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Child Nutrition Program

State Agency Waiver for Onsite Monitoring in Inclement Weather

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
801-538-7513

2. Region:

Southwest Regional Office, USDA Food and Nutrition Services

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

Utah State Board of Education (USBE) - Child Nutrition Programs (CNP) is in good standing with USDA Food and Nutrition Services. The USBE Child Nutrition Programs defines good standing as the agency has no outstanding audit findings or program funding in withholding.

The intent of the waiver is for the State agency to warrant a virtual review in place of on-site monitoring in a review during an incident of inclement weather. The State agency will reschedule on-site dates for sponsors who are not in good standing. The waiver is not intended to be utilized by sponsors in the State of Utah.

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]:

Unanticipated inclement weather in the State of Utah has included high wind advisories, heavy snow fall causing unsafe road conditions, wildfires, excessive heat, and poor air quality. These inclement weather categories result in road closures or travel delays that inhibit the state specialist conducting the review from providing the on-site observations as scheduled and/or put the reviewer specialist in unsafe circumstances. Program reviews are scheduled with off-site and on-site activities observations. The state may have unforeseen weather conditions restricting travel due to road closures from wildfires and unsafe driving conditions due to high winds, snow and icy road conditions that pose a risk for state employees, especially in the early morning hours to observe breakfast meals.

This waiver would allow the state agency to determine if a transition to a virtual on-site observation is warranted to maintain the review timelines established and reduce burden on the sponsor to reschedule the on-site portion of the review. In the past we had a couple of specialists spend five hours of travel in unsafe road conditions during a blizzard to get to an on-site observation in February 2022. The travel to the site in safe conditions is one and a half hours drive. Specialists had to find shelter for the evening due to the weather instead of the ability to drive home. Having this type of waiver in place would have allowed the review specialists to complete a virtual on-site visit, reduce stress, unsafe travel conditions and reduce state administrative costs

Ten percent of the on-site portion of CACFP and SNP reviews in SY22 were rescheduled due to unsafe road conditions from snow/ice and/or high wind advisories.

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

Due to tight review schedules during the school year, we request to waive the requirement to complete the onsite portion of the administrative review in-person during the school year when the administrative review was opened following regulation timeframes, when the sponsor in good standing. Our department is requesting to use the alternative procedures outlined below to ensure timely completion of the reviews scheduled. For sponsors not in good standing, reviews would be rescheduled for an onsite visit within the school year the administrative review was opened.

USBE-CNP requests onsite monitoring requirements be waived due to inclement weather posing safety concerns for the following programs.

Child and Adult Food Care Program: Section 17 of the Richard B. Russell National School Lunch Act, as amended [[42 USC 1766](#)]; [7 CFR 226.6\(b\)\(1\)](#); [226.6\(m\)\(6\)](#).

Summer Food Service Program: 7 CFR 225.7(d)(2)(ii)

National School Lunch Program, National School Breakfast Program, Fresh Fruit and Vegetable Program, Afterschool Snack Program, Seamless Summer Option, and Afterschool Snack Program: 210.18 and 220.8(j).

(References above were also cited in the COVID-19 Public Health Emergency Nationwide Waivers for onsite monitoring requirements for State Agencies.)

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

Alternative procedures will be utilized when the State of Utah establishes state employees to work remotely. In 2021, Utah State Legislature passed a bill that would enable remote working under certain circumstances, namely “**Special Circumstance Days**” and “**Mandatory Action Days.**” **Special Circumstance Days** are defined as days where heavy snowfall or other circumstances pose a risk to employee safety. These are determined by the governor and the Governor’s Office of Management and Budget.

Mandatory Action Days are defined as poor air days, where the air pollution levels are at a point that is considered unhealthy for sensitive groups. For mandatory action days to be surge remote workdays, the notice from the Division of Air Quality (DAQ) needs to be issued at least 48 hours in advance. This means if the DAQ issues mandatory action for the following day, it will not be a surge remote workday. The 48-hour advance notice is necessary to allow supervisors and employees time to prepare for surge remote work.

The State agency will also utilize the Utah Department of Transportation Road report to determine travel modifications or cancelations due to current road conditions.

Alternative procedures include utilizing technology platforms to conduct virtual observations and review program operators’ documentation. During COVID-19 operations USBE Child Nutrition Programs successfully conducted virtual reviews for the on-site portion of the reviews with assistance from program sponsors. Providers will be notified up to 48 hours prior to the on-site visit and/or the morning of the on-site visit depending on weather circumstances. Providers have identified technology needed for virtual reviews throughout the COVID-19 pandemic and have implemented the necessary resources needed to accommodate a virtual review.

Using technology during inclement weather has the impact of helping both the state agency staff and sponsor maintain the review timeline previously set. Reviews are planned to best determine available resources including staffing and carpooling. Setbacks on timelines impact other reviews in progress or to be conducted. USBE-CNP would maintain the on-site date and complete the on-site portion of the review with a mixture of a desk review and use of technology

to observe meal operations. All documents that would be reviewed on-site would be uploaded to the State's E-Review Module and maintained with all other required documentation for the review.

Should technology not be useable during an inclement weather event, the State agency would reschedule the review(s) if not able to complete virtually. The State agency will reschedule the review within the regulatory timeframes for completing monitoring reviews.

Historically the winter months in Utah bring heavy snowfall and icy roads that pose a threat to the safety of the employees. Excessive heat, wildfires and poor air quality are a threat during the summer months. In Utah, for the months of June-August, the temperature for most days is at least 90 degrees, and several days are 100 degrees or higher. The surge telework bill defines surge days as poor air days, where the air pollution levels are at a point that is considered unhealthy, or other circumstances pose a risk to employee safety. This waiver would help the state agency maintain the review schedule as much as possible throughout the year regardless of any weather situation or mandatory action days that may arise.

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]:

Established processes and procedures to streamline reviews. Off-site work prepares the reviewers to spend less time on site. Most on-site visits are conducted to observe meal service, entrance, and exit conferences with the sponsor. Currently there are no defined allowances due to inclement weather to conduct on-site observations virtually.

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

We do not anticipate any challenges with waiver implementation. Any challenges have been addressed in prior years with the nationwide on-site waiver implementation. We are confident our staff and sponsors are trained in the technology platforms required to complete successful virtual on-site observations, as evidenced by our previous success in completing virtual on-site observations.

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]:

Costs are already budgeted for on-site observations. There are no additional costs to conduct a virtual on-site observation. Technology is already in use for operations.

10. Anticipated waiver implementation date and time period:

November 15, 2022, through September 30, 2023.

11. Proposed monitoring and review procedures:

The same scope of the review will be covered virtually. Technology currently in use will help state agency staff conduct virtual observations and review program operators' documentation as described in Item #6 and according to Child and Adult Food Care Program: Section 17 of the Richard B. Russell National School Lunch Act, as amended [42 USC 1766], 7 CFR 226.6(b)(1);,

226.6(m)(6); National School Lunch Program 7 CFR 210.18 Administrative Reviews; National School Breakfast Program 7 CFR 220.13(f)(1); 7 CFR 225.6 State Agency Summer Food Service Program 7 CFR 225.6(a)(1), 7 CFR 225.7 Program Monitoring and Assistance.

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

One year after approval of the waiver, USBE Child Nutrition Program will provide information on the use of the waiver to the FNS Southwest Regional office.

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]:

The Utah State Board of Education public website, "State Waiver Request,"

<https://schools.utah.gov/cnp/resources/waivers>.

14. Signature and title of requesting official:

Kathleen Britton

Title: Child Nutrition Program Director

Requesting official's email address for transmission of response:

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:**