



Food and
Nutrition
Service

DATE: July 17, 2019
MEMO CODE: SP 31-2019, CACFP 14-2019, SFSP 14-2019

Park Office
Center

SUBJECT: Farm Bill Implementation Memo:
Donated Traditional Foods and Civil Liability¹

3101 Park
Center Drive
Alexandria
VA 22302

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

On December 20, 2018, Congress passed the Agriculture Improvement Act of 2018 (Public Law 115-334, 2018 Farm Bill). The purpose of this memorandum is to notify Child Nutrition Program operators of the 2018 Farm Bill's expansion of the provision stating that certain groups are not liable in civil cases regarding the donation and service of traditional foods. This provision only applies to food service programs at public and nonprofit facilities that primarily serve Indians, including those operated by Indian Tribes and Tribal organizations.

Previously, only the United States and Indian Tribes or Tribal organizations were protected from liability, and this protection was limited to the donation and serving of traditional foods. This provision, included in Section 4033 of the Agricultural Act of 2014 (Public Law 113-79), was effective in February 2014. Section 4203 of the 2018 Farm Bill amended the prior authority and eliminated civil liability for States, counties or county equivalents, local educational agencies, and entities or persons authorized to facilitate the donation, storage, preparation, or serving of traditional foods by the operator of a food service program. These organizations and persons are not liable in any civil action for any damage, injury, or death caused to any person by the storage, preparation, donation, or serving of traditional foods through food service programs, including the Child Nutrition Programs.

The Food and Nutrition Service (FNS) provided guidance on the 2014 Farm Bill provision in SP 42-2015, CACFP 19-2015, SFSP 21-2015: *Service of Traditional Foods in Public Facilities*, issued July 31, 2015. The 2018 Farm Bill expanded the elimination of civil liability to additional organizations and persons (as described above) and added the "storage" and "preparation" of donated traditional foods to the list of activities covered by the provision. The 2015 memorandum is not otherwise impacted by this change.

¹ Pursuant to the Congressional Review Act (5 U.S.C. §801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. § 804(2).

Regional Directors

State Directors

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State agencies are reminded to distribute this memorandum to Program operators. Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

Original Signed

Angela M. Kline

Director

Policy and Program Development Division