



Food and
Nutrition
Service

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Center

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SUBJECT: Child Nutrition Program Waiver Request Guidance and Protocol

TO: Regional Directors
Child Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All Regions

The purpose of this memorandum is to provide guidance for State agencies requesting waivers of Program requirements for the Child Nutrition Programs, including the Child and Adult Care Food Program (CACFP), the Summer Food Service Program (SFSP), the National School Lunch Program (NSLP), and the School Breakfast Program (SBP). The Food and Nutrition Service (FNS) has the authority to grant waivers of certain Program requirements to facilitate Program operation and has approved waivers in recent years that maintain Program purpose, while streamlining administration and safeguarding Program integrity.

This memorandum provides an overview of statutory waiver authority, the waiver request and review process, and data reporting requirements. The intent is to ensure that waiver requests submitted to FNS are complete and that data demonstrating the outcomes of waived requirements are reported to FNS and can be used to both maintain Program integrity as well as to inform future Program policy. This memorandum also includes a revised version of the *Child Nutrition Program Waiver Request Template* [**Attachment**]. States are highly encouraged to use this template when submitting waiver requests for the CACFP, SFSP, NSLP, and SBP. Using the template ensures all information required by FNS, as outlined in this memorandum, is included in the waiver request. However, if States choose not to use the template, they must ensure that all components in the template are addressed.

This memorandum supersedes SFSP 09-2015, *Summer Food Service Program Waiver Request Guidance and Protocol*, December 12, 2014.

Waiver Authority

The Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1760(1) grants the Secretary the authority to waive Program requirements under the NSLA

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or the Child Nutrition Act of 1966 or corresponding Program regulations, if it is determined that:

- the waiver supports the purpose and intent of the Program,
- the State or entity requesting the waiver provides notice and information to the public regarding the proposed waiver, and
- the request demonstrates that the waiver will not increase the overall cost of the Program to the Federal Government, and if it does increase the cost, the additional cost will be paid from non-Federal funds.

However, the statute restricts the Secretary's authority to grant waivers that relate to a number of topics, including:

- the nutritional content of meals served,
- Federal reimbursement rates,
- the provision of free and reduced price meals,
- limits on the price charged for a reduced price meal,
- maintenance of effort,
- equitable participation of children in private schools,
- distribution of funds to State agencies and sponsors,
- disclosure of individual income eligibility information,
- prohibition of the operation of a profit producing program,
- the sale of competitive foods,
- the commodity distribution program (USDA Foods), and
- enforcement of any constitutional or statutory right of an individual.

Under the authority of the Robert Stafford Disaster Relief and Emergency Act (42 U.S.C. 5141), additional waiver flexibilities exist in cases of federally declared disasters. Refer to memoranda SP 46-2014, CACFP 12-2014, SFSP 18-2014, *Disaster Response*, May 19, 2014, <http://www.fns.usda.gov/disaster-response-0> for more information.

The NSLA also requires FNS to periodically review the performance of any State or eligible service provider for which FNS has granted a waiver. If FNS determines that the waiver leads to deficits in Program operation or to an increase in the overall cost of the Program to the Federal Government and the increase has not been paid for with non-Federal funds, FNS may terminate the waiver.

FNS provides approval of waivers for a limited time period. After the initial waiver period has expired, State agencies may request renewal of the waiver if the waiver is still needed and if the alternative procedures have improved Program administration and have not caused increased costs to the Federal Government.

Waiver Request Protocol

FNS requires State agencies to submit their requests to waive Program requirements to their FNS Regional Office. FNS Regional Offices will review the waiver request and submit a recommendation to the National Office for review and a final decision. FNS highly encourages State agencies to submit requests using the *Child Nutrition Program State Waiver Request Template [Attachment]*, which captures the elements required by the NSLA as well as other information that will assist FNS in processing the request. The request must:

- identify the statutory or regulatory requirements requested to be waived,
- describe any steps taken to address statutory and regulatory barriers at the State level,
- describe the goal of the waiver to improve operation of the Program and the expected outcomes if the waiver is granted,
- describe how the waiver will address or remove impediments to the efficient operation and administration of the Program,
- propose relevant monitoring and review procedures, and
- propose reporting requirements that will enable FNS to assess the waiver's effect on the efficient operation and administration of the Program.

FNS encourages State agencies to consult with their Regional Office when developing waiver requests to ensure a well-reasoned, thorough request is submitted from the outset. In order to ensure FNS is able to conduct a detailed review of each request, State agencies should submit waiver requests at least 60 calendar days prior to the anticipated implementation date.

FNS recognizes that some requests are made in response to emergency situations addressing unforeseen circumstances and will make every effort to expedite the response to those requests. As noted above, additional waiver flexibility exists in disaster situations.

Monitoring and Reporting

FNS is committed to ensuring that flexibilities granted under waiver authority improve Program operations while maintaining Program integrity. The NSLA requires FNS to monitor the performance of Programs operating under waiver authority. FNS requires that each request to waive Program requirements include proposed data reporting requirements that will enable FNS to assess the effect of the waiver on Program administration. State agencies are reminded to adhere to existing applicable monitoring and reporting requirements, as well as those outlined in the waiver approval issued by FNS, to ensure continued operation throughout the approved waiver period. Failure of a Program operator to fulfill the monitoring and

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reporting requirements could impact consideration of subsequent requests to waive the same Program regulations.

State agencies are reminded to distribute this information to Program operators immediately. Program operators should direct any questions regarding this memorandum to the appropriate State agency. State agency contact information is available at <https://www.fns.usda.gov/school-meals/school-meals-contacts>. State agencies should direct questions to the appropriate FNS Regional Office.

Original Signed

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Attachment