



Food and
Nutrition
Service

December 23, 2020

Braddock
Metro Center

Mark Haller, Director
Illinois State Board of Education (ISBE)
Nutrition Department
100 N. First Street
Springfield, IL 62777

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Place
Alexandria
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Dear Mr. Haller:

This letter is in response to the December 9, 2020 updated waiver request, from the Illinois State Board of Education, (ISBE). ISBE has requested to waive the following statutory and regulatory requirements for the State Agency (SA), and sponsoring facilities:

National School Lunch Program (NSLP)

- 7 CFR 210.10(h)(2) Requirement to review trans fat;
- 42 USC 1769c(b)(1)(C)(i) & 7 CFR 210.18(c) Timing of administrative reviews and cycle;
- 7 CFR 210.18(e) Number and type of schools to review, including Seamless Summer Option review requirement;
- 7 CFR 210.18(f) Scope of review;
- 7 CFR 210.19(a)(5) Food Service Management Company (FSMC) review cycle requirements;
- 42 USC 1769c(b)(6)(A) & 7 CFR 245.11 (a)-(b) Notification of second review of applications;
- 7 CFR 210.8(a)(1) & 220.11(d)(1) SFA reviews by February 1;
- 7 CFR 210.9 (c)(7) Afterschool care reviews;

Summer Food Service Program (SFSP)

- 7 CFR 225.7(d) Conduct Program monitoring and provide assistance according to the provisions at this part;
- 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)(C) Annually review sponsors who had operational issues the year prior;
- 7 CFR 225.7(d)(2)(ii)(D) Review every sponsor at least once every three years;
- 7 CFR 225.7(d)(2)(ii)(E) Conduct reviews of at least 10 percent of each sponsor's sites or one site, if that's greater;
- 7 CFR 225.7(d)(2)(iii)(3) Conduct follow up reviews of sponsors and sites as necessary;
- 7 CFR 225.7(d)(2)(iii)(6) Inspect FSMC facilities;
- 7 CFR 225.15(d)(2) Visit sites at least once during the first week of operation;

- 7 CFR 225.15(d)(3) Review food service operations at each site at least once during the first four weeks of operation;

Child and Adult Care Food Program (CACFP)

- 7 CFR 226.6(m)(2) Target for more frequent review institutions whose prior review included a finding of serious deficiency;
- 7 CFR 226.6(m)(4) Review sponsored facilities;
- 42 USC 1766(d)(2)(C)(i) & 7 CFR 226.6(m)(6)(i)-(iii) Frequency and number of required institution reviews;
- 7 CFR 226.16(d)(1) Pre-approval visits;
- 7 CFR 226.16(d)(4)(i)(A)-(F) Reviews that assess whether the facility has corrected problems noted on the previous review(s) and an assessment of the facility's compliance with: The meal pattern; licensing or approval; attendance at training; meal counts; menu and meal records; and the annual updating and content of enrollment forms (if the facility is required to have enrollment forms on file, as specified in §§226.15(e)(2) and 226.15(e)(3));
- 7 CFR 226.16(d)(4)(ii) Reconciliation of meal counts;
- 42 USC 1766(d)(2)(B)(i)(I); 42 USC 1766(d)(2)(B)(ii) & 7 CFR 226.16(d)(4)(iii)(A)-(D) Frequency and type of required facility reviews. Review each facility three times each year, unless averaging. In addition: at least two of the three reviews must be unannounced; at least one unannounced review must include observation of a meal service; at least one review must be made during each new facility's first four weeks of Program operations; and not more than six months may elapse between reviews.
- 7 CFR 226.16(d)(4)(iv) Follow-up reviews; and,
- 7 CFR 226.16(d)(4)(iv) Notification of unannounced reviews.

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, ISBE proposed to pause formal monitoring in fiscal year, (FY) 2021 for all child nutrition programs and has proposed an extensive plan for targeted technical assistance (TA), as an alternative. ISBE would like to add two additional years onto their current AR, FSMC, and procurement cycle in the NSLP. Per ISBE's waiver plan request, they would postpone reviews in the CACFP and SFSP cycle by one year. ISBE stated in their request they have transferred most NSLP sites to SFSP. Per ISBE in a typical year they would have approximately 150 sponsors in the SFSP and 1,050 sponsors in the NSLP. In FY21 ISBE has in excess of 950 sponsors participating in SFSP and less than 65 participating in NSLP. Of those sponsors

participating in NSLP in FY21, most are parochial schools and Residential Child Care Institutions, (RCCI's). ISBE has also noted a significant drop in CACFP sponsors, due to COVID-19 restrictions. To ensure program integrity, ISBE plans to conduct desk reviews focused on the primary review areas in each program.

To ensure program integrity in the NSLP, in lieu of conducting AR's for FY21 ISBE will conduct targeted TA, as well as perform lesser desk reviews in the event program integrity concerns arise. ISBE has stated they plan to resume their AR cycle in FY22 and expect to complete the cycle in FY26. ISBE plans to continue to review claims for the small number of sponsors operating NSLP in FY21. In addition to targeted TA, ISBE plans to continue to support sponsors with ISBE Nutrition Monitors who are assigned to specific program areas in order to provide support around menus, claims, and general compliance. ISBE has also requested to waive the requirement to review trans fat as part of school year, (SY) 20-21 ARs, however, a waiver of this requirement is not needed given that ISBE has indicated a pause in formal monitoring for SY 20-21.

To ensure program integrity in the SFSP and CACFP, ISBE will conduct desk reviews on the primary areas of review in the respective programs, in lieu of traditional monitoring. ISBE plans to pause all traditional monitoring in the SFSP and CACFP and they have stated that all desk reviews conducted during the COVID time period, will not count toward any traditional reviews, but will instead be used as TA to maintain program integrity. ISBE plans to take a sample of documentation to provide an overview of the sponsor's operations. Per ISBE, the desk reviews are designed to spot check major areas of the program for compliance purposes, and provide reasonable assurance that program integrity is followed. ISBE stated they plan to investigate any suspected fraudulent claims, or claims that fall outside of normal COVID claiming patterns. Technical assistance will be provided as part of the reviews as necessary. ISBE stated that, in desk reviews, they will provide a written report and take limited fiscal action, with appeal rights if necessary, for program deficiencies. Additionally, ISBE plans to continue to support sponsors with ISBE Nutrition Monitors who are assigned to specific program areas in order to provide support around menus, claims, and general compliance. ISBE plans to conduct modified desk reviews for all new sponsors, prior to approval to operate the program. ISBE has also stated they will conduct a desk review within the first few months of operating to promote program compliance. ISBE plans to resume normal cycle reviews in the CACFP, and SFSP in FY22. ISBE would prioritize sponsors not reviewed by a desk review, and those whose last review was conducted in FY 2019. The three-year cycle would be completed by FY 23/24.

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(l) of the Richard B. Russell National School Lunch Act (NSLA), (42 USC 1760(l)), FNS approves ISBE's waiver request effective through:

- June 30, 2021, for NSLP monitoring requirements and FSMC review cycle requirements;
- September 30, 2021 for CACFP and SFSP monitoring requirements;
- September 30, 2024, for the SFSP and CACP review cycle extension; and
- June 30, 2026, for the NSLP administrative review cycle extension.

Please note that this only extends the NSLP, CACFP, and SFSP review cycles and does not waive the requirement itself for the review cycles. 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 regulatory requirements will facilitate ISBE's ability to successfully carry out the purpose of the Programs.

ISBE'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, ISBE 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 1, 2021, FNS is requiring that for the duration of this waiver, ISBE provide the Midwest regional office, (MWRO) a quarterly written report. The report must provide information on how the State 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;

- Provide 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 ISBE determine this waiver is no longer necessary prior to the expiration of the dates listed above, please notify the MWRO.

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 MWRO.

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