Wisconsin Department of



Public Instruction

**PERMANENT AGREEMENT/POLICY STATEMENT**

**SPECIAL MILK PROGRAM - SCHOOL AGENCIES**

WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION SCHOOL NUTRITION TEAM

125 SOUTH WEBSTER STREET P.O. BOX 7841

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**PERMANENT AGREEMENT General Information**

This Agreement/Policy Statement is permanent and is between the School Food Authority (SFA) and the Wisconsin Department of Public Instruction (DPI). The SFA agrees to administer the Special Milk Program approved in its contract in accordance with federal regulations including policy and instructions issued by the United States Department of

Agriculture (USDA) and DPI. The applicable regulations are 7 CFR 215 (Special Milk Program) and applicable procurement regulations stipulated in the aforementioned program and applicable procurement regulations contained in 7

CFR 3016 (public SFAs) including all of subsection 3016.36 titled procurement or contained in 7 CFR 3019 (private

nonprofit SFAs) including all of subsections 3019.40 – 3019.48 titled procurement standards. For Special Milk Program covered by this Agreement, the SFA and DPI agree as follows:

***THE DPI AGREES TO***:

1. Reimburse the SFA, to the extent of available funding, for milk meeting prescribed nutritional requirements served to children attending the schools participating in the Special Milk Program covered by this Agreement. The amount of reimbursement during any fiscal year shall be paid in accordance with the allowable rates established by USDA regulations.

2. Promptly notify the SFA in writing of any change in the nutrition standards or the assigned rates of reimbursement.

***THE SFA AGREES TO*:**

Comply with all requirements of 7 Code of Federal Regulations (CFR) part 215 - Special Milk Program, including those resulting from the Healthy Hunger Free Kids Act (HHFKA) of 2010 that pertain to the Special Milk Program. If selecting the free milk pricing option\*, comply with Part 245 – *Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools*. As prescribed, SFAs contracting with DPI to participate in the Special Milk Program will:

1. Implement the program in schools and sites approved by DPI on Schedule A of the online contract, supervise the milk service and accept financial and administrative responsibility for the program operations.

2. Follow pricing plan option selected on the online contract: (1) Nonpricing – no student charge (2) Pricing plan – all students pay set charge or (3) Pricing plan - free milk\* will be provided to eligible children.

3. Encourage consumption of milk by making maximum use of the federal reimbursement payments to lower, or reduce to zero wherever possible, the price per half-pint which children pay for milk.

4. If electing to provide free milk\*, serve milk free to all eligible children at times that milk is made available to

nonneedy children under the program and make no discrimination against any needy children because of inability to pay.

5. Serve fluid milk consistent with the most recent Dietary Guidelines for Americans which recommend that persons over age two should consume fat-free or low-fat (1%) fluid milk. For children over two years of age, offer milk from the following list: fat-free milk; low-fat (1%) milk; fat-free or low-fat lactose reduced milk; fat-free or low-fat lactose-

free milk; fat-free or low-fat buttermilk; or fat-free or low-fat acidified milk. Milk may be flavored or unflavored and

there is no variety requirement.

6. Claim reimbursement only for pasteurized fluid milk types, as specified above, which meet state and local standards for milk in the schools listed on Schedule A of the online contract. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration.

7. Exclude milk served to adults and any non eligible children when submitting claims.

8. Submit claims for reimbursement in accordance with procedures established by the DPI. It is recommended that claims be submitted by the 15th of the month following the month of service but no later than 60 days following the last day of the full month covered by the claim. Failure to submit accurate claims may result in the recovery of an overclaim and may result in the withholding of payments, suspension, or termination of the program. Failure to submit accurate claims due to embezzlement, willful misapplication of funds, theft or fraudulent activity will result in penalties prescribed by federal regulations.

9. Maintain a nonprofit milk service and use all income for program purposes, except that such income shall not be

used to purchase land, acquire or construct buildings.

10. Maintain full and accurate records of Special Milk Program, including, but not limited to, program income and

expenditures, net cash resources for each school year, beginning and ending cash balance for each school year, the total number of half-pints of milk purchased, a count taken at the point of service of the number of half-pints served to eligible needy children (if electing to provide free milk)\* and to paying children, and maintain such records for a period of three years after the fiscal year to which they pertain except that if audit findings or investigations have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit or investigation.

11. Upon request, make all records pertaining to the Special Milk Program available to the DPI and USDA for audit, investigation, or administrative review at a reasonable time and place.

12. Retain individual applications for free milk\* submitted by families for a period of three years after the fiscal year to which they pertain except that if audit findings or investigations have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit or investigation.

13. Provide adequate storage and proper refrigeration for all milk within a temperature range of 35 to 41 degrees F from delivery until it is served. Meet other food safety requirements as deemed necessary by DPI and USDA including, but not limited to, monitoring temperatures of refrigeration units on school premises, maintaining temperature logs

of these units on days school is in session and taking appropriate corrective action whenever temperatures register above 41 degrees F.

14. Establish a local school wellness policy.

15. Comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the

Education Amendments of 1972 (20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.

794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); and all USDA regulations regarding nondiscrimination (7 CFR parts 15, 15a, and 15b) and Food and Nutrition Services (FNS) Instruction 113-1 *Civil Rights Compliance and Enforcement-Nutrition Programs and Activities* (which includes annual civil rights training) to the effect that no person shall, on the grounds of race, color, national origin, age, sex, or disability, be excluded

from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement. By accepting this assurance, the SFA agrees to compile data, maintain records and submit reports, as required, to permit effective enforcement of the nondiscrimination laws and permit authorized USDA personnel during normal working hours to review such records, books and accounts as needed to ascertain compliance with nondiscrimination laws. If there are any violations of this assurance, the USDA FNS shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the program applicant and its successors, transferees and assignees, as long as they receive assistance or retain possession of any assistance from the DPI.

*\*Applicable only when SFA elects to provide milk free to eligible needy child as the pricing plan option in the “Milk Plan Information” of*

*the annual online contract.*

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

1. The annual online contract shall be made a part of this Agreement and Policy Statement.

2. The terms of this Agreement shall not be modified or changed in any way other than by consent in writing of both parties.

*3.* Schools or sites may be added or deleted from Schedule A of the annual online contract as need arises, and shall be effective only after approval fr*o*m DPI*.*

4. No member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise there from; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

5. The DPI may renew this Agreement for each school year thereafter, as soon as practicable after funds have been

appropriated by Congress for carrying out the purposes of the National School Lunch Act and the Child Nutrition Act of 1966 during each fiscal year. However, this Agreement may be terminated upon 10 days written notice on the

part of either party. The DPI may terminate this Agreement immediately if the SFA is found to be out of compliance with the terms and conditions of this Agreement. Any termination of this Agreement for noncompliance with Title VI of the Civil Rights Act of 1964 shall be in accordance with applicable laws and regulations. Any termination or expiration of this Agreement, however, shall not affect the obligation of the SFA to maintain and retain records and to make such records available for audit.

6. For purpose of this agreement the following terms are defined:

a. *Child with a Disability:* Any child who has a mental or physical impairment as defined in S 15b.3 of USDA

nondiscrimination regulations (7CFR, Part 15b).

b. *Cost of milk:* The net purchase price paid by the SFA to the milk supplier for milk delivered to the schools.

This does not include any amount paid to the milk supplier for serving, rental or installment purchase of milk service equipment.

c. *Needy Children:* Children who attend schools participating in the Program and who meet the eligibility criteria for free milk approved by the USDA *Special Milk Program:* The school milk program authorized by Section 3 of the Child Nutrition Act of 1966, as amended, and implemented pursuant to 7CFR, Part 215.

d. *Net Cash Resources*: All monies, as determined in accordance with DPI’s established accounting system

that are available to or have accrued to a SFA’s nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, and cash on deposit.

e. *Nonprofit Milk Service:* Milk service maintained by or on behalf of the SFA for the benefit of the children, all

of the income from which is used solely for the operation or improvement of such milk services.

f. *Point of Service:* That point in the milk service operation where a determination can accurately be made that

a reimbursable free or paid half-pint of milk has been served to an eligible child.

g. *Revenue:* All monies received by or accruing to the nonprofit milk service in accordance with the DPI’s

established accounting system including, but not limited to, children’s payments, earnings on investments,

other local revenues, state revenues, and federal cash reimbursements.

h. *School:* An educational unit of high school grade or under operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the state, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade.

i. *SFA:* The governing body responsible for the administration of one or more schools and which has the legal

authority to operate a nonprofit milk service.

j. *Service Costs:* Direct expenses incurred by the SFA in connection with the safe handling and service of milk.

This may include straws, napkins and expenses incidental to the acquisition or rental of necessary milk service equipment.

**POLICY STATEMENT**

**For SFAs selecting Pricing Plan - Free Milk Eligibility on online contract**

The SFA accepts responsibility for providing free milk to eligible children in the schools noted on Schedule A of the on line contract. It assures the DPI that the policy will be uniformly applied and implemented in all participating schools under its jurisdiction. In fulfilling these responsibilities the SFA:

A. Agrees to serve free milk, as applicable, to children from households whose income is at or below the family size income scale on the USDA’s Income Eligibility Guidelines for the current school year.

B. Agrees that there will be no physical segregation of, nor any other discrimination against, any child because of his/her inability to pay the full price of milk. The names of the children eligible to receive free milk shall not be published, posted, or announced in any manner, and there shall be no overt identification of any such children by use of special tokens, tickets or any other means. Further assurance is given that children eligible for free milk shall not be required to:

1. Work for milk.

2. Use a separate milk service area.

3. Go through a separate serving line.

4. Enter the serving area through a separate entrance.

5. Drink milk at a different time.

6. Drink milk different from the one sold to children paying the full price.

C. Agrees that, in the operation of school nutrition programs, no child shall be discriminated against because of race, sex, color, national origin, age, or disability.

D. Agrees to designate certain individual(s) as **Determining Official** to review applications and make determinations

of eligibility using criteria outlined in this policy and to designate an individual as the **Hearing Official** to hear complaints or appeals on application determination and possible discrimination in the operations of the program. Such officials(s) will be designated on the online contract and will use the criteria outlined in this policy to determine which individual children are eligible for free milk.

E. Agrees to establish and use a fair hearing procedure under which: 1) a household can appeal a decision made by the SFA with respect to the household’s free milk application; and 2) the SFA can challenge the continued eligibility of a child for free milk. During the appeal and hearing, the child who was determined to be eligible based on the

face value of the application submitted will continue to receive free milk. Prior to initiating the hearing procedure, the school official, the parent(s) or guardian may request a conference to provide an opportunity for the parent(s) or

guardian and school official(s) to discuss the situation, present information, obtain an explanation of the data

submitted in the application and the decisions rendered. Such a conference shall not in any way prejudice or diminish the right to a fair hearing. The hearing procedure shall provide the following for both the household and the SFA:

1. A simple, publicly announced method to make an oral or written request for a hearing.

2. An opportunity to be assisted or represented by an attorney or other person.

3. An opportunity to examine, prior to and during the hearing, any documents and records presented to support the decision under appeal.

4. Reasonable promptness and convenience in scheduling a hearing and adequate notice is given as to the time and place of the hearing.

5. An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference.

6. An opportunity to question or refute any testimony or other evidence and to confront and cross examines any adverse witnesses.

7. A hearing conducted and a decision made by a hearing official who did not participate in the decision under appeal or any previously held conference.

8. A decision of the hearing official that is based on the oral and documentary evidence presented at the hearing and made a part of the hearing record.

9. That the parties concerned and any designated representative thereof shall be notified in writing of the decision of the hearing official.

10. That a written record shall be prepared with respect to each hearing, which shall include the challenge or the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons thereof, and a copy of the notification to the

parties concerned with the decision of the hearing official.

11. That the written record of each hearing shall be preserved for a period of three years after the close of the school year to which they pertain. These records must be made available for examination by the parties concerned or their designees at any reasonable time and place during that period.

F. Agrees to continue free milk benefits to a child when the household requests a fair hearing while the household awaits the hearing and decision.

G. Households that are denied benefits upon application shall not receive free milk benefits.

H. Agrees to submit to the DPI any alterations to the annual prototype free milk application before distribution to households. Such changes will be effective only upon DPI approval.

I. Agrees to develop and distribute to each child’s parent(s) or guardian a letter as outlined in the Policy Statement. In addition, an application form for free milk shall be distributed with the parent letter at or about the beginning of each school year or whenever there is a change in eligibility criteria. The letter to parents with the free milk application attachment shall include the income eligibility guidelines for free milk.

J. Interested parents or guardians are responsible for filling out the application and returning it to the school for review.

Such applications and documentation of determinations made will be maintained for a period of 3 years following the end of the school year to which they pertain.

K. Applications must only require the last four digits of the parents or guardians social security number. The word

“none” in place of the digits is acceptable for those without a social security number.

L. Applications may be filed at any time during the year. Parents or guardians enrolling a child in a school for the first time shall be supplied with appropriate free milk application materials regardless of the time of year the child is registered. If a child transfers from one school to another under the jurisdiction of the same SFA, his/her eligibility for free milk will be transferred to and honored by the receiving school.

M. Parents or guardians will be promptly notified of the acceptance or denial of their application(s). Parents of students determined through direct certification to be eligible for free milk shall be notified of free meal benefits using the prototype provided by DPI unless otherwise approved by DPI.

N. Children under the legal responsibility of a foster care agency or court are eligible for free meal benefits, regardless of income. Foster children may be certified as eligible without a household application with proper documentation from local or state placement agencies. Households with foster children and non-foster children may choose to include the foster child as a household member, as well as any personal income available to the foster child, on the same application that includes their non-foster children.

O. Children will be served milk immediately upon the establishment of their eligibility. P. All children from an eligible household will receive the free milk benefits.

Q. When an application is rejected, parents or guardians will be provided written notification which shall include: 1) the reason for the denial of benefits, e.g., income in excess of allowable limits or incomplete application; 2) notification of the right to appeal; 3) instructions on how to appeal; and 4) a statement reminding parents that they may reapply for free milk benefits at any time during the school year.

R. The reasons for ineligibility shall be properly documented and retained on file at the SFA level.

S. Agrees to submit a public/press release containing the free 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.

T. Agrees to submit to the DPI any alterations of public announcements before release. Such changes will be effective only upon approval. All changes in eligibility criteria must be publicly announced in the same manner used at the beginning of the school year.

U. Agrees to establish a procedure to collect money from children who pay for their milk and to account for the number of half-pints of free milk and full price milk served. The procedures described in the online contract will be use so that no other child in the school will consciously be made aware by such procedure of the identity of the children receiving free milk.

V. The following materials on the DPI’s website shall be considered part of this policy:

 Family Income Scale for current school year.

 Letter to Households

 Application for free milk

 Notification to Households

 Public Release

**Debarment and Suspension**

The SFA will comply with 7 CFR Part 3017, Subparts A-E, Governmentwide Debarment and Suspension (Nonprocurement). The SFA will not enter into contracts with debarred, suspended or voluntarily excluded entities until such time as the debarment, suspension or voluntarily exclusion is lifted. In procurement transactions equaling or exceeding $25,000, the SFA agrees to verify that the person with whom it is intended to do business is not excluded or disqualified by (a) checking the Excluded Parties List System maintained by the General Services Administration; or (b) collecting a certification from that person; or (c) adding a clause or condition to the procurement transaction with that person.

**Lobbying**

The SFA will comply with the 7 CFR Part 3018, New Restrictions on Lobbying and certifies that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into of a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit to DPI the Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The language from the above two paragraphs will be included in the award documents for all covered subawards exceeding $150,000 in Federal funds at all appropriate tiers and all subrecipients shall certify and disclose accordingly.

**Changed and New Statutes, Regulations, Instructions, Policy Memoranda, and Guidance**

By continuing to operate the covered programs after the enactment or issuance of any **changed and new** statutes and regulations applicable to the programs covered by this agreement and any **changed and new** instructions, policy

memoranda, guidance, and other written directives interpreting these statutes and regulations, the SFA agrees to comply with them. If the SFA does not wish to comply with **any changed or new** items, the SFA must seek to terminate this agreement.

**Equal Employment Opportunity**

SFA shall comply with E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, and Department of Labor.”

**Contract Work Hours and Safety Standards Act**;

SFA shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–

333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each SFA shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 and ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section

107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in

surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**Clean Air Act and the Federal Water Pollution Control Act**

SFA shall comply with Clean Air Act (42 U.S.C. 7401 et. seq.) and the Federal Water Pollution Control Act (33 U.S.C.

1251 et seq.), as amended if and when the amount of this contract and/or subgrants are in amounts in excess of

$150,000; if and when this amount is met or exceeded, SFA will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq. ) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq. ). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).