



**STATE OF NEW MEXICO  
PUBLIC EDUCATION DEPARTMENT  
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ARSENIO ROMERO, PH.D.  
SECRETARY OF EDUCATION

MICHELLE LUJAN GRISHAM  
GOVERNOR

**CHILD NUTRITION PROGRAM  
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(l) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), 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 (CNP), including the Seamless Summer Program (SSO), the National School Lunch Program (NSLP), the Fresh Fruit and Vegetable Program (FFVP), 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 15-2018, CACFP 12-2018, SFSP 05-2018, *Child Nutrition Program Waiver Request Guidance and Protocol- Revised*, May 24, 2018.

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

New Mexico Public Education Department, Child Nutrition Programs Michael Chavez,  
Child Nutrition Director [MichaelA.Chavez@state.nm.us](mailto:MichaelA.Chavez@state.nm.us) 505-699-4562

**2. Region:**

Southwest Regional Office

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

For the New Mexico Public Education Department (NMPED) Child Nutrition Programs experienced and approved sponsors operating the National School Lunch Program (NSLP), School Breakfast Program (SBP), and Seamless Summer Option (SSO). Eligible SFAs are required to submit an annual application to operate the National School lunch program, in which they must complete all assurances to comply with the NSLP regulations. All SFAs are reviewed and tracked in our Administrative Review (AR) system. All reviews and technical assistance are tracked in the system and SFAs that are not compliant or in good standing, can be made "inactive" and monitored. Our contractor, CN Resources, also assists us with reviews and has access to the AR system to complete the reviews.

**4. 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(l)(2)(A)(iii) and 12(l)(2)(A)(iv) of the NSLA]:**

SFAs continue to struggle with congregate meal service due to, significant staff shortages, changing health guidance, and unanticipated school closures due to natural disasters, unscheduled major building repairs, court orders related to school safety or other issues, labor management disputes, or, when approved by the State agency for a similar unanticipated event. Due to these challenges, NMPED is requesting flexibilities outlined in the attached waiver checklist.

The goal of the non-congregate waiver implementation is to allow for efficient and consistent service of school meals and ensure access to healthy meals for New Mexico's children, in the event of unanticipated school closures, with or without virtual learning.

Approval of this waiver will allow NMPED and sponsors to continue implementing streamlined meal service and program operations. NMPED expects that the waiver will help to prevent disruption to meal access for NM students and increase participation during unanticipated school closures and summer meal programs.

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

See attached waiver checklist. SFSP regulations on checklist do will not apply to SFAs not operating SFSP.

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

The Summer 2023 and SY 2023-24 Child Nutrition Program 12 (l) waivers are needed to allow sponsors to continue to provide meals when program operations are impacted by unanticipated school closures. Operational flexibilities at the sponsor and state level will be utilized as outlined in the attached waiver checklist.

Alternate procedures would include:

- Bus route meal delivery
- Bus stop meal pick-up
- Grab n' go meals (will increase participation by not requiring that children stay at the site to eat)
- Program operators have more flexibility for site operations (not having to make sure there is space in a congregate area for meal consumption)
- Program operators have the flexibility to continue serving meals in the event of site closures'
- Meal delivery at bus stops, community centers or other designated areas will greatly increase the access to meals in rural areas where children cannot commute to a congregate setting.

**Anticipated Impact:** The waivers will significantly increase access to healthy meals, and allow sponsors to meet the needs of their students and communities. The NMPED will continue to ensure program integrity through a thorough application approval process, technical assistance, on-site visits, administrative reviews, and ongoing training. In addition, no change will need to be made to current technology systems as a result of these waivers. Approval will be cost neutral for NMPED.

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

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

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

There are no anticipated challenges with waiver implementation. NMPED's internal processes and procedures are already in place to ensure program integrity. We will be providing regular training, on-site visits and technical assistance to program operators. Participating SFAs that receive a review during the school year, will also be required to have their summer feeding program reviewed as well. All technical assistance, corrective action and outreach will be tracked in our Administrative Review system.

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

There is no additional cost to the National School Lunch Program (NSLP), School Breakfast Program (SBP), Seamless Summer Option (SSO), Fresh Fruit and Vegetable, or the federal government, for these waivers. Summer meals under SSO,

will continue as an extension of the NSLP, no extra costs but more opportunity to feed more children and have more operational summer feeding sites.

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

The anticipated statewide implementation start date is upon approval from USDA and is to remain in effect through dates identified on the attached checklist.

**11. Proposed monitoring and review procedures:**

Monitoring of sponsors performance under the requested waivers will follow administrative review regulations for each program, with the exception of Special Milk and CACFP programs, which are not operated under NSLP. This practice will be consistent with 7 CFR 210, 215, 220, 225, and 226 review requirements.


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

No later than October 30, 2024, NMPED will report to USDA the number of sponsors that requested and were approved to utilize these waivers.

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

[Student Success & Wellness Bureau – New Mexico Public Education Department \(state.nm.us\)](http://state.nm.us)

**14. Signature and title of requesting official:**

DocuSigned by:  
  
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Title: Director

Requesting official's email address for transmission of response:

[MichaelA.Chavez@ped.nm.gov](mailto:MichaelA.Chavez@ped.nm.gov)

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**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(l)(1)(A)(ii) of the NSLA

New Mexico's USDA Waiver Request

March 15, 2023

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**Regional Office Analysis and Recommendations:**