



Food and
Nutrition
Service

February 2, 2021

Braddock
Metro Center

Ms. Monica L. Herrera
Director of Nutrition
Minnesota Department of Education
1500 Highway 36 West
Roseville, MN 55113

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Place
Alexandria
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Dear Ms. Herrera:

This letter is in response to the January 19, 2021 updated waiver request from the Minnesota Department of Education (MDE). MDE requested to waive the following statutory and regulatory requirements:

National School Lunch Program

- 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; and
- 7 CFR 210.18(e) Number and type of schools to review, including the Seamless Summer Option review requirement.

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)(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;
- 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; and
- 7 CFR 225.15(d)(3) Review food service operations at each site at least once during the first four weeks of operation.

Child and Adult Care Food Program (CACFP)

- 42 USC 1766(d)(2)(C)(i) and 7 CFR 226.6(m)(6)(i-iii) Frequency and number of required institution reviews.
 - Review independent centers and sponsoring organizations of 1 to 100 facilities at least once every three years;
 - Review sponsoring organizations with more than 100 facilities at least once every two years; and
 - Review new institutions that are sponsoring organizations of five or more facilities within the first 90 days of Program operations.
- 42 USC 1766(d)(2)(B)(i)(I); 42 USC 1766(d)(2)(B)(ii) and 7 CFR 226.16(d)(4)(iii)(A-B, D) Frequency and type of required facility 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, MDE is requesting to pause formal monitoring in all Child Nutrition Program and provided an alternative oversight plan that includes the creation of a Program Integrity and Risk Management Plan that identifies high risk Child Nutrition Program sponsors that need additional support via targeted technical assistance, training, and/or reviews. MDE will also utilize this framework to identify high risk program components, normally addressed in full reviews, in order to inform trainings, develop resources for sponsors, and provide technical assistance. Some examples of trainings and technical assistance include webinars and interactive web-based training platforms.

For the School Meal Programs, MDE has requested a 5 year review cycle for both Administrative Reviews and Food Service Management Company reviews. As part of their integrity plan for the School Meal Programs, in lieu of conducting Administrative Reviews this school year, MDE will conduct a Resource Management review for the 139 SFAs originally scheduled for a full Administrative Review in School Year (SY) 2020-21. These school food authorities (SFA) will be fully reviewed later in the review cycle. The Resource Management review will address the financial integrity of sponsors, help identify any misuse of Federal funds, and help identify fraudulent activities. Based on the results of data collection activities conducted by MDE the state will provide training and technical assistance for SFAs, FSMCs, and vendors identified at risk of being out of compliance with things such as contract management, meal patterns, counting and claiming procedures, and procurement regulations. In addition to the oversight activities mentioned above, MDE school nutrition staff will also conduct

off-site Seamless Summer Option reviews for select sponsors during SY 20-21 for sponsors that will receive an Administrative Review in SY 21-22.

As part of their integrity plan, for SFSP, MDE will share several online learning resources, provide technical assistance, and conduct compliance follow up reviews. MDE will conduct claims trend analysis to identify red flags for follow-up reviews and, as needed, verify claims that are questionable. MDE will utilize data to determine if any sponsors are at high risk for claiming inaccuracies or if claims are unusually high. MDE will follow-up with sponsors to verify claim data that is flagged or questionable. MDE will collect claim validation data as a desk audit, or, if needed and if possible, conduct onsite visits.

As part of their integrity plan, for CACFP, MDE will create several online learning resources, provide technical assistance and conduct compliance follow up reviews. MDE will conduct trend analysis using claims from sponsors in order to identify any red flags, such as discrepancies between enrollment and claims. MDE will look into any issues and verify any claims in question. MDE conducted an analysis to determine which Program areas resulted in fiscal action, identifying the need for online training on these specific topics. As a result, MDE will update seven webinar workshops to support Program needs in the following topics: recordkeeping and accountability; internal controls; claim edits; claim submission; and menu review for meal pattern compliance. Once completed, a live webinar will be delivered, recorded, captioned and posted to the website. Reference documents or training tools will also be developed as needed.

SFSP sponsoring organizations in Minnesota will continue to provide technical assistance and conduct monitoring, but due to the unpredictability of the COVID-19 pandemic, MDE requested to waive the requirement that SFSP sponsors shall visit each of their sites at least once during the first week of operation and that SFSP sponsors must review each site at least once during the first four weeks of operation.

CACFP sponsoring organizations in Minnesota will continue to provide technical assistance and conduct monitoring, but due to the unpredictability of the COVID-19 pandemic, MDE requested to waive the requirement that two of the three reviews by CACFP sponsors must be unannounced, that at least one unannounced review by CACFP sponsors must include meal service observation, and that not more than six months may elapse between CACFP sponsor reviews.

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 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)), FNS approves MDE's waiver request effective through:

- June 30, 2021, for NSLP monitoring requirements;
- September 30, 2021, for CACFP and SFSP monitoring requirements; and,
- June 30, 2026, for the School Meal Program Administrative Review cycle and Food Service Management Company reviews

Please note that this waiver only extends the review cycle 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 requirement 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, the MDE provide the FNS Midwest Regional Office (MWRO) a quarterly written report. The report must provide information on how the 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 the MDE determine this waiver is no longer necessary prior to the expiration of the waiver, 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