



Food and
Nutrition
Service

Braddock
Metro Center

1320
Braddock
Place
Alexandria
VA 22314

June 8, 2020

Cheriee Watterson
Office Administrator
South Dakota Department of Education
800 Governors Drive
Pierre, South Dakota 57501-2235

Dear Ms. Watterson:

This letter is in response to the South Dakota Department of Education's (SDDE) May 29, 2020, request for a waiver under Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA) (42 USC 1760(l)) to permit Fresh Fruit and Vegetable Program (FFVP) operations at National School Lunch Program Seamless Summer Option (SSO) and Summer Food Service Program (SFSP) sites that are not elementary schools during COVID-19 related closures. Under current requirements, Program operators may offer FFVP foods only in elementary schools.

Specifically, SDDE requested a statewide waiver of the FFVP requirement at Section 19(a) of the NSLA (42 USC 1769a(a)), which limits availability of FFVP foods to elementary schools. The Food and Nutrition Service (FNS) recognizes that in this public health emergency caused by COVID-19, some FFVP elementary schools are closed and children that normally attend those schools are receiving meals through SSO and SFSP sites operating at other locations. To maintain children's access to FFVP foods, SDDE is requesting that school food authorities (SFAs) be permitted to offer FFVP foods from elementary schools closed due to COVID-19 at SSO and SFSP sites operating during school closures associated with COVID-19.

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 SDDE's waiver request satisfies these statutory requirements.

Based on the exceptional circumstances relating to COVID-19, and pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS approves SDDE's waiver request through June 30, 2020, or upon expiration of the federally declared public health emergency, whichever is earlier. While SDDE requested this waiver through September 30, 2021, FNS limited the duration of the waiver to the current school year.

Therefore, effective immediately, this waiver allows State agencies to approve SFAs participating in FFVP to serve FFVP foods at SSO and SFSP sites that are not elementary schools through June 30, 2020. This may be used in combination with the parent pickup

waiver approved on May 5, 2020, to allow parent pickup of FFVP foods at SSO and SFSP sites that are not elementary schools.

The waiver authority at section 12(1) of the NSLA also requires FNS to periodically review the performance of any State or eligible service provider that was granted a waiver. Therefore, SDDE must provide to the FNS Mountain Plains Regional Office a written report quantifying the impact of the waiver, as described below. Please note that approval of any extension is contingent on SDDE's ability to provide complete data and an analysis of the waiver impact.

The report must include the following:

- A description of how the waiver impacted FFVP food service operations, children's access to FFVP foods, and participation in FFVP;
- The number of SFAs that used the waiver;
- The number of approved alternate sites that used the waiver;
- The FFVP funds provided during the COVID19 unanticipated school closures, 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 SDDE's commitment to work with SFAs to meet the nutritional needs of children during a challenging time. If you have questions, please contact the Mountain Plains Regional Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Ang M Kline". The signature is written in a cursive, flowing style.

Angela M. Kline
Director
Policy and Program Development Division

Electronic Copy: Diane Fulton, MPRO