



Food and  
Nutrition  
Service

January 06, 2021

Braddock  
Metro Center

Ms. Naomi Steenson  
Child and Adult Care Food Program Director  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, CO 80246

1320  
Braddock  
Place  
Alexandria  
VA 22314

Dear Ms. Steenson:

This letter is in response to the December 11, 2020 waiver request from the Colorado Department of Public Health and Environment (CDPHE). CDPHE requested to waive the following statutory and regulatory requirements:

Child and Adult Care Food Program (CACFP)

- 42 USC 1766(d)(2)(C)(i) [7 CFR 226.6(m)(6) (i-ii)] the requirement that independent centers and sponsoring organizations are reviewed at least once every three years and the requirement that at least 15 percent of the total number of facility reviews required must be unannounced.
- 42 USC 1766(d)(2)(B)(ii) [7 CFR 226.16(d)(4)(iii)(A)] the requirement that at least two of the three required reviews must be announced.

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, CDPHE proposed an alternative oversight plan that includes continuing to conduct oversight and ensure Program integrity by reviewing any open and operating sponsor virtually through a desk audit or through teleconsultation. If a CACFP institution up for review closes temporarily, at a time of the year that makes it difficult or impossible to complete their review in fiscal year (FY) 2021, the institution would be prioritized for review during FY 2022. While there will be no unannounced reviews, if a complaint is filed, CDPHE will follow their complaint procedure and decide if an unannounced visit is warranted. CDPHE will assess the sponsor's procedure to ensure program integrity through the administrative review process and require a corrective action plan if non-compliance is identified. CDPHE will also conduct follow-up reviews when warranted. The CDPHE will continue to provide ongoing technical assistance to all CACFP institutions as needed via telephone, email,

webinars, and teleconferencing methods in order to ensure that Program operators are fully prepared to meet the requirements of the Program.

Sponsoring organizations will conduct all three required visits as announced visits rather than meeting the regulatory requirement that two of these visits be unannounced. The sponsoring organizations will continue to provide technical assistance to all institutions via telephone, email, or teleconferencing methods in order to ensure that Program operators are fully prepared to meet the requirements of the Program.

All other review requirements outlined in Program regulations will be met by CDPHE and sponsoring organizations in Colorado.

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 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(1) of the Richard B. Russell National School Lunch Act (NSLA) (42 USC 1760(1)), FNS approves CDPHE's waiver requests through September 30, 2021. 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 requirement will facilitate CDPHE's ability to successfully carry out the purpose of the Programs.

CDPHE'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, CDPHE must take Program integrity measures to identify any misuse of Federal funds and identify fraudulent activities.

The waiver authority at section 12(1)(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 April 1, 2021, FNS is requiring that for the duration of this waiver, the CDPHE provide the FNS Mountain Plains Regional Office (MPRO) a quarterly written report. The report must provide information on how the CDPHE 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 the CDPHE determine this waiver is no longer necessary prior to the expiration of the waiver, please notify the FNS MPRO.

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 MPRO.

Sincerely,

A handwritten signature in black ink that reads "Sarah E. Smith-Holmes". The signature is written in a cursive style with a large initial 'S'.

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