



Food and
Nutrition
Service

January 6, 2021

Braddock
Metro Center

Ms. Leanne Eko
Director of Child Nutrition Services
Office of Superintendent of Public Instruction
PO Box 47200
Olympia, WA 98504

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Alexandria
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Dear Ms. Eko:

This letter is in response to the December 28, 2020 updated waiver request from the Washington Office of Superintendent of Public Instruction (OSPI). OSPI requested to waive the following statutory and regulatory requirements:

National School Lunch Program (NSLP)

- 7 CFR 210.10(h)(2) Requirement to review trans fat;
- 42 USC 1769c(b)(1)(C)(i) and 7 CFR 210.18(c) Timing of administrative reviews and cycle;
- 7 CFR 210.19(a)(5) Food Service Management Company (FSMC) review cycle requirements;
- 42 USC 1769c(b)(6)(A) and 7 CFR 245.11 (a)-(b) Notification of second review of applications;

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)(2)(iii)(3) Conduct follow up reviews of sponsors and sites as necessary;
- 42 USC 1761(n)(4) and 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)(4) Review of sponsored facilities;

- 42 USC 1766(d)(2)(C)(i) and 7 CFR 226.6(m)(6)(i)-(iii) Frequency and number of required institution reviews;
- 42 USC 1766(d)(2)(B)(i)(I) and 7 CFR 226.16(d)(4)(iii) Frequency and type of required facility reviews;
- 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; and
- 7 CFR 226.16(d)(4)(iii)(B) At least one unannounced review must include observation of a meal service.

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 (SFSP) and the National School Lunch Program (NSLP) 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, OSPI proposed to postpone formal monitoring for all Child Nutrition Programs during fiscal year (FY) 2021 and school year (SY) 20-21, and an alternative oversight plan that includes technical assistance for all sponsoring organizations and school food authorities (SFAs). To ensure program integrity and prevent fraud, OSPI will require SFAs and sponsors to complete Meal Distribution Plans (MDP), which include a description of waivers implemented, meal distribution and equitable access information, resource utilization, food safety, local health jurisdiction contact, bus route or home delivery plans, counting and claiming procedures, parent meal pick-up requirements, and sponsor coordination. OSPI will continue to review all claim data, and SFAs and sponsors will receive targeted, risk-based technical assistance. OSPI will also provide online training, facilitated focus groups, and forms, tools, and resources specific to operation during this time. Additionally, OSPI requested monitoring waivers on behalf of sponsoring organizations and SFAs in order to meet their current needs on the ground.

To ensure program integrity in NSLP, OSPI will provide targeted training and technical assistance this school year. All sponsors operating meal programs in SY 20-21 are required to submit an NSLP or SFSP/SSO MDP prior to beginning operation and anytime there are changes in their meal service or waiver implementation. OSPI will review and evaluate MDP responses and supporting documentation and conduct an off-site technical assistance “visit,” and recommend additional trainings or participation in other activities such as group facilitation or zoom office hours. OSPI will provide targeted, risk-based technical assistance to NSLP sponsors that are utilizing multiple waivers, sponsors with new directors or significant staff turnover, and sponsors where the state has identified risk from their MDP or previous review. OSPI has also requested to waive the requirement to review trans fat as part of SY 20-21 ARs,

however, a waiver of this requirement is not needed given that OSPI has indicated a postponement in formal monitoring for SY 20-21.

To ensure program integrity in SFSP, OSPI will offer targeted, risk-based technical assistance for all SFSP sponsors this year. OSPI will target technical assistance for new SFSP sponsors, sponsors utilizing multiple delivery methods, sponsors operating or transitioning to multiple meal service models, and sponsors operating multiple programs. OSPI will also target large SFSP sponsors with high meal counts, sponsors requesting meal pattern waivers, sponsors with new directors or significant staff turnover, sponsors that requested technical assistance on their MDP, and sponsors where the state has identified risk from their MDP or previous review.

To ensure program integrity in CACFP, sponsors will receive increased targeted, risk-based technical assistance. OSPI will target new CACFP sponsors, sponsors who were seriously deficient last year, sponsors with a history of problems identified during a review or audit, sponsors with new directors or significant staff turnover, and sponsors operating multiple programs. OSPI will also target sponsors utilizing multiple waivers, sponsors where the state identified risk from their MDP, sponsors with a significant increase in meals claimed, and new at-risk sponsors. OSPI will review CACFP sponsors that have a significant discrepancy in the claims that are reviewed from the previous fiscal year. OSPI also requested to allow CACFP sponsoring organizations to review facilities at least two times during FY 2021, and both visits may be announced with at least one visit including a meal observation.

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 do not increase the overall costs of the Program 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)), the Food and Nutrition Service (FNS) approves the following OSPI waiver request through June 30, 2021 for NSLP monitoring requirements and September 30, 2021 for CACFP and SFSP monitoring requirements. Please note that this approval 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 OSPI's ability to successfully carry out the purpose of the Programs. The OSPI oversight plan, as discussed above, provides assurance that the State 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, OSPI 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, the OSPI provide the FNS Western Regional Office (WRO) a quarterly written report. The report must provide information on how the State 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; and
- A summary of any technical assistance measures that were provided.

Should OSPI 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 black ink that reads "Sarah E. Smith-Holmes". The signature is written in a cursive style with a large initial 'S' and 'H'.

Sarah Smith-Holmes
Director
Program Monitoring and Operational Support Division
Child Nutrition Programs