

SUMMER FOOD SERVICE PROGRAM APPLICATION/AGREEMENT

AGREEMENT, APPEAL RIGHTS AND NONDISCRIMINATION STATEMENT

Keep for your records; you are agreeing to abide by these requirements when you submit the SFSP iCAN application for approval.

THE REPORTING AND/OR RECORDKEEPING REQUIREMENTS CONTAINED IN THE APPLICATION AND AGREEMENT HAVE BEEN APPROVED BY THE OFFICE OF MANAGEMENT AND BUDGET IN ACCORDANCE WITH THE FEDERAL REPORTS ACT OF 1942.

In order to carry out the purpose of Section 13 of the National School Lunch Act (42 U.S.C. 1761) as amended, and the regulations governing the Summer Food Service Program for Children issued thereunder 7 CFR Part 225, (hereinafter referred to as the Summer Program), Child and Adult Nutrition Services (hereinafter referred to as the State Agency), and the sponsor whose name and address appear on the Combined Application Section of the Application/Agreement, covenant and agree as follows:

A. THE STATE AGENCY AGREES:

1. To reimburse the sponsor in connection with meals served in accordance with regulations under the Summer Program to the approved sites listed on Part I, F during the period stated.
2. To terminate a sponsor's participation in the Summer Program by written notice whenever it is determined by the State Agency that the sponsor has failed to comply with the rules of the Program.
3. To inform the sponsor of its right to request a review of decisions made by the State Agency which affect the participation of a sponsor in the Summer Program or the sponsor's claim for reimbursement.
4. To aid local agencies in requirements established under 7 CFR 225.16(a), it shall inform appropriate State Departments of Health that the Summer Program is operating.
5. To comply with and meet all responsibilities and requirements set forth in 7 CFR Part 225, Summer Food Service Program regulations.

B. THE SPONSOR/LOCAL AGENCY AGREES THAT:

1. It will comply with and meet all responsibilities and requirements set forth in 7 CFR Part 225, Summer Food Service Program regulations,
2. If it is a unit of local, municipal, county, tribal, or state government, or a private nonprofit organization, it will directly operate the program in accordance with 7 CFR 225.14(d).
3. It will accept final administrative and financial responsibility for total program operations at all sites listed in Part I, F of the application.
4. It will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist, or qualify as a camp.
5. The sites at which summer school is in session are open both to children enrolled in summer school, and to all children residing in the area serviced by the site.
6. All sites will be monitored before program operations to ensure that all sites have the capability and the facilities to provide the meal service for the planned number of children.
7. It will provide capable supervisory and operational personnel for overall monitoring and management at each site.

8. When a sponsor's staff person identifies a problem, he/she will notify the site supervisor and/or authorized representative immediately for major infractions and by the end of the next operating day for minor infractions (see below for definition of major and minor infractions). The person notified will begin implementing corrective action immediately for major infractions and by the end of the next operating day (from time of notification) for minor infractions.

Upon request, all accounts and records pertaining to its Summer Food Service Program will be made available to the State Agency or its designee(s), to USDA Food and Nutrition Services, and to the Office of Inspector General for audit or review at a reasonable time and place. These representatives shall be provided reasonable private space accommodation to assure confidentiality to complete a review of documents and records.

Sponsors will be advised of state agency identified deficiencies with written notification following a review. Sponsors will begin implementing corrective action immediately for major infractions and by the end of the next operating day for minor infractions.

If an outside party notifies the state agency of a problem, state agency staff will follow the same criteria for notification as the sponsor's staff, and would expect the same follow-up.

In any of the above cases, the authorized representative or his/her designee will conduct a follow-up review within two operating days (from implementation of corrective action) for major infractions and within five operating days for minor infractions.

The sponsor will send the state agency a written response outlining the action taken for any deficiency brought to their attention by the state agency. This response will be sent within ten working days unless the state agency has granted an extension due to extenuating circumstances.

Major infractions include:

- any circumstance that
 - is/could be detrimental to the health and/or well-being of participating children;
 - denies eligible children access to the program

--claiming meals:

- that do not meet meal pattern requirements;
- served to adults;
- in excess of number served;
- for unapproved:

- sites
- meal types
- dates

--claiming disallowed and/or unsubstantiated expenses;

--not reporting income to the program;

--submission of false information on SFSP forms;

--any infraction so identified by the state agency;

Minor infractions include:

--a few meals taken off site by children;

--a few meals with insufficient portion sizes;

--service of meals outside the approved meal time(s), with no resultant disruption of the entire meal service;

--records lacking sufficient detail and/or that occasionally are not kept up-to-date.

9. WARNING STATEMENT OF CRIMINAL PROVISIONS AND PENALTIES:

As established in Section 13 (o) of the National School Lunch Act (42 U.S.C. 1761 (o)):

- a. Whoever, in connection with any application, procurement, recordkeeping entry, claim for reimbursement, or other document or statement made in connection with the Program, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or whoever, in connection with the Program, knowingly makes an opportunity for any person to defraud the United States, or does or omits to do any act with intent to enable any person to defraud the United States, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.
- b. Whoever being a partner, officer, director, or managing agent connected in any capacity with any partnership, association, corporation, business, or organization, either public or private, that receives benefits under the Program, knowingly or willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any benefits provided by this Program, or any money, funds, assets, or property derived from benefits provided by this Program, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both (but, if the benefits, money, funds, assets, or property involved is not over \$200, than the penalty shall be a fine of not more than \$1,000 or imprisonment for not more than one year, or both).
- c. If two or more persons conspire or collude to accomplish any act described in paragraphs (a)(4)(i) of Section 225.6, and one or more of such persons do any act to effect the object of the conspiracy or collusion, or property are of value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years, or both, or if such funds, assets, or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

10. TERMINATION PROCEDURES

As established by Section 225.11 (C) of the SFSP Regulations:

- a. The State agency shall terminate the Program agreement with any sponsor which it determines to be seriously deficient. However, the State agency shall afford a sponsor reasonable opportunity to correct problems before terminating the sponsor for being seriously deficient.
- b. The State agency may approve the application of a sponsor, which has been disapproved or terminated in prior years in accordance with this paragraph, if the sponsor demonstrates to the satisfaction of the State agency that the sponsor has taken appropriate corrective actions to prevent recurrence of the deficiencies. Serious deficiencies which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:
 - (1) Noncompliance with the applicable bid procedures and contract requirements of Federal child nutrition program regulations.
 - (2) The submission of false information to the State agency.
 - (3) Failure to return to the State agency any start-up or advance payments which exceeded the amount earned for serving meals in accordance with Part 225, or failure to submit all claims for reimbursement in any prior year, provided that failure to return any advance payments for months for

which claims for reimbursement are under dispute from any prior year shall not be grounds for disapproval in accordance with this paragraph.

- (4) Program violations at a significant proportion of the sponsor's sites. Such violations include, but are not limited to, the following:
 - (a) Noncompliance with the meal service time restrictions set forth in Section 225.16(c).
 - (b) Failure to maintain adequate records.
 - (c) Failure to adjust meal orders to conform to variations in the number of participating children.
 - (d) The simultaneous service of more than one meal to any child.
 - (e) The claiming of Program payments for meals not served to participating children.
 - (f) Service of a significant number of meals which did not include required quantities of all meal components.
 - (g) Excessive instances of off-site meal consumption.
 - (h) Continued use of food service management companies that are in violation of health codes.
- c. Sponsors or sites which have been terminated in accordance with the provisions above shall be allowed to appeal in accordance with Section 225.13.

11. It will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 42 U.S.C. 2000d et seq.) and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), Department of Justice (28 CFR Parts 42 & 50), and FNS directives or regulations issued pursuant to that Act and the regulations, to the effect that no person in United States shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the program applicant receives Federal financial assistance from the Department; and hereby gives assurance that it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants and loans of Federal funds; reimbursable expenditures; grant or donation of Federal property and interest in property, the detail of Federal personnel; and the sale and lease of, and the permission to use, Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the program applicant by the Department. This includes any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the program applicant agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of Title VI and permit authorized USDA personnel during normal working hours to review such records, books and accounts as needed to ascertain compliance with Title VI. If there are any violations of this assurance, the Department of Agriculture Food and Nutrition Service shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the program applicant, its successors, transferees, and assignees as long as they receive assistance or retain possession of any assistance from the Department.

APPEAL PROCEDURES

A. ACTIONS WHICH CAN BE APPEALED

In accordance with 7 CFR 225.13, a sponsoring organization or a food service management company may appeal, by requesting a review, the following actions made by Child and Adult Nutrition Services, hereinafter referred to as the State Agency:

1. denial of an organization's application for participation;
2. denial of an application submitted by a sponsoring organization for a site;
3. termination of the participation of a sponsor or a site;
4. denial of an advance payment;
5. denial of all or a part of a claim for reimbursement (except for late submission under 225.9 (d)(6));
6. demand for the remittance of a payment;
7. refusal by the State Agency to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim;
8. denial of a food service management company's application for registration; or
9. revocation of a food service management company's registration.

B. STATE AGENCY RESPONSIBILITIES

The sponsor or food service management company shall be advised in writing of the grounds upon which the State Agency based the action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the sponsor or food service management company has the right to appeal the action of the State Agency.

C. FILING AN APPEAL

1. The appellant shall have an opportunity to review any information upon which the action was based.
2. The appeal must be postmarked no later than two weeks from the date of receipt of the notice of action.
3. The appeal request must state whether the appellant desires the hearing office to review records only or if the appellant desires a hearing before the review official/hearing officer.
4. The appellant may refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven (7) days of submitting the appeal, must clearly identify the State Agency action being appealed, and must include a photocopy of the notice of action issued by the State Agency.
5. Mail the request to the Secretary, Department of Education, 800 Governors Drive, Pierre, SD 57501-2294.
6. The appellant may retain legal counsel or may be represented by another person.

D. PROCEDURES FOR HANDLING REVIEW

1. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter requesting the appeal the action.
2. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing.
3. A representative of the State Agency shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official.
4. If the appellant has requested a hearing, the appellant and the State Agency shall be provided with at least (5) days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.
5. The hearing shall be held within fourteen (14) days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraphs (4) and (5) of 225.13.
6. The review official shall be independent of the original decision making process.
7. A record regarding each review shall be kept by the State Agency for a period of three years following the date of the final determination of the appeal. Records may be kept in their original form or on microfilm. The record shall document the State Agency's compliance with these regulations and shall include the basis for the decision.

E. DETERMINATION OF THE REVIEW OFFICER

1. The review official shall make a determination based on information provided by the State Agency and the appellant, and in consistency with Summer Program regulations and policy.
2. Within five (5) working days after the appellant's hearing, or within five (5) working days after receipt of written documentation if no hearing is held, the reviewing official must make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested.

F. PROCEDURE PRIOR TO REVIEW

The State Agency's action shall remain in effect during the appeal process. However, participating sponsors and sites may continue operating under the Summer Program during an appeal or termination, and if the appeal results in overturning the State Agency's decision, reimbursement shall be paid for eligible meals served during the appeal process. However, such continued summer program operation shall not be allowed, if the State Agency's action is based on imminent danger to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State Agency shall so specify in its notice of action.

G. FINAL DETERMINATION

The determination by the State review official is the final administrative determination to be afforded to the appellant.

NONDISCRIMINATION STATEMENT:

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, religious creed, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information

(e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at:

http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter 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;
- (2) fax: (202) 690-7442; or
- (3) email: program.intake@usda.gov.

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