



Food and
Nutrition
Service

June 27, 2022

Braddock
Metro Center

Loren Miller
Family Nutrition Bureau Chief
New Mexico Early Childhood Education and Care Department
3401 Pan American Freeway NE
Albuquerque, NM 87107

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Braddock
Place
Alexandria
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Dear Loren Miller:

This letter is in response to the New Mexico Early Childhood Education and Care Department (NM ECECD)'s June 13, 2022, request to provide operational flexibilities in the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP) 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 NM ECECD's waiver request satisfies these statutory requirements.

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

Summer Operations (SFSP/SSO)

The waivers in this section apply to the SFSP and the SSO for summer 2022. These waivers are effective June 27, 2022, through September 30, 2022. However, FNS expects that flexibilities under the waivers in this section will only be implemented by Program operators when congregate meal service is limited by the COVID-19 pandemic.

Waiver 1: Non-Congregate Meal Service during Summer 2022 (SFSP/SSO)

Under the NSLA, 42 U.S.C. 1753(b)(1)(A), 42 U.S.C. 1761(a)(1)(D), and program regulations at 7 CFR 225.6(e)(15), meals must be served in a congregate setting and must be consumed by participants on site.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirements to serve meals through the SFSP in a congregate setting this summer. Any other requirements referenced in these provisions remain in effect. FNS also extends the non-congregate feeding flexibilities to SSO for the duration of this waiver.

Waiver 2: Parent and Guardian Meal Pick Up during Summer 2022 (SFSP/SSO)

Under the NSLA, 42 U.S.C. 1761(f)(3) and program regulations at 7 CFR 210.10(a), 7 CFR 220.2 (Breakfast), 7 CFR 220.8(a), 7 CFR 225.2 (Meals), and 7 CFR 225.9(d)(7) meals must be served to eligible children.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirement that meals may only be served directly to children this summer. Any other requirements referenced in these provisions remain in effect. FNS also extends the parent and guardian pick up flexibility to SSO for the duration of this waiver. State agencies 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 meals are distributed only to parents or guardians of eligible children, and that duplicate SFSP or SSO meals are not distributed to any child.

Unanticipated School Closures

The waivers in this section apply to the SFSP and the SSO during unanticipated school closures. These waivers are effective October 1, 2022, through April 30, 2023. However, FNS expects that flexibilities under these waivers will only be implemented by Program operators when congregate meal service is limited by the COVID-19 pandemic.

Waiver 16: Non-Congregate Meal Service during Unanticipated School Closures (SFSP/SSO)

Under NSLA, 42 U.S.C. 1753(b)(1)(A), 42 U.S.C. 1761(a)(1)(D), and program regulations at 7 CFR 225.6(e)(15), SFSP meals must be served in a congregate setting and must be consumed by participants on site.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirements to serve meals through the SFSP during an unanticipated school closure in a congregate setting. Any other requirements referenced in these provisions remain in effect. FNS also extends the non-congregate feeding flexibility to SSO for the duration of this waiver.

Waiver 17: Parent and Guardian Meal Pick-Up during Unanticipated School Closures (SFSP/SSO)

Under the NSLA, 42 U.S.C. 1761(f)(3) and Program regulations at 7 CFR 210.10(a), 7 CFR 220.2 (Breakfast), 7 CFR 220.8(a), 7 CFR 225.2 (Meals), and 7 CFR 225.9(d)(7) meals must be served to eligible children.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirement that meals may only be served directly to children. Any other requirements referenced in these provisions remain in effect. FNS also extends the parent and guardian pick up flexibility to SSO for the duration of this waiver.

Waiver 18: Meal Service Times for Unanticipated School Closures (SFSP/SSO)

Under program regulations at 7 CFR 225.16(c)(1) and (2) meals served in the SFSP must follow meal service time requirements.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirements that set meal time parameters for SFSP sites. Any other requirements referenced in these provisions remain in effect. FNS also extends the meal service times flexibility to SSO for the duration of this waiver.

Waiver 19: Service of Meals at School Sites during Unanticipated School Closures

Under the NSLA, 42 U.S.C. 1761(c)(1) and program regulations at 7 CFR 225.6(d)(1)(iv), State agencies are required to only approve meal service operations at non-school sites during unanticipated school closures.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirement that limits the operation of SFSP during an unanticipated school closure to non-school sites. FNS also extends the service of meals at school sites during unanticipated school closures flexibility to SSO for the duration of this waiver.

Child and Adult Care Food Program Operations

The waivers in this section apply to CACFP. These waivers are effective July 1, 2022, through June 30, 2023. However, FNS expects that flexibilities under these waivers will only be implemented by Program operators when congregate meal service is limited by the COVID-19 pandemic.

Waiver 20: Non-Congregate Meal Service (CACFP)

Under the NSLA, 42 U.S.C. 1753(b)(1)(A) and program regulations at 7 CFR 226.19(b)(6)(iii), CACFP meals must be served in a congregate setting and must be consumed by participants on site.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirement to serve meals through CACFP in a congregate setting. Any other requirements referenced in this provision remain in effect.

Waiver 21: Parent and Guardian Meal Pick Up (CACFP)

Under Program regulations at 7 CFR 226.2 (Meals), meals must be served to eligible children and eligible adult participants.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirement that meals may only be served directly to children and adult participants. Any other requirements referenced in these provisions remain in effect.

Waiver 22: Meal Service Times (CACFP)

Under Program regulations at 7 CFR 226.20(k) meals served in the CACFP must follow meal service time requirements.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirements that set meal time parameters for CACFP institutions and facilities.

Child and Adult Care Food Program Administration

The waivers in this section are effective when the public health emergency, which was declared on January 31, 2020 by the United States Department of Health and Human Services, ends and continue through June 30, 2023.

Waiver 23: State Agency Onsite Monitoring Visits (CACFP)

Under Program statute and regulations, State agencies are required to conduct one scheduled visit of CACFP institutions at not less than 3-year intervals. CACFP regulations at 7 CFR 226.6(m)(6) go on to require State agencies to annually review at least 33.3 percent of all CACFP institutions. Additionally, per 7 CFR 226.6(b)(1), State agencies are required to do a pre-approval visit of all new CACFP sponsors. However, FNS recognizes that as the country continues to respond to COVID-19, onsite monitoring may not be possible.

Therefore, pursuant to the Section 12(l) waiver authority cited above, FNS waives the requirement that CACFP monitoring requirements included in 7 CFR 226.6(b)(1) and 226.6(m)(6) be conducted onsite. Please note that to ensure Program integrity during this time, State agencies that elect to use this waiver should continue monitoring activities of Program operations offsite (e.g., through a desk audit).

Waiver 24: Sponsoring Organization Onsite Monitoring Visits (CACFP)

Under Program regulations at 7 CFR 226.16(d)(4)(iii), CACFP sponsoring organizations must review each facility three times each year and: 1) at least two of the three reviews must be unannounced; 2) at least one unannounced review must include observation of meal service; 3) at least one review must be made during each new facility's first four weeks of Program operations; and 4) not more than six months may elapse between reviews. However, FNS recognizes that as the country continues to respond to COVID-19, onsite monitoring may not be possible.

Therefore, pursuant to the Section 12(l) waiver authority cited above, FNS waives the requirement that CACFP monitoring requirements included in 7 CFR 226.16(d)(4)(iii) be conducted onsite. Please note that to ensure Program integrity during this time, CACFP sponsoring organizations that elect to use this waiver should continue monitoring activities of Program operations offsite (e.g., through a desk audit).

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS approves NM ECECD'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 NM ECECD determine any of these waivers are no longer necessary prior to the expiration date of any waivers above, please notify the Southwest Regional Office (SWRO).

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, NM ECECD must provide to the FNS SWRO 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 NM ECECD's exceptional effort to meet the nutritional needs of children during this challenging time. If you have questions, please contact the FNS SWRO.

Loren Miller
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Sincerely,

Original Signed

Jessica Saracino
Director
Program Monitoring and Operational Support Division

Electronic Copy: James Abraham, CACFP/SFSP