



Food and
Nutrition
Service

December 23, 2020

Braddock
Metro Center

Amanda Harrison
Director, Office of Child Nutrition
West Virginia Dept. of Education
Building 6, Room 750
1900 Kanawha Boulevard, East
Charleston, WV 25305-0330

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Dear Ms. Harrison:

This letter is in response to the waiver request received December 2, 2020, from the West Virginia Department of Education (WVDE). WVDE requested to waive the following statutory and regulatory requirements:

- 42 USC 1769c(b)(1)(C)(i), 7 CFR 210.18(c)—timing of administrative reviews and cycle; and,
- 7 CFR 210.19(a)(5)—Food Service Management Company (FSMC) review cycle requirements.

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, WVDE proposes an alternative oversight plan that includes adding an additional year to their existing administrative review cycle, thus moving from five to six years for all School Food Authorities (SFAs) administering the NSLP and School Breakfast Program (SBP) that are in good standing. In addition, WVDE seeks to align its procurement reviews with administrative reviews and will extend the review cycle requirements for NSLP/SBP FSMCs to four years.

To ensure program integrity in NSLP, all SFAs with critical area violations or evidence of unallowable use of funds will undergo a review more frequently by WVDE depending upon the serious nature of review findings. Also, WVDE will continue to provide training to sponsors via an online Civil Rights training, a four-hour food safety training, and monthly calls with sponsors to go over program oversight rules, address any issues, and provide technical assistance. By allowing the one-year extension of the NSLP/SBP administrative review cycle, WVDE will be able to focus efforts on technical assistance and monitoring of the federal Child Nutrition Programs currently being most utilized during the pandemic and would allow WVDE more time to develop

effective procedures for conducting off-site monitoring for the SFSP and Child and Adult Care Food Program (CACFP).

To ensure program integrity in NSLP for sponsoring organizations, all SFAs operating SSO will complete the monitoring of each SSO site by February 1, 2021, as required by 7 CFR 210.8(a)(1), and SFAs operating the NSLP Afterschool Snack Program will complete two reviews during school year (SY) 20-21 as required by 7 CFR 210.9(c)(7).

To ensure program integrity in the CACFP and SFSP, WVDE will continue to follow standard monitoring and review procedures, which will be performed off-site via desk audits.

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 Programs 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)), FNS approves WVDE's waiver request effective through June 30, 2025, for the NSLP/SBP administrative review cycle and June 30, 2023, for the FSMC review cycle. Please note that this only extends these review cycles and does not waive the requirement itself for the review cycles. FNS acknowledges that WVDE will align its procurement reviews with its administrative 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 WVDE's ability to successfully carry out the purpose of the Programs.

WVDE's oversight plan, as discussed above, provides assurance that WVDE 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, WVDE 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 January 1, 2021, FNS is requiring that for the duration of this waiver,

WVDE provide the FNS Mid-Atlantic Regional Office (MARO) a quarterly written report. The report must provide information on how WVDE 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 WVDE determine this waiver is no longer necessary prior to the expiration of the dates listed above, please notify the FNS MARO.

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 MARO.

Sincerely,



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