



Food and
Nutrition
Service

May 16, 2022

Braddock
Metro Center

Allette Vayda, Director of Operations
Tennessee Department of Human Services
James K. Polk Building, 156th Floor, 505 Deaderick Street
Nashville, TN 37243

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Dear Allette Vayda:

This letter is in response to the Tennessee Department of Human Services's (DHS) May 6, 2022, request to provide operational flexibilities in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), and/or the National School Lunch Program Seamless Summer Option (SSO) 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 DHS's waiver request satisfies these statutory requirements.

Specifically, DHS 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 May 16, 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.

School Year Administration (NSLP/SBP/SFSP)

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 8: Food Service Management Company (FSMC) Contract Duration (NSLP and SFSP)

Under Program regulations at 7 CFR 210.16(d) and 225.6(h)(7), SFAs and SFSP sponsors with a FSMC may contract for no longer than one year, with options for a yearly renewal not to exceed four additional years. Many SFAs and SFSP sponsor FSMC contracts may be nearing the end of their last renewal year. However, FNS recognizes that during this transition year, requiring SFAs and sponsors to conduct a competitive procurement process for a new FSMC contract may place an undue administrative burden on local operators.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives 7 CFR 210.16(d) and 7 CFR 225.6(h)(7) to permit SFAs and SFSP

sponsors to extend existing FSMC contracts that would not otherwise be eligible for extension through SY 2022-2023 or June 30, 2023.

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 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 DHS 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 DHS determine any of these waivers are no longer necessary prior to the expiration date of any waivers above, please notify the Southeast Regional Office (SERO).

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, DHS must provide to the FNS SERO 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 DHS exceptional effort to meet the nutritional needs of children during this challenging time. If you have questions, please contact the FNS SERO.

Sincerely,

Original Signed

Sarah Smith-Holmes
Director
Program Monitoring and Operational Support Division

Electronic Copy: Rosie Daugherty, SERO
Kirk Farquharson, SERO