

Nebraska Department of Education

Nutrition Services

Appeal Procedures for the Summer Food Service Program

NDE Nutrition Services Policy

SFSP-409-G

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Summer Food Service Program Appeal Procedures

Pursuant to Title 7 of the Code of Federal Regulations (CFR), Section 225.13, the Nebraska Department of Education Nutrition Services (hereinafter referred to as the “State Agency”) has adopted the following Summer Food Service Program (SFSP) appeal procedures:

A. Actions which may be appealed:

- A denial of an application for participation; (Source: 7 CFR 225.13(a))
- A denial of a sponsor’s request for an advance payment; (Source: 7 CFR 225.13(a))
- A denial of a sponsor’s claim for reimbursement (except for late submission under 7 CFR 225.9(d)(5)); (Source: 7 CFR 225.13(a))
- The State agency’s refusal to forward to the Food and Nutrition Service of the U.S. Department of Agriculture (FNS) an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim; (Source: 7 CFR 225.13(a))
- A claim against a sponsor for remittance of a payment; (Source: 7 CFR 225.13(a))
- The termination of a sponsor or site; (Source: 7 CFR 225.13(a))
- A denial of a sponsor’s application for a site; (Source: 7 CFR 225.13(a))
- A denial of a food service management company’s application for registration, *if applicable*; or (Source: 7 CFR 225.13(a))
- The revocation of a food service management company’s registration, *if applicable*. (Source: 7 CFR 225.13(a))

Appeals shall not be allowed on decisions made by the Food and Nutrition Service of the U.S. Department of Agriculture (FNS) with respect to late claims or upward adjustments under 7 CFR §225.9(d)(5). (Source: 7 CFR 225.13(a))

B. Appeal Procedures:

(1) The sponsor or food service management company shall be advised in writing of the grounds upon which the State Agency based the action. The notice of action, which may be sent by certified mail return receipt requested, sent via email with read receipt, or facsimile and shall also state that the sponsor or food service management company has the right to appeal the State Agency’s action. The notice is considered to be received by the sponsor or food service management company when it is delivered by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email. The notice will include all information upon which the action was based; (Source: 7 CFR

225.13(b)(1))

- (2) The sponsor or food service management company shall be advised in writing that **the appeal must be made in writing within 10 calendar days from the date on which the notice of action is received**, and must meet the requirements of paragraph (3) of this section; (Source: 7 CFR 225.13(b)(2))
- (3) Appeal instructions provided in writing including physical or email address to which the appeal should be sent and what the appeal should contain. The State Agency shall appoint an independent review official upon receipt of a request for an appeal as identified in paragraph (3). The notice of appointment will include the date the request for appeal was received and copy of the appointment will be sent to the sponsor; (Source: 7 CFR 225.13(b)(8))
- (4) Appeals will be determined by the review official by reviewing documents provided by the appellant and the State agency unless the sponsor explicitly requests a hearing and the sponsor identifies what testimony is necessary at a hearing and such information must be included in the request for appeal; (Source: 7 CFR 225.13(b)(5))
- (5) To be considered, written documentation must be submitted by the appellant to the review official within 7 calendar days of submitting the appeal, must clearly identify the State agency action being appealed, and must include a photocopy of the notice of action issued by the State agency. The State agency has 10 days from the appeal request to submit an answer and any additional documentation to the review official. Both the State agency and the appellant must provide copies of the documentation provided to the review official to the other party; (Source: 7 CFR 225.13(b)(4))
- (6) The appellant may retain legal counsel or may be represented by another person. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official; (Source: 7 CFR 225.13(b)(5))
- (7) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 5 calendar days advance written notice, sent by certified mail, return receipt requested, by the review the official of the time and place of the hearing; (Source: 7 CFR 225.13(b)(6))
- (8) The hearing, if requested, shall be held within 14 calendar days of the date of the receipt of the request for review, but, where applicable, not before the appellant's or State agency's written documentation is received in accordance with paragraph (6) of this section; (Source: 7 CFR 225.13(b)(7))
- (9) The review official shall make a determination based on information provided by the State agency and the appellant, and on SFSP regulations; (Source: 7 CFR 225.13(b)(9))
- (10) Within five (5) calendar days after the appellant's hearing, or within (5) five calendar days after receipt of written documentation if no hearing is held, the reviewing

official shall make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested; (Source: 7 CFR 225.13(b)(10))

(11) The State Agency's action remains in effect during the appeal process. However, the participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the State Agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued Program operation shall not be allowed if the State Agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State Agency shall so specific in the notice of action;

(12) The determination by the State review official is the final administrative determination to be afforded to the appellant. The State Agency's action shall remain in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued Program operation shall not be allowed if the State agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State Agency shall so specify in its notice of action; and (Source: 7 CFR 225.13(b)(11))

(13) The determination by the State review official is the final administrative determination to be afforded to the appellant. (Source: 7 CFR 225.13(b)(12))

C. Notification of Appeal Procedures. The State Agency shall send written notification of the complete appeal procedures and of the actions which are appealable, as specified in section A of this policy, to each potential sponsor applying to participate and to each food service management company applying to register in accordance with 7 CFR 225.6(g).
(Source: 7 CFR 225.13(c))

D. State Agency Record. A record regarding each review shall be kept by the State Agency, as required under §225.8(a). The record shall document the State Agency's compliance with these regulations and shall include the basis for its decision. (Source: 7 CFR 225.13(d))