



Food and
Nutrition
Service

March 31, 2021

Braddock
Metro Center

Mr. Dustin Melton
Director, Child Nutrition Programs
Oregon Department of Education
255 Capitol Street NE
Salem, OR 97310

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Place
Alexandria
VA 22314

Dear Mr. Melton:

This letter is in response to the March 8, 2021, updated waiver request from the Oregon Department of Education (ODE). ODE 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; and
- 7 CFR 210.18(g)(2)(i)(B)(1) Observing meal service.

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;
- 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; 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)

- 7 CFR 226.6(m)(3)(vii) If an independent center, observation of a meal service;
- 7 CFR 7 CFR 226.6(m)(4) Review of sponsored facilities; and
- 42 USC 1766(d)(2)(C)(i) and 7 CFR 226.6(m)(6)(i)-(iii) Frequency and number of required institution 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, ODE proposed an alternative oversight plan that includes conducting offsite reviews of program operators. Program Sponsors receiving an offsite review may receive an onsite full or targeted review in Fiscal Year 2022 based on risk

factors developed by the state and if it is safe to review onsite. In addition, ODE will provide robust technical assistance to reviewed operators and will focus on written policies and procedures. ODE will also provide trainings via webinars regarding writing policies and procedures. Due to challenges with obtaining the comprehensive documentation needed for offsite reviews and technology issues, the ODE oversight plan includes an alternative measure to traditional meal observations for all programs in order to ensure that compliant meals are served. All other review content and scope of the reviews will be conducted in line with program regulations and requirements. ODE's alternative meal observation process includes reviewing sponsors and school food authorities' policies and procedures regarding meal service. ODE will also review documentation in order to ensure site eligibility or individual eligibility of children receiving meals at the site. ODE will review menus, menu production records, and documentation that demonstrates that meals served meet the meal pattern requirements and will review delivery receipts, daily meal counts, and meal consolidation as applicable. ODE will also review sponsors' training of site staff, to ensure that the meal service training meets the minimum regulatory requirements. ODE has not requested a waiver of any school food authority or CACFP sponsor level regulations. School food authorities and sponsors will meet all review requirements outlined in program regulations.

To ensure program integrity in the School Meal Programs, ODE will conduct remote reviews of school food authorities. ODE will use a previously approved administrative review cycle and therefore does not need to further waive the requirements at 7 CFR 210.18(c) through this waiver. This year, ODE will review school food authorities that are scheduled for a review and operating NSLP in school year (SY) 21 and any school food authorities operating the Seamless Summer Option that are scheduled for reviews in SY 22.

To ensure program integrity in the SFSP, ODE will conduct remote announced administrative reviews for SFSP institutions/sponsors on a modified administrative reviews schedule. ODE will review 25 percent of participating SFSP sponsors without taking into consideration the requirement to annually review sponsors whose reimbursements count as half the aggregate from the previous year.

To ensure program integrity in the CACFP, ODE will review 25 percent of participating CACFP sponsors. ODE will prioritize sponsors whose reviews were delayed or rescheduled due to COVID-19 in Fiscal Year 2020 and those institutions that are deemed "in danger of being seriously deficient;" queries that identify red flags; single audit findings; and recommendations from assigned specialists. All other reviews will be determined based on the time elapsed since the sponsor's last administrative review.

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 ODE's waiver request effective through:

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

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 ODE's ability to successfully carry out the purpose of the Programs.

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

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 WRO.

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