

April 12, 2023

1. **State agency submitting waiver request and responsible State agency staff contact information:**

North Dakota Department of Public Instruction
Melissa Anderson, SFSP Program Manager
mdanderson@nd.gov
701-328-2263

2. **Region:** Mountain Plains

3. **Eligible service providers participating in waiver and affirmation that they are in good standing:**

State-wide waiver request to allow non-congregate meal service at certain urban outdoor summer meal sites experiencing excessive heat or other exceptional circumstances. Program operators will be approved for participation in this waiver on a case-by-case basis and their current administrative and operational standing in the North Dakota Child Nutrition Programs will be considered and used as an evaluation data point prior to approval. The North Dakota Department of Public Instruction (NDDPI) is requesting to allow up to 10 sponsors each year, per excessive heat or other exceptional circumstances, to be approved to serve non-congregate meals during these unique situations for outdoor sites that do not have access to indoor facilities.

4. **Description of the challenge the State agency is seeking to solve, the goal of the waiver to improve services under the Program, and the expected outcomes if the waiver is granted. [Section 12(l)(2)(A)(iii) and 12(l)(2)(A)(iv) of the NSLA]:**

North Dakota has seen an increase in the number of sponsors who provide outdoor meal services to children under the SFSP. To continue providing meals at these outdoor sites, sponsors will need flexibility in their meal service to ensure that children receive meals during times of excessive heat or other exceptional circumstances.

According to Weather-us.com, North Dakota is vulnerable to thunderstorms, floods, droughts, tornadoes, and blizzards. Mountains provide a barrier on the western side to the moist air from the Pacific Ocean. The northern and southern sides of the state are open to air masses in all the seasons. Continuous wind in all seasons and temperature variations are the main features of the climate of North Dakota. Extreme cold up to -60°F (-51.1°C) and blizzards are not rare in the winter, nor are temperatures of 121°F (49.4°C) and frequent tornado outbreaks in the summer. Local floods are frequent during late spring and summer due to spring snow melt and heavy summer rainfall. The previous waivers, in 2020 and 2021, allowed SFSP sponsor organizations to serve non-congregate meals and provided a way for children to receive meals which allowed for a COVID safe option as well as a safe option on those days when temperatures were above normal or if there were other circumstances that would have otherwise prevented a congregate meal service. With the expiration of non-congregate waivers, SFSP sponsors no longer have the option, to provide non-congregate meals.

The goal of the waiver is to provide urban sponsors the option to request permission to offer non-congregate meals during times of excessive heat or exceptional circumstances. This will allow them to continue providing nutritious meals to children 18 years and younger on the days where excessive

heat or other exceptional circumstances would otherwise prevent children from consuming meals in a congregate setting.

Goal: Allow for urban sponsors to provide non-congregate meal services, for safety reasons through, the Summer Food Service Program (SFSP), to SFSP sites in North Dakota experiencing excessive heat or exceptional circumstances. Increased access to nutritious SFSP meals during times of excessive heat or exceptional circumstances which would otherwise prevent children from eating in a congregate setting. Prevent health emergencies of the children participating at the site as well as the health of staff on site serving and supervising meals.

Expected Outcomes: The number of summer meals served to children in needy areas will continue and experience minor declines or be stable.

5. Specific Program requirements to be waived (include regulatory citations). [Section 12(l)(2)(A)(i) of the NSLA]:

Congregate Feeding Requirement:

We are requesting to waive the congregate feeding requirement and that meals must be consumed on site in order to be eligible for reimbursement. This waiver is for urban sites only.

7 CFR 225.2 Definitions Site “means a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.”

7 CFR 225.6 (e)(15) Maintain children on site while meals are consumed;

6. Detailed description of alternative procedures and anticipated impact on Program operations, including technology, State systems, and monitoring:

NDDPI provides detailed information and instructions to SFSP sponsors on how to contact the State agency to request approval for the waiver and collect the required reporting information and timelines on non-congregate meal service, menu requirements, documentation and claiming requirements of non-congregate meals to all SFSP sponsors state-wide.

For urban sites only, the use of non-congregate meal service will be limited to times of excessive heat or exceptional circumstances. All urban sponsors claiming non-congregate meals for reimbursement must receive prior State agency approval and no retroactive approval will be given. Families will attend approved sites. Sealed sack lunches containing all required meal components will be provided to each eligible child present. Food safety measures will be taken to ensure food safety will include cold and hot holding boxes and HACCP procedures will be in place. Only one meal per child will be provided to each child present at the site. The sponsor will comply with meal counting, claiming and State and sponsor monitoring and oversight requirements.

The State agency’s application system, NDFoods, has the capability to collect meal information for those sponsors wanting to serve congregate or non-congregate meals. The claim for reimbursement process in NDFoods can collect data for both meal service types and data can be generated for reporting purposes.

7. Description of any steps the State has taken to address regulatory barriers at the State level.

[Section 12(l)(2)(A)(ii) of the NSLA]:

Previously, the State agency has not had to address any regulatory barriers as these flexibilities were in place.

8. Anticipated challenges State or eligible service providers may face with the waiver implementation:

The State agency does not anticipate that these waivers will present any challenges to the agency or SFSP sponsor organizations as these flexibilities have already been implemented and in place. The challenges that the State Agency and SFSP sponsor organizations may face if the waiver is **NOT** approved include:

- Loss of reimbursement revenues for meals and snacks as SFSP sponsors may not be able to access an alternate indoor facility in the event of excessive heat or exceptional circumstances.
- Loss of reimbursement revenues for meals and snacks as non-congregate meals are more favorable when serving children during times of excessive heat or exceptional circumstances.
- Decreased meal participation and program growth throughout North Dakota.

9. Description of how the waiver will not increase the overall cost of the Program to the Federal Government. If there are anticipated increases, confirm that the costs will be paid from non-Federal funds. [Section 12(l)(1)(A)(iii) of the NSLA]:

The State agency does not anticipate that these waivers will increase the overall cost of the Program to the Federal Government. This waiver will however continue to assist the SFSP sponsors and the State agency streamline and control costs to their programs.

10. Anticipated waiver implementation date and time period:

To be effective with the start of the 2023 SFSP and approved for a period of 1 year.

11. Proposed monitoring and review procedures:

The State agency will do individual sponsor technical assistance during pre-approval visits and annual application renewal; then continue to follow their standard SFSP review procedures. Sponsors found to have noncompliance issues as related to these waivers will work with the State agency on an individualized corrective agency plan and will have follow-up reviews scheduled as needed.

12. Proposed reporting requirements (include type of data and due date(s) to FNS):

The State agency will report to FNS any compliance issues noted with these flexibilities during application approvals and reviews by October 1st each year.

13. Link to or a copy of the public notice informing the public about the proposed waiver [Section 12(l)(1)(A)(ii) of the NSLA]: The public notice is located at:

[Summer Food Service Program | North Dakota Department of Public Instruction \(nd.gov\)](#)

14. **Signature and title of requesting official:**

Date: 4/12/2023

Name: Linda Schloer

Title: Director, Child Nutrition and Food Distribution Programs

Requesting official's email address for transmission of response: lkschloer@nd.gov

TO BE COMPLETED BY FNS REGIONAL OFFICE:

FNS Regional Offices are requested to ensure the questions have been adequately addressed by the State agency and formulate an opinion and justification for a response to the waiver request based on their knowledge, experience and work with the State.

Date request was received at Regional Office:

- **Check this box to confirm that the State agency has provided public notice in accordance with Section 12(l)(1)(A)(ii) of the NSLA**

- **Regional Office Analysis and Recommendations:**