



Food and  
Nutrition  
Service

March 9, 2021

Braddock  
Metro Center

Ms. Sharon Davis  
Nebraska Department of Education  
301 Centennial Mall South  
P.O. Box 94987  
Lincoln, NE 68509-4987

1320  
Braddock  
Place  
Alexandria  
VA 22314

Dear Ms. Davis:

This letter is in response to the February 26, 2021, waiver request from the Nebraska Department of Education (NDE). NDE requested to waive the following statutory and regulatory requirements:

National School Lunch Program (NSLP)

- 42 USC 1769c(b)(1)(C)(i) and 7 CFR 210.18(c) Timing of administrative reviews and cycle.

Summer Food Service Program (SFSP)

- 7 CFR 225.7(d)(2)(ii)(A) Review new sponsors within the first year of operating;
- 7 CFR 225.7(d)(2)(ii)(B) Annually review sponsors whose reimbursements count as half the aggregate from the previous year; and
- 7 CFR 225.7(d)(2)(ii)(E) Conduct reviews of at least 10 percent of each sponsor's sites or one site, if that is greater.

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 (SFSP) and the National School Lunch Program (NSLP) Seamless Summer Option (SSO) 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, NDE proposed an alternative oversight plan that includes pausing formal NSLP reviews during school year (SY) 20-21 and extending the administrative review (AR) cycle and procurement review (PR) cycle by one year. Due to the decreased number of school food authorities (SFAs) operating NSLP and increased operational burden on SFAs providing multiple service delivery options, NDE will add one year to the five-year AR cycle and one year to the six-year PR cycle to allow staff to focus on technical assistance (TA). Due to the increased number of sponsors operating SFSP, NDE requested to waive first year reviews for new sponsors and the annual review requirement for sponsors whose reimbursements account for half the aggregate from the previous year. NDE will conduct reviews of SFAs new to SFSP

using a risk assessment to identify previous findings related to operational issues that could also arise in SFSP. NDE will continue to conduct compliance reviews of sponsors and sites for new private non-profit organizations operating SFSP in program year (PY) 20-21. NDE also requested to waive the requirement to conduct reviews of at least 10 percent of each sponsor's sites or one site, if that is greater. NDE will complete compliance reviews for returning sponsors based on a three-year review cycle and a high risk classification. High risk sponsor reviews will include reviews of at least 10 percent of sites. NDE did not request a waiver of any Child and Adult Care Food Program (CACFP) regulations and will continue to monitor CACFP per regulations off-site. NDE did not request a waiver of monitoring requirements on behalf of SFAs or sponsors, therefore all SFAs and sponsors will conduct reviews as required per regulations.

To ensure program integrity in NSLP, NDE will implement effective oversight measures including providing TA one-on-one and through monthly school meals operator webinars, Questions and Answers sessions made available to new food service directors, and recorded trainer videos. In place of ARs this year NDE will continue to monitor claims submitted by SFAs operating SBP/NSLP and will provide TA to all sponsors. To identify the misuse of Federal funds and fraudulent activity, NDE will use a risk assessment of SFAs operating NSLP and target new food service directors and those with previous operational issues to receive TA.

To ensure program integrity in SFSP, NDE will conduct compliance reviews for no less than half of all new SFSP sponsors and will review all returning SFSP sponsors according to the three-year review cycle. NDE will continue to conduct first year reviews for SFSP sponsors who are determined to be at high risk for operational and/or administrative issues due to recent AR findings. In addition, NDE will conduct reviews of at least 10 percent of each high-risk sponsor's sites. NDE will provide targeted TA to all SFSP sponsors through one-on-one assistance, monthly webinar trainings, training for new food service directors, and Questions and Answers to address common compliance issues and concerns. To identify the misuse of Federal funds and fraudulent activity, NDE's application and claims system ensures claims align with approved program operations. NDE will also conduct periodic checks of monthly reimbursement claims to ensure accuracy and monitor for significant changes in reimbursement amounts.

To ensure program integrity in CACFP, NDE will continue to conduct off-site reviews as desk audits, per COVID-19: Child Nutrition Response #40, and is not requesting any additional waivers of monitoring requirements. TA and training will continue to be conducted.

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, does 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.

Pursuant to section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), (42 USC 1760(l)), FNS approves NDE's waiver request effective through:

- September 30, 2021, for SFSP monitoring requirements;
- June 30, 2024, for the extended procurement review cycle; and,
- June 30, 2026, for the extended administrative review cycle.

Please note that this only extends the review cycles and does not waive the requirement itself for a 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 NDE's ability to successfully carry out the purpose of the Programs.

NDE's oversight plan, as discussed above, provides assurance that NDE 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, NDE 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, NDE provide the FNS Mountain Plains Regional Office (MPRO) a quarterly written report. The report must provide information on how NDE 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 NDE determine this waiver is no longer necessary prior to the expiration of the dates listed above, please notify the FNS 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 FNS MPRO.

Sincerely,



Jessica Saracino  
Acting Director  
Program Monitoring and Operational Support Division  
Child Nutrition Programs