

# Appendix K

## Child Nutrition Response #4: The Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs

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. Section 2202(d) of the FFCRA requires states to report on the use of nationwide waivers by the state and eligible service providers. FNS uses the information collected via this waiver to evaluate nationwide waiver participation, ensure nationwide waivers improve services to children, maintain program integrity, and meet reporting and notification requirements established under the FFCRA. 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 implement a meal pattern flexibility authorized in this Nationwide waiver 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  
Service

Braddock  
Metro Center

1320  
Braddock  
Place  
Alexandria  
VA 22314

DATE: March 25, 2020

CODE: COVID-19: Child Nutrition Response #4

SUBJECT: Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs<sup>1</sup>

TO: Regional Directors  
Special Nutrition Programs  
All Regions

State Directors  
Child Nutrition Programs  
All States

|                               |  |
|-------------------------------|--|
| <b>Issuing Agency/Office:</b> | FNS/Child Nutrition Programs   |
| <b>Title of Document:</b>     | Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs  |
| <b>Document ID:</b>           |  |
| <b>Z-RIN:</b>                 |  |
| <b>Date of Issuance:</b>      | March 25, 2020   |
| <b>Replaces:</b>              | N/A  |
| <b>Summary:</b>               | (1) FNS waives, for all States, the requirements to serve meals that meet the 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, School Breakfast Program, Child and Adult Care Food Program, and Summer Food Service Program. (3) This document relates to 7 CFR 210.10(b) and (c), 220.8(b) and (c), 225.16(d), and 226.20. |
| <b>Disclaimer:</b>            | <b>The contents of this guidance document have the force and effect of law as authorized by the Families First Coronavirus Response Act (the Act) (P.L. 116-127).</b>  |

Pursuant to section 2202(a) of the Families First Coronavirus Response Act (the Act) (P.L. 116-127) 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, School Breakfast Program, Child and Adult Care Food Program, and Summer Food Service Program (the Child Nutrition Programs).

<sup>1</sup> "Pursuant to the Congressional Review Act (5 U.S.C. §801 et seq.), the Office of Information and Regulatory Affairs designated this waiver as *not major*, as defined by 5 U.S.C. § 804(2)."

Section 2202(a) of the Act 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.

Under Program regulations at 7 CFR 210.10(b) and (c), 220.8(b) and (c), 225.16(d), and 226.20, Child Nutrition Program meals must meet meal pattern requirements. However, FNS recognizes that, in this public health emergency, appropriate safety measures are necessary. Therefore, FNS waives, for all States, the requirements at 7 CFR 210.10(b) and (c), 220.8(b) and (c), 225.16(d), and 226.20, to serve meals that meet the meal pattern requirements during the public health emergency.

Consistent with section 2202(a)(2) of the Act, this waiver is automatically available to all States that elect to use it, without further application. State agencies must inform their Regional Office if they elect to be subject to the waiver. However, in order to participate under this waiver, local Program operators must contact the State agency for approval to utilize this waiver.

When reviewing requests from local Program operators, the State agency should consider requests that are targeted and justified based upon disruptions to the availability of food products resulting from unprecedented impacts of COVID-19. FNS expects and strongly encourages Program operators to maintain and meet the nutrition standards for each Program to the greatest extent possible. FNS stands ready to provide technical assistance and to offer alternatives to help stakeholders meet meal patterns. As a reminder, Federal procurement regulations at 2 CFR 200.320(f) allow procurement by noncompetitive proposals when there is a public emergency.

State agencies should inform local Program operators of the availability of this waiver as quickly as possible, and work in partnership with them to determine if this waiver is necessary to ensure access to nutritious meals. The State agency must approve use of this waiver on a case-by-case basis, and must report to the FNS Regional Office when and where this waiver is in effect and for what food components.

This waiver is effective immediately and remains in effect until April 30, 2020 or until expiration of the federally declared public health emergency, whichever is earlier. FNS is offering this flexibility in short term increments and will reevaluate the continued need for the waiver as the situation continues to evolve.

As required by section 2202(d), each State that elects to be subject to this waiver must submit a report to the Secretary not later than 1 year after the date such State received the waiver. The report must include:

- A summary of the use of this waiver by the State agency and local Program operators, and
- A description of whether and how this waiver resulted in improved services to Program participants.

FNS stands ready to provide assistance to areas impacted by COVID-19, and intends to continue supporting access to nutritious meals during this public health emergency.

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,

A handwritten signature in black ink, appearing to read "Ang M Kline". The signature is written in a cursive, flowing style.

Angela M. Kline  
Director  
Policy and Program Development Division