



Food and
Nutrition
Service

December 17, 2020

Braddock
Metro Center

1320
Braddock
Place
Alexandria
VA 22314

Linda Schloer, Director
Child Nutrition and Food Distribution Programs
North Dakota Department of Public Instruction
600 East Boulevard Avenue, Department 201
Bismarck, North Dakota 58505-0440

Dear Ms. Schloer:

This letter is in response to the November 23, 2020 waiver request from the North Dakota Department of Public Instruction (NDPI). NDPI requested to waive the following statutory and regulatory requirements:

- 42 USC 1769c(b)(1)(C)(i) and 7 CFR 210.18(c), the requirement that State agencies conduct administrative reviews of all school food authorities participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) at least once during a 3-year review cycle;
- 7 CFR 225.7(d)(2)(ii)(B), the requirement that State agencies annually review Summer Food Service Program (SFSP) sponsors whose reimbursements count as half the aggregate from the previous year; and,
- 7 CFR 225.15(d)(3), the requirement that State agencies review food service operations at each SFSP site at least once during the first four weeks of operation.

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 SFSP and the 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, NDPI proposed an alternative oversight plan that includes a 1-year extension to their 5-year NSLP administrative review cycle. To ensure continued program integrity for the NSLP during school year (SY) 2020-2021, NDPI will hold monthly virtual training sessions for school foodservice personnel, hold in-person or virtual trainings specific to new staff members, send out a monthly newsletter to all CN program operators, and provide resources on the NDPI website. NDPI will continue to provide training and technical assistance on NSLP and SBP requirements throughout SY 2020-2021 to remind program operators that these requirements will remain in effect following operation of the SFSP. NDPI will record and distribute trainings to foodservice personnel who are unable to participate.

To ensure continued program integrity for the SFSP during fiscal year (FY) 2021, NDPI staff will review all new SFSP sponsors and any sponsors that had significant operational issues during FY 2020. NDPI staff will also review any current SFSP sponsors with any reported or observed complaints or claim irregularities. SFSP sponsors will complete the first four weeks of operation site reviews by November 30, 2020, and NDPI will review this requirement as part of the compliance monitoring process.

For the Child and Adult Care Food Program (CACFP), NDPI will conduct CACFP reviews as required per regulations; TA and trainings 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 do not increase the overall cost of the Program 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 NDPI's waiver request effective through September 30, 2021 for the SFSP requirements, and through June 30, 2025 for the NSLP administrative review cycle extension. Please note that this only extends the NSLP administrative review cycle and does not waive the requirement itself for an administrative 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 NDPI's ability to successfully carry out the purpose of the Programs.

NDPI's oversight plan, as discussed above, provides assurance that the State 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, NDPI 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 January 1, 2021, FNS is requiring that for the duration of this waiver, NDPI provide the FNS Mountain Plains Regional Office (MPRO) a quarterly written report. The report must provide information on how NDPI 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; and
- A summary of any technical assistance measures that were provided.

Should NDPI determine this waiver is no longer necessary prior to September 30, 2021 for the SFSP requirements or June 30, 2025 for the NSLP administrative review cycle extension, 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