

**Provision 2 Base Year Claiming percentages  
Waiver Request**  
New Mexico Public Education Department  
(NMPED)

**State agency staff contact information:**

New Mexico Public Education Department  
Michael Chavez  
Director, Child Nutrition Program (NSLP)  
[MichaelA.Chavez@state.nm.us](mailto:MichaelA.Chavez@state.nm.us)

**Region:** Southwest Region

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

Any state approved NSLP sponsor in good standing, operating the Provision 2 base year during SY 2019-2020 and the COVID-19 outbreak. The New Mexico Public Education Department. There were 4 School Food Authorities and 14 school sites that were approved and establishing their Provision 2 breakfast and lunch percentages. This waiver would apply to all SFA's which were in compliance with National School Lunch Program (NSLP) and in good standing with our state agency.

**Description of the challenge 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]:**

Challenge:

New Mexico School Districts and Schools had closed due to Covid-19 on March 16<sup>th</sup>, 2020. Due to the closure the USDA guidance were for Districts and Schools to switch Program operations from NSLP to Seamless Summer Option (SSO) or the Summer Feeding Program (SFP). Due to this public health emergency, school closures limited the number of operating days; therefore, schools conducting Provision 2 base years were unable to collect adequate data to determine claiming percentages and reimbursement for use in non-base years. Our agency has given the SFA the ability to re-establish the during the SY 2020-2021. As the Covid-19 issue is still an issue and the data still may be skewed our agency and the SFA wish to utilize the data for SY 2019-2020 for establishing the Provision 2 base year breakfast and lunch claiming percentages for the next 3 years.

Goal:

Approved State waiver for Provision 2 will allow SFAs to use data from months when school were in full operation when determining reimbursement for non-base years. This waiver will release the SFA administrative burden for collecting and certifying application and establishing a new Provision 2 in the new school year.

Expected Outcomes:

The NM PED will be able to utilize the actual free, reduced, paid data along with the meals served for breakfast and lunch for SY 2019-2020 to establish the Provision 2 claiming percentages. This will allow our SFA's to focus on the plan that they will establish to serve all students breakfast and lunch for free and remain in compliance with USDA guidance, regulations and approved waivers is

approved. In turn, more students will have access to free meals during this Covid-19 health crisis.

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

*USDA Policy Memo # SP-46-2015 and Provision 2 Guidance-National School Lunch and School Breakfast Programs, USDA, Summer 2002, page 5.*

The school takes counts of only the total number of reimbursable meals served each day, instead of counting meals by type. Reimbursement during these years is determined by applying the percentages of free, reduced, and paid meals served during the base year to the total meal counts for the claiming period subsequent year. Federal reimbursement is based on the percentages and meals that are reimbursed at the free, reduced price and paid rates issued by USDA annually. The regulation below would need to be waived.

7 CFR 245.9(b)(3)(i)(ii)

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

If approved, NM PED will utilize the free, reduced, and paid meal counts served by the SFA and schools for the months of July 1, 2020- March 16, 2020. The breakfast and lunch percentages will be review, validated, and approved. The percentages will then be programed in the NM Nutrition Claims portal to ensure proper federal reimbursement for the subsequent Provision 2 years.

**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]:**

There are currently no State level regulatory barriers related to this specific issue.

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

Our State does not anticipate that the establishment of this statewide waiver and will not pose any challenges at the state or SFA level since schools operating under this waiver were previously on Provision 2. We will ensure that the schools under this waiver continue to operate under USDA regulation and guidance for Provision 2 Program option.

**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(1)(1)(A)(iii) of the NSLA]:**

The establishment of this statewide waiver will not increase the overall cost of the Program to the Federal Government since these schools were previously on Provision 2 and just needed to re-establish their Provision 2 base years.

**Anticipated waiver implementation date and time period:**

The anticipated waiver implementation start date is when the waiver is approved by USDA. The Provision 2 waiver will be in effect for the SFA and school that established the Provision 2 July 1, 2019- June 30, 2023.

**Proposed monitoring and review procedures:**

In addition to required Administrative Review (AR), at Provision 2 districts establishing a base year in SY 2019-2020, prior to first claim payment for SY 2020-2021 State Agency **will:**

- review a statistically valid sample of meal applications and other eligibility source documents to ensure they were determined correctly during base year;
- compare those student eligibility documents to the point of service (POS) eligibility rosters for SY 2019-2020 to ensure that students received the correct benefit;
- compare total number of student meal eligibilities by category to number of meals served by day to ensure that meals are claimed at the correct eligibility rate;
- ensure that meals at each site were consolidated correctly on the claim for reimbursement during SY 2019-2020.
- Ensure the proper Provision 2 breakfast and lunches free, reduced, paid percentage rates are programed in our claims system to ensure the proper federal funds are reimbursement;
- System edits check are made monthly for approved Provision 2 school sites.
- In SY 2020-2021 the claims for reimbursement will be reviewed by NM PED staff to ensure correct Provision 2 claiming percent ages are used.

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

There are no proposed reporting requirements for this waiver. The claim regulations established and reports for claims still remain in effect for this waiver and will be submitted by the dates established by USDA.

**Link to or a copy of the public notice informing the public about the proposed waiver:**

**Public Notice: Once approved the Provision 2 Meal Counting and Claiming waiver will be placed on the NM PED Student Success and Wellness Bureau webpage at <http://webnew.ped.state.nm.us/bureaus/student-success-wellness/>.**

**Signature and title of requesting official:**

**Michael A. Chavez**

**Public Education Department**

Michael A. Chavez, 8/10/2020  
Michael Chavez, Director, Child Nutrition  
[MichaelA.Chavez@state.nm.us](mailto:MichaelA.Chavez@state.nm.us)

---

**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:**

- Date Received: \_\_\_\_\_
- 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:**
  - Recommend Approval
  - Recommend Denial