

## ATTACHMENT A

### SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN INFANTS, AND CHILDREN (WIC) FARMERS' MARKET NUTRITION PROGRAM (FMNP) QUESTIONS AND ANSWERS ON PROGRAM FLEXIBILITIES DURING A PANDEMIC

#### A. Existing flexibilities allowable within current regulations

**Question 1.** May a State agency skip the FMNP application form WIC participants typically sign and only record who receives coupons?

**Answer:** Yes. Although FMNP regulations do not require either an application form or a recipient signature to receive coupons, they do require issuance records that coupons were issued to valid recipients, which may be maintained electronically. See 7 CFR 248.10(h).

**Question 2.** May the State agency mail FMNP coupons to eligible recipients?

**Answer:** Yes. The State agency may mail FMNP coupons to eligible recipients. However, the State agency may not charge the cost of mailing coupons to its Federal FMNP food grant. Federal FMNP administrative funds or other non-Federal funds must be used to cover the cost of mailing FMNP coupons to recipients. See 7 CFR 248.12(a)(1)(i) and (b).

**Question 3.** May the nutrition education requirement for FMNP recipients be administered remotely or by mail?

**Answer:** Yes. Nutrition education to satisfy FMNP requirements may be conducted by any remote means necessary, including but not limited to telephone, mail, or online education. See 7 CFR 248.9(b).

**Question 4.** May the State agency provide instructions on the use of FMNP coupons to recipients in an electronic format only?

**Answer:** Yes. FMNP regulations at 7 CFR 248.10(i) do not prohibit the State agency from providing instructions to recipients electronically, including via email, online, etc.

**Question 5.** Is the State agency or another qualified individual, such as a county extension agent, required to visit a farmer's farm before approving the farmer as an authorized FMNP outlet?

**Answer:** No. FMNP regulations at 7 CFR 248.10 do not require a pre-authorization visit before a State agency approves a farmer as an authorized FMNP outlet.

**Question 6.** May the State agency implement social distancing practices in its FMNP operations?

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

**Answer:** Yes. The State agency has the discretion to implement a variety of acceptable social distancing practices in its FMNP operations, including limiting the number of people permitted inside a farmers' market at one time and using curbside pickup of eligible foods. FMNP farmers, farmers' markets, or roadside stands may not charge participants for extra services rendered. See 7 CFR 248.6(c) and 246.10(b)(1)(iii).

**Question 7.** Will there be special consideration to the FY 2021 funding formula if there are large amounts of FMNP funds returned at the end of FY 2020?

**Answer:** The FMNP funding formula does not take into account expenditures of prior year grant funds when allocating base grants. Provided that sufficient FMNP funds are available, each State agency that participated in the FMNP in any prior year, will receive not less than the amount of funds the State agency received in the most recent fiscal year in which it received funding. See 7 CFR 248.14(b).

## **B. Regulatory requirements that may be waived by request**

**Question 8.** Can FNS waive the regulatory requirement for face-to-face training to permit FMNP State agencies to conduct remote training for all new farmers and farmers' market managers?

**Answer:** Yes. The State agency may submit a request to waive the requirement at 7 CFR 248.10(a)(4) and (d) to conduct face-to-face training for farmers and farmers' market managers who have never previously participated in the FMNP. The FMNP State agency may propose to conduct the initial training of farmers and farmers' market managers by remote means, including but not limited to telephone conference calls, video conferences, and web-based training. USDA FNS will expedite review of the request.

**Question 9.** Can FNS waive the regulatory requirement that FMNP authorized farmer agreements not exceed three years to permit the State agency to extend currently expiring farmer agreements by one year?

**Answer:** Yes. The State agency may submit a request to waive the requirement at 7 CFR 248.10(b)(7) that FMNP authorized farmer agreements may not exceed three years, specifying the duration by which the State agency wishes to maintain active agreements. USDA FNS will expedite review of the request.

## **C. Statutory requirements that cannot be waived**

**Question 10.** May the State agency implement the bulk purchase option or community supported agriculture (CSA) program option similar to the Senior Farmers' Market Nutrition Program (SFMNP)?

**Answer:** No. Section 17(m)(1) of the CNA requires recipients to exchange coupons for fresh, nutritious, unprepared foods at farmers’ markets and/or roadside stands. Since the bulk purchase and CSA program options administered by SFMNP State agencies do not use coupons or farmers’ markets, they cannot be implemented for the FMNP.

**Question 11.** May FMNP coupons be used online to purchase eligible foods?

**Answer:** No. Section 17(m)(1) of the CNA requires recipients to exchange coupons for eligible foods at farmers’ markets and/or roadside stands.

**Question 12.** May the State agency increase the amount of the FMNP season benefit above \$30?

**Answer:** No. Section 17(m)(5)(C) of the CNA specifies the value of the Federal share of the FMNP benefits received by any recipient may not be less than \$10 per year or more than \$30 per year.

**Question 13.** May the State agency extend the FMNP coupon issuance date from September 30, 2020 to October 31, 2020?

**Answer:** No. Section 17(m)(9)(B)(i)(I) of the CNA prohibits FMNP State agencies from entering into new obligations of FY 2020 grant funds after September 30, 2020.

**Question 14.** May the State agency disregard the regulatory requirement in 7 CFR 248.10(b)(1)(v) that requires one-to-one reconciliation of FMNP coupons?

**Answer:** No. Section 17(m)(1) of the CNA requires recipients to exchange coupons for eligible foods at farmers’ markets and/or roadside stands. Section 17(m)(5)(E) states: “The coupon redemption process under the program shall be designed to ensure that the coupons may be—(i) redeemed only by producers authorized by the State to participate in the program; and (ii) redeemed only to purchase fresh nutritious unprepared food for human consumption.” And, Section 17(m)(10)(A) of the CNA defines “coupon” as “a coupon, voucher, or other negotiable financial instrument by which benefits under this section are transferred.” FMNP coupons should match valid issuance records, and redeemed coupons should bear identification of the authorized farmers paid for providing eligible foods to recipients.

**Question 15.** May the State agency carryover unused FY 2020 FMNP funds into FY 2021?

**Answer:** No. Section 17(m)(9)(B)(i)(I) of the CNA requires State agencies to return all unspent FY 2020 FMNP funds to FNS by February 1, 2021, for reallocation during FY 2021. For a State agency that does not operate the FMNP during FY 2020, FNS will recover unspent grant funds during August 2020 as carryover funds for FY 2021 pursuant to 7 CFR 248.14(k).

#### **Attachment: WIC FMNP Waiver Request Template**