

**CHILD NUTRITION PROGRAM**  
**STATE WAIVER REQUEST – Area Eligibility Pursuant to 7 CFR 225.2, 225.6, and**  
**225.14**  
**3/28/2020**

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 the USDA to waive requirements for State agencies or eligible service providers under certain circumstances. State agencies and eligible service providers should 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.

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

Mississippi Department of Education, Office of Child Nutrition

**Scott Clements**, State Director, Office of Child Nutrition  
[sclements@mdek12.org](mailto:sclements@mdek12.org); 601-576-5000 (please e-mail any questions as MDE physical offices are closed through 4/17/2020)

**2. Region:** Southeast

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

The Mississippi Department of Education (the MDE) is requesting that the US Department of Agriculture (USDA) grant a waiver from the provisions of 7 CFR 225.2, 225.6, and 225.14 which require open sites be approved only where poor economic conditions exist. The MDE is requesting that this waiver apply to service providers that are in good standing and have a legitimate need to operate open sites in areas with less than 50% free/reduced students to meet the needs of their Summer Food Service Programs operating during unanticipated school closures.

Only School Food Authority (SFA) sponsors will be allowed this flexibility. This flexibility will only be extended during SFSP operations in the time of unanticipated school closures.

**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]:**

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Challenge to Solve:

Mississippi has many schools where the number of students eligible for free/reduced meals is close to the 50% threshold to operate an open SFSP site. In these situations, a large number of children will go unserved if the area eligibility requirement stands. In addition, in some school zones, there are pockets of poverty that can be easily identified even if the percentage of students in that zone eligible for free/reduced lunch is lower. The SFAs are in the best position to identify these needs in their communities. Many Mississippi SFAs have expressed the need to operate sites in these communities that would not usually be area eligible, to help the children who will otherwise be underserved by SFSP. This is especially important during the current COVID-19 crisis because so many parents are losing their jobs, increasing the likelihood of food insecurity for their children.

Goal of the Requested Waiver:

The goal of this waiver request is to allow SFA sponsors who have identified a need to serve in areas that would not meet the usual area eligibility requirements to operate open sites during times of unanticipated school closures.

The MDE envisions a two-pronged approach to implementing this waiver:

- Sites that have 40-49% free/reduced eligibility would be allowed to operate as area eligible open sites due to the large number of children who would be eating free/reduced meals if school was in session. The sponsor would be required to submit a plan for how known free/reduced children in the school zone would be targeted.
- Sites with less than 40% free/reduced eligibility would require specific justification from the SFA, and a plan for how the known free/reduced children in the school zone would be targeted (e.g. bus route, location of site, e-mail blast).

Expected Outcomes:

This waiver will increase availability of meals to vulnerable children during times of unanticipated school closures. It is expected that many children who receive free or reduced meals will obtain meals from these open sites.

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

The MDE is requesting a waiver from the requirements of Sections 225.2(a)-(c) of Title 7 of the Code of Federal Regulations that define the area eligibility requirements for open sites.

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*7 CFR 225.2 Definitions*

***Areas in which poor economic conditions exist means:***

(a) The attendance area of a school in which at least 50 percent of the enrolled children have been determined eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program;

(b) A geographic area where, based on the most recent census data available or information provided from a department of welfare or zoning commission, at least 50 percent of the children residing in that area are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program;

(c) A geographic area where a site demonstrates, based on other approved sources, that at least 50 percent of the children enrolled at the site are eligible for free or reduced-price meals under the National School Lunch Program and the School Breakfast Program;

***Open site*** means a site at which meals are made available to all children in the area and which is located in an area in which at least 50 percent of the children are from households that would be eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined in accordance with paragraph (a) of the definition of *Areas in which poor economic conditions exist*.

In addition, the MDE requests waiver of the related provisions listed:

7 CFR 225.6(c)(2)(i)(G): New sponsors and sites – verification of eligibility of open sites

7 CFR 225.6(c)(3)(i)(B): Returning sponsors and sites – verification of eligibility of open sites

7 CFR 225.6(d)(l)(i): Approval of sites – verification of poor economic conditions existing

7 CFR 225.14(c)(3): Sponsor to operate where poor economic conditions exist

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

Impact on Program operations is expected to be minimal. MDE staff will be trained on the waiver and how it affects applications from the SFA sponsors to operate sites that would not be traditionally eligible. The State electronic application and reimbursement system can be easily modified by State staff to override the error associated with approving a site that has less than 50% free/reduced eligibility. (There is no cost associated with this, and it can be just as easily reversed for traditional summer operations.)

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**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]:**

The MDE does not anticipate any regulatory barriers at the State level.

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

The MDE does not anticipate any challenges with implementation of the waiver as proposed.

**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]:**

This waiver request will not impact the overall cost of the Program to the Federal Government.

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

The MDE respectfully requests approval to waive regulatory requirements for a minimum duration of approximately two years, from March 16, 2020 through April 30, 2022.

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

The MDE will follow USDA guidance released 3/27/2020 on monitoring sponsors and sites that operate during unanticipated school closures.

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

By December 31 of each year, the MDE will provide a report to FNS of the number of sponsors approved for this waiver, the number of sites included in the waiver, the number of participating children, the criteria used to determine the sponsor's waiver approval and any other requirements established by the 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]:**

Website link: [mdek12.org/ocn/](http://mdek12.org/ocn/)

**Signature and title of requesting officials:**

Respectfully submitted,

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*Scott Clements*

State Director  
School Nutrition and District Operations Division

Requesting official's email address for transmission of response:

sclements@mdek12.org

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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:**