



Matthew L. Blomstedt, Ph.D., Commissioner

NEBRASKA

DEPARTMENT OF EDUCATION

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Subject: Nebraska Department of Education Waiver Request - Monitoring Plan

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

Nebraska Department of Education (NDE)
Attn: Sharon Davis
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2. **Region:** Mountain Plains

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

The Nebraska Department of Education (NDE), the State Agency (SA) for the USDA Child Nutrition Programs (CNPs), is requesting this waiver to the CNPs monitoring requirements. This waiver is intended to waive selected monitoring requirements of the National School Lunch Program, Summer Food Service Program and Child and Adult Care Food Program during the 2020-2021 program year (PY), who are deemed by the SA to be 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(1)(2)(A)(iii) and 12 (1)(2)(A)(iv) of the NSLA]:**

The COVID-19 pandemic has created many administrative burdens for the SA and local operators. This waiver request seeks to reduce the administrative requirements and the burden they create during this challenging time while maintaining program integrity and identifying misuse of Federal funds.

National School Lunch Program (NSLP):

Challenge: As of November 1, 2020, there are 19 School Food Authorities (SFAs) operating the National School Lunch Program (NSLP) in School Year (SY) 2020-21, 12 of those are RCCIs. The SA typically conducts approximately 75-80 NSLP Administrative Reviews (ARs) per school year using a five-year review cycle, and approximately 50 Procurement Reviews (PRs) using a six-year review cycle. Since few SFAs are operating NSLP, ARs and PRs cannot be conducted in SY2020-21 but must be completed during the remaining three years of the five-year AR cycle

and the remaining two years of the six-year PR cycle. The high number of SFSP reviews needed for PY2021 limits the capacity of NDE to conduct ARs and PR within the remaining time frames for each review cycle. Nor would NDE specialists be able to adequately sustain the necessary technical assistance and training supports required for successful management of the CNPs during the pandemic. Significant challenges to NDE's ability to provide adequate technical assistance, training and education would arise in finishing the remaining reviews in a shortened timeframe. Many SFAs are experiencing a significant operational burden by providing multiple service delivery options to reduce exposure to the coronavirus. Very few SFAs are participating in the NSLP and for those that are, the burden of preparing for an AR/PR is not one that needs to be added.

Goal: The goal of this waiver is to address the challenges SFAs are encountering by designating SY2020-21 as a gap year in the AR and PR cycles for NSLP. The scheduled ARs and PRs will not be conducted for NSLP, School Breakfast Program, Special Milk Program, Afterschool Snack Program or Fresh Fruit and Vegetable Program. This means year 2 of the AR cycle and year 5 of the PR cycle will take place during SY2021-22, which will add one year to our five-year AR cycle and one year to the six-year PR cycle. The NDE is requesting to waive **7 CFR 210.18(c)** for SY2020-21 allowing for a six-year AR cycle and a seven-year PR cycle.

- Effective oversight measures will be implemented to ensure program integrity and will serve as an effective replacement for ARs. These oversight measures include technical assistance through monthly school meals operator webinars, Q&A sessions made available to new food service directors, recorded training videos accessible at the users' convenience and one-on-one technical assistance. SFAs administering SFSP or CACFP will also receive technical assistance.
- The current program circumstances and flexibilities impact oversight requirements and timeframes, and this waiver provides the opportunity to streamline these requirements. The flexibilities provided through the USDA Nationwide waivers and this SA waiver will allow the SA NSLP and Summer Food Service Program (SFSP) team to focus their time on providing technical assistance to the few SFAs still operating the NSLP in SY20-21, while also completing desk reviews of SFSP operations, required of all first-year SFSP sponsors (approximately 346 of our 371 SFAs are participating in the SFSP).
- The SA will implement oversight measures to ensure program integrity including identifying misuse of Federal funds and fraudulent activities using a Risk Assessment of SFAs operating the NSLP. New food service directors and those with previous findings of operational issues will be provided targeted technical assistance. SFAs operating the SFSP will be evaluated for risk factors including a new food service director and previously identified operational findings will be prioritized to receive technical assistance. The SA will continue to conduct small group webinar trainings and one-on-one technical assistance for new food service directors.
- Training and technical assistance measures the SA will implement to assist Program operators and ensure that Program requirements are met include the following: SFAs operating NSLP and SFSP will continue to have one-on-one technical assistance with NDE team members; NDE will continue offering monthly webinars on program updates, regulatory reminders, and offer time for sponsor and questions and answers. Technical assistance webinars or resources for Residential Child Care Institutions (RCCIs) will be developed.
- Specific training will be provided through webinars and resources on these topics:
 - o Technical assistance for meal pattern compliance.

- Procurement training designed to assist SFAs in preparing for competitive selection of a Food Service Management Company for SY2021-22 was provided in December 2020.
- Expected outcomes include the following: This waiver will significantly decrease administrative burden and allow for efficient and effective oversight of program operations. No change will need to be made to current technology systems as a result of this waiver.

Summer Food Service Program (SFSP):

Challenge: Due to the public health emergency in SY2019-20 and SY20-21, many schools opted to operate the SFSP to reduce their administrative burden and to provide free meals to all students in order to reduce food insecurity during a time of economic hardship. Currently, NDE has 346 sponsors operating the SFSP program, which includes 344 public and non-public school districts and two non-profit community organizations. The addition of many new schools to the SFSP means NDE will need to conduct approximately 115 SFSP desk reviews of first-year operators [7 CFR 225.7(d)(2)(ii)(A)] and for sponsors that account for half the aggregate of reimbursement [7 CFR 225.7(d)(2)(ii)(B)]. Previous years' records show that NDE conducted approximately 35-40 SFSP compliance reviews per year, which is only one-third of the reviews required to be completed in PY20-21. This exceptional increase in the required number of SFSP compliance reviews may not be reasonable with the required technical assistance activities our team is providing to ensure CNP sponsors feel supported and able to operate within programmatic requirements and regulations. Additionally, SFAs and other SFSP sponsors are encountering many administrative and operational burdens. Food service teams are being asked to prepare and serve meals using multiple service methods for students in classrooms and cafeterias, and for students engaging in remote learning. Preparing for an administrative review requires a large time commitment for the SFA and would cause a significant administrative burden during a time when staff shortages related to COVID19 and requirements to quarantine are common. In addition, the volume of records required for submission to complete a Compliance Review is large, creating a burden for organizations to assemble, scan and submit a large volume of documents. It is common to overlook submitting required documentation and time consuming for SFAs and SA staff to identify, follow-up on and retrieve this information.

Goal: The SA is requesting to waive three review-related requirements for the SFSP:

1. The SA is requesting to waive the requirement to conduct first year reviews for s new to the SFSP in SY20-21 SFAs new to the SFSP in SY20-21, as required by [7 CFR 7 CFR 225.7(d)(2)(ii)(A). -Instead, the SA will conduct reviews of SFAs new to the SFSP based on a risk assessment to identify previous NSLP/SBP findings related to operational issues that could also arise in the SFSP (primarily findings related to meeting meal pattern requirements and concerns with meal counting and/or claiming). (NDE will conduct compliance reviews of sponsors and sites operations for new private non-profit organizations that are new to the SFSP in PY20-21)
2. The SA would like to have waived the annual review requirement for sponsors whose reimbursements account for half the aggregate reimbursement from the previous year (7 CFR 225.7(d)(2)(ii)(B)); and
3. The SA would like to have waived the requirement of conducting reviews of at least 10 percent of each sponsor's sites or one site, if that is greater [7 CFR 225.7(d)(2)(ii)(E)]. As an alternative, the SA will complete compliance reviews for returning sponsors, according

to review requirements based on a three-year review cycle and a high risk classification. The reviews of high risk sponsors will comply with 7 CFR 225.7(d)(2)(ii)(E) and the SA will conduct reviews of at least 10% of each high risk sponsors' sites.

- Effective oversight measures proposed as an alternative include:
 - o The SA will complete compliance reviews for no less than half of all new SFSP sponsors and for all returning SFSP sponsors who must be reviewed according to the three-year review cycle requirements. Unless identified as a “high risk” SFSP sponsor, the SA would like to have waived the requirement to conduct compliance reviews for the sponsors whose program reimbursements, in the aggregate, accounted for at least one-half of the total program meal reimbursements in the State in the prior year, per [7 CFR 225.7(b)(2)(ii)(B)].
 - o The SA will provide targeted technical assistance to all SFSP sponsors through one-on-one assistance, monthly webinar trainings where common compliance issues will be addressed, and Q&A time will be offered to address concerns from sponsors. The SA will also provide ongoing training for new food service directors, and promote its online training resources (videos, handouts and forms).
 - o The SA will continue to require all SFSP sponsors to complete their own monitoring activities in compliance with [7 CFR 225.15(d)(3)].
- The current program circumstances and flexibilities impact oversight requirements and timeframes and this waiver provides opportunities to streamline these requirements in the following ways:
 - o As addressed in the challenges identified above, preparing for a compliance review requires a large time commitment for the SFA. It is a significant burden for SFAs to gather, scan and submit the large volume of documents normally required to complete a compliance review. A waiver to the monitoring requirements would reduce this burden, allowing sponsors to focus their attention and limited staff resources on feeding children during the COVID-19 pandemic.
- Effective oversight measures the SA will implement to ensure program integrity, identify misuse of Federal funds, and identify fraudulent activities:
 - o The SA application and claims system, CNP, has business rules in place to ensure claims align with the program operations that have been approved in the sponsor and site applications.
 - o The SA team members will conduct periodic checks of the monthly claims for reimbursement to ensure meals are claimed in the correct CNP and to identify significant changes in monthly claims for reimbursement.
 - o As mentioned above, the SA will continue offering a variety of technical assistance measures to SFSP sponsors to ensure program requirements are consistently and clearly communicated to help ensure program compliance and integrity are maintained.
 - o The SA will require all SFSP sponsors to complete the sponsor monitoring requirements.
- Training and technical assistance measures the SA will implement to assist Program operators and ensure that Program requirements are met include the following:
 - o One-on-one technical assistance through telephone calls, emails and video conferences will continue to be available with NDE program specialists.
 - o NDE program specialists will provide monthly webinar/training with Q&A opportunities for SFSP sponsors.

- Continued newsletter and webinar reminders on program requirements from meal counting & claiming, meal pattern requirements, offer vs. serve, and Civil Rights will be provided.
- Expected Outcomes: This waiver will decrease administrative burden and support efficient and effective oversight of program operations to ensure program integrity. No change will need to be made to current technology systems as a result of this waiver.

Child and Adult Care Food Program

Nebraska (NDE) chooses to forgo *on-site* monitoring reviews due to the COVID19 Pandemic. NDE CACFP is implementing the off-site waiver CNR #40 and has developed procedures to conduct announced off-site Compliance Reviews and unannounced off-site visits for family day care homes and center sites. The current plan will ensure the 15% unannounced site-visit requirement is met. NDE plans to continue with the 3-year rotation of Compliance Reviews for FY 2020-21. Centers scheduled for Compliance reviews in the FY 2020-21 program year will be completed by June 30, 2021. The Compliance Reviews will be completed as desk audits with remote meal observation through the use of virtual technology. When conducting off-site reviews, NDE will review all required elements of Program operations they would normally review while on-site to the best of their ability. This includes all the review elements found at 7 CFR 226.6(m)(3)-(5). The required review elements can be completed off-site by reviewing documents, electronic systems, or by using other means of technology. Off-site, NDE will review and verify records that have been texted, emailed, mailed, faxed, or delivered to NDE, or through virtual observation, by using live or recorded video. In situations where direct observation normally occurs, NDE will review and verify records by observing photos and/or live or recorded videos. NDE may also conduct interviews with institution staff and Program participants to verify information in photos via telephone or video conference. Unannounced reviews will be completed during an unscheduled phone or video call and follow up with the home/center sponsor after the provider interview is completed. Strategies for reviewing elements off-site include, but are not limited to:

- ✓ Recordkeeping –records are available and support the institution’s claim for reimbursement.
- ✓ Application – review the program agreement and the current year’s application and supporting documents.
- ✓ Enrollment Records –verify participant information and annual documentation information has been updated.
- ✓ Attendance Records – document with meal counts.
- ✓ Free or Reduced-Price Meal Applications –current applications exist for children claimed for free or reduced-price meals, verify the institution has correctly determined and classified the eligibility of enrolled participants for free or reduced price meals or, for Family Day Care homes, for tier I and tier II reimbursement.
- ✓ Area Eligibility Data – for at-risk after school centers, review the appropriate school data to verify that the institution or facility is eligible.
- ✓ Meal Service Records – review menu records, medical statements, production records, and inventory records.
- ✓ Training and Monitoring Records – review training records to verify the institution has

provided adequate training to its staff and facilities. Verify the training session date(s), location(s), and the names of participants; and that all required training topics were covered.

- ✓ Financial Management Records – review invoices, receipts or other records required by the State agency, claims for reimbursement, documentation of nonprofit food service, and accounting systems to verify all financial information.
- ✓ CACFP Operating and Administrative Costs – review all transactions and the institution’s approved budget to ensure all expenses are approved.
- ✓ Household Contact System – review household contact records to verify that the institution is correctly implementing their household contact systems.
- ✓ Implementation of the Serious Deficiency Process – review and evaluate records of facility reviews conducted by the sponsoring organization to confirm that the serious deficiency process is being implemented when there is evidence that a provider has committed one or more serious deficiencies.
- ✓ All Other Program Requirements – review any other applicable records to ensure that all institutions and facilities being reviewed are in compliance with all other regulatory requirements
- ✓ Licensing – review a photo of the center or family day care home’s license to verify it is current and posted in a public place. Additional verification may be checked on the child care license on the Nebraska DHHS website. Ensure via photos and/or video that the center or family day care home does not have more children or adults in care than stated in the license.
- ✓ Health, Safety, and Sanitation – as appropriate, review photos and/or video of food production permit, health inspection report, food storage, food handling, and sanitation. If technology permits, conduct a live video tour of the center or facility.
- ✓ Posters – verify via photos and/or video that the “And Justice for All” poster is displayed and WIC information is provided (as applicable).
- ✓ Meal Service Observation – review via photos and/or video, compliance with the meal pattern (photos of table/tray/plate), meal service times (time-stamped photos or photo of clock), menus (match with posted menu), and that meal counts are taken at the time of service (photos or video of count being taken). Photos and/or videos must adequately capture all of the necessary information to adequately observe a complete meal service.

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

The SA is requesting to waive the requirements of [7 CFR 210.18(c)]: Timing of administrative reviews and cycle. The SA is not requesting to waive the requirements of:

- [7 CFR 210.8(a)(1) - Internal controls for claim accuracy within the SFA
- [7 CFR 220.11(d)(1)] - Onsite reviews conducted by the SFA by February 1
- [7 CFR 210.9(c)(7)] - Afterschool snack reviews conducted by SFA

NDE is requesting to waive [7 CFR 225.7(d)]: Program monitoring and assistance. As a result, the following regulations related to the SFSP administration are also requested to be waived:

- [7 CFR 225.7(d)(2)(ii)(A)] Review new sponsors within the first year of operating.
- [7 CFR 225.7(d)(2)(ii)(B)] Annually review sponsors whose reimbursements count as half the aggregate from the previous year.
- [7 CFR 225.7(d)(2)(ii)(E)] Conduct reviews of at least 10 percent of each sponsor's sites or one site if only one is operating.

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

National School Lunch Program:

NDE has 12 RCCIs and seven public and nonpublic schools operating NSLP in SY2021. A “gap year” will allow NDE to maintain a consistent review cycle for all SFAs. The SA will continue to monitor claims submitted by the SFAs operating SBP/NSLP. NDE program specialists will provide technical assistance to all sponsors, including those that operate the NSLP/SBP.

Changes to current technology systems as a result of this waiver will not be needed.

Approval of this waiver request will decrease administrative burden in order to support efficient and effective oversight of program operations.

Summer Food Service Program:

The SA will continue conducting the following monitoring activities:

- The SA will conduct reviews of SFSP operations for organizations and schools that traditionally participate in the SFSP; they will be reviewed in accordance with the three-year review cycle requirement;
- The SA's request to waive [7 CFR 225.7(d)(w)(ii)(a)] (first year reviews) and [7 CFR 225.7(d)(2)(ii)(B)] (a sponsor whose reimbursement accounts for a portion of half the aggregate reimbursement in the previous year) will not include SFSP sponsors who the SA determines are at high risk for operational and/or administrative issues. These SFAs' risk level will be determined by reviewing the most recent Administrative Review (AR) conducted of their NSLP/SBP. Those identified as “high risk” will have documented operational issues that required corrective action and technical assistance during the AR; the SA will complete compliance reviews of these sponsors' operation and administration of the SFSP. The reviews of “high risk” sponsors will comply with [7 CFR 225.7(d)(2)(ii)(E)] (review at least 10% of each sponsor's sites).
- The SA program specialists will continue to provide technical assistance for SFSP requirements to all SFAs and community organizations operating the program. These efforts include one-on-one support, monthly update/training webinars with Q&A and availability of online training videos and other resources; and
- The SA's online application and claims system contains edit checks to ensure claims align with the program operations that have been approved in the sponsor and site applications. Trends in claim reimbursement will be monitored by the SA.

Changes to current technology systems as a result of this waiver will not be needed.

Approval of this waiver request will decrease administrative burden in order to support efficient and effective oversight of program operations.

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]:

Nebraska does not have any State statutory or regulatory barriers that apply to this waiver request.

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

There are not any challenges for State or sponsoring agencies anticipated with the implementation of this waiver.

9. Description of how the waiver will not increase the overall cost of the Program to the Federal Government. If there are anticipated increase confirm that the costs will be paid from non-Federal funds. [Section 12(l)(2)(A(ii) of the NSLA]:

The requested waiver does not impact the overall cost of the program to the State or Federal government.

10. Anticipated waiver implementation date and time period:

This waiver will be implemented immediately upon receiving approval. It will be applied retroactively to the beginning of each program's 2020-21 year and will continue through June 30, 2021 for NSLP and through September 30, 2021 for CACFP and SFSP.

11. Proposed monitoring and review procedures:

NDE will continue carrying out normal SA monitoring requirements using standard CNP review procedures for desk and virtual reviews for CACFP and SFSP organizations, to the maximum extent practicable. If compliance issues are identified, NDE will work with the Sponsoring organizations on individualized corrective action plan(s) and will conduct follow-up reviews as needed.

NDE is requesting a “gap year” for the AR and PR requirements for SFAs operating SBP/NSLP. The NSLP AR and PR cycles will resume in 2021-2022.

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

NDE will report to FNS regional office the following:

- All non-compliance issues noted during the time this waiver was in place;
- A list of technical assistance resources developed and provided during the time this waiver was in place; and
- The number of SFSP and CACFP compliance reviews conducted during the time this waiver was in place.

13. Link to or a copy of the public notice informing the public about the proposed waiver [Section 12(1)(2)(A(ii) of the NSLA]:

The public notice is available here: <https://www.education.ne.gov/ns/>

14. Signature and title of requesting official:



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