



Food and
Nutrition
Service

January 12, 2021

Braddock
Metro Center

Christine Emerson
Montana Office of Public Instruction
1227 11th Ave
Helena, MT 59601

1320
Braddock
Place
Alexandria
VA 22314

Dear Ms. Emerson:

This letter is in response to the December 23, 2020 waiver request from the Montana Office of Public Instruction (MT OPI). MT OPI requested to waive the following statutory and regulatory requirements:

National School Lunch Program (SFSP)

- 42 USC 1769c(b)(1)(C)(i) and 7 CFR 210.18(c) - Timing of administrative reviews and cycle;
- 7 CFR 210.19(a)(5) - Food Service Management Company (FSMC) review cycle requirements;

Summer Food Service Program (SFSP)

- 7 CFR 225.7(d)(2)(ii)(A) - Review new sponsors within the first year of operating; and
- 7 CFR 225.7(d)(2)(ii)(B) - Annually review sponsors whose reimbursements count as half the aggregate from the previous year.

The Food and Nutrition Service (FNS) recognizes that due to Program operation changes as the result of *COVID 19: Child Nutrition Response #59*, allowing the Summer Food Service Program and the National School Lunch Program Seamless Summer Option to continue to operate through June 30, 2021, many Child Nutrition Program monitoring requirements will be difficult for State agencies and local operators to meet. In light of this, FNS will waive program monitoring requirements when a State agency provides a waiver request with an alternative plan that ensures program integrity is continued this year.

In its waiver request, MT OPI proposed an alternative oversight plan for NSLP and SFSP that includes extensive technical assistance for all program sponsors. MT OPI does not oversee the Child and Adult Food Program (CACFP) in Montana. For NSLP, the administrative review (AR) and FSMC review cycles will be extended by one year and formal monitoring will be paused for school year (SY) 20-21. For SFSP, the half-aggregate requirement will be waived for fiscal year (FY) 21 and school food authorities (SFAs) who have chosen to operate the SFSP for the first time in SY 20-21, and are in good standing in the NSLP, will not receive an SFSP review in the first year of operation. MT OPI has not requested a waiver of SFA and sponsor level monitoring

requirements on behalf of their SFAs and sponsoring organizations; therefore, all SFAs and sponsoring organizations will conduct reviews of their operations as required per regulations.

To ensure program integrity in the NSLP, MT OPI will continue to provide extensive technical assistance to SFAs. Additionally, both FSMC and procurement reviews will be aligned with the new AR schedule to ensure a streamlined review process that promotes program integrity. MT OPI completes at least one targeted technical assistance visit, in addition to an AR, during each review cycle and will continue to do so on the new 6-year cycle. This SY, a MT OPI specialist will conduct a virtual technical assistance visit to provide training and guidance to promote program integrity and ensure the correct use of Federal funds. Prior to the session, the specialist will review sponsor records for late claims and previous review findings, and provide an opportunity for the SFA to request specific technical assistance. During the session, the specialist will go over available waivers and program requirements, review menus to ensure compliance with the meal pattern, and review meal counts to ensure accurate meal claiming.

To ensure program integrity in the SFSP, MT OPI will continue to conduct virtual reviews for new SFSP sponsors not experienced with operating NSLP and/or any sponsor due for a three-year review. This FY, a MT OPI specialist will conduct a virtual technical assistance visit to provide training and guidance to promote program integrity and ensure the correct use of Federal funds. Prior to the session, the specialist will review sponsor records for late claims and previous review findings and provide an opportunity for the SFA to request specific technical assistance. During the session, the specialist will go over available waivers and program requirements, review menus to ensure compliance with the meal pattern, and review meal counts to ensure accurate meal claiming. SFAs who choose to operate SFSP in SY 20-21 will receive additional trainings on SFSP-specific topics. MT OPI will be unable to meet the half-aggregate requirement as it paid \$2 million in SFSP reimbursements in summer 2019 and has paid more than \$26 million in 2020 due to COVID; MT OPI does not have the staffing or resources to complete the number of reviews required under this regulation. However, MT OPI will continue to monitor each sponsor at least once every three years.

Given the numerous flexibilities and waivers that FNS has provided during the novel coronavirus public health emergency, many of the current monitoring requirements and regulations do not efficiently address the oversight of the Child Nutrition Programs. Since these flexibilities alter the normal operations of the Programs, monitoring strategies must adapt. This waiver request and activities within do not increase the overall costs of the Program(s) to the Federal Government, rather it allows the State agency to alter its oversight activities in order to strengthen program integrity and conduct efficient monitoring. Through implementation of this waiver, the State agency will continue to fulfill its oversight responsibilities and provide technical assistance which is critical to ensure that current program requirements are met.

Except for the requirements that remain in effect as discussed above, pursuant to section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), (42 USC 1760(l)), FNS approves MT OPI's waiver request effective through:

- September 30, 2021 for SFSP monitoring requirements;
- June 30, 2024 for the NSLP FSMC review cycle extension; and
- June 30, 2025 for the NSLP AR cycle extension.

Please note that this approval only extends the NSLP administrative review and FSMC review cycles and does not waive the requirement itself for an administrative review or FSMC review cycle. FNS has determined that, in light of the exceptional circumstances of the current novel coronavirus public health emergency and other program flexibilities provided by FNS, waiving the above statutory and regulatory requirements will facilitate MT OPI's ability to successfully carry out the purpose of the Programs.

MT OPI's oversight plan, as discussed above, provides assurance that MT OPI will continue to conduct oversight and provide technical assistance upon approval of this waiver. These actions will help Program operators effectively operate Child Nutrition Programs that meet the nutritional needs of eligible Program participants. In addition, as part of this waiver, MT OPI must take program integrity measures to identify any misuse of Federal funds and identify fraudulent activities.

The waiver authority at section 12(l)(5) of the NSLA requires that FNS review the performance of any State that is granted a waiver and terminate the waiver if the performance of the State has been inadequate to justify a continuation of the waiver. Beginning on April 1, 2021, FNS is requiring that for the duration of this waiver, MT OPI provide the Mountain Plains Regional Office (MPRO) a quarterly written report. The report must provide information on how MT OPI is implementing its oversight plan and quantify the impact of the waiver, as described below.

The report must include:

- A description of how the waiver impacted meal service operations and eligible participants access to nutritious meals and snacks;
- A description of how the waiver has facilitated the State agencies oversight abilities and responsibilities;
- A summary of program integrity measures taken to identify any misuse of Federal funds and identify fraudulent activities, and, if anything was identified, any actions taken;
- A description of how the waiver impacted the quantity of paperwork necessary to administer the Program(s); and

- A summary of any technical assistance measures that were provided.

Should MT OPI determine this waiver is no longer necessary prior to the expiration of the dates listed above, please notify the MPRO.

FNS understands that these are challenging times for all and that many State agencies and Program operators face significant resource and time constraints. We are committed to supporting State agencies and Program operators as they strive to run successful programs and meet Child Nutrition Program requirements in order to provide nutritious food to eligible participants.

If you have any questions or concerns, please contact the MPRO.

Sincerely,

A handwritten signature in black ink that reads "Sarah E. Smith-Holmes". The signature is written in a cursive style with a large initial 'S'.

Sarah Smith-Holmes
Director
Program Monitoring and Operational Support Division
Child Nutrition Programs