



DEPARTMENT OF EDUCATION


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July 7, 2022

MEMORANDUM

TO: School Nutrition Supervisors
Single Unit and Special School Administrators

FROM: Aimee F. Beam, MS, RD, LDN 
Education Associate, Nutrition Programs

RE: **SY 2022 - 2023 Operational Memo #1**
Waiver to Allow Fiscal Action Flexibility for Meal Pattern Violations Related to COVID-19 Supply Chain Disruptions Impacting School Meals in School Year 2022-2023 - EXTENSION

This memo is being sent to inform all School Food Authorities (SFAs) of the extension of the waiver of certain Administrative Review fiscal action requirements in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP). Specific fiscal action requirements are waived per the following memo excerpt: *Therefore, pursuant to the waiver authority cited above, FNS is granting a waiver, for all States, for the following regulations when there is a supply chain disruption with respect to foods served under the NSLP, SBP, or SSO and such disruption is due to COVID-19:*

- *The requirement to apply fiscal action for missing food components or missing production records as detailed in 7 CFR 210.18(l)(2)(i); and*
- *The requirement to apply fiscal action for repeated violations involving milk type and vegetable subgroups as detailed in 7 CFR 210.18(l)(2)(ii).*

Please review the attachment to this memo for more information. **No further action is needed by SFAs to participate in this waiver.** State agencies can use this flexibility during a School Nutrition Program Administrative Review when there is a supply chain disruption due to COVID-19 that is preventing or impending NSLP or SBP meal service during the school year.

Please contact us with any questions at 302-857-3356.

Attachments: COVID-19: Child Nutrition Response #110, Waiver to Allow Fiscal Action Flexibility for Meal Pattern Violations Related to COVID-19 Supply Chain Disruptions Impacting School Meals in School Year 2022-2023 -- EXTENSION

cc: Nutrition Team



Food and
Nutrition
Service

DATE: June 30, 2022
CODE: COVID-19: Child Nutrition Response #110

Braddock
Metro Center

SUBJECT: Waiver to Allow Fiscal Action Flexibility for Meal Pattern
Violations Related to COVID-19 Supply Chain Disruptions
Impacting School Meals in School Year 2022-2023 --
EXTENSION

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TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

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|-------------------------------|--|
| Issuing Agency/Office: | FNS/Child Nutrition Programs |
| Title of Document: | Waiver to Allow Fiscal Action Flexibility for Meal Pattern Violations Related to COVID-19 Supply Chain Disruptions Impacting School Meals in School Year 2022-2023—Extension |
| Document ID: | |
| Z-RIN: | |
| Date of Issuance: | June 30, 2022 |
| Replaces: | N/A |
| Summary: | (1) FNS waives, for all States, the requirements to take fiscal action for meal pattern violations related to COVID 19 supply chain disruptions during School Year 2022-2023. (2) This waiver is available to State agencies administrating 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 210.18(l)(2). |

Pursuant to the authority in Section 2202 of the Families First Coronavirus Response Act (the FFCRA) (P.L. 116-127), as amended, and current national supply chain constraints due to COVID-19, the Food and Nutrition Service (FNS) is granting a waiver of certain fiscal action requirements in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP). This waiver is available for any State where there is a supply chain disruption with respect to foods served under such a qualified program and such disruption is due to COVID-19. FNS is also extending this flexibility to the NSLP Seamless Summer Option (SSO) for the duration of this waiver.

Section 2202(c) of the FFCRA permits the Secretary of Agriculture to grant a waiver relating to the nutritional content of meals served if the Secretary determines that a waiver is necessary to provide meals and meal supplements and that there is a supply

chain disruption due to COVID-19. Such disruptions may include unanticipated cancellation of food and supply contracts and unexpected substitutions of food products by suppliers, with respect to foods served under the Child Nutrition Programs.

The Richard B. Russell National School Lunch Act, 42 U.S.C. 1769(c) establishes a unified accountability system, known as the school meal programs administrative review, and program regulations at 7 CFR 210.18 establish requirements for State agencies conducting administrative reviews of school food authorities (SFAs) operating the school meal programs¹. Program regulations at 7 CFR 210.18(1)(2) require State agencies to take fiscal action for missing meal components or production records and for repeat violations involving milk type and vegetable subgroups. FNS recognizes that given current supply chain disruptions that are a result of the COVID-19 pandemic, State agencies and SFAs need additional support and flexibility to continue to serve meals to children during the COVID-19 pandemic. SFAs are facing various supply chain challenges in purchasing and receiving food through their regular procurement channels. Specifically, some districts and schools are experiencing unanticipated cancellation of food and supply contracts, lack of availability of certain foods, unexpected substitution of food products, and increased food and supply prices due to COVID-19 supply chain disruptions.

Therefore, pursuant to the waiver authority cited above, FNS is granting a waiver, for all States, for the following regulations when there is a supply chain disruption with respect to foods served under the NSLP, SBP, or SSO and such disruption is due to COVID-19:

- The requirement to apply fiscal action for missing food components or missing production records as detailed in 7 CFR 210.18(1)(2)(i); and
- The requirement to apply fiscal action for repeated violations involving milk type and vegetable subgroups as detailed in 7 CFR 210.18(1)(2)(ii).

When determining whether this waiver is applicable during an administrative review, State agencies should consider all of the information SFAs have available that illustrates that a COVID-19 supply chain disruption occurred. This waiver is available through June 30, 2023.

States are reminded that under 7 CFR 210.18(1)(2)(iii-iv) fiscal action for repeat violations of the requirements for food quantities and whole grain-rich foods, and for repeat violations of the dietary specifications for calories, saturated fat, sodium, and trans fat is discretionary. FNS strongly encourages State agencies to use this discretion not to take fiscal action for meal pattern violations resulting from a supply chain disruption with respect to foods served under the NSLP, SBP, or SSO and such disruption is due to COVID-19.

FNS is committed to supporting schools in serving the most nutritious meals possible, and expects schools to meet meal pattern requirements to the greatest extent possible.

¹ The burden associated with administrative reviews for the School Meals Programs is included at OMB Control # 0584-0006, Information Collection for the National School Lunch Program – Part 210 (7/31/23).

Before implementing this waiver, States should consider other options, such as the emergency procurement flexibilities at 2 CFR 200.320(c), to ensure meal pattern requirements continue to be met to the greatest extent possible. However, FNS understands schools are concerned about their ability to meet the meal pattern requirements due to supply chain constraints, and we encourage State agencies to use this flexibility when there is a supply chain disruption due to COVID-19 that is preventing or impending NSLP, SBP, or SSO meal service during the school year. FNS will continue to focus its technical assistance resources on any specific challenges schools face.

This waiver may be implemented by States that are experiencing a supply chain disruption with respect to foods served under the NSLP, SBP, or SSO and such disruption is due to COVID-19. State agencies must notify their respective FNS Regional Office of the supply chain disruption that is impacting meal service in their State for use of the waiver². FNS reminds State agencies that a COVID-19 supply chain disruption with respect to foods served under the NSLP, SBP, and SSO is an ongoing condition that must apply to continue using the waiver.

As required by Section 2202(d) of the FFCRA and extended by the Keep Kids Fed Act, 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 elected to receive the waiver. The report must include a summary of the use of this extension by the State agency and local Program operators.

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

JESSICA SARACINO Digitally signed by JESSICA
SARACINO
Date: 2022.06.30 12:34:21 -04'00'

Jessica Saracino
Director
Program Monitoring and Operational Support Division

² The burden associated with the requirement to elect Nationwide Waiver participation will be included in an upcoming revision to OMB Control #0584-0654.