United States Department of Agriculture
Food and Consumer Service
Mountain Plains Region
1244 Speer Blvd., Suite 903
Denver, CO 80204-3585

DEC 1 0 1996

Reply to
Attn. of: SP 97-09
CACFP-493
SFSP-302

Subject: Applications for Waivers in the Child Nutrition Programs

To: STATE AGENCY DIRECTORS (Child Nutrition Programs) - Colorado ED, Colorado DPHE, Colorado DHS, Iowa, Kansas, Missouri ED, Missouri DH, Montana OPI, Montana DPHHS, Nebraska ED, Nebraska SS, North Dakota, South Dakota, Utah, Wyoming ED, Wyoming DHSS

Public Law (P.L.) 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, was signed by the President on August 22, 1996. Section 705(f) of that legislation made a number of changes to Section 12(l) of the National School Lunch Act which governs the waiver process in the Child Nutrition Programs. This memorandum identifies the changes made by P.L. 104-193 and provides guidance to be used in developing and submitting waiver requests to the Child Nutrition Division. A summary of the changes is attached.

As indicated in our previous guidance issuance (SP-95-10, CACFP-428, SFSP-267, dated April 19, 1995), we are recommending that you consult with our office when you are developing waiver requests. Further, the submission of applications from you to our National Office must come through our office. We will evaluate the request and send it on to our National Office with our recommendation for approval or denial.

As noted in the attached summary, one of the changes made to the waiver process by P.L. 104-193 was the removal of the requirements that local entities submit annual reports to their State Agency (SA) that describe their use of waivers and evaluate how the waiver contributed to improved services to children participating in the Program for which the waiver was requested. It also removed the requirement that the SA submit an annual report to the Secretary summarizing all reports received by the SA from local entities. It did not, however, remove the requirement that the Department submit an annual report on waiver activity to the Congress. Given that fact, the Department intends to continue to require annual reports of States in which waivers have been granted. Further, the information to be submitted in these annual reports will continue to be that required under the prior statutory provisions since the type of information that the Department is required to provide the Congress under the statute has not changed.

A second change made by P.L. 104-193 was the removal of the requirement that waivers could be issued for a period of time up to 3 years, with extensions beyond 3 years permitted if the Department determines that the waiver has been effective in enabling the SA or local entity to carry out the purposes of the program. The Department views this change essentially as an elimination of a maximum time limitation. Therefore, future waivers will be in effect for an amount of time determined by the Department at the time of approval without regard to an outside time limit. Further, the Department will continue to consider extensions of waivers beyond the period established at the time of approval based on the criteria already in place.

If you have any questions with regard to this material, please contact the respective Program area in our office.

Mary Nelson

for ANN C. DEGROAT
Regional Director
Child Nutrition Programs

Attachment

CHANGES IN THE WAIVER PROCESS FOR THE CHILD NUTRITION PROGRAMS MADE BY PUBLIC LAW 104-193

Section 705(f)(1) removed the State waiver application requirements for (1) a description of the management goals to be achieved, such as fewer hours devoted to, or fewer number of personnel involved in, the administration of the program; (2) a timetable for implementing the waiver; and (3) a description of the process the State or local entity will use to monitor the progress in implementing the waiver, including the process for monitoring the cost implications of the waiver to the Federal Government.

- Implemented in attached guidance.

Section 705(f)(2) removed the requirements that (1) the Secretary provide successful waiver applicants the Department's expected outcome of granting the waiver; (2) the successful applicant State or local entity disseminate the decision of the Secretary through its normal means of communicating with the public; and (3) the duration of the waiver may not exceed 3 years.

- Implemented in attached guidance.

Section 705(f)(3) removed the "offer versus serve" provisions from the program categories for which waivers may not be granted.

- Implemented in attached guidance.

Section 705(f)(4) removed the requirements that local entities submit annual reports to the State that describe their use of waivers and evaluate how the waiver contributed to improved services to children participating in the program for which the waiver was requested. It also removed the requirement that the State submit an annual report to the Secretary summarizing all reports received by the State from local entities.

- Attached guidance continues to require State and local reporting to the extent that it is necessary to support the Department's report to the Congress.

STATUTORY AND REGULATORY WAIVERS IN THE CHILD NUTRITION PROGRAMS

Statutory Authority

Section 12(l) of the National School Lunch Act, as amended by Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, gives the Secretary of Agriculture authority to waive certain statutory and regulatory provisions which govern the Child Nutrition Programs.

Pre-application Considerations

Eligibility - Applications for waivers may be made by State agencies which administer the Child Nutrition Programs (including Food and Consumer Service Regional Offices that operate ROAP programs) either for themselves or on behalf of local entities which are participating in the Child Nutrition Programs.

General Considerations - When deciding whether or not to submit a specific waiver request, State agencies and local entities should keep in mind that the Department will be guided by its understanding of specific statutory provisions which govern the waiver provisions, as well as the Congressional intent which supports them. As stated in House Report 103-535, the former House Committee on Education and Labor believed that Federal assistance for Child Nutrition Programs should be provided in a way which permits flexibility in the implementation of the those Programs and which eliminates unnecessary administrative burdens, paperwork, and overly prescriptive regulations. However, the Committee indicated that there should be certain requirements for waivers including: the facilitation of program administration and benefit delivery; appropriate public notification; and no increase in the Federal cost of the program. Consistent with that intent, and in recognition of the burden on all levels of program administration associated with these waiver requests, the Department will review all submissions for their demonstrable benefit to State and local program administrators and program beneficiaries and for their consistency with Congressional intent.

State Involvement in Local Agency Applications - When a State agency is submitting a waiver request on behalf of a local entity, the Department views the State agency role as both a facilitator and a collaborator. In this role, the State agency is expected to give advice and technical assistance to the local entity, if necessary. State agencies should not submit waiver requests on behalf of local entities if they cannot fully support them or if they believe them to be inconsistent with statutory intent.

Consultation with Regional Offices - State agencies are encouraged to consult with their Food and Consumer Service Regional Office when considering waiver applications.

Public Notification - Prior to the formal submission of a waiver request by the State agency, the State agency or local entity which initiates the waiver request is required to provide public notification of its intent to seek such a waiver. Such notice and information must be provided in the same manner in which the State agency or local entity normally provides similar notices and information to the public.

State and Local Reporting - State agencies must submit an annual report to the Department that summarizes all waiver activity within the State and describes whether waivers resulted in improved services to children and adults; the impact on providing nutritional meals to participants; and how they reduced the quantity of paperwork necessary to administer the program.

Duration of Waivers - Waivers granted by the Department will be in effect for an amount of time determined by the Department at the time of approval. The Department may extend the authority for a waiver beyond the period established at the time of approval if it determines that the waiver has been effective in enabling the State or local entity to carry out the purposes of the program.

Application Procedures

Applications for waivers under section 12(l) of the National School Lunch Act should be forwarded by State agencies to the Director, Child Nutrition Programs in their Food and Consumer Service Regional Office. Food and Consumer Service Regional Offices are responsible for reviewing waiver applications and forwarding them to the Director of the Child Nutrition Division along with their evaluation of the applications and recommendations for approval or denial.

Content of Applications

Waiver applications should be in narrative form and written as concisely as possible. In no case should an application exceed 10 pages in length. Applications should follow the structure set out below and, at a minimum, contain the following:

Part A - Identification of the State agency and, if applicable, identification of the local entity for which the waiver is being sought, including its name and address, the Child Nutrition Program(s) in which it participates, and a general description of the size and scope of its program.

Part B - Identification/description of the specific statutory or regulatory requirements for which the waiver is being sought, including the applicable citations (e.g., section 13(a)(7)(B)(ii) of the National School Lunch Act; 7 CFR Part 210.20(b)(11)).

Part C - A description of the impediments to the efficient operation and administration of the program that caused the waiver to be sought.

Part D - A description of actions that the State has undertaken to remove any State-level barriers (either statutory or regulatory) to achieve the result sought under the waiver. If not applicable, that should be indicated.

Part E - A description of the State's expectation as to how the waiver will improve services and the expected outcomes if the waiver is granted.

Part F - A description of the process used by the State or local entity to provide notice and information to the public regarding the proposed waiver and a certification that such notice has been provided in the same manner customarily used by the State or local entity to provide similar notices and information to the public.

Waiver Limitations

When considering a waiver request submission, State agencies and local entities should be guided by the limitations on waivers imposed in the statute. In this regard, the Department is not permitted to waive any current statutory or regulatory requirements related to:

* the nutritional content of meals;
* the individual entitlement to free and reduced price meals;
* the maximum amount charged for a reduced price meal;
* Federal reimbursement rates;
* the distribution of program funds to State and local entities participating in the Child Nutrition Programs;
* the equitable participation of private schools and the children attending private schools;
* maintenance of effort;
* the disclosure of information relating to students receiving free or reduced price meals and other recipients of benefits;
* the commodity distribution program under section 14 of the National School Lunch Act;
* the maintenance of non-profit food service operations;
* the sale of competitive foods; and
* enforcement of any individual rights established under the Constitution of the United States and Federal statutes.

Responsibilities of the Department

The Department will promptly inform State agencies in writing the reasons for granting or denying requests.

The Department will periodically review the performance of any State agency or local entity operating under a waiver. If such performance has been inadequate, the Department will terminate the waiver authority. Likewise, the Department will terminate a waiver if it is determined that it has resulted in an increase in the program's cost to the Federal government.

The Department will submit an annual report to the Congress which summarizes the use of waivers by State agencies and local entities; describes whether the waivers resulted in improved services to children; describes the impact of the waivers on providing nutritional meals to participants; and describes how the waivers reduced the quantity of paperwork necessary to administer the program.