

CHILD NUTRITION PROGRAM STATE WAIVER REQUEST
Arkansas Department of Human Services, Division of Child Care and early Childhood Education
Health and Nutrition Unit

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 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 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:

Arkansas Department of Human Services Division of Child Care and Early Childhood Education/Health Nutrition Unit (HNU)

2. Region:

Southwest

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

Sponsors with approved 2021 applications for Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), and National School Lunch Program (NSLP).

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]:

Challenge: The exceptional circumstances created by the current Covid-19 health emergency presents various obstacles to conducting monitoring of the Child Nutrition Programs per requirements outlined in Federal regulations. Obstacles include varying schedules of operation in programs with fluctuating periods of service due to health concerns. Scheduling monitoring has been challenged by unexpected program closures and sponsor staff absences. Travel and access restrictions create barriers to monitoring. Arkansas continues to experience record

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numbers of Covid-19 exposures.

Goal: State Agency's goal is to maintain the integrity of the programs while assisting sponsors in meeting the challenges of providing services to needy families and ensuring the safety, health, and well-being of our staff.

Outcome: Adherence to Federal regulations in the operation of all Child Nutrition Programs will be successfully monitored.

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

7CFR 225.7(d)(2)(ii)(A) *Frequency and number of required reviews.* State agencies shall: (A) Conduct a review of every new sponsor at least once during the first year of operation;

- SFSP reviews of new sponsors will be conducted at least once during the first year of operation unless pandemic circumstances cause closure. New sponsors that do not receive a review during the first year of operation will be reviewed during their second year of operation.

7CFR 225.7(d)(2)(ii)(B) Annually review a number of sponsors whose program reimbursements, in the aggregate accounted for at least one-half of the total program meal reimbursements in the State in the prior year;

- SFSP sponsors whose program reimbursements, in the aggregate, account for at least one-half of the total program meal reimbursements in the State in the prior year will be reviewed if barrier not caused by public health emergency. SFSP sponsors that account for at least one-half of the total program meal reimbursement that do not receive a review will be reviewed the following program year. State agency will request a financial review be completed by our Office of Payment Integrity and Audit if deemed necessary for any sponsor based on billing amounts.

7CFR 225.7(d)(2)(ii)(C) Annually review every sponsor which experienced significant operational problems in the prior year.

- SFSP sponsors who had operational issues the year prior will receive a review unless pandemic circumstances cause closure. Any SFSP sponsor who had operational issues the year prior that does not receive a review will be reviewed the following program year.

7CFR 225.7(d)(2)(ii)(D) Review every sponsor at least once every three years.

- SFSP sponsors are being reviewed at least once every three years. State Agency will review every sponsor at least once every four years if an increase in SFSP sponsors transitioning from NSLP creates a need.

7CFR 225.7(d)(2)(iii)(6) *Food service management company facility visits.* As a part of the review of any vended sponsor which contracts for the preparation of meals, the State agency shall inspect the food service management company's facilities. Each State agency shall establish an order of priority for visiting facilities at which food is prepared for the Program. The State agency shall respond promptly to complaints concerning facilities. If a food service management company fails to correct violations noted by the State agency during a review, the

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State agency shall notify the sponsor and the food service management company that reimbursement shall not be paid for meals prepared by the food service management company after a date specified in the notification. Funds provided for in §225.5(f) may be used for conducting food service management company facility inspections.

- Food service management companies that provide vended meals to SFSP sponsors will receive an inspection if facilities remain open and accessible. Food service management companies that do not receive an inspection will be inspected the following program year. The State agency will respond promptly to complaints concerning facilities.

7CFR 226.6(m)(6) *Frequency and number of required institution reviews.* The State agency must annually review at least 33.3 percent of all institutions. At least 15 percent of the total number of facility reviews required must be unannounced. The State agency must review institutions according to the following schedule:

- CACFP facility reviews will be announced. Institutions will be contacted by phone and email to schedule facility reviews to limit exposure during the health pandemic.

7CFR 226.6(m)(6)(i) Independent centers and sponsoring organizations of 1 to 100 facilities must be reviewed at least once every three years. A review of such a sponsoring organization must include reviews of 10 percent of the sponsoring organization's facilities;

- CACFP Independent centers and sponsoring organizations of 1 to 100 facilities will be reviewed at least once every three unless prevented by pandemic circumstances. State agency is using a two-year review cycle instead of a three-year cycle. This has allowed us to adjust our review schedule and still be within federal regulations. Any center or sponsor that is not reviewed on their normal two-year cycle will be scheduled during the following program year. Independent centers and sponsoring organizations will be reviewed at least once every four years.

7CFR 226.6(m)(6)(iii) New institutions that are sponsoring organizations of five or more facilities must be reviewed within the first 90 days of Program operations.

- CACFP new institutions that are sponsoring organizations of five or more facilities will be reviewed within the first 90 days of Program operations if accessible. Institutions not reviewed within the first 90 days of Program operations will be reviewed within the first 180 days.

7CFR 210.18(c) Administrative reviews.

(c) *Timing of reviews.* State agencies must conduct administrative reviews of all school food authorities participating in the National School Lunch Program (including the Afterschool Snacks and the Seamless Summer Option) and School Breakfast Program at least once during a 3-year review cycle, provided that each school food authority is reviewed at least once every 4 years. For each State agency, the first 3-year review cycle started the school year that began on July 1, 2013 and ended on June 30, 2014. At a minimum, the on-site portion of the administrative review must be completed during the school year in which the review was begun.

- State agency is requesting a one-year extension to conduct NSLP administrative and procurement reviews on a four (4) year cycle. ARDHS will submit the procurement review cycle extension request to the SWRO separately for review and approval.

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7CFR 210.19(a)(5) Food Service Management Company (FSMC) review cycle requirements

(5) Food service management companies. Each State agency shall annually review each contract (including all supporting documentation) between any school food authority and food service management company to ensure compliance with all the provisions and standards set forth in this part before execution of the contract by either party. When the State agency develops a prototype contract for use by the school food authority that meets the provisions and standards set forth in this part, this annual review may be limited to changes made to that contract. Each State agency shall review each contract amendment between a school food authority and food service management company to ensure compliance with all the provisions and standards set forth in this part before execution of the amended contract by either party. The State agency may establish due dates for submission of the contract or contract amendment documents. Each State agency shall perform a review of each school food authority contracting with a food service management company, at least once during each 3-year period. Such reviews shall include an assessment of the school food authority's compliance with §210.16 of this part. The State agency may require that all food service management companies that wish to contract for food service with any school food authority in the State register with the State agency. State agencies shall provide assistance upon request of a school food authority to assure compliance with Program requirements.

- State agency is requesting a 1-year extension to conduct a review of each school food authority contracting with a food service management company at least once during each 4-year period.

7 CFR 210.8(a)(1) and 220.11(d)(1):

SFAs must review lunch service at all schools and breakfast service for at least 50% of schools under its jurisdiction by February 1.

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

State agency will provide monitoring through desk audit reviews. Sponsors are contacted by telephone and notified of review date. A list of required review documents is provided to the sponsor via email. The sponsor is given the option to allow an on-site or off-site meal observation. If off-site is requested, the sponsor is given instructions on providing the meal observation and other requirements remotely using technology. Sponsors are reminded of protecting privacy of meal participants during video observation. All review activities are documented using our current USDA approved review forms and entered in the database. Any review of a sponsor forced to cease operating due to issues caused by the health pandemic will be rescheduled.

Seven school food authorities have changed from operating NSLP to SFSP. All of these will need a review this year as new sponsors. Seventeen school food authorities are participating in NSLP. Eight NSLP sponsors are scheduled for administrative review. Many additional SFSP sponsors are anticipated to operate which would require monitoring.

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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]:

Four Zoom Town Hall meetings have been conducted since the start of the pandemic to update sponsors. Topics discussed included waiver extensions, documentation, program management, program applications, training, and enrichment activities. Best practices for serving grab and go meals with health and safety concerns were also addressed.

We are adjusting our review schedule to allow extra time to conduct desk audits with multiple communications with sponsors.

Annual sponsor training has been made available as an on-line class. This enables all sponsors to meet requirements while minimizing potential exposure during the pandemic. State Agency staff are available by phone and email to answer any questions and provide technical assistance as requested.

Sponsors are submitting a request for waivers using an application including detailed questions for each waiver for grab and go meals, parent or guardian pick up, multi-meal distribution, home delivery, and meal pattern flexibility. Parents wishing to participate in picking up meals must sign a *Parent Attestation and Pick Up Form* verifying that the meals will be served directly to a child and they are not receiving more than the daily maximum number of meals. Sponsors will document parents daily during meal grab and go service to avoid distributing duplicate meals.

Requests for meal pattern flexibility waivers due to a supply shortage are verified through our Commodity Distribution Unit. We have been able to assist sponsors in finding sources to prevent meal pattern issues.

Sponsors with approved waivers are receiving technical assistance from our staff which includes monitoring of daily meal documentation and meal counts for two weeks as well as monitoring claims using official SFSP review forms and procedures.

The top ten highest billing SFSP providers were given a financial review completed by our Office of Payment Integrity and Audit for the month of April 2020.

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

Challenges are not anticipated at the provider or State level.

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]:

It is not anticipated that the waiver request will require an increase in funding or staff.

10. Anticipated waiver implementation date and time period: Waiver implementation date through September 30, 2021.

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11. Proposed monitoring and review procedures:

State agency will conduct monitoring activities of all child nutrition programs through desk audits using alternate technologies and limited on-site visits with announced reviews. Reviews will be performed on the timeline according to regulations when possible. State agency needs the option of conducting CACFP, SFSP, and NSLP reviews on a four-year cycle due to the unpredictable operating climate of sponsors. New SFSP sponsors will be reviewed in the first or second year. SFSP sponsors whose program reimbursements account for at least one-half of the total in the State in the prior year will be reviewed that year or the following year. SFSP sponsor with operational issues in the prior year will receive an annual review or the following year. New CACFP institutions will be reviewed within the first 180 days. NSLP administrative and procurement reviews will be conducted every four years and reviewing food service management companies every three years will be waived for SY 2020-21 (7CFR 210.19(a)(5)).

Claims submitted for reimbursement in the Food Nutrition Service programs are randomly selected for review by the State Agency on a weekly basis. The team reviews claim data submitted by sponsor is reviewed and compared to the number of operating days, students, meals claimed and category (free, reduced or paid) that was approved by AR DHS upon submission of their application to participate in the program. This process occurs prior to payment of the claim. If a discrepancy is found, the review team must follow up with the sponsor/school food authority to resolve the issue. A tracking log is maintained on DHS Share and captures program monitored and outcome.

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

State agency will continue to submit federal reports by due date.

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]:

Waiver request is posted on the Arkansas Department of Human Services website at the following link: <https://humanservices.arkansas.gov/about-dhs/dccece/covid-19-information>

14. Signature and title of requesting official:



Title: Assistant Director, Health and Nutrition Unit, Division of Child Care

Requesting official's email address for transmission of response:

Thomas.Sheppard@dhs.arkansas.gov

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

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- **Regional Office Analysis and Recommendations:**