

VERMONT DEPARTMENT OF EDUCATION
CHILD NUTRITION PROGRAMS

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| TITLE OF POLICY MEMORANDUM | |
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| FROM | Laurie Colgan, Director, Child Nutrition Programs |
| APPLIES TO | Summer Food Service Program |
| SUBJECT | Appeal Procedures |
| DATE | February 24, 2011 |

I. Purpose and Scope

A. The purpose of this policy memorandum is to implement appeal procedures found at 7 CFR 225.13. “Each State agency shall establish a procedure to be followed by an applicant appealing: A denial of an application for participation; a denial of a sponsor’s request for an advance payment; a denial of a sponsor’s claim for reimbursement (except for late submission under §225.9(d)(5)); a State agency’s refusal 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; a claim against a sponsor for remittance of a payment; the termination of the sponsor or a site; a denial of a sponsor’s application for a site; a denial of a food service management company’s application for registration, if applicable; or the revocation of a food service management company’s registration, if applicable. Appeals shall not be allowed on decisions made by FNS with respect to late claims or upward adjustments under §225.9(d)(5).

B. Included are procedures and deadlines that program sponsors must use to file appeals.

II. Legal Requirements

Laws and regulations that serve as the basis for this policy include:

- 7CFR §225

III. Implementation Requirements

The State Agency shall send notification of this procedure to each potential sponsor applying to participate and to each FSMC applying to register.

A. An applicant must use the prescribed procedures below in order to appeal the following actions:

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- a. The denial of an application for participation;
 - b. The denial of a sponsor’s request for an advance payment;
 - c. The denial of a sponsor’s claim for reimbursement (except late submission under 225.9(d)(5));
 - d. A state agency’s refusal to forward to FNS an exception request by the sponsor for a payment of a late claim or a request for an upward adjustment to a claim;
 - e. A claim against a sponsor for remittance of a payment;
 - f. The termination of the sponsor or a site;
 - g. A denial of a sponsor’s application for a site;
 - h. A denial of a food service management company’s application for registration;
 - i. Or the revocation of a Food Service Management Company’s registration.
- B. 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 state that the sponsor or food service management company has the right to appeal the State's action;
- C. The sponsor or food service management company shall be advised in writing that the appeal must be made within a specified time and must meet the requirements of paragraph (b)(4) of §225.13. The State agency shall establish this period of time at not less than one week nor more than two weeks from the date on which the notice of action is received;
- D. The appellant shall be allowed the opportunity to review any information upon which the action was based;
- E. The appellant shall be allowed to 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 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;
- F. 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 appealing the action. The appellant may retain legal counsel or may be represented by another person. 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. 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;

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- G. 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;
- H. The hearing shall be held within 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 (b) (4) and (5) of §225.13;
- I. The review official be independent of the original decision-making process;
- J. The review official make a determination based on information provided by the State agency and the appellant, and on Program regulations;
- K. Within 5 working days after the appellant's hearing, or within 5 working days after receipt of written documentation if no hearing is held, the reviewing official 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;
- L. The State agency's action remains in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued Program operation shall not be allowed if the State agency's action is based on imminent dangers 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; and
- M. The determination by the State review official is the final administrative determination to be afforded to the appellant.
- N. (c) The State agency shall send written notification of the complete appeal procedures and of the actions which are appealable, as specified in paragraph (a) of this section, to each potential sponsor applying to participate and to each food service management company applying to register in accordance with §225.6(g).
- O. (d) A record regarding each review shall be kept by the State agency, as required under §225.8(a). The record shall document the State agency's compliance with these regulations and shall include the basis for its decision.

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