



United States
Department of
Agriculture

Food and
Nutrition
Service

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Center Drive
Alexandria, VA
22302-1500

DATE: March 29, 2013

MEMO CODE: CACFP 09-2013

SUBJECT: Additional State Agency Requirements in the Child and Adult Care Food Program

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The purpose of this memorandum is to provide a standard process to be used by State agencies when requesting approval to implement additional requirements for the Child and Adult Care Food Program (CACFP). States may impose additional requirements which must be consistent with CACFP Federal requirements, not deny access to the Program to eligible institutions, and have been reviewed and approved by the applicable Food and Nutrition Service (FNS) Regional Office [7 CFR §226.25(b)]. This standard process will provide a straightforward method for State agencies and FNS Regional Offices to use in the review and approval process.

State agencies must submit a written request for review and approval to the appropriate FNS Special Nutrition Programs Regional Director at least 30 days prior to the date of implementation of the proposed additional requirement. The State agency must receive written approval from the FNS Regional Office before initiating implementation of the proposed requirement. A prototype State agency request form is attached, which State agencies may use. At a minimum, State agencies must include the following information when submitting a request for proposed additional requirements to the FNS Regional Office:

- a description of the proposed additional requirement, including the affected CACFP institutions and participants;
- a description of what the proposed additional requirement is intended to accomplish; and
- an assurance that the proposed additional requirement will not deny access to eligible institutions and participants.

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

FNS Regional Offices will review requests from State agencies and determine whether the additional requirements conform to the regulatory requirements as discussed above. An FNS Regional Office may approve a proposed additional requirement for a specific period of time with a maximum of three years. FNS also may revoke the approval of a proposed additional requirement based on changes made to the Program or issues that may arise after the implementation of the additional requirement. A decision by an FNS Regional Office not to approve a proposed additional requirement does not provide an opportunity for appeal by the State agency.

State agencies may not deny an application, disallow meals that are otherwise reimbursable, assess an overclaim, declare a sponsor seriously deficient, or terminate a sponsor based solely on the violation of an additional State agency requirement. Instead, such a violation may result in a finding, whereby the State agency may require corrective action. As noted above, however, failure to correct the finding may not result in disallowance of the Federal reimbursement or other adverse action as provided for in the CACFP regulations.

State agencies that have already implemented additional requirements that have not been reviewed and approved by the FNS Regional Office must submit a request for review and approval. Going forward, CACFP management evaluations will include a review of additional requirements imposed by State agencies. The FNS Regional Office will issue a finding to address any noncompliance should it be determined that a State agency has implemented additional requirements without FNS Regional Office approval.

Please note, 7 CFR §226.6(f)(3)(iv) allows State agencies to put in place certain specific additional requirements. Because these are specifically permitted by the regulations they would not be considered additional State agency requirements subject to FNS Regional Office approval. Similarly, 7 CFR §226.15(e) requires institutions to maintain any records required by the State agency. Therefore, additional record requirements established by the State agency, including production records, are not subject to FNS Regional Office approval and are enforceable with fiscal action by the State agency.

State agencies should direct any questions concerning this guidance to the appropriate FNS Regional Office.

Original Signed

Melissa Rothstein
Acting Director
Child Nutrition Division

Attachment

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Child and Adult Care Food Program

State Agency Request to Implement Additional Requirements

State agencies administering the Child and Adult Care Food Program (CACFP) are authorized to implement additional Program requirements that are not inconsistent with the Federal requirements, do not deny access to the Program to an eligible institution, and have been reviewed and approved by the applicable FNS Regional Office (7 CFR §226.25(b)). **Please provide the information requested below and return to the appropriate Special Nutrition Programs Regional Director for consideration at least 30 days prior to the planned implementation of the requirement.**

State Agency:	Contact Person and Title:	Date:
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Email Address:	Phone Number:	Name and Title of State Agency Authorizing Official:
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Please provide a description of the additional Program requirement, including the affected Program participants.

Please explain what this additional Program requirement is intended to accomplish.

Please provide assurances that this additional Program requirement is not inconsistent with Program regulations and will not create barriers to participation or deny access to eligible institutions.

1 Use of this form is not required, but is provided as an example of the information that should be submitted by State agencies to the Food and Nutrition Service Regional Office.

This additional requirement applies to:

All Institutions and Family Day Care Home Providers

If this requirement does not apply to all institutions and family day care home providers, **check all that apply:**

- | | | |
|---|---|--|
| <input type="checkbox"/> School sponsors | <input type="checkbox"/> Private nonprofit sponsors | <input type="checkbox"/> Governmental sponsors |
| <input type="checkbox"/> For-profit sponsors | <input type="checkbox"/> Independent centers | <input type="checkbox"/> Sponsored centers |
| <input type="checkbox"/> Family day care home providers | <input type="checkbox"/> Other: _____ | |

Signature of State Agency
Authorizing Official

Title

Date

Regional Office Response

Approved

Effective date of approval: _____ Expiration date of approval: _____

Summary of Justification for Approval of Additional Requirement:

Denied

Summary of Justification for Denial:

Signature

Title

Date