



**United States
Department of
Agriculture**

Food and
Nutrition
Service

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DATE: July 11, 2008

MEMO CODE: SP 31-2008

SUBJECT: Fresh Fruit and Vegetable Program (FFVP): Nationwide Expansion and Program Operations Resulting from the Food, Conservation, and Energy Act of 2008 (Public Law 110-234)

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
School Nutrition Programs
All States

The Food, Conservation, and Energy Act of 2008, also known as the Farm Bill, became law on May 22, 2008 (P.L. 110-234). Section 4304 of P.L. 110-234 amended the Richard B. Russell National School Lunch Act (NSLA) by adding section 19, the *Fresh Fruit and Vegetable Program*. Under section 19 of the NSLA, beginning July 1, 2008, the FFVP becomes a nationwide program that will operate in selected schools in the 50 States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands. The previous FFVP authorization under section 18(f) of the NSLA was removed; funds already provided to the 11 permanent States and the six States originally funded through the 2006 Appropriations Act will continue to be available.

The purpose of this memorandum is to provide information to all State agencies regarding operations of the FFVP under section 19 of the NSLA beginning July 1, 2008 (school year 2008-09). Section 19 of the NSLA contains significant changes from the previous program, including funding amounts; the number of schools that can participate; allocation of funds to States and schools; use of funds for State administrative costs; and school selection criteria and requirements.

Allocation of Funds to State Agencies

Section 19 of the NSLA provides \$40 million for the FFVP for school year 2008-09, available as of October 1, 2008. In addition to these funds, the Consolidated Appropriations Act of 2008 (P.L. 110-161) provided \$9.9 million for FFVP operations, which may be used for the FFVP for all State agencies except those in Guam, Puerto Rico and the Virgin Islands.

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

For funds accounting and reporting purposes, the FFVP will continue to operate on a fiscal year basis for State agencies. We will be providing two separate allocations to State agencies through their Letters of Credit for FFVP operations in school year 2008-09, as follows:

- Each State will receive \$184,100 from the remaining funds provided in the Consolidated Appropriations Act of 2008, on or about July 1, 2008. The funds will be available for obligation by schools through September 30, 2008, and must be closed out by December 30, 2008.
- Each State will receive its share of the \$40 million on or about October 1, 2008. The funds will be available for obligation by schools through June 30, 2009. State agencies must close out the funds by December 30, 2009.

In accordance with section 19 of the NSLA, the 11 permanent States will receive at least the same amount of funds that they received for FFVP operations in School Year 2007/08. Funds not expended by the due dates specified above will be recovered by FNS and made available for future program operations.

Funds for State Administrative Costs

The law permits State agencies to retain a portion of their total FFVP grant allocation for State administrative costs. The amount of funds retained for State administrative costs is the lesser of: (1) 5 percent of the State agency's total grant for the year; or (2) the amount required to pay the costs of one full-time coordinator for the FFVP in the State. Each State agency should identify the appropriate level and resulting salary for a FFVP coordinator within the State personnel structure.

This provision does not require the State agency to employ a full-time coordinator for the FFVP. Rather, it sets a cap on the amount of funds available for State administration based on salary rates of individual States. It is up to each State agency to determine how best to manage administration of FFVP within its existing personnel structure, workload considerations, and other factors.

The amount retained for State administrative costs must be determined up-front, since States must subtract funds used for State administrative costs prior to determining school allocations. State administrative funds are subject to the same cost accountability and management principals applied to State Administrative Expense funds.

School Selection Criteria

Section 19 of the NSLA sets forth criteria for State agency selection of schools to participate in FFVP as follows:

- Only elementary schools may participate (note that this is a change from prior program operations);
- Selected schools must also operate the National School Lunch Program (NSLP);
- Each interested school must submit an application for participation in FFVP (see **School Applications** below);
- Each selected school must have 50 percent or more of its students eligible for free/reduced price meals;
- Highest priority must be given to schools with the highest percentages of low-income students, *to the maximum extent practicable*; and
- The total enrollment of all schools selected in the State must result in a per-student allocation of \$50 to \$75 per year.

As noted above, the law requires the highest priority for schools with the highest percentages of low-income students, to the maximum extent practicable. For example, States should select a school with 60 percent free/reduced price enrollment before selecting a school with 55 percent free/reduced price enrollment. States may select a school with a lower percentage of free/reduced price enrollment over a school with a higher percentage to either effectively manage the per-student allocation requirements of \$50 to \$75, or if there are significant concerns about a particular school's ability to properly implement and operate the FFVP. Once all interested and eligible schools at or above 50 percent have been selected, the law permits State agencies to select eligible schools below 50 percent.

Transition of Existing Schools to the New FFVP

The Farm Bill contains provisions to facilitate the transition of the program in previously participating States to the requirements under section 19 of the NSLA. Any elementary or secondary school already selected for participation for school year 2008/09 as of May 21, 2008, may be permitted to participate, at State agency discretion, regardless whether the school meets the new selection criteria.

Beginning in school year 2009/10, all schools must meet the school selection criteria; except State agencies may permit previously participating secondary schools to continue to participate for school year 2009/10 provided the schools meet the rest of the new criteria. 2009-10 is the final school year secondary schools may participate.

All schools must follow allocations of \$50 to \$75 per student beginning July 1, 2008.

Outreach to Low-Income Schools

State agencies are required to inform elementary schools with the highest proportion of free/reduced price enrollment, including Native American schools, of FFVP participation

eligibility. At a minimum, States must provide information to all elementary schools with free/reduced price enrollment at or above 50 percent.

In addition, from 50 percent or higher group, States must further identify and inform schools likely chosen to participate in FFVP because the schools have the highest free/reduced price percentages. To identify the schools, States would first calculate the total student enrollment in schools needed in the State to meet the \$50 to \$75 per student requirement. States would then determine both how many and which of the schools could be selected within this range.

The outreach must be conducted before the State agency selects schools for participation in the program.

School Applications

State agencies must solicit applications from interested elementary schools within the State. Each school interested in participating in the FFVP must submit an application including, at a minimum, the following information:

- The total number of enrolled students, and the percentage eligible for free/reduced price meals;
- A certification of support for participation in the FFVP signed by all of the following: (1) school food manager, (2) school principal, and (3) district superintendent (or equivalent position);
- A program implementation plan including efforts to integrate the FFVP with other efforts to either promote sound health and nutrition, reduce overweight and obesity, or promote physical activity; and
- A description of partnership activities undertaken or planned. While optional, each school is encouraged to develop partnerships with one or more entities that will provide non-Federal resources, including entities representing the fruit and vegetable industry.

State agencies may choose to request additional information as part of the application process. This application process must be conducted by the State agency every year.

Program Evaluation

The Farm Bill provides \$3 million in funds for FNS to conduct an evaluation of the FFVP. The evaluation will consider whether the FFVP resulted in increased consumption by children of

fruits and vegetables, and other dietary changes including decreased consumption of foods with less nutritional value. State agencies are required to maintain and provide information to assist FNS in completing the evaluation. Additional information on the evaluation will be provided at a later date. The Report to Congress on FFVP evaluation is due September 30, 2011.

General Program Parameters

The FFVP operates through the NSLP, under an addendum to the State agency/School Food Authority agreement. Under the FFVP, selected schools receive reimbursement for the cost of making free fresh fruits and fresh vegetables available to students throughout the school day. The fresh fruits and vegetables should be provided separately from the lunch or breakfast meal, in one or more areas of the school. All selected schools that participate in the FFVP are required to widely publicize within the school the availability of free fresh fruits and vegetables.

In accordance with direction from Congress contained in the conference report that accompanying the Farm Bill, the intent of the FFVP is to provide children with free fresh fruits and vegetables. It is not the intent *“to allow this program to provide other products, such as nuts, either on their own or comingled with other foods, such as in a trail mix”*. It should be noted Congressional intent is to also to eliminate dried fruit from the FFVP, a departure from previous program operations.

Please note the Catalog of Federal Domestic Assistance (CFDA number for the Fresh Fruit and Vegetable Program is 10.582

The attachment is an addendum to the permanent Federal/State agreement to reflect permanent FFVP authority and operations under section 19 of the NSLA. All State agencies should have the appropriate official sign and then return the addendum to the respective Regional Offices as soon as possible. Schools should not begin program operations until the Federal/State agreement addendum is executed. States must also amend their agreements with school food authorities.

FNS will (1) issue State-specific funding allocations for school year 2008-09 from the \$40 million provided by section 19; (2) provide technical assistance on transition and start-up procedures; and (3) schedule conference calls to review the memorandum and respond to questions. In addition, FNS will present a session on FFVP during the 2008 Annual National Conference of the School Nutrition Association in Philadelphia on July 20, from 12:00 to 1:00. A second informal session at the conference is scheduled for July 21, from 5:30 to 7:00 p.m. to focus on questions and answers and information shared from experienced states. We ask currently participating States have an FFVP representative present at these two sessions to the extent possible.

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We strongly encourage State agencies and selected schools to work closely with program partners at the State and local levels to facilitate successful implementation and operation of the FFVP. National, State and local-level partners have proven to be important resources to the FFVP. We encourage close coordination at the State level with your State's Fruit and Vegetable Program Coordinator (formerly called the 5-A-Day Coordinator). The FNS website lists additional potential partners.

State agencies with questions regarding FFVP should contact the respective Regional Offices. Regional Offices should contact Mara McElmurray of Child Nutrition Division.

Original Signed

CYNTHIA A. LONG
Director
Child Nutrition Division

Attachment

Addendum to Federal – State Agency Agreement
Fresh Fruit and Vegetable Program

This agreement is between the U.S. Department of Agriculture, Food and Nutrition Service (USDA/FNS) and the _____ State Agency for operation of the Fresh Fruit and Vegetable Program (FFVP) set forth in section 19 of the Richard B. Russell National School Lunch Act.

The undersigned has the authority to enter into this Agreement to participate in the FFVP. This letter serves as an official addendum to the Agreement between the USDA/FNS and the State agency. This addendum will remain in effect, subject to availability of funds and until such time as the State Agency no longer administers the FFVP.

It is mutually agreed between USDA/FNS and the State Agency that:

GENERAL

1. The FFVP period of performance is on a fiscal year basis, October 1 to September 30 of each year.
2. The State Agency agrees to abide by all of the requirements for administering the Program as set forth in section 19 of the Richard B. Russell National School Lunch Act, additional guidance, regulations and memoranda provided by USDA/FNS, and any subsequent laws pertaining to the FFVP.
3. The State Agency agrees to provide FFVP funds to the appropriate School Food Authority (SFA) for school(s) selected by the State Agency consistent with section 19 of the Richard B. Russell National School Lunch Act, guidance, regulations and memoranda provided by USDA/FNS, and any subsequent laws pertaining to the FFVP.

REPORTING REQUIREMENTS

The State agency agrees to submit an electronic SF-269A on a quarterly basis. The State agency agrees to submit other reports as required by FNS.

GENERAL CONDITIONS

This Agreement is non-transferable.

Signatures

Food and Nutrition Service, USDA

State Agency

Title

Title

Date

Date

THIS ARRANGEMENT does not constitute the entire agreement between the parties with respect to subject matter thereof.