

Appendix N

Child Nutrition Response #90: The Nationwide Waiver to Allow Specific School Meal Pattern Flexibility for School Year 2021-2022

The information is being collected to meet the requirement established at Section 2202(a)(2) of the Family First Coronavirus Response Act (FFCRA) (P.L. 116-127), as extended by the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159), for States to elect to be subject to each Nationwide waiver prior to implementing the flexibilities granted in the waiver. In addition, this Nationwide waiver requires Child Nutrition Program (CNP) operators to develop and submit requests to their respective State agencies to utilize the meal pattern flexibilities authorized in the waiver; requests should be targeted and justified based upon disruptions to the availability of food products resulting from impacts of the novel Coronavirus. FNS uses the information collected to evaluate Nationwide waiver participation and maintain program integrity. This collection does not request any personally identifiable information under the Privacy Act of 1974. According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0584-0654. The time required for states to notify FNS of their election to be subject to a nationwide waiver is 5 minutes (.0835 hours). The time required for a local program operator to develop and submit a request to waive meal pattern requirements is 1 hour, and the burden associated with a State agency's responsibility to review each request and respond to a program operator is 15 minutes (.25 hours). Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314 ATTN: PRA (0584-0654).



Food and
Nutrition
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DATE: April 20, 2021

CODE: COVID-19: Child Nutrition Response #90

SUBJECT: Nationwide Waiver to Allow Specific School Meal Pattern Flexibility for School Year 2021-2022

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Issuing Agency/Office:	FNS/Child Nutrition Programs
Title of Document:	Nationwide Waiver to Allow Specific School Meal Pattern Flexibility for School Year 2021-2022
Document ID:	
Z-RIN:	
Date of Issuance:	April 20, 2021
Replaces:	N/A
Summary:	(1) FNS waives, for all States, the requirements to serve meals that meet specified meal pattern requirements during the public health emergency due to COVID-19. (2) This waiver applies to State agencies administering and local organizations operating the National School Lunch Program and School Breakfast Program. These flexibilities also apply to the National School Lunch Program Seamless Summer Option. (3) This document relates to 7 CFR 210.10(b), (c), (d), (f), (o), and (p); and 220.8(b), (c), (d), (f), and (o).
Disclaimer:	The contents of this waiver have the force and effect of law as authorized by the Families First Coronavirus Response Act (the Act) (P.L. 116-127), as extended by the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159), unless otherwise provided.

Pursuant to Section 2202 of the Families First Coronavirus Response Act (the FFCRA) (P.L. 116-127), as extended by the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159), and in light of the exceptional circumstances of this public health emergency, the Food and Nutrition Service (FNS) is granting a nationwide waiver to support access to nutritious meals while minimizing potential exposure to the novel coronavirus (COVID-19). This waiver applies to the National School Lunch Program (NSLP) and School Breakfast Program (SBP). FNS is also extending this flexibility to the NSLP Seamless Summer Option (SSO) for the duration of this waiver.

Section 2202 of the FFCRA permits the Secretary of Agriculture to establish a waiver for all States for the purposes of providing meals under the Child Nutrition Programs, with appropriate safety measures, as determined by the Secretary. Consistent with Section 2202 of the FFCRA, this approval applies automatically to all States that elect to use it, without further application. If the State agency elects to implement these flexibilities, it must notify its respective FNS Regional Office, which will acknowledge receipt. With the exception of the sodium requirements, local program operators must request waivers from their State agency, as described below.

Under program regulations at 7 CFR 210.10(b), (c), (f), (o), and (p); and 220.8(b), (c), (f), and (o), NSLP and SBP meals must meet certain meal pattern requirements. Further, regulations at 7 CFR 210.10(c) and (d)(1)(i), and 220.8(c) and (d), require schools to offer students a variety (at least two different options) of fluid milk, and that low-fat milk must be unflavored. However, FNS recognizes that, in this public health emergency, meal pattern flexibility is necessary to ensure the provision of meals in a safe manner. In addition, program regulations at 7 CFR 210.10(c) and 220.8(c) require schools to plan menus and offer food components to students in specific age/grade group combinations of grades K-5, grades 6-8, and grades 9-12. This waiver is for the purpose of appropriate safety measures by supporting alternative meal service models and social distancing in the new school year. FNS expects schools to meet the meal standards to the best of their ability, but recognizes that, in some situations, it might not be possible to meet every component of the meal pattern requirements. Given the challenges when employing appropriate safety measures for COVID–19, including serving meals outside the cafeteria and using different age/grade group combinations or one age/grade group, this waiver allows States to grant requests from program operators for the flexibilities listed below.

FNS is committed to supporting schools in serving the most nutritious meals possible as they transition back to normal school meal program operations during the upcoming school year. We expect that the flexibilities provided for this school year will only be utilized as needed, and that schools will seek to meet the meal pattern requirements to the greatest extent possible. In support of that goal, FNS will focus its technical assistance resources on the specific challenges schools face during this transition period.

Therefore, for all States, FNS is establishing a waiver of the NSLP and SBP requirements below. FNS also extends these flexibilities to SSO for the duration of this waiver.

- That menus meet the dietary specification for sodium, at 7 CFR 210.10(b), (c), and (f); and 220.8(b), (c), and (f);
- That all grains offered be whole grain-rich, at 7 CFR 210.10(c); and 220.8(c);
- That, for pre-schoolers, at least one serving per day, across all eating occasions, must be whole grain-rich, at 7 CFR 210.10(o)(3) and (p); and 220.8(o);
- To offer a variety of vegetables from the vegetable subgroups, at 7 CFR 210.10(c) and 220.8(c);
- To offer a variety (at least two different options) of fluid milk, at 7 CFR 210.10(d)(1)(i) and 220.8(d);

- That low-fat milk must be unflavored, at 7 CFR 210.10(c) and (d)(1)(i), and 220.8(c) and (d); and
- To plan menus and offer food components for specified age/grade groups in the stated combinations, at 7 CFR 210.10(c) and 220.8(c).

All other meal pattern requirements remain in effect. This waiver is effective October 1, 2021, and remains in effect until June 30, 2022. State agencies must elect to be subject to the school year 2021-2022 meal pattern flexibilities in order to use them. State agencies should inform local program operators of the availability of this waiver as quickly as possible,¹ and work in partnership with them to determine if this waiver is necessary to ensure access to nutritious meals.

In order to participate under the flexibilities for sodium, whole grains, vegetable subgroups, milk variety, low-fat flavored milk, and the age/grade groups, local program operators must contact the State agency for approval to use this waiver and provide the State agency any necessary information to complete the report requirements discussed below. The State agency must consider approval of this waiver for whole grains, vegetable subgroups, milk variety, low-fat flavored milk, and the age/grade groups on a case-by-case basis. For sodium, State agencies should allow all local program operators to implement sodium flexibilities because, due to COVID–19 safety concerns, many schools are relying on grab-and-go or shelf-stable foods that are pre-packaged, many which are higher in sodium than the foods that were typically used by schools prior to COVID–19. State agencies must report to the FNS Regional Office regarding these flexibilities. When reviewing requests from local program operators, the State agency should consider requests that are targeted and justified with a demonstrated need, based on plans to support access to nutritious meals while minimizing potential exposure to COVID–19.

FNS offers these meal pattern flexibilities to support a successful reopening of schools in school year 2021-2022. To ensure the safety of students, families, and school food service professionals, schools may continue to use alternative meal service models to support social distancing in the new school year. FNS recognizes that meeting the meal pattern requirements can be challenging when serving meals outside the cafeteria. However, FNS also appreciates the importance of offering age-appropriate meals and meeting other meal pattern requirements, and expects that operators look to other alternatives prior to utilizing these flexibilities. FNS expects and strongly encourages program operators to maintain and meet the nutrition standards for each program to the greatest extent possible. Federal procurement regulations continue to apply. As a reminder, procurement regulations permit an exception at 2 CFR 200.320(c)(3), for noncompetitive proposals when there is a public emergency that will not permit a delay.

¹ The burden associated with the requirement to elect Nationwide Waiver participation will be included in an upcoming change request to OMB Control #0584-0654.

As required by Section 2202(d) of the FFCRA, each State that elects to be subject to the meal pattern flexibilities must submit a report to the Secretary not later than 1 year after the date such State elected to receive the flexibilities.² In order to use these flexibilities, local program operators must be prepared to provide the State agency with any necessary information to complete the reporting requirements. The report must include:

- A summary of the use of the meal pattern flexibilities by the State agency and local program operators, and
- A description of whether and how the meal pattern flexibilities resulted in improved services to program participants.

FNS stands ready to provide technical assistance to help program operators meet the meal patterns, and has developed a range of Team Nutrition materials to support the service of nutritious, high-quality meals during the COVID–19 pandemic. To view these resources, please visit <https://www.fns.usda.gov/tn/covid19-resources>.

FNS appreciates the exceptional effort of State agencies and local program operators working to meet the nutritional needs of participants during a challenging time. State agencies should direct questions to the appropriate FNS Regional Office.

Sincerely,

Original Signed

Angela M. Kline
Director
Policy and Program Development Division

² FNS will submit to OMB for approval a revision to OMB Control #0584-0607 to cover the reporting requirements of this waiver under the Paperwork Reduction Act.