



Food and
Nutrition
Service

December 17, 2020

Braddock
Metro Center

Mr. Michael A. Chavez
Director
Student Success and Wellness Bureau
New Mexico Public Education Department
120 South Federal Place #207
Santa Fe, New Mexico 87507

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Dear Mr. Chavez:

This letter is in response to the November 23, 2020, waiver request from the New Mexico Public Education Department (NMPED). NMPED 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 (SFA) participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) at least once during a 3-year review cycle; and
- 7 CFR 210.8(a)(1) and 220.11(d)(1), the requirement that SFAs must review lunch service at all schools and breakfast service at 50% of schools under its jurisdiction by February 1 each year.

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 and the National School Lunch Program Seamless Summer Option 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, NMPED proposed an alternative oversight plan that includes a 2 - year extension to their 3-year School Meals Administrative Review Cycle. This new 5-year cycle will provide the state additional time to conduct reviews. This year NMPED will conduct approximately 10-15 virtual administrative reviews for SFAs who have opted to operate regular NSLP and SBP. In addition, the oversight plan includes providing technical assistance to SFAs that are operating the Seamless Summer Option (SSO) by using the FNS SSO Administrative Review Forms. This oversight measure will help ensure program integrity of SFAs that are operating SSO this year. To assist with maintaining oversight and program integrity this year, NMPED will continue to conduct regular oversight of procurement practices during school year 20-21. NMPED will conduct approximately 35 procurement reviews, including any required reviews of

Food Service Management Companies. Given the current administrative and operational challenges SFAs are experiencing as a result of the novel coronavirus, NMPED has also proposed to waive the requirement for SFAs to review NSLP at all schools and SBP at 50% of schools under its jurisdiction by February 1 each year. In its place, NMPED will ensure program oversight through any scheduled reviews and technical assistance that is provided to SFAs, which will assist with operational challenges and ensure Program compliance.

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 the activities within do not increase the overall costs 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 NMPED's request to extend their administrative review cycle required at 210.18(c) through June 30, 2025. Additionally, FNS approves NMPED's remaining waiver requests referenced above effective through June 30, 2021. 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 NMPED's ability to successfully carry out the purpose of the Programs.

NMPED'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, NMPED 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 01, 2021, FNS is requiring that for the duration of this waiver, NMPED provide the FNS Southwest Regional Office (SWRO) a quarterly written report. The report must provide information on how the NMPED 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 NMPED determine this waiver is no longer necessary prior to June 30, 2025 for the review cycle extension or June 30, 2021 for the other items that have been waived, please notify the FNS SWRO.

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 SWRO.

Sincerely,



Sarah Smith-Holmes
Director
Program Monitoring and Operational Support Division
Child Nutrition Programs