



Food and
Nutrition
Service

May 17, 2022

Braddock
Metro Center

Danielle Quigley
New York State Department of Health
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Dear Danielle Quigley:

This letter is in response to the New York State Department of Health's (NYDOH) April 27, 2022, request to provide operational flexibilities in the Child and Adult Care Food Program (CACFP). 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 NYDOH's waiver request satisfies these statutory requirements.

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

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 NYDOH 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 the NYDOH determine any of these waivers are no longer necessary prior to the expiration date of any waivers above, please notify the Northeast Regional Office (NERO).

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, NYDOH must provide to the FNS NERO a report quantifying the impact of the waivers included in this approval as described below.

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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 NYDOH exceptional effort to meet the nutritional needs of children during this challenging time. If you have questions, please contact the FNS NERO.

Sincerely,

Original Signed

Sarah Smith-Holmes
Director
Program Monitoring and Operational Support Division

Electronic Copy: Jan Kallio