



Food and  
Nutrition  
Service

Braddock  
Metro Center

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Braddock  
Place  
Alexandria  
VA 22314

April 5, 2021

Ms. Amanda Cullen, Director of Community Nutrition Programs  
Ms. Jessica Sharkus, Director of School Nutrition Programs  
Wisconsin Department of Public Instruction  
125 S. Webster St,  
Madison, Wisconsin 53707

Dear Ms. Cullen and Ms. Sharkus:

This letter is in response to the January 25, 2021 updated waiver request from the Wisconsin Department of Public Instruction, (WDPI). WDPI 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) & 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) & 7 CFR 245.11 (a)-(b) Notification of second review of applications;
- 7 CFR 210.8(a)(1) & 220.11(d)(1) SFA reviews by February 1; and
- 7 CFR 210.9 (c)(7) Afterschool care reviews.

Summer Food Service Program (SFSP)

- 7 CFR 225.7(d) Conduct Program monitoring and provide assistance according to the provisions at this part;
- 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;
- 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)(5)(v) Opposition;
- 7 CFR 226.6(k)(5)(ix) Time for issuing a decision;
- 7 CFR 226.6(m)(2) Target for more frequent review institutions whose prior review included a finding of serious deficiency;
- 7 CFR 226.6(m)(3) Review content:
  - 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;
- 7 CFR 226.6(m)(4) Review sponsored facilities;
- 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 according to the schedule:
  - 7 CFR 226.6(m)(6)(i) Review independent centers and sponsoring organizations of 1 to 100 facilities at least once every three years, including reviews of 10% of their facilities;
  - 7 CFR 226.6(m)(6)(ii) Review sponsoring organizations with more than 100 facilities at least once every two years, including reviews of 5% of the first 1,000 facilities and 2.5% of the facilities in excess of 1,000;
  - 7 CFR 226.6(m)(6)(iii) Review new institutions that are sponsoring organizations of 5 or more facilities within the first 90 days of Program operations;
- 7 CFR 226.16(d)(1) Pre-approval visits;
- 7 CFR 226.16(d)(4)(i)(A)-(F) Reviews that assess whether the facility has corrected problems noted on the previous review(s) and an assessment of the facility's compliance with: The meal pattern; licensing or approval; attendance at training; meal counts; menu and meal records; and 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;
- 42 USC 1766(d)(2)(B)(i)(I); 42 USC 1766(d)(2)(B)(ii) & 7 CFR 226.16(d)(4)(iii)(A)-(D) Frequency and type of required facility reviews. Review each facility three times each year, unless averaging. In addition: at

least two of the three reviews must be unannounced; at least one unannounced review must include observation of a meal service; at least one review must be made during each new facility's first four weeks of Program operations; and 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)(v) Follow-up 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 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, WDPI proposed to pause formal monitoring in fiscal year (FY) 2021 for all child nutrition programs and has proposed an extensive plan for targeted technical assistance (TA), as an alternative. WDPI would like to add one additional year onto their current AR and FSMC cycles in the NSLP. WDPI requested to postpone reviews in the CACFP and SFSP cycles by one year. WDPI also requested to waive monitoring at the SFA and sponsor level in all programs. WDPI plans to resume normal monitoring per regulations in all programs, beginning in school year (SY) 21-22. To ensure program integrity, WDPI plans to provide targeted TA to each program, with a focus on critical review areas.

To ensure program integrity in the NSLP, WDPI will complete a comprehensive technical assistance review for all 321 SFAs operating Seamless Summer Option, (SSO) during SY 20-21, which includes a call with a Nutrition Program Consultant and Public Health Nutritionist. WDPI is developing a TA checklist which includes both critical and general areas of review. Per WDPI's plan each SFA will receive a scheduled TA call to address any issues happening at the SFA level. WDPI plans to review SSO claims and will correct any counting and claiming issues which may be identified. WDPI 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 WDPI has indicated a pause in formal monitoring for SY 20-21.

To ensure program integrity in the SFSP, WDPI will conduct modified virtual reviews which target new, and returning SFSP sponsors, sponsors participating in multiple child nutrition programs, those who added community based sites, and those that have been identified as having a significant increase in participation and reimbursement. The modified reviews will target the following review elements: meal count integrity, claim verification, program income and expenses, meal service production, food safety, civil rights, and sponsor/site applications. WDPI plans to verify programs that sponsors are actively operating during the application process. Additionally, WDPI will provide

program guidance, technical assistance, training and resources on all SFSP requirements to all sponsors via virtual learning courses, webinars, and virtual office hours. WDPI plans to resume normal monitoring practices per regulations in the SFSP, beginning in FY 22.

To ensure program integrity in the CACFP, WDPI plans to complete a virtual focused review, targeting critical areas of the CACFP which include meal pattern compliance, income eligibility, and financial record keeping. The virtual review will include the following: a comprehensive CACFP Requirements Checklist to be completed, signed and submitted by the institution; a review of requested CACFP documents submitted by the institution; completion of a review form by the State agency, (SA) covering critical areas of the CACFP, including COVID-19 waivers; and a call between the SA and institution to discuss the submitted documents and to provide technical assistance to the institution. WDPI plans to create a site monitoring checklist for sponsoring organizations to provide to facilities to complete in order to verify compliance with CACFP requirements. WDPI plans to provide additional program guidance, TA, and training on CACFP requirements via online course, webinars and virtual office hours.

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.

WDPI has also asked to extend regulatory appeal due dates on behalf of the Administrative review Hearing Official. This would allow an appellant to submit documentation to support their opposition to the State Agency action by an additional 30 days and to extend the regulatory due date for the Administrative Review Hearing Official by an additional 60 days to issue a decision. FNS will provide a response separately to the request to waive appeal time frames found at 7 CFR 226.6(k)(5)(v) and 7 CFR 226.6(k)(5)(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(1)), FNS approves WDPI's waiver request effective through:

- June 30, 2021, for NSLP monitoring requirements and FSMC review cycle requirements;
- September 30, 2021 for CACFP and SFSP monitoring requirements;

- June 30, 2023, for the NSLP administrative review cycle extension; and
- September 30, 2024, for the SFSP and CACP review cycle extension.

Please note that this only extends the review cycles 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 WDPI's ability to successfully carry out the purpose of the Programs.

WDPI's oversight plan, as discussed above, provides assurance WDPI 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, WDPI must take program integrity measures to identify any misuse of Federal funds and identify fraudulent activities.

The waiver authority at section 12(1)(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, WDPI provide the FNS Midwest Regional Office, (MWRO) a quarterly written report. The report must provide information on how WDPI 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 WDPI determine this waiver is no longer necessary prior to the expiration of 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,

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