

## **CHILD NUTRITION PROGRAM STATE WAIVER REQUEST TEMPLATE**

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 XX-2018, CACFP XX-2018, SFSP XX-2018, *Child Nutrition Program Waiver Request Guidance and Protocol- Revised*, Month XX, 2018.

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

Oregon Department of Education, Child Nutrition Programs (ODE CNP)  
Lynne Reinoso, [lynne.reinoso@state.or.us](mailto:lynne.reinoso@state.or.us), 503 – 947 – 5892

**2. Region:**

Western Region Office

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

Program operators will be approved for participation in this waiver on a case-by-case basis and their current administrative and operational standing in the Oregon Child Nutrition Programs will be considered and used as an evaluation data point prior to approval. The Oregon Department of Education is requesting to allow up to 10 sponsors each year, per each unique fire incident, to be approved to serve non-congregate meals during U.S. EPA's Air Quality Index is unhealthy (red flag) under the SFSP demonstration project for non-congregate meals service at outdoor sites that do not have access to indoor facilities. A "unique fire incident" would be defined as an active wildfire that is attributed to a specific, uniquely named fire.

**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(I)(2)(A)(iii) and 12(I)(2)(A)(iv) of the NSLA]:**

Issue seeking to solve: Since 2013, Oregon has seen an increase in the number of historically large wildfires. As North America's temperatures are in a warm phase, it is anticipated that the frequency and the size of these wildfires will increase. To further complicate this issue, Oregon is forecasted to experience a drier than normal winter preceding summer 2020. The Northwest is expected to have a normal significant large fire potential across the region. Wildfires produce a lot of smoke, and as a result can affect air quality over wide areas.

The Oregon Department of Forestry has produced a map with the history of fire in Oregon from 1911- 2017:

[https://www.oregon.gov/ODF/Documents/Fire/FireIntelGIS/20180305\\_ODF\\_CenturyFireHistory\\_11x17.pdf](https://www.oregon.gov/ODF/Documents/Fire/FireIntelGIS/20180305_ODF_CenturyFireHistory_11x17.pdf)

The National Interagency Fire Center produces the National Significant Wildland Fire Potential Outlook:

[https://www.predictiveservices.nifc.gov/outlooks/monthly\\_seasonal\\_outlook.pdf](https://www.predictiveservices.nifc.gov/outlooks/monthly_seasonal_outlook.pdf)

In 2019, summer meals sites in areas of southern Oregon were affected by smoke and were approved for the demonstration project for air quality after ODE CNP was approved to offer it. FNS approved the waiver in FY2019. Three sponsors were approved to serve non-congregate meals during air quality advisories in SFSP FY2019. However, due to the purple flag (very healthy) AQI not being issued, none of the sites were able to offer non-congregate meals.

In the past, including in FY2019, the wildfires and resulting poor air quality due to smoke have impacted participation in the SFSP and SSO in surrounding and down-wind areas. The Oregon Department of Education is seeking to allow sponsors to apply for air quality waivers due to wildfires when air quality advisories are imminent or already issued. If sponsors are allowed to apply and be approved by ODE CNP while the threat of fire is imminent, they may not serve non-congregate meals until EPA has issued the appropriate advisory. This will allow a seamless transition for meal sites to offer non-congregate feeding when needed to lower the impacts of wildfires, smoke, poor air quality and lack of resources by providing nutritious meals to children 18 years and younger in this time of need.

Goal: Allow for the service of non-congregate meals service for safety reasons through, the Summer Food Service Program (SFSP) and Seamless Summer Option (SSO), to SFSP sites in Oregon areas experiencing air quality advisories of at a minimum of unhealthy (EPA red flag) where "everyone may begin to experience health effects; members of sensitive groups may experience more serious health effects," due to wildfires. Increase access to nutritious SFSP/SSO meals during times when smoke is impeding children from attending meal sites and the health of staff on site serving and supervising meals.

Expected Outcomes: The number of summer meals served to children in needy areas will continue and experience minor declines or be stable.

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

Demonstration Project for Non-Congregate Feeding for Outdoor Feeding Sites Experiencing Excessive Heat memo with Q&As (SP 14-2018, SFSP 04-2018)

Section 749(g) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Action, 2010 (PL 111-80).

7 CFR 225.2 *Definitions* Site “means a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.”

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

ODE CNP will provide detailed information and instructions to SFSP and SSO sponsors on how to contact the State agency to request approval for the waiver, and gain the required reporting information and timelines on non-congregate meal service, menu requirements, documentation and claiming requirements of non-congregate meals to all SFSP and SSO sponsors state-wide. These instructions and processes are already in place due to the waivers approved in FY18 and data was sufficiently collected and reported.

The use of non-congregate meal service will be limited to times of EPA air quality advisories of “unhealthy for sensitive groups, unhealthy, very unhealthy or hazardous,” or more severe advisories, and the requirement of documentation that an air quality advisory was issued on the date of non-congregate service.

All sponsors claiming non-congregate meals for reimbursement must receive prior State agency approval and no retroactive approval will be given.

Barriers to ensuring that eligible populations are served in eligible areas have been addressed in SFSP 10-2012, as it details that “children residing in or evacuating from disaster areas may be determined homeless under the McKinney-Vento Homeless Assistance Action. These children are categorically (automatically) eligible for free meals in the Child Nutrition Programs.” Furthermore, SFSP 10-2012 provides that SFSP and SSO site eligibility may be waived by the FNS Regional Office (7 CFR 225.6(c) (2) for the relocation of sites damaged by a natural disasters to areas not eligible based on school or census data.

Families will drive or walk to approved sites. Sealed sack lunches containing all required meal components will be provided to each eligible child present. Food safety measures will be taken to ensure food safety will include cold and hot holding boxes and HACCP procedures will be in place. Only one meal per child will be provided to each child present at the site. The sponsor will comply with meal counting, claiming and State and sponsor monitoring and oversight requirements.

**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]:**

Oregon Department of Education is currently considering addressing the emergency through flexibilities outlined in SP 25-2012, CACFP 12-2012, SFSP 10-2012 *Disaster Response*. This memorandum provides extensive flexibilities to locations of SFSP/SSO/CACFP sites; it does not speak to the requirement for congregate meal service. As congregate meal service is not feasible in times of excessive smoke advisories, when the National Weather Service has issued a smoke advisory of “unhealthy for sensitive groups, unhealthy, very unhealthy or hazardous,” this waiver’s approval would provide additional safety from prolonged exposure to smoke.

To streamline sponsors’ request to participate in the demonstration project, the Oregon Department of Education has a section to the electronic SFSP application for sites where sponsors may request to participate in the demonstration project for non-congregate meals for excessive heat. In FY 2018, a selection in this area was added for sponsors to request the non-congregate meals for air quality due to smoke as well.

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

This SFSP option would be used in communities with poor air quality that are near to, or are downwind from fires in the summer when school is out. During wildfires there may be road closures in areas close to the fires which would make it difficult for families to pick up meals or for food availability in those communities. ODE CNP does not anticipate approving sponsors for non-congregate SFSP service in areas affected by road closures, unless there are extenuating circumstances such as the community has high walkability rates allowing parents and children to walk to a nearby site safely and with reduced exposure to smoke.

**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]:**

Without the waiver, a significant decline in meals served will be observed during times of air quality advisories due to smoke. However, with the waiver, a less significant decline in meals served will be seen in the affected areas. Impact to the State Administrative Funds or State Administrative Expense accounts will be nothing to minimal and any increase will be covered by Oregon’s General Account.

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

The Oregon Department of Education will allow sponsors to be approved to serve non-congregate meals under the SFSP demonstration project for non-congregate meals service at outdoor sites that do not have access to indoor facilities on days when air quality advisories from wildfires are established until the last date the SFSP site(s) are approved for operation during FY2019.waiver, but only on days of EPA advisories. This will provide ODE the ability to respond quickly when hazardous

conditions are present as a result of wildfires. The Oregon Department of Education is requesting that the demonstration project be approved for a three year time period; May 1, 2020 to April 30, 2023.

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

The Oregon Department of Education will track and provide oversight to those sponsors which are approved to serve SFSP non-congregate meal service due to air quality due to smoke. The Oregon Department of Education will ensure that sponsors approved and duration of approval and service corresponds appropriately to nearby fires or affected areas of smoke as made known by the National Weather Service which is responsible for publishing smoke advisories of varying degrees.

For approved sponsors, if they are scheduled for a review in the corresponding year of applied non-congregate waiver, SFSP/SSO sponsor reviews, state staff will interview staff regarding their non-congregate meal service performances and conduct a random sample of meal consolidation forms during the time of the natural disaster to ensure that the appropriate number of meals were claimed for reimbursement.

If state staff are reviewing a site approved to serve non-congregate meals due to air quality conditions, they will ensure that a maximum of one meal, per child may be claimed when participating in this demonstration project. State staff will also ensure that a trained adult staff is available on site to document all non-congregate meals that are served and maintain the integrity of the site. Disallowances/upwards adjustments will occur as appropriate.

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

The Oregon Department of Education will inform the FNS Western Regional Office when SFSP sponsors and sites have been approved prior to their participation in the demonstration project. Sponsors will inform ODE of all days on which non-congregate meals are served and report the number of meals served. In addition, sponsors will document the qualifying red flag air quality alerts due to smoke advisories from EPA, including the dates and affected areas. At the conclusion of the demonstration project, sponsors will be required to submit a report to ODE detailing the execution, challenges, successes, results, and, if requested, other information as requested by FNS of the demonstration project. ODE will submit this information annually and will submit reports to the FNS Western Regional Office by January 15 of the following approved FY. This data will serve as a benchmark for FNS to use in future deliberations as to the scope and impact of wildfires and corresponding smoke as related to the number of potential non-congregate meals served in similar natural disasters.

**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://www.oregon.gov/ode/students-and-family/childnutrition/sfsp/Pages/default.aspx>

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



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Title: Manager, Community Nutrition Programs

Requesting official's email address for transmission of response:

lynne.reinoso@state.or.us

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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**

- **Regional Office Analysis and Recommendations:**