



## **Child Nutrition Program**

### **State Waiver Request for Non-Congregate Service in Excessive Heat**

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 (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 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:**

Utah State Board of Education, Child Nutrition Programs  
Kathleen Britton, Child Nutrition Director  
[kathleen.britton@schools.utah.gov](mailto:kathleen.britton@schools.utah.gov)  
801-538-7513  
250 East 500 South  
Salt Lake City, UT 84111-3204

**2. Region:**  
Southwest Regional Office

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



For Utah State Board of Education (USBE) Child Nutrition Programs experienced and approved sponsors operating Summer Food Service Program (SFSP) or Seamless Summer Option (SSO) in good standing (i.e. not in withholding and has not exhibited any egregious errors in regard to running the program).

**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]:**

The entire state of Utah can experience very high temperatures in the summertime, often reaching in excess of 100 degrees F. Many of our SFSP/SSO sites are in public outdoor spaces, such as parks, without a reasonable alternative service location. The summer temperatures can threaten the safety of children who may participate in these summer meals programs, both by heat exposure, and an increased burden on site operators to keep food at temperatures safe for consumption. To make alternative service options available in the event of excessive heat, and to emphasize the health and safety of the children served, USBE is requesting this waiver.

The goal of the waiver is to allow SFSP/SSO sponsors that normally operate outdoor meal service at sites without a temperature-controlled alternative, to provide a non-congregate meal service on days when the area experiences excessive heat or other exceptional circumstances, at the State's discretion.

Approval of this waiver will allow USBE and SFSP/SSO sponsors to continue implementing streamlined program operations. USBE expects that the waiver will allow sponsors to better serve participants on days when it may be unsafe to be outside for extended periods of time by allowing them to adjust to non-congregate meal service, decreasing the time children need to spend outdoors in excessive heat.

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

7 CFR 225.6(e)(15): Maintain children on site while meals are consumed;

42 U.S.C. 1753(b)(1)(A): the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the [Secretary](#) under [section 1758\(a\) of this title](#)) served during such fiscal year in schools in such [State](#) which participate in the school lunch program under this chapter under agreements with such [State educational agency](#); and

42 U.S.C.1761(a)(1)(D): The term "[service institution](#)" means a public or private nonprofit school food authority, local, municipal, or county government, public or



private nonprofit higher education institution participating in the National Youth Sports [Program](#), or residential public or private nonprofit summer camp, that develops special summer or school vacation [programs](#) providing food service similar to food service made available to [children](#) during the [school year](#) under the school lunch [program](#) under this chapter or the school breakfast [program](#) under the [Child Nutrition Act of 1966 \(42 U.S.C. 1771 et seq.\)](#).

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

**Alternate Procedures:**

The Non-Congregate Meal Service for Outdoor Summer Meal Sites Experiencing Excessive Heat Waiver is needed to allow SFSP/SSO sponsors to continue to provide meals when program operations are impacted by excessive heat.

**Alternative Procedures:** If an outdoor SFSP or SSO site cannot serve scheduled meals at an appropriate alternative location during an episode of excessive heat, they must request the Non-Congregate Meal Service for Outdoor Summer Meal Sites Experiencing Excessive Heat Waiver through the state agency. Sponsors will provide with their request information about a forecasted or established heat advisory, excessive heat warning, or excessive heat watch for their service area (e.g. url to or screenshot of dated weather-related information for the area, etc.)

**Anticipated Impact:** This waiver will allow SFSP/SSO sponsors to meet the needs of their communities in times that excessive heat may interrupt service. The USBE will continue to ensure program integrity through a thorough application approval process, technical assistance visits, administrative reviews, and training. In addition, no change will need to be made to current technology systems as a result of this waiver. Approval of this waiver will be cost neutral for USBE.

If this waiver is not implemented, the following impact on program operations will likely occur:

- For those SFSP/SSO sites where meals are served outdoors, fewer children, who need highly nutritious foods will be served SFSP/SSO Meals, than they normally would on days where temperatures are dangerously high. Because of the low-income nature of the areas SFSP/SSO meals are served in, these specific areas are more likely to have food insecurities within the population, and in urban areas, more likely to be considered food deserts.
- In Utah, for the months of June-August, the temperature for most days are at least 90 degrees, and several days are 100 degrees or higher. Allowing non-congregate feeding on days where temperatures are extremely high



will ensure that children and families who participate in the SFSP are safe, offering meal service that doesn't require they stay in the heat for longer than necessary periods of time to pick up a nutritious meal.

- SFSP/SSO site staff are also at risk on days of excessive heat. Allowing non-congregate feeding on days where temperatures are extremely high will ensure that site staff are able to fulfill meal service needs in the communities, without putting their own health or wellbeing at risk. Maintaining a healthy and well-cared for staff can ensure that program operations can continue without interruption to the planned schedule.

**7. Description of any steps the State has taken to address regulatory barriers at the State level. [Section 12(I)(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. USBE internal processes and procedures are already in place to ensure 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)(1)(A)(iii) of the NSLA]:**

There is no additional cost to the program or the federal government for this waiver.

**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 summer 2023.

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

Monitoring of SFSP/SSO sponsors performance under the requested waivers will follow administrative review regulations for each program. 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):**

USBE will report to USDA the number of sponsors that used this waiver as requested by USDA.

**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]:**

<https://schools.utah.gov/cnp/sfsp?mid=1218&tid=5>

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

*Kathleen Britton*

Title: Director

Requesting official's email address for transmission of response:

[kathleen.britton@schools.utah.gov](mailto:kathleen.britton@schools.utah.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**

**Regional Office Analysis and Recommendations:**



**Utah State  
Board of  
Education**