



Food and  
Nutrition  
Service

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May 14, 2020

Lindsey Palmar, RDN  
Director of Nutrition Programs  
Child Nutrition Programs and Food Distribution  
Office of the State Superintendent of Education  
Government of the District of Columbia  
1050 First Street, Northeast, 6<sup>th</sup> Floor  
Washington, DC 20002

Ms. Palmer:

This letter is in response to the District of Columbia, Office of the State Superintendent of Education's (OSSE) May 13, 2020, request to waive the requirement that Fresh Fruit and Vegetable Program (FFVP) foods may only be provided to students during non-congregate meal services due to the novel coronavirus (COVID-19). Under current requirements, Program operators must provide FFVP foods directly to students.

Specifically, OSSE requested a statewide waiver of the distribution requirements at Section 19(b) of the Richard B. Russell National School Lunch Act (NSLA) (42 USC 1769a). As implemented, Section 19(b) requires Program operators to provide FFVP foods directly to students, not to parents and guardians. However, the Food and Nutrition Service (FNS) recognizes that in this public health emergency, continuing to require children to come to the meal site to pick up meals may not be practical and in keeping with the goal of providing meals while also taking appropriate safety measures.

Because the Families First Coronavirus Response Act (P.L. 116-127) did not include FFVP as a "qualified program," the nationwide waiver allowing parents to pick up meals for children at non-congregate sites does not apply to FFVP. Therefore, State agencies must request a waiver under Section 12(l) of the NSLA to permit Program operators with an approved waiver allowing non-congregate meal distribution during COVID-19-related operations to distribute FFVP foods to a parent or guardian to take home to their children.

To grant a Section 12(l) waiver, the NSLA requires that the waiver must facilitate the purpose of the program, the public must receive notice and information regarding the proposed waiver, and the waiver will not increase the overall cost of the program to the Federal Government. FNS finds that OSSE's waiver request does satisfy these statutory requirements.

Accordingly, based on the exceptional circumstances relating to the declaration of a public health emergency due to COVID-19, and pursuant to the waiver authority granted at section 12(l) of the NSLA, FNS approves OSSE's waiver request through June 30, 2020, or upon expiration of the federally declared public health emergency, whichever is

earlier. While OSSE requested this waiver through September 30, 2020, FNS limited the duration of the waiver to assess its impact and the State's ability to report the required data elements outlined below. Please note, OSSE also requested flexibility to allow any school site operating one of the Child Nutrition Programs during closures related to COVID-19 to provide FFVP foods. FNS will address this request separately.

Therefore, effective immediately, this waiver allows State agencies to approve school food authorities (SFAs) participating in FFVP to distribute FFVP foods to a parent or guardian to take home to their children during an unanticipated school closure due to the novel coronavirus.

State agencies, in addition to meeting the NSLA requirements for a Section 12(l) waiver listed above, must have a plan for ensuring that Program operators are able to maintain accountability and program integrity. This includes putting in place processes to ensure that FFVP foods are distributed only to parents or guardians of eligible children, and that duplicate meals are not distributed to any child. State agencies may want to consult local Program operators when developing their plans as local Program operators are best situated to determine how to provide these assurances. If OSSE has already developed a plan for distribution to parents and guardians through other programs, that plan may be adapted to include FFVP.

The waiver authority at section 12(l) of the NSLA also requires FNS to periodically review the performance of any State or eligible service provider that was granted a waiver. Therefore, OSSE must provide to the FNS Mid-Atlantic Regional Office a written report quantifying the impact of the waiver, as described below. Please note that approval of any extension is contingent on OSSE's ability to provide complete data and an analysis of the waiver impact.

The report must include the following:

- A description of how the waiver impacted FFVP food service operations, children's access to FFVP foods, and participation in FFVP;
- The number of FFVP schools that used the waiver;
- The FFVP funds provided during the COVID-19 unanticipated school closures, demonstrating that the waiver has not resulted in an increase to the overall cost of the program; and,
- A summary of findings associated with the waiver

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FNS appreciates OSSE's commitment to work with SFAs to meet the nutritional needs of children during a challenging time. If you have questions, please contact the Mid-Atlantic Regional Office.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ang M Kline". The signature is written in a cursive, flowing style.

Angela M. Kline

Director

Policy and Program Development Division

Electronic Copy: Michelle Frey, MARO