



Food and
Nutrition
Service

April 29, 2021

Braddock
Metro Center

Kimberly Vumbaco, Director
New York State Department of Education
89 Washington Ave., Room 375-EBA
Albany, NY 12234

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Dear Ms. Vumbaco:

This letter is in response to the April 8, 2021, waiver request from the New York State Education Department (NYSED). NYSED 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;
- 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 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)(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 is greater;
- 7 CFR 225.7(d)(3) Conduct follow up reviews of sponsors and sites as necessary;
- 7 CFR 225.7(d)(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.

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, NYSED proposed an alternative oversight plan that includes pausing formal monitoring for NSLP during school year (SY) 20-21 and focusing on training and technical assistance (TA). Due to COVID-19 restrictions and USDA flexibilities, NYSED requested to extend their three-year administrative review (AR) cycle by two years to a five-year cycle ending on June 30, 2024. NYSED conducts FSMC reviews, procurement reviews, and ARs simultaneously, and therefore also requested to pause and extend those cycles until June 30, 2024. The majority of SFAs operating NSLP are using the community eligibility provision (CEP), therefore, NYSED also requested to waive the second review of applications which they state would be unnecessary. Due to the significant increase in SFSP sponsors during the pandemic, NYSED requested to pause formal monitoring during summer 2020 and summer 2021 to prioritize staff resources for training and TA. NYSED requested to extend their three-year SFSP review cycle by two years to a five-year review cycle ending in summer 2024. NYSED also requested a waiver of NSLP and SFSP monitoring requirements on behalf of SFAs and sponsors.

To ensure program integrity, NYSED will resume the incomplete ARs from SY 19-20 in SY 21-22. SFAs identified for second review of applications based on ARs conducted in SY 19-20 will be required to conduct a second review of applications during SY 21-22. NYSED will resume formal SFSP monitoring in summer 2022 and will conduct alternative monitoring and targeted training and TA during summer 2021. During SY 20-21, NYSED will provide individual targeted TA to all program operators (NSLP/SBP, SSO, and SFSP). NYSED will also provide training and resources via the Child Nutrition Management System (CNMS) website and webinars for program operators. NYSED will conduct rigorous reviews of approximately 70 identified high risk operators including those that have documented significant increases in participation. Additional operators will be selected if integrity concerns are identified through the TA reviews or through continued operations during fiscal year (FY) 2021. NYSED will review 10 percent of FSMC contracts to ensure contracts are being upheld to protect the fiscal and nutritional integrity of the programs. NYSED will engage with each program operator to collect, process, and approve operations implementing waiver flexibilities. NYSED staff will meet, virtually or via phone, with program operators during the second half of SY 20-21 to check in on meal services, ensure appropriate waiver implementation, provide additional TA, and note integrity concerns and flag high-risk operators for in-depth review. Safeguards have been built into CNMS to prevent gross inconsistencies and errors. NYSED will require corrective action and take fiscal action on SFAs and sponsors as needed.

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(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 NYSED's waiver request effective through:

- June 30, 2021, for NSLP monitoring requirements;
- September 30, 2021, for SFSP monitoring requirements;
- June 30, 2024, for the AR and FSMC review cycle extension;
- September 30, 2024, for the SFSP review cycle extension.

Please note that this 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 NYSED's ability to successfully carry out the purpose of the Programs.

NYSED's oversight plan, as discussed above, provides assurance that NYSED 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, NYSED 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 July 1, 2021, FNS is requiring that for the duration of this waiver, NYSED provide the FNS Northeast Regional Office (NERO) a quarterly written report. The report must provide information on how NYSED 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 NYSED determine this waiver is no longer necessary prior to the expiration of the dates listed above, please notify the FNS 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 FNS NERO.

Sincerely,



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