



Food and
Nutrition
Service

May 23, 2022

Braddock
Metro Center

Dr. Sandra Curwood
Virginia Department of Education
James Monroe Building, 101 N 14th Street, 21st Floor
Richmond, VA 23219

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Dear Dr. Sandra Curwood:

This letter is in response to the Virginia Department of Education's (VDOE) May 18, 2022, request to provide operational flexibilities in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), Fresh Fruit and Vegetable Program (FFVP), 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 VDOE's waiver request satisfies these statutory requirements.

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

Additional Flexibilities (NSLP/SBP):

The following waivers provide needed flexibility and allow State and local Program operators to overcome challenges resulting from COVID-19. FNS expects Program operators will only use these flexibilities for the duration and extent that they are needed.

Waiver 26: Carryover Eligibility (NSLP and SBP): At 42 U.S.C. 1758(b)(9)(C) and 7 CFR 245.6(c)(1), the statute and regulations indicate that eligibility for free or reduced price meals remains in effect for the entire school year and for a certain number of days into the subsequent school year. Under Program regulations at 7 CFR 245.6(c)(2), eligibility from the preceding year must be used to determine eligibility for the first 30 operating days of the school year, or until a new eligibility determination is made in the current school year, whichever comes first.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned statutory and regulatory requirements and allows schools that operated under the SSO in SY 2021-2022 and do not have eligibility determinations from SY 2021-2022 to use the most recent free and reduced price determinations since SY 2019-2020 during the 30-day carryover period of SY 2022-2023. This waiver is effective for the carryover period during SY 2022-2023.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS approves VDOE'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 VDOE determine any of these waivers are no longer necessary prior to the expiration date of any waivers above, please notify the Mid-Atlantic Regional Office (MARO).

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

Dr. Sandra Curwood
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Sincerely,

Original Signed

Sarah Smith-Holmes
Director
Program Monitoring and Operational Support Division

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