Attachment A, SNP Memo No. 2020-2021-61

May 28, 2021



Permanent Agreement to Participate in the School Nutrition Programs

Between the Virginia Department of Education and the School Food Authority

**School Division/Residential Child Care Institution (RCCI):** Click or tap to enter School Division/RCCI

**Division Number:** Click or tap to enter Division Number

In order to effectuate the purpose of the National School Lunch Act (NSLA) and the Child Nutrition Act (CNA) of 1966, as amended, the Virginia Department of Education (VDOE), hereinafter referred to as *Department,* and the school food authority (SFA) whose name and division identification number appear above, acting on behalf of each school under its jurisdiction with a complete site application in the VDOE School Nutrition Programs (SNP) Web system (SNPWeb), covenant and agree as follows:

**THE DEPARTMENT AGREES**, to the extent of funds available:

1. To reimburse the SFA for the programs operated by it in accordance with whichever of the following regulations are applicable to such programs: National School Lunch Program (NSLP) and Afterschool Snack Program (ASP) regulations 7CFR part 210, School Breakfast Program (SBP) regulations 7CFR part 220, the Special Milk Program (SMP) regulations 7CFR part 215, Free and Reduced-Price Meal Eligibility regulations 7CFR part 245 and any amendments thereto.
2. To provide performance-based cash assistance as authorized under §7 CFR part 210.4(b)(1) for lunches served in SFAs certified by the Department to be in compliance with meal pattern and nutrition requirements set forth in §210.10 and, if the SFA participates in the SBP (7 CFR part 220 §220.8 or §220.23), as applicable.
3. To establish procedures to certify SFAs for performance-based cash assistance in accordance with guidance established by the U.S. Department of Agriculture, Food and Nutrition Services (USDA-FNS) and make a determination within 60 days.
4. To disburse performance-based cash assistance for all lunches served beginning with the start of certification provided that documentation reflects meal service in the calendar month the certification materials are submitted or, in the month preceding the calendar month of submission.
5. To ensure that SFAs comply with the requirements for pricing paid lunches and non- program foods as required in §7 CFR part 210.14(e) and § 210.14(f).

**THE SFA** and participating schools/RCCIs under its jurisdiction agree to comply with all provisions thereof, and with any instructions or procedures issued in connection therewith and to accept federal funds in accordance with the applicable regulations and any amendments thereto. The SFA further agrees that for each participating school/RCCI under its jurisdiction it will conduct the indicated program(s) in accordance with the Department's regulations and will conform to the following requirements in the conduct of each program (unless the requirement is restricted to a particular program):

1. Operate and maintain a nonprofit school food service program and use program revenue only for the operation or improvement of the school food service, except that such revenue shall not be used to purchase land or buildings or to construct buildings. (7CFR part 210.14(a))
2. Comply with the limitations on any competitive school food service. Establish such rules or regulations as are necessary to control the sale of foods in competition with meals served under these programs. (7CFR part 210.11 (b), 8VAC 20-290-10 and 8VAC 20-580-10)
3. Limit its net cash resources to an amount that does not exceed three months average expenditures for its nonprofit school food service or other such amount as may be approved by the USDA and the Department. (7CFR part 210.19 (a))
4. Maintain a financial management system to comply with state and federal regulations regarding financial management. (7CFR part 210.14 (c))
5. Ensure that all foods sold in a school and purchased with funds from the nonprofit school food service account, other than meals and supplements reimbursed by the USDA, generates revenue at least equal to the cost of such foods. (7 CFR 210.14(f))
6. Serve meals and/or milk that meet the requirements prescribed in regulations by the USDA. (7CFR part 210.10, 7 CFR part 215, 7 CFR part 220)
7. Offer lunches that meet requirements during the period the school has designated as the lunch period. Schools must offer lunches between 10:00 a.m.-2:00 p.m. (7CFR 210.10 (f))
8. Price meals as a unit, except in non-pricing meal programs (RCCI and Provision 2 schools) where, as described in the application, no charge is made. Price milk in accordance with the federal regulations. (7CFR part 210.9 (b) (6)) and Part 215.8)
9. Annually establish paid meal prices in accordance with the federal regulations. (7 CFR§210.14 (e) (2), (e) (4) and (e) (5), and to increase prices for paid lunches, as described in §210.14(e) (3), or add financial support from non-federal sources to the school food service account.
10. Set reduced-price charges for lunch, breakfast, and afterschool snack, as applicable, at or below maximum reduced price allowed by regulations ($.40, $.30, and $.15, respectively) and below the full price of the lunch, breakfast, or snack. (7CFR part 245)
11. Make meals and/or milk available, at no cost (free) or at a reduced price, to all children who are determined by the SFA to be eligible for such meals. (7CFR part 245)
12. Claim reimbursement at the assigned rates only for reimbursable meals and/or milk served, as applicable, to children who are eligible and approved for free, reduced-price and paid meals respectively. Reimbursement for the NSLP, SBP, ASP, and SMP shall be based on daily counts at the point of service, which indicate the number of free, reduced-price and paid reimbursable meals served. (7CFR part 210.8)
13. Designate a school official responsible for the operation of the school nutrition programs to review and analyze meal counts to ensure accuracy before submission to the Department. The appropriate required edit checks must be applied, investigated, and resolved prior to the use of these meal counts in the claim for reimbursement. (7CFR part 210.8 (a) (2) and (3))
14. Submit claims for reimbursement for all programs in accordance with procedures established by the Department. Claims for reimbursement shall be submitted through the VDOE SNPWeb system via the secure Single Sign-on for Web Systems (SSWS) portal. (7CFR part 210.8 (b))
15. Submit claims for reimbursement within 60 days following the claim month. Claims for reimbursement not filed within 60 days will be disallowed. Any exception to this requirement will be made in accordance with USDA-FNS policy. (7CFR part 210.8 (b) (1))
16. Acknowledge that failure to submit accurate claims will result in the recovery of an overclaim and may result in the withholding of payments, suspension, or termination of the program. (7CFR parts 210.24 and 210.25)
17. Acknowledge that if failure to submit accurate claims reflects embezzlement, willful misapplication of funds, theft, or fraudulent activity, penalties shall apply. (7CFR part 210.26)
18. Maintain files of currently approved and denied free and reduced-price meal applications. Maintain also the names of children eligible for free meals by direct certification based on official documentation, provided by the Department via the SNPWeb system, to certify that the child is included in a household approved to receive benefits under the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program) or Temporary Assistance for Needy Families (TANF); maintain documentation of how categorical eligibility was extended to other students in the household; or, documentation certified by the appropriate authority that the student is a homeless, migrant, or runaway youth; or, documentation that the student is a member of a household certified as income eligible for the Headstart program; or, documentation certified by the welfare agency or courts that the student is a foster child. If the applications and/or direct certification documentation are maintained at the SFA level, they shall be readily retrievable by school. (7CFR part 210.9 (18))
19. Maintain full and accurate records of operations under this Agreement, including those set forth herein. Retain all records for a period of three (3) years after the end of the school year to which they pertain. If such records are part of an unresolved audit, they must be maintained beyond the three-year period, as long as required, for the resolution of the issues raised by the audit. If the school is operating under Provisions 1, 2, or 3 and the records are for the base year, all records must be maintained for as long as the school remains under Provisions 1, 2, or 3, or until three years beyond the establishment of a new base year. (7CFR part 210.23 (c))

The SFA must keep full and accurate records of the school nutrition program(s) to serve as a basis for claims for reimbursement and for audit purposes. (7CFR part 210.7 (d) (2), 210.8, 210.10, and 210.15 (b))

The minimum records to be kept with respect to each program include, but are not limited to, the following:

* Daily number of meals and/or milk served to children, by meal eligibility category and program; (Documentation of participation data by school in support of the claim for reimbursement and data used in the claims review process, as required under §210.8(a), (b), and (c));
* Revenue from children's payments, federal and state reimbursement, food sales to adults, other sources, including loans to the program, and a la carte sales, catered meals, etc.;
* Expenditures supported by invoices, receipts, or other evidence, for food, labor, and other expenditures, including repayment of loans to the program;
* Food production records, using the form provided by the Department or an approved alternate; and
* Daily menus for the breakfast, lunch and afterschool snack programs.
* Documentation to support performance-based cash assistance, as required under §210.7(d) (2), this would include production and menu records as required under §210.10.
1. Make available Make available to the Department and/or the USDA all accounts and records pertaining to operations under this Agreement for review or audit at any reasonable time and place. (7CFR part 210.9 (b) (17))
2. Meet the requirements for determining eligibility for free and reduced-price meals and/or milk. In schools that participate in more than one child nutrition program, eligibility shall be applied uniformly so that the eligible children receive the same benefits in each program. (7CFR part 245.3 (b) (2))
3. Comply with all current and applicable laws, regulations, and guidance regarding Civil Rights and non-discrimination; and, agree that, in the operation of school nutrition programs, no child shall be discriminated against because of race, sex, color, national origin, age, or disability. (7CFR parts 15, 15a, 15b)
4. Agree to follow and ensure implementation of the USDA non-discrimination policy and to post the non-discrimination statement in all offices and on all materials that are produced for public information. (7CFR parts 15, 15a, 15b)

The USDA non-discrimination statement is as follows:

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, disability, age, 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](http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf), (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.

This institution is an equal opportunity provider.

1. Assure the SFA will compile data, maintain records, and submit reports, as required, to permit effective enforcement of the nondiscrimination laws and permit Department and USDA personnel to review such records, books, and accounts, as needed, to ascertain compliance with the nondiscrimination laws. If there are any violations, the USDA shall have the right to seek judicial enforcement of this assurance. This assurance is given in consideration of, and for the purpose of obtaining any and all federal funds, reimbursable expenditures, grant or donation of federal property and interest in property, the detail of federal personnel, or the furnishing of services without consideration or at a normal consideration, or at a consideration which is reduced for the purpose of assisting recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvement made with the federal financial assistance extended to the SFA by the Department. This includes any federal agreement, arrangement, or other contract, which has as one of its purposes, the provisions of assistance such as food, cash assistance for the purchase of food, or any other financial assistance extended in reliance of the representations and agreements made in this assurance. (7CFR parts 15, 15a, 15b)
2. Make no discrimination against any child because of his/her eligibility for free or reduced-price meals or because of his/her inability to pay the full price of the meal. (7CFR part 210.9 (b) (12))
3. Ensure there shall be no overt identification of any child eligible for free or reduced-price meals by use of special tokens, tickets or any other means. The names and/or social security numbers of the children eligible to receive free or reduced-price meals shall not be published, posted, announced, or shared in any manner, except as authorized. The SFA agrees to have a written agreement (Memorandum of Understanding - MOU) between the determining agency and the requesting entity prior to disclosure. Parental permission will be sought before information is used for any other purpose. (7CFR part 245.8 (a))
4. Ensure children eligible for free or reduced-price meals shall not be required to work for their meals; to be physically segregated; to use a separate lunchroom, a separate line, or a separate entrance; to eat meals at a different time; or to eat a meal different from the one sold to children paying the full price. (7CFR parts 245.8 (b) (c) (d) and (e))
5. Designate an appropriate school division official to review applications for free or reduced-price meals and make determinations of eligibility. The official will use criteria outlined in USDA guidance. (7CFR part 245.6 (a))
6. Distribute to each household a letter and an application for free or reduced-price meals at the beginning of each school year and whenever there is a change in eligibility criteria. The letter to households included with the free or reduced-price meal application will have **only** the income eligibility guidelines for reduced-price meals with an explanation that households with incomes at or below the reduced-price guidelines may be eligible for either free or reduced-price meals. Prototype letters and applications are provided by the VDOE in SNPWeb. If any of these prototype letters or forms are altered or customized, the SFA agrees to send such locally developed letters or forms to the Department for approval prior to use. (7CFR part 245.6 (a))
* Applications may be submitted at any time during the year. Any parent enrolling a child in a school for the first time, at anytime during the year, shall be supplied with an application. If a child transfers from one school to another, his eligibility for free or reduced-price meals will be transferred to and honored by the receiving school. Thedate of transfer will be recorded on the application and/or eligibility list when an eligible child leaves or enters a school. (7CFR part 245.3 (c))
* Parents or guardians will be promptly notified of the approval or denial of their application. Children will be served meals or milk immediately upon the establishment of their eligibility. All children from an eligible household will receive the same benefits, with the exception of eligibility determined for a foster child, which may be unique to one child in the household. (7CFR part 245.6 (c)(1))
* When an application is denied, households will be provided written notification which shall include: (1) the reason for the denial of benefits; (2) notification of the right to appeal; (3) instructions on how to appeal; (4) a statement reminding households that they may reapply for free or reduced-price benefits at any time during the school year; and, (5) a local or toll-free phone number to contact a person who can assist the household. The reasons for denial must be properly documented and retained on file. (7CFR part 245.6 (c)(2))
1. Announce publicly the criteria for determining free and reduced-price eligibility; however, no such public announcement shall be required for RCCIs. Submit a public/press release or announcement containing both free and reduced-price eligibility guidelines and all other information outlined in the parent letter, to the local news media, local unemployment offices, and major employers contemplating or experiencing large layoffs. Changes in eligibility criteria must be publicly announced in the same manner at the beginning of each school year. (7CFR part 245.5)
2. Establish and use a fair hearing procedure for parents' appeals of the school division's determination of eligibility for free or reduced-price meals, and for school officials' challenges to the correctness of information contained in an application or continued eligibility of any child for free or reduced-price meals. Records of all such appeals and challenges and their disposition shall be retained for three years after the current year. (7CFR part 245.7 (a))

**The hearing procedure shall provide the following:**

* A publicly announced, simple method for making an oral or written request for a hearing.
* An opportunity to be assisted or represented by an attorney or other person.
* An opportunity to examine, prior to and during the hearing, the documents and records presented to support the decision under appeal.
* Reasonable promptness and convenience in scheduling a hearing and adequate notice as to the time and place of the hearing.
* An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference.
* An opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses.
* That the hearing will be conducted and the decision made by a hearing official who did not participate in the decision under appeal or in any previous conference. It is recommended that the hearing official hold a position at a higher administrative level than the determining official.
* That the decision of the hearing official be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record.
* That the parties concerned and any designated representative thereof be notified in writing of the decision of the hearing official.
* That for each hearing a written record be prepared including, the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official and the reasons therefore, and a copy of the notification, to the parties concerned, of the hearing official's decision.
* That such written record must be retained for a period of three years and must be available for examination by the parties concerned or their representatives at any reasonable time and place during such period.
1. Comply with the verification procedures for free and reduced-price meal applications and report results to the VDOE via the SNPWeb system. Agree to verify eligibility of applicant households in accordance with program regulations and maintain records as follows: (1) a summary of verification efforts: (2) the total number, by category, of applications on file as of October 1; (3) the number of applications verified; (4) the results of verification and reapplication; and (5) the number of applicant students in each of the specified ethnic and racial groups. (7CFR part 245.6 (a))
2. Establish a procedure to collect money from children who pay for their meals and to account for the number of free, reduced-price, and paid meals served in a manner which prevents overt identification of children receiving free or reduced-price meals by this procedure. (7CFR part 245.10 (a) (4))
3. Promote activities to involve students and parents in the programs. (7CFR part 210.12 (a))
4. Establish a local wellness policy for schools/RCCIs under its jurisdiction. (Section 204 of the Healthy, Hunger-Free Kids Act of 2010 (the Act), Public Law 111-296, section 9A to the NSLA (42 U.S.C. 1758b), as amended).
5. Provide when available, for the schools under its jurisdiction and upon the request of a sponsoring organization of day care homes in the CACFP and SFSP, information on the boundaries of the attendance areas for the elementary schools identified as having 50 percent (or as specified in the USDA regulations) or more of enrolled children certified eligible for free or reduced-price meals. (7CFR part 210.9 (b) (20))
6. Maintain necessary facilities for storing, preparing, and serving food. (7CFR part 210.9 (16))
7. Maintain, in the storage, preparation, and service of food, proper sanitation and health standards in conformance with state and local laws and regulations. Schools/RCCIs shall comply with the requirement to obtain a minimum of two food safety inspections each school year and shall post, in a publicly visible location, the results of the most recent inspection. (7CFR part 210.13 (b))
8. Purchase, to the maximum extent practical, domestic products and commodities, as outlined in the Buy American provisions. (7CFR part 210.21 (d))
9. Accept and use, in as large quantities as can be efficiently utilized in its nonprofit food service program, the foods as may be offered as a donation by the USDA. (7CFR part 210.9 (15))
10. Review accountability procedures in the NSLP for each participating school/RCCI under its jurisdiction prior to February 1 of each year. (7CFR part 210.8 (a) (1))
11. Review each ASP twice per year; the first review shall be made during the first four weeks that the program is in operation each school year and the second prior to its end, except that an afterschool snack program operating year round shall be reviewed during the first four weeks of its initial year of operation, once more during its first year of operation, and twice each school year thereafter. (7CFR part 210.9 (c) (7))
12. Submit forms and reports to the Department to demonstrate compliance with program requirements. (7CFR part 210.15 (a))
13. Submit to the Department for approval any changes to this agreement and/or online information prior to implementation. Such changes will be effective only upon approval. Payment of reimbursement shall be withheld until approval of changes is final. (7CFR part 210.9)

**THE VDOE AND THE SFA MUTUALLY AGREE THAT:**

1. The completed SNPWeb online Agreement, site applications, and supporting documents are part of this Agreement.
2. The Department shall promptly notify the SFA of any change in the minimum meal requirements or the assigned rates of reimbursement or changes in eligibility criteria and those changes must be publicly announced by the SFA at the beginning of the school year.
3. This Agreement will be effective from the approval date in the SNPWeb system, until the close of the school year, or until a new agreement is executed, whichever comes first.
4. This Agreement may be terminated upon 10 days of written notice on the part of either party hereto. The Department may terminate this Agreement immediately upon receipt of evidence that the SFA has not fully complied with the terms and conditions of this Agreement or of the regulations. Any termination of this Agreement by the Department shall be in accordance with applicable laws and regulations.
5. The terms of this Agreement shall not be modified or changed in any way other than by the consent in writing of both parties hereto.
6. For the purpose of this Agreement the following terms will mean respectively:
* **Adult:** a person who is a staff member or employee of a school/RCCI, including all faculty, supervisory, and other personnel, and a person not under 21 chronological years of age in schools/RCCIs, and not a student of high school grade or under as determined by the State education agency in schools as defined in 7CFR part 210.2.
* **Child:** a student of high school grade or under, as determined by the state educational agency, who is enrolled in an educational program of high school grade or under, including students who are mentally or physically disabled, as defined by the state, and who are participating in a school program established for the mentally or physically disabled; or, in schools as defined in 7CFR part 210.2 a person under 21 chronological years of age.
* **Cost of Milk:** the average net purchase price paid by the school for a half-pint of milk. This should not include any costs paid to the milk supplier for servicing, rental or installment payments for equipment.
* **Meals:** food served at a school under the indicated program(s) that meets the applicable nutritional requirements set forth in regulations. "Meals" thus means breakfast, lunch, or afterschool snack.
* **Milk:** pasteurized, fluid types of unflavored or flavored, fat-free or low-fat milk, or cultured buttermilk, or lactose-reduced or lactose-free milk, or acidified milk which meet state and local standards for such milk. All milk should contain vitamins A and D at levels specified by the FDA and consistent with state and local standards.
* **Needy Children:** children enrolled in half-day kindergarten programs that meet eligibility standards for free milk.
* **Nonprofit Food Service:** all food service operations conducted by the school food authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food service. When applied to schools or institutions eligible for the school nutrition program nonprofit means exempt from income tax under Section 501 (c) (3) of the Internal Revenue Code of 1986.
* **Non-program Food:** food or beverages sold in a participating school other than a reimbursable meal that is purchased using funds from the nonprofit school food service account of the SFA. This also includes food that is sold in competition with a program established under the NSLA (as amended) or the Child Nutrition Act of 1966.
* **School:**
	+ An educational unit of high school grade or under, recognized as part of the educational system in the state, and operating under public ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of pre-primary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as part of the educational system in the state, regardless of whether such pre-primary classes are conducted in a school having classes of primary or higher grade.
	+ With the exception of residential summer camps, which participate in SFSP for children, and job corps centers funded by the Department of Labor, any public RCCI, or distinct part of such institution, which (1) maintains children in residence and (2) operates principally for the care of children. The term "residential child care institutions" includes, but is not limited to: homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers.
* **School Food Authority:** the governing body which is responsible for the administration of one or more schools or RCCIs and which has the legal authority to operate a USDA meal program therein.
* **School Year:** a period of 12 months beginning July 1 of any year and ending June 30 of the following year.
* **Special Needs Children:** children who are emotionally, mentally, or physically impaired.

**APPROVED BY SCHOOL DIVISION:**

Signature of Division Superintendent/Chief Officer

Print Name of Division Superintendent/Chief Officer

Date

**APPROVED BY VIRGINIA DEPARTMENT OF EDUCATION:**

Dr. Sandra C. Curwood

Director

Office of School Nutrition Programs

Virginia Department of Education

Date