



Food and
Nutrition
Service

January 6, 2021

Braddock
Metro Center

1320
Braddock
Place
Alexandria
VA 22314

Ms. Lauren E. Moore, Director,
Kentucky Department of Education,
Division of School and Community Nutrition
300 Sower Boulevard, 5th Floor
Frankfort, KY 40601

Dear Ms. Moore:

This letter is in response to the December 21, 2020 updated waiver request from the Kentucky Department of Education, Division of School and Community Nutrition, (KDE). KDE 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, (AR)s and cycle;
- 42 USC 1769c(b)(6)(A) & 7 CFR 245.11 (a)-(b) Notification of second review of applications;
- 7 CFR 210.8(a)(1) & 220.11(d)(1) School Food Authority (SFA) reviews by February 1; and
- 7 CFR 210.9 (c)(7) Afterschool care reviews.

Summer Food Service Program (SFSP)

- 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 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, KDE requested to postpone ARs for school year, (SY) 20-21 for SFAs in the NSLP, and requested to add an additional year to the state's current AR cycle. KDE also requested to waive SFA level reviews in the NSLP, and the SFSP requirement to annually review sponsors whose reimbursements count as half the aggregate from the previous year. KDE has had a large number of SFAs switch from NSLP to SFSP for SY 20-21, rendering it burdensome to complete all required reviews. To ensure program integrity, KDE plans to meet all other monitoring requirements per

regulation in the SFSP, and will provide detailed technical assistance (TA), and training to all program operators. KDE has not requested to waive any regulations in the Child and Adult Care Food Program, (CACFP) at this time, and plans to monitor the CACFP program per regulations, except for any nationwide waivers they have elected to utilize.

To ensure program integrity in the NSLP, KDE plans to reschedule the SY 20-21 ARs to SY 21-22. Per KDE's plan they will resume normal monitoring in SY 21-22 per regulations, at both the local and State agency level. Due to the large number of ARs that will be rescheduled for SY 21-22, KDE requests to add an additional year to their current AR cycle. KDE plans to conduct TA consultations for all SFAs who were originally scheduled for an AR in SY 20-21. The TA consultation will focus on the critical areas of operation such as: the meal pattern, meal counting and claiming, and review of the nutrition facts labels for trans fat compliance. KDE has requested to waive the requirement to review trans fat as part of SY 20-21 ARs, however, a waiver of this requirement is not needed given that KDE has indicated a pause in formal monitoring for SY 20-21.

To ensure program integrity in SFSP, KDE plans to continue to require all sponsor level monitoring to take place per regulations and with the option to conduct reviews off-site. Additionally, KDE plans to review sponsors that have not been reviewed in the previous two years (in order to ensure that sponsors are reviewed at least once every three years), all new sponsors, and sponsors with continual non-compliance issues from prior years as well as sponsors identified from a risk analysis-generated claims verification to have systemic problems with program integrity. Risk analysis would include targeted claims validation for sponsors with high meal claim amounts under SFSP when compared to NSLP claims from the previous year, or high meal claim amounts when compared with sponsors having similar enrollment and/or participation. KDE will further ensure program integrity by providing webinars, presentations, technical assistance and training as needed, as well as weekly updates to sponsors.

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 KDE's waiver request effective through:

- June 30, 2021, for NSLP monitoring requirements;

- September 30, 2021 for SFSP monitoring requirements; and
- June 30, 2025, for the NSLP administrative review cycle extension.

Please note that this approval only extends the NSLP administrative review cycle and does not waive the requirement itself for an administrative 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 KDE's ability to successfully carry out the purpose of the Programs.

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

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 SERO.

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