



Food and
Nutrition
Service

December 23, 2020

Braddock
Metro Center

Julie Sutton, Director
Indiana Department of Education (IDOE SCN)
Office of School and Community Nutrition
115 W Washington St, South Tower, Suite 600
Indianapolis, IN 46204

1320
Braddock
Place
Alexandria
VA 22314

Dear Ms. Sutton:

This letter is in response to the November 23, 2020 waiver request from the Indiana Department of Education School & Community Nutrition, (IDOE SCN). IDOE SCN 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) & 7 CFR 210.18(c) Timing of administrative reviews and cycle;

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;

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)(3) Review content
- 7 CFR 226.6(m)(4) Review sponsored facilities;
- 42 USC 1766(d)(2)(C)(i) & 7 CFR 226.6(m)(6) Frequency and number of required institution reviews. Annually review at least 33.3% of all institutions according to the schedule:

- 7 CFR 226.6(m)(6)(i) Review independent centers and sponsoring organizations of 1 to 100 facilities at least once every three years, including reviews of 10% of their facilities;
- 7 CFR 226.6(m)(6)(ii) Review sponsoring organizations with more than 100 facilities at least once every two years, including reviews of 5% of the first 1,000 facilities and 2.5% of the facilities in excess of 1,000;
- 7 CFR 226.6(m)(6)(iii) Review new institutions that are sponsoring organizations of 5 or more facilities within the first 90 days of Program operations;
- 42 USC 1766(d)(2)(B)(i)(I) & 7 CFR 226.16(d)(4)(iii) Review each CACFP facility three times per year;
- 7 CFR 226.16(d)(4)(iii)(D) Not more than six months may elapse between 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, IDOE SCN proposed an alternative oversight plan that includes a 1-year extension to their 3-year NSLP administrative review, (AR) cycle and procurement review cycle. Additionally, IDOE SCN has asked to postpone State Agency (SA) reviews in CACFP by one year, and has asked to waive two sponsor level review regulations in the CACFP. IDOE SCN also requests a waiver to replace required 2021 SFSP administrative and site reviews, required as outlined in all the regulations listed above, with structured detailed technical assistance. According to IDOE SCN, in order to ensure program integrity, they are not requesting to waive monitoring requirements in the SFSP or NSLP. Sponsors in the SFSP and NSLP will continue local level reviews as per regulations specific to each program.

In the NSLP and SFSP to ensure continued program integrity, IDOE SCN will conduct a minimum of two technical assistance visits for all sponsors operating NSLP and SFSP. In their request IDOE SCN, stated that field specialists will follow a detailed outline for providing technical assistance and review of sponsor/site practices related to claiming and counting and meal pattern compliance for the respective programs being operated by sponsors. Sponsor required monitoring documentation will be reviewed, and feedback and follow up will be provided by field staff. Per IDOE SCN all technical assistance visits will be structured to document each sponsor's operation of critical elements which, if identified as being at risk, will flag follow up requirements through additional technical assistance visits. If structured technical assistance with sponsors, results in program integrity suspicions in the critical elements of claiming and counting

or meal pattern compliance, the SA staff will immediately conduct an official targeted review of those specific areas and require corrective action, where needed. The targeted reviews will take place off-site as an official desk review or on-site, depending upon the ability of field staff to travel to specific areas of the state and whether sponsor personnel are available to host state agency staff on-site. IDOE SCN has also requested to waive the requirement at 210.10(h)(2) to review trans fat as part of school year, (SY) 20-21 ARs, however, a waiver of this requirement is not needed given that IDOE SCN has indicated a pause in formal monitoring for SY 20-21.

In the CACFP to ensure continued program integrity, IDOE SCN plans to continue oversight of the CACFP program by providing a minimum of one direct technical assistance virtual meeting with every participating institution which will include: review of the waiver options and implementation, civil rights, budget accuracy, and menus and meal patterns. In addition to the virtual visits. IDOE SCN plans to conduct online technical assistance training monthly on a variety of topics including: claim and application system training, general refresher courses of the CACFP requirements, and the meal pattern. In its request IDOE SCN stated they would conduct full desk reviews of new institutions, and partial reviews for a minimum of 10% of institutions. According IDOE SCN, they will require the sponsoring organizations to complete two monitor reviews in fiscal year, (FY) 2021. Per IDOE SCN, sponsoring organizations will only complete all three monitor reviews for those facilities that are determined to be seriously deficient, or are new facilities in FY21.

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)), the Food and Nutrition Service approves IDOE SCN's waiver request effective through:

- September 30, 2021 for CACFP and SFSP monitoring requirements
- June 30, 2023, for the NSLP administrative review cycle extension; and
- September 30, 2024, for the SFSP and CACP 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 IDOE SCN's ability to successfully carry out the purpose of the Programs.

IDOE SCN'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, IDOE SCN 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, IDOE SCN 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;
- 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 IDOE SCN 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