



Food and
Nutrition
Service

January 6, 2021

Braddock
Metro Center

Ms. Aimee F. Beam
Delaware Department of Education
35 Commerce Way, Suite 1
Dover, DE 19901

1320
Braddock
Place
Alexandria
VA 22314

Dear Ms. Beam:

This letter is in response to the December 16, 2020 waiver request from the Delaware Department of Education (DDOE). DDOE requested to waive the following statutory and regulatory requirements:

National School Lunch Program (NSLP)

- 42 USC 1769c(b)(1)(C)(i) and 7 CFR 210.18(c) - Timing of administrative reviews and cycle;
- 7 CFR 210.19(a)(5) Food Service Management Company (FSMC) review cycle requirements;

Child and Adult Care Food Program (CACFP)

- 7 CFR 226.6(m)(3)(vii) – If an independent center, observation of a meal service;

Summer Food Service Program (SFSP)

- 7 CFR 225.15(d)(2) - The requirement to visit sites at least once during the first week of operation; and
- 7 CFR 225.15(d)(3) - The requirement to review food service operations at each site at least once during the first four weeks of operation.

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, DDOE proposed an alternative oversight plan for all three Programs that includes extensive technical assistance for all program sponsors. For NSLP, the administrative review and FSMC review cycles will be extended by one year to a four-year review cycle. DDOE has not requested a waiver of school food authority (SFA) level monitoring requirements on behalf of their SFAs. For CACFP, DDOE requests to waive the observation of a meal service requirement as all DDOE

employees are working remotely and not all independent CACFP centers have the technology to provide photos, videos and/or live streams of meal services to meet the requirement. DDOE has not requested a waiver of sponsor level reviews on behalf of their sponsoring organizations. For SFSP, DDOE will conduct reviews of sponsoring organizations as required by regulations. However, DDOE requests a waiver of sponsor level reviews on behalf of their sponsoring organizations.

To ensure program integrity in NSLP, DDOE will continue to monitor program operations. While most SFAs chose to operate SFSP rather than NSLP in school year (SY) 20-21, four SFAs who have not received an administrative review (AR) in the current cycle and are operating NSLP in SY 20-21 will receive an off-site AR this SY. The remaining ARs in the cycle will be completed in SY 21-22 or SY 22-23. SFAs who operate NSLP this school year will receive extensive training and technical assistance, particularly around waivers that are being implemented. SFAs who chose to operate SFSP will receive training and technical assistance under SFSP.

To ensure program integrity in CACFP, all sponsors scheduled for a review in fiscal year (FY) 2021 will receive a review off-site per program regulations. DDOE's waiver request only asks to waive the observation of the meal service – all other regulatory requirements will be met.

To ensure program integrity in SFSP, DDOE will conduct reviews as required per regulations; TA and trainings will continue to be conducted. Sponsoring organizations will be required to perform at least one monitoring visit prior to June 30, 2021; however, the sponsoring organizations will not need to complete the first week site visit and the review within the first four weeks of operation.

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(s) 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.

Except for the requirements that remain in effect as discussed above, pursuant to section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), (42 USC 1760(l)), FNS approves DDOE's waiver request effective through:

- September 30, 2021 for CACFP and SFSP monitoring requirements; and
- June 30, 2023 for the NSLP AR and FSMC review cycle extensions.

Please note that this approval only extends the NSLP administrative review and FSMC review cycles and does not waive the requirement itself for an administrative review or FSMC 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 DDOE's ability to successfully carry out the purpose of the Programs.

DDOE's oversight plan, as discussed above, provides assurance that DDOE 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, DDOE 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, DDOE provide the Mid-Atlantic Regional Office (MARO) a quarterly written report. The report must provide information on how DDOE 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(s); and
- A summary of any technical assistance measures that were provided.

Should DDOE determine this waiver is no longer necessary prior to the expiration of the dates listed above, please notify the MARO.

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 MARO.

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