



Food and  
Nutrition  
Service

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July 30, 2021

Dr. Sandy Dawes  
School Nutrition State Director  
Tennessee Department of Education  
710 James Robertson Parkway  
10<sup>th</sup> Floor  
Nashville, Tennessee 37243

Dear Dr. Dawes:

This letter is in response to the Tennessee Department of Education's (TDOE) July 19, 2021, request for a waiver under Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA) (42 USC 1760(l)) to permit Fresh Fruit and Vegetable Program (FFVP) operations at sites that are not elementary schools during COVID-19-related school building closures. Under FFVP requirements, Program operators may offer FFVP foods only at elementary schools.

Specifically, TDOE requested a statewide waiver of the FFVP requirement at Section 19(a) of the NSLA (42 USC 1769a(a)), which limits availability of FFVP foods to elementary schools. The Food and Nutrition Service (FNS) recognizes that in this continued public health emergency caused by COVID-19, some FFVP elementary school buildings are closed, and children that normally attend those schools are receiving meals at other locations. To maintain children's access to FFVP foods, TDOE is requesting that school food authorities (SFAs) be permitted to offer FFVP foods from elementary schools closed due to COVID-19 at sites operating during school building closures associated with COVID-19 during School Year (SY) 2021-2022.

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 TDOE's waiver request satisfies these statutory requirements.

Based on the exceptional circumstances relating to COVID-19, and pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS approves TDOE's waiver request through June 30, 2022.

Therefore, effective immediately, this waiver allows State agencies to approve SFAs participating in FFVP to serve FFVP foods at sites that are not elementary schools through June 30, 2022. This may be used in combination with the SY 2021-2022 parent pickup waiver approved on July 21, 2021, to allow parent pickup of FFVP foods at sites that are not elementary schools.

Please note, this waiver is intended to provide needed flexibility to support schools in continuing to offer nutritious meals while safely and successfully reopening. While this waiver is available through June 30, 2022, flexibilities under the waiver should be implemented by SFAs until such a time when greater levels of congregation in in-school settings is safe and healthy to pursue.

The waiver authority at section 12(l) of the NSLA also requires FNS to periodically review the performance of any State or eligible service provider that was granted a waiver. Therefore, TDOE must provide to the FNS Southeast Regional Office a written report quantifying the impact of the waiver, as described below.<sup>1</sup>

The report must include the following:

- A description of how the waiver impacted FFVP food service operations, children's access to FFVP foods, and participation in FFVP;
- The number of SFAs that used the waiver;
- The number of approved alternate sites that used the waiver;
- The FFVP funds provided during the SY 2021-2022 COVID-19-related operations, demonstrating that the waiver has not resulted in an increase to the overall cost of the program; and,
- A summary of findings associated with the waiver.

FNS appreciates TDOE's commitment to work with SFAs to meet the nutritional needs of children during a challenging time. If you have questions, please contact the FNS Southeast Regional Office.

Sincerely,

Angela M. Kline  
Director  
Policy and Program Development Division

Electronic Copy: Kirk Farquharson, SERO

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<sup>1</sup>The reporting requirements of this waiver will be included in an upcoming change request to *FNS Information Collection Needs due to COVID-19*, OMB Control #0584-0654, expiration date 01/31/2022..