**CHILD NUTRITION PROGRAM**

**STATE WAIVER REQUEST**

**DoD Alternate Method**

**Submitted 9/28/2021**

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 Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), National School Lunch Program (NSLP), Fresh Fruit and Vegetable Program (FFVP), 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 date 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:**

Maine Department of Education

Child Nutrition

Walter Beesley, Director Child Nutrition

207-624-6875

[Walter.beesley@maine.gov](mailto:Walter.beesley@maine.gov)

1. **Region:** NERO

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

**in good standing:** This would be for SFAs in good standing participating in

the NSLP, SFSP

**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]:** Maine Child Nutrition manages the USDA Food program for NSLP,

CACFP and SFSP. We have and still use the DOD program for some

produce purchasing. The contract for Maine was awarded to a Hartford

Provisions Company, HPC in Hartford, CT. Delivery was sub-contracted to Native

Maine due to logistics and commercial trucking laws. Local schools in Maine want

to use DOD but find it difficult and sometimes as much as 3 times higher in price for

the same identical product from the same farm. School districts cannot follow

the procurement CFR 2 regulations and use DOD.

The DOD products are ordered via FFAVORS which has its challenges, but locals have overcome that issue. Hartford Provisions cannot afford to send a truck to Northern Maine monthly, never mind weekly or daily. Transportation laws require overnight stays or two drivers because of the driving time. It is an 8-hour drive in a car from Hartford to Fort Kent, Maine. Therefore, HPC sub-contracted with Native Maine out of Westbrook Maine to deliver to Maine schools. There are challenges with the process of ordering from HPC and having delivery through Native Maine. Then with all the procurement training and review requirements, we discover DOD products are more expensive sometimes as much as 63% (watermelon). This is for the same product, brand name quantity coming out of the same box and off the same truck.See chart below for September 2021.

**5. Specific Program requirements to be waived (include statutory and**

**regulatory citations). [Section 12(l)(2)(A)(i) of the NSLA]:**  Maine supports

the USDA Food program and its purpose. In support of Federal Procurement

regulations, good fiscal money management, and support for our farmers,

a change is needed. Maine has looked at two options:

* 1. The well-known Cash in Lieu of Commodities, CLOC (Federal regulation 7 CFR 240) such as CACFP or a reimbursement type program, where the monthly claim pays the USDA rate times number of meals. This would be our first choice but realizing the USDA position on CLOC, Maine wrote the waiver on option b. § 250.56 (e) *Cash in lieu of donated foods.* States that phased out their food distribution facilities prior to July 1, 1974, are permitted to choose to receive cash in lieu of the donated foods to which they would be entitled in NSLP, in accordance with the Richard B. Russell National School Lunch Act (42 U.S.C. 1765) and with 7 CFR part 240
  2. In interest of our great farmers nationwide in Maine, Maine is asking that the money normally diverted to DOD would be transferred to the State agency to a fund to be used for reimbursement of fresh produce purchases. The State agency would accept monthly local claims for reimbursement from districts. Maine would reimburse them up to the amount that was set aside for the hybrid DOD amount. Maine DOE/Child Nutrition would maintain an account for the funds, following all accounting Federal and State laws.

Regulation Maine would like to further strengthen § 250.13 Efficient and cost-effective distribution of donated foods.

Regulations that will require the waiver 7 CFR 250

§ 250.56 Provision of donated foods in NSLP

**6. Detailed description of alternative procedures and anticipated impact**

**on Program operations, including technology, State systems, and monitoring:**

The procedure we are considering would be:

|  |  |  |
| --- | --- | --- |
| Steps: | Responsible Party | New or existing |
| SFA would  indicate on annual survey/order the amount of dollars to divert to DOD | SFA | Existing |
| Maine would submit amount requested by districts to USDA | SA | existing WBSCM |
| Maine creates account for districts of dollar amount requested | SA | New |
| SFA would order product from local vendor or distributor of their choice | SFA | Existing |
| SFA submits bill for reimbursement monthly | SFA | New |
| SA approves reimbursement request |  | Existing |
| SA draws money down from USDA | SA | Existing |
| SA pays local district using Maine’s payment system | SA | Existing |
| SA monitors the SFA account, so it does not exceed the requested amount. | SA | New |
| SA will include monitoring with the Administrative reviews. | SA | Existing |

Maine realizes current regulation places severe limitations of this procedure.

**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]:** Maine has

contacted USDA and DOD about the price difference. We submitted

documentation the prior school year and have heard nothing back.

We again notify our NERO office of the price difference so they could share

that information. Maine also realizes this is a method for SFAs to utilize

their entitlement.

**8. Anticipated challenges State or eligible service providers may face with**

**the waiver implementation:** Training local staff will be first but not a

major barrier considering this is very similar to what we do now with the

Maine Foods fund created by Maine law. The district would have to pay and

then submit for reimbursement for the products. Procedures will need to

be created and formalized for consistent regulatory compliance. Purchase

would be limited to fresh produce and could be purchased from

producers, produce distributor or broad line distributors much like the

current HPC catalog.

**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]:** No cost increase to USDA. Maine

cost increase would be absorbed by current staff.

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

could start as early as 1/2022 with USDA wavier approval.

**11. Proposed monitoring and review procedures:** The State Agency will handle requests for payment. During Admin Reviews, staff will review documentation on site.

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

**to FNS):** Reporting would occur the same process in place as the monthly claim for reimbursement. Year end close out of DoD and USDA Food would be the same.

**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.maine.gov/doe/schools/nutrition/laws>

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

**Director Child Nutrition Maine DOE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Title:

Requesting official’s email address for transmission of response:

**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:**