



Food and
Nutrition
Service

December 23, 2020

Braddock
Metro Center

Cheryl S. Johnson
Kansas State Department of Education
Child Nutrition and Wellness
900 SW Jackson St., Suite 251
Topeka, KS 66612

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Dear Ms. Johnson:

This letter is in response to the November 24, 2020 waiver request from the Kansas State Department of Education (KSDE). KSDE requested to waive the following statutory and regulatory requirements:

Child and Adult Care Food Program (CACFP)

- 42 USC 1766(d)(2)(C)(i) and 7 CFR 226.6(m)(6) Frequency and number of required institution reviews;
- 7 CFR 226.6(m)(6)(i) Review independent centers and sponsoring organizations of 1 to 100 facilities at least once every three years and include reviews of 10% of their facilities;

Summer Food Service Program (SFSP)

- 7 CFR 225.7(d)(2)(ii)(A) Review new sponsors within the first year of operating; and
- 7 CFR 225.7(d)(2)(ii)(B) Annually review sponsors whose reimbursements count as half the aggregate from the previous 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 (SSO) 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, KSDE proposed an alternative oversight plan for CACFP and SFSP that includes extensive technical assistance for all program sponsors. For CACFP, the review cycle will be extended by one year. For SFSP, school food authorities (SFAs) who elected to operate SFSP for the first time during school year (SY) 20-21 will be reviewed in program year (PY) 2021 and the half-aggregate requirement will be waived for (PY) 2021. Please note that KSDE monitors SFSP on a

calendar year rather than a fiscal or school year. Therefore, KSDE is asking for SFSP monitoring requirements to be waived through December 30, 2021 to account for the full PY 2021 review. KSDE did not request a waiver of monitoring requirements on behalf of their SFAs sponsoring organizations; therefore, all SFAs and sponsoring organizations will conduct reviews of their operations as required per regulations.

To ensure program integrity in CACFP, KSDE will continue to review program sponsors during fiscal year (FY) 2021, however, only 25% of sponsors will be reviewed instead of 33%. Similarly, in FY 2022, 25% of sponsors will be reviewed. KSDE will return to a three year cycle in FY 2023. KSDE will use internal risk criteria to determine which sponsors will be reviewed in each FY. In addition, CACFP Sponsors with more than 100 sites will continue to receive a review every 2 years per regulation and new institutions that are sponsoring organizations of five or more facilities will be reviewed within the first 90 days of Program operations.

To ensure program integrity in the SFSP Program, KSDE will continue to review program sponsors during PYs 2020-2021. For PY 2020, KSDE will conduct new sponsor reviews for the 33 new non-SFA and SFA SFSP sponsors that have participated during summer 2020 prior to August 31st as well as the 31 sponsors due for their 3-year review, 5 Sponsors determined to have operational problems in the previous year, and an 34 additional sponsors to meet the half-aggregate requirement. For PY 21, KSDE will review all sponsors due for a review (those whose last review was in PY18, plus new sponsors since August) and any sponsor determined to be at risk through targeted technical assistance sessions or if follow up is required from PY20 review. Due to the increased participation in SFSP and increased reimbursement, KSDE will not be able to meet the half-aggregate requirement.

To ensure program integrity in the National School Lunch Program (NSLP), KSDE will conduct NSLP reviews as required per regulations; TA and trainings will continue to be conducted.

To ensure program integrity across all programs, KSDE will provide extensive technical assistance to all sponsors including webinars, town halls, and individual training sessions. The individual training sessions will be held virtually with sponsors to ensure waivers are being implemented to maintain program integrity, point of service is being taken as required and menus meet requirements while maintaining food safety. If risk is noted, a review will be scheduled.

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.

Pursuant to section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), (42 USC 1760(l)), FNS approves KSDE's waiver request effective through:

- September 30, 2021 for CACFP monitoring requirements;
- December 30, 2021 for SFSP monitoring requirements; and
- September 30, 2022 for the CACFP review cycle extension.

Please note that this only extends the CACFP review cycle and does not waive the requirement itself for a 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 KSDE's ability to successfully carry out the purpose of the Programs.

KSDE's oversight plan, as discussed above, provides assurance that KSDE 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, KSDE 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, KSDE provide the Mountain Plains Regional Office (MPRO) a quarterly written report. The report must provide information on how KSDE 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 KSDE determine this waiver is no longer necessary prior to the expiration of the dates listed above, please notify the 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 MPRO.

Sincerely,

A handwritten signature in black ink that reads "Sarah E. Smith-Holmes". The signature is written in a cursive, flowing style.

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