

STATE WAIVER REQUEST - DELAWARE

1. **Waiver Serial Number (if applicable):**
2. **Type of request:** Initial
3. **Regulatory citation:** 7 CFR §273.15 (c) (1) Fair Hearings
4. **State:** DE
5. **Region:** MARO
6. **Regulatory requirements:**

Supplemental Nutrition Assistance Program (SNAP) regulations at 7 CFR § 273.15 (c) (1); 7 CFR § 273.15 (c) (4); 7 CFR § 273.18 (2)

Timely action on hearings

State level hearings. Within 60 days of receipt of a request for a fair hearing, the State agency shall assure that the hearing is conducted, a decision is reached, and the household and local agency are notified of the decision.

Household requests for postponement. The household may request and is entitled to receive a postponement of the scheduled hearing. The postponement shall not exceed 30 days and the time limit for action on the decision may be extended for as many days as the hearing is postponed. For example, if a State level hearing is postponed by the household for 10 days, notification of the hearing decision will be required within 70 days from the date of the request for a hearing.

Claims against households. This claim is a Federal debt subject to this and other regulations governing Federal debts. The State agency must establish and collect any claim by following these regulations.

7. **Description of alternative procedures:**

All requests below are directly tied to the March 13, 2020 state of emergency and March 22, 2020 stay-at-home order implemented in Delaware due to the coronavirus pandemic. Delaware asks FNS to retroactively grant this waiver from March 13, 2020, until the Delaware state of emergency is lifted.

Delaware is asking FNS to (a) waive the requirement to conduct hearings and issue decisions within 60 days, (b) grant the Fair Hearing Office authority to postpone scheduling/rescheduling hearings for more than 30 days then extend the due date of the decision for as many days as the hearing is postponed, and (c) eliminate the

requirement for Delaware to collect claims against households for benefits overpaid as a result of postponements associated with this waiver request.

These alternative procedures include ensuring SNAP households are not negatively impacted by continuation of benefits during the period hearings will not be conducted. Delaware seeks to postpone scheduling or conducting hearings, issuing decisions, or notifying parties for the pendency of the state of emergency.

Delaware is asking FNS to grant authority to postpone hearings for more than 30 days and expand the time frame in which tasks associated with a filed appeal must be completed. The proposed time limit extensions (aka timely action on appeals) will be calculated by adding the number of days the request has been postponed to the date the appeal is received to arrive at the due date of the decision.

For example: If the state level hearing is postponed due to the state of emergency for 20 days, notification of the hearing decision will be required within 80 days of the request for a hearing.

Delaware also seeks relief from the requirement to collect claims against households for benefits overpaid during this period, once the state of emergency ends (specifically, from March 13, 2020 through the last business day the state of emergency is in effect).

8. Justification for request:

A state of emergency became effective in Delaware on March 13, 2020 at 8:00 A.M. As ordered on March 22, 2020, Delaware is also currently operating under a stay-at-home declaration for non-essential staff due to the COVID-19 pandemic. Granting this request will allow Delaware the opportunity to redeploy staff to complete essential tasks.

Delaware will ensure applicants and participants are notified of their right to a fair hearing after the state of emergency is lifted ends. Fair Hearing staff cannot complete fair hearing summaries remotely. Fair Hearing staff has not been provided VPN access. Further, Fair Hearing staff who do not personally own home computers will not be issued state laptops as surplus inventory does not exist. Lastly, a relevant portion of our appellant population does not have access to telephones or computers. Thus, they are unable to submit documents electronically. Nor can they leave their homes to access these resources elsewhere.

9. Anticipated impact on households and State agency operations:

Delaware requests this waiver to ensure our most vulnerable citizens are not further needlessly harmed by circumstances beyond their control. Delaware is implementing a myriad of stopgap measures to ensure an adequate standard of living for all, particularly, members of our low- and no-income communities. Immediate support is needed and requested from our federal partners.

Delaware is prepared to provide continuation of benefits to any household who files an appeal. Considering current circumstances, appellants who submitted appeals stating they did not wish to have continuation of benefits prior to the implementation of the stay-at-home order will be contacted by the agency to determine if they wish to continue benefits. If yes, benefits will be authorized. Once hearings resume, if a household is determined ineligible for a benefit received during this time frame, Delaware asks that the household not be further penalized. Delaware asks for latitude in forgiving the overpayment claim.

State agencies are also impacted by the depletion of available work force due to COVID-19. Unprecedented numbers of state employees are missing work due to circumstances beyond their control. Some, but not all, are able to work remotely. Our current Fair Hearing model is an in-person model. Although we have the capability to conduct hearings via telephone, this ability is hampered since staff is only able to compile/complete hearing summaries while in the office as some systems cannot be remotely accessed. Further, printing and mailing decisions via USPS will be difficult when not in the office. Each step of the hearing process is impeded by the state of emergency and stay at home order.

For these reasons, Delaware seeks permission from FNS to waive the regulatory requirements found at #6, above.

10. Caseload information, including percent, characteristics, and quality control error rate for affection portion (if applicable):

Delaware currently has 58,457 SNAP Households on SNAP. The Fair Hearing Office is in possession of 24 pending appeals that have not been scheduled and 38 appeals that will require rescheduling. Delaware anticipates receiving additional appeal requests for benefits that were denied/discontinued/negatively impacted before the state of emergency was imposed.

The Fair Hearing Office currently handles hearings for other programs, including Cash Assistance, Food Benefits, Child Care, Medicaid, and ADH. Waiver requests are pending with the appropriate federal agencies for these programs.

11. Anticipated implementation date and time period for which waiver is needed:

Requesting retroactive approval from March 13, 2020 through the last date of the state of emergency.

12. Proposed quality control review procedures:

Delaware proposes the following internal quality control procedures. The appeals that fall under this waiver request will be maintained on a separate log. When hearings resume, Fair Hearings will comply with all standing regulations and track and monitor

appeals through every phase of the process: Scheduling hearings, conducting hearings, and issuing decisions according to the terms outlined in this waiver. If this waiver is granted, the steps outlined below will be followed.

- Date the appeal is received
- Date and name of the Fair Hearing Team member assigned to complete the hearing summary
- Date the hearing summary is provided to the field
- Date the hearing summary is submitted to the Fair Hearing supervisor for review
- Date the hearing summary is reviewed
- Date the hearing scheduling notice is mailed to the parties
- Date the hearing is scheduled for
- Date the decision is due
- Date the decision is received
- Date(s) the decision is reviewed
- Date the decision is mailed to the parties
- If applicable, Date an appeal is filed with Delaware Superior Court

13. Signature and title of requesting official:



Title: Deputy Director, Division of Social Services

Email for transmission of response: Thomas.Hall@delaware.gov

14. Date of request: 03/31/20

15. State agency staff contact (name/email/telephone):

Thomas Hall/Thomas.Hall@delaware.gov/302-255-9605

16. Regional office contact person (to be completed by FNS regional office):