



Food and Nutrition Service

U.S. DEPARTMENT OF AGRICULTURE

July 17, 2024

Sterling Whisenhunt

Interim Bureau Chief

Florida Department of Health - Bureau of Child Care Food Programs

4052 Bald Cypress Way Bin #A-17

Tallahassee, FL 32399

Dear Sterling Whisenhunt:

This letter is in response to Florida Department of Health - Bureau of Child Care Food Programs's (FDOH) July 17, 2024, request to provide non-congregate meal service in the at-risk afterschool component of the Child and Adult Care Food Program (CACFP) when congregate meal service operations in schools are limited due to natural disasters, unscheduled major building repairs, court orders relating to school safety or other issues, labor-management disputes, or, when approved by the State agency, for a similar unanticipated cause. In order to support continued access to nutritious meals, the Food and Nutrition Service (FNS) recognizes that certain operational flexibilities may be necessary.

FNS has authority to issue statewide waivers under Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1760(l). 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 FDOH's waiver request satisfies these statutory requirements.

Specifically, FDOH requested a statewide waiver of the requirements explained below.

Child and Adult Care Food Program

The waivers in this section apply to the at-risk afterschool component of CACFP only. These waivers are intended to provide needed flexibility to support at-risk afterschool centers in continuing to offer nutritious meals during unanticipated school closures. These waivers are effective through June 30, 2025.

Non-Congregate Meal Service (CACFP)

Under the NSLA, 42 U.S.C. 1766(f)(1)(A), CACFP meals must be served in a congregate setting and must be consumed by participants on site.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the requirements to serve meals through the CACFP at-risk afterschool component in a congregate setting. Any other requirements referenced in these provisions remain in effect.

Meal Service Times (CACFP)

Under Program regulations at 7 CFR 226.17a(m), meals served in the CACFP must follow meal service time requirements.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirements that set meal time parameters for CACFP at-risk afterschool centers. Any other requirements referenced in these provisions remain in effect.

Parent and Guardian Meal Pick Up (CACFP)

Under the NSLA, 42 U.S.C. 1766(f)(1)(A) and Program regulations at 7 CFR 226.2 (Meals), meals must be served to eligible children.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the requirements that CACFP at-risk afterschool meals may only be served directly to children. Any other requirements referenced in these provisions remain in effect. State agencies opting to use this flexibility must have a plan for ensuring that local operators are able to maintain accountability and Program integrity. This includes putting in place processes to ensure that meals are distributed only to parents or guardians of eligible children, and that duplicate meals are not distributed to any child.

Enrichment Activity (CACFP)

Under the NSLA, 42 U.S.C. 1766(r)(2)(B), afterschool meals and snacks must be served in a school or Program with an educational or enrichment purpose. FNS regulations further require at 7 CFR 226.17a(b)(1)(ii) and (iii), eligible schools and at-risk afterschool care centers to serve afterschool meals and snacks in a structured and supervised environment, with an educational or enrichment activity.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirements that require educational or enrichment activities for the at-risk component of CACFP. Any other requirements referenced in these provisions remain in effect.

As a reminder, CACFP regulations require that at-risk afterschool centers must be located in the attendance area of a school (an elementary, middle, or high school) where at least 50 percent of the students are eligible for free or reduced price meals under the NSLP. School data used to establish free and reduced price eligibility is valid for a period of five years. More

information regarding area eligibility can be found at 7 CFR 226.17a(i) and in SP08 CACFP04; SFSP03-2017: Area Eligibility in Child Nutrition Programs (<https://www.fns.usda.gov/cn/area-eligibility-child-nutrition-programs>).

FNS is granting these waivers to allow FDOH and local Program operators to more quickly respond to those occasions when congregate meal service is limited or negatively impacted by unanticipated school building closures caused by natural disasters, unscheduled major building repairs, court orders relating to school safety or other issues, labor-management disputes, or, when approved by the State agency, for a similar unanticipated cause. However, FDOH **may not** approve a waiver for a local Program operator for more than 10 consecutive operating days without approval from FNS. In situations that may warrant longer approval periods, the FNS Southeast Regional Office (SERO) will work closely with the FDOH to determine if an extension is needed.

The waiver authority at Section 12(l) of the NSLA requires FNS to review the performance of any State or eligible service provider that was granted a waiver. Therefore, by September 30, 2025, FDOH must provide to the FNS SERO a report quantifying the impact of the waiver, as described below. The report must include the following:

- The number of local Program operators (i.e., LEAs or sponsors) that utilized each set of waivers (i.e., the number utilizing SFSP/SSO waivers, NSLP waivers, and CACFP waivers);
- A description of why congregate meal service in schools was limited (e.g., natural disasters, unscheduled major building repairs, etc.);
- A description of how the waiver resulted in improved services to children; and
- A summary of benefits and challenges associated with the waiver.

In addition, State agencies should maintain sufficient documentation to ensure local Program operators are appropriately implementing the waivers.

If you have questions, please contact the FNS SERO.

Sincerely,

J. Kevin Maskornick

Director

Community Meals Policy Division