



Food and
Nutrition
Service

February 2, 2021

Braddock
Metro Center

Ms. Brigette Hires, Child Nutrition Program Manager
Office of Integrated Student Supports
Ohio Department of Education 25. S. Front St.
Columbus, OH 43215

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Place
Alexandria
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Dear Ms. Hires:

This letter is in response to the waiver request received January 15, 2021, from the Ohio Department of Education (OH DOE). The OH DOE requested to waive the following statutory and regulatory requirements:

National School Lunch Program (NSLP):

- 7 CFR 210.8(a)(1) & 220.11(d)(1) School food authority (SFA) reviews by February 1;
- 42 USC 1769c(b)(1)(C)(i) & 7 CFR 210.18(c) Timing of administrative reviews (AR) and cycle;
- 7 CFR 210.19(a)(5) Food Service Management Company (FSMC) review cycle requirements;

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)(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)(6) Inspect FSMC facilities;

Child and Adult Care Food Program (CACFP):

- 7 CFR 226.6(m)(3)(i) Recordkeeping (including all records listed at 7 CFR 226.15(e));
- 42 USC 1766(d)(2)(C)(i) & 7 CFR 226.6(m)(6) Frequency and number of required institution reviews. Annually review at least 33.3% of all institutions (at least 15 percent of the total number of facility reviews required must be unannounced);
- 7 CFR 226.6(m)(6)(i) Review independent centers and sponsoring organizations of 1 to 100 facilities at least once every three years and include reviews of 10% of their facilities; and
- 7 CFR 226.6(m)(6)(ii) Review sponsoring organizations with more than 100 facilities at least once every two years and include reviews of 5 percent of the first 1,000 facilities and 2.5 percent of the facilities in excess of 1,000.

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 SFSP and the NSLP 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, OH DOE proposed an alternative oversight plan for NSLP includes adding a year to its 5-year waiver cycle which will now end in school year (SY) 21-22. Any administrative reviews that were scheduled for SY 20-21 will be conducted in SY 21-22. Similarly, OH DOE will extend its FSMC review cycle by one year and will conduct the reviews scheduled for SY 20-21 in SY 21-22. OH DOE requests that SFAs be given until April 1, 2021, to conduct the annual monitoring reviews of counting and claiming systems and general areas as required by 7 CFR 210.18(h).

OH DOE proposed an alternative oversight plan that for SFSP that includes a waiver of the requirement to review within the first year SFAs new to SFSP who were in good standing in the NSLP as of the State's program year (PY) 19-20. OH DOE also requests a waiver to deduct SFSP reimbursement distributed in the March through May 2020, and September 2020, timeframe from the aggregate PY 19-20 SFSP reimbursement to avoid inaccurately inflating reimbursement for traditional summer operating. OH DOE will complete PY 20-21 SFSP reviews based on the reimbursement earned during the traditional June – August 2020 SFSP timeframe. OH DOE will limit documentation review to review-selected sites and allow sponsor visits that were conducted in PY 20-21, but not completed, to carry over and count toward the PY 21-22 SFSP review completion. OH DOE will maintain all parameters set forth in review of sponsors but limit documentation to the selected sites. If violations occur at rate of greater than 10%, additional sites will be added. For the inspection of FSMC facilities, OH DOE requests a waiver to conduct off-site desk audits of such facilities and will conduct the review to the maximum extent practical off-site utilizing video and picture monitoring.

OH DOE proposed an alternative oversight plan for CACFP that includes carrying reviews scheduled for PY 20-21 into PY 21-22, although it intends on completing reviews to the maximum extent possible. OH DOE will limit documentation review to review-selected sites and should the limited documentation review indicate concerning errors, OH DOE will add sites for documentation review.

To ensure program integrity in all Programs, OH DOE will monitor claims in comparison to 19-20 to identify any abnormal claim submissions. For SFSP, OH DOE will maintain all parameters set forth in reviews of sponsors but limit documentation to the selected sites. If violations occur at rate of greater than 10%, additional sites will be added. Similarly, for CACFP, should the limited documentation review indicate concerning errors, OH DOE will add sites for documentation review. OH DOE will

provide technical assistance through weekly emails to all sponsors; conduct Monthly Townhall presentations, and Education Program specialists will individually contact each assigned sponsor at least twice in the program year. For SFSP and CACFP, OH DOE will provide technical assistance via weekly emails, townhall webinars, monthly training, and review of current guidance memos.

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 OH DOE's waiver request effective through:

- June 30, 2021, School Meal Programs requirements;
- September 30, 2021, for CACFP and SFSP monitoring requirements; and,
- June 30, 2022, for the NSLP administrative review cycle and FSMC review cycle

Please note that this waiver only extends the review cycles listed above 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 OH DOE's ability to successfully carry out the purpose of the Programs.

OH DOE's oversight plan, as discussed above, provides assurance that OH DOE 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, OH DOE 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, OH DOE provide the FNS Midwest Regional Office (MWRO) a quarterly written report. The report must provide information on how OH DOE 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).
- A summary of any technical assistance measures that were provided.

Should OH DOE determine this waiver is no longer necessary prior to the dates listed above, 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,



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