

# Appendix S.1

## Technical Assistance Email

### Subject Line: State Oversight Waivers and Plan

This information is being collected to assist the Food and Nutrition Service (FNS) to ensure States and eligible providers adhere to the statutory requirements at Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1760(l)) when requesting a waiver of Child Nutrition Program (CNP) requirements, as well as assess states' abilities to provide effective and efficient oversight of CNPs during COVID-19-related operations. This collection is required to obtain a waiver approval of monitoring requirements under waiver authority at Section 12(l) of the NSLA; FNS uses the information to evaluate whether waiver requests meet the statutory requirements established at Section 12(l) of the NSLA, assess a State or eligible service provider's need to waive program monitoring requirements, enhance integrity in CNPs, and monitor the impact waiver approvals have on CNP operations. This collection does not request any personally identifiable information under the Privacy Act of 1974. Responses will be kept private to the extent provided by law. According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0584-0654. The estimated time required to review the technical assistance guidance provided to States via email and confirm receipt of such email is estimated to average 30 minutes (.5 hours). Because this technical assistance guidance encouraged States in need of a monitoring oversight waiver to include an alternative approach to oversight activities and additional rational alongside their waiver requests, the burden associated with requests for State monitoring oversight waivers is more than waiver requests that follow FNS' standard waiver protocol. The estimated time required to develop and submit a waiver request of program monitoring oversight requirements is 2.5 hours per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314 ATTN: PRA (0584-0654). Do not return applications to waive program requirements to this address.

# Informative Email and Technical Assistance to States in Need of a State Monitoring and Oversight Waiver during COVID-19 Operations

**Subject:** State Oversight Waivers and Plan

**Importance:** High

Good Afternoon,

While we have extended our nationwide waivers allowing offsite monitoring in Child Nutrition Programs through next year, given the numerous flexibilities and waivers in place for CN Programs this year, monitoring as required in our regulations may not be appropriate or fit the needs of States and locals. Therefore, we are providing the attached document laying out the process for State agencies to submit oversight waivers and plans to target flexibilities on local conditions and focus State oversight efforts on high-risk circumstances. Please share the attachment with your States and notify Jess Saracino when your States have confirmed receipt.

We have also attached a checklist of all the regulatory monitoring requirements in CN. We ask that States please limit these particular waiver requests to just monitoring requirements.

We will be setting up a meeting next week to discuss your questions and concerns. Please look for the meeting invite.

Below are some general guidelines:

- State agencies should include all CN programs they administer in their CN Waiver Request and Oversight Plan
- States must use the process described in the memorandum, Child Nutrition Program Waiver Request Guidance and Protocol- Revised (SP 15-2018, CACFP 12-2018, SFSP 05-2018), and are strongly encouraged to use the template provided with this guidance
- If a State agency requests to waive monitoring requirements this year, they should include in the rationale an alternative approach to oversight. For example, if the State agency wants to conduct technical assistance in lieu of formal monitoring, they should explain in the rationale how they will conduct technical assistance this year
- State agencies should include ways they will identify program fraud as part of their oversight plans
- If a State agency has already submitted a monitoring waiver for this year, we ask that they please roll that waiver request into this larger request and plan. State agencies should note whether a waiver has already been submitted for a particular request

## Child Nutrition Programs Monitoring and Oversight Plan Checklist

### State Agency Monitoring Requirements

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#### National School Lunch Program (NSLP):

- [7 CFR 210.10(h)(2)] Requirement to review trans fat.
- [7 CFR 210.18] Administrative review:
  - [7 CFR 210.18(c)] Timing of administrative reviews and cycle.
  - [7 CFR 210.18(e)] Number and type of schools to review, including Seamless Summer Option review requirement.
  - [7 CFR 210.18(f)] Scope of review.
  - [7 CFR 210.18(i)(3)] Notification time frames (review reports, etc.).
  - [7 CFR 210.18(l)] Fiscal Action.
  - [7 CFR 210.18(m)] Transparency requirements.
  - [7 CFR 210.18(n)] Reporting requirements.
  - [7 CFR 210.18(p)] Appeals process and deadlines.
- [7 CFR 210.19(a)(5)] Food Service Management Company (FSMC) review cycle requirements.
- [7 CFR 245.11 (a)-(b)] Notification of second review of applications.

#### Summer Food Service Program (SFSP):

- [7 CFR 225.7(d)] Program monitoring and assistance:
  - [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)(2)(iii)(3)] Conduct follow up reviews of sponsors and sites as necessary.
  - [7 CFR 225.7(d)(2)(iii)(6)] Inspect FSMC facilities.

#### Child and Adult Care Food Program (CACFP):

- [7 CFR 226.6(m)(2)] Review priorities.
- [7 CFR 226.6(m)(3)] Review content:
  - (i) Recordkeeping (including all records listed at [7 CFR 226.15(e)]);
  - (ii) Meal counts;

- (iii) Administrative costs;
  - (iv) Any applicable instructions and handbooks issued by FNS and the Department, and any instructions and handbooks issued by the State agency which are not inconsistent with the provisions of this part;
  - (v) Facility licensing and approval;
  - (vi) Compliance with the requirements for annual updating of enrollment forms;
  - (vii) If an independent center, observation of a meal service;
  - (viii) If a sponsoring organization, training and monitoring of facilities;
  - (ix) If a sponsoring organization of day care homes, implementation of the serious deficiency and termination procedures for day care homes and, if such procedures have been delegated to sponsoring organizations, the administrative review procedures for day care homes;
  - (x) If a sponsoring organization, implementation of the household contact system;
  - (xi) If a sponsoring organization of day care homes, the requirements for classification of tier I and tier II day care homes; and
  - (xii) All other Program requirements.
- [7 CFR 226.6(m)(4)] Review of sponsored facilities.
  - [7 CFR 226.6(m)(6)] Frequency and number of required institution reviews. Annually review at least 33.3% of all institutions according to the schedule:
    - (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;
    - (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; and
    - (iii) Review new institutions that are sponsoring organizations of five or more facilities within the first 90 days of Program operations.

## **Sponsoring Organization Monitoring Requirements**

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### **National School Lunch Program (NSLP):**

- [7 CFR 210.8(a)(1) & 220.11(d)(1)] SFA reviews by February 1.
- [7 CFR 210.9 (c)(7)] Afterschool care reviews.

### **Summer Food Service Program (SFSP):**

- [7 CFR 225.15(d)(2)] Visit sites at least once during the first week of operation.
- [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 226.16(d)(1)]: Pre-approval visits.
- [7 CFR 226.16(d)(4)(i)] Reviews that assess whether the facility has corrected problems noted on the previous review(s) and an assessment of the facility's compliance with:
  - (A) The meal pattern;
  - (B) Licensing or approval;
  - (C) Attendance at training;
  - (D) Meal counts;
  - (E) Menu and meal records; and
  - (F) The annual updating and content of enrollment forms (if the facility is required to have enrollment forms on file, as specified in §§226.15(e)(2) and 226.15(e)(3)).
- [7 CFR 226.16(d)(4)(ii)] Reconciliation of meal counts.
- [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:
  - (A) At least two of the three reviews must be unannounced;
  - (B) At least one unannounced review must include observation of a meal service;
  - (C) At least one review must be made during each new facility's first four weeks of Program operations; and
  - (D) Not more than six months may elapse between reviews.
- [7 CFR 226.16(d)(4)(iv)] Averaging of required reviews.
- [7 CFR 226.16(d)(4)(iv)] Follow-up reviews.
- [7 CFR 226.16(d)(4)(iv)] Notification of unannounced reviews.

## Attachment 2 of Email: Fiscal Year 2021 Oversight Plans

Under Program statute and regulations, State agencies and local operators are required to conduct monitoring of the Child Nutrition Programs. [Through nationwide waivers](#), the Food and Nutrition Service has provided flexibilities to allow for off-site reviews in 2021 in order to help minimize potential exposure to the novel coronavirus (COVID-19).

The Food and Nutrition Service (FNS) recognizes the current exceptional circumstances of this public health emergency and the release of [COVID-19: Child Nutrition Response #59](#) Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through June 2021. Program operators may be operating different programs, at different times of the year, than traditional operations. As a result, State agencies and local operators may need to modify their oversight and review plans. In planning their oversight activities for the coming year, State agencies may determine that a waiver of Federal statutory and/or regulatory requirements is needed in order to provide effective and efficient oversight of some or all of their Program operations. FNS also understands that in addition to oversight activities, technical assistance and training measures are important tools in ensuring that Program operators successfully operate Programs consistent with Federal regulations.

Therefore, FNS is providing the opportunity for State agencies to submit a waiver request of both State and local Child Nutrition Program monitoring requirements and include in the justification a proposed alternative plan for conducting effective Program oversight in fiscal year 2021.

If submitting a waiver request of monitoring requirements with a proposed alternative oversight plan, State agencies are strongly encouraged to:

- Describe how the current program circumstances and flexibilities impact oversight requirements and timeframes, and assess if a waiver may provide the opportunity to streamline these requirements.
- Clearly state the Federal statutory and regulatory requirements that the State agency is requesting to waive and include any effective oversight measures which are proposed as an alternative.
- In the rationale for the waiver request, include information or data on the number of Child Nutrition Program sponsors and/or program operators operating each Program within the State
- Describe effective oversight measures the State agency will implement to ensure Program integrity, identify any misuse of Federal funds, and identify fraudulent activities.
- Submit waiver requests that minimize duplicative Program oversight activities.
- Specify training and technical assistance measures the State agency will to assist Program operators and ensure that Program requirements are met.

When submitting a monitoring waiver request and oversight plan, State agencies must use the process described in the [Child Nutrition Program Waiver Request Guidance and Protocol- Revised](#), and are strongly encouraged to use the template provided with that guidance. FNS recommends that State agencies holistically assess their Program and operational requirements. Each request should identify all of the Child Nutrition Program statutory and regulatory requirements which would require waiver.

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.