



Food and
Nutrition
Service

January 26, 2021

Braddock
Metro Center

Diane Golzynski
Director, Office of Health and Nutrition Services
Michigan Department of Education
608 W. Allegan
Lansing, MI 48933

1320
Braddock
Place
Alexandria
VA 22314

Dear Ms. Golzynski:

This letter is in response to the January 12, 2021, revised waiver request from the Michigan Department of Education (MDE). MDE requested to waive the following statutory and regulatory requirements:

National School Lunch Program (NSLP)

- 7 CFR 210.10(h)(2) Requirement to review trans fat;
- 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;
- 42 USC 1769c(b)(6)(A) and 7 CFR 245.11 (a)-(b) Notification of second review of applications;

Summer Food Service Program (SFSP)

- 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)(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;
- 42 USC 1761(n)(4) and 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;

Child and Adult Care Food Program (CACFP)

- 7 CFR 226.6(m)(2) Review priorities;
- 7 CFR 226.6(m)(4) Review of sponsored facilities;
- 42 USC 1766(d)(2)(C)(i) and 7 CFR 226.6(m)(6)(i)-(iii) Frequency and number of required institution reviews;
- 42 USC 1766(d)(1)(B)(i)(I) and 7 CFR 226.16(d)(1) Pre-approval visits;
- 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) and 7 CFR 226.16(d)(4)(iii)(A)-(D) Frequency and type of required facility reviews;
- 7 CFR 226.16(d)(4)(iv) Averaging of required reviews;
- 7 CFR 226.16(d)(4)(v) Follow-up reviews; and,
- 7 CFR 226.16(d)(4)(vi) 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 SFSP and the NSLP 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, MDE proposed a pause in formal monitoring for all Child Nutrition Programs during fiscal year (FY) 2021 and school year (SY) 20-21, and an alternative oversight plan that includes targeted reviews and technical assistance (TA) for sponsoring organizations and school food authorities (SFAs). MDE is requesting a one-year extension of review cycles for NSLP, SFSP, and CACFP to complete reviews unable to be completed this year. MDE will continue to provide targeted TA and program oversight. MDE will conduct regularly scheduled program-specific training, weekly bulletin updates, and staff check-ins to provide opportunity to clarify requirements and determine if additional training or monitoring is needed. MDE will review and compare NSLP, SFSP, and CACFP claims for all sponsors to determine if there are large discrepancies in meal counts that would warrant an administrative review (AR).

Program integrity will remain the primary lens in which TA and AR decisions are made. MDE will work to identify risk of any misuse of federal funds and identify fraudulent activities while minimizing duplicative program oversight activities. Using this risk assessment, MDE will conduct ARs of the appropriate program to ensure regulatory compliance. To ensure program integrity in NSLP, MDE will provide TA in various formats in place of ARs. During SY 20-21, MDE will conduct calls with NSLP sponsors, conduct calls with county program and fiscal analysts, assist new food service directors, and offer open office hours and TA for interested food service directors. MDE will provide recorded webinar trainings by compliance topic. MDE plans to develop new resources for sponsors including “All About” guidance documents, memos where guidance is lacking, and communication with sponsors through the School Nutrition News and School Nutrition bulletins. MDE will identify and target SFAs who have not participated in trainings since the beginning of the public health emergency. MDE will conduct virtual procurement reviews and will complete FSMC and vended meal contract reviews next SY to allow time to modify prototypes and shift the review process onto their electronic monitoring system.

To ensure program integrity in SFSP, MDE will review any new or returning SFSP school sponsor that had fiscal action taken or other significant deficiencies noted in their most recent NSLP or SFSP AR. New non-school sponsors will continue to be reviewed per regulations. MDE will provide targeted TA for all new SFSP sponsors through regularly scheduled program-specific training, check-ins, and a SFSP webinar series. New SFA sponsors found to have deficiencies during TA check-ins will be required to complete additional training. MDE will average the past three years (2017-2019) of SFSP reimbursement to determine the aggregate amount for SFSP review purposes for 2021. This will allow MDE to concentrate on select sponsors that require additional TA during the time they are providing meals either virtual, in-person, or hybrid. MDE will conduct one review of each site type, or one site if there are not a variety of site types, and virtual follow up reviews of sponsors and sites as deemed necessary. FSMC facility inspections will be covered as part of the NSLP procurement review cycle. MDE plans to hire two limited term program analysts to assist with SFSP reviews specific to unanticipated school closures and extended SFSP.

To ensure program integrity in CACFP, MDE will target reviews for high-risk institutions and sponsors. MDE will provide TA for low risk institutions and they will be reviewed during their next three-year review cycle. High risk institutions are defined as those that have significant prior findings, current serious deficiency (SD) status, and may also include a prior SD, operation of multiple programs, non-school programs, for-profit programs, high staff turnover, quick expansion of sponsored facilities, and accelerated claim trends. Reviews will focus on household income eligibility statements, daily attendance records, and meal counts. Additional supporting documentation will be requested for the review including receipts, invoices, training documentation, and non-profit food service ledgers. When possible, MDE will conduct virtual pre-approval reviews for new institutions. Sponsoring organizations will be required to conduct pre-approvals of any new facilities. MDE will focus on risk assessment, TA, webinars, virtual regional trainings, and virtual reviews for sponsors with program integrity concerns.

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, does not increase the overall cost 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 TA, 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 MDE's waiver request effective through:

- June 30, 2021, for NSLP monitoring requirements;
- September 30, 2021, for CACFP and SFSP monitoring requirements;
- April 30, 2022, for the SFSP review cycle extension;
- June 30, 2022, for the NSLP AR and FSMC review cycle extension; and,
- September 30, 2022, for the CACFP review cycle extension.

Please note that this waiver only extends the review cycles 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 MDE's ability to successfully carry out the purpose of the programs.

MDE'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, MDE 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 April 1, 2021, FNS is requiring that, for the duration of this waiver, MDE provide the FNS Midwest Regional Office (MWRO) a quarterly written report. The report must provide information on how MDE 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 MDE determine this waiver is no longer necessary prior to the expiration of the dates listed above, please notify the FNS 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 FNS MWRO.

Sincerely,

A handwritten signature in blue ink, appearing to read "Saracino", is written over a horizontal line.

Jessica Saracino
Acting Director
Program Monitoring and Operational Support Division
Child Nutrition Programs