



Food and
Nutrition
Service

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DATE: March 9, 2021

CODE: COVID-19: Child Nutrition Response #74

SUBJECT: Nationwide Waiver to Allow Meal Pattern Flexibilities for Summer 2021 Operations- EXTENSION 9¹

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 Meal Pattern Flexibilities for Summer 2021 Operations- EXTENSION 9
Document ID:	
Z-RIN:	
Date of Issuance:	March 9, 2021
Replaces:	N/A
Summary:	(1) FNS waives, for all States, the requirements to serve National School Lunch Program and School Breakfast Program meals that meet the meal pattern requirements during the public health emergency due to COVID-19. These flexibilities also apply to the Seamless Summer Option. (2) The waiver and flexibilities apply to State agencies administering and local organizations operating the National School Lunch Program, School Breakfast Program, and Seamless Summer Option during Summer 2021. (3) This document relates to 42 U.S.C. 1758(a)(2)(A)(i), 7 CFR 210.10(b) and (c), 210.10(d)(1), 220.8(b) and (c), and 220.8(d).
Disclaimer:	The contents of this guidance document have the force and effect of law as authorized by 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) unless otherwise provided.

Pursuant to Section 2202(a) 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 extending a waiver of

¹ 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).

the National School Lunch Program (NSLP) and School Breakfast Program (SBP) meal pattern requirements to support access to nutritious meals while minimizing potential exposure to the novel coronavirus (COVID–19) this summer. As discussed below, these flexibilities will also be available for the Seamless Summer Option (SSO) for the duration of this waiver. This waiver does *not* apply to the Summer Food Service Program (SFSP). Therefore, normal SFSP meal pattern requirements will apply, as of July 1, 2021, when the previous meal pattern waiver expires. Section 2202(a) 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.

Under the National School Lunch Act at 42 U.S.C. 1758(a)(2)(A)(i) and Program regulations at 7 CFR 210.10(b) and (c), 7 CFR 210.10(d)(1), 220.8(b) and (c), and 220.8(d), all meals offered must meet meal pattern and fluid milk requirements. However, FNS recognizes that, in this public health emergency, appropriate safety measures are necessary. Therefore, for all States, FNS waives the requirements at 42 U.S.C. 1758(a)(2)(A)(i), 7 CFR 210.10(b) and (c), and 220.8(b) and (c). In addition, FNS also waives the requirement at 7 CFR 210.10(d)(1) and 220.8(d) that schools must offer students a variety (at least two different options) of fluid milk. All other fluid milk requirements remain in effect. This waiver is effective from July 1, 2021 through September 30, 2021. FNS extends these meal pattern flexibilities to SSO operations for the duration of this waiver.

As mentioned, sponsors that operate the SFSP will resume normal SFSP meal pattern operations as of July 1, 2021, when the *Nationwide Waiver to Allow Meal Pattern Flexibility in the Summer Food Service Program – EXTENSION 8* expires. SFSP sponsors are not expected to face undue burden meeting SFSP meal pattern requirements while simultaneously meeting health and safety standards related to COVID-19.

Consistent with Section 2202(a)(2) of the FFCRA, the meal pattern flexibilities are automatically available 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. However, to use these flexibilities, for NSLP/SBP and SSO operators must contact the State agency for approval and provide the State agency any necessary information to complete the report requirements discussed below. Prior approvals for NSLP/SBP and SSO operators will continue under this extension through September 30, 2021; no further action is needed. Prior approvals for SFSP sponsors will expire on June 30, 2021.

When reviewing requests from local Program operators, the State agency should consider requests that are targeted and justified based on plans to support access to nutritious meals while minimizing potential exposure to 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 Program operators meet the 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 this partial extension as quickly as possible, and work in partnership with them to provide meals to all participants in a safe and accessible manner. The State agency must approve requests on a case-by-case basis, and must report to the FNS Regional Office when and where meal pattern flexibilities are in effect and for what food components.

As required by Section 2202(d) of the FFCRA, each State that elects the meal pattern flexibilities 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 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 "Angela M. Kline". The signature is written in a cursive, flowing style.

Angela M. Kline
Director
Policy and Program Development Division