



Food and
Nutrition
Service

February 16, 2021

Braddock
Metro Center

Ms. Alejandra Rebolledo Rea
Division Director
Early Childhood Education and Care Department
1120 Paseo de Peralta
Santa Fe, NM 87501

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Dear Ms. Rebolledo:

This letter is in response to the January 29, 2021, revised waiver request from the New Mexico Early Childhood Education and Care Department (ECECD). ECECD requested to waive the following statutory and regulatory requirements in the Child and Adult Care Food Program (CACFP):

- 42 USC 1766(d)(2)(C)(i), 42 USC 1766(d)(2)(B)(i)(I), and 7 CFR 226.6(m)(6) Frequency and number of required institution reviews. Annually review at least 33.3% of all institutions (at least 15 percent of the total number of facility reviews required must be unannounced) according to the schedule:
 - (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;
 - (ii) Review sponsoring organizations with more than 100 facilities at least once every two years and include reviews of 5 percent of the first 1,000 facilities and 2.5 percent of the facilities in excess of 1,000; and,
 - (iii) Review new institutions that are sponsoring organizations of five or more facilities within the first 90 days of Program operations.

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 (SFSP) and the National School Lunch Program (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, ECECD proposed an alternative oversight plan that includes waiving the timing and frequency requirements for reviews of CACFP institutions to allow the State agency readjust their monitoring schedule in recognition of the exceptional circumstances of the COVID-19 pandemic. ECECD did not request a waiver of monitoring requirements on behalf of CACFP sponsoring organizations; therefore, all sponsoring organizations will conduct reviews as required per regulations. ECECD did not request a waiver of any Summer Food Service Program

(SFSP) monitoring requirements; therefore, monitoring of SFSP will be completed as required per regulations.

To ensure program integrity in CACFP, ECECD will continue formal monitoring by identifying and conducting virtual reviews during fiscal year (FY) 21 of institutions that are high risk, currently declared seriously deficient, new, or have not been reviewed in over three years; however, NM ECECD will not meet the 33.3% requirement for FY 21 as 3 reviews did not meet the aforementioned criteria and will be postponed to the first quarter of FY 22. ECECD will continue to provide technical assistance, training, and support for all CACFP institutions. Sponsoring organizations will continue to conduct reviews of their operations as required per regulations.

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 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 ECECD's waiver request effective 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 requirements will facilitate ECECD's ability to successfully carry out the purpose of the programs.

ECECD'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, ECECD 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, ECECD provide the FNS Southwest Regional Office (SWRO) a quarterly written report. The report must provide information on how ECECD 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 ECECD determine this waiver is no longer necessary prior to September 30, 2021, please notify the FNS SWRO.

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 SWRO.

Sincerely,



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