

CHILD NUTRITION PROGRAM

STATE WAIVER REQUEST

Child Nutrition Programs are expected to be administered according to all statutory and regulatory requirements; waivers to the requirements are exceptions. However, Section 12(l) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), provides authority for USDA to waive requirements for State agencies or eligible service providers under certain circumstances. When requesting the waiver of statutory or regulatory requirements for the Child Nutrition Programs (CNPs), including the Child and Adult Care Food Program (CACFP), the Summer Food Service Program (SFSP), the National School Lunch Program (NSLP), the Fresh Fruit and Vegetable Program (FFVP), the Special Milk Program (SMP), and the School Breakfast Program (SBP), State agencies and eligible service providers should use this template. State agencies and eligible service providers should consult with their FNS Regional Offices when developing waiver requests to ensure a well-reasoned, thorough request is submitted. State agencies and eligible service providers are encouraged to submit complete waiver requests at least 60 calendar days prior to the anticipated implementation date. Requests submitted less than 60 calendar days prior to the anticipated implementation should be accompanied by an explanation of extenuating circumstances.

For more information on requests for waiving Program requirements, refer to

SP 15-2018, CACFP 12-2018, SFSP 05-2018, *Child Nutrition Program Waiver Request Guidance and Protocol- Revised*, May 24, 2018.

September 15, 2023

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

North Dakota Department of Public Instruction (NDDPI)

Child Nutrition and Food Distribution Programs (CNFD)

Linda Schloer, Director

lschloer@nd.gov

701-328-4565

2. Region: Mountain Plains Region

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

Eligible North Dakota sponsors participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), the National School Lunch Program Seamless Summer Option (SSO), and the Summer Food Service Program (SFSP) sponsors in good standing.

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]:

Allow eligible sponsors to continue to provide meals when service models, access and congregate meal service operations are limited due to natural disasters, unscheduled major building repairs, court orders relating to school safety or other issues, labor-management disputes, or, when approved by NDDPI, for a similar unanticipated cause. When there is an emergency situation, if sponsors do not have flexibilities in place there would be an increased administrative burden and limited access to nutritious meals to safely serve the community. If approved, sponsors will be able to continue providing meals to students without disruption, ensuring access during emergency situations. Additionally, NDDPI CNFD has reviewed non-congregate meal service during the nationwide pandemic and in rural areas for the SFSP during program year 2023 and has zero findings.

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

National School Lunch Program and School Breakfast Program

- Non-Congregate Meal Service [NSLA, 42 U.S.C. 1753(b)(1)(A) and Child Nutrition Act, 42 U.S.C. 1773(b)(1)(A)]
- Meal Service Times [7 CFR 210.10(l) and 220.8(l)]
- Parent/Guardian Meal Pickup [7 CFR 210.10(a), 220.2 (Breakfast), and 220.8(a)]
- Offer Versus Serve [42 U.S.C. 1758(a)(3) and 7 CFR 210.10(e)]

SFSP and SSO Unanticipated School Closures

- Non-Congregate Meal Service during Unanticipated School Closures [42 U.S.C. 1753(b)(1)(A), 42 U.S.C. 1761(a)(1)(D), and 7 CFR 225.6(i)(15)]
- Parent and Guardian Meal Pick-Up: Parent and Guardian Meal Pick-Up during Unanticipated School Closures [42 U.S.C. 1761(f)(3) and 7 CFR 210.10(a), 220.2 (Breakfast), 220.8(a), 225.2 (Meals), and 225.9(d)(7)]
- Meal Service Times for Unanticipated School Closures [7 CFR 225.16(c)(1), (2), and (3)]
- Service of Meals at School Sites for Unanticipated School Closures [42 U.S.C. 1761(c)(1) and 7 CFR 225.6(h)(1)(iv)]

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

Sponsors will apply to NDDPI for the waiver, when necessary. NDDPI will determine eligibility based on information received from the sponsor, which will include the description of the emergency situation and justification for the exception. NDDPI will provide guidance

and technical assistance to the sponsor including program application procedures, claiming procedures, meal service, meal pattern requirements and any other area of need. NDDPI will approve applications and monitor requirements through the administrative review process. This waiver will allow sponsors to meet the needs of their communities and participating children. No changes will need to be made to the current technology system as a result of this waiver. Approval of this waiver will be cost neutral to NDDPI.

7. Description of any steps the State has taken to address regulatory barriers at the State level. [Section 12(I)(2)(A)(ii) of the NSLA]:

There are currently no State regulatory barriers related to this specific issue.

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

There are no anticipated challenges with waiver implementation. Internal processes and procedures are already in place to ensure program integrity. Alternatively, this waiver will ensure North Dakota youth continue to have access to healthy meals during emergency situations.

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(I)(1)(A)(iii) of the NSLA]:

There is no anticipated impact on Federal administrative costs for NDDPI School Nutrition oversight with the implementation of this waiver.

10. Anticipated waiver implementation date and time period:

The waiver implementation will begin October 1, 2023, for SFSP and SSO Unanticipated School Closures through April 30, 2024, and effective immediately upon approval for the National School Lunch and School Breakfast programs through June 30, 2024.

11. Proposed monitoring and review procedures:

NDDPI will provide training and technical assistance on related program requirements and operations. Compliance will be assessed during the administrative review process.

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

One year after the date of waiver approval, or earlier upon request, NDDPI School Nutrition will report to FNS a summary of the use of this waiver by the state agency and sponsors and a description of whether and how this waiver resulted in improved services to program participants.

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]:

14. Signature and title of requesting official:

Linda Schloer

Title: Director, Child Nutrition and Food Distribution Programs

Requesting official's email address for transmission of response: lschloer@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: