



Food and
Nutrition
Service

August 11, 2020

Braddock
Metro Center

Michael Chavez
Director, Child Nutrition Program (NSLP)
New Mexico Public Education Department
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Alexandria
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Dear Mr. Chavez:

This letter is in response to the New Mexico Public Education Department (NMPED) July 31, 2020 request to waive the requirement that Fresh Fruit and Vegetable Program (FFVP) foods may only be provided to students during non-congregate meal services due to the novel coronavirus (COVID-19). Under current requirements, Program operators must provide FFVP foods directly to students.

Specifically, NMPED 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 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) did not include FFVP as a “qualified program,” the nationwide waiver allowing parents to pick up meals for children at non-congregate sites 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 NMPED’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 NMPED’s waiver request through June 30, 2021.

Therefore, effective immediately, for SY-2020-2021, 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. SFAs may begin distributing FFVP foods when classes officially begin.

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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 NMPED's has already developed a plan for distribution to parents and guardians through other programs, that plan may be adapted to include FFVP.

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, NMPED must provide to the FNS Southwest Regional Office a written report quantifying the impact of the waiver, as described below.

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 2020-2021 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 NMPED's commitment to work with SFAs to meet the nutritional needs of children during a challenging time. If you have questions, please contact the Southwest Regional Office.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ang M Kline". The signature is fluid and cursive, with the first name "Ang" being the most prominent.

Angela M. Kline
Director
Policy and Program Development Division

Electronic Copy: Shannon Jones, SWRO