation that demonstrates that the remaining amounts are paid to the CE.

[11] TDA recommends that procured agents communicate this information and make payments on remaining amounts on a quarterly basis.

[12] TDA recommends that cooperatives communicate this information and make payments on remaining amounts on a quarterly basis.

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Nonprofit Cooperatives

When Membership Fees Are Used: At the end of the contract year, if there is a membership fee or charge for services provided, nonprofit cooperatives must return all funds in excess of the cost of operating the cooperative to the CEs participating in the cooperative, as described in the cooperative agreement. Each cooperative member is responsibility for ensuring that it receives credit for the remaining amount. Each cooperative is also responsible for retaining documentation that demonstrates the CE has been credited properly for remaining amounts and has been provided documentation demonstrating accuracy of payments to the CE.

When Transaction or Vendor Fees Are Used: A cooperative may also use transaction or vendor fees to cover the cost of cooperative services.

Credits for transaction or vendor fees are classified as income to the SNP and must be credited to the CE's nonprofit school food service account.

However, a cooperative membership agreement may allow the cooperative to deduct the cost of services from the fees and pay any remaining amount to members on a regular basis.[13] Each cooperative member is responsible for ensuring that it receives credit for the remaining amount. Each cooperative member must retain documentation that demonstrates that the remaining amounts are paid to the CE.

Procurement

All purchases made on behalf of the cooperative members must follow (1) all USDA procurement regulations and (2) State and local procurement requirements if more restrictive as long as these regulations are not in conflict with USDA regulations. While the cooperative is making purchases on behalf of the member CEs, each CE is still responsible for retaining documentation that these purchases are compliant with all regulations.

Conflict of Interest, Operator-Only Cooperative

In procurement, all involved must avoid conflicts of interest that inhibit proper procurement practices.

USDA also prohibits third-party contracts that procure products or services from a third-party's parent company, subsidiary of the parent company, or other entities with a financial relationship to the third-party. This includes an FSMC purchasing from FSMC-owned or affiliated vendors. These types of situations represent a real or apparent conflict of interest, limit competitive procurement, and result in school nutrition funds to be used to pay for duplicative services.[14]

An agent, agent's parent company, or subsidiary company of the parent company or the agent publishing a solicitation on behalf of a CNP operator (or CNP operator-only cooperative) cannot respond to this solicitation. Responding to this solicitation would constitute an unfair advantage and be in violation of federal procurement requirements.

[13] TDA recommends that cooperatives communicate this information and make payments on remaining amounts on a quarterly basis.

[14] See *Administrator's Reference Manual (ARM), Section 15, Program Integrity* for additional information on conflicts of interest.

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Operator-Only Cooperative Contracts with a Third-Party

If an Operator-Only Cooperative engages a third-party contractor or agent to manage or purchase products and/or services on behalf of the Operator-Only Cooperative, the third-party must be procured in a manner consistent with all USDA regulations and guidance.

- Any added purchases or services provided by a third-party that are not procured properly may create a material change. [15]
- Any products and/or services that are not procured properly may result in unallowable costs.[16]

Price for Operator-Only Cooperatives

A price based on a cost-plus percentage of cost is not allowed for any purchases made on behalf of CEs by an Operator-Only Cooperative. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).

Vendor List for Product Pricing for Operator-Only Cooperatives

In specific circumstances, an Operator-Only Cooperative may award a bid to a group of approved produce vendors with the intention that each CE will order products and/or services through an *on-demand* method or request. To be allowable, the solicitation must include specifications and/or technical requirements that establish reasonable total estimated cost and quantities (cost analysis and forecasting) of the products and/or services to be purchased. By describing the total cost and quantities in the solicitation, all potential offerors know what is being solicited and are able to offer CEs the most cost-effective pricing.

When a vendor list is used, the solicitation must also clearly state that a vendor list will be used and must describe the actions a vendor must take to be approved to be on the list. This includes an option for vendors to achieve approval after the solicitation has been released, but before the due date for offers. When CEs use a vendor list, they must ensure that the use of the list does not limit competition.

Individual CE Purchases through an Operator-Only Cooperative

Even if a CE joins a cooperative, the CE is not required to make all of its purchases through the cooperative—the CE may decide to purchase select products and/or services outside of the cooperative if it is in the best interests of the CE or program as long as the CE has not indicated that the CE will purchase the items through the cooperative.

However, if the CE has agreed to purchase specific products and/or services through the cooperative, the CE cannot later decide to purchase these products and/or services from another source until the quantity or amount the CE agreed to purchase through the cooperative is exhausted.

[15] See the *Material Change* topic located in the *Administrator's Reference Manual (ARM), Section 17, Procurement* subsection in this section for additional information on this topic.

[16] An unallowable cost or expense cannot be paid using school nutrition program funds.

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Type 2: Third-Party Cooperatives

Any type of cooperative agreement that is formed by sources that are external to CEs (i.e., not operator-only cooperatives) which includes the following types of cooperatives:

Non-Child Nutrition Program State Agency Procurement Agency Agreements

Intergovernmental agreements with the State, which may include public, private, and nonprofit entities, are conducted for State facility needs using State procurement standards. These agreements allow local educational agencies and other Child Nutrition Program (CNP) operators that are governmental entities to purchase from the State's contracted sources. This type of cooperative includes, but is not limited to, state agency buy boards.

Interagency Agreements

Public, private, and nonprofit entities formed for the purpose of procuring goods and services. This includes, but is not limited to, county buying groups and education technology hubs.

Group Purchasing Organizations, Group Buying Organizations, and Third-Party Vendors (Collectively referred to as GPOs)

CNP and non-CNP operators such as public and private schools, hospitals, universities, law enforcement, public works, etc., who join a third-party company or service provider. A GPO may be a for-profit or a nonprofit entity. Typically, a GPO includes a membership fee for those granted access to the GPO price list of products and services. This type of cooperative includes, but is not limited to, membership buy boards and subscription services.

Establishment

The fee a CE pays to join or participate in a third-party cooperative is typically charged to allow the CE to gain access to a price list of products and/or services. For the CE to use these services, the services of the third-party cooperative must be properly procured.

Fees

CEs may pay a fee to cover overhead or administrative costs for third-party cooperatives. These fees must be specified in the agreement. These fees do not constitute a competitive procurement. A cost-plus percentage of cost fee is not allowable for any type of fee structure—any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).

Procurement

All purchases made through a third-party cooperative must meet USDA procurement regulations.

When purchases are made through a third-party cooperative, the price must be the primary consideration for awarding a contract or making a purchase. A price based on a cost-plus percentage of cost is not allowed for any purchases made on behalf of CEs by a third-party cooperative. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).

The following guidance must be applied to procurement through third-party cooperatives:

- Micro-Purchase Method: If the aggregate purchase amount is equal to or less than $10,000, the product or service may be procured from a third-party cooperative using a micro-purchase method as long as the micro-

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purchase requirements, as described in this section, are met. This includes the equitable distribution of purchases.

A membership fee that is equal to or less than $10,000 may be a micro-purchase. It is the CE's responsibility to retain documentation that demonstrates the CE's compliance with the micro-purchase requirements.

- Small Purchase Method and Formal Procurement Method: The CE is responsible for ensuring that all purchases made through the third-party cooperative meet USDA procurement regulations. The CE must determine whether the third-party cooperative follows USDA procurement regulations **before** any purchase is made, then adhere to the following guidance to ensure the purchase meets regulations:

  - If the third-party cooperative **follows USDA procurement regulations** for small and formal method purchases, as described in this section, the CE may make purchases through the third-party cooperative without additional procurement actions. It is the CE's responsibility to retain documentation that demonstrates that the third-party cooperative follows USDA procurement regulations for products and/or services procured. The records may include, but are not limited to, the solicitation and contract, advertising documentation, and written procedures.

  - If the third-party cooperative **does not follow USDA procurement regulations**, as described in this section, the CE may consider the price from the third-party cooperative as one source of pricing for small and formal method purchases (i.e., a bid or an offer). In these cases, the CE must obtain additional competitive offers using a solicitation process as defined by the USDA procurement regulations described in this section.

    After obtaining additional offers, the CE will evaluate the price from the third-party entity and the additional offers. Then, the CE will purchase (or award the contract to) the most responsive and responsible offeror with price as the primary consideration. It is the CE's responsibility to retain documentation that demonstrates the CE's compliance with the required procurement process.

Catalog Purchasing and Subscription Services

This type of Group Purchasing Organization (GPO) typically requires a membership fee for access to the GPO's price list of products and services from various vendors. It does not guarantee that the products or services offered were procured according to USDA procurement regulations. The CE must ensure that all purchases meet USDA procurement regulations; if the CE determines that the GPO does not follow USDA procurement regulations, the CE must conduct the appropriate USDA procurement regulations to purchase the product or service.

Individual CE Purchases

Even if a CE joins a cooperative, the CE is not required to make all of its purchases through the cooperative—the CE may decide to purchase select products and/or services outside of the cooperative if it is in the best interests of the CE or program as long as the CE has not indicated that the CE will purchase the items through the cooperative.

However, if the CE has agreed to purchase specific products and/or services

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through the cooperative, the CE cannot later decide to purchase these products and/or services from another source until the quantity or amount the CE agreed to purchase through the cooperative is exhausted.

Off-Bid Purchases

When a CE plans to purchase products or services not listed on the contract from an awarded vendor, this is considered an "off-bid purchase" and requires a separate procurement method be used: micro, small, or formal purchase.

However, if the CE determines that adding the purchase of a limited number of products to a current contract would be advantageous, the CE may do so if the following conditions are met:

1. Solicitation and Contract

   The option to add additional, "off-bid" products must be included in the original solicitation and contract as a specific percentage of the estimated value of the contract, as described in the chart below.

Allocation of Purchases by Percentage of the Estimated Contract Value of the Original Contract Chart				
Items Listed in Solicitation and Contract	➡	At Least 90% of Total Estimated Value Original Contract		
Off-Bid Items Added to Original Contract List	➡	Up to 10% of Total Estimated Value of Original Contract		
Items Listed in Solicitation and Contract	+	Off-Bid Items Added to Original Contract List	=	100 % of Total Estimated Value of Original Contract

2. Value of Off-Bid Products Exceeds Percentage Specified in Solicitation and Contract
   On an existing contract, the purchase of any additional products that exceeds the percentage specified in the solicitation and contract is an unallowable cost. If the value for the added products exceeds the percentage specified in the solicitation and contract,[17] a separate procurement for those products must be conducted.

3. Contract Renewal
   The option to renew a contract must be indicated in the original solicitation and contract.
   - The original solicitation and contract's specified percentages for listed and added products apply to all renewal contracts.
   - Instead of using the contract's estimated total value for renewal years, the percentages are applied to the contract's actual total cost for the previously completed contract year.

Additional Resources

TDA Resources

TDA resources are available on the SquareMeals website, *www.SquareMeals.org*.

[17] The percentage allocated for added products in the solicitation and contract cannot exceed 10% of the total estimated value of the contract.

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- *Approved Purchase List*—Form designed to provide a list of products approved to purchase with information that will be helpful to menu planners and staff managing the contract.
- *Buy American Checklist for Non-Domestic Food Product Purchases*—Checklist to assist CEs in determining if a non-domestic product is acceptable.
- *Procurement Snapshot Tool*—Form designed to provide a summary of procurement activities for the program year or fiscal year.
- *Micro-Purchase Log*—Form designed to track purchases made under the micro-purchase method.
- *Informal Small Purchase Log*—Form designed to track offers and offerors for small purchase procurement.

Institute for Child Nutrition (ICN)

- *First Choice*, a handbook for developing an effective procurement process, available at *www.theicn.org*
- *Procurement in the 21st Century*, manual providing specific details on the procurement process, available at *www.theicn.org*
  [NOTE: This resource is not a guidance document, but it does provide useful information.]
- *State Agency Guidance on Procurement*, a series of web-based training on procurement, available at *www.theicn.org*

USDA

- *Understanding Food Qualities Labels*, a manual provided by USDA's Agricultural Marketing Service (AMS) that provides a guide to product labeling that indicates quality, available at *www.ams.usda.gov/sites/default/files/media/AMS%20Product%20Label%20Factsheet.pdf*

Other Websites

- Texas Procurement and Support Services (TPASS) (Formerly Texas Building and Procurement Commission), available at *www.window.state.tx.us/procurement/*
- Comptroller of Public Accounts, available at *www.cpa.state.tx.us*
- Universal Public Purchasing Certification Council/National Institute of Government Purchasing (NIGP), available at *www.nigp.org*
- USDA Farm to School website, available at *www.fns.usda.gov/farmtoschool/*

Records Retention

The CE is required to maintain an organized accounting and financial system that includes documentation that demonstrates compliance with program regulations and the history of all procurements. Records retained for procurement must be sufficient to detail the history of procurement for each procured product and/or service, including but not limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. CEs have the option to maintain records on paper or electronically.

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These records must be accessible to appropriate CE staff members and federal or state reviewers. TDA may request procurement documentation during both offsite and onsite administrative review processes as well as any additional review specific to procurement.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, other nonprofit organizations, and residential child care institutions (RCCIs) after the end of the fiscal year to which they pertain.

Information Box 3

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

Procurement System

The CE has documentation that demonstrates that CE has established internal controls to promote program integrity. This includes, but is not limited to, documentation that illustrates the following:

- Written procurement procedures, including, but not limited to, actions or tasks for cost analysis, selection of procurement method, ethical standards, and other requirements, as described in this section.
- Procedures for effective contract management.
- Verification of third-party entity compliance with procurement regulations.

See *Administrator's Reference Manual (ARM), Section 15, Program Integrity; Section 16a, Contract Management; Section 17a, Procurement Procedures;* and *Section 17b, Buy American* for additional information on document

Purchasing cooperatives must provide sufficient documentation to CEs, so they can demonstrate compliance with all regulations. This requirement must be included in all cooperative agreements or contracts. However, it is the CE's responsibility to ensure that purchasing cooperative meets all requirements.

Compliance

TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance with the procurement requirements. Additionally, TDA will assess compliance with the accounting and financial requirements based on the documentation that the CE has submitted throughout the year as well as documentation submitted for offsite and onsite administrative review processes or other procurement review activities.

The cost for any products and/or services that were procured improperly are unallowable costs to the school nutrition program.[18] This includes any costs that the CE has incurred as a result of intentionally breaking up purchases into smaller amounts to qualify under the micro-purchase threshold or simplified purchase threshold as well as purchases made on behalf of the CE by a third-party.

CEs must make available, upon request of the awarding agency (state or federal), any or all of the documentation described in the *Records Retention* subsection in this section.

[18] An unallowable cost or expense cannot be paid using school nutrition program funds.

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Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations

CE's must report, in writing to TDA, all violations of federal criminal law—fraud, bribery, or gratuity.

> The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).

Criminal Penalty

The maximum fine for embezzling, willfully misapplying, stealing, or obtaining by fraud, funds, assets, or property acquired under the National School Lunch Act or Child Nutrition Act is $25,000.

Fraud

> Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

Termination of the Permanent Agreement for Financial Fraud or Misuse of Funds

If serious deficiencies, such as fraud or misuse of funds occur, and corrective action is not practical, TDA will amend the FND Agreement to terminate the CE's participation in the SNP. In this case, TDA may also refer the matter to the appropriate local, state, and/or federal authorities.

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Section 18

Food Service Contracts

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Section 18, Food Service Contracts

Consultant, Food Service Management Company (FSMCs), and Vended Meal

Update Guide

September 29, 2022	Clarified guidance on the following topics: - FSMC Contract Review Form
July 28, 2022	Clarified guidance on the following topics: - Definitions - Vended meal servers - USDA Foods Reconciliation
December 6, 2021	Updated the *Administrator's Reference Manual (ARM), Section 18, Food Service Contracts* to emphasize CE responsibility for the contract and that proper procurement must be followed. The following guidance was clarified: - Conflicts of interest - Procurement of food service contracts - Material change - Consultant contract requirements - Roles for a Food Service Management Company (FSMC) in a School Nutrition Program (SNP) - Responsibility for Program Compliance and Contract Management - FSMC monitoring - Procuring an FSMC - Elements to be included in an FSMC solicitation/contract - Protecting school nutrition funds - Awarding the FSMC contact - FSMC contract renewal - Vended meal contract requirements
August 16, 2021	Updated the definition of aggregate.
May 27, 2021	Updated *Section 18, Food Service Contracts* to clarify the following: - Definitions
August 12, 2020	Updated *Administrator's Reference Manual (ARM)* section references. Clarified information on the following topics: – Acting on behalf of the CE – Agreement definition – Competitive procurement – Conflicts of interest – Consultant contract requirements – Contingency approval – Cost estimate – Final contract – Food service management company (FSMC) requirements – Internal controls – Program integrity – Record retention

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- Reports
- TX-UNPS records
- Types of food service contracts
- Vending contract requirements

February 23, 2017

Updated *Section 22, Food Service Contracts* to expand the scope of this section to include consultants and vended meals in addition to food service management companies (FSMCs).

Updated to the section to incorporate the following United States Department of Agriculture (USDA) memo and guidance:

- *USDSA Memo SP 40-2016, Updated Guidance: Contracting with Food Service Management Companies* (June 2, 2016)
- *USDA Memo SP 35-2016, Bonding Requirements for Food Service Management Companies and Other Subcontractors* (May 5, 2016)
- *USDA Memo SP 20-2016, Nonprofit School Food Service Account Nonprogram Food Revenue Requirements* (December 23, 2015)
- *USDA Memo SP 35-2013, State Agency Oversight and Monitoring of School Food Authority Contracts with Food Service Management Companies* (April 19, 2013)
- *USDA Memo SP 23-2013, Guidance Reaffirming the Requirement that State Agencies and School Food Authorities Periodically Review Food Service Management Company Cost Reimbursable Contracts and Contracts Associated with USDA Foods* (February 12, 2013)
- *USDA Memo SP 33-2012, Fresh Fruit and Vegetable Program Fees in FSMC Contracts* (May 31, 2012)

Clarified information on the following topics:

- Consultant contracts
- Food service management contracts (FSMCs)
- Vending contracts

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Food Service Contracts

Consultant, Food Service Management Company (FSMCs), and Vended Meal

A contracting entity (CE) may procure a food service contractor to support the CE in its food service operation. However, the CE is still responsible for ensuring the food service contractor operates the program according to the contract and in compliance with all regulations and guidance. **Contracting with a food service contractor does not release the CE from any responsibilities for the Child Nutrition Programs.**

[NOTE: In some cases, a CE may use a written agreement to assist the CE in program operation or procurement. The guidance for food service contracts applies to agreements that achieve the same purposes.]

The guidance in this section should assist CEs in the procurement and management of the food service contracts for the following school nutrition programs (SNPs):

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Fresh Fruit and Vegetable Program (FFVP)
  - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

If an SNP operator also operates the Summer Food Service Program (SFSP) or Child and Adult Care Food Program (CACFP), the guidance in this section will apply to FSMC contracts for those programs.

In addition to the guidance in this section, CE will find additional applicable guidance in the following *Administrator's Reference Manual (ARM)* sections:

- *Section 14, USDA Foods*
- *Section 14a, USDA Foods Processors*
- *Section 15, Program Integrity*
- *Section 16, Financial System*
- *Section 16a, Contract Management*
- *Section 17, Procurement*
- *Section 17a, Procurement Procedures*

Information Box 1
Additional Resources for Procurement

Texas Comptroller of Public Accounts

The website for the Texas Comptroller provides information on state regulations that apply to state and local governmental entities. Available at *www.comptroller.texas.gov/*

Resources include the following:

- *State of Texas Procurement and Contract Management Guide*— guidance and recommendations on improving existing contract management methods and practices. Available at *https://comptroller.texas.gov/purchasing/publications/procurement-contract.php*

Texas Education Agency (TEA)

Financial Accountability System Resource Guide (FASRG) provides detailed guidance of financial accountability, including Module 3, Purchasing, for local education agencies and charter schools. Available at *www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial__Accountability_System_Resource_Guide/*

United States Office of Management and Budget (OMB)

2 Code of Federal Regulations, Part 200— These regulations provide detailed information on required federal procurement process. Available at *https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1*

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- *Section 17b, Buy American*
- *Section 17c Cooperative Purchasing*
- *Section 23, Food Product Documentation*
- *Section 26, Food Safety*
- *Section 27, Professional Standards*
- *Section 30, Records Retention*

Conflicting Program Regulations

CEs operating Child Nutrition Programs (CNPs) must follow federal, state, and local regulations that govern the actions of the CE. When there is a conflict between USDA regulations and regulations from other agencies, the CE must follow USDA regulations for the use of CNP funds. If other applicable federal, state, or local regulations do not conflict with USDA regulations, the CE will follow the most restrictive federal, state, or local regulations. All programs receiving federal funds are required to follow 2 CFR Part 200 unless federal legislation supersedes 2 CFR Part 200.

Education Department General Administrative Regulations (EDGAR)

CEs receiving funds through the United States Department of Education are required to follow the regulations described in the *Education Department General Administrative Regulations (EDGAR)* for those funds, which incorporates *2 CFR Part 200*. However, Child Nutrition Programs (CNPs) are required to follow USDA regulations for financial management, including procurement. While there are regulations in EDGAR that conflict with USDA regulations, in most situations, CEs will find the regulations to be compatible. However, if there is a regulatory conflict, CEs must follow the USDA regulations for all CNP funds (income, allowable and unallowable costs, and procurement).

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Definitions for this Section

The nature of financial processes fosters the use of terms and vocabulary that are more commonly used by accountants than by school nutrition staff. For School Nutrition Programs (SNPs), the following financial and procurement terms are used:

Acting on Behalf of CE	Entity or person who has been given the responsibility to act for the CE.
Agent	Person or business that is procured to act on behalf of the CE. This includes procuring on behalf of the CE.
Aggregate Purchase Amount	The total cost of all products and services in a single procurement transaction.
Agreement (for School Nutrition Programs)	Written legal document summarizing contractual obligations between two or more entities. This includes intergovernmental and interlocal agreement.
Allocable	Assigning a cost, or group of costs, to one or more cost objectives, in reasonable and realistic proportion to the benefit provided or other equitable relationship—the cost meets one of the following principles: – is incurred specifically for the award/program or – benefits both the award/program and necessary work and can be distributed in reasonable proportion to the benefits received or – is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.
Allowable	Direct or indirect costs that may be paid by SNP funds.
Approved Supplier List	List of suppliers or potential contractors who have demonstrated the ability to perform successfully under the terms and conditions of a proposed procurement, consideration being given to contractor integrity, compliance with applicable policy or regulations, record of past performance, and financial and technical resources.
Arms-Length Transaction	Transaction in which the parties are dealing from equal bargaining positions—neither party is subject to the other's control or dominant influence, and the transaction is treated with fairness, integrity, and legality. Less than Arms-Length Transaction A less than arms-length transaction occurs when a person responsible for making a purchase and appears to have a stake in the outcome is able to control or substantially influence the actions of others. This may include agreements between divisions of an organization; organizations under common control through common officers, directors, or members; and an organization and a director or employee of the organization and his or her immediate family.
Audit	Independent examination of accounting and financial records for accuracy, efficiency, and consistency. This is also called the annual audit or single audit.
Audit Report	Final summary of audit findings provided by a financial auditor.
Audit Corrective Action Plan	Plan in which the CE describes the strategies or actions the CE will adopt to address each finding reported in the audit report.
Audit Summary Schedule or Work Plan	Document that contains a cumulative list of audit findings by year and explanations of the strategies and actions the CE plans to take or has taken to resolve each audit finding. This summary allows the CE, auditor, or TDA staff member to review the actions planned or taken from year to year to maintain an accurate, efficient, and consistent accounting and financial system.
Bid Guarantee	Guaranteed percentage of bid price provided by the offeror at the time the offer is submitted. The CE must return all bid guarantees to all unsuccessful offerors when the contract is awarded and to the winning offeror as soon as the contract is signed.

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Bond	Insurance agreement pledging surety for financial loss caused in connection with the contract. For school nutrition programs, if a loss occurs in connection with a contract related to program operations, the loss will be covered to the extent agreed upon in the bond.
Breach of Ethics	Attempt to realize personal gain through public employment with a CE by any conduct inconsistent with the proper discharge of the employee's duties.
Brokers	Independent sales agents who negotiate sales for manufacturers by working with food distributors and/or school nutrition operations.
Buy American	Requirement for schools to purchase, to the maximum extent practicable, domestic commodities, and products. A domestic commodity or product means an agricultural commodity that is grown in the United States and processed in the United States or that is processed in the United States substantially using agricultural commodities that are produced in the United States.
Capital Assets	Land, buildings (facilities), and equipment that have a useful life of more than one year which are capitalized in accordance with Generally Accepted Accounting Principles (GAAP).
Capital Expenditures	Direct cost expenses to acquire capital assets or to make additions, improvements, modifications, replacements, reinstallations, renovations, or alternations to capital assets to be used for general purposes for multiple years and which materially increase the value or useful life of the asset.[1]
CE Employee (Specific to Program Integrity)	Term used in this section to represent a CE employee or official; family member of CE employee or official; or business partner of a CE employee or official.
Charge Period	Span of time during which a cost is paid. This payment process includes spreading payments over a period of weeks or months or establishing milestones that are linked to payments.
Code of Conduct	Set of written standards the CE must develop that outline the responsibilities of, or proper practices for, an individual or organization and which governs the following: 1. Performance of the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by Food and Nutrition Service (FNS) program funds. 2. Methods of procurement, including the requirement that the CE perform a cost or price analysis for every procurement (including contract modifications) and determination of which contract clauses and certifications are required in the CE's contracts.
Cognizant Agency Related to Indirect Costs	Agency that has primary responsibility for negotiating the indirect cost methodologies for non-federal entities.
Conflict of Interest	Any action that allows a person to benefit at the expense of the public interest or the expense of an employer. A conflict of interest may be a real or apparent conflict of interest.
Contract	Formal, legally enforceable agreement (terms and conditions) between a buyer (the CE) and a seller (contractor) that clearly and accurately describes the products and/or services to be delivered or performed and sets forth the method and the compensation the contractor receives when products and/or services are provided.
Consultant	Consultant that provides temporary support to the CE in areas where the CE lacks the necessary resources, skills, and/or abilities in order to assist the CE in gaining the necessary resources, skills, and/or abilities to operate an effective and compliant program.
Cooperative Purchasing	Group of entities who join together to purchase products and/or services with the intention of reducing costs and improving the quality of products and/or services available to members of a group. In this reference, a purchasing cooperative consists of a group of CEs.

[1] TDA must approve capital expenditures before a CE makes a capital expenditure purchase.

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Cost Analysis	Review and evaluation of each element of cost to determine reasonableness, allocability, and allowability for products and/or services to procured. A cost analysis will include the total projected cost for the products and/or services to be procured.
Cost Index	Tool designed to show the impact of an economic measure on the price of purchasing a specific type of item. TDA has approved the use of the Consumer Price Index (CPI) Food Away from Home for this purpose.
Cost Objective	Program function or activity for which cost data and for which specification is made to accumulate and measure the cost of processes, products, jobs, or other expenses.
Cost Plus Percentage of Cost	Method of pricing where the contract or agreement creates a pricing structure that charges the cost of the product or service plus a percentage of the cost. This pricing structure is not allowable for any purchase under USDA regulations. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).
Cost-Reimbursable Contract	Reimbursable contract that is a formal, legally enforceable contract that reimburses the contractor for costs incurred under the contract but does not provide for any other payment to the contractor with a fixed fee or with a cost-reimbursement fee. [NOTE: The fixed fee associated with these types of contracts may be called management fees or administrative fees.] In a cost-reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor. In a cost-reimbursable contract, the fixed price (fee) includes the contractor's direct and indirect administrative costs and profit allocable to the contract.
Debarment	Action taken by a debarring official to exclude a person from participating in covered transactions.[2] A person so excluded is debarred, that is, unable to participate.
Direct Cost	Expenses that can be identified specifically with a particular cost objective used to meet a specific program goal or goals.
Distributor	Commercial food company that purchases, receives, and/or stores commercial food products and then sells, delivers, and bills the recipient agency for goods and/or services provided.
Drop Delivery	Delivery to one location within the CE, such as a central warehouse.
Economies of Scale	Purchase of large quantities of a product and/or service in order to obtain a better price.
Escalator/De-escalator Clause or Market-based Pricing	Predetermined provisions in a contract stipulating specific conditions for an increase or decrease in price.
Equipment (Property)	Items which have been purchased and are nonexpendable; items have a useful life of more than one year. Equipment purchases of $5, 000 or more are capital expenses and require prior approval.[3]
Ethics	Principles of conduct governing and guiding decisions for an individual or a group in their personal and professional lives. School nutrition professionals have a responsibility to act ethically in accordance with all federal, state, and local guidelines.
Excess Net Cash Resources (Excess Fund Balance)	Net cash resources that exceed three months of operating expenses. For NSLP and SBP an excessive fund balance refers to net cash resources.
Exclusive Contract (Including Exclusive Beverage Contracts)	Contract between an entity or organization and a distributor/vendor that prevents the entity or organization from buying or selling similar products from other distributors/vendors. The distributor/vendor may offer the entity or organization financial, product, or service incentives for signing an exclusive contract.

[2] Covered transactions in this section refer to transactions related to child nutrition programs.
[3] See the *Capital Expenditures* subsection in this section for additional information on this requirement.

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Expenditures (Costs)	Amount of money that is spent on an item or service.
Firm Fixed-Price Contract (Also Called Firm Price Contract)	Contracts that provide products or services for a price not subject to adjustment other than increases or decreases tied to an economic indicator stipulated by contract. Firm-fixed price contracts are usually negotiated where reasonably finite specifications and/or technical requirements are available, and costs can be estimated with reasonable accuracy. A fixed price contract places minimum administrative burden on contracting parties but subjects a contractor to maximum risk arising from full responsibility for all cost escalations.
Fixed-Price	Agreed-upon amount of money that is fixed at the inception of a contract and is guaranteed for a specific period of time. A fixed-price contract may also contain an economic cost adjustment provision tied to the Consumer Price Index (CPI) Food Away from Home.
Fixed Price (Fee)	Agreed upon amount of money that is fixed at the inception of the contract.
Food Service Management Company (FSMC)	Any organization, whether commercial enterprise or a nonprofit organization, that is or may be contracted by the CE to manage any aspect of the school food service.[4] CEs must use an FSMC from TDA's list of approved FSMCs.
Food Service Management Company (FSMC) Solicitation/ Contract	TDA term used to reference the TDA prototype combined solicitation and contract. This term is applicable to this section only.
Forecasting	Process of analyzing current and historical data to determine procurement needs. In the case of school nutrition programs, forecasting involves predicting and estimating the goods, works, and services needed in specified areas for the coming year, and/or assessing needs by reviewing current procurement activities. Forecasting allows for procurement timelines and tasks to evolve each fiscal year.
Full and Open Competition	Situation where all potential contractors are competing on a level playing field and have the same opportunity to compete and be awarded a contract. Full and open competition is also commonly referred to as free and open competition
Fund Balance (Net Cash Resources)	See "net cash resources."
Grade Standards	USDA quality standards based on measurable attributes that describe the value and utility of the products.
Grantees	Governmental or other legal entity to which a grant is awarded where the receiving entity is held accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.
Incentives	Rewards or benefits received as a result of performing requested actions and/or meeting predetermined milestones.
Indirect Cost	Expenses that are incurred for the benefit of multiple programs or functions and are necessary for the general operation of the SNP program—but cannot be directly attributable to the program.
Indirect Cost Rate	Established percentage of awarded funds that is dedicated to pay costs that have been identified as indirect costs.

[4] If an NSLP CE operates a Child and Adult Care Food Program and/or Summer Food Service Program, there may be additional regulations that applied for the use of an FSMC to operate the program.

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Internal Controls	Procedures or processes designed to establish and maintain effective internal control over the SNP's financial management system that provides reasonable assurance that the CE is managing the program in compliance with all federal, state, and local regulations and terms and conditions of the program award. These procedures or processes help the CE to (1) define actions related to financial management and the procurement activities, (2) establish standards of ethical conduct, and (3) provide full and open competition.
Invitation for Bid (IFB)	Formal method of procurement that uses sealed bidding and results in a fixed-price contract with or without adjustment factors.
Just-in-Time (JIT)	Food and supplies kept in quantities an entity anticipates will meet its immediate needs, which results in the entity maintaining a low inventory level.
LEA	Local education agency, an entity having administrative control and direction of a public or private nonprofit elementary or secondary school.[5]
Lead Time	Amount of time necessary for a distributor to prepare and deliver products and/or services to the CE.
Local Product	Unprocessed locally grown or raised agricultural products that retain their inherent character.
Managing the Contract	Procedures the CE has in place to ensure that contractors perform in accordance with the specifications, technical requirements, and terms and conditions described in a contract or purchase order.
Market Basket	Solicitation strategy that allows a CE to procure a list of products with varied pricing options for a finite number of products. Each product on the market basket list must have (1) a description with the quantity to be purchased, (2) specifications and/or technical requirements for each product, and (3) a description of how each product will be awarded on the contract.
Market Basket, Total Cost Analysis and Scoring	Analysis and scoring evaluation based on the aggregate total cost or by line item total.
Market Basket, Simplified Total Cost Analysis and Scoring	Analysis and scoring evaluation based on a representative sample of all products.
Material Change	Change made to a contract after the contract has been awarded that alters the terms and conditions of the contract substantially enough that had other offerors known of the change in advance, they may have bid differently and more competitively.
Meal Equivalency Factor (MEF)	Statistical tool that is used to convert a la carte sales into a standard of measure, in this case a "meal." The MEF is often used to convert a la carte sales into meal equivalents for billing purposes in fixed price contracts.
Micro-purchase Method	An acquisition of supplies or services using simplified acquisition procedures, the aggregate purchase amount of which does not exceed the micro-purchase threshold.
Necessary	Item or service that is essential to the operation of the program.
Negative Net Cash Resources (Fund Balance)	A CE must not carry negative net cash resources into the next school year. Negative net cash resources exist when all net cash resources have been depleted, and the resulting negative balance constitutes a liability to the organization.

[5] This definition is taken from USDA regulation.

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Net Cash Resources	Amount of funds the SNP account has available to spend—total revenue less total liabilities (expenditures). USDA further defines Net Cash Resources as This includes all monies, as determined in accordance with the State agency's established accounting system that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds, or other negotiable securities.
Noncompetitive Method	Procurement method used when there is an insufficient number of offers submitted in response to a solicitation. In this case, full and open competition is deemed inadequate, and there is no way to remedy the situation.
Non-Federal Entity	State, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.
Open Award	Contract award in which all vendors that submit an offer are awarded a contract. This type of award does not promote full and open competition or pricing that is advantageous to the program. An open award is not the same as using a market basket strategy.
Operating Months	Months during which the CE operates any child nutrition program—NSLP, SBP, CACFP At-Risk, or a summer feeding program. This includes reasonable amounts of time to set up program operations before meal service begins and time to close program operations at the end of the meal service period. Days on which operational tasks occur may be for a full month of operation or a partial month of operation.
Operator	Entity that operates a Child Nutrition Program.
Operator-Only Cooperative	Any type of agreement that is formed solely among CNP operators, including regional education service center (ESC) cooperatives.
Pass-Through Entity	Entity receiving federal funds that have passed through another entity. This definition is specific to funding from federal sources and applies to state agencies, CEs, group purchasing cooperatives, and third-party entities. These funds are used to fulfill the purposes of a federally funded program.
Payment Bond	Bond that covers the cost of materials and works for construction contracts.
Performance Bond	Bond which covers the cost of ensuring that the work is done as specified in the terms of the contract.
Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events or financial transactions. For this section, the word procedure is used to refer to all of these types of documents.
Procurement	Act of obtaining of goods or services in exchange for money or value. [NOTE: Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.]
Procurement Standards	Standards of conduct that shall govern the performance of the CE's officers, employees, or agents in contracting for payment and expending program funds. State and federal procurement regulations require each CE to maintain written standards of conduct, including a code of conduct that prohibits employees from participating in the selection, award, and administration of any contract to which an entity or certain persons connected to them have a financial interest.
Program Integrity	Organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds. [NOTE: Program integrity includes practices associated with ethical standards and codes of conduct.]
Program Specific Audit	Review of the financial transactions—income and expenditures—and accounting procedures for a designated program.
Proprietary Products	Manufactured products ordered specifically for a particular program or are unique to a manufacturer.

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Reasonable Cost	Amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.
Regulatory Authority	Oversight authority dictated by legislative act or regulation.
Request for Proposals (RFP)	Formal procurement method where potential contractors submit an offer to provide products and/or services under a fixed-price contract.
Responsible (Offer)	Capable of providing the product(s) and/or service(s), as described in the solicitation.
Responsive (Offer)	Offer that addresses the terms and conditions of the solicitation, including the specifications and/or technical requirements for product(s) and/or service(s).
Revenue	Income received by an organization.
Revenue to the School Nutrition Program (SNP) Account	All income that is collected or awarded to the SNP account is revenue (or income) to the SNP account. This includes, but is not limited to, the following: – Federal reimbursement – State or local funds, such as per meal subsidies and state revenue matching funds – Students' payment for reimbursable meals and a la carte sales – Payments for items purchased for fund raisers and vending machines – Income from catering and adult meals
Service Fee	Fee charged for the performance of a specific service.
Simplified Acquisition Threshold (Also Called Small Purchase Threshold)	Amount established by federal, state, or local regulations that defines when formal and informal procurement methods must be us
Single Audit	Organization–wide review of the financial transactions—income and expenditures—and accounting procedures.
Sole Source Method	Noncompetitive procurement method used when products and/or services are available from only one supplier, distributor, or contractor. TDA must approve all sole source methods of procurement.
Solicitation	Process of notifying prospective or qualified offerors about the specifications or technical requirements for the purchase of products and/or services. For informal procurement, the solicitation may be communicated by email, in person, by fax, or by phone as long as the person soliciting offers documents the specifications or technical requirements to ensure that every possible contractor is given the same information. For a formal procurement, a written solicitation is required.
Specifications and Technical Requirements	Detailed information included in the solicitation and in the final contract that describes the product(s) and/or service(s) that will be provided to the CE under the contract.
State Matching Funds	Matching funds provided to local education agencies (LEAs) that participate in NSLP by the state of Texas based on the number of lunches reported on reimbursement claims filed during the period of September 1 through August 31 of the prior year. RCCIs and private schools do not receive state matching funds.
Subgrantees	Governmental or other legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided.
Supplier (Sometimes Called Vendor)	Commercial enterprise, public or nonprofit private organization, or individual that enters into a contract with a CE to provide products and/or services. A supplier is also referred to as an offeror during the solicitation phase of procurement.
Supplies	Items that are expendable or consumed in day-to-day activities and replenished as needed.

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Tangible Benefit	Special offer for a particular item in order to incentivize a purchase which includes, but is not limited to, offering (1) a special item at much lower price than the price structure for a current contract, (2) an item not presently used at a special price that is below market value; or (3) an incentive, such as equipment or other prizes for purchasing items.
Terms and Conditions	General provisions, definitions for terminology, renewal options, protests, termination, and other standards inherent to the contract.
Third-Party	Entity that is contracted to act on behalf of another entity.
Third-Party Cooperative	Any type of cooperative agreement that is formed by sources that are external to CEs which includes the following types of cooperatives: Non-Child Nutrition Program State Agency Procurement Agency Agreements Intergovernmental agreements with the State which may include public, private, and nonprofit entities and are conducted for State facility needs using State procurement standards. These agreements allow local educational agencies and other Child Nutrition Program operators to purchase from the State's contracted sources. Interagency Agreements Public, private, and nonprofit entities formed for the purpose of procuring goods and services. Group Purchasing Organizations, Group Buying Organizations, and Third-Party Vendors (Collectively Referred to as GPOs) CNP and non-CNP operators such as public and private schools, hospitals, universities, law enforcement, public works, etc., who join a third-party company or service provider. A GPO may be a for-profit or a nonprofit entity. Typically, a GPO includes a membership fee for those granted access to the GPO price list of products and services.
Transaction	Occurrence in which two or more entities exchange goods, services, or money between them or among them under an agreement formed for their mutual benefit.
Unallowable Cost	Direct or indirect cost that cannot be paid using funds from the nonprofit school food service account because the cost is not reasonable, allowable, and/or allocable. A cost that is unallowable for the CE is also unallowable for a third-party acting on behalf of the CE. The term *disallowed* is sometimes used in place of unallowable.
Unit Cost	Cost for a single item.
Value	Something of monetary or material worth or something that has a usefulness that can be exchanged for something of worth, merit, or importance.
Velocity Report	Report providing the quantity, date of purchase, and other valuable information for specific products and/or services purchased by CEs used to assist with forecasting future purchasing needs.
Vended Meal Contract	Contractor or merchandiser providing the CE with complete meals, meal components, and raw materials for the meal service.
Vendor Participation Fees	Charge to participate. The charge to participate may be paid by the participant, or it may be paid by those providing products and/or services.
Written Financial and Procurement Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events, including financial and procurement transactions. For this section, the word *procedure* is used to refer to all of these types of documents. Procedures define the critical steps taken to establish and operate effective and efficient systems for (1) financial management, (2) procurement, and (3) management of contracts and agreements. Written procurement procedures may include a procurement plan with timelines and tasks, or a procurement plan may be a separate document from the procedures. Written financial and procurement procedures must be established by all CEs.

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Types of Food Service Contracts

When preparing for a solicitation and awarding a food service contract, a CE must consider the types of tasks and length of the contract before determining whether the solicitation and contract will be for a consultant contract, FSMC contract, or vended meal contract. This section provides detailed guidance on each of the following:

Consultant Contract

A consultant may be procured to temporarily provide support to a CE in areas where the CE lacks the necessary resources, skills, and/or abilities. Through the services of the consultant, the CE learns the necessary resources, skills, and/or abilities to operate an effective and compliant program.

A consultant can assist a CE's staff to develop strategies or skills to operate a successful and effective program. A consultant cannot be procured to operate or manage the program.

A consultant contract also cannot result in the purchase of duplicative services. If the CE has already procured the same services through another contract, the costs of the duplicative services are an unallowable cost to the nonprofit school food service account.

Food Service Management Company (FSMC) Contract

An FSMC is a commercial enterprise or nonprofit organization that may be procured to assist the CE in managing and operating the program, i.e., to operate the program on behalf of the CE.

Vended Meal Contract

A contractor or merchandiser may be procured to provide the CE with complete meals, meal components, raw materials, and information necessary for the CE to produce food production records for the meal service.

Conflicts of Interest

It is a conflict of interest for a potential offeror to have prior knowledge of the solicitation or to assist in the development of solicitation. Prior knowledge and assistance include, but are not limited to, the potential offeror having input into any aspect of solicitation specifications and/or technical requirements, solicitation documentation, evaluation criteria, or award process.

If a CE awards a contract to a vendor that has provided information or documentation for the solicitation or contract, the costs of the contract are unallowable and cannot be paid with funds from the nonprofit school food service account.

Therefore, the CE must not (1) engage in the development of a food service solicitation and/or contract if that vendor will submit an offer for a food service contract or (2) use information that is prepared by any entity that will be submitting an offer for a food service contract.

Moreover, when a vendor assists a CE in the development of a solicitation or contract to procure additional services and/or products outside of the food service contract, the CE must not award the contract to an offeror if any one of the following conditions exists:

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- The offer is submitted by a vendor that assisted the CE in the development of the solicitation.
- The offer is submitted by the parent company of the vendor that assisted the CE in the development of the solicitation.
- The offer is submitted by any subsidiaries of the vendor that assisted the CE in the development of the solicitation.

Communication with Potential Offerors for a Food Service Contract

All information or documentation provided must be provided to every potential offeror. This includes, but is not limited to, the questions asked by any potential offerors and answers provided to question.

The CE must provide the location and method for accessing information or documentation in the solicitation. CEs often find the easiest way to distribute the information or documentation is a web-based format.

CE Survey of Possible Bidders for Product and/or Service Availability

A CE may survey prospective offerors to determine if specific products and/or services can be provided. In cases where a CE conducts a survey of potential offerors, the CE must ensure that possible offerors do not assist the CE in preparing the solicitation or contract.

Third Parties Acting on Behalf of the CE

USDA also prohibits third-party contractors that procure products and/or services on behalf of the CE from procuring the products and/or services from the third-party's parent company, subsidiary of the parent company, or other entities with a financial relationship to the third-party. These types of situations represent a real or apparent conflict of interest, limit competitive procurement, and result in the use of school nutrition funds to pay for the costs of duplicative services. **Duplicative costs are an unallowable cost to the nonprofit school food service account.**

Conflict of interest circumstances include, but are not limited to, a food service contractor purchasing from the food service contractor-owned or affiliated vendors. Moreover, when a food service contractor or a purchasing cooperative publishes a solicitation and procures on behalf of a CE , the food service contractor and cooperative cannot award a contract to the food service contractor's parent company, a subsidiary company of the food service contractor's parent company, or any entity with a financial relationship with the food service contractor or cooperative.

See the *Administrator's Reference Manual (ARM), Section 15, Program Integrity* for additional guidance on conflicts of interest.

Procurement of Food Service Contracts

A CE must procure a food service contract appropriately, as described in *Administrator's Reference Manual (ARM)* sections listed at the beginning of this section.

CEs that procure food service contracts must also apply the following procurement requirements:

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Acting on Behalf of the CE

Any agency, organization, group, business, food service management company, food processor, contractor, distributor, vendor, or other entity acting on behalf of a CE for any SNP programs is required to follow federal and state procurement guidance for all procurement on behalf of the CE. This includes the guidance in this section as well as the guidance in the *Administrator's Reference Manual (ARM)* sections listed at the beginning of this section.

Information Box 1

Additional Resources for Procurement

Texas Comptroller of Public Accounts
The website for the Texas Comptroller provides information on state regulations that apply to state and local governmental entities. Available at *www.comptroller.texas.gov/*

Texas Education Agency (TEA)
Financial Accountability System Resource Guide provides detailed guidance of financial accountability, including Module 3, Purchasing, for local education agencies and charter schools. Available at *www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial__Accountability_System_Resource_Guide/*

United States Office of Management and Budget (OMB)
2 Code of Federal Regulations, Part 200—These regulations provide detailed information on required federal procurement process. Available at *www.fns.usda.gov/es/node/73141*

Contract Negotiation

A CE must not negotiate with any offeror at any time when an invitation for bid (IFB) method is used. For a request for proposal (RFP), a CE may negotiate with the top responsible and responsive offerors who score above a specified score or percentage that was pre-determined before the evaluation of the offers began. A CE may do so to get clarification about what each contractor is offering. See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional guidance on this process.

[NOTE: While this is commonly called a negotiation, it is not a true negotiation where there is give and take among those involved. Instead, it is an opportunity for the offerors to provide clarity on their offer.]

Cost Structure for Food Service Contracts

A CE cannot award or pay the cost for any contract with a cost-plus percentage of cost contract structure.

A CE cannot pay travel or other costs that are not written into the contract as a specific amount. Increased travel or other costs cannot cause the total cost of the contract to exceed the total contract value.

Documentation

All third-party entities must provide adequate documentation[6] to a CE, so the CE can demonstrate compliance with all requirements, including, but not limited to, the following areas: procurement, training, food product documentation, financial, staffing, and meal service. Financial document must include accurate information on the application of credits, rebates, discounts, and USDA Foods values as income to the nonprofit school food service account.

Finalized Contract Before Implementation

Before a CE can implement the contract, all contract award requirements must be completed. If the contract requires TDA approval, such as FSMC contracts, TDA must provide approval before the contract is implemented. A CE cannot make retroactive payment to cover products and/or services prior to date the contract is finalized.

[6] See the *Records Retention* subsection in this section for additional information on documentation.

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Limiting Competitive Procurement

For all consultant contracts, FSMC contracts, and vendor contracts, CEs must ensure that they do not limit competition through any of the following actions:

- Place unreasonable requirements on potential contractors for them to qualify to do business with the CE.
- Require unnecessary experience and excessive bonding.
- Allow noncompetitive pricing practices between contractors or between affiliated companies.
- Allow noncompetitive contracts to be awarded to consultants that are on retainer contracts.
- Allow contracts between entities when there are organizational conflicts of interest.
- Specify only a "brand name" product instead of allowing "an equal" product to be provided.
- Allow any arbitrary action in the procurement process.

Meal Pricing

CEs must establish the prices for student meals and meal service options. A contractor cannot set CE policy to establish the price for meals.

Noncompliance Caused by Contractor Actions

In the solicitation and contract, the CE's procurement procedures and contract management processes must address how the contractor will resolve any noncompliance caused by contractor action or negligence. This requirement includes reimbursing the CE for the costs of fiscal action and required reimbursement of the nonprofit school food service account for unallowable costs and failure to accurately collect credits, rebates, discounts, and USDA Food values.

Reports

A CE employee designated by the superintendent must submit all reports. A FSMC company employee, consultant, or vendor employee can provide information or assistance to the CE in collecting report information, but a CE employee must submit all reports to TDA. Reports include, but are not limited to, the *Permanent Agreement*, claims for reimbursement, the *Verification Report (742)*, the *Policy Statement for Free and Reduced-Price Meals (Attachment B*), and documentation required for an Administrative Review (AR).

Texas Unified Nutrition Programs System (TX-UNPS) Contact

CEs must designate a CE employee as the food service contract contact in TX-UNPS. An FSMC company employee, consultant, or vendor employee cannot be recorded in TX-UNPS as the CE contact. This requirement applies even if an FSMC employee is the Child Nutrition Director.

Material Change

Any change in a contract may result in a material change in the contract. If there is a material change to the contract, the CE must rebid the contract. See the *Administrator's Reference Manual, Section 17, Procurement* for detailed information on material change.

Changes Commonly Not Considered a Material Change

Though every change should be considered individually, the following changes are commonly not considered to be a material change:

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- The original contract included an anticipated change that was described as an option in the scope of work and/or specifications and/or technical requirements.

- Emergency situations when time does not permit conducting a formal competitive procurement process. See the *Administrator's Reference Manual, Section 17, Procurement* for more information on public emergency or unexpected emergency situation noncompetitive procurement.

Changes That Commonly Are Considered a Material Change

Material changes that require a new bid or separate contract include, but are not limited to, the following:

- Addition of new services to an existing contract that are not included in the current scope of work as reflected in the specifications, technical requirements, and/or terms and conditions of the contract.
  For Example: Adding any of the following meal service options: catering, a la carte sales, vended meals, convenience stores, vending machines, and concessions

- Addition of FSMC management for another program not included in the current scope of work as reflected in the specifications, technical requirements, and/or terms and conditions of contract.
  For Example: Adding another Child Nutrition Program (CNP) to the contract such as Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), or Seamless Summer Option (SSO)

- Making changes in services to the current scope of work as reflected in the specifications, technical requirements, and/or terms and conditions of contract which will alter the value or total costs for the original contract.
  For Example:
  - Changes to the formula for determining meal equivalency.
  - Any change in fees or basis for fee increases not reflected in the original solicitation and contract.
  - Major shift in responsibilities for the CE's staff or FSMC staff.
  - Significant changes in the basis for determining guaranteed returns.
  - Change to or adding elements to the option to renew the contract.
  - Changes to the formula that is used to identify the meal.

Consultant Contract

Consultant contracts provide short-term or temporary service assistance when a CE lacks the necessary resources, skills, and abilities to manage and operate the program effectively and in compliance with regulations. Though a consultant may provide assistance, the CE is still responsible for managing and operating the program.

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In general, a consultant's contract should last no more than a year. In some cases, it is acceptable to extend the contract as the staff transition into implementing what was learned from the consultant. In this case, the consultant role takes the form of an advisor helping staff process and assess implementation actions.

Short-term or temporary services may include a single consultation or a series of consultations over a defined period of time, but no longer than one year.

For Example:

- A kitchen equipment specialist provides suggestions for improving the service line equipment and recommendations for an equipment replacement schedule.
- A registered dietitian provides recommendations related to students with medical accommodations, new recipes, and recommended menu items for unpopular meals.

[NOTE: For small or rural CEs, consultant contracts are also used when budgets and staff limitations do not support a wide range of specialized skills. However, in these cases, a consultant's contract still cannot include implementing or managing the day-to-day operations of the program.]

Before procuring a contract for a consultant, the CE should also consider if its regional education service center (ESC) can provide technical assistance at no cost to the CE for the needed services. There may also be other CEs that have the same need. CEs may form cooperatives to share the costs for these types of services. A CE may also establish an agreement with another CE to access these services through an employee of the other CE. In these agreements, both CEs will contribute to cover the costs of the employee's salary.

The CE must also ensure that a consultant contract does not result in the purchase of duplicative services. If the CE has already procured the same services through another contract, the costs of the duplicative services are an unallowable cost to the nonprofit school food service account.

Roles for a Consultant in a School Nutrition Program (SNP)

Where the services provided are not of a continuing nature, the CE may procure the services of a consultant temporarily while the CE builds staff capacity or develops a plan for implementation. If the services provided by the consultant continue over an extended period of time, the CE must reevaluate whether the contractor is meeting the CE's needs to implement the program. In these circumstances, TDA recommends that CEs contact their ESC to determine if the ESC can provide the services at no charge.

Consultant contracts may be used as described in the following circumstances:

Appropriate Use for a Consultant Contract

When there is a lack of resources, skills, or abilities to perform a required service or action, including, but not limited to, a regulatory change that the CE is not prepared to implement, the CE may procure a consultant to gain access to resources and develop staff skills and abilities to achieve or maintain compliance.

When tasks to be performed can be accomplished in a short period of time and the services can be provided more economically by a short-term, i.e., cost effective, consultant instead of a direct hire, the CE may procure a consultant. Cost effective in this case means a lower cost to the CE.

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If the activities in this contract include program operation or management duties, the CE must reevaluate its consultant's solicitation and contract and either remove those duties or issue a solicitation for an FSMC contract.

Contract Duration

The role of the consultant is intended to be a short-term role. If a CE has procured a consultant or a series of consultants to address long-term issues, the CE is not using consultant services as allowed. Instead, the CE is likely using a consultant in an FSMC capacity and, therefore, must procure an FSMC if the CE is not ready or chooses not to transfer these responsibilities to its own staff.

In all cases, a contract cannot exceed the one year plus four one-year renewals. After the fourth renewal, the contract must be rebid. If a CE allows a consultant contract to exceed this limitation, the costs of the contract are unallowable to nonprofit school food service account.

[NOTE: Since a consultant contract is intended to have a duration of short period, it will be unusual for a consultant contract to have a duration of four years or for there to be a rebid.]

Operational and Management Tasks

A consultant role cannot perform operational or management tasks. A consultant's contract may be used to support the CE's staff in performing operational and management tasks. When a consultant assumes operational and management roles, it has become an FSMC. If the consultant services include implementing or managing the day-to-day operations[7] of the program, a food service management contract must be used instead of a consultant's contract.

If a CE allows a consultant contract to be used to perform operational and management tasks, the cost of the consultant's contract is an unallowable cost to the nonprofit school food service account.

Awarding the Contract

The consultant contract must be awarded to the contractor that is the most responsive and responsible to the solicitation[8] with price as the primary consideration as described in the CE's written procurement procedures. See the *Administrator's Reference Manual, Section 17, Procurement* for more information on awarding the contract.

Program Compliance

The CE cannot delegate its responsibility to operate and manage program compliance with all applicable federal, state, and local regulations. The CE is responsible for ensuring that the activities described in a consultant's contract are appropriate for this type of contract, that is, the activities do not involve program management or program operation.

Procurement

A CE must procure a consultant's contract appropriately as described in *Administrator's Reference Manual (ARM)* sections listed at the beginning of this section. In the solicitation

7 Day-to-day operations include, but are not limited to, menu planning, inventory management, food production records, and common operational tasks.

8 If the micro-purchase method is used, a formal written solicitation is not required.

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and contract, the CE should include, but is not limited to, the following information and requirements at a minimum:

Scope of Work

A consultant contract must clearly define the scope of work to ensure that correct type of contract has been awarded:

- Statement of the objectives to be achieved with measurable indicators of when the objectives have been met and progress milestones.
- Qualifications or technical specifications necessary to provide the services under the contract.
- Explanation of the types of issues the consultant is expected to address.

Financial Elements

A consultant contract must address the following issues at a minimum:

- Process for submitting invoices, verifying accuracy of invoices, and paying invoices.
- Explanation that the offer to be submitted is for a set price,[9] i.e., the offer must include a statement for the total costs for the contract.

  Any costs that exceed the total amount of the contract are unallowable costs to nonprofit school food service account. If additional services are needed, a new solicitation must be issued, and a new contract must be awarded.

  If travel or other types of expense costs are included in the total cost of the contract, those expenses must be outlined in the offer with a maximum cost for each type of cost for the duration[10] of the contract. Travel costs and other expenses cannot be added in addition to the total cost of the contract.

  Consultant payments cannot exceed the amount of the total cost of the contract. If a contract has a renewal option, the cost of products or services cannot increase in a contract renewal year unless the change is based on a cost index or a planned expansion of products or services.

  [NOTE: Changes to the cost of may occur in two circumstances:

  1. The solicitation and contract include a change in cost based on the Yearly Percentage Change in the Consumer Price Index (CPI) for All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home. If this index is used, the total costs must also be decreased as determined by the index and may be increased as determined by the index.
  2. The solicitation and contract include a description of anticipating increase or decrease in the product or services to be provided by the consultant. However, use of this option is not intended to create a long-term contract. Consultant contracts

[9] A consultant's contract cannot be awarded to an offeror that has submitted a cost-plus percentage or cost-plus added expenses. All costs to be charged for the contract must be included in the offer.

[10] A consultant contract has a duration of one year. Any renewal of the contract is also for one year.

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are intended to be temporary contracts for a short period of time.

Terms and Conditions

The terms and conditions of the contract address general provisions, definitions for terminology, renewal options, protests, termination, and other standards inherent to the contract.

[NOTE: As a best practice, CE's may consider a provision stating that any silence, absence or omission from the contract specifications must be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the CE is to be used. This provision should be contained in both the IFB/RFP and the contract.]

The terms and conditions for the contract must address, but are not limited to, the following issues:

- Responsibility of the CE to manage the contract.
- Process for addressing conflicts in the contract.
- Statement of the expected timeline for the contract duration.
- Length of the contract and options for renewal.
- Terms and conditions for terminating the contract.

FSMC Contract

CEs may use an FSMC to manage and operate the food service program or specific elements of the food service program on behalf of the CE.[11] An FSMC may be a commercial enterprise or a nonprofit organization.

CEs may only contract with a FSMC vendor from *TDA's Food Service Management Company Approved Vendor List*.[12]

Issues to Consider

Whether a CE is considering the use of an FSMC for the first time or evaluating its current use of an FSMC, the CE should consider the following issues:

1. What method of providing food service best meets the CE's goals and objectives?
    - What are the goals for the program?
        - Customer service?
        - Educational activities such as nutrition lessons, school gardens, or farm to school activities?
        - Financial?
        - Local wellness policy activities?
        - Nutrition?
    - What the measurable objectives for meeting each goal?
    - What are the financial considerations for program operations?

[11] If an NSLP CE operates a Child and Adult Care Food Program and/or Summer Food Service Program, there may be additional regulations that applied for the use of an FSMC to operate the program.

[12] Available at *www.squaremeals.org*.

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- What other elements of program operation are important to the CE?

2. What type of services does the food nutrition program provide?
   - How many reimbursable meals—lunch, breakfast, snack, and summer—are served each year?
   - What is the average daily participation (ADP) by site?
   - What other meal service activities does the CE provide?
     - Catering?
     - Special events?
     - Fundraisers?
     - Other Activities?
3. What is the current cost of operating the food service program and income for the program?[13]

   Income

   - What is the reimbursement the CE receives by program operated—lunch, breakfast, snack, and summer—and in total?
   - What income does the CE receive for other food service program activities?
   - What income does the CE receive for credits, rebates, discounts, and USDA Foods values?

   Costs

   - What are the costs incurred for operating the program?
     - Food
     - Labor
     - Supplies
     - Equipment
     - Indirect costs
     - Employee benefits
     - Storage of USDA Foods
     - Processing of USDA Foods
     - Other items?
4. What are the reasons the CE is considering changing to FSMC operation?
   - Cost?
   - Staffing challenges?
   - Operating challenges?
   - Other issues?
5. What elements of program operation does the CE feel an FSMC can manage more effectively than the CE?
   - General program management?

[13] The annual Financial Report submitted to TDA will provide some financial information, but the CE should work with the CE's financial manager to explore income and costs more thoroughly. TDA also provides the *Budget Tool* at *www.SquareMeals.org* which will help the CE collect the data needed to conduct a full financial analysis of the school nutrition program.

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- Meal Service?
- Menu planning?
- Procurement?
- Staffing?

6. Other than meal program operational changes, are there other impacts if the CE changes to FSMC operation?
   - Employees losing positions?
   - Other school groups or organizations that are served by the CNP?

CEs may get additional assistance from their education service center (ESC) child nutrition specialist, and may also find contacting other CEs of similar size to learn about their experiences with self-operation and/or FSMC operation helpful.

Roles for an FSMCs in a School Nutrition Program

The CE may include the following roles for FSMC Staff:

Meal Planning, Preparation, and Service

- Menu development
- Preparation of meals
- Service of meals
- Maintain food production records
- Health and safety requirements
- Receipt and use of USDA Foods, including maintaining all required records
- Inventory management

Counting and Claiming Data

- Operate the point of service (POS) system
- Collect and report data for meals served to the CE
- Maintain and provide counting and claiming data to the CE

Procurement on Behalf[14] of the CE

- Procure necessary food and supplies
- Assist CE in procurement of USDA Foods processing
- Maintain records on procurement, including, but not limited to, all documentation related to credits, rebates, discounts, and USDA Foods values

The FSMC contract may also stipulate that the assigned tasks for the FSMC are different for each of the child nutrition programs that are covered by the contract.

[14] These requirements are commonly referred to as *pass through entity* requirements.

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Contract Duration

An FSMC contract may be a short-term or long-term method of managing or operating the program. The contract may be awarded for up to one year, July 1 to June 30, and renewed for four additional one-year periods before a new solicitation is required. An FSMC contract may only be renewed if the specifications, technical requirements, and terms and conditions of the original contract are still in place.

Responsibility for Program Compliance and Contract Management

The CE cannot delegate its responsibility to operate and manage the program in compliance with all applicable federal, state, and local regulations. **It is the responsibility of the CE to monitor the FSMC contract and ensure that all regulatory requirements are met.**

Even though the FSMC solicitation /contract will describe specific responsibilities for the FSMC, the CE still maintains overall responsibility for program operation and for specific actions as described in regulation.

- If a responsibility is not included in the solicitation and contract scope of work, the responsibility remains with the CE.
- If a responsibility is assigned to the FSMC, the CE is still responsible for ensuring that actions taken on its behalf are compliant with all requirements.
- If the FSMC assumes responsibilities not described in the original solicitation and contract, performing new responsibilities may be a material change and require the FSMC solicitation/contract to be rebid.[15]

The CE is responsible for the following operational tasks:

Accounting and Finances

The CE must retain control and overall financial responsibility of the nonprofit food service account. As such, the CE must ensure that all financial transactions are compliant with requirements, including, but not limited to:

- Use of nonprofit school food service funds only for allowable costs.
- Accrue all income to the nonprofit school food service account and that FSMC income reports include income broken down by source, type, and category of meal or food service.
- Retain responsibility for the overall operation of food service programs, including financial requirements. This includes limiting FFVP administrative costs to 10 percent of the overall grant, if applicable.
- Ensure the accuracy of counting and claiming.
- Ensure the accuracy of bills and invoices, including credits, rebates, discounts.
- Ensure the CE receives all credits, rebates, discounts, and USDA Foods values, if applicable. These funds must be credited to the nonprofit school food service account.
- Ensure that the FSMC provides the documentation necessary to report program and nonprogram costs and revenue as well documentation for the

[15] See the *Administrator's Reference Manual, Section 17, Procurement* for additional information on material change.

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required program/nonprogram cost and revenue proportion calculation.

Administrative Review (AR) and Other Audits

During an Administrative Review (AR), the CE retains responsibility for providing documentation to TDA, planning onsite observations, and resolution of findings and corrective action. While the FSMC will be involved in preparing and providing information to the CE for an AR or other audit, the CE is responsible for all responses for to TDA. Further, the CE is responsible for any unallowable costs or fiscal action resulting from the AR.

Advisory Board

The CE must ensure that an advisory board composed of parents, teachers, and students to assist in menu planning is established and maintained.

Agreements and Contracts

The CE must retain responsibility for all contractual agreements entered into in connection with the operation of the program. This includes, but is not limited to, the following:

- Retain signature authority on the TDA Permanent Agreement with TDA and compliance with the Permanent Agreement.
- Retain signature authority for the CE's *Policy Statement for Free and Reduced-Price Meals Attachment B: Meal Count/Collection Procedure(s)*.
- Retain signature authority for all tasks completed in TX-UNPS.
  [NOTE: In the space provided for the CE to record the CE's contact for the FSMC in TX-UNPS, the name recorded must be a CE employee. It cannot be an FSMC employee.]
- Retain responsibility for processor agreements and contracts.
- Retain oversight to ensure that all third-party contracts are compliant with all regulations.
- Submit reports, including claims for reimbursement, the *Verification Report (742)*, and other reports required by TDA or USDA.

Civil Rights

The CE must ensure that the FSMC complies with the procedures established by the CE for referring any civil rights complaints to the CE.[16]

Competitive Foods

The CE must ensure that the FSMC is compliant with Competitive Food Nutrition Standards (also called smart snacks) as described in A*dministrator's Reference Manual (ARM), Section 22, Competitive Foods*.

Counting and Claiming

The FSMC may maintain and provide counting and claiming data to the CE. However, the CE is responsible for submitting claims and for ensuring the accuracy of meal counts prior to claim submission.

Eligibility Determination

The CE must conduct all eligibility and verification activities related to free or reduced-price meal eligibility.

[16] See *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality* for more information on the required actions when there is a civil rights complaint.

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FSMC Contract Review Form

The CE must ensure the FSMC operates the program according to the contract and in compliance with all regulations and guidance. The CE must review the FSMC's operation of the program quarterly for at least one site using TDA's *Food Service Management Company (FSMC) Contract Review Form*.[17]

Onsite Monitoring

CEs with more than one school must conduct an annual onsite review of each school prior to February 1st of each school year to observe the school's counting and claiming procedures. This includes any schools where an FSMC operates; CE staff must conduct the required onsite reviews. See A*dministrator's Reference Manual (ARM), Section 20, Counting & Claiming*.

Health and Safety

The CE must ensure all applicable health and safety certifications regulations are met, including, but not limited to, the following:

- Ensure the development and use of a Hazard Analysis Critical Control Point (HAACP) plan.
- Ensure compliance with all state and local health inspection regulations.
- Ensure the safe and appropriate storage of all foods, commercial products.

Meal Service

The CE must retain control of the quality, extent, and general nature of food service for program and nonprogram foods and meals. This includes, but is not limited to, to the following:

- Develop the 21-day cycle menu for the FSMC. [NOTE: The FSMC must implement the agreed upon 21-day cycle menu for the first 21 days. Any changes to the first 21-day cycle menu must be submitted to TDA for approval.]
- Ensure compliance with applicable meal pattern compliance.
- Determine prices to be charged for meals.
- Ensure the incorporation of USDA Foods into meals to the greatest extent possible.
- Ensure meal service operational practices are compliant with requirements, including, but not limited to, offer versus serve (OVS).
- Verify receipt of credits, rebates, discounts, and USDA Foods values.

Procuring an FSMC

A CE must procure an FSMC contract appropriately as described in *Administrator's Reference Manual (ARM)* sections listed at the beginning of this section. In this section, the term *solicitation/contract* is used to reference the TDA prototype combined solicitation and contract.

- An FSMC contract must be fixed price. Cost-plus-a-percentage-of-cost and cost-plus-a-percentage-of-income contracts are prohibited by USDA.
- Fee increases are not allowable unless indicated in the solicitation/contract. A fee

[17] Available at *www.SquareMeals.org*.

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increase must only be based on a cost index[18] or an anticipated growth or decrease in services that is described in the solicitation. Any information regarding potential fee increases must be available to all potential offerors at the outset of the procurement action through the final contract award.

- Full and open competition must be maintained in all procurement actions.

Acceptable Methods to Procure an FSMC

In Texas, CEs may use one of two methods to procure an FSMC: (1) invitation for bids (IFB) or competitive sealed bid method or (2) request for proposals (RFP) and must use the TDA prototype solicitation/contract for this purpose. See the *Administrator's Reference Manual, Section 17, Procurement* for more information on formal procurement methods.

Invitation for Bids (IFB) (Also called competitive sealed bid)	**Request for Proposals (RFP)** (Also called competitive proposal)
Pricing	
– Contract must be fixed price.	– Contract must be fixed price.
Method Design	
– Expectations—Are the scope of work and specifications, technical requirements, and terms and conditions well defined and measurable? – Evaluation—Is there an indication of the method by which the offeror demonstrates that it has met the specifications, technical requirements, and terms and conditions? – Offers—How does the CE ensure that offers are publicly opened, and the process for opening offers is described in the solicitation/contract? – Contract Award—How will the contract be awarded to the most responsible and responsive offeror that submits the lowest cost offer?	– Expectations and Evaluation—Are the scope of work and specifications, technical requirements, and terms and conditions clearly defined, and is the CE allowed to score criteria for factors in addition to price? – Contract Award—What is the method for the contract to be awarded to the most responsible and responsive offeror with price as the primary consideration? – Offers—Even though offers do not have to be publicly opened, what is the process for opening offers that will be described in the solicitation/contract?

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[18] Texas CEs must use the Yearly Percentage Change in the Consumer Price Index (CPI) for All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home

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Invitation for Bids (IFB) (Also called competitive sealed bid)	**Request for Proposals (RFP)** (Also called competitive proposal)
Questions to Consider	
– Scope of Work—Is the CE able to clearly define or describe the programs to be operated, products, and services the FSMC will provide and describe the roles and responsibilities for the FSMC and CE, and costs the FSMC will cover? – Competition—Are there multiple entities or companies that are able to make an offer?	– Technical Skills—Does the CE possess the technical skills necessary to develop the written evaluation and scoring criteria, complete a review of the responses received to evaluate, and score the proposals as specified in the solicitation, and negotiate with offerors? • Strong knowledge of procurement and experience with contract negotiation? • Knowledge of Child Nutrition Program (CNP) regulations, including allowable and unallowable cost provisions? • School food service administration and operation management? • Financial management of a nonprofit food service account? – Evaluation and Scoring Criteria—Does the CE have a process in place to document communication about the evaluation and scoring criteria in the solicitation/contract, pre-determined cut-off score for responsive offers, evaluation, and award of the contract?
Advantages	
– Revenue and Cost—How will the CE accurately estimate program revenue and contract costs? – Billing and Payments—How will the CE describe how the payment transactions are limited to the monthly contract fee? – Simplified Monitoring—How will the CE conduct onsite monitoring for compliance: 21-day cycle menu and meal pattern, health and safety regulations, program operation, credit for the value of USDA Foods, and status of the nonprofit school food service account for revenues and expenses? – Economic Cost Adjustment—Will the CE tie changes in contract costs to the Yearly Percentage Change in the Consumer Price Index (CPI) for All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home? [NOTE: If cost adjustments are tied to the CPI, market price variability will not significantly impact the cost of the contract.]	– Responsibilities—How will the CE control of the weight or score for each of the evaluation criteria, so the evaluation criteria can be used to ensure that the elements in the offer related to the key FSMC responsibilities are emphasized? – Pricing—How will the CE ensure that price is the primary factor in the evaluation? – Economic Cost Adjustment for Fixed Price—Will the CE tie changes in contract costs to the Yearly Percentage Change in the Consumer Price Index (CPI) for All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home? [NOTE: If cost adjustments are tied to the CPI, market price variability will not significantly impact the cost of the contract.]

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Invitation for Bids (IFB) (Also called competitive sealed bid)	Request for Proposals (RFP) (Also called competitive proposal)
Disadvantages	
– Precise Descriptions—How does the CE ensure that the scope of work, specifications, technical requirements, and terms and conditions provided in the solicitation/contract are well written so that offerors are able to write offers that meet the needs of the CE?	– Monitoring Costs—How does the CE address the issue that monitoring costs may be higher because of number of areas that must be monitored: 21-day cycle menu and meal pattern, health and safety regulations, advisory board, record keeping, allowable costs, Buy American provision, third party procurement, USDA Foods values, and credits, rebates, discounts for other purchases? – Essential Skill and Experience—How does the CE prepare staff who do not have sufficient knowledge, skill, and experience in procurement, allowable costs, negotiation, program operations, and financial management to conduct the process? Will it be necessary for the CE to hire experts to finalize the terms and conditions of the contract? [NOTE: Attempting to negotiate the final terms and conditions without needed expertise may result in a fully enforceable contract that fails to meet regulatory requirements. Moreover, because an administrative review or other audit may result in fiscal action for noncompliance, staff that lack knowledge, skill, and experience may not ensure that responsibilities are assigned in a way that limits the financial burden on the CE.] – Poorly Defined Responsibilities—How will the CE prevent additional costs caused by poorly defined FSMC responsibilities? How will the CE ensure that the contractor responsibilities are clearly defined, and key performance goals are met? – Final Terms and Conditions—How will the CE ensure that the final contract maintains the scope of work, specifications, technical requirements, and terms and conditions communicated in the original solicitation/ contract?

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Cost Analysis

Before issuing a solicitation for an FSMC contract, a CE must conduct a cost analysis to establish an expectation of the cost. Cost analysis may be accomplished in various ways, including the review of the CE's income and costs over a period of time, market prices, and similar contracts.[19]

[19] The annual *Financial Report* submitted to TDA will provide some financial information, but the CE should work with the CE's financial manager to explore income and costs more thoroughly. TDA also provides the Budget Tool at *www.SquareMeals.org* which will help the CE collect the data needed to conduct a full financial analysis of the school nutrition program.

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The CE must have sufficient information upon which to project the total anticipated cost of the contract. Since fee adjustments may not be permitted, any change in fees or basis for fee increases not reflected in the original solicitation and contract would constitute a substantive or material change to the contract which would require that the contract be rebid.

[NOTE: Changes to the cost of may occur in two circumstances:

1. The solicitation and contract include a change in cost based on the Yearly Percentage Change in the Consumer Price Index (CPI) for All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home. If this index is used, the total costs must also be decreased as determined by the index and may be increased as determined by the index.
2. The solicitation and contract include a description of anticipating increase or decrease in number of students, campuses, nutrition programs, or meal service options.]

Plan for Evaluating FSMC Offers

The CE must have a plan to ensure that procuring an FSMC contract is a well-run and fair process. The CE should develop its plan for evaluating offers as it develops the solicitation.[20] While an IFB plan for evaluation will have fewer factors to consider, the CE should carefully plan the evaluation of the IFB offers as well as the RFP offers.

The criteria for awarding the contract must be included in the solicitation.

The following criteria are commonly used in contract evaluation:

- Price/Cost (total cost of proposal submitted, must be the primary consideration)
- Management plan (demonstrates FSMC's plan and personnel for how services identified in the solicitation are proposed to be accomplished)
- Experience of FSMC, reference letters, etc. (includes total business experience as well as with CEs of similar size operating Child Nutrition Programs including references of these CEs)
- Financial Condition/stability, business practices
- Accounting and reporting systems
- Personnel management and professional standards plan
- Procurement-specifically the quality of the food to be purchased
- Promotion/Marketing in school food service
- Involvement of students, staff, and others

See the *Administrator's Reference Manual, Section 17, Procurement* for more information on awarding the contract.

Offer Evaluation Team

Assignment of the roles and responsibilities for developing the evaluation

- What staff members or other persons currently have the knowledge and expertise to evaluate the offers?
- What kind of knowledge and expertise is needed to evaluate the specifications and technical requirements?

[20] See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional guidance on evaluation and cost as the primary consideration in awarding a contract.

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        - Who has that knowledge and expertise? Establish the standards for the evaluation/rubric tools? Create evaluation/rubric tools? To evaluate?
        - Do members of the team need additional information before beginning to evaluate the offers?
    - How many members does the evaluation team need to both complete the work and ensure that there is a fair process?
        - How many offers does the CE expect to receive?
        - How long will it take a person to review the offer?
    - Who has to approve the contract before it is formally awarded?
        - What actions need to be taken to get necessary approvals?
        - Who will take these actions?
        - Who will monitor the process to ensure that all approvals are obtained?
    - How will the CE communicate the outcome of the solicitation to all offerors?
        - Who will develop the appropriate notification documentation? Sign the documentation? Send the notification documentation?

Information Box 3

Examples of Evaluation Criteria Point/Percentage System

CEs may use an appropriate evaluation point system. The most commonly used options are to use points or to use a percentage.

Criteria	Amount to Be Awarded	
	Option to Use Points	Option to Use Percentage
• Price/Cost—Primary Consideration	25	20%
• Management Plan—FSMC's Plan for Accomplishing Goals Presented in Solicitation	20	15%
• Experience of FSMC—Total Business Experience, Experience with CEs of Similar Size, Experience Operating Child Nutrition Programs	10	5%
• Financial Condition/Stability, Business Practices	20	15%
• Accounting and Reporting Systems	20	15%
• Personnel Management and Professional Standards Plan	20	10%
• Quality of Food to Be Procured	15	10%
• Promotion/Marketing in School Food Service	10	5%
• Stakeholder Involvement—Students, Staff, and Others	10	5%
Highest Possible Total	**140 points**	**100%**

Required Solicitation and Contract Prototype

CEs must use the TDA prototype to procure an FSMC. USDA strongly recommends that CEs obtain legal counsel in the development of solicitations and contracts when procuring an FSMC.

Approval Process

Process for the CE to take the following required actions before releasing its FSMC solicitation/contract:

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1. Notify TDA of the CE's intent to contract with a FSMC.
   TDA will provide information the CE will need to complete the process.
2. Use the TDA prototype solicitation/contract.[21]
   FSMC-developed contracts and amendments are not allowed.
3. Submit the prepared solicitation/contract to TDA for approval at least two weeks prior to the first advertising date.
   All proposed solicitation/contracts must be submitted to TDA before December 31.

Approval for a Renewal

4. Submit appropriate documentation to TDA for approval of the contract renewal prior to December 31:
   An FSMC contract may be renewed up to four times. However, the contract must be rebid if there is a material change[22].

The CE's FSMC contract and/or renewal packet must be approved, in writing, by TDA before the start of the contract year. If the FSMC contract or renewal has not been approved by TDA and a signed copy of the FSMC contract has not been submitted to TDA, the CE (1) cannot claim reimbursement for meals served under FSMC operation and (2) any cost associated with an FSMC contract is unallowable.

Advertising for Offers

CEs must provide enough postings to ensure that there is broad distribution of the advertising announcement and allow sufficient time for offerors to respond to the solicitation/contract.[23] **In addition to public notice, the CE must also distribute the solicitation to all vendors on the FSMC Vendor list.[24]**

While there is no required amount of time for advertising activities in USDA guidance,[25] CEs must ensure that they advertise to the widest possible audience across a period that is sufficient for offerors to create and submit their offer.[26]

Timing of Advertisement

Because of the complex nature of FSMC solicitations, releasing the advertisement at least 45-60 days before the offer due date will allow the contractor sufficient time to review, develop, and submit a response. If a pre-bid meeting is planned, the CE will also need to allow additional time for the

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21 Available at *www.SquareMeals.org*.
22 See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional guidance on material change.
23 See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional guidance on advertising.
24 Available at *www.SquareMeals.org*.
25 The Texas Education Agency (TEA) also has procurement guidance that may apply. As long as TEA guidance is not in conflict with USDA guidance, CEs may use that guidance.
26 The Texas Education Agency (TEA) guidance allows for shorter period for advertising than USDA recommends. While USDA does not require 45-60 days, CEs that do not allow enough time for FSMCs to prepare an offer are limiting competition. USDA regulations do not allow CEs to take actions that limit competition.

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meeting and for providing information from the pre-bid meeting with all participants.[27]

[NOTE: If the CE receives a small number of offers, the CE should review the timing of its release to ensure that the timeline was sufficient for offerors to respond to the solicitation.]

Content of Advertisement

The CE should have a procedure or process that ensures broad advertising of the solicitation. Advertising must include how the potential offeror may obtain the complete solicitation, method for submitting an offer, information concerning a pre-bid meeting (if applicable), time and place for opening offers, summary of evaluation criteria, and processes for awarding the contract.

Additional Required Notification for FSMC Contracts

The CE should have a procedure or process that ensures that the CE will send the FSMC solicitation/contract to the vendors listed on TDA's *Food Service Management Company Approved Vendor List*.

Elements to Be Included in the FSMC Solicitation/Contract

Certifications

Statements[28] that the FSMC will comply with the following requirements:

- Suspension and debarment method and appropriate documentation
- Lobbying
- Non-collusion or certification of independent price determination[29]
- Civil rights compliance[30]

Competitive Food Nutrition Standards

Description of the FSMC and CE responsibilities for compliance with the Competitive Food Nutrition Standards and the retention of related documentation demonstrating compliance with all regulations.

Contract Duration

Statement that the contract is for one-year, July 1 to June 30. The CE may add a renewal option for up to four additional one-year contracts.

Documentation

Description of methods and frequency the FSMC will provide documentation to the CE so the CE can demonstrate compliance with all requirements.

Facilities Management

Description of the expectations for managing facilities, including, but not limited to, the following:

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27 See the *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional guidance on this topic.

28 See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on acceptable method to meet certification requirements.

29 See the Texas Education Agency (TEA) website to obtain a copy of TEA's financial manual and the forms TEA provides for this purpose. CEs may use applicable TEA forms that accomplish the USDA requirement.

30 See *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality* for additional information on requirements related to civil rights.

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- Cleaning
- Extermination or pest control
- Maintenance of meal preparation and service areas
- Repairs
- Trash removal
- Other tasks as appropriate

Financial, Allowable Costs

Statement describing the methods to identify allowable and unallowable costs. The FSMC must use one of the following methods:

1. Identify each cost submitted for payment and indicate whether each cost is allowable or unallowable

   or

2. Exclude all unallowable costs from billing documents and certify that only allowable costs are submitted for payment.

Financial, Food Service Account

Statement that all revenues and profits must be retained exclusively by the nonprofit school food service account[31] and that the FSMC must provide all necessary documentation to the CE to demonstrate compliance with financial requirements, which includes, but is not limited to, sufficient information for the CE to understand each cost charged through the contract.

Financial, Invoicing

Specific directions on the method for the following actions:

- Methods for the FSMC to submit invoices.
- Information on payment processes.
- Required documentation to support invoices and payments.
- Requirements related to credits, rebates, discounts, and USDA Foods values as well as necessary documentation to demonstrate the accuracy of these payments.
- Frequency of payments after invoices are received—monthly, prorated monthly, or other frequency.

[31] There are two common types of accounting and billing systems that a CE may use: (1) cash basis, billing for goods and services at the time of purchase and (2) accrual basis, billing when the goods and services are actually used. The accrual basis of accounting is the preferred method because it measures the benefits received from purchases. Cash basis billing can distort this measurement by generating overstated expenses and an understated account balance at the time of purchase, and the reverse situation at other times. The CE can correct such distortions only by making adjustment entries. If the FSMC does not use the purchased goods at the same rate from month to month, the CE must recalculate the adjustment entry each month.

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Financial, Procurement Practices and Preferences

Description of the CE's expectations for how procurement will be handled which includes the following information:

- Indication of the types of procurement the FSMC will provide for the CE.

  In all cases, if the FSMC solicitation/contract indicates that the FSMC will perform procurement on behalf of the CE, the FSMC must provide procurement as indicated. In no case can the CE contract with two different entities to provide the same service(s)—this is called duplicative services. The costs of duplicative services are unallowable to the nonprofit school food service account.

  Moreover, the FSMC must follow the requirements for conflicts of interest described in this section and in *Administrator's Reference Manual (ARM), Section 15, Program Integrity*.

- Requirements related to the processing of USDA Foods.
- Local preferences and expectations.
- Statement that the FSMC must provide documentation necessary to demonstrate compliance with all procurement regulations.

Financial, Purchasing Equipment on Behalf of the CE

In the FSMC fixed-meal rate contract, if the FSMC purchases equipment on behalf of the CE, the following guidance must be used:

Capital Expenses

Purchases of equipment which exceed $5,000 require prior approval from the CE and TDA.[32]

Equipment Used in the Storage, Preparation, and Delivery of School Meals

Contracts should describe the appropriate authorizations and forms required for TDA and the CE to approve the purchase of equipment to be used in the storage, preparation, and delivery of school meals.

Ownership of FSMC Purchased Equipment

When the FSMC is expected to invest in equipment on behalf of the CE, the original solicitation and contract must describe this provision. This includes, but is not limited to, the total amount of the investment over the total life of the contract or as prorated annually within a specified timeframe. Adding these provisions after the original solicitation and contract are awarded may create a material change that will require the solicitation to be re-bid.

If the contract expires or is terminated prior to the complete repayment of the investment, the CE must, on the expiration date or within five days after receipt by either party of any notice of termination under the contract, either (1) deliver the equipment items funded by the investment to the FSMC in full release of the unpaid balance or (2) retain the property and continue making payments in accordance with the amortization schedule as described in the solicitation and contract.

[32] Use the capital expenditure form in TX-UNPS for this purpose.

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Financial, Roles and Responsibilities

Description of the role and responsibilities for both the CE and FSMC related to accounting and finances. These descriptions should be designed to ensure that the CE is able to monitor all transactions for accuracy. This includes, but is not limited to, statement that the CE be provided all documentation required to demonstrate compliance with all regulations.

- Counting and claiming
- Management of ticket sales
- Nonprogram food including a la carte, catering, vending, and special events services
- Point of service system expectations

Inventory Management

Description of the FSMC's and CE's responsibilities for managing the program's inventory of food (including USDA Foods) and supplies. This includes ensuring that all food is stored safely and the most cost-effective use of USDA Foods.

Meal Preparation and Service

Explanation of the FSMC and CE responsibilities for the preparation of meals and service of meals. This includes, but not limited to, the following issues:

- Food production records and other food product documentation
- Health and safety, including any expectations for sample menu items to be refrigerated and tested in the event of an outbreak of food borne illness, if applicable[33]
- Meal pattern requirements
- Menu planning (21-day menu cycle)
- Nutrition programs under contract
- Use of USDA Foods
- Inventories, including USDA Foods

Meal Service Advisory Board

Description of the method for creating an advisory board, frequency of meetings, and roles and responsibilities associated with the advisory board.

Professional Standards

Description of requirements for compliance with professional standards for training and hiring of a director and staff as well as maintaining documentation to demonstrate compliance.

Records Retention

Description of the CE's expectation for the retention of documentation that demonstrates compliance with program operational and financial regulations. The CE should require that all records be kept on the premises of the CE.

[33] Retaining food samples for this purpose is an optional requirement. If adopted, (1) food samples are typically maintained for a 48-hour period, but may be kept for a longer period, and (2) requirements related to labeling, dating, and storage will need to be included.

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Protecting School Nutrition Funds

Bond, If Required

Description of any type of bond(s) that the CE requires and time of submission, if applicable[34]. CEs may require payment bonds, performance bonds, and bid guarantees.

USDA has rescinded its previous guidance that bonds are required for all non-construction contracts more than $50,000. Instead, each CE must evaluate the products and/or services to be procured and determine if a bond is needed to safeguard any possible loss of funds.

[NOTE: Many contracts have financial guarantees. These guarantees may serve the same purpose as a bond.)

Financial Guarantees, If Required

Statement that stipulates financial guarantees for meeting fiscal goals as specified by the CE. Food service contracts may contain language stipulating that the FSMC guarantees to meet fiscal goals specified by the CE. Any guaranteed return promised by the FSMC must remain in the nonprofit school food service account.

- If the contract contains such guarantees, the contract should also contain language that ensures that the FSMC bears responsibility for failure to meet those goals. Guaranteed fiscal goals or returns cannot be contingent upon multi-year contracts as FSMC contracts are for duration of one year with the option of up to four one-year renewals.
- When an option for contract renewal is considered, the CE should specify in the original solicitation the CE's expectations of the guarantee for each renewal year option and if changes in the guarantee will be allowed.

Insurance, As Appropriate

Description of the CEs requirements related to insurance coverage. For insurance costs to be allowable, they must be specified in both the solicitation and contract.

Loss Recovery

Statement of the FSMC's liability for financial losses. Contracts typically offer two options to address FSMC liability. The CE must include one of the following options in the solicitation/contract:

1. Reimburse the CE for the loss without limit

   or

2. Reimburse the CE with limits equal to the management fee or a specified ceiling.

Contracts should also address the length of time the CE can seek recovery of losses. A CE should seek recovery of any losses for a period of time corresponding to the CE's period of liability (contractual and legal period of liability).

Negligence

Statement that communicates liability for damage caused by negligence. CEs should exclude any contract term or waiver of liability statement for FSMC damage to equipment or facilities caused by negligence.

[34] For NSLP programs, requiring a bond is local decision. For NSLP CEs operating the Summer Food Service Program, a bid bond and performance bond are required as outlined in 7 CFR 225.15(m)(5-7).

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Recovery of Overclaims (Non-Performance)

Statement that the FSMC pay the CE for any overclaims assessed by TDA due to FSMC negligence or noncompliance with regulations, including overclaims based on review or audit findings. This liability should correspond to either the five-year record retention period for public and charter schools or three years for nonprofit private schools, other organizations, and residential child care institutions (RCCIs).

Prior Program Information

Financial Information

Description of CE's prior revenues and operating expenses, and related information. This includes, but is not limited to, the following:

- Total program income for the prior year.
- Total program expenses for the prior year.
- Prior and expected practice for subsidizing program operations with general funds.
- Staffing requirements including number of employees, approval of child nutrition director, insurance requirements, management of staff, and responsibility for employee benefits.

  [NOTE: Contracts may have provisions against cross-hiring. Cross-hiring refers to the hiring of staff by one party to a contract when such employees are employed by the second party to the contract. Terms and conditions related to cross-hiring need to describe when an employee is no longer employed (retirement, resignation, or termination) and when an employee may cross-hire and how employee costs will be transferred from one party to the other party. Without such provisions, changes to contract provisions for handling personnel costs not included in the scope of the original solicitation and contract may represent a material change when the FSMC services are modified to include such changes. Cross-hiring provisions by either the CE or the FSMC should be reviewed by the CE's legal counsel to ensure compliance with federal, state, and local labor laws.]

General Information on Prior Operation

Information on general program operation, including, but not limited to, to the following:

- Food preparation facilities (all sites prepare food versus one central kitchen)
- Meal prices for students and adult meals
- Meal service hours at each site
- Methods of meal service (operator-served or buffet/self-service, salad bars, etc.)
- Number of current employees, including status (full-time or part-time), salaries, and benefits, as applicable
- Number of school food service sites including nutrition programs operated
- Number of serving days, including a school calendar that includes holidays and no school days for students

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- Type and value of nonprogram foods and meals to be offered (catering or fundraising)
- Current federal reimbursement rates

Program Participant Demographics

Information on CE's demographics. Description of the demographics of school and program participants, including, but not limited to, the following:

- Anticipated student growth or loss and/or additional or reduced service locations
- Description of student age/grade for meal patterns required
- Educational programs available that will also receive services (pre-kindergarten, half-day kindergarten, adult education centers, alternative schools, or technical programs)
- Indication of number of students enrolled and the average daily participation (ADP)

Terms and Conditions

The terms and conditions of the contract address general provisions, definitions for terminology, renewal options, protests, termination, and other standards inherent to the contract.

[NOTE: As a best practice, CE's may consider a provision stating that any silence, absence or omission from the contract specifications must be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the CE is to be used. This provision should be contained in both the IFB/RFP and the contract.]

The terms and conditions for the contract must address, but are not limited to, the following issues:

Additional or Fewer Contracted Services during the Contract Period

Description of any anticipated changes to the meal service operation during the one-year contract plus four options to renew. To increase the value of the contract or expand the FSMC contracted services during any year, the CE must include a description of expected changes in student population, number of schools, programs to be offered, or other meal service options in the solicitation and contract. This allows all potential offerors to have the same information before submitting an offer.

Conflict Resolution

Description of the CE's process for resolving contract conflicts.

Contract Duration

Statement that the contract is a one-year contract. The contract may be renewed for up to four additional one-year time periods as specified in the solicitation and contract.

[NOTE: If the option for a contract renewal is not stated in the solicitation and contract, the existing contract cannot be renewed.]

Cost Index

Statement that describes if the CE will allow an adjustment to the contract fee/cost when a contract is renewed using the Yearly Percentage Change in the Consumer Price Index (CPI) for All Urban Consumers, as published by the US Department of

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Labor, Bureau of Labor Statistics, Food Eaten Away from Home. If this option is used, the price of the contract must also decrease if the cost index indicates a decrease.

Federal, State, and Local Regulations

The solicitation/contract must include a requirement that the FSMC must be compliant with all federal, state, and local regulations specific to protecting program funds.[35]

Logistics for the FSMC Contract Award

Description of key dates associated with awarding the FSMC contract, including, but not limited to, the following:

- Approval process milestones for contract award.
- Dates offers will be opened, evaluated, negotiated, and awarded.
- Location if the offers are to be opened publicly.
- Pre-bid meeting, if applicable. The CE cannot designate the offer due date less than two weeks after the pre-bid meeting.

Protests

Explanation of the method the CE will use to address protests.

Signatory Authority

Description of the CE's approval authority for this type of contact.

Termination

Explanation of the terms and conditions for terminating the contract—Regulations require that any contract in excess of $10,000 must address termination for cause and convenience, including the manner by which it is affected and the basis for settlement. In addition to the provision of termination for cause, CEs may also want to include a termination for convenience provision that provides adequate advance notice that would permit the CE sufficient time to arrange alternate food service if the FSMC exercises this clause.

USDA Foods

Management of USDA Foods

Descriptions of the CE's expectation of the FSMC for managing USDA Foods, including, but not limited to, the following:

- Handling, storage, and accounting for the USDA Foods inventory.
- Ordering USDA Foods in coordination with CE.
- Previous use of USDA Foods.
- Processing of USDA Foods.
- Quantities/types of USDA Foods available or ordered for the upcoming year.
- Requirement to use USDA Foods ordered for the CE.

[35] The list of applicable federal regulations is listed in *Administrator's Reference Manual, Section 17, Procurement*.

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Reporting USDA Foods Values

Description of value pass-through method the FSMC will use when USDA Foods processed end products are used. The FSMC must report the credit for UDSA Foods values on the billing invoice submitted to the CE for payment.

The FSMC must use the value pass-through method specified in the solicitation and contract and must credit the value of USDA Foods received to the nonprofit food service account.

Reporting requirements include the following elements:

1. Specified method for routine reporting and payments at an interval that allows the CE to track and verify the accuracy of values paid and owed to the CE.

   [NOTE: The FSMC must provide a report to the CE demonstrating all payments for USDA Foods values at the end of the year. However, a report at the end of the year may not allow the CE sufficient time to verify that all values have been paid accurately before a contract terminates. TDA recommends that CEs require these reports at least quarterly if not monthly.]

2. Retention of all documentation related to credits, rebates, discounts, and USDA Foods values.
3. Providing documentation upon request to the CE, TDA, USDA, or another authorized agency.

Removing USDA Foods from Invoiced Food Cost

Statement that USDA Foods will not be included in food costs. To ensure that the FSMC does not include USDA Foods when computing the food costs billing, the CE must include controls in the contract for differentiating between USDA Foods and commercially purchased foods in the inventory records and invoices for payment. Contract terms to help the CEs ensure that its food cost billings do not include charges for USDA Foods are included in the TDA RFP and Contract prototype. All USDA Foods received for the CE during the contract period must be accounted for; CEs may also require separate reporting by the FSMC of USDA Foods used during the billing cycle.

USDA Foods Reconciliation

The CE must conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the FSMC credited the CE for the value of all USDA Foods received for use in the CE's food service in the school or fiscal year, including the value of USDA Foods contained in finished end products. The reconciliation process is much easier to manage if conducted monthly. However, the contract and solicitation must stipulate that the FSMC shows the total value of USDA Foods both purchased and received for the specific billing period.

Fresh Fruit and Vegetable Program (FFVP) Cost

Administrative costs for the FFVP to operate an FFVP must not exceed 10 percent of the overall grant. When a CE includes FFVP operation in an FSMC contract, the CE must ensure that this financial requirement is met. See the *Administrator's Reference Manual (ARM), Section 12, Fresh Fruit & Vegetable Program* for additional guidance on allowable costs for this program.

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Bankruptcy Procedures

If the FSMC under contract to provide NSLP and/or SBP meals files for bankruptcy, the CE must contact TDA immediately to inform the agency of the bankruptcy. TDA will take the following actions:

- Review the bankruptcy documentation along with other issues that might have an impact on the FSMC's ability to comply with contract terms as appropriate and
- Remove the FSMC from the FSMC vendor's list unless the FSMC can provide a required performance bond.

[NOTE: CEs cannot impose any additional criteria or assurances (for example, bonds) on a FSMC regardless of a contract's value solely due to Chapter 11 status.]

Awarding the Contract

The FSMC contract must be awarded to the contractor that is the most responsive and responsible to the solicitation with price as the primary consideration as described in the CE's written procurement procedures. See the *Administrator's Reference Manual, Section 17, Procurement* for more information on awarding the contract.

Contract Renewal

The CE must notify TDA of the CE's intent to renew the contract each year of the remaining four years of the contract by submitting the following documentation to TDA for approval starting October 1 and no later than December 31 of the year prior to the upcoming contract year:

- A letter stating that the CE has elected to renew the contract with the FSMC for the upcoming school year accompanied by a completed TDA Contract Renewal Checklist, available at *www.SquareMeals.org*;
- FSMC Contract Review Form, information on TDA review status, and annual USDA Foods reconciliation;
- Copy of the foodservice budget for the current year ended (actual numbers), and the proposed budget for the upcoming school year (in the format provided by TDA); and
- A current list of CE campuses served by the FSMC.
- Required federal certifications
    - Suspension Debarment Certification Form;
    - Anti-Collusion Affidavit;
    - Lobbying Certification Form.

All changes, amendments, letter agreements, subcontracts, etc., must be submitted to TDA for approval prior to execution.

Vended Meal Contract

CEs may use a vended meal contract to procure services which allow the CE to operate the program efficiently.

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Roles for a Vended Meal Contractor in a School Nutrition Program (SNP)
Vended meal contractors may be procured to perform the following tasks:

- Prepare complete meals, meal components, or raw materials meals according the menu specifications provided by the CE, including ready-to-serve meals, heat-and-serve meals, ready-to-prepare meals, and raw ingredients.
- Provide menu choices from which the CE may choose meals, food, and beverage items to be served.
- Deliver meals, meal components, or raw ingredients at designated times to designated locations.
- Provide documentation that demonstrates that the prepared meals or food and beverage items delivered meet the program requirements as indicated in the contract. This would include providing product labels and other appropriate documentation to demonstrate that specific food and beverage items meet the meal pattern or Competitive Food Nutrition Standards. In all cases, it is the CE's responsibility to maintain food product records that demonstrate that meals served meet the meal pattern.

Contract Duration
The contract may be awarded for up to one year and renewed for four additional one-year periods before a new solicitation is required.

Counting and Claiming
A vended meal contractor cannot conduct the following counting and claiming tasks:

- Determine if the meal served meets the meal pattern at the point of service (POS).
  The CE provides the meal pattern specifications to the vended meal contractor. The vended meal contractor supplies a meal as specified. However, it is the CE's responsibility to determine if the meal served is reimbursable.
- Code a meal as reimbursable in the POS system.
  The vended meal contractor may provide information to the CE about the number of meals prepared according to the contract specifications. However, the vended meal contractor cannot be held responsible for determining if a meal is reimbursable. It is the CE's responsibility to make that determination.
- Count and collect data for CE claims.
  The vended meal contractor may provide information to the CE about the number of meals prepared according to the contract specifications. However, the vended meal contractor cannot be held responsible for determining if a meal is reimbursable and the number of reimbursable meals served. It is the CE's responsibility to make that determination.

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Meal Servers

A vended meal contractor may serve meals if the contract includes servers in the scope of work. Even with servers, the CE must continue to retain responsibility for operation and management of the program, including counting and claiming responsibilities. If the CE wants to add servers but the existing contract does not include them, this is considered a material change and a new solicitation is required.

USDA Foods

A vended meal contractor cannot receive direct delivery of USDA Foods. However, the CE can provide its USDA Foods to the vended meal contractor to incorporate into meals provided by the vendor. If this occurs, the CE must ensure that the vended meal contract provides documentation demonstrating the appropriate use of the USDA Foods and accounting for all USDA Foods provided to the vended meal contractor.

Credits, Rebates, Discounts, and USDA Foods Values

If there are any applicable credits, rebates, discounts, or USDA Foods values owed to the CE in this process, the vended meal provider must provide documentation that allows the CE to ensure that all amounts received are accurate.

Responsibility for Program Compliance

The CE cannot delegate its responsibility to operate and manage a program in compliance with all applicable federal, state, and local regulations to the vended meal contractor. If the activities in this contract include duties or actions that are program operation or management tasks, the CE must reevaluate its vendor solicitation and contract and either remove those duties or reissue a solicitation for an FSMC contract.

It is the CE's responsibility to ensure that the activities described in a vendor's contract are appropriate for this type of contract, that is, the activities do not involve program management.

Procuring a Vendor

A CE must procure a vendor's contract appropriately as described in *Administrator's Reference Manual, Section 17, Procurement*. In the solicitation and contract, the CE will include the following information and requirements at a minimum:

Scope of Work

- Specific description of the meals/food or beverage items the CE intends for the vendor to provide.
- Explanation and description of the meal pattern specifications that meals are to meet as well as types of meal options the CE wants the vendor to provide.
- Detailed information on how the food is to be delivered: packaging, containers, food safety requirements, etc.
- Description of the quality of food and beverage items the vendor is to provide.

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- Description of the number of meals, food, or beverages to be delivered, the time(s) of delivery, and the location for deliver.
- Explanation of any equipment or facility support the CE will provide.
- Explanation of how or if the CE will approve substitutions.
- Explanation of how leftover meals are to be handled.
- Explanation of the type of documentation the CE will require the vendor to retain and the process for providing retained documentation to the CE on request and on a routine basis.
- Explanation of when and how the CE will notify the vendor if there is a change in the CEs standard order based on early release, field trips, or other changes to the students' regular schedule.

Financial Elements

- Explanation that the offer to be submitted is for a set price,[36] i.e., the offer must include a statement for the total costs for the contract.
- Process for submitting invoices, ensuring accuracy, and receiving payment.

Operational and Management Tasks

A vended meal contract is intended to provide a service to the CE, i.e., to support the CE's staff in performing operational and management tasks. A vended meal contractor cannot take on the role of day-to day operation or management the program, including, but not limited to, - maintaining facility food safety certifications and producing daily food production records.

If the CE is intending to procure services that include operational and management tasks, the CE must, instead, procure an FSMC contract. Any vended meal contract costs for providing operational and management services are unallowable costs to the nonprofit school food service account.

Terms and Conditions

The terms and conditions of the contract address general provisions, definitions for terminology, renewal options, protests, termination, and other standards inherent to the contract.

[NOTE: As a best practice, CE's may consider a provision stating that any silence, absence, or omission from the contract specifications must be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the CE is to be used. This provision should be contained in both the IFB/RFP and the contract.]

The terms and conditions for the contract must address, but are not limited to, the following issues:

- Process for addressing conflicts in the contract.
- Statement of the expected timeline for the contract duration.
- Length of the contract and options for renewal.

[36] A vendor's contract cannot be awarded to an offeror that has submitted a cost-plus percentage or cost-plus added expenses. All costs to be charged for the contract must be included in the offer.

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– Terms and conditions for terminating the contract.

Awarding the Contract

The vended meal contract must be awarded to the contractor that is the most responsible and responsive to the solicitation with price as the primary consideration as described in the CE's written procurement procedures. See the *Administrator's Reference Manual, Section 17, Procurement* for more information on awarding the contract.

Responsibility for Program Compliance

The CE cannot delegate its responsibility to operate and manage program compliance with all applicable federal, state, and local regulations. The CE is responsible for ensuring that the activities described in a consultant's contract are appropriate for this type of contract, that is, the activities do not involve program management or program operation.

Records Retention

CEs must retain documentation about food production and service. All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, nonprofit organizations, and residential child care institutions after the end of the fiscal year to which they pertain.

When a CE engages an FSMC to manage its food service program, the CE must work with the FSMC to ensure that all required records are provided to the CE in a timely manner. It is the responsibility of the CE to ensure that all required records are retained and maintained for the period of time required.

CEs have the option to maintain records on paper or electronically. If the operational tasks are performed by the FSMC, the CE must still ensure that all required documentation is retained and made available to the CE. These records must be accessible to appropriate CE staff members and federal or state reviewers. TDA may request procurement documentation during both offsite and onsite administrative review processes as well as any additional review specific to procurement.

Information Box 4

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

Procurement System

The CE must have documentation that demonstrates that CE has established internal controls to promote program integrity for food service contracts. This includes, but is not limited to, documentation that illustrates the following:

- Written procurement procedures, including, but not limited to, actions or tasks for cost analysis, selection of procurement method, ethical standards, and other requirements, as described in this section.
- Procedures for effective contract management.
- Verification of third-party entity compliance with procurement regulations, including the requirements listed in the *Buy American*, *Local Preference*, and *Other Regulatory Contract Requirement* subsections in this section.

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See *Administrator's Reference Manual (ARM)* sections listed at the beginning of this section for additional information on documentation and procurement systems.

Documentation
Documentation includes, but is not limited to, the following:

- Written procedures and processes
- Documentation of the use of written procedures and processes, including, but not limited to, evidence of applying all contract award criteria for each method of procurement.
- Documents demonstrating that all costs paid through the nonprofit school food service account are allowable. If any unallowable costs are indicated on an invoice, the CE must provide documentation that those costs are paid with funds that do not come from the nonprofit school food service account.
- Documentation demonstrating that the CE has received all credits, rebates, discounts, and USDA Food values and that the funds have been assigned to the nonprofit school food service account.
- Documentation required specific to each Child Nutrition Program (CNP). This includes, but is not limited to, administrative costs for FFVP.
- Documentation identifying program and nonprogram food costs.
- Documentation demonstrating compliance with the Buy American provision and other contract inclusions as defined in regulation.
- Solicitations and awarded contracts, including evaluation tools.
- Documentation demonstrating compliance with operational requirements.
- Documentation demonstrating the CEs contract management practices.

For more information on the specific types of documentation that are required, see *Administrator's Reference Manual (ARM), Section 30, Records Retention*.

Compliance

TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance with the requirements for all types of food service contracts. TDA will assess compliance with the related operational, accounting, procurement, and financial requirements based on the documentation that CE has submitted throughout the year as well as documentation submitted for offsite and onsite administrative review processes or other procurement review activities.

CEs must make available, upon request of the awarding agency (state or federal), any, or all of the documentation described in the *Records Retention* subsection in this section.

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Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations

CE's must report, in writing to TDA, all violations of federal criminal law—fraud, bribery, or gratuity.

> The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in§ 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).

Criminal Penalty

The maximum fine for embezzling, willfully misapplying, stealing, or obtaining by fraud, funds, assets, or property acquired under the National School Lunch Act or Child Nutrition Act is $25,000.

Fraud

> Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

Termination of the Permanent Agreement for Financial Fraud or Misuse of Funds

If serious deficiencies, such as fraud or misuse of funds occur, and corrective action is not practical, TDA will terminate the CE's participation in the SNP. In this case, TDA may also refer the matter to the appropriate local, state, and/or federal authorities.

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Section 19

Meal Pricing

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Section 19, Meal Pricing

Student and Adult Meals; Equity in Meal Pricing—Paid Lunch Equity and Revenue from Nonprogram Foods

Update Guide

July 28, 2022	Incorporated the following United States Department of Agriculture (USDA) memos and guidance: - *USDA Memo SP 11-2021, Consolidated Appropriations Act, 2021: Effect on Child Nutrition Programs* Clarified information on the following topics: - Performance Based Reimbursement - PLE exemption flexibility - Weighted average lunch price
September 17, 2021	Updated *Section 19, Meal Pricing* to incorporate the following United States Department of Agriculture (USDA) memos and guidance: - *USDA Memo SP 11-2021, Consolidated Appropriations Act, 2021: Effect on Child Nutrition Programs - REVISED* (May 14, 2021) Clarified information on the following topics: – PLE exemption flexibility
August 12, 2020	Updated *Section 19, Meal Pricing* to update the *Administrator's Reference Manual (ARM)* section references. Clarified information on the following topics: – Allowable/Unallowable costs – Paid lunch equity – Universal free or reduction in price sites – Unpaid meal charges
May 7, 2020	Updated *Section 15, Meal Pricing* to incorporate guidance from – *USDA Memo SP 07-2020, Paid Lunch Equity: Guidance for School Year 2020-2021* (January 22, 2020) Clarified information on the following topics: – Adult meal pricing – PLE calculation – PLE exemption flexibility
June 10, 2019	Updated *Section 15, Meal Pricing* to incorporate guidance from – *USDA Memo SP 27-2019, Paid Lunch Equity: Guidance for School Year 2019-2020* (April 18, 2019) Clarified information on the following topics: – Adult meal pricing – Non-pricing program returns to standard counting and claiming – PLE calculation – PLE exemption flexibility
November 7, 2018	Clarified information on the following topics: – Grace period of unpaid meal charges
June 1, 2018	Updated *Section 15, Meal Pricing* to incorporate guidance from – *USDA Memo SP 12-2018, Paid Lunch Equity: Guidance for School Year 2018-19* (April 18, 2018) Clarified information on the following topics: – PLE calculation – Updated PLE exemption
March 8, 2018	Updated *Section 15, Meal Pricing* to add guidance on student account balances which is currently addressed in *Section 14, Financial Information Concerning School Nutrition Programs* and to clarify guidance on the following topics:

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- Allowable nonfederal funding sources for paid lunch equity
- Charge policy, lowest cost meal
- Corrective action
- Paid lunch equity exemption

August 7, 2017 — Updated *Section 15, Meal Pricing* to incorporate guidance from

- *Senate Bill 1566, Section 12,* 85th Texas Legislature on meal charge grace period local policy (June 15, 2017)

Clarified information on the following topics:

- Board approval of charge policy

May 16, 2017 — Updated *Section 15, Meal Pricing* to incorporate the following:

- *USDA Memo SP 29-2017, 2017 Edition: Overcoming the Unpaid Meal Challenge: Proven Strategies from Our Nation's Schools* (May 10, 2017)
- *USDA Memo SP 17-2017, Paid Lunch Equity Guidance for School Year 2017-18* (January 12, 2017)
- *USDA Memo SP 11-2017, Paid Lunch Equity: School Year 2017-2018 Calculations and Tool* (December 15, 2016)
- *USDA Memo SP 58-2016, 2016 Edition: Overcoming the Unpaid Meal Challenge: Proven Strategies from Our Nation's Schools* (September 19, 2016)
- *USDA Memo SP 57-2016, Unpaid Meal Charges: Guidance and Q & A* (September 16, 2016)
- *USDA Memo SP 47-2016, Unpaid Meal Charges: Clarification on Collection of Delinquent Meal Payments* (July 8, 2016)
- *USDA Memo SP 46-2016, Unpaid Meal Charges: Local Meal Charge Policies* (July 8, 2016)

Clarified information on the following topics:

- Lower cost alternate meals
- Nonprogram funds
- Paid lunch equity, returning to standard counting and claiming from a universal free program
- Payment systems
- Record retention
- Unpaid meal charge policy

February 2, 2016 — Updated *Section 15, Meal Pricing* to incorporate the following:

- *USDA Memo SP 09-2016, Paid Lunch Equity: School Year 2016-2017 Calculations and Tool* (November 13, 2015)
- *House Bill 3562,* 84th Texas Legislature on meal charge grace period local policy (June 18, 2015)

Clarified information on the following topics:

- Adult meal pricing
- Lower cost alternate meals
- Charge policy
- Medium of exchange
- Overt identification
- RCCI and paid lunch equity
- Responsibility for establishing meal pricing

April 27, 2015 — Updated *Section 15, Meal Pricing* to incorporate the following United States Department of Agriculture (USDA)guidance:

- *USDA Memo SP 19-2015, Paid Lunch Equity Guidance for School Years 2015-2016 and 2016-2017* (February 9, 2015)
- *USDA Memo SP 03-2015, Paid Lunch Equity: School Year 2015-2016 Calculator and Tool (*October 8, 2014)

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- *USDA Memo SP 02-2015, Online Fees in School Meal Programs* (October 8, 2014)
- *USDA Memo SP 51-2014, Eligibility Effective Date for Directly Certified Students* (June 19, 2014)
- *USDA Memo SP 11-2014, Effective Date of Free or Reduced-Price Meal Eligibility* (December 3, 2013)

Clarified information on the following topics:

- Add-on fees
- Adult meal prices
- Charge policies
- Effective date for eligibility
- Non-pricing or universal free feeding contracting entities or sites
- Outstanding student debt
- Paid Lunch Equity (PLE)
- Paid Lunch Equity (PLE) Exemption
- Salad bar pricing
- Second meals
- Service fees
- Student debt
- Student workers
- Texas Department of Agriculture forms
- Visiting students

June 2, 2014 — Updated *Section 15, Meal Pricing* to provide clarification on United States Department of Agriculture (USDA) regulations related to use of credit cards.

April 14, 2014 — Updated *Section 15, Meal Pricing* to incorporate the following USDA guidance:

- *USDA Memo SP 17-2014, Discretionary Elimination of Reduced-Price Charges in the School Meal Program* (January 22, 2014)
- *USDA Memo SP 15-2014, Paid Lunch Equity: School Year 2014-2014 Calculations and Tool* (December 18, 2013)
- *USDA Memo SP 11-2014, Effective Date of Free or Reduced-Price Meal Eligibility* (December 3, 2013)
- *USDA Memo SP-2013, Paid Lunch Equity: Additional Guidance for School Year* (SY) 2013-2014 (September 10, 2013)
- *USDA Memo SP 34-2013, Paid Lunch Equity: Guidance for SY 2013-2014* (April 17, 2013)
- *USDA Memo SP 25-2013, Paid Lunch Equity: School Year 2013-2014 Calculations and Tool* (February 21, 2013)
- *USDA Memo SP 19-2013, Paid Lunch Equity: School Year 2013-2014 Calculations* (January 2, 2013)
- *USDA Memo SP 18-2012, CN Reauthorization 2010: Q & A on Paid Lunch Price Report* (April 20, 2012)
- *USDA Memo SP 22-2012, Paid Lunch Equity: School year 2012-2013 Calculations and Tool* (March 19, 2012)
- *USDA Memo SP 18-2012, Paid Lunch Price Report* (February 24, 2012)
- *USDA Memo SP 15-2012, Paid Lunch Equity: School Year 2012-2013, Calculations* (February 15, 2012)
- *USDA Memo SP 39-2011, Revised, CN Reauthorization 2010: Guidance on Paid Lunch Equity and Revenue from Nonprogram Foods* (October 24, 2011)

Clarified information on the following topic:

- Credit or debit card fees

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Meal Pricing

Student and Adult Meals; Equity in Meal Pricing—Paid Lunch Equity and Revenue from Nonprogram Foods

Contracting Entities (CEs) that participate in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) must meet meal pricing requirements for both students and adults. These requirements ensure that nutrition program revenue or income (1) is applied equitably to free, reduced-price, and paid (full-price) students' meals and (2) is not used to subsidize adult meals.

Responsibility for Establishing the Price of Meals

The CE must set the price of meals for students and adults. A food service management company (FSMC) cannot set the price of meals for the CE.

The guidance in this subsection applies to the following programs:

- Afterschool Care Program (ASCP)
- National School Lunch Program (NSLP)
- Seamless Summer Option (SSO)
- School Breakfast Program (SBP)

Definitions for This Section

For this section, the following terms will be used:

Average Price for Lunch	The average of paid lunch prices across the CE. This price is used in the calculation of paid lunch equity. For Example: $1.50 (Ash Elementary School) + $1.75 (Elm Middle School) + $2.00 (Oak High School) = $5.25 $5.25 ÷ 3 = $1.75, $1.75 is the average price for lunch
Inflation Factor	Percentage of increase or decrease the CE will apply to CE's average price for a student's paid lunch if the CE's pricing structure does not meet the weighted average price.[1] The inflation factor is 2% + the annual rate of inflation.
Medium of Exchange	The way or method students pay for meals during meal service—The medium of exchange must also ensure that there is no overt identification of a student's eligibility status.
Minimum Adult Meal Price	The minimum amount the CE is allowed to charge for an adult meal.
Minimum Student Meal Price	The minimum amount the CE is allowed to charge a student for a paid meal based on the Paid Lunch Equity tool developed by the United States Department of Agriculture (USDA).
Nonprogram Food	Food that (1) is sold in a participating CE other than a reimbursable meal and (2) is purchased using funds from the CE's school nutrition program nonprofit school food service account. This includes, but is not limited to, – A la carte items sold in competition with reimbursable meals – Adult meals – Items purchased for fundraisers, vending machines, and onsite stores. – Items purchased for catering and vended meals

[1] See *Information Box 1, Paid Lunch Equity (PLE) Weighted Average Lunch Price and Inflation Rate for SY 2016–2017* in this section for information on the method for calculating the inflation factor.

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Non-Pricing or Universal Free (Non-Pricing) Feeding CEs or Sites	CEs or sites that have implemented a non-pricing or universal free (non-pricing) feeding policy are not required to determine if they have equity in lunch pricing—this includes the Community Eligibility Provision, Provision 2, and other programs which provide reimbursable meals at no charge to all students. Universal free feeding sites are also called universal free.
Overt Identification	Any action the CE takes that may result in a student being recognized as eligible or potentially eligible to receive or certified for free or reduced-price meals including at the point of service (POS).
Paid Lunch Equity (PLE)	Process for making sure that the revenue or income from students' free and reduced-price lunches is equitable to the income from students' paid lunches.
Revenue to the School Nutrition Program (SNP) Account	All income that is collected or awarded to the nonprofit school food service account is revenue (or income) to the nonprofit school food service account. This includes, but is not limited to, – Federal reimbursement – State or local funds, such as per meal subsidies and state revenue matching funds – Students' payment for reimbursable meals and a la carte sales – Payments for items purchased for fundraisers, and vending machines. – Income from catering and adult meals.
SNP	School Nutrition Program
Weighted Average Price for Lunch	Difference between the higher federal reimbursement provided for free lunches and the federal reimbursement provided for paid lunches. This is also called the minimum lunch price. [Federal Rate for Free] **–** [Federal Rate for Paid] **=** [Weighted Average Price for Lunch]

Meal Pricing for Students

CEs must adhere to the following guidance in pricing meals and charging students for meals.

Meal Pricing for Students

Regulations (1) stipulate the cost of meals, (2) provide flexible pricing for different aged students and varied food items, and (3) specify the ways food costs should be applied to meal pricing.

Add-on Meal Service Fees

While documented costs for meal supervision or other services necessary for the operation of nutrition programs may be considered an allowable cost for operating the program, the cost of these services cannot be added to the price a student pays for a meal. Instead, CEs should pay these costs out of their nonprofit school food service account.[2]

CE Setting Meal Prices

CEs must establish the prices for meals and meal service options. A contractor, including Food Service Management Companies (FSMCs), cannot set policy to establish the price for meals. The contract may provide the CE useful information to assist them in setting prices.

Charging Students Eligible for Free Meals

Students who are eligible for free meals cannot be charged for a reimbursable meal.

[2] See *Administrator's Reference Manual, Section 14, Financial System f*or additional information on allowable nutrition program costs.

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Charges Related to Fluid Milk

CEs must adhere to the following guidance:

The following practices are prohibited.

- Charging extra or an a la carte price for an alternate beverage for those students who accept milk, while giving away an alternate beverage to those students who refuse milk.
- Offering juice at no charge to those students who refuse milk, while charging an a la carte price for another beverage for those students who select milk as part of a reimbursable meal.

These practices are prohibited because they violate the unit pricing requirement and effectively undermine the inclusion of the milk component as an integral part of the reimbursable meal.

The following options are allowable.

- Offering milk as a component of the reimbursable meal to all students and charging a separate (a la carte) price for another beverage for those students who take a second beverage.
- Giving away another beverage to all students who request it whether the students take or do not take milk as part of the reimbursable meal as long as students are aware that they may take both the milk and the other beverage.

These options promote the inclusion of the milk component as an integral part of the reimbursable meal. CEs should consider the types of alternative beverages to offer based on the nutrient standard requirements of the students as well as the pricing structure before adopting this option.

Comparison of Prices for Reduced-Price and Paid Meals

Reduced-price meals must be priced (1) less than paid meals and (2) never greater than the required maximum price for a reduced-price meal.[3]

Credit Card Surcharges or Convenience Fees

When a CE offers a payment system that adds a surcharge or convenience fee (use fee) to credit card transactions, CEs must use the following guidance to determine if a student, parent, or guardian or the school nutrition program is allowed to pay the use fee:[4]

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[3] See the *Pricing Maximum for Reduced-Price Meals* subsection in this section for additional information on this topic.

[4] Texas and federal regulations define acceptable practices for credit card surcharges and convenience fees. CEs should consult the regulatory authority for credit cards to ensure that their credit card surcharge or convenience fee policies and practices are applied in a manner that is consistent with state and federal law.

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Household payment of use fee—appropriate in the following circumstance:

If a CE accepts credit card payments for meals, the student, parent, or guardian may be asked to pay a use fee if each of the following conditions is met:

1. The student, parent, or guardian has the option to make a payment by a method that does not require a use fee.
2. The CE has clearly communicated to students, parents, and guardians about the option to make a payment by a method that does not require a use fee.
3. Use fees are charged in accordance with state and federal law regulating credit card surcharge and convenience fees.

SNP payment of use fee—appropriate in the following circumstances:

1. The SNP may pay the cost of a use fee for an online payment system as an allowable cost if the CE has a standard practice for all programs to pay use fees for credit card payments with program funds.
2. If the SNP is the only program taking credit card payments, the use fee for the credit card payment may be paid by the SNP as an allowable cost. However, in this circumstance, the CE is also making a commitment that in the future other programs that accept online credit card payments will pay the fees out of their program funds as a standard practice.[5]

In all circumstances where the SNP pays use fee costs, use fee charges must be consistent with state and federal laws regulating credit card surcharge and convenience fees.

Non-SNP source payment of use fee—appropriate in the following circumstances:

If the CE does not have a standard practice to pay use fees that applies to all programs, a use fee is not an allowable cost for the SNP. Therefore, costs must be covered by a source other than the SNP.

In all circumstances where the SNP pays use fee costs, use fee charges must be consistent with state and federal laws regulating credit card surcharge and convenience fees.

Pricing for A La Carte Items

A la carte pricing should be structured so that the charged price meets the following requirements:

1. Covers the cost of producing the menu item—food cost, labor, and/or indirect costs.
2. Does not create an incentive for students to choose a la carte items because the price is less than a reimbursable meal

To prevent promotion of the purchase of an a la carte meal, the unit price for a reimbursable meal, including the purchase of a second reimbursable meal, should be priced lower than the total of the a la carte prices for the same items.[6]

[5] See *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on the requirement for CEs to consistently process similar expenses across all programs.

[6] A second meal that is also a reimbursable meal cannot be submitted for reimbursement under NSLP. See the *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on this topic.

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Pricing for Different Ages of Students

The charge for a reduced-price meal may be a higher price for older students than for younger students. However, if different pricing is used, the price must always be lower than the price for a paid or full-price meal and never greater than the required maximum price for a reduced-price meal.

Pricing for Offer Versus Serve (OVS)

Reimbursable meals served under OVS must be priced as a unit for a reimbursable meal,[7] regardless of which items a student chooses. This includes salad bars which must also be priced as a unit, not by weight.

Pricing for Reimbursable Meals

A reimbursable meal must be priced as a unit regardless of menu items selected by the student. This means that those students eligible for free meals continue to receive meals at no charge; students eligible for reduced-price breakfast pay the current reduced-price charge; and all other students will pay the full price for the meal.

Pricing for Varied Menus Items

CEs may offer students a choice of reimbursable meals. In these cases, the meals must be priced as a unit. The CE may charge varied paid unit prices for different reimbursable meal choices.

However, any student who qualities for a free or reduced-price meal must not be required to pay an additional charge if taking a higher priced reimbursement meal.

For Example: If the site offers a special lunch with a larger serving of a meat/meat alternate or other premium item, the CE may price the meal at a higher unit price than other menu choices—the chicken entrée is priced $0.25 higher for paid students than the ground beef alternative entrée. The special lunch is also available to the free and reduced-price students at no additional charge if these lunches are to be claimed for reimbursement for free, reduced-price, or paid reimbursement.

Pricing Maximum for Reduced-Price Meals

CEs cannot charge students who are eligible for reduced-price meals more than the following amounts:

- Lunch—40 cents
- Breakfast—30 cents
- Snacks—15 cents

Universal Free or Universal Reduction in Price Site

Before implementing a universal free or reduction in price program at a site, the CE must indicate on its *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures*[8] that the CE is establishing site or CE-wide universal free or reduction in price site. Detailed guidance on this topic is provided in *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming*.

Visiting Students, Universal Free Feeding Site

See *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for detailed information on meal charges for visiting students.

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7 OVS is not required for all grade levels or for breakfast.
8 Web-based form available in the Texas Unified Nutrition Programs System (TX-UNPS).

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Effective Date for Eligibility

CEs have the option to assign the effective date for eligibility as the date applications are received by the CE or the date categorical eligibility is designated as approved in documentation provided by an administering agency.[9] CEs must have a method in place to clear student accounts of any charges or reimburse students for meal payments received while the eligibility determination was processed. Clearing the charges or reimbursing for payments made applies only to the current school year in which the eligibility determination was made.

CEs must indicate the effective date of eligibility in their *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures*.[10]

Elimination or Lowering of Reduced-Price Charges, Non-CEP or Non-Provision 2 Sites

CEs have the option to eliminate or lower the reduced-price charges for NSLP and SBP serving sites that are not CEP or Provision 2 sites.

Options	Student Payments CE Collects
Eliminate the price for reduced-price eligible students	CE collects payments from paid students only.
Lower the price for reduced-price eligible students	CE collects the payments from paid students and the lower payment for reduced-price students.

Funding the Elimination or Lowering of Reduced-Price Charges

Funds from the nonprofit school food service account may be used to cover any expenditures associated with eliminating the charge or lowering the price for reduced-price reimbursable meals.

Counting and Claiming When Eliminating or Lowering Reduced-Price Charges

The CE continues to count and collect reimbursements based on each students eligibility status—a reimbursable meal served to a reduced-price eligible student is reimbursed at the reduced-price rate and a paid eligible student is reimbursed at the paid rate.

Students Working for School Nutrition Program (SNP)

Regulations state that students receiving free and reduced-price benefits must not be required to work for those benefits. However, CEs are not prohibited from hiring program students to work in the cafeteria. In these cases, the following guidance applies to students who choose to work in the cafeteria:

Local or State Student/Youth Employment Regulations

If CEs choose to employ students, they must follow all local and state regulations for the employment of students under the age of 18.

Notice to Parents

In these cases, the parents of all workers must be informed in writing that their students have been hired to work for pay or other compensation.

- The letter must state that if a student has been certified as eligible for free or reduced-price benefits that the student's eligibility is

[9] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* and *Section 7, Counting & Claiming* for additional information on this topic.

[10] Web-based form available in the Texas Unified Nutrition Programs System (TX-UNPS).

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not dependent upon student's continued employment by the SNP.

- The letter should not be a part of or attached to the free and reduced-price letters to parents, applications, or notices of approval or denial.

Separation of Work and Program Participation

If a student works for the SNP and the student goes through the meal line as a student, not an employee, the CE has to treat the student served a meal as a student and not an employee of SNP. The student is charged or not charged according to eligibility. If a reimbursable meal is chosen, the CE may claim a reimbursable meal served to the student.

If the student works at a time when other employees would be or are served a meal at no charge, the student/employee may be served a meal with the employees at no charge. In this situation, the meal cannot be claimed because the student is acting as an employee, not a program participant receiving a reimbursable meal.

Payment and Charging Systems

All payment and charging systems must include a method for payment or charging for meals that makes free and reduced-price meal recipients appear the same as those who have paid full price—avoiding overt identification of a student's eligibility status. CEs are encouraged to use prepayment systems with multiple methods of prepayment to prevent overt identification of a student's eligibility status.

Medium of Exchange

The medium of exchange is the way students pay for meals. The medium of exchange includes any type of ticket, token, ID, name, verbal identifier, or number that is issued to a student to obtain a meal.[11] The most effective CEs will link the medium of exchange to its coding system for recording the meal served to each student and that student's eligibility status.

Medium of Exchange Requirements

CEs must meet the following requirements in their medium of exchange, payment, and charging procedures:

Available to All Students

If certain lines are not made available to all students, including those receiving free or reduced-price meals or free milk, reimbursable meals or free milk served on those lines must not be claimed for reimbursement.

Charging

If charging is necessary, CEs must notify parents as soon as possible about the charges to prevent the accumulation of large charge balances.[12]

Change in Status

The medium of exchange system must include a process that allows for daily updates to track the following:

- Transfers

[11] See the *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on coding systems.

[12] See *Unpaid Meals, Charged Meals* subsection in this section for additional information on charge policies.

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- Withdrawals
- Changes in eligibility status due to verification
- Other eligibility issues

Distribution of the Medium of Exchange

CEs need to create a system for distributing the medium of exchange that provides the following conditions:

- A common location and time where all students (free, prepaid, reduced-price, and paid) are required to obtain their tickets, tokens, etc.
- Adequate time and area for purchase or pick up of the medium of exchange
- Prevention of overt identification.

Notice

Information about payment and/or charging of meals should be routinely publicized. Appropriate notice strategies include, but are not limited to, the following:

- Posted signs
- Public announcements
- Printed informational materials sent home with students or directly to households.

Payment of Cash on the Line

When students pay cash on the line for reduced-price or paid meals, they may be counted in a different manner than those students who prepay or charge. This allows the CE to have a method in place to account for cash received from an individual student at the time of service. In all cases where cash is received for payment, CEs must account for individual payments. A grand total for cash received is not adequate documentation for counting and claiming purposes.

Change from Overpayment

When a student pays cash for a meal or an a la carte item and is due change, the student must be given the option to receive the change from a cash transaction or to apply the change on his or her account.

- Automatically applying change from a cash transaction to a student's account when the student had no intention to pre-pay for meals is not allowed.
- Automatically applying change from a cash transaction to a student's debt when the student had no intention of applying change toward a debt is not allowed.
- However, a CE may establish a *no check cashing* policy under which any payment by check must be credited onto the student's meal account.

Payments for Meals When a Student Has a Negative Balance

When a student has a negative account balance, the CE must allow the student to purchase a reimbursable meal with any funds the student has on hand. Additionally, the CE cannot require the student to pay any remaining funds (overpayment) from

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the meal purchase to the student's existing account balance.

Online Payment Systems

A CE cannot limit balance inquiries to online systems. The CE must provide an alternate method for any household that does not want to use an online system to check a student's balance.

Prepayment Incentive

Some CEs offer incentives for prepayment options when cash is also accepted on the serving line. This is an acceptable practice.

For Example: When a $20.00 prepayment is made, the student receives a $2.00 bonus to the account.

Lost, Stolen, or Misused Ticket or ID Requirements

CEs may establish procedures to address the handling of lost, stolen, or misused free, reduced-price, or paid meal tickets[13] which include the guidance described below. However, if a CE (1) does not have procedures in place for lost, stolen, or misused tickets or IDs or (2) does not follow its written procedures for lost, stolen, or misused tickets or IDs, the CE cannot deny a meal to any student without a ticket or ID.

Procedure Guidance for Lost, Stolen, or Misused Ticket or ID

CEs must include the following guidance in their procedures related to lost, stolen, or misused tickets or IDs:

Notice

- Advance Notice. Parents and students must be advised in writing of the site's policy regarding missing meal tickets and of the student's corresponding responsibility for her or his tickets. This notice must be provided to all households at the time the student begins receiving or purchasing meal tickets or IDs.
- Advance Warning. At least one advance, written warning must be given to the student and the parent(s) prior to the CEs refusal to replace a ticket or ID or denial to provide meals without a replaced ticket or ID. The written warning must include the following information:
  - Explanation that the student has exceeded the maximum number of replaced tickets or IDs.[14]
  - Explanation that each subsequent time the student fails to have a ticket or ID the student will be expected to either bring his or her own meal or pay full price for the meal.

Replacement

- Replacement. A minimum of three replacements or special meal arrangements must be allowed for each student within each school year—initial ticket or ID plus three replacements. In cases of repeated ticket loss or misuse, the CE may wish to contact an adult household member to arrange a meeting to discuss the problem.

[13] See the *Records Retention* subsection in this section for information on requirements for documentation retention on this topic.

[14] The number must be 3 or more.

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– Charge for Replacement. CEs may establish a procedure for students to pay for lost tickets or IDs after three replacements have been issued (initial plus three replacements). A student cannot be denied a meal for a lost, stolen, or misused ticket unless the CE's procedures for lost, stolen, or misused tickets have been followed.

  If the CE is using an ID card for other purposes, there must be an alternate method for students to receive meals if the card is stolen or destroyed. Possible methods include the following:

  - Require the student get a temporary meal or milk card.
  - Ask the student to go to the end of line, so the staff member has extra time to find the student's name and ID number on a roster and record the meal served manually.
  - Assign the student a number code to use to obtain meals.

Exception

– Students Who Must Be Served Meals With or Without a Ticket or ID. Meals must always be provided to pre-kindergarten, kindergarten, and disabled students who may not be able to take full responsibility for a meal ticket or ID.

Unpaid Meals, Charged Meals

CEs must have a written policy related to charged meals that is reviewed and updated as appropriate to the CE's needs.[15] The meal charge policy for public and charter schools must be approved by the CE's board of trustees or governing board. CEs that are not public or charter schools should consider the value of having board approval.

The charge policy may apply the same standards for all grades or may apply different standards for different grades or grade groups. In all cases, the CE's charge policy must be implemented consistently for all students or for the designated grade levels. A CE's policy may include the following:

1. Allow students to charge all available reimbursable meals.
2. Allow students to charge a limited number or type of meals.
3. Provide the lowest cost reimbursable meal available or the lowest cost meal available when the student has a negative balance that has reached the CE's predetermined threshold[16] as long as the meal is offered to all students as a choice on a regular meal service line.

In all cases, a student that qualifies for free meals cannot be denied a reimbursable meal even if the student has accrued a negative balance from other purchases in the cafeteria such as a la carte sales and extra items. However, the CE may limit other purchases such as a la carte sales and extra items for a student that qualifies for free meals when there is an outstanding balance.

15 USDA policy released in July and September of 2016 and May of 2017 for unpaid meal charges aligns with current Texas law on establishing a local charge policy and grace period.

16 The CE sets the predetermined threshold (number of meals or amount of money that a student may charge during the grace period) policy. See the *Public and Charter Schools* subsection in this section for more information on the CE's charge policy and grace period.

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Public and Charter Schools

In Texas, public and charter schools must allow students who use a prepaid meal card or account to purchase meals to have a grace period for each school year before the CE stops providing a meal. The CE's policy must include the following elements:

- A grace period for each school year that allows the student to accumulate a negative balance on the student's card or account or receive an extension of credit for the grace period for that school year.
- Notification of the student's parent or guardian that the student's meal card or account balance is exhausted and/or has a negative balance for the school year.
- The CE must not apply a fee over the price of the meal or apply interest in connection with meals purchased during the grace period for the school year.

Household Management of Student Charges

- CEs may allow households to establish a limit on the amount of prepaid funds a student may spend each day and whether a student is allowed to purchase a la carte items. This gives the parent greater control of students' unpaid meal charges
- The CE must not limit balance inquiries to an online system.
- CEs may include the use of a payment plan in the charge policy.

Communicating the CE's Charge Policy

The CE must provide the charge policy to each of the following groups:

Students and Households

The written charge policy must be provided in writing to all households at the start of the school year and to the households of any transfer student at the time of transfer. Posting to the CE or school website is not sufficient notification. Although the CE may use a variety of communication strategies, the following methods are acceptable ways to share the written charge policy:

- Include a letter to households explaining the meal charge policy when sending *back-to-school* packets for student registration.
- Include the policy in the print versions of student handbooks, if provided to parents and guardians annually.
- Include the written policy when using existing notification methods to inform families about applying for free or reduced-price meals, such as distributing household applications at the start of the school year.

CE Staff

CEs must ensure that the following staff are provided the charge policy:

- School food service professionals responsible for collecting payment at the point of service or other locations

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- Staff involved in notifying families of low or negative balances
- Staff involved in enforcing any other aspects of the meal charge policy

CE should provide the charge policy to the following staff:

- School social workers
- School nurses
- Homeless liaison
- Other staff members assisting children in need (or who may be contacted by families with unpaid meal charges)

If the CE uses a food service management company (FSMC), the CE must ensure that FSMC employees are informed of the CE's charge policy. The CE is also responsible for ensuring that the FSMC implements the charge policy as written.

Financial Considerations in Addressing Unpaid Meals, Charged Meals

No matter how the CE chooses to address unpaid meal charges, the CE should consider the financial implications of its approach when addressing this issue.

- What is the impact of the charge policy on the cost of operating the program?
- What type of lower cost meal (alternate meal) will be provided to those students without funds? Reimbursable? Non-reimbursable?
- Will the charge policy impact the amount of reimbursement the CE receives?
- How will the charge policy effect the accumulated total student debt at the end of the year?
- Does the charge policy create additional costs to the program or the CE?
- Are there ways to prevent additional costs to the CE by changing the charge policy?
- What will be the financial impact on households when the charge policy is implemented?
- Will the charge policy cause students to go without meals?

Because of flexibility USDA has given CEs on this issue, CEs may find that providing a lower cost reimbursable meal is the most financially advantageous option. When utilizing this option, USDA allows CEs to provide students with unpaid meal charges a lower cost reimbursable meal. CEs should consider the amount of reimbursement received when offering a lower cost reimbursable meal. In this case, the lower cost reimbursable meal must also be available to all students during each serving period on a regular lunch line.

Lowest Cost Meal Available for Students with Unpaid Meal Charges

Having a lower cost meal as a menued meal choice that is available every day for all students will ensure that students who are unable to pay will not be the only students eating a lower cost meal. This approach helps to prevent overt identification of students who have unpaid meal charges.

If the CE's written policy (as described earlier in this subsection) indicates that students with unpaid meal charges will be served the lowest cost meal available to all students, the CE must

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ensure that students and their parents are given instructions on how to access these meals.

For Example: A CE establishes a Fast Lane service line. The Fast Lane will provide the lowest cost reimbursable meal available each day. Any student may be served a reimbursable meal on this line—i.e., the line is not limited to students with unpaid meal charges. Because the line has pre-plated meals or limited OVS choices, the students will be able to move through the line faster—hence, the name the Fast Lane.

The parents are given notice of the students' meal account status and informed that the students will be served the lowest cost reimbursable meal available until the student's unpaid meal charges are paid.

Students who have unpaid meal charges are called to the office to speak to the nurse's aide and are instructed in private to use the Fast Lane meal line to get a reimbursable meal.

or

A CE that has one service line serves the Blue Plate Special as one its entrée choices every day. The Blue Plate Special is always the lowest cost reimbursable meal available on the line. Any student may be served a reimbursable meal on this line—i.e., the Blue Plate Special is not limited to students with unpaid meal charges.

The parents are given notice of the students' meal account status and informed that the students will be served the lowest cost reimbursable meal available until the student's unpaid meal charges are paid.

Students who have unpaid meal charges are called to the office to speak to the nurse's aide and are instructed in private to select the Blue Plate Special to get a reimbursable meal.

Accommodation for a Medical Disability

For any student who has a medical statement for a meal accommodation, any lower cost meal served to that student must still meet the required accommodations.[17]

Lowest Cost Meal Available Options

CEs have two options in providing a lower cost meal to students who have exhausted the grace period for charging meals:

Option 1: Lowest Cost Reimbursable Meal Available

If the CE chooses to provide the lowest cost reimbursable meal available (an alternate meal), the meal must be available to all students as a choice on a regular meal service line—that is, lower cost reimbursable meals cannot only be available to students with unpaid meal charges.

The CE may charge the student for a lower cost reimbursable meal or may provide the meal at no charge to the student.

[NOTE: If the CE chooses to provide a lower cost reimbursable meal to students with unpaid meal charges, the CE must establish this practice in its meal charging policy. If the CE does not charge for the lower cost reimbursable meal, the CE must include this practice its charge policy and must publicize that lower cost reimbursable meals are served at no cost to students who have exceeded the meals allowed in the grace period.]

Cost of Preparing the Meal

If the CE charges for a lower cost reimbursable meal or provides the lower cost reimbursable meal at no charge, the cost of the preparing and serving the meal is an allowable cost to the program.

[17] See *Administrator's Reference Manual (ARM), Section 25, Meal Accommodations.*

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Charge to Student

Any unpaid charges accumulate to the student's account if the student does not have funds to pay the meal charge.

Any remaining unpaid charges at the end of the charge period must be recovered from a non-federal source of funds.

If the CE serves a lower cost reimbursable meal at no charge, the CE must provide this information in its published charge policy as well as in the CE's *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures (Attachment B)*.

If the CE does not provide notification to households and does not provide the information in the CE's *Attachment B* form, the meal charge must be paid with non-federal funds by the end of the charge period.[18]

Payment for Lower Cost Reimbursable Meals

Payment for all reimbursable meals must be credited to the nonprofit school food service account.

OVS Not Used

The CE provides a pre-plated reimbursable meal[19] that provides the full portion size required to be offered for each required component.

The student must have a choice of milk.[20]

OVS Used

The CE allows a student to choose the full portion size required to be offered for each required meal component. If the student chooses the required components for a reimbursable meal, the CE may claim the meal.

The student must have a choice of milk.[21]

Option 2: Lowest Cost Non-Reimbursable Meal Available

When the CE provides a non-reimbursable meal, the CE should still provide a nutritious, well-balanced, and age-appropriate meal to the student. If the CE chooses to provide the lowest cost non-reimbursable meal available (as an alternate meal), the meal must be available to all students as a choice on a regular meal service line—that is, lower cost meals cannot only be available to students with unpaid meal charges.

18 See the *Administrator's Reference Manual (ARM), Section 16 Financial System* for additional information on the charge period for outstanding student debt.

19 Students have the option to refuse any food item in a pre-plated meal. If the student refuses an item, the meal the student takes must have the required components for a reimbursable meal for the meal to be claimed.

20 Choice of milk does not apply to the pre-kindergarten meal pattern.

21 Choice of milk does not apply to the pre-kindergarten meal pattern.

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The CE may charge the student for a lower cost non-reimbursable meal as an a la carte sale or may provide the meal at no charge to the student.

(NOTE: Serving a non-reimbursable lower cost meal is a federal allowance. However, serving a non-reimbursable meal and charging for that meal increases the debt of the student; increases the cost to the food service program for providing the meal; and potentially increases the amount of non-federal funds needed to cover student bad debt.]

A la Carte Sale

If the CE chooses to charge for a non-reimbursable lower cost meal, it is an a la carte sale. The price of the meal should reflect the actual cost of the meal, that is, if the meal cost is 40% less than a reimbursable meal, a price that is 40% less than a paid reimbursable meal would be appropriate to charge for the meal.

Cost of Preparing the Meal

A non-reimbursable lower cost meal is an unallowable cost to the program whether the meal is an a la carte sale or provided at no charge. The cost of preparing and serving the meal must be paid by non-federal funds.

Charge to Student

Any unpaid charges accumulate to the student's account if the student does not have funds to pay the meal charge.

Any remaining unpaid charges at the end of the charge period[22] must be recovered from a non-federal source of fund.

If the CE serves a lower cost non-reimbursable meal at no charge, the CE must provide this information in its published charge policy as well as in the CE's *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures (Attachment B)*.

If the CE does not provide notification to households and does not provide the information in the CE's *Attachment B* form, the meal charge must be paid with non-federal funds at the end of the charge period.[23]

Payment for Lower Cost Reimbursable Meals

Payment for non-reimbursable meals (a la carte sales) must be credited to the nonprofit school food service account.

[22] See the *Administrator's Reference Manual (ARM), Section 16 Financial System* for additional information on the charge period for outstanding student debt.

[23] See the *Administrator's Reference Manual (ARM), Section 16 Financial System* for additional information on the charge period for outstanding student debt.

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Competitive Food Requirements

If the CE charges for a lower cost non-reimbursable meal, the meal must meet the Competitive Food Nutrition Standards.

Proportional Program/Nonprogram Revenue and Costs

The cost of preparing the non-reimbursable meal and any revenue from the meal are classified as nonprogram costs and revenue and may be included in CE's calculation of program and nonprogram proportion.[24]

Special Guidance, Students with Unpaid Meal Charges

The CE may implement strategies for debt collection. USDA has defined (1) practices that should be discouraged and (2) practices that are prohibited as well as (3) recommended practices to address unpaid meal charges.

Discouraged Practices Related to Students with Unpaid Meal Charges

- Using hand stamps, stickers, or other physical markers to identify students with meal charge debt.
- Sending clearly marked notices home with students who have an outstanding balance (i.e., overtly identifying a student who has unpaid meal charges).

Prohibited Practices Related to Students with Unpaid Meal Charges

- Announcing or publicizing the names of students who have free or reduced-price eligibility and who have unpaid meal charges.
- Using a strategy or notification method that overtly identifies the eligibility status of any student.
- Enlisting the assistance of volunteers to request payment from a family with unpaid debt—Only appropriate officials trained on USDA's confidentially requirements who have a need to access a student's account balance or eligibility information may request payment from families with unpaid meal charges unless the family gives approval for this information to be shared with others.
- Requiring students to work for meals or work to pay back their debt—Any CE employee who is also a student cannot be required to pay for meals out of his or her paycheck.

Recommended Practices Related to Students with Unpaid Meal Charges

- Communicating privately with individual families about their child's outstanding balance.
- Sending discrete reminders in a plain, white envelope or sending reminders with other communication materials sent to all families.
- Working with families to develop a payment plan to pay back meal charge debt.

[24] See the *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on this topic.

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CEs may also use other income sources as a temporary measure to cover the cost of unpaid meal charges, including, but not limited to, the following:

- State revenue matching funds in excess of the State revenue matching fund requirement.
- State or local funds provided to cover the price of student meals.
- Local contributions provided by community organizations or individuals and school fundraisers.[25]

  At the end of the school year, CEs may invite any household with excess funds in a student's account to donate the remaining funds to a special fund to pay for unpaid meals charges. In Texas, a CE cannot automatically take, redistribute, or use excess funds without permission from the household. See the *Student Account Balances* subsection of this section for additional information on this requirement.
- A la carte revenue and profit from foods not purchased using funds from the nonprofit school food service account and funded from an account that is separate from the nonprofit school food service account.
- Revenue from catering or contracting services that operate using an account that is separate from the nonprofit school food service account.

Special Guidance, Serving Meals to Students with Unpaid Meal Charges

CEs must keep the following practices in mind when serving meals to students with unpaid meal charges:

Discouraged Practices Related to Serving Students with Unpaid Meal Charges

- Throwing a student's meal in the trash if the student is unable to pay for the meal the student has been served.

Prohibited Practices Related to Serving Students with Unpaid Meal Charges

- Requiring students who have free or reduced-price eligibility and who have unpaid meal charges to use a different serving line to pick up a lower cost alternate meal.
- Identifying a student's eligibility status (overt identification).

Recommended Practices Related to Serving Students with Unpaid Meal Charges

- Notifying the student ahead of time in private that the student will be served an alternate meal.
- Serving students with unpaid meal charges in the same serving line(s) as all other students.
- Ensuring the lower cost alternate meal is a healthy meal and does not single out students with unpaid meal charges.

[25] USDA has stated that this type of strategy is not intended to be a long-term solution. CEs should continue to pursue other strategies. Moreover, if a CE chooses to use an alternate funding option, school food service professionals should not be expected to solicit funds or organize fundraisers, as this is beyond the scope of their regular job duties.

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Outstanding Student Debt

Outstanding student debt (also called bad debt) resulting from nonpayment for school meals or milk is not an allowable cost to the nonprofit school food service account and cannot be absorbed by the SNP. For detailed guidance on outstanding student debt, see the *Administrator's Reference Manual (ARM), Section 16, Financial System*.

Student Account Balances

If a student account has a balance at the end of the school year, the CE must make every effort to return the funds to the household or the student. If the CE is unable to return the funds to the student (or household, if appropriate), the funds must be accounted for as described in the following guidance:

1. Must not be used to offset other non-SNP debt the student has incurred.
2. Must be recorded as deferred income or revenue[26] (general accounting principle).
3. Must not be donated for any purpose unless the CE has the consent of the parent or guardian.
4. Must be reported to the Texas Comptroller's Office (*www.window.state.tx.us/up/reporting.html*) and handled as required by Texas law if the balance is not returned to the student or donated by consent of the parent or guardian once the student has left the school district.

Meal Pricing for Adults

Since the expressed purpose of federal assistance is to safeguard the health and well-being of the nation's students, meals served to adults are not eligible for federal cash reimbursement—therefore, the reimbursements CEs receive for serving students must not be used to pay for adult meals.

Nutrition Program Employees

Employees directly involved in the operation or administration of meal planning, preparation, and service may or may not be charged for their meals at the discretion of the CE. This would include SNP supervisors, managers, cooks, and servers. A meal served at no cost to nutrition program employees is considered to be a fringe benefit that can be counted as an allowable program cost.[27]

Subsidizing Adult Meals, CE Employees

CEs must also ensure that federal reimbursements, students' payments, and other non-designated nutrition program revenues do not subsidize meals served to nonprogram employees—teachers, administrators, custodians, or other adults.

Fringe Benefit

A CE may choose to offer its employees a fringe or incentive benefit that covers the cost of the meal. If a CE chooses to offer a free or reduced-price meal as a fringe benefit, CEs must take the following actions:

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[26] Deferred income or revenue is often called *unearned income*. A student's prepayment for meals is considered to be deferred income because the CE *owes* the income to the student until the student *purchases* food or meals.

[27] See *Administrator's Reference Manual (ARM), Section 11, Summer Meals* for additional guidance related to paid meals for security guards.

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- Ensure that the funds for the fringe benefit do not come from the nonprofit school food service account and are not funded from the revenue generated from students' paid meals.
- Ensure that the source of funding for the fringe benefit is sufficient to cover the actual cost of the meal, including the value of any USDA Food entitlement or bonus as well as additional reimbursement amounts including performance-based or severe need for breakfast or lunch[28] payments (reimbursements) awarded to the CE.
- Maintain documentation that clearly illustrates that the funding for the fringe benefit comes from other revenue sources and that the general revenue fund has reimbursed the nonprofit school food service account for this lost revenue.

USDA Foods Meal Counts

Meals served to adults do not count toward the CE's award of USDA Foods (Commodities).

Price of Adult Meals

The charge for adult meals must, at a minimum, be greater than the amount of total reimbursement received for a free meal plus any other supplemental payments received by the CE plus per-meal value of USDA Foods (Commodities) used for the meal service. The meal price for adult visitors may be higher than the price paid by adult CE employees at the discretion of CE officials.

Total reimbursement includes the following:

- **Standard Reimbursement**—Amount of reimbursement the CE receives for free, reduced-priced, or paid reimbursable meals.
- **Performance-Based Reimbursement**—Additional reimbursement applied to each reimbursable lunch claimed. For School Year (SY) 2022-2023, the amount increased to $.08 per claimed lunch.
- **Severe Need Reimbursement**—Additional reimbursement based on high economic need.

  For lunch, Severe Need is paid CE-wide for claimed lunches. For breakfast, the reimbursement is paid to eligible sites.
- **USDA Foods Per Meal Value (Reimbursement)**—CE-wide allocation that is based on the number of reimbursable lunches served in the previous year.

This applies whether the program is pricing or non-pricing meal program. CEs must have a method in place to document income from adult meals.

There are many strategies a CE can use to ensure that the adult meal pricing criteria are met. When calculating a pricing structure, all results should be rounded up. The following methods illustrate two ways of pricing that are acceptable. Pricing programs may use Method 1, Method 2, or another method as long as documentation demonstrates that the method meets the criteria described above. Non-pricing programs must always use Method 2.

[28] Severe need for lunch reimbursements/payments are also called *two-cent differential*.

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Method 1, Using Paid Reimbursement Rate for Lunch, Breakfast, Snack

Lunch—Charge a price that is greater than the total amount of reimbursement for a student's paid lunch plus the per meal value of USDA foods plus the highest price paid by a student for lunch.

Adult Price Minimum	***must be greater than***	Highest Student Price Charged in the District	+	Federal Paid Reimbursement Rate Plus All Other Federal Reimbursement or Payments (This includes, but is not limited to, performance-based reimbursement, lunch severe need reimbursement, and per meal value of USDA Foods, as applicable.)

Breakfast—Charge a price that is greater than the total amount of reimbursement for a student's paid meal or snack plus the highest price paid by a student for the meal or snack.

Adult Price Minimum	***must be greater than***	Highest Student Price Charged in the District	+	Federal Paid Reimbursement Rate Plus All Other Federal Reimbursement or Payments (This includes, but is not limited to, breakfast severe need and per meal value of USDA Foods if USDA Foods are used for breakfast meals.)

Method 1, Sample Calculating Correct Adult Pricing for Lunch Structure Chart (Using SY 2018-2019 Rates)

Pricing Information

The CE proposes to use the following pricing structure.

	Student Lunch Meal Paid Charge	Adult Paid Charge
Cash Payment	$2.85	$3.00

Calculation to Determine Minimal Adult Price

Federal Funds to Include in Calculation	
Paid Reimbursement Rate	$0.31
Performance-Based Reimbursement	$0.06
Severe Need Lunch	$0.02
USDA Foods	$0.3450
Total	**$0.735**

Calculation, Method 1, Adult Lunch Meal Price	
Student Paid Charge	$2.85
Federal Funds	$0.735
Adult Minimum Charge	**$3.585**

Calculation Equation: ($0.31 +$0.06 + $0.02 + $0.3450) + ($2.85) = $3.585, rounded up to $3.59

Method 1, Questions to Determine If Adult Minimum Meal Price Is Appropriate Answers to all questions must be yes for the adult meal price to be appropriate.		**Adult Lunch Meal Price Method 1— at least $3.59**
1. Does the meal price cover the cost of federal funds?	Yes	
2. Is the adult price more than the paid price for a student?	Yes	
3. Is the total adult price more than the total revenue or income received for a paid student's meal?	No*	

* While a CE may round up an adult price to a number that is more convenient to collect (i.e., $3.585 to $3.60), the CE must not round down to a price lower than the calculated Adult Minimum Price (i.e., $3.585 to $3.50).

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Method 2, Using Free Reimbursement Rate for Lunch, Breakfast, or Snack

Lunch—Charge a price that is greater than the total amount of federal reimbursement for a free student's lunch plus the per meal value of USDA Foods.

Adult Price Minimum	*must be greater than*	Federal Free Reimbursement Rate Plus All Other Federal Reimbursement or Payments (This includes, but is not limited to, performance-based reimbursement, lunch severe need reimbursement, and per meal value of USDA Foods, as applicable.)

Breakfast—Charge a price that is greater than the total amount of federal reimbursement for a free student's meal.

Adult Price Minimum	**must be greater than**	Federal Free Reimbursement Rate Plus All Other Federal Reimbursement or Payments (This includes, but is not limited to, breakfast severe need reimbursement and per meal value of USDA Foods if USDA Foods are used for breakfast meals.)

Method 2, Sample Calculating Correct Adult Pricing for Lunch Structure Chart (Using SY 2018-2019 Rates)

Pricing Information

The CE proposes to use the following pricing structure.

	Student Lunch Meal Paid Charge	Adult Paid Charge
Cash Payment	$2.70	$2.75

Calculation to Determine Minimal Adult Price

Federal Funds to Include in Calculation	
Free Reimbursement Rate	$3.31
Performance-Based Reimbursement	$0.06
Severe Need Lunch	$0.02
USDA Foods	$0.3450
Total	**$3.735**

Calculation, Method 2, Adult Lunch Meal Price	
Federal Funds	$3.735
Adult Minimum Charge	**$3.735**

Calculation Equation: $3.31 +$0.06 + $0.02 + $0.3450 = $3.735, rounded up to $3.75

Method 2, Questions to Determine If Adult Minimum Meal Price Is Appropriate Answers to all questions must be yes for the adult meal price to be appropriate.		**Adult Lunch Meal Price Method 2— At least $3.735**
Does the meal price cover the cost of federal funds?	No	
Is the adult price more than the paid price for a student?	Yes	
Is the total adult price more than the total revenue or income received for a free student's meal?	No	

* While a CE may round up an adult price to a number that is more convenient to collect (i.e., $3.735 to $3.75), the CE must not round down to a price lower than the calculated Adult Minimum Price (i.e., $3.735 to $3.70).

TDA has developed an Excel form to assist CEs in calculating adult meal prices. The *Adult Meal Calculator Worksheet* is available at *www.SquareMeals.org*.

Paid Lunch Equity (PLE)

Each year, CEs must evaluate their lunch pricing structure and determine if the cost and income from lunch meals are equitably distributed among free, reduced-price, and paid meals—Paid Lunch Equity (PLE). CEs that determine that their lunch pricing structure is not equitably distributed must take action to remedy the inequity—increase meal prices, provide additional funds from nonfederal sources, or a combination of both.

Non-Pricing or Universal Free (Non-Pricing) Feeding CEs or Sites

CEs or sites that have implemented a non-pricing policy that applies to all students are not required to determine if they have equity in lunch pricing—this includes the Community Eligibility Provision (CEP), Provision 2 (P2), or other non-pricing, universal free feeding programs that provide reimbursable meals at no charge to all students.

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Non-Pricing or Universal Free Feeding (Non-Pricing) CEs or Sites, Returning to Standard Counting and Claiming

If a CE has sites that are returning to standard counting and claiming after operating a non-pricing program, the CE must apply the PLE requirements to all of those sites returning to standard counting and claiming.

- In situations where all of a CE's sites operated a non-pricing program in the previous school year; the CE must apply the current weighted average lunch price since there is no pricing history for the previous school year for these sites.
- In situations where some, but not all, of a CE's sites operated a non-pricing program in the previous school year, the CE may use the meal prices from the sites that did not operate a non-pricing program to evaluate and establish pricing for those sites returning to standard counting and claiming.

Residential Child Care Institutions with Paid Students

If an RCCI has students who are not free or reduced-price, the RCCI must determine if it has equitable lunch pricing (PLE).

Preparation for Calculating Paid Lunch Equity (PLE)

Because the calculation for the upcoming year is made at the end of the current school year (SY) and is based on the pricing information from multiple years, the CE needs to have current and prior year meal pricing records on hand to perform this process. The CE will need the following information to determine the appropriate lunch price for the upcoming SY:

- Meal pricing information from previous years. The USDA Paid Lunch Equity Tool uses pricing information from the previous two school years.
- Meal pricing information from SY 2010-2011, the first year PLE calculations were required if CE was active in that SY.
- Nonfederal contribution amounts for the upcoming year and the previous SY.

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Steps for Calculating Paid Lunch Equity

CEs should take the following actions to calculate paid lunch equity.[29]

1. Establishing the Minimum Meal Price for Students. When a CE assesses its paid lunch equity, it is determining if the average paid price is less than the difference between the free and paid federal reimbursement rates. The difference between the free and paid federal reimbursement rate is called the weighted average lunch price that is provided by USDA each year.
2. Using the Inflation Factor. If the CE's average paid price is less than the USDA current weighted average lunch price, the CE must increase the average paid price using the inflation factor.
3. Uniform Threshold. There is no uniform threshold for price increases. Each year the amount will be recalculated.
4. Unrounded Adjusted Averaging. CEs are also required to use unrounded adjusted averaging for this process.

Information Box 1

Paid Lunch Equity (PLE) Weighted Average Lunch Price and Inflation Rate for SY 2020-2021

For SY 2020-2021,* the PLE weighted average lunch price is $3.09.

Free Reimbursement Rate	-	Paid Reimbursement Rate	=	Weighted Average Meal Price

For SY 2020-2021, the inflation factor is 4.68% (.0468).

2% (.20)	+	Annual Inflation Rate (2.94%)	=	4.94% (.0494) (SY 2020-2021)

CEs that charge less than $3.09 must adjust their average lunch price by the inflation factor, add nonfederal funds to the nonprofit food service account, or do a combination of both.

* The SY 2020-2021 weighted average lunch meal price is calculated using the previous year's reimbursement rates.

The following chart contains the weighted average and inflation factor for the current and previous years.

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[29] See the *Preparation for Calculating Paid Lunch Equity (PLE)* subsection in this section for additional information on records and documentation needed to prepare for these actions.

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Current and Previous Year Weighted Average Lunch Price and Inflation Factor Chart		
School Year	**Weighted Average Meal Price**	**Inflation Factor**
2022-2023	3.31	6.04%
2021-2022	3.18	4.93%
2020-2021	3.09	4.94%
2019-2020	3.00	4.68%
2018-2019	2.92	4.31%
2017-2018	2.86	4.64%
2016-2017	2.78	4.97%
2015-2016	2.70	4.19%
2014-2015	2.65	4.27%
2013-2014	2.59	4.93%
2012-2013	2.51	4.18%
2011-2012	2.46	3.14%

Calculating Weighted Paid Lunch Price

The CE may use USDA's *Paid Lunch Equity Tool* to calculate PLE. This form is located at *www.squaremeals.org*.

Or the CE may calculate PLE manually by performing the following actions:[30]

Step 1: Determine if the CE needs to adjust its average meal price.

Compare the CE's average price for a paid lunch	to	the difference between the higher federal reimbursement provided for free lunches and the federal reimbursement provided for paid lunches				
		Free Reimbursement Rate	–	Paid Reimbursement Rate	=	Weighted Average Price for a Paid Lunch

If the average paid lunch price is *less than* the USDA current weighted average lunch price,[31] the CE must take one of the following actions:

- Adjust the average paid price using the inflation factor.
- Adjust the proportion of nonfederal funding.
- Use a combined adjustment of increasing the average paid lunch price applying the inflation factor and increase the proportion of nonfederal funding to address the difference.

If the CE's average paid lunch price is more than the USDA current weighted average lunch price, the CE does not need to take further action.

Step 2: Apply the Inflation Factor

The next step in the process is to apply the inflation factor—two percent plus the annual inflation rate or percentage (*Information Box 1, Paid Lunch Equity (PLE) Weighted Average Lunch Price and Inflation Rate for SY 2020–2021*).[32]

30 See the *Tools to Assist with Paid Lunch Equity Determinations* subsection in this section for information about tools to help with paid equity calculations.

31 For SY 2020-2021, the USDA weighted average price is $3.09.

32 The inflation factor is based on the percentage of change in the Consumer Price Index for All Urban Consumers (CPI), using the 12-month period of May of the previous year to May of the current year. Because of the timing of

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Unrounded Adjusted Average. CEs are required to use unrounded adjusted average paid lunch price when calculating paid lunch equity.[33]

Applying the inflation factor is completed in two calculations:

1. Amount of Increase Required. The CE multiplies its average lunch paid price by the inflation factor percentage to determine if the CE needs to increase the price of a paid reimbursable lunch.

CE's Average Lunch Price	x	Inflation Factor (SY 2020-2021)	=	Amount of Increase Needed (may result in no needed increase)
$3.00		4.94% (.0494)^		$0.1482

2. Adjusted Paid Lunch Equity Price. The CE adds the amount of increase, to its average paid lunch price to get the adjusted paid lunch equity price.

CE's Average Lunch Price	+	Amount of Increase (if an increase is needed)	=	Adjusted Paid Lunch Equity Price
$3.00		$0.1482		$3.1482 (or $3.15)*

^ 4.94% is the inflation factor for SY 2020-2021.

* In this case, by raising the price to nearest 25 cents ($3.25), the CE would be able to credit $.1018 toward the next year's PLE calculation as described Excess Paid Lunch Equity Increase subsection in this section. Formula for credit: $3.25-$3.1482=$0.1018.)

Additional Guidance for Applying Pricing Structure to Achieve Paid Lunch Equity

CEs must adhere to the following guidance as they determine if the CE is required to make an adjustment to achieve equity in lunch pricing:

Adjustment, Grade Level

A CE may increase the price of meals for varied grade levels at different rates as long as the average price corresponds to the adjustment needed.

For Example: The CE may apply a larger increase for grades 9–12 than it does for grades K–3. If the CE must increase the average price to $2.95, the CE can charge K–3 students $2.75, middle school students $2.90, and high school students $3.20.

Average Lunch Price
($2.75 + $2.90 + $3.20) ÷ 3 = $2.95

Amount of Increase Maximum

A CE is not required to increase its prices by more than $.10 (10 cents) each year. However, a CE may opt to increase prices more than $.10.

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calculation and issuing the reimbursement rates, the paid lunch equity calculations are based on the inflation factor used for the previous school year's (SY's) reimbursement rate. The inflation factor will be recalculated each year by USDA.

[33] CEs were allowed to use rounded averaging in SY 2011–2012 as they transitioned their pricing structures to address the paid equity provision. CEs are now required to use unrounded adjusted averaging.

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Excess Paid Lunch Price Increase

If the CE raised its average paid price above the required amount for the previous year, any excess in paid lunch price increase over the CEs lunch average for the previous year may be subtracted from the current year's paid lunch price increase requirement.

For Example: For SY 2018–2019, the CE was required to raise lunch prices by an inflation factor of 4.31 percent. The average paid lunch price for the CE was $2.25 which was less than the weighted average lunch price.

Percentage of Increase
($2.25 x 4.31%) = $.0969

Therefore, the CE needs to raise its average price by $.0969—making the required average lunch price $2.6077.

Required Average Price
($2.25 + $0.0969) = $2.3469 or $2.35

However, the CE chose to raise its average lunch price to $2.50 which created an excess paid lunch price increase of $0.1531 which can be applied to the next school year.

Excess Paid Lunch Price Increase
($2.50 - $2.3469) = $0.1531

The CE may apply the excess paid lunch price increase of $0.1531 to any increase required in SY 2019–2020.

[NOTE: CEs must retain sufficient records to document the carry forward of the excess average price calculation.]

New CEs

CEs in their first year of operating the NSLP that do not have a prior meal pricing history should use the current year's weighted average lunch price for paid lunches.[34]

New Sites

If a CE opens a new serving site, it will not have a prior meal pricing history. The site should price lunches at the same level or higher as other sites within the CE.

Non-Pricing or Universal Free Feeding Programs

Non-pricing or universal free feeding CEs should report a $0 in pricing reports. In CEs that administer Provision 2, Community Eligibility Provision (special provision), or other non-pricing universal free feeding sites as well as non-special provision sites, the CE should report and calculate paid lunch equity for non-special provision sites only.

If a non-pricing or universal free feeding program, including special provision, returns to standard counting and claiming, the CE must a charge a paid lunch price at the same level or higher as the current weighted average. If the CE is able to access pricing data from a previous pricing period and calculate pricing data through the current school year, the CE may charge the reconstructed and recalculated lunch meal price.

Shortfall in Paid Lunch Price Increase

If the CE did not price its meals at the established weighted average amount in the previous school year, the shortfall must be added to the next year's paid lunch adjustment requirement.

[NOTE: CEs must retain sufficient records to document the carry forward of the shortfall in average price calculation.]

[34] USDA calculates and publishes this price each year.

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Adjusting Paid Lunch Equity with Revenue from Nonprogram Food

A CE that does not want to increase the paid lunch meal price may choose to offset the required increase in meal pricing with revenue from nonprogram foods.[35] USDA's *Paid Lunch Equity Tool* includes fields which allow the CE to calculate how much nonprogram food revenue is needed to offset a required increase in meal pricing. This tool will auto-calculate the appropriate amount of nonprogram funds to contribute.

Paid Lunch Equity, Revenue from Nonprogram Food Calculation Chart				
Total number of paid reimbursable meals claimed for the previous school year	x	Difference between SY 2018-2019 weighted average paid lunch price requirement and SY 2017-2018 weighted average paid lunch price	=	Nonfederal fund contribution

Allowable Nonfederal Funding Sources

The following sources are allowable nonfederal contributions:

- Any amount that is credited to paid meals—breakfast, lunch, and snack—from direct payments provided by organizations, including state, county, CE, district, city, or other agencies
- Any proportion attributable to paid meals—breakfast, lunch, and snack—from the CE to support the meal service, including prorated shares of general funds

  For Example: The CE receives $1,000 in state and local subsidies. Twenty percent of the lunches served are paid lunches. To calculate the prorated share of the income, the CE multiplies $1,000 by 20%. The result—$200—is the prorated portion of state or local subsidy that contributes toward paid lunches. The rest is applied to free or reduced-price meals.

- Funds from CE-related or community organizations
- Matching funds from state revenues that exceed the minimum requirement[36]

Unallowable Nonfederal Funding

The following cannot be counted as nonfederal contributions:

- Any federally sourced payment, including additional per-meal reimbursements,[37] providing specifically to support free and reduced-price meals.
- Any revenue from concession stands or other onsite income generating activities if the revenue or income flows through the nonprofit school food service account even if the SNP only gets a portion of the revenue or income[38]

35 See the *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on nonprogram income.
36 This requirement is established in 7 CFR 210.17.
37 Performance-based reimbursement and severe need for breakfast and lunch reimbursements.
38 For this type of income to be nonprogram funds, all operational and financial support for the activities must come from outside of the SNP. There are CEs that provide food service activities that generate income but are not operated by or for the SNP: A culinary arts program that provides food service that is not connected to the SNP or a concession stand. If the funds that support these programs do not come from SNP and if they are operated totally outside of the SNP or the SNP's resources, these efforts would be nonprogram funds.

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- Revenue from foods sold in competition with reimbursable meals—i.e., competitive foods.
- Any in-kind contributions which includes the following:
  - Janitorial services that were previously provided at no cost to the SNP
  - Prorated share for the salaries of teacher or office staff that serve as cafeteria monitors
  - Supplies, such as office equipment, that were previously provided at no cost to the SNP
  - Prorated share for utilities that were previously paid by the SNP

Adjusting Paid Lunch Equity by Combining Increased Paid Lunch Price and Nonfederal Funds

The CE may combine an increase in lunch price and a supplement of nonfederal funds. CEs should use the USDA's *Paid Lunch Equity Tool* to calculate the required adjustments when a combined method is used.

Additional Guidance for Applying Nonprogram Funds to Achieve Paid Lunch Equity

When a CE considers whether a source of funds is appropriate or inappropriate, the CE should also consider the following guidance:

Excess Nonfederal Funds Contribution

If the CE's previous year estimate of required contribution exceeds the actual level needed, the excess contribution may be subtracted from the next year's contribution requirement.

Excessive Fund Balance

If the CE has an excessive fund balance of more than three months of operating expenses, it cannot decrease its excessive fund balance as a method to reach paid lunch equity.

- Appropriate Use of Excessive Fund Balance. Excessive fund balances must be used to
  1. improve food quality or
  2. other actions designed to improve the school nutrition.[39]
- Lowering Meal Prices. If the CE has an excessive fund balance, the CE

cannot	can
lower prices if it is not exceeding the weighted or minimum paid lunch average for year the adjustment is being made.	lower prices if the price exceeds the weighted or minimum lunch price average for the year the adjustment is being made.

Insufficient Nonfederal Funds Contribution

If the CE's previous year estimate of required contribution to paid lunch price increase is less than the actual amount needed, the excess contribution must be added to the next year's contribution requirement.

[39] See *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on this topic.

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Large Fund Balance (Not an Excessive Fund Balance)

For this purpose, a large fund balance[40] is the amount of funds remaining in the nonprofit school food service account after all expenses have been paid. This amount cannot be used to offset PLE as nonfederal funds.

Program Account

If the CE chooses to fulfill the paid equity requirement with a nonfederal source contribution, the funds do not have to be kept in a separate account. The funds may be added at the beginning of the year or at intervals throughout the year. In all cases, the CE must maintain a clear record of the source of funds.

(NOTE: CEs must retain sufficient records to document funds added to the nonprofit school food service account. This includes, but is not limited to, itemized or detailed records showing that a transfer is made for student debt that is separate from transfers to address PLE and adult meals.)

Paid Lunch Equity Exemption

For School Year (SY) 2022-2023 USDA has provided a PLE exemption that is based on the CE's financial position. CEs with a zero or positive fund balance as of December 31, 2021, have two options:

1. Complete and apply the SY 2022-2023 PLE calculation to CE's meal pricing structure. If a CE chooses this option, the CE will adjust meal prices as appropriate to the PLE calculation.

   Records to Retain: The CE must retain the completed PLE calculation tool and other documentation demonstrating how the CE determined the meal prices to be charged.

2. Choose not to complete and not to apply the SY 2022-2023 PLE calculation. If the CE chooses this option, the CE may increase meal prices, but is not required to do so.

   TDA recommends CEs perform the PLE calculation each year and retain all related documentation as information recorded in the calculation tool may be helpful if the CE does not qualify for an exemption in the future.

   Records to Retain: The CE must retain financial documentation that demonstrates that the CE has reconciled all costs incurred and income received since the end of the most recent fiscal year and December 31, 2021, and determined that it has a zero or positive fund balance. If the CE chooses to increase meal prices, the CE needs to retain documentation demonstrating the amount of the price increase.

For SY 2022-2023 only, CEs with a negative fund balance as of December 31, 2021, are also exempted from completing and applying the SY 2022-2023 PLE calculation to their meal pricing structure, but they must notify TDA via the online request form located on SquareMeals at *https://squaremeals.org/FandNResources/CoronavirusUpdateforContractingEntities/IntakeForms.aspx*.

Special Guidance for Determining a Zero, Positive, or Negative Fund Balance

Whether a CE has a zero, positive, or negative fund balance is based on its financial reconciliation of costs and income as of December 31, 2021.

Did the nonprofit school food service account have a zero, positive, or negative fund balance after accounting for all income and all expenses from the period between the end of the CE's most recent fiscal year and December 31, 2021?

[40] An Excessive Fund Balance is a fund balance that exceeds three months of operating expenses.

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The following definitions will assist the CE in this determination:

- The **fund balance as of December 31, 2021**, covers the period of time between the end of the CE's most recent fiscal year and December 31, 2019.

  For Example: The CE closes its fiscal year on June 30 of each year. The CE's final balance as of June 30, 2019, was a credit of $32,000. The CE carried the $42,000 over to the new year which started July 1, 2020. From July 1, 2020, until December 31, 2020, the CE had $328,000 in expenses and $295,000 income.

Income (Carryover + Current Year)		Costs (on December 31)		Balance (on December 31)
($42,000 + $295,000)	-	$328,000		
$337,000	-	$328,000	=	$9,000

- **Costs incurred** includes the costs for products that were delivered and/or cost of services that occurred prior to January 1, 2022, which have been paid or will be paid after December 31, 2021.
- **Income received** includes reimbursement for claimed meals, a la carte sales, catering, and any other income to the School Nutrition Program for activities that occurred prior to January 1, 2022, for which payment has been received or payment will be received after December 31, 2021.

Special Guidance, When a CE No Longer Qualifies for an Exemption

When a CE no longer qualifies for an exemption, the CE must use the appropriate year's PLE calculation tool to determine the required increase in meal prices. The CE is not required to retroactively apply previous PLE increases for the years in which the CE qualified for a waiver.

[NOTE: The PLE calculation tool for the years in which the exemption applied may provide additional data that can be used if the CE chooses to offset a required price increase using non-federal funds.]

Tools to Assist with Equity in Lunch Pricing Determinations

The USDA and TDA have developed forms that can be used to calculate both parts of the paid lunch equity process. These forms are available at *www.squaremeals.org*. CEs are not required to use these forms, but TDA strongly encourages CEs to do so. If a CE uses another form, the CE must ensure that the form collects the same information as the TDA or USDA forms.

TDA Forms

The following TDA forms will assist CEs in collecting the information required to determine whether the CE is compliant with the revenue from nonprogram foods provision:

- *Adult Meal Calculator Worksheet*
- *Daily Record of Income—National School Lunch Program and School Breakfast Program Form*
- *Income from Food Service Operations Form*
- *Paid Lunch Equity (PLE) Exemption*
- *Record of Program Expenditures Form*
- *Food Service Pro-rata Share of Exclusive Beverage Contract Form*

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USDA Form

USDA provides a *Paid Lunch Equity (PLE) Tool*[41] that will automatically calculate paid lunch equity when the CE records current meal pricing information. The form is updated when the inflation factor or reimbursement rates change, so CEs should use the current form for each SY. Instructions are provided with the tool.

Information Box 2

Record Retention

Public and charter schools are required to keep documentation related to school nutrition programs for five years.

Private schools, other nonprofit organizations, and residential childcare institutions (RCCIs) are required to keep documentation for three years.

Records Retention

The CE is required to maintain an organized system of record retention that is accessible to appropriate CE staff members and federal or state reviewers. TDA may request documentation for both offsite and onsite administrative reviews. CEs also have the option to maintain records in paper or electronically.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, nonprofit organizations, and residential student care institutions after the end of the fiscal year to which they pertain. If audit findings have not been resolved, the records must be maintained as long as required for the resolution of the issues raised by the audit.

The records and documentation the CE must be able to produce concerning meal pricing and paid lunch equity include, but are not limited to, the following:[42]

- Daily and cumulative monthly records of prices charged to students for reduced-price and paid meals
- Daily and cumulative monthly records of prices charged to adults for all meals
- Complete record of prices charged for a la carte items sold to students and adults
- Daily and cumulative monthly records for income from all sources, federal and nonfederal
- Daily and cumulative monthly record for costs for program and nonprogram expenses
- Forms demonstrating the CE's efforts to address an excessive fund balance, if applicable
- Documentation of all steps and actions taken to achieve paid lunch equity
- Records of transfers into and out of the nonprofit school food service account for all purposes, but specifically to achieve equity in meal pricing
- Forms and records for PLE and nonprogram/nonfederal revenue and cost calculations
- All records demonstrating the methods the CE used to communicate its charge policy to household and staff, including, but not limited to, the following:

41 The *Paid Lunch Equity (PLE) Tool* has the capability of printing a report that can be used to help complete the forms in future years. TDA recommends that CEs take advantage of this feature to facilitate their response to paid lunch equity requirements in succeeding years.

42 See the *Administrator's Reference Manual (ARM), Section 30, Record Retention* for detailed information on records that must be included in a CE's records retention system.

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- Evidence of efforts to collect unpaid meal charges in accordance with the policy
- Evidence that collection efforts fell within the timeframe and methods established by the policy
- Financial documentation showing when the unpaid meal charge became an operating loss
- Evidence that the funds written off as bad debt were restored to school nutrition nonprofit food service account from non-Federal sources

Compliance

TDA will review documentation submitted through TX-UNPS and during administrative reviews to determine if the CE is compliant with all meal pricing requirements. TDA may require an approvable corrective action plan if the CE does not comply with the meal pricing requirements as well as the paid lunch equity requirement. Noncompliance in these areas may require fiscal action.

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Section 20

Counting & Claiming

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Section 20, Counting & Claiming

Update Guide

September 29, 2022	Clarified guidance on the following topics: - Point of service - Visiting students, special provision sites
July 28, 2022	Updated *Section 20, Counting & Claiming* to correct typos and clarify guidance on the following topics: - *Security Authority for Users Access Manager Form (FND-135)* - Visiting students, special provision sites
January 4, 2022	Updated *Section 20, Counting & Claiming* to correct typos and clarify guidance on the following topics: - Onsite monitoring
August 12, 2020	Updated *Section 20* to update the title to *Counting & Claiming* and to update *Administrator's Reference Manual (ARM)* section references. Provided clarification or information on the following issues: – Afterschool programs edit check/accuclaim – 60-calendar day rule – Second meals and second servings – Severe Need – Visiting students – Weekend meal service – Unique site designations – Universal free – Universal reduction in price
March 10, 2020	Updated *Section 20, Counting & Claiming to update the Administrator's Reference Manual (ARM)* section titles. Clarified information on the following topics: – 60-90 day rule – Attendance factor, accuclaim for afterschool programs – Effective counting and claiming systems – Operating month – Point of Service (POS) systems and eligibility data – Record retention – Severe Need Breakfast and Lunch – Unique site designations – Visiting students – Weekend meals
August 21, 2019	Updated *Section 7, Counting and Claiming* to incorporate the following United States of Department of Agriculture (USDA) guidance: – *USDA Memo SP 20-2018, 60 Day Claim Submission and 90 Day Reporting Requirements for Child Nutrition Programs* (September 14, 2018) – *USDA Guidance for Local and State Agencies on 60-Day Claim Submission and 90-Day Reporting Requirements for Child Nutrition Programs* (August 2018) Clarified information on the following topics – Adjusted claims

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- Attendance factor and edit check/accuclaim process
- Claim submission
- Community Eligibility Provision (CEP)
- Enrollment data
- Obligation to report fraud
- Offsite reimbursable meals
- Onsite monitoring
- Record retention
- Severe Need
- Weekend meal service

January 22, 2018 Updated *Section 7, Counting and Claiming* to incorporate the following United States Department of Agriculture (USDA) guidance:

- *USDA Memo SP 29-2017, 2017 Edition: Overcoming the Unpaid Meal Challenge: Proven Strategies from Our Nation's Schools* (May 10, 2017)
- *USDA Memo SP 54-2016, Community Eligibility Provision: Guidance and Updated Q&As* (September 9, 2016)

Clarified information on the following topics:

- Alternative schools or in-school suspension
- Backup or recovery of documentation
- Compliance
- Multiplier factor
- Non-school age children
- Receiving site
- Record recovery or backup systems
- Records retention
- Sending site
- Severe need
- Universal free feeding
- Universal free feeding, residential child care institutions (RCCIs)
- Visiting students

November 29, 2016 Updated *Section 7, Counting and Claiming* to incorporate the following United States Department of Agriculture (USDA) guidance:

- *USDA Memo SP 54-2016, Community Eligibility Provision: Guidance and Updated Q&As* (September 9, 2016)
- *Administrative Reviews in the School Nutrition Programs, Final Rule, Federal Register, Volume 81, Number 146* (July 29, 2016)
- *USDA Memo SP 19-2016, Community Eligibility Provision: Guidance and Updated Q&As* (December 14, 2015)
- *USDA Memo SP 37-2015, 2015 Edition Questions and Answers for the National School Lunch Program's Seamless Summer Operation* (May 22, 2015)

Clarified information on the following topics:

- Breakfast onsite monitoring
- Contracting entity (CE) operating days
- Counting and claiming while on financial hold
- Onsite monitoring reviews
- Severe Need Breakfast and Lunch
- Total enrollment

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January 15, 2015

Updated *Section 7, Counting and Claiming* to incorporate the following United States Department of Agriculture (USDA) guidance:

- *USDA Memo SP 16-2015, Community Eligibility Provision: Guidance and Updated Q&As* (January 14, 2015)
- *USDA Memo SP 51-2014, Eligibility Effective Date for Directly Certified Students* (June 19, 2014)
- *USDA Memo SP 30-2014, Determining Eligibility for Two Cent Differential Reimbursement in New Schools* (March 28, 2014)
- *USDA Memo SP 11-2014, Effective Date of Free or Reduced-Price Meal Eligibility* (December 3, 2013)
- *USDA Memo SBP 23-2005, Eligibility for Severe Need Rates for School Breakfast Program* (September 22, 2005)

Clarified information on the following topics:

- Additional reimbursements
- All cash lines
- Attendance factor
- Automated Accuclaim error messages in TX-UNPS
- Claiming, special situations
  - Audit findings
  - Community Eligibility Provision
  - Effectiveness date for eligibility determination
  - Offsite meals
  - Performance-based reimbursement
  - Provision 2
  - Severe need, breakfast and lunch
  - Universal feeding
  - Visiting students
  - Weekend meals
  - Universal free feeding sites
- Counting practices
- *Daily Record/Accuclaim Form*
- Lost, stolen or misused tickets
- Master list or roster of program participants
- Overt identification
- Payment and charging
- Records retention
- TDA operating day

April 16, 2014

Updated *Section 7, Counting and Claiming* to incorporate the following United States Department of Agriculture (USDA) guidance:

- *USDA Memo SP 11-2014, Effective Date of Free or Reduced-Price Meal Eligibility* (December 3, 2013)
- *USDA Memo SP 17-2014, Discretionary Elimination of Reduced-Price Charges in the School Meal Program* (January 22, 2014)

Clarified information on the following topics:

- Accuclaim requirements
- Claiming: students in nontraditional programs
- Coding methods: verbal identifier, tickets or tokens, coded identifier (ID) cards
- Effective date of free or reduced-price meal eligibility
- Lost or stolen tickets

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- Offsite meal consumption
- Student workers
- Records retention
- TDA contact information
- Unacceptable methods of counting
- Use of rosters and master lists
- Visiting students

February 28, 2013	Updated *Section 7, Counting and Claiming* to incorporate new USDA guidance on reimbursement, the new meal pattern, and overt identification.
July 22, 2013	Updated *Section 7, Counting and Claiming* to reflect the renumbering of *Section 9C* to *Section 2C, Certification for Performance-Based Reimbursement* in order to relocate the information on certification adjacent to *Section 2, Application and Agreement* since certification is now part of the application process. Deleted all references to *Section 8N* since that section has been removed from the *Administrator's Reference Manual (ARM)*. CEs must follow the guidance provided in *Section 8, Breakfast* since *Section 8N* applied to SY 2012–2013 only.
August 9, 2013	Updated *Section 7, Counting and Claiming* to reflect current guidance on claiming meals for visiting students.
August 15, 2013	Updated *Section 7, Counting and Claiming* to retitle the onsite monitoring form.

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Counting & Claiming

Each Contracting Entity (CE) must develop a system of counting and claiming that (1) meets the requirements of the Texas Department of Agriculture (TDA) and United States Department of Agriculture (USDA) and (2) addresses the needs of the individual CE (See *Information Box 1, Factors That Influence a Counting and Claiming System*).

In developing an effective system of counting and claiming, the CE will take the following actions:

1. Describe its counting and claiming system in the *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedure(s)*.[1]
2. Implement the counting and claiming system as written.
3. Provide staff with all necessary training, so they are ready to implement the written counting and claiming procedures.
4. Develop a system to retain all records related to counting and claiming and a method for documentation recovery or back up.

Information Box 1

Factors That Influence a Counting and Claiming System

Contextual Needs

- Size of the site/s
- Number of meals served
- Number of students participating in the program
- Percentage of students receiving free, reduced-price, and paid meals
- Grade levels involved

Meal Accountability Needs

- Point of service capabilities
- Prevention of overt identification
- Recording and controlling student eligibility
- Reimbursable meals served and counted
- Edits and internal checks
- Reporting procedures
- Personnel training and skills

Administrative Considerations

- Account balances maintenance
- Financial analysis such as budget and sales
- Program profit and loss status, including self-sustainability
- Daily operations
- Personnel training such as cost and time
- Support and updating processes
- Technology needs

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[1] See the Directions, Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedure(s) (Attachment B) for additional information on this form, located in the Texas Unified Nutrition Programs System (TX-UNPS) |Application Screen | Download Forms | SNP-131.

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Programs
The guidance provided in this section applies to the following programs:

- National School Lunch Program (NSLP)
  - Fresh Fruit and Vegetable Program (FFVP), also see *Administrator's Reference Manual (ARM), Section 12, Fresh Fruit and Vegetable Program (FFVP)* for additional information on claiming related to FFVP.
  - Afterschool Care Program (ASCP)
  - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

Effective Counting and Claiming System

An effective counting and claiming system will allow a CE to accurately report reimbursable meals or milk served by eligibility category—free, reduced-price, and paid. A CE's system for counting and claiming must include procedures that address the following aspects of its system:

- **Counting, Coding, and Recording Meals or Milk Served**—accurate method to determine the number of reimbursable meals served by eligibility category
- **Claiming Reimbursement for Meals or Milk Served**—timely and accurate method of submitting the number of reimbursable meals eligible for reimbursement
- **Retaining Documentation on Counting and Claiming**—well-organized method of maintaining documentation about the number of meals or milk served by eligibility category and the number of reimbursable meals or milk claimed[2]

To ensure that the CE has received the correct reimbursements, CEs should review its monthly *NSLP Claim for Reimbursement Summary* in the Claims module in TX-UNPS. If the summary does not reflect the correct reimbursements, the CE must contact TDA immediately.[3]

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[2] See the *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals; Section 8, Lunch Meals;, Section 10, Afterschool Snacks & Meals; Section 11, Summer Meals; Section 27, Residential Child Care Institutions* and *Section 13, Special Milk Program* for detailed information on a reimbursable meal or milk.

[3] For more information on Community Eligibility Provision (CEP), see *Administrator's Reference Manual (ARM), Section 5, Special Provision Options*.

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Definitions

For this section, the following terms will be used:

<table>
<tr><td>Benefit Issuance List | Master List of Program Participants | Roster of Program Participants</td><td colspan="2">List of students that may be served meals—The list must contain the following information:
– Student's name
– Eligibility status, including specific categorical program if eligibility is based on categorical program participation
– Date and notation of any changes in eligibility status
There are commonly two types of lists used by CEs: <u>master list</u> and <u>roster</u>. Generally, the difference between a <u>master list</u> and a <u>roster</u> is the amount of information recorded on the list. Lists may be paper or electronic.</td></tr>
<tr><td></td><td>Master List</td><td>Typically, a list of all students (free, reduced-price, and paid) enrolled at each site as well as detailed information that may be useful for program planning, eligibility determination, verification, or other needs[4] which commonly includes the following types of information:
– Student's name
– Student's date of birth
– Campus location
– Eligibility status
– Date of eligibility determination
– Date and notation of any changes in status Grade level
– Source of eligibility status (may be more than one)
– Teacher</td></tr>
<tr><td></td><td>Roster</td><td>Typically, a list of all students (free, reduced-price, and paid) enrolled at each site. Typically, a roster would include the following information:
– Student's name
– Eligibility status
– Date of eligibility determination
– Date and notation of any changes in status</td></tr>
<tr><td>CE Operating Days</td><td colspan="2">Days when the school nutrition program staff are preparing for or serving reimbursable meals and other days when conducting official operational tasks.</td></tr>
<tr><td>Equal Access</td><td colspan="2">Requirement that every student, no matter the eligibility, have equal access to a reimbursable meal in a line that does not overtly identify the student's eligibility status—If any line is not made available to all students, meals served on that line may not be claimed for reimbursement.</td></tr>
<tr><td>Identified Student Percentage</td><td colspan="2">Percentage used for Community Eligibility Provision (CEP) that is determined by dividing the number of <u>identified students</u> by the number of <u>enrolled students</u>.
(Number of Identified Students) ÷ (Number of Enrolled Students) = ISP</td></tr>
<tr><td>Identified Students</td><td colspan="2">Identified students are approved as eligible for free meals and are not subject to verification. Any student who has access to NSLP or SBP may be an Identified Student as long as the student is certified as eligible without an application.</td></tr>
<tr><td>Medium of Exchange</td><td colspan="2">Way or method students pay for meals during meal service—The medium of exchange must also ensure that there is no overt identification of a student's eligibility status.</td></tr>
<tr><td>Multiplier Factor</td><td colspan="2">Number that is multiplied by the ISP to calculate the CE's reimbursement rate. This factor adjusts the ISP for reduced-price meals that are not included in the ISP. The Multiplier Factor is 1.6.
(ISP) x (Multiplier Factor or 1.6) = Percentage of Meals Served Reimbursed at the Free Rate</td></tr>
<tr><td>Operating Month</td><td colspan="2">Month during which the CE performs operational tasks. This includes reasonable amounts of time to close down program operations at the end of the school year and time to set up program operations at the beginning of the year as well as each month for which claims were submitted. Days on which operational tasks occur may be for a full month of operation</td></tr>
</table>

[4] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on information that CEs may or may not collect from households.

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	or a partial month of operation.
Overt Identification	Any action the CE takes that may result in a student being recognized as eligible or potentially eligible to receive or certified for free or reduced-price meals including at the point of service (POS).
Point of Service (POS)[5]	Point in the food service operation where a determination can accurately be made that a reimbursable free, reduced-price, or paid meal has been served to an eligible student. This determination is made by the cashier or an appropriate serving staff member.
Receiving CE or Site	Term used to indicate a CE or site where a student visits and receives a reimbursable meal. This term is used specific to counting and claiming.
Reimbursement	Federal cash assistance, including advances, paid or payable to participating CEs for meals that (1) meet the meal pattern requirements and (2) are served to eligible students. CEs use the claiming and reporting process to get reimbursed for free, reduced-price, and paid meals served to eligible students.
Reimbursable Meal	Meal that offers all of the required meal pattern food items and/or food components in the required serving sizes for the student's age/grade group.[6]
Sending CE or Site	Term used to indicate the CE or site a student normally attends in reference to situations when a student visits another CE or site and receives a reimbursable meal. This term is used specific to counting and claiming.
TDA Operating Day	Monday through Friday from 8 a.m. to 5 p.m. central time, excluding weekends and days that TDA is closed to the public.
Total Enrollment Number for Schools Operating NSLP or SBP	Total number of students that accurately reflects the total number of students who have access to at least one NSLP or SBP meal service during the operational day and who are currently attending and enrolled[7] in a school operating NSLP or SBP.
Universal Free Feeding (Universal Feeding)	Site which offers reimbursable meals at no cost to all participants. Even though special provision sites provide free meals to all students, universal free feeding typically refers to situations where the CE has chosen to provide free reimbursable meals to all students, but submits claims based on each student's eligibility as determined each year by application or direct certification.
Without Further Application (NSLP/SBP Only)	Eligibility determination that is directly certified to receive meals benefits with no further action required by the student's household.

Counting, Coding, and Recording Meals Served

CEs are required to establish procedures for counting, coding, and reporting[8] the following information:

- An accurate daily count of the number of students receiving a reimbursable meal by category by type of meal served—one lunch, breakfast, and/or snack per student per day

[5] CEs should place all food components prior to the point of service. For additional information on this topic, see *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals; Section 8, Lunch Meals; Section 10, Afterschool Snacks & Meals;* and *Section 28, Residential Child Care Institutions.*

[6] See the *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals; Section 8, Lunch Meals; Section 10, Afterschool Snacks & Meals;* and *Section 27, Residential Child Care Institutions* for additional information on a reimbursable meal.

[7] As defined by Texas Education Code (TEC), Title 2, Subtitle E, Chapter 25, Subchapter A, Section 25.001—This regulation also provides additional information related to enrollment.

[8] See the *Records Retention* subsection in this section for information on requirements for documentation retention on this topic.

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- An accurate process for coding reimbursable and non-reimbursable meals served to students by eligibility category—free, reduced-price, or paid
- Processes or common practices that prevent overt identification of student eligibility status

Any CE that needs assistance in defining its needs and identifying the most appropriate system for counting, coding, and recording meals should contact its regional education service center (ESC) child nutrition specialist or TDA.

Point of Service (POS)

The point of service (POS) must be located at the end of the service line. If a site is not able to put all the food components (e.g., fruit salad bar) prior to the POS, the CE should indicate the alternative POS process on *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures*.[9]

Charge Policy

In recent guidance related to unpaid meal charges, USDA stated that CEs may find implementing charge policies easier if the cashier is located at the beginning of the service line. CEs may implement this practice; however, the CE must still have a method to identify any instance where a student exiting the service area is not served a reimbursable meal.

Eligibility Data

A CE's POS system must maintain accurate information about each student's eligibility, including, but not limited to, a specific designation by the categorical program if the student's eligibility is based on categorical program participation. If a student's eligibility changes mid-year, the POS system must have a method for showing when the change was made and why.

Regardless of where meals are served, an effective point of service (POS) meal counting system must be in place to properly count and document the meals served whether in the cafeteria, classroom, or on a field trip.

> Counts taken by any method that does not link the student to the reimbursable meal the student is given or selects at the POS are likely to be problematic.

Working with staff, teachers, and administrators on an ongoing basis is the key to maintaining a successful POS system. The CE is responsible for making sure that the cashier or staff member assigned at the point of service (POS), as well as a substitute cashier or staff member, is able to determine if the meal the student is served meets meal pattern requirements for a reimbursable meal.[10]

The CE's counting, coding, and recording procedures begin with the actions and observations of the cashier or a staff member working at the POS—the end of the serving line.[11] The cashier is responsible for the following:

1. Determining if a reimbursable meal has been selected by each student.

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[9] Available in the Texas Unified Nutrition Programs Systems (TX-UNPS) | Applications | Attachment B.

[10] See the *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals; Section 8, Lunch Meals; Section 10, Afterschool Snacks & Meals*; and *Section 28, Residential Child Care Institutions* for detailed information on a reimbursable meal.

[11] The CE must indicate the location of its POS in its *Policy Statement for Free and Reduced-Price Mails, Attachment B: Meal Count/Collection Procedures*.

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2. Using the CE's coding and counting system to record the meal served to the student.

3. Ensuring that only one reimbursable meal is served to each student during each meal service, except for second breakfasts for SSO as appropriate.

An accurate reimbursable meal count may be achieved through a variety of methods—manual or automated. In recent years, many CEs have chosen to implement POS systems that incorporate technologies such as personal identification numbers (PIN), biometrics, and other individual student identifiers. If an automated system is used, the CE must have a manual back-up system[12] in place in case of mechanical failure.

Community Eligibility Provision (CEP) and Provision 2 (P2) Point of Service (POS) Systems

When operating CEP or P2, CEs are required to maintain a point of service (POS) system that provides an accurate count of reimbursable meals served to students at each meal service. This includes having a system that meets the following criteria:

- Method to monitor serving lines to ensure that all meals claimed for reimbursement meet the meal pattern requirements for a reimbursable meal.
- Method to ensure that reimbursement is claimed for only one reimbursable meal per student per meal, except for second breakfasts for SSO as appropriate. The CE must be able to associate each claimed meal with the student receiving the reimbursable meal.

When implementing CEP, USDA encourages school systems to maintain an accurate POS system that has a proven track record of reliability and security.

Master List or Roster of Program Participants

Maintaining an accurate master list or roster of students—free, reduced-price, and paid—who participate in the meal program is essential to the CE's efforts to provide an accurate POS count of meals served by eligibility category at each site. The master list or roster is used by the CE to match a specific student's eligibility status to the monthly claim for reimbursable meals served and to complete the daily participation report.

The master list or roster provides the following information to assist the CE in submitting reimbursement claims:

- Highest number of eligible students that may be served meals—free, reduced-price, and paid—at a particular site
- Any change of the eligibility status for any participating student
- Date and initials of the person recording any change of eligibility status for any participating student
- Timeliness of making changes in status eligibility
- Record of benefit issuance that ensures that every student is receiving the benefits to which he or she is entitled
- Designation of categorical eligibility, if applicable.

[12] A back-up system includes, but is not limited to, using the roster or master list.

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Master lists or rosters are usually alphabetical for simplicity; however, CEs may use other classification strategies including grade groups, class, or meal period.

Coding

An effective coding method is central to reporting accurate meal counts by eligibility categories. CEs must describe their procedures for coding in the *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedure(s).*[13]

Standards for Coding

Even though CEs are not required to use a specific coding method, each CE's coding method must meet the following two standards:

1. Protect students' privacy and prevent overt identification.
2. Allow the CE to link the meal served to an individual student to the student's eligibility category.

Strategies to Prevent Overt Identification

CEs must assure that a student's eligibility status is not disclosed at any point in the process of providing free or reduced-price meals.

The following strategies are often used to prevent overt identification:

- Change the medium of exchange coding system yearly to prevent the use of a previous year's tickets and tokens.
- Use a code that includes a combination of multiple letters or numbers (See *Information Box 2, Coding Suggestions*.)
- Shield the view of lists, whether paper or on a computer, from the sight of students and adults.

Information Box 2

Coding Suggestions

Series
1 through 1,999 free; 2,000 through 3,999 reduced-price; 4,000 through 5,999 paid

Student Number
Multi-digit number ending in 0 or in an odd or even number

Variations in Formatting
Variations in signatures, placement of date or ticket distributor, such as Mary Smith, Mary J. Smith and M. Smith

Subtle Differences
Differences in printing, such as capital letter, period, spacing of a line or differences in underlining

Number of Digits
Four digits for free, five digits for reduced-price or six digits for paid

Computer-Coded Student ID Numbers
ID numbers assigned by the school and identified in the approval process as free, reduced-price, or paid

Coding Methods

The following coding methods are often used by CEs, but CEs may develop a different method as long as it meets the standards for coding:

Verbal Identifier/Cashier List System

Each student is given a verbal identifier (such as a name or number) to give to the cashier (or staff member) at the POS. The cashier records the student's meal as reimbursable or non-reimbursable on a master list or roster (manual or electronic system) that is the source for (1) determining the student's eligibility status and (2) reporting or claiming the student's

[13] See *Administrator's Reference Manual (ARM), Section 2, Program Application & Agreement* for additional information on this form.

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meal as reimbursable or non-reimbursable.

For Example:

1. Student Name: The cashier records the meal served by the student's name on a list as he or she passes the point-of-service.
2. Roster Number: The student gives the cashier her or his number, and the cashier checks the meal the student was served beside the number.

Advantage of Method	Disadvantage of Method
• There is nothing to lose or be destroyed. • The same document is used to tie the student's identifier directly to the eligibility coding system.	• Identifier can be used by another student. • Students may forget their numbers and slow down the line. • Coded rosters can be time consuming to use for manual counting systems.

[NOTE: If the cashier or staff member at the POS uses a highlighter to mark students' names, the highlighter color must be the same for free, reduced-price, or paid to prevent overt identification.]

Tickets or Tokens

All students—those who prepay and those who receive free, reduced-price, and paid meal benefits—receive a ticket or token that is later redeemed for a reimbursable meal. To prevent overt identification, all students, no matter the eligibility category, must use the ticket or token at the point of service to receive a meal if this method is used. Tickets or tokens may be issued or sold in the cafeteria, principal's office, or classroom in advance of the meal service on a daily, weekly, or monthly basis. Students receiving free and reduced-price meal benefits must be issued a ticket or token identical to the ones issued to students who prepay, except for the code that identifies the eligibility category.

For Example:

1. The CE uses a coded ticket system. The tickets for all students look the same, but a series of numbers at the bottom codes the student as eligible to receive free, reduced-price, or paid meals. These tickets may be scanned or a coded number may be entered at the POS.
2. The CE uses an auto tabulator or clicker (with three separate counters). As students present tickets at the POS, a staff member records the meals served on the appropriate counter.
3. Each ticket issued by the CE has a coded tear-off section which has a student number or identifier. As a student passes the POS, a perforated section is torn off. A staff member notes each tear off as a reimbursable or non-

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reimbursable meal. The tickets are later sorted to create a daily count of free, reduced-price, and paid meals.

Advantage of Method	Disadvantage of Method
• When collected at the point of service, this method provides a means of physically counting the meals by eligibility category.	• Tickets can be destroyed, transferred, lost, stolen, or sold. • In large districts, this may be cumbersome. • If not coded properly, may result in overt identification.

Coded Identification (ID) Cards.

All students are issued a coded ID with a coded bar. As students pass through the point of service, their cards are scanned, or identification numbers are manually entered into a keypad/POS system. These cards may also serve as IDs for other purposes.

For Example: The first day of school students are given a coded picture ID on a lanyard. The students are required to wear their IDs throughout the day. At mealtimes, each student's ID is presented and scanned at the POS. As each ID is scanned, the staff worker records the meal as reimbursable or non-reimbursable. The software program used by the CE automatically counts the reimbursable meals by eligibility category as each meal is recorded.

Advantage of Method	Disadvantage of Method
• Cards are not easily transferred to another student if photo is on the card. • Meal information can be incorporated into the student's ID card, a cost saving, accurate, and time saving method. • A coded bar line prevents overt identification on the line.	• Cards can be lost, stolen, or destroyed. • Some types of cards or unlinked readers prevent multiple uses during the same meal.[14] • Startup or replacement cost may be high.

Prohibited Coding Practices

The following coding practices are prohibited:

- Using a color-coding system that allows students to be identified by eligibility category
- Using single-symbol or single-digit or letter coding that has obvious identifiers, such as *F*, *R*, *P*
- Assigning students to lines, groups, seating areas, or mealtimes based on their eligibility status
- Limiting a student's choice of meal based on her or his eligibility status
- Using any system that overtly identifies students' eligibility category
- Basing the count of reimbursable meals solely on a visual identification or knowledge of the students' eligibility categories

[NOTE: Even though this system may work in some instances, a backup system must be established for other cashiers to determine student's eligibility and whether the meal chosen met the requirements to be reimbursable.]

[14] A student may purchase a reimbursable meal and then purchase an a la carte item during the same meal service.

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Unacceptable Meal Counting Methods

Counts taken by any method that does not link the student to the meal served at the POS are not acceptable. To be creditable, cafeteria staff need to verify that each student was served a reimbursable meal. Unacceptable counting methods include the following:

- A La Carte. Coding and counting food items sold independently of the reimbursable meal as reimbursable—CEs must account for a la carte items sold distinctly from reimbursable meals because a la carte items cannot be claimed for reimbursement.
- Attendance Counts. Using the number of students in attendance as a meal count—This method does not provide a verifiable or accurate count of reimbursable meals served.
- Backing into the Number. Any method of counting reimbursable meals that uses summary totals instead of a method for the cashier to count the individual meal served to each student.

  For Example: The cafeteria staff prepare 100 trays; 20 trays remain unserved at the end of the meal—therefore, the cafeteria served 80 reimbursable meals.
- Cash Totals. Using cash totals to determine the number of meals served. This method accounts for cash received but does not provide a verifiable count of reimbursable meals served by category. In addition, this method allows cash collection errors to translate into meal count errors.
- Category/Cash Back-out System. Calculating the meal count by subtracting the number of meals from another category—CEs must count the number of meals served in each category: free, reduced-price, or paid categories at the point of service.
- Classroom Counts. Counting the number of students in the class who indicate that they intend to eat a meal prior to the meal service—Students intending to eat may not actually do so, and there are no controls at the point of service to count reimbursable meals.
- Counting Off Site. Counting the number of meals delivered to the school—The number of meals delivered to a school is not necessarily the number of meals that were actually served.
- Ineligible Students. Counting a student as eligible for free or reduced-price meals who has not been certified as eligible—CEs must certify a student's eligibility before the student's meals can be claimed for reimbursement. A student whose eligibility has not been certified based on income or categorical program participation must be counted and claimed as a paid meal.

  However, the CE has two options in assigning the effective date of an eligibility determination—date of receipt or date of approval. If the CE chooses to use the date of receipt, it may amend a previously submitted claim for meals served after date of receipt as long as the amended claim is filed within the required timeframe.[15]

[15] See *Effective Date for Determination* subsection in this section or the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on this topic.

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- Not Counting at the POS. Counting the free, reduced-price, or paid meals at a location other than the point of service—Unless approved by TDA, the only place an accurate count of reimbursable meals can be made is at the point where it can be determined that the meals are actually reimbursable. CEs must indicate the process used at the POS to count and claim reimbursable meals on the *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedure(s)*.[16]
- Prepaid/Charged Meals. Counting the number of prepaid or charged meals on a day other than the day meals were served—When students either prepay or charge their meals, these meals must be counted on the day and at the point of service where the student is served the meal, not on the day that the prepaid meal was purchased or the charged meal was repaid.
- Seconds. Counting a student's second meal as a reimbursable meal—CEs can claim only one meal per meal type[17] per eligible student per day. If seconds (or a second meal) is served to a student, the CE must treat these items as a la carte sales.
- Tray or Entree Counts. Counting the number of trays or entrees used during the meal service—This method does not provide an accurate count of reimbursable meals—only of trays and entrees. Each meal must be monitored at the point of service to ensure that the meals served are reimbursable.

Medium of Exchange

The medium of exchange is the way students pay for meals.[18] The most effective CEs will link the medium of exchange to its coding system for recording the meal served to each student and that student's eligibility status. This method ensures that claims for reimbursable meals are counted correctly.

Claiming Reimbursement for Meals and Milk Served

CEs submit claims for reimbursement through the Texas Unified Nutrition Programs System (TX-UNPS). When the CE's authorized representative submits claims for the CE, that person is responsible for

1. ensuring that the reimbursement claim is based on an accurate number of meals and milk served to eligible students in each of the three eligibility categories—free, reduced-price, and paid meals or free or paid milk—and
2. ensuring that the cashier or other staff member is knowledgeable and skilled in recognizing a reimbursable meal.

Reimbursable meal counts must be counted at the point of service (POS) and reported in TX-UNPS as required by program (NSLP, SBP, ASCP, SSO, SFSP, or CACFP At Risk).

[16] See *Administrator's Reference Manual (ARM), Section 2, Program Application & Agreement* for additional information on this form.

[17] For each eligible child—for NSLP, one lunch per day; for SBP, one breakfast per day, or one Afterschool Care Program (ASCP) snack; for Seamless Summer Option (SSO), two meals per day for all types of sites except migrant or camp sites. SSO migrant or camp sites may be reimbursed for three meals per day. See *Administrator's Reference Manual (ARM), Section 10, Afterschool Snacks & Meals,* and *Section 11, Summer Meals* for additional information on this topic.

[18] See *Administrator's Reference Manual (ARM), Section 19, Meal Pricing* for additional information on mediums of exchange, including methods of payment and charging.

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When the CE submits the number of meals served in TX-UNPS to claim reimbursement, the CE must use accurate data. The number cannot be an estimate of meals served.

Reporting Accurate Total Enrollment Numbers for Schools Operating NSLP or SBP

In addition to SNP purposes, reimbursement claim data reported to the Texas Department of Agriculture (TDA) is used by the Texas Education Agency (TEA) when calculating the annual state compensatory education (SCE) allotment.[19] To ensure the accuracy of SCE allotment for schools operating NSLP or SBP, the number of enrolled students reported in Question G3 of the NSLP Site Claim Report[20] must be accurate and reflect the actual total student enrollment for the school operating NSLP or SBP. This requirement applies to contracting entities (CEs) that operate standard counting and claiming, Community Eligibility Provision (CEP), and Provision 2 (P2).

Actual Total Enrollment for a School Operating NSLP or SBP Includes

For schools operating NSLP or SBP, total enrollment includes all students (1) who are currently attending and enrolled[21] in a school and (2) who have access to at least one National School Lunch Program or School Breakfast Program meal service daily. Total enrollment includes all enrolled students, including pre-kindergarten students, who receive meals through the school meal program and all enrolled students who choose not to participate.

Actual Total Enrollment for a School Operating NSLP or SBP Does Not Include

For schools operating NSLP or SBP, total enrollment does not include students who have withdrawn or students who are not currently in attendance and are not currently enrolled.[22] Even though a student's eligibility may be carried over for the first 30 operating days from one year to the next, a student who is not attending or enrolled in the school is not counted as a carryover student. In this case, total enrollment must not include a student who attended and was enrolled in the previous school year unless that student is also attending and enrolled in the current year.

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[19] The method for calculating state compensatory education allotment was changed in the Texas 2019 Legislative Session. TEA will release updated guidance on the new methodology in the future.
[20] Reimbursement claims are completed and submitted in the Texas Unified Nutrition Programs System (TX-UNPS).
[21] As defined by Texas Education Code (TEC), Title 2, Subtitle E, Chapter 25, Subchapter A, Section 25.001—This regulation also provides additional information related to enrollment.
[22] As defined by Texas Education Code (TEC), Title 2, Subtitle E, Chapter 25, Subchapter A, Section 25.001 provides additional information related to enrollment.

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Total Enrollment, Significant Number of Eligibility Changes During a Month

When a CE moves a significant number of students from one eligibility category (free, reduced-price, and/or paid) to another eligibility category at the end of the carryover period or at the end of verification process, reporting the highest monthly participation total number for each eligibility category[23] may trigger an error message in TX-UNPS. This error occurs because a significant number of students were in one eligibility category for part of the month and in another eligibility category for another part of the month.

For Example:

If there is a significant change for the number of students eligible for free meals:

Highest Number of Students Eligible for Free Meals on Different Days of the Month	Number of Operating Days for the Highest Number
2,990	6
3,001	6
3,103	3
2,884	1
2,801	3
2,750	1
2,758	3

In this example the range of highest daily number of students eligible for free spans 2,750 to 3,103.

Reporting a variance of this significance may trigger an error.

To resolve this issue, take the following steps.

Step 1: Verify that number of meals claimed for each category is accurate for each day.

[NOTE: This calculation will not impact the number of meals claimed by category for each operating day. It will only impact the highest daily total of students in the affected category/ies.]

Step 2: Add together the daily total of students eligible for each day for the category for the claim month.

Step 3: Divide the total from Step 2 by the number of operating days by category.

Step 4: Use the result (the average) for each category as the highest daily total number for the month.

For Example:

Using the data from the significant change to student with free eligibility above, the calculation for the free total enrollment number would be…

Step 2: Add together the daily total of students eligible for each day for the category for the claim month.				
Highest Number of Students Eligible for Free Meals on Different Days of the Month		Number of Operating Days for the Highest Number		Subtotal for Number of Operating Days
2,990	x	6	=	17,940
3,001	x	6	=	18,006
3,103	x	3	=	9,309
2,884	x	1	=	2,884
2,801	x	3	=	8,403
2,750	x	1	=	2,750

[23] The highest total enrollment numbers and eligibility numbers are reported in the claims' module in TX-UNPS, questions G1, G2, and G3.

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2,758	x	3	=	8,274	
Total of Subtotals for Number of Operating Days				67,566	
Step 3: Divide the total from Step 2 by the number of operating days.					
Total of Subtotals		Number of Operating Days		Average Total Highest Number of Students Eligible for Free Meals	Highest Total Enrollment for the Free Category to Be Recorded in TX-UNPS
67,566	÷	23	=	2,937.65	**2,938**[24]

If changes are made to all three categories—free, reduced-price, and paid, use the calculation directions for Steps 2 and 3 for the free and reduced-price categories first. Then, subtract the combined free and reduced-price total from the total student enrollment to calculate the highest number of students eligible for paid meals.

For Example:

Using the data from the previous two examples, the calculation for the paid total enrollment would be....

If there are changes made to all three categories, first calculate the combined free and reduced-price highest total enrollment to be recorded in TX-UNPS.				
Highest Total Enrollment for the Free Category to Be Recorded in TX-UNPS		Highest Total Enrollment for the Reduced-Price Category to Be Recorded in TX-UNPS		Combined Free and Reduced-Price Total
2,938	+	829	=	3,767

Then, subtract the combined total from the total student enrollment to get the highest total enrollment for the paid category.				
Total Student Enrollment		Combined Free and Reduced-Price Total		Highest Total Enrollment for the Paid Category
4,651	–	3,767	=	**884**

Standard Counting and Claiming for Reimbursable Meals

When a CE uses standard counting and claiming, the CE submits the total number of reimbursable meals served for the month for each eligibility category—free, reduced-price, and paid—in TX-UNPS.

Reimbursement Rates

Reimbursement rates are different for each category of meal benefit (free, reduced-price, or paid) and for each type of meal served (lunch, breakfast, or snack).

TDA posts the current reimbursement rates at *www.SquareMeals.org* and in TX-UNPS

Standard Claiming Calculation

For standard claiming sites, TX-UNPS applies the data on participant eligibility entered by the CE each month to automatically calculate the claiming percentage for each eligibility category—free, reduced-price, or paid—for the month.

[24] When the percentages are applied, the results may include partial meals for one or more of the eligibility categories. If this occurs, standard rounding procedures (five and above round up; four and below round down) are applied to reimbursable meals to be claimed for each category. After rounding is completed, TX-UNPS will automatically make sure that the total number of meals claimed in the categories matches the total number of reimbursable meals the CE submitted for the month. If an adjustment is needed, it will be made to the paid category.

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Standard Claiming, Rounding

The claiming percentages are carried four decimal places and applied to the total number of reimbursable meals claimed for the month.

When the percentages are applied, the results may include partial meals for one or more of the eligibility categories. If this occurs, standard rounding procedures (five and above round up; four and below round down) are applied to reimbursable meals to be claimed for each category.

After rounding is completed, TX-UNPS will automatically make sure that the total number of meals claimed in the categories matches the total number of reimbursable meals the CE submitted for the month. If an adjustment is needed, it will be made to the paid category.

Special Provision, Counting and Claiming for Reimbursable Meals

If a CE is operating CEP or P2 in a non-base year, the claiming percentage for each eligibility category—free, reduced-price, or paid as appropriate for the special provision—is established prior to CE submitting meal counts.[25] Each month the CE operating CEP and P2 in a non-base year submits the total number of reimbursable meals served by type of meal, and the system automatically applies the appropriate claiming percentage for each category.

The CE reports the total count of reimbursable meals served in TX-UNPS. When the CE enters the total number of reimbursable meals served into TX-UNPS for reimbursement, the system will automatically apply the percentages of meals to be reimbursed at the free and paid rates.

For Example: If a CEP CE served 25,000 meals during the month of November and had a percentage of reimbursement at the free rate of 91.2% (ISP of 57% x 1.6) and a paid rate of 8.8% as follows.

91.2%	x	25,000	x	Free Rate	+	8.8%	x	25,000	x	Paid Rate	=	Total Reimbursement

Even though the CE submits monthly reports, CEs must perform these counts daily to ensure accuracy. See the *Daily Record/Accuclaim Form* and *Edit Check Record* subsections in this section for additional information on maintaining accurate counts. If the CE has both CEP and non-CEP locations, the CE will use its regular methods for counting and claiming for any location not operating CEP.

If a site adopts CEP after July 1, the CE cannot retroactively apply CEP claiming percentages for reimbursable meals that were previously claimed under standard claiming at the site.

Special Provision Claiming, Rounding

The CE claiming percentage for each category is carried two decimal places and is rounded up or down to one decimal place using standard rounding procedures (five and above round up; four and below round down). Once the claiming percentages are rounded to one decimal place, the paid percentage is adjusted if the sum of the percentages does not equal 100%. For P2 sites that annualize their claiming percentage, see the *P2 Claiming, Percentage for Annualized Claiming Percentages for Non-Base Years* subsection in this section.

When the percentages are applied, the results may include partial meals for one or more of the eligibility categories. If this occurs, standard rounding procedures (five and above round up; four and below round down) are applied to reimbursable meals to be claimed for each category.

[25] See the *Special Situations, Claiming* subsection in this section and the *Administrator's Reference Manual (ARM), Section 5, Special Provision Options* section for additional information on this topic.

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After rounding is completed, TX-UNPS will automatically make sure that the total number of meals claimed in the categories matches the total number of reimbursable meals the CE submitted for the month. If an adjustment is needed, it will be made to the paid category.

CEP, Claiming Percentage for Single Sites

The claiming percentage for a single site is based on the site's total number of students identified as eligible without application (identified students) divided by the site's total enrolled students:[26] The result of this calculation is called the identified student percentage (ISP). The ISP is multiplied by the *multiplier factor* to calculate the free claiming percentage. The maximum free claiming percentage is 100 percent. The paid claiming percentage is calculated by subtracting the free claiming percentage from 100 percent. The maximum combined free and paid claiming percentage for CEP is 100 percent.

Multiplier Factor. USDA has set the multiplier factor as 1.6.

CEP Claiming Percentage for Grouped CEP Sites

The claiming percentage for a group of CEP sites is based on the sum of the total students identified as eligible without application (identified students) divided by the sum of total enrolled students for the group of sites:[27] The result of this calculation is called the identified student percentage (ISP). The ISP is multiplied by the *multiplier factor* to calculate the free claiming percentage. This calculation is demonstrated in the *CEP Claiming Percentage for Grouped Sites Calculation Chart*. The maximum free claiming percentage is 100 percent. The paid claiming percentage is calculated by subtracting the free claiming percentage from 100 percent. The maximum combined free and paid claiming percentage for CEP is 100 percent.

CEP Claiming Percentage for Grouped Sites Calculation Chart

Total Identified Students (Sum identified students all sites)	÷	**Total Enrollment** (Sum enrolled students all sites)	=	**Identified Student Percentage** (ISP)
Identified Student Percentage (ISP)	x	**Multiplier Factor** (1.6)	=	**Free Claiming Percentage** (Maximum % of 100)[1]
100 %	–	**Free Claiming Percentage**	=	**Paid Claiming Percentage**

[26] See *Administrator's Reference Manual (ARM), Section 5, Special Provision Options* for additional information on this topic and see the *Special Situations, Claiming* subsection in this section for additional CEP claiming guidance.

[27] See *Administrator's Reference Manual (ARM), Section 5, Special Provision Options* for additional information on this topic.

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CEP Increased Identified Student Percentage

In the second, third, and fourth year of the CEP cycle, TX-UNPS will automatically apply the highest identified student percentage based on the data recorded in the March CEP report for the previous year.

For Example:

	ISP, Previous Year's CEP Report	Claiming Percentage, Previous Year's CEP Report	Claiming Percentage, Claims Applied
School Year 1	56.89	91.024	91.024
School Year 2	55.98	89.568	*91.024
School Year 3	58.32	93.312	93.312
School Year 4	58.89	94.224	94.224

* The claiming percentage from the prior year continues to apply if the CE's ISP decreases during the second, third, or fourth year of the cycle unless the CE chooses to restart the 4-year cycle at a lower or higher claiming percentage.

TDA will monitor increases in ISP each year to determine if additional actions are required to validate the ISP data. TDA will contact a CE if additional actions are required.

P2 Claiming, Base Year

During the P2 base year, standard procedures for counting and claiming reimbursable meals are followed by the CE. Each day the CE counts the number of reimbursable meals served at each P2 school by eligibility category—free, reduced-price, and paid.

P2 Claiming, Non-Base Years

During the non-base year, when the CE submits the total number of reimbursable meals served each month, TX-UNPS automatically applies the blended rate to that number. The blended rate is the assigned percentages for free, reduced-price, and paid meals established the based year. The claiming percentages for each category will not vary from month to month. See the *P2 Claiming, Percentage for Annualized Claiming Percentages for Non-Base Years* subsection in this section for additional information on claiming related to P2.

P2 Claiming, Percentage for Annualized for Non-Base Years

CE may elect to annualize its claiming percentages by site or CE-wide using the blended rate established during the base year. The blended rate is the assigned percentages for free, reduced-price, and paid meals established in the base year. To exercise this option, the CE must designate participation in the TX-UNPS Application Packet screen for P2 during the application renewal process.

Each month the CE records the total number of reimbursable breakfasts served and total number of reimbursable lunches served at all P2 sites in TX-UNPS. The TX-UNPS system applies the percentage (in decimal form) for each category using the base year claims. The CE does not have to enter claim counts by individual eligibility category—free, reduced-price, or paid.

When the percentage is annualized, the percentage is converted to a decimal carried to the sixth place. If the three eligibility percentages, when converted, do not add to 1.0000 (because the decimals are carried to the 4th place), the paid percentage will be adjusted to make the total of the three categories equal 1.0000.

Annualized Percentage, Schools Adopting Provision 2 on a Different Cycle

A CE may add new Provision 2 schools during the application renewal process. In these cases, TDA manually records the annualized percentages if

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1. The CE uses the same data sources for the new P2 school as an existing P2 school.
2. The CE annualizes P2 schools CE-wide/districtwide. The CE must notify TDA to annualize claiming when a new P2 school is added that meets these conditions.

Annualized Percentage and Delayed Operation of P2

If a CE chooses delayed operation, the annualized percentage does not include the month of delay in the calculation for an annualized percentage.

Special Situations, P2 Claiming

Additional Reimbursements Under P2

CEs or sites qualifying for performance-based reimbursement, Severe Need Breakfast, or Severe Need Lunch[28] reimbursement will continue to receive the added reimbursement if operating P2.

Delayed Operation, First Claiming Period

If delayed operation for the first month of operation is approved by TDA, the first claiming period of the school year is not considered part of the base year. At the end of the school year, when the CE's monthly claim reports are annualized, that month is not included in the calculation. After the base year, all months of operation are included in annualization.

Designated Staff to Submit Reimbursement Claims

When the CE completes its application and the *Security Authority for Users Access Manager Form (FND-135)*,[29] it designates an authorized representative to submit claims for the CE. The CE's representative is given a user identification (user ID) and password to access the electronic claims system in TX-UNPS. By entering the user ID and password, the authorized representative is providing a legal signature on each claim for reimbursement. For this reason, the CE must restrict access to the user ID and password to those individuals with delegated authority to sign claims on the CE's behalf.

TDA also recommends that CEs have a back-up person designated to submit claims. The back-up person must also be an authorized representative for the CE. Having at least one other staff member as an authorized representative who can submit claims may lessen the chance of submitting a late claim that may be denied because of late submission. The absence of the regularly assigned staff person to submit claims within the required timeframe is <u>not</u> automatically an acceptable reason for submitting a late claim.

[NOTE: Each authorized representative must have his or her own user ID and password. Sharing user IDs and passwords is not allowed even if the individual is also an authorized representative.]

[28] Severe need lunch is also called two-cent differential.
[29] Form available at *www.SquareMeals.org*.

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Special Situations, Claiming

The following guidance may assist a CE in addressing special situations in claiming for reimbursement:

Additional Reimbursements

CEs or sites qualifying for performance-based reimbursement, Severe Need Breakfast, or Severe Need Lunch[30] reimbursement will continue to receive the added reimbursement if operating CEP or P2.

All Cash Lines

Meals and milk served on an all-cash line may not be claimed for reimbursement even if the same items are offered on another serving line. If certain lines are not made available to all children, including those receiving free or reduced-price meals or free milk and meals, the meals or milk served on those lines must not be claimed for reimbursement.

Alternative Schools or In-School Suspension

CEs operating alternative schools or in-school suspension (ISS) must establish procedures for maintaining eligibility determinations and counting and claiming reimbursable meals. Sometimes, these procedures will vary from those established for regular schools. In all cases, the CE must have a procedure to ensure that only reimbursable meals served to students are claimed.

Whether the alternative school or in-school suspension is located at another site in the CE or at a site in another CE, the site where the student receives the meal and the sending site must agree on which site will claim the meal. See the *Visiting Students* subtopics that follow for additional information on how these students may be claimed.

CEP, Return to Normal Counting and Claiming

If a CE or site stops operating CEP midyear or at the end of the school year, the CE must switch to normal counting and claiming procedures which includes taking applications for all students who are not directly certified as participating in one of the categorically eligible programs.[31]

CEP, Vended Meal Claiming

If a CE operating CEP also provides vended meals to other CEs or schools from other CEs, the meal counts from the other CEs cannot be included in the CE's CEP claims.

Meals Prepared for Field Trips

Reimbursable meals consumed on school-sponsored, supervised field trips may be claimed for reimbursement since the meals are prepared by the SNP department and served and consumed as part of a school-related function. A list, roster, or other method of claiming the meals must be used to record the meals students were served. The CE must have a procedure to ensure that only reimbursable meals served to students are claimed.

Non-School Age Children

Younger children who are not school age and who visit the school are not eligible for reimbursable meals.

Offsite Reimbursable Meal

If students attend an offsite facility that does not participate in a meal program, a school may claim reimbursable meals for students enrolled in the school that are served by the

[30] Severe Need Lunch is also called Two-Cent Differential. See the *Severe Need Breakfast Reimbursement for Reimbursable Meals* or *Severe Need Lunch Reimbursement for Reimbursable Meals* subsections in this section for additional information on this topic.

[31] See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* and *Section 5, Special Provision Options* for additional information on this topic.

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SNP during the school's normal mealtime while the students attend offsite work-study or alternative academic program classes. Reimbursable meals in this type of situation may include, but are not limited to, a takeout or sack lunch. The CE must have a procedure to ensure that only reimbursable meals served to students are claimed and must have a method in place to count each reimbursable meal served as the meals are dispensed.

If a CE distributes reimbursable meals to students for offsite consumption prior to or during the meal service time for students to consume in a non-congregate circumstance, the reimbursable cannot be claimed. To claim these meals, a staff member must take the following actions:

(1)				(2)
Must distribute the meals at a congregate feeding location (typically, the offsite location).	**or**	Must distribute the meals to students who will then take the meals to the congregate feeding location.	**and**	Count each reimbursable meal as it served

Students in Special Off-Campus Programs

A student who is enrolled at a home campus and attends class at an off-campus location during mealtimes may participate at the home campus meal service on days when the special program is not in session. In these cases, the home campus may claim meals for reimbursement. The CE must have a procedure to ensure that only reimbursable meals served to students are claimed.

Student Workers

All meals claimed for student workers should be claimed based on the student's eligibility category. However, the student does have the option to pay for meals even if the student is eligible for free or reduced-price meals. In cases where students who are eligible for free or reduced-price meals choose to pay for meals, the meals must be claimed at the paid rate.

Visiting Students, Different CEs, Non-Special Provision Sites

There are times when students from one CE (*sending CE*) are served meals by another CE (*receiving CE*) for either a short-term or a long-term period of time.

For Example: Students from a sending CE are served reimbursable meals by a receiving (hosting) CE during a basketball tournament.

The receiving CE may claim reimbursement for meals served to visiting students,[32] or the sending CE may claim reimbursement. The two CEs must agree on which CE will claim reimbursement for visiting students. Both CEs cannot claim reimbursement for the same meal for the same student.

- If the sending CE does not provide eligibility information or if the student is from a CE that does not participate in the SNP, the receiving CE may claim reimbursement for the meals served to the students in the paid category. The sending CE cannot claim reimbursement for the student's meal if the receiving CE claims the meal.
- If the sending CE provides the receiving CE with a student's eligibility, the receiving CE may claim reimbursement by eligibility category. The sending CE cannot claim reimbursement for the student's meal if the receiving CE claims the meal.

[32] Include this information in daily record or Accuclaim report as described in the *Daily Record/Accuclaim Form* subsection in this section.

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- If the receiving CE charges the sending CE for the price of the student's meals to recoup the cost, the sending CE may claim the student's meal. The sending CE cannot claim reimbursement for the student's meal if the receiving CE claims the meal.

Visiting Students, Same CE, Non-Special Provision Sites

When a student from one site visits another site in the same CE and is served a meal, the two sites will determine ahead of time how the meals will be claimed, so the meal is claimed by one site only. The student's meal is claimed according to the student's eligibility determination.

Visiting Students, Universal Free Feeding Site (Non-Special Provision) in the Same CE

When a student from a universal free feeding site[33] visits a standard counting and claiming site in the same CE, the two sites will determine ahead of time how the meals will be claimed, so the meal is claimed by one site only. The student's meal is claimed according to the student's eligibility determination.

Visiting Students, Universal Free Feeding (Non-Special Provision) Site in Another CE

When a student from a universal free feeding site visits a standard counting and claiming site in another CE, the two CEs will determine ahead of time how the meals will be claimed, so the meal is claimed by one site only. The student's meal is claimed according to the student's eligibility determination. If the sending CE does not provide the eligibility information, the meal must be claimed as paid.

Visiting Students, Special Provision Sites

Special Provision eligibility is associated with the site, not the student. The sending and receiving sites will determine ahead of time how the meals will be claimed. In all cases, only one site may claim the reimbursable meal for the student.

If a student attending a Non-Special Provision Site visits a Special Provision site in a different CE…	The receiving site must serve the student a reimbursable meal at no charge. The receiving site may claim the reimbursable meal at the free rate or the sending site may claim the reimbursable meal at the sending site based on the student's eligibility determination—free, reduced-price, or paid. The sending site cannot claim reimbursement for the student's meal if the receiving site claims the meal.
If a student attending a Special Provision site visits another Special Provision site in the same CE…[34]	The receiving site must serve the student a reimbursable meal at no charge. The receiving site may claim the meal as free. The sending site cannot claim reimbursement for the student's meal if the receiving site claims the meal.
If a student attending a Special Provision site visits another Special Provision site in a different CE…	The receiving site should serve the student a reimbursable meal at no charge. The receiving site may claim the reimbursable meal as free. The sending site cannot claim reimbursement for the student's meal if the receiving site claims the meal.

[33] In this case, universal free means the CE has chosen to provide meals at no cost to the student. The CE must still determine the eligibility for students and claim student reimbursable meal according to their eligibility.

[34] When a site is in a P2 base year, the standard guidance for visiting students is used.

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If a student attending a Special Provision site visits a Non-Special Provision site in the same CE…	→	The receiving site <u>should</u> serve the student a reimbursable meal at no charge. The receiving site may claim the reimbursable meal[35] as follows: **If one student,** the receiving site may claim the reimbursable meal as free. **If multiple students,** the receiving site must claim the students' reimbursable meals using the sending Special Provision site's established claiming percentages. The sending site cannot claim reimbursement for the student's meal if the receiving site claims the meal.
If a student attending a Special Provision site visits a Non-Special Provision site in a different CE…	→	The receiving site <u>should</u> serve the student a reimbursable meal at no charge. The receiving site may claim the reimbursable meal as follows: **If one student,** the receiving site may claim the reimbursable meal as free. **If multiple students,** the receiving site must claim the students' reimbursable meals using the sending Special Provision site's established claiming percentages. The receiving site must claim the meals, and the sending site should pay the receiving site for the cost of any meals claimed at the paid rate.

Weekend Meal Service

Under SBP and NSLP, breakfast and lunch meals may be served and claimed on weekends if a CE holds classes on weekend days (1) that are part of the CE's <u>regular instructional</u> program, (2) when <u>all</u> students are required to attend the classes, and (3) when the student time in class counts toward the school's yearly instructional minutes. Weekend meals cannot be claimed if the meals are served during a school-affiliated extracurricular event or activity, such as football, band, tutorials, or choral activity or a Saturday school day where all students are not required to be in attendance.[36]

Unique Site Designations

If a CE has designated a single site location as two sites in TX-UNPS in order to more accurately report compensatory data or to meet Texas Education Agency requirements for principalships, the CE must report claiming data for each site separately.

[NOTE: TDA must approve this type of site designation and will only do so under specific circumstances.] [37]

[36] See Administrator's Reference Manual (ARM), Section 28, Residential Child Care Institutions for additional information on weekend meal service specific to this type of entity.

[37] For more information on Community Eligibility Provision, see Administrator's Reference Manual (ARM), Section 5, Special Provision Options.

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Universal Free Feeding Sites—Elimination of Reduced-Price Charges or Paid Charges, Non-Special Provision Sites

CEs have the option to eliminate the reduced-price and/or paid meal charges at non-special provision sites and make all meals universally free. When a CE implements a universal free pricing option, the CE continues to distribute and collect applications, conduct direct certification for all categorial programs, and determine eligibility for each student.

Consistency

All students with the same eligibility status must receive the same reduction in price. Specially, all reduced-price students must be treated the same; all paid students must be treated the same.

Counting and Claiming

The CE continues to count and collect reimbursements based on each student's eligibility status—a reimbursable meal served to a reduced-price eligible student is reimbursed at the reduced-price rate; a reimbursable meal served to a paid eligible student is reimbursed at the paid rate.

Indication of Intent, Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures and TX-UNPS

The CE must change its *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures*[38] before implementation if the site's collection or counting and claiming procedures change because of offering universal free feeding meals.[39]

The CE must indicate its use of a universal reduction in price for reduced-price and paid meals in the site application in TX-UNPS.

No other formal approval process is necessary to begin universal free feeding meals.

Program Costs

The CE agrees to pay the program costs for all students eating at no charge if program funds are not sufficient to cover the total costs of operating the program. *Administrator's Reference Manual (ARM), Section 16, Financial System* and *Section 19, Meal Pricing* provide additional information on allowable use of SNP funds for sites that offer universal free feeding meals.

Residential Child Care Center (RCCI)

An RCCI may choose to offer universal free meals to non-residential or day students. However, the RCCI must claim non-residential students by the correct eligibility status—free, reduced-price, or paid. The RCCI must not claim all day students as paid in order to avoid making eligibility determinations for these students.

Universal Reduction in Price for Reduced-Price or Paid Sites, Non-Special Provision Sites

CEs have the option to decrease reduced-price and/or paid meal charges at non-special provision sites. When a CE implements a universal reduction in price, the CE continues to distribute and collect applications, conduct direct certification for all categorial programs, and determine eligibility for each student.

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[38] Available in the Texas Unified Nutrition Programs Systems (TX-UNPS) | Applications | Attachment B.

[39] See the *Administrator's Reference Manual (ARM), Section 30, Records Retention* for more information on the deadline.

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Consistency

All students with the same eligibility status must receive the same reduction in price. Specially, all reduced-price students must be treated the same; all paid students must be treated the same.

Counting and Claiming

The CE continues to count and collect reimbursements based on each student's eligibility status—a reimbursable meal served to a reduced-price eligible student is reimbursed at the reduced-price rate; a reimbursable meal served to a paid eligible student is reimbursed at the paid rate.

Program Costs

The CE agrees to pay the program costs for all students eating at no charge if program funds are not sufficient to cover the total costs of operating the program. *Administrator's Reference Manual (ARM), Section 16, Financial System* and *Section 19, Meal Pricing* provide additional information on allowable use of SNP funds for sites that offer universal free feeding meals.

Indication of Intent, Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures and TX-UNPS

The CE must change its *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures*[40] before implementation if the site's collection or counting and claiming procedures change because of offering universal free feeding meals.[41]

No other formal approval process is necessary to begin universal reduction in price for reduced-price or paid sites.

Residential Child Care Center (RCCI)

An RCCI may choose to offer universal free meals to non-residential or day students. However, the RCCI must claim non-residential students by the correct eligibility status—free, reduced-price, or paid. The RCCI must not claim all day students as paid in order to avoid making eligibility determinations for these students.

Performance-Based Reimbursement for Reimbursable Meals

CEs that have demonstrated compliance with the meal pattern are certified to receive an additional performance-based reimbursement for each reimbursable lunch served (free, reduced-price, and paid).[42] This additional reimbursement applies to NSLP and SSO. The amount a CE receives for performance-based reimbursement is subject to change each year. Current performance-based reimbursement rates are posted at *www.SquareMeals.org* and in TX-UNPS.

Previously Certified Sites No Longer Eligible for Performance-Based Reimbursement

If a CE is determined to be out of compliance with the meal pattern requirements, it will no longer earn the performance-based reimbursement. When the CE is again certified as in compliance with the meal pattern, the performance-based reimbursement will restart.[43]

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[40] Available in the Texas Unified Nutrition Programs Systems (TX-UNPS) | Applications | Attachment B.

[41] See the *Administrator's Reference Manual (ARM), Section 30, Records Retention* for more information on the deadline.

[42] See the *Administrator's Reference Manual (ARM), Section 2a, Certification for Performance-Based Reimbursement* for additional information on this topic.

[43] The Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition page that follows the table of contents provides detailed information on how to contact TDA.

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Certification for New CEs

New CEs are required to become certified with the meal pattern as part of the application process. Once certified, the CE will receive performance-based reimbursement for each reimbursable lunch served.

Severe Need Breakfast Reimbursement for Reimbursable Meals

Severe Need Breakfast reimbursement was established to provide additional support to CEs with populations of high economic need. Sites in which 40 percent or more of the reimbursable lunches served in the second preceding year were free or reduced-price are eligible to receive the Severe Need Breakfast reimbursement in addition to the standard breakfast reimbursement rate. The percentage to qualify for Severe Need Breakfast cannot be rounded up.

Calculating Site Claiming Percentage for Severe Need Breakfast Reimbursement
(Using Data from the Second Preceding Year)

Site Total Number of Free and Reduced-Price Lunch Meals Claimed for the School Year	÷	**Site Total Number of Lunch Meals Claimed for the School Year**	=	**Site Claiming Percentage** If the site claiming percentage is equal to or greater than 40%, the site is eligible for Severe Need Breakfast Reimbursement.

Sites that qualify for Severe Need Breakfast reimbursement will receive the reimbursement amount for the eligible sites in addition to the standard reimbursement for each reimbursable breakfast meal served for SBP and SSO. A CE may have sites that receive Severe Need Breakfast reimbursement and other sites that do not.

CEP Special Provision Site

Severe Need Breakfast reimbursement for CEP sites is based on individual site data. For CEP sites, each site's free claiming percentage is used to determine eligibility for Severe Need Breakfast. If the site is in a group, the CE must calculate the individual site's free claiming percentage to determine if the site is eligible for Severe Need Breakfast.

To determine an individual site's free claiming percentage multiply the site's individual identified student percentage by the Multiplier Factor (1.6).[44]

Calculating the Claiming Percentage for an Individual CEP Site (Grouped Site)
(Using Data from the Second Preceding Year)

Site Identified Student Percentage (ISP)	x	**1.6 (Multiplier Factor)**	=	**Individual Site Claiming Percentage** **If the site claiming percentage is equal to or greater than 40%, the site is eligible for Severe Need Breakfast Reimbursement.**

For sites that begin CEP operation for the first time, the individual site claiming percentage can be used to verify eligibility for Severe Need Breakfast.

SSO Site Location

The CE will receive the same Severe Need Breakfast reimbursement rate for SSO sites as it does for the SBP school sites located in the same attendance zone.

Nonschool SSO Site

A nonschool site that is located within the attendance zone of a site that is eligible for Severe Need Breakfast will qualify for Severe Need Breakfast when it is an SSO site.

[44] For more information on Community Eligibility Provision, see *Administrator's Reference Manual (ARM), Section 5, Special Provision Options*.

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Outside of Jurisdiction

If the CE is operating a site outside of its jurisdiction, the CE will receive the same reimbursement rates, including Severe Need Breakfast, that the site earns during the regular school year.

Identification of Severe Need Breakfast, Eligibility for Sites That Have Operated for More Than Two Years

TX-UNPS will automatically identify sites that are eligible for Severe Need Breakfast. TDA monitors Severe Need site identification.[45] However, to ensure that an eligible site receives Severe Need Breakfast, CEs should monitor monthly claims to verify that Severe Need Breakfast has been applied. This information is located on the monthly *NSLP Claim for Reimbursement Summary* in the Claims module in TX-UNPS.

Amount of Reimbursement

The amount a CE receives for Severe Need Breakfast reimbursement is subject to change each year. Current Severe Need Breakfast reimbursement rates are posted at *www.SquareMeals.org* and in TX-UNPS.

Sites Receiving Severe Need Breakfast Reimbursement Whose Percentage Falls Below 40 Percent

If a site's severe need eligible claiming percentage falls below 40 percent in a school year, the site is not eligible for Severe Need Breakfast reimbursement for the following school year. However, the CE may requalify sites for the school year if 40 percent or more of the reimbursable lunches served for first three claims during the year were free or reduced price. In this case, the CE must complete the process described below in the *Site, Operating Less Than Two Years* subsection in this section.

Site, Eligibility Established Using Data from the Second Preceding School Year

In the following situations, there is prior site data that may be used to establish the Severe Need Breakfast eligibility for a new site:

- Site changes its name with no change in location or student membership.
- Site moves to a new building with no changes in the student membership.
- Combination of a change in name and move to a new building.
- Two or more schools identified as having severe need (40 percent of students served free or reduced-price lunches) combine the entire student enrollment from both sites into one site.

In these cases, the CE must notify TDA/Claims prior to the start of the school year that the site meets the criteria for one of the situations described above at the TDA /Claims email address provided on the Contact Information for the Texas Department of Agriculture (TDA) page that follows the table of contents.

If the CE does not notify TDA in a timely manner or take required actions as requested, the CE may not receive the additional Severe Need Breakfast reimbursement for all submitted claims for the school year. Therefore, TDA strongly encourages CEs to proactively reach out to TDA /Claims as soon as possible.

Site, Operating Less Than Two Years

A site that has operated less than two years may be approved as eligible for Severe Need Breakfast reimbursement if the site demonstrates eligibility using lunch meal service

[45] If a CE was unable to operate during the second preceding year because of natural disaster or other emergency situation, please contact TDA for additional information on possible eligibility. Contact information and the TDA/Claims email is provided on the Contact Information for the Texas Department of Agriculture (TDA) page which is located after the Table of Contents for this section.

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claims for the first three months of the school year. If the site qualifies, TDA will retroactively apply the Severe Need Breakfast reimbursement for the three months used to establish eligibility.

To apply to use the first three claims of the school year to establish Severe Need Breakfast eligibility, the CE must take the following actions:

1. Complete and submit the *Severe Need Approval Request Form* before the beginning of the school year. This form is available in TX-UNPS | Applications | Download Forms page.
2. Complete the actions requested by TDA staff to update TX-UNPS using the timeline TDA provides. If a CE does not take these actions in a timely manner, the CE may not receive the additional Severe Need Breakfast reimbursement for all submitted claims for the school year.

Severe Need Lunch Reimbursement (Two Cent Differential) for Reimbursable Meals

Severe Need Lunch reimbursement was established to provide additional support to CEs with populations of high economic need. CEs in which 60 percent or more of the reimbursable lunches served in the second preceding year were free or reduced-price are eligible to receive the Severe Need Lunch reimbursement. The percentage to qualify for Severe Need Lunch cannot be rounded up.

Calculating CE-Wide Claiming Percentage for Severe Need Lunch Reimbursement
(Using Data from the Second Preceding Year)

CE Total Free and Reduced-Price Lunch Meals Claimed for All Sites for the School Year	÷	**CE Total Number of Lunch Meals Claimed for the School Year**	=	**CE-Wide Claiming Percentage** If the CE-wide claiming percentage is equal to or greater than 60%, all sites in the CE are eligible for Severe Need Lunch reimbursement.

CEP Special Provision Site

Since Severe Need Lunch is based on CE-wide data, CEs with CEP sites must calculate the number of students that qualify for free meals at each CEP site in order to determine the CE's total number of free (and reduced-price) lunch meals for all sites for the school year. For individual CEP sites and for grouped CEP sites, the CE will use each individual site's free percentage to calculate the number of free meals claimed for each site for the school year.[46]

To determine the number of free meals claimed at a site for the school year, the CE will (1) calculate the individual site's free claiming percentage by multiplying the site's individual identified student percentage by the Multiplier Factor (1.6) and (2) use the site's free claiming percentage to calculate the number of free lunch meals claimed for the site.

Calculating Total Number of Students Qualifying for Free Meals for Individual CEP Sites
(Using Data from the Second Preceding Year)

Site Identified Student Percentage (ISP)	x	**1.6** (Multiplier Factor)	=	**Individual CEP Site Free Claiming Percentage**

[46] For more information on Community Eligibility Provision, see Administrator's Reference Manual (ARM), Section 5, Special Provision Options.

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Site Total Lunch Meals Claimed for the School Year	x	Individual CEP Site Free Claiming Percentage	=	Total Number of Free Meals Claimed at the CEP Site for the School Year

Each CEP site's total number of free meals served is used in calculating the CE-wide number of lunch meals eligible for free (and reduced-price) meals. The result of this calculation is used to establish the CE-wide free and reduced-price claiming percentage.

For sites that begin CEP operation for the first time, the individual site claiming percentage can be used to verify eligibility for Severe Need lunch.

SSO Site Location

The CE will receive the same reimbursement rate for SSO sites located within the CE's attendance boundaries as it does for the NSLP school sites located in the same attendance zone.

Nonschool SSO Site

A nonschool site that is located within the attendance zone of a site that is eligible for Severe Need Lunch will qualify for Severe Need Lunch when it is an SSO site.

Outside of Jurisdiction

If the CE is operating a site outside of its jurisdiction, the CE will receive the same reimbursement rates, including Severe Need Lunch that the site earns during the regular school year.

Identification of Severe Need Lunch, Eligibility for CEs That Have Operated for More Than Two Years

TX-UNPS will automatically identify CEs that are eligible for Severe Need Lunch. TDA monitors Severe Need identification, However, to ensure that an eligible CE receives Severe Need Lunch, CEs should monitor monthly claims to verify that Severe Need Lunch has been applied. This information is located on the monthly *NSLP Claim for Reimbursement Summary* in the Claims module in TX-UNPS.

Amount of Reimbursement

The amount a CE receives for Severe Need Lunch reimbursement is subject to change each year. Current Severe Need Lunch reimbursement rates are posted at *www.SquareMeals.org* and in TX-UNPS.

CEs Whose Percentage Falls Below 60 Percent

If a CE's severe need eligible claiming percentage falls below 60 percent in a school year, the CE is not eligible for Severe Need Lunch reimbursement for the next school year. However, the CE may requalify if 60 percent or more of the reimbursable lunches served for the first three claims for the year were free or reduced price. In this case, the CE must complete the process described below in the *CE, Operating Less Than Two Years* subsection in this section.

CE, Eligibility Established Using Data from the Second Preceding School Year

In the following situations, there is prior CE data that may be used to establish the Severe Need Lunch eligibility for a new CE:

- CE changes its name with no change in location or student membership.
- CE moves to a new building with no changes in the student membership.
- Combination of a change in name and move to a new building.

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- Two or more CEs identified as having severe need (60 percent of students served free or reduced-price lunches) combine the entire student enrollment from both CE into one CE.

In these cases, the CE must notify TDA/Claims prior to the start of the school year that the CE meets the criteria for one of the situations described above at the TDA /Claims email address provided on the Contact Information for the Texas Department of Agriculture (TDA) page that follows the table of contents.

If the CE does not notify TDA in a timely manner or take required actions as requested, the CE may not receive the additional Severe Need Lunch reimbursement for all submitted claims for the school year. Therefore, TDA strongly encourages CEs to proactively reach out to TDA /Claims as soon as possible.

CE, Operating Less Than Two Years

A CE that has operated less than two years may be approved as eligible for Severe Need Lunch reimbursement if the CE demonstrates eligibility using lunch meal service claims for the first three months of the school year. If the CE qualifies, TDA will retroactively apply the Severe Need Lunch reimbursement for the three months used to establish eligibility.

To apply to use the first three claims of the school year to establish Severe Need Lunch eligibility, the CE must take the following actions:

1. Complete and submit the *Severe Need Approval Request Form* before the beginning of the school year. This form is available in TX-UNPS | Applications | Download Forms page.
2. Complete the actions requested by TDA staff to update TX-UNPS using the timeline TDA provides. If a CE does not take these actions in a timely manner, the CE may not receive the additional Severe Need Lunch reimbursement for all submitted claims for the school year.

Reimbursement Procedures

CEs must submit meal counts by eligibility category by site for reimbursement.[47] While the SNP programs operate on a school year (SY) calendar—July 1 to June 30, the submission of claims follows the federal fiscal year—October 1 to September 30. CEs must submit claims for reimbursable meals served no later than 60 calendar days after the last day of the claim month.

60-Calendar Day Rule

Federal regulations governing the SNP require that claims for reimbursement be submitted to TDA within 60-calendar days of the last day of the claim month. The 60-calendar day rule applies to all Child Nutrition Programs (CNPs).

This is called the 60-Calendar Day Rule. TDA does not reimburse claims after 60 calendar days except as described in *Adjusted Claims, Within 60 Calendar Days of the Claim Month; Adjusted Claims, More Than 60 Calendar Days of Claim Month,* and *Late Claim* subsections in this section. The *60-Calendar Day Rule Chart* provides the timeframe for submitting claims.

[47] TDA no longer accepts consolidated site claims from CEs.

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60-Calendar Day Rule Chart	
Month	**Last Day for Claim Submission** (In cases where the last day of the month falls on a Saturday, Sunday, or TDA holiday, or Federal Holiday, the due date is the next business day.)
January	April 1 (Leap Year – March 31)
February	April 29
March	May 30
April	June 29
May	July 30
June	August 29
July	September 29
August	October 30
September	November 29
October	December 30
November	January 29
December	March 1 (Leap Year – February 29)
Weekends/Holidays. If the 60th day is on a weekend or a federal holiday, the claim must be received no later than midnight on the next business day following the weekend day or holiday.	

The 60-Calendar Day Rule timeframe is applicable to all 12 months of the year. In applying the 60-Calendar Day Rule. CEs need to be sure that summer claims are submitted within the 60-day time limit.

Adjusted Claims, Within 60 Calendar Days of the Claim Month

CEs may submit downward or upward adjustments through TX-UNPS as long as the adjusted claim is submitted within 60 calendar days of the last day of the claim month.

TDA will reconcile any overpayment or underpayment against any outstanding claims for the current federal fiscal year—October 1 to September 30. If the outstanding claims are not sufficient to reconcile the adjusted claim, TDA will process a request for payment and require the CE to submit any remaining overpayment to TDA as instructed by TDA staff.

Downward or Upward Adjustments, Within 60 Calendar days of the Claim Month

When the adjustment claim is submitted to TDA, the following guidance must be used:

Administrative Review (AR), Compliance Review, Financial Audit, or Other Financial Review

TDA will adjust a claim upward or downward as a result of administrative review, compliance review, financial review, or financial audit at any time—the 60-calendar day rule is suspended. TDA staff will provide directions to the CE on actions the CE is to take in these circumstances.[48]

This guidance also applies to annual audit findings. If audit findings indicate that the CE has submitted claims for reimbursement that are incorrect, the CE must (1) adjust the impacted claims and (2) take corrective action to prevent further violations. If the CE does not adjust its

[48] See the Contact Information for the Texas Department of Agriculture (TDA) page which follows the table of contents for phone and email information.

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claims and/or take appropriate corrective action, TDA may take fiscal action for any violations found during an audit.

Effective Date for Eligibility Determination

CEs have the option to make the *effective eligibility date* (1) the date the application was received by the CE or (2) the date a student's categorical eligibility is designated as approved by the administering agency.[49] If the CE uses one of these options, the CE may adjust its claim for all eligibility determinations made under the option if reimbursable meals were claimed as paid or reduced-price and later determined to be reduced-price or free as long as (1) the CE has a method in place to refund the overpayments to students or households, and (2) the claim is adjusted within 60 calendar days of the end of the claim month.

[NOTE: CEs that adopt one or both of these effectiveness date options should ensure that the determining or reviewing official is timely in making eligibility determinations in order to ensure that updated claims can be filed as quickly as possible.]

Repeated Adjusted Claims, Submitted Within 60 Calendar Days of the Claim Month

TDA will require corrective action and may suspend payments if repeated adjusted claims are submitted. If claiming is suspended, the suspension will remain in effect until the CE demonstrates that it has procedures in place to produce a final claim for each month on time.

Timeline

A downward adjustment or overclaim must be made for the overclaim month within the federal fiscal year in which the overclaim month occurs unless the adjustment is made because of an administrative review, compliance review, financial review, or financial audit.

Adjusted Claims, More Than 60 Calendar Days After the Claim Month

Upward revisions that are not received within the 60 calendar days after the end of the claim month are not eligible for reimbursement unless the CE applies its one-time late claim exception as described in the *Late Claim, One-Time Exception Payment Provision* subsection in this section.

TDA will reconcile any overpayment or underpayment against any outstanding claims for the current federal fiscal year—October 1 to September 30. If the outstanding claims are not sufficient to reconcile the adjusted claim, TDA will process a request for payment for any underpayment and require the CE to submit any remaining overpayment to TDA as instructed by TDA staff.

Downward Adjustments for Overclaims, More Than 60 Calendar Days After the Claim Month

When the adjustment of a claim is made to decrease the amount of a submitted reimbursement claim and to return funds to TDA—an overclaim, the following guidance must be used:

Administrative Review (AR), Compliance Review, Financial Audit, or Other Financial Review

TDA may downward or upward adjust a claim as a result of administrative review, compliance review, financial review, or financial audit at any time.

[49] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on this topic.

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TDA staff will provide directions to the CE on actions the CE is to take in these circumstances.

This guidance also applies to annual audit findings. If audit findings indicate that the CE has submitted claims for reimbursement that are incorrect, the CE must (1) adjust the impacted claims and (2) take corrective action to prevent further violations. If the CE does not adjust its claims and/or take appropriate corrective action, TDA may take fiscal action for any violations found during an audit.

Effective Date for Eligibility Determination

CEs have the option to make the *effective eligibility date* (1) the date the application was received by the CE or (2) the date a student's categorical eligibility is designated as approved by the administering agency.[50] If the CE uses one of these options, claims cannot be adjusted more than 60 calendar days after the end of the claim month.

Electronic Submission of Adjustment by CE

When a downward adjustment of funds is discovered by a CE, the CE must submit its adjusted claim electronically via TX-UNPS or contact TDA for further instructions at (877) TEX-MEAL.

When a CE submits an adjustment to address an overclaim, TDA will contact the CE before the adjustment is processed to ask the CE to provide the following information: reason why the downward adjustment is necessary (i.e., calculation error, incorrect eligibility determination).

Repeated Adjusted Claims, More Than 60 Calendar Days After the Claim Month

TDA will require corrective action and may suspend payments if repeated adjusted claims are submitted. If the claiming is suspended, the suspension will remain in effect until the CE demonstrates that it has procedures in place to produce a final claim for each month on time.

Timeline

A downward adjustment or overclaim must be made for the overclaim month within the federal fiscal year in which the overclaim month occurs unless the adjustment is made because of an administrative review, compliance review, financial review, or financial audit.

Late Claim, One-Time Exception Payment Provision

A late claim is one received by TDA more than 60 calendar days after the last day of the claim month. A one-time exception payment provision may be used for one specific month within a 36-month time period for each USDA Child Nutrition Program (CNP) that a CE administers. Therefore, the CE may be granted a one-time exception for each cluster of CNPs:

- School Nutrition Program (SNP) which includes NSLP, SBP, ASCP, and SSO

  For Example: If the CE receives a one-time exception for SBP, it cannot receive a one-time exception for NSLP, ASCP, or SSO in the same 36-month time period.

[50] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on this topic.

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- Child and Adult Care Food Program (CACFP) which includes a CACFP childcare center or At Risk

  For Example: If the CE receives a one-time exception for At Risk, it cannot receive a one one-time exception for a CACFP childcare center in the same 36-mont time period.

- Summer Food Service Program (SFSP)

The CE may choose the claim month for which the one-time exception payment provision is used.

The CE must take the following actions to apply for the One-Time Exception Payment Provision:

- *Corrective Action Plan*. A late claim is classified as program noncompliance; therefore, the CE must submit an approvable corrective action plan (CAP) to TDA that includes the following information about its claim:
  - Reason for submitting the late claim
  - Actions to be taken to avoid repetition of the situation linked to the late claim submission
  - Actions to be taken to avoid any future late claim submission from the same or other causes
  - Signature of an authorized representative designated to act on the CE's behalf

  Once the CE has submitted an approved CAP, TDA will determine if it is eligible for the one-time exception payment provision.

- *Approved Corrective Action Plan*. If TDA approves the CAP, the CE has the following options:

If the CE has not used its one-time exception payment provision within the last 36-months…		
Option 1: The CE may…request to use the one-time exception payment for the claim.	*or*	**Option 2: The CE may…**decide to save its one-time exception and not apply it to the claim submitted for that month.

Late Claim Exception for Good Cause

If a CE has already used its One-Time Exception Payment Provision late claim, TDA will deny payment of a late claim. However, the CE may request in writing an exception for *good cause* that demonstrates that the late-claim noncompliance occurred because of circumstances beyond its control.

- Good Cause. Circumstances that may be considered as *good cause* include the following:
  - Catastrophic incident such as a tornado, flood, or fire.
  - Life-threatening injury or illness to the person responsible for submitting the claim.

    However, catastrophic incidences, life-threatening injuries, or illnesses **do not** automatically entitle the CE to be granted a good-cause exception. The responsibility is on the CE to demonstrate how the catastrophic incident, life-

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threatening injury, or illness caused a situation that made submitting the claim within 60 calendar days unreasonable or impossible.

- Not Considered Good Cause. Circumstances that would not be considered *good cause* include the following:
  - Absence of personnel on the 60th calendar day, for reasons other than a life-threatening injury or illness.
    [NOTE: CEs are expected to have a backup plan for submitting claims. This includes having more than one staff member designated and trained to perform this task.]
  - TX-UNPS is unavailable for electronic filing.
  - Malfunction of power or equipment at CE facility.
  - Failure to get the claim submitted through TX-UNPS by the 60th calendar day.

Late Claim Exception for Good Cause Procedure

In these cases, the following guidance will apply to an exception for good cause:

- TDA will consider each good-cause exception request on a case-by-case basis.
- If TDA agrees that good cause exists, the claim will be forwarded to USDA. USDA will determine if the claim will be paid.
- If TDA does not agree that good cause exists, the claim will be denied and will not be forwarded to USDA.
- CEs cannot appeal either the non-payment of a claim by USDA's or TDA's ruling regarding good cause.

Counting and Claiming When a CE's Funds Are Placed on Financial Hold

If a CE's funds are placed on financial hold, the CE must continue to submit claims on a timely basis (as described in this section) in order for the CE to receive reimbursement for meals served when the financial hold is removed. If the CE does not submit claims as required by TDA procedure, the CE will not be paid for reimbursable meals served during the financial hold period when the financial hold is removed.

Daily Record/Accuclaim Form

The Accuclaim process was developed to improve the accuracy and accountability of reimbursement claims. Proper implementation of the Accuclaim regulations, which include edit checks and onsite reviews, will ensure that the CE has an accurate system of counting and claiming and help to prevent the necessity for an upward adjustment for an underclaim or a downward adjustment for an overclaim.

Edit Check Record

The CE must use the *Daily Record/Accuclaim Form* or the *Special Milk Program Worksheet* form[51] or a similar locally-developed form for each site where meals are served to

[51] Form available at *www.SquareMeals.org*. CEs operating one of the special provisions must use the daily record/Accuclaim specific to the provision.

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- perform a daily edit check and
- create a monthly edit check summary.

The information collected on this form allows the CE to review a number of factors to ensure the accuracy of claims before they are submitted. Edit checks, and specifically the information about percentages of participation, are reviewed during the AR process.

Accuclaim reports contain the following types of information:

- Served Students. Daily and monthly total number of reimbursable meals or milk served to students by eligibility category and type of meal are captured through the *Accuclaim/Edit Check* form.
- Served Adults. Daily and monthly total number of meals or milk served to adults is captured through the *Accuclaim/Edit Check* form.
- Average Daily Participation (ADP). Monthly average of students participating in the meal program that were served a reimbursable meal by meal type—breakfast, lunch, or snack—and category—free, reduced-price, or paid. This number is used in calculating the Attendance Factor.
- Attendance Factor. Monthly average of students in attendance at the site divided by number of operating days for the claim month which is multiplied by the highest daily enrollment during the month. This calculation helps the CE to identify possible errors in reporting.

Claims, Automated Accuclaim Error Messages

When a CE submits a claim, TX-UNPS automatically analyzes the claim to determine if the number of free or reduced-price meals served exceeds the Attendance Factor for the CE. If errors are found, they are called Accuclaim Errors.[52]

The Attendance Factor is the sum of daily attendance for the month divided by the number of operating days, which is divided by the highest daily total enrollment for the claim month.

Claims, Unique Site Designations

If a CE has designated a single site location as two sites in TX-UNPS in order to more accurately report compensatory data or to meet Texas Education Agency requirements for principalships, the CE must report claiming data for each site separately. Therefore, each site must complete the accuclaim process and forms separately.

[NOTE: TDA must approve this type of site designation and will only do so under specific circumstances.]

[52] See the *Daily Record/Accuclaim Form* subsection in this section for additional information.

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Attendance Factor

The following chart illustrates how the Attendance Factor is calculated.

Calculating the Attendance Factor Chart								
Average Daily Attendance (ADA) for the Month								
(Sum of Daily Attendance for Month)	÷	(Number of Operating Days)	=	**ADA**	÷	**Highest Daily Total Enrollment** for the Month	=	**Attendance Factor** for the Month
22,626	÷	18	=	1,257	÷	**1,425**	=	**0.8821**

This calculation should be completed and recorded at the end of each month.

Applying the Attendance Factor

This calculation alerts the CE that the number of meals claimed fall outside of the normal expectation.

Eligibility Type	Highest Daily Number of Possible Participants	x	Attendance Factor	=	High Number of Meals Expected to be Claimed Each Day
Highest Daily Total Enrolled	1,425	x	0.8821	=	1,256.99 (1,257)
Free Highest Daily Count	825	x	0.8821	=	727.7 (728)
Reduced Highest Daily Count	165	x	0.8821	=	145.5 (146)
Paid Highest Daily Count	267	x	0.8821	=	235.52 (236)

CEs must perform this calculation daily and monthly before submitting claims.

When an Accuclaim error is found on the claim submitted through TX-UNPS, a message appears that advises the CE that the claim appears to have a discrepancy or problem. The CE is expected to research the validity of the claim and make any adjustments needed. If the discrepancy or problem is not resolved, the Accuclaim error may require an upward or downward claim adjustment.

Daily Record/Accuclaim Form for NSLP and SBP Feeding Sites Operating the Community Eligibility Provision (CEP) or Provision 2 (P2)

TDA has modified the daily record/accuclaim forms for those CEs operating the Community Eligibility Provision (CEP) or Provision 2 (P2). These modified forms— *Daily Record /Accuclaim Form—Community Eligibility Provision (CEP)* and *Daily Record/Accuclaim Form—Provision 2 (P2)*—will assist these CEs in ensuring the accuracy of their claims.[53]

[53] Form available at *www.SquareMeals.org*. CEs operating one of the special provision programs must use the daily record/accuclaim form specific to the provision.

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Daily Record/Accuclaim Form for School Nutrition Program Operators Feeding Sites Operating the Afterschool Care Program or CACFP At-Risk Program

TDA has modified the daily record/accuclaim forms for those CEs operating an afterschool program. This form allows the CE to use this one form for both operation of one of the afterschool programs or both programs. The modified *Daily Record/Accuclaim Form—Afterschool* will assist the CEs in ensuring the accuracy of their claims.[54] However, for this form, instead of using the site's total enrollment to calculate the attendance factor, the CE will use the highest number of students eligible to participate in the snack/supper service program. Highest number eligible includes all students onsite on the day the data is recorded (1) who are onsite at the time of the snack/supper service and (2) who are allowed to participate in any enrichment activity offered.

Information Box 3

Definitions Specific for the Daily Record/Accuclaim Form—Afterschool

Student Participating in the Program	Student who receives a reimbursable snack/supper during an afterschool snack/supper service.
Total Number of Students Eligible to Participate in the Program	Students who 1. Are onsite at the time of the snack/supper service. and 2. Are allowed to participate in any enrichment activity offered.

Daily Record/Accuclaim Form for NSLP and SBP Sites Participating in the NSLP or SBP During the Summer

If a CE is providing meals as an extension of NSLP or SBP for an academic summer program that is not part of the Seamless Summer Option (SSO) program, the CE must continue to conduct edit checks for meals served.

Daily Record/Accuclaim Form Results

The *Daily Record/Accuclaim Form*[55] assists the CE in ensuring accuracy by providing a guided process for CEs to determine if the number of reimbursable meals claimed is reasonable in light of the highest possible number of students in attendance.

Discrepancies or potential problems can be resolved through further investigation. Any findings should be adjusted on edit check forms and documented.[56]

The *Edit Check Chart* demonstrates the possible issues the Accuclaim process can reveal and actions to take when the issue arises.

Daily Record/Accuclaim Form Action Chart	
Possible Issues	**Actions to Address**
Reported Number Exceeds the Number of Approved Students	
Daily number of free and reduced-priced meals claimed exceeds number of students approved for free and reduced-priced meals.	CE needs to review the attendance records and procedures used to code eligibility to reach a correct count.
Reported Number in an Eligibility Category Exceeds of Number of Approved Students in that Category	

[54] Form available at *www.SquareMeals.org*. CEs operating one of the special provision programs must use the daily record/accuclaim form specific to the provision.
[55] Form available at *www.SquareMeals.org*.
[56] See the *Records Retention* subsection in this section for additional information on this topic.

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Number of meals claimed by eligibility category exceeds the number of students in attendance by category.	CE needs to recheck the attendance numbers and document the reason why its meal counts are incorrect.
Reported Numbers Appear Repetitive or Patterned	
Number of meals served is the same at lunch and breakfast or is the same for multiple days for lunch or breakfast.	CE needs to recheck the attendance numbers and coding procedures to determine if the correct numbers have been reported.
Reported Percentage Exceeds the Estimated Attendance Percentage	
Percentage of free and reduced-priced meals claimed exceeds estimated percentage in attendance.	CE needs to review attendance records to determine maximum number of students by category who were present at school on the day of discrepancy.

Onsite Monitoring Review

CEs that operate more than one feeding site are required to conduct onsite reviews which include ensuring that the following requirements are met:

- The counting system is consistent with the CE's policy statement included in its approved *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedure(s)*.[57]
- The counting system, as implemented, yields the actual number of reimbursable free, reduced-price, or paid meals served for each day of operation.
- The counting system prevents overt identification of students receiving free and reduced-price meals.
- The system provides for adequate monitoring to ensure that only reimbursable meals are counted.

If the review discloses problems with a site's meal counting or claiming procedures, the CE must ensure that the feeding site develops and implements a corrective action plan (CAP). The plan should be in writing and developed jointly by the school nutrition program (SNP) director and the CE's foodservice supervisor, director or whoever performed the review. It should detail the corrective action necessary to bring the feeding site into compliance and assign responsibility for implementing the plan. The CE must conduct a follow-up onsite review within 45 calendar days of the onsite monitoring review to determine if the corrective action resolved the problems and take additional actions as necessary to correct the issue.

CEs are required to conduct onsite monitoring reviews of serving sites on the following schedule:

National School Lunch Program, Standard Counting and Claiming

Required: At least once annually prior to February 1st of each school year for all feeding sites

Recommended: Every month

Form: *Onsite Monitoring Form—National School Lunch Program (NSLP)*

National School Lunch Program, Community Eligibility Provision (CEP)

Required: At least once annually prior to February 1st of each school year for all

[57] See *Administrator's Reference Manual (ARM), Section 2, Program Application & Agreement* for additional information on this form.

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feeding sites

Recommended: Every month

Form: *Onsite Monitoring Form | Community Eligibility Provision (CEP)*

National School Lunch Program | Provision 2 (P2)

Required: At least once annually prior to February 1st of each school year for all feeding sites

Recommended: Every month

Form: *Onsite Monitoring Form | Provision 2 (P2)*

School Breakfast Program

Required: At least once prior to February 1st of each school year for fifty percent of the sites operating SBP each year, i.e., every site is reviewed every other year

Recommended: Every month

Form: *Onsite Monitoring Form | School Breakfast Program (SBP)*

Afterschool Care Program (ASCP) and Child and Adult Care Food Program At-Risk (CACFP At-Risk)

Required: For ASCP, within the first four weeks of starting snack service each school year and a second time before the end of the school year; for CACFP At-Risk, at least three times each year with no more than six months between reviews

Recommended: Every month

Form: *Onsite Monitoring Form | Afterschool Care Program (ASCP) and Child and Adult Care Food Program At-Risk (CACFP At-Risk)*

Seamless Summer Operation

Required: At least once annually during operation for all lunch sites and 50 percent of breakfast sites

Recommended: Every month

Form: *Onsite Monitoring Form | National School Lunch Program (NSLP)*

This requirement does not apply to the Special Milk Program.

The forms used for onsite monitoring reviews are available at *www.SquareMeals.org.*

Additional Resources

The following forms, which can be found at *www.SquareMeals.org,* will assist CEs in the implementation of a counting and claiming system.

- *CACFP-At-Risk Afterschool Care Centers Review (Form H1606-AT)*
- *Daily Record/Accuclaim Form*
- *Daily Record/Accuclaim Form—Community Eligibility Provision (CEP)*
- *Daily Record/Accuclaim Form—Provision 2 (P2)*
- *Monthly by Classroom Coded List Form*
- *Onsite Monitoring Form | National School Lunch Program (NSLP)*
- *Onsite Monitoring Form | School Breakfast Program (SBP)*

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- *Onsite Monitoring Form | Afterschool Care Program (ASCP) and Child and Adult Care Food Program At-Risk (CACFP At-Risk)*
- *Onsite Monitoring Form | Community Eligibility Provision (CEP)*
- *Onsite Monitoring Form—Provision 2 (P2), Year 2 and Following Years*
- *Onsite Monitoring Form | Seamless Summer Option (SSO)*
- *Special Milk Program Worksheet*
- *Weekly/Monthly Number Coded List Form*

Records Retention

Public and charter schools must maintain records for a period of five years. Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) must maintain records for three years.

Information Box 4

Records Retention

State Board of Education policies require public and charter schools to maintain records for a period of five years.

Private schools, other nonprofit organizations, and RCCIs maintain records for three years.

Point of Service (POS) System

Many schools use a vendor to provide their point of service system. While CEs have the option to choose any vendor that meets their needs, they must ensure that (1) the POS system is able to retain all required documentation as described in this section and other sections of the *Administrator's Reference Manual (ARM)*, including, but not limited to, *Section 4, Eligibility Determination*; *Section 5, Special Provision Options*; and *Section 6, Verification of Eligibility*, or (2) the CE maintains all required documentation by another method. That method may be electronic or paper.

Record Recovery System

Counting and claiming records can be lost for a variety of reasons, including, but not limited to, electronic system failure, software malfunction, unexpected disaster, and human error. To ensure that counting and claiming documentation is retained, CEs must have a method to recover or back up their records. Recovery or backup methods may be electronic or paper.

If the CE uses a POS vendor, TDA strongly recommends that the CE contact the POS vendor for assistance about the best way to create a recovery or backup system for the CE's counting and claiming records.

CEs must develop an effective system of retaining and maintaining records related to counting and claiming that includes the retention of the following information:

- Documentation demonstrating that a student receives only one meal per meal service.
- Documentation demonstrating the type of eligibility each student has—free, reduced-price, or paid—as well as an indication of the source of eligibility—household meal application or specified categorical program participation.
- Documentation supporting Fresh Fruit and Vegetable Program (FFVP) reimbursement claims. Also see *Administrator's Reference Manual (ARM), Section 12, Fresh Fruit and Vegetable Program (FFVP)* for additional information on claiming related to FFVP.

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- Records demonstrating the accuracy of the counting and claiming system.
- Rosters, sign in sheets if appropriate, daily and monthly cumulative totals for students. receiving meals, snacks, or milk.
- Records reflecting total meals served which includes documentation that links specific students to claims for meals or milk.

[NOTE: CEs should print their Direct Certification lists from TX-UNPS before the end of the school year. These lists are not retrievable in TX-UNPS after the current year ends.]

Participation Records and Reports

CEs are required to retain the following records:

- Master lists or rosters, including student eligibility status and categorical designation and when changes to eligibility[58] are made, if applicable. This applies to electronic records systems or manual (paper) systems.
- Daily records for coding and counting procedures for meals and milk served by eligibility category including the following:
  - Coding lists or documents used as category identifiers.
  - Electronic cash register counts if cash register reading is used for accounting purposes.
  - Prepaid tracking checklists when tracking of prepaid meals is done after meal service, not at the time of service.
- Onsite monitoring forms

If a CE uses a food service management company (FSMC) or manages its eligibility records using vended software, the CE is responsible for ensuring the company follows all required regulations.

Daily Participation Report

Each site is required to create a daily participation report. The recording method used must ensure that correct meal counts by eligibility category can be easily read, edited, and consolidated into an accurate monthly claim for reimbursement.

The CE must be able to provide complete records for each meal service for each site, including reimbursable meals and all food and beverages that are not part of the reimbursable meal. This report must include, but is not limited to, the following information:

- The total number of reimbursable meals by eligibility category—free, reduced price, and paid; total servings of food and beverages that are not part of a reimbursable meal; or milk served in each category—free, reduced-price, and paid.
- The remaining balance of prepaid meal payments for each individual student that pays for meals.

  In all cases, the recordings of the cashier at the POS must be reflected in the site's daily participation report.

[58] See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on maintaining eligibility information.

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Claiming Records

CEs are required to retain the following records:

- All documents that support claims submitted.
- Documentation of the specific to number of reimbursable meals or milk claimed for visiting students from another campus within the CE or from another CE.

  [NOTE: Using a generic code or key at the point of service (POS) to indicate reimbursable meals or milk served to students not in the POS system does not provide adequate documentation for a claimed meal or milk. The CE must have documentation that explains why students were coded with a generic code or key.]
- Documentation related to establishing CEP or P2 claiming percentages.

  [NOTE: If a CE does not retain its CEP or P2 records that document the accuracy of site claiming percentages, the CE must reestablish the claiming percentages for each site. This documentation includes point of service (POS) system data that confirms the accuracy of student eligibility determinations.]
- Edit check forms.
- Onsite monitoring forms.
- Records demonstrating the accuracy of the counting and claiming system.
- Records reflecting total meals served which includes documentation that links specific students to claims for meals.
- Rosters or sign in sheets, daily and monthly cumulative totals for students receiving meals or snacks.
- Written CAPs based on onsite self-assessment reviews.

Edit Check Discrepancies or Problems

Discrepancies or potential problems can be resolved through further investigation. Any findings should be documented and kept with the site's daily record of meals or milk claimed.

Visiting SNP Participants Documentation

The CE must retain the following documentation:

- Receiving CE Claims for Reimbursement. If the hosting CE claims reimbursement, the hosting CE must keep copies of the documentation provided by the sending CE related to student eligibility. This would include such documentation as a master list or roster indicating each student's eligibility.
- Sending CE Claims Reimbursement. If the hosting CE charges the sending CE for the cost of the student's meals to recoup the cost, the hosting CE would not have to keep a copy of the visiting students' eligibility documentation.

Compliance

During an administrative review (AR) or at other times as appropriate, TDA will assess compliance with the counting and claiming requirements by reviewing the CE's counting and claiming practices and documentation. Documentation will include, but is not limited to, financial records and food production documentation. CEs with findings in these areas will be required to complete approvable Corrective Action Documentation (CAD). Noncompliance in these areas may also require fiscal action.

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Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations

CE's must report, in writing, all violations of federal criminal law—fraud, bribery, or gratuity.

> The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200. 113; 31 U.S.C. 3321).

Criminal Penalties Associated with Mishandling of Funds

The following statement from the NSLP regulations describes the penalties for the misuse or fraudulent use of program funds:

> Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall if such funds, assets, or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals, or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

Termination of the Permanent Agreement for Financial Fraud or Misuse of Funds

If serious deficiencies, such as fraud or misuse of funds, occur, and corrective action is not practical, TDA will terminate the CE's participation in the SNP. In this case, TDA may also refer the matter to the appropriate local, state, and/or federal authorities.

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Section 21

Meal Service

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Section 21, Meal Service

Update Guide	
July 28, 2022	Updated *Section 21, Meal Service* guidance on donating leftovers based on updates made to the Texas Education Code (TEC) 33.907. Clarified guidance on the following topic: - Leftover sharing tables - Donating foods - Weekends
August 12, 2020	Created *Section 21, Meal Service* and updated the Administrator's Reference Manual (ARM) section references. Guidance for this new section was taken from the previous *Administrator's Reference Manual (ARM), Section 19, Other Operational Issues* Clarified information on the following topics: – Food truck, food trailer, or modified school bus – Leftovers – Mealtimes – Offer versus serve (OVS)

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Meal Service

The guidance in this section addresses operational issues related to meal service in School Nutrition Programs (SNPs). The guidance is this section applies to the following programs:

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)

This section does not contain meal pattern guidance. Meal pattern guidance is located in the following *Administrator's Reference Manual (ARM) sections*:

- *Section 7, Breakfast Meals*
- *Section 8 Lunch Meals*
- *Section 9, Pre-Kindergarten Meals*
- *Section 10, Afterschool Snacks & Meals*
- *Section 11, Summer Meal Programs*
- *Section 13, Special Milk Program*
- *Section 25, Meal Accommodations*

Leftover Food

CEs have several options in dealing with leftover food items.

Leftover Sharing Tables

To minimize food waste, schools may set up sharing tables for leftovers from food(s) already served. SNPs must apply all appropriate state and local health and safety regulations to sharing tables, including, but is not limited to, holding temperatures and food contamination.

Leftovers Sold in School Cafeteria

Leftovers that were never served (1) may be sold in the school cafeteria or other designated eating area as second meals or a la carte items or (2) may be incorporated into a future reimbursable meal as long as all state and local health and safety regulations are followed.

When leftovers are sold, (1) the income from the sale of the leftovers must accrue to the nonprofit school food service account and must be tracked as part of documenting nonprogram income.[1] Leftover food items sold as a la carte foods must meet the competitive food requirements.[2]

The a la carte sale price must include the following costs:

[1] See the *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on nonprogram foods.

[2] See the *Administrator's Reference Manual (ARM), Section 22, Competitive Foods* for additional information on this topic.

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- Value of USDA Foods
- Purchased foods used to make the item
- Labor to prepare the item
- Overhead

Students Saving Items from Their Meal to Eat Later

Students are allowed to take food items from a meal service with them to eat later as determined by local policy. School policies related to students removing food items from the meal service area should be based on whether the item can be carried by the student without a special container and if the item is food safe without refrigeration.

Donating Leftovers

If food from a meal or snack service is leftover and cannot be used for another meal service, the food may be donated.

Donation Agreement

When an SNP donates leftover food to a nonprofit, the CE should create an agreement that provides guidelines for food transfers and food holding and storage.

Donating to Local Food Banks and Charitable Organizations

USDA regulations allow CEs to donate leftover food to eligible food banks and charitable nonprofit organization under the following conditions:

- The CE practices good meal production planning to ensure that one meal per student is produced.
- The CE does not intentionally prepare additional servings, intending to donate extra servings.
- CEs should ensure that policies to support a food donation program do not discourage students from consuming all items served to them.
- The CE cannot use the leftover food for another meal service and food would, therefore, be thrown away.
- State and local health codes are followed in the storage and transport of the leftover food items.

Eligible local food banks and charitable organizations are entities that are exempt from taxes under Section 501(c)(3) of the Internal Revenue Code of 1986 [26 USC. 501(c)(3)].

Further, Texas law allows public and charter schools to donate food to a nonprofit organization through a person who is directly and officially affiliated with the campus, including a teacher or counselor, or through a parent of a student enrolled at the campus.

Good Samaritan Food Donation Act

CEs that make donations under these provisions also have extended protections against civil and criminal liability for persons or organizations when making food donations to the extent provided under the Bill Emerson Good Samaritan Food Donation Act, found in Section 22 of the Child Nutrition Act.

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Types of Donated Food

Donations may include:

- unserved food that is packaged on campus and has not been removed from the campus cafeteria;
- packaged served food if the packaging and food are in good condition;
- whole, uncut produce; and
- wrapped raw produce.

CEs must follow all applicable local, state, and federal food safety regulations for handling and storing donated foods.

Distribution of Donated Food

CEs may allow the SNP to donate leftovers from breakfast, lunch, supper, and snack meal service(s). Food may be distributed onsite by the nonprofit organization at any time, including using leftovers from a previous meal service to provide food or a meal to a student who is unable to purchase a meal for breakfast, lunch, supper, or snack. CEs will need to be careful not to overtly identify the eligibility of a student or students if food is distributed during the school day.

Any food given away is not subject to the Competitive Rules. Even if the food or meal provided by a food donation program during a meal service time meets the meal pattern, a CE cannot claim these meals because the food was not provided as part of the SNP meal service.

Use of SNP Equipment

The CE may allow donated food to be received, stored, and distributed onsite. However, a CE needs to keep in mind whether the use of SNP equipment for these purposes is incidental or long term.

If any SNP equipment is used for a food donation program, the CE must maintain documentation that demonstrates (1) that there is negligible cost in using SNP equipment and/or storage and that no additional equipment has been purchased specifically because of or for the donation program or (2) that the cost for equipment and/or storage has been covered by non-SNP sources.

Involving School Nutrition Staff

School nutrition staff may assist in organizing and distributing food as volunteers for the nonprofit food donation program. However, the CE needs to be mindful of how staff charge their time when assisting with the organization and distribution of food.

SNP staff may charge time to the SNP when identifying and organizing food items to be donated but cannot charge time to the SNP when performing operational tasks for the food donation program.

Donating USDA Foods

There are occasionally situations when a CE has ordered USDA Foods and is unable to use the food items in its meal service before storage limitations expire. See *Administrator's Reference Manual (ARM) Section 14, USDA Foods* for additional information on this topic.

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Donating or Selling Food Waste or Scraps

CEs are permitted to donate or sell food waste or scraps for composting or animal feed. Any income from this effort must be applied as income to the nonprofit school food service account. Any costs to the SNP for these types of programs must be reasonable.[3]

Food Waste or Scraps to Feed Swine

In Texas, no individual, agency, or organization may donate or sell any type of food garbage to swine that contains meat, meat scraps, or items that came in contact with the cooking of meat unless they are licensed to do so. This law applies to all SNP sites.

Adults Eating from a Student's Tray

Parents or caretakers occasionally visit their children during mealtime. TDA encourages their involvement in students' education and the nutrition program. However, an adult is not allowed to consume all or part of a meal served to a student. If an adult eats from a student's tray, that meal is not reimbursable.

Required Response to an Adult Eating from a Student's Tray

If an adult eats from a student's tray, SNP staff must inform the adult that the meal is for the student's consumption and that the adult must either purchase a meal at the school, bring in an outside meal to eat, not eat from the student's tray, or not eat with the student.

Consumption of Reimbursable Meals Outside of Designated Meal Service Area

Reimbursable meals prepared for school nutrition programs are to be served and consumed in the cafeteria or other designated eating areas. However, USDA recognizes that with time-limited meal periods and the increased amount of fruits and vegetables offered at meals, some students may be inclined to save some items for consumption at a later time. There is no federal prohibition of this practice. USDA encourages this practice as a means of reducing potential food waste and encouraging consumption of healthy school meals. For food safety reasons, this practice should be limited to food items that do not require cooling or heating, such as a whole fruit or packaged non-perishable item.

However, meals that are prepared with the intention of being consumed by students outside of the regular school day are not reimbursable.

For Example: Meals given to students to eat on the bus on the way home or meals sent home when there is an early dismissal.

Meal Service Methods

CEs may choose to deliver meals through a variety of strategies including family style, multiple-choice menus, multiple serving stations, offer versus serve (OVS), pre-packaged delivery, and pre-plated meals.

No matter which meal service type, CEs must implement strategies that ensure (1) staff are able to accurate identify a reimbursable meal at the point of service (POS) and (2) students are able to recognize a reimbursable meal during meal service.

[3] See *Administrator's Reference Manual (ARM), Section 16, Financial System* Funds for additional information on reasonable costs.

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Breakfast in the Classroom (BIC)

Breakfast in the Classroom (BIC) is an alternative serving method that CEs may use to provide students with a nutritious meal in a familiar setting—their classroom. BIC commonly results in the following outcomes:

- More students eat breakfast; therefore, more students are ready for learning.
- BIC allows teachers to accomplish routine morning tasks—attendance, collecting homework, and announcements—while students are eating breakfast.

  Therefore, little, if any, teaching time is lost.
- Food service staff save time since students are usually responsible for clearing away their trash.
- When the food service facilities are not large enough to accommodate all students at one setting, BIC allows breakfast service to be completed more quickly since the site does not have to offer staggered serving times.

BIC works well in many types of circumstances. However, the following conditions will help to support a successful BIC:[4]

- Students are in the same room at the start of each day.
- Buses arrive just before classes begin.
- Teachers are supportive of the breakfast program and realize its importance to learning.
- The cafeteria is centrally located or has methods for delivering meals quickly to classrooms.

Strategies for BIC Service

TDA recommends that CEs develop a written policy on BIC before implementing this program. It is also recommended that the SNP staff obtain the approval and support of administrators, principals, and teachers.

BIC can be served in a variety of ways.

- Meal in a bag
- Individually wrapped items
- Cafeteria style service, eaten in the classroom
- Delivery to the classroom
- Hallway service kiosks
- Pre-order meals delivered to the classroom

Breakfast Carts

Breakfast Carts may be used to bring meals to the students. Meals are often pre-packaged for a student to pick up or to be delivered to a specific location.

[4] More information on breakfast in the classroom (BIC) is available from USDA at *www.fns.usda.gov*; the Institute of Child Nutrition at *www.nfsmi.org;* and the Food Research and Action Center at *www.frack.org*.

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Grab 'N' Go Breakfast

The Grab 'N' Go method allows breakfast to be served where students are congregating or passing—during transition period or during breaks. Meals may be consumed in a central location or at scattered locations through the building.

Nutrition Break or Second Chance Breakfast

Students are served breakfast during a morning break, usually 9:00 a.m. to 10:00 a.m. Any breakfast meal served after 10:00 a.m. must not be claimed for reimbursement unless a student is late arriving at school. Commonly reimbursable breakfasts are pre-packaged and ready to serve to each student. Meals may be served from mobile carts, tables, or the cafeteria and must include a variety of milk.

Serving Time

Even though BIC is commonly offered as the day starts, it can be offered later in the morning. Often, older students are not ready to eat early in the morning, so a later time can increase breakfast participation for them.

Family Style Meals

A site may serve meals *family style.* Family style meal service allows students to serve themselves from common dishes of food with assistance from supervising adults. Prepared meals must meet all of the daily and weekly food component/food item requirements and the weekly dietary specifications.

Age-Grade Groups K-12

When family style meal service is used for Age/Grade Groups K-12, the following guidance must be used:

- The supervising adult should initially offer the student the full planned serving of each food component/food item.

  [NOTE: However, since portions of food served may be replenished immediately at each table, the initial serving of a food component/food item may be less than the full required minimum quantity.]

- The supervising adult should encourage additional portions and selections as appropriate.

- During family style meal service, the adult supervisor must ensure that each student selects at least ½ cup of fruit or vegetable or combination of both during the course of a family style meal service in order for the meal to be reimbursable.

Pre-Kindergarten (Pre-K) Family Style Meals

When family style meal service is used with Pre-K students, the following guidance must be used:

- A sufficient amount of prepared food must be placed on each table to provide the full required portions of each of the components for all the students and/or adults at the table.

- Students, with assistance as needed, and adults must be allowed to serve the food components themselves with the exception of fluids, including milk and juice. During the course of the meal, it is the responsibility of the supervising adults to actively encourage each student to serve

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themselves the full required portion of each food component of the meal pattern.

- Supervising adults who serve the fluid components, including milk and juice, directly to the students must serve the required minimum quantity to each student.
- While students must be offered the minimum required serving size of each meal component, a student does not need to take the full minimum required serving size of a food component in order for the meal to reimbursable.

Multiple Choice Menus

CEs may offer students a choice of menus as a strategy to provide students with a larger selection of food options and increase meal participation. Each meal on the menu must include at least the daily and weekly minimum requirement[5] for each food component or food item.

Multiple Serving Lines or Stations

For NSLP and SBP, if the CE uses independent serving lines which offer different entrée options or serving stations where students select different components or food items for a reimbursable meal before passing the point of service (POS),[6] all serving lines or the serving stations as a whole must meet the following requirements:

- Meet the daily required number of components/food items.
- Meet the required serving portion for each as well as the weekly vegetable subgroup requirements for lunch meal service.

Offer Versus Serve

Offer versus serve (OVS) is a serving method designed to reduce food waste and food costs without jeopardizing the nutritional integrity of the meals served.[7] The food production record must indicate offer versus serve (OVS), if utilized.

For NSLP—OVS is a requirement in the NSLP for senior high schools (age/grade group 9–12) and is an option for lower grade schools.

Residential child care institutions (RCCIs) may be exempted from OVS if their system does not accommodate a structure to use OVS. In these cases, RCCI CEs are encouraged to provide choice to the extent practicable.

For Example: An RCCI could offer fruit, vegetable, and grain components separately to allow student to have a choice about what they want to eat. A basket with a variety of fruits and a separate cooler with milk choices are strategies to implement OVS in this situation.

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5 See *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals, Section 8, Lunch Meals, Section 9, Pre-Kindergarten Meals*, and *Section 10, Afterschool Snacks & Meals* for additional information on the meal pattern requirements.

6 See *Administrator's Reference Manual, Section 20, Counting & Claiming* for additional information on point of service (POS) systems.

7 USDA provides detailed guidance on O*VS in Offer Versus Serve, Guidance for the National School Lunch Program and the School Breakfast Program*. Available at *www.fns.usda.gov/sites/default/files/cn/SP41-2015av2.pdf*. For detailed information on identifying a reimbursable meal under OVS, see the *Administrator's Reference Manual (ARM), Section 7*, *Breakfast Meals* and *Section 8, Lunch Meals*.

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For SBP—OVS is not required for any age/grade group under the breakfast requirements; however, CEs may choose to offer OVS at breakfast for any age/grade group.

The following guidance must be used when implementing OVS:

Another Child Nutrition Program, NSLP or SBP Meal Pattern

When operating a CACFP program, CEs following the NSLP or SBP meal patterns must follow the NSLP or SBP OVS requirements for meals (suppers) as applicable. However, OVS at snack is not allowed for any Child Nutrition Program (CNP).

Communication about Reimbursable Meals

For OVS meal service, signage located near or at the beginning of the serving line and shared menus should provide clear information about allowable choices that will help the student easily build a reimbursable meal.

Components Offered under OVS

The planned OVS meal must include all five components for NSLP or the three components for SBP and must be priced as a unit whether the student takes the minimum number of food items or components or not.

For NSLP reimbursable meal, a student must take three of the five components; one of the components must be a ½ cup serving of fruit or vegetable.

For SBP reimbursable meal, a student must take three of the four food items which include the three breakfast components; one of the components must be a ½ cup serving of fruit (or vegetable substituted for fruit).

Offering choices within a single component is not OVS.

In offering a reimbursable meal under OVS, CEs are encouraged to give students options of entrees and side items and are always required to offer a variety of milk.

Sample Straight Serve, Not OVS

The student must take one item from each of the following components:

- Grains Component—2 different grain items
- Fruit Component—2 different fruit items
- Vegetable Component—2 different vegetable items
- Meat/Meat Alternate Component—2 different meat/meat alternates
- Milk Component—2 milk flavors

In this case, the student only has a choice of items within each component. **This is not an acceptable OVS practice**. While choices within components are allowable, to meet the requirements for OVS, the student must be given a choice of which components to take.

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Sample OVS

The student must take least three components from the 4 options below. Meat/Meat Alternates and Grains are offered as one food item. The student must take at least ½ cup of fruit or vegetable for the meal to be reimbursable:

- Meat/Meat Alternate & Grains Components—2 different meat/meat alternate/grain items
- Fruit Component—2 different fruits
- Vegetable Component—2 different vegetables
- Milk Component—2 milk flavor

While there is a choice of items for each component, the student also has a choice to take 3, 4, or 5 components. **This is an acceptable example of OVS**; the student is able to take a variety of options among the components.

When a student declines a full portion of a food item, a smaller portion of a component may be offered. However, the student must still take the required number of components in the correct serving sizes for the meal to be reimbursable.

Menu Planning under OVS

If a student is required to select all components, the CE is not utilizing OVS. SNP directors and menu planners should consider participation and selection trends to determine what food items to offer and how much food to prepare. It is the menu planner's discretion to determine the variety of food items offered for a reimbursable meal under OVS.

A student's reimbursable meal is determined by how each food item offered is menued. A CE may menu several items that fall within one component in equal or varied quantities. Students may be required to take paired items in order to meet meal pattern requirements as long as the student is still given a choice of items.

In these situations, the CE must (1) ensure that the cashier is able to identify a reimbursable meal and (2) provide instructions to students so that students know how much to take of any one or more items to get a reimbursable meal.

Meal Preparation

CEs must prepare enough servings for each student to take the full-required portion size amount for the age/grade group for each food component or item.

Milk under OVS

In all cases, students must be given a choice of milk when OVS service is used.

Pre-Ordered Meals under OVS

CEs may use a system where students pre-order a reimbursable meal under OVS. CEs must ensure that the ordering system has a method to communicate what items must be selected for a reimbursable meal.

Salad or Theme Bars under OVS

If a site uses OVS as a method for serving a reimbursable meal, the salad or theme bar

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1. must be available to all students on any day a salad or theme bar is offered;[8]
2. must meet the weekly required offerings for fruit or vegetables over the course of the week including juice or vegetable subgroups; and
3. must provide the minimum daily and weekly required servings of grain.

When planning a menu that includes a salad or theme bar as a part of a reimbursable meal or a complete meal, the menu planner must take the following actions:

- Make sure that the minimum portion sizes are consistent with the meal pattern requirements for the serving size for the age/grade group and creditable amount to be counted toward a reimbursable meal.
- Monitor the components that contribute toward a reimbursable meal.

  For Example: The minimum creditable amount for fruit is ⅛ cup. On the menu and signage in the serving area, the menu planner lets students know the amounts of each food item or the combination of food items that contribute toward the appropriate portion size for each component for a reimbursable meal. At the POS[9], the cashier uses the menu planner's information to determine if a reimbursable meal is selected by the student.

Pre-Plate Delivery System

CEs with a pre-plate delivery system must inform students that they may request the server to remove any unwanted item(s) from their plates for NSLP and SBP. Strategies to provide this information may include announcements by homeroom teachers or posters in the cafeteria.

All students must be able to select their own milk from a variety of milk types offered.

Pre-Packaged or Pre-Proportioned Delivery System

CEs may pre-package or pre-proportion menu items in specific serving size portions for NSLP and SBP. The pre-packaging or pre-proportioning system (1) must allow students to take at least the minimum daily requirement of all components for the age/grade group; (2) must provide a method for students to have a choice of what menu items to take if using OVS; and (3) must give students the option to refuse any food item(s).

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[8] See the *Special Guidance, Meal Service* subsection in this section for additional information on the application of this requirement in an ISS context.

[9] See *Administrator's Reference Manual, Section 20, Counting & Claiming* for additional information on point of service (POS) systems.

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Salad or Theme Bars

Salad and theme bars are an effective strategy for providing a wider range of food choices and increasing acceptability for NSLP and SBP. They can be used for the following types of items or meals:

- A la carte food items
- Food Component—one food component, multiple food components, or a complete meal of three or more components for a reimbursable meal.

This type of food service may be used for any age of student. However, it is critical that CEs make sure that all sites using salad or theme bars follow appropriate health and safety precautions.[10]

Serving Utensils

CEs using salad bars are required to use specific serving size utensils to meet quantity requirements to encourage students to take appropriate food amounts. Regardless of the serving utensils used, SNP staff must ensure that the portions on students' trays meet the meal pattern requirements for the meal to be reimbursable.

Vegetable Subgroups

Vegetable subgroups offered on a salad or theme bar must be listed on the planned menu and identified on production records.[11]

Point of Service (POS) for Salad or Theme Bars (NSLP and SBP)

If the site has a salad bar, students may be able to make an entree salad or a side dish menu item from the various ingredients. Food components or food items located on a salad or theme bar must be labeled, listed on the menu, or otherwise identified so that students can easily recognize all the food components and serving sizes for a reimbursable meal. This includes information that allows students to select the correct quantities of fruit or vegetables.

CEs are also required to monitor the food components or items taken and the portion size of each serving taken if the student is selecting food components or items that are credited toward a reimbursable meal or for a complete reimbursable meal. The cashier at the POS[12] must be trained to accurately judge the quantities of self-serve items on trays, so the cashier can determine if the food/menu item can count toward a reimbursable meal.

For Example: Students and cashiers are informed that the entree salad consists of two scoops of tuna or chicken salad plus a bowl of lettuce, a spoon of tomatoes, and small bowl of carrots. The side salad/menu item could be a bowl of lettuce and other vegetables or a bowl of fruit salad.

If the salad or theme bar is not monitored after the POS,[13] any items taken from the salad or theme bar are considered Extra food. Extra food cannot be credited toward a reimbursable meal but must be included in the required dietary specifications for the week: calories, sodium, and saturated and trans fats.

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10 See *Administrator's Reference Manual (ARM), Section 26, Food Safety* for additional information on this topic.
11 See *Administrator's Reference Manual (ARM), Section 30, Records Retention* for more additional information on this topic.
12 See *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on point of service (POS) systems.
13 See *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* or additional information on point of service (POS) systems.

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Pre-Packaging and Pre-Proportioning for Salad or Theme Bars

Food items on salad or theme bars may be offered in prepackaged or pre-proportioned amounts. Prepackaged or pre-proportioned food or menu items may help cashiers at the POS[14] determine if the items chosen are creditable toward a reimbursable meal. If pre-packaging and pre-proportioning are used under OVS, CEs must make sure students are still allowed a choice of items.

Resources for Salad and Theme Bars

The following web-based sources may help CEs to establish a safe and successful salad or theme bar:

- *Best Practices: Handling Fresh Produce in Schools*, a USDA and Institute for Child Nutrition fact sheet that provides specific food safety recommendations for produce

  Available at *www.fns.usda.gov/best-practices-handling-fresh-produce-schools*

- *Fruits and Vegetables Galore: Helping Kids Eat More*, a USDA publication that contains information on how to train students on salad bar etiquette

  Available at *www.fns.usda.gov/tn/fruits-vegetables-galore-helping-kids-eat-more*

- *Program Information Manual, Retail Food Protection: Recommendations for the Temperature Control of Cut Leafy Greens during Storage and Display in Retail Food Establishments*

  Available at *www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/IndustryandRegulatoryAssistanceandTrainingResources/ucm218750.htm*

- *Program Information Manual: Retail Food Protection Storage and Handling of Tomatoes*

  Available at *www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/IndustryandRegulatoryAssistanceandTrainingResources/ucm113843.htm*

- *Retail Food Safety Program Information Manual: Safe Handling Practices for Melons*

  Available at *www.fda.gov/media/116691/download*

Vending Machines

CEs may use vending machines as a method of serving a reimbursable meal as long as the vending machines are able to price a reimbursable meal as a unit. When vending machines are used to offer a reimbursable meal, the machines are subject to the same procedures, menu planning requirements, competitive food rules, and offer versus serve (OVS) requirements that are applicable to meals offered on a service line with a cashier.

The CE is responsible to ensure that the vending system is able to do the following:

- Dispense reimbursable meals that meet the meal pattern requirements. Vending machines may provide the same service as a different OVS line, i.e., different machines may be treated as different serving lines with different OVS options or a vending machine may be a different OVS line. All meals offered through

[14] See *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional information on point of service (POS) systems.

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vending machines must be planned to meet the daily and weekly meal pattern requirements, including a variety of milk for students to choose from.

- Document when a reimbursable meal has been selected by an eligible student. Documentation includes counting the number of reimbursable meals served by each eligibility category: free, reduced-price, and paid. However, the vending machine system must prevent overt identification of the eligibility of any student.
- Prevent a free or reduced-price student from receiving more than one reimbursable meal per service period. A student may pay for a second meal if the student chooses to do so, but only one meal per student is reimbursable.
- Have a method in place to prevent a vending machine from dispensing meals or food items when it is no longer able to dispense a complete reimbursable meal. When a vending machine is out of reimbursable meals, there has to be method to prevent the machine of vending any food or beverage item in order to ensure that a student does not buy a meal assuming it is reimbursable when it is not.

If a CE plans to operate vending machines to serve reimbursable meals, the CE must notify TDA of its intent by completing the *Vending Machine to Dispense Reimbursable Meals* form (SNP-000)which is located in TX-UNPS, Download Forms.[15] TDA will provide information on the requirements for vended reimbursable meals and assist the CE in developing appropriate strategies to meet vended meal requirements.

Alternative School or In School Suspension (ISS)

When serving meals to students in an alternative school or ISS facility, CEs must apply the following requirements as appropriate to their serving situation:

- All students, including ISS students, must have equal access to all food service lines if they are allowed to go to the cafeteria to receive meals during regular meal service periods.
- If ISS students are only allowed access to the cafeteria before or after regular serving times, they may be limited to one reimbursable line. In this situation, the ISS students must receive and consume their meals prior to or after the regular meal periods for other students. They may consume these meals in the cafeteria or in another location.
- If the alternative school or ISS site participates in NSLP or SBP, students must not be required to bring a meal when there is a meal service on the campus. However, in cases where no foodservice is available at the location where the students are assigned, the CE is not required to provide meals.
- Students attending an alternative school or ISS site may be served a different meal than students attending school in regular school sites. In this case, the meal served must be a reimbursable meal, and the student must be allowed to choose from a variety of low-fat and fat free milk.

Field Trips or Special Events

When planning for meal service at special functions for all Child Nutrition Programs (CNPs), parties, field trips, or other special events, the CE must ensure (1) that students are not denied

[15] See the Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition page located on the page following the Table of Contents for information on how to contact TDA.

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meals or a variety of milk; (2) that there is no overt identification of eligibility; and (3) that meals claimed for reimbursement meet meal pattern requirements.

The SNP may provide sack lunches for only those students who request one. Request forms used for field trips must not include eligibility status.

Offsite Classes

If students enrolled at one of the CE's sites attend classes at an offsite facility that does not participate in the school nutrition program, a CE may provide reimbursable meals during the period of time when students are attending classes at the offsite facility. Students must be in attendance at the offsite facility when the meals are served, and meals must be served during the regular site's normal mealtime. The meal service must be congregate service when multiple students are in attendance at the offsite facility.

Offsite classes commonly include, but are not limited to, students enrolled in offsite work-study or alternative academic program classes. The meal may be a sack lunch or other appropriate service method.

Mobile or Temporary Serving Sites

Contracting Entities (CEs) may find mobile or temporary feeding sites helpful during summer operation and/or during the rest of the school year. Mobile or temporary serving sites can take many forms including, but not limited to, school buses retro-fitted to be a mobile site (*food truck* type service)[16] and temporary sites set up outside of the school building for special events.

For Example: A site sets up food booths during a field day. Each booth serves a different reimbursable meal. Students pick up a choice of milk at the checkout table (point of service) where the cashier records the meals served.

A site sets up a temporary serving site under a tent at an extra-curricular event to provide reimbursable meals for enrolled and visiting students. Operating a serving site at the event will help the site meet the demands of serving a large number of visiting students and provide meals to enrolled students who are participating in the event.

A CE retrofits a school bus as a serving site. The school bus provides meals at a different site each day of the week. Students enjoy the food truck atmosphere.

Special Guidance for Mobile Serving Sites

As CEs use mobile or temporary serving sites, they need to consider the following guidance:

Competitive Food Requirements

If a la carte items are sold, mobile and temporary sites must meet the competitive food standards.[17]

Counting and Claiming

All mobile or temporary sites must have a method to record the reimbursable meals or a la carte items served. When meals are served to visiting students, the receiving and sending CEs should determine whether the receiving or sending site will claim the reimbursable meals.[18]

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16 Before purchasing a food truck, food trailer, or modifying a school bus for meal service, CEs need to review the guidance provided in the *Administrator's Reference Manual (ARM), Section 16, Financial System*.

17 See *Administrator's Reference Manual (ARM), Section 22, Competitive Foods* for additional guidance on competitive food requirements.

18 See *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional guidance on claiming reimbursable meals served to visiting students.

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Financial

There are financial issues the CE will need to consider when it uses a mobile feeding site: See *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional guidance on allowable and unallowable costs.

Health and Safety

Mobile and temporary sites must follow all applicable health and safety regulations. This includes, but is not limited to, addressing mobile and temporary sites in the CE's Hazard Analysis Critical Control Point (HACCP) plan, holding foods at safe temperatures, and food handling safety.[19]

Meal Service Options

CEs may use a variety of meal service options including pre-plated and offer versus serve (OVS). However, in all cases, meal services must be congregate.

Point of Service (POS) System

If the CE is not able to use its regular point of service system to record information about meals or a la carte items served at mobile or temporary sites, the CE must have a second method to record this information and retain document to demonstrate the accuracy of counting and claiming.[20]

When a mobile site is used, the CE must include information about the POS system for the mobile site in its *Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures (Attachment B).*

CEs must also ensure that there is no overt identification when recording meal service information.

Special Guidance, Meal Service

Disciplinary Action

USDA guidance prohibits the denial of meals as a disciplinary action for any student who is enrolled in a school operating a school nutrition program. This does not include disciplinary action which suspends the student from attending school.

Farm to School and School Farm or Garden Programs

Educational activities offered in farm to school and school farm or garden program may provide benefits to school food service operations in a variety of ways: improving student attitudes toward fruits and vegetables, increasing student consumption of fruits and vegetables and improving job satisfaction for school nutrition team members. Farm to school and school farms and gardens may be used to incorporate locally or regionally produced foods into the meal service for all NSLP and SBP programs and integrate hands-on learning activities and food-related education into classroom instruction.

Common educational activities include classroom lessons, field trips to local farms, or meet the farmer day.

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[19] See *Administrator's Reference Manual (ARM), Section 16, Food Safety* for more information on this topic.

[20] See *Administrator's Reference Manual (ARM), Section 20, Counting & Claiming* for additional guidance on claiming reimbursable meals served to visiting students.

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Health and Safety

In selling garden produce, the CE must also follow all federal, state, and local requirements regarding health and safety regulations.

Leftover Garden Produce

Any leftover produce from the garden may be used for other child nutrition programs. If that is not possible, the garden program may sell the produce to the public as long as the profits accrue to the nonprofit school food service account or may donate the leftovers in accordance with state and local health and safety regulations.

Mealtimes for Breakfast, Lunch, and Snack

The following meal service times apply to school nutrition programs (SNPs):

Program	Time Requirements
ASCP	After the end of the regular school day[21] For half-day school programs and split-session kindergarten programs, students can be served snacks at the end of their school day provided all other program eligibility requirements are met. The snack program has no ending timeframes.
NSLP	10 a.m. to 2 p.m. Meal must be served prior to 2 p.m., but students may continue to eat after 2 p.m.
SBP	Prior to 10 a.m.; however, CEs are encouraged to allow students to eat breakfast when they are late arriving at school.
All Programs, Time Between Meals	For SNP, there are no requirements related to the amount of time between the beginning of one meal and beginning of the next. However, if a CE provides meals under the Child and Adult Care Food Program At-Risk (CACFP At Risk) afterschool program, the CE must allow two hours between a snack served under ASCP or CACFP At Risk and supper meal service.

Adequate Meal Service Periods

USDA encourages sites to make every effort to establish meal periods that are long enough for students to fully consume their meals and to provide an environment conducive to eating those meals. It is important, both nutritionally and socially, to give students sufficient time, conducive atmosphere, and safe environment to eat nutritious meals.

The following resources provide information on current research related to adequate meal service periods:

- *The Relationship Between the Length of the Lunch Period and Nutrient Consumption in the Elementary School Lunch Setting* (Ethan A. Bergman, PhD,

[21] See *Administrator's Reference Manual, Section 10, Afterschool Meal Programs* for additional information on the end of the regular school day.

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RD, CD, FADA; Nancy S. Buergel, MS, RD, CD; Timothy F. Englund, PhD; and Annaka Femrite, MS, RD) *Journal of Child Nutrition & Management*

Available at *http://docs.schoolnutrition.org/newsroom/jcnm/04fall/bergman/bergman2.asp*

- *Amount of Time to Eat Lunch Is Associated with Children's Selection and Consumption of School Meal Entrée, Fruits, Vegetables, and Milk* (Juliana F.W. Cohen, ScD, ScM; Jaquelyn L. Jahn, Scott Richardson, MBA; Sarah A. Cluggish, MBA; Ellen Parker, MBA, MSW; Eric B. Rimm, ScD) *Journal of the Academy of Nutrition and Dietetics*.

  Available at *http://www.andjrnl.org/article/S2212-2672(15)01248-4/fulltext*

Non-Traditional Meal Service Times

TDA may grant reasonable variances to meal service times in the following circumstances:

1. Accommodation of special circumstances for traditional students during traditional mealtimes which includes limitations caused by capacity of facility and length of school day

   For Example:

   - The CE cannot provide a complete meal service to all program participants because its facilities do not have the capacity to accommodate the number of meals served.
   - The CE has extended school hours.

2. Accommodation of special circumstances for traditional students with non-traditional mealtimes which includes situations where students are not on campus during the regular school day

   For Example:

   - Credit recovery or graduation programs that operate on a non-traditional school day schedule
   - Work study programs that allow students to work during the regular school day and attend classes in the late afternoon or evening

Exemptions to the meal service time are made on a case-by-case basis. TDA may also grant an exemption for a limited period of time when warranted. It is not necessary for a CE to seek approval each year after an approval is made if the conditions upon which the approval was made remained unchanged. However, if the circumstances do change, the CE must resubmit the request for an approval.[22]

To obtain an approval for non-traditional meal service time, CEs must indicate meal service times they plan to implement in the Application Packet in TX-UNPS. Once a CE indicates a non-traditional meal service time, TDA will contact the CE.

[NOTE: Evening meals served to students in adult education courses are not eligible for a meal exemption.]

Weekends

Saturday *or* Sunday breakfast and lunch meals may be served and claimed as long as the classes are part of the regular CE's instructional program, and students are required to

[22] See the Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition page located on the page following the Table of Contents for information on how to contact TDA.

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attend classes. A school-affiliated extracurricular event or activity, such as football, band, or choral activity is not eligible for weekend meal service.

Refer to the *Administrator's Reference Manual (ARM) Section 28, Residential Child Care Institutions* for additional information regarding RCCIs and weekend meals.

Year-Round CEs or Schools

Year-round CEs or schools may claim reimbursement for eligible meals. If the CE or school has implemented a multi-track system (not all students in a school are attending school at the same time), the CE must ensure that systems are in place to distinguish students participating in an instructional track from students who are off track. However, year-round CEs or schools may provide reimbursable meals to enrolled students who are off track (not attending class because of school breaks or vacations) if the students are engaged in school-sponsored educational activities on the school campus.

Special Schedules

If there is a special event, such as testing or a field day, the CE does not need a waiver to adjust mealtimes for this type of special schedule. The CE does not need to update the site application in TX-UNPS to reflect an adjusted mealtime for this type of special event.

Information Box 1

Record Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

Other Food Sales

A La Carte

CEs may provide an a la carte service as long as they also offer a reimbursable meal to all students.

At Breakfast

If a student chooses less than three food items menued for a reimbursable breakfast (including a minimum serving of fruit or vegetables), the student must pay the a la carte price of those items if this is the CE's policy when a student does not select a reimbursable meal.

At Lunch

If a student chooses less than three food components menued for a reimbursable lunch (including a minimum serving of fruit or vegetables), the student must pay the a la carte price of those items if this is the CE's policy when a student does not select a reimbursable meal.

A la carte prices should be set to cover the total cost of each menu item.[23] All a la carte sales must meet all applicable Competitive Food Nutrition Standards.[24]

Records Retention

The CE is required to maintain an organized system of record retention that is accessible to appropriate CE staff members and federal or state reviewers. TDA may request documentation for both offsite and onsite administrative reviews. CEs also have the option to maintain records

[23] See *Administrator's Reference Manual (ARM), Section 19, Meal Pricing* for additional information on this topic.

[24] See the *Administrator's Reference Manual (ARM), Section 22, Competitive Foods* for additional information on a la carte sales and the competitive food requirements.

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in paper or electronic form. The *Administrator's Reference Manual (ARM), Section 30, Records Retention* has additional information on the records CEs must retain.

A La Carte

The CE must retain records related to competitive foods, including, but not limited to, nutritional profile of food and beverages served, income, and cost.

Reimbursable Meals

The CE must retain food production records, menus, POS service records, and other documentation related to meal service as well as income and cost.

Leftovers

The CE must retain records that demonstrate how leftovers are handled.

Meal Service

The CE must retain records indicating meal service times, including special event schedules and mealtime waivers, if applicable.

The CE must retain records of meal service methods, including OVS methods, as required or applicable.

Compliance

TDA will review documentation submitted through TX-UNPS, retained onsite during Administrative Reviews (ARs), or on request to ensure that the CE is compliant with the regulations described in this section. TDA may require an approvable corrective action plan if the CE does not comply these requirements.

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Section 22

Competitive Foods

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Section 22, Competitive Foods

Update Guide

January 4, 2022	Updated *Section 22, Competitive Foods* to correct minor typos and clarify guidance on the following topics: - Flavored milk
August 12, 2020	Updated *Section 22, Competitive Foods* to apply new title and updated the *Administrator's Reference Manual (ARM)* section references. Clarified information on the following topics: – Defining food and/or beverages to be sold or given away – Flavored milk – Fundraisers – Grains
June 28, 2017	Updated *Section 20, Competitive Food Nutrition Standards* to update the calories allowed for Other Beverages per 8 fluid ounces offered at the high school level and to provide information on 100% juiced products.
September 23, 2016	Updated *Section 20, Competitive Food Nutrition Standards* to incorporate the following guidance: – *National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Solid in School as Required by the Healthy, Hunger-free Kids Action of 2010, Final Rule for 7 CFR Parts 201 and 220, Federal Register, Vol 81, No. 146* (July 29, 2016) Clarified information on the following topics: – Combination Foods – Entrée items – Exempt entrée criteria – Fundraisers – Grain product – Resources
August 26, 2015	Updated *Section 20, Competitive Food Nutrition Standards* to incorporate the following guidance: – *Title 4. Agriculture, Part 1. Texas Department of Agriculture, Chapter 26. Food and Nutrition Division, Subchapter A. Texas School Nutrition Policies* – *USDA Memo, SP 23-2014 (v. 3), Questions and Answers Related to the "Smart Snacks" Interim Final Rule* (March 31, 2015) Clarified information on the following topics: – Alliance Product Calculator – Beverages sold to high school students – Child nutrition (CN) labels – Combination foods – Dairy products – Extended traditional National School Lunch Programs (NSLP) or School Breakfast Programs (SBP) – Food or beverages given to students – Fundraisers

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- Fruit or vegetable juice
- Non-traditional grain products
- Nutrient values
- Records retention
- School campus
- Smoothies

February 9, 2015

Updated *Section 20, Competitive Food Nutrition Standards* to incorporate the following guidance:

- *USDA Factsheet Fundraisers and Smart Snacks: Foods Not Intended for Consumption at School* (January 9, 2015)
- *Title 4. Agriculture, Part 1. Texas Department of Agriculture, Chapter 26. Food and Nutrition Division, Subchapter A. Texas School Nutrition Policies*
- *USDA Memo SP 11-2015, CN Labels Copied with a Watermark* (November 26, 2014)
- *USDA Memo TA 07-2010 (v.3), Guidance for Accepting Processed Product Documentation for Meal Pattern Requirements* (November 26, 2014)
- *USDA Memo SP 63-2014, Smart Snack Standards for Exempt Foods When Paired Together* (September 11, 2014)

Clarified information on the following topics:

- Accompaniments and condiments
- Alliance calculator
- Circumstances in which Competitive Food Nutrition Standards apply
- Classroom funds
- CN labeling
- Deep fat frying
- Entrée criteria
- Exemptions from Competitive Food Nutrition Standards
- Food not intended to be consumed on the school campus
- Fried foods
- Fruit concentrate and fruit concentrate puree
- Fruit juice
- Fundraisers
- Records retention, including for concession stands or other events
- School day
- School campus
- Time and place restrictions as defined by Texas Administrative Code, including Alternative Time and Place Restrictions and Standard Time and Place Restrictions

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August 1, 2014	Updated *Section 20 Competitive Food Nutrition Standards* to incorporate the following United States Department of Agriculture (USDA) memos and guidance: – *Texas Administrative Code (TAC), Title 4 Agriculture, Part 1 Texas Department of Agriculture, Chapter 1 General Procedures, § 26.10, § 26.12* (June 26, 2014) – *USDA Memo, SP 23-2014 (v. 2), Questions and Answers Related to the "Smart Snacks" Interim Final Rule* (June 5, 2014) – *USDA Memo SP 40-2014, Smart Snacks Nutrition Standards and Culinary Education Programs* (April 22, 2014) – *USDA Memo SP 36-2014, Smart Snacks Nutrition Standards and Exempt Fundraisers* (April 17, 2014) – *USDA Memo SP 35-2014, Grain Entrees Related to the Smart Snacks in School Standards* (April 17, 2014) – *USDA Memo Consolidated Appropriations Act Report Language on Waivers for School Breakfast and Smart Snacks* (March 21, 2014) – *USDA Notification, Alliance Smart Snacks Calculator for Food Sold to Students in Schools* (February 24, 2014) – *Interim Final Rule, National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by Healthy, Hunger-Free Kids Act of 2010* (June 28, 2013)

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

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Competitive Foods

The Competitive Food Nutrition Standards guidance in this section applies to all contracting entities (CEs)[1] operating the National School Lunch Program (NSLP) and School Breakfast Program (SBP) in which food and/or beverage items are sold to students during the school day on a school campus that are not part of a reimbursable meal. The Competitive Food Nutrition Standards are also called Smart Snacks or the competitive rule. For guidance on the dietary specifications that apply to reimbursable meals, see the *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals* and *Section 8, Lunch Meals*.

A *competitive food* is defined as

> Foods and/or beverages sold to students that compete with the school's operation of the NSLP and/or SBP. This definition includes, but is not limited to, food and/or beverages sold a la carte in a meal service line, in vending machines, in school stores, or as part of fundraisers.

Four Competitive Food Nutrition Standards

CEs that sell food and/or beverages that are not part of a reimbursable meal during the school day on the school campus—*competitive foods*— must use the following Competitive Food Nutrition Standards.

Beverage Standards for Competitive Foods (Beverage Standards)

Set of criteria that establish beverage types, sizes, and nutrient values to ensure that students are able to purchase healthy beverages.

General Food Nutrition Standards for Competitive Foods (General Food Nutrition Standards)

Set of general characteristics for food items sold—type of food item and nutritional values for the food item—that determine if a food item is allowable as a competitive food.

Nutrient Standards for Competitive Foods (Nutrient Standards)

Set of nutritional values for calories, saturated or trans fats, sodium, and sugar that determine if food items can be sold under the competitive rule.

Entrée Criteria for Competitive Foods

Set of criteria that establish the Competitive Food Nutrition Standards for entrée items.

[1] For some requirements, residential child care institutions (RCCIs) may not be required to follow the regulation described. In those instances, the exception will be noted in the guidance or in a footnote.

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Definitions for This Section

For this section, the following terms will be used:

A La Carte	Individually priced food and/or beverage items sold during the meal service by the school nutrition program. These items may or may not be included in a reimbursable meal.
Beverage Standards for Competitive Foods (Beverage Standards)	Set of criteria that establish beverage types, sizes, and nutrient values for competitive foods in NSLP and SBP to ensure that students are able to purchase healthy beverages. These standards apply to sites operating NSLP and SBP. These standards do not apply to the dietary specifications required for a reimbursable meal.
Child Nutrition Labels (CN Labels)	USDA program working directly with commercial food processing firms and in cooperation with agencies of USDA and the United States Department of Commerce (USDC) to provide standardized food crediting statements on product labels.[2]
CN Label	Product label that contains a statement that clearly identifies the crediting contribution that the product makes toward the meal pattern. CN labels also provide ingredient information needed to assess whether items meet the Competitive Food Nutrition Standards.
Combination Food	Products that contain two or more components representing two or more of the recommended food groups: fruit, vegetable, dairy, protein, or grains.
Competitive Food (Includes Both Food and Beverages)	Foods and/or beverages sold to students that compete with the school's operation of the NSLP and/or SBP. This definition includes, but is not limited to, food and/or beverages sold in a meal service line, in vending machines, in school stores, or as part of fundraisers.
Competitive Food Nutrition Standards (Also Called Smart Snacks and Competitive Food Rule)	Standards established by USDA to ensure that students are able to purchase healthy meals and snacks. There are four types of Competitive Food Nutritional Standards: beverage standards, exempt entrée criteria, general competitive food standards, and Nutrient Standards for food and beverage items. These standards apply to food sold at any sites operating NSLP and SBP. These standards do not apply to the dietary specifications required for a reimbursable meal.
Competitive Food Rule	Another term used in reference to the Competitive Food Nutrition Standards for foods sold during the school day on the school campus that are not part of the reimbursable meal. The Competitive Food Nutrition Standards are based on the Recommended Dietary Allowance (RDA) which is designed to help consumers use food label information to plan a healthy diet.
Daily Value (DV)	Percentage of a nutrient provided in a food product based on the recommended dietary allowance (RDA).

[2] See *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* for more information on this topic.

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DGA	Dietary Guidelines for Americans, a set of science-based recommendations for Americans two years and older that have been used by USDA to establish dietary specifications, nutrition standards and policies for breakfast, lunch, snacks, and competitive foods under NSLP and SBP.
Entrée Item	Item that is intended to be a main dish and is either 1. A combination food of meat/meat alternate and whole grain or 2. A combination food of vegetable or fruit and meat/ meat alternate or 3. A meat or meat alternate alone with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters, and meat snacks (such as dried beef jerky) or 4. A grain only, whole-grain rich entrée that is served as the main dish of the SBP reimbursable meal.
Exempt Entrée Criteria for Competitive Foods	Set of criteria used to identify exempt entrée items under the Competitive Food Nutrition Standards – served a la carte on the same day that an entrée item served as a main dish is included on the planned menu as part of reimbursable meal or – the next operating day after the entrée item served as a main dish is included on the planned menu as part of reimbursable meal. An exempt entrée item must be in the same serving size or smaller than the entrée item offered in the NSLP or SBP reimbursable meal.
Exempt Fundraiser	Fundraising event where the Competitive Food Nutrition Standards do not apply. Each campus may have up to six exempt fundraising days per year. Food and beverage items sold for exempt fundraisers cannot be sold in competition with school meals in the food service area during the school meal service.
Food Buying Guide for Child Nutrition Programs (FBG)	USDA resource which contains information to assist CEs in determining (1) the number of serving portions for specific products and (2) whether a product fulfills the requirements for a designated food component.[3]
Fruit or Vegetable Juice	Beverages labeled as containing 100 percent fruit or vegetable juice. The U.S. Food and Drug Administration (FDA) requires beverage labels for products that contain juice to include a percentage of juice stated on the product carton. If the label states that the product is 100 percent juice, the juice product meets the 100 percent juice requirement.
Fundraisers	Activities where food or nonfood items may be sold by school administrators or staff, students or student groups, parents or parent groups, or any other person, company, or organization to raise money for school or non-school needs. For more information, see the definition for *exempt fundraiser* in this section.
General Food Nutrition Standards for Competitive Foods (General Food Nutrition Standards)	Set of general characteristics for food items sold that are based on the food item type and nutritional values—these characteristics determine if a food item is allowable as a competitive food. These standards apply to food sold at any sites operating NSLP and SBP. These standards do not apply to the dietary specifications required for a reimbursable meal.

[3] Available at *www.foodbuyingguide.fns.usda.gov/*

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Local Wellness Policy	Set of policies established by the CE to establish goals for nutrition education, physical activity, and other school-based activities that promote student wellness, as well as nutrition guidelines to promote student health and reduce childhood obesity for all foods available on each school campus. Local wellness policies must be approved by the local school board or governing board for the CE.[4]
Main Food Group Categories	Four food groups designated by USDA as the main categories of food under the Competitive Food Nutrition Standards: protein, dairy, fruit, and vegetables. In USDA guidance this term is sometimes called the *Non-grain Main Food Groups*.
Nutrition Fact Label	The U.S. Food and Drug Agency (FDA) label that is added to food and beverage products to provide information about the product's crediting contribution and nutritional profile.
Nutrient Standards for Competitive Foods (Nutrient Standards)	Set of nutrient values for calories, saturated or trans fats, sodium, and sugar that determine if food items can be sold under Competitive Food Nutrition Standards for sites operating NSLP and SBP.
Nutrient Values for Competitive Foods (Nutrient Values)	Amount of calories, fat (including total fat, saturated fat, and trans fat), sodium, and sugar in a food and/or beverage. These values establish the nutrient standards for allowable food and/or beverages under the Competitive Food Nutrition Standards for sites operating NSLP and SBP. These standards do not apply to the dietary specifications required for a reimbursable meal.
Product Formulation Statement	Also called the product analysis sheet or manufacturer's product statement, documentation that provides product specific information on the product's potential crediting contribution toward meal pattern or Competitive Food or Beverage Nutritional Standards.
Protein Food	Term used in Competitive Food Nutrition Standards for food items high in protein such as meat, beans, poultry, seafood, eggs, nuts, and seeds.
Recommended Dietary Allowance (RDA)	Average amount of a nutrient that is recommended for a person in generally good health in a 24-hour period, used to establish the Nutrient Standards and dietary specifications for breakfast, lunch, snacks, and competitive foods for sites operating NSLP and SBP.
School Campus	Under the Competitive Food Nutrition Standards, all areas of the property under the jurisdiction of the school that are accessible to students during the school day.
School Day	The period from the midnight before the beginning of the official instructional day to 30 minutes after the end of the official instructional day. [NOTE: The school day requirement does not include the afterschool meal and snack programs, events, or other activities as long as food service for these activities does not occur during the 30 minutes after the end of the official instructional day.]
School Meals	Meals provided under the school nutrition program for which schools receive reimbursement in accordance with all applicable federal regulations, policies, instructions, and guidelines.
Smart Snacks	Another term used in reference to the Competitive Food Nutrition Standards for foods sold during the school day on the school campus that are not part of the reimbursable meal.
Trans Fat	Type of fat that occurs in food when manufacturers use hydrogenation, a process in which hydrogen is added to vegetable oil to turn the oil into a more solid (saturated) fat. Trans fats may be found in such foods as margarine, crackers, candies, cookies, snack foods, fried foods, baked goods, salad dressings and other processed foods. Trans fats may also occur naturally in some meat products.

[4] See *Administrator's Reference Manual (ARM), Section 29, Local Wellness Policy & Stakeholder Engagement* for additional information on this topic.

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When Competitive Food Nutrition Standards Apply

The Competitive Food Nutrition Standards apply only to food and/or beverages sold during the school day on the school campus. CEs may establish local policies or rules that are more restrictive than Texas or USDA regulations as long as those policies and rules are not in conflict with Texas or USDA regulations.

Definition for Transactions that Constitute a *Sale*

Sale of a food and/or beverage includes all direct or indirect sales such as (1) cash or credit transactions; (2) tokens, tickets, or other representations of value in exchange for cash or credit that a student may use to purchase food and/or beverages; or (3) food and/or beverages given to students in exchange for donations, whether those donations occur by cash or credit. If a student receives a food and/or beverage as a result of any form of payment, donation, or other contribution, the food and/or beverage item must meet the Competitive Food Nutrition Standards.

Food and/or Beverages Given to Students

If a student is given food and/or beverage items at no charge (no form of payment, donation, or other contribution exchanged for the item), these items are not subject to the Competitive Food Nutrition Standards. Food given to students is a transaction that does not result from a payment, donation of funds, or a contribution of value by the student or parent.

Food Provided by Parents or Guardians

Food provided by parents or guardians is considered to be food given to students and is not subject to the Competitive Food Nutrition Standards.[5]

Accompaniments or Condiments

An accompaniment or condiment intended to be used with a competitive beverage and/or food item is considered to be part of the competitive food and/or beverage item—even if the accompaniment or condiment is provided at a different location in the serving area.[6]

Food and/or Beverages Purchased with Classroom Funds

When the parents of students in a classroom agree to donate funds toward the purchase of treats to be shared by all children in the classroom for special occasions, food and beverage items served are not subject to the Competitive Food Nutrition Standards.

Food and/or Beverages Purchased with Tickets or Tokens Given as a Reward

If a ticket or token is given to a student for good behavior or good grades—i.e., a behavioral or performance award—and no money or other form of payment is exchanged in order to acquire the ticket or token, the exchange of the reward ticket or token is not considered a sale to the student.

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5 See the *Food and/or Beverages Brought from Home or Food Given to Students* subsection in this section for additional information on parents or guardians providing food to their children.

6 See the *Accompaniments or Condiments* subsection in this section for additional information on this topic.

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School Day

School day is defined as the period from the midnight before the beginning of the official instructional day to 30 minutes after the end of the official instructional day. Competitive Food Nutrition Standards apply during this time period.

Afterschool Programs

The Competitive Food Nutrition Standards do not apply to afterschool programs, events, or activities except during the 30 minutes after the end of the official instructional day.

Operating Extended NSLP or SBP in the Summer

If a CE extends the operation of the traditional NSLP or SBP into the summer, the Competitive Food Nutrition Standards do apply to all food and/or beverages sold on the school campus during the school day. The Competitive Food Nutrition Standards do not apply to sites where the CE is operating the Seamless Summer Option (SSO) or Summer Food Service Program (SFSP) and is not operating extended traditional NSLP or SBP.

School Campus

School campus is defined as all areas of the property under the jurisdiction of the school that are accessible to students during the school day. Competitive Food Nutrition Standards apply to these places.

Combined Campuses

Combined campuses must follow the Competitive Food Nutrition Standards for the youngest age/grade group unless access to food and/or beverages is separated by age/grade group.

Locations Other Than the Cafeteria

If food and/or beverages are sold in any location where students have access, the food and/or beverages must meet the Competitive Food Nutrition Standards. This includes, but is not limited to, performing arts centers and sports facilities. This does not include any area restricted to adults or staff as long as students are not allowed to have access to the area.

Restricted Areas

If students are allowed access to an area that is labeled *staff only*, the area is considered to be accessible by students and is, therefore, subject to the Competitive Food Nutrition Standards.

Exceptions to the Competitive Food Nutrition Standards

Food and/or beverages sold or served in the following special situations are not required to meet the Competitive Food Nutrition Standards:

Accommodating Students with Special Needs

The requirements in this section do not apply to special needs students whose Individualized Education Program (IEP) plan indicates the use of a food and/or beverage item of any type for behavior modification (or other suitable need).

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Competitions and Other Events

The requirements in this section do not apply to any location students travel to for competitions or other events if a school nutrition program (SNP) does not provide the students with meals as long as the competitive or event location is not an extended area of a school campus that operates NSLP or SBP.

Food and/or Beverages Brought from Home or Food Given to Students

The Competitive Food Nutrition Standards do not restrict (1) food and/or beverages that parents provide for their own children's lunches or snacks or (2) food and/or beverages that are given to students. This includes, but is not limited to, food and/or beverages provided for birthday parties or special events.

Acting on Behalf of a Parent

It is not uncommon for a parent to designate another adult to act for the child in the place of the parent. This authority is granted for the best interests of the child and the parent. However, there are instances when it may be difficult for school staff to determine when a parent has given *official* authority to another adult to act on his/her behalf.

CEs may establish policies to clearly define how and when a parent gives authority to another adult to provide food and/or beverages to a child on behalf of the parent during the school day on the school campus.

Food and/or Beverages Ordered and Paid for Off Campus

If the CE allows students to have food and/or beverages delivered to them on campus, students or their parents may order and pay for food and/or beverages off campus that do not meet the competitive rules and have the food and/or beverages delivered to the students to consume on the school campus during the school day. In these cases, the delivery of food or beverages must meet local policies or regulations.

CEs should include information on whether they do or do not allow food and/or beverage deliveries on campus and any applicable policies or rules in their local wellness policy.[7]

School Nurses

The requirements in this section do not apply to school nurses or another school official permitted by local policy to assist school nurses using a food and/or beverage item of any type during the course of providing health care to individual students.

Supporting Students' Nutritional Needs Outside of the School Day

If a CE participates in a program that is designed to support students' nutritional needs outside of the school day (i.e., over the weekend or during extended breaks), the food and/or beverage items sent home with these children are not intended to be consumed during the school day or on school campus. Therefore, these food packets are not subject to the Competitive Food Nutrition Standards.

For Example: Weekend backpack program

[7] See *Administrator's Reference Manual (ARM), Section 29, Local Wellness Policy & Stakeholder Engagement* for additional guidance on this topic.

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Fundraisers

A fundraiser is an event that includes any activity during which currency, tokens, tickets, donation for, or other forms of payment are exchanged for the sale or purchase of a product. Giving away food but suggesting a donation would be considered a fundraiser since funds will be raised as a result. A vending machine for which profits are used to support a school-sponsored club or activity such as the school band or football team is a fundraiser. Purchasing tickets or tokens to be exchanged later during the school day for food items would also be considered to be a sale of food for a fundraiser.

There is no limit on fundraisers that meet the Competitive Food Nutrition Standards. Any food and/or beverage item that meets the standards may be sold on the school campus during the school day.

CEs must define what types of food and/or beverages are allowed to be sold on campus.[8]

Exempt Fundraisers

Texas public, charter, and private schools that participate in NSLP or SBP may sell food and/or beverages as part a fundraiser that does not meet the Competitive Food Nutrition Standards during the school day for up to six (6) days per school year on each school campus. Food and/or beverages sold during an exempt fundraiser must not be sold in competition with school meals in the food service area during the school meal service.

CEs should include information on exempt fundraisers in their local wellness policies to ensure that students, parents, and staff understand when fundraising exemptions apply.

Food Sold During the School Day Not Intended for Consumption in Schools

Competitive Food Nutrition Standards do not apply to fundraising activities that include the ordering and distribution of food and/or beverages not intended to be consumed during the school day on the school campus. This includes ordering food items that will be picked up a later time in the future. Typically, these food items need further preparation before they can be served.

For Example: Cookie dough or frozen sausage.

Concession Stands or Other Events Where Food and/or beverages Are Sold During the School Day

Foods and/or beverages sold to students at concession stands or other events must meet the Competitive Food Nutrition Standards if the sale occurs during the school day on the school campus as defined in this section.

[8] See *Administrator's Reference Manual (ARM), Section 29, Local Wellness Policy & Stakeholder Engagement* for additional guidance on the requirements in the local wellness policy that must address all food sold and given away on the school campus.

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CEs may find that providing training or assistance to concession operators about acceptable products to sell to students will help to ensure that the Competitive Food Nutrition Standards are met. See the *Records Retention* and the *Compliance* subsections in this section for additional information related to concession activities or other events that operate under the Competitive Food Nutrition Standards.

USDA's Competitive Food Nutrition Standards

All food and/or beverage items sold during the school day on the school campus that are not part of the reimbursable meal must meet the Beverage Standards, General Food Nutrition Standards, and the Nutrient Standards for Competitive Foods:[9]

Information Box 1

Common Nutrition Measurement Abbreviations

fl = fluid	≤ = equal to or less than
g = gram	≥ = equal to or greater than
mg = milligram	
oz = ounce	

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[9] See the *Exceptions to the Competitive Food Nutrition Standards* and the *Items Exempt from Competitive Food Nutrition Standards* subsections in this section for additional information on situations, contexts, and specific food and/or beverage items that are not subject to the Competitive Food Nutrition Standards.

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Competitive Food Nutrition Standards Chart

(Competitive food or beverage items sold during the school day must meet the standards as described in this chart.)

Beverage Standards

Type of Beverage	School Level		
	Elementary	Middle	High
Water (With No Added Ingredients)			
• Plain water	Any Size	Any Size	Any Size
• Plain Carbonated Water	Any Size	Any Size	Any Size
Milk			
• Plain, unflavored low-fat (1%) milk	≤8 fl oz	≤12 fl oz	≤12 fl oz
• Plain or flavored fat-free milk and approved milk alternatives	≤8 fl oz	≤12 fl oz	≤12 fl oz
Fruit or Vegetable Juice			
• 100% Fruit or vegetable juice	≤8 fl oz	≤12 fl oz	≤12 fl oz
• 100% fruit or vegetable juice diluted with water—with or without carbonation—with no added sweeteners	≤8 fl oz	≤12 fl oz	≤12 fl oz
Other Beverages for High School Students			
• Other lower calorie flavored and/or carbonated beverages that are labeled to contain ≤40 calories per 8 fl oz, or ≤60 calories per 12 fl oz.	–	–	≤12 fl oz
• Other very low calorie flavored and/or carbonated beverages that are labeled to contain ≤5 calories per 8 fl oz, or ≤10 calories per 20 fl oz	–	–	≤20 fl oz

General Food Nutrition Standards

Meet all of the Competitive Food Nutrition Standards

and

Be a grain product that contains 50% or more of whole grains by weight or have whole grains as the first ingredient.[10]

or

Have one of the non-grain major food groups as a first ingredient* (fruit, vegetable, dairy, or protein food).

or

Be a combination food that contains at least ¼ cup fruit and/or vegetable.

Nutrient Standards

Calorie limits: and
- Snack Items: ≤ 200 calories
- Entrée or Main Dish Items: ≤ 350 calories

Sodium limits: and
- Snack Items: ≤ 200 mg per portion as packaged[11]
- Entrée or Main Dish Items ≤ 480 mg per portion as packaged

Fat limits: and
- Total Fat: ≤ 35% of calories
- Saturated Fat: < 10% of calories
- Trans Fat: 0 g (≤ 0.5 g)

Sugar limits:
- ≤ 35% of weight from total sugars in foods

[10] If water is the first ingredient, the second ingredient must be one of the following: (1) grain product that contains 50% or more of whole grains by weight; (2) fruit, vegetable, dairy, or protein foods as a first ingredient; or (3) be a combination food that contains at least ¼ cup fruit and/or vegetable.

[11] On July 1, 2016, the sodium standard will move to 200 mg per item as packaged or served.

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General Food Nutrition Standards			
Meet all of the Competitive Food Nutrition Standards and			
Be a grain product that contains 50% or more of whole grains by weight or have whole grains as the first ingredient.[12]	or	Have one of the non-grain major food groups as a first ingredient* (fruit, vegetable, dairy, or protein food).	or Be a combination food that contains at least ¼ cup fruit and/or vegetable.
Nutrient Standards			
Calorie limits: ▪ Snack Items: ≤ 200 calories ▪ Entrée or Main Dish Items: ≤ 350 calories	and	Sodium limits: ▪ Snack Items: ≤ 200 mg per portion as packaged[13] ▪ Entrée or Main Dish Items: ≤ 480 mg per portion as packaged	and Fat limits: ▪ Total Fat: ≤ 35% of calories ▪ Saturated Fat: < 10% of calories ▪ Trans Fat: 0 g (≤ 0.5 g)
and Sugar limits: ▪ ≤ 35% of weight from total sugars in foods			

Entrée Items for Competitive Foods

For competitive foods, an entrée item is intended to be a main dish and is either

1. A combination food of meat/meat alternate and whole grain.[14]
   or
2. A combination food of vegetable or fruit and meat/ meat alternate.
   or
3. A meat or meat alternate alone with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters, and meat snacks (such as dried beef jerky).
   or
4. A grain only, whole-grain rich entrée that is served as the main dish of the SBP reimbursable meal.

See the *Exempt Entrée Items* subsection in this section for information on entrees that are exempt from the Competitive Food Nutrition Standards.

Combination Foods for Competitive Foods

The *Combination Food Criteria for Competitive Chart* provides a detailed description of a combination food item as well as a detailed list of criteria that establish the designation of a combination food. Combination food items must also meet the Nutrient Standards specified for competitive foods.

Combination Food Criteria for Competitive Foods Chart
Combination foods must meet the following criteria:

[12] If water is the first ingredient, the second ingredient must be one of the following: (1) grain product that contains 50% or more of whole grains by weight; (2) fruit, vegetable, dairy, or protein foods as a first ingredient; or (3) be a combination food that contains at least ¼ cup fruit and/or vegetable. The whole grain flexibility allowed for reimbursable meals does not apply to competitive foods.

[13] On July 1, 2016, the sodium standard will move to 200 mg per item as packaged or served.

[14] The whole grain flexibility allowed for reimbursable meals does not apply to competitive foods.

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1. Contain two or more components representing two or more of the recommended food groups: fruit, vegetable, dairy, protein, or grains.
2. Meet one the of the following criteria:
   - Meet all of the nutrient standards specified for a competitive food

     or
   - Be a combination food that contains ¼ cup of fruit and/or vegetable that meets the nutrient standards for a competitive food

For Example:

- Blueberry muffin, containing refined grains and at least a ¼ cup of blueberries
- Harvest stew, containing a least ¼ cup of vegetables
- Cheese sandwich, containing a whole grain-rich bread and a protein food

Special Situations, Combination Foods or Foods Served as a Unit

The following guidance provides information on combination foods or foods served as a unit:

Two Items Packaged Together

Two items that are packaged together are considered to be a combination food. The items must be sold together as one unit and must meet the criteria for a combination food.

For Example: A 100-calorie pouch containing a small chocolate chip cookie and a small banana.

The cookie contains grain and the banana contains about a ½ cup of fruit and together they contain the following nutrient values:

- 190 calories
- 3 g of fat (14% calories from fat)
- 1 g of saturated fat (5% calories from saturated fat)
- 0 g trans fat
- 95 mg sodium
- 20 g of sugar (17% sugar by weight)

Yogurt

When yogurt is combined with fruit or vegetables or a whole grain food such as granola, it becomes a combination food and is an acceptable entrée item at lunch if it meets the Competitive Food Nutrition Standards. However, yogurt alone, without fruit or vegetables or a whole grain food, cannot be an entrée item or main dish.

Exempt Entrée Items

If offered in the same or smaller portion on the same day or the next operating day after it was offered as part of a reimbursable meal, an NSLP or SBP entrée item served as a main dish is exempt from the Competitive Food Nutrition Standards.

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Moreover, a breakfast entrée item served as main dish may be a lunch exempt entrée item, and a lunch entrée item served as a main dish may be a breakfast exempt entrée item.

To qualify as an exempt entrée item, the entrée must meet the following criteria.

Exempt Lunch Entrée

To qualify as an exempt entrée item, a lunch entrée item must be designated as a main dish on the planned menu and must be one of the following.

- A combination food of meat or meat alternate and whole grain rich food
  or
- A combination food of vegetable or fruit and meat or meat alternate
  or
- A meat or meat alternate alone with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters, and meat snacks (i.e., dried beef jerky).

Exempt Breakfast Entrée

To qualify as an exempt entrée item, a breakfast entrée item must be designated as a main dish on the planned menu. This includes, but is not limited to, a grain only, whole-grain rich entrée that is served as the main dish of the SBP reimbursable meal.

Nutrient Standards, Calculation of Fat and Sugar Nutrient Values

By determining the nutrient values for foods and beverages sold in competition with the reimbursable meal, CEs will ensure that students are served healthy meals and snacks.

To assist CEs in the process, USDA has announced that the Alliance Product Calculator created by the Alliance for a Healthier Generation will help CEs in determining if a specific food item meets the calories, total fat, saturated fat, sodium, and sugar Nutrient Standards. This calculator can be accessed through the SquareMeals website at *www.SquareMeals.org*.

Alliance Product Calculator Accuracy

In order for the calculator tool to provide accurate information, the amounts recorded into the calculator must be correct and must be entered into the correct field. The CE will need the product's nutrition facts label in order to record the product specifications in the calculator.

Combination Foods

If the nutrition fact label ingredient information for a combination food item is entered incorrectly, the calculator result may be incorrect. CEs should read the directions carefully to ensure that all information is entered correctly.

Multiple Servings in One Package

For products that have more than one serving in a package, the calculator will automatically report the nutrition facts for one serving when the CE enters the total number of servings from the nutrition fact label in the calculator.

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Zero Amount

When recording the amounts in the Alliance Product Calculator, enter zero if there is no amount listed on the Nutrition Fact label.

If a CE is unable to access a web-based calculator, the following guidance demonstrates how to calculate the Nutrient Standards for a food and/or beverage item.

See *Administrator's Reference Manual (ARM), Section 23, Food Product Labeling* for additional guidance on how to calculate total fat, saturated fat, sugar per serving, and sodium per serving.

Items Exempt from Competitive Food Nutrition Standards

The following food and/or beverage items are exempt from some or all of the Competitive Food Nutrition Standards:

Combination Foods

- Items which include a combination of only dried fruit, nuts, and seeds as long as the product contains no added nutritive sweeteners or fats are exempt from the total fat, saturated fat, and sugar standards.
- Items which include a combination of fruits and/or vegetables as long as there are no added ingredients except water are exempt from all Nutrient Standards.

Fruits and Vegetables

- Fruits[15] and vegetables that are fresh, canned, pureed, or frozen that have no added ingredients except water are exempt from all Nutrient Standards.
- Fruit packed in 100 percent juice, extra light, or light syrup are exempt from all Nutrient Standards.
- Canned vegetables with no added ingredients except water that contain a small amount of sugar for processing purposes are exempt from all Nutrient Standards.
- Canned vegetables that are low sodium or have no salt added that contain no added fat.
- Dried or dehydrated whole fruit or vegetables or pieces of fruit or vegetables with no added nutritive sweeteners are exempt from the sugar standard.
- Dried whole fruit or pieces of fruit with nutritive sweetener required for processing and palatability are exempt from the sugar standard. At this time, the only types of dried fruit that may have added nutritive sweeteners and be exempt from the sugar standard are dried cranberries, dried tart cherries, and dried blueberries.

Paired Exempt Foods

- When two or more food items that are exempt from the Competitive Food Nutrition Standards are paired or packaged together without additional

[15] Any fruit product with sugar that meets the Nutrient Standards and has fruit as the first ingredient may still be sold if it meets all Competitive Food Nutrition Standards.

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ingredients, the paired exempt items retain their individually designated exemption for total fat, saturated, fat, and/or sugar.

For Example:

- Reduced Fat Cheese Served with Apples. Reduced fat cheese is exempt from the total fat and saturated fat limits. When it is paired with a vegetable or fruit, such as apples, the paired snack is only required to meet the calorie and sodium limits.
- Celery with Peanut Butter and Unsweetened Raisins. Peanut butter is exempt from the total fat and saturated fat requirements. When it is paired with a vegetable or fruit, such as celery, the paired snack retains the fat exemptions and may be served if it meets the calorie and sodium limits. Dried fruit, such as unsweetened raisins, are exempt from the sugar limit. However, calorie and sodium limits still apply to the snack as a whole.

Proteins

- Reduced fat cheese and part skim mozzarella cheese are exempt from total fat and saturated fat standards.
- Nuts and seeds and nut/seed butters are exempt from total fat and saturated fat standards.
- Dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat are exempt from the total fat and saturated fat standards.
- Seafood with no added fat is exempt from total fat standard only.
- Whole eggs with no added fat are exempt from the total fat and saturated fat standards but are subject to the trans fat, calorie, and sodium standards.

Other Items

- Sugar-free chewing gum is exempt from the Competitive Food Nutrition Standards.

Special Situations, Food and Beverage Items

The following guidance provides additional information on special situations related to the nutrient values of food and beverage items under the Competitive Food Nutrition Standards:

Accompaniments or Condiments

The nutrient profile for any accompaniment or condiment must be included in a food and/or beverage item's nutrient values—that is, the accompaniment or condiment counts toward the item's total nutrient values. Accompaniments or condiments include, but are not limited to, dressings or toppings, i.e., food items added to a food and/or beverage.

Calculating the Portion Size for an Accompaniment or Condiment

In cases where the CE uses bulk accompaniment or condiment products instead of individually packaged accompaniments or condiments, the CE must establish an

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average amount used—that is dividing the total amount served by the number of servings taken.[16]

After calculating the average portion size, the CE will determine the nutrient values for the portion size and add the average portion's nutrient values to that amount to get the nutrient values for the item.[17]

Calculation Accompaniment or Condiment Nutrient Value Chart				
Average Portion Size				
Total Amount for All Portions Served		**Number of Servings**		**Average Accompaniment or Condiment Portion Size**
48 oz	÷	55	=	.818
Total Item Nutrient Value (Calculate for Each Nutrient Value in the Item Using Information from the Nutrition Fact Label)				
Nutrient Value for Average Portion Size		Nutrient Value for Food and/or beverage Item		Total Nutrient Value for Food and/or beverage Item
2 mg sodium	+	100 mg sodium	=	102 mg sodium

Caffeinated Beverages

CEs may serve caffeinated beverages to high school students as long as all Competitive Food Nutrition Standards are met. However, research on the effect of caffeine on adolescents is only beginning to emerge; schools should exercise caution when selecting caffeinated items for sale to students.

The Competitive Food Nutrition Standards do not allow food and/or beverage items with caffeine to be served to elementary or middle schools students with the exception of trace amounts of naturally occurring caffeine.[18]

Cheese and Crackers

If the cheese and crackers are packaged separately and sold as separate items, cheese and crackers are not considered a combination item. Therefore, each item must meet the nutritional standards individually.

Cheese and Crackers as a Combination Item.

To be a combination item, the cheese and cracker item must be

1. listed on the planned menu as a combination item,
2. served as a unit, and
3. have either a dairy food or whole grain as the first ingredient.

[16] See the *When Competitive Food Nutrition Standards Apply* subsection in this section for additional information related to accompaniments or condiments intended to be used with a food and/or beverage or item that is sold.

[17] CEs must retain calculations documentation or records that demonstrate established average serving sizes for accompaniments or condiments with meal production documentation.

[18] Chocolate milk has naturally occurring caffeine.

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Coffee and Tea, High School Only

Coffee and tea are classified as Other Beverages and must meet the Nutrient Standards for Other Beverages.

Espresso with Steamed Milk

Espresso with steamed milk may be served at the high school level if the following requirements are met:

1. Steamed milk is made from skim flavored/unflavored milk or 1% unflavored milk.
2. No more than a 12 fl oz beverage is served.

Espressos may also be served over ice or blended with ice.

Culinary Education Programs

The Competitive Food Nutrition Standards have no impact on the curriculum for culinary education programs. Food/menu items prepared and tasted in the culinary program classes do not have to meet Competitive Food Nutrition Standards if they are not sold. The culinary program may continue to sell any food prepared to adults or the larger community during the school day on the school campus and to students outside of the school day. However, if the culinary program prepares and sells food to students during the school day, the Competitive Food Nutrition Standards do apply to food and/or beverages sold to students.

Dairy, Milk Beverages

Allowable milk beverages for all grade levels under the competitive rule include flavored or unflavored nonfat milk, unflavored low-fat (1%) milk, Kefir (cultured milk), buttermilk, acidified milk, acidophilus milk, or nutritionally equivalent milk alternatives as permitted by the school meal requirements.

Dairy, Deviated Identity Milk Beverages

A deviated identity milk beverage is beverage labeled by the manufacturer as a *milk product* but cannot be counted as milk product because the product profile does not meet the federal standards for identifying the product ingredients as a dairy product. Deviated identity milk beverages cannot be served as a competitive food. Since probiotic dairy drinks, drinkable yogurt, milk shakes, and/or high protein low-fat milk have a deviated statement of identity, these products cannot be served as a dairy product.

Non-Dairy Food and/or Beverages

Under the competitive rules, a dairy product must meet the specific federal standards for identification as a dairy product to count as a dairy product or as one of the non-grain major food groups.[19] Products that do not meet the federal standards might include nut butters, margarine, or rice milk even if the product contains one of the nutrient components of a milk product such as milk fat or milk protein. However, if the product container or the ingredient declaration specifies that the product is *ice cream*, which is a

[19] See the *Competitive Food Nutritional Standards Chart, General Food Nutritional Standards* subsection in this section. Non-grain major food groups are fruit, vegetable, dairy, or protein food.

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standard identity for dairy food, and has an ingredient list that includes milk fat, milk solids, or cream, the product is a dairy product or one of the non-grain major food groups.

Fruit Concentrate

A fruit juice product may be packaged in a concentrated form that is intended to be diluted as described in the product directions to make 100 percent fruit juice. In this case, once the concentrated fruit juice has been diluted as described in the directions, it is *100 percent fruit juice*.

However, when *fruit concentrate* or *fruit concentrate puree* is listed as an ingredient on a nutrition fact label or manufacturer's statement for a product that is not intended to be diluted to make 100 percent fruit juice, the *fruit concentrate* or *fruit concentrate puree* is not considered to be fruit or fruit juice. In this case, the fruit concentrate ingredient is considered to be an added sweetener and, therefore, must be counted as an additive sweetener when calculating the nutritional values for a food and/or beverage item.

[NOTE: Typically, when fruit concentrate or fruit concentrate puree is an additive sweetener, it is not the first ingredient listed on the nutrition fact label.]

Fruit Juice Labeled 100% Juiced

Juice products labeled *100% juiced* are not 100% juice products.

Frozen Fruit Product

A CE has the option to serve a frozen fruit product (i.e., slushy, frozen fruit bar) as a food item or a beverage item. The CE must designate whether the frozen fruit product is a food and/or beverage item on its planned menu.

Frozen Fruit, Food Item

If a CE serves a frozen fruit product as a food item, the product must (1) contain one of the main food groups (protein, dairy, fruit, or vegetable) as the first ingredient and (2) meet the appropriate Nutrient Standards.

Frozen Fruit, Beverage Item

If a CE serves a frozen fruit product as a beverage, the following guidance must be used.

- Elementary and Middle Schools—The product must have no added sweeteners since only 100 percent juice and water are allowed. The product must meet the Nutrient Standards for the type of beverage.
- High Schools—The product may be served as (1) a juice item if it is 100 percent juice and water or as (2) an Other Beverage if the frozen fruit product contains added sweeteners or other ingredients. In either case, the product must meet the calorie requirement for the beverage type.

Non-traditional Grain Products

Non-traditional grain products—such as pasta, tortilla chips, or crackers—made with meat alternates with first ingredients such as beans or bean powder are not considered

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an entrée item[20] for competitive foods unless they are combined with a meat/meat alternate, a meat/meat alternate and a vegetable, or a meat/meat alternate and a fruit.

When sold by themselves, non-traditional grain products which have grain as the first ingredient must meet the General Food Nutrition Standards for food items with a non-grain-food group as the first ingredient.

When sold as part of a combination food, the combination food must meet the Entrée Criteria for competitive foods or qualify as an exempt entrée item.

For Example: Lentil crackers combined with hummus may be sold as an entrée item, assuming the combined item meets the Entrée Criteria.

Popcorn

Popcorn is considered a whole grain if the ingredient label lists the first ingredient as popcorn. Popcorn may be sold as a competitive food item if the product meets the Competitive Food Nutrition Standards.

Salad

CEs have the option to menu a salad in the way that best meets their needs. Therefore, a salad may be served as a vegetable food item or a combination food.

Side Dish from Reimbursable Meal

When a side dish from a reimbursable meal is offered as a competitive food item, the side dish must meet the Competitive Food Nutrition Standards—side dishes are not exempt from Competitive Food Nutrition Standards.

Smoothie

Smoothies may be sold as a food item or beverage item, depending on the ingredients used to make the smoothie.

Smoothie, Beverage Item

A smoothie is considered to be a beverage when it is comprised of 100% juice, low-fat, or nonfat milk (including milk alternatives or substitutes),[21] and water (or ice). To be served as a competitive food, a smoothie beverage item must meet the Beverage Standards for the school level for which it is served—elementary, middle, or high school.

If a beverage smoothie sold at the high school level contains added sweeteners, it would fall in the Other Beverage category, and, therefore, must meet the Other Beverage requirements.

Smoothie, Breakfast Entrée

If a smoothie meets the breakfast meal pattern and was offered the day of or the next operating day after service as a reimbursable meal item, it may be designated as a breakfast entrée which can be served as an exempt entrée item.[22]

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20 See Entrée Items for Competitive Foods subsection in this section for additional information on entrée items.

21 See the *Administrator's Reference Manual, Section 8, Breakfast or Section 9, Lunch* for additional information on appropriate milk alternatives or substitutes.

22 See the *Special Situations, Combination Foods* subsection in this section for additional information on this topic.

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Smoothie, Food Item

A smoothie is considered to be a food item if the smoothie meets the (1) General Food Nutrition Standards, containing one of the main food groups other than whole grain (protein, dairy, fruit, and vegetables) as a first ingredient and (2) Nutrient Standards for calories, saturated or trans fats, sodium, and sugar.

If a smoothie also meets the criteria for a food entrée item or main dish item—that is, contains a meat alternate (i.e., yogurt, peanut butter) in addition to a fruit or vegetable, it may be sold as an exempt entrée. If a smoothie does not meet the criteria for a food entrée item or main dish but meets the General Competitive Food Nutrition Standards and Nutrient Standards, it may be sold as a snack.

Soy Products

Soy products, such as tofu and textured vegetable protein (TVP), are considered protein foods. If tofu, TVP, or soybean is listed as the first ingredient in a food item, the product meets the criterion for a protein food and may be served as a competitive food if the item meets Nutrient Standards.

Soy Nuts, Protein Food Item

Soy nuts are dried soybeans that fall into both the protein[23] group and vegetable group. When listed on the planned menu as a protein food item, the vegetable exemption for the Competitive Food Nutrition Standards does not apply.

Soy Nuts, Vegetable Food Item

When soy nuts or dried soybeans are listed on the planned menu as a vegetable, the soy nuts are exempt from the total fat and saturated fat under the nut/seeds exemption. However, soy nuts are still subject to the Nutrient Standards for calorie, trans fat, sugar, and sodium.

Soy-Beverages

Fortified soy-beverages are an allowable milk alternative in schools. Therefore, if the soy-beverage meets the Nutrient Standards for milk, these products are allowable as a competitive food item.

Yogurt with Fruit

Yogurt is a dairy product; however, when yogurt is combined with fruit, vegetables, or whole grain rich food (i.e., granola), it becomes a combination food entrée.[24]

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[23] Meat/Meat alternate

[24] See the *Combination Foods for Competitive Foods* subsection in the section for additional information on this topic.

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TDA Resources

The following TDA resources may assist CEs in meeting the requirements for the Competitive Food Nutrition Standards: [25]

- *Competitive Food (Smart Snacks) Worksheet*

Information Box 2

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

Records Retention

CEs have the option to maintain documentation or records on paper or electronically. CEs are encouraged to develop a system of document retention that allows them to readily retrieve documentation. TDA may request documentation as part of the administrative review processes.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, nonprofit organizations, and residential child care institutions after the end of the fiscal year to which they pertain.

The CE must retain the following types of documentation related to food production in its records retention system:[26]

- Administration of the program
- Counting and claiming
- Food purchase and production
- Program review as well as onsite monitoring forms

For more information on the specific types of documentation that is required, see *Administrator's Reference Manual (ARM), Section 30, Records Retention*.

Documentation for Competitive Foods

The CE must keep complete and accurate documentation or records for competitive beverages and foods sold. This documentation is the CE's method to demonstrate that food and/or beverage items sold met the Competitive Food Nutrition Standards. Documentation includes, but is not limited to, child nutrition labels (CN labels), nutrition fact labels, *USDA Food Fact Sheets for Schools & Child Nutrition Institutions*, manufacturer product formulation statements, menus, nutrition value calculations, nutrition fact labels, invoices, and forms or records indicating portion sizes and number of servings.

Alliance Calculator Tool

CEs may use a printed or electronic copy of the results from the calculator tool to demonstrate that a product meets Nutrient Standards; however, relevant nutrition fact labels or product/manufacturer's statement must also be retained to demonstrate the information recorded in the calculator was entered correctly.

[25] Available at *www.SquareMeals.org*.

[26] See *Administrator's Reference Manual (ARM), Section 30, Records Retention* for additional information on this topic.

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While there is no one specific strategy for maintaining documentation on competitive foods, TDA recommends that each CE develop a system that aligns to its menu cycle, particularly if the CE is selling breakfast and/or lunch entrée items or main dishes as competitive food items.

CEs should use the following guidance in maintaining documentation or records:

- Document or form providing information about beverage or food items that includes
  - Serving/portion size information for a la carte beverage and food sales
  - Number of sales for each beverage or food item
- Menus for reimbursable meals, including information on breakfast or lunch entrees to be sold as exempt items
- Invoices for beverage and food products purchased
- Documentation that demonstrates the nutrition profile for competitive food beverage or food that includes, but not limited to,
  - Child nutrition labels (CN Labels)
  - Nutrition facts labels
  - *USDA Food Fact Sheets*
  - Product formulation statements to demonstrate the nutritional profile of all a la carte items[27]
  - Print out from the USDA competitive food calculator with appropriate product documentation

Documentation should be organized in an easily accessible format on a daily basis with cumulative accounting weekly or monthly as appropriate and ready for review on request.

If a CE chooses to hold exempt fundraisers, the CE must maintain adequate documentation to indicate the dates for each site's exempt fundraisers.

Documentation or Records for Concession Stands or Other Events Where Food and/or Beverages Are Sold During the School Day on the School Campus

If food and/or beverage items are sold during the school day on the school campus for a concession stand or other event, the CE must have a system in place to retain documentation or records demonstrating that the food and beverage items sold at the concession stand or other event met the Competitive Food Nutrition Standards. The CE, not the school nutrition program, is responsible for the retention of all documentation or records relating to the sale of food and/or beverages during school day on the school campus that are not sold by the SNP. This responsibility is not assigned to the SNP.[28]

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27 See *Administrator's Reference Manual, Section 24, Child Nutrition (CN) Labeling and Product Documentation* for additional information on this topic.

28 7 Code of Federal Regulations (CFR) 210.11 (b)(2), Recordkeeping, Federal Register, Volume 78, Number 125, June 28, 2013, Page 39091.

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Currently, there is no state or federally required method for keeping this documentation, TDA recommends that the CE establish a CE-wide policy about maintenance of documentation or records for a concession stand or other event.

[NOTE: Although the CE is required to retain appropriate documentation or records for all food and beverage items sold, the school nutrition program itself is not responsible for maintaining documentation or records related to the sale of food and beverage items during the school day on the school campus when those food and beverage items are not sold by the school nutrition program.]

CEs may find it helpful to provide training to operators of concession stands or other events so that operators understand the requirements.

Compliance

TDA will assess compliance with Competitive Food Nutrition Standards during an administrative review (AR) or at other times as appropriate. TDA's assessment will include an analysis of food and/or beverage items sold in competition with reimbursable meals.

TDA will take fiscal action, as appropriate, for the following violations:

- Not meeting the Competitive Food Nutrition Standards
- Inadequate or unavailable documentation related to competitive foods

CEs with findings in these areas will be required to complete adequate Corrective Action Documentation (CAD).

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Section 23

Food Product Labeling

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Section 23, Food Product Documentation

Update Guide

January 4, 2022	Updated *Section 23, Food Product Documentation* to update the *Administrator's Reference Manual (ARM)* to correct minor typos. Clarified information on the following topics: - Advertising Literature - Summary of Product Documentation
August 12, 2020	Updated *Section 23, Food Product Documentation* to update the *Administrator's Reference Manual (ARM)* section references Incorporated the following United States Department of Agriculture guidance: – *USDA Memo SP 32-2019, Buy American and the Agricultural Improvement Act of 2018* (August 15, 2019) Clarified information on the following topics: – Labeling harvested fish
April 3, 2018	Updated *Section 24, Child Nutrition (CN Labeling and Product Documentation* to incorporate the following United States Department of Agriculture guidance: – *USDA Memo FD-107, National School Lunch Program (NSLP), Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), Commodity Supplemental Food Program (CSFP), Food Distribution Program on Indian Reservations (FDPIR), The Emergency Food Assistance Program (TEFAP), and Charitable Institutions* (November 21, 2017) – *USDA Memo SP 28-2016, Food and Drug Administration Requirements for Vending Machines* (March 2, 2016) – *USDA Child Nutrition Programs: TIPS for Evaluating a Manufacturer's Product Formula Statement* (January 2016) – *USDA Memo SP 36-2015, Voluntary Menu Labeling in the National School Lunch and School Breakfast Program* (May 19, 2015) Clarified information on the following topics: – Calculating Calories from total fat and saturated fat, sugar, and sodium using product labels – CN Labels – Compliance – Food and beverage product labels, including product origin labeling – Records retention – Rounding in product formulation statements – Standards for meal and poultry products – Vending machines labeling – Voluntary menu labeling
February 9, 2015	Updated *Section 24, Child Nutrition (CN Labeling and Product Documentation* to incorporate the following United States Department of Agriculture guidance: – *USDA Memo SP 11-2015, CN Labels Copied with a Watermark* (November 26, 2014) – *USDA Memo TA 07-2010 (v.3), Guidance for Accepting Processed Product Documentation for Meal Pattern Requirements* (November 26, 2014) – *USDA Memo SP 23-2014 (v. 2), Questions and Answers Related to the "Smart*

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	Snacks" Interim Final Rule (June 5, 2014) – *USDA Memo TA 07-2010, Revised, Guidance for Accepting Processed Product Documentation for Meal Pattern Requirements (MPR)* (January 15, 2013) Clarified information on the following topics: – Child Nutrition Label (CN Label) – Compliance – Documentation sources – *Food Buying Guide for School Nutrition Programs* – Nutrition Facts Labels – Product formulation statement – Records Retention – Texas Department of Agriculture (TDA) Resources – USDA Foods Fact Sheet for Schools & Child Nutrition Programs
February 11, 2013	Created *Section 24, Child Nutrition (CN) Labeling and Product Documentation* to provide guidance specific to this topic. Deleted School Meal Initiative Review section as this effort was no longer required.

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Food Product Labeling

All school nutrition programs (SNP) are required to retain documentation that demonstrates that menus and beverage and food items served are compliant with the meal pattern as well as the Competitive Food Nutritional Standards (competitive foods).[1] There are typically six types of documentation available for contracting entities (CEs) to use for this purpose:

- **Child Nutrition (CN) Labeling**—While general labeling requirements apply to all food and beverage products, CN Labels are guaranteed to contain the contributions listed on the CN Label when the product is manufactured according to the directions.[2]
- **Food Buying Guide for School Meal Programs**—The *Food Buying Guide for School Meal Programs* provides detailed information that can assist CEs in determining (1) the number of creditable portions in specific products.[3]
- **USDA Foods Fact Sheets for Schools & Child Nutrition Institutions (USDA Foods Fact Sheet)**—USDA Foods Fact Sheets provide detailed information about products distributed through the USDA Foods (Commodities) program.[4]
- **Nutrition Facts Labels**—Nutrition Facts Labels provide nutritional information based on the recommended daily dietary values as specified by the United States Food and Drug Administration (FDA).[5]
- **Product Formulation Statements** (also referred to as manufacturer's product statements and product analysis sheets)—Product formulation statements are signed and certified by the manufacturer to accurately report the crediting contribution of a product toward the meal pattern.
- **Product Advertising**—Advertising materials are commonly not certified and do not provide extensive information on a product formulation.

The information in this section on product documentation is intended to be used with the guidance provided in the following *Administrator's Reference Manual (ARM)* sections:

- *Section 7, Breakfast Meals*
- *Section 8, Lunch Meals*
- *Section 9, Pre-Kindergarten Meals*
- *Section 22, Competitive Food Nutrition Standards*
- *Section 31, Administrative & Other Compliance Reviews*

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1 See the *Administrator's Reference* Manual *(ARM), Section 7, Breakfast Meals; Section 8, Lunch Meals*; and *Section 222, Competitive Foods* for more information on requirements related to specific food items served.
2 Detailed information on the CN Labeling Program can be accessed at *www.fns.usda.gov/cn/labeling-program/*.
3 Available at *www.foodbuyingguide.fns.usda.gov/*
4 Additional information and individual NSLP USDA Food Fact Sheets are available at *www.fns.usda.gov/fdd/nslp-usda-foods-fact-sheets*
5 Detailed information on Nutrition Facts Labels can be found on the U.S. Food and Drug Administration (FDA) website at *www.fda.gov/*.

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For this section, when guidance is provided on the use of CN Labels or product documentation for meeting the meal pattern requirements, *meal pattern requirements* include menu planning, food components, crediting contributions, weekly minimums, and weekly dietary specifications.

Definitions for This Section

For this section, the following definitions provide information that may assist CEs in retaining documentation about meal served and competitive foods sold:

AMS	Agricultural Marketing Service, United States Department of Agriculture (USDA) agency that administers the CN Labeling Program.
CN Label	Product label that contains a statement that identifies the crediting contribution that a product makes toward the meal pattern.
Child Nutrition Labels (CN Labels)	USDA program working directly with commercial food processing firms and in cooperation with USDA and the U.S. Department of Commerce (USDC) to provide standardized food crediting statements on product labels.
Competitive Food Nutrition Standards (Also Called Smart Snacks)	Standards established by USDA to ensure that students are able to purchase healthy meals and snacks when these items are not part of the reimbursable meal. There are four types of Competitive Food Nutritional Standards in NSLP and SBP: beverage standards, entrée criteria, general competitive food standards, and nutrient standards for beverage and food items. These standards do not apply to the dietary specifications required for a reimbursable meal.
Food Buying Guide (FBG) for Child Meal Programs	USDA resource that contains information that can assist CEs in determining (1) the number of creditable portions in specific products.[6]
Nutrition Facts Label	U.S. Food and Drug Administration (FDA) label that is added to beverage and food products to provide information about the product's nutritional profile and serving size by weight or volume
Product Formulation Statement	Also called the product analysis sheet or manufacturer's product statement, signed, and certified documentation that provides specific information on a product's potential crediting contribution toward the meal pattern.
USDA Foods Fact Sheet for Schools & Child Nutrition Institutions	Documentation for products distributed by the USDA Foods (Commodities) program that provides product specific information on a product's crediting contribution toward the meal pattern or provides information that may help determine whether a product meets the competitive food requirements.
Vending Machine Operator	Entity that controls or directs the function of a vending machine, including deciding which articles of food are sold from the vending machine or the placement of the articles of food or beverages within the vending machine and is compensated for the control or direction of the function of the vending machine.

Product Labels

For all food and beverage products sold in the United States, the product label must provide information about the product manufacturer or processor, nutrition information, and country of origin.[7] The Food and Drug Administration (FDA) guidance includes five items that must appear

[6] Available at *www.foodbuyingguide.fns.usda.gov/*

[7] Product labels are also a key aspect of determining if the purchase meets the Buy American requirements. For additional information on this requirement, see *Administrator's Reference Manual (ARM), Section 17, Procurement*.

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on every food or beverage packaging label (sticker) in order for the label to provide the required information:

Statement of Identity	Name of the food or beverage—specifically the common name for the food or beverage, not the brand name For Example: Sunny Delight is a brand name; orange juice is the product name. Peter Pan is a brand name; peanut butter is the product name.
Product Net Weight	Weight of the food or beverage item—net weight which does not include the weight of the container, wrappers, or packing materials
Manufacturer and Manufacturer's Address	Location where the food or beverage product is processed and prepared, including country of origin information
Nutrition Facts	Serving size, nutrients, vitamins, and minerals[8]
Ingredient List	All ingredients in a food or beverage listed on the product package in the order of highest amount of each ingredient by weight—includes, but is not limited to, water, spices, and flavors

All labeling must be provided in clear and readable print. Print may be typed, printed, or handwritten.

Acceptable Manufacturer Address

In addition to the name of the manufacturer, the label must also show the address, country of origin for the product and, if a processed product, country of origin where the processing occurred. For School Nutrition Programs (SNPs), country of origin is used to demonstrate compliance with the Buy American provision.[9]

Location of Labels

Manufacturers must have the manufacturer's address and country of origin (1) on individual product packaging or (2) on a box or container of smaller packaged items.

The following guidelines will assist CEs in determining if the country of origin information on the product label is acceptable or unacceptable.

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[8] See the *Nutrition Facts Label* subsection in this section for additional information on this topic.

[9] Processing location may include the term *substantially*. For more information on the use of this term for the Buy American provision, see *Administrator's Reference Manual (ARM), Section 17, Procurement*.

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Label Statement about the Ingredients

Acceptable Phrasing:	Product of … or Grown in …
Unacceptable Phrasing:	Regional location that does not list the actual location unless the label lists both the regional location and the actual location Unacceptable: Grown and Raised in the Atlantic Region To Be Acceptable[10]: Grown and Raised in Atlantic Region, MD, USA
	Flag or other symbols to represent origin location unless the label also provides a location in text as well Unacceptable: Texas flag symbol To Be Acceptable: Texas flag symbol and Mexia, TX, USA
	Origin location as product name Unacceptable: Pecos Melon To Be Acceptable: Pecos Melon, USA

Label Statement about Where Product Was Processed

Acceptable Phrasing:	Manufactured in … or Prepared in … or Produced in… or Assembled in … or Processed in …
Unacceptable Phrasing:	Insufficient information to determine actual location where the food was processed Unacceptable: Manufactured in North America To Be Acceptable: Grown in Canada, manufactured in USA[11]
	Indication of processing in United States and non-United States locations (unless there is an indication that it was processed substantially in United States) Unacceptable: Manufactured in Texas and Mexico To Be Acceptable: Grown and manufactured substantially in Texas, USA

Size of Print

Any font or size is allowed as long as it is legible, easily seen (conspicuous), and in one color that contrasts with the background color.[12]

[10] The US Custom and Border Protection (CBP) rules have established acceptable abbreviations for counties.

[11] While this is acceptable country of origin labeling, a product with this statement would not meet the Buy American requirements described in *Administrator's Reference Manual (ARM), Section 17, Procurement* because it does not indicate that the product is grown in the United States and the label does not indicate if the product was substantially processed in the United States.

[12] FDA provides additional information on appropriate print sizes at *www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm2006828.htm*.

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Product Use by or Sell by Dates

Manufacturers are not required to place *best if used by*, *use by*, *sell 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.[13]

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	Assists retail stores with knowing when the product will have the best flavor or quality and assists with managing product inventory management. It is not a safety date.
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.

Harvested Fish Designation

All fish sold must also have a designation of country of origin. To meet the Buy American provision requirements, the labeling must indicate the following:

- Farmed fish must be harvested within the US or any territory or possession of the US
- Wild caught fish must be harvested as described below.
    1. Within the Exclusive Economic Zone (EEZ) of US (no more than 200 nautical miles from the territorial sea baseline and is adjacent to the 12 nautical miles from the territorial sea of US, territories of US, or possession of US).
    2. By US flagged vessel (flies a US flag, uses US crew, follows US safety rules, and is built in US shipyard).

Unlabeled Products

Since all food and beverage products sold in the United States must have product labels, any food or beverage products that do not have adequate information on the labels are suspect. CEs should evaluate these products and determine if they should be used in the SNP.[14]

Child Nutrition (CN) Label

While the general label requirements apply to all products sold, the United States Department of Agriculture (USDA), Food Nutrition Service (FNS), Child Nutrition (CN) Labeling Program works directly with commercial food processing firms and in cooperation with the Food Safety Inspection Service (FSIS), Agricultural Marketing Service (AMS), and National Marine Fisheries Service (NMFS) to approve and manage CN Labels which are designed to meet the specific labeling needs of Child Nutrition Programs (CNPs).

[13] USDA provides additional information on these labels at *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*.

[14] Product labels are also a key aspect of determining if the purchase meets the Buy American requirements. For additional information on this requirement, see *Administrator's Reference Manual (ARM), Section 17, Procurement*.

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A CN Label is

> a product label that contains a statement that clearly identifies the crediting contribution that a product makes toward the meal pattern.

To obtain a CN Label, the manufacturer has participated in a Quality Control plan administered by the Agricultural Marketing Service (AMS) or National Marine Fisheries Service (NMFS) using guidelines provided by USDA FNS. CN Labels must be authorized by USDA FNS prior to use. CN Labels are designed to provide specific crediting contribution information for meat/meat alternates. However, when meat/meat alternate products contain other components, the CN Label may also provide information related to other meal pattern food components in addition to the meat/meat alternate information.[15]

The CN Labeling Program is responsible for reviewing a product's formulation to determine the crediting contribution that a single serving of a product makes toward the meal pattern.

Schools and other program operators are not required to offer products with CN Labels; however, it is important to recognize that a CN Label guarantees that the stated crediting contribution toward meal pattern is correct when the product is prepared and served according to the directions. No other available documentation is guaranteed to meet this standard.

Label Statement

The CN Label statement is an integral part of the product label and must include the following information:

- The CN logo, a distinct border around the CN statement
- A six-digit product identification number assigned by FNS, located in the upper right corner of the CN Label statement
- The statement of the product's crediting contribution toward meal pattern requirements for components included in the product
- Statement specifying the use of the logo and CN Label statement is authorized by FNS
- The month and year the label was approved by FNS, located in the lower right side.

CN Labels expire at the end of five years.

[15] Although designed to identify crediting contributions for NSLP/SBP meal pattern, CN Labels may also provide information that may be used to demonstrate whether the food product meets the competitive food requirements.

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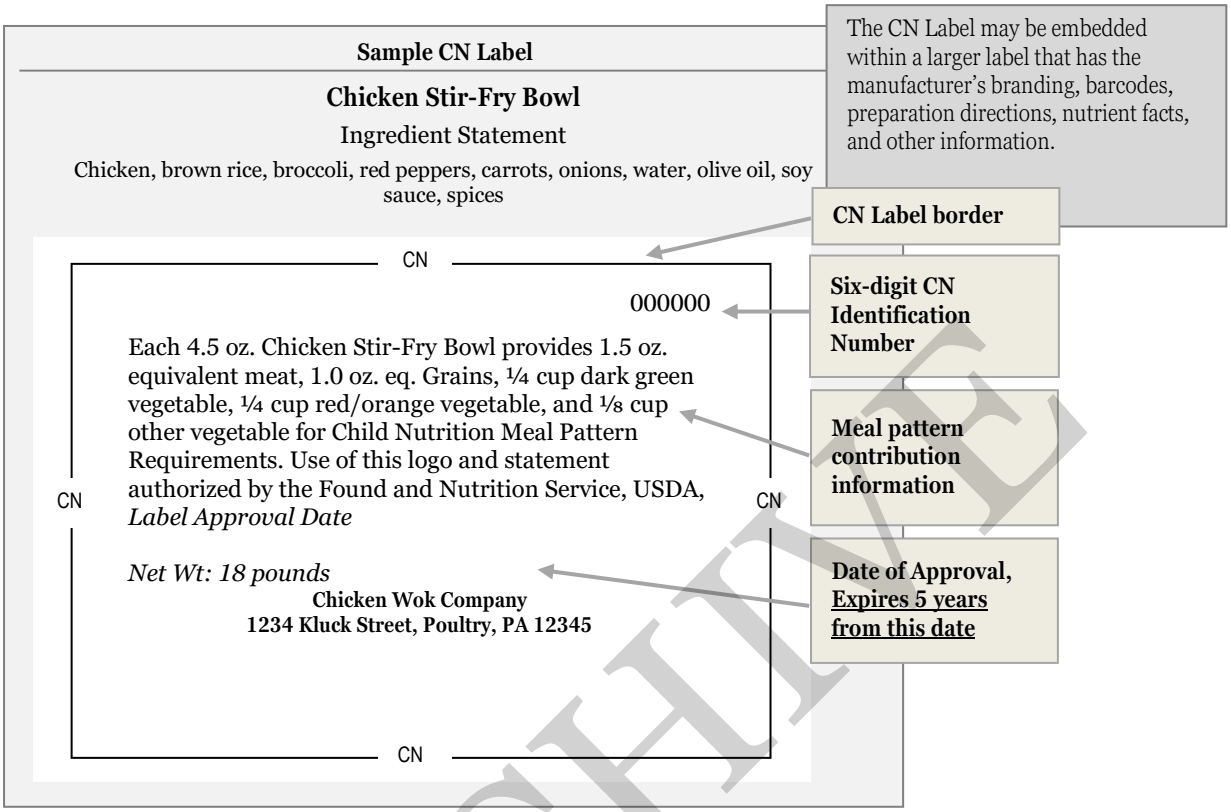
The *Sample CN Label* illustrates the information that is required to be included on a CN Label as well as additional information that may be included on the CN Label.



Source to Verify CN Label Authenticity

USDA provides a list of valid labels that is updated monthly on the FNS CN Labeling Program website at *www.fns.usda.gov/cn/labeling-program*. CE should check the status of the label before using the product. This list may also provide additional information including the manufacturer's physical address and, in some cases, contact information.

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Federal Inspection

All CN Labeled products must be produced under an appropriate USDA or U.S. Department of Commerce (USDC) federal inspection program to ensure that the label statement accurately reflects the amount of each ingredient used in the product. Federal agencies inspecting these products include the following agencies:[16]

- Food Safety and Inspection Service (FSIS) of USDA
- Agricultural Marketing Service (AMS) of USDA
- National Marine Fisheries Services (NMFS) of the U.S. Department of Commerce (USDC)

The *Federal Inspection Labels Chart* illustrates the stamps used by various federal inspectors to indicate that the product has been inspected and meets the requirements for that type of product.

CE Responsibility for Use of CN Labeling

Although USDA monitors manufacturer documentation and guarantees the accuracy of information, the CE is responsible for interpreting the information presented on the label and determining if a product meets the meal pattern.

The CN Label statement tells how the labeled product can be credited or counted toward meeting the meal pattern.	A CN Label statement • Does not assure that a product is *good for children* • Does not assure that a product is *acceptable to children*. • Does not suggest that products without CN Labels are inferior

Acceptable Forms of CN Label Documentation

CEs may use any of the following methods to retain CN Label documentation or records.

- Original label removed from product package.
- Photocopy of CN Label attached to or printed on the product package if the CN Label is difficult to remove or laser printed.
- Photograph of CN Label attached to or printed on the product package if the CN Label is difficult to remove or laser printed.

TDA recommends the following practices for retaining CN Labeling documentation or records.

- Establish a procedure for designated food service staff to safely remove

[16] Additional information about requesting copies of federally inspected product labels from manufacturers during the bidding process can be found at *www.fns.usda.gov/cn/labeling-program*.

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CN Labels from boxes. Only one CN Label is needed for the same CN Labeled product purchased by the CE.

- File CN Labels in a designated binder for future reference and check CN Labels of reordered products against CN Label on file to make sure the filed label is current.
- File digital photos or electronically scanned labels with applicable SNP documentation or records that can be easily retrieved for future reference.[17]

Food Buying Guide (FBG) for Child Nutrition Programs

The *Food Buying Guide for Child Nutrition Programs* is

> a USDA resource that provides information that can assist CEs in determining (1) the number of creditable portions in specific products and (2) whether a product fulfills the requirements for a designated food component.[18]

USDA developed the *Food Buying Guide for Child Nutrition Programs* as a tool to assist CEs to do the following:

1. To determine the number of purchase units needed to obtain the desired number of servings of a particular food.
2. To adjust portion sizes and calculate servings to meet minimum meal pattern requirements.
3. To calculate the quantity of food to buy to obtain the correct amount of ready-to-cook and ready-to-use food for a recipe.
4. To determine correct yields for food purchased, prepared, and ready-to-cook or ready-to-use, especially for fresh fruits and vegetables.
5. To calculate cost comparisons.

The *Sample Food Buying Guide for Child Nutrition Meal Programs* illustrates the way product information is presented *Food Buying Guide for Child Nutrition Programs*.

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[17] School nutrition funds may be used to purchase a camera for food service operational needs. Most cameras can also date stamp the photo.

[18] Available at *www.foodbuyingguide.fns.usda.gov/*

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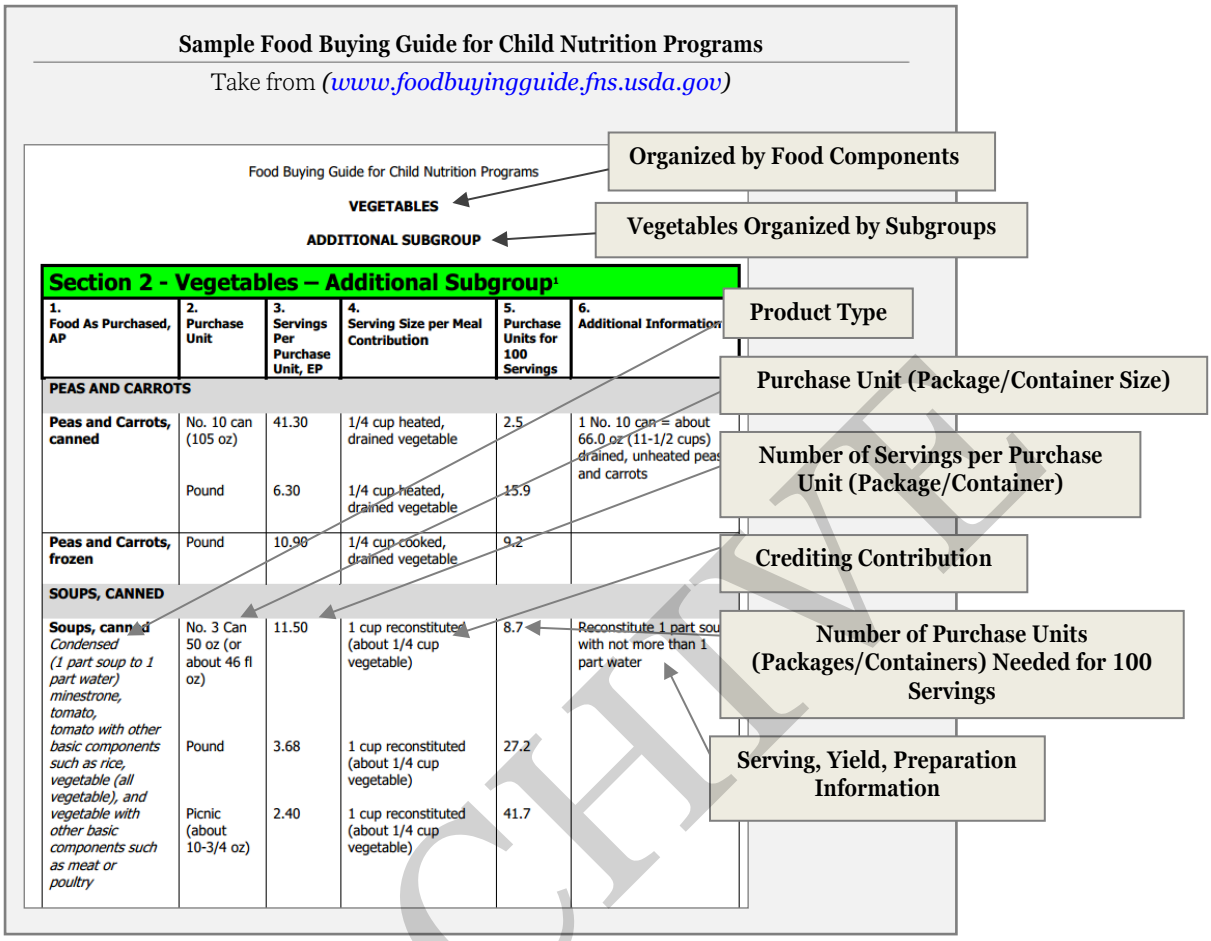
Sample Food Buying Guide for Child Nutrition Programs

Take from *(www.foodbuyingguide.fns.usda.gov)*



Food Buying Guide for Child Nutrition Programs

VEGETABLES

ADDITIONAL SUBGROUP

Section 2 - Vegetables – Additional Subgroup[1]

1. Food As Purchased, AP	2. Purchase Unit	3. Servings Per Purchase Unit, EP	4. Serving Size per Meal Contribution	5. Purchase Units for 100 Servings	6. Additional Information
PEAS AND CARROTS					
Peas and Carrots, canned	No. 10 can (105 oz)	41.30	1/4 cup heated, drained vegetable	2.5	1 No. 10 can = about 66.0 oz (11-1/2 cups) drained, unheated peas and carrots
	Pound	6.30	1/4 cup heated, drained vegetable	15.9	
Peas and Carrots, frozen	Pound	10.90	1/4 cup cooked, drained vegetable	9.2	
SOUPS, CANNED					
Soups, canned *Condensed (1 part soup to 1 part water) minestrone, tomato, tomato with other basic components such as rice, vegetable (all vegetable), and vegetable with other basic components such as meat or poultry*	No. 3 Can 50 oz (or about 46 fl oz)	11.50	1 cup reconstituted (about 1/4 cup vegetable)	8.7	Reconstitute 1 part soup with not more than 1 part water
	Pound	3.68	1 cup reconstituted (about 1/4 cup vegetable)	27.2	
	Picnic (about 10-3/4 oz)	2.40	1 cup reconstituted (about 1/4 cup vegetable)	41.7	

Organized by Food Components

Vegetables Organized by Subgroups

Product Type

Purchase Unit (Package/Container Size)

Number of Servings per Purchase Unit (Package/Container)

Crediting Contribution

Number of Purchase Units (Packages/Containers) Needed for 100 Servings

Serving, Yield, Preparation Information

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CE Responsibility for Use of the *Food Buying Guide (FBG) for Child Nutrition Programs*
Although USDA provides nutritional information based on the most accurate available information, the CE is responsible for interpreting the information presented in the *FBG* and determining if a product meets the meal pattern.

CEs are not required to print and retain copies of the FBG but may find it helpful to retain copies of pages that are commonly used.

USDA Foods Fact Sheet for Schools & Child Nutrition Institutions

The USDA Foods Fact Sheet for Schools & Child Nutrition Institutions

> is a type of product documentation distributed by the USDA Foods (Commodities) program that provides product specific information on crediting contribution toward the meal pattern or provides information that may help determine whether a product meets the competitive food requirements.

These documents incorporate nutritional information that is taken from the USDA National Nutrient Database or average values based on information from vendors who provide USDA Foods. Facts Sheet. This includes the following information:

- USDA Foods Material Code—a six-digit number that is unique to the product (located to the left of the product name)
- Food Category—Grains, meat/meat alternates, fruits, and vegetables
- Nutrition Information
- Product yield and crediting information
- Allergen information (available as appropriate and on newer releases)
- Information on Product Preparation
- Food Safety Information

The *Sample USDA Foods Fact Sheet* illustrates the way product information is presented on the facts sheet.

CE Responsibility for Use of a USDA Foods Fact Sheet
Although USDA provides nutritional information based on the most accurate available information, the CE is responsible for interpreting the information presented on the fact sheet and determining if a product meets the meal pattern or competitive food requirements.

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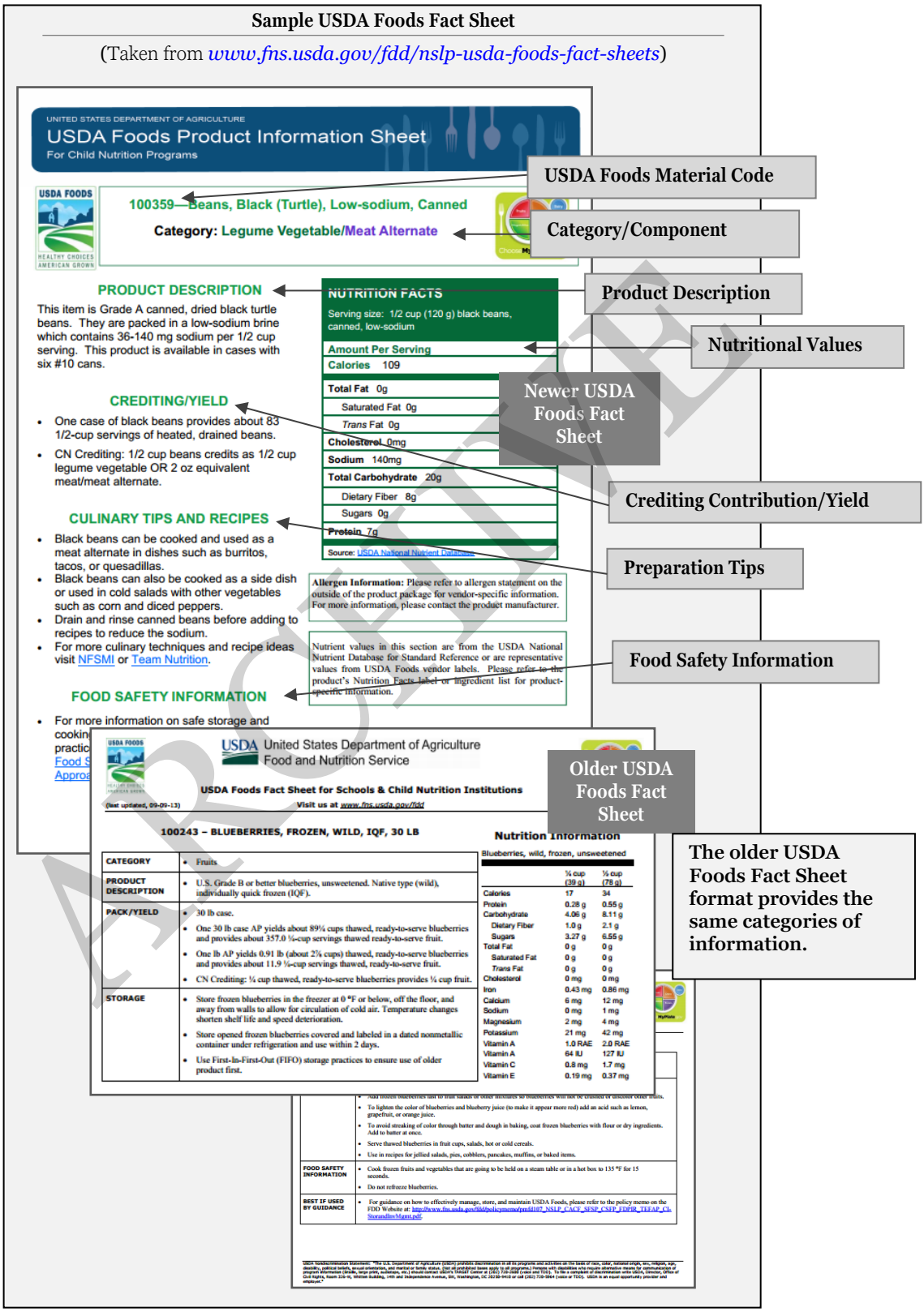
To use a USDA Foods Fact Sheet for documentation, the CE must ensure that it uses the most current fact sheet and must retain the fact sheet with its food documentation or records.

Sample USDA Foods Fact Sheet

(Taken from *www.fns.usda.gov/fdd/nslp-usda-foods-fact-sheets*)



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Nutrition Facts Label

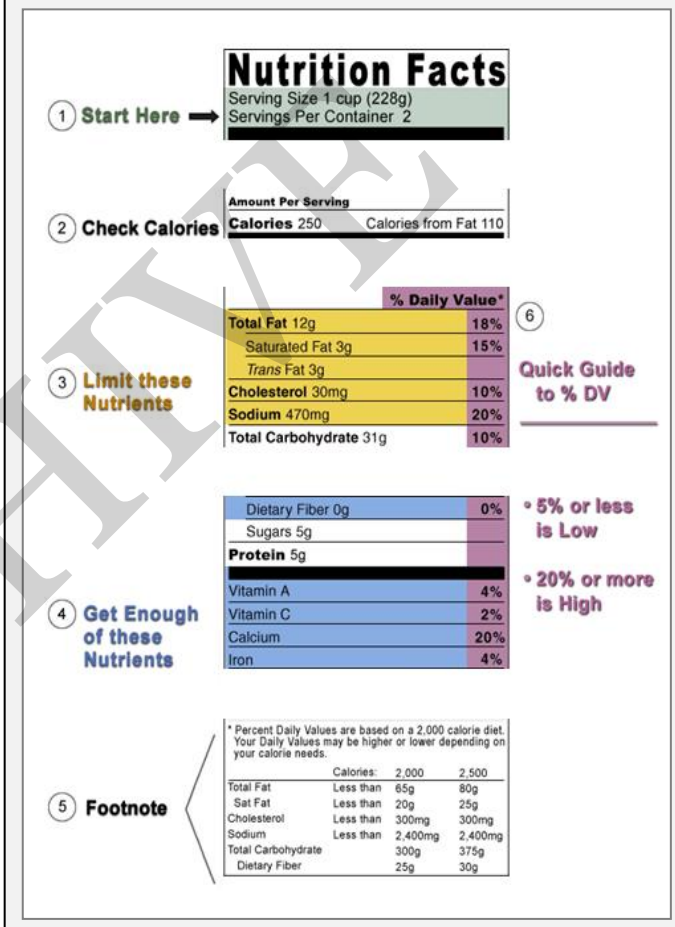
A Nutrition Facts Label

> is a label that is added to beverage and food products to provide information about the product's nutritional profile and serving size by weight or volume.

Nutrition Facts Labels are regulated by the Food and Drug Administration (FDA). The FDA requires that most food and beverage products have Nutrition Facts Labels. The manufacturer is responsible for the accuracy of the information provided on a Nutrition Facts Label based on criteria provided by the FDA. The FDA audits Nutrition Facts Labels but does not review and approve individual Nutrition Facts Labels. Detailed information on Nutrition Facts Labels can be found on the FDA website at *www.fda.gov/*.

Sample Nutrition Facts Label

(Taken from *www.fda.gov)*



The information on Nutrition Facts Labels may be helpful in calculating weekly dietary specifications as well as determining whether a product makes a creditable contribution toward a meal pattern component or provides information that may help determine whether the product meets the competitive food requirements.

A Nutrition Facts Label must contain specific information on a food or beverage's nutritional profile in the following areas:

- Serving size by weight or volume
- Number of servings in the package
- Nutrient values for a product—calories, saturated fat, trans fat, cholesterol, sodium, carbohydrates, fiber, protein, and vitamins

The *Sample Nutrition Facts Label* illustrates the way product information is presented on a label.

CE Responsibility for Use of a Nutrition Facts Label

Although FDA monitors the information manufacturers include on the Nutrition Facts Label, the CE is responsible for interpreting the information presented on the label and determining if a product meets the meal pattern or competitive food requirements.

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To use a Nutrition Fact Label for documentation, the CE must ensure that it uses the most current Nutrition Fact Label and must retain the Nutrition Fact Label with its food documentation or records. When a Nutrition Fact Label provides the needed nutritional information for a product, a CE may use that information as recorded. There are instances where a CE will need to perform calculations using the nutritional information on a Nutrition Facts Label. The following calculation formulas may be helpful:

Sample Nutrient Fact Label

Nutrition Facts Label, Calculating Calories from Total Fat and Saturated Fat

The nutrition facts label panel includes total fat in two places:

1. listed as calories from fat near the top and
2. listed as grams (g) on the list of nutrients in the product.

Calories from Total Fat

A CE may choose whether to use the calories from fat method or the grams of fat method for this calculation even though each may yield slightly different results. The result of either method should not be rounded.

Sample Nutrient Fact Label

Percentage of Calories from Total Fat Per Serving Calculation Chart

Calories from Fat Method—Per Serving

Calories from Fat Per Serving		Total Calories Per Serving				100		Percentage of Calories from Fat Per Serving
50	÷	140	=	.357	x	100	=	35.7%

Grams of Total Fat Method—Per Serving

Number of Grams of Fat Per Serving		9^				Total Calories Per Serving				100		Total Percentage of Calories from Fat Per Serving
5	x	9	=	45	÷	140	=	.3214	x	100	=	32.14 %

^ There are 9 calories in each gram of fat

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Percentage of Calories from Saturated Fat Per Serving

To calculate the percentage of calories from saturated fat per serving, the CE will use the following formula.

Sample Nutrient Fact Label

Nutrition Facts
Serving Size 1 oz (28g)
Serving Per Container 1

Amount Per Serving	
Calories 140	Calories from Fat 50
	% Daily Values*
Total Fat 5g	**8%**
Saturated Fat 0.5g	**3%**
Trans Fat 0g	
Sodium 200mg	**8%**
Total Carbohydrate 18g	**6%**
Dietary Fiber 3g	**12%**
Sugars 2g	
Protein 3g	**6%**

*Percent Daily Values are based on a 2,000 calorie diet.

Percentage of Calories from Saturated Fat Per Serving Calculation Chart

Grams of Total Fat Method—Per Serving

Number of Grams of Saturated Fat Per Serving		9^			Total Calories Per Serving			100		Total Percentage of Calories from Saturated Fat Per Serving
0.5	x	9	=	4.5	÷ 140	=	.0321	x	100	= 3.2%

^ There are 9 calories in each gram of fat

Nutrition Facts Label, Calculating Percentage of Sugar Per Serving

The nutrition facts panel includes grams (g) of sugar on the nutrition facts label. CEs may use the following formula to calculate the percentage of sugar by weight.

Sample Nutrient Fact Label

Nutrition Facts
Serving Size 1 oz (28g)
Serving Per Container 1

Amount Per Serving	
Calories 140	Calories from Fat 50
	% Daily Values*
Total Fat 5g	**8%**
Saturated Fat 0.5g	**3%**
Trans Fat 0g	
Sodium 200mg	**8%**
Total Carbohydrate 18g	**6%**
Dietary Fiber 3g	**12%**
Sugars 2g	
Protein 3g	**6%**

*Percent Daily Values are based on a 2,000 calorie diet.

Percentage of Sugar by Weight Per Serving Chart

Number of Grams of Sugar Per Serving		Item Total Weight (Grams) Per Serving			100		Percentage Sugar by Weight Per Serving
2	÷	28	=	.0714	x	100	= 7.14%

Nutrition Facts Label, Calculating Sodium

Sodium is reported by milligrams (mg) for each serving on the nutrition facts label for each product. No further calculation is needed to determine if the sodium meets the sodium nutrition standard.

Sample Nutrient Fact Label

Nutrition Facts
Serving Size 1 oz (28g)
Serving Per Container 1

Amount Per Serving	
Calories 140	Calories from Fat 50
	% Daily Values*
Total Fat 5g	**8%**
Saturated Fat 0.5g	**3%**
Trans Fat 0g	
Sodium 200mg	**8%**
Total Carbohydrate 18g	**6%**
Dietary Fiber 3g	**12%**
Sugars 2g	
Protein 3g	**6%**

*Percent Daily Values are based on a 2,000 calorie diet.

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Product Formulation Statement

The product formulation statement

> is a document that provides product specific information on the product's potential crediting contribution toward meal pattern.

When a CN Label is not available or the *FBG*, USDA Foods Fact Sheet, or Nutrition Facts Label does not provide adequate information, a CE may request a product formulation statement from a manufacturer.[19] Product formulation statements are written, designed, signed/certified, and distributed by the individual manufacturer. USDA does not review or approve product formulation statement; therefore, there is no guarantee that the statements made by the manufacturer are accurate.

> [NOTE: Product formulation statements must be written by the manufacturer. A product formulation statement written by a product vendor is not acceptable documentation for any purpose.]

Contents of Product Formulation Statement

A product formulation statement contains a description that clearly identifies the crediting contribution that the product makes toward the meal pattern components.

When a manufacturer provides a product formulation statement, it should

- Be on the manufacturer's letterhead.
- Be signed and certified by an officer for the manufacturer.
- Include contact information for the officer signing the Product Formulation Statement.
- Provide the product name and product code number.
- Demonstrate how the processed product credits toward the meal pattern or competitive food requirements citing school nutrition program resources and/or regulations.
- Provide specific information about the amount of each food item in the product and crediting contribution for the meal pattern components.

TDA provides sample templates for Product Formulation Statements at *www.SquareMeals.org*.

CE Responsibility for Use of a Product Formulation Statement

Although an officer for the manufacturer signs/certifies these statements to attest to the information, CEs have to trust that the official for the manufacturer is providing accurate nutritional information. USDA encourages CEs to review product formulation statements carefully since the CE is responsible for ensuring that menus meet meal pattern.

If the formulation of a product changes, the CE will need to obtain a new product formulation statement that reflects the product changes.

[19] A product manufacturer is not required to provide a product formulation statement but may do so at the request of a CE.

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General Guidance for CEs Reviewing Product Formulation Statements

At a minimum, CEs should take the following actions before using a product formulation statement as proof for crediting contributions:

- Ensure that the product formulation statement provides specific, not approximate, crediting contribution specifications. **Product formulation statements that contain phrases like *to the best of our knowledge* and/or *contribution of the product is approximately* do not provide the necessary specificity for a CE to determine if the product provides the crediting contributions as claimed. A CE should not accept a product formulation statement containing such language since it does not certify that the product contains the ingredients described.**

- Determine that creditable ingredients listed in the product formulation statement match a description in the FBG.[20] **If a product formulation statement for a specific product claims to provide a higher credit than what is listed in the *FBG*, the CE must ensure that the statement**
  1. **clarifies all crediting contributions for ingredients and**
  2. **demonstrates how the product provides that crediting contributions according to FNS regulations, guidance, and policy.**

- Verify that the stated amount of crediting contribution for the product is not greater than the serving size of the product. **If the product formulation statement indicates a larger crediting contribution than the actual serving size of the product, the CE cannot use the product formulation statement.**

  For Example: A 2.2 fl. oz. (¼ cup) frozen fruit pop or bar may not credit for more than 2.2 fl. oz. or ¼ cup of fruit or fruit juice.

- Ensure that the total contribution rounds down. **The total creditable amount must be rounded down to the nearest 0.25.oz.**

  For Example: The total creditable amount of 0.99 oz. must be rounded down to 0.75 oz.

- Verify that creditable components are visible in the finished product. **It is never acceptable for a CE to rely completely on a manufacturer's statement that a food item is included in the product. If the manufacturer states that the product includes a crediting contribution for a specific component for the meal pattern, the food item must be visible in the product.**

  For Example: If the product formulation statement says that a fruit filled pancake product contains a meat/meat alternate, but a meat/meat alternate is not a visible ingredient in the product, the CE cannot assume that the product contains a meat/meat alternate.

[20] The *Food Buying Guide (FBG) for Child Nutrition Programs* available at *www.foodbuyingguide.fns.usda.gov*.

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Advertising Literature

Advertising literature is created and distributed by the product manufacturer. It may contain useful information about one or more of the company's products, including nutritional information. However, the information in an advertisement is not sufficient to provide information on the crediting contribution that a product makes toward the required meal pattern or provide information that may help determine whether a product meets the competitive food requirements.

Instead, the CE must use an acceptable form of documentation to demonstrate the crediting contribution or nutritional profile of a beverage or food product. This includes a CN Label, *FBG*, USDA Foods Fact Sheet, and Nutrition Facts Label, product formulation statement, or manufacturer's specification.

Standards for Meat and Poultry Products

USDA standards for meat and poultry products set legal requirements for content, preparation, and labeling before being manufactured and sold in commerce. Standards of identity set specific (and optional) ingredients a food must contain—such as the kind and amount of meat, percent of fat or moisture and additives, if any—when a product is to be labeled or identified by a common product name. See USDA FNS website (*www.ams.usda.gov/grades-standards*) for more information on the standards for meat and poultry products.

Meat and Poultry Inspection in Texas

The Texas Department of State Health Services (DSHS), Division for Regulatory Services, Meat Safety Assurance Unit, is responsible for administering the meat and poultry inspection program in Texas. All State of Texas meat and poultry plant labels are reviewed by the Labels and Standards Program to assure they are truthful and accurate at the time of approval. For additional information, contact DSHS.

Meat Safety Assurance Unit, MC 1872
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347
Telephone: (512) 834-6760 |
TDD: 1-800-735-2989
Fax: (512) 834-6763

Other Regulation Applying to Food Labeling

CEs must follow the Food and Drug Administration (FDA) vending machine regulations as applicable and may follow the United States Department of Health and Human Services (HHS) and FDA menu labeling regulations.

Food and Drug Administration (FDA) Vending Machine Guidance

Any CE that owns or operates 20 or more vending machines is required (1) to disclose calorie information for food and beverages sold from the machines and (2) to provide contact information for vending machine operator. However, FDA recommends that all vending machines provide this information.

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FDA defines a vending machine owner or operator that is covered by this regulation as a person or entity that

> Controls or directs the function of the vending machine, including deciding which articles of food or beverage are sold from the vending machine or the placement of the articles of food or beverages within the vending machine and is compensated for the control or direction of the function of the vending machine.

The calorie statements must meet the following requirements:

- Clear, conspicuous (easily noticeable and visible to users), and prominently placed.
- Disclosed on a sign (e.g., small placard, sticker, or poster) near the food item or selection button. The owner or operator may also use electronic or digital displays to communicate the information. However, if the buyer can easily see the nutrition fact label for the item or the nutrition information is visible at the point of service (POS) because of the way the product is placed or stored, no statement of calories is required.

Failure to comply with the FDA regulation will render covered vending machine food misbranded under the Federal Food, Drug, and Cosmetic Act.

CNP operators also may wish to incorporate requirements of this FDA regulation into their vending machine contracts in order to ensure that covered vending machine operators contracted by the CNP operator include the calorie information when it is required.

Additional Information on FDA Vending Machine Labeling Regulation

- *Food Labeling: Calorie Labeling of Articles of Food in Vending Machines* at *www.federalregister.gov/articles/2014/12/01/2014-27834/food-labeling-calorie-labeling-of-articles-of-food-in-vending-machines*
- *Vending Machines Labeling Requirements At-A-Glance* at *www.fda.gov/food/food-labeling-nutrition/overview-fda-labeling-requirements-restaurants-similar-retail-food-establishments-and-vending*

United States Department of Health and Human Services (HHS) and FDA Voluntary Menu Labeling

CEs may voluntarily follow the retail food establishment rules to (1) provide calorie information for all standard menu items and (2) provide, on request, the following nutritional information: total calories, calories from fat, total fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrates, dietary fiber, sugar, and protein.

Providing nutritional information for food and beverage items on menus may help students to make more informed choices about the foods they select and consume at school. Since many schools use nutrition software for menu planning and identifying acceptable competitive foods, CEs are also likely to have all the needed information to provide menu labeling. However, it is the CEs choice to provide this information.

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Additional Resources

The following resources may be helpful for CEs developing and implementing an effective system for retaining food product documentation:

- *Food Buying Guide for Child Nutrition Programs (FBG)*
  Available at *www.foodbuyingguide.fns.usda.gov/*
- *Food Labeling: Calorie Labeling of Articles of Food in Vending Machines*
  Available at *www.federalregister.gov/articles/2014/12/01/2014-27834/food-labeling-calorie-labeling-of-articles-of-food-in-vending-machines*
- *Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments*
  Available at *www.federalregister.gov/articles/2014/12/01/2014-27833/food-labeling-nutrition-labeling-of-standard-menu-items-in-restaurants-and-similar-retail-food*
- *National Nutrient Database for Standard Reference*
  Available at *https://fdc.nal.usda.gov/*
- *Overview of FDA Labeling Requirements for Restaurants, Similar Retail Food Establishments and Vending Machines*
  Available at *www.fda.gov/food/food-labeling-nutrition/overview-fda-labeling-requirements-restaurants-similar-retail-food-establishments-and-vending*
- *USDA, Agricultural Marketing Service, Grades and Standards*
  Available at *www.ams.usda.gov/grades-standards*
- *USDA, Agricultural Marketing Service, Country of Origin Labeling (COOL)*
  Available at *www.ams.usda.gov/rules-regulations/cool*

  USDA, CN Labeling
  Available at *www.fns.usda.gov/cn/labeling-program*

TDA Resources

The following TDA forms may assist CEs in obtaining an acceptable product formulation statement from manufacturers:

- *Product Formulation Statement for Grains Product—Statement Template*
- *Product Formulation Statement for Meat/Meat Alternate Products (M/MA)—Statement Template*
- *Product Formulation Statement for Fruit Products—Statement Template*
- *Product Formulation Statement for Vegetable Products—Statement Template*

These resources are available at *www.SquareMeals.org*.

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Records Retention

Appropriate documentation and records are essential to the CE's ability to demonstrate that reimbursable meals meet the meal pattern and that additional beverages and food sold meet the competitive food requirements.[21] The following *Administrator's Reference Manual (ARM)* sections provide additional information on records retention related to meal patterns and competitive foods:

- *Section 7, Breakfast Meals*
- *Section 8, Lunch Meals*
- *Section 9, Pre-Kindergarten Meals*
- *Section 10, Afterschool Snacks & Meal*
- *Section 11, Summer Meal Programs*
- *Section 22, Competitive Foods*
- *Section 30, Records Retention*

Information Box 1

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

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[21] See *Administrator's Reference Manual, Section 20, Counting & Claiming* for additional information on the claims process.

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Summary of Product Documentation

The *Product Documentation Chart* provides a summary of the information contained in the five types of acceptable documentation that a CE may use to demonstrate compliance.

Product Documentation Chart					
	Child Nutrition (CN) Labels	***Food Buying Guide (FBG) for School Meal Programs***	**USDA Foods Fact Sheets for Schools & Child Nutrition Institutions**	**Nutrition Facts Label**	**Product Formulation Statements and Manufacturer's Specifications**
Description	Provides information on the product crediting contribution.	Provides detailed product crediting information based on volume or weight.	Provides detailed product information on crediting, yield amounts, nutritional values, preparation, and food safety.	Provides information on product crediting contribution by weight/volume and nutritional values.	Provides information on the product potential crediting contribution.
Standard Information Required	Yes	Yes	Yes	Yes	Yes
Reviewed and Monitored	Yes, USDA regulates CN Labels	Yes, USDA develops	Yes, USDA develops	Yes, FDA regulates Nutrition Facts Labels	No
USDA Guarantee Regarding Product Crediting Contribution	Yes	Developed by USDA	Developed by USDA	FDA regulates Nutrition Facts Labels	No
Product Identification Numbers	Each CN Labeled product has a distinct 6-digit identification number.	Yes	Yes	No	Product must be identifiable by name, code number, weight, ingredient listing, etc.

Compliance

For an Administrative Review, CN Labels, USDA Foods Fact Sheets, the *FBG*, Nutrition Facts Labels, and signed product formulation statements may be used as documentation to demonstrate the crediting contribution of a particular food or product to a reimbursable meal or compliance with the Competitive Food Nutrition Standards. However, a CN Label is the only documentation that is guaranteed to be accurate as long as the product is prepared as instructed.

If a CE is unable to provide documentation or records that demonstrate that menus and beverage and food items served are compliant with the applicable meal pattern or the Competitive Food Nutritional Standards, TDA will request a bill of lading or invoice with the CN Label identification number for menu items or food or beverage items sold. TDA will take

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additional steps as appropriate based on a review of the bill of lading or invoice.

TDA will take fiscal action, as appropriate, if documentation or records do not demonstrate compliance with the meal pattern or competitive food requirements. CEs with findings in these areas will be required to complete approvable Corrective Action Documentation (CAD).

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Section 24

Disaster Situations

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Section 24, Disaster Situations

Section 24 Update Guide

July 28, 2022	Updated *Section 24, Disaster Situations* to clarify guidance on: - Meal service flexibility - Situation of Distress definition
August 12, 2020	Created *Section 24, Disaster Situations* and updated Administrator's Reference Manual (ARM), section references. Guidance for this new section was taken from *Administrator's Reference Manual (ARM), Section 19, Other Operational Issues*. Incorporated the following United States Department of Agriculture (USDA) guidance: – *USDA Memo SP 04-2020, Meal Service During Unanticipated School Closures* (November 5, 2019) – *USDA Memo SP 05-2018, Providing Child Nutrition Programs Benefits to Disaster Survivor Evacuees* (January 19, 2018)

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program

CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program

NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option

SSO.BOps@TexasAgriculture.gov

Summer Food Service Program

SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations

CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)

Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)

School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)

DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)

FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures

NSLP-SBP.BOps@TexasAgriculture.gov

Claims

BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement

CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan

School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory

CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer

CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Disaster Situations

The guidance in this section addresses operational issues when there is a local, regional, statewide, or nationwide disaster or emergency situation. For this section, a disaster situation is an unanticipated situation in which the contracting entity (CE) cannot operate in a normal manner. This unanticipated situation may be caused by weather, man-made events, or health situations.

If this type of situation occurs, the CE **must** contact TDA as quickly as possible, so TDA can assist the CE in continued and compliant operation of the School Nutrition Program (SNP).[1]

Guidance in this section applies to the following programs:

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Seamless Summer Operation (SSO)
  - Fresh Fruit and Vegetable Program (FFVP)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)
- Summer Food Service Program (SFSP)
- Child and Adult Care Food Program (CACFP) At-Risk

This section does not address emergency procurement. See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on noncompetitive emergency procurement.

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Definitions for This Section

For this section, the following terms will be used:

Disaster or Emergency Situation	Unanticipated situation in which the CE cannot operate in a normal manner. This unanticipated situation may be caused by weather, man-made events, or health situations. It does not include planned special schedules or school or community events. Disasters may be local, regional, statewide, or nationwide.
National or Regional Presidentially Declared Disaster	Declaration of disaster or emergency situation by the President. USDA defines a disaster as a natural occurrence such as hurricanes, tornadoes, and floods or an exceptional emergency or man-made disaster to include such situations as human pandemics or chemical plant explosions.
Situation of Distress	A natural catastrophe or other event that does not meet the definition of disaster in this section, but that, in the determination of the distributing agency, or of FNS, as applicable, warrants the use of donated foods to assist survivors of such catastrophe or other event. A situation of distress may include, for example, a hurricane, flood, snowstorm, or explosion.
Unanticipated School Closure	Disaster or emergency event that causes schools to stop instructional activities and close.

[1] See the *TDA Communications During a Disaster Situation* subsection in this section for additional information on communication during a disaster or emergency situation.

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TDA Communications During a Disaster Situation

Communications during a disaster or emergency situation are critical to a CE receiving effective and efficient support from TDA. TDA may use any of the following communication tools:

- *SquareMeals@TexasAgriculture.gov*

  TDA actively monitors its general email box and addresses questions as received.

- *www.SquareMeals.org*

  During regional, statewide, or national disaster or emergency situations, TDA may develop a dedicated webpage. The disaster webpage will contain announcements, guidance, applicable forms, and other information specific to the disaster or emergency.

  Affected CEs should routinely review the website for new information as TDA frequently updates these websites.

- TDA Food and Nutrition Customer Service Line (877-TEXMEAL, (877) 839 -6985)

  TDA takes calls related to the disaster or emergency on TDA's regular customer service line.

- NSLP Bi-Weekly

  The NSLP Bi-Weekly is used to provide reminders and updated guidance. This resource is released twice a month.

- Education Service Centers (ESCs)

  TDA has a process for information to be quickly disseminated through the regional ESCs. CEs should immediately review each ESC communication they receive for new guidance and updates. TDA also conducts routine information sharing sessions with ESC staff, so they are able to provide direct assistance to CEs on request.

- Targeted Email Sent to All Affected CEs

  During a disaster or emergency situation, TDA may send targeted emails to affected CEs to quickly distribute guidance or other important information

- Extreme Situations

  During some disaster and emergency situations, normal communication methods may not be available. In these cases, TDA will work one-to-one with CEs and through the CE's ESC to establish the best available communication methods.

Inability to Maintain Normal Operational Systems

In situations where the CE is operating a meal program, but is unable to maintain normal accounting systems, including, but not limited to, counting, claiming, and monitoring, the CE must contact TDA as soon as possible.[2] TDA will coordinate with USDA on appropriate actions to take.

Verification

In cases where a disaster interrupts the CEs procedures to complete the verification of household applications, TDA may approve deadline extensions in consultation with USDA.

[2] See the Contact the Texas Department of Agriculture page which follows the Table of Contents in this section.

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National or Regional Presidentially Declared Disaster

USDA defines a disaster as a natural occurrence such as hurricanes, tornadoes, and floods or an exceptional emergency or man-made disaster to include such situations as human pandemics or chemical plant explosions. When there is a National or Regional Presidentially Declared Disaster that may impact the ability of CEs to continue normal program operations, USDA may approve regulatory waivers or other operational flexibilities to accommodate the needs of severely impacted areas or authorize TDA to approve waivers or other operational flexibilities.

Regulatory waivers and other operational flexibilities are provided on a case-by-case basis and require justification from TDA. CEs must contact TDA as soon as possible to alert TDA that a disaster is anticipated, will occur, or has occurred. TDA will coordinate with USDA and other agencies as appropriate in responding to the disaster.

Possible Regulatory Waivers or Operational Flexibilities During a Disaster

USDA regulation allows TDA and USDA to implement regulatory waivers and other operational flexibilities during a disaster or emergency. This guidance provides an overview of the possible flexibilities. However, the unique circumstances of the disaster or emergency will determine the scope and range of the approved regulatory waivers and operational flexibilities.

When a disaster or emergency situation impacts a single CE, a group of CEs, or all CEs statewide, operational flexibilities may be allowed under the authority USDA and under the authority USDA grants to TDA.

Meal Service, Short-Term Issue

If the disaster or emergency circumstances prevent a site or CE from meeting the meal service requirements for a short period of time, TDA may approve to address short term operational needs of CEs. This approval will be limited and will address a particular meal service issue.

Flexibility may be allowed in the following areas:

- Traditional meal service time
- Requirements related to offer versus serve
- Substitution of an alternate form of milk

In its written request[3] to TDA, the CE must provide detailed information on (1) the reason the CE cannot meet the meal service requirement(s) and (2) the alternative practice(s) the CE plans to implement. The Regional ESC can assist CEs in preparing a written request.

Meal Service, Extended Period

If the disaster or emergency circumstances prevent a site or CE from meeting the meal service requirements for an extended period, flexibilities must be approved by USDA. TDA will submit the approval request to USDA on behalf of the CE. This approval will be limited and will address a particular meal service issue.

Flexibility may be allowed in the following areas:

- Traditional meal service time
- Requirements related to offer versus serve

[3] In extreme situations when communication methods are limited, TDA will assist CEs in submitting written requests.

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- Substitution of an alternate form of milk

In its written request[4] to TDA, the CE must provide detailed information on (1) the reason the CE cannot meet the meal service requirement(s) and (2) the alternative practice(s) the CE plans to implement. The Regional ESC can assist CEs in preparing a written request.

In some circumstances, USDA may proactively address meal service issues and provide flexibility without TDA or CEs requesting approval. If USDA grants flexibility, TDA will provide additional guidance on how CEs may use the flexibilities.

Serving Site Locations

If the disaster or emergency results in an unanticipated school closure, TDA may allow CEs to operate the Seamless Summer Option (SSO) or Summer Food Service Program (SFSP) at non-school sites. With USDA approval, TDA may approve NSLP and/or SBP school sites to operate SSO or SFSP during the unanticipated school closure.

The designated disaster organization and the CE should determine if NSLP or SBP sites are the best option to provide meal service during a disaster or emergency situation. The size of the kitchen and cafeteria, amount of inventory on hand, size and condition of equipment, and available staff should be considered in determining site locations.

Expanded Serving Locations

TDA may expedite the authorization of SSO sites or SFSP sites to provide meal services when schools or day care facilities must remain closed during a disaster or emergency situation. USDA may also authorize TDA to waive the site requirements for Child and Adult Care Food Program (CACFP), SFSP, and SSO in order to provide meals in the most suitable locations during a disaster or emergency situation.

Changing Service Locations When Facilities Are Damaged

When facilities are damaged, and the CE is unable to provide meal services at the sites the CE normally operates, a CE may combine or consolidate meal services at existing or new sites.

For existing sites, the CE must adjust the site enrollment number in the Texas Unified Nutrition Programs System (TX-UNPS) to reflect the new number of students enrolled at the location.

For new sites, temporary or long term, TDA may require CEs to create a new site in TX-UNPS. If required, TDA will provide instructions on the process for adding new sites in a disaster or emergency situation.

CACFP At-Risk and ASCP

With approval from TDA, NSLP/SBP CEs operating SSO/SFSP during a disaster or emergency situation that normally offer CACFP At-Risk supper and snack may offer lunch and a snack or breakfast and a snack instead of supper and snack. However, the SSO requirement that limits the number of meals each day still applies.[5]

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[4] In extreme situations when communication methods are limited, TDA will assist CEs in submitting written requests.

[5] See *Administrator's Reference Manual (ARM), Section 11, Summer Meals* for additional information on the meals that may be offered under SSO.

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- Breakfast, lunch, and snack
- Breakfast, supper, and snack

An NSLP/SBP CE cannot claim lunch and supper on the same day.[6]

USDA must approve additional waivers for operational flexibilities related to ASCP and CACFP At-Risk program requirements, including, but not limited to, enrichment.

FFVP

USDA must approve waivers for operational flexibilities for FFVP meal distribution.

Other Operational Flexibilities for NSLP/SBP CEs

There are other operational flexibilities that may be used based on unique circumstances. TDA will work with CEs on a case-by-case basis to identify these flexibilities and the process to obtain approval to use them.

Reporting Requirements for Flexibilities

When CEs apply flexibilities during a disaster or emergency, they may be required to report information on their use of the flexibility.

Disasters When There Is an Evacuation of a Geographic Area

In cases where families are evacuated from a geographic area, distributing and processing household applications may be challenging.[7]

Submitting a Household Application on Behalf of the Student

In the following circumstances, school officials may submit a household application on behalf of the student:

- When resources are not available to distribute and process household applications.
- When there is significant damage to the facility that houses eligibility records, and records are not accessible.
- When there has been an evacuation of an area where a CE is located, and CEs do not have access to eligibility information.

Establishing Homeless Eligibility

During a disaster or emergency situation, each county's Emergency Coordinator is responsible for coordinating emergency services throughout the impacted communities, including the identification of homeless families and individuals. CEs should work with the county Emergency Coordinator to identify homeless students as quickly as possible so that CEs are able to provide additional services as appropriate.

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[6] Camps may serve lunch and supper. See *Administrator's Reference Manual (ARM), Section 11, Summer Meals* for additional information on the meals that may be offered under SSO

[7] See the *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on eligibility. Additionally, the *Households That Do Not Submit a Household Application, Submitting on Behalf of the Student* subsection of *Section 4* provides guidance specific to submitting an application on behalf of the student.

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Resources for Disaster Feeding

The following resources provide information on preparation for disaster responses and guidance related to child nutrition programs.

TDA

- TDA Disaster website, F&N Resources tab at *www.SquareMeals.org*.
- TDA Disaster Resource Information Packet at *www.squaremeals.org/Portals/8/files/commodities/Agricultural%20Disaster%20Assistance%20Packet.pdf*

USDA

- Child Nutrition Programs during Disaster at *https://childnutrition.ncpublicschools.gov/information-resources/emergency-disaster-preparedness/usda_cn_disaster.pdf*
- Disaster Nutrition Assistance Programs at *https://childnutrition.ncpublicschools.gov/information-resources/emergency-disaster-preparedness/fns483_disasterbroch.pdf*
- Food Distribution Disaster Assistance website at *www.fns.usda.gov/disaster/usda-foods-disaster-assistance*
- USDA Food Program Disaster Manual at *https://fns-prod.azureedge.net/sites/default/files/fdd/disaster-manual.pdf*

Information Box 1

Record Retention

Public and charter schools are required to keep documentation related to school nutrition programs for five years.

Private schools, other nonprofit organizations, and residential childcare institutions (RCCIs) are required to keep documentation for three years.

Other Sources

- Federal planning resources for emergency at *www.ready.gov/*
- Red Cross at *www.redcross.org/*
- United States Federal Emergency Management Agency (FEMA) at *www.fema.gov/*

Records Retention

The CE is required to maintain an organized system of record retention that is accessible to appropriate CE staff members and federal or state reviewers. TDA may request documentation for both offsite and onsite administrative reviews. CEs also have the option to maintain records in paper or electronic form. The *Administrator's Reference Manual (ARM), Section 30, Records Retention* has additional information on the records CEs must retain.

Lost Records

When records required for review purposes are lost or destroyed because of a disaster, the CE must inform TDA as quickly as possible. This includes, but is not limited to, paid claims, approved applications, and food production records. TDA will coordinate with USDA on the appropriate actions to take.

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The CE must retain records for the following topics related to program operation service during a disaster or emergency:

- Counting & Claiming. The CE must retain records that accurately reflect all reimbursable meals served, including, but not limited to, documented records of the meals served at each meal service and the number of meals claimed for reimbursement.
- Meals Service. The CE must retain records for reimbursable meals served, food items served, times of meal service, staffing, food inventory, and other meal service operational tasks.

  If the CE has received a waiver for any aspect of the meal service operation, the CE must retain documentation of the approved flexibility or waiver and how the flexibility or waiver was implemented.
- Financial. The CE must retain records of all financial transactions, including, but not limited to, income to the program, allowable costs, and procurement.

Compliance

TDA will review documentation submitted through TX-UNPS, retained onsite during Administrative Reviews (ARs), or on request to ensure that the CE is compliant with the regulations described in this section. TDA may require an approvable corrective action plan if the CE does not comply these requirements.

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Section 25

Meal Accommodations

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Section 25, Meal Accommodations

Update Guide	
July 28, 2022	Updated *Section 25, Meal Accommodations* to correct minor typos. Clarified guidance on the following topics: – Separation of students with disabilities
August 12, 2020	Updated *Section 25, Meal Accommodations* and updated the *Administrator's Reference Manual (ARM)* section references. Clarified information on the following topics: – Medical statement – Milk substitute specifications – Required accommodations – Texas Education Code 25.022
January 22, 2018	Updated *Section 13, Accommodating Students with Medical Disabilities and Special Dietary Needs* to incorporate the following United States Department of Agriculture guidance: – *USDA Memo SP 40-2017, Accommodating Children with Disabilities in the School Meal Program, Guidance for School Food Service Professionals* (July 25,2017) Clarified information on the following topics: – Allergen free zone – Confidentiality – Definition for disability – Location of meal service – Medical statement requirements – Methods to address modifications – Reasonable accommodation – Record retention – Unreasonable accommodation
October 10, 2017	Updated *Section 13, Accommodating Students with Medical Disabilities and Special Dietary Needs* to incorporate the following United States Department of Agriculture guidance: – *USDA Memo SP 26-2017, Accommodating Disabilities in the School Meal programs: Guidance and Questions and Answers* (April 25, 2017) Clarified information on the following topics: – Additional meals
May 1, 2017	Updated *Section 13, Accommodating Students with Medical Disabilities and Special Dietary Needs* to incorporate the following United States Department of Agriculture guidance: – *USDA Memo SP 59-2016, Modifications to Accommodate Disabilities in the School Meal Program* (September 27, 2016) – *USDA Memo SP 36-2013, Guidance Related to the ADA Amendments Act* (April 26, 2013) – *USDA Memo SP 32-2015, Statements Supporting Accommodations for Children with Disabilities in the Child Nutrition Programs* (March 30, 2015) Clarified information on the following topics: – CE policy on accommodations – Compliance with disability requirements

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- Definitions related to medical disability and special dietary needs
- Medical statement
- Milk substitutions
- Records retention
- Resources to assist with providing accommodations for students with disabilities
- Types of accommodations

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Meal Accommodations

The Rehabilitation Act of 1973, Section 504 (Section 504) and the American Disabilities Act (ADA) of 1990 provide regulatory guidance which defines a disability as any physiological disorder or conditions, cosmetic disfigurement, or anatomical loss affecting the body's systems or any mental or psychological disorder[1] which affects one of the major life activities.[2] Individuals who take mitigating measures to improve or control any of the conditions recognized as a disability are still considered to have a disability and require an accommodation.

The school nutrition program (SNP) must[3] provide reasonable accommodations for reimbursable meals at no additional charge, snacks, and a la carte sales[4] when (1) a student's disability restricts his/her diet and (2) the disability is supported by a medical statement signed by a medical authority that is licensed by the State to write medical prescriptions or meal accommodation requirement in a student's individualized education program (IEP) as authorized by the Individuals with Disabilities Education Action (IDEA) or the Rehabilitation Act of 1973, Section 504 (Section 504).

[NOTE: For this section, State is defined as the State of Texas. Any medical authority whose prescription is allowed to be filled by a pharmacy located in Texas under Texas law or regulation may provide a medical statement for a meal accommodation.]

In cases where a meal accommodation is requested by a parent or guardian and when the student does not have a medical disability or an IEP requirement, the SNP may provide the accommodation as long as the accommodation does not prevent the student from being served a reimbursable meal, snack, or an a la carte choice. The SNP is not required to provide meal accommodations when requested by a parent or guardian when the parent or guardian does not have a medical statement or an IEP required meal accommodation. However, the SNP is encouraged to work with families to make reasonable accommodations for students with special dietary needs.

This regulation applies to the following school nutrition programs (SNPs):[5]

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Seamless Summer Operation (SSO)

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1 Physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine. Mental or psychological disorders include the following: intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disability. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, drug addiction, and alcoholism.

2 Major life activities include the following: bending, breathing, caring for oneself, communicating, concentrating, eating, hearing, learning, lifting, major bodily functions, performing manual tasks, reading, seeing, sleeping, speaking, standing, thinking, walking, and working. Major bodily functions include, but are not limited to, the following: functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, and reproductive functions.

3 *Individuals with Disabilities Education Act (IDEA)*; *Provisions Related to Children with Disabilities Enrolled by Their Parents in Private Schools*, *IDEA*; *Section 504* of the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act (ADA) of 1990*.

4 For additional information on a reimbursable meal or snack, see *Administrator's Reference Manual (ARM), Section 8, Breakfast; Section 9, Lunch;* and *Section 10, Afterschool Meal Programs*. For additional information on counting and claiming reimbursable meals, see *Administrator's Reference Manual (ARM), Section 7, Counting and Claiming*.

5 This regulation also applies to the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP).

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  - Fresh Fruit and Vegetable Program (FFVP)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

The guidance in this section is intended to be used with the meal pattern guidance provided in the *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals; Section 8, Lunch Meals; Section 10, Afterschool Snacks & Meals; Section 11, Pre-Kindergarten Meals*; and *Section 12, Seamless Meals*.

Definitions for This Section

For this section, the following definitions provide information that may assist CEs in providing meal accommodations to students with a disability:

Americans with Disabilities Act (ADA)	Comprehensive legislation signed into law on July 26, 1990, that creates new rights and extends existing rights for Americans with disabilities. Title II of the Act is especially significant for the school nutrition programs, as it requires equal availability and accessibility in state and local government programs and services, including public schools.
Anaphylaxis/ Anaphylactic Reaction	Rare but potentially fatal condition in which several different parts of the body experience food-allergic reactions at the same time. Symptoms may progress rapidly and include severe itching, hives, sweating, swelling of the throat, breathing difficulties, lowered blood pressure, unconsciousness, and even death.
Food Allergy	Hypersensitivity from an abnormal response of the body's immune system to food or food additives that would otherwise be considered harmless. Many of the true food allergy symptoms often resemble allergic reactions to other substances, such as penicillin, drugs, bee stings, hives, and itching.
Food Intolerance	Adverse food-induced reaction that does not involve the body's immune system. Lactose intolerance is one example of food intolerance.
Identified Disability Category	Recognized disability category according to the Individuals with Disabilities Education Act (IDEA) which includes the following: autism; deaf-blindness; deafness or other hearing impairments; emotional disturbance; hearing impairment; intellectual disability; orthopedic impairments; other health impairments; specific learning disabilities; speech or language impairment; traumatic brain injury; and visual impairment, including blindness which adversely affects a student's educational performance; and multiple disabilities.
Individuals with Disabilities Education Act (IDEA)	Legislation that provides federal funds to assist states and school districts in making a free appropriate public education available to eligible students with specified disabilities. IDEA was previously called the *Education of the Handicapped Act* and was originally enacted in 1975.
Individualized Education Program (IEP)	Written statement for a student with a disability that is developed, reviewed, and revised in accordance with IDEA regulations. The IEP is the cornerstone of the student's educational program that contains the program of special education and related services to be provided to a student with a disability covered under the IDEA. When nutrition services are required under a student's IEP, school officials must ensure that child nutrition department staff are involved early in decisions regarding special meals.
Lactose Intolerance	Difficulty digesting the sugar found in milk, milk products, and milk foods.

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Person with a Disability For the SNP, this is called a medical disability.	Person (1) with a physical or mental impairment that substantially limits one or more major life activities and (2) that has a record or is regarded as having a physical or mental impairment. This includes, but is not limited to, a disability that is episodic or in remission. [NOTE: A physical or mental impairment need not be life threatening to constitute a disability. It is enough that it limits a major life activity. For Example: Digestion is an example of a bodily function that is a major life activity. A student whose digestion is impaired by lactose intolerance may be a person with a disability regardless of whether or not consuming milk causes the student severe distress. An impairment may be covered as a disability, even if medication, or another mitigating measure may reduce the impact on the impairment. For Example: The fact that a student may be able to control an allergic reaction by taking medication should not be considered in determining whether the allergy is a disability. Whether a physical or mental impairment constitutes a disability must be determined on a case-by-case basis. The determination must be made without regard for whether mitigating measures may reduce the impact of the impairment.] For the SNP, a student with medical disability must receive meal accommodations when an appropriate medical statement has been provided
Major Life Activities	Characteristics that warrant the CE making an accommodation for a disability: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working as well as major bodily functions which include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, and reproductive functions. Individuals who take mitigating measures to improve or control any of the conditions recognized as a disability are still considered to have a disability and require an accommodation.
Medical Statement (Physician's Statement)	Formal statement or prescription written by a medical authority licensed to write prescriptions by the State. A medical statement provides a description of (1) the student's disability; (2) why the disability restricts the student's diet and the major life activity affected by the disability; and (3) the meal accommodation the CE is to implement. Accommodations include, but are not limited to, food items or ingredients to be omitted, special dietary supplements, food items ingredients to be substituted, and/or other accommodation.
Physical or Mental Impairment	One of two types of impairment defined by ***Rehabilitation Act of 1973, Section 504 and the Americans with Disabilities Act (ADA) of 1990***: – *A*ny physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine. – Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis, cancer; heart disease; diabetes; intellectual disability; emotional illness; and drug addiction and alcoholism.
Recognized Medical Authority	Health care professional licensed by the State who is authorized to write medical prescriptions under State law that are allowed to be filled by pharmacies located in Texas.
Special Dietary Need	Medical condition that does not meet the standard of a medical disability or a religious or cultural practice that prevents a student from eating a specific food or ingredient. Special dietary need requests for accommodations include requests from parents or guardians.

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Process for Implementing Accommodations

The CE must develop procedures that establish a process for implementing accommodations that includes the following elements:

1. Procedures for how CE staff will handle accommodation requests.
2. Notification to households about each of the following elements of the accommodation procedure:
   - Method to request an accommodation.
   - Decisions that have been made by the CE about accommodation requests.
   - Right of the household to examine all relevant records and to appeal the decision.[6]
3. Training for staff on the procedures and legal requirements for accommodations.
4. Assigned coordinator who is designated to ensure that procedures are developed and followed, training is provided, and accommodations are monitored. This can be a SNP staff member or another CE staff member, including, but not limited to, a registered dietician, school nurse, or Section 504 coordinator)

USDA recommends that CEs use a team to implement the accommodation process. It can be the same type of team or the same team that is used for special education or Section 504 Individualized Education Plans. If the existing special education or Section 504 team is used, the CE should ensure that the SNP is represented on the team.

Texas Education Code 25.022 describes the requirement for public and charter schools to collect student food allergy information on enrollment. These requirements are complementary to federal regulations. Therefore, CEs are required to meet both federal and state requirements.

Accommodations for a Medical Disability

In most cases, students with medical disabilities can be accommodated with little extra expense or effort. Medical accommodations may require, but are not limited to, a modification to the meal pattern, food texture, or method of meal service.

There is a possibility that a medical modification can be made by offering students a choice of food items within an existing cycle menu, i.e., no change to the meal pattern.

For Example: A student is allergic to strawberries. The CE always offers two types of fruit at every meal service. So, if strawberries are on the menu, there is always another fruit for the student to choose.

If the CE has a method to accommodate a medical disability without making a change to the meal pattern, the CE is not required to have a medical statement on file. However, the CE may require that parents or guardians provide a medical statement when a student has a medical condition that requires a meal accommodation.

[6] The right to examine records and appeal the decision may be conducted in the same manner as an appeal for a Section 504 decision. A parent or guardian may have legal representation for this process.

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In all cases, a request to make an accommodation for a medical disability must be in writing—i.e., a medical statement from a medical authority licensed to write prescriptions by the State[7] with a request from parent or guardian for the CE to ensure that there is a medical accommodation made available within an existing cycle menu or requirement described in an IEP.

[NOTE: When an accommodation is made for a student without a medical statement, the same accommodation must be available to all students. See the *Accommodations for Special Dietary Needs, Not Medical Disability Related* subsection in this section for additional information on this topic.]

In situations that require a meal accommodation that does not meet the meal pattern, or additional equipment, specific technical training, or expertise is required, it is important that food service staff and parent(s) or guardian(s) be involved at the outset in preparations for the student's entrance into the school.

Medical Statement

For a medical statement to be valid, it must be written by a medical authority licensed to write prescriptions by the State[8] or it must be recorded in student's IEP.[9] A medical statement must include the following information in order for the CE to make a meal accommodation:

1. Explanation of the student's disability which includes a description that is sufficient to allow the CE to understand how this condition restricts the student's diet and what major life activity is affected by the disability.

   [NOTE: A medical statement does not have to include the word disability or name the student's disability. Instead, it must provide sufficient information for the CE to determine that there is medical condition that is a disability and how that medical condition affects the student's participation in the meal program.]

2. Description of the accommodation to be made: food items or ingredients to be omitted, special dietary supplements, food items or ingredients to be substituted and other accommodation information as appropriate.

   [NOTE: A CE is not required to provide name brand products as a substitute for a food item if another product with the same specifications is available. If the medical statement requires a name brand product, the CE should contact the household, and the medical authority, as appropriate, in order to identify the ingredients that must be included or excluded from the student's meal to ensure that an alternate substitution will meet the same need.]

When a meal meets the specifications described in the medical statement, even if the meal does not meet the meal pattern, the meal is reimbursable.

Additional Meals

If a medical statement includes a specification that the student must have breakfast each morning and the site does not operate the SBP, the CE is not required to provide breakfast unless the specification is also included in a student's individualized education program (IEP).

It is not the CE's responsibility to verify that a disability exists or establish standards for what is a disability. A CE cannot request medical records or medical charts related to the disability as part of the medical statement. That is the responsibility of medical authority or IEP Team. If a medical authority provides adequate information in the medical statement or the IEP provides

[7] See the *Definitions for This Section* subsection in this section for additional information on this topic.
[8] See the *Definitions for This Section* subsection in this section for additional information on this topic.
[9] A CE may require a medical statement for all students who have a medical disability when meal modifications are required.

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adequate information for an accommodation to be made, the CE must accept the medical statement or IEP record as describing a valid medical disability.

The CE also has a duty to engage the parents or guardians in the implementation of the accommodation. There are situations in which the parents or guardians will have information that may assist the CE in implementing the accommodation. When there is a difference in how the parent or guardian interprets the medical statement or what the CE is required to do, engaging the parents or guardians in the process will help to build shared understanding about how the CE will accommodate the student's needs.

For Example: A CE is provided a medical statement that says that foods high in vitamin K counteract a medication a student takes for a circulatory disorder and says that the student must not be served foods high in vitamin K. A discussion with the parent about what types of other vegetables have proven to work well with the medication will help identify a range or type of food that can be served to the student.

Duration of Medical Statement

When a medical authority provides a written medical statement, the household is not required to provide an annual updated statement from the medical authority. The CE, therefore, cannot require the household to provide a new medical statement each year.

However, CEs may contact the household to ask if the student's medical condition has changed. If the medical condition no longer requires a meal accommodation, the CE may ask the parent or guardian to sign a statement indicating that the student no longer needs a meal accommodation before ending the accommodation.

Incomplete or Unclear Medical Statement

The medical statement must include all required information in order for the CE to make a meal accommodation. The CE cannot implement the accommodation affectively if the CE is not given sufficient information to make an appropriate accommodation.

For Example: If the medical statement says do not serve the student green vegetables, but does not say that vitamin K is to be removed from the students diet, the CE may make an accommodation that does not sufficiently address the medical issue. Potatoes, and tomatoes, and some dairy products are also high in vitamin K. The CE would not know that these foods are also problematic.

Therefore, if the medical statement does not clearly describe what the student needs to avoid or be eliminated from the student's diet, the CE may not make an affective accommodation.

When a CE believes the medical statement is unclear or lacks sufficient detail, the CE must request appropriate clarification so that a proper and safe meal can be provided.

However, CEs may begin implementation of the accommodation if there is adequate information to make an accommodation.

For Example: If the accommodation states that the student must not be served eggs because of an allergy but does not provide a suggested substitution, the CE may begin serving the student a meal that does not include eggs and, at the same time, ask for additional information on what food items the student can be served in place of eggs that will have the same nutritional value.

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In this situation, the CE would naturally assume this is a food allergy to eggs; however, that may not be the case. The CE will not know unless the medical authority provides additional information.

CEs may use the services of a Registered Dietitian Nutritionist (also called Registered Dietitian), when available, to assist in implementing meal accommodations, as appropriate. If clarification is provided by a medical authority, any changes to the medical statement must be provided in writing before the CE implements the changes.

Modification or Revision of Medical Statement

The CE must not modify, revise, or make changes to a medical statement provided by a medical practitioner.

Reasonable Accommodation

In all cases, the CE is expected to provide reasonable meal accommodations in response to a medical statement. The question of whether an accommodation for a medical disability is reasonable or not reasonable must be made on a case-by-case basis. The CE may consider expense and efficiency in choosing an appropriate approach to accommodate the student's disability. However, the CE must keep in mind that when an accommodation is made, the objective is for the student to have access to the same benefits as all other students.
In determining how to address an accommodation, the CE needs to keep the following in mind:

Age of Student

Younger students may need more assistance in making sure the accommodation is made than older students.

Allergen Free Site

When the CE has banned a specified food item or food group to create an allergen free site, student(s) and parent(s) or guardian(s) will assume the site is a safe place. This may cause student(s), parent(s), or guardian(s) to assume normal precautionary safety measures are not needed to avoid a specific food or food group. Therefore, when a CE chooses to universally exclude specific foods or food groups from sites, the specific food or food group must never be present in the site.

Intent of the Program

The accommodation cannot fundamentally alter the intent of the program.

Offsite Meal Accommodation

The CE cannot claim a meal that is served to a student at home. NSLP and SBP meals are intended to be served and consumed on the school premises, with the exception of occasional school-sponsored field trips or special events.

Specific Brand Names

Unless there is only one product that meets the requirements of the accommodation described by the medical authority or IEP, the CE is not required to provide brand name products or to provide a product that is a one-for-one match (such as pizza for pizza) for the replaced item.

When the cost of an accommodation is significant, the CE has a duty to work with the household and the authorized medical authority, if

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appropriate, to identify a suitable accommodation that addresses the medical issue.

Separation of Students with Disabilities

Federal civil rights legislation, including Section 504 of the *Rehabilitation Act of 1973,* IDEA and Title II of the ADA, requires that in providing for or arranging for the provision of nonacademic services and extracurricular activities, including meals, CEs must ensure that students with medical disabilities participate along with students without medical disabilities to the maximum extent appropriate to the needs of students with medical disabilities. The CE must keep in mind that when an accommodation is made, the objective is for the student to have access to the same benefits as all other students.

Students with medical disabilities must be allowed to participate with other students to the maximum extent appropriate. When an accommodation is made, students cannot be separated from other students because of a disability. Just as the least restrictive environment applies to classroom instruction, it also applies to meal accommodations.

However, under limited circumstances, it may be appropriate for children to sit at a separate table. For example, if a child requires a large degree of assistance from an aide to consume their meals, it may be necessary for the child and the aide to have more space during the meal service.

Additionally, a school may determine a more isolated eating area is necessary for children with severe food allergies. The separate eating area may be a designated table in the cafeteria cleaned according to food safety guidelines (to eliminate possible cross contamination of allergens on tables and seating) or an area away from the cafeteria where children can safely consume their meals.

Prior to developing a special seating arrangement, the school should determine, with input from the child's parent or guardian and, if reasonable, the licensed professional who signed the medical statement, if this type of seating arrangement is truly necessary. If the school develops a special seating arrangement, other children should be permitted to join children with food allergies, provided they do not bring any foods potentially dangerous to those children.

Determination That an Accommodation Is Unreasonable

When the CE determines that the accommodation described in the medical statement is not reasonable, the CE should work with the household and the medical authority, as appropriate, to identify a reasonable solution. In these cases, the CE cannot simply deny the accommodation request; the CE has a duty to work with the household and the medical authority, as appropriate, to find a solution.

When notifying the household that an accommodation is not reasonable, the CE must ensure that the student's parent or guardian understands that he or she has the right and understands the process to take any of the following actions:

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- File a grievance if the parent or guardian believes a violation has occurred regarding the request for a reasonable modification
- Receive a prompt and equitable resolution of the grievance
- Request and participate in an impartial hearing to resolve their grievances
- Be represented by legal counsel at the hearing
- Examine the record
- Receive notice of the final decision and a procedure for review, i.e., right to appeal the hearing's decision

A La Carte Sales

Section 504 applies to every program, activity, and service provided by the school or associated with school activities in which the student participates. Therefore, meal accommodations for students with medical disabilities apply to all SNP food services, including a la carte sales.

When the CE develops an a la carte menu, the CE needs to include items which accommodate medical disabilities for each type (i.e., entrees, sides, and beverages) of item sold. The most effective strategy for this process will be for the CE to offer more than one entrée item, side item, and beverage.

For Example: After reviewing the types of meal accommodations the CE must provide, the CE determines that it will serve the following entrées: regular hamburger, bean and cheese burrito, and chef salad; the following sides: French fries, rice, and small salad; and the following beverages: one percent milk, fat free chocolate milk, lactose free milk, juice, and water. By offering different items under each type, there is range of choices to address the accommodations the CE is making. The CE may offer the same a la carte items every day or may have a rotating menu.

Offer Versus Serve (OVS)

Sites operating OVS must ensure students with medical disabilities have the same opportunity to select items from all required food components. The CE cannot eliminate a specific food component for a meal served under OVS as an accommodation for student with a medical disability.

For Example: A student with a gluten intolerance must have a choice of a bread/grain item that is gluten-free.

Information Box 1

Strategies to Prevent Allergic Reactions

- Include the method staff will use in response to life-threatening food allergy reactions in the school's emergency plan, including quick access to epinephrine auto-injectors.
- Establish a communication system to be used when responding to food allergy reactions and emergencies.
- Communicate the school's responsibilities, expectations, and practices for managing food allergies to all parents or guardians through newsletters, student handbook, announcements, and other methods.
- Establish food allergy policies and practices that apply to field trips, extracurricular activities, sale of competitive foods, fundraiser events, athletic events, class parties, or after-school programs.
- Develop staff training specific to how to respond to severe allergic reactions.

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Accommodations Specific to Severe Allergies Classified as a Medical Disability

When a student has a severe allergy that is classified as a medical disability, the CE has the responsibility to provide a safe, non-allergic meal to the student.[10] To do so, CE must make sure that all food items offered to the student meet prescribed guidelines included in the medical statement and are free of foods or ingredients associated with the allergic reaction. While there is no best method for doing this, the resources described in *Information Box 1, Strategies to Prevent Allergic Reactions* will assist the CE is this process.

Additional Meals

The CE must provide special meals even when the CE normally does not provide meal service if the student's individualized education program (IEP) includes a nutrition component that states that additional meal service is required. The additional meal service must be provided at no additional cost to the student. In these cases, the CE must ensure that the SNP is involved early in decisions regarding special meals and modifications.

All meal service recommendations and meal accommodations included in the IEP must be provided to the SNP in writing to minimize misunderstandings. This documentation must be retained by the CE.

These accommodations are provided to the student at no cost and are allowable costs to the program.

For Example: As part of the therapy for a student with a disability, the medical practitioner has provided a medical statement that the student must *consume six cans of* cranberry juice a day. The juice is to be served at regular intervals and some of these servings would occur outside of the normal school meal periods. If this requirement is not written in the IEP, the SNP would only be required to pay for the servings that are provided during meal service. The SNP may cover the cost of the additional servings but is not required to do so. However, if the requirement is written into the student's IEP, the SNP must cover the cost of all 6 servings.

or

A Residential Child Care Institution (RCCI) may be required to provide additional foods or servings since the student does not have a means of obtaining meal service except through the RCCI.

Special Guidance, Accommodations for Students with Medical Disabilities

CEs must use the following guidance when implementing accommodations for a student with a medical disability.

Cost of the Meal

When a CE makes a dietary accommodation for a medical disability for a reimbursable meal, the meal must be offered at no additional cost to the student. The cost of the meal is an allowable cost to the program.

Reimbursable Meal

An accommodation may include substituting a different food, beverage item, or ingredient; modifying the texture of a food item; serving a specified portion size; or other appropriate accommodation. A modified meal that meets the specifications as prescribed in a medical statement is not required to meet the meal pattern—the meal is reimbursable. The cost of the meal is an allowable cost.

[10] There are food allergies that do not affect a major life activity. If this is the case, the allergy is not a medical disability. For an allergic reaction to be a medical disability, a medical statement describing the medical disability must be provided by the parent or guardian.

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Students Who Need to Track Dietary Intake

When a medical statement describes the need for a student to track dietary intake, a CE is not required to provide nutrition information for all food items and all program meals as it would be very burdensome to provide this information. Instead, the CE may develop a cycle menu with input from the student's parent or guardian, medical professionals, school nutritionist and/or nurse, and staff who work with students with disabilities as appropriate. The CE would only have to provide nutrition information for the foods on the planned cycle menu for the student with a disability, as opposed to all foods offered through all meal programs.

Staff Issues

In some cases, it may be advisable for specially trained personnel, such as a registered dietitian nutritionist (also called registered dietitian), to provide guidance to the CE on how to modify a student's meals to comply with requirements as provided in the medical statement.

Moreover, for certain students with medical disabilities, it may be necessary to have a nurse or trained health aide feed the student or have a specially trained professional, such as a special education teacher, occupational therapist, or speech therapist, assist the student to develop and improve his or her eating skills.

Texture Modifications for Students with Disabilities

For students with medical disabilities who require modifications in the texture of food items served[11] (such as chopped, ground, or pureed foods), instructions in the form of a medical statement indicating the appropriate food texture is recommended but not required. For students receiving special education, the texture modification should be included in the student's individualized education program (IEP) and/or in the student's file.

The CE may apply stricter guidelines and require that a written medical statement for texture modifications be provided and kept on file or may require written instructions from the household if the meal accommodation is described in an IEP.

Administering Assisted Feedings

For students requiring assistance in eating, the determination of who will feed the student is a local school decision. While the SNP is specifically responsible for providing the necessary foods needed by a student with a disability, it is not the responsibility of the SNP staff to physically feed the student. Moreover, in the case of more delicate operations, such as tube feeding, it is advisable that commercial nutritive formulas, prescribed by a licensed physician and specially designed for tube feedings, be used rather than a school blenderized formula, which may be subject to spoilage and may not always have the correct consistency or nutritive content. Proper administration of this type of feeding generally requires the skills of specially trained personnel, such as nurses or the special trained aides who regularly work with the students.

Furthermore, CEs should be aware that they could be held liable if persons without sufficient training are performing tasks or activities, such as developing or modifying a diet order prescribed

[11] If the texture modification also includes nutrient supplements, a medical statement is needed.

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by a licensed physician or administering tube feedings. For specific guidance concerning personal liability, school officials should contact their own legal counsel.

Special labor costs may be covered through special education funds if the student has an IEP. If the student does not have an IEP, these costs may be charged, as appropriate, to the SNP nonprofit food service account, may be assigned to the CE's general fund, or may be assigned to other funding sources. When the SNP funds the cost of staff to provide assisted feedings, the cost must only include the actual time for the feeding.

Accommodations for Special Dietary Needs, Not Medical Disability Related

CEs may make meal accommodations or substitutions for individual students who do not have a medical disability but who have a special dietary need as long as the meal served meets the meal pattern. Such determinations are made only on a case-by-case basis. This provision covers those students who have food intolerances or allergies that do not affect a major life activity.

If CEs provide these types of non-disability accommodations, they must establish local policy which describes the types of accommodations the CE will make, establish a method for parents or guardians to request these accommodations, and provide notification about the accommodations the CE will provide to students and households.

CE Policy on Non-Disability Meal Accommodations

A non-disability meal accommodation policy must adhere to the following guidance:

- The policy must be applied equitably to all students.
- The CE must require a written request from a parent or guardian or an authorized medical authority that describes the student's special dietary need.
- The CE must retain documentation for all requests.
- They CE may only submit claims for meals if the meal served meets the meal pattern.

Religious or Cultural Practices

CEs may also provide reimbursable meals that conform to the practices of religious or cultural groups as long as the meal served meets the meal pattern. As a general practice, the offer versus serve (OVS) strategy allows students to select among food items and select a meal that meets their religions or cultural practices.

In cases where the OVS strategy is not available, the CE may prepare different plated reimbursable meals from which students may choose. CEs are encouraged to reach out to community religious or cultural groups to identify appropriate meal options.

Fluid Milk Substitutions

CEs may also make substitutions for fluid milk for non-disabled students who cannot drink fluid milk based on a special dietary need, including, but not limited to, dairy allergies, and/or cultural dietary restrictions.

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The fluid milk substitution may be offered to students as a milk choice for milk component for a reimbursable meal as long as the following requirements are met:

Fluid Milk Substitution Specifications Chart
Minimum Amount Per 8 Fluid Ounces
g = grams; mg =milligrams; mcg = micrograms; U = international Units

	Previous FDA Measurement Specifications Amounts		Current FDA Measurement Specifications
Nutrient	**Weight**	**Percentage[12]**	**Weight**
Calcium	276 mg	30%	276 mg
Protein	8 g	—	8 g
Vitamin A	500 IU	10%	150 mcg
Vitamin D	100 IU	25%	2.5 mcg
Magnesium	24 mg	6%	24 mg
Phosphorus	222 mg	20%	222 mg
Potassium	349 mg	10%	349 mg
Riboflavin	0.44 mg	25%	0.44 mg
Vitamin B-12	1.1 mcg	20%	1.1 mcg

Fat content of fluid milk substitutions, such as soy milk are not subject to the regulations regarding fat content that apply to regular fluid milk. Therefore, fluid milk substitutions can have a higher fat content than fat free or 1%.

Specifications

The fluid milk substitute meets the specifications for an acceptable milk substitute. The *Fluid Milk Substitution Specifications Chart* provides detailed information on the required specifications for these products.

[NOTE: The measurements for milk substitute specifications have changed as reflected in the right column in the Fluid Milk Substitution Specification Chart. The amounts are the same; only the measurement method has changed.]

Milk Component

The fluid milk substitute is served as a component for a reimbursable meal.

Lactose Free Milk

The CE may provide lactose-reduced/lactose-free milk as a creditable serving for the milk component for a reimbursable meal without additional documentation.

Cost for Student

Students cannot be required to pay extra for the fluid milk substitute.[13]

TDA Notification

The CE must inform TDA if any of its schools offer a fluid milk substitute (with the exception of lactose free milk) for non-disabled students before offering the fluid milk substitute as the milk component for a reimbursable meal.

TDA has developed a worksheet to assist CEs in ensuring that the chosen fluid milk substitute meets required specifications. CEs notifying the Texas Department of Agriculture (TDA) of their intension to serve a milk substitute must complete this worksheet and email it as an attachment to *nutrition@TexasAgriculture.gov*. This worksheet is available on the *Publications* page on *www.squaremeals.org*.

[12] Labeling regulations require that amounts be reported to the nearest 5%, i.e., the actual percentage of calcium is 27.6%, but regulations require that this amount be reported as 30%.
[13] Additional costs for milk substitutes are an allowable cost to the SNP.

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Medical Accommodation or Special Dietary Request?

The *Medical Accommodation Requirement Chart* provides examples of whether the requested accommodation must be made or may be made by the SNP.

Medical Accommodation Requirement Chart		
Description/Request	**Documentation Supporting Request**	**Medical Accommodation?**
Vegetarian household: No meat items, instead meat alternates	Written request from household	No, this is a special dietary request. CE may make this accommodation if the CE makes the same accommodation for all students with the same request.
Weight disorder: Restriction on number of meals/servings	Requirement written in IEP under IDEA	Yes, this is a medical accommodation. CE must make accommodation for this student.
Lactose intolerant: no lactose-based milks	Written medical statement from physician	Yes, this is a medical accommodation. CE must make accommodation for this student.
Physical disability: unable to chew	Requirement written in IEP under Section 504	Yes, this is a medical accommodation. CE must make accommodation for this student.
Allergic reaction: Hives specific food items	Written medical statement from physician	Yes, this is a medical accommodation. CE must make accommodation for this student.
Religious diet: Limitation on certain types of food	Written request from household	No, this is a special dietary request. CE may make this accommodation if it makes the same accommodation for all students with the same request.

Resources

The following resources may be helpful to CEs as they implement meal accommodations:

TDA

Resources available at *www.SquareMeals.org*

- *Meal Accommodation Tracking Form*, sample form for tracking student meal accommodations

  [NOTE: Some POS systems have an electronic method to maintain this information, so that the cashier can ensure that a student does not take a food item where an accommodation has been made.]

- *Medical Statement Form*, sample form for CEs to provide to parents or guardians requesting a medical statement from a licensed medical authority
- *Milk Substitute Worksheet*, worksheet used to submit notification to TDA about the use of a milk substitute

Texas Department of State Health Services

Guidelines for the Care of Students with Food Allergies At-Risk for Anaphylaxis at *https://www.dshs.texas.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=8589969921*

Centers for Disease Control and Prevention (CDC)

Food Allergies in Schools at *www.cdc.gov/healthyschools/foodallergies/index.htm*

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United States Department of Agriculture (USDA)

Accommodating Children with Disabilities in the School Meal Programs, Guidance for School Food Service Professionals at *http://www.fns.usda.gov/school-meals/guidance-and-resources*

Resource List on Food Allergies and Intolerance for Consumers 2010 at *www.nal.usda.gov/sites/default/files/fnic_uploads/allergy.pdf*

Legal Concerns and Liability in Working with Students with Disabilities

A growing body of federal law clearly intends that students with medical disabilities have the same rights and privileges and the same access to benefits, such as school meals, as students without medical disabilities. Consequently, schools that do not make appropriate program accommodations for students with medical disabilities may be found in violation of federal civil rights laws.

School administrators and SNP staff should be aware of two issues involving liability: (1) the school's responsibility for providing program accommodations for students with disabilities and (2) the question of personal responsibility in cases of negligence. In order to accommodate a student with a disability, the school must ensure that both facilities and personnel are adequate to provide necessary services.

Privacy Regulations That Apply to Accommodations for Medical Disabilities

In addition to the USDA regulations that limit the disclosure of confidential information related to eligibility status, information on a student's disability is also subject to privacy laws. SNP staff cannot share information about a student's disability with any staff member who does not have a need to know and cannot release medical information to anyone outside of the site[14] without written permission of the parent or guardian.

[NOTE: In most cases, sharing private information of any type with anyone outside of the SNP staff is inappropriate. However, because there is often a coordination of services for special needs students, SNP staff may legitimately share and receive information from non-SNP school staff. Need to know is the primary consideration in sharing private information for the coordination of services.]

The applicable privacy laws include the following:

- Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule
- Family Education Rights and Privacy Act (FERPA)
- Individuals with Disabilities Education Act (IDEA)
- Americans with Disabilities Act (ADA), Section 504

TDA recommends that CEs establish policy and/or procedures for handling, sharing, and storing private information.

Records Retention

When a CE makes a menu accommodation, the CE must retain appropriate documentation, including, but not limited to, the following types of documentation:

- CE policy and procedure related to accommodations, including any policy related to non-disability accommodations and how that policy is shared with households

[14] Exceptions: Court ordered or law enforcement request

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- Medical statements, records of contact with households about medical statements, and records of contact with the medical authority, if appropriate
- Written requests from parents or guardians for non-disability accommodations, if applicable
- Notes about communications and/or interactions with the household concerning the student's accommodation.
- Food production records or meal preparation records that demonstrate modifications that were made
- Product labels and other ingredient statements

Information Box 2

Records Retention

State Board of Education policies require public and charter schools to maintain records for a period of five years after the SNP has ceased to provide the meal accommodation.

Private schools, other nonprofit organizations, and RCCIs maintain records for three years after the SNP has ceased to provide the meal accommodation.

Compliance

TDA will assess compliance with the CE's practices to provide accommodations for students with disabilities and other types of accommodations, if applicable.

TDA will take fiscal action, as appropriate, for the following violations:

- Not meeting the meal pattern requirements when making accommodations for a student with special dietary needs that are not a disability unless the student's IEP requires an accommodation that results in a non-reimbursable meal being served.
- Inadequate or incorrect response to accommodations as described on a medical statement.
- Inadequate or unavailable documentation related to accommodations.

CEs with findings will be required to submit an approvable Corrective Action Document (CAD). TDA may also terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance with accounting and financial requirements, including corrective action related to audits.

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Section 26

Food Safety

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Section 26, Food Safety

Update Guide	
January 4, 2022	Updated *Section 26, Food Safety* to correct minor typos.
August 12, 2020	Updated *Section 26, Food Safety* to update the *Administrator's Reference Manual (ARM)* section references. Guidance on home-canned products was moved from the previous *Administrator's Reference Manual (ARM) Section 19, Other Operational Issues* to this section.
February 26, 2020	Updated *Section 18, Food Safety* to update information related to Institute for Child Nutrition, formerly the National Food Service Management Institute (NFSMI).
August 28, 2017	Updated *Administrator's Reference Manual, Section 18, Food Safety* to include the following USDA Memos: – *USDA Food-Safe Schools Action Guide, Creating a Culture of Food Safety, A Food Safety Resource for School Nutrition Directors* (2014) – *USDA Memo SP 37-2013, Enhancing the School Food Safety Program Frequently Asked Questions* (April 26, 2013) Added guidance on standards for meat and poultry products and sulfiting agents in foods to this section. Guidance was previously located in *Administrator's Reference Manual (ARM), Section 19, Other Operation Issues*. Provided clarification on the following topics: – Holding time – Meat and poultry inspection – Standards for meat and poultry – Sulfiting agents – Temperature danger zone – Texas Department of State Health Services (DSHS) – Training – USDA/FDA food safety requirements

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

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Food Safety

Contracting Entities (CEs) operating any School Nutrition Program (SNP) must be compliant with federal, state, and local regulations related to food safety. For this section, the term *food* includes both food and beverage items. CEs must have written procedures for addressing food safety in the following areas:

1. Preparation of foods and beverages for a School Nutrition Program (SNP)
2. Service of food and beverages for a SNP
3. Storage of all food and beverages for a SNP

This requirement applies to all food preparation, service, and storage sites which includes, but is not limited to, cafeterias, classrooms, school business, school courtyards, kiosks, vending machines, warehouses, storage facilities, or field trip sites.

USDA requirements do not apply to food sold or served that is not part of a SNP. However, state and local regulations may apply.

Food Service Management Company (FSMC)

When a CE contracts with an FSMC, the CE is responsible for the quality and general nature of the food service operation, including ensuring that the food service program is compliant with all federal, state, and local food safety regulations.

Food safety requirements apply to the following programs:

- National School Lunch Program (NSLP)
- School Breakfast Program (SBP)
- Afterschool Care Program (ASCP)
- Fresh Fruit and Vegetable Program (FFVP)
- Seamless Summer Option (SSO)
- Special Milk Program (SMP)

as well as any Child and Adult Care Food Program (CACFP)[1] or Summer Food Service program (SFSP) operated by an NSLP or SBP CE.

[NOTE: CACFP or SFSP sponsors that use an NSLP or SBP CE's facilities to operate a Child Nutrition Program (CNP) that is not affiliated with or associated with an NSLP or SBP CE should follow the guidance for CACFP or SFSP operators.]

[1] This includes such program as the At Risk CACFP program.

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Federal, State, and Local Food Regulations

CE's must follow all required safety regulations—federal, state, and local. The following list describes resources that provide guidance for each level:

USDA

USDA provides numerous tools to support schools in meeting the food safety requirements at *www.fns.usda.gov/ofs/food-safety*, including, but not limited to, the following which are specific to developing a safety plan:

- *Food-Safe School Action Guide* which provides detailed guidance on meeting the USDA's requirement for creating written procedures to address food safety.
- *Guidance for School Food Authorities: Developing a School Food Safety Program Based on the Process Approach to HACCP Principles* which provides detailed information on how to develop a HACCP plan.

USDA also requires that CEs that serve only prepackaged food meet all applicable federal, state, and local food safety standards, including, but not limited to, food handling, storage, and safety inspections as described in this section.

Food and Drug Administration (FDA)

By regulation, USDA uses the food safety guidance issued by the Food and Drug Administration (FDA) for the operation of Child Nutrition Programs (CNPs). FDA provides regulatory information as well as numerous tip sheets on handling different types of food and different types of food preparation. FDA resources for retail food service operators[2] are available at *www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/default.htm*.

Texas Department of State Health Services (DSHS)

The Texas Department of State Health Services (DSHS) provides detailed guidance on Texas food safety regulations, addressing food safety hazards proactively, and other relevant information at *www.dshs.texas.gov/foodestablishments/permitting.aspx#schoo*.

Required Permits, For-Profit Food Service Contractors

Recently, DSHS changed the regulations related to permits for school food establishments. When an NSLP/SBP meal or snack service is prepared and/or served by a for-profit entity (including, but not limited to, FSMCs or vendors), the for-profit entity must have a DSHS permit. Additional information on the permit and the permit application is available at *www.dshs.texas.gov/foodestablishments/permitting.aspx#schoo*.

NSLP/SBP CEs that are self-operated[3] are not required to have a permit.

Local Regulations

Because local regulations vary across the state, CEs need to contact city and county

[2] FDA provides guidance for consumers and retail food service operators. SNPs must follow the guidance for retail food service operators.

[3] For self-operated programs, a CE's staff prepare and serve the meals. Self-operated programs may use onsite kitchens or central kitchens.

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officials to get information on requirements specific to a site's location.

Definitions for This Section

For this section, the following terms will be used:

Food (for this section)	Food or beverages items sold or served by a School Nutrition Program (SNP).
Food Establishment[4]	Definition used by Texas Department of State Health Services (DSHS) to describe an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. All entities that perform these tasks must meet all applicable requirements.
Food Safety Inspection	Inspection of food preparation, service, and storage facilities to ensure that proper food safety procedures are followed.
Hazard Analysis Critical Control Point (HAACP)	Systematic approach to constructing a food safety plan. It is designed to reduce the risk of food-borne illnesses/hazards by focusing on each step of the food preparation process, from receiving to service.
HACCP Approach	Food safety approach that applies standards based on safety hazard for each food item based on established food safe and unsafe temperature conditions.
Potentially Hazard Food	Food that is natural or synthetic that requires temperature control because the food is capable of supporting the growth or rapid and progressive growth of bacteria.
Retail Food Service Establishments	Term used by the USDA and the FDA to classify the type of entity providing food service. School food service operators are classified as retail food service establishments and must follow food safety regulations for this type of entity. This includes all types of food preparation including, but not limited to, self-operated program, FSMC, vended meals, and catering.
Self-Operated	Program where the CE's staff prepare and serve the meals. Self-operated programs may use onsite kitchens or central kitchens.
Standard Operating Procedures (SOPs)	Established and written protocols for how staff respond to specific situations.

Food Safety Inspection

At least twice a year, each CE site preparing or serving meals for the National School Lunch Program (NSLP) and/or School Breakfast Program (SBP) is required to obtain a food safety inspection conducted by the state or local governmental agency responsible for such inspections. A CE may count an inspection that occurs in the summer as one of the two required inspections as long as the site is also used during the regular school year.

Reporting

CEs must report food safety inspections in Texas Unified Nutrition Programs System (TX-UNPS) annually when the CE applies to renew its program application.

[4] This definition is taken from the *Texas Food Establishment Rules Field Inspection Manual (2015).*

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The most recent food safety inspection report must be posted in a visible location and released to the public on request.

Hazard Analysis Critical Control Point (HAACP)

NSLP and SBP CEs must have a written plan for food safety based on HACCP principles. The HACCP Plan gives CEs flexibility in creating a process that is specific to the CE's food service program: staff, equipment, and serving needs. USDA's *Guidance for School Food Authorities: Developing a School Food Safety Program Based on the Process Approach to HACCP Principles* provides detailed information on how to develop a HACCP plan.[5]

When Is a HAACCP Plan Used?

HACCP plan must be applied to any facility or part of a facility in which food is prepared, served, or stored for the purposes of a SNP. The food safety plan must address all aspects of meal preparation, service, and storage and must be addressed in procurement as appropriate.

For Example: The CE stipulates the temperature or conditions of foods that will be accepted on delivery.

Seven Principles of That Guide a Successful HACCP plan

1. Hazard Analysis—Identify steps in the food-production process where hazards could occur, assess their severity and human health risk, and determine a preventative measure.
2. Determination of Critical Control Points—Identify critical control points in the handling of food at which the potential hazard can be controlled or eliminated.
3. Specification of Critical Limits—Institute control measures and establish criteria to measure control at those critical points. For example, minimum cooking times and temperatures could be established for a cooked food.
4. Monitoring—Monitor critical control points by establishing procedures for how the critical measures will be monitored and who will be responsible.
5. Corrective Actions—Take corrective action when the criteria are not being met, including disposal or reprocessing of the food in question and fixing the problem.
6. Verification—Check the system routinely for accuracy to verify that it is functioning properly and consistently.
7. Documentation—Establish effective record-keeping procedures that document and provide a historical record of the facility's food safety performance.

Elements of a HACCP Plan

HACCP plans must have documented standard operating procedures at each school food preparation, service, and storage site which includes the following elements:

- Methods for assigning and documenting menu items in the appropriate

[5] Available at *www.fns.usda.gov/ofs/food-safety*.

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HACCP critical control point category

- Documentation identifying critical control points of food production
- Method to monitor the implementation of the HACCP plan
- Method for identifying and documenting corrective actions
- Record keeping
- Periodic review and revision of the food safety plan

How Often Is a HAACP Plan Updated?

Food safety plans must be reviewed regularly to ensure that standard operating procedures for safe food handling are updated to include any facility or part of a facility where food is stored, prepared, or served, including such locations as school buses, hallways, school courtyards, kiosks, classrooms, or other locations outside the cafeteria. This requirement applies to all SNPs.

USDA Recipes with Assigned HACCP Process Categories

Using recipes that identify food safety critical control points is an appropriate strategy to support a HACCP plan; however, the use of these recipes does not meet the requirements of a complete HACCP plan.

Temperature Danger Zone

USDA states that the School Nutrition Programs (SNPs) must follow the requirements for retail food service operators. The danger zone for retail food service establishments is 41˚ to 135˚.[6]

The *Minimum Safe Temperature Chart* provides the appropriate temperatures for food/menu items and general food preparation:

Minimum Safe Temperature Chart	
Food/Menu Item	**Temperature**
– All poultry preparations – Casseroles – Reheat leftovers – Stuffing	165˚
– Egg dishes – Ground meats (beef, lamp, veal, pork)	160˚
– Fin fish – Roasts (medium rare) – Steaks or chops (beef, lamb, pork, veal)	145˚
– Holding temperature for cooked food – Reheat fully cooked ham	140˚

[6] USDA regulations require that School Nutrition Programs (SNPs) use the temperature guidelines established by the United States Food and Drug Administration (FDA). FDA provides two sets of temperature guidelines—consumer and retail establishments. School food establishments must meet the retail establishment standard.

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Danger Zone for Food Safety	41˚ to 135˚
– Refrigerator temperature	40˚
– Freezer temperature	0˚

Food Safety Handling

The following strategies promote the safe handling of food/menu items:

Avoiding Cross Contamination

Cross contamination practices are important to prevent unsafe foods from being served and to ensure that students with allergies are not served the wrong food items.

- Use different kitchen tools, pans, utensils, gloves, surfaces, and containers for different food items or portions and wrap items before food service.
- Wash hands before beginning any food preparation activities. This includes washing hands after staff take a break or if staff perform a non-food preparation or service activity and then go back to meal preparation or service activities.
- Ask students and guests to wash hands before the meal service.
- Keep the work area clean and all spills wiped up immediately.
- Use clean equipment in preparing, cooking, and serving food.

Information Box 1

Standard Operating Procedure Categories for Food Sanitation and Food Handling

The following categories of practices are commonly used in procedures and plans for food sanitation and food handling:

1. Cleaning and Sanitizing Food Contact Surfaces
2. Holding Hot and Cold Potentially Hazardous Foods
3. Personal Hygiene
4. Preventing Contamination at Self-Service Bars
5. Serving Food
6. Transporting Food to Remote Sites (Satellite Kitchens)
7. Using and Calibrating Thermometers
8. Handling Ready-to-Eat Foods
9. Washing Fruits and Vegetables
10. Washing Hands

General Food Handling

- Wash all raw fruits and vegetables before using.
- Scrub and sanitize all cutting boards, knives, and electric slicers immediately after contact with raw or cooked meats, fish, or poultry.
- Re-pan in shallow containers any cooked food to be held at refrigerated temperatures and refrigerate immediately. Center of the food should reach 40° within 4 hours. To hasten cooling, space pans in the cooler to allow for adequate air circulation.
- Never serve questionable food.
- Refrigerate all unused foods, promptly.

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- Handle all utensils and serving equipment by handles and bases to avoid touching areas that will later come in contact with the food.
- Use a clean spoon to taste food.
- Reassign employees with infected cuts or burns. These employees should not prepare food or handle equipment that will come in contact with food.
- Clean and sanitize surfaces where there is a possibility of food contact, including desks and tables in classrooms.
- Monitor food storage conditions, such as temperature, cleanliness, etc., if food is stored in locations outside of the kitchen or cafeteria.

Holding Foods

The length of time a food is allowed to remain at the temperature listed above is based on the rate and extent of bacterial growth that occurs. The following temperatures indicate the period of time a food may be held at the correct temperature before it becomes unsafe.

Hot Foods	Cold Foods
2 hours holding at 140 ° or above	2 hours of preparation, refrigerated or frozen at the appropriate temperature

Leftovers

Leftovers may be served or sold a la carte; however, if these foods are to be served or sold, the CE must take care to ensure that all safety standards are met, including any local requirements.[7]

Pest Control

- Remove all leftover food and food waste from preparation, serving, and eating locations immediately after the service.
- Direct staff to report any evidence of pests (such as droppings, holes in food storage containers, or food crumbs on the floor) in meal preparation, service, storage, or eating locations to a designated staff member.

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[7] See *Administrator's Reference Manual (ARM), Section 21, Meal Service* for additional information on handling leftovers.

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Reheating Potentially Hazardous Foods

- Reheat potentially hazardous foods[8] rapidly to 165˚ or higher before the food/menu items are placed in hot food storage equipment (i.e., steam tables, bain-marie, or warmers). Because of the required temperature for safe reheating, steam tables, bain-marie pots, warmers, and other similar hot food holding equipment cannot be used to reheat potentially hazardous food items. Food/Menu items to be reheated include pre-cooked items as well as fully prepared items.

Food Served by Non-SNP Staff or Volunteers

(Commonly occurs on field trips or during special events)

- Select single-serve items that have been pre-portioned and wrapped and can be served easily in a classroom, or another location.
- Use equipment that will maintain safe temperatures when transporting potentially hazardous hot or cold foods.
- Check the ambient temperature of holding equipment and the internal temperature of potentially hazardous food before delivery to classrooms, or other locations.
- Advise school staff and volunteers to wash their hands properly before handling or serving food.
- Provide serving utensils or single-use disposable gloves.
- Minimize the amount of time that food is held in classrooms or other locations.
- Provide basic food safety training in-house to non-SNP servers.

Information Box 2

List of Foods Commonly Considered to Be Potentially Hazardous

(List is not exhaustive.)

Meat/Protein

- Raw meat, fish, and poultry
- Processed meat, fish, and poultry, including those labeled fully cooked
- Unpasteurized shell eggs
- Cooked eggs, dishes with eggs
- Cooked and hot-held beans

Fruit and Vegetables

- Cut melons and figs
- Vegetables mixed with mayonnaise
- Cut tomatoes
- Cooked/Heated and hot-held vegetables, including beans

Dairy

- Cheese, real cream, milk, butter, margarine

Grains

- Cooked pasta and rice

Main Dishes

- Cooked, hot-held casseroles, soups, and stews

Sulfiting Agents in Foods

Sulfiting agents are used in many processed foods as preservatives. Medical findings have linked sulfiting agents to severe adverse reaction by sensitive individuals. Individuals have been reported to suffer life-threatening respiratory distress, shock, and even coma after eating food treated with sulfiting agents.

[8] Food that is natural or synthetic that requires temperature control because the food is capable of supporting the growth or rapid and progressive growth of bacteria.

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To help sulfite-sensitive people avoid problems, the Food and Drug Administration (FDA)

- prohibits the use of sulfites on fresh produce (except fresh potatoes) intended to be sold or served raw and
- requires the presence of sulfites in processed food to be declared on the label.

Processed foods that may contain sulfites include baked goods, condiments, dried and glacéed fruit, jam, gravy, dehydrated or pre-cut or peeled *fresh* potatoes, molasses, shrimp, soup mixes, and beverages, such as cider, fruit and vegetable juices, and tea.

For CEs participating in the school nutrition program, USDA

- prohibits the addition of sulfites, such as *vegetable fresheners* and *potato whiteners*, to any foods during meal preparation and
- recommends that CEs do not purchase foods treated with sulfiting agents.

Any questions regarding the use of sulfiting agents should be referred to local or state health authorities.

Standards for Meat and Poultry Products

USDA standards for meat and poultry products set legal requirements for content, preparation, and labeling before being manufactured and sold in commerce. Standards of identity set specific (and optional) ingredients a food must contain—such as the kind and amount of meat, percent of fat or moisture and additives, if any—when a product is to be labeled or identified by a common product name.[9]

USDA Food and Safety and Inspection Service, About FSIS

The Food Safety and Inspection Service (FSIS)[10] is the public health agency in the U.S. Department of Agriculture responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and correctly labeled and packaged.

Meat and Poultry Inspection in Texas

The Texas Department of State Health Services (DSHS), Division for Regulatory Services, Meat Safety Assurance Unit, is responsible for administering the meat and poultry inspection program in Texas. All State of Texas meat and poultry plant labels are reviewed by the Labels and Standards Program to assure they are truthful and accurate at the time of approval. For additional information, contact DSHS.

Meat Safety Assurance Unit, MC 1872
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347
Telephone: (512) 834-6760

[9] See USDA FNS website (*www.fsis.usda.gov/wps/portal/informational/aboutfsis*) for more information on the standards for meat and poultry products.

[10] For additional information on this topic, see *www.fsis.usda.gov/wps/portal/fsis/home*.

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TDD: 1-800-735-2989
Fax: (512) 834-6763

Home-Canned Products

Home-canned products are unallowable in the school meal program because of food safety concerns. However, canned food items (including those produced locally) that are produced and processed in an approved facility that meet all local, state, and federal food safety and health guidelines may be used in school meals.

Training

CEs must conduct annual HACCP training for all SNP staff at locations where meals are prepared, served, and stored. CEs must retain documentation to demonstrate that the annual training was conducted.[11] This training may also be used to meet the training required for professional standards.[12]

School Nutrition Program Directors

School nutrition program directors are required to have 8 hours of food safety training every five years.[13]

Food Safety Inspection Reporting

Each year, CEs must complete the Food Safety Inspection Report in the Texas Unified Nutrition Programs System (TX-UNPS) when they complete their program renewal application.

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[11] See the *Records Retention* subsection in this section for additional information on this topic.
[12] See *Administrator's Reference Manual (ARM), Section 27, Professional Standards* for additional information on this topic.
[13] See *Administrator's Reference Manual (ARM), Section 27, Professional Standards* for additional information on this topic.

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Resources

- **Institute for Child Nutrition** provides numerous resources and online training on food safety topics at *www.theicn.org*.

- **Texas Department of State Health Services (DSHS)** provides a wide range of resources on food safety issues and food borne pathogens as well as regulations that are specific to school food establishments at *https://www.dshs.texas.gov/foodestablishments/permitting.aspx#schoo*.

- **Texas Regional Education Service Centers (ESCs)** child nutrition specialists provide technical assistance to CEs to help them develop and implement HACCP.

- **USDA** provides numerous resources, including a *Food-Safe School Action Guide, Creating a Culture of Food Safety, A Food Safety Resource for School Nutrition Directors* at *https://www.fns.usda.gov/sites/default/files/Food-Safe-Schools-Action-Guide.pdf* which will assist schools in meeting the USDA regulations.

  USDA's *Guidance for School Food Authorities: Developing a School Food Safety Program Based on the Process Approach to HACCP Principles* provides detailed information on how to develop a HACCP plan.

  These resources, tip sheets, reminder documents to post, and many more are located at *www.fns.usda.gov/ofs/food-safety*.

- **United States Food and Drug Administration (FDA)** provides numerous helpful documents related to food safety, including HACCP, potential hazardous foods, food handling and more at *www.foodsafety.gov*.

Forms

TDA provides the following forms at *www.SquareMeals.org*:

- *Cooler or Freezer Temperature Recording Form*
- *Food Safety Inspection Report* (Reported in TX-UNPS)

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Record Retention

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, other nonprofit organizations, and residential child care institutions (RCCIs) after the end of the fiscal year to which they pertain.

The CE is required to maintain records for all program operations including, but not limited to, the following:

- Food safety procedures
- HACCP plan
- HACCP training, which includes the date, HACCP topic, participant names, and signatures of participants
- Other related training[14]
- Temperature logs
- Food safety inspection reports

Information Box 3

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Nonprofit private schools, other organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

CEs have the option to maintain records on paper or electronically. These records must be accessible to appropriate CE staff members and federal or state reviewers. TDA may request documentation related to food safety during both offsite and onsite administrative review processes.

Compliance

TDA will review documentation submitted through TX-UNPS, retained onsite during Administrative Reviews (ARs), or on request to ensure that the CE is compliant with the regulations described in this section. TDA may require a corrective action document if the CE does not comply with these requirements. If TDA finds that the operation of any site endangers the health and safety of the students being served, TDA will coordinate with the appropriate local and/or state agencies to determine and take appropriate actions. This may include the immediate closure of meal service operations.

[14] See *Administrator's Reference Manual (ARM), Section 27, Professional Standards* for additional information on this topic.

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Section 27

Professional Standards

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Section 27, Professional Standards

Update Guide	
July 28, 2022	Updated *Section 27, Professional Standards* to fix minor typos. Clarified information on the following topics: - Education and experience for Program Directors
January 4, 2022	Updated *Section 27, Professional Standards* to fix minor typos. Clarified information on the following topics: - Education and experience for Program Directors
August 12, 2020	Updated *Section 27, Professional Standards* to update *Administrator's Reference Manual (ARM)* section references.
March 4, 2020	Updated *Section 25, Professional Standards* to remove editing marks.
November 21, 2019	Updated *Section 25, Professional Standards* to incorporate the following United States Department of Agriculture (USDA) memos and guidance: – *Hiring Flexibilities Under Professional Standards, Final Rule, Federal Register, Vol. 84, No. 41* (March 1, 2019) Clarified information on the following topics: – Hiring standards flexibilities – Record retention – Short-term, temporary, and part-time employee training requirements
April 3, 2018	Updated *Section 25, Professional Standards* to incorporate the following United States Department of Agriculture (USDA) memos and guidance: – *USDA Memo SP 38-2016, Questions & Answers (Q&As) on the Final Rule "Professional Standards for State and Local School Nutrition Program Personnel as Required by the Healthy, Hunger-Free Kids Act of 2010"* (May 26, 2016) Clarified information on the following topics: – Compliance – Content for training by job function and responsibility – Food safety training requirements for directors – Hiring standards for program directors – Professional standards for contracted services and food service management companies (FSMCs) – Training requirements for assistant directors, employees working less than 20 hours, local wellness coordinators, and staff with cognitive disabilities – USDA Learning Categories

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February 26, 2016 — Updated *Section 25, Professional Standards* to incorporate the following United States Department of Agriculture (USDA) memos and guidance:

- *USDA's Guide to Professional Standards for School Nutrition Programs* (January 14, 2016)
- *Updated Professional Learning Objectives* and *Professional Standards learning Topics with Learning Topic Codes* (September 11, 2015)
- *USDA Memo SP 39-2015, Questions and Answers on the Final rule Professional Standards for State and Local School Nutrition Programs Personnel as Required by the Healthy, Hunger-Free Kids Act of 2010* (June 26, 2015)

Clarified information on the following topics:

- Appropriate training topics
- Documentation
- Equivalent Educational Experience
- Flexibility for SY 2015-2016
- Food Service Management Company
- Program director and manager duties and responsibilities
- Related Field for hiring professional standards
- Relevant School Nutrition Program Experience
- Special situations related to training professional standards
- Staff with shared responsibilities
- Total enrollment
- Training provided by program directors and program managers
- Unacceptable training topics
- Updated learning categories, topics, subtopics, and objectives

May 18, 2015 — Removed the content from *Section 25* related to the history of the school nutrition program and replaced it with new content that provides guidance on the school nutrition program professional standards. The previous content on the history of the school nutrition program will be relocated to the SquareMeals website (*www.SquareMeals.org*).

This section incorporates the following United States Department of Agriculture (USDA)guidance:

- *Correction to Professional Standards for State and Local School Nutrition Programs Personnel as Required by the Healthy Hunger-Free Kids Act of 2010, Federal Register, Volume 80, Number 88* (May 7, 2015)
- *Professional Standards for State and Local School Nutrition Programs Personnel as Required by the Healthy Hunger-Free Kids Act of 2010, Federal Register, Volume 79, Number 23* (February 4, 2015)

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address		Mailing Address	
1700 N. Congress, 11th Floor, Austin, TX 78701		PO Box 12847, Austin, TX 78711-2847	
Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

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Professional Standards

The continuing education/training and hiring professional standards for the National School Lunch Program (NSLP) and School Breakfast Program (SBP) are intended to provide a framework to

- ensure that the personnel who manage and/or operate these programs have adequate knowledge and training to perform their duties,
- strengthen the ability of personnel to manage and/or operate the programs effectively and efficiently, and
- improve the quality of school meals, reduce errors, and enhance program integrity.

Who Does This Affect?
The guidance in this section applies to all personnel who manage and/or operate school nutrition programs (SNPs) as well as employees who are contracted to manage or operate an SNP on behalf of a contacting entity (CE). These requirements do not apply to the Special Milk Program.

What School Nutrition Programs (SNPs) Are Affected?
The requirements described in this section apply to CEs operating the following SNPs:

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Fresh Fruit and Vegetable Program (FFVP)
  - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)

If a CE operates a site under the Child and Adult Care Food Program (CACFP) or Summer Food Service Program (SFSP) in addition to its NSLP or SBP sites, the professional standards for continuing education/training and hiring apply to these sites.

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Summary of Professional Standards for School Nutrition Programs

The *Summary of Professional Standards Chart* in this section provides an overview of the key elements of the professional standards requirements.

Summary of Professional Standards Chart
Types of Professional Standards
Continuing Education/Training Professional Standards (Training Standards) specify training hours and topics that are required based on employee responsibilities.
Hiring Professional Standards for Program Directors (Hiring Standards) specify the required educational background and professional experience for the program director.
Date of Hire/Employment
All Employees Hired and Employed Before or After July 1, 2015 must meet the training standards requirements each school year based on their job functions.
Program Directors Hired and Employed Before or After July 1, 2015 must meet the food safety training requirements every five years.
Program Directors Whose Positions Were Not Advertised Prior to July 1, 2015 and Who Are Hired and Employed on or after July 1, 2015 must meet the hiring standards requirements based on the total number of students enrolled in the CE's school(s).
If the program director responsibilities are distributed across several positions, only the person hired to perform the majority of the program director duties must meet the program director hiring and training standards. If the program director and program manager positions are merged, the person performing the combined positions must fulfill the program director requirements.
Job Position Roles and Functions
School Nutrition Program Directors are those individuals directly responsible for management of the day-to-day operations of school food service for <u>all</u> participating schools under the jurisdiction of the contracting entity (CE).
Program director responsibilities typically include, but are not limited to, administration, program implementation, monitoring, and evaluation of the following: sanitation, food safety, employee safety, nutrition and menu planning, food production, facility layout and design, equipment selection, procurement, financial management, recordkeeping, program accountability, marketing; customer service, nutrition education, general management, personnel management, and computer technology.
School Nutrition Program Managers are employees directly responsible for the management of the day-to-day operations of school food service for a participating school.[1]
Other School Nutrition Program Employees are employees, without managerial responsibilities, involved in the day-to-day operations for the SNP whether they are or not funded with school nutrition program funds.[2]
Food Service Management Company (FSMC) Staff must meet the hiring and training standards for the position they are hired to perform. If an FSMC staff member performs the responsibilities of the program director, the person employed by the CE who is assigned to manage the FSMC contract and ensure that all regulations are met <u>must also</u> meet the hiring and training standards. This oversight includes

[1] A school nutrition program manager, as defined in this section, may be the manager for more than one participating school, but not all of the participating schools.

[2] Staff classified as other school nutrition program employees as defined in this section may work in more than one participating school.

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requiring the FSMC to provide documentation that the FSMC has fully implemented the professional standards for continuing education/training and hiring.

Total Student Enrollment Level[3] (Based on the most current October 1 Data)

Smaller Sized Schools—2,499 students or less

Medium Sized Schools—2,500 to 9,999 students

Larger Sized Schools—10,000 students or more

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[3] CEs must retain documentation demonstrating total student enrollment for the CE. See the *Records Retention* subsection in this section for additional information.

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Definitions for This Section

For this section, the following terms will be used:

Continuing Education/ Training	Events that provide information and build skills to improve school nutrition employee effectiveness and efficiency. This includes, but is not limited to, workshops, conferences, onsite training, webinars, and classroom style learning.
Equivalent Educational Experience	College credits completed by an individual who does not possess a bachelor's or an associate degree. To meet the hiring standards using this criterion, a new director for a school nutrition program would be expected to have a least 60 college credits (number of hours typically required for an associate degree).
Related Field	Other college majors that would provide an applicant specific knowledge and skills that are relevant for a school nutrition program director. Possible majors would include, but are not limited to, food science, community nutrition and marketing, and hospitality management. [NOTE: Colleges and universities may use different names for similar majors.]
Relevant School Nutrition Program Experience	Experience in the NSLP and SBP, as well as experience in other child nutrition programs (Child and Adult Care Food Program and/or Summer Food Service Program) if the latter experience is gained from working in a school. The rationale for hiring actions based on an applicant's work experience must indicate the applicant's familiarity with USDA's school nutrition program. The intent of the professional standards regulations is to ensure that new school nutrition program directors have the knowledge and skills to manage the program as required. When Hiring a Child Nutrition Director **Relevant Food Service Employment Experience for CEs with a Total Student Enrollment of 2,499 or Less** refers to previous work experience in the food service industry that demonstrates the applicant's familiarity with the operation and/or management of a food service establishment. **Relevant School Nutrition Program Experience for CEs with a Total Student Enrollment of 2,500 or More** refers to previous work experience in NSLP, SBP, or any of the child nutrition programs which indicates the applicant's familiarity with USDA's school nutrition program.
School Nutrition Program Directors (Program Directors)	Those individuals who are directly responsible for the management of the day-to-day operations of school food service for all participating schools under the jurisdiction of the school food authority, including employees who are contracted to serve as the director for an SNP on behalf of the CE. Program director responsibilities typically include, but are not limited to, administration, program implementation, monitoring, and evaluation of the following: sanitation, food safety, employee safety, nutrition and menu planning, food production, facility layout and design, equipment selection, procurement, financial management, recordkeeping, program accountability, marketing; customer service, nutrition education, general management, personnel management, and computer technology.
School Nutrition Program Managers (Program Managers)	Those individuals who are directly responsible for the management of the day-to-day operations of school food service for a participating school including employees who are contracted to manage a SNP on behalf of the CE. A school nutrition program manager, as defined in this section, may be the manager for more than one participating school, but not all of the participating schools.
Other School Nutrition Program Employees (Other Program Employees)	Those individuals without managerial responsibilities who are involved in day-to-day operations of school food service for a participating school, including employees who are contracted to assist in the day-to-day operations of a SNP on behalf of the CE. Staff classified as other school nutrition program employees, as defined in this section, may work in more than one participating school.
School Year (SY)	For the professional standards requirements, the school year (SY) is defined as the program year—July 1 to June 30.

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Temporary, Substitute, or Acting Employee	Individual who is temporarily filling an employee position. For Example: A person who fills in temporarily for a day or few days for an employee who has a sudden illness or family emergency.
Total Enrollment	Total number of students who are able to participate in a school nutrition program, i.e., total enrollment of all sites participating in any school nutrition program as applied to the hiring standards. CE's should use the most current October enrollment data for this purpose.

Continuing Education/Training Professional Standards (Training Standards)

Each employee must obtain the appropriate number of training hours based on job function(s) for each school year—July 1 to June 30. Program staff include, but are not limited to, cooks, cashiers, and others who are involved in the preparation and service of school meals; staff involved in other program operations such as eligibility determinations and meal counting and claiming; and support staff that have a job function that has an impact on the safety of school meals.

The professional standards requirements for each staff member are associated with the employee's job function(s), not the local position title. If an individual performs the functions described for a position but has a different title than the one used in the USDA professional standards, the requirements still apply to the person regardless of the position title.

Job Position Descriptions That Indicate Training Requirements

The following job position descriptions are used to determine the amount of training hours each employee is required to have each year:

School Nutrition Program Directors (Program Directors)

Employees who are directly responsible for the management of the day-to-day operations of school food service for all participating schools under the jurisdiction of the contracting entity, including employees who are contracted to serve as the director for a SNP on behalf of the CE.

Program director responsibilities typically include, but are not limited to, administration, program implementation, monitoring, and evaluation of the following: sanitation, food safety, employee safety, nutrition and menu planning, food production, facility layout and design, equipment selection, procurement, financial management, recordkeeping, program accountability, marketing, customer service, nutrition education, general management, personnel management, and computer technology.

School Nutrition Program Managers (Program Managers)

Employees who are directly responsible for the management of the day-to-day operations of school food service for a participating school including employees who are contracted to manage a SNP on behalf of the CE. A school nutrition program manager, as defined in this section, may be the manager for more than one participating school, but not all of the participating schools.

Other School Nutrition Program Employees (Other Program Employees)

Employees without managerial responsibilities who are involved in day-to-day operations of school food service for a participating school, including employees who are contracted to assist in the day-to-day operations of the program on behalf of the CE. Staff classified as other school nutrition program

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employees, as defined in this section, may work in more than one participating school.

Continuing Education/Training, Special Situations

The following guidance will assist CEs in applying the professional standards in special situations.

Assistant Director for SNP

If the duties of the Assistant Director are comparable to those of a program manager, the assistant director must, at a minimum, complete the annual training required for a program manager. If the duties are not comparable, the assistant director must complete the annual training required for other program staff.

Employees and Contracted Food Service Employees in Charter Schools with Locations in More Than One Geographic Area

The job position descriptions and training hour requirements also apply to CEs that have participating sites that are managed and/or operated in different locations across the state even if a third party manages and/or operates those programs. In these cases, (1) a program director may be assigned to one site, a group of sites, or all sites; (2) a program manager may be assigned to one site or a group of sites but cannot be the program manager for all sites.

Employee Assigned Limited Program Tasks

Employees, including office staff members, who provide other support for the school nutrition program or process free and reduced-price meal applications for a short period of time during the school year are not required to meet the annual professional standards for training. However, the CE must still ensure that these individuals receive adequate training specific to the tasks they perform.

Employees with Multiple Functions/Positions

For SNP employees who share program director and program manager roles and responsibilities, the CE must use the following guidance.

- If the person holds a position that encompasses more than one job position description, the person must meet the highest level of professional standards.
- If an employee serves more than one position in the same CE or multiple CEs as described in this section, the employee must meet the highest set of professional standards.
- If school nutrition program director duties are performed by the program manager, the manager is expected to meet the program director training professional standards.
- When a CE with a smaller student enrollment or with only one site does not have a designated program director, the person who plans, administers, implements, monitors, and evaluates all aspects of the school nutrition program for the CE must meet the program director professional standards for training even if the person's major responsibilities are not fulfilling the program director's responsibilities.

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Employees Working Under an Annual Contract

The duration of the contract does not affect the training requirements.

Funding Source for Employee Salary

The training standards apply to staff whose salaries are paid, partially paid, or not paid by the SNP.

General Training Not Related to SNP Operation

General training provided to SNP staff that does not address topics relevant to the operation of the SNP cannot be counted toward meeting the continuing education/training professional standards requirements.

This includes, but is not limited to, in-service training provided at the beginning of the school year or during the school year.

For Example: The following training topics are unlikely to be relevant to SNP operation as the content does not relate to the tasks the SNP staff must perform:

- Record keeping related to teacher gradebooks
- Integrating writing into all content areas
- Understanding the learning needs of diverse learners

However, the following topics may be relevant to the operation of the SNP if the content of the presentation relates to the tasks the SNP staff must perform:

- Process for submitting timesheets
- Benefits update
- Conflict of interest procedures

Local Wellness Coordinator

If the local wellness coordinator is not involved in the day-to-day operations of the SNP, the coordinator is not expected to meet the annual training requirements.

Part-Time Employees of the SNP (20 Hours or More)

Employees, including office staff, working on program activities for 20 hours or more per week throughout the school year must meet the professional standards for training.

The CE is not required to track the training provided to SNP employees who work less than 20 hours a week under the professional standards requirements. However, the CE must still provide all employees appropriate training so that they are able to perform the work assigned to them. TDA recommends that the CE use the same documentation method(s) for all employee training whether the training falls under the professional standards requirements or not.

Program Directors or Program Managers Providing Training

If program directors or managers provide continuing/education training, the directors or managers providing the training may count the training toward their required hours of training. However, if the program director or manager provides the same training multiple times, only the first instance may count toward the program director's or program manager's required training hours for the school year.

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Refresher Training Provided Annually

Refresher training that must be completed each school year, such as civil rights or food safety, may be counted each year. While the training may cover some of the same topics as previous years, there will also be updated information for the current year.

Support Personnel, Delivery Staff

The program director must work with managers and staff to determine the training needs for delivery staff. If the food delivery employee preforms tasks associated with safe food storage and transportation, the employee is expected to complete annual training on topics such as proper handling, delivery, and storage of perishable food products to ensure the safety of school meals and prevent food waste. If delivery staff do not perform these types of tasks, training is not required under the professional standards requirements.

Support Personnel

Employees who are not involved in program operation are not required to meet the training standards. This includes personnel such as janitorial custodians who are not involved in food preparation or food service.

Staff with Cognitive Disabilities

All SNP employees must receive the required training. This includes staff members with cognitive disabilities whether they work full time or part time. In appropriate circumstances, training events may be tailored to meet the employee's abilities and duties. However, all training opportunities should be made available to all staff in order to avoid discriminatory practices.

Temporary, Substitute, or Acting Employees and Volunteers

Temporary, substitute, or acting employees[4] are not required to meet the professional standards for training. Volunteers are also not required to meet the professional standards for training. However, the CE must ensure that these short-term employees and volunteers receive the training necessary to perform assigned tasks.

Vended Meal Provider

Vendors that provide pre-plated meals and do not perform program operation or management tasks are not required to meet the professional standards for training. However, the CE is responsible for ensuring that a vendor providing pre-plated meals has the knowledge and skills to supply safe and nutritious meals that meet the meal pattern and dietary specifications.[5]

Training Design

Costs Associated with Training

The CE may charge all reasonable and allowable costs to the nonprofit school food service account for training but must not pay for the cost of college credits incurred by an individual to meet the hiring standards.[6]

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4 Temporary or substitute employees are short-term workers, not employees who work over an extended period of time.

5 In determining if a vending contractor meets this exception, the CE should review the roles and responsibilities for the vendor to make sure it is not preforming operational or management responsibilities.

6 See the *Administrator's Reference Manual, Section 16, Financial System* for additional information on reasonable costs.

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Determining the Amount of Training Time to Credit

The amount of time an employee participates in learning activities during a continuing education/ training event is the amount of time that credits toward the yearly amount of training hours—i.e., seat time. Time used for breaks, meals, and other non-learning activities does not count toward the yearly amount of training hours.

Focus of Training

Training must be job-specific and is intended to help employees perform their duties well. Training is expected to fall within the professional standards' learning categories, topics, subtopics, and objectives and to be appropriate to the work conducted by the employee. See the *USDA Learning Categories, Topics, Subtopics, and Objectives by Code Chart* in this section for additional information on nutrition program-related learning categories, topics, subtopics, and objectives.

Format of Training Events

Training events may be conducted in a variety of formats. This includes, but is not limited to, the following:

- Conference presentations
- Hands on training
- Onsite training or workshops
- Video conferencing
- Webinars or web-based training events
- Workshops

Local, State, or Other Funding Source Training Requirements

If other governing or administering agency rules and/or regulations require training on specific topics or required hours, CEs must also meet those requirements as prescribed. If rules and regulations permit, dual crediting may be applied—that is, applying the same training hours to meet required hours for both sets of rules and regulations.

Selecting Program Director Training

Training for program directors includes, but is not limited to, administrative practices including applications, certification, verification, meal counting, and meal claiming procedures.

Sources for Training

Regulations do not require that training sources be provided by specific agencies, organizations, or individuals. However, it is the CE's responsibility to ensure that all training opportunities focus on nutrition-related topics[7] and are conducted by knowledgeable nutrition sources.

Nutrition program-related training may be provided by, but is not limited to, the following sources:

- Education Service Centers (ESCs)
- Local school nutrition program (in house)
- Nutrition conferences

[7] As defined by the *Continuing Education/Training Learning Categories, Topics, Subtopics, and Objectives* subsection in this section.

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- Nutrition focused vendors
- Nutrition organization
- Other knowledgeable nutrition sources
- State or federal agency
- Texas Department of Agriculture (TDA)

Number of Training Hours for Each Position Type

The minimum amount of training required for employees is dependent upon on the employee's daily job functions and responsibilities for the assigned position as described in this section. All training must be job-specific and help the employee fulfill the employee's job functions and responsibilities.

CEs may apply staff excess training hours received during one school year to the previous or next school year as demonstrated in the *Tracking Continuing Education/Training Chart Over a One-Year or Two-Year Cycle Chart*.

However, this flexibility is not intended to be used to delay training so that CE staff only receive training every two years. Instead, it is intended to offer flexibility to assist the CE in managing and fostering long-term training goals at the local level. CE staff are required to receive some training each year.

Tracking Continuing Education/Training Over a One-Year and Two-Year Cycle Chart*

	SY 2017-2018 July 1-June 30	SY 2018-2019 July 1-June 30	SY 2019-2020 July 1-June 30	SY 2020-2021 July 1-June 30
One-Year Cycle				
Program Director:	12 hours	12 hours	12 hours	12 hours
Program Manager:	10 hours	10 hours	10 hours	10 hours
Program Staff:	6 hours	6 hours	6 hours	6 hours
Two-Year Cycle				
Program Director:	12 hours + 12 hours = 24 hours total			
Program Manager:	10 hours + 10 hours = 20 hours total			
Program Staff:	6 hours + 6 hours = 12 hours			

Program Director:	12 hours + 12 hours = 24 hours
Program Manager:	10 hours + 10 hours = 20 hours
Program Staff:	6 hours + 6 hours = 12 hours

Program Director:	12 hours + 12 hours = 24 hours
Program Manager:	10 hours + 10 hours = 20 hours
Program Staff:	6 hours + 6 hours = 12 hours

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* Staff are required to receive some continuing education/training every year even if tracking continuing education/training across two years.

Continuing Education/Training Implementation Timeline

The *Continuing Education/Training Minimum Hours Chart* in this section provides specific information on the amount of training for each type of SNP position:

Continuing Education/Training Minimum Hours Chart	
Position	**Amount of Continuing Education/Training**
Program Directors	12 hours each school year (July 1 to June 30) **Specific to Food Safety** **Program Directors Employed Prior to July 1, 2015** For SY 2015-2016 8 hours food safety training within 5 years of July 1, 2015 or 8 hours food safety training by June 30, 2016 and After SY-2015-2016 8 hours of food safety training within five years of the date of the program director's last completed 8 hours of food safety training. **Program Directors Employed On or After July 1, 2015** When Employed 8 hours of food safety training within 30 calendar days of his or her start date and After Hiring 8 hours food safety training within five years of the date of the program director's last food safety training. Food safety training taken to meet the 8-hour requirement may be included in the program director's yearly required continuing education/ training hours.
Program Managers	10 hours each school year (July 1 to June 30)
Other Program Employees Working 20 Hours or More Each Week	6 hours each school year (July 1 to June 30)
Other Program Employees Working Less Than 20 Hours Each Week (Part time employees)	4 hours each school year (July 1 to June 30)
Any Program Employee Hired After January	Half (½) of the hours required for role/position for each school year (July 1 to June 30) except for requirements related to food safety

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Continuing Education/Training Learning Categories, Topics, Subtopics, and Objectives
All continuing education/training opportunities are expected to fall under one or more of four subject categories:

1. Nutrition
2. Operations
3. Administration
4. Communication/Marketing

Each category is further subdivided into topics and subtopics and assigned a code so that CEs can track the topics addressed in the training provided to employees. Each category is assigned a list of learning objectives appropriate to the category.

When assigning the appropriate designations, only those areas that are well covered in the training event should be selected. The USDA *Learning Categories, Topics, Subtopics, and Objectives by Code Chart* in this section provides detailed information on the categories, topics, subtopics, and learning objectives by assigned code.

USDA Learning Categories, Topics, Subtopics, and Objectives by Code Chart

1000 Nutrition

1100 Menu Planning

Employee will be able to effectively and efficiently plan and prepare standardized recipes, cycle menus, and meals, including the use of USDA Foods, to meet all Federal school nutrition program requirements, including the proper meal components.

1110 USDA Nutrition Requirements
Plan menus that meet USDA nutrition requirements for reimbursable meals, including calculating meal components.

1120 Cycle Menus
Plan cycle menus that meet all rules. Consider cost, equipment, foods available, storage, staffing, student tastes, and promotional events.

1130 Local Foods/Farm to School
Utilize local food sources, especially Farm to School, when possible.

1140 Standardized Recipes
Write standardized recipes and use USDA Food Buying Guide for School Nutrition Programs (FBG).

1150 Menu Analysis
Analyze menus for school meal pattern requirements.

1160 Special Diets, Including Food Allergies
Plan meals to accommodate students requiring special diets, including food allergies.

1170 USDA Foods
Plan for effective use of USDA Foods.

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USDA Learning Categories, Topics, Subtopics, and Objectives by Code Chart

1200 Nutrition Education

Employee will be able to utilize resources to prepare and integrate age/grade appropriate nutrition education curriculum with school nutrition program.

1210 Nutrition Activities
Plan age/grade appropriate nutrition education activities using USDA Team Nutrition materials when possible.

1220 Classroom and Cafeteria Integration
Integrate nutrition education curriculum with school nutrition program, utilizing the cafeteria as a learning environment. (Including Team Nutrition resources.)

1230 School Gardens
Support school gardens as a means to nutrition education.

1300 General Nutrition

Employee will be able to understand the Dietary Guidelines for Americans, USDA Foods guidance concepts and general nutrition principles.

1310 Dietary Guidelines for Americans, MYPLATE and School Nutrition
Relate the Dietary Guidelines and USDA food guidance (such as MyPlate) concepts to the goals of the school nutrition programs.

1320 General Nutrition
Understand general nutrition concepts that relate to school meals, such as whole grains, sodium, etc.

2000 Operations

2100 Food Production

Employee will be able to effectively utilize food preparation principles, production records, kitchen equipment, and food crediting to prepare foods from standardized recipes, including those for special diets.

2110 Standardized Recipes
Understand and effectively prepare food using a standardized recipe

2120 Food Production Records
Complete a food production record and other required paperwork.

2130 Culinary Skills
Develop culinary skills necessary for school meal preparation

2140 Use and Care of Equipment
Properly use and care for equipment.

2150 CN Labeling, Crediting
Understand CN Labeling, product formulation statements and/or appropriate crediting information for school meal pattern.

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USDA Learning Categories, Topics, Subtopics, and Objectives by Code Chart

2200 Serving Food

Employee will be able to correctly and efficiently serve food portions to meet all USDA school meal pattern requirements and encourage healthy food selections including those for special diets.

2210 Portion Sizes/Special Diets
Identify/serve portions of food items according to school meal pattern requirements and diet restrictions.

2220 Offer VS Serve
Use Offer Versus Serve correctly.

2230 Maintaining Food Quality and Appearance
Serve food to maintain quality and appearance standards.

2240 Serving Lines
Manage serving lines for clean and efficient operation.

2300 Cashier and Point of Service (POS)

Employee will be able to efficiently operate and utilize a Point of Service (POS) system, ensuring correct application of reimbursable meal components, Offer Versus Serve, and confidential student eligibility identification in a financially responsible manner.

2310 Reimbursable Meals
Count reimbursable meals according to meal pattern requirements (including Offer Versus Serve) and eligibility status.

2320 POS Financial Responsibility
Use financial responsibility at Point of Service.[8]

2330 Free or Reduced Identification
Apply proper measures to prevent overt identification of students receiving free or reduced-price meals.

2400 Purchasing/ Procurement

Employee will be able to effectively and efficiently implement purchasing procedures and practices in order to appropriately and best utilize supplies and USDA Foods to meet menu requirements and comply with all Federal, State, and local regulations.

2410 Product Specifications
Develop product specifications to best meet menu requirements.

2420 Bid Solicitation and Evaluation
Solicit, receive, and evaluate bids for award in compliance with Federal, State, and local regulations

2430 Purchase Food, Supplies, and Equipment
Purchase food, supplies, and equipment through vendors, meeting CE specifications in compliance with Federal, State, and local procurement regulations and availability of USDA Foods.

2440 Food and Supplies Orders
Generate food and supply orders.

2450 Cooperative Purchasing Groups
Identify possible cooperative purchasing groups and geographic preference options.

2460 Contracts with Food Service Management Company
Develop and monitor contract(s) with food service management company, and/or others.

2500 Receiving and Storage

Employee will be able to ensure proper inventory management including correct delivery and storage of inventory, and that which has been placed on hold or recalled.

2510 Inventory Management
Develop processes for inventory management.

2520 Receiving and Storage
Apply safe and effective inventory receiving and storage procedures.

[8] This objective would address such procedures as how transactions are handled at the point of service, for example: method in which cash is handled on receipt and until deposits are made; accounting method for recording revenue; making change.

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USDA Learning Categories, Topics, Subtopics, and Objectives by Code Chart

2530 Hold and Recall
Understand hold and recall procedures.

2600 Food Safety and hazard Analysis and Critical Control Point (HACCP)[9]

Employee will be able to effectively utilize all food safety program guidelines and health department regulations to ensure optimal food safety.

2610 HACCP
Practice (Follow) a HACCP-based program.

2620 Food Safety-General
Practice general food safety procedures.

2630 Federal, State and Local Food Safety Regulations
Practice Federal, State, and local food safety regulations and guidance.

2640 Food Safety Culture
Promote a culture of food safety behaviors in the school community (includes training on food allergens).

3000 Administration

3100 Free and Reduced-Price Meal Benefits

Employee will be able to effectively certify, process, and verify free and reduced-price meal eligibility benefits in accordance with Federal and State regulations related to nutrition programs. Understand and apply the Community Eligibility Provision (CEP) to eliminate the administrative burden of school meal applications and be able to serve meals at no charge.

3110 Eligibility
Certify, process, and verify free and reduced-price meal eligibility benefits in compliance with Federal regulations.

3120 Direct Certification
Understand and practice direct certification procedures by your state.[10]

3130 Community Eligibility Provisions (CEP)
Understand and apply the Community Eligibility Provision (CEP).

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[9] Hazard Analysis and Critical Control Points (HACCP)
[10] See *Administrator's Reference Manual, Section 4, Eligibility Determination* for additional information on this topic.

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USDA Learning Categories, Topics, Subtopics, and Objectives by Code Chart

3200 Program Management

Employee will be able to effectively manage staff and resources; prepare for administrative reviews, emergency programs; and utilize standard operating procedures.

- 3210 Staff Management
  Manage staff work including scheduling.
- 3220 Standard Operating Procedures
  Oversee standard operating procedures for routine operations.
- 3230 Healthy School Environment
  Evaluate and utilize resources to promote a healthy school environment.
- 3240 Emergency Plan
  Develop and implement emergency and disaster plans as needed.
- 3250 Water, Energy, and Waste Management
  Manage water, energy, and waste.
- 3260 Administrative Review
  Prepare for administrative reviews.

3300 Financial Management

Employee will be able to manage procedures and records for compliance with resource (financial) management with efficiency and accuracy in accordance with all Federal, State, and local regulations, as well as the administrative review.

- 3310 Meal Counting, Claiming, Managing Funds
  Implement a system of checks and balances to ensure accuracy and integrity of meal counting and claiming, funds collected, and record keeping.
- 3320 Compliance with Regulations/Policies
  Establish and document appropriate accounting procedures for all revenues and expenses, ensuring that all procedures comply with federal, state, and local regulations and Administrative Review.
- 3330 Budgets
  Prepare a budget that appropriately reflects financial goals.
- 3340 Financial Analysis
  Analyze financial statements and accounting procedures to make informed financial decisions and ensure alignment with budget and regulations.
- 3350 Pricing
  Calculate and recommend prices for meals and other food items to CE authorities, maintaining compliance with Federal, State, and local guidelines.
- 3360 Communicate Financial Information
  Communicate financial goals, status, and other data to appropriate CE and state authorities.

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USDA Learning Categories, Topics, Subtopics, and Objectives by Code Chart

3400 Human Resources and Staff Training

Employee will be able to implement human resources management practices through maintenance and familiarity with current personnel policies and procedures and support employees through training and retention strategies.

3410 Human Resources Management
Understand and apply human resource management practices.

3420 Policies and Procedures
Implement current personnel policies and procedures.

3430 Training Plans and Tracking
Develop employee training plans, including a plan for tracking training.

3440 Retention, Promotion, and Recognition
Implement a system for employee retention, promotion, and recognition.

3450 Employee Health, Safety and Wellness
Foster employee health, safety, and wellness (includes training on First Aid and Cardiopulmonary resuscitation [CPR]).

3500 Facilities and Equipment Planning

Employee will be able to evaluate school nutrition program equipment and facilities to ensure maximum efficiency and availability of healthy food choices.

3510 Facility and Equipment Planning
Evaluate/plan facilities and equipment to meet program goals.

3520 Equipment Purchasing and Maintenance
Maintain plans for purchasing and maintaining equipment.

4000 Communication/Marketing

4100 Communications and Marketing

Employee will be able to develop plans that include involvement with school and community members, empower school nutrition leaders, and address excellent customer service.

4110 Strategic and Marketing Plans
Develop strategic plans and marketing plans that reflect program goals and enhance interaction with stakeholders.

4120 Program Promotion
Promote the Child Nutrition Program (CNP).

4130 Customer Service
Empower school nutrition staff to provide excellent customer service.

4140 Communication Skills
Develop communications skills.

4150 School and Community Communication
Communicate within the school, CE, and the community through multiple approaches to inform and educate stakeholders.

4160 Smarter Lunchrooms Techniques
Create an environment that engages students to select and consume healthy foods with minimum waste, including Smarter Lunchroom[11] techniques.

Annual Civil Rights Training

The annual civil rights training may be counted toward meeting the training standards.

Unacceptable Topics for the Continuing Education/Training Professional Standards (Training Standards)

The following topics do not credit toward meeting the training standards:

[11] Resources on Smarter Lunchroom practices are available at *www.SquareMeals.org* and *www.smarterlunchrooms.org/*.

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- Motivational speeches/training
- Advocacy training
- General leadership training
  [Exception: Leadership training that focuses on management areas in the approved USDA professional standard learning topics and objectives may count toward the training standards.]
- General staff meetings
  [Exception: Training on acceptable topics may be included in general staff meetings. In this case, the time dedicated to the training may be counted toward the training standards.]

Food Safety Training
Food safety training must be current as defined in the *Continuing Education/Training Minimum Hours Chart*.

CEs will find that there are a wide range of possible sources for food safety training, including, but not limited to, the following:

- Accrediting agencies or organizations
- City, county, and state agencies
- Education service centers (ESCs)

Hiring Professional Standards (Hiring Standards) for Program Directors

The hiring standards for program directors described in this subsection apply to employees hired on or after July 1, 2015 or employees who were hired for a position that was advertised after July 1, 2015.

Hiring standards for program directors are based on total student enrollment for the CE for all schools participating in the program[12]—all students enrolled in all CE sites operating a CNP even if the sites are located across the state. Total enrollment should be based on the most current October enrollment data.

For Example: A charter school system has schools located in Dallas, El Paso, Fort Bend, and San Antonio. The program director hiring standards are determined by the total enrollment across all of the CE's schools participating in the program.

CEs must not hire any individual for the program director position unless that person meets the applicable qualification standards.[13]

Special Situations, Hiring Program Directors
The following guidance addresses special situations related to the professional standards and hiring program directors.

Date of Hiring

The actual date the program director is hired determines if the hiring standards apply.

[12] See the *Education Professional Standards for Program Directors* subsection in this section for the specific student enrollment ranges.
[13] See *Hiring Flexibilities for CEs with a Total Student Enrollment of 2,499 or Less* subsection in this section for additional information on the program director hiring exception for very small schools.

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Hired and Employed Before July 1, 2015

The hiring standards for program directors as described in this section do not apply in the following circumstances:

1. Program directors who continue to be employed in their current CEs when the program director was hired and employed before July 1, 2015
2. Program directors who move to another position within the CE that hired and employed them before July 1, 2015

   For Example: A program manager who was employed by the CE prior to June 30, 2015 was promoted to program director on August 1, 2015. This staff member is not required to meet the hiring standards for program directors hired on or after July 1, 2015.

3. Program directors who move to another CE with the same or lower total student enrollment level as the CE that employed them as of June 30, 2015

   For Example: A program director who is employed by a CE with a total student enrollment of 3,500 on June 30, 2015 is hired by another CE with a total student enrollment of 4,200 on January 5, 2016. This staff member is not required to meet the hiring standards for program directors hired on or after July 1, 2015 because both CEs are in the 2,500 to 9,999 group.

4. Program directors who have taken positions that were advertised prior to July 1, 2015

Hired and Employed On or After July 1, 2015

The professional standards for hiring program directors as described in this section apply to program directors hired on or after July 1, 2015 unless the new program director meets one of the exceptions described in the *Hired and Employed Before July 1, 2015* subsection in this section.

Contracted Services

The hiring standards requirements for program directors include personnel employed by food service management companies and other vendors engaged in program operation and/or program management.

Food Service Management Company

If an FSMC operates an SNP for a CE, the CE must request documentation from the FSMC that demonstrates that the FSMC is in compliance with program director hiring and training standards. This documentation may also be requested for an administrative review. It is the CE's responsibility to ensure that the FSMC meets these requirements. The CE must include this requirement in its FSMC solicitation and contract.

Personnel Employed by a CE with Locations Across the State

If a CE has multiple schools located in different areas of the state, the hiring standards for the program director are based on the total student enrollment for the CE across all locations participating in the program.

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Personnel Employed by More Than One CE

If an individual is employed by more than one CE, the individual must meet the highest hiring standards based on the largest CE's total student enrollment for schools participating in the program.

Shared Program Director Responsibilities

When the responsibilities that are normally associated with the director's position are divided among multiple staff members, the person with the majority of the director's job responsibilities must fulfill the program director hiring standards.

Education and Experience for Program Directors

The educational and relevant experience requirements for program directors hired on or after July 1, 2015, are based on the CE's total student enrollment. For hiring standards, total student enrollment is total student enrollment from the most current October at sites participating in the school nutrition program. If CEs have limited employment resources and have difficulty identifying a candidate for the program director position who will meet the educational and program experience requirements, CEs should contact their Regional ESC or TDA[14] for assistance.

Information Box 1
Hiring Standards Terms

Equivalent Educational Experience refers to college credits completed by an individual who does not have a bachelor's or an associate degree: at least 60 college credits for an associate degree or a minimum 4 years of full-time college-level course work (about 120 hours) for a bachelor's degree.

Related Field refers to other college majors that would provide an applicant specific knowledge and skills that are relevant for a school nutrition program director. This includes, but is not limited to, food science, dietetics, food and nutrition, food service management, family and consumer sciences, nutrition education, culinary arts, business, community nutrition, and marketing, and hospitality management.

Relevant School Nutrition Program Experience for CEs with a Total Student Enrollment of 2,500 or More refers to previous work experience in NSLP, SBP, or any of the child nutrition programs which indicates the applicant's familiarity with USDA's school nutrition program.

Relevant Food Service Employment Experience for CEs with a Total Student Enrollment of 2,499 or Less refers to previous work experience in the food service industry that demonstrates the applicant's familiarity with the operation and/or management of a food service establishment.

CE Total Student Enrollment of 2,499 or Less

Minimum Educational and Experience Background

- Bachelor's degree or equivalent educational experience in a nutrition specific or related major (academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or related field). School nutrition experience is preferred, but not required.

  or

- Bachelor's degree or equivalent educational experience in any major and 1 year of relevant **paid** food service employment experience. School nutrition experience is preferred, but not required.

  or

- Associate degree or equivalent educational experience in a nutrition specific or related major (academic major or concentration

[14] The Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition page which follows the table of contents provides information on how to contact TDA directly.

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in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field) and at least 1 year of relevant **paid** food service employment experience. School nutrition experience is preferred, but not required.

or

- High school diploma (or GED) and 3 years of relevant **paid** food service employment experience. School nutrition experience is preferred, but not required.

Program directors that are hired and do not have an associate degree are strongly encouraged to work toward attaining an associate degree.[15]

Hiring Flexibility for CEs with a Total Student Enrollment 2,499 or Less

CEs with a total student enrollment of *2,499* students or less that have made attempts to hire a qualified program director but have been unable to do so may apply for flexibility to hire an individual if all of the following conditions exist:

1. CE's total student enrollment is 2,499 or less.
2. Candidate has the required educational experience for a CE with a total student enrollment of 2,499 or less.
3. Candidate does not have the required amount of **paid** food service employment experience based on the candidate's educational experience for a CE with a total student enrollment of 2,499 or less.

With TDA approval, the CE may hire a candidate who meets each of the following standards:

- CE's total student enrollment is 2,499 or less.
- Candidate has the required educational experience for a CE with a total student enrollment of 2,499 or less.
- Candidate has the required amount of food service experience as an **unpaid** volunteer based on the candidate's level of education for a CE with a total enrollment of 2,499 or less.
- CE develops and implements an approved written plan to ensure the candidate will acquire relevant School Nutrition Program (SNP) and food service experience.

  Approvable plans include, but are not limited to, the following types of activities to assist the candidate in acquiring relevant experience: professional training, coaching, shadowing, internship, and peer-to-peer mentoring.

To apply for this flexibility, the CE must submit the *Hiring Professional Standards Exception Request for Contracting Entities (CEs) with a Total Student Enrollment of 2,499 or Less*. Access to the form is available through Texas Unified Nutrition Programs System (TX-UNPS) | Applications | Download Forms, *Form ID: SNP-000, Request for*

[15] The cost of college credits incurred by an individual to meet the hiring standards is not an allowable cost.

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Exemptions/Waivers for Program Operation. TDA will notify the CE if the flexibility is approved.

A CE must receive TDA approval before hiring a candidate that qualifies under this flexibility.

In all cases, CEs must retain documentation that demonstrates the candidate's education and food service experience on the date of hire; TDA's approval to hire the candidate; and the implementation of the approved plan.

Additional Hiring Flexibility for CEs with a Total Student Enrollment of 500 or Less

CEs with a total student enrollment of 500 students or less that have made attempts to hire a qualified program director but have been unable to do so may apply for additional flexibility to hire an individual meets all requirements for CEs with a total enrollment of 2,499 or less except the requirement related to relevant **paid** food service experience.

With TDA approval, the CE may hire a candidate who meets each of the following standards:

1. CE's total student enrollment is 500 or less.
2. Candidate has the required educational experience for a CE with a total student enrollment of 2,499 or less.
3. Candidate does not have the required amount of **paid** food service experience based on the candidate's education experience for CE with a total student enrollment of 2,499 or less.
4. CE develops and implements an approved written plan to ensure the candidate will acquire relevant School Nutrition Program (SNP) and food service experience.

   Approvable plans include, but are not limited to, the following types of activities to assist the candidate in acquiring relevant experience: professional training, coaching, shadowing, internship, and peer-to-peer mentoring.

To apply for this flexibility, the CE must submit the *Hiring Professional Standards Exemption Request for Contracting Entities (CEs) with Total Student Enrollment of 2,499 or Less*. Access to the form is available through the Texas Unified Nutrition Programs System (TX-UNPS) | Applications | Download Forms, *Form ID: SNP-000, Request for Exemptions/Waivers for Program Operation*. TDA will notify the CE if the flexibility is approved.

A CE must receive TDA approval before hiring a candidate that qualifies under this flexibility.

In all cases, CEs must retain documentation that demonstrates the candidate's education and food service experience on the date of hire; TDA's approval to hire the candidate; and the implementation of the approved plan.

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Summary of Flexibilities, CEs with a Total Student Enrollment of 2,499 or Less Chart				
	Flexibility for Required Experience			
	Total Student Population			
Required Educational Experience	2,499 or Less		500 or Less	
Bachelor's degree in nutrition or related major	No flexibility needed		No flexibility needed	
Bachelor's degree in any other major	1 year of food service experience, **paid**	1 year of food service experience, **unpaid**	1 year of food service experience, **paid**	Less than 1 year of food service experience, **unpaid**
Associate degree in nutrition or related major	1 year of food service experience, **paid**	1 year of food service experience, **unpaid**	1 year of food service experience, **paid**	Less than 1 year of food service experience, **unpaid**
High school diploma or GED	3 years of food service experience, **paid**	3 years of food service experience, **unpaid**	3 years of food service experience, **paid**	Less than 3 years of food service experience, **unpaid**
Is Hiring Flexibility Needed?	NO	YES	NO	YES
Required to Receive Flexibility:				
Request submitted to and approved by TDA		✓		✓
Approved plan to ensure candidate achieves relevant SNP and food service experience		✓		✓
Approval from TDA before hiring candidate		✓		✓
Retention of documentation related to exemption approval and creating and implementing approved plan		✓		✓

CE Total Student Enrollment 2,500-9,999

Minimum Educational and Experience Background

- Bachelor's degree or equivalent educational experience in a nutrition specific or related major (academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or related field).

  School nutrition experience is preferred, but not required.

  or

- Bachelor's degree or equivalent educational experience in any major and least 2 years of relevant school nutrition experience.

  or

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- Associate degree or equivalent educational experience in a nutrition specific or related major (academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field) and at least 2 years of relevant school nutrition experience.

Program directors that are hired and do not have a bachelor's degree are strongly encouraged to work toward attaining bachelor's degree.[16]

CE Total Student Enrollment of 10,000 or More

Minimum Educational and Experience Background

- Bachelor's degree or equivalent educational experience in a nutrition specific or related major (academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field).

  School nutrition experience is preferred, but not required.

  or

- Bachelor's degree or equivalent educational experience in any academic major and at least 5 years' experience in school nutrition program management.

Program directors that are hired and do not have a master's degree are strongly encouraged to work toward attaining a master's degree.[17]

At least one year of management experience, preferably in school nutrition, is strongly recommended.

At least 3 credit hours at the university level in food service management plus at least 3 credit hours in nutritional sciences at time of hiring is strongly preferred.

The *Education Experience—Hiring Professional Standard Chart* provides a comparison of the hiring professional standards by total student enrollment size.

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[16] The cost of college credits incurred by an individual to meet the hiring standards is not an allowable cost.
[17] The cost of college credits incurred by an individual to meet the hiring standards is not an allowable cost.

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Educational Experience—Hiring Professional Standards Chart (By Total Student Enrollment for Schools Participating in the Program)		
2,499 or Less[a]	**2,500-9,999**	**10,000 or More**
Bachelor's degree or equivalent educational experience[b] in a nutrition specific or related major[c] School nutrition experience[d] is preferred, but not required.		
or	or	or
Bachelor's degree or equivalent educational experience[b] in any academic major and at least 1 year of relevant food service employment experience[e]	Bachelor's degree or equivalent educational experience[b] in any academic major and at least 2 years of relevant school nutrition experience[d]	Bachelor's degree or equivalent educational experience[b] in any major and at least 5 years of experience in school nutrition program management
or	or	
Associate degree or equivalent educational experience[b] in a nutrition specific or related major[c] and at least 1 year of relevant food service employment experience[e]	Associate degree or equivalent educational experience[b] in a nutrition specific or related major[c] and at least 2 years of relevant school nutrition experience[d]	
or		
High school diploma (or GED) and at least 3 years of relevant food service employment experience[e]		

[a] Flexibility: CEs with a total student enrollment of 2,499 or less may request flexibility to hire a director that does not have the required relevant food service employment experience. Additional information on this flexibility is described in the CE Total Enrollment of 2,499 or Less subsection in this section.

[b] Equivalent Education Experience: At least 60 college credits for an associate degree or a minimum 4 years of full-time college-level course work (about 120 hours) for bachelor's degree.

[c] Related Field or Major: Academic major or concentration in food science, food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, community nutrition, and marketing, and hospitality management.

[d] Relevant School Nutrition Experience: Previous work in NSLP, SBP, or any of the child nutrition programs which indicates the applicant's familiarity with USDA's school nutrition program.

[e] Relevant Food Service Employment Experience: Previous work experience in the food service industry that demonstrates the applicant's familiarity with the operation and/or management of a food service establishment.

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Tools to Assist with Professional Standards

USDA and TDA have developed the following resources to assist CEs in implementing the professional standards.

USDA Resource

- Professional Standards for School Nutrition Professionals
  Available at *www.fns.usda.gov/school-meals/professional-standards*

TDA Resources

- *Continuing Education/Training Tracking Record*—CEs may use this Excel form to track staff professional development hours.
  Available at *www.SquareMeals.org*
- *Hiring Professional Standards Exemption Request for Contracting Entities (CEs) With a Total Student Enrollment of 2,499 or Less*—CEs with a total

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student enrollment of 2,499 or less must use this form if requesting an exemption to hire a program director that does not meet the professional standards requirements.

Available through the *Download Forms* screen in the Texas Unified Nutrition Programs System (TX-UNPS) Applications.

- *Hiring Program Director Checklist*—CE may use this form to determine if a candidate for a program director hired after July 1, 2015 meets the professional standards requirement.

  Available at *www.SquareMeals.org*

Records Retention

CEs are required to maintain an organized system of records retention that is accessible to appropriate CE employees and federal or state reviewers. TDA may request documentation for both offsite and onsite administrative review processes. CEs have the option to maintain records in paper or electronically.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, other nonprofit organizations, and residential child care institutions after the end of the fiscal year to which they pertain. If audit findings have not been resolved, the records must be maintained as long as required for the resolution of the issues raised by the audit.

Documentation Related to Training

CEs must maintain records that demonstrate compliance for employees required to meet training standards, including food safety training.

Food Safety Training

While all employees may participate in food safety training, the CE must retain documentation that demonstrates that the program director has met the following standard. CEs need to ensure that records related to food safety training are kept for the full five years even if other records retention periods expire.

Existing Directors

Completed eight hours of food safety training within 5 years prior to July 1, 2015 or eight hours of food safety training by June 30, 2016 and 8 hours of food safety training within five years of the date of the program director's last completed 8 hours of food safety training.

New Directors

Completed eight hours of food safety training within 30 calendar days of the employment start date and 8 hours of food safety training within five years of the date of the program director's last food safety training.

Information Box 2

Record Retention

Public and charter schools are required to keep documentation related to school nutrition programs for five years.

Private schools, other nonprofit organizations, and residential childcare institutions (RCCIs) are required to keep documentation for three years.

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Employee Training Under the Professional Standards Provisions

The CE must retain records that provide the following information for each person attending a training event:[18]

- Training event title and content[19] including topics/objectives
- Date and actual time participating in learning activities
- Source providing the training

Documentation includes, but is not limited to, attendance sign in sheets, continuing education/ training agendas, certificates of attendance, and other training documents. CEs may use any organized method of retaining this documentation that meets the requirements described in this subsection.

The categories of information captured in TDA's, *Continuing Education/Training Tracking Record* demonstrates what information must be retained and a method for doing this. TDA highly recommends using this form or a similarly organized method to make retrieval of documentation easier.

If an FSMC operates the SNP for the CE, the CE must be able to demonstrate that it has reviewed documentation for the training standards and ensured that the FSMC is compliant with the professional standards requirements.

Employees Who Work Less Than 20 Hours Per Week

Even though employees who work for less than 20 hours per week are not required to receive training under the professional standards provisions, the CE must still retain documentation that these staff members have received appropriate training for their assigned tasks. TDA recommends that the CE use the same documentation method(s) for all training whether the training falls under the professional standards requirements or not.

Documentation Related to the Hiring Standards

The CE must maintain records for all employees that demonstrate the following information:

- Name of each staff person
- Date hired
- Title/Position with a brief list of core responsibilities, including the employee's position title, i.e., nutrition program director, manager, kitchen staff, or other staff
- Employment status, i.e., full time, part time, substitute

Part Time Employees

- Average hours per week for all part time employees

Program Directors Hired on or after July 1, 2015

For all program directors hired on or after July 1, 2015, the CE must maintain records for program directors that demonstrate the following information:

- Highest level of education achieved, areas of study or focus as appropriate
- Years of school nutrition program experience

[18] This includes records for FSMC staff.
[19] See the *Continuing Education/Training Learning Categories, Topics, Subtopics, and Objectives* subsection in this section for additional information on this topic.

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Approved Under 2,499 Exemption

- Letter of approval and all documentation related to information provided to TDA in the request for an exemption

Transfer to Another Position within the CE or to a CE of the Same Size

- Documentation necessary to demonstrate that program director was employed by the CE's SNP prior to July 1, 2015
- Documentation demonstrating that the enrollment of the transfer location is in the same total enrollment group (2,499 or less; 2,500 to 9,999; or 10,000 or more) as the originating CE. Total enrollment should be based on the most current October enrollment data.

Appropriate documentation for the hiring standards includes, but is not limited to, college transcriptions (with social security number and other confidential information redacted) and resumes.

Compliance

TDA will review CE documentation related to professional standards during an administrative review or as appropriate to determine if the CE is meeting the hiring and training requirements. If the CE is not in compliance with the requirements, TDA may require a corrective action plan that demonstrates that the CE has developed approvable procedures and actions to correct noncompliance within a specified period of time.

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Section 28

Residential Child Care Centers

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Section 28, Residential Child Care Institutions (RCCIs)

Update Guide

July 28, 2022	Clarified information on the following topics: - Financial system - Local wellness policy
August 12, 2020	Updated *Section 28, Residential Child Care Institutions (RCCIs)* to update *Administrator's Reference Manual (ARM)* section references. Clarified information on the following topics: – Adult meals – Afterschool snacks and meals – Eligibility – Local wellness policy – Meal pattern, meal pattern flexibility – Non-residential children/students – Offer versus serve (OVS) – Children/Student participation – Weekend and occasional meals
October 10, 2017	Provided clarification or information on the following issues – Adult meals – Compliance – Definitions for terms not previously included – Edit check/Accuclaim calculations – Eligibility – Family style meal service – Household signature – Local wellness policy – Master list – Meal pattern – Meal pattern flexibility – Non-residential children/students or day children/students – *Policy Statement for Free and Reduced-Price Meals Attachment B: Meal Count/Collection Procedure(s)* – Public announcement – Records Retention – Total monthly attendance – Universal free meals – Verification

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Residential Child Care Institutions (RCCIs)

Residential Child Care Institutions (RCCIs) are required to comply with all program regulations unless specifically exempted by regulation. RCCIs must follow all other regulations as described in other sections of the *Administrator's Reference Manual* unless flexibility is given by USDA.

This section provides information on the areas in which RCCIs are given flexibility in operating one of the School Nutrition Programs (SNPs).

Definitions for This Section

For this section, the following terms will be used:

Day Children/ Students	Non-residential children/students enrolled at a school operated by the RCCI.
Household	A group of related or unrelated individuals who are not residents of an institution or boarding house and are living as one economic unit are considered a household. Typically, the term family is used for household.
Local Wellness Policy	Policy established by the CE to establish, evaluate, and maintain a healthy school environment and promote transparency to the public on key areas that affect each school's nutrition environment.
Master List	List of children/students that reside at an RCCI which contains information that establishes the eligibility of the children/students. A master list may also contain information on non-residential or day children/students.
Signature	Any printed name, cursive, or electronic signature. A recorded X is considered to be a signature. For electronic communication, the signature may be digital or digitized. A digital signature may be recorded or accomplished through a variety of methods, including, but not limited to, personal identification numbers (PINs) and passwords. A digitized signature is a representation of an actual signature that can be physically compared to an original signature to determine authenticity.

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Policy Statement for Free and Reduced-Price Meals

RCCIs are required to submit and maintain a *Policy Statement for Free and Reduced-Price Meals Attachment B: Meal Count/Collection Procedure(s)*, even if they operate a program that does not charge separately for meals. The *Policy Statement for Free and Reduced-Price Meals Attachment B: Meal Count/Collection Procedure(s)* form is available in the Texas Unified Nutrition Programs Systems (TX-UNPS), application screen. For information regarding the policy statement for free and reduced-price meals, refer to *Administrator's Reference Manual (ARM), Section 2, Program Application & Agreement*.

Eligibility Determination

USDA provides flexibility to RCCIs on documentation related to eligibility for RCCI children/students that reside in the RCCI. However, there is no flexibility for day children/students that attend the RCCI's school.[1] Moreover, because RCCIs have the possibility of children/students attending an RCCI school or a public or charter school, the method for determining eligibility varies for RCCIs.

Documentation Demonstrating Eligibility

CEs certify eligibility for RCCI children/students in one of three ways:

Residential Children/Students Attending an RCCI Onsite School

When children/students attend an RCCI onsite school, the RCCI may complete a household application on behalf of each child/student or may use a master list to establish eligibility. If the RCCI completes a household application for each child/student, the RCCI director or designated official signs the household application as the adult household member for the child/student.

For children/students that are residents of the RCCI, each child/student is considered to be a household of one.

Non-Residential Children/Students (Day Children/Students) Attending an RCCI Onsite School

The eligibility for non-residential or day students is based on household income or categorical eligibility. The RCCI is responsible for distributing and collecting household applications from non-residential students.

Eligibility of non-residential students cannot be determined without an application unless the student is directly certified as categorically eligible.[2]

If an RCCI chooses to provide meals to all day students at no cost, the RCCI must still determine the eligibility for each day student and claim reimbursable meals for these students by eligibility status—free, reduced-price, or paid.

[NOTE: An RCCI may choose to offer universal free meals to day children/students. In this case, the RCCI must claim reimbursable meals for day children/students by the correct eligibility status—free, reduced-price, or paid—as determined by household application or Direct Certification. An RCCI cannot claim all day children/students as paid in order to avoid the eligibility determination process for these children/students.]

RCCI Children/Students Attend a School Offsite

When children/students attend a public or charter school that is not located at the RCCI, RCCIs may complete a household application on behalf of each child/student or may provide a master list to the school. If the RCCI completes a household application for each child/student, the RCCI director or designated

[1] See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on eligibility determination.

[2] See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on eligibility determination.

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official signs the household application as the adult household member for the child/student.

Master List

To document child/student eligibility, a master list must provide the following information:

- Child's/Student's name
- Child's/Student's date of birth
- Personal income received by the child/student, including frequency of income
- Date of admission to the RCCI
- Date a child/student no longer resides or is enrolled at the RCCI
- Signature,[3] title, and contact information of an official authorized to provide the information Signature[4] of the RCCI's authorized representative, title, and contact information

[NOTE*:* A master list may also contain eligibility information for non-residential or day children/students.]

To simplify the reporting income information of a master list, a CE may record a note on the master list indicating that all children/students have zero income as long as the note states that the zero income applies to all children/students and is signed and dated by a staff member who can certify the accuracy of the information.

Managing a Master List

The RCCI must update each child's/student's information on the master list annually and/or when the child/student exits the facility either physically or by reaching the age of 21.

Master lists do not have to be paper lists. The master list may be maintained electronically. RCCIs must enroll new children/students onto the master list as soon as possible after they enter the RCCI in order for those meals to be claimed. Meals served to children/students not listed on the master list must not be claimed for reimbursement.

The *Sample Master List Chart* demonstrates one method of record keeping that documents required information.

Sample Master List Chart

Child's/ Student's Name	Date of Birth	Entering or Starting Date	Approved	Income	Frequency	Category	Exiting Date or Date Child/ Student Reached 21 Years of Age
Smith, Joe	5/4/2003	6/1/2015	6/1/2015	$00.00		Free	
Ngyen, Le	11/5/2002	4/16/2017	4/16/2017	$00.00		Free	
Lusby, Arnie	2/5/2001	2/25/2016	2/25/2016	$275.00	Monthly	Free	
Nunez, Ted	6/20/1999	1/15/2016	1/16/2016	$00.00		Free	6/20/2017*

* The exit column denotes the date a child/student becomes ineligible for the NSLP and SBP by virtue of age or by physically leaving the facility. In Ted Nunez's case above, his 21st birthday made him ineligible as of midnight on 6/19/2017. While the facility will provide meals to him after that date, none of his meals can be claimed for reimbursement after 6/19/2017.

[3] See the *Definitions for This Section* in this section for additional information on signatures.
[4] See the *Definitions for This Section* in this section for additional information on signatures.

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Other Determining Eligibility Issues

Household Member Signature

RCCIs are not required to obtain a household application or signature from an adult household member to receive free or reduced-price meals on behalf of a child/student in the residence at the RCCI. If the RCCI does not obtain a household application, the RCCI must document the child's/student's income and eligibility status in the child's/student's case file and on the master list.

For day children/students, the RCCI must distribute household applications and must ensure that an adult in the household provides a signature when a household application is submitted.

Income

RCCIs do not count income or payments from any source received directly by the institution on the behalf of children/students. This includes court-ordered child support from the parent and/or guardian.

The following types of income for children/students must be counted:

- Trust funds or oil interest monies
- Social security death benefits or military allotments
- Regular earnings from full or part-time employment

Public Announcement about NSLP/SBP

Residential Child Care Institutions (RCCIs) are exempt from the public announcement requirement unless the RCCI has day children/students. If the RCCI has day children/students, the RCCI must provide a public announcement about the meal program. In making a public announcement, the RCCI may target the information to the households of day children/students or the population area from which the RCCI draws its day children/students.

Size of Household

A residential child/student in an RCCI is considered a one-person household.

Verification

RCCI residential children/students are exempt from the requirement to verify applications when the children/students attend classes at the RCCI. However, RCCI are still required to complete the *School Food Authority (SFA) Verification Collection Report, FNS-742* and submit it in TX-UNPS.

RCCI non-residential or day child/student household applications must be verified as described in *Administrator's Reference Manual (ARM), Section 6, Verification*.

Local Wellness Policy and Assessment

Every CE must establish and follow a local wellness policy (LWP). However, establishing a LWP that engages parents and community members may be difficult for RCCIs that only provide services to residential children/students or primarily residential children/students. In these cases, RCCIs are expected to meet all requirements whenever possible for residential children/students and document those situations that prevent it from fully implementing an LWP as required for residential students. For detailed guidance on developing an LWP and

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completing the triennial assessment, see the *Administrator's Reference Manual (ARM), Section 29, Local Wellness Policy, Stakeholder Engagement*.

Meal Service

RCCIs are encouraged to give children/students sufficient time for meals and an atmosphere that maximizes nutritional and social benefits of shared meals.

Meal Pattern

RCCIs are required to follow the meal pattern requirements described in *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals*; *Section 8, Lunch Meals*; and *Section 9, Pre-Kindergarten Meals*.

Meal Pattern Flexibility

RCCIs may apply for the following flexibilities if (1) the RCCI is a juvenile detention or correctional facility or the RCCI can demonstrate operational limitations to separating age/grade groups and (2) has a legitimate safety concern or State juvenile justice laws or regulations related to offering meals with varying amounts of food within the same meal period:

Age/Grade Portion Size Flexibility

Offer the same portion size to all children/students. If approved, (1) the RCCI may serve lunch and/or breakfast meals with the same amount of food for all age/grade groups at the meal service and (2) RCCI must serve meals meeting the lunch meal pattern in effect for the highest age/grade group participating to ensure nutritional adequacy.

Choice of Milk Flexibility

Offer a choice of milk over the week. If approved, the RCCI may meet the milk variety requirement by offering all children/students one choice of milk on some days of the week and a different choice of milk on another day. All milk served must meet the specifications for fluid milk as described in the meal pattern.

To request flexibility, RCCIs must submit a letter[5] requesting flexibility on RCCI letterhead signed by the superintendent or an authorized representative as specified in the Texas Unified Nutrition Programs System (TX-UNPS). This letter must provide an explanation, and documentation if needed, about how the RCCI qualifies for this flexibility including information on

1. **Status.** How does the institution qualify as a juvenile detention or correctional facility or how does the institution demonstrate operational limitations to separating age/grade groups?

   An explicit explanation might include the following: a description of how children/students are placed in the institution, the types of state programs housed in the institution, or the types of services provided by the institution.[6]

2. **Portion Size.** How will serving varied portions to different age/grade groups during the same meal service create a safety concern for children/students

[5] The *Contact Information for the Texas Department of Agriculture* that follows the Table of Contents provides phone, fax, and email information for submitting a flexibility request to TDA.

[6] RCCIs may find it helpful to use descriptions and definitions in state or federal regulations that govern their institutions or mission or work scope statements in writing their explicit explanation of status.

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and/or how does serving varied portion sizes conflict with State law and/or regulations?

An explicit explanation might include the following: a description of what factors can impact children's/students' safety or previous similar situations that have caused adverse reactions; detailed description of the conflicting regulations and programs to which it applies.

3. **Age/Grade Groups.** Which age/grade groups and meal patterns—breakfast, lunch, or both—will be affected by this flexibility?

   An explicit description includes what age/grade groups are being served at the same time and for which meals.

4. **Choice of Milk Over the Week.** How will the RCCI offer milk choice throughout the week.

   An explicit description includes what types of milk will be served and the frequency for serving each milk type.

TDA will review the request submitted and will contact the RCCI by email with approval or denial of request within ten (10) TDA business days of receipt. This flexibility may be revoked for a change in conditions, if state law or regulations change, or if review findings discredit the information provided in the flexibility.

Weekend and Occasional Meals

For weekend meal service, the RCCI has several options for serving the meal pattern. For these options, the RCCI will use the meal pattern described in the Short and Long Week Adjustment Chart found in *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals* and *Section 8, Lunch Meals* for the number of days meals are served for the week.

Routine Weekly Meal Service

- Use the 7-day meal pattern, or 6-day if appropriate.
  The CE will integrate the weekend meal service into its regular week-day service. Only the *additional* vegetables category is adjusted for long weeks; no adjustment to any of the dietary specifications is required since they are weekly averages.
- Add three weekends together to create a 6-day school week.
  This option allows the RCCI a more flexible method of serving the meal pattern. Only the *additional* vegetables category is adjusted for long weeks; no adjustment to any of the dietary specifications is required since they are weekly averages.

Infrequent Weekend Meal Service

- Use the one day or two-day meal pattern.
  When serving only one day, the RCCI will use the daily meal pattern requirement. If it is two days, the RCCI will use a two-day meal pattern.

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Family Style Meal Service

RCCIs may serve meals family style. In order to claim these meals for reimbursement, RCCIs must meet the following conditions:

- Enough food must be placed on the table in serving bowls to allow each child/student to receive the required minimum portion of each component and to accommodate the servings for the supervising adult(s) if they eat with the children/students.
- Each child/student must be initially offered the full required minimum portion of each component.
- If the child/student does not take the entire minimum required portion size, the supervising adult(s) should encourage the child/student to take the required portion size of the item during the course of the meal. For a meal to be reimbursable, the meal must contain the required portion sizes of the required components as described in *Administrator's Reference Manual (ARM), Section 7, Breakfast Meals*; *Section 8, Lunch Meals*; and *Section 9, Pre-Kindergarten Meals*.
- The RCCI cannot force or require the child/student to take any of the meal items. A supervising adult may encourage the child/student to take the required meal components for a reimbursable meal. However, if the child/student refuses to take the required components for a reimbursable meal, the meal is not reimbursable.

Offer Versus Serve

Offer versus serve (OVS) is optional for children/students below the high school level. At the high school level, OVS is required at lunch unless the institution receives TDA approval to waive the requirement to waive OVS implementation.

To request this flexibility, RCCIs must submit a letter[7] requesting OVS flexibility on RCCI letterhead signed by the superintendent or an authorized representative as specified in the Texas Unified Nutrition Programs System (TX-UNPS).

Child/Student-Parent Involvement

The nature of some RCCIs makes it difficult to incorporate child/student-parent involvement in the NSLP. RCCIs are encouraged, to the maximum extent possible, to include children/students and parents in the operation of the NSLP.

Financial System

School Nutrition Program (SNP) accounts are required to comply with Generally Accepted Accounting Principles (GAAP) for federally funded programs, as well as accounting and financial requirements that are specific to the SNP.

To meet this requirement, CEs must have an accurate, efficient financial management system that applies sound and consistent management practices that allows CEs to:

- Identify all funds received and expended by each school nutrition program the CE is operating.
- Identify the source and application of school nutrition program funds.
- Ensure effective control over, and accountability for, all funds, property, and

[7] The *Contact Information for the Texas Department of Agriculture* that follows the Table of Contents provides phone, fax, and email information for submitting a flexibility request to TDA.

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other assets.

- Provide accurate, current, and complete disclosure of financial and accounting system as required.
- Operate under specific written procedures for determining the allowability of costs.

For more information, see the *Administrator's Reference Manual (ARM), Section 16, Financial System*.

Claims for Reimbursement

RCCIs must establish a point of service (POS) system that allows them to accurately count and report reimbursable meals served.[8]

Total Monthly Attendance in RCCIs Used for Counting and Claiming Edit Checks

RCCIs may have populations that remain constant over time or have significant fluctuation in the number of children/students who are present at any given time. Fluctuating child/student populations can make it difficult for RCCIs to conduct edits check (Accuclaim process) to ensure that counting and claiming is done accurately.[9]

For the edit check (Accuclaim process), an RCCI must calculate its total monthly attendance to determine the number range for meals the CE may claim. The total monthly attendance is a total of all children/students enrolled in the RCCI each day. RCCIs must use the following criteria to establish their total monthly attendance:[10]

- If a child/student is in attendance for the entire month, count the child/student as having been in attendance every day that month.
- If a child/student is in attendance some but not all of days for a month, count the child/student as in attendance on each of the days the child/student is in attendance.
- If a child/student exits the RCCI, count the child/student as in attendance on each of the days the child/student is in attendance.
- If a child/student is in attendance for a few days of a month, exits, and then returns for additional days, count the child/student as in attendance for each of the days the child/student is in attendance.

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[8] See the *Administrator's Reference Manual (ARM), Section 20, Counting and Claiming* for additional information about claims for reimbursement.
[9] See the *Administrator's Reference Manual (ARM), Section 20, Counting and Claiming* for additional information about edit checks.
[10] Total monthly attendance is the total enrollment for each serving day totaled. It is not the number of meals served or claimed each month.

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Sample Total Monthly Attendance Calculation Chart				
	Number Days in Each Date Range			
Number of Students Enrolling and Exiting	**January 1–9** (9 Days)	**January 10-24** (15 Days)	**January 25** (1 Day)	**January 26–31** (6 Days)
Number Children/Students Attending Start of Date Range—Add for each day in attendance	100	100	117	131
Number Children/Students Added on the Last Day of Date Range—Add for each day in attendance	--	10	14	--
Number of Children Students Who Exited on the Last Day of Date Range—Add for each day in attendance	--	7	--	5
Total Attendance for Date Range	100	117	131	136
Multiply by number of days in range	x 9	x 15	x 1	x 5
Total Attendance Per Date Range	= 900	= 1,755	= 131	= 680
Total Monthly Attendance Add all range totals together	[900 + 1,755 + 131 + 816] **= 3,602**			

Age Limitations for Claiming Meals in RCCIs

The age limit for claiming meals in the NSLP and SBP for children/students enrolled in an RCCI is up to 21 years of age; meals may not be claimed for children/students residing in an RCCI who are 21 years of age or older.

Therefore, RCCIs can only claim meal reimbursements through 20 years of age for the following categories of children/students:

- Children/Students residing at the RCCI
- Children/Students residing at the RCCI and enrolled in the RCCI's day school component
- Children/Students not residing at the RCCI but enrolled in the RCCI's day school component

Afterschool Snacks—Afterschool Care Program (ASCP)

RCCIs may claim afterschool snacks served in the afterschool care program (ASCP). RCCIs may not claim reimbursement for snacks served on weekends, holidays, or vacation periods unless the snack is served during an activity that takes place after an education activity. The RCCI must retain records that demonstrate that an educational activity was offered before the snack service. See *Administrator's Reference Manual (ARM), Section 10, Afterschool Snacks & Meals* for additional guidance on this program.

Afterschool Snacks/Suppers—Child and Adult Care Food Program At Risk (CACFP At-Risk)

An RCCI may apply to participate in the Child and Adult Care Food Program (CACFP), including CACFP At-Risk, as an emergency shelter, but only if it serves a distinct group of homeless children/students who are **not** enrolled in the RCCI's regular program.

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An emergency shelter is a public or private nonprofit organization or site that provides temporary shelter and food services to homeless children/students, including children/students in an RCCI that serves a distinct group of homeless children/students who are not enrolled in the RCCI's regular program.

If an RCCI serves CACFP meals to children/students 18 years old or younger who are homeless and seeking shelters with or without their families, the RCCI must ensure that it claims reimbursement only for reimbursable meals that meet program requirements and maintains records that track the income and costs for each program the RCCI operates. See *Administrator's Reference Manual (ARM), Section 10, Afterschool Snacks & Meals* for additional guidance on this program.

Shorter or Longer School Weeks

RCCIs may be reimbursed for meals served on weekends as long as these meals meet the new meal patterns. For additional information on short and long week meal service, see the *Schools with Shorter and Longer School Weeks* subsection of the applicable breakfast or lunch section of the *Administrator's Reference Manual (ARM)*.

Meals Served to Continuous School Calendar (Year Round) Children/Students

Many RCCIs operate on a continuous school calendar. RCCIs may **not** claim reimbursement for any meals served to children/students on a continuous school calendar who are on vacation.

Information Box 1

Records Retention

State Board of Education policies require public and charter schools to maintain records for a period of five years.

Private schools, other nonprofit organizations, and RCCIs maintain records for three years.

Meals Served to Children/Students of RCCI Staff

RCCIs may not claim reimbursement for meals served to children/students of RCCI staff except in the following situation:

- Children/students are actually enrolled in the RCCI program and in residence.
- Children/students are non-residential children/students enrolled in the RCCI's school.
- Documentation is kept on file.

Meals Served to RCCI Staff

RCCI staff that are assisting with the operation of the meal program may receive a meal at no charge. This includes staff that prepare and serve meals, perform the counting and claiming, and supervise the meal service. The RCCI must pay the nonprofit school food service account for meals served to staff that are not involved directly with the preparation, operation, or supervision of the meal service.[11]

Records Retention

CEs are required to maintain an organized system of records retention that is accessible to appropriate CE employees and federal or state reviewers. TDA may request documentation for both offsite and onsite administrative review processes. CEs have the option to maintain records in paper or electronically.

[11] See the *Administrator's Reference Manual (ARM), Section 19, Meal Pricing* for additional information on adult meal pricing.

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All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, other nonprofit organizations, and residential child care institutions after the end of the fiscal year to which they pertain. If audit findings have not been resolved, the records must be maintained as long as required for the resolution of the issues raised by the audit.

Compliance

During an administrative review (AR) or at other times as appropriate, TDA will assess compliance with the counting and claiming requirements by reviewing the CE's counting and claiming practices and documentation. Documentation will include, but is not limited to, financial records and food production documentation. CEs with findings in these areas will be required to complete approvable Corrective Action Documentation (CAD). Noncompliance in these areas may also require fiscal action.

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Section 29

Local Wellness Policy & Stakeholder Engagement

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Section 29, Local Wellness Policy & Stakeholder Engagement

Update Guide

September 29, 2022	Updated *Section 29, Local Wellness Policy & Stakeholder Engagement* to correct minor typos. Clarified information on the following topics: - Records retention - Triennial Assessment
August 12, 2020	Created *Section 29, Local Wellness Policy & Stakeholder Engagement* and updated the *Administrator's Reference Manual (ARM)* section references. Guidance for this new section was taken from the previous *Administrator's Reference Manual (ARM), Section 19, Other Operational Issues*. Clarified information on the following topics: – Resources – Triennial assessment, COVID-19 flexibility – Written local wellness policy – Written implementation plan

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program

CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program

NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option

SSO.BOps@TexasAgriculture.gov

Summer Food Service Program

SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations

CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)

Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)

School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)

DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)

FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures

NSLP-SBP.BOps@TexasAgriculture.gov

Claims

BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source & Emergency Procurement

CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan

School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory

CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer

CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Local Wellness Policy & Stakeholder Engagement

Each contracting entity (CE) is required to develop, implement, and assess a local wellness policy (LWP). The LWP is intended to be a useful tool in establishing, evaluating, and maintaining a healthy school environment and promoting transparency to the public on key areas that affect each school's nutrition environment. The development of an LWP will include the involvement of students and parents as well as other key stakeholder groups.

The LWP must focus on nutrition education and promotion, physical activity, and school-based activities that promote student wellness. However, the CE may also include activities to promote wellness for parents, staff members, and the larger community.

Existing CEs

Existing CEs must update their local wellness policy each year as needed but are not required to submit a copy of updated local wellness policies to TDA. Existing CEs must conduct a triennial assessment of their LWP implementation.

New CEs

New CEs must create a local wellness policy before starting operation of a School Nutrition Program (SNP) and submit their LWP when completing their SNP application. After the first year of approval to operate a SNP, CEs must update their local wellness policy each year as needed but are not required to submit a copy of their updated local wellness policies to TDA. These CEs must also conduct a triennial assessment of their LWP implementation.

New CEs should work with their regional ESC child nutrition specialist in developing their LWP.

RCCIs

RCCIs should establish and follow a local wellness policy (LWP). However, promoting transparency to the public and engaging parents and community members may be difficult for RCCIs that only provide services to residential children/students or primarily residential children/students. In these cases, RCCIs should meet all requirements whenever possible, and document those situations that prevent the RCCI from fully implementing an LWP as required.

Guidance in this section applies to the following programs:

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Seamless Summer Operation (SSO)
- School Breakfast Program (SBP)

General Requirements for a Local Wellness Policy

The development of a local wellness policy is a layered process. The CE will (1) develop formal LWP policies for achieving identified goals, (2) develop a plan for implementing its LWP, (3) implement the plan, and (4) assess the implementation of the plan toward meeting

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the CE's written LWP policies. USDA provides a wide array of resources for developing a LWP on the Child Nutrition Sharing Site at *www.theicn.org/cnss/*. Type the words *local wellness policy* in the Resource Hub search box to find resources.

Written Policy

The formal policy describes how the CE will address all local, state, and federal requirements.

The LWP must be approved and adopted by the local board of trustees or governing board. This policy must be reviewed each year and updated when there is a change in implementation practices or to address updated local, state, or federal requirements.

Written Implementation Plan

The implementation plan describes how the CE will implement the written formal policies. The plan for implementation should be updated to meet emerging needs and priorities of the community in addition to addressing local, state, or federal requirements.

A written implementation plan may be a part of the CE's board policy or site policy or procedures, or it may be a free-standing plan.

Local Needs

Local wellness polices may also include additional policies that reflect the goals of the local community as long as those goals do not conflict with USDA or TDA regulations.

For Example: CE may include, but are not limited to, activities and goals that focus on promoting wellness for parents, community members, and school and CE staff.

Updated Local Wellness Policy

Each year the CE must review its local wellness policy. If changes are made to the policy, TDA recommends that the CE contact its ESC child nutrition specialist to ensure that the updated policy continues to meet the requirements before adding new policy or activities to its plan.

Required Elements of a Local Wellness Policy

The following guidance describes the required elements for an LWP and also indicates optional elements:

Structure

- Must apply to all schools participating in NSLP and/or SBP.
- Must be approved by the board of trustees or governing board.
- May customize the policy for different schools based on student age, facility, or other circumstances as long as the resulting LWP meets the requirements and does not conflict with federal and state regulations.

Nutrition Education and Promotion

Must address nutrition education and nutrition promotion through goals that address the following:

1. Activities that promote health, wellbeing, and students' ability to learn.

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2. Nutritional guidelines for all food and beverages available to be sold or given to students on the school campus during the school day,[1] including food and beverages offered by the school nutrition program and outside of the school nutrition program. This includes fundraisers, school-sponsored activities, and nonschool-sponsored activities that take place during the school day on the school campus.

Must target students.

May also target parents, community members, and staff in nutrition education and promotion.

Stakeholder Engagement

Must engage the following stakeholders in developing and implementing the LWP:

- Administrators (district and/or school)
- Community members
- Parents
- Representatives of the CE or school(s)
- Representatives of the board of trustees or governing body
- School health professional
- School nutrition staff
- Students

May involve other stakeholder groups, including Supplement Assistance Program Education (SNAP-ED) coordinators.

Assigned Responsibilities

Must assign a staff position or positions to be responsible for the following tasks:

1. Development of the LWP
2. Implementation of the LWP
3. Assessment of the LWP
4. Update of the LWP

May assign one person to take responsibility for all tasks or may assign multiple people.

Marketing

Must describe how the following marketing issues will be addressed:

1. Current district marketing guidelines for foods and beverages sold to students.

Information Box 1

Marketing Definitions

What is marketing?

Marketing is the use of varied methods to promote the sale of a food or beverage.

What types or methods of marketing are covered in the requirements related to marketing?

Marketing methods includes, but is not limited to, oral, written, and graphic statements that appear on vending machines, posters, menu boards, tray liners, beverage cups, coolers, trash cans, digital marketing, food service supplies and equipment, or other items.

When and where do the marketing standards apply?

Marketing requirements apply to any food or beverage sold on the school campus during the school day for those schools operating NSLP and/or SBP.

When do the marketing standards not apply?

Marketing standards do not apply to materials used for classroom educational purposes; for schools that do not operate NSLP and/or SBP; product marketing that occurs outside of the school day; incentive program coupons for products that are not intended to be served during the school day; and label redemption programs such as Box Tops for Education which are brought from home.

[1] See *Administrator's Reference Manual (ARM), Section 22, Competitive Foods* for additional information on food and beverages that can be sold or given away during the school day.

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2. Strategies the CE will implement to ensure that, as of July 1, 2017, all marketing for foods and beverages sold to students on the school campus during the school day meets the Competitive Food Nutrition Standards.[2]

May immediately replace or eliminate items that display marketing information (including products with logos) that are not compliant with the Competitive Food Nutrition Standards.

Must establish a plan to ensure that all items that display marketing information obtained after July 1, 2017, are compliant with the Competitive Food Nutrition Standards.

Must establish a plan for replacing or eliminating all existing marketing displays and items with marketing information that are not compliant with the Competitive Food Nutrition Standards.

Triennial Assessment

Must establish a plan to assess the effectiveness of the implementation of its LWP at least every three years including, but not limited to, an assessment of the following:

1. compliance with its LWP
2. alignment to model, evidence-based LWPs[3]
3. progress made toward attaining the goals described in its LWP

Must distribute the results of the assessments to the public.

May assess the implementation of its LWP more frequently and may include other areas or issues in its assessment.[4]

Records Retention

Must establish a system to retain all records that demonstrate compliance with LWP requirements, including, but not limited to, stakeholder involvement, development, and implementation of the LWP, triennial assessments, public notifications, and marketing policy.[5]

Student/Parent Involvement

Regulations require schools[6] to promote activities to involve students and parents in NSLP. This involvement includes activities to engage parents, teachers, and students in assisting in menu planning. CEs have flexibility in planning and implementing program activities that meet the needs of individual sites.

The following strategies and activities may help to encourage parental involvement:

- Prepare articles for local newspapers or student newsletters. Articles might feature menus, meal statistics, special activities, offer versus serve, or nutrition information.

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2 See the *Administrator's Reference Manual, Section 22, Competitive Foods* for additional information on this topic.

3 USDA provides resources on successful practices and best practices on the School Nutrition Environment and Wellness Resources website (*https://www.fns.usda.gov/tn/implementation-tools-and-resources*).

4 A critical element of any assessment is the collection of data or information that is used for the assessment. Data or information about the LWP should be collected each year as part of the assessment. This includes, but is not limited to, number of participants in program activities, documentation of policy changes, and survey data about program impact.

5 See the *Records Retention* subsection in this section for additional information on this topic.

6 RCCIs are encouraged, but not required, to implement parental involvement strategies.

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- Take pictures that can be shared with local newspapers or used in student newsletters. Pictures might demonstrate parent-involvement activities, students trying new foods or activities that might interest the public or parents.
- Plan special menus—
  - Menus to highlight special events, such as holidays or athletic victories
  - Menus to reflect the types of food eaten in foreign countries
  - Menus to reflect the types of food eaten in specific regions of the country
- Invite parents, grandparents, or other people in the community to have lunch at the site. The invitation can be an informal invitation to have lunch when it is convenient or a special event.
- Plan projects to improve the appearance of the cafeteria. This might include up-to-date bulletin boards, decorations for holidays or special events, or student artwork.
- Conduct student surveys on food likes and dislikes and solicit menu suggestions. Topics might include how to reduce plate waste, tasting events results, or other topics of interest for students.
- Work with educational staff to include nutrition activities and study in the classroom. These activities might include the following:
  - Student evaluation of menus based on the *Dietary Guidelines for Americans* or an evaluation of meals for variety, texture, and color.
  - Student created menus using available food product list and meal pattern information.
  - Student developed brochures on nutritious snack foods.
  - Home economics classes planning which help to prevent weight gain or promote weight gain.
  - Student tasting panel for new products where students conduct product acceptability surveys.
  - Class tour of the kitchen.
  - Student research reports on nutrition relating to personal appearance and health.
- Engage parent/school organizations in menu planning or product taste testing.
- Reach out to other CEs to see what kinds of activities have been successful for them.
- Engage students in advisory groups to support program participation and promote good nutrition.

TDA provides the *Student/parent Involvement Activity Form* on the SquareMeals website to assist schools in tracking these types of activities.

Youth Advisory Council (YAC)

Youth Advisory Councils (YACs) are organizations composed of students and adult advisors who have the mutual goal of promoting good nutrition through the SNP. Members participate in nutrition-related projects and serve as a communication bridge between the SNP administration and the students and community.

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Resources for Developing and Planning Local Wellness Policies

- Centers for Disease and Control and Prevention—The Centers for Disease and Control and Prevention provides resources and information specific to school health at *www.cdc.gov/HealthyYouth/* and *www.cdc.gov/healthyyouth/npao/wellness.htm*. They also provide resources for school health assessments at *https://www.cdc.gov/healthyschools/shi/index.htm*.
- Institute of Child Nutrition—The Institute of Child Nutrition, formerly the National Food Service Management Institute (NFSMI), has created the *Resource to Sustain and Strengthen Local Wellness Initiatives* which is available at *www.theicn.org*.
- Texas Association of School Boards (TASB)—TASB has developed tools to assist CEs in developing their LWP and implementing their LWP. The tools are available at *https://www.tasb.org/services/policy-service/resources/student-health-and-wellness.aspx*.
- *USDA Team Nutrition*—USDA Team Nutrition provides a wide array of resources CEs can use in developing a local wellness policy and in sharing information about nutrition with students, parents, and larger community at *www.fns.usda.gov/*. USDA provides a list of resources at *www.fns.usda.gov/tn/local-school-wellness-policy* as well as a wide array of resources for developing a LWP on the Child Nutrition Sharing Site at *www.theicn.org/cnss/*. Type the words *local wellness policy* in the Resource Hub search box to find resources.
- Alliance for Healthier Generation provides resources at *www.healthiergeneration.org/*.

Information Box 2

Record Retention

Public and charter schools are required to keep documentation related to school nutrition programs for five years.

Private schools, other nonprofit organizations, and residential childcare institutions (RCCIs) are required to keep documentation for three years.

TDA Forms

TDA has developed a checklist for developing a local wellness policy—*Local Wellness Policy (LWP) Checklist*. CEs are not required to use the checklist, but it does help the CE to ensure that all required elements are addressed in the CE's policy or implementation plan. The checklist is available at *www.SquareMeals.org*. The ESC child nutrition specialists may also use this form to provide technical assistance on the development of local wellness policies.

TDA provides the following forms on the SquareMeals website[7] to assist CEs in implementing the guidance presented in this section:

- *Student-Parent Involvement Activity Form*

Records Retention

The CE is required to maintain an organized system of record retention that is accessible to appropriate CE staff members and federal or state reviewers. CEs also have the option to maintain records in paper or electronic form. The *Administrator's Reference Manual (ARM), Section 3, Records Retention* has additional information on the records CEs must retain.

CEs are required to retain documentation demonstrating compliance with the following:

- Written local wellness policy and implementation plan

[7] Available at *www.SquareMeals.org*.

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- Board of trustee or governing board approval
- Public notifications
- Stakeholder engagement
- Strategies to engage parents and students in menu planning
- Triennial assessment
- Marketing policy

Compliance

TDA will review documentation submitted through TX-UNPS, retained onsite during Administrative Reviews (ARs), or on request to ensure that the CE is compliant with the regulations described in this section. TDA may require an approvable corrective action plan if the CE does not comply these requirements.

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Section 30

Records Retention

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Section 30, Records Retention

Update Guide

July 28, 2022	Updated *Section 30, Record Retention* to remove the Records List. Clarified information on: - *Security Authority for Users Access Manager Form (FND-135)*
August 12, 2020	Updated *Section 30, Record Retention* to update *Administrator's Reference Manual (ARM)* section references.
July 5, 2016	Updated the guidance in *Section 3, Records Retention* to remove the list of forms that is being moved to the SquareMeals website. The location for the Records List webpage is *www.SquareMeals.org/NSLPforms*.
February 20, 2015	Updated guidance in *Section 3, Records Retention* to incorporate guidance from the following sources: – *USDA Memo SP 23-2014 (v. 2), Questions and Answers Related to the "Smart Snacks" Interim Final Rule* (June 5, 2014) Updated information on the following topics: – Documentation related to competitive foods – Financial reporting – Renamed forms – New forms
July 11, 2014	Updated *Section 3, Records Retention* to incorporate guidance and information on the following topics: – Contact information for the Texas Department of Agriculture (TDA) – Specific information on requirements for forms to be submitted to TDA or kept onsite – Information about the retention of specific records to documentation required for administrative reviews – Updated form titles and removal of forms no longer required – Updated tables to provide information on records retention grouped by topic – References to other sections or locations for additional information

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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 the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847

Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations
CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Records Retention

Contracting entities (CEs) are required to retain accurate program documentation. These records must be available for audit purposes or review by the United States Department of Agriculture (USDA) or the Texas Department of Agriculture (TDA). CEs must adhere to the following record retention schedule:

Type of Institution	Number of Years Records[1] Must Be Retained After the End of the Program Year*
Public Schools	5^
Charter Schools	5^
Private Schools	3^
Residential Child Care Institutions (RCCI)	3^
Other Organizations	3^

*** Definition for Program Year**

For NSLP and SBP, the program year is July 1 to June 30. Therefore, the year for document retention begins on June 30.^

For Example: For a public school, school nutrition program documentation retained for program year 2013-2014 must be retained until June 30, 2019.

For an RCCI, school nutrition program documentation retained for program year 2013-2014 must be retained until June 30, 2017.

^ Special Exceptions:

- **Food and Nutrition Agreement**—A CE's *Food and Nutrition Agreement (Agreement)* and all Agreement amendments must be retained for the duration of the agreement between TDA and the CE. When there is a termination of the *Agreement*, the *Agreement* and all Agreement amendments must be retained for 5 years after the *Agreement* has been terminated for public and charter schools or 3 years for private schools, RCCIs, and other organizations.
- **Certificate of Authority**—All valid *Security Authority for Users Access Manager Forms (FND-135)* must be retained for the duration of the agreement between TDA and the CE. Any Certificate of Authority that has been rescinded or terminated must be retained for 5 years for public and charter schools or 3 years for private schools, RCCIs, and other organizations after it has been rescinded or terminated.
- **Administrative Review Findings**—If a CE has audit or administrative review (AR) findings, unresolved corrective action documents/plans, or other required response for corrective action required by TDA, any records related to these events must be maintained until the resolution of the issue/s. In these cases, the records must be retained beyond the number of years required.
- **Documentation Supporting Approval to Operate under a Special Provision**—When a CE uses data to establish base year percentages for eligibility categories or to demonstrate that there has been no change in the economic situation of the student population, the CE must retain records demonstrating the accuracy of this information for as long as the site operates the special provision program, plus an additional five years if the site is a public or charter school or an additional three years if the site is a private school or RCCI.

This section addresses records retention for the following School Nutrition Programs (SNPs):[2]

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Fresh Fruit and Vegetable Program (FFVP)
  - Seamless Summer Option (SSO)

[1] A record means any chart, form, template, letter, information sheet, worksheet, or other document that the CE created or received in conducting SNP related business (Texas Government Code § 441.158; 13 TAC § 7.125, Local Schedule SD, Part 11, Food Service Records and 7 CFR § 210.23(c))

[2] More specific information on these programs is available at *www.SquareMeals.gov*.

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- School Breakfast Program (SBP)
- Special Milk Program (SMP)

TDA Resources

TDA provides forms, samples, prototypes, templates, calculation tools, checklists, and worksheets at *www.SquareMeals.org* to assist CEs in successfully implementing a school nutrition program as well as through the Form Download screen in the Texas Unified Nutrition Programs System (TX-UNPS).

CEs are not required to use the forms, samples, prototypes, and templates provided by TDA in documenting their efforts unless specified in the *Administrator's Reference Manual*; directions for samples, prototypes, and templates directions; or other directives from TDA, However, TDA strongly recommends that CEs do so.

In cases where CEs are allowed to develop their own versions of a forms, samples, prototypes, and templates, CEs are responsible to make sure that all required information and elements included in the TDA forms, samples, prototypes, and templates are collected in the CE's version. CEs also have the option to maintain records in paper or electronically.

Submitting Required Documentation to TDA

TDA requires that CEs submit some documentation through TX-UNPS and other documentation by mail, fax, email, or electronic processes. CEs should carefully review the method required for submitting documentation for any submission requirement.

In cases where TX-UNPS is not the method of submission, the CE must submit its documents or information as described in the directions in the required format to the TDA Austin office.[3] See the Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition page that follows the table of contents in this section for detailed TDA contact information.

Compliance

Records retention is a vital component of demonstrating compliance with program requirements. CEs must make available, upon request of the awarding agency (state or federal), all documentation related to program operation. CEs are encouraged to develop a system of document retention that allows them to readily retrieve records. An effective system will include, but is not limited to, (1) a centralized location for all records and (2) staff understanding of where records are retained and how to retrieve them. Records may be retained in paper form, electronically, or both.

TDA reviews records to assess program compliance during administrative reviews and procurement reviews, to investigate complaints, to ensure compliance with reporting requirements, and for other compliance purposes. If the CE does not comply with regulations related to records retention, TDA may require a corrective action document/plan and may also take fiscal action, withhold funds, or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance with program requirements.

[3] See the Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition section for mail, fax, or email information.

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Section 31

Administrative & Other Compliance Reviews

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Section 31,
Administrative & Other Compliance Reviews

Update Guide	
November 28, 2022	Updated *Section 31, Administrative & Other Compliance Reviews* to correct minor typos. Clarified information on the following topics: - Appeals timeframe - Cycle length Updated Texas Administrative Code (TAC) appeals citation.
August 12, 2020	Updated *Section 31, Administrative & Other Compliance Reviews* to update *Administrator's Reference Manual (ARM)* section references. Provided clarification on the following topics in addition to incorporating guidance from USDA: – Combining review activities
January 15, 2019	Updated *Section 23, Administrative Review* to incorporate the following USDA memos and guidance: – *USDA Administrative Review Manual* (May 18, 2018) – *USDA Memo SP 39-2017, Local Agency Procurement Reviews for School Food Authorities* (June 30, 2017) – *USDA Memo SP 03-2017, Draft Tool for Local Agency Procurement Reviews for School Food Authorities in SY 2016-2017—Revised Tool* (October 6, 2016) – *USDA Memo SP 45-2016, Draft Tool for Local Agency Procurement Reviews for School Food Authorities in SY 2016-2017* (June 30, 2016) – *USDA Memo SP 04-2016, Local Agency Procurement Reviews: School Year 2015-2016* (November 9, 2015) Provided clarification on the following topics in addition to incorporating guidance from USDA: – Administrative Review, Resource Management – Administrative Financial Review (AFR) – Corrective Action – Fiscal action – Noncompliance – Procurement Review (PR)
October 17, 2014	Updated *Section 23, Administrative Review* to incorporate the following USDA memos and guidance: – *USDA Memo SP 44-2014, Questions and Answers Related to the Independent Review of Applications* (April 30, 2014) – *USDA Memo SP 24-2014, Additional Administrative Reviews Guidance* (March 6, 2014) – *National School Lunch Program: Independent Review of Applications Required by Healthy, Hunger-Free Kids Action of 2010, Final Rule* (February 6, 2014) – *USDA Administrative Review Manual* (September 20, 2013) – *USDA Memo SP 42-2013, School Nutrition Programs Updated Administrative Review Process* (May 30, 2013) – *USDA Memo SP 12-2013, School Year 2012-2013 Administrative*

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Review Procedures and New Three Year Administrative Review Cycle Beginning in School Year 2013-2014 (December 6, 2012)

Provided clarification on the following topics in addition to incorporating guidance from USDA:

- Additional sources for information on program requirements
- Contact information for the Texas Department of Agriculture (TDA)
- Information and documentation needed for administrative review
- Information on the offsite and onsite process for the administrative review
- Records retention
- Review cycle and review timeline

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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 the site name and ID if applicable) in all communication or documentation.

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General Contact Information			
Physical Address		**Mailing Address**	
1700 N. Congress, 11th Floor, Austin, TX 78701		PO Box 12847, Austin, TX 78711-2847	
Phone	877-TEX-MEAL, (877) 839 -6325	**Email Contact**	*SquareMeals@TexasAgriculture.gov*
Fax	(888) 203-6593	**Website**	*www.SquareMeals.org*

Questions about Program Applications

Child & Adult Care Food Program
CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program
NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option
SSO.BOps@TexasAgriculture.gov

Summer Food Service Program
SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

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CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)
DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)
FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures
NSLP-SBP.BOps@TexasAgriculture.gov

Claims
BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement
CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan
School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory
CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer
CommodityOperations@TexasAgriculture.gov

June 22, 2020

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Administrative & Other Compliance Reviews

The Texas Department of Agriculture conducts compliance reviews to promote program integrity and to assist contracting entities (CEs) in operating a program that is compliant with all regulations. The following Child Nutrition Programs (CNPs) are included in the compliance reviews described in this section:

- National School Lunch Program (NSLP)
  - Afterschool Care Program (AFCP)
  - Fresh Fruit and Vegetables (FFVP)
  - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)
- Other Federal Programs
  - At Risk Child and Adult Care Food Program (At Risk CACFP), as applicable
  - Special Milk Program (SMP)

Compliance reviews are intended to address the following objectives:

1. Determine whether the contracting entity (CE) meets program requirements
2. Provide the CE with technical assistance
3. Secure needed corrective action
4. Assess fiscal action, and when applicable, to recover improperly paid funds.

Whenever possible these reviews incorporate collaborative compliance—a process which focuses not only on ensuring program compliance, but also includes the technical assistance CEs need to operate a CNP.

Information Box 1

Strategies to Prepare for a Compliance Review

Checklists: Use the TDA provided checklists to prepare for the compliance review and to ensure that all documentation is submitted in a timely manner.

Electronic Submission of Documentation: Work with the CE technology staff or the ESC to be prepared to work with PDF formats, scan documents, upload documents, and/or attach files.

File Naming Conventions: Make sure to name files with content specific names, so the file does not have to be opened in order to see its content. TDA staff also often provide naming conventions to assist with this effort.

Key Staff: Ensure that staff who have the greatest understanding or experience with the compliance review topics are available to respond to questions and requests.

Organizing: Organize documentation that supports the CE's responses to questions and requests in folders (electronic or paper) or a binder.

To accomplish these objectives, TDA uses risk-based tools for onsite and offsite evaluation processes to conduct three types of standardized compliance reviews which may be conducted separately or together:

- **Administrative Review (AR)**—Comprehensive review of the CE's operational practices including, but not limited to, meal access and reimbursement, meal pattern and nutritional quality, and general operational practices.
- **Administrative Financial Review (AFR)**—Comprehensive review of the CE's financial management system of School Nutrition Programs (SNP).
- **Procurement Reviews (PR)**—Comprehensive review of the CE's procurement practices and contract management.

While each CE will participate in these reviews on a routine schedule, TDA may also conduct additional ARs, AFRs, or PRs when warranted.

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This section provides general information on the reviews TDA conducts. TDA provides detailed guidance for CEs receiving reviews on SquareMeals at *https://squaremeals.org/Programs/NationalSchoolLunchProgram/NationalSchoolLunchProgramCompliance.aspx*.

Definitions for This Section

For this section, the following terms will be used:

Administrative Review (AR)	Standardized review process that includes comprehensive offsite and onsite evaluations of a contracting entity (CE) participating in the School Nutrition Programs (SNP). The review includes both critical and general areas of review, as well as areas the state agency deems as important.
Administrative Financial Review (AFR)	Standardized review process that includes a comprehensive review of the CE's financial management system, including, but not limited to, accounting methods for tracking income and costs; allowable and unallowable costs; credits, discounts, and rebates; grant funds; paid lunch equity; methods to promote program integrity and internal controls; proportion of nonprogram and program food revenues and costs; and written financial procedures, policies, and processes.
Authorized Representative (AR)	Person who is authorized to make decisions and sign legally binding documents on behalf of the CE.
Collaborative Compliance	Approach to a compliance review that incorporates both monitoring activities and technical assistance.
Comprehensive Review	In-depth investigation of operational practices or documentation in response to high risk factors
Corrective Action	Action the CE takes to achieve compliance for areas of noncompliance.
Corrective Action Document (CAD) or Corrective Action Plan (CAP)	Documentation that demonstrates that the CE has implemented corrective action to achieve compliance. [NOTE: The Texas Unified Nutrition Programs System (TX-UNPS) uses the term Corrective Action Document (CAD). TDA will use CAD when documentation is submitted through TX-UNPS. However, the term Corrective Action Plan (CAP) may be used when documentation is not submitted through TX-UNPS.]
Fiscal Action	Recovery of overpayment through direct assessment or offset of future claims, disallowance of overclaims as reflected in unpaid claims for reimbursement, submission of a revised claim for reimbursement, and correction of records to ensure that unfiled claims for reimbursement are corrected when filed. In addition to fiscal action, an AR may also require the CE to reimburse the nonprofit food service account for unallowable costs and may result in placing the CE's funds on financial hold if noncompliance continues.
Follow-up Review (Follow-up AR, AFR, or PR)	Targeted review process or desk audit that focuses on verifying corrective action for findings from any review conducted in the current review cycle. This review is initiated when a CE receives repeated or systemic critical area or general area findings that are not corrected systemically; has not submitted adequate CAD/CAP in response to the AR findings; is found to be willfully and egregiously non-compliant; or has been placed on financial hold.
Hold Funds	Action taken to place the CE's reimbursement payments on hold until the CE is able to demonstrate program compliance.
Month of Review (MOR)	The most recent month for which a claim for reimbursement has been submitted which has at least 10 operating days.
Non-Systemic Findings	Finding for which the contributing factors are unusual, not part of the normal operating procedure—the system does not require changes to achieve accurate results.

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Procurement Review (PR)	Standardized review process that includes a comprehensive review of the CE's procurement management including, but not limited to, Buy American; contract management; cooperative purchasing; food service contracts; management of credits discounts, and rebates; processor contracts; solicitation and contract award process; and written procurement processes, procedures, and practices, including internal controls.
Reimbursement to the Nonprofit Food Service Account	Recovery of payments made from the nonprofit food service account for costs that are unallowable to the School Nutrition Program (SNP).
Repeated Finding	Finding determined at the CE level that is the same type of critical area finding or general area finding that is noted in more than one review during the same review cycle or across multiple review cycles. This type of finding may occur at different sites or the same site.
Review Cycle	Three-year cycle in which each CE in the state is reviewed at least one time.
Review Period	Period of time the compliance review targets.
Systemic Finding	Finding for which the contributing factors are inherent to the routine operation of the CE or site and are likely to occur again in the same review cycle if operational processes are not changed.
USDA Foods	Foods donated by USDA to CEs to provide additional support to certain federal nutrition programs (formerly called commodities).

Administrative Review (AR)

The Administrative Review (AR) process is a comprehensive review of the CE's operational practices, including, but not limited to, meal access and reimbursement, meal pattern and nutritional quality, and general operational practices. While each type of review has its own focus, TDA will combine review tasks for different types of reviews whenever possible.

Cycle

CEs participating in NSLP or SBP must be reviewed at least once during the established five-year cycle. New CEs entering the program at any point during a five-year cycle must be reviewed during that five-year cycle. TDA may also conduct additional ARs based on identified needs.

Notification

TDA will post a list of ARs to be conducted for each year in the five-year cycle on *www.SquareMeals.org*. TDA will contact the CE approximately twelve to fourteen weeks before the review to request information or documentation and describe the actions both TDA and CE will take during the AR.

Review Period

The review period is the most recent month with at least 10 operating days for which a claim for reimbursement has been submitted. The latest claim information can be found in the Texas Unified Nutrition Programs System (TX-UNPS).

Special Situation, Review Scheduled Early in the School Year

If the review occurs early in the school year and the CE has not filed a claim for the current school year, TDA may designate the month of review as the last claim in the previous school year. In this case, TDA would review the previous school year's eligibility determinations, benefit issuance documents, and procedures for updating eligibility.

Focus Areas for the AR

At a minimum, the review will include, but is not limited to, the following areas of review:

- Critical Areas of Review

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  - Critical Area 1 (Performance Standard 1), Meal Access and Reimbursement
    - Certification and Benefit Issuance
    - Meal Counting and Claiming
    - Verification
  - Critical Area 2 (Performance Standard 2), Meal Pattern and Nutritional Quality
    - Dietary Specifications and Nutrient Analysis
    - Meal Components and Quantities
    - Offer versus Serve
- General Areas of Review
  - Resource Management
    - Indirect Costs
    - Maintenance of the Nonprofit School Food Service Account
    - Paid Lunch Equity
    - Revenue from Nonprogram Foods
  - General Program Compliance
    - Buy American
    - CE Onsite Monitoring
    - Civil Rights
    - Competitive Food Services
    - Food Safety
    - Local School Wellness Policy and School Meal Environment
    - Professional Standards
    - Reporting and Recordkeeping
    - School Breakfast Program (SBP) and Summer Food Service Program (SFSP) Outreach
    - Water Availability
    - USDA Foods
  - Other Federal Program Reviews (as appropriate)
    - Afterschool Care Program (ASCP)
    - At Risk Child and Adult Care Food Program (At Risk CACFP)
    - Fresh Fruit & Vegetable Program (FFVP)
    - Seamless Summer Option (SSO)
    - Special Milk Program (SMP)
- Other Areas as Determined by TDA
  - Areas TDA determines to be relevant, including nutrition policy in Texas schools

Format

While TDA will continue to collect information specific to sites, much of the focus for an AR is a CE-wide process-oriented, risk-based review. The design of the AR process includes a web-based set of questions provided in a web-based instrument and documentation submitted through a web-based portal. The CE's responses to the questions and the requested documentation are an important element of a successful AR process.

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The AR will include (1) offsite and onsite activities and (2) observations of meal preparation and meal service.

Offsite Review Processes

Twelve to fourteen weeks prior to the onsite review, TDA will begin to guide the CE through a series of actions that include submitting documentation to TDA and completing web-based assessments. Both of these tasks are completed in TX-UNPS. TDA provides a list of file naming conventions to assist CEs in labeling uploaded files in an easily identifiable manner.

CEs will also be expected to provide information or complete actions for the offsite process in a specified timeframe as described in AR notifications and phone calls with TDA staff members. Not submitting documentation in a timely manner is considered to be noncompliance and will prompt a comprehensive review.

Assessments

During the offsite review process, TDA will ask or direct CEs to answer questions for three assessments: *Meal Compliance Risk Assessment Tool*, *Dietary Specifications Risk Assessment Tool*, and *Resource Management Risk Indicator Tool* that are located in TX-UNPS.

High Risk School

During the offsite review, the assessment process is intentionally designed to identify one school site that has the highest risk score. This school site is designated as the site with the highest risk for noncompliance. This designation does not mean the school is out of compliance. There will be a school identified as high risk for every AR.

Although a nutrient analysis may be conducted based on the high-risk identification, the determination about whether to conduct this analysis is not determined until after the onsite review process has been completed.

TDA strongly recommends that school nutrition directors reach out to the CE's technology staff to ensure that the CE is able to access information, complete web-based assessments, and upload documents in TX-UNPS as early as possible in the AR process. CEs that do not submit required documentation in a timely manner are considered to be high risk.

Onsite Review Processes

The onsite review process also allows TDA staff to validate information collected during the offsite assessment, to observe school nutrition program operations at the selected sites and evaluate the CE's compliance with program requirements. The onsite review includes a formal entrance conference, observation of meal preparation and service, additional questions on specified topics, additional documentation review, and an exit conference.

Administrative Financial Review (AFR)

The Administrative Financial Reviews (AFR) process is a comprehensive review of the CE's financial management system. This review is conducted in addition to the CE's yearly single audit.[1] While each type of review has its own focus, TDA will combine review tasks for different types of reviews whenever possible.

[1] CEs are required to align financial procedures and processes to generally accepted accounting principles (GAAP). See *Administrator's Reference Manual (ARM) Section 16, Financial System* for additional information on single audits and other financial requirements; *Section 15, Program Integrity* for additional information on maintaining financial program integrity; and *Section 17, Procurement* for additional information on procurement requirements.

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Cycle

Each CE will receive at least one AFR every five years on the same cycle as the AR, but TDA may also conduct AFRs (1) when findings or errors from other compliance reviews indicate an AFR is warranted, (2) when the investigation of a complaint warrants an AFR, (3) when a report from another agency identifies areas of noncompliance or financial management weakness, or (4) when TDA and/or USDA determines additional monitoring is warranted.

Notification

TDA will post a list of AFRs to be conducted for each year in the five-year cycle at *www.SquareMeals.org*. TDA will contact the CE directly if there will be an AFR conducted outside of the regular review cycle. TDA will align the timing of the request for documentation for the AFR with the request for documentation for the AR whenever possible.

Review Period

While TDA may review multiple years of financial records, the focus will be on the most recently completed fiscal year and the current fiscal year.

Focus Areas for the AFR

At a minimum, the focus areas include, but, are not limited to the following:

- Accounting method for tracking and verifying income and costs
- Allowable and unallowable costs
- Conflict of interest
- Credits, discounts, and rebates
- Direct and indirect costs
- Financial management system including CE's standard accounting practices
- Grant funds (i.e., equipment, professional standards, or others), receipt and use
- Methods to promote program integrity and internal controls
- Paid lunch equity
- Proportion of nonprogram and program food revenue and costs
- Single audit
- Written financial management procedures, policies, and practices including internal controls

Format

Whenever possible the AFR will be conducted offsite. The CE will submit documentation as requested by TDA. However, an onsite review process may also be used. While the review will focus on CE-wide operations, the review may also include an assessment of individual financial transactions that occur at the site level.

Procurement Review (PR)

The Procurement Review (PR) process is a comprehensive review of the CE's procurement practices and contract management. While each type of review has its own focus, TDA will combine review tasks for different types of reviews whenever possible.

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Cycle

Each CE will receive at least one PR every five years on the same cycle as the AR, but TDA may also conduct a PR (1) when findings or errors from other compliance reviews indicate an AFR is warranted, (2) when the investigation of a complaint warrants an PR, (3) when a report from another agency identifies areas of noncompliance or financial management weakness, or (4) when TDA and/or USDA determines additional monitoring is warranted.

Notification

TDA will post a list of PRs to be conducted for each year in the five-year cycle at *www.SquareMeals.org*. TDA will contact the CE approximately three to four weeks prior to the review to communicate timing for each step in the process: (1) identification of the CE contact who will coordinate with TDA; (2) assessment of the types of procurement the CE uses; and (3) collection of procurement samples.

Review Period

While TDA may review multiple years of financial records, the focus will be on the most recently completed fiscal year and the current fiscal year. However, TDA may review additional years if warranted.

Focus Areas for the PR

At a minimum, the focus areas for PR include, but are not limited to the following:

- Buy American
- Conflict of interest
- Contract management
- Cooperative purchasing
- Food service contacts
- Management of credits, discounts, and rebates
- Processor contacts
- Solicitation and contract award process
- Written procurement processes, procedures, and practices, including internal controls

Format

Whenever possible the PR will be conducted offsite. The CE will submit documentation as requested by TDA. While the review will focus on CE-wide operations, the review may also include assessment activities for individual site procurement transactions that occur at the site level.

Follow-up Reviews

TDA may conduct a targeted or full follow-up review to verify corrective action for findings for any compliance review. TDA strongly recommends that CEs seek assistance from their regional education service center (ESC) nutrition specialist for any actions or issues related to a Follow-up Review.

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Resources to Assist CEs in a Review

The *Resources to Assist in Preparing Documentation Chart* provides information on which *Administrator's Reference Manual (ARM)* sections provide additional information on records to retain specifically for the areas of compliance categories listed.

Resources to Assist in Preparing Documentation Chart	
Record Retention Categories	**Administrator's Reference Manual (ARM) Section for this Topic**
Eligibility and Verification	– *Section 3, Civil Rights & Confidentiality* – *Section 4, Eligibility Determination* – *Section 5, Special Provision Options* – *Section 6, Verification of Eligibility* – *Section 10, Afterschool Snacks & Meals* – *Section 11, Summer Meals* – *Section 13, Special Milk Program* – *Section 28, Residential Child Care Institutions*
Communication and Outreach	– *Section 4, Eligibility Determination* – *Section 5, Special Provision Options* – *Section 11, Summer Meals* – *Section 13, Special Milk Program* – *Section 29, Local Wellness Policy & Stakeholder Engagement*
Competitive Foods	– *Section 22, Competitive Foods*
Counting and Claiming	– *Section 4, Eligibility Determination* – *Section 5, Special Provision Options* – *Section 10, Afterschool Snacks & Meal* – *Section 11, Summer Meals* – *Section 13, Special Milk Program* – *Section 20, Counting & Claiming* – *Section 26, Residential Child Care Institutions*
Financial and Accounting	– *Section 14, USDA Foods* – *Section 14a, USDA Foods Processing* – *Section 15, Program Integrity* – *Section 16, Financial System* – *Section 16a, Contract Management* – *Section 17, Procurement* – *Section 17a, Procurement Procedures* – *Section 17b, Buy American* – *Section 17c, Cooperative Purchasing* – *Section 18, Food Service Contracts* – *Section 19, Meal Pricing* – *Section 20, Counting & Claiming*

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Resources to Assist in Preparing Documentation Chart	
Record Retention Categories	**Administrator's Reference Manual (ARM) Section for this Topic**
Meal Pattern and Meal Preparation	– *Section 2a, Meal Pattern Certification* – *Section 9, Pre-Kindergarten Meals* – *Section 7, Breakfast Meals* – *Section 8, Lunch Meals* – *Section 10, Afterschool Snacks & Meals* – *Section 11, Summer Meals* – *Section 13, Special Milk Program* – *Section 21, Meal Service* – *Section 23, Food Product Labeling* – *Section 25, Meal Accommodations*
Program Agreement and Application(s)	– *Section 2, Program Application and Agreement* – *Section 16, Program Integrity*
General Issues, Program Operation	– *Section 14, USDA Foods* – *Section 14a, USDA Foods Processing* – *Section 15, Program Integrity* – *Section 19, Meal Pricing* – *Section 24 Disaster Situations* – *Section 26, Food Safety* – *Section 27, Professional Standards* – *Section 28, Residential Child Care Institutions* – *Section 29, Local Wellness Policy & Stakeholder Engagement* – *Section 30, Records Retention*

TDA Forms
TDA also provides a list and description of use for all TDA developed forms, samples, and templates on the *School Nutrition Programs (SNPs) Records Retention List* which located at *www.SquareMeals.org*.

Records Retention

CEs must retain documentation related to all compliance reviews. If a case occurs where records used or needed for the compliance review process exceed the number of years required for documents to be retained, the CE must retain all compliance review related records until the appropriate number of years have passed from the date the compliance review was closed.

CEs have the option to maintain records on paper or electronically. All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, nonprofit organizations, and residential childcare institutions (RCCIs) after the end of the fiscal year to which they pertain.

Information Box 2
Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

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Compliance

USDA regulations require that CEs comply with all requests for information and documentation to demonstrate compliance in a timely manner. If a CE does not provide the information and documentation in a timely manner, the CE is out of compliance with regulations. When a CE is found to be out of compliance with regulations, the CE must take action to achieve compliance with the submission of required documentation in order to continue operation of the program.

Whenever a CE is out of compliance, the CE will be required to perform and document corrective action for the area of non-compliance. CEs are expected to provide approvable corrective action documents (CADs) or corrective action plans (CAPs) that demonstrate that the CE has taken action to resolve all findings according to the timeline and directions that TDA provides. CEs will upload CAD responses into TX-UNPS for ARs and as directed for AFRs and PRs CADs or CAPs. Corrective action must be applied to all sites to ensure that correction for all findings or errors are made CE-wide.

Notification of Findings or Errors

TDA will provide a description of preliminary findings or errors at the exit conference or, if an offsite-only review, in the preliminary results notification. In the final compliance review report, TDA will notify the CE of any findings or errors that must be corrected in order for the CE to continue operation of the program.

Notification for findings or errors will include, but is not limited to, the following:

1. Description of the finding or error
2. Statement describing the corrective action the CE must take to resolve all findings and errors immediately and in the future
3. Description of the result or outcome that must occur when the CE corrects the finding or error
4. Timeline for submitting documentation to TDA that demonstrates corrective action has occurred
5. Description of the method to submit documentation demonstrating compliance

Fiscal Action

TDA will take fiscal action as described by USDA regulation and policy and may terminate the Food and Nutrition Division Permanent Agreement for any CE that is not in compliance with all requirements.

Fiscal Action for ARs

The regulations require fiscal action for Critical Areas of Review[2] and provide a framework to allow TDA to take fiscal action or withhold payments for program noncompliance in the General Areas of Review.[3] This includes, but is not limited to, the following:[4]

- Fiscal action may result if an overclaim is noted during the review.[5]
- Fiscal action may be taken when there are repeated findings across reviews of any type.

[2] Critical Area 1: Meal Access and Reimbursement and Critical Area 2: Meal Pattern and Nutritional Quality
[3] Fiscal action is authorized or required by 7 CFR Parts 210, 2015, or 220, as applicable.
[4] See the *Administrator's Reference Manual, Section 20, Counting & Claiming* for additional information on this topic.
[5] An overclaim is the portion of a CE's claim for reimbursement that exceeds the federal financial assistance that is properly payable.

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- Fiscal action may be applied CE-wide for noncompliance related to eligibility determination (Meal Access and Reimbursement).
- Fiscal action may include the suspension of the performance-based reimbursement for meal pattern noncompliance.
- TDA has an option to disregard any overclaim of $600 or less per program[6] each fiscal year.

Additional Action for AR, AFR, and PR Which May Impact the CE Financially

Findings from an AR, AFR, and PR may require payment from the CE's general fund to reimburse the nonprofit school food service account for unallowable costs—reimburse the nonprofit food service account for unallowable costs.

TDA may also place a financial hold on a CEs funds until a CE has achieved compliance. Once the CE has achieved compliance, the financial hold will be removed. To receive reimbursement for the period of time when the CE's funds are placed on financial hold, the CE must continue to submit claims each month while funds are on hold.

Termination of the Agreement

According to federal regulations, TDA will evaluate whether the degree of noncompliance by a CE demonstrates long-term, willful or egregious, and/or systemic noncompliance which warrants termination of the Food and Nutrition Division Permanent Agreement.

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[6] NSLP, SBP, or CACFP

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Appeals

An appeals procedure is provided when fiscal action is taken, when reimbursement of unallowable costs is required, or when a CE's funds are placed on hold. A CE can appeal fiscal action resulting from the denial of all or part of a claim for reimbursement, reimbursement for unallowable costs, or withholding of payments. Findings cannot be appealed. The *Appeals Timeframe Chart* provides a summary of the appeals actions and timelines.[7]

Appeals Timeframe Summary Chart	
CE submits written request for an appeal—postmarked or submitted to TDA within 15 calendar days of receipt of notice of fiscal action or withholding of funds notice.	TDA and CE are informed of the Administrative Review Official's (ARO's) decision on appeal of fiscal action or withholding of funds—within 60 calendar days of the date of receipt of the CE's request for an appeal.
TDA acknowledges receipt request for appeal—within 10 calendar days of receipt of appeal request.	
TDA and CE are given notice of the date of the appeal hearing—at least 10 calendar days before hearing.	

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[7] The requirements for an appeal are set out in *Title 4, Part 1, Chapter 26, Subchapter E,* as applicable of the Texas Administrative Code.

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