



Food and  
Nutrition  
Service

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Alexandria  
VA 22314

July 21, 2021

Dustin Melton  
Director  
Oregon Department of Education  
Child Nutrition Programs  
255 Capitol St. NE  
Salem, Oregon 97310

Dear Mr. Melton:

This letter is in response to the Oregon Department of Education's (ODE) July 15, 2021, request to waive the requirement that, during non-congregate meal services due to the novel coronavirus (COVID-19), Fresh Fruit and Vegetable Program (FFVP) foods may only be provided to students. Under FFVP requirements, Program operators must provide FFVP foods directly to students.

Specifically, ODE requested a statewide waiver of the distribution requirements at Section 19(b) of the Richard B. Russell National School Lunch Act (NSLA) (42 USC 1769a). As implemented, Section 19(b) requires Program operators to provide FFVP foods directly to students, not to parents and guardians. However, the Food and Nutrition Service (FNS) recognizes that in this ongoing public health emergency, continuing to require children to come to the meal site to pick up meals may not be practical and in keeping with the goal of providing meals while also taking appropriate safety measures.

Because the Families First Coronavirus Response Act (P.L. 116-127), as extended by the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159), did not include FFVP as a "qualified program," the nationwide waiver allowing parents to pick up meals for children at non-congregate sites during School Year (SY) 2021-2022 does not apply to FFVP. Therefore, State agencies must request a waiver under Section 12(l) of the NSLA to permit Program operators with an approved waiver allowing non-congregate meal distribution during COVID-19-related operations to distribute FFVP foods to a parent or guardian to take home to their children.

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 ODE's waiver request satisfies these statutory requirements.

Accordingly, based on the exceptional circumstances relating to the continued public health emergency due to COVID-19, and pursuant to the waiver authority granted at section 12(l) of the NSLA, FNS approves ODE's waiver request through June 30, 2022.

Therefore, effective immediately, for SY 2021-2022, this waiver allows State agencies to approve school food authorities (SFAs) participating in FFVP to distribute FFVP foods to a parent or guardian to take home to their children.

State agencies, in addition to meeting the NSLA requirements for a Section 12(l) waiver listed above, 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 FFVP foods are distributed only to parents or guardians of eligible children, and that duplicate meals are not distributed to any child. State agencies may want to consult local Program operators when developing their plans as local Program operators are best situated to determine how to provide these assurances. If ODE has already developed a plan for distribution to parents and guardians through other programs, that plan may be adapted to include FFVP.

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, ODE must provide to the FNS Western 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 FFVP schools 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

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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.

Mr. Dustin Melton

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FNS appreciates ODE'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 Western Regional Office.

Sincerely,

Angela M. Kline

Director

Policy and Program Development Division

Electronic Copy: GeNam Chew, WRO