

**Nationwide Waiver to Allow Non-congregate Feeding in Child Nutrition Programs  
Request for Closed Family Day Care Homes to Not Participate in Waiver**

Oregon Department of Education  
Child Nutrition Programs

Child Nutrition Programs are expected to be administered according to all statutory and regulatory requirements; waivers to the requirements are exceptions. However, Section 12(1) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(1), 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.

**State agency staff contact information:**

Oregon Department of Education  
Child Nutrition Programs  
Dustin Melton, Director  
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Salem, OR 97310  
503-947-5888

**Region:** Western Region

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

**N/A**

**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]:**

ODE CNP requests that Oregon not participate in the component of the Nationwide Waiver for Non-congregate Feeding in the Child Nutrition Programs that allows for non-congregate service of meals for Family Day Care Home Providers. The only limited exception would be a provider located in an area where summer or community meals are not available. That waiver included waiving the requirement in 7 CFR 226.19(b)(6)(iii), to serve meals through the Child and Adult Care Food Program in a congregate setting for closed ***Family Day Care Home Provider facilities***.

ODE CNP staff have met with all FDCH Sponsors in Oregon and they are in agreement with the concept of excluding closed family day care home providers from serving non-congregate meals due to integrity concerns and workload issues associated with ensuring families are not receiving double meals through the provider and also through a summer meal site.

Oregon Governor Kate Brown has mandated Oregon Schools to supply meals during the unanticipated school closures. In response to that mandate Oregon has at least 600 SFSP/SSO meal service locations (not including bus route meal drop locations) and over 1,000 emergency child care sites throughout the entire state. As a result, children, especially low-income children, have access to safe meals through either the SFSP/SSO sites, a large number of bus drops, and through emergency child care centers and emergency family day care homes.

With the current FDCH provider monitoring waiver and monitoring limitations, it will be difficult for FDCH Sponsors to uphold the integrity of the program with non-congregate feeding and meal claiming in family day care homes. Food safety concerns with the service of non-congregate meals distributed from FDCH provider homes is also an issue.

Challenge: Upholding program integrity considering monitoring limitations during the statewide “Stay Home Save Lives” mandate from Governor Brown due to the COVID 19 outbreak.

Goal: Maintain FDCH Sponsor and provider integrity, remove duplicate efforts of meal distributions within communities, and increase participation at Oregon summer meal sites.

We realize the importance of allowing for non-congregate feeding as many communities nationwide are experiencing rapid spread of COVID-19. We have asked that our Family Day Care Home Sponsoring Organizations communicate to their providers the availability of meals offered through the Summer Food Service Programs (SFSP) within their communities and although they have, only one FDCH provider has expressed interest and the sponsor was very hesitant to move forward with it because there was a summer meal site near the provider’s home which is in an urban area.

Expected Outcomes: Reduced monitoring burden on FDCH Sponsors, reduced approval burden on the state agency, maintain the focused access to non-congregate meals through summer meal sites already located throughout Oregon. Removal of duplicate efforts of meal distribution within communities.

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

This removal of participation would eliminate the impact on technology, tracking, monitoring and reporting of this component of the waiver at the state and sponsor level. This waiver exception is expected to ease administrative burden on sponsors, overall, and increase attendance at approved SFSP sites to continue feeding children in Oregon communities during this state of emergency.

**Description of any steps the State has taken to address regulatory barriers at the State level.:**

The State regulatory barrier is in alignment with the Oregon Governor's "Stay Home, Save Lives" [Executive Order 20-12](#) issued due to the COVID 19 outbreak. This mandate prevents in person monitoring visits of FDCH providers from occurring and that schools provide meals to community children.

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

ODE CNP does not anticipate that this waiver exception will pose any challenges at the state or sponsor level. We held a meeting with our FDCH Sponsoring Organizations and there was unanimous agreement with this proposal due to integrity, approval and monitoring challenges.

**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]:**

The establishment of this statewide waiver exception will not increase the overall cost of the Program to the Federal Government because non-congregate meals would not be allowed in closed FDCH provider homes.

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

The anticipated waiver implementation exception would be upon approval, through the duration of the Nationwide Non-Congregate Feeding Waiver.

**Proposed monitoring and review procedures:**

N/A unless a minimum number of providers are approved due to lack of local availability of meals served through schools or other community sites. If any providers are approved the SA would monitor the FDCH Sponsor implementation and review procedures to ensure program integrity and to support sponsor and provider success.

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

If any FDCH providers are approved, no later than December 30, 2020 ODE CNP will report the number of FDCH sponsors approved by the SA implement the non-congregate feeding waiver including the number operating days and meals claimed – if any are approved.

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

<https://www.oregon.gov/ode/students-and-family/childnutrition/Pages/COVID-19.aspx>

**Signature and title of requesting official:**



Name: Dustin Melton  
Title: Director, Child Nutrition Programs  
Oregon Department of Education

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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:**

- Date Received: \_\_\_\_\_

- Check this box to confirm that the State agency has provided public notice in accordance with Section 12(I)(1)(A)(ii) of the NSLA

- **Regional Office Analysis and Recommendations:**

Recommend Approval

Recommend Denial

Pursuant to the COVID-19 Child Nutrition Response Act (the Act) (H.R. 6201, Title II), and based on the exceptional circumstances of this public health emergency, the Food and Nutrition Service (FNS) is establishing a nationwide waiver to support access to nutritious meals while minimizing potential exposure to the novel coronavirus (COVID-19). This waiver applies to the National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program, and Summer Food Service Program (the Child Nutrition Programs).

Section 2202(a) and (b) of the Act permits the Secretary of Agriculture to establish a waiver for all States for the purposes of providing meals under the Child Nutrition Programs, with appropriate safety measures, as determined by the Secretary.

Under the Richard B. Russell National School Lunch Act at 42 U.S.C. 1753(b)(1)(A) and 42 U.S.C. 1761(a)(1)(D), and Program regulations at 7 CFR 225.6(e)(15) and 7 CFR 226.19(b)(6)(iii), Child Nutrition Program meals must be served in a congregate setting and must be consumed by participants on site. However, FNS recognizes that in this public health emergency, waiving the congregate meal requirements is vital to ensure appropriate safety measures for the purpose of providing meals and meal supplements.

Therefore, FNS waives, for all States, those requirements at 42 U.S.C. 1753(b)(1)(A), 42 U.S.C. 1761(a)(1)(D), and 7 CFR 225.6(e)(15), to serve meals through the National School Lunch Program, School Breakfast Program, and Summer Food Service Program in a congregate setting. FNS also waives, for all States, requirements at 7 CFR 226.19(b)(6)(iii), to serve meals through the Child and Adult Care Food Program in a congregate setting.

This waiver is effective immediately, and remains in effect through June 30, 2020, or upon expiration of the federally declared public health emergency, whichever is earlier.

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Consistent with section 2202(a)(2) of the Act, this waiver applies automatically to all States that elect to use it, without further application. State agencies must inform their Regional Office if they elect to be subject to the waiver. State agencies should inform local Program operators of the flexibilities provided by this waiver as quickly as possible, and work in partnership with local operators to provide meals to all participants in a safe and accessible manner.

As required by section 2202(d), each State that elects to be subject to this waiver must submit a report to the Secretary not later than 1 year after the date such State received the waiver. The report must include:

- A summary of the use of this waiver by the State agency and local Program operators, and
- A description of whether and how this waiver resulted in improved services to