

## Section 2

# Program Application & Agreement

# Section 2, Program Application & Agreement

## Update Guide

DATE	
	Updated <i>Section 2, Program Application &amp; Agreement</i> to correct minor typos. Clarified information on: <ul style="list-style-type: none"><li>- <i>Security Authority for Users Access Manager Form (FND-135)</i></li></ul>
January 4, 2022	Updated <i>Section 2, Program Application &amp; Agreement</i> to correct minor typos and section references.
August 12, 2020	Updated Administrator's Reference Manual (ARM), <i>Section 2, Program Application &amp; Agreement</i> to update <i>Administrator's Reference Manual (ARM)</i> section references. Added guidance on the Attachment B upload requirement and the Security Authority for User Access Manager Form (FND-135).
January 15, 2019	Updated <i>Section 2, Program Application and Agreement</i> to incorporate the following United States Department of Agriculture (USDA) guidance: <ul style="list-style-type: none"><li>- <i>USDA Memo SP 15-2018, Child Nutrition Program Waiver Request Guidance and Protocol Revised</i> (May 24, 2018)</li></ul> Clarified information on the following topics: <ul style="list-style-type: none"><li>- Compliance</li><li>- Education service provider (ESP)</li><li>- Local wellness policy</li><li>- Policy statement</li><li>- Program requirement waiver</li><li>- Record retention</li><li>- Renewal of application</li><li>- Supporting documentation</li><li>- USDA Foods Agreement</li></ul>
December 4, 2014	Updated <i>Section 2, Program Application and Agreement</i> to provide clarification on the following issues <ul style="list-style-type: none"><li>- Employer Identification Number (EIN)</li><li>- Local wellness policy</li><li>- Meal pattern certification</li><li>- Permanent agreement</li><li>- Policy statement</li><li>- Program application</li><li>- Racial and ethnic data</li><li>- Record retention</li><li>- TDA contact information</li><li>- Termination</li></ul>
July 22, 2013	Updated <i>Section 2, Application and Agreement</i> to reflect the renumbering of <i>Section 9C to Section 2C, Certification for Performance-Based Reimbursement</i> in order to relocate the information on certification adjacent to <i>Section 2, Application and Agreement</i> since certification is now part of the application process. Deleted all references to <i>Section 8N</i> since that section has been removed from the <i>Administrator's Reference Manual (ARM)</i> . CEs must follow the guidance provided in <i>Section 8, Breakfast since Section 8N</i> applied to School Year (SY) 2012–2013 only.

April 29, 2013

Updated *Section 2, Application and Agreement* to align the content with changes to the Texas Unified Nutrition Programs System (TX-UNPS) and incorporate new USDA guidance and requirements related to the new meal pattern.

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## Contact Information for the

### Texas Department of Agriculture (TDA), Food and Nutrition

When contacting TDA by phone, Contracting Entities (CEs) need to have their CE Identification Number (CE ID) (and site ID, if applicable). CEs should include their name and CE ID (and the site name and ID if applicable) in all communication or documentation.

#### General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847
<b>Phone</b> 877-TEX-MEAL, (877) 839-6325	<b>Email Contact</b> <a href="mailto:SquareMeals@TexasAgriculture.gov">SquareMeals@TexasAgriculture.gov</a>
<b>Fax</b> (888) 203-6593	<b>Website</b> <a href="http://www.SquareMeals.org">www.SquareMeals.org</a>

#### Questions about Program Applications

##### Child & Adult Care Food Program

[CACFP.BOps@TexasAgriculture.gov](mailto:CACFP.BOps@TexasAgriculture.gov)

##### National School Lunch Program, School Breakfast Program, & Special Milk Program

[NSLP-SBP.BOps@TexasAgriculture.gov](mailto:NSLP-SBP.BOps@TexasAgriculture.gov)

##### Seamless Summer Option

[SSO.BOps@TexasAgriculture.gov](mailto:SSO.BOps@TexasAgriculture.gov)

##### Summer Food Service Program

[SFSP.BOps@TexasAgriculture.gov](mailto:SFSP.BOps@TexasAgriculture.gov)

#### Questions about Program Flexibility

[SNPWaivers@TexasAgriculture.gov](mailto:SNPWaivers@TexasAgriculture.gov) for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

[Nutrition@TexasAgriculture.gov](mailto:Nutrition@TexasAgriculture.gov) for questions about

- Milk Substitute Notification

#### Questions about Program Operation

##### USDA Foods Operations

[CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov)

##### Community Operations (Child & Adult Care Food Program & Summer Food Service Program)

[Community.Ops@TexasAgriculture.gov](mailto:Community.Ops@TexasAgriculture.gov)

##### School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)

[School.Operations@TexasAgriculture.gov](mailto:School.Operations@TexasAgriculture.gov)

##### Texas Eligibility List Management System (Texas ELMS)

[DirectCertification@TexasAgriculture.gov](mailto:DirectCertification@TexasAgriculture.gov)

##### Farm Fresh Initiative (Local Products)

[FarmFresh@TexasAgriculture.gov](mailto:FarmFresh@TexasAgriculture.gov)

#### Questions about Financial Issues

##### Capital Expenditures

[NSLP-SBP.BOps@TexasAgriculture.gov](mailto:NSLP-SBP.BOps@TexasAgriculture.gov)

##### Claims

[BCT.BOps@TexasAgriculture.gov](mailto:BCT.BOps@TexasAgriculture.gov)

##### Procurement, Including Sole Source and Emergency Procurement

[CE.ProcurementReviews.BOps@TexasAgriculture.gov](mailto:CE.ProcurementReviews.BOps@TexasAgriculture.gov)

##### Excessive Balance Plan

[School.Operations@TexasAgriculture.gov](mailto:School.Operations@TexasAgriculture.gov)

#### Questions about USDA Foods

##### USDA Foods Carryover Inventory

[CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov)

##### USDA Foods Transfer

[CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov)

June 22, 2020

# Program Application & Agreement

The program application and the *Food and Nutrition Agreement (Permanent Agreement)* create a legal contract between the Texas Department of Agriculture (TDA) and a contracting entity (CE) to provide meals to children through a school nutrition program (SNP). Public and charter schools, private schools, and residential child care institutions (RCCIs) may participate in SNPs. This section describes the policy for an SNP application and the agreement for the following programs:<sup>1</sup>

- National School Lunch Program (NSLP)
  - Afterschool Care Program (ASCP)
  - Fresh Fruit and Vegetable Program (FFVP)
  - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

[NOTE: There are notations where the information provided applies differently to FFVP or SMP.]

The application and agreement processes include the following components:<sup>2</sup>

1. Program Application—A new applicant must complete an application, and a CE currently operating an SNP must renew its application each year. For current CEs, because applications can be submitted through the Texas Unified Nutrition Programs System (TX-UNPS), many fields in the application will prepopulate for the next year’s application or when the CE applies for additional programs.
2. Additional Supporting Documentation for the Application—A CE must submit the required application supporting documentation as specified by the program application.
3. Permanent Agreement—All of the programs addressed in this section use the same *Permanent Agreement*, i.e., a CE has only one approved and signed *Permanent Agreement* even if the CE participates in more than one program and even if the CE administers a program over multiple years.

## Definitions

For this section, the following terms will be used:

Amendment to the Permanent Agreement	An amendment to the <i>Permanent Agreement</i>
Authorized Representative	Person who is authorized to make decisions and sign legally binding documentation.
Award or Grant Award	Term used when a CE is approved to receive funds to implement an SNP
Certificate of Authority (COA)	Process for assigning a person to be an authorized representative for a contracting entity (CE).

<sup>1</sup> In some areas, FFVP and SMP have different requirements. See the FFVP guidance provided at [www.SquareMeals.org](http://www.SquareMeals.org) and the *Administrator's Reference Manual, Section 13, Special Milk Program* for additional information.

<sup>2</sup> All forms referenced in this section are available at [www.SquareMeals.org](http://www.SquareMeals.org).

Contracting Entity (CE)	Entity that has a formal agreement with TDA to administer an SNP.
Food and Nutrition Agreement (Permanent Agreement)	Commonly called the <i>Permanent Agreement</i> , a document signed by the CE and TDA that outlines the roles and responsibilities for the program(s).
Policy Statement	Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures or Policy Statement for Free Milk, Attachment B: Milk Count/Collection Procedures, commonly called Attachment B, part of the application documentation that provides detailed information on the CEs procedures for implementing the program requirements.
Program Application	The collection of documents required for the CE to begin or continue participation in a nutrition program.
School Food Authority (SFA)	United States Department of Agriculture (USDA) term used for NSLP and SBP operators. This term is used in TX-UNPS and other documentation. In Texas, an SFA is called a CE which is an acronym for contracting entity.
Termination of the Permanent Agreement	Action to end the CE's <i>Permanent Agreement</i> with TDA—permanent withdrawal of previously-awarded grant funds before the grant funds would otherwise expire.

## Program Year

For the programs addressed in this section, the program application, renewal of the program application, and *Permanent Agreement*, the program year follows the school year (SY) for deadlines and timelines—July 1 to June 30.

## Educational Service Provider (ESP)

If a CE (school district, charter school, private school, or RCCI) has assigned administrative responsibility to an education service provider (ESP)<sup>3</sup> for the operation of all functions, the ESP may also be given operational authority for eligibility determination and verification; however, the CE must retain responsibility to ensure that all program requirements are met.

## Program Application

Any entity desiring to participate in a nutrition program must complete an application and renew its application each year after.

## Application Submission

There are two ways a CE can complete an application:

1. Electronically through TX-UNPS<sup>4</sup>—TDA **strongly encourages** CEs submit their program applications through TX-UNPS. An electronic submission results in the following benefits:
  - Allows TDA to process the application more quickly
  - Saves the CE time and effort when resubmitting an application in subsequent years or applying for additional programs

<sup>3</sup> Authority for ESPs to manage education and other operations for a school district or charter school is given by the Texas Education Agency; authority for an RCCI by the agency with regulatory authority for the RCCI; and authority for private schools by the governing board.

<sup>4</sup> Website accessed at [www.SquareMeals.org](http://www.SquareMeals.org).



- Reduces paperwork as many of the required application forms are integrated into the online application  
 [NOTE: Any forms that are not integrated into TX-UNPS are easily downloadable through the TX-UNPS system. The system is designed to direct a CE to complete only the forms that are necessary for that CE. In most cases, when a CE submits one of the supporting documents in one program application, the CE will not be required to resubmit the same form in another program application.]

CEs will also find the TX-UNPS Online Help tool useful as they complete an online application.

2. On Paper—An applicant may contact TDA to obtain a copy of application by mail.<sup>5</sup>

### Signature on Program Application, Renewal Application, or Permanent Agreement

The program application and supporting forms must be signed by an authorized representative.<sup>6</sup>

### CE Responsibilities Defined by the Program Application

In completing an application, the CE assumes responsibility for the following:<sup>7</sup>

#### Program Benefits and Services

- Provide free or reduced-price meals or free milk to the following:
  - Students from families whose income is at or below the current eligibility income scale
  - Students who are eligible based on categorical status
  - Students from families experiencing strikes, layoffs, or unemployment that causes the family income to fall below the eligibility income scale

#### Privacy, Equal Treatment

- Ensure that the following does not occur:
  - Overt identification of any student receiving these benefits
  - Discrimination in providing meals or milk because of race, color, national origin, sex, age, or disability<sup>8</sup>

#### Appeals

- Establish a fair hearing procedure for households to appeal decisions related to eligibility.<sup>9</sup>

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<sup>5</sup> See the *Contact Information for the Texas Department of Agriculture* page following the table of contents in this section for telephone or email information.

<sup>6</sup> See the *and Security Authority for Users Access Form (FND-135)* subsection in this section for additional information on this topic. If the program application is submitted through TX-UNPS, an electronic signature will be used.

<sup>7</sup> See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination; Section 6, Verification of Eligibility; Section 7, Breakfast Program; Section 8, Lunch Program; Section 10, Afterschool Snacks & Meals; Section 11, Summer Meals; Section 13, Special Milk Program; Section 20, Counting & Claiming; and Section 28, Residential Child Care Institutions* for additional information on these requirements.

<sup>8</sup> See *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality* for additional information on civil rights.

<sup>9</sup> See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on eligibility determinations.

- Designate a (1) determining or reviewing official to certify participant eligibility and (2) hearing official to process eligibility determination appeals—cannot be the same individual.

### Public Information

- Share information about SNP with the following:
  - Media
  - Local employment offices
  - Major employers contemplating large layoffs
- Issue a public media release containing information about eligibility criteria and the household application form that is used by parents to assist their children in taking advantage of free or reduced-price meals or free milk.

### Supporting Documentation

The CE will complete and submit the application supporting documentation to TDA which includes, but is not limited to,<sup>10</sup> the following:

#### Program Operation

##### Security Authority for Users Access Manager Form (FND-135)

TDA requires that CEs use the *User Access Manager Form (FND-135)* to submit the name of the CE **representative responsible for security management of users within the CE**.

The FND 135 Form is available in TX-UNPS | Security | CE Systems Logins. Detailed instructions on the use of this form are available at

<https://squaremeals.org/FandNResources/TXUNPSProgramResources/TXUNPSUserAccessManager.aspx>.

**This form designates the User Access Manager (UAM), an authorized representative that can make decisions and sign legally binding documentation. CEs are expected to resubmit** the form in a timely manner when staff changes are made. This includes changing a name and deleting or adding an authorized representative.

An authorized representative must be an employee of the CE. **Consultants and contractors are not considered authorized representatives.** *Administrator's Reference Manual (ARM), Section 18, Food Service Contracts* provides additional guidance on Food Service Management Company (FSMC) employee access to TX-UNPS. The authorized representative is responsible for the following:

- Ensuring that the CE's program(s) are operated in accordance with federal and state regulations
- Maintaining the proper records and reporting requirements to support the monthly reimbursement claim
- Updating application information in a timely manner

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<sup>10</sup> When an individual CE chooses to implement specific flexibilities additional forms or documentation may be required.

- Preparing and submitting reports
- Providing certification of compliance

The *FND-135* also allows different staff members to have different access rights within TX-UNPS. This allows the CE to control which staff members are allowed or have access to specified functions in TX-UNPS, such as counting and claiming or the Texas Eligibility List Management System (Texas-ELMS).<sup>11</sup>

#### Special Guidance, FND-135

- Required Roles. At a minimum, a CE must have an authorized representative to fulfill the following roles:
  - Edit or update the application packet as needed
  - Submit or edit claims for reimbursement

[NOTE: These roles may be fulfilled by one staff member or multiple staff members.]
- Required Signature. The *FND-135* must be signed by either the CE's superintendent or the president of the board of trustees.
- Security Levels. The *FND-135* provides a process for the CE to designate varied security levels for an authorized representative. CEs should contact TDA if they have questions about the appropriate security level for an authorized representative.

#### Submission Requirement:

New Applicants: Complete and submit to TDA.

Current CEs: Update and submit as needed to TDA.

### USDA Foods Agreement Between Contracting Entity and Texas Department of Agriculture

This agreement<sup>12</sup> outlines each party's rights and responsibilities and the terms and conditions for obtaining USDA Foods.

#### Submission Requirement:

New Applicant: Submit the agreement to TDA.<sup>13</sup>

Current CE: Submit an updated agreement as requested by TDA.

<sup>11</sup> For additional information on these roles see *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination and Section 20, Counting & Claiming*.

<sup>12</sup> Form located at [www.SquareMeals.org](http://www.SquareMeals.org).

<sup>13</sup> CEs are not required to participate in the USDA Foods program, but they are required to submit this form.

## Hazard Analysis Critical Control Points (HACCP) Checklist (FND-104)

The CE uses this form to describe its plan to address food sanitation, temperature control, and standard operating procedures related to handling and serving food.

### Submission Requirement:

New Applicant: Complete and submit to regional education service center (ESC). The ESC will work with the CE to finalize the HACCP plan. The CE will retain onsite.<sup>14</sup>

Current CE: Review each year and retain updated procedures with other school nutrition program documentation onsite.

## Local Wellness Policy (LWP)

Each CE must have a local wellness policy. CEs may use any format for their local wellness policy (LWP), but it must incorporate all of the elements described in the *Administrator's Reference Manual (ARM), Section 29, Local Wellness Policy & Stakeholder Engagement*. The CE may also use the *Local Wellness Policy (LWP) Checklist*, which is available at [www.SquareMeals.org](http://www.SquareMeals.org), to assist in creating a LWP.

### Submission Requirement:

New Applicants: Create a LWP and retain the document onsite. The ESC will work with the CE to finalize the LWP. The CE will retain onsite.<sup>15</sup>

Current CEs: Review local wellness policy each year and, as appropriate, consult with the regional ESC nutrition specialist when modifications are made to existing policy. Retain updated policy and any documentation of action taken at local school board meetings related to the policy with school nutrition program records.

## Meal Pattern Certification

CEs applying for NSLP or SBP for the first time must submit the documentation described in *Administrator's Reference Manual, Section 2a, Meal Pattern Certification*.

### Submission Requirement:

New Applicants: Complete and submit forms to TDA through the TX-UNPS Meal Pattern dashboard.

[NOTE: After a CE has been certified to receive performance-based reimbursement, the CE does not need to update any fields in the Meal Compliance Module in TX-UNPS, including the Attestation form. If a CE enters the Meal Compliance Module and takes any action that changes one of the fields in the Meal Compliance Module, the CE's performance-based reimbursement may be suspended. TDA does not receive a notification when this happens, so it will not be automatically corrected. CEs must not take any action in the Meal Compliance Module unless a TDA staff member specifically directs the CE to do so.]

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<sup>14</sup> The ESC will provide necessary documentation and notification to TDA.

<sup>15</sup> The ESC will provide necessary documentation and notification to TDA.

**Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures (Attachment B) or Policy Statement for Free Milk, Attachment B: Milk Count/Collections Procedures (Attachment B)**

CEs are required to use this form to indicate operational practices for eligibility determination, counting and claiming, and charge policy.

**For NSLP, SBP, ASCP—Policy Statement for Free and Reduced-Price Meals, Attachment B: Meal Count/Collection Procedures(s) (Attachment B), web-based form submitted in TX-UNPS**

**For SMP—Policy Statement for Special Milk Program, Attachment B: Milk Count/Collection Procedure(s) (Attachment B), available at [www.SquareMeals.org](http://www.SquareMeals.org) and submitted in TX-UNPS**

**Submission Requirement:**

New Applicants: Complete and submit to TDA in TX-UNPS. Print and retain a copy onsite.

USDA requires that TDA review each contracting entity's (CE's) template household application(s), directions, and notification letters to ensure that the CE is meeting the requirements for these documents. Starting School Year (SY) 2020-2021 and each SY forward, each CE must upload certification and benefit issuance templates by October 31, 2020 in TX-UNPS | Application | Attachment B: Upload Attachments. The link will open August 1, 2020.

Current CEs: (1) Review the current *Attachment B* routinely to ensure that the information reported in the approved *Attachment B* reflects the CE's current operational practices and (2) resubmit to TDA through TX-UNPS if modifications are made. Retain a copy onsite.

USDA requires that TDA review each contracting entity's (CE's) template household application(s), directions, and notification letters to ensure that the CE is meeting the requirements for these documents. Starting School Year (SY) 2020-2021 and each SY forward, each CE must upload certification and benefit issuance templates by October 31, 2020 in TX-UNPS | Application | Attachment B: Upload Attachments. The link will open August 1, 2020.

## Pre-Award Civil Rights Compliance Review Form

This form<sup>16</sup> collects information on the race and ethnicity of program participants and procedures related to civil rights.<sup>17</sup>

### Submission Requirement:

New Applicant: Complete and submit to TDA.

Current CEs: Maintain yearly information on race and ethnicity of program participants through the Public Education Information Management System (PEIMS) administered by the Texas Education Agency (TEA) or collect race and ethnic data using this form or another tool which collects the same information. This information is retained onsite.<sup>18</sup>

## Financial

### Application for Texas Identification Number (AP-152)

The CE uses this form to request a Texas Identification Number (TIN)<sup>19</sup> from the Texas Comptroller of Public Accounts. A TIN is required for a CE to receive payment for reimbursement claims.

[NOTE: If providing an Employer Identification Number (EIN) or the AP-152, the CE will need to also provide documentation from the Internal Revenue Service (IRS) that establishes the EIN. A copy of the letter from the IRS or a payment coupon with the EIN on it is acceptable.]

### Submission Requirement:

New Applicants: Complete and submit to TDA.

### Proof of IRS 501(c)(3) Tax Exemption

The CE must submit proof of its 501(c)(3) tax exemption status if it is a private nonprofit organization.<sup>20</sup>

### Submission Requirement:

New Applicants: Submit the appropriate IRS documentation to TDA.

### Vendor Direct Deposit/Advance Payment Notification Authorization (74-176)

The CE uses this form<sup>21</sup> to request direct deposit of claim reimbursements.

### Submission Requirement:

New Applicants and Current CEs: Complete and submit this form to TDA.

Current CEs: Complete and submit to TDA if changes are made to direct deposit information.

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<sup>16</sup> Form located on the TX-UNPS Application Module Download Forms screen, reference number SNP-003.

<sup>17</sup> USDA provides detailed guidance on civil rights compliance in the following guidance document: *FNS-113-1, Civil Rights and Enforcement—Nutrition Programs and Activities*, which is available at [www.fns.usda.gov](http://www.fns.usda.gov).

<sup>18</sup> See *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality* for additional information on this topic.

<sup>19</sup> Form located on the TX-UNPS Application Module Download Forms screen, reference number SNP-002.

<sup>20</sup> More information on 501(c)(3) status is available at [www.irs.gov](http://www.irs.gov).

<sup>21</sup> Form located at [www.SquareMeals.org](http://www.SquareMeals.org).

## Permanent Agreement

The CE must also complete the *Permanent Agreement*.<sup>22</sup> Under the terms of the *Permanent Agreement*, each CE agrees to meet the following program requirements:

### Related to Meals

- Serve a lunch, breakfast, and/or snack that meets meal pattern and nutritional requirements or milk specifications as required by the program.<sup>23</sup>
- Provide free and reduced-price meals to eligible children or free milk as required by the program.
- Price meal served as a unit or milk served as unit.
- Provide meals or milk to all children without regard to race, color, national origin, sex, age, disability, or eligibility status.
- Prevent overt identification of children receiving free or reduced-price meals or free milk.
- Complete the USDA Foods or commodities form (not applicable to SMP).

### Related to Program Participants

- Provide information as required by TDA on the number of children served free, reduced-price, and paid meals or free milk.
- Maintain files of approved and denied household applications for free and reduced-price meals or free milk.
- Maintain master or roster list of all eligible program participants including documentation of any changes to the list.
- Maintain free and reduced-price meals or free milk application documentation related to income eligibility, direct certification, or other source categorical eligibility.<sup>24</sup>

### Related to Operational Issues

- Meet proper sanitation and health standards for the service of meals as required by local and state agencies.
- Comply with recordkeeping and retention requirements and provide records for review as required.

### Related to Fiscal Issues

- Maintain a nonprofit food service, observing the limitations on the use of revenues including, but not limited to, competitive food services.
- Limit net cash resources to an amount that does not exceed three (3) months of average expenditures for its nonprofit school food service.

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<sup>22</sup> The CE is required to retain a completed *Permanent Agreement* as long as the CE maintains operation of a child nutrition program administered by TDA no matter how many programs the CE administers. However, *Permanent Agreements* may be amended as appropriate.

<sup>23</sup> See *Administrator's Reference Manual, Section 7, Breakfast Program; Section 8, Lunch Program; Section 9, Pre-Kindergarten Meals; Section 10, Afterschool Meal Programs; Section 11, Summer Meal Programs; or Section 13, Special Milk Program* for additional information on requirements related to meal, snack, or milk service.

<sup>24</sup> See *Administrator's Reference Manual, Section 4, Eligibility Determination* for additional information on this topic.



- Maintain a financial management system that meets requirements for the program.
- Submit claim reimbursements through TX-UNPS for the reimbursable free, reduced-price, and paid meals or free milk served to eligible children in accordance with regulations.

### Waiver of Program Requirements

A CE may submit a written request to waive certain program requirements for NSLP, SBP, SFSP, SMP, and FFVP. Before submitting a request to waive a program requirement, the CE must evaluate its intent for requesting the waiver and if a program waiver is required. An approved waiver must support the purpose and intent of the program.

### Waiver Limitations

TDA and USDA will not consider waiver requests related to any of the following topics:

- Nutritional content of meals served
- Federal reimbursement rates
- Provision of free and reduced-price meals
- Limits on the price charged for a reduced-price meal
- Maintenance of effort (not decrease or affect the expenditure of funds from state and local sources for the maintenance of the Child Nutrition Program)
- Equitable participation of children in private schools
- Distribution of funds to State agencies and sponsors
- Disclosure of individual income eligibility information
- Prohibition of the operation of a profit producing program
- Sale of competitive foods
- USDA Foods
- Enforcement of any constitutional or statutory right of an individual

### Requirements for Which TDA Has Regulatory Discretion

It is not necessary for CEs to submit a waiver for any operational practice that TDA has the authority to grant a regulatory exemption, including, but not limited to, the following areas.

- RCCI age/grade group meal pattern  
(As described in *Administrator's Reference Manual (ARM), Section 27, Residential Child Care Institutions*)
- Gender separation  
(As described in *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality*)
- Paid Lunch Equity (PLE)  
(As described in *Administrator's Reference Manual (ARM), Section 19, Meal Pricing*)



- Child Nutrition Program Director (CND) Professional Standards for CEs with 500 students or fewer  
(As described in *Administrator's Reference Manual (ARM)*, Section 26, *Professional Standards*)
- Summer mandate  
(As described in *Administrator's Reference Manual (ARM)*, Section 11, *Summer Meal Programs*)
- Summer age/grade group meal pattern  
(As described in *Administrator's Reference Manual (ARM)*, Section 11, *Summer Meal Programs*)
- Breakfast mandate  
(As described in *Administrator's Reference Manual (ARM)*, Section 7, *Breakfast Program*)
- Meal service time  
(As described in *Administrator's Reference Manual (ARM)*, Section 21 *Meal Service*)
- Electronic confirmation systems  
(As described in *Administrator's Reference Manual (ARM)*, Section 6, *Verification of Eligibility*)
- Vending machines  
(As described in *Administrator's Reference Manual (ARM)*, Section 21, *Meal Service*)

Requests for exemptions are submitted as described in the referenced *Administrator's Reference Manual (ARM)* section.

#### Waiver Duration

A waiver is only valid during one program year (PY). For NSLP/SBP operators the program year is July 1 to June 30. A CE that wishes to continue a waiver into the next PY must submit another request.

#### Waiver Contents

The written request must include the following information:

1. **Challenge(s) the CE Is Seeking to Solve, Goal(s) of the Waiver to Improve Services, and the Expected Outcomes**
  - Describe the problem that the CE is seeking to solve. Include a description of any impediments to the efficient operation and administration of the program(s).
  - Describe what has been done to solve this problem within the scope of the regulatory requirements and what in the regulations or statute prevents this problem from being solved?
  - Describe the goal of the waiver to improve services under the applicable program(s) and the expected outcomes if the waiver is granted.
  - Describe how the waiver would improve services under the applicable program(s).

- 2. Regulatory Citation(s) and Requirement(s)**
  - Identify the specific statutory or regulatory requirements<sup>25</sup> requested to be waived for the applicable program(s).
- 3. Description of Alternative Procedures and Anticipated Impact of Implementation**
  - Provide a description of the alternative procedures that could be used to solve the problem while maintaining the intent and purpose of the applicable program(s) if the waiver is granted.
  - Describe the anticipated impact on applicable program operations, including technology, State systems, and monitoring.
- 4. Anticipated Implementation Challenges**
  - Describe any anticipated challenges the CE may face with implementation of the waiver, if granted.
- 5. Anticipated Implementation Date and Time Period for Which Waiver Is Needed**
  - Provide the beginning and ending date for the requested waiver.  
[NOTE: USDA provides approval of waivers for a limited time period. After the initial waiver period has expired, the CE may request renewal of a waiver.]
- 6. Overall Cost to the Applicable Program(s)**
  - Describe how the waiver will not increase the overall costs of the applicable program and, if it does, how any additional costs will be paid from non-Federal funds.  
For Example: Provide an explanation of what the anticipated cost will be, if any.
  - Address whether the waiver will increase program participation and claims for reimbursement.
- 7. Proposed Monitoring and Review Procedures**
  - Describe how the CE will monitor and review operations of the waiver to ensure the proper oversight and integrity of the applicable program(s). If applicable, include monitoring details to ensure increased costs of the applicable program will not be paid from Federal funds.
- 8. Proposed Reporting Requirements**
  - Describe how the CE will report to TDA on the outcome of the waiver implementation, if it is approved, including details on how the implementation of the waiver and its effect on the efficient operation and administration of the applicable program will be evaluated. For example, what data points would be useful to determine if the waiver was successfully implemented? The CE must report this information to TDA within 60 days of the end of the waiver period.
- 9. Notification to the Public**
  - Describe how the CE provided notice and information to the public regarding the proposed waiver prior to submitting the waiver request to TDA. A link or copy of the public notice about the proposed waiver must be included with submission of this form to TDA.  
[NOTE: Acceptable methods of public notification include, but are not limited to, the following:

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<sup>25</sup> Sources for statutory or regulatory requirements include the Code of Federal Regulations, USDA policy memos, and/or USDA guidance manuals.

- posting notice on the CE’s website and
- providing public notice through a printed announcement in the local/state newspaper.]

### Submitting Waiver Request

CEs must use the *Child Nutrition Programs Waiver Request Form* located at [www.SquareMeals.org](http://www.SquareMeals.org) for this purpose. The completed request is submitted to TDA as described in the form directions at least 90 days prior to the desired implementation to allow adequate time for review.<sup>26</sup> Upon receipt, TDA will evaluate the request and approve or deny the request. Before a waiver approved by TDA can be implemented, TDA will forward the request to USDA for final approval. Denial of a request, either by TDA or USDA, is not an appealable action.

### Renewal of Application

The application is in effect for one school year (SY)—July 1 to June 30. To continue to participate in ASCP, FFVP, NSLP, SSO, SBP, or SMP, and prior to submitting reimbursement claims for the upcoming SY, a CE must complete a renewal through the Application Packet screen in TX-UNPS by July 1 of each year.

In the renewal application, the CE must take the following actions:

- Review, update, and complete each section of the Application Packet in TX-UNPS and submit to TDA.
- Enter the total participant enrollment for the program(s) and total eligible participants for the program(s) from the previous October in the Site Application, Participation Information Section in TX-UNPS.

[NOTE: CEs must submit accurate enrollment information. See *Administrator's Reference Manual (ARM), Section 4, Eligibility Determination* for additional information on this topic related to enrollment. Accurate enrollment information is also important in order to correctly determine eligibility for SFSP and CACFP.]

The CE must also review all other information that was automatically populated in the program application in TX-UNPS from the previous year to ensure accuracy. For additional information regarding renewing participation, contact TDA, Business Operations section.<sup>27</sup>

### Amendment to the *Permanent Agreement*

Once TDA has approved the application and entered into the *Permanent Agreement* with the CE, the *Permanent Agreement* can be amended only with the consent of TDA. An amendment must be made using the *Amendment to the Food and Nutrition Division Contracting Entity Specific Amendment* form.<sup>28</sup>

A CE’s failure to return a CE specific amendment, or to notify TDA that that the CE wishes to withdraw the action, could result in termination of the CE’s *Permanent Agreement* for cause.

There are two types of amendments to the *Permanent Agreement*:

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<sup>26</sup> Email, fax, and mail address information is located on the TDA contact page which is located after the table of contents in this section.

<sup>27</sup> See the *Contact Information for the Texas Department of Agriculture* page following the table of contents in this section for telephone or email information.

<sup>28</sup> Blank in the title is filled in with the number of the amendment.

## Universal Amendments

Universal amendments are modifications to the terms and conditions of the *Permanent Agreement* that apply to all CEs operating under the *Permanent Agreement*, including amendments that are specific to a particular program, regardless of whether a particular CE has been approved to participate in that program. Universal amendments are initiated by TDA.

## Contracting Entity Specific Amendments

A contracting entity specific amendment can be initiated by either TDA or the CE. Contracting entity specific amendments are limited to the following:

- Add participation in a Food and Nutrition (F&N) administered program.
- Delete participation in an F&N-administered program.
- Record a change in name of the organization in the *Permanent Agreement*.

[NOTE: The Employer Identification Number (EIN) must remain the same under an existing *Permanent Agreement*. If the CE changes its EIN, it must terminate its existing agreement, complete a new application, and establish a new *Permanent Agreement* under the new EIN.]

For Example: The following examples demonstrate the processes required for contracting entity specific amendments to the *Permanent Agreement*:

### Adding a Program—Initiated by the CE

A CE is approved to participate in the Child and Adult Care Food Program (CACFP) and is later approved to participate in the NSLP.

- TDA will complete the \_\_\_\_\_ *Food and Nutrition Agreement, Amendment to the Food and Nutrition Agreement, Contracting Entity Specific Amendment*<sup>29</sup> and send it to the CE for review and signature.
- The CE's authorized representative will sign the form and return it to TDA.
- Upon receipt of the signed amendment form, the form will be approved and signed by TDA, and a copy will be returned to the CE for its files.

### Deleting a Program—Initiated by the CE

The CE is approved to participate in both the CACFP and the NSLP but decides to terminate participation in the CACFP.

- The CE must notify the TDA that it would like to terminate participation in a program.
- TDA will complete the \_\_\_\_\_ *Food and Nutrition Agreement, Amendment to the Food and Nutrition Agreement, Contracting Entity Specific Amendment*<sup>30</sup> and send it to the CE for review and signature.
- The CE's authorized representative will sign the form and return it to TDA.
- Upon receipt of the signed amendment form, the form will be signed by TDA, and a copy will be returned to the CE for its files.

### Changing the CE Name—Initiated by either the CE or TDA

A CE notifies TDA that the name of its contracting organization has changed, but the EIN has not.

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<sup>29</sup> Blank in the title is filled in with the number of the amendment.

<sup>30</sup> Blank in the title is filled in with the number of the amendment.

- The CE completes the \_\_\_\_\_ *Contracting Entity Specific Amendment* form, recording the new name of the CE and sends it to TDA for review and signature.
- TDA returns the approved and signed form to the CE for its files.

## Termination of the *Permanent Agreement*

An action to end the CE’s *Permanent Agreement* with TDA—a termination of the *Permanent Agreement* is a permanent withdrawal of a previously-awarded approval. The *Permanent Agreement* between TDA and a CE may be terminated under two conditions: (1) consent and (2) noncompliance.

### Consent Termination

Both TDA and the CE agree to terminate the *Permanent Agreement* for all programs the CE administers or part of those programs. When the *Permanent Agreement* is terminated by consent, TDA will provide written notification to the CE verifying that the *Permanent Agreement* has been terminated.

### Noncompliance Termination

TDA may terminate the CE’s *Permanent Agreement* if the CE materially fails to comply with any terms of the award<sup>31</sup>—whether these terms are stated in federal statute or regulations, an assurance, a state plan or application, a notice of award, or elsewhere.

For Example: Areas of noncompliance may include, but are not limited to, improper claims submission, financial impropriety, or repeated findings from administrative reviews or audits.

If TDA terminates the CE’s *Permanent Agreement* for noncompliance, TDA will provide written notification to the CE that explains the reason(s) for the termination.

## Records Retention

Public and charter schools must maintain records for a period of five years. Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) must maintain records for three years.

CEs are required to retain all documentation related to its program application(s), program application renewals, *Permanent Agreement*, and all documentation related to the operation of program(s) as required by state or federal regulation and the Texas State Board of Education policies. For additional information on records retention for this documentation, see the *Administrator’s Reference Manual (ARM)*, Section 29, *Records Retention*.

#### Information Box 1

##### Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.

<sup>31</sup> *Award* is used to describe the formal agreement for TDA to provide funds to the CE to implement the nutrition program.

## Compliance

During an administrative review (AR), procurement review (PR), financial review, or at other times as appropriate, TDA will assess compliance with information and supporting documentation submitted in program application or program application renewal. If a CE submits fraudulent information and/or supporting documentation for a program application or program application renewal, TDA may require approvable corrective action. TDA may also require appropriate fiscal action related to claims, reimbursement to the nonprofit school food service account for unallowable costs, placement of the CE's funds on hold until the CE has achieved compliance, or termination of the *Permanent Agreement*.