



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

DATE: January 24, 2013

MEMO CODE: SFSP 06-2013 - REVISED

SUBJECT: Additional State Agency Requirements in the Summer Food Service Program

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The purpose of this memorandum is to introduce a standard process to be used by State agencies when requesting approval to implement additional State agency requirements for the Summer Food Service Program (SFSP) and clarify enforcement options. This memorandum supersedes SFSP 03-2012, *Additional State Requirements in the Summer Food Service Program*, October 31, 2011.

States are permitted to implement additional State agency requirements that are not inconsistent with the Federal requirements, do not deny access to the Program to eligible children, and have been reviewed and approved by the applicable Food and Nutrition Service (FNS) Regional Office [7 CFR §225.18(f)].

Formal Request

Before implementing additional requirements, State agencies are required to submit a formal request to the FNS Special Nutrition Programs Regional Director in their region. The request must be submitted at least 30 days before implementation of the additional requirement and the State agency must receive approval from the FNS Regional Office before implementation. A prototype State agency request form is attached. State agencies are not required to use the attached form. However, State agencies must include the following information when submitting a request to the FNS Regional Office:

- a description of the additional State agency requirement, including the affected Program participants;
- a justification as to why the additional State agency requirement is necessary; and
- an assurance that the additional State agency requirement will not create barriers to participation or deny access to eligible children.

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 Review

FNS Regional Offices will review requests from State agencies and determine whether the additional requirement meets the regulatory requirements as discussed above. FNS Regional Offices have the authority to reject a request, at their discretion, or to limit the approval to a specific period of time, with a maximum effective period of three years. FNS also has the authority to revoke previous approval of a request based on changes made to the Program at the Federal level or issues that may arise after the implementation of the additional requirement.

State agencies that have already implemented additional requirements that have not been reviewed and approved by the Regional Office must submit a request for review and approval. Beginning in fiscal year 2013, SFSP management evaluations will include a review of additional State agency requirements. If a State agency has implemented additional requirements that were not approved by the Regional Office, it will be considered a finding.

Enforcement

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 then requires 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 Federal regulations.

Some requirements outlined in Program regulations, however, may be enforced at the discretion of the State agency and do not require FNS approval prior to implementation. An example of a discretionary requirement is a deadline set for less than 60 days for the final claim for reimbursement [7 CFR §225.9(d)(6)]. State agencies must disallow meals, assess an overclaim, or declare a sponsor seriously deficient, when such requirements enforced by the State agency are not met.

Production Records

Some State agencies currently require sponsors to maintain production records, which include detailed information about how food was purchased and the specific amounts of foods prepared and served. This is not a Federal requirement and FNS has encouraged State agencies to reconsider this requirement due to the additional administrative burden it places on sponsors and sites [SFSP 14-2011, *Existing Flexibilities in the Summer Food Service Program*, May 9, 2011; 7 CFR §225.16(d)].

In lieu of production records, State agencies should review menus, invoices, receipts, and other food service records to ensure meal pattern requirements are met on the day of the review and

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.

Regional Directors
State Directors
Page 3

during the selected review period. State agencies may not disallow meals that are otherwise reimbursable or assess an overclaim based solely on a State requirement concerning production records.

Original Signed

Cynthia Long
Director
Child Nutrition Division

Enclosure

Summer Food Service Program (SFSP)

State Agency Request to Implement Additional Requirements

States are authorized by the regulations to implement additional operating requirements that are not inconsistent with the Federal requirements, do not deny access to the Program to eligible children, and have been reviewed and approved by the applicable FNS Regional Offices as required by 7 CFR §225.18(f). **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 (SA):	Contact Person and Title:	Date:
Email Address:	Phone Number:	Name and Title of SA Authorizing Official:

Please provide a description of the additional program requirement, including the affected Program participants.

Please provide the justification for why this additional Program requirement is necessary.

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

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.

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.

Summer Food Service Program (SFSP)

State Agency Request to Implement Additional Requirements

This additional requirement applies to:

☐ All SFSP sponsors

If not all sponsors then **check all that apply:**

☐ Nonprofit sponsors

☐ Government sponsors

☐ School sponsors

☐ Other _____

State Agency Authorizing Official

Title

Date

Regional Office Response

☐ Approved

Effective date of approval _____ Expiration date of approval _____

Summary of Justification for Additional Requirement:

☐ Denied

Reason for denial:

Dates of approval: From _____ Until _____

Signature

Title

Date