



Food and
Nutrition
Service

Braddock
Metro Center

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Alexandria
VA 22314

January 12, 2021

Walter Beesley
Director, Child Nutrition
Maine Department of Education
136 State House Station
Augusta, ME 04333-0136

Dear Mr. Beesley:

This letter is in response to the January 6, 2021 revised waiver request from the Maine Department of Education (MDOE). MDOE requested to waive the following statutory and regulatory requirements:

National School Lunch Program (NSLP)

- 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;
- 7 CFR 210.8(a)(1) & 220.11(d)(1) School Food Authority (SFA) reviews by February 1;
- 7 CFR 210.9 (c)(7) Afterschool care reviews;

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)(D) Review every sponsor at least once every three years;
- 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;
- 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)

- 7 CFR 226.6(m)(3)(vii) If a review of an independent center, observation of a meal service;
- 42 USC 1766(d)(2)(C)(i) and 7 CFR 226.6(m)(6) Annually review at least 33.3 percent of all institutions;
- 42 USC 1766(d)(2)(C)(i) and 7 CFR 226.6(m)(6)(i) Independent centers and sponsoring organizations of 1 to 100 facilities must be reviewed at least once every three years;

- 7 CFR 226.16(d)(4)(ii) Reconciliation of meal counts;
- 42 USC 1766(d)(2)(B)(ii) and 7 CFR 226.16(d)(4)(iii)(A) At least two of the three facility reviews must be unannounced;
- 7 CFR 226.16(d)(4)(iii)(B) At least one unannounced review must include observation of a meal service; and,
- 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 (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, MDOE proposed a pause in conducting administrative reviews (AR) and FSMC reviews for one year during school year (SY) 20-21, and an alternative oversight plan that includes technical assistance (TA) for all Child Nutrition Programs. MDOE will provide TA via phone calls, virtual meetings, and monthly webinars. To ensure program integrity and identify potential fraudulent activity, MDOE will continue to review reimbursements and flag those with significant changes in meals served or reimbursement amounts. MDOE has also requested a waiver of monitoring requirements on behalf of SFAs and sponsoring organizations for all programs this year.

To ensure program integrity in NSLP, MDOE proposed extending their NSLP AR cycle by one year and their FSMC review cycle by one year. MDOE will complete ARs and FSMC reviews beginning in SY 21-22, and will continue procurement reviews this SY. MDOE will provide TA via phone calls, virtual meetings, and monthly webinars. Virtual TA meetings will be scheduled more often in response to late reporting, changes in staff, and other high-risk indicators. MDOE staff will maintain constant communication with districts and will monitor for questionable monthly claims and flag and follow up with any districts that have a large change in meals served or reimbursement compared to other months. MDOE also requested a waiver of the SFA reviews by February 1 and afterschool care reviews requirements.

To ensure program integrity in SFSP, MDOE will continue to conduct desk audits of SFSP sponsors. MDOE will review all 37 of the experienced sponsors on their current three-year cycle. MDOE will also review sponsors who experienced significant operational concerns the prior summer, and new sponsors who are operating in 2020 if they are either a non-SFA or an SFA who has experienced operational concerns in the past. MDOE will conduct an off-site procurement review of the one district contracting with an FSMC this year. Additional reviews will be added for sponsors flagged as high

risk. MDOE has also requested to waive the first week site visits and first four-week site visits for SFSP sponsors, stating that the forms traditionally used for these visits are no longer applicable due to the numerous waivers in place. Sponsors will continue to monitor programs safely to ensure compliance with regulations and waiver flexibilities, but will not complete the traditional forms. MDOE will provide TA and guidance for SFSP sponsors in weekly emails, webinars, and annual training. To identify potentially fraudulent activities, MDOE will include a comprehensive claim review for each SFSP sponsor receiving an off-site desk audit for summer 2021 operations.

To ensure program integrity in CACFP, MDOE will conduct thorough desk audits of institutions including all review components. MDOE plans to review the 33.3 percent of institutions required, however, they requested the flexibility to review only 20 percent of institutions in case of unanticipated circumstances. MDOE also requested a waiver of the three-year review requirement for a portion of institutions and sponsoring organizations of family day care homes that have a review scheduled for 2021. These sponsoring organizations are in good standing and MDOE will re-schedule these reviews to 2022 when on-site reviews can be resumed. MDOE reviewed and approved written monitoring plans from day care home sponsors to ensure they maintain monitoring and oversight of sponsored facilities. MDOE offers regular webinars and CACFP Basic Training covering updates, requirements, and common findings. In lieu of observation of a meal service, MDOE and sponsoring organizations will conduct in-depth interviews including detailed questions regarding all review requirements that would normally be covered during observation. On behalf of CACFP sponsoring organizations, MDOE has requested a waiver of the reconciliation of meal counts due to challenges in day-of review of children in attendance. Instead, MDOE will provide a review form to ensure questions asked in lieu of on-site observations are thorough. Sponsoring organizations will offer immediate TA for any sites or providers that fail to offer adequate answers, and will continue to compare meal counts to attendance and enrollment. Most sponsoring organizations continue to conduct unannounced visits during desk audits, however, MDOE has requested a waiver of this requirement to cover circumstances in which sponsors have attempted to conduct unannounced visits unsuccessfully and have resorted to conducting those visits on a scheduled day and time. MDOE also requested a waiver on behalf of sponsoring organizations of the requirement that no more than six months may elapse between reviews because several sites and providers throughout Maine remain closed due to COVID-19. MDOE will continue to provide training and technical assistance, and will monitor meal counts and reimbursements for fraudulent claims and program integrity.

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)), FNS approves the following MDOE waiver request through:

- June 30, 2021 for NSLP monitoring requirements;
- September 30, 2021 for CACFP and SFSP monitoring requirements;
- June 30, 2022 for the NSLP FSMC review cycle extension; and
- June 30, 2025 for the NSLP review cycle extension.

Please note that this waiver only extends the review cycles 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 requirements will facilitate MDOE's ability to successfully carry out the purpose of the Programs. MDOE'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, MDOE 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, MDOE provide the FNS Northeast Regional Office (NERO) 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 MDOE determine this waiver is no longer necessary prior to the expiration of the dates listed above, please notify the NERO.

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 NERO.

Sincerely,

A handwritten signature in black ink that reads "Sarah E. Smith-Holmes". The signature is written in a cursive, flowing style.

Sarah Smith-Holmes
Director
Program Monitoring and Operational Support Division
Child Nutrition Programs