



Food and
Nutrition
Service

Braddock
Metro Center
1320
Braddock
Place
Alexandria
VA 22314

September 14, 2020

Monica L. Herrera
Director of Nutrition, Health and Youth Development Division
Minnesota Department of Education
1500 Commerce Drive
Roseville, MN 55113

Dear Ms. Herrera:

This letter is in response to the Minnesota Department of Education's (MDE) July 29, 2020, request to waive the requirement that milk served via the Special Milk Program (SMP) may only be provided to students during non-congregate meal services due to the ongoing public health emergency associated with the novel coronavirus (COVID-19). Under current requirements, Program operators must provide milk directly to students.

Specifically, MDE requested a statewide waiver of the SMP distribution requirements at Section 3(a)(7) of the Child Nutrition Act of 1966 (42 USC 1772(a)(7)) and Title 7 CFR 215.7(d)(2)(i) and 215.13a(a), which require SMP operators to provide milk directly to children, not to parents and guardians. However, the Food and Nutrition Service (FNS) recognizes that in this ongoing public health emergency, requiring children to come to the SMP site to pick up milk may not be practical and in keeping with the goal of providing milk to children while also taking appropriate safety measures.

Because the Families First Coronavirus Response Act (P.L. 116-127) did not include SMP as a "qualified program," the nationwide waiver allowing parents to pick up meals for children during COVID-19-related operations through school year (SY) 2020-2021 does not apply to SMP. Therefore, State agencies must request a waiver under Section 12(l) of the NSLA to permit Program operators with an approved waiver allowing non-congregate meal distribution during COVID-19-related operations to distribute SMP milk to a parent or guardian to take home to their children.

To grant a Section 12(l) waiver, the NSLA requires that the waiver must facilitate the purpose of the program, the public must receive notice and information regarding the proposed waiver, and the waiver will not increase the overall cost of the program to the Federal Government. FNS finds that MDE's waiver request satisfies these statutory requirements.

Accordingly, based on the exceptional circumstances relating to the continued public health emergency due to COVID-19, and pursuant to the waiver authority granted at section 12(l) of the NSLA, FNS approves MDE's waiver request through June 30, 2021.

Therefore, effective immediately, for SY 2020-2021, this waiver allows State agencies to approve school food authorities (SFAs) participating in SMP to distribute SMP milk to a

parent or guardian to take home to their children who are not present at school because of virtual or distance learning schedules or school closures.

State agencies, in addition to meeting the NSLA requirements for a Section 12(l) waiver listed above, must have a plan for ensuring that Program operators are able to maintain accountability and program integrity. This includes putting in place processes to ensure that SMP milk is distributed only to parents or guardians of eligible children, and that duplicate servings are not made available to any child. State agencies may want to consult local Program operators when developing their plans as local Program operators are best situated to determine how to provide these assurances. If MDE has already developed a plan for distribution to parents and guardians through other programs, that plan may be adapted to include milk.

The waiver authority at section 12(l) of the NSLA also requires FNS to periodically review the performance of any State or eligible service provider that was granted a waiver. Therefore, MDE must provide to the FNS Midwest Regional Office, by August 31, 2021, a written report quantifying the impact of the waiver, as described below.

The report must include the following:

- A description of how the waiver impacted milk service operations, children's access to milk, and participation in SMP;
- The number of program operators and sites that used the waiver;
- The number of milks provided during SY 2020-2021 COVID-19-related operations, demonstrating that the waiver has not resulted in an increase to the overall cost of the program; and,
- A summary of findings associated with the waiver

FNS appreciates MDE's commitment to work with SFAs to meet the nutritional needs of children during a challenging time. If you have questions, please contact the FNS Midwest Regional Office.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ang M Kline". The signature is fluid and cursive, with the first name "Ang" being the most prominent.

Angela M. Kline
Director
Policy and Program Development Division

Electronic Copy: Samia Hamdan, MWRO