



Permanent Agreement/Policy Statement
March 2023
Special Milk Program - School Agencies

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 2 CFR 200 including but not limited to subsections found in Procurement Standards, which include 200.318 General procurement standards, 200.319 Competition, and 200.320 Methods of procurement to be followed.

DEFINITIONS

- 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. *LEA*: A Local Educational Agency.
- d. *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.
- 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 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* means: (a) An educational unit of high school grade or under, recognized as part of the educational system in the state and operating under public or nonprofit private ownership in a single building or complex of buildings; (b) any public or nonprofit private classes of preprimary grade when they are conducted in aforementioned schools; or (c) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and if private, is licensed to provide residential child care services under the appropriate licensing code by the state or a subordinate level of government, except for residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes.
- i. *School Food Authority (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.

- k. *State Agency (SA)* means the state administering agency of USDA Child Nutrition Programs. In Wisconsin, the SA is the DPI School Nutrition Team.

For the 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:

1. 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 and the [Transitional Standards for Milk, Whole Grains and Sodium - Final Rule](#) that pertains to the Special Milk Program. If selecting the Pricing Plan with Free Milk option*, comply with [Part 245 - Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools](#).
2. 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.
3. Follow pricing options selected on the online contract: (1) Nonpricing Plan – no student charge, (2) Pricing Plan – all students pay set charge, or (3) Pricing Plan with Free Milk* – eligible children will be provided free milk and non-eligible students pay set charge.
4. Encourage consumption of milk by making maximum use of the federal reimbursement payments to lower, or reduce to zero wherever possible, the price which children pay for a half-pint of milk.
5. If electing Pricing Plan with Free Milk*, serve milk free to all eligible children at times that milk is made available to non-needy children under the program, and make no discrimination against any needy children because of inability to pay.
6. Claim reimbursement for fluid milk and non-dairy fluid milk substitutes served in schools listed on Schedule A of the online contract that meet the requirements outlined below:
 - a. Types of fluid milk. All fluid milk must be pasteurized fluid milk that meets State and local standards and have vitamins A and D at levels specified by the Food and Drug Administration. Fluid milk must meet the following requirements:
 - (1) *Children 1 year old.* Children one year of age must be served unflavored whole milk.
 - (2) *Children 2 through 5 years old.* Children two through five years old must be served either unflavored low-fat (1 percent) or unflavored fat-free (skim) milk.
 - (3) *Children 6 years old and older.* Children six years old and older must be served unflavored low-fat (1 percent), unflavored fat-free (skim), flavored low-fat (1 percent), or flavored fat-free (skim) milk.
 - b. Fluid Milk substitutes. Non-dairy fluid milk substitutions that provide specified nutrients and are fortified in accordance with fortification guidelines issued by the Food and Drug Administration may be provided for non-disabled children who cannot consume fluid milk due to medical or special dietary needs when required in writing by the child's parent or guardian. A school may offer a non-dairy beverage if it is identified as an allowable fluid milk substitute once approved by DPI.
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 free eligible 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. 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.
13. Adhere to all federal, state, and local procurement regulations and laws, per 2 CFR Part 200.
14. Complete corrective actions during Special Milk Program audits, issued by the SA within timeframes specified by the SA.

**Applicable only when SFA elects to provide milk free to eligible child as the pricing plan option in the "Milk Plan Information" of the annual online contract.*

ASSURANCE OF CIVIL RIGHTS COMPLIANCE

The SFA hereby agrees that it will comply with:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
2. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
3. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
4. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
5. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
6. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);
7. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
8. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);
9. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex (including gender identity and sexual orientation), age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.
10. The USDA nondiscrimination statement that 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, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the SFA agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the State agency shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the applicant, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA. By signing this application, the person or persons whose signatures appear in the signature section of this application are authorized to agree to this assurance on behalf of the applicant's organization for which this assurance section is binding.

The Wisconsin Department of Public Instruction does not discriminate on the basis of sex, race, color, religion, creed, age, national origin, ancestry, pregnancy, marital status or parental status, sexual orientation, or ability and provides equal access to the Boy Scouts of America and other designated youth groups.

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 from DPI.
4. 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. The Agreement remains in effect until terminated by 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.

POLICY STATEMENT
For SFAs selecting Pricing Plan with 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 online 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:

1. 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.
2. If electing to serve milk at no charge only to needy children under 7 CFR 215.7(d)(2), the SFA agrees to serve milk free to all eligible children, at times that milk is made available to non-needy children under the Special Milk Program.
3. 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:
 - a. Work for milk.
 - b. Use a separate milk service area.
 - c. Go through a separate serving line.
 - d. Enter the serving area through a separate entrance.
 - e. Drink milk at a different time.
 - f. Drink milk different from the one sold to children paying the full price.
4. 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.
5. Agrees to establish and use a fair hearing procedure as prescribed by the DPI.
6. Agrees parents or guardians will be promptly notified of the acceptance or denial of their application.
7. Agrees parents of students determined through Direct Certification to be eligible for free milk shall be notified of free milk benefits using the prototype letter provided by the DPI.
8. Agrees when an application is denied, parents or guardians will be provided written notification which shall include:
 - a. the reason for the denial of benefits, e.g., income in excess of allowable limits or incomplete application.
 - b. notification of the right to appeal.
 - c. instructions on how to appeal.
 - d. a statement reminding parents that they may reapply for free milk benefits at any time during the school year.
 - e. the reasons for ineligibility shall be properly documented and retained on file at the SFA level.
9. 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.
10. Agrees to develop and distribute to each child's parent(s) or guardian a letter on how to apply for free milk benefits. 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.
11. Agrees 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 three years after submission of the final claim for reimbursement for the fiscal year unless there is an audit finding that has not been resolved. In that case, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

12. Agrees 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.
13. Agrees 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, when the determining official is notified and provided source documentation from the previous school.
14. Agrees children under the legal responsibility of a foster care agency or court are eligible for free milk benefits, regardless of income. Foster children may be certified as eligible through the Direct Certification process; without a household application or with proper documentation from local or state placement agencies. Households with foster children and non-foster children may 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. If the foster family is not eligible for free milk benefits, this does not prevent a foster child from receiving free milk benefits.
15. Have a system in place to identify language needs of families to ensure that there are no barriers for participation in the USDA Child Nutrition Programs for Limited English Proficient (LEP) families. LEAs can use the information gained through the Home Language Survey conducted during the school enrollment process to identify the language used by households. LEAs can use the information gained through the Home Language Survey conducted during the school enrollment process to identify the language used by households. LEAs are required to communicate with parents and guardians in a language they can understand throughout the certification process.
16. Agrees to communicate meal benefits with households of children deemed as categorically eligible under "Other Source Categorically Eligible" after the liaison has indicated the child qualifies as migrant, homeless or runaway.
17. Agrees children will be served milk immediately upon the establishment of their eligibility.
18. Agrees all children from an eligible household will receive the free milk benefits. A household eligible for reduced benefits are not to be claimed as a free milk reimbursement.
19. Agrees to submit a public release containing the free eligibility guidelines and all other information outlined in the parent letter, to the local news media, local unemployment offices, grassroots organizations and major employers contemplating or experiencing large layoffs.
20. 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 used 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.
21. Agrees to use the following materials on the DPI's [Special Milk Program Webpage](#) and shall be considered part of this policy:
 - a. Free Milk Application,
 - b. Letter to Households,
 - c. Press Release,
 - d. Notice to Households of Approval or Denial of Benefits, and
 - e. Notice of Eligibility Based on Direct Certification.