



Food and
Nutrition
Service

April 5, 2021

Braddock
Metro Center

Ms. Lena Wilson
Administrator for Food and Nutrition
Texas Department of Agriculture
1700 Congress Avenue #11
Austin, TX 78701

1320
Braddock
Place
Alexandria
VA 22314

Dear Ms. Wilson:

This letter is in response to the February 25, 2021 updated waiver request from the Texas Department of Agriculture (TDA). TDA requested to waive the following statutory and regulatory requirements:

National School Lunch Program (NSLP)

- 7 CFR 210.18(e) Number and type of schools to review;
- 7 CFR 210.18(l) Fiscal action;
- 7 CFR 210.8(a)(1) & 220.11(d)(1); SFA review 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's greater;
- 7 CFR 225.7(d)(3) Conduct follow up reviews of sponsors and sites as necessary;
- 42 USC 1761(n)(4) and 7 CFR 225.7(d)(6) Inspect FSMC facilities;
- 7 CFR 225.13(b)(7) and 7 CFR 225.13 (b)(10) Appeal time frames;
- 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.

Child and Adult Care Food Program (CACFP)

- 7 CFR 226.6(k)(ix) Timing for issuing a decision;
- 7 CFR 226.6(m)(2) Review priorities;
- 7 CFR 226.6(m)(3)(viii) Review content;

- 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) according to the schedule:
 - 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;
 - 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; and
 - Review new institutions that are sponsoring organizations of five or more facilities within the first 90 days of Program operations.
- 42 USC 1766(d)(1)(B)(i)(I) and 7 CFR 226.16(d)(1) Pre-Approval visits;
- 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
- 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)(iv) Averaging of required reviews; and
- 7 CFR 226.16(d)(4)(vi) Notification of unannounced 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 (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, TDA proposed an alternative oversight plan that includes aligning the review cycle for any school food authority (SFA) operators concurrently operating NSLP or SFSP with any CACFP Program. For these operators, their review cycles for all programs operated will be brought into alignment with TDA's previously approved School Meal Programs 4-year review cycle. TDA's staff will be repurposed due to the extended operation of the SFSP and decrease in participation in the School Meal Programs, resulting in some staff conducting targeted integrity reviews of the United States Department of Agriculture's Child Nutrition Program waivers, procurement reviews, and other supports necessary given the various programs are concurrently operating.

To ensure program integrity, in the School Meal Programs TDA will continue to review SFAs using the administrative review procedures, but has requested flexibility to waive some parts of the process, including the number of sites reviewed to account for burden and logistical challenges. Therefore, TDA will align the number of virtual reviews with

the number of days typically onsite as opposed to the number of onsite reviews stipulated in regulations. TDA is also requesting flexibility in issuing fiscal action using a case by-case analysis if the finding is not considered egregious and is likely the result of confusion related to modified Program requirements enacted as a result of COVID-19. TDA will adjust internal procedures and criteria for issuing fiscal action in school year (SY) 20-21 and train compliance staff on how to determine fiscal action based on the new criteria. In addition, TDA will count any SSO reviews conducted during SY 20-21 towards the Federally required SSO reviews to be conducted in SY 21-22 Administrative Reviews.

To ensure program integrity in the SFSP Program, TDA will review SFSP operators using an updated time frame for completion of reviews. TDA requests flexibility to waive the number of reviews per the requirement in the event of inability to reach program operators due to closures or other COVID-19-related limitations and if operators were reviewed or are scheduled to be reviewed under the School Meal Programs.

To ensure program integrity in the CACFP Program, TDA will continue to conduct CACFP administrative reviews. TDA requested flexibility to waive the number of reviews per Federal requirements in the event of closures or other COVID-related limitations. In addition, TDA will make every effort to satisfy all areas of the CACFP review content, but requests the ability to modify review content in the area of training and monitoring facilities depending what other programs the sponsor operates. In instances where the School Meal Programs are also operated, procurement and resource management tools will be used in conjunction with CACFP program review requirements.

TDA has also requested flexibility in local level monitoring in the School Meal Programs for SFAs that are not able to conduct reviews by February 1, for SFSP operators who are not able to review at least one site the first week of operation and review food service operations at each site in the for four weeks, and for CACFP sponsor preapproval visits and frequency. All other oversight and local level monitoring requirements not requested in the waiver will be satisfied by local level operators.

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.

With operational delays due to COVID-19 closures and with potential increases in appeals due to concurrent SFSP and CACFP operations, TDA requested a waiver of regulatory appeals deadlines and procedures. This would extend deadlines for the time by which an appeal hearing must be conducted and the date by which a decision and order must be issued. TDA requested a 90-day appeal timeline for both the SFSP and CACFP. FNS will provide a response separately to the request to waive appeal time frames found at 7 CFR 225.13(b)(7) , 7 CFR 225.13 (b)(10), and 7 CFR 226.6(k)(ix) and does not approve the request to waive these regulatory citations at this time.

Except for the requirements that remain in effect as discussed above, pursuant to section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), (42 USC 1760(l)), FNS approves TDA's waiver request effective through:

- June 30, 2021, for NSLP monitoring requirements;
- September 30, 2021, for CACFP and SFSP monitoring requirements; and,
- June 30, 2023, for the review cycle for SFA operators that are operating multiple Child Nutrition Programs.

Please note that this waiver only extends the review cycle 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 TDA's ability to successfully carry out the purpose of the Programs.

TDA's oversight plan, as discussed above, provides assurance that TDA 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, TDA 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, TDA provide the Southwest Regional Office (SWRO) a quarterly written report. The report must provide information on how TDA 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 TDA determine this waiver is no longer necessary prior to September 30, 2021, please notify the SWRO.

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 SWRO.

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