# CHILD NUTRITION PROGRAM STATE WAIVER REQUEST:

# Massachusetts Waiver Request to USDA to Waive Child Nutrition Program Administrative Reviews Requirements during COVID-19

# State agency submitting waiver request and responsible State agency staff contact information:

# MA Department of Elementary and Secondary Education (MA DESE)

# Office for Food and Nutrition Programs (FNP)

# 75 Pleasant St., Malden, MA, 02148

# Robert M. Leshin, Director [Robert.M.Leshin@mass.gov](mailto:Robert.M.Leshin@mass.gov) 781-338-6477

1. **Region:** Northeast (NERO)
2. **Eligible service providers participating in waiver and affirmation that they are in good standing:**

This waiver would impact current National School Lunch Program (NSLP) and Seamless Summer Option (SSO) sponsors including public, private and residential childcare institutions (RCCIs), Child Adult Care Food Program (CACFP) sponsors including childcare centers, family day care homes and adult day health programs and Summer Food Service Program (SFSP) sponsors that include school food authorities (SFA) and community organizations.

1. **Description of the challenge the State agency is seeking to solve, the goal of the waiver to improve services under the Program, and the expected outcomes if the waiver is granted. [Section 12(l)(2)(A)(iii) and 12(l)(2)(A)(iv) of the NSLA]:**

**Challenge #1 State Level Monitoring**

**NSLP**

MA DESE was midway through Year 1 of a 4-year NSLP Administrative Review cycle in School Year 2019-2020 before schools statewide closed on March 17, 2020. MA DESE was able to accomplish approximately (87/128) of NSLP Administrative Reviews in School Year 2019-2020 before it became operationally unattainable to continue due to COVID-19. As a result, the reviews not completed in School Year 2019-2020 (Year 1) must be rolled into School Year 2020-2021 (Year 2).

MA DESE has been recently informed through verbal USDA guidance that any type of review conducted for School Year 2020-2021 other than the full NSLP Administrative Review will not count towards our current NSLP review cycle. Given that all School Food

Authorities are operating either the Seamless Summer Option (SSO) or the Summer Food Service Program (SFSP), no offsite reviews conducted by MA DESE this school year will count towards our NSLP review cycle. Therefore, effectively MA DESE will not accomplish Year 2 of our current 4-year review cycle this school year due to these circumstances. As a result, the incomplete reviews from Year 1 and all incomplete reviews for Year 2 will roll into Year 3 (School Year 2021-2022) causing a future enormous, unachievable NSLP Administrative Review caseload. Additionally, at this point, it is not known if Administrative Reviews will resume next year.

MA DESE will continue with NSLP Procurement Reviews and the current review cycle by reviewing a selection of SSO sponsors. The need for procurement monitoring and technical assistance exists due to the level of emergency procurement conducted statewide as a result of the pandemic. However, the reviews will need to be conducted fully offsite posing challenges to the collection and review of material. Additionally, the Procurement Reviews will need to be conducted in a manner that is respectful to the current, high stress work environment in which SSO program operators are working in by focusing on technical assistance.

**CACFP**

MA DESE did not conduct Child Adult Care Food Program (CACFP) reviews in Fiscal Year 2020 of childcare centers, family day care homes and adult day health programs before the statewide closures in mid-March 2020 due to COVID-19. DESE’s review staff begin the review year with a focus on SFAs. With exception of new programs, CACFP reviews typically begin in April.

Since MA DESE has opted into the existing state agency waiver to not conduct onsite reviews this year, no onsite reviews will take place. It is not known whether any type of offsite CACFP review will count as a Program Review for the 3-year interval requirement. Given the fact that not all CACFP sites are open this year and the possibility of MA DESE CACFP offsite reviews not counting as the required review, the 3-year interval timeline is impossible to track and accomplish. Additionally, staying within the 3-year interval will cause a future enormous, unachievable CACFP review caseload.

Massachusetts’ licensing agencies do not permit non-essential adults from entering childcare facilities, adult day health centers, and family day homes. Sponsoring organizations also limit non-essential personnel in their offices. Additionally, the establishment of smaller participant-to-staff ratios to limit virus exposure for children, adults and staff members also limits the time during service hours for MA DESE to access administrative personnel. These challenges impact MA DESE’s ability to perform program monitoring.

**SFSP**

MA DESE understands that any type of review conducted that did not fully encompass all review components will not count for FY20 review cycle. No onsite reviews took place as MA DESE opted into the existing state agency waiver to not conduct onsite reviews this year. Therefore, effectively MA DESE will not accomplish this year’s review cycle due to these circumstances. As a result, the incomplete reviews from FY20 will create an

unachievable SFSP Review caseload when operations resume. Additionally, at this point, it is not known if MA DESE will be able to complete full SFSP reviews next year in FY21.

While MA DESE has made adaptations to accommodate changes in all Child Nutrition Programs (CNP), it is unattainable for MA DESE to meet the NLP Administrative Review parameters that are not meant or intended for the vast fluctuations we are experiencing. Additionally, the recurring fluctuations and working in amidst a global pandemic, and the inability to conduct in-person verifications does not enable MA DESE to fairly evaluate program operators. Depending on the point in time, MA DESE’s internal policies and procedures contradict themselves as we adjust to flexibilities and guidance issued. Administrative and program reviews will fall short of meeting requirements and confirm irregularities based on flexibilities, to which both will likely lead to unnecessary non-compliance. Assessing Program compliance amidst continuous change does not permit CNP operators to demonstrate full compliance of their operations and many Special Nutrition Programs lack the technological ability to participate in an offsite review model.

**NSLP Administrative Review, CACFP Review and SFSP Review Timeline Suspension Request**

As opposed to extending the NSLP Administrative Review cycle, requesting to extend the CACFP 3-year review interval, or extend the SFSP three-year review interval, MA DESE is requesting to simply pause or suspend all three Child Nutrition Program review cycles and frequencies.

MA DESE is requesting to extend the unfinished Year 1 of our 4-year NSLP Administrative Review cycle until a normal Administrative Review year continues no earlier than School Year 2021-2022. Additionally, while MA DESE proposes to continue Procurement Reviews, MA DESE is requesting the suspension of the requirement to review SFAs with Food Service Management Companies every 3-years.

MA DESE is also requesting to pause or suspend the CACFP review cycle until normal CACFP reviews resumes no earlier than Fiscal Year 2022. MA DESE is also requesting to pause or suspend the SFSP review cycle until normal SFSP reviews resumes no earlier than Fiscal Year 2022.

For NSLP, MA DESE will retain our current already approved 4-year NSLP review cycle and will resume CACFP and SFSP reviews and meet 3-year intervals (not including Fiscal Year 2021 and possibly future years in the 3-year calculation) when it is safe to do so.

**Challenge #2 Sponsor level monitoring for NSLP SFAs, CACFP SOs and SFSP SOs**

While MA DESE may adapt the onsite review materials to accommodate the limitations for onsite reviews and modify monitoring questions, while offering USDA’s waivers, the process for monitoring under the present conditions of national pandemic, makes the monitoring process unachievable for Sponsors. Additionally, State level restrictions and varying constraints governed by local authorities in their communities may further impact the Sponsors ability to complete the required monitoring.

MA DESE’s offsite technical assessment planning for NSLP/SSO, CACFP and SFSP will be able to accommodate, without significant challenges or barriers for both the State agency and Program operators, any delays due to COVID-19 related closures and limitations. MA DESE will return to full reviews and will use all Program review tools as they were designed, to evaluate Programs under normal operations.

**Goal and Expected Outcomes**

The overarching goal of this waiver request is to continue to conduct program monitoring and technical assistance in a manner that is in the best interest of the program operators and the state agency due to the circumstances of the pandemic. A secondary goal is to be held harmless in terms of review timelines in order to avoid unachievable review caseloads in future years due to the inability to have reviews “count” towards our current review cycle and review timelines during SY 2020-2021 and FY21.

MA DESE anticipates that the outcome of this request will maintain the State agency’s role for oversight of integrity, program efficiency and accountability regardless of ability to complete traditional monitoring activities. MA DESE’s alternate procedures will demonstrate both the continued support as well as the value of collaboration between the State agency and all Program operators. MA DESE’s integrity plan provides an overview of each Program’s training, target technical assistance and oversight for program assessments. These assessments will allow MA DESE to quickly address any inconsistencies or improper implementation of waivers and flexibilities issued, correct any health and safety concerns while reviewing the integrity of the Programs.

1. **Specific Program requirements to be waived (include statutory and regulatory citations). [Section 12(l)(2)(A)(i) of the NSLA]:**

In addition to the outline in Question 5, MA DESE is submitting a waiver for multiple monitoring and oversight requirements in NSLP/SSO, the CACFP and the SFSP. SFAs, Institutions and Sponsoring Organizations have piloted operating in multiple programs concurrently due to the unique circumstances of the public health emergency. Program operators are focused on more urgent priorities related to COVID-19, such as local needs and services, and do not have the resources to participate in State agency monitoring requirements.

**MA DESE requests exemptions from the following:**

**State Agency Monitoring Requirements**

**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.

**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.

**CACFP State Agency Appeal time frames [7 CFR 226.6(c)(1), (2), (3) and (5)**

With operational delays due to COVID-19 closures and limitations likely for CACFP operations, DESE requests a waiver of regulatory appellate deadlines and procedures. Such waivers 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.

**CACFP Flexibilities in administering fiscal action [7 CFR 226.14]**

MA DESE is requesting flexibility in issuing fiscal action to a CNP operator if after case-by-case analysis, the finding was not considered egregious and likely the result of confusion related to modified requirements enacted as a result of the COVID-19 flexibilities granted.

**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.

**SFSP State Agency Appeal time frames [7 CFR 225.13]**

With operational delays due to COVID-19 closures and limitations likely for SFSP operations, DESE requests a waiver of regulatory appellate deadlines and procedures. Such waivers 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.

**SFSP Flexibilities in administering fiscal action [7 CFR 225.12]**

MA DESE is requesting flexibility in issuing fiscal action to a CNP operator if after case-by-case analysis, the finding was not considered egregious and likely the result of confusion related to modified requirements enacted as a result of the COVID-19 flexibilities granted.

**SFA/Sponsoring Organization Monitoring Requirements**

**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.

**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.

**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.

1. **Detailed description of alternative procedures and anticipated impact on Program operations, including technology, State systems, and monitoring:**

## **NSLP/SSO**

## Technical Assistance Off-Site Assessments

To prepare both internal staff and Sponsoring agencies for the modified review procedures, MA DESE FNP will provide training detailing the remote process. Internal staff will receive training on available SSO waivers, and how waiver flexibilities will impact program operations. SSO Sponsors will be provided guidance on how to submit the requested documents, and how review staff will assess traditional SSO review topics in addition to new flexibilities under COVID-19 waivers.

Sponsors will be notified prior to the day of assessment to confirm assessment details, including date and time of the virtual review, week of assessment, and documentation to be collect prior to the day of assessment. MA DESE FNP will offer a training around both SA and SFA responsibilities and expectations throughout the SSO review. SA program staff will work with each sponsor to determine the most suitable way to conduct the virtual assessment. Each Program will receive a targeted technical assistance session on key program areas such as food safety, procurement, menus, counting and claiming, enrollment and eligibility, civil rights, training, waiver participation, along with additional guidance and best practices, as needed. Assessments will be conducted via telephone calls, video conferencing, and may include sharing of documentation, as needed.

Throughout the call the MA DESE FNP program reviewer will facilitate an open discussion with the sponsor which will allow the reviewer to complete the applicable portions of the review, and provide extensive technical assistance as needed. Additionally, the reviewer will provide feedback on documentation submitted by the sponsor ahead of time and offer an opportunity for sponsors to ask for assistance troubleshooting any areas of difficulty and discuss contingency plans for future operations. At the conclusion of the call, the MA DESE FNP program reviewer will summarize the call, request any additional documentation, and

schedule a follow up if needed. Once the review is completed, the MA DESE FNP program reviewer will send an email to the sponsor providing a brief summary of what was discussed, technical assistance provided and, if applicable, links or attachments for SSO resources.

Through the online review module, MA DESE will record the technical assistance assessments including program areas addressed as well as the usage of waivers. DESE reviewers will also document any significant issues that may elevate to written corrective action and fiscal disallowance.

These modified procedures utilized existing State agency technology and had no impact on State systems.

**CACFP**

Targeted Technical Assistance Offsite Assessments

MA DESE FNP will maintain its current tracking system for reviews and identify operating centers and sponsoring organizations that were scheduled for a review in FY20 and FY21.

To prepare both internal staff and Sponsoring agencies for the modified review procedures, MA DESE FNP will provide training detailing the remote process. Internal staff will receive training on available CACFP waivers, and how waiver flexibilities will impact program operations. CACFP Institutions will be provided guidance on how to submit the requested documents, and how review staff will assess traditional CACFP review topics in addition to new flexibilities under COVID-19 waivers.

Each Program will receive a targeted technical assistance session on key program areas such as food safety, procurement, menus, counting and claiming, enrollment and eligibility, civil rights, training, waiver participation, along with additional guidance and best practices, as needed. Assessments will be conducted via telephone calls, video conferencing, and may include sharing of CACFP documentation, as needed.

Through the online review module, MA DESE will record the technical assistance assessments including program areas addressed as well as the usage of waivers. DESE reviewers will also document any significant issues that may elevate to written corrective action and fiscal disallowance.

To enhance DESE’s oversight of integrity, all actively operating centers and sponsoring organizations must submit written notification of unanticipated temporary closures. Such closures may be related to COVID-19 cases. These additional centers and sponsors will receive a claim verification through a desk review to ensure meals were not claimed during the temporary closures.

These modified procedures will utilize existing State agency technology and have no impact on State systems.

**SFSP**

In lieu of traditional monitoring, MA DESE conducted offsite assessments for SFSP sponsors operating March to September 2020. To prepare both internal staff and Sponsoring agencies for the modified review procedures, MA DESE provided training detailing the remote process. Internal staff received training on how waiver flexibilities would impact program operations, and how Sponsoring agencies were asked to document specific aspects of these flexibilities. SFSP Sponsors were provided detailed guidance on how to submit the requested documents, and how document reviews would address the traditional SFSP review topics, in addition to new flexibilities under COVID waivers.

MA DESE program review staff conducted scheduled calls with all SFSP program operators. The assessments consisted of various practices associated with program integrity, including:

* delivery methods implemented,
* menus,
* meal counting methods,
* claim edit checks and allowable expenses,
* waiver participation,
* food safety and Board of Health compliance
* civil rights compliance and complaints.

Through the online review module, MA DESE recorded the technical assistance assessments including program areas addressed as well as the usage of waivers. DESE reviewers documented any significant issues that were elevated to written corrective action and fiscal disallowance. MA DESE required corrective action as necessary to ensure program integrity.

These modified procedures utilized existing State agency technology and had no impact on State systems.

1. **Description of any steps the State has taken to address regulatory barriers at the State level. [Section 12(l)(2)(A)(ii) of the NSLA]:**

MA DESE FNP does not anticipate any regulatory barriers with the implementation of this waiver.

1. **Anticipated challenges State or eligible service providers may face with the waiver implementation:**

MA DESE FNP does not anticipate any challenges with the implementation of this waiver.

1. **Description of how the waiver will not increase the overall cost of the Program to the Federal Government. If there are anticipated increases, confirm that the costs will be paid from non-Federal funds. [Section 12(l)(1)(A)(iii) of the NSLA]:**

This waiver request will not increase cost of the Program to the Federal Government. Program administration and operations will remain committed to oversight and compliance. Program reimbursement will continue to be based on total number of meals served to eligible participants by the sponsor.

1. **Anticipated waiver implementation date and time period:**

School Year 2020-2021 through School Year 2023-2024 for NSLP and Fiscal Year 2020 through Fiscal Year 2024 for CACFP (subject to change based upon the duration of the public health emergency and the inability to conduct countable reviews).

1. **Proposed monitoring and review procedures:**

MA DESE’s waiver request is specific to program monitoring and therefore the procedures impact on monitoring was outlined in Question 6. Additionally, refer to MA DESE’s integrity plan for further detail on monitoring and review procedures.

1. **Proposed reporting requirements (include type of data and due date(s) to FNS):**

MA DESE FNP will provide a comprehensive report on the impact of this waiver extension on all sponsors participating in SSO or CACFP. This report, which will pull data directly from the online Security Portal will identify results from the SSO and CACFP reviews.

1. **Link to or a copy of the public notice informing the public about the proposed waiver [Section 12(l)(1)(A)(ii) of the NSLA]:**

Notice to be released: <http://www.doe.mass.edu/covid19/school-meals.html>

1. **Signature and title of requesting official :**

Title:

Requesting official’s email address for transmission of response:

# TO BE COMPLETED BY FNS REGIONAL OFFICE:

*FNS Regional Offices are requested to ensure the questions have been adequately addressed by the State agency and formulate an opinion and justification for a response to the waiver request based on their knowledge, experience and work with the State.*

# Date request was received at Regional Office:

* + **Check this box to confirm that the State agency has provided public notice in accordance with Section 12(l)(1)(A)(ii) of the NSLA**
* **Regional Office Analysis and Recommendations:**