



**DATE:** [Insert Date], 2024

**SUBJECT:** Food Distribution Program on Indian Reservations (FDPIR) – Interim Administrative Waiver Authority Guidance

**TO:** Regional Directors  
Supplemental Nutrition Programs  
All FNS Regional Offices

FDPIR Directors  
All FDPIR Administering Agencies

This memorandum provides interim guidance on new FDPIR regulatory waiver authority that became effective on October 31, 2024. Regulations at [7 CFR 253.12](#) provide authority for USDA’s Food and Nutrition Service (FNS) to waive or modify specific administrative requirements contained in 7 CFR Parts 253 and 254. Under this authority, FDPIR administering agencies can request waivers of specific regulatory requirements. To support simplicity in the administrative waiver process, FNS may also issue nationwide waivers if determined to be necessary and applicable to all FDPIR administering agencies. FNS will not issue any waivers in situations where the waivers are inconsistent with provisions of the [Food and Nutrition Act of 2008, as amended \(P.L. 95–113, the Act\)](#).

This waiver authority aligns with Supplemental Nutrition Assistance Program (SNAP) waiver authority found at 7 CFR 272.3(c), thus increasing parity between the two programs. However, FDPIR authority is separate and distinct from SNAP authority.

### **FNS Waiver Approval Requirements**

FNS will only approve waivers of administrative requirements contained in 7 CFR Parts 253 and 254 in the following circumstances:

1. The specific regulatory provision cannot be implemented due to extraordinary temporary situations.

Example: A specific regulatory provision cannot be implemented due to a federal disaster or emergency, localized emergency, or situation of distress;

2. FNS determines that the waiver would result in more effective and efficient administration of the program.

Example: An administering agency may request to waive a specific program requirement (e.g., related to dissemination of printed outreach materials which could be made available in another format), offering a creative temporary solution to the benefit of participants or potential participants for FNS to consider.

OR

3. Unique geographic conditions within the geographic area served by the administering agency preclude effective implementation of the specific regulatory provision and require an alternative procedure.

Example: The administering agency may request to waive a specific regulatory requirement (e.g., related to application processing) which cannot be met due to climate- and transportation-related conditions, based on the location of the administering agency and/or its proximity to participants or potential participants. The waiver request could identify a creative temporary solution for FNS to consider.

### **Waiver Submission Requirements**

When submitting requests for waivers, FDPIR administering agencies must provide compelling justification. The compelling justification must be tied to the above referenced FNS Waiver Approval Requirements. Through the justification, the administering agency lets FNS know *what* it wants to do, *why* the agency wants to do it, *how* it will impact service to participants, and *when* the waiver flexibility is needed. FNS has provided an optional FDPIR administering agency waiver request sample template as Attachment A to facilitate the submission of waiver requests.

At a minimum, requests for waivers must include the following information:

1. Thorough explanation of the proposed alternative provision or action to be used in lieu of the waived or modified regulatory provision. This includes a list of the regulatory provisions requested to be waived or modified;
2. Anticipated time period for which the waiver is needed. Please provide a start date and an end date for the requested waiver;
3. Reasons why the waiver is needed. For example, the administering agency could state that “*the situation of distress negatively impacted service to participants by...*”; and
4. Anticipated impact on service to participants or potential participants who would be affected. For instance, the administering agency statement could state that “*the proposed waiver flexibility will positively impact participants by...*”

The FDPIR administering agency may provide supplemental, additional information to support the waiver request. **FDPIR administering agencies should submit waiver requests via email to the FNS Regional Office.**

### **Limitations**

FNS will approve waivers for a period not to exceed one year unless the waiver is for an ongoing situation. If the waiver is requested for longer than a year, appropriate justification is required. FNS will determine if a longer period is warranted and if so, the duration of the

waiver. Extensions may be granted provided that the administering agency submits appropriate justification to FNS and FNS approves the extension. FNS reserves the right to evaluate the waiver short-term before considering a longer-term approval.

USDA FNS will not approve waivers when either:

1. The waiver would be inconsistent with the Act. Some regulatory requirements are required by statute and FNS does not have authority to waive statutory requirements. FNS is available to advise FDPIR administering agencies on whether a specific regulatory requirement is required by statute. For example, FNS cannot approve waivers to statutory requirements contained in [Section 4\(b\) of the Act](#) specific to FDPIR, such as the requirements related to the prohibition on dual participation with SNAP; OR
2. The waiver would result in material impairment of any statutory or regulatory rights of participants or potential participants. In general, this means that the waiver cannot negatively impact applicants' or participants' ability to apply for or obtain benefits, or otherwise participate in the program.

#### **FNS Requests for Data**

By submitting the waiver request, the administering agency agrees to periodically provide data to FNS upon request. During the approved waiver period, USDA FNS may collect data on an approved waiver to determine its impact, and confirm the administering agency's continued need for the waiver. FNS may further request additional data after waiver discontinuance. FNS will strive to limit the burden on administering agencies when requesting any supporting data.

#### **USDA FNS Welcomes FDPIR Administering Agency Input**

FNS welcomes FDPIR administering agency input on the process and guidance for submitting waiver requests as described in this document. **FNS requests feedback on this interim guidance by January 31, 2025, to the appropriate Regional Office.**

FNS has also committed to further consultation on the implementation of this provision, including the waiver submission process.

We appreciate your patience and flexibility as we continue to work with our program partners to implement this waiver process. Administering agencies with questions should contact their respective FNS Regional Office.

Sara Olson  
Director  
Policy Division

Supplemental Nutrition and Safety Programs

Attachment

DRAFT