



Food and
Nutrition
Service

May 17, 2022

Braddock
Metro Center

Lynda Westphal
Idaho Department of Education
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Boise, ID 83702

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Dear Lynda Westphal:

This letter is in response to the Idaho Department of Education's (IDE) April 29, 2022, request to provide operational flexibilities in the National School Lunch Program (NSLP), School Breakfast Program (SBP), for summer 2022 and school year (SY) 2022-2023. Program operators continue to respond to and recover from the COVID-19 pandemic, including managing challenges related to increased administrative burden and staffing issues, which are demanding significant Program operator resources. In order to support access to nutritious meals while State agencies continue to mitigate the administrative, fiscal, and operational challenges exacerbated by COVID-19, FNS recognizes that continued operating flexibilities may be necessary.

FNS did not receive legislative authorization to issue new nationwide waivers beyond SY 2021-2022, as previously provided under the Families First Coronavirus Response Act (FFCRA) (P.L. 116-127), as extended by the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159). Therefore, State agencies must request a statewide waiver under Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1760(l), to obtain approval for certain flexibilities previously provided under the nationwide waiver authority.

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 IDE's waiver request satisfies these statutory requirements.

Specifically, IDE requested a statewide waiver of the requirements explained below.

School Year Administration (NSLP/SBP)

The waivers in this section allow State and local Program operators to overcome administrative challenges resulting from COVID-19 and to appropriately allocate their limited staffing resources to meal service to best ensure safe service of meals to children as they respond to and recover from the COVID-19 pandemic. FNS expects program operators to use the flexibilities for only the duration and extent that they are needed.

Waiver 7: Local School Wellness Policy Triennial Assessment (NSLP)

Section 9A(b) of the NSLA, 42 U.S.C. 1758b(b), establishes requirements for local school wellness policies related to implementation, evaluation, and publicly reporting on progress of local school wellness policies. FNS regulations further require at 7 CFR 210.31(e)(2) that, at least once every three years, local educational agencies (LEAs) assess compliance with the local school wellness policy and make assessment results available to the public.

Based on the July 1, 2017, implementation of the local school wellness policy regulations, the first triennial assessments were due June 30, 2020. On April 2, 2020, FNS issued a nationwide waiver delaying the deadline for the first triennial assessment to June 30, 2021, and on June 11, 2021, FNS issued a nationwide waiver delaying the deadline for the first triennial assessment to June 30, 2022. FNS recognizes that States and schools continue to devote additional resources to pandemic recovery and the transition back to normal operations. Due to this ongoing pandemic response and recovery, the resources required to meet the upcoming Local School Wellness Policy triennial assessment deadlines are better spent planning for the upcoming school year and ensuring that students are fed.

Pursuant to the Section 12(l) waiver authority cited above, FNS waives, for Program operators the above referenced statutory and regulatory requirements and provides a new first triennial assessment deadline of June 30, 2023. Accordingly, LEAs required to complete a triennial assessment by June 30, 2022, may choose to accept the new regulatory deadline and instead complete their first assessment by June 30, 2023. These LEAs then would complete a second triennial assessment by June 30, 2026. FNS recognizes that some LEAs may be prepared to complete their triennial assessment by June 30, 2022, and encourages those that are prepared to do so to complete their assessments on time.

Waiver 10: FNS-874 Second (Independent) Review of Applications (NSLP)
Under 42 U.S.C 1769c(b)(6)(E)(iii) and program regulations at 7 CFR 245.11(b)(2), each State agency must submit a report, as specified by FNS, describing the results of the second reviews of eligibility determinations conducted by each LEA in their State. The report must provide information about applications reviewed in each LEA and include activities required under 7 CFR 245.11. This report is due March 15th of each year.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives 7 CFR 245.11(b)(2) to permit States the time to focus on continuity of operations during this transition year, and in recognition of the fact that nationwide waiver flexibilities adopted by State agencies during the prior two school years extensively impacted free and reduced price certifications, as well as oversight activities. This waiver pertains to the requirement to submit the FNS-874 report due March 15, 2023, which would provide information about application reviewed in each LEA and include activities required under 7 CFR 245.11.

This waiver only applies to the reporting requirements associated with the independent review process. The underlying requirement for LEAs that collect school lunch program applications in SY 2022-2023 to conduct independent reviews as applicable remains in effect.

Waiver 11: FNS-640 Administrative Review Data Report (NSLP)

Under the NSLA, 42 U.S.C. 1769c(b)(1)(C)(iv) and program regulations at 7 CFR 210.18(n), State agencies shall submit to FNS each year the FNS-640 report containing the results of the reviews conducted in the preceding school year. This report is due March 1st of each year.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives 7 CFR 245.11(b)(2) to permit States the time to focus on continuity of operations, and in recognition that the FNS-640 report for SY 2022-2023 would cover a time period during which operations were extensively impacted by nationwide waiver flexibilities. This waiver pertains to the requirement to submit the FNS-640 report due March 1, 2023, which would provide data collected from conducted administrative reviews for SY 2021-2022.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS approves IDE's waiver request for the provisions mentioned above. Effective dates of each waiver are listed in the associated sections above. The State agency should inform Program operators of the flexibilities provided by this waiver as quickly as possible. Should IDE determine any of these waivers are no longer necessary prior to the expiration date of any waivers above, please notify the Western Regional Office (WRO).

The waiver authority at Section 12(l) of the NSLA requires FNS to review the performance of any State or eligible service provider that was granted a waiver. Therefore, by October 30, 2023, IDE must provide to the FNS WRO a report quantifying the impact of the waivers included in this approval as described below.

State agencies may submit one report for all waivers included in this approval. The report must include the following:

- A description of how the waivers impacted meal service operations at participating sites;
- A description of whether the waivers resulted in improved services to children;
- A description of how the waivers reduced the quantity of paperwork necessary to administer the Program; and
- The number of program operators that used the waivers.

FNS appreciates IDE's exceptional effort to meet the nutritional needs of children during this challenging time. If you have questions, please contact the FNS WRO.

Lynda Westphal
Page 4

Sincerely,

Original Signed

J. Kevin Maskornick
Acting Director
Policy and Program Development Division

Electronic Copy: Tim Thole, WRO

GeNam Chew, WRO