

CHILD NUTRITION PROGRAM STATE WAIVER REQUEST TEMPLATE

Child Nutrition Programs are expected to be administered according to all statutory and regulatory requirements; waivers to the requirements are exceptions. However, Section 12(l) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), provides authority for USDA to waive requirements for State agencies or eligible service providers under certain circumstances. When requesting the waiver of statutory or regulatory requirements for the Child Nutrition Programs (CNPs), including the Child and Adult Care Food Program (CACFP), the Summer Food Service Program (SFSP), the National School Lunch Program (NSLP), the Fresh Fruit and Vegetable Program (FFVP), the Special Milk Program (SMP), and the School Breakfast Program (SBP), State agencies and eligible service providers should use this template. State agencies and eligible service providers should consult with their FNS Regional Offices when developing waiver requests to ensure a well-reasoned, thorough request is submitted. State agencies and eligible service providers are encouraged to submit complete waiver requests at least 60 calendar days prior to the anticipated implementation date. Requests submitted less than 60 calendar days prior to the anticipated implementation should be accompanied by an explanation of extenuating circumstances.

For more information on requests for waiving Program requirements, refer to SP 15-2018, CACFP 12-2018, SFSP 05-2018, *Child Nutrition Program Waiver Request Guidance and Protocol- Revised*, May 24, 2018.

1. State agency submitting waiver request and responsible State agency staff contact information:

Tennessee Department of Education,
Dr. Sandy Dawes
School Nutrition State Director
710 James Robertson Parkway
10th Floor
Nashville, TN 37243
Sandy.Dawes@tn.gov
629-203-0208

2. Region: Southeast Region

3. Eligible service providers participating in waiver and affirmation that they are in good standing:

All Tennessee Department of Education (TDOE) School Nutrition Program approved Fresh Fruit and Vegetable Program (FFVP) sponsors in good standing, operating during school year 2021-22.

4. Description of the challenge the State agency is seeking to solve, the goal of the waiver to improve services under the Program, and the expected outcomes if the waiver is granted. [Section 12(l)(2)(A)(iii) and 12(l)(2)(A)(iv) of the NSLA]:

Challenges:

Social-distancing is integral to the control of the COVID-19 virus and many school districts have social distancing procedures in place. The FFVP requires that students are present to receive fresh fruits and vegetables, which is not consistent with nationwide waivers allowing meals to be consumed in a non-congregate setting, and that allow for parent/guardian pickup of meals intended for students. Requiring students to be present increases the potential risk of exposure to COVID-19 and is a barrier to continue offering the FFVP during 2021-2022 school year.

Also, based on information from the field, districts are planning for several different learning and meal service models for the 2021-22 school year:

- 100% remote learning

- School buildings will be closed, and remote learning will occur
- Hybrid learning
 - Different start dates per grade level and alternating student schedules
 - Small, in-person learning with remote learning rotations
 - Rolling starts and stops; change between in-person, or modified in-person and remote learning
- 100% in-person learning
 - School buildings will open at the beginning of the school year, potentially close if there are cases of COVID at the school, and then reopen 2-3 weeks later after proper cleaning/sanitation measures have been taken.

As it is unclear which scenarios will come to fruition during 2021-2022 school year, creating flexibilities within FFVP will give SFAs the opportunity to use available funding to offer fresh fruits and vegetables to children. To maintain children's access to FFVP foods, TDOE School Nutrition Program is requesting that SFAs be permitted to offer FFVP with a grab and go option only and operation of FFVP in the in-person school environment would be in accordance with program requirements. This waiver will only be used to distribute FFVP fruits and vegetables with other meal service times through a grab and go option, when the participating site is operating flexible meal time schedules to accommodate remote and hybrid students.

To best support the variety of learning models, TDOE School Nutrition Program is requesting that SFAs be permitted to offer FFVP fruits and vegetables to students enrolled in participating elementary schools at alternate locations. Alternate locations will only be used to distribute FFVP fruits and vegetables, when the participating site is not operating meal service due to COVID-19.

In addition, sponsors continue to operate with serious funding deficiencies due to COVID-19 and need flexibility to offer FFVP produce without barriers to use the FFVP funds granted to the greatest extent possible.

Goals:

- Allow parents and/or guardians to pick up FFVP produce for students with appropriate safety measures in place that minimizes potential exposure to COVID-19.
- To maintain children's access to FFVP fruit and vegetables allowing operation of FFVP during grab and go option meal time services.
- To maintain children's access to FFVP fruit and vegetables allowing operation of FFVP to continue at alternate locations during altered site operations.

Expected Outcome: Ensure participants have access to fresh fruits and vegetables and that sponsors are able to use the FFVP funds they have been granted to feed children.

5. Specific Program requirements to be waived (include statutory and regulatory citations).

Tennessee Department of Education School Nutrition Program requests a waiver of regulations at Section 19(b) of the National School Lunch Act (NSLA) [42 U.S.C. 1769a] that requires schools participating in the FFVP to make fresh fruits and vegetables available to students. The state agency also requests to waive the regulations at Section 19(a) of the National School Lunch Act that requires states to carry out a program to make free fresh fruits and vegetables available in elementary schools.

6. Detailed description of alternative procedures and anticipated impact on Program operations, including technology, State systems, and monitoring:

If approved, TDOE School Nutrition Program will provide technical assistance to sponsors on processes and procedures in operating the FFVP to maintain accountability and program integrity. Tennessee sponsors are familiar with operating under the Nationwide Waiver to Allow Parents and Guardians to Pick-up Meals for Children and the previous statewide waiver granted to allow parents and guardians to pick-up FFVP items for students. Under this waiver, sponsors document their process for ensuring that meals are distributed only to parents or guardians of eligible children, and that duplicate meals are not distributed. TDOE School Nutrition Program will require FFVP sponsors to include FFVP in this already established process, which will be seamless for FFVP sponsors.

If approved, FFVP fruits and vegetables will be allowed to be distributed as a grab and go option during meal service times as supplemental items to pick up in the grab and go operation. TDOE School Nutrition Program will provide technical assistance to SFAs on processes and procedures in operating the FFVP to maintain accountability and program integrity.

If approved, FFVP fruits and vegetables will be allowed to be distributed at alternate locations when the participating site is not operating meal service/FFVP due to COVID-19. TDOE School Nutrition Program will provide technical assistance to SFAs on processes and procedures in operating the FFVP to maintain accountability and program integrity.

TDOE School Nutrition Program will require FFVP sponsors to document the use of this waiver to the state agency via an electronic submission process. Each option will be listed on the documentation: parent pick-up, meal service time, and alternate location. There are no impacts on technology, state systems, or monitoring.

If the waiver is not granted, program operations will be impacted by increasing programmatic burden on food service operators. Fewer districts will be able to appropriately provide FFVP produce items to students in a safe way in regards to pandemic concerns. Not granting the waiver may ultimately decrease food items served to children, which will decrease food security and increase childhood hunger.

7. Description of any steps the State has taken to address regulatory barriers at the State level.

[Section 12(I)(2)(A)(ii) of the NSLA]: The regulations seeking to be waived prevent state-level remedies from being a possibility to address the issue.

8. Anticipated challenges State or eligible service providers may face with the waiver implementation:

There are no anticipated challenges to service providers nor the state with implementation of the waiver. The implementation of the waiver will alleviate potential challenges in regards to program operations faced by school food authorities and barriers to implementing alternative meal service models in response to public health measures resulting from the outbreak of coronavirus. This waiver will reduce the challenges faced by schools and communities where students are attending school remotely or in a hybrid model due to COVID-19, ensuring uninterrupted access to fresh fruits and vegetables by allowing flexibilities to use the FFVP funds they have been granted to feed children.

9. Description of how the waiver will not increase the overall cost of the Program to the Federal Government. If there are anticipated increases, confirm that the costs will be paid from non-Federal funds. [Section 12(I)(1)(A)(iii) of the NSLA]:

Approval of this waiver will not increase the overall cost of the program to the federal government since the FFVP operating expenditures will not exceed the 2021-22 school year grant allocations. There are no additional staff costs to implement this waiver.

10. Anticipated waiver implementation date and time period: The waiver will be implemented as districts return to school for the 2021-2022 school year to accommodate for virtual and hybrid learning models as related to COVID-19.

Implementation date requested: July 2021

Time period requested: June 30, 2022

11. Proposed monitoring and review procedures: TDOE School Nutrition Program will provide training and technical assistance for sponsors to ensure compliance with FFVP regulations. Each SFA will be monitored during the regular administrative review process.

12. Proposed reporting requirements (include type of data and due date(s) to FNS):
One year after the date of waiver approval, TDOE School Nutrition Program will report to FNS a summary of the use of this waiver by the state agency and local program operators and a description of whether and how this waiver resulted in improved services to Program participants.

13. Link to or a copy of the public notice informing the public about the proposed waiver [Section 12(l)(1)(A)(ii) of the NSLA]: <https://www.tn.gov/education/snp-resources/snp-listservs.html>

14. Signature and title of requesting official:



Title: School Nutrition State Director

Requesting official's email address for transmission of response: Sandy.Dawes@tn.gov; 629-203-0208

TO BE COMPLETED BY FNS REGIONAL OFFICE:

FNS Regional Offices are requested to ensure the questions have been adequately addressed by the State agency and formulate an opinion and justification for a response to the waiver request based on their knowledge, experience and work with the State.

Date request was received at Regional Office:

Check this box to confirm that the State agency has provided public notice in accordance with Section 12(l)(1)(A)(ii) of the NSLA

Regional Office Analysis and Recommendations: