

CHILD NUTRITION STATE WAIVER REQUEST

Child Nutrition Programs are expected to be administered according to all statutory and regulatory requirements; waivers to the requirements are exceptions. However, Section 12(1) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(1), provides authority for USDA to waive requirements for State agencies or eligible service providers under certain circumstances. When requesting the waiver of statutory or regulatory requirements for the Child Nutrition Programs (CNPs), including the Child and Adult Care Food Program (CACFP), the Summer Food Service Program (SFSP), the National School Lunch Program (NSLP), the Fresh Fruit and Vegetable Program (FFVP), the Special Milk Program (SMP), and the School Breakfast Program (SBP), State agencies and eligible service providers should use this template. State agencies and eligible service providers should consult with their FNS Regional Offices when developing waiver requests to ensure a well-reasoned, thorough request is submitted. State agencies and eligible service providers are encouraged to submit complete waiver requests at least 60 calendar days prior to the anticipated implementation date. Requests submitted less than 60 calendar days prior to the anticipated implementation should be accompanied by an explanation of extenuating circumstances.

For more information on requests for waiving Program requirements, refer to SP XX- 2018, CACFP XX-2018, SFSP XX-2018, *Child Nutrition Program Waiver Request Guidance and Protocol- Revised*, Month XX, 2018.

1. State agency submitting waiver request and responsible State agency staff contact information:

New Mexico, Early Childhood Education and Care Department (NMECECD)

2. Region:

Southwest

3. Eligible service providers participating in waiver and affirmation that they are in good standing:

If waivers are approved by Food and Nutrition Services (FNS), New Mexico Early Childhood Education and Care Department (ECECD) will limit the availability of waivers to experienced sponsors that have had no significant problems in the prior year and who make a request to the State agency to use one or more of the waivers requested for SFSP operations for the summer of 2023.

4. Description of the challenges the State agency is seeking to solve, the goal of the waiver to improve services under the Program, and the expected outcomes if the waiver is granted. [Section 12(1)(2)(A)(iii) and 12(1)(2)(A)(iv) of the NSLA]:

Labor market issues have caused sponsors to struggle with recruitment and retention of qualified and experienced staff to accomplish organizational objectives, goals and mission. With recent increases to the minimum wage in parts of the state and nation, sponsors now find themselves having to consider increases for others whose wage is above the minimum required to simply retain employees.

Supply chain issues present challenges for operators to be able to adhere to menu cycles and result in sponsors having to accept substitutes that are more costly than the product originally requested in order to meet meal requirements. The instability in the availability of goods and products has led some Child Nutrition operators to reduce meal production capacity for outlying sites so they are able to ensure adequate meal production for key locations. For example, school sponsors have chosen to eliminate public sites such as parks and other public locations to ensure they have enough meal production capacity to serve summer school populations.

Economic inflation has impacts on program operations as well. For example, as costs for daily goods and services rise for the general public, existing employees are requesting wage increases or changing employers to obtain higher wages. Inflation also impacts companies that supply products to Child Nutrition operators that are not under fixed price contracts, resulting in Child Nutrition operators paying more for the same items they were purchasing previously at a lower cost. Suppliers and vendors have also increased fuel surcharges for supply deliveries to off-set fuel costs.

As the nation continues to experience acts of violence in schools and public places, and the rise in the population of homeless persons in public spaces, parents' concern for their children's safety has increased as well. A simple visit to a meal site located in at a park or in a church, may now pose the possibility of injury or harm. Although a non-congregate meal service can certainly mitigate exposure to possible danger, a visit to a public meal site has the potential to put individuals in the wrong place at the wrong time.

The issue of increased rates of homelessness is most concerning in urban areas. In Albuquerque, SFSP meal services at 6 public park locations was discontinued during the summer of 2022 due to problems with homeless persons. In all cases, inappropriate adult activities including substance abuse, inebriation, lewd acts, violence, threats, and nuisance all contributed to declined site participation. Additionally, some sponsor staff became concerned over their own wellbeing at these locations and refused to work. Given the current increase in homelessness and the lack of results being achieved by authorities to resolve the problems associated with homeless persons, this problem is anticipated to continue to grow for SFSP operators.

The COVID-19 pandemic is no longer the main issue to shrinking levels of service and program access. However, with new strains of the virus still appearing the issue of close, prolonged contact with others, remains a high concern for some.

When combined, these issues pose significant barriers and difficulties, which impede sponsors' ability to provide or maintain pre-pandemic levels of service and program access. As a result, overall participation in the SFSP has decreased significantly both

in the number of meal sites and in the participant levels. Throughout this time period, sponsors' administrative burden to manage the program has remained relatively the same. Despite yearly increases to the SFSP reimbursement rate structure, the decreased participation in the program at meal sites in New Mexico, stifles sponsors ability to achieve economies of scale during a time when cost savings are key to maintaining a balanced program budget so services can be maintained.

The purpose for requesting waivers of program requirements is two-fold. First, the approval of these waivers will provide sponsors with flexibilities that will help combat the adversities being experienced by all SFSP sponsors. Second, the approval, and implementation of waivers to program requirements is crucial to the restoration of pre-pandemic service levels and access to benefits across the state that needy children are now finding less available. In some cases, the state agency hopes to restore services which have been eliminated.

Approval of the waivers requested will allow sponsors of the program to omit certain operational requirements which should help to directly address the challenges brought on by adverse circumstances. With effective tools to use against rising costs, labor shortages, socioeconomic issues, social problems, and lingering concerns over the pandemic, sponsors can first maintain cost neutral operations which is key to halting shrinkage in service and Program access so the next steps to re-expanding access to pre-pandemic levels can be entertained.

5. Specific Program requirements to be waived (include statutory and regulatory citations). [Section 12(1)(2)(A)(i) of the NSLA]:

SFSP congregate feeding requirement.

- 7CFR, Part 225.6(i)(15)
- 7CFR, Part 225.11(c)(4)(vii)

SFSP requirement to serve and claim for reimbursement meals served to eligible children. (Parent or guardian pickup of meals for children)

- 7CFR, Part 225.2 – Defines “*Children*”
- 7CFR, Part 225.2 – Defines “*Meals*”
- 7CFR, Part 225.6(g)(1)(i)
- 7CFR, Part 225.6(i)(4)
- 7CFR, Part 225.7(j)

SFSP Meal service requirements.

- 7CFR, Part 225.16(c)(2)
- 7CFR, Part 225.16(c)(3)

6. Detailed description of alternative procedures and anticipated impact on Program operations, including technology, State systems, and monitoring:

Non-congregate feeding – Under this waiver, sponsors can utilize various methods of distributing meals to eligible children and allow the children to take the meal away from the distribution site for consumption elsewhere. Acceptable methods include:

- Grab and go – Children pick-up their own meals from an approved location and take the meal elsewhere to consume. Children do not have to remain on site. Any and all food components may be taken away from site.
- Curbside pick-up – Children can arrive at an approved location with parent or guardian and receive their meal. Both the child and meal could then leave the site and the meal could be consumed elsewhere
- Bus route meal drop off – Sponsors can use vehicles to distribute meals to children at locations on a specific route. Many sponsors use bus routes and distribute meals where children normally board the school bus for transportation to school. Children can then take the meal elsewhere for consumption.

The state anticipates this will increase participation significantly and does not anticipate any negative or counter effects to smooth program operations.

State technology systems will not be impacted as a result of this implementing this waiver. Meal counts will continue to be documented at the point of service and the procedure and process of claiming of meals will not be changed.

The state and sponsor will continue their respective monitoring procedures, in-person, to ensure there is no discrimination during the meal service, children receive complete meals and meal counts are taken at the point of service.

Parent or guardian pick-up of meals – Under this waiver, sponsors can choose to allow a parent or guardian to pick up meals for children without the child or children being present with the parent or guardian. Sponsors will not be approved to distribute multiple meals for multiple days. Returning sponsors previously approved for this waiver can utilize the same procedures developed by the sponsor and approved by the state agency when this provision first became available nationwide. Alternative procedures designed to ensure only children benefit from SFSP services include:

- Identification cards – Some sponsors may use color coded cards that signify to sponsor staff that the parent or guardian has substantiated the number and age of children for which they are picking up meals. Methods used to substantiate initial validity include proof from parent or guardian their child(ren) is/are enrolled in school via students' school identification cards, use of school enrollment data from school enrollment system, and bringing all relative children to the site initially so the number and approximate age of children could be verified by sponsor staff. Once staff validate the number and eligibility of children, the number of meals for children is written on the color-coded card. The color of the card indicates the school in which the children were enrolled.
- Visual verification – Some sponsors may choose to ask parents or guardians to bring the children in their care to the site initially, and then site staff would document the name of the adult(s) that would be picking up meals and include

- the number of meals the person(s) would need each visit.
- School IDs – Some sponsors may require parents or guardians to show the children’s school IDs as proof of need for meals for children.

The state anticipates this waiver will positively impact families that would otherwise choose to not participate due to various concerns over the welfare of children due to violence, threats, homeless person’s activities and health concerns over the lingering COVID-19 pandemic. The state does not anticipate usage of this waiver by all sponsors as not all sponsors requested this waiver when it was first offered in 2020.

State technology systems will not be impacted as a result of this waiver being approved. Meal counts will continue to be documented at the point of service and the procedure and process for claiming of meals will not be unchanged.

The state and sponsor will continue their respective monitoring procedures, in-person, to ensure there is no discrimination during the meal service, children receive complete meals and meal counts are taken at the point of service.

Mealtime service requirements – Under this waiver, sponsors will be able to serve a breakfast and a lunch at the same time. Sponsors will not be allowed to serve multiple meals for multiple days. Sponsors will be required to ask either the child or parent if a breakfast and a lunch are needed rather than assuming both are needed. This waiver request is primarily aimed at reducing the number of times a day when a parent, guardian or child must visit a meal site to reduce items such as fuel costs for travel to the site, exposure to dangerous or inappropriate situations, and inconvenience for working parents. The request is also designed to assist sponsors with staffing shortages and will allow sponsors to re-direct human resources to other program areas.

The state anticipates this waiver will directly impact those families with limited transportation resources and limited availability to purchase fuel over food. The State does not anticipate any negative or unwanted result from this waiver.

State technology systems will not be impacted as a result of this waiver being approved. Meal counts will continue to be documented at the point of service and the procedure and process for claiming of meals will not be changed.

The state and sponsor will continue their respective monitoring procedures, in-person, to ensure there is no discrimination during the meal service, meals distributed to adults for children are complete and meal counts are taken at the point of service.

7. Description of any steps the State has taken to address regulatory barriers at the State level. [Section 12(1)(2)(A)(ii) of the NSLA]:

NMECECD has no state level regulatory barriers related to the waivers requested.

8. Anticipated challenges State or eligible service providers may face with the waiver implementation:

NMECECD does not anticipate any challenges with the approval and implementation of the waivers requested. Returning sponsors that served during the early part of the pandemic are familiar and experienced with these waivers. Sponsors new to the program will receive an administrative review to support compliance with requirements put in place to support program integrity.

9. Description of how the waiver will not increase the overall cost of the Program to the Federal Government. If there are anticipated increases, confirm that the costs will be paid from non-Federal funds. [Section 12(I)(I)(A)(iii) of the NSLA]:

There will be no additional cost to the Federal government as a result of the approval and implementation of these waivers. The State agency will train sponsors to survey children and/or parents as to their need for a breakfast and a lunch or only one of the two. Sponsors will also be trained to understand that the service of multiple meals for multiple days is not an allowable practice. Breakfast meals will be counted and claimed separately from lunch meals.

10. Anticipated waiver implementation date and time period:

May 15, 2023, through September 30, 2023.

11. Proposed monitoring and review procedures:

New Mexico Early Childhood Education and Care Department will monitor the performance of sponsors as part of the in-person administrative review process that will take place summer, 2023. Sponsor performance and compliance will be measured per the Federal regulations found at 7CFR, Part 225.7(e) and in accordance with the sponsor limitations included in this request.

12. Proposed reporting requirements (include type of data and due date(s) to FNS):

NM ECECD will report the following data points to FNS no later than October 30, 2023:

- A summary of the use of waivers by the State and eligible service providers.
- A description of whether the waivers resulted in improved services to recipients/participants.
- A description of the impact of the waivers on providing nutritious meals to participants.
- A description of how the waivers reduced the quantity of paperwork necessary to administer the program.
- Any additional information requested in the waiver approval.

13. Link to or a copy of the public notice informing the public about the proposed waiver [Section 12(1)(1)(A)(ii) of the NSLA]:

www.nmeccd.org/family-nutrition-public-notice/

14. Signature and title of requesting official:

loren.miller@eecd.nm.gov

Title: Loren Miller: Bureau Chief, Family Nutrition Bureau - ECECD

Requesting official's email address for transmission of response:

TO BE COMPLETED BY FNS REGIONAL OFFICE:

FNS Regional Offices are requested to ensure the questions have been adequately addressed by the State agency and formulate an opinion and justification for a response to the waiver request based on their knowledge, experience and work with the State.

Date request was received at Regional Office:

- Check this box to confirm that the State agency has provided public notice in accordance with Section 12(1)(1)(A)(ii) of the NSLA**

• **Regional Office Analysis and Recommendations:**