



Food and
Nutrition
Service

January 26, 2021

Braddock
Metro Center

Rose Tricario
Director, Division of Food and Nutrition
New Jersey Department of Agriculture
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Trenton, NJ 08625-0330

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Alexandria
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Dear Ms. Tricario:

This letter is in response to the January 14, 2021, waiver request from the New Jersey Department of Agriculture (NJDA). NJDA 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;
- 42 USC 1769c(b)(6)(A) and 7 CFR 245.11 (a)-(b) Notification of second review of applications;
- 7 CFR 210.8(a)(1) and 7 CFR 220.11(d)(1) SFA review by February 1; and
- 7 CFR 210.9(c)(7) Afterschool care reviews.

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;
- 42 USC 1766(d)(2)(B)(i)(I) and 7 CFR 226.16(d)(4)(iii), Frequency and type of required facility reviews. Review each facility three times each year, unless averaging. In addition:
 - 42 USC 1766(d)(2)(B)(ii) and 7 CFR 226.16(d)(4)(iii)(A), At least two of the three reviews must be unannounced;
 - 7 CFR 226.16(d)(4)(iii)(B), At least one unannounced review must include observation of meal service;
- 7 CFR 226.16(d)(4)(iv) Averaging of required reviews; and,
- 7 CFR 226.16(d)(4)(v) Follow-up 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 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, NJDA proposed to pause formal monitoring for NSLP during school year (SY) 20-21 and provided an alternative oversight plan that includes a one-year extension of their current four-year administrative review (AR) cycle and training and technical assistance (TA) for all school food authorities (SFAs) operating SSO. NJDA will continue to conduct FSMC reviews on a three-year cycle. To ensure program integrity, NJDA will continue to provide targeted TA and program oversight, and each SFA operating the SSO will receive in-depth TA and training tailored to their unique meal service challenges under COVID-19. NJDA has developed a self-assessment tool for SFAs to evaluate each site participating in SSO. The self-assessment tool will focus on the areas of counting and claiming and meal pattern compliance. Based on the results of this tool and staff review of key supporting documentation, targeted TA and training will be provided. NJDA will continue to develop webinar trainings and tip sheets on best practices and will utilize FNS Team Nutrition's available resources. NJDA also requested a waiver of monitoring requirements on behalf of SFAs who are unable to meet the on-site monitoring requirements due to safety concerns and COVID-19 protocols. NJDA requested an extension for SFAs operating SSO to conduct these on-site reviews by June 30, 2021. The five SFAs identified as having 10 percent or more certification/benefit issuance errors in SY 19-20 will be required to complete the second review of applications again in SY 21-22. Given that ARs will not be conducted this year, additional SFAs will not be identified or required to conduct a second review of applications. NJDA also requested to waive the two review requirement of afterschool care programs for SFAs operating NSLP and SSO. NJDA will resume afterschool care reviews concurrently with ARs in SY 21-22. In addition, NJDA will continue monitoring to identify any misuse of Federal funds or potentially fraudulent activities.

To ensure program integrity in CACFP, NJDA requested to extend their current three-year CACFP review cycle by two years to a five-year cycle, beginning in fiscal year (FY) 21. NJDA will use this flexibility to take additional time to accommodate the unique operational challenges of COVID-19. NJDA will provide extensive TA and virtual trainings to all institutions operating CACFP in FY 21. The TA and trainings will be based on the results of staff review of key supporting program records and institution waiver request documentation. NJDA will continue to develop webinar trainings and promote training materials for CACFP best practices. On behalf of sponsoring organizations, NJDA requested to require only two announced desk reviews of facilities, a virtual meal observation as part of facility monitoring reviews, a first four week visit for all new CACFP facilities, and to waive all unannounced monitoring activities through September 30, 2021. NDJA monitoring and approval of Compliance Contractor FY 21 reviews will identify any misuse of Federal funds or potentially fraudulent activities.

For SFSP, NJDA will conduct reviews as required per regulations and TA and trainings will continue to be conducted.

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 cost 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 TA, 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 NJDA's waiver request effective through:

- June 30, 2021, for School Meal Program monitoring requirements;
- September 30, 2021, for CACFP monitoring requirements;
- June 30, 2023, for the School Meal Programs AR cycle extension; and,
- September 30, 2025, for the CACFP 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 NJDA's ability to successfully carry out the purpose of the programs.

NJDA'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, NJDA 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, NJDA provide the FNS Mid-Atlantic Regional Office (MARO) a quarterly written report. The report must provide information on how NJDA 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 NJDA determine this waiver is no longer necessary prior to the expiration of the dates listed above, please notify the FNS MARO.

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 MARO.

Sincerely,



Jessica Saracino
Acting Director
Program Monitoring and Operational Support Division
Child Nutrition Programs